

**BOARD OF ADJUSTMENT
MINUTES**

December 7, 2011

The Urbandale Board of Adjustment met in regular session on Wednesday, December 7, 2011, at the Urbandale City Hall, 3600 86th Street, with Chairperson Patrick Kirchner calling the meeting to order at 6:00 p.m.

Board members present were John Pittman, Mark Wandro, Tom Muselman, and Patrick Kirchner. 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 November 2, 2011, meeting minutes. It was moved by Muselman, and seconded by Pittman, to approve the November 2, 2011 meeting minutes. On roll call: Ayes: Muselman, Pittman, Wandro, Kirchner; Nays: none. Passes: none. Motion carried.

The next item on the agenda was the "R & R Realty Group Real Estate Sign Variances", 8800 Block of Plum Drive, Case no. 011-2011-01.09.

Mr. Tom Rupprecht, R & R Realty Group, 1225 Jordan Creek Parkway, West Des Moines, said we have an office development, called Highland Point, in Urbandale. It's about a 45-acre development. One of our key advertising methods that we use is signs. The signs are used for the public to call from. In this particular development, we have signs located on Plum Drive, which meet the current ordinance because the distance is very close to Plum Drive and the speed of traffic that goes by on Plum Drive

Board of Adjustment Meeting minutes

December 7, 2011

Page 2

is very slow, 35 miles per hour. They're easy to read and it works. We do also front a lot on the Interstate where the traffic travels at a high rate of speed. It makes it difficult for people to view the sign, as well as we have a setback from the storm water detention, so it is setback a lot further. Our concern is the sign is not visible for people to see a number to call or a name. And we also are concerned about safety. When people look over and see that, they tend to focus a little bit longer on the sign, so it's also a concern of safety as well. He said so we are requesting a larger sign, I believe it's in the ordinance, of the size that we believe is going to be the most visible, as well as safety will be taken care of as well. I'd be happy to answer any questions.

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 4.2 of the Sign Ordinance to allow a 96 square foot, 15 foot tall commercial real estate sign.

R&R Realty Group, represented by Tom Rupprecht, is requesting a sign area variance of 64 square feet, to allow a sign having an area of 96 square feet instead of the 32-foot maximum area permitted for a nonresidential real estate sign, and a sign height variance of 7 feet in addition to the permitted 8-foot maximum height, to erect a 15-foot tall, 96-square foot commercial real estate sign adjacent to the east bound 86th Street off-ramp of Interstate 35/80. The subject property is located in the 8800 block of Plum Drive and is currently vacant.

The copy on the proposed sign is typical of real estate signage with the company name and company representative contact information. The proposed sign is required to be located 50-feet south of the plat boundary due to an overland flowage and storm sewer easement. The combined width of the Interstate right-of-way and easement puts the sign approximately 280 feet from the travelled portion of the Interstate and approximately 95 feet south of the 86th Street off-ramp.

The maximum size allowed by Section 4.2 of the Sign Ordinance for a commercial real estate sign is 32 square feet of area and a maximum height of 8 feet. Currently there is a real estate sign located on the property that appears to meet the Sign Ordinance requirements, but no permit was issued for the sign.

Ms. Mac Bean said the property has a total area of 15 acres, 1,044 feet of frontage on the Interstate off-ramp and 1,216 feet of frontage on Plum Drive. The property is zoned "P.U.D." Planned Unit Development District and is regulated by the "Highland Pointe" P.U.D. Master Plan as are the properties to the west and to the south of Plum Drive. The properties to the north and east are also zoned P.U.D., but are regulated by different Master Plans.

The appellant notes that the Highland Pointe Business Park is a 40 acre commercial office-retail development. It has a significant presence that faces the Interstate 35/80 corridor. The appellant states that current signage requirements prevent the viewing or

accessing of any development information from interstate drivers, thus making developing and leasing of this property significantly difficult.

