

BOARD OF ADJUSTMENT

DYERSVILLE, IOWA

Lower Level Council Chambers

DATE: September 19, 2018

THE ZONING BOARD OF ADJUSTMENT IS A QUASI-JUDICIAL BOARD CREATED BY THE CITY OF DYERSVILLE. THE BOARD'S PURPOSE IS TO DECIDE ON APPLICATIONS FOR VARIANCES FROM THE ZONING ORDINANCE (CHAPTER 165 OF THE MUNICIPAL CODE), APPEALS OF DECISIONS OF THE ZONING OFFICIAL, AND APPLICATIONS FOR SPECIAL PERMITS AND FOR EXCEPTIONS REQUESTED UNDER THE ZONING ORDINANCE.

WE ARE AN INDEPENDENT BOARD OF CITIZENS AND NOT PART OF THE CITY ADMINISTRATION. WE ARE SERVED IN OUR EFFORTS BY A CITY ATTORNEY AND STAFF MEMBERS.

MEETING CALLED TO ORDER: 6:00 P.M. by Chairperson Klostermann

ROLL CALL: Present: Board Members: Robin Bauer, Jeff Geistkemper, Jeff Jacque,
Mary Klostermann, Ann Salter, Steve Timp

Absent: Steve Boeckenstedt

Item #1: Approve Minutes of the August 15, 2018 Meeting.

Chairperson Klostermann asked for questions or comments regarding the minutes and there were none.

Jeff Jacque made a motion to approve the minutes of the August 15, 2018 Meeting. Motion seconded by Steve Timp.

Voice Call Vote:

Ayes: Robin Bauer, Jeff Geistkemper, Jeff Jacque,
Mary Klostermann, Ann Salter, Steve Timp,

Nays: None

Motion Carried

Item #2: Received & File email regarding Chad Ellis request withdrawal.

Steve Timp made a motion to Receive & File email regarding Chad Ellis request withdrawal. Motion seconded by Jeff Jacque.

Voice Call Vote:

Ayes: Robin Bauer, Jeff Geistkemper, Jeff Jacque,
Mary Klostermann, Ann Salter, Steve Timp

Nays: None

Motion Carried

CASE NO. 05-2018

TYPE OF REQUEST: Special Exception Use for Multi Family Dwelling at 1205 6th Street SE (Parcel 0731437001), Dyersville, Iowa as required in Section 165.24(5)(j) of the City Code.

(CASE SHEETS ATTACHED)

BOARD OF ADJUSTMENT CASE SHEET

September 19, 2018

THE ZONING BOARD OF ADJUSTMENT is authorized to grant a Variance or Special Exception provided **ALL OF THE FOLLOWING REQUIREMENTS** have been addressed:

I. UNNECESSARY HARDSHIP:

To support a Finding of Unnecessary Hardship, the Board must, upon competent evidence, determine:
That the land in question cannot yield a reasonable return if used only for the purpose allowed in the zone.

- A. The plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood, which may reflect the unreasonableness of the Zoning Ordinance itself.
- B. The use to be authorized by this variance will not alter the essential character of the area.

II. THE VARIANCE will not be contrary to the Public Interest.

III. THE SPIRIT of the Ordinance is protected.

IV. SPECIAL EXCEPTION:

Use of a property not otherwise permitted by Ordinance but permitted as Special Exception Uses as stated in the Dyersville Municipal Code.

CASE NO. 05-2018

TYPE OF REQUEST: Special Exception Use for Multi Family Dwelling at 1205 6th Street SE (Parcel 0731437001), Dyersville, Iowa as required in Section 165.24(5)(j) of the City Code.

Prior to meeting Recording Secretary, Lori Panton, provided each Board member with three letters received after the agenda was prepared.

Chad Ellis, Rose Garden Properties LLC, was present and advised he is requesting a special exception use with off-street parking. His site plan shows 17 outside parking spaces and 45 underground parking spots for 41 units. He stated his smaller parking lot is a benefit because it will decrease the storm water run-off.

