

**CITY OF URBANDALE
BOARD OF ADJUSTMENT
MINUTES**

December 3, 2008

The Urbandale Board of Adjustment met in regular session on Wednesday, December 3, 2008, at the Urbandale Administrative Offices Building, 3600 86th Street, with Chairperson Patrick Kirchner calling the meeting to order at 6:00 p.m.

Board members present were Carey Evans, Patrick Kirchner, and Mark Wandro. Staff members present were Paul Dekker, Director of Community Development, and Cheryl Vander Linden, Department Secretary.

There were no objections to the official publications as they appeared in the Urbandale/Johnston Register.

Mr. Kirchner explained that the Board is normally a five-member board, and a majority vote for approval (three out of five) would be necessary in order for an appeal to pass. Because only three members are present tonight, a unanimous vote in favor by all three members will be necessary to approve any variance. That said, any appellant who wishes to defer their item until a later meeting in order to have more board members present may do so at any time up to a motion being made for vote. Once a motion has been made, it would no longer be possible to request deferral. If denied, a variance cannot be resubmitted for the Board's consideration for a minimum of one year.

The first item on the agenda was approval of the November 5, 2008 meeting minutes.

Ms. Evans moved, and it was seconded by Wandro, to approve the November 5, 2008 meeting minutes. On roll call; Ayes: Evans, Wandro, Kirchner; Nays: none. Passes: none. Motion carried.

Then next item on the agenda was the "Urbandale High School Sign Variances", 7111 Aurora Avenue, case no. 011-2008-01.24.

Mr. John Lees, 7321 NW 21st, Ankeny, supervisor of maintenance construction for Urbandale Schools, said we're here to request variances from the Sign Ordinance. We have four specific locations at the new high school project where we need variances. The first is at the entrance to Frerichs Field. The second would be the new entrance to the gymnasium. The other two would be for the new entrance to the performing arts center and for the new main entrance to the high school.

Currently the present high school sits where the new parking will be, and all of the main building entries will be from the new parking lot. It's not going to be possible to see those building entrances from the street, only from the parking lot once people get into

the parking lot. So, we need variances to face the gymnasium and performing arts entrance signs toward the parking lot rather than the street. And then the main high school entrance is tucked away there in the corner, so we need an elevated sign pulled out from the building there just so it can be seen. From Aurora to where that sign is is probably close to 1/8 mile.

The fourth sign is for the stadium, which is now completed. We're requesting that instead of a monument sign, due to where the parking is in relation to the stadium entrance, that we be allowed a variance to locate a sign out in front of the stadium entrance, to help direct people to the stadium ticket booth. So we respectfully request approval of those variances.

Mr. Kirchner asked is there already a sign near the stadium entrance?

Mr. Lees said no, the background for the sign is there, but we didn't put the sign up because we needed the variance to put the sign in.

Mr. Dekker said there is a monument sign on the corner.

Mr. Lees said yes, there's a monument sign here for the high school on the corner of 70th and Aurora. This is actually to direct people to the high school and the stadium property. For this sign there's an architectural element in the front that we're asking to put the sign on, similar to what we have at the main entrance to the high school.

There was no one present who wished to speak in opposition.

Mr. Dekker said the action required on this item is to approve or deny variances from Sections 2, 4.1, and 4.3, paragraph "N" of the Sign Ordinance to allow erection of wall and free-standing signs in four locations for the high school and sports stadium.

The Urbandale Community School District is requesting variances to:

- erect wall signs identifying building entries for the auditorium and gymnasium on the west wall of the building, which does not front on a public street as required by Section 4.1 of the Sign Ordinance, each having 11.7 square feet of area and respectively reading "auditorium entrance" and "gymnasium entrance";
- erect a free-standing sign with 33.3 square feet of area identifying the main entry to the high school, near but separate from the building, parallel to the south wall and reading "Urbandale High School";
- erect a free-standing sign near and parallel to but separate from the sports stadium ticket booths and stadium entry having 35 square feet and reading "Frerichs Field" and "Home of the J-Hawks"; and
- use three rectangles to calculate the area of the signs on the high school building in lieu of the two rectangles allowed.

