

ZONING BOARD OF ADJUSTMENT MEETING

CITY OF DAVENPORT, IOWA

THURSDAY, JANUARY 26, 2023; 4:00 PM

CITY HALL | 226 WEST 4TH STREET | COUNCIL CHAMBERS

THE ZONING BOARD OF ADJUSTMENT HOLDS PUBLIC HEARINGS TO CONSIDER
HARDSHIP VARIANCES, SPECIAL USES, AND INTERPRETATION APPEALS.

I. Call to Order

II. Secretary's Report

A. Consideration of the 2023-01-12 Minutes

III. Old Business

IV. New Business

V. Other Business

A. Consideration of amended Board by-laws.

B. Election of Officers

VI. Adjourn

City of Davenport
Zoning Board of Adjustment

Department: DNS
Contact Info: ScottKoops@davenportiowa.com

Date
1/26/2023

Subject:
Consideration of the 2023-01-12 Minutes

ATTACHMENTS:

Type	Description
▣ Exhibit	Minutes 2023-01-12

REVIEWERS:

Department	Reviewer	Action	Date
Community Planning & Economic Development	Koops, Scott	Approved	1/18/2023 - 9:30 AM



MINUTES
Zoning Board of Adjustment
January 12, 2023



By this reference all reports, documents, presentations, videos and the hearing's video recording are incorporated into the minutes.
See the following link: <https://www.youtube.com/user/DavenportToday/videos>

I. Call to Order:

Chairman Darland called the Zoning Board of Adjustment (ZBA) meeting to order in City Hall Council Chambers, Davenport, Iowa at approximately 4:01 p.m.

Board Members present (3): Galliart, Boyd-Carlson, and Darland

Excused: Loebach, Quinn (Resigned)

Staff present: Koops, Berkley, staff Attorney Bagby

II. Secretary's Report:

Minutes were approved for the 2022-10-12 ZBA Hearing by voice-vote (3-0).

III. Old Business:

None.

IV. New Business:

- 1. The Board tabled item HV23-01 Dumpster Location at 707 E. Kimberly RD for one cycle (to group the item with HV23-02, also of 707 E. Kimberly RD)**

Motion:

Galliart moved to table the request for one cycle to the January 26th, 2023 meeting, seconded by Boyd-Carlson. The motion carried unanimously by a voice vote (3-0).

- 2. Request HV23-03 of Aldi Inc. at 3643 W. Kimberly RD for a hardship variance to reduce the required transparency of the proposed grocery store building on the west elevation from 594 sq. ft. to 0 sq.ft. of transparency, while providing 716 sq. ft. of spandrel glass/glazing for the west elevation. The north elevation will exceed the required transparency by 15%. Section 17.05.040 and Table 17.05-2 of the Davenport Municipal Code require 35% transparent windows for both the west and north building elevations, as measured between 2 and 10 feet on the façade. This property is zoned C-3 General Commercial. [Ward 2]**

Koops presented the staff report.

Findings: (supported by the staff report analysis)

Item #1 application of the ordinance creating hardship has been established;

Item #2 physical and topographical conditions of the site do impact visibility;

Item #3 unique circumstance has been established;

Item #4 protection of essential character has been established;

Recommendation:

Staff recommends approval of the request as the approval standards for a hardship variance have been met as proposed.

The petitioner addressed the Board and presented their request.

Motion

Boyd-Carlson moved to approve request HV23-03 as proposed, Galliart seconded the motion and the motion carried unanimously. (3-0)

Boyd-Carlson yes; Galliart yes; and Darland yes.

V. Other Business

None.

VI. Adjourn

The meeting adjourned unanimously by voice vote at approximately 4:20 p.m.

City of Davenport
Zoning Board of Adjustment

Department: DNS
Contact Info: ScottKoops@davenportiowa.com

Date
1/26/2023

Subject:
Consideration of amended Board by-laws.

ATTACHMENTS:

Type	Description
▣ Exhibit	By-Laws Draft

REVIEWERS:

Department	Reviewer	Action	Date
Community Planning & Economic Development	Koops, Scott	Approved	1/25/2023 - 9:09 AM

**BYLAWS AND RULES OF PROCEDURE
ZONING BOARD OF ADJUSTMENT
DAVENPORT, IOWA**

**ADOPTED
February XX, 2023**

Governing Rules

The Zoning Board of Adjustment shall be governed by the terms of [Chapter 414 of the State Code of Iowa](#), the [Davenport Municipal Code](#) (DMC), and by the [Zoning Ordinance of January 20, 2019, as amended](#), including but not limited to Chapters [2.66](#), [17.13](#), and [17.14](#).

