

**CITY OF URBANDALE
BOARD OF ADJUSTMENT
MINUTES**

October 7, 2009

The Urbandale Board of Adjustment met in regular session on Wednesday, October 7, 2009, 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 John Pittman, Carey Evans, Patrick Kirchner, and Tom Muselman. Staff members present were Heather Mac Bean, Planner II, and Cheryl Vander Linden, Department Secretary.

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

Mr. Kirchner said this is a 5-member board and the Code of Iowa requires 3 affirmative votes to grant any variance or conditional use, regardless of how many members are present or may have a conflict of interest and be unable to participate and vote on a particular appeal. A minimum of 3 members must be present to constitute a quorum and allow the meeting to be held. In such case a unanimous vote is necessary. A vote of 2 to 1 in favor, or 2 to 1 with one abstention, if 4 were present, as examples, would constitute a denial. Knowing that, anyone who wishes to have his or her item deferred until a future meeting may do so by requesting a deferral now or at any time prior to a motion being made. Once a motion has been made, it will no longer be possible to request deferral. If denied, a variance or conditional use cannot be resubmitted for the Board's consideration for a minimum of one year. We ask that each person addressing the Board this evening please speak from the podium at the front of the room so your voice will be picked up by the sound system, state your name and address for the record prior to making your presentation. Also please turn off your cell phones or at a minimum set them to silent or vibrate.

The first item on the agenda was approval of the September 2, 2009 meeting minutes.

Ms. Evans moved, and it was seconded by Muselman, to approve the September 2, 2009, meeting minutes. On roll call: Ayes: Evans, Pittman, Muselman, Kirchner; Passes: none; Nays: none. Motion carried.

The next item on the agenda was the "Sapphire Gymnastics Academy Conditional Use Permit", (4405 121st Street), Case number 011-2009-02.09.

Ms. Wendy Ogden, Associate General Counsel with R & R Realty Group, said I am here on behalf on R & R, Realty Group which owns Meredith Business Park, and Sapphire Gymnastics Academy which is currently a tenant in one of the buildings at the

park. She said in May 2005, this Board approved a special use permit for Sapphire Gymnastics Academy to lease about 10,000 square feet of space in this building here, which is Warehouse 2. It's a gymnastics academy that has classes for preschool children, about 12 students in the mornings during the week days, and in the late afternoon and evening, it has classes for school-age children up to 8:30 p.m., at a maximum of about 44 students on a week night. There were some questions about parking, whether the parking would be adequate and appropriate for the use. In May of 2005, the Board approved the conditional use permit for that tenant in that space. She said recently, another tenant in that building requested to be able to expand its business in Meredith Warehouse 2. So we would like permission now to have a conditional use permit to move Sapphire from this space right here, south to Warehouse 3. They will use 12,500 square feet. Their hours will be the same, the use will continue to be the same, number of students will continue to be the same. Their current lease expires in 2011. Megan Robinson is here from Sapphire Gymnastics and Brad Zaun is here from R & R Realty Marketing Group. Both of them have a little more familiarity with the actual use of the space and the neighboring tenants' parking.

Ms. Ogden said, to date, we're not aware of any parking concerns. Megan informed me tonight that their program requires that parents of children 1 to 2 years old have to stay and attend during the classes, but after that, the parents don't have to and rarely do. So it's mostly drop-off, pick-up. I think she said they have two drivers who are students on Thursday nights who would be parking. In the report, I pointed out the current parking of the proposed building has a total of 146 spaces vacant for this. I've got another diagram that shows you where they will be moving. The x'd out space is the part of the building that they would be moving to and there is all this extra parking right out in front that was actually built for another tenant that we think will serve nicely for this use here. Sapphire Gymnastics doesn't anticipate any problems with the conditions that Staff has recommended. On the competitive events, which are a larger group of people, being restricted to the weekends, they would ask that the weekend events be allowed to go to 9:00 p.m. instead of 4:00 p.m. and that was actually one of the considerations of the 2005 conditional use permit. She says right now they only have one competitive event a year and are agreeable, obviously, to providing additional parking if needed and re-evaluating this conditional permit use if parking becomes a problem, which we don't anticipate happening.

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

Ms. Mac Bean said the action required on this item is to approve or deny the requested Conditional Use Permit to allow a facility providing gymnastics instructional classes and training.

