

## **Board of Adjustment**

Meeting Minutes – May 11<sup>th</sup>, 2020

Meeting was called to order at 5:00 PM in the City Council Chambers at 10 W. State Street

### **1. Roll Call:**

Present: Engle, Schulze, Starks, and Wenner

Absent: Thurston

### **2) Meeting Minutes From 9/15/20**

Starks motion to approve

Wenner seconded

All approve and accept minutes

### **3) Appeal Request: 1207 ½ S 12<sup>th</sup> ST Home Occupation**

**Spohnheimer:** Appeal process, and background. The City did receive concerns from neighbors on 1207 ½ S 12<sup>th</sup> St, about illegal Home Occupation, or Home Occupation Violation. That recreational vehicles were being used for rentals, as a business. Concern that there was going to be multiple recreational vehicles. Concerns on waste disposal, and concern of impact to neighborhood characterizes, and potential resale. Both Caleb, and I received separate complaints on these items. Since we had an existing Home Occupation that was registered, and active, we knew we have some communication with the property owners. Staff investigated the online presence that included a: blog, Facebook, and an Airbnb listing. Code references 156.025 Home Occupation under the Zoning Ordinance. Biggest impact: statement of intent. The two criteria that we believe are the most relevant to this situation:

Item 1: exterior display. There is no signage or other things. The fact that the RV is on the exterior of the home, being used for the business is our determination for meeting exterior display. Item 3: Residential Character: The building or premises occupied should not be rendered objectional or detrimental to the residential character of the neighborhood due to the appearance or by emission of dust, gas, noise, odor, or smoke, or in any other way. Those items were not in our concern, but we clearly had received information that lead us to this case. Out of concern for the residential character for the neighborhood. With those two specific criteria, we felt that there was a violation of the Home Occupation Guidelines. As you are aware all Home Occupations that do not fall under permitted or prohibited categories have to come before the Board of Adjustment for approval. That gives the opportunity to review proposed plans, set conditions upon those plans, set hours of service or visit, traffic, parking, all those types of things. Being that this is not an activity that is listed permitted or prohibited, that type of activity would have needed to come before the Board of Adjustment for approval. Which of course it has not done. The Home Occupation that was approved permitted activity, and can continue operate. Additional code sections that we did look at reference: definitions also under the zoning portion of our code. Related to the definition of a dwelling. A dwelling does explicitly exclude RV as a dwelling unit. Which is relevant to some of the State regulations related to short term rental. Also the definition of Home Occupation in generally is secondary to the main use of the premise of the dwelling, not changing the character, or that in connection with display that would take from the exterior that is being utilized for any other purpose other than dwelling. Definition of a

recreational vehicle, as part of the City Ordinance or city code we do have a regulation for recreational vehicles, and the allowance of their use for limited periods of time. Under the recreational equipment uses 73.002 there is an allowance for recreational vehicles to be used for a time not to exceed five consecutive days. This is typically for friend, family member that is in town using an RV at your residence when they are staying. We have seen some cases where the Chief would have that opportunity to allow for additional time, this has not been a common practice where we have had this happen. It is currently how our code allows for that. We do not feel that this is meeting that requirement, of that section of the code. We also have a section under the City Code that again not specific to the Zoning Ordinance that does require or address parking, in residential yards. Any vehicles, which does include recreation vehicles, must be parked in a permanent structure or on a hard surface consisting of concrete, asphalt, bricks or crushed gravel. Those hard surfaces are in areas where are connected to a driveway or leading from an approved curb entrance. We do see some that come off alleyways' things like that. Should be on a hard surface. Included a section of the Iowa Code that was recently enacted Iowa Coded 414.1 relates to short term rentals, short term rentals property specifically identity single family house, or dwelling unit. This is where our definition of dwelling unit does specifically exclude recreational vehicle. The Iowa Code section does not specifically identify the recreational vehicle in this, particular section. Since we do have language that specifically defines that after consultation with our legal counsel we felt that it was actable. Reviewed with legal counsel to make sure that our interruptions were accurate, based on the Codes. We received confirmation to that.

**Schulze:** Anything more Michelle

**Spohnheimer:** Not at this time

**Schulze:** Property Owners are attending online or on the phone?

**Elizabeth Curtis:** Yes, we are here.

**Schulze:** Before we get too far down the road it is important for you to know that we don't have a full board, we do have quorum though. Prior to a vote if you choose to withdraw, to table to wait for the full board to vote. Michelle anything to add?

**Spohnheimer:** Board is a five-member board, four in attendance, voting of three have to be favorable for the board of adjustment level.

**Schulze:** Three regardless of how many are in attendance?

**Spohnheimer:** Correct.

**Schulze:** In any other case of a rental property you would have inspection & permit. For an apartment or anything else. To verify the condition of the unit, that it is safe & maintained in accordance with the building code & city rental code. Has this been waved?

**Spohnheimer:** No. This would not be subject to the rental housing code. Being that we don't consider it to be a dwelling unit. But you are correct any residential dwelling unit house or apartment is required to be inspected on regular basis, which is typically every three years.