Board Member Jeff Geistkemper asked if Ellis had a site plan with the dimensions of the basement because the one in the packet was too small to read. Ellis did not have anything different than what was handed out. City Administrator Mick Michel advised he had one. Ellis advised he thinks there is ample parking; there is 13-14 feet for each space.

City Administrator Mick Michel stated he had some items for the Board's consideration. He said he would present them one at a time and explain each one.

City Item #1 was code section 165.23 R-2 Residential District. He provided R-2 zoning information because if the property was zoned R-2 there would be no requirements for off-street parking. He advised another part is section 165.24 C-1 Central Business District (page 622). Page 623 shows the Special Exceptions in which single and multi-family dwellings is what is being considered. The current code requires one off-street on-premise parking space be provided for each unit. Michel went back page 622, it lists the permitted uses. Michel read the permitted uses. He brought this to their attention because the

property is currently zoned C-2 and these uses can be on this property. Michel advised the code section allows C-1 activity in a C-2 district. Michel moved to page 624, which is code section 165.25 C-2 Commercial District. Michel read the permitted uses for C-2 district. He stated this is where it shows the uses permitted in a C-2 district. He provided this to show what could be done on this property with just the building permit process. Board Member Steve Timp asked that what Michel is saying is that those things could be built without coming to the Board. Michel stated he is correct, they would not need to come before the Board and ask for an off-street parking exception.

City Item #2 was sections of the Dyersville Comprehensive Plan that was adopted on July 16, 2018. Michel presented sections of the plan because it shows the general populace opinion of the residents in Dyersville. The plan went through public hearings and considered public input. On page 51, under Community Development he read the second item. He stated this senior housing development falls under that type of development. On page 56, Michel read the Residential Land Need section. Michel pointed out Figure 3.1 which is the Projected Future Land Use Needs by 2040. He submitted this to show the requested 2 acres is needed for multi-family dwellings because 184 acres will be needed between 2018 and 2040. Michel moved to page 57 which includes Infill Development, Mixing Uses and Density and Development Costs. Michel provided this because infill lots are best used for multi-family dwelling units along with the mixed uses. It also shows density development costs associated with that type of development. On page 59 there is the Future Land Use Map. Michel advised he circled the property site and that area is designated for Mixed-Use. Michel went on to page 61 which shows the definition of High-Density Residential and read the third feature. Michel stated the most appropriate use would be Mixed Use and he read the second feature of Mixed Use. He advised the mixed use shows a picture of Physical Therapy Solutions which is a commercial and residential mixed use.

City Item #3 was the Hearing and Approval of the Development Agreement and Tax Increment Payments for Rose Garden Properties LLC. This was dated 3/5/18. It shows a public hearing was held on March 5, 2018 for tax increment financing. Michel noted the oral objections or statements made during the meeting. There were 2; one from Sally Brant with concerns about the number of units and section 8 housing and one from Jacques Rahe stating there will be an architectural review and the intent is for seniors 55 and over. Michel moved to page 3 of the agreement (Resolution 20-18) and noted 3 sections of the agreement. These items show there was a public hearing on March 5, 2018; shows Iowa Code Chapter 15A declares economic development is a public purpose and cities may provide financial assistance; and shows what Chapter 15A requires before granting financial assistance and the city council must determine that a public purpose will reasonably be accomplished by spending funds. Michel directed the Board to the Development Agreement and read the 3rd and 4th preambles of the resolution. These alleviate the concerns about public housing and shows this will be a senior living facility. Michel goes to page 6 of the Resolution and states the legal description matches the property being considered.

City Item #4 was information from the State Of Iowa regarding traffic analysis on street systems. Michel printed out the annual average daily traffic (AADT) information for 13th Avenue SE, 6th Street SE and 8th Avenue SE. The 13th Avenue SE information shows the AADT is 690 based on information from 2015. The 6th Street SE AADT is 690 based on

2017 information and the 8th Avenue SE AADT is 1940 from 2017. Michel stated this comparison was provided regarding the public's concern about traffic and how it compares to other residential areas.