This is a conditional use application to allow a facility providing gymnastics instructional classes and training in an industrial area. The gymnastics facility is proposed to be located near the west end of the building and have a total area of 12,500 square feet,

within an office-warehouse building having a total area of 225,000 square feet. The building was constructed in 2000.

The property is zoned "P.U.D." Planned Unit Development District and is regulated by the "Crossroads II Business Park" Planned Unit Development Master Plan. Gymnasiums are classified as an amusement and recreational services use and require a Conditional Use under the Planned Unit Development Master Plan.

A conditional use permit was granted by the Board of Adjustment for this use in May, 2005 for their location at 4451 121st Street. R & R Realty is exercising an option to relocate Sapphire Gymnastics to allow for the expansion needs of another tenant in the building they currently occupy. Both parties have agreed that the space at 4405 121st Street would serve the academy's needs very well. R & R has indicated that to date there have been no issues with this tenant in their current location. The City also has not received any complaints or noted any issues or violations of the Ordinance or conditions of the Board's approval. The future lease will extend through May 2011.

The hours of operation and estimated number and ages of the students will remain the same at this location. Monday-Thursday there will be classes of preschoolers in the morning, with a maximum of twelve students, and school age classes will be held from 3:30 – 8:30 p.m. with a maximum of twelve students prior to 4:30 p.m. and a maximum of 44 students from 5:00 – 8:30 p.m. The appellant indicates that the students attending between 5:00 and 8:00 p.m. will have staggered drop-off/pick-up times, and will generally be older. Some of these students are not expected to have a parent stay with them during their session. However some of the students are of driving age and will park their cars there during class time.

On Saturdays, classes will be held from 8:30 a.m. – 4:00 p.m. for all ages, with a maximum of 44 students. On Sundays, classes will be held from 1:00 – 8:00 p.m. with a maximum of 35 students. Occasionally, the academy may host gymnastics competitions; there will be greater numbers of students at those events, but they will always be held on weekends.

Ms. Mac Bean said there are 228 parking spaces located to the north of the building, a ratio of about one space/1,000 square feet of floor area that is considered to be sufficient for most warehouse uses. There is also additional area to the east and north of the existing parking to approximately double the amount of parking on the site if needed. The property owner indicates that the warehouse building is fully occupied with the exception of this 12,500-square foot space, and that the current building tenants utilize 82 parking spaces thereby leaving a total of 146 parking spaces available for this use.

The Zoning Ordinance bases parking requirements for this use on the number of students, requiring a minimum of one space/5 students, but experience indicates that

the minimum required parking ratio is insufficient unless drop-off spaces are also provided to bring the overall ratio of parking/drop-off spaces to about one space/two students. Overlap also needs to be considered if there are multiple sessions during the day since that may result in drop-off and pick-up occurring simultaneously and increasing the drop-off/parking requirements accordingly.

The property has a total area of 16.5 acres. The property has 690 feet of frontage on 121st Street and is accessed in two locations from 121st Street, at the north and south ends of the property. The property is zoned "P.U.D." Planned Unit Development District as are the properties to the west, north and south, and is regulated by the "Crossroads II Business Park" Planned Unit Development Master Plan. The property to the south is also zoned "P.U.D." and has zoning regulations that are similar to this property, but is governed by a different Master Plan. The Aurora Business Park is located to the east of the Interstate and is zoned "M-2" Medium Industrial District.

Ms. Mac Bean said Staff analysis is as follows:

1. Standards, all of which must be met prior to approval of a Conditional Use Permit, are as follows:
 - (a) That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare;
 - (b) That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will not substantially diminish and impair property values within the neighborhood;
 - (c) That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;
 - (d) That adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided;
 - (e) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;
 - (f) That the conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified as provided in Section 6.
 - (g) That the proposed use shall be consistent with the Comprehensive Plan. Conditions such as landscaping, architectural design, type of construction,

construction commencement and completion dates, sureties, lighting, fencing, planting screens, operational controls, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or parking requirements, may be required by the Board upon finding that these are necessary to fulfill the purpose and intent of this Ordinance.

