

ZONING BOARD OF ADJUSTMENT MEETING

CITY OF DAVENPORT, IOWA

THURSDAY, DECEMBER 9, 2021; 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 11-18-21 meeting minutes.
- III. Old Business
- IV. New Business
- V. Other Business
- VI. Adjourn

City of Davenport
Zoning Board of Adjustment

Department: DNS
Contact Info: Scott Koops, Planner II, AICP
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Date
12/9/2021

Subject:
Consideration of the 11-18-21 meeting minutes.

ATTACHMENTS:

Type	Description
▣ Exhibit	Minutes

REVIEWERS:

Department	Reviewer	Action	Date
Community Planning & Economic Development	Koops, Scott	Approved	12/3/2021 - 10:23 AM



MINUTES
Zoning Board of Adjustment
November 18, 2021



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/watch?v=uGvLze7v_cg

I. Call to Order:

Board member Reistroffer called the Zoning Board of Adjustment meeting to order in City Hall Council Chambers, Davenport, Iowa at approximately 4:01 p.m.

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

Excused: None.

Staff present: Koops, Zoning Administrator Berkley; Assistant City Attorneys Hoyt and Heyer.

II. Secretary's Report:

Minutes were approved for the 9-23-21 Hearing by voice-vote.

Chairman Reistroffer announced that request HV21-06 was withdrawn in writing by the applicant and has been removed from the agenda.

Darland moved, seconded by Quinn, to approve the minutes.

III. Old Business:

None.

IV. New Business:

Request AA21-01 of Michael Meloy on behalf of James Capranos dba JC Landscaping & Maintenance at 245 South Utah Avenue being an appeal of the zoning administrator interpretation dated September 24, 2021 ("Exhibit D" Zoning Administrator's Interpretation), regarding allowed uses for this site. Property is zoned S-AG Agricultural Zoning District and was previously zoned A-1 Agriculture prior to January 20, 2019). [Ward 1]

Koops presented the staff report to the Board.

Zoning Interpretation

The City of Davenport Zoning Administrator was requested by Michael Meloy ("**Exhibit C" Meloy Request for Interpretation - May 25, 2021**") to make a zoning interpretation in response to the letter dated April 26, 2021 from the City Legal Office ("**Exhibit B" Capranos Allowed Uses - April 26, 2021**").

The Zoning Administrator's Interpretation is that snow removal and tree removal are not allowed uses of a nursery and are not allowed uses for 245 S. Utah Avenue under the previous or existing zoning classifications (A-1 Agricultural or S-AG Agricultural). Staff's full interpretation is located in **Exhibit D. - Zoning Administrator's Interpretation.**

Appeal of a Zoning Administrator's Interpretation

The Davenport Zoning Ordinance allows for a property owner in the City, or person expressly authorized in writing by the property owner, that is directly affected by a determination of the Zoning Administrator to file an appeal of the Zoning Administrator's decision on a zoning interpretation decision related to the Zoning Ordinance (Section 17.14.130). The process is intended to provide appropriate checks and balances on the administrative authority of the Zoning Administrator.

The Zoning Board of Adjustment will take formal action on zoning administrative appeal application once a submittal is completed. The burden of proof is on the applicant of the appeal

Board Options

The "Zoning Board of Adjustment must either confirm or overturn the Zoning Administrator's decision" as specified in the City of Davenport Zoning Code (see Section 17.14.130).

If the Board confirms the Zoning Administrator's interpretation, the snow and tree trimming business activities (and any lawn service business operations) would have to cease at 245 S. Utah. These businesses could be allowed in the I-1 and I-2 Zoning District if the uses meet Principal Use Standards and any other applicable zoning codes.)

A nursery use would be allowed under the pre-2019 Zoning Code, however the same use under the present zoning code published January 20, 2019, would also be allowed as an agricultural use (greenhouse/nursery, provided there is no retail component to the use. The Zoning Administrator's Interpretation is that snow removal and tree removal are not ancillary uses to a nursery, have not been legally established, and are primary uses of the property.

If staff's interpretation is overturned by the Board, JC Landscaping will be able to continue to operate snow removal and tree trimming business at 245 S. Utah Avenue.

Discussion

The City Development & Planning Administrator (who is designated as the City Zoning Administrator) reviewed the letter from Michael Meloy requesting a zoning interpretation and the Legal Department's letter of allowed uses for 245 South Utah Avenue owned by James Capranos, being **Exhibit B. Capranos Allowed Uses (April 26, 2021)** written by the City Legal Department and **Exhibit C. Meloy Request for Interpretation (May 25, 2021)**.

The Zoning Administrator conducted the following in preparation for the interpretation:

- I. Review of existing correspondence related to the property.
 - a. Attorney Meloy's letter dated May 25, 2021
 - b. Attorney Heyer's letter dated April 26, 2021
 - c. Letter to Tami Lord dated June 12, 2008

The 2008 letter indicates that Mr. Oestreich did not enter the property and observe activities. Mr. Oestreich also states that if a nursery was present, some equipment could be expected. The letter does not mention activities such as snow removal or tree removal.

