



MINUTES
Zoning Board of Adjustment
April 14, 2022



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 4:02 p.m.

Board Members present: Loebach, Quinn, Reistroffer, Boyd-Carlson, and Darland

Excused: None

Staff present: Koops, Werderitch, Zoning Administrator Berkley; staff Attorneys Heyer & Bagby

II. Secretary's Report:

Minutes were approved for the 3-24-22 ZBA Hearing by a voice-vote (5-0).

III. Old Business:

Reconsideration of AA22-01.

Request AA22-01 of Mike Meloy on behalf of John Davis/AlleyKats LLC for an appeal of an administrative interpretation, appealing the Zoning Administrator's interpretation letter dated December 9, 2021 regarding the sale of vehicles at 1707 West River Drive in the City of Davenport, Iowa. Property is zoned I-2 Heavy Industrial District. [Ward 3]

1. Darland opened the meeting by stating that the effect of an approved motion to reconsider is that it immediately places the item before the Board in the exact position it occupied the moment before it was originally voted on. Thus, the Board will not be taking additional evidence or comments.

2. If, however, a Board Member would like to further discuss this item with the other members of the Board or has questions about the agenda item, the Member may ask his or her question of the applicant or staff. Responses should be limited to answering the Board Member's specific question. All points from the previous Hearing are on record as recorded in the approved minutes of the March 10, 2022 Zoning Board of Adjustment Public Hearing. It is now the time for the Board to discuss the case.

3. Attorney Mike Meloy was recognized by the Chairman. Attorney Meloy stated that he represents Ally Kats, LLC. On March 10th during a two-hour hearing the applicant presented evidence to the Board and the Board approved the appeal to allow vehicle sales at 1707 W. River Drive.

4. Attorney Meloy stated that at the March 24th, 2022 ZBA Meeting the Board moved to reconsider Case AA22-01 without any legal basis because the Board has not adopted Robert's Rules of Order and secondly, the Board has not adopted any rules of procedure allowing a reconsideration at a subsequent meeting. Also, attorney Meloy stated that he did not get notice of the meeting today, and that if the Board moves forward with the reconsideration today, the Board will be violating his clients due process rights.

5. Staff attorney Heyer explained to the Board that a reconsideration can be requested at the meeting the vote was taken or at the next regularly scheduled meeting; anytime thereafter such a motion would not be valid. The motion must be made by a board member on the prevailing side of the original motion.

6. Darland stated, regarding the notice of the meeting, that attorney Meloy's client was at the meeting where the motion to reconsider passed and that he was aware of the hearing for today, April 14, 2022. Later, approximately 20 minutes into the meeting, City staff did also communicate to the Board that the Zoning Administrator had notified the applicant's representative via email to attorney Meloy dated March 28th, 2022, four days after the March 24th ZBA meeting at which the reconsideration motion passed.

Motion

7. Darland stated that he would entertain a motion approving the applicants appeal (Case AA22-01) to overturn the Zoning Administrator's interpretation regarding auto sales at 1707 W. River Drive.

Reistroffer so moved, and Quinn moved to second the motion.

Board Discussion of the pending motion:

8. Loebach stated that the staff's timeline (page 15) for dealership licenses, indicates M&S Motorsports (under ownership of John Cernovich) had a State dealership license up to February [March] of 2019, but that the renewal was unpaid to continue the license beyond that time. She indicated that Derric Carter did not buy the property until later (July 29, 2019), thus the property now falls under the new zoning regulations. Loebach asked for staff verification.

9. Staff person Koops asked for clarification of the question; staff asked if Loebach was inquiring about the time frame from expiration of the State M&S Motorsports License (when the property was sold, up to the time of Derric Carter's ownership of the property. Loebach confirmed that was the time under consideration. Staff stated that the State Dealer Programs indicted that State M&S Motorsports License expired at the time of the ownership transfer to Derric Carter. The State Dealer Programs emails (from Erika Eickstein) indicate that there is no current State license for 1707 W. River Dr., and that Derric Carter never had a State Dealership license on that property as either a regular license for as an extension (or sub) lot. Without a state license for the property, a legal use of the property by Carter (and Carter Auto Sales) was never established, licensed or permitted for auto sales by the State. Carter is not authorized to sell cars there unless the State approves a license in writing.