2. It appears that the maximum usage will be competitions (exact size not quantified), and the maximum "daily" usage will be 44 students between the hours of 5:00 p.m. until 8:30 p.m., Monday through Friday, and from 8:30 a.m. to 4:00 p.m. on Saturday with 35 students using the facility from 1:00 to 8:00 p.m. on Sundays. During the prime operating hours of the other businesses located in the building, maximum use is 12 students during the hours of 9:00 a.m. and 12:00 p.m. Monday through Thursday, ages 2 to 5 years of age, and 12 students, ages two to 18 years from 3:30 to 4:30 p.m.

The 12 young students would be expected to generate a 1:1 parking need in addition to parking for instructor/staff (assume 3) for a total parking need of 15 parking spaces during business hours. Thirteen parking spaces are provided for this space, so the day-time parking need moderately exceeds the provided parking and should be accommodated without difficulty by the 146 parking spaces that are not currently being used by other tenants (distribution of use is not known), may not be evenly distributed over the entire building).

The applicant states that the 44 students between the hours of 5:00 p.m. and 8:30 p.m. will have staggered instruction periods, which would appear probable if there are varying ages as indicated, or different instructional programs being offered during that time slot (as opposed to one 44-student session). It appears that a combined ratio of parking/drop-off spaces at a ratio of one space/two students would be adequate, i.e. 22 parking spaces plus spaces for instructors staff, and could be accommodated in the available parking. In addition, most of the other businesses would not be expected to be operating/occupied, at least not at a peak level, during the evening and weekend hours.

3. Competitive events would appear to generate the highest parking demand. No information has been provided regarding the number of participants or frequency of competitions, and although no spectator seating areas are shown on the supporting documents, parents and other spectators would be expected to be present. It is assumed that about 100 competitors potentially could be involved in a competitive event (about 2.5 times the largest class size of 44 students), and the parking needs would approximate a 1:1 ratio, i.e. one parking space/one student, plus parking for coaches/instructors and staff at a ratio of at least one/10 students, or a total parking

need of 110 parking spaces for such event. Such a parking need would absorb about half of the 228 available parking spaces on the site, and could potentially affect any business located in the westerly two-thirds of the building (by using the parking closest to this tenant space).

4. A lack of parking may adversely affect other permitted businesses in the property, which would be contrary to the intent of the Zoning Ordinance and contrary to the conditioned outlined above in paragraph #1. Therefore, it may be appropriate to restrict the size and frequency of competitive events, and to specifically restrict them to weekends only.
5. Commercial/recreational/amusement uses may conflict with permitted industrial uses, in terms of creating traffic congestion that interferes with truck traffic or customer traffic; utility loading; or hazards associated with the industrial uses that the zoning intends to separate from other uses that engender significant life-safety exposure. This use entails a significant number of users from the general public, in particular children, who should be protected from possible industrial hazards.

Therefore, the Board could find that the proposed Conditional Use does not satisfy the standards required for approval of a Conditional Use, and that the request therefore must be denied. Or, the Board could find that with certain modifications and stipulations, that the proposed Conditional Use would not create a negative impact upon the character of the neighborhood, would satisfy the required standards and the intent of the Ordinance, and that the requested Conditional Use be approved subject to such modifications and stipulations.

Ms. Mac Bean said Staff recommends approval of the requested conditional use to allow a facility providing gymnastics instructional classes and training subject to:

1. Competitive events shall be restricted to a maximum of 100 participants; restricted to not more than one competitive event in any one quarter of a calendar year, and restricted to a maximum of 4 competitive events in any calendar year; and restricted to weekends only between the hours of 8:30 a.m. to 4:00 p.m. on Saturday and Sunday.
2. Provide additional parking in the north half of the property if found to be necessary, as evidenced by improper parking on adjoining properties, in circulation aisles or landscaping, or complaints from other tenants in the building, to be determined at the sole discretion of the Zoning Administrator.
3. Reevaluation of the conditional use at the end of the current lease period, with respect to any parking issues and to determine if any hazardous occupancies or

other potential life-safety issues have arisen due to the location of legally permitted principal industrial uses in the general area.

Ms Mac Bean said we reviewed the previous meeting minutes and the disposition for the previous conditional use permit, and there was discussion and the Board did approve that the ending time for competitions be moved to 9:00 p.m. on weekends. So we are changing our Staff recommendation for weekend events to 9:00 p.m. versus 4:00 p.m.

Mr. Kirchner said you anticipated and answered my only question.