1 Officers

1.1 Officers

1.1.a Chairperson

- 1) The position of Chairperson is hereby established.
- 2) The Chairperson shall preside at all meetings of the Board.
- 3) The Chairperson shall have general charge of the business of the Board.
- ~~4) The Chairperson shall appoint all committees~~
- 5) The Chairperson shall perform such other duties as are usually exercised by the Chairperson of a Board or as specifically authorized by the Board.

1.1.b Vice-Chairperson

- 1) The position of Vice-Chairperson is hereby established.
- 2) The Vice-Chairperson shall act in the capacity of Chairperson in the absence of the Chairperson.
- 3) In the event the office of Chairperson becomes vacant, the Vice-Chairperson shall succeed to this office for the unexpired term and the Board shall elect a successor to the office of Vice-Chairperson for the unexpired term.

1.1.c Secretary

- 1) The position of a non-elected officer, Secretary, is hereby established.
- 2) The Secretary shall be city staff personnel designated by the Director of Development and Neighborhood Services to act as staff liaison for the Board.
- 3) The Secretary shall provide staff support to the Board in pursuit of its duties.
- 4) The Secretary shall attend all regular and special meetings and public hearings and shall call the roll of those members present.
- 5) The Secretary shall present a record of ~~those~~ meetings to the Board.
- ~~6) The Secretary shall act in the capacity of Chairperson in the absence of the Chairperson and the Vice-Chairperson.~~

1.2 Election of Officers ~~and Appointment of Committees~~

- 1.2.a Officers of the Board shall be elected at the first regularly scheduled meeting of the Board in August ~~July~~ and shall hold office for one year or until their successors are elected.
- 1.2.b Any vacancy of a position may be filled at any Regular or Special Meeting after such vacancy.
- 1.2.c In the absence of both the chair and vice-chair the Board shall elect a Chair Pro Tem to serve in their absence. ~~As needed, the Chairperson shall appoint committees and the chairperson of each.~~

2 Public Hearings

- 2.1 The Board shall hold public hearings ~~before recommendation~~ in conjunction with consideration of Special Use, Hardship Variance, and Administrative Appeal Applications. Comprehensive Plan amendments, Zoning Ordinance text amendments, Zoning Maps amendments, or the vacation of Right-of-Way.
- 2.2 Notice of the time and place of the hearing will be given not less than four (4) and no more than twenty (20) days prior to such hearing by one publication in a newspaper of general circulation.
- 2.3 The notice procedures outlined in Zoning Code Sections [17.14.020](#) (published notice requirements, etc.) and [17.14.030](#) (continuances of hearing, etc.) shall be followed.
- 2.4 Procedures for [17.14.010](#) (pre-application meeting required, etc.), shall be followed. Applicants shall discuss their request and possible alternatives with staff. Applicants shall submit the request after this meeting with their final proposal having considered various options that may reduce or elimination the need for portions of the request.
- 2.5 The public will be allowed to provide evidence under oath regarding maters requiring a ~~speak to any of the open petitions on the~~ public hearing, with a maximum of five (5) minutes at the discretion of the Chair.
- 2.6 All participants shall conduct themselves in a respectful, courteous and civil manner.
- 2.7 Participants of the public hearings shall not speak unless recognized by the Chairperson; the lone exception would be when it is appropriate for staff to clarify a point of order and/or to ensure the meeting is run in conformance with applicable meeting procedures.

3 Meetings

- 3.1 ~~Regular~~ Meetings
 - 3.1.a The monthly meetings of the Board shall be held on the second and fourth Thursdays ~~Tuesday preceding the first and third Wednesday~~ of the month at 4:00 p.m, excepting the fourth Thursdays of November and December.
 - 3.1.b All ~~Regular~~ meetings shall be held at [City Hall](#) unless otherwise specified or unless there is no business for the Board, staff as secretary of the Board, may elect to forego the meeting until there is business before the Board.
 - 3.1.c In the event that all elected officers should be absent or unable to attend to the duties of their office, the members of the Board may, at any Meeting, appoint a Chairperson pro-tempore or a Secretary pro-tempore, who shall attend to all the duties of such office until such officer shall return or be able to attend to their duties.

- 3.1.d The Board may, on motion, recess a meeting to a time and place set forth in such motion.

3.2 Special Meetings

- 3.2.a Special Meetings of the Board may be called by the Chairperson and held at any time or place fixed in the call with proper notice.
- 3.2.b Any three or more members of the Board may request in writing to staff to call a Special Meeting.