10. Darland stated that the crux of the situation is that as the City Zoning Code changed (in 2019), if the use has continued then the use is grandfathered, but a break in that use (for over one year) requires the property to follow the new (2019) Zoning laws. Darland stated that is a really good question because that is at the heart of the mater.

11. Darland stated that while the property had cars for sale at the site, that use was not legally established by obtaining the required State Dealership License, and that while the Board tries to establish if there was a dealership at this location should the Board allow unlicensed use to equal use.

12. Loebach asked staff if the owner is allowed to operate if the site is located in the floodplain. Zoning Administrator Berkley stated that a business can be operated in a floodplain, but there are specific rules that apply and that the site must adhere to the ordinance. On this site John Cernovich substantially improved the property which triggered compliance with the Flood Damage Prevention Ordinance. Staff stated that there is no evidence that such work was completed, which would involve submission of an elevation certificate which would certify that such work

was completed, which is one of the reasons why the property never passed final inspections and why there was no certificate of occupancy for the building.

13. Loebach stated that even if the applicant obtained proper zoning approval and dealership licensing, this building would still not be approved for occupation. Berkley stated that there are a number of components that effect the ability of the owner to occupy the building for business use. One part is the floodplain regulation, which the applicant must meet to be in partial compliance for occupancy. Another component is that the Building Department's Permitting requirements must be met for an occupancy permit. One issue with that is that the site has not passed inspection of Building Department for having an operable restroom facility.

14. City staff also communicated to the Board that Zoning Administrator Berkley had notified the applicant's representative via email to attorney Meloy dated March 28th, 2022, four days (less than two business days) after the March 24th ZBA meeting at which the reconsideration motion passed.

15. Attorney Meloy asked the Chairman if they would be able to have the opportunity to respond, in order to respond to some of the things that city staff has commented on. Chairman Darland stated that he could speak if he is addressing a question of the applicant by a member of the Board.

16. Reistroffer stated that he would like to hear what the applicant had to say.

17. Chairman Darland recognized Loebach's question for the applicant. Loebach state that she would like to know if the petitioner's licenses submitted at the original public hearing where the same one's supplied in the Board Member Packet compiled by staff. Attorney Meloy stated that he would like to see the documents to which Board Member Loebach was referring. Staff indicated that all 11 Exhibits submitted by attorney Meloy were included in the Board Member's Packet compiled by City staff, and where located on page 71. Loebach asked attorney Meloy about the city business license from 2020 and if it was ever paid.

18. Attorney Meloy stated that they did submit business licenses, and that he did not believe they submitted the 2019 license, however Mr. John Davis would be able to address this. Further, attorney Meloy stated that he believes there is confusion regarding the State Dealership licensing versus the actual zoning of the property. Attorney Meloy stated that he has been in contact with State of Iowa Program Administer Kevin Cruz regarding this particular issue in an attempt to clarify that issue. Attorney Meloy also stated that Mr. Davis will be handing out two letters he received dated April 11th, and April 14th, 2022 from the Iowa DOT Dealer Program Manager Kevin Cruz.

19. Darland stated that Mr. Meloy has gone beyond the original question. Darland stated that he would be asking the applicant a question would let the applicant to address this. Darland stated that the heart of the matter is whether or not the nonconforming use has continued, is whether or not this property has been a legal car dealership throughout this period in question. The State has provided evidence that says there has not been a dealership license for this piece of property for a period of time that would then say that the nonconforming use has halted. Darland's question to the applicant is that since the State has provided evidence that there wasn't a license, does the applicant have some information contrary to that that can show that not only was someone selling a cars as a car dealership there, and that from a legal stand point, has there been a legal continued licensed use at this address as a car dealership.

20. Meloy stated that Mr. John Davis would address that question directly to the Board. Mr. Davis stated that since the lot was a subplot (extension lot), Carter was not required to have a separate license at this location because it runs off of his primary license. Darland stated that the subplot

would have to be annotated. Mr. Davis refuted this, and stated the site can function off of the primary license, without the need to duplicate all the paperwork required for both sites, Mr. Davis also stated that there is no need to have a primary license as it is an extinction lot. Staff asked to have a copy of the document that was provided to the Board by the applicant.