Ms. Evans moved, and it was seconded by Pittman, to approve the Sapphire Gymnastics Academy Conditional Use Permit to allow a facility providing gymnastics instructional classes and training, based on the three Staff recommendations, also noting the change to 9:00 p.m. on weekends for competitive events, based on the fact that this use does not cause a detriment to the community, and all conditions have been satisfied. On roll call: Ayes: Evans, Pittman, Muselman, Kirchner; Nays: none. Passes: none. Motion carried.

The next item on the agenda was the "Insta-Pro International Sign Variance", 4043 120th Street, Case number 011-2009-01.18.

Mr. Kevin Kacere, President and CEO of Insta-Pro International, said we've been a part of Urbandale for 40 years. We were part of Triple F located on 100th and Douglas. Our company purchased it last August. We searched for a location to move the company out of the Triple F operation and landed in Urbandale again at this location. One of the attractions to this location was the proximity to the Interstate, visibility on the Interstate. We have a lot of trucks coming in and out, customers coming in and out, and the ability to see where they're going, where to find us, right off of Douglas there, was an attraction to that location. The former tenant in our spot, which was OSE Interiors, had 3 signs, one on the interstate side, one on the south side, and then one on the west side. We're just looking to do two, one on the south side right over our door, and then one on the Interstate side. He said we think that that is plenty for us, reasonable for us, and achieves our objective of trying to get people to find us on an easier basis. That's what it's about and that's what we're looking to get approval for tonight.

Mr. Kirchner asked what type of a business is Insta-Pro?

Mr. Kacere said I thought you might ask that. It's a manufacturing and marketing business of large industrial equipment for the processing of oil seeds, like soybeans or canola, grains, foods, pet foods, things of that nature. We sell to processors who then process for those purposes. Our business is about two-thirds international, one-third domestic. We sell all over the world and have customers who travel here to visit us from all over the world.

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

Ms. Mac Bean said the action required on this item is to approve or deny variances from Section 4.3 of the Sign Ordinance to allow a wall sign oriented to the Interstate and to allow a wall sign on a non-street frontage side of the building.

Mr. Kevin Kacere, representing Insta-Pro International is requesting variances to allow a wall sign oriented to the Interstate and to allow a wall sign on a non-street frontage side of the building. The sign proposed for the Interstate side of building would be in addition to the one permitted sign for the "end cap" tenant. Both the sign facing the Interstate and the sign over the main entrance to the business on the south side of the building are proposed to be 113.2 square feet.

The warehouse building on this property was constructed in 1999 and contains a total of 49,775 square feet of floor area. The building has 200 feet of frontage on the Interstate and measures 250 feet along its south elevation. The property has 442.56 feet of frontage on the Interstate and 369.96 feet of frontage on 120th Street. The main entrances to the building face south leaving no building frontage facing the Interstate except for the tenant in the east half of the building. DMA Enterprises, which leases the space to the appellant, has owned the building since 2007.

Section 4.3 of the Sign Ordinance allows lots that are located within 600 feet of the Interstate and visible from the Interstate to orient a portion of their permitted wall signage to the Interstate, and are provided a bonus of 100 square feet of wall sign area for such purpose. However, only the eastern-most tenant is allowed to have a wall sign on the wall facing the Interstate since the appellant does not have wall frontage facing the Interstate. This section of the Sign Ordinance also allows businesses that do not have any street frontage to have one wall sign on the wall containing the primary public entrance to said business. Insta-Pro International occupies the west half of the building and would be allowed signage on the 120th Street (west) side of the building.

OSE, Office Interiors, previous occupied the majority of this building and because of their "full occupancy" had frontage on both the Interstate and 120th Street, and therefore was allowed by the Ordinance to have signage on both the Interstate and 120th Street. ADI, the tenant in the east half of the building has an existing wall sign facing the Interstate that contains 35 square feet. They also have 2 sign faces on the south elevation that total 53 square feet.

The property to the south has an office/warehouse building that faces the Interstate, so each of the tenants is allowed to have a sign facing the Interstate. The 3 buildings to the north with Interstate frontage each have the same north/south orientation as the appellant's building and have one wall sign facing the Interstate, that represents the business located in the east end or the entire building. A variance to allow 2 additional

wall signs oriented to the Interstate was granted for the building at 4401 121st Street in June 2005.