3.3 Notice of Meetings

- 3.3.a The Staff shall file with the Deputy City Clerk the time and place of all Board meetings, together with a copy of the Agenda and previous meeting minutes at least twenty-four hours in advance of the meeting.
- 3.3.b A copy of the agenda and minutes together with such additional material as the Staff deems appropriate shall be given to each member of the Board.

3.4 Quorum

- 3.4.a ~~Roll call of members shall start each Board meeting.~~
- 3.4.b ~~Fifty percent~~ Three appointed members of the ~~membership~~ Board shall constitute a quorum for the transaction of business at all Board meetings, regardless of any membership vacancies, absences, or abstentions.
- 3.4.c At meetings with only three members present the Board may, at the Chair's discretion, inform the applicant that approval of any motion requires the concurring vote of all three members present and may allow the applicant to request a tabling prior to the commencement of the public hearing.
- 3.4.d Without a quorum, no business will be transacted and no official action on any matter will take place.

3.5 Agenda – Order of Business

- 3.5.a Consideration of the previous meeting(s) minutes
- 3.5.b Old/New Business for Special Use or Hardship Variance Public Hearing requests
 - 1) Chairperson reads the description of the request
 - 2) Staff presents the staff report, notices and comments, findings and recommendation; staff receives and answers questions from the Board
 - 3) Applicant or their representative makes a statement outlining the nature of the request; Applicant presents evidence in support of the application;

- Applicant receives and answers questions from the Board
- 4) Staff receives and answers questions from the Board, if necessary
 - 5) Oath testimony from the general public is provided with evidence to the Board in Favor of the quest; the Board may solicit comment f om either the applicant or staff
 - 6) Oath testimony from the general public is provided with evidence to the Board in opposition to the request; the Board may solicit comment from either the applicant or staff
 - 7) Board discussion; the Board may solicit comment from either the applicant or staff
 - 8) Board deliberation; Board outlines findings
 - 9) Motion is received by the Chairperson; motion is made in the affirmative, whereas a yes vote is a vote to approve the request, and a no vote is a vote to deny the request
 - 10) Any other old or new business for special use or hardship variance is deliberated repeating steps 1) through 9) above.

3.5.c Old or New Business Administrative Appeal Public Hearing requests

- 1) Chairperson reads the description of the request
- 2) Chairman at his option may have staff personnel explain the nature of the case before the board (yes/no?)
- 3) Or? the Zoning Administrator explains cause for the Zoning Interpretation
- 4) Applicant or their representative makes a statement regarding their interpretation of the Zoning Code section in question
- 5) Applicant presents evidence in support of the application; Applicant receives and answers questions from the Board
- 6) Staff presents the staff report, notices and comments, findings and recommendation; staff receives and answers questions from the Board
- 7) Applicant receives and answers questions from the Board, if necessary
- 8) Board discussion; the Board may solicit comment from any parties which provided evidence to the Board
- 9) Board deliberation; Board outlines findings
- 10) Motion is received by the Chairperson; motion is made in the affirmative, whereas a yes vote is a vote to approve the request, and a no vote is a vote to deny the request
- 11) Any other old or new business for administrative appeal is deliberated repeating steps 1) through 10) above.

3.5.d Discussion of any non-public hearing administrative items, if necessary

3.5.e Meeting Adjournment

3.6 Voting

- 3.6.a Voting will be roll call, called by the Secretary, and will be recorded by yeas and nays or present. A vote of Present will have the effect of a nay vote.

- 3.6.b Every member of the Board, including ~~excluding~~ the Chairperson, is required to cast a vote upon each motion. . The concurring vote of three (3) members of the Board shall be required to approve any motion (request) before the Board ~~The Chairperson may vote upon a motion in the case of a tie occurs or to cause a tie to occur. If a tie occurs following the vote of the Chairperson, a negative recommendation will be forwarded to the City Council.~~
- 3.6.c A member may abstain only if the member believes there is a conflict of interest as provided in Subsection 3.7.
- 3.6.d Members shall be physically present at the meeting in order to exercise their vote. Proxy voting, mail voting or telephone voting are prohibited. If deemed necessary (i.e. declared pandemic, health, etc.) the Chairperson may permit a virtual attendance and virtual voting on a temporary basis.
- 3.6.e The affirmative vote of a ~~majority of those three~~ three Board members ~~voting~~ shall be required for the exercise of powers or functions conferred or imposed upon the Board as per [Chapter 414 of the State Code of Iowa](#), ~~but less than a quorum of the members may meet and adjourn from time to time until a quorum is present.~~
- 3.6.f Reconsiderations of Board actions must be moved by a Board member who voted on the prevailing side of the motion. Reconsiderations, at the request of the applicant or the City of Davenport, must be moved at the same or next scheduled meeting of a rendered decision.
- 3.6.g The chair shall have the right to vote on all matters presented before the Board. All motions shall be made in the affirmative, whereas a yes vote is a vote to approve the request, and a no vote is a vote to deny the request.