Staff analysis is as follows:

1. This property does not appear to be unique compared to other similarly zoned properties, except for the drainage easement which increases the minimum setback from the Interstate by a distance of 40 feet (minimum setback is 10 feet, easement is 50 feet wide). All real estate signs are allowed a maximum size of 32 square feet and a maximum height of 8 feet, regardless of the location.
2. Real estate signs have had the same size requirements for years prior to the development of this property. While the existing sign on the property meets the Sign Ordinance requirements, the Ordinance may create a hardship if the maximum allowed size of the sign is insufficient to allow a reasonable amount of sign copy to be legible to a customary, reasonable audience.
3. The intent of the Ordinance is to limit the number and size of signs to eliminate unnecessary competition and clutter, protect public safety, and other purposes while providing adequate and equitable means of identifying a property for sale or lease. It appears that the essential character of the neighborhood will not be altered if the variances are granted.
4. An alternative to the variance is to retain the existing real estate sign that meets the Sign Ordinance size requirements.

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.

Ms. Mac Bean said Staff recommends approval of a variance from Section 4.2 of the Sign Ordinance to allow a 96 square foot, 15 foot tall commercial real estate sign subject to obtaining a sign permit and the sign being located 50 feet south of the Interstate right-of-way line outside of the overland flowage and storm sewer easement.

Mr. Kirchner asked Staff's recommendation is based upon its belief that the appellant has met the necessary showing of hardship?

Ms. Mac Bean said yes.

Board of Adjustment Meeting minutes

December 7, 2011

Page 4

Mr. Kirchner asked if Mr. Rupprecht wanted to add anything further? He said you've seen the conditions that the Staff has imposed upon its recommendation and you're comfortable with those?

Mr. Rupprecht said yes.

Mr. Wandro moved, and it was seconded by Muselman, to approve the R & R Realty Group Real Estate Sign Variances, 8800 Block of Plum Drive, based upon Staff recommendations and the drainage easement which increases the minimum setback. On roll call: Ayes: Wandro, Muselman, Pittman, Kirchner; Nays: none. Passes: none. Motion carried.

The next item on the agenda was the "Iowa All Stars Conditional Use Permit and Shared Parking Variance", 4409 121st Street, Case no. 011-2011-02.08.

Mr. Tom Rupprecht, R & R Realty Group, 1225 Jordan Creek Parkway, West Des Moines, said we are the landlord for the property that is in need of a conditional use permit. We have our tenant here, who is working on getting the variance. But it's Mark Pecan, here to answer any questions as it relates to the proposed use, as well as Chris Curran for the marketing. They are here to answer any specific questions, as it relates to this project.

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 cheerleading-tumbling instruction and training facility, and for a parking variance from Sections 4.2 and 5.12 of the Zoning Ordinance to allow 3 of the 15 required parking spaces for the proposed facility to be shared by two or more users.

This is a conditional use application to allow a cheerleading-tumbling instruction and training facility in an industrial area. The facility is proposed to be located near the west end (front) of the building (4409 121st Street) 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 application also includes a parking variance to allow 3 of the required 15 parking spaces to be shared by two or more users.

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. Gymsnasiums/academies are classified as an amusement and recreational services use and require a Conditional Use under this Master Plan.

A conditional use permit was granted by the Board of Adjustment in October, 2009 for a similar use in this building, being the "Sapphire Gymnastics Academy" that is located at 4405 121st Street, two tenant spaces west of the proposed "Iowa All Stars" facility. A parking variance was not required for Sapphire Gymnastics.

Iowa All Stars, Inc. ("IAS") is an organization that coaches and teaches tumbling and cheerleading teams. Cheerleading squads would use the facility in 2-hour time segments with each squad generally including up to twenty students. A maximum of forty to sixty students will use the facility at one time, plus up to six instructors. The students are between the ages of 3 to 18, and IAS currently has 160 cheerleaders on its teams.

Ms. Mac Bean said the hours of operation are anticipated to be 3:30 p.m. – 9:30 p.m. Monday-Friday, 8:00 a.m. – 10:00 p.m. Saturday, and Noon – 8:00 p.m. Sunday. IAS will also offer one-hour tumbling classes, private half-hour lessons and team cheer camps and may also use the space for birthday parties and "boot camps". The facility would conduct about 100 private lessons per month. The private lessons or tumbling classes may occur at the same time as cheer squad practices. The maximum number of squads practicing at the same time will be two, although this may increase to three in the future.

