

## **Altoona Board of Adjustment Hearing – August 1, 2006 – 6:30 PM**

Members Present – Dale Sikes, Dennis Armantrout, Douglas Teuber, John Rullman  
Lea Morris arrived at 6:33 p.m.

Staff Present – John Shaw, Chad Quick, Susi Hoots

Others Present – Dennis Keller, Tom Carr, Nina Carr, Carl Fields, Kathie Ruth, Robert Thompson, Mike Brooner, Dick Nesselroad, Dee Susi, Frank Butts, Karen Bellis, Scott Glass, Janet Glass, Bob Johnston, David Porter, Judy Porter, Tony Glass.

Chairman Rullman called hearing to order. Roll call was taken with one member absent. Lea Morris arrived at 6:33 p.m.

#1 – Continuation of a hearing from June 6, 2006, Conditional Use Permit Request from Robert and Delores Johnston. Chairman Rullman directed this item be moved to the end of the agenda.

#2 – Variance requests from Dee Susi for property at 1003-3<sup>rd</sup> Street SW, to allow her to place a swimming pool in the front yard area of a corner lot and to use a 42” tall chain link fence to enclose the swimming pool. The property is zoned R-2 and by City Code swimming pools are not allowed in front yards and must be enclosed by a six-foot tall non-climbable fence.

Dee Susi, 1003-3<sup>rd</sup> Street SW, Altoona, presented the request. Ms Susi stated the pool is for her children. The pool has a cover, which is some times on and some times off. The rear yard is not big enough for this pool.

Member Sikes asked if Ms Susi understands there are other reasons for a six-foot fence around a swimming pool besides the City Ordinance? Ms Susi responded “yes”. Ms Susi said she contacted the City when she got the pool last year and was told by Joe Pirillo something like “well at least you have a fence and that is better than most...” as he would change the ordinance to make it OK. Ms Susi stated she does not have a back yard so doesn’t have any choice but to put the pool in the front yard and can’t have a six-foot fence in the front yard. She spent \$200 on the pool for her children’s enjoyment. She asked Joe Pirillo for something in writing to verify the pool was approved and was told all she needed was his name.

Shaw indicated the City Building Department and Zoning Department have nothing on file or any direct recollection of this particular matter. Shaw acknowledged Staff has had many conversations/discussions regarding pools of this type, especially last summer. He further indicated Joe Pirillo is not in a capacity to make such a determination.

Members asked if there was a way for the pool to be moved to the back yard. Ms Susi stated the pool is 15’ diameter and 42” deep, and she would have to remove the trees and current fence from the backyard to get the pool to fit there.

Frank Butts, 1003-3<sup>rd</sup> Street SW, addressed the Board. Frank said he studied the situation and determined the pool would not fit in the back yard. Frank further stated he removed the ground to set the pool 5 inches below the fence bottom in its current location.

Member Sikes asked Ms Susi to state her hardship that is the basis for a variance. Ms Susi stated: The hardship is I have a pool and I have no place to put it. I talked to the City and was told it was OK.

Tony Glass, 209-11<sup>th</sup> Ave NW, Altoona, IA, addressed the Board to voice opposition to the granting of a variance.

Janet Glass, 207-11<sup>th</sup> Ave SW, Altoona, IA, addressed the Board to voice opposition to the granting of a variance.

City Staff had received one e-mail in opposition to the granting of a variance.

Teuber moved to deny the Variances as requested in the application. Seconded by Sikes. Vote: Yes – Teuber, Sikes, Armantrout, Morris, Rullman. No – None. **Variance requests denied.**

#3 Variance requests from David and Judith Porter for property at 400-1<sup>st</sup> Avenue S to allow front yard setback variances of 26.88 feet and 19.64 feet, and a rear yard variance of 32.08 feet. The property is zoned R-3 (Multi-family Residential). The owners are proposing to change the use from an apartment to a condominium. No additional construction is proposed and no additional extension into the front or rear yard is proposed.