Section 2 of the Sign Ordinance requires that a maximum of two rectangles be used to calculate the area of wall signs, and Section 4 restricts wall signs to walls that front on a street.

Section 4.3, paragraph "N" requires free-standing signs for public buildings to be monument signs. The proposed signs are configured to allow pedestrians to walk under and through them, and could be considered to be pole signs under the definitions of the Sign Ordinance, or alternatively do not comply with the monument criteria for monument signs (too much open space in the monuments).

With completion of the current and final phase of the high school reconstruction, next summer the remainder of the old building excluding the gymnasiums will be demolished and the primary parking for the high school will then be constructed in its former location, i.e. to the south and west of the new building and the gymnasiums. The main entrances to the high school, auditorium, and gymnasiums will then be from the new parking, i.e. on the south and west sides of the building. The main entrance to the sports stadium is now in its southwest corner, along Aurora Avenue and separated from the primary parking by the high school building.

Mr. Dekker said a total of approximately 642 spaces will be provided for the high school, while maintaining the 65 spaces for the Senior Center and 24 spaces for the pool, for a total of approximately 731 parking spaces.

The school property has a total area of 35.53 acres including the baseball field but excluding City-owned parcels for the Senior Center and swimming pool. Most of the parking for the pool and Senior Center is located within the school site. The school property has 1,694.67 feet of frontage on Aurora Avenue, excluding 250 feet of frontage for the Senior Center (school frontage includes all of the pool parking and most of the Senior Center parking), and 779.15 feet of frontage on 70th Street. 72nd Street, with a right-of-way width of 70.0 feet, also terminates into the north side of the property

The high school property is zoned "R-1I" Intermediate Density Single Family District. Schools are a conditional use in the "R-1I" District and all other residential districts, so a Conditional Use Permit was required for the high school and stadium reconstruction and was approved by the Board on January 19, 2005. The Conditional Use Permit required a minimum of 618 parking spaces to be provided on the school site, excluding the pool and Senior Center parking. The Conditional Use Permit approval also included approval of a setback variance from 70th Street for sports stadium seating. The Board granted a variance on October 3, 2007 to allow the sports stadium lighting to exceed the 60-foot maximum height allowed by the Zoning Ordinance.

The single-family residences located to the north of the school property are zoned "R-1I" Intermediate Density Single Family District, as are those located to the south of

the school property (south of Aurora Avenue) and west of 72nd Street. The single-family residences located to the south of the school property (south of Aurora Avenue and east of 72nd Street), Lions' Park, and the single-family residences located east of the school (east of 70th Street) are zoned "R-1S" Suburban Density Single Family District.

Mr. Dekker said Staff Analysis is as follows:

1. The property appears to be unique, in part because high schools are by nature unique from other properties (public and private) and in part because the near-total reconstruction of the high school on the same property while the original building remained in use necessitated some design compromises.

In particular, the building is located between the primary parking and the sports stadium by a considerable distance, somewhat isolating the two and making it more difficult for visitors and casual fans from locating the stadium entry. This relationship appears to create a greater than usual need for sign identification, and need for a more distinguishable sign application.

Somewhat similarly, the primary entrance for the high school is somewhat "tucked away" in an interior corner of the building, making it less prominent, while also being set back a considerable distance from the street. This relationship appears to make the free-standing sign necessary in lieu of a more customary wall sign, i.e. by setting it out from the building the identification provided by the sign becomes more prominent.

The auditorium and gymnasium entrances are oriented to the parking field and appear readily visible from the primary parking, but are not readily visible from the street or primary entrance to the parking. The locations of such building entrances on the west wall of the building are very substantially dictated by the pre-existing conditions, especially the gymnasium, and it there does not appear to be any practical way to locate the wall signs on a frontage wall.

All of the above situations appear to be the unique results of the property's pre-existing characteristics, and not the result of desire or debatable choice. It appears reasonable to conclude that none of the above situations would have been acceptable had there been more freedom from site/building constraints, i.e. the parking/sports stadium would have been placed in close proximity, and all of the building entrances would have been more prominent with respect to the streets/primary site entries.

2. It does not appear that any of the above situations were self-created, i.e. they were the optimal outcomes from imposed site/building limitations and conditions rather than at-will design choices. Therefore, the Ordinance may create hardships by not allowing signage appropriate to the property conditions.