The majority of the students will be dropped off, and generally 10 minutes are allowed between classes/sessions to accommodate this drop-off/pick-up period. The majority of the classes and drop-off and pick-up times will occur after normal business hours of the other uses in the building, except for Sapphire Gymnastics, which has similar hours of operation, an equal number of students on the weekends, but fewer students during the week.

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 will be fully occupied with the addition of this use. Iron Mountain, a data storage business currently leases approximately 100,000 square feet in this building and uses no more than ten stalls at any given time. Additionally, many employees park in the service area south of the building. By the building owner's estimate, there are at least 146 parking spaces available during weekday business hours to serve both Sapphire Gymnastics and IAS, sufficient to meet the needs of all tenants.

Section 5.12 of the Zoning Ordinance bases parking requirements for this use on the number of students and employees, requiring a minimum of one space/5 students and 1 space/2 employees. The proposed use would have a maximum of 60 students, if IAS expands to 3 cheer squad practices in the future and a maximum of 6 teachers at any one time. This calculates to 15 required parking spaces for the use and 12 parking spaces were provided for the 12,500 square foot space when the office/warehouse building was constructed.

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. Also, the number of students taking tumbling classes and private lessons has not been determined.

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.

The Shared Parking Variance Staff Analysis is as follows:

1. This property does not appear to be unique compared to other similarly zoned properties since it was developed in 2000 under the existing zoning regulations that also apply to all of the surrounding commercial properties in the same Planned Unit Development, and the parking requirements for this P.U.D. are the same as those for commercial uses throughout Urbandale. Alternatively, individual businesses may be unique, and unique characteristics may allow parking to be shared without creating an adverse situation if the unique characteristics cause peak parking needs to occur at different times, or cause parking needs to be less than customary.
2. The current parking requirement has been in existence for many years prior to the development of this property and it appears that the property could be reasonably used for other office/warehouse uses that would not need more parking spaces than have been provided, so the Zoning Ordinance may not have created a hardship. Or the Ordinance may create a hardship if the parking will remain adequate with the addition of this amusement and recreational service use, and the Ordinance accordingly would require parking that is not necessary for any public purpose.
3. The intent of the Ordinance is to provide an adequate supply of parking on-site for all businesses. The amount of parking that is required is a minimum and actual parking needs may exceed the minimum requirement. The minimum parking requirement for this use is based on the number of students and employees, requiring a minimum of one space/5 students and 1 space/2 employees. The minimal overlap of parking needs with the other uses in the building appears to meet the intent of the Ordinance and the essential character should not be altered by granting the variance.
4. An alternative to the requested variance would be to locate the proposed use at a site that provides enough parking.

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.

Ms. Mac Bean said Staff recommends approval of a variance from Sections 4.2 and 5.12 of the Zoning Ordinance to allow 3 of the 15 parking spaces required for the proposed facility to be shared by two or more users, subject to:

1. The variance to run with the appellant and current nature of operation, and not with the land or to allow significant changes in operations that may alter the Iowa All Star's parking needs.
2. Parking being restricted to the parking lot north of the building.
3. Constructing additional parking; altering the operating hours; or taking other measures as necessary to eliminate the parking shortage if the Zoning Administrator finds a parking problem to exist as evidenced by parking spilling over into nearby properties or streets, or vehicles parked in circulation aisles, loading spaces, landscape areas, or other locations not designed and designated for parking, and if constructing additional parking spaces did not eliminate the parking shortage.

Conditional Use Permit 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 40-60 students at any time that the facility is open. A small portion of this time will occur during the prime operating hours of the other businesses located in the building, primarily from 3:30 to 6:00 Monday through Friday, except for Sapphire Gymnastics. Twelve 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.
 3. A lack of parking may adversely affect other permitted businesses on the property, which would be contrary to the intent of the Zoning Ordinance and contrary to the conditions outlined above in paragraph #1. Therefore, it may be appropriate to restrict the number of squads using the facility at any one time and limit the use of the facility for birthday parties and boot camps to weekends only, as these uses do not appear to be directly related to IAS primary functions.
 4. 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 cheerleading-tumbling instruction and training facility subject to:

1. Providing 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.
2. 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.

Mr. Kirchner asked the Staff feels they have met the necessary burden of proof with regard to hardship?