Board Member Jacque stated he appreciated the information but based on the scope of the meeting aren't they there to determine if adequate parking is being provided? Michel advised that is the Board's consideration, but they can take in other information and he will bring this all together at the end and explain why he is providing the documentation.

City Item #5 is the Building Permit submitted to the city on July 3, 2018. Michel stated there are questions regarding the site plan and realizes the plan in the packet was hard to read. Board Member Geistkemper asked about the dimensions which can be seen on the plan and shows 17 outside parking spaces. It does not show the additional 45 packing spaces. Michel said the city has not fully reviewed this permit and won't until the Board makes their decision. The map shows the parking spaces will have outlet to 6th Street SE and tenant parking will use 13th Avenue SE. Michel advised the city is considering an improvement project on 6th Street SE and is waiting on a decision regarding this development so it can work in the necessary requirements. The city wants to make sure storm sewer and traffic impact is taken care of.

Item #6 was the site plan that was included in the agenda packet. Michel states the plan shows 62 off-street parking spaces. Item #5 confirms 17 of them will be outside. This is part of the Board's decision and will also be part of the permitting process by the city. Michel also pointed out there is a "beauty" area that he believes is for future commercial use. There is also a community room that could produce commercial activity. The property is zoned C-2 so if they do have commercial activity that would not be allowed in an R-2 district.

City Item #7 was aerial views from 4/22/17 of the property in question. Michel stated he highlighted the 2-acre property. It shows the location looking North, South and East. The views show the adjoining property, existing trees, and shows there is enough space when considering the 40-foot setback on the north. It provides a buffer and shows industrial and commercial activity in the area. It does not show the new Theisen's building.

City Item #8 was information regarding a living center already in the City of Dyersville. The current facility is in an R-2 Residential district. The website of the current center shows the facility is 120,000 square feet with 32 assisted living units and 26 independent living units. Michel indicated the Beacon sheet shows the living center on 3.76 acres and the proposed facility is on 2 acres with 41 units. This puts things in context with activity within the city.

Michel concluded that the development will be a less intense use than what is allowed in a C-2 use. The general populace opinion supports the development based on the comp plan. There is adequate infrastructure to meet the needs of the development. The development alleviates a blight condition and will enhance property value and economic conditions which is the reason for the tax increment financing. The development agreement shows this will be a senior living facility. Based on information provided by the developer it meets the requirement of one off-street on-premise parking space for each unit. Michel concluded these are facts submitted for the Board's consideration.

Chairperson Klostermann asked if they could take comments on anything or just regarding parking. Michel stated they could take comments on anything, but the consideration will still be one off-street parking space per unit. The facts presented by the city indicate the requirement has been met and the use is less intense than what is permitted by code. Michel gave an example that a 3-story hotel could be built there with only a building permit being submitted and would be a more intense use. Michel felt this is a good compromise because the tax increment financing proves it will be a senior center. When looking in that area there is already commercial, industrial, residential and multi-family units. It won't have a lot of activity based on the other senior living facility in the city. Michel stated that C-2 allows commercial activity along with residential activity, as is already at Physical Therapy Solutions, and it provides a buffer between the commercial area and residential area. Michel stated it had been demonstrated it will have a low-intensity impact and has off-street parking. The off-street parking will also be considered during the permit process.

Chairman Klostermann asked if the letters that were on the table at the beginning of the meeting need to be read. Recording secretary Panton stated they were dropped off and for their information.

Board Member Jacque suggested that they only hear comments regarding the scope of the hearing. Michel stated they could hear all comments but, in the end, it will come down to the special exception of meeting at least one off-street parking space. Board Member Timp asked that if they approve this, will it go back to the Council? Michel advised it would go to the Council to either be approved or remanded back to the board for further consideration. Michel said he felt the city showed enough evidence and facts to support the development and how it is good for the community. Michel gave the example that a hotel of equal or greater size could go there with just a building permit.