21. Darland stated the document requires a dealer to apply for an extension lot license and that a primary lot can have an extension lot if the extension lot license is applied for and granted. Mr. Davis said that Carter does have one, but it's the overflow lot, and it is issued by the City.

22. After receipt of the document City staff stated that Mr. Davis was asked by the Chairman to provide appropriate State licensing for both the primary and extension lots. Mr. Davis informed the Board that the state does not require a license for a subplot.

23. Darland stated to Mr. Davis, that per the document provided to the Board from the State DOT, item 2B says that a dealer must apply for an extension lot license. Once the extension lot application is approved the Iowa DOT issues a license for the extension lot under the dealer's license number of the primary place of license, but there must still be documentation that the extension lot is issued by the State.

24. Mr. Davis stated that the notation of the extension lot is noted on the primary dealership license. Chairman Darland again stated that the document states that the DOT issues a license for the extension lot. Without saying where the extension lot is, it must be annotated somewhere or there is no proof of the extension lot being issued. Mr. Davis stated that Kevin Cruz said that Carter was not required to have it, he is required to have a zoning letter. Mr. Carter does have a City license.

25. Darland asked City staff to confirm his understanding that this document reads, under the general rules, but specifically that the City has asked the State if there was an approved license for this piece of property, and the answer was no. Darland asked staff to help de-conflict the two documents. City staff attorney Heyer stated that the Chair is correct in interpreting paragraph B, and in the April 14th letter signed by Kevin Cruz. The extension lot has to be annotated, or noted somewhere, if it is noted on the primary license that is fine, but it has to be noted otherwise the State would have no way of tracking them. The fact is that there was no notation of an extension lot for 1707 W. River Drive from the State of Iowa so it was never lawful as a location.

26. City staff person Koops noted that the Ericka Eckstein email is located in the Boards Packet on page 29. The email lists 5 bulleted points which document all of Derric Carter's State licenses in Davenport, both primary and extension lots. The email does not document any licensees for 1707 W. River Drive; there is no extension lot for that property, and that State has no documentation of that.

27. Boyd-Carlson asked staff a question regarding Carter's Auto Sales. She stated that Derric Carter has not owned the property in over a year and a half. So if Carter does not even own the property, does his (State) license even come into play here? Mr. Davis stated that even though Carter no longer owns the lot, Carter still sells cars at the site.

28. Chairman Darland asked a question for City legal staff regarding the sale of a property, does a new owner have to apply for a license. Attorney Heyer stated that an owner could lease the property to another party for auto sales, and that appears to be what Mr. Davis has indicated as happening.

29. City staff stated that the Applicant has not provided the City with any of the leases for this property. Mr. Davis stated that it was only a verbal contract.

30. Reistroffer asked a question regarding the information that was presented during the applicant's testimony. He wanted to confirm that it is correct that the State Dealership Program inspected 1707 W. River Drive and that the State inspected this property when it was Carter's operation and therefore the State was involved in this and with the inspection process.

31. Reistroffer asked Mr. Davis if the applicant received any correspondence from the State indicating the site passed inspection. Mr. Davis stated that Mr. Matt Dingbaum, an onsite State Investigator of the IDOT who works on Kimberly Road, did the inspection and it was sent to the State Department. The State has it on file that the site passed inspection and it is filed under River Drive Auto Sales, and not under Veric LLC or AllyKats LLC.

32. Reistroffer stated, again, that the State is involved with this and they inspected the property and said the site is fine for a car dealership. Reistroffer stated, this confirms the State is well aware of the property. Mr. Davis indicated yes, it site passes for a dealership and a subplot, and that it passes everything. Mr. Davis said he would not be standing here fighting if he still needed to get the State's approval, spending a ton of money on attorneys. He stated he is not fighting with the State, he is fighting for a zoning letter, the site is definitely grandfathered in, it is all black and white.

33. Darland stated to Mr. Davis, this isn't a question so please have a seat. For discussion on page 29 of our packet, which is page three of an email, it says regarding the property at 1707 W. River Drive, that the State lists the dealerships related to Derric Carter and all of the extension lots by address, so clearly they are annotated, and 1707 W. River Drive is not one of those and the State clearly says in the email 'There is no current license at this location' to quote the State, therefore they do not have records of that address being covered by any State issued dealer license.