The property has a total area of 3.84 acres and is zoned "P.U.D." Planned Unit Development District and is regulated by the "Crossroads Business Park" P.U.D. Master Plan. The properties to the north, south and west are also regulated by the same P.U.D. "Aurora Business Park" is located to the east of the Interstate and is zoned "M-2" Medium Industrial District.

The appellant states that when choosing to lease the property at 4043 120th Street, a primary attraction was the Interstate visibility. Many of the other surrounding buildings have multiple signs on the Interstate frontage and they would like to be consistent with those signs. The public entrance to the building is on the south side of the building not on 120th Street. The appellants also states that they have customers, vendors and trucks traveling to their location and signage will assist them in locating their business. If there is only a sign over the public entrance on the south side, visitors from the north will not be able to find the company easily. The appellant indicates that the previous tenant had 3 signs, one on the 120th Street frontage, one over the public entrance and one on the Interstate frontage, which were removed in August, 2009. They would like to install 2 signs, one over the public entrance and one on the Interstate frontage, reducing the number of signs and keeping the intent of the Ordinance intact. Finally, the appellant states because so many other businesses have signage on the Interstate frontage, their inability to have signage on the Interstate puts a greater hardship on their company. If the company is only allowed to have a sign on the 120th Street frontage, the Interstate traffic cannot find them. If there is only a sign over the public entrance, visitors from the north cannot find the business easily.

Ms. Mac Bean said Staff analysis is as follows:

1. The configuration of the property is somewhat unique, being a multi-tenant building with comparatively limited street/Interstate frontage. The Sign Ordinance was written with the expectation that the front of a building would be oriented towards a street. Because this building faces south instead of west, the Ordinance may have created a hardship.
2. The Sign Ordinance appears to create some hardship since the signs would be legal if the building orientation was east-west instead of north/south and the tenants therefore would front on the both the Interstate and 120th Street. Identification to interstate traffic and over the main entrance is a significant factor to many businesses. The hardship is not self-imposed since the appellant could not have reasonably developed the building with a north-south orientation.
3. The additional signage does not appear to have a detrimental affect on health, safety, or welfare, or to adversely affect the character of the neighborhood. The

additional signs do not materially create sign competition since it results in fewer signs that are allowed by the Ordinance. Therefore the spirit and intent of the Ordinance appears to be satisfied.

4. Alternatives to the variances would be to install signage on the 120th Street elevation and to put a smaller sign on the door of the main entrance to the business. However these alternatives are not practical as the business is trying to identify themselves to Interstate traffic and not having a sign over the business entrance may be hardship.

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.

Staff recommends approval of variances from Section 4.3 of the Sign Ordinance to allow a wall sign oriented to the Interstate and to allow a wall sign on a non-street frontage side of the building, subject to the sign being approved as submitted and that the variance runs with "Insta-Pro International" business and not with the property.

Mr. Muselman asked can we do them both at once?

Ms. Mac Bean said yes.

Mr. Kirchner said the staff's recommendation, you believe, satisfies all the legal requirements for this Board to grant variances?

Ms. Mac Bean said yes.

Mr. Pittman moved, and it was seconded by Evans, to approve the Insta-Pro International Sign Variances, based upon the fact that subject property is unique, that the Ordinance has appeared to create a hardship and the fact that the additional signs do not appear to have a detrimental effect on the health, safety or welfare of the neighborhood, subject to the signs be the same as what has been submitted and approved and that the variance run with Insta-Pro International and not with the property. On roll call: Ayes: Pittman, Evans, Muselman, Kirchner; Nays: none. Passes: none. Motion carried.

Regarding Staff reports, Ms. Mac Bean said we have two submittals for next month, and there may be a third out there, but I'm waiting to see if they actually submit that. But

we'll know on Friday.

Mr. Kirchner asked interesting stuff?

Ms. Mac Bean said one is for a swimming pool, which I don't understand this time of year, and the other is for a lot that, due to its square configuration and being a corner lot, the narrower street side is the "front", so then the opposite side is the rear. The house isn't necessarily going to fit but the other side is almost the same and so they would like the front yard that determines the rear yard changed to from one street side to another.

Mr. Pittman said I will be out of town and so will not be able to attend the next meeting on November 4, 2009.

The meeting adjourned at 6:22 p.m.