Chairperson Klostermann opened the meeting to public comment.

Sue Engelbrecht – adjoining property owner. Engelbrecht read section 165.02 of the city code which is the Zoning Regulations Purpose. She stated her concerns are with overcrowding the land and undue concentration of population. The board should know this development goes against section 165.02. Engelbrecht is not opposed to senior living but is opposed to 41 apartments on 2 acres. This goes against the overcrowding of land and the undue concentration of population and should be considered before moving forward.

Mike Brant – adjoining property owner. He stated the information he is providing comes from the Section 165.04(53) of the City Code which he reads. Brant states the map he received shows 45 spaces, times that by 250 square feet which comes to 11,250 square feet. It shows the basement to be 242 feet by 60 feet which totals 14,520 square feet. The center drive is 28 feet x 242 feet and that comes to 6,776 square feet. If you take 6,776 square feet off the total 14,520 square feet that leaves 7,744 square feet. Brant states they are 3,506 square feet short. Brant said to do the math, he doesn't have enough space for that many cars. Brant also submitted two petitions to the recording secretary in objection to the special exception use. Jacque asked if it was the one submitted on September 4th and Brant said it was not. Brant stated there were 2 he submitted - one was part of the September 4th but wasn't handed in that night.

Jerry Koch, 516 8th Avenue SW, said he received a copy of the print that was pretty vague and knows it will take some post beams to hold the upper stories. He provided a diagram to the Board. He showed the board where the posts are and advised the 14-15 that are needed will take away from the parking spaces. He has been in construction for 61 years and built the Ellen Kennedy Center and had to put support posts in just like this and you can't park where a post is. Timp wanted to clarify that what Koch is saying is that the developer can't meet the obligation. Koch said the print is vague and doesn't know where the posts are and if they would be supporting wood or concrete floors. Structural support beams are needed either way and you can't park where the beams are.

Carl Burkle, 14299 Christoph Road, stated he represents the elderly and senior citizens. He stated it looks like a beautiful facility. The elderly and seniors need this and want this. Burkle said he thinks seniors will enjoy this facility. Burkle wanted the Board to consider the elderly and seniors when making their decision and not to turn their backs on them. Burkle said this is their future and will be a beautiful place to live.

Sue Engelbrecht spoke again and agreed they need to speak for the senior citizens, but what senior in Dyersville wants to live in a 700 square foot apartment with no elevator that she can see? She stated that if the basement is considered a floor and there are two more floors, what senior would want to walk up three flights of stairs? If it would be more like the Ellen Kennedy Center or what a local contractor built on the west side with main level apartments, that is what should go here. She suggested 8 complexes with green space where people will want to live. If you look at the plans would you want to live there? She stated there is no senior in Dyersville that would want to live there. She would not go there.

Jerry Koch spoke again and stated the apartments are not big enough and they can't meet ADA compliance. This is such a vague plan and he would have never gotten approval with a plan like this. Koch stated Board member Timp can attest to that because in 1995 Koch got turned down with no questions asked.

Jacque Rahe, with Dyersville Economic Corporation, addressed Jerry Koch and stated she didn't think this was the place to air grievances he may have. Rahe wanted to talk about the process in coming up with this housing development. There was a housing assessment study done in 2016 and 2017 that was commissioned through RDG. They had round table meetings with various community groups. The people at these meetings talked with the consultants and the thing that kept coming up was Dyersville losing residents to other communities because of lack of affordable housing and rentals. The consultants came back with recommended strategies. The top three were: senior housing developments, development of multi-family units, and city participation in housing infrastructure. Rahe stated this land has been for sale for years. She advised they purchased it to help with the Theisen's store expansion and help eliminate this blighted area. Rahe said the board discussed the best use for the property. There is commercial, industrial and R-2 areas here. Rahe had a lot of interest from developers with some from the area. They sold to Mr. Ellis for a senior living facility. The purchase agreement states it must be for an independent senior living facility and common space services. There are many examples of multi-family in commercial districts. Rahe stated multi-family is anything over one unit. Rahe advised Michel went through the permitted uses and a warehouse could be built there tomorrow. Rahe stated this project has had public vetting processes.