3.7 Conflict of Interest

- 3.7.a A member of the Board must abstain from participating in a matter before the Board when the member has a conflict of interest or an appearance of impropriety.
- 3.7.b Conflict of interest shall mean a direct and personal interest in the outcome of the proceedings. An appearance of impropriety shall mean an apparent conflict of interest based on objective standards.
- 3.7.c A member of the Board shall declare their conflict or appearance of impropriety as soon as the matter comes before the Board for discussion or as soon thereafter as the member becomes aware of the appearance of impropriety or conflict. Thereafter, the member shall take no part in the discussion or note on the matter.

3.8 Ex Parte Communications

- 3.8.a It shall be the policy of the Board that members not attend private meetings whose principal purpose is to discuss substance and/or

details of business that is before or will come before the Board, unless such attendance is approved by the Board by motion prior to the private meeting.

3.8.b Ex Parte means communication between a Board member(s) and an applicant or third party outside of duly scheduled meetings on an issue pending before the Board. Ex Parte communications should be avoided because they raise the issue of due process fairness. In the event a situation arises where such communication occur, the member shall place on the public record the sum and substance of the communication to enable interested persons to rebut the communications.

3.8.c The Chair shall act as spokesperson for the Board. No member of the Board shall speak for the Board or give public expression, including news releases, of the opinion, attitude or action of the Board on any matter before or acted upon by the board, unless specifically directed to do so by motion of the Board.

4 Meeting Attendance

4.1 Board members are expected to attend all regular and special Committee and Board meetings and public hearings of the Board.

4.2 Prior to any scheduled Meeting, members shall notify the appropriate city Staff regarding any excused or anticipated absences.

4.3 Failure of members to attend meetings as outlined in Section 2.66.060 of the City Code may be subject to forfeiture of appointment. [NOTE: OLD BYLAWS REQUIRED 80%, new code is only 2/3rd; 1983 Zoning Code had no similar language]

4.4 Applicants (or designated representatives) shall attend the meeting at which their request is to be heard. After two meetings without informing staff of an absence, the request shall be return to the applicant with no action taken and with no refund of the fee.

5 Communications

5.1 Only the Chairperson shall speak, make statements, comment on social meeting, or issue news releases on behalf of the entire Board pertaining to its actions, attitudes and/or actions. Any member of the Board may express their personal opinion on matters not before the Board, provided their expressly state their comments are as a private citizen and not as a member of the Board.

5.2 It is the policy of the Board that members not attend private meetings whose principal purpose is to discuss business that is before the Board, unless such attendance is approved by the Board prior to the meeting.

- 5.3 Ex Parte means communication between one or more Board members and a party or third person outside of the duly scheduled meetings on an issue pending before the Board. Ex Parte communications should be avoided because they raise the issue of due process and fairness. In the event a situation arises where they occur, the member(s) shall place on the public record the sum and substance of the communication to enable interested persons to rebut the communications.
- 5.4 Any written communication to a Board member(s) shall be reported and presented to the entire Board and shall be included in the public record.

6 Duties

6.1 The duties of the Board include:

- 6.1.a ~~Review, advise, and make recommendations regarding revisions to the Comprehensive Plan.~~
- ~~6.1.b~~ Review and take action on applications submitted and placed on the Board agenda and make recommendations on subdivision plans and other development proposals to ensure that such requests are in conformance with the [Davenport Municipal Code and Title 17 Zoning](#). ~~and that the provisions of the Subdivision ordinance are fulfilled.~~
- ~~6.1.c Review and make recommendations to the City Council on the vacation of public rights of way of streets and alleys.~~

On behest of city staff, the Board may review and make recommendations to the City Council on proposed changes to the Zoning Ordinance, altering the map or ordinance language in conformance with the Comprehensive Plan and City Code.