**Schulze:** I understand you are of the position that this is not a rental unit because it is a recreational vehicle. But if it was, and disregard the fact it is a recreational vehicle it would have to have comply with all of those codes? Would it not?

**Spohnheimer:** Yes, I would assume so. Hard one to answer because Iowa Code Section for short term rentals that was recently enacted does change the way some of the things that are an Airbnb that those are not subject to the rental housing standards. Still subject to building code, those apply to all structures period. There are some limitations for city in applying the rental housing standards to traditional Airbnb dwelling units.

**Schulze:** Even the State Code give broad authority to protect the safety and welfare of the community

**Spohnheimer:** Yes, I believe so.

**Schulze:** Under the new law?

**Spohnheimer:** Yes, I believe under the new law there are things that would apply to building, plumbing, electrical, safety,

**Schulze:** The third paragraph down in the board's attachment; it does not remove ability of the City to govern to protect the health, safety, and welfare of the community?

**Spohnheimer:** Correct

**Schulze:** So, it hasn't undermined that. The authority of the normal codes.

**Spohnheimer:** We still do have some of those.

**Schulze:** Owners, comment? Anything they would like to add to their submission?

**Elizabeth Curtis:** This ordeal has been very stressful, for our family & business. For the last 14 months we have dealt with anonymous complaints to the City regarding our livelihood. The complaint prior to this one was to the building department because my husband is a license contractor, and it really difficult to feel as it is not a personal attack. But if we are going off the violations stated in our permit we have not made any sort of changes, accommodations or anything like that for sewing station or office space. Provided pictures of the outside of the house. Things that the neighbors feel that have violated our home permit are not applicable to our permit. Which would be uses as an Airbnb, or potential concerns of an RV. Which is not happening. Even if there were future ideas for an RV park, if others use their RV's onto our property, and using it to stay. As of right now there are no laws or ordinances how many recreational vehicles or equipment we can have registered to us, parked, or stored on our property. The camper trailer is a self-contained unit and we the property biohazard equipment to dispose of it properly. There has never been a potential problem and never will be. Because of the neighbors' concerns for their property value we would suggest installing a privacy fence. This will help neighbors feel more secure in their invest. From our personal research privacy fences tend to increase property values, provided that all the parties agree to Iowa State laws regarding privacy fences. From what I've been able to gather this is the Iowa State Legislation regarding short term rentals, are not subject to any permit or use, or fees associated with those permits, and cannot be subjected to any new ordinances. Per Iowa State Legislation. The only ordinance that Marshalltown states is that recreational vehicles or recreational equipment cannot be used more five consecutive days or with prior approval from the Chief of Police. Personally, called Chief Tupper, he had no idea that this ordinance existed, and referred me to Code Enforcement, and as of yet they still have not gotten back to me on that. We do not allow guest over three nights, just a personal preference. The blog that was mentioned earlier said that there was proof that we are planning on having multiple recreational vehicles is a blog I specifically created for DIY projects, ideas, and plans for the future. That means 2022/2023. From what I've found no where does Marshalltown code or ordinances state that must inform the city of ideas we have for our property. Lavender takes approximately two years, we would not be wanting to acquire a special use permit until 2023. When we would plan to open this venture. So, if you're familiar with gardening you know what lavender is extremely difficult to grow, and if it doesn't grow we don't plan to go on with this venture. We personally feel that planning for the future of our property doesn't require permission or a permit from the city, if we are in the planning zone of this. The final point is that if the board denies our appeal it is extremely important to know that not only would it be detrimental to our small business but every small home based business

in Marshalltown. If Home uses permit, can be revoked for violation not in the permit, we feel this is telling Marshalltown small business that the City has power to shut down any home based business for any reason. Even when it is not in violation of City ordinances or laws. The items of concern listed on this complaint are not applicable to our home occupation permit for sewing and office space.

**Schulze:** Thank you. Open to Discussion, and questions from members of the board.

**Engle:** What are your future plans? From the blog. What is your future desire? What does that look like? Talking about 3-5, to use as Airbnb Campers?

**Curtis:** It would be no more than one more. Honestly, it's overwhelming have one now. The blog is for idea purposes only

**Schulze:** Tend to agree with you, that the ideas are irrelevant. Not until you execute it, are you in an island of trouble. Plans, ideas, and thoughts that what makes things change. In this case we have a standing ordinance. In my opinion what you are doing with the Airbnb campers is irrelevant to the Home Occupation Permit. The Airbnb is not included in the Home Occupation permit. It is pretty clear what is allowed. The question is the ordinances as they stand not with standing State law does that accommodate your use, the campers as a Airbnb. And if it does become a business, as soon as it becomes a source of income it becomes a business. I think in a very simple way it does fall outside of the Home Occupation and home business definition. But that's part of this discussion.

**Curtis:** Completely agree with that. It became a business as soon as we started charging for it. In our research there was nothing stated that we needed a permit, falls out of the grasp of the Home Occupation Permit. We found the Iowa State legislation stating we didn't need a permit because it's a short term rental. There was nothing stated we need anything other than what we have. The definition of dwelling, is anything with a full kitchen. Our rental/camper has a full kitchen, oven, stove, everything. In the ordinances Marshalltown has which is five consecutive days, we weren't doing that. So we felt we were in the grasp of the Iowa State Law.