David Porter, 100-7<sup>th</sup> Avenue SW, Altoona, IA, presented the requests. Mr. Porter stated he and his wife own the apartments and wish to change them to condominiums so that they have control over the condominiums and control over the sales. Porter said he has concerns that if the units were sold as apartments they may not be cared for in the manner he would prefer. Whereas if they are condominiums he can set the covenants to require maintenance as he sees fit. Mr. Porter indicated he would be seeking approval from the Altoona Building Department, City Council, and Polk County for the condo conversion.

When the apartments were built they received variances and are currently considered legally non-conforming.

Sikes moved to approve the variances as requested in the application conditional upon all three properties obtaining R-3 zoning through the City Council. Seconded by Teuber. Vote: Yes – Sikes, Teuber, Rullman, Morris, Armantrout. No – None. **Variance requests approved.**

#4 – Variance request from David and Judith Porter for property at 106-5<sup>th</sup> Street SW to allow front yard setback variances of 25.98 feet and 30.94 feet, and a rear yard variance of 26 feet. The property is zoned R-3 (Multi-family Residential). The owners are proposing to change the

use from apartment to condominium. No additional construction is proposed and no additional extension into the front yard or rear yard is proposed.

Sikes moved to approve the variances as requested in the application conditional upon all three properties obtaining R-3 zoning through the City Council. Seconded by Teuber. Vote: Yes – Sikes, Teuber, Rullman, Morris, Armantrout. No – None. **Variance requests approved.**

#5 – Variance requests from David and Judith Porter for property at 106-5<sup>th</sup> Street SW to allow front yard setback variances of 19.75 feet and 26.64 feet, and a rear yard variance of 31.49 feet. The property is currently zoned R-2 (One and Two-family Residential). The owners are proposing to change the use from apartment to condominium. No additional construction is proposed and no additional extension into the front or rear yard is proposed.

Sikes moved to approve the variances as requested in the application conditional upon all three properties obtaining R-3 zoning through the City Council. Seconded by Teuber. Vote: Yes – Sikes, Teuber, Rullman, Morris, Armantrout. No – None. **Variance requests approved.**

#6 – Variance request from Walters Companies, Inc. for an eight-foot variance to place a monument sign two feet from their south property line. The property is the Foxton Village Retail Strip Center at 1003-8<sup>th</sup> Street SW. The property is zoned R-2 and City Code requires a freestanding sign to set back 10 feet from a property line.

Mike Brooner, Civil Design Advantage, 5501 NW 112<sup>th</sup> Street, Ste G, Grimes, IA presented the request on behalf of the owner, Walters Companies, Inc. Mr. Brooner stated they would like the sign to be the same distance from 8<sup>th</sup> Street SW as the other signs along the street, but that is not feasible as that would be in the right-of-way. The right-of-way varies greatly on the north side of 8<sup>th</sup> Street. The ordinance may have been written assuming a standard right-of-way. The applicants are requesting to be closer to the lot line than the ten-foot requirement. It appears other signs are closer than 10 feet. In the proposed location, it will still be difficult to see the sign. The day care sign next door is 40 feet back of curb; this proposal is for 51' back of curb. The Marzetti sign is closer to back of curb than 51' feet.

Robert Thompson, 700-2<sup>nd</sup> Avenue SE, Altoona, IA, addressed the Board to advise as to how the current state of the variable right-of-way came about.

Staff advised one citizen, Mike Warren, 803-8<sup>th</sup> Street SW, Altoona, had contacted the City to voice opposition to the granting of a variance.

Teuber moved to approve a six-foot variance to allow a monument sign to be placed four feet inside the address' south property line. Seconded by Sikes. Vote: Yes – Teuber, Sikes, Rullman, Armantrout, Morris. No – None. **Six-foot Variance approved.**

#7 – Request for administrative appeal from Karen Bellis Associates for property at 707-1<sup>st</sup> Avenue South. The appeal is from a decision made by Altoona City Staff concerning whether or not Karen Bellis Associates is eligible to apply for a home occupation conditional use permit.