3. The intent of the Ordinance is to provide adequate signage to appropriately identify the property and principal uses, and to properly guide users, in this case the general public. The proposed signage appears to be appropriate to the spirit and intent of the Ordinance, and to thereby comply with its spirit and intent.
4. There do not appear to be reasonable alternatives to the variances.

Therefore, the Board could find that the property is not unique; no hardship exists; the proposed variances could be detrimental to health, safety and welfare; that the spirit and intent of the Ordinance has not been satisfied; that a reasonable alternative exists; and that one or more of the requested variances should be denied. Or, the Board could find that subject property is unique; hardship has been created by the Ordinance; the proposed variances do not create a negative impact upon the character of the neighborhood, and the spirit and intent of the Ordinance have been satisfied; health, safety, and welfare have been preserved; no reasonable alternatives to the variances exist; and that one or more of the requested variances be approved.

Staff recommends approval of variances from Sections 2, 4.1, and 4.3, paragraph "N" of the Sign Ordinance to allow erection of wall and free-standing signs in four locations for the high school and sports stadium in the manner proposed.

Mr. Wandro moved, and it was seconded by Evans, to approve the Urbandale High School Sign Variances, based on the fact that the subject property is unique, hardship has been created by the ordinance, the variances do not create a negative impact on the character of the neighborhood, and the spirit and intent of the ordinance has been satisfied, health, safety and welfare has been preserved, and no reasonable alternative to the variances exists. On roll call; Ayes: Wandro, Evans, Kirchner; Nays: none. Passes: none. Motion carried.

The next item on the agenda was the "Collins Fence Setback Variance", 4639 90th Street. Mr. Kirchner said this agenda item has been deferred tonight at the request of the appellant.

The next item on the agenda was the "Ordagic Garage Height Variance", 3512 Ashwood Drive, case no. 011-2008-01.26.

Mr. Jeff Coop, 4408 62nd Street, Urbandale, said this is a request for a proposed detached garage on a property that slopes off dramatically in the back yard. Right now their driveway only extends to the back wall of the house and they don't have very much parking on the property. They have room for two cars parked behind each other, and if they have any company at all, they have to park on the street. Their whole intention was to get a garage in the back so they could get their cars off the street and inside of a garage. Their neighbor to the north has built a garage in almost exactly the same

manner that my client is proposing, since their back yard slopes down from their house as well. There is another neighbor to the south that has done pretty much the same thing. So basically we just kind of looked at what was in the neighborhood and pretty much copied what they were doing. That's how we came about the idea of doing this.

At the time, we didn't realize that we would need a variance because of the back of the garage being so high, but we found that out after we had talked to the City staff, so we went through the process to submitting this variance request. We talked to several people about if there was anything we could do differently so we could comply but it would set the garage down so low that everything would just drain right back down into the garage. He said our garage would be almost identical to the neighbors' to the north. The garage would have a poured foundation wall, and we did get engineering on the footings and the floor part because they do want to have a storage space underneath. It looked like the neighbors had used frame construction, but we didn't want to do it that way. So I contacted an engineer that we deal with, at Advanced Engineering, and they designed a steel floor system that would really hold the weight a lot better. And I told them to go ahead and engineer the footings as well, to compensate for the weight of the cars and weight of the foundations. Then it would have a poured foundation wall actually going the rest of the way up here to tie in with the driveway. And we'd use compacted fill from where the storage room is forward, that would just be compacted fill.

Mr. Coop said here's a picture of what their neighbor has. You can see the door into their below-floor storage. I think ours would be a better design than theirs. It was kind of thrown together pretty quickly. We want to do it right, make sure it's done the right way. Here's a picture looking into the backyard. You can see it slopes off pretty quickly. This is where the proposed garage would be and it would be about the same setback as what the neighbors' is. It's going to be as close as we can get to the property line. Where the fence is here, to make it drain better, we talked to the neighbor, and my customer wants to take this chain link fence out and fill that with some gravel in there, and then we're going to put an actual channel drain right here in the concrete so that it drains to the back properly, rather than out into the street or anything like that. Other than that, I think that was pretty much it.