She sat down with some neighbors and offered to get them information and gave out business cards. She stated no one called her back. This is a done deal except for the Board's decision on whether it meets the off-street parking requirement. Rahe said there was a lot of talk about math and engineering. This developer is experienced with other projects like this and will need to meet city code requirements before building. The Board's decision is whether he meets the requirements.

Jeannie Ulrich, adjoining property owner, stated handicapped parking spaces were not discussed yet. Chairperson Klosterman said it looks like there will be 2 outside and it can't be determined how many are inside. Ulrich was concerned that there will only be 2 handicapped spots for 41 units; attention should be made to this. Ulrich wanted to know what the requirements were. Board Member Timp addressed Michel on this. Michel advised handicapped parking is determined by the ADA and the developer will need to meet their requirements. The city has no building inspector and the architect or engineer will need to ensure the Iowa Building Code is followed.

Joe Ertl, 507 13th Avenue SE, stated that with handicapped parking you need to have a van accessible spot, which will then take away from the existing spaces. Also, only 1/3 of the spaces will not have a post next to it. He advised, in the lower level parking you will need to walk 500 feet and up 2 flights of stairs to get to an apartment. If you are handicapped how are you going to get up the stairs without an elevator? Ertl said he noticed on the website an elevator is being sold as an amenity when it should be a necessity. Ertl felt there should be 2 elevators in case one breaks down and there should be a large one for freight, which will take up several more parking spaces. Ertl stated he doesn't know what there is for parking until he sees plans. He felt the process is too far ahead and the drawings were amateurish. Ertl appreciated the opportunity to speak and objected to the special exception use. Ertl stated he wanted to ask Mr. Ellis some questions. Michel advised he did not think that was appropriate because this is public comment and not Q & A. Michel advised the relationship is between the city and petitioner. Ertl asked that it be noted that he was denied the opportunity to ask questions. Michel didn't think any Board of Adjustment in Iowa would allow for questions and answers. Ertl stated he doesn't think these questions have been answered from what he has seen. Ertl went on to read his questions (the questions were submitted later as part of the record). Ertl questioned the address and the front of the building. Klostermann said the address is determined by how the lot is configured. Michel corrected that and explained the address is determined by the front of the building; the front of a lot and setbacks is determined by code and that has not yet been determined because he is waiting for the Board's decision. Michel confirmed the building permit was submitted with the address of 1205 6th Street SE and that is the current mailing address of parcel #0731437001. Ertl wanted to make sure the front yard is on 6th Street SE and not 13th Avenue SE. Michel stated the front of the lot is along 13th Avenue SE based on lot dimensions. Ertl stated the problem with the code is that it is twisted in any way we want. Board Member Timp stated the Board did not write the code but it is what they have. Ertl said if 6th St is the front yard there is a required front setback of 40' and 40' in rear. Board Member Jacques advised Ertl the Board does not determine setbacks, they are here to discuss parking. Ertl stated we are here to discuss the purpose of the Board and that is to hear why things are the way they are. Ertl stated if you take that basis of the front and rear yards require 80 feet and the building is 150 some feet, the building is 20 feet too far towards the street and does not fit on the lot properly. Ertl questioned on how many stories are in the building. Everyone is saying 2 but