Attorney Heyer's letter dated April 26, 2021 states that the expansion to tree removal and snow removal services require industrial zoning. The letter included a picture taken from JC Landscaping's website showing a fleet of snow plows.

Attorney Meloy's letter requests for a zoning interpretation with the belief that the 2008 letter acknowledges the existence of JC Landscaping and its associated activities.

Ms. Berkley, has determined that the 2008 letter is not an official zoning interpretation. There was no on-site visit or contact with the property owner to investigate the extent of activities. Attorney Heyer's letter is not in conflict with the 2008 letter and speaks to activities beyond the scope that of what would be considered ancillary to a nursery.

- II. Site inspection of 245 South Utah Avenue (and reviewed previous site inspections conducted by city staff).

The site inspection on June 9, 2021 was scheduled in advanced and staff was provided a tour of the property with Mr. Capranos and Attorney Meloy present. Observations from the site visit were provided in the Zoning Interpretation dated September 24, 2021. Staff were not provided entry into the large metal sided building. No greenhouses are located at this property. No saplings were seen on site. Mr. Capranos stated the most recently planted trees (planted summer of 2021) were 2-year old trees. The height of the trees varied in height with many exceeding 5 feet.

- III. Review JC Landscaping's of web presence (a business owned by Mr. James Capranos).

Ms. Berkley reviewed advertised services and photos on the company websites www.jclandscapemaintenance.com , www.facebook.com/JCLandscapeandMaintenance.com , Mr. Capranos' Facebook page www.facebook.com/James.Capranos , and business referenced on the Scott County Assessor's site, www.ScottCountyIowa.com ,

Quad City Times, www.qctimes.com , and www.KWQC.com . References to any activity related to purchase of nursey items and transplanting of nursery times were not identified. A single reference on the www.jclandscapemaintenance.com site is mentioned as "Tree and shrub planting". No reference exist for nurseries or greenhouses.

- IV. A review of the Davenport Municipal Code (both the January 20, 2019 and the pre-2019 Zoning Codes).

Ms. Berkley reviewed the purpose statements of Agricultural zoning districts for both the current and previous zoning codes including, but not limited to, the definitions associated with nursery, contractor's shop, contractor's storage yard, and uses by district.

The clearest description of the activities associated with the majority of the business operations at 245 South Utah Avenue are allowed in the M-1 and the I-1 Districts of the old and new zoning codes respectively.

- V. Review of aerial photography.
20 aerial photographs reviewed, with 19 of the 20 photos dating to 2004-2021.

While strictly a nursery use could be allowed within agricultural zoning, it is by observation that the primary activities associated with this property are not a nursery. The majority, and intensity of the activities, including traffic generation associated with the site are primarily related to snow removal and tree trimming/removal. **Exhibit F. – Timeline of Events** outlines City interactions with the property owner and business owner Mr. James Capranos.

Background

The business at 245 S. Utah does not have all the necessary licenses and approvals. A residential building contractor shall obtain a Class B license. A "residential building contractor" is a contractor limited to the construction, remodeling or demolition of one- or two-family residences or of auxiliary facilities including car ports and garages intended for one-family or two-family residential uses. In addition, a tree trimming license is required as well.

Public Input:

Notices were sent to property owners within 200 feet of the subject property.

Staff notes that public input should be limited to documentation/testimony that supports or is contrary to the position of the Zoning Administrator's Interpretation.

Definitions/Code Sections of Note:

Nursery: (pre-2019 Zoning Code; 17.04.010.236)

Any land used to raise trees, shrubs, flowers and other plants for sale or for transplanting

Contractor's Shop: (pre-2019 Zoning Code; 17.04.010.88)

An enclosed space for the housing and/or operating of machinery, the provision of services, the fabrication of building-related products and interior storage, but which does not use any exterior storage.

Contractor's Storage Yard: (pre-2019 Zoning Code; 17.04.010.89)

An unenclosed portion of the lot or parcel upon which a construction contractor stores and maintains construction equipment and other materials used in the trade carried on by the construction contractor. The contractor may or may not also have a business office located on the property. If permitted to be used in this manner, the entire lot or parcel would then be classified as a "contractor's storage yard". This definition would also include a store and yard where similar equipment is available for rent and/or sale.

Use Regulations: (pre-2019 Zoning Code; 17.06.040)

The use regulations for each district shall be construed to include in addition to the listed use, any use of a similar nature or intensity, except otherwise provided for in this title.

"M-1" Light Industrial Use Regulations (pre-2019 Zoning Code; 17.36.030)

The following and similar uses...that manufacture, assemble, process, store, and distribute goods and materials and are in general, dependent upon raw materials and the manufacturing...of the following products or similar uses: 1.b. concrete products, 6.g. Contractor's shop and storage yard.