Ms. Mac Bean said yes.

Mr. Pittman said my only question or point to raise, is Iron Mountain in there on a long-term lease?

Ms. Mac Bean said I believe so.

Mr. Pittman said so they're not going to be moving out and something else would come in and need the parking?

Mr. Curran said I believe they just renewed and they even expanded, so I believe they've got to be in there for at least five more years. They would be the same length as Iowa All Stars.

Mr. Kirchner asked anything further to add from the appellants? Comfortable with the conditions suggested by Staff?

The representatives indicated that they were comfortable with staff recommendations.

Mr. Wandro moved, and it was seconded by Pittman, to approve the Iowa All Stars Shared Parking Variance, based on Staff analysis and with the conditions outlined in the Staff recommendation. On roll call: Ayes: Wandro, Pittman, Muselman, Kirchner; Nays: none. Passes: none. Motion carried.

Mr. Wandro moved, and it was seconded by Muselman, to approve the Iowa All Stars Conditional Use Permit, based upon Staff analysis 1-A through G, and with the conditions so outlined in Staff recommendation. On roll call: Ayes: Wandro, Muselman, Pittman, Kirchner; Nays: none. Passes: none. Motion carried.

The next two items on the agenda, which are related, are the "Sparks Side Yard Setback Variance", 3107 Mary Lynn Drive, Case no. 011-2011-01.10, and "Jenkins

Accessory Structure Setback Variance", 3201 Mary Lynn Drive, Case no. 011-2011-01.11. Mr. Kirchner said we will first hear the argument for the Sparks Side Yard Setback Variance, followed by the Jenkins Accessory Structure Setback Variance.

Mr. Ed Pelds, Pelds Engineering Company, 2323 Dixon Street, Des Moines, said I represent both the Sparks and the Jenkins. In this case, we ran into a problem when we were looking at a survey and the properties seemed to have assumed some wrong property lines when they put some improvements in. The sprinkler system on the Jenkins property was put on the Sparks' property, and the fence to the north of the Jenkins property was put on Jenkins' property. Whenever that happened, I don't know. It happened before any of these people took possession of their homes, and that's before they ran into the problem. We just want to clear up the property lines and any improvements that they have to be associated with their properties. I think the Jenkins family is looking to sell their property and would like a clean title and nothing to worry about on that. He said we're looking for a 1-1/2 foot variance on the south to meet the 12-foot...

Mr. Wandro asked could you focus that a little bit tighter? I assume the blue lines are what you're talking about?

Mr. Pelds said yes, the blue lines are both of the property transfers that we're talking about. The sprinkler system would be in the southern area here, and the fence is on this northern area here. We ran into a problem with the sprinklers being on the property of 3107 and the fence being on the property of 3201. With the property shift, I believe the accessory building required setback is 3 feet, and we would be 2/10 off the property line. So we'd need a 3 foot variance on that. And then a 1-1/2 foot variance on the south for the sprinkler system, to meet requirements.

Mr. Wandro said so we've got the area to the north requesting that it move south. And we've got the area to the south moving north.

Mr. Pelds said they're also moving south. Everything is just shifting south.

Mr. Pittman said so there are three properties involved.

Mr. Pelds said there are three properties involved, but two of them that require variances. And I think we would be improving the situation for the property to the north because they don't meet the 12-foot setback requirement today. We'd be increasing it from 6 feet to 9 feet. Hopefully that helps the situation. The houses would still maintain the 24-foot separation distance between each other, to maintain the integrity of the neighborhood. I'd be happy to answer any questions.

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

Ms. Mac Bean said the action required on **Sparks Side Yard Setback Variance** is to approve or deny a variance of 1.5 feet from the 12-foot minimum side yard setback

required by Section 3.2 of the Zoning Ordinance.

Mr. Tyler D. Sparks is requesting a variance of 1.5 feet from the 12-foot side yard setback required in the "R-1L" Low Density Single Family District. A variance would allow the proposed conveyance of a 4-foot wide strip of land to the property adjoining to the north, reducing the existing north side yard setback for the single-family dwelling to 10.5 feet from the new property line. The lot is currently 105 feet wide and 165 feet deep and is 17,235 square feet in area. The house was constructed in 1965 and has been owned by the appellant since 2009.