**Starks:** I have a few quick questions regarding this Iowa Code Section. Referring to Iowa Code Section 414 subsection 1 Short term rental properties in that definition is the RV that you are renting a single-family house or dwelling unit?

**Curtis:** From what I've understood it would be a dwelling unit, from the lawyers we've spoken to.

**Starks:** Is it a condominium, cooperative, or timeshare?

**Curtis:** Again, it would be more subject to interpretation but, from I've understood a dwelling unit is anything with a full kitchen.

**Schulze:** Michelle to your knowledge we have a definition of dwelling in our ordinance?

**Spohnheimer:** I will let Raymond finish his questions

**Starks:** Dwelling is covered under Marshalltown City Code, it dwelling unit defined in Iowa Code Chapter 414?

**Spohnheimer:** As you asking the applicant? Or the city?

**Starks:** Asking either.

**Spohnheimer:** Our understanding to the best of our knowledge is that a dwelling unit is not defined in section 414. Dave to your question: does the city define what a dwelling unit is? As included in the memo under the zoning ordinance specific the definition we have a dwelling unit is nay building or portion there of that is designed or used for residential purposes but not including a tent, cabin, automobile, mobile home, trailer, recreational vehicle, apartment house, motel or hotel. Dwelling unit: a room or group of adjoining rooms located within a structure and

forming a single habitable unit with facilities which are intended to be used for living, sleeping, eating, cooking, and sanitation.

**Schulze:** So our code excludes recreational vehicles.

**Spohnheimer:** That was our basis for our determination.

**Starks:** Can the applicant point to a different definition of a dwelling unit that would allow them to be covered by Iowa Code 414?

**Curtis:** Even if we couldn't have a short-term rental. City ordinances say we can use it for five consecutive days? Correct?

**Spohnheimer:** The issue that the City is looking at under the appeal; the appeal is specifically looking at the zoning ordinance. The zoning ordinance is the portion that regulates the Home Occupations. So the position from the zoning administrator is that the violation of the Home Occupation guidelines is the conduction of a business operation out of your residential premise, and that is the portion which is regulated by the zoning ordinance. An appeal to the other portions to the City Code really are not subjective to this board's review. We certainly look at those when making considerations in our overall looking at the code. The pieces that are specific to the Board of Adjustment's review under and appeal are the zoning regulations; which include the Home Occupation guidelines and those definitions. Both of these items are under the zoning ordinance specifically. That we are saying where a violation has occurred. A business that is not meeting the criteria of Home Occupations.

**Schulze:** In my view: that's the difference as a business it makes an incoming generating thing. So it's a business. In any other context: leasing, renting space for living purposes short-term, long-term it is govern by a code that is pretty strictly enforced with safety provisions. Again, Iowa Code, that was cited early makes reference to health safety, and welfare. Folks have had to make major investments in windows, sprinklers, exits, fire alarms, and all kinds of things to keep their patrons safe, the adjacent units safe, and adjacent property owners. None of that is done in this case, at all. Beyond regulations of uses of recreational vehicles. I do own an RV myself, I do know the hazards that they represent. Lp/Propane to the safety measured used to monitor. I think there's some problems here. You've crossed the line, this is actually an RV as a rental property as a business model. Other comments, questions from the board?

**Engle:** Do rental inspections apply?

**Spohnheimer:** Rental Housing code doesn't give authority. This is not a dwelling for rental so, it's outside of the scope.

**Curtis:** This operation in the grey area of code? What is this going to fall into for the Board of Adjustment. What category will this fall into?

**Spohnheimer:** The City's perspective, and from the zoning administer, and enforcement perspective our determination that this activity of using the RV as rental is not compliant with the Home Occupation criteria, established in the zoning ordinance. Therefore, not permitted as a home occupation, that is our interpretation that on this particular issue. That is what is before the Board of Adjustment for an appeal consideration. Should the City Council, who has the authority to regulate what our ordinances are, choose to amend to change code to address situations like this. That is under their purview. Based on recommendation from the Planning and Zoning Commission. This interpretation and enforcement of those codes, and the board to determine whether or not the staff acted in accordance with that guidance. If the board were to find in favor that the staff did act in accordance with policy and regulations and uphold the decision of the zoning administrator. The decision would stand. If the decision of the board would be to overturn the decision, that would not apply. Would have to go back with legal counsel about what are

those next steps. Uphold or overturn interpretation.

**Schulze:** What if it was a home? Would it be subject to the same rental inspections?

**Spohnheimer:** Can't regulate short term rentals. The Esty business can continue.

**Schulze:** Reminder we do not have a full board, but we do have quorum. Do you want the Board to vote?

**Curtis:** Go ahead

**Starks:** Motion to uphold Zoning Administrator's decision.

**Wenner:** 2<sup>nd</sup>

**All members voted in Favor to uphold Zoning Administrator's Decision.**

With no further business, the meeting adjourned.

Meeting minutes prepared by,  
Caleb Knutson  
City Planner