Dyersville code says you need to include the basement which makes it a 3-story building and there will be 2 flights of stairs. Ertl asked how much fill will be added - will there be 3 feet or 6 feet? He asked what is the height of the underground parking building – will it be 8 feet, or 15 feet, will it be big enough for a garbage truck to get in? He stated the trash is in the north end of the parking area. It is an 18x18 area and for a building like this it will need at least 5-7 dumpsters. Ertl referenced the dumpster for the apartment by the Oak Gardens and questioned what the dumpster provisions will be for this unit – will it be in an open or enclosed area? These items should be on a drawing and looked at. Ertl asked if the underground parking garage is going to be all concrete and will it have a ventilation system? Ertl said if there is, it will require 4 feet all around the structure. He said there appears to be a little ventilation system in the corner. If you provide for a 4' ventilation system, it makes the building become 8 feet wider; will it require support posts to be bigger which decreases the parking spaces? Ertl figured the parking spaces are drawn out to be about 18' long, take 2 rows times 18' and that is 36'; it appears there is a 24' drive which makes a 60' wide building; add 8' ventilation and that comes to 68' building. The site plan is for a 60' building. Ertl stated the site plan appears to be for a one-story building with 17 parking spaces in the front; the underground parking shows 43 spaces. Ertl stated the drawings provide for 62 parking spaces which is approximately 1 ½ spaces per unit. Ertl referenced chapter 165.20 D-1 Delaware Ag district of the city code which requires 2 off street parking spaces per unit. Chairperson Klosterman advised this structure is not in Delaware County. Ertl continued onto chapter 165.23(4) Special Exception Uses and Structures and stated mobile home parks require 2 spaces per home. Klostermann stated they need to look at what district the request is in. Ertl said if Delaware County and mobile home parks require 2 spaces this multi-family unit should also require 2 spaces per unit, or 82 spaces that are 250 square feet. Board member Jacque stated they can only address this item and can't change the code. Michel addressed the chair and said Ertl is just giving his facts. Ertl said he is pointing out the irregularities of the code. Ertl continued to chapter 165.23 - the density requirement should be 38 units at 3500 square feet and 3 units at 2500 square feet. Jacque stated that if the units are too small and Ellis can't rent them, that is his problem. Michel advised the chair that Ertl is stating his facts and how they weigh them in their consideration is up to them. Ertl stated the measurements tell him this unit requires a 4-acre piece of property based on the city code. He stated the density does not allow for enough parking. Timp stated that what is being proposed is within the acceptable parameters of the code. If the developer cannot come up with a plan that allows for 45-46 spots he won't be able to build it. Jacque requested confirmation from Michel. Michel advised the Board could put that he is required to provide a minimum number of parking spaces as part of the motion. Michel also stated that if the petitioner cannot demonstrate that he can meet the requirements, based on the Board's decision, he cannot approve the building permit. Board member Bauer stated this makes sense, opposed to the other stuff and she doesn't have the background, but does the city have it measured out or will it be if the Board passes this? Michel brought them back to item #6 which was the plan that was submitted to the Board. Michel stated there is a logo in the upper right corner from 563 Design. Michel asked Ellis if 563 Design did the design or if Ellis did. Ellis said 563 Design did the design and worked with a structural engineer on the rest and are working with a structural engineer on the drawings. Michel said his point is, this wasn't done just by the developer but by an architectural firm. Michel adds that at a minimum they need to meet the requirements of the State of Iowa building code or the architect will be on the hook. The city doesn't do inspections, but it does zoning review and in this case has the Board to make sure there is the required off-street parking. Ertl said so

the city is not requesting 1 ½ spaces. Michel advised it was not because the code is only requiring one; other classifications can require more parking but this one does not. Michel stated how they get the off-street parking is not up to the city. Ertl continued that the drive-in ramp is 40 feet long and the basement goes down about 8' that will be a 15% slope going in. He stated the recommended slope is 5-7%. Ertl stated there is no green space or common area that you would normally have for an area like this. Ertl thinks these are things that need to be discussed now and a good contractor would have appropriate plans ready.