The house is currently situated 14.5 feet from the north property line, meeting the 12-foot minimum side yard setback requirement of the "R-1L" District. The appellant is proposing to sell the north 4 feet of their property to their neighbor to the north, 3201 Mary Lynn Drive, who has an existing lawn sprinkler system that encroaches into the subject 4 feet of Mr. Spark's property.

The appellants applied for a fence permit in May, 2011. The permit showed that the fence would be located 4 feet south of the existing property line, i.e. the proposed new property line after the proposed conveyance, and the "locate inspection" conducted by the Building Department indicates that the fence was built on the proposed location, i.e. the post-conveyance property line. Fences are allowed to be located on the side and rear property lines, or can be set back from a property line if the owner chooses to do so. Permits/inspections are not required for lawn sprinkler systems.

The 4-foot property transfer from 3107 to 3201 Mary Lynn Drive is one of two conveyances shown on a Plat of Survey that has been prepared by a land surveyor as required by the Code of Iowa for property conveyances of this sort. The Plat of Survey also includes a proposed conveyance of a 3-foot wide strip by 3201 Mary Lynn Drive to 3205 Mary Lynn Drive. The house and lot at 3201 Mary Lynn Drive would remain in full compliance with all requirements of the "R-1L" District after the conveyances, except that the conveyance would increase the nonconformity of an existing accessory structure in the northeast corner of the property.

The existing accessory structure currently complies with the 3-foot minimum setback from the north property line, and post-conveyance it would have a setback of just 0.2 foot from the new property line. However, there is an existing fence located on the proposed property line, so the "real life" appearance will not be changed by the proposed conveyance. That is, the existing fence encroaches onto the 3201 property by 3 feet and therefore the accessory structure currently appears to be situated very close to the property line, given that fences usually are assumed to be located on property lines rather than having any setback. A variance request for that accessory structure located on the 3201 Mary Lynn Drive property is also on this Board of Adjustment agenda, since nonconformities cannot be created even though they may appear to already exist.

The proposed 3-foot conveyance to 3205 Mary Lynn Drive by 3201 Mary Lynn would

make the 3205 residence more conforming, since it currently has a south side yard setback of 6.4 feet. Again, there is an existing fence that encroaches onto the 3201 property by 3 feet, making the actual the side yard setback of 6.4 feet appear to 9.4 feet. The minimum required setback is 12 feet, so the 3205 residence will continue to be legally nonconforming, but will be significantly less non-conforming with a 9.4-foot setback.

Ms. Mac Bean said the subject and all adjacent properties are zoned "R-1L" Low Density Single Family District, which requires a 90-foot minimum lot width and 12-foot minimum side yard setbacks on each side of the lot. The lots to the east are narrower (typically 83 feet) than lots along Mary Lynn Drive and Melanie Drive (over 100 feet). Two blocks to the east, along 92nd Street, the Patricia Park neighborhood transitions to the "R-1I" Intermediate Density Single Family District, which requires a 10-foot side yard setback. The existing zoning dates to a comprehensive rezoning in the City in 1971, which did not take existing development patterns into account.

The appellant states that they would like to sell a 4-foot strip of land to the neighbor to the north to allow the existing lawn sprinkler system to remain in place. The sprinkler system was installed prior to the purchase of the home. The assumed locations of the side property lines were incorrect, and the actual locations of the property lines did not become known to these 3 owners until a survey was completed in the summer of 2011 for 3107 Mary Lynn's proposed fence. The appellant notes that the minimum overall distance between homes will be maintained at or exceed 24 feet to maintain the spirit and intent of the Ordinance. The appellant also states that in order to service and repair any damage to the existing sprinkler system, they feel that 1.5 foot variance to the side yard setback is required. The newly constructed fence on the property was built to allow for the transfer of the 4-foot wide property. The cost and disturbance of moving the existing system is not desirable.