Mr. Dekker has sent me stuff as far as what City Staff was looking at with respect to flood protections, and kind of gave me some recommendations, and they told me about an elevation engineer, Mark Lee, and I've contacted him and he's supposed to get back with me tomorrow. We'll get the elevation verified, so that we're one foot above the 100-year flood zone. Hopefully that satisfies everything.

Mr. Kirchner asked do you serve as contractor for the project?

Mr. Coop said yes, I do.

Mr. Kirchner asked do you know if the neighbors had to obtain variances to put in their

garages?

Mr. Coop said I think one did that I know of. I didn't really talk to them. I did talk to them about signing if they were okay with our project, and they did say that they had received notices from the City and they were perfectly fine with everything. I asked Roger Schemmel, in the Building Department, that if they had already went through the variance process and got approved, can we streamline this to not waste your time, and he said we still need to go through the variance process. He thought one of them had gotten a variance, but that's all I know. I didn't really check into that.

There was no one present who wished to speak in opposition.

Mr. Dekker said the action required on this item is to approve or deny a variance of 7.25 feet from the 12-foot maximum height allowed by Section 4.1, paragraph B-1 of the Zoning Ordinance for a detached garage.

The appellants, Mr. Senad and Ms. Vanentina Ordagic, are requesting a variance of 7.25 feet in addition to the 12-foot maximum allowed height to construct a two-car detached garage in the rear yard that would have a partial "walkout" lower level for storage under the rear (west) portion of the garage. The height variance is necessary because of the proposed lower level, which causes the proposed garage to have a height of 19.25 feet as measured on the rear elevation and a height of 14.25 feet as measured on the front elevation. No garage exists on the property, and it has a single-car driveway width as is common for many properties in this neighborhood. The house was constructed in 1965 and Mr. and Ms. Ordagic acquired the property in 2002.

Section 4.1, paragraph B of the Zoning Ordinance restricts the height of detached accessory buildings for single-family residences to a maximum height of 12 feet unless the building has 25-foot minimum setbacks from all property lines, in which case the maximum permitted height becomes 25 feet. Building height is defined as the average height of the gable for this type of structure (half-way between the eave line and ridge line), measured from the finished grade at the building line or street curb, whichever is higher. "Building line" is synonymous to the minimum front setback line, which usually is higher than the curb line and is on this property (residential lots usually, but not always, slope upward from the street curb to the front setback line). The appeal did not include a proposed floor elevation; if the existing driveway elevation is retained, it appears that the garage floor would be about the same elevation as the building line elevation, although the height may be raised to positively drain the driveway out to the street. Depending on the final determination by the builder/appellant, the actual variance may less than the published amount.

The size of this property does not allow for 25-foot setbacks to be provided for the proposed garage in lieu of the variance, since the property is just 60 feet wide. The 25-foot setback requirement for an accessory structure exceeding 12 feet in height was

adopted in 2000. Before 2000, accessory structures were not allowed to be taller than 12 feet under any circumstances, regardless of setback. The current setback and height regulations for accessory buildings were adopted for two primary reasons. First, several very large garages were constructed with 3-foot setbacks, to the detriment of the adjoining properties since the structures shaded significant area on the adjoining properties and obstructed air flow to the extent of creating “dead zones”, and because they altered the character of the neighborhood. Secondly, the City annexed a significant amount of agricultural and residential estate properties that were comparatively large in size, and whose owners often wished to construct accessory buildings with heights of more than 12 feet because of large vehicles or equipment. As development occurred, those large, tall accessory buildings could have a negative affect on the development of adjoining properties if they had only 3-foot setbacks, so larger minimum setback requirements were established to mitigate their impact while at the same time accommodating the need for greater height.

The property has 60 feet of frontage on Ashwood Drive and an area of 7,518 square feet, making the lot legally nonconforming in both lot width and lot area, as is common throughout much of the Karen Acres neighborhood. The property is zoned “R-1S” Suburban Density Single Family District, as are the single-family residences to the north, south, and east. North Karen Acres Park adjoins to the west, and the Karen Acres Creek channel runs along the edge of the Park, just to the west of this property’s rear property line.