Werner Helmer, 137 1st Avenue E, stated he is representing Joe Ertl in some legal matters. He said he had heard about the permits, been given an architectural rendition with no signature, there was mention of engineer studies, and there was discussion on the experience of the developer, but he has no information before him regarding that. Helmer submitted a written objection to the special use exception to Chairperson Klostermann. Helmer stated that per the city administrator the only consideration for the Board is regarding parking. Helmer referenced chapter 165.33(9) of the code. Helmer read item number one of the written objections that he entered into record. Helmer stated the second objection is to no adequate site plan; he can't make heads or tails out of it and it is an architectural rendition. Helmer said it is nice to say it will be addressed during the permit process but that remains to be seen. The items missing are traffic, water, density and property tax studies; ADA requirements; fire and safety codes; water runoff; and other matters that are concerns of the adjoining property owners. Helmer stated the 3rd objection is that the applicants proposed parking and property setback requirements are not in compliance with the zoning regulations for multi-family dwellings. The 4th item to discuss is the reclassification of the variance as a special use exception is objected. Helmer said there are 2 ways to get properties put in an area and that is to seek a variance or seek a special exception use. A lot of communities have skirted the issue of a variance because you need to prove a hardship which is hard to do so they skirt the issue and say they will put a multi-family unit in a commercial zone which circumvents the system. Helmer stated the Board needs to have input from the application and public. Helmer wanted his written objections included as part of the record as well Ertl's questions that he was not allowed to ask. Board member Timp asked Helmer if his stance has changed since the last meeting. Helmer advised no. Timp said at the last meeting Helmer objected to the ownership of the property. Helmer advised that was a procedural point. Timp said now you have these issues? Helmer said yes because it never got to this point last time and the ownership issue has been addressed. Helmer had one more point on Chapter 165.33 which says the Board shall consist of 5 members appointed by council and 2 members appointed as provided in Section 414.23 of the Code of Iowa, yet there are 6 members present. Michel stated one member is missing. Helmer asked why there would be 7 members, based on his understanding there should only be 5 unless it extends outside the city limits. City Attorney Marc Casey advised they comply with the state statute. The city has extended the jurisdiction into Delaware County because they do not have a zoning board. The city has added 2 Delaware County members and that is why we have a 7-member board and one of the board members is not here. Helmer asked if this applied even if the property is not in Delaware County. Casey stated yes because of state statute.

Sue Engelbrecht added she did not receive any letter or notification on the meeting Jacque Rahe referenced. The first courtesy notice was received 2 days before they left for vacation and they received a 2nd courtesy notice. Engelbrecht stated she would have had a lot of

questions if she would have been notified of the March 5th meeting. Rahe advised that was a public hearing. Engelbrecht had another issue with Ann Salter who was just appointed to the Board at the last council meeting. Engelbrecht felt that is a conflict of interest with her husband being the President of DII and wanted that part of the record. Michel advised the petitioner is Mr. Ellis and not DEDC.

City Attorney Marc Casey stated he was there on behalf of the City and not speaking for or against the project. He was there to describe how the City believes the Board of Adjustment should function and to protect the integrity of the Board of Adjustment. Casey said the Board is dealing with Chapter 165.24(5)(j) and the charge is very narrow. One, has the applicant provided one off-street parking space per living unit? Two, is there any offensive emission of noise, odor or vibration? Casey stated everything else heard this evening is irrelevant. The Board needs to make a fact-finding decision on whether the applicant has met the requirements under 165.24(5)(j). Casey said a lot of what was discussed is policy that is determined by the City Council. The Board is denied any authority to make changes to the zoning ordinance. Therefore, when the Board hears they should do this, or they should change this, that is not under purview of the Board. Casey said the city wants to make sure the process is followed. Casey stated the City Code of Ordinance is modeled after the state code. He stated people might not like the process but that is the process we have and the process we have to follow. Casey understood the code is in the process of being re-written but that is a long process and there will be a public hearing before that is approved and that is when the public can say what they would like changed. Casey said the Board has a process to follow and should not be sidetracked with speculation but has the applicant met his requirements.

Chad Ellis said he heard a lot of things that are not true. This is a state-of-the art facility that will follow state codes and the facility will be ADA compliant. Elis said nobody will be hitting posts. He stated it will have precast concrete basement specially designed by his architect and a structural engineer. Ellis stated he will have enough parking spaces; there is an elevator from the basement to the third floor; garbage will be in the basement next to elevator; the trash will be picked up twice a week; and there will be a live-in maintenance person who will bring the dumpster to the entrance for pick-up.