Karen Bellis, 5632 W 18<sup>th</sup> Street N, Mingo, IA, presented the request. Ms Bellis stated her business is a small business-to-business operation that previously had been located in a home in Pleasant Hill. She purchased the subject house for the business as she and her staff wanted to be in a home environment. She does not reside in the house. Ms Bellis indicated she polled 19 neighbors to solicit input and received no objection to the business being in this location. Ms Bellis further indicated she did not inquire of any zoning issues at the time of purchasing the property as she was in a difficult situation and needed to relocate quickly. Ms Bellis acknowledged that the appeal would not be necessary if she, in fact, lived in the house, but she does not.

Robert Thompson, 700-2<sup>nd</sup> Avenue SE, Altoona, IA, addressed the Board to voice opposition to any granting of the appeal.

Sikes moved to deny the administrative appeal, as the Board agrees with Staff's interpretation of the City Zoning Code and refer this matter to Planning and Zoning Commission/City Council for any possible change in Chapter 167.15 of the Zoning Code. Seconded by Armantrout. Vote: Yes – Sikes, Armantrout, Morris, Rullman, Teuber. No – None. **Request for administrative appeal denied.**

Copies of Ordinance Nos. 7-17-06#4(225) and 7-17-06#3(224) approved by City Council on July 17, 2006, were distributed to Board Members for review.

#1 – Continuation of a hearing from June 6, 2006: Conditional Use Permit request from Robert and Delores Johnston to operate a retail business in an M-1 (Limited Industrial) zoning district for property they own as 120-1<sup>st</sup> Ave North. The Coffee Barn wishes to make and serve fruit smoothies and lunches.

Sikes asked if Coffee Barn presently complies with M1 zoning. Shaw answered yes: as manufacturing, assembling, compounding, processing, packaging, or other comparable treatment of food products (168.13-1H). Sikes stated that Staff has determined the proposed use would not be a permitted accessory use as described in 168.13-2C and questioned whether the Board should hear the matter as an administrative appeal instead of a conditional use permit request.

Carl Fields, 1305-4<sup>th</sup> Street NW, Altoona, IA, owner of The Coffee Barn business, addressed the Board. Mr. Fields indicated he feels he is dealing with a food-stuff in the coffee business and hot dogs and smoothies are food and therefore he sees no difference in adding those sales to what is currently being sold at this location. Mr. Fields further indicated he is confused by the zoning regulations and those regulations have been interpreted to him in a number of different ways.

Furthermore he was advised yesterday by a city official that M1 was for everything from industrial uses through all commercial uses. Shaw replied that the zoning was similar to that as stated prior to a change made in 1998.

Bob Johnston, 109-8<sup>th</sup> Street SE, Altoona, IA, addressed the Board. Mr. Johnston said he does not see any difference in what Mr. Fields proposes and what is currently being done at Being There, which is also zoned M-1.

Sikes indicated he was told by a city official that a zoning issue was going to be brought up at the next City Council meeting that would specifically allow food sales, concessions, restaurants in an M-1 district. Shaw indicated he was not aware that was the case. Sikes asked Dennis Keller, Member of Planning and Zoning Commission, to step forward and address the Board. Mr. Keller stated no request has been presented to the Commission to consider a recommendation for re-zoning of this location.

Additional discussion.

Morris moved to grant a Conditional Use Permit for The Coffee Barn to operate a retail business selling smoothies and lunches in an M1 Zoning District for a period of three months or until the property is re-zoned to a commercial zone, whichever comes first. Teuber seconded. Vote: Yes – Morris, Teuber, Sikes, Armantrout, Rullman. No – None. **Conditional Use Permit for the Coffee Barn to operate a retail business selling smoothies and lunches in an M1 Zoning District for a period of three months or until the property is re-zoned to a commercial zone, whichever comes first, granted.**

Hearing adjourned 9:40 p.m.

Next Hearing will be Wednesday, September 6, 2006, 6:30 p.m..

Respectfully submitted,  
Susi Hoots  
Community Services  
Administrative Assistant  
City of Altoona