Mr. Dekker said, according to Flood Insurance Rate Maps (FIRM) issued for Urbandale by the Federal Emergency Management Agency (FEMA), approximately the westerly 40% of this property appears to be located within a Flood Hazard Area, specifically within Zone “X”—Other Flood Areas, so designated because this portion of Karen Acres Creek has a drainage area of less than one square mile. To the south of 78th Street, about 400 feet south of this property, Karen Acres Creek has a Zone “A” designation, given to 100-year floodplains for which no base flood elevations have been determined.

This property may or may not actually be located within a Flood Hazard Area, in part because current FIRM’s are inherently inaccurate and lacking in detail, and in part because the designation appears to have been made from inaccurate topographic data that was the “best available” at the time (1979). The official FIRM map appears to correlate to an unofficial “work map” given to City staff in 1979 when the initial flood maps were issued, that utilized City topographic mapping created from 1960 aerial photography that predated development of this property. The City topography was much superior to US Geological Survey (USGS) topographic information that usually had to be used by FEMA, if ANY topographic information was available, but casual observation suggests that the Creek channel originally flowed through this property but was relocated to the west into the Park, and the lot filled to some extent. Such practices have not been allowed for decades, but were not unusual at the time this property was developed.

Conversely, a great deal of the drainage basin upstream from this property had not been developed at the time the FIRM was issued, formulas used by FEMA to calculate flooding have been modified, and very limited data was available at the time the original maps were issued. Therefore, it is also possible that the flood risk for this property is understated by the FIRM.

The unofficial work map suggests that the 100-year flood elevation for this property was computed to be approximately 111.5 feet (City datum), thereby resulting in a minimum floor elevation of 112.5 feet for the lowest level of the proposed garage. However, in the case of undetermined flood base elevations such as this, the property owner is required to retain a qualified engineer to compute floodway boundaries and the minimum floor elevation, which may or may not resemble the approximation of the work map or FIRM.

In any case, the City is required to enforce the FIRM as issued or to utilize more restrictive "best available information" if any is available and known to the City. Failure to enforce the flood protection requirements could jeopardize the City's eligibility to participate in the FEMA flood insurance program, which would have very dire consequences for the community as a whole as well as for this individual property. Nonparticipation could make it difficult or even impossible to secure financing, even in very good market times. At the very least, the City's "good standing" could be damaged, leading to increased oversight and other adverse results.

The appellant states that neighbors to both the north and south have similar garage designs, and are requesting the variance to be allowed to do the same sort of construction. Also, that the lack of a garage requires the owners to park their vehicles in the driveway or street, and the addition of a garage will allow them to park them in the garage and free up the driveway and street for visitors, etc. Finally, the appellant states that it is not possible to construct a garage without the variance due to the topography, i.e. because the rear yard slopes down to the Creek, and that therefore there is no reasonable alternative to the variance.

Mr. Dekker said Staff Analysis is as follows:

1. The property does not appear to be unique with respect to the neighborhood, since all of the nearby properties are very similar in size and character. The property IS somewhat unique with respect to "R-1S" District properties in general because it is legally nonconforming with respect to the minimum lot width and area, which are 60 feet and 7,518 square feet compared to the 70-foot minimum lot width and 8,500 square foot minimum lot area that have been required by the "R-1S" District since 1973.

Properties throughout much of the Karen Acres neighborhood are legally

nonconforming in both lot width and lot area. The legal nonconformities do not appear to be factors in the requested variance.

The property also is somewhat unique because its rear yard appears to lie partially within the Karen Acres Creek floodplain, having been developed prior to FEMA designation of flood hazard areas and correlating regulation of floodplain development. Properties developed in Urbandale after issuance of the FIRM seldom have any flood hazard areas within them, and at worst only within "perimeter" portions of the property that would usually not be considered "buildable". No properties developed within the last 10 years contain even a small portion of flood hazard area, since any such inclusion made it impossible to sell mortgages for such properties on the secondary markets.

2. The garage conforms to the minimum setbacks in all respects except for its height, so it does not appear to have a detrimental affect on health, safety, or welfare since the impact on adjoining properties to the north (side) and rear (west) appear to be minimal. The provision of additional off-street parking is considered desirable and beneficial to the neighborhood.