~~7 Committees~~

~~7.1 Executive Committee~~

- ~~7.1.a The Executive Committee is a standing committee of the Board which consists of the Chairperson, Vice Chairperson and Secretary.~~
- ~~7.1.b The duties of the Executive Committee are:~~
- ~~1) Annual review of the bylaws and make recommendations of any possible changes to the full Board for consideration.~~
 - ~~2) Consideration of items to be brought to the Board as a whole which are not considered by any other committee in existence or appointed by the Chairperson.~~

~~7.2 Comprehensive Plan Committee~~

~~7.2.a The Comprehensive Plan Committee, being the whole Board, is tasked with supporting the maintenance and implementation of the Comprehensive Plan of the City of Davenport.~~

~~7.2.b The Chairperson may appoint subcommittees to study particular issues if they choose to do so.~~

~~7.3 Special Committees~~

~~7.3.a Special Committees as may be deemed necessary or advisable by the Board may be created from time to time by resolution of the Board at any Meeting called for that purpose.~~

~~7.3.b The Chairperson of the Board shall appoint one member of each Committees the Chairperson thereof, and the Committee shall meet at such times and places as directed by the Chairperson of the committee or at the regularly scheduled time and place of a particular committee meeting.~~

~~7.3.c The members of the Committees shall serve for one year or until their successors are appointed or in the case of Special Committees, until their work is completed. Any vacancy in a Committee shall be filled by the Chairperson of the Board.~~

8 Staff

8.1 The Director of Development & Neighborhood Services or the designated representative shall serve as staff to the Board.

8.2 The Staff shall be responsible for preparation of the Agenda and for the provision of all staff support and reports to the Board and its Committees. The Staff shall provide to the Board all reports pending on its upcoming agenda at least 24 hours prior to the scheduled meeting. Action may be deferred on any agenda item not meeting this requirement.

8.3 The Staff shall be responsible for the maintenance of all records, reports and correspondence.

9 New Boarder Orientation and Training

9.1 Orientation

9.1.a Following appointment to the Board and as soon as possible, new Boarders shall attend an orientation session with the Board Chair and Staff. At this meeting the following topics shall be among those covered.

- Duties of the Board
- ~~The Comprehensive Plan, Zoning Ordinance, Subdivision Ordinance, and Flood Damage Prevention Ordinance~~
- Meeting attendance
- Board bylaws, including conflict of interest and ex-parte contact

- Boarder decorum

9.1.b Staff will provide new board members with links to relevant documents and training materials, or provide hard copies upon request.

9.2 Training

9.2.a Board members shall be offered the opportunity for training through invitations to webinars hosted by the Bi-State Regional Board and other sources. The costs of attendance shall be the responsibility of the individual member, or through full or partial reimbursement by the City if funds are available.

10 Rules of Order

10.1 Parliamentary Procedure

10.1.a Roberts Rules of Order, Revised, will serve as a guide for the Board meetings in all cases where these rules do not provide for the procedures to be followed.

10.2 Amendments

10.2.a The foregoing bylaws, or any part thereof, may be amended at Meeting of the Board where not less than three days' notice has been given to all members of the Board and a copy of the proposed amendment sent with the notice, providing, however, its shall require an affirmative note by the majority of the Boarders present to make any amendment or change in the bylaws.

10.3 Delays in Processing

10.3.a ~~Issues~~ Requests brought before the Board for ~~recommendation~~ consideration shall be ~~considered~~ heard in a timely manner in accordance with the applicant's due process rights. Any issue under consideration by the Board ~~or one of its Committees~~, which has been tabled, postponed or returned for additional supporting information shall be returned to the agenda ~~of the appropriate body~~ on or before its sixth meeting following the tabling, postponing or returning for additional information.

10.3.b Should the requested information not be submitted in the amount of time provided for above, the Board may make a recommendation based on the information available or it may return the request to the applicant for future resubmission after making a determination that the request is incomplete and after listing the requisite information.

Referenced DMC Chapters/Sections:

[Title 2: Administration and Personnel. Chapter 66 Zoning Board of Adjustment.](#)

[Title 2: Administration and Personnel. Chapter 66 Zoning Board of Adjustment. Section 90 Powers and duties.](#)

[Title 17: Zoning. Chapter 13 Ordinance Administrators.](#)

[Title 17: Zoning. Chapter 14 Zoning Applications.](#)

City of Davenport
Zoning Board of Adjustment

Department: DNS
Contact Info: ScottKoops@davenportiowa.com

Date
2/9/2023

Subject:
Election of Officers

REVIEWERS:

Department	Reviewer	Action	Date
Community Planning & Economic Development	Koops, Scott	Approved	1/25/2023 - 9:11 AM