34. Mr. Davis approached the podium and stated that the email says Carter voluntarily surrender his license because it was not needed, so Carter did not need the State license for the property. Why would Carter pay for a bunch of licenses and insurance on property that isn't needed; that is why Carter does not need a State license at 1703. [sic] Carter surrendered the properties listed in the email because they were not needed for River Drive. As the document shows, a license is not a requirement as it is not a primary license.

35. Darland stated that the DOT notes that the extension lots voluntary surrendered, so the extension lot are still annotated and are still licensed under the primary license.

36. Mr. Davis said that a sub license allows an owner to display a motor vehicle for sale. There is a bunch of different license here on this email and it is getting very confusing but none of these licenses are required if an owner has a primary license.

37. Darland stated that the email states that there are no current licenses at that location. Mr. Davis stated there is no license for 1707 W. River Drive because there is no license required. Staff asked Mr. Davis if he had a code section that states no license are required. Mr. Davis stated that under number 2 item B, on the April 14th letter from Kevin Cruz is where the language is.

38. Darland again asked Mr. Davis to confirm that Mr. Davis was referencing #2B, and Mr. Davis answered in the affirmative. Loebach stated that there is no documentation that the extension was ever approved for Derric Carter. Darland read item #2b which states 'The State shall issue a license for the extension lot under the dealer's license number' but there is not a license issued for the extension lot under that dealer license number. Mr. Davis stated Derric Carter has a City

license under Carter Auto Sales, it is not a requirement that Carter get a State license, only that he would have a zoning letter.

39. Loebach stated that she would like to go back to the timeline where it says under the City license, there was an unpaid renewal, March of 2019, but there is no evidence that a fee was paid in 2019. There is also not a date listed on the City license under the heading "Date Issued".

40. Quinn stated that in his opinion the applicant reasonably established that there was a dealership operated continuously at the site during the March 10 ZBA Meeting. Quinn stated that he felt there may or may not have been a State license issue. Quinn stated he has a question for staff, as a Zoning Board, should the Board be debating the legality of the business; is that really the Board's place. Quinn stated that he is looking at it strictly as a zoning issue; is it the Board's jurisdiction to decide; should the Board be debating the issue at all.

41. City staff attorney Heyer stated that the applicant's case is based on whether or not a lawful nonconforming use existed there prior to the zoning change; that is where the lawfulness come in. Quinn stated that he feels that the term lawful was added since the March 10 meeting.

42. City staff attorney Heyer stated that it is possible to have an unlawful use of a property, but that does not give someone a legal right to continue the use. Therefore in order to have a grandfathered use at the property prior to the change in zoning the property would have needed to have been lawful. Quinn stated that it appeared that the use was half lawful, as the City issued a license but the State did not and Quinn stated that he knows that the applicant needs to have zoning approval before being issued a State license but this matter is getting really complicated.

43. Darland stated that having a dealership license was a means to determine whether or not a site was used as a dealership, because with a dealership license one can say that it is being used as a dealership and without a dealership license it is hard to say that a licensed use of the property has been continuous. Darland stated that the State Dealership license is a way of demonstrating whether or not the site has been indeed used as a dealership continuously through the period in question.

44. Darland asked City staff attorney Heyer to confirm that it is legal to have an extension license and to clarify what is required with a State extension license.

45. City staff attorney Heyer stated that what the State considers an extension lot, the City calls a subplot. Recall that staff made references to State Code Section 322 at the hearing. Iowa Code Chapter 322 is the dealership licensing provisions for the state of Iowa. Iowa Code Chapter 322.3 entitled Prohibited Acts states under sub heading 2 that *"a person other than a licensed dealer in new motor vehicles shall not engage in this state in the business of selling at retail used motor vehicles or represent or advertise that the person is engaged or intends to engage in such business in this state unless and until the department has licensed the person as a used motor vehicle dealer in the state and has issued to the person a license in writing as proved in this Chapter"*. And the definition of selling also from Chapter 322 which states *"Selling' includes bartering, exchanging, delivering, or otherwise dealing in."* Heyer continued, therefore for this property to be licensed by the State it would have needed to have an extension lot license noted on the license. The State of Iowa has told us that doesn't exist. Derric Carter testified to this Board that he never had a State Dealership license for 1707 W. River Dr. He stated that he did not need a license from the State. However the State Code Chapter 322 says otherwise. The letter from Mr. Cruz under item 2B says otherwise.