The Ordinance DOES require that all buildings and fill be located outside of floodways so flooding onto other properties is not increased in extent or depth, and that the lowest floor elevation be one foot above the 100-year flood elevation. If the proposed structure complies with these requirements, the spirit and intent of the Ordinance appears to be satisfied.

3. The Ordinance does not appear to create a hardship since the height variance only appears to be necessary to incorporate a storage area below the main level of the garage. It appears that the lower level storage could be eliminated and the building site filled instead, thereby reducing the height of the garage and making it possible to comply with the maximum height restriction.

It may be necessary to eliminate the lower level storage to comply with minimum floor elevation requirements, depending on an engineer's determination of the base flood elevation and corresponding minimum floor elevation.

4. Elimination of the lower level storage appears to be a reasonable alternative to the requested variance even though the property is smaller than the "R-1S" requirements. There are a number of "small lot" single-family residential neighborhoods within Planned Unit Developments (P.U.D.'s) that have smaller lots and fully compliant detached garages.

Therefore, the Board could find that the property is not unique; no hardship exists; the proposed variance could be detrimental to health, safety and welfare; that the spirit and intent of the Ordinance has not been satisfied; that a reasonable alternative exists and

that the requested variance should be denied. Or, the Board could find that subject property is unique; hardship has been created by the Ordinance; the proposed variance does not create a negative impact upon the character of the neighborhood, and the spirit and intent of the Ordinance have been satisfied; health, safety, and welfare have been preserved; no reasonable alternative to the variance exists; and that the requested variance be approved.

Mr. Dekker said Staff recommends approval of the variance of 7.25 feet from the 12-foot maximum height allowed by Section 4.1, paragraph B-1 of the Zoning Ordinance to allow the proposed garage to have a height of 19.25 feet as measured on the rear elevation and a height of 14.25 feet as measured on the front elevation, subject to the appellants' retaining a qualified engineer to determine and certify floodway boundaries and base flood elevations for this property, and compliance with the Zoning Ordinance by placing the proposed garage and all fill beyond such floodway boundaries and raising the lowest floor elevation of the garage a minimum of one foot above the 100-year flood elevation.

Mr. Kirchner said you said that you're familiar with, and agreeable to, the conditions that are accompanying the staff's recommendation?

Mr. Coop said yes.

Mr. Wandro moved, and it was seconded by Evans, to approve the Ordagic Garage Height Variance, per Staff's recommendations, based upon the fact that the property is unique, hardship has been created by the ordinance, the proposed variance does not create a negative impact upon the character of the neighborhood, and the spirit and intent of the ordinance has been satisfied, the health, safety and welfare have been preserved, and no reasonable alternative to the variance exists. On roll call; Ayes: Wandro, Evans, Kirchner; Nays: none. Passes: none. Motion carried.

Regarding Staff reports, Mr. Dekker for the next meeting, we may have the Collins fence setback item, assuming they decide to proceed. They're still not sure whether they are going to proceed or not, and if they do, whether they'll do it at the January meeting or February meeting. At this point that's the only thing that has been filed, but we're not yet at deadline for submittals.

To bring you up to date on Furry Friends, briefs have been filed by both sides. I'll make copies of those and send those to you. One thing that might be of note is that I pointed out to the City's attorney that they have relocated to another city where they were allowed by the zoning, so the court appeal seems like kind of a moot point at this juncture. The City's legal counsel noted that fact in their filing, so maybe the case will just get dismissed since the Court has plenty of other cases to deal with rather than to just have what would basically be a philosophical discussion. But in any case, City legal counsel has responded to everything and I'll give you copies just so that you can read

then if you wish.

Mr. Wandro asked was she released from her lease on that property?

Mr. Dekker said yes, she must have been. She relocated to a property in Clive which has Industrial zoning, which, if she had found a property in Urbandale with industrial zoning her use probably would not have been an issue in Urbandale.

The last thing is that, in January, you'll be starting to see a new face. I've delegated the duties of staffing the Board to one of my staff people, Heather Mac Bean. I'll let her co-pilot for a couple of meetings and then after that, turn it over to her. In any case, I'll still be participating behind the scenes; I just won't be attending all the meetings.

The meeting adjourned at 6:25 p.m.