Ms. Mac Bean said Staff analysis is as follows:

1. This property is not unique when compared to other properties that are zoned "R-1L" Low Density Single-Family District or to other properties in the area, as it meets all of the requirements of the district.
2. The Ordinance does not create an unnecessary hardship as the property is and can be used for a single-family dwelling that meets all the requirements of the Ordinance similar to other homes in this neighborhood. The Ordinance requirements have been in place since 1971 and the subject property fully complies with the minimum requirements. Any hardship is self-created, as the sprinkler system could be moved to the north. The construction of the fence in July 2011 in anticipation of a property division that would meet requirements and be approved is not a hardship that necessitates a side yard setback variance.
3. The intent of the Ordinance is to maintain minimal spacing between residential structures, for air movement, yard access, fire protection, and to create and preserve

neighborhood character. The separation between the two dwellings will not be changed, and is sufficient for all intended purposes. The essential character of the neighborhood does not appear to be altered by granting of the 4-foot variance.

4. An alternative to the variance would be to entirely relocate the sprinkler system to 3201 Mary Lynn Drive, thereby making the request unnecessary.

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.

She said Staff recommends denial of the Sparks Side Yard Setback variance of 1.5 feet from the 12-foot minimum side yard setback required by Section 3.2 of the Zoning Ordinance.

If the Board determines that the necessary findings for granting a variance exist, staff suggests that such findings be based upon the fact that the 3-foot conveyance to the 3205 property will make the 3205 residence more compliant with the Zoning Ordinance, and that accordingly the variance be subject to the satisfactory completion of said 3-foot conveyance to 3205 by 3201 Mary Lynn as evidenced by providing copies of the recorded Plat of Survey and deeds to City staff upon completion.

Ms. Mac Bean said the action required on the **Jenkins Accessory Structure Setback Variance** is to approve or deny a variance to eliminate the side yard setback for an existing accessory structure as required by Section 4.1 B of the Zoning Ordinance.

Ms. Patricia K. Jenkins is requesting a variance to allow the proposed conveyance of a 3-foot wide strip of land to the property adjoining to the north, reducing the existing north side yard setback for the existing accessory building from 3.2 feet to a proposed setback of 0.2 foot from the new side (north) property line. The lot is currently 106 feet wide and 165 feet deep and is 17,325 square feet in area. The house was constructed in 1962 and has been owned by the appellant since 2005.

The existing shed measures 14' x 23', contains 322 square feet and was constructed on a concrete slab. The City has no record of a building permit for the accessory structure. As shown on the submitted survey, the shed is in the northeast corner of the property and has a setback of 3.2 feet from the actual north property line and less than one foot from the rear property line. During a site visit, it was observed that the accessory structure is immediately next to the fence, i.e. appears to be located 0.2 foot from the

property line if one assumes that the existing fence is located on the property line, when in fact the existing fence appears to encroach into 3201's property by 3 feet, i.e. is located 3 feet south of the existing (actual) side property line, in the location of the proposed post-conveyance property line.

The proposed plat of survey would establish a new property line matching what already exists in the field: a fence on the side property line and accessory structure on or very close to the side property line. The appellant proposes to sell the above mentioned 3 feet of their property to the property to the north, 3205 Mary Lynn Drive. Section 4.1 B of the Zoning Ordinance requires minimum setbacks of three feet from all property lines if the accessory building's main floor is 720 square feet or less in area.

The single-family dwelling at 3205 Mary Lynn Drive is located 6.4 feet from the side property line, and the proposed 3-foot conveyance would increase the side yard setback to 9.4 feet, lessening its non-conformity from the 12-foot minimum side yard setback required by the "R-1L" District.

The sale of the north 3-feet of the subject property to 3205 Mary Lynn Drive is one part of a plat of survey that also includes the conveyance of the north 4 feet of 3107 Mary Lynn Drive to 3201 Mary Lynn Drive. A request to reduce the side yard setback for the house at 3107 Mary Lynn Drive to less than the 12 feet required by the "R-1L" District is also item on this Board of Adjustment agenda.

Ms. Mac Bean said the subject property and all surrounding properties are zoned "R-1L" Low Density Single Family District. The lots to the east are narrower (typically 83 feet) than lots along Mary Lynn Drive and Melanie Drive (over 100 feet). Two blocks to the east the Patricia Park neighborhood transitions to the "R-1I" Intermediate Density Single Family District.