46. Darland stated that means, even though the extension license would be listed under the dealer's primary number, there is still a tracking mechanism for that extension lot under the

dealer's license number stating where that extension lot is located. City staff attorney Heyer stated that is correct, otherwise the State would have no idea where the lots exist. Darland stated that shown on page 29 of the Board packet are the emails for the State Dealer Programs which list extension lots by address and that the State would have extension lots listed by address, and Heyer confirmed that also.

47. Mr. Davis interjected that it was the City license and a State requirement that Carter had to send a City a zoning letter, and that Carter sent it to the State in order for them to be able to legally sell cars. Carter sent that email from Matt Flynn to the State and he also sent in his City license to the State. The State is not required to give Carter anything back for the license. Carter has been showing cars there and it has been a dealership for years, and Derric has renewed his City license, but the City never took away the City license. Why would the City issue the City license if it is not right. Mr. Davis stated that he had personally talked to the Zoning Administrator Berkley and that she asked for proof that Carter Auto Sales was operating at 1707 W. River Dr., and if he produced that he would be good to go. Mr. Davis stated that he has taken every step required by the State, and has passed everything needed and that he is still waiting for the zoning letter which authorizes car sales at 1707 W. River Dr.

48. Darland asked Berkley to help the Board to understand the State dealership license and the City dealership license and the order thereof. Berkley stated that the City license does not mean a business can sell, barter or otherwise deal in the sale of motor vehicles without the required State license. By City interpretation, staff made the determination that the letter from Matt Flynn was issued in error. There was never any evidence that M&S Motorsports ever established a business there or ever sold cars there. M&S Motorsports never had a certificate of occupancy to legally occupy that building, but that aside Carter Auto Sales never obtained the State license for the site. Therefore, whether or not there is a City license for the site, doesn't really matter because a business cannot legally operate on the site, per State code regulations. There is no grandfathering from M&S Motorsports to Carter Auto Sales as the use was not legally established or continued.

49. Darland addressed Mr. Davis' question regarding why the City issued a dealership license. Darland stated that the City can license a property for conduct of a business, but whether or not there are additional requirements, whether in this case it is the State Department of Transportation or public health requirements or any other requirements, having a City license does not negate the business from having to meet any other regulatory requirements. Mr. Davis stated that Darland was correct. Mr. Davis said he is not asking for the Board to give him a license, only a zoning letter; not asking to be able to open a business, only asking the Board to give him the zoning letter that he feels entitled to. Everything submitted has been in order. The City is correct on a lot of stuff that they say, but they are looking at it wrong. A primary State dealership license, yes, that is required, and he has one. A subplot is not required to have a license. Mr. Davis stated his request is just a zoning question; and that he just needs a zoning letter to display motor vehicles.

50. Boyd-Carlson stated that from her understanding Mr. Davis basically needs to prove that car sales were happening in this time period, whether there was a license or not. Every single one of the pictures examined in the Board Packet do not appear to be photos of a car dealership. The photos go back to 2008 and shows photos to 2021, and 2022, and there are no vehicles on the lot. From the pictures given to the Board, it does not look like any kind of car dealer lot.

51. Mr. Davis stated that at the March 10, 2022 hearing, photos were submitted showing how photos from above do not show cars on the lot, but that cars parked under the canopy cannot be seen. Boyd-Carlson stated that the photo from 2020 shows the building with graffiti on the front. Mr. Davis stated that there were still cars for sale at the same time there was graffiti on

the building. Boyd-Carlson stated that the pictures do not show any sign of there being a dealership at the site.

52. Mr. Davis said that right before Derric Carter sold the property all the cars were removed from the lot. Mr. Davis said he made a deal with Mr. Carter and leased the property back to Carter all within a months' time. At the time of the graffiti, catalytic converters were stolen and Carter talked to the City about it.

53. Loebach asked Mr. Davis if he is the owner of the property. Mr. Davis stated that he is going to be leasing the property.