“A-1” Agricultural District 17.08.010 (pre-2019 Zoning Code)

Intent:

This district is intended to preserve a rural setting of very low density and high quality for “estate” or “gentlemen’s farms” type development, while providing also for the continuance of comital agriculture on properties of sufficient area to permit compatibility with surrounding residential development, in areas not intended to be serviced by municipal sewer.

Districts Established and Designated 17.06 and 17.06.010 (pre-2019 Zoning Code)

In order to classify, regulate and restrict the locations of trades, industries, and the location of buildings designated for specific uses, to regulate and limit the height and bulk of buildings hereafter erected or structurally altered, to regulate and limit the intensity of the use of the lot area, and to regulate and determine the areas, of yards, courts, and other open spaces within the surrounding such buildings, the City is divided into district, of which there shall be twenty in number.

Purpose Statements:

S-AG Agricultural District (Section 17.07.010.A.) is intended to address existing agricultural land uses. The standards of the S-AG District promote the continuation of farming, and protect agricultural land uses from encroachment of incompatible developments.

A-1 Agriculture (pre-2019 Zoning Code)

This district is intended to preserve a rural setting of very low density and high quality for “estate” or “gentlemen’s farms” type development, while providing also for the continuance of comital agriculture on properties of sufficient area to permit compatibility with surrounding residential development, in areas not intended to be serviced by municipal sewer.

Zoning Code Purpose, Title 17 (Section 17.01.020)

The intent of this document [the zoning code] is to establish zoning regulations to serve the City of Davenport, which may be cited as “the City” or “City.” This Zoning Ordinance is adopted for the following purposes: (underlining added)

- A. To promote and protect the public health, safety, and welfare.
- B. To promote the orderly development in accordance with the Comprehensive Plan and land use policies.
- C. To organize the City into zoning districts, according to use of land and structures, height and bulk of structures, intensity of use of the lot, or other classification, as deemed best suited to carry out the purposes of this Ordinance.
- D. To protect the character and maintain stability of the City’s residential & non-residential areas.
- E. To preserve and enhance the value of structures, communities, and neighborhoods that constitute the distinct places within the City.
- F. To promote infill development.
- G. To promote economic development within the City that balances the needs of the current and future economy with a high quality-of-life standard.
- H. To promote the preservation, protection, and conservation of natural resources.
- I. To protect against fire, explosions, noxious fumes, and other dangers.
- J. To provide for the gradual elimination of nonconformities.

K. To define & limit the powers & duties of the administrative officers and bodies as provided in this Ordinance.

L. To prescribe penalties for the violation of and methods for the enforcement of the provisions of this Ordinance.

Findings & Staff Recommendation:

Findings:

- Operational uses of the early business have expanded to include storage and operation of a fleet of snow removal vehicles
- Operational uses of the early business have expanded to include storage and operation of a number of tree removal and tree trimming vehicles and heavy equipment
- The tree removal and trimming business of Mr. Capranos at 245 S. Utah has resulted in illegal dumping, illegal fill, and trash burning as referenced in City Cartegraph Tasks 19-30900, 19-33449, 20-74925, 21-17982, 21-52959.
- The petitioner does not have the required City Tree Trimming License
- The overall observation of the use and activities of the property far exceeds any activity associated with a nursery and therefore are not ancillary to a nursery.

Recommendation:

Staff recommends the Board "Move to confirm the interpretation of the Zoning Administrator in the letter address to James Capranos dated September 24, 2021 (identified as **Exhibit D. - Zoning Administrator's Interpretation**)"

Attorney Meloy Addressed the Board on behalf of the applicant James Capranos and Mr. Capranos also addressed the Board, and explained their issue.

Speaking in favor of the request was Bob Tappendorf and Denise Kroeger.

Bob Tappendorf of 6605 W. River Dr. stated that he purchased property near this site in 2005 at Utah and 61. He has used JC Landscaping services since then. He [Capranos] has a green business and the property is beautiful. He is a small business guy and just a great guy. This doesn't seem right; he should be allowed to continue his business.

Denise Kroeger of 307 S Utah Ave. stated yes there is equipment there [245 S. Utah], it is not for us an issue. There are busy moments when crews and trucks come in and come out and move around, absolutely. We have operated a snow plow business so we understand that. We have no issue with that siting there, we knew it was there when we purchased in 2018/2019.

Speaking in opposition to the request was Patrick Fennelly and John Gerdes, both of whom have submitted opposition letters of opposition which were made apart of the Board's meeting packet.

Pat Fennelly who owns land abutting to the north [[S3117-04](#)] addressed the Board in opposition. He stated that he agrees with the City's interpretation. He purchased his property Sept. 29, 2017. There were no trees on the north side of the property when he purchased the property. The trees were established after that. Mr. Fennelly submitted his photo to the Board showing his property line stake. He stated his complaint is that the site is a commercial storage yard.

John Gerdes addressed that