The appellant states that they would like to transfer a 3-foot strip of land to the neighbor to the north. The property transfer would bring the general alignment of the existing fences between 3205 and 3201 Mary Lynn Drive close to the property line. The assumed location of the boundary line between the two properties was incorrect, and the proposed conveyance would match the actual property line to the assumed location and resolve the issue. The appellant notes that the fence line separating 3205 and 3201 Mary Lynn Drive is located 3 feet +/- south of the property line and the property owners agree to the new boundary location. The appellant also states that the existing shed has a concrete base and would be very difficult to relocate. The property to the north will benefit from having a larger side yard, and being more compliant with the Zoning Ordinance. Fence would probably need to move so that they would not encroach. This is the most cost effective solution to which the neighbors seem to agree upon.

Ms. Mac Bean said Staff analysis is as follows:

1. This property is not unique when compared to other properties that are zoned "R-1L" Low Density Single-Family District or to other properties in the area, as it meets all of

the requirements of the District. Alternatively, the location of the accessory structure may be unique as it is already adjacent to the assumed property line, and the conveyance would establish in fact, what has been assumed to be accurate and factual.

2. The Ordinance does not create an unnecessary hardship as there is ample space on the property to locate the accessory structure in a fully compliant location. The existing nonconformity of the structure (little or no setback from the rear property line) does not appear to be a legal nonconformity, since a setback of at least 3 feet from the rear and side property lines has always been required since construction of the house in 1962. No permit for the accessory structure was found in the City building records, nor is it documented on the Polk County web site.
3. The intent of the Ordinance is to maintain minimal spacing between structures on adjacent properties. The essential character of the neighborhood may not be altered by the granting of the variance at this point, since the accessory structure appears to have been in existence for a lengthy period and the new property line will match what has been incorrectly assumed to be the property line for a lengthy period of time.
4. Alternatives to the variance would be to relocate the fence or move the existing shed so that it meets the required 3-foot setback from the new property line.

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.

Ms. Mac Bean said Staff recommends denial of the Jenkins Accessory Structure Setback variance to eliminate the side yard setback for an existing accessory structure as required by Section 4.1 B of the Zoning Ordinance.

If the Board determines that that the necessary findings for granting a variance exist, staff suggests that such findings be based upon the fact that the 3-foot conveyance to the 3205 property will make the 3205 residence more compliant with the Zoning Ordinance, and that accordingly the variance be subject to the satisfactory completion of said 3-foot conveyance to 3205 by 3201 Mary Lynn as evidenced by providing copies of the recorded Plat of Survey and deeds to City staff upon completion.

Mr. Wandro asked how did the house end up as close as it did at 3205? It didn't meet the setback on the sideyard.

Ms. Mac Bean said actually the shed does meet the sideyard setback now.

Mr. Wandro said but the house itself doesn't, does it?

Ms. Mac Bean said 3205 does not.

Mr. Wandro asked how does that happen though? I'm not challenging Staff, I'm just asking.

Ms. Mac Bean said I have no idea how it happened in this particular case.

Mr. Wandro said I've got the same problem next door to me.

Ms. Mac Bean said these houses were built in the early to mid-60's, so I don't have a good answer for you as to how or why it happened. I couldn't find the house permit for one of the houses, either. Based on all of the analysis, Staff cannot recommend approval of the variances, as there is nothing unique about the properties nor does the Ordinance create a hardship so we're recommending denial. However, if the Board determines that there are necessary findings to grant these variances, please refer to the paragraph below the Staff recommendations with conditions. I'd be happy to answer any other questions you may have or if you need anything clarified about what the properties look like.

Mr. Wandro said this isn't criticism, it's just factual, but I don't think it gets checked, when homes are dug and built.

Ms. Mac Bean said in cases such as this, because these are old enough it is a possibility, but I don't know. And in the Patricia Park area, when the houses were built, none of the lots had a clear legal description. They all have a "north so many feet" and a "south so many feet" of two separate lots. And that situation occurs pretty much south from Dewey Gibbs for two or three blocks. So no lot is Lot 1, Lot 2, or Lot 3. They are portions of lots. And so that situation was going on when the houses were being built.

Mr. Pelds said I think we'd just be improving the situation for the current property owners if these are granted.

Mr. Kirchner said you've seen the conditions that the staff is recommending in the event the Board does find the necessary hardship and grants these variances?