54. Boyd-Carlson stated that the pictures submitted by the applicant (picture start on page 87) show only one car on the lot in the top photo. Mr. Davis said that the photos show that cars can be parked under the canopy and not be visible with overhead photography. Boyd-Carlson asked why those vehicles do not show sale stickers indicating the cars are for sale. Mr. Davis stated that they all have them in the back left top corner of the rear window. Boyd-Carlson said that it appears like anyone could have driven a car under the canopy and taken a picture of it.

55. Darland asked for any other questions by the Board, and there were none.

56. Darland stated that the discussion point that he cannot get past is that the State (Dealership Programs Office) has no record of Derric Carter having an extension or regular sales lot at 1707 W. River Dr., as such the use of the lot as a car sales lot cannot be continued as it is not grandfathered as a legal nonconforming use.

Chairman Darland asked the Board for discussion:

57. Loebach stated that while she voted in favor of the applicant previously, she has come to realize that the City Dealership License was not paid. As the car use was not legal, she cannot grant the request to continue the use.

58. Quinn stated, going back to the original hearing, that he has not heard anything that changes his mind. Quinn stated that he thinks that it has been reasonably established that a car dealership has been in continuous use since then. The property may or may not have a State Dealership License, but Quinn stated that he does not believe that is under the Boards purview. Quinn stated that he would tend to stick with his original vote.

59. Reistroffer stated he grew up on the west end and the business climate is tough down there. Reistroffer stated that he goes by that location probably every day, and seeing how deteriorated it was, he has seen cars there and other times cars are not there, but lately in the last six or seven months the building has been painted and there are cars there. Reistroffer stated he does not want to lose a business on the west end because it is really tough to get businesses down there.

60. Reistroffer continued by stated that in his personal view the State Dealership Program was involved in this as they went there to inspect the property. So, if there was no license why did they go down to inspect the property. The State has to make reports of what they see, so something happened there; they were well aware that it was a used car lot. Reistroffer stated that he previously voted in the petitioner's favor, and he will do so again; we cannot lose a business. Who's fault is it, is it the City, is it us; therefore Reistroffer stated that he was going to vote on the side of error. Reistroffer stated that he is going to make it right, this business is good for the City down there, and those are his final thoughts.

61. Quinn stated that he would concur. Quinn applauded the applicant for establishing a business in a blighted part of town. That is something that others probably wouldn't do; Mr. Davis has more courage than he does and he applauds that effort. Quinn stated that Mr. Davis may or may not get his state license if Board would grants the zoning letter to Mr. Davis, but he is willing to grant that zoning letter.

62. Reistroffer added to Quinn's statement by stating that what concerns him is that the state inspector went down there to inspect the property, so the State was involved. I do not know if the inspector didn't want to write any reports on it, I just don't know. He reiterated that he thinks it will be a great business down there, and that Mr. Davis would keep the place clean, and 'we' need that.

63. Darland stated that he agrees, but if the state inspected the property, that does not necessary mean that they issued a license, but the he understands that they have to inspect first.

64. Chairman Darland stated the Board's charge is to hear and resolve cases applying the strict application of zoning laws, so the City zoning laws are that between the new zoning laws and the old zoning laws, so therefore for the use to be grandfathered, continuous non-conforming use allowing the use to continue through from the old to the new zoning laws; that is the strict application of the zoning laws and that is the duty the Board is charged with. The Board needs to decide whether there has been the continuation of a nonconforming use. Therefore, has there been cars continuously sold at the site, that is the question.

65. Darland stated that it comes down to the Board and if the Board would allow a non-licensed, illegal use to define a use. The question is how does each board member, in their own mind, define whether there has been continuation of a non-conforming use as a dealership; each Board member has heard the evidence as to what has been done there and by whom, so therefore has there been cars continuously sold there, given strict application of the zoning laws.

66. Seeing no other comments Darland continued, stating that he wants it to be clear for everyone regarding the motion, that a yes vote is in favor of the applicant's appeal, and a no vote is to deny the applicant's appeal. Chairman Darland then called for a roll call vote on the standing motion:

Boyd-Carlson, yes; Quinn, yes; Loebach, no; Reistroffer, yes; Darland, no.

The motion carried (3-2) in favor of the applicant's appeal as requested.

IV. New Business:

None.

V. Other Business

None.

VI. Adjourn

The meeting adjourned unanimously by voice vote at approximately 5:17 p.m.