Mick Michel re-iterated the facts the city provided to the Board of Adjustment. The Board is considering the multi-family use parking requirements. The intensity of this development is less intense than what is currently there now. Michel did not feel it would emit offensive noise, odor, dust, or vibrations. Michel stated it is a senior living facility and the development agreement references that. Michel said the facts are there for them to deliberate and for them to make their recommendation.

Chad Ellis advised there will be a lot of seniors that won't be driving, and some won't own cars. His plan is to purchase a bus to drive the seniors on errands and appointments. He said this will cut down on the traffic.

Board Member Jeff Jacque stated he listened to the pros and the cons and wanted to move the meeting along and made a motion to approve the Special Exception Use for Multi Family Dwelling at 1205 6th Street SE (Parcel 0731437001), Dyersville, Iowa as required in Section 165.24(5)(j) of the City Code.

Board Member Jeff Geistkemper advised the board has no proof that the parking spots are 250 square feet. Geistkemper asked if the Board approves this, and he can't get enough spots in the basement can he do whatever he needs to do to make it work? Michel advised the building permit would be denied and he will need to come back to the Board of Adjustment or have the property rezoned. Michel stated this needs to meet the zoning requirements. Michel stated he is waiting for the Board to make their decision so he, as the zoning administrator, can consider if this meets the requirements. Michel guaranteed the city attorney would be involved in that process and Ellis' architect would be involved. Also, if the city has any questions, the city has engineers it can hire if needed. Michel said the application states it would have 62 off-street parking spaces and the minimum is 41. He has 20 spots to work with - as long as he has 41, unless the Board says differently, that is what the city will take into consideration. Jacque stated he felt there were more pros than cons. Steve Timp said that if the Board would approve this, it does not mean he can do whatever he wants. Ellis would still need to meet all state and federal codes. Geistkemper said Ellis would need to meet the required 41, 250 square foot parking spots. Michel advised the discretion on his end is if this meets the Board's requirement. As a zoning administrator there are 2 tests it needs to meet, does it meet the C-2 setback requirements, and does it meet the requirements and conditions of the Board of Adjustment if there are any. If both tests are met, the permit is approved, if they are not, the permit goes back to the Board for a variance or a rezoning request is made. From what Michel could see, it meets the requirements.

Marc Casey stated that as the city attorney, he suggests an amendment to the motion that it is subject to confirmation by the city zoning officer of 41 code compliant off-street parking spaces. This way everyone knows what they are working with. Robin Bauer asked if that was redundant. Casey said this way there are no questions since some issues were brought up. This way it is spelled out and this is what he must meet. Jacque amended his motion to include the 41 minimum code compliant parking spaces. Chairperson Klosterman asked for the second. Michel stated there was the original motion on the table and the amended original motion, so we are looking for a second. Michel asked the chair to have the motion read. Recording Secretary Panton read the motion to be: motion to approve the Special Exception Use for Multi Family Dwelling at 1205 6th Street SE (Parcel 0731437001), Dyersville, Iowa with 41 code compliant parking spots. Michel corrected that to include "a minimum". Panton read the motion again: motion to approve the Special Exception Use for Multi Family Dwelling at 1205 6th Street SE (Parcel 0731437001), Dyersville, Iowa with 41 minimum code compliant parking spots. Jeff Jacque confirmed that motion. Motion seconded by Steve Timp.

Roll Call Vote: Ayes: Robin Bauer, Jeff Geistkemper, Jeff Jacque,
Mary Klostermann, Ann Salter, Steve Timp

Nays: None

Motion Carried

ADJOURNMENT: Motion: Robin Bauer Second: Jeff Jacque Time: 7:43 pm
Voice Call Vote: Ayes: All Nays: None

Motion Carried

Lori A. Panton

Lori A. Panton – Recording Secretary

9/19/18
Date