Mr. Pelds said I have, and we agree to them.

Mr. Kirchner asked you're fine with those?

Mr. Pelds said yes, absolutely.

Mrs. Louise Grzybowski, 3106 Mary Lynn Drive, Urbandale, said I live right across the street from this. And I just wonder what's going to happen when people sell their houses? Are they going to have a big fight over this property line thing again? Is this going to be a continuing thing? I've lived here for 36 years in that house. We've never had any problems. There is a conflict between two of the families there, that I know of, and I just wondered if this is an outgrowth of that? And I wonder if this is going to continue or if something else is going to happen?

Mr. Wandro said I'll offer my advice. The fact that both sides agreed to it impresses me.

Ms. Grzybowski said I just wondered, if one of them moves, are they going to have a problem with a new person moving in or something?

Ms. Mac Bean said if the variances are granted, I believe and a plat of survey is recorded, it will actually clear up the questions regarding the property line locations and where the property lines are will now match what appears to be out in the field. So this could actually clear a lot of things up, with a plat of survey.

Ms. Grzybowski said I don't want to cause trouble or anything; I'm just worried that this is going to go on.

Ms. Mac Bean said no, it may make things better.

Mr. Muselman said I think that the Board agrees with Ms. Mac Bean, it will clear this up.

Ms. Grzybowski said when we put in a privacy fence between our neighbor and us, we had problems because they said there was no survey of our property. So we put in a fence on the other side and we had Bishop Engineering come. But the other fence had never been surveyed or anything.

Mr. Kirchner asked anything further you wish to add, Mr. Pelds?

Mr. Pelds said no.

Mr. Wandro moved, and it was seconded by Muselman, to approve the **Sparks Side Yard Setback Variance**, 3107 Mary Lynn Drive, based upon the fact that the 3-foot conveyance to the 3205 property will make the 3205 residence more compliant with the Zoning Ordinance, it will clear up the confusion of the property line locations, it will lessen the non-conformity of the house located on the northerly lot (3205 Mary Lynn Drive) and that the variance would not affect the essential character of the neighborhood, with the conditions imposed. On roll call: Ayes: Wandro, Muselman, Pittman, Kirchner; Nays: none. Passes: none. Motion carried.

Mr. Wandro moved, and it was seconded by Muselman, to approve the **Jenkins Accessory Structure Setback Variance**, based upon the fact that the 3-foot conveyance to the 3205 property will make the 3205 residence more compliant with the

Board of Adjustment Meeting minutes

December 7, 2011

Page 18

Zoning Ordinance, it will clear up the confusion of the property line locations, it will lessen the non-conformity of the house located on the northerly lot (3205 Mary Lynn Drive) and that the variance would not affect the essential character of the neighborhood with the conditions imposed. On roll call: Ayes: Wandro, Muselman, Pittman, Kirchner; Nays: none. Passes: none. Motion carried.

Regarding Staff reports, Ms. Mac Bean said we don't have any items for the next meeting yet, but the agenda closes on Friday. However, the Council did amend the "C-N" district, and that amendment to the "C-N" Neighborhood Convenience District would allow for live entertainment in restaurants through a conditional use permit. That request was brought forward by the attorney for Irina's, on Hickman Road and Rocklyn Drive. So I am expecting a conditional use permit application. Possibly for January and if not then, then for February. I'm not sure, but it will be coming. If you would like to see the ordinance amendment, I will forward it to you so you can look it over and see what the basis is for granting one of those conditional use permits. If you want me to, I will; if you don't, that's okay too.

Mr. Muselman said I would.

Mr. Kirchner said I'd like to see it please.

Ms. Mac Bean said then thirdly, please start thinking about chair and vice-chair positions for next year, because the elections will be on the January agenda.

Mr. Muselman said it seems like we just did that!

Ms. Mac Bean said actually I was thinking that myself.

Mr. Kirchner said I may not be here for the January meeting. I'm not certain yet but I may be out of town, at which point, feel free to vote me out.

Mr. Wandro said when you're absent, you generally get re-elected to your current role.

Mr. Kirchner said I'm not planting this seed for no reason.

The meeting adjourned at 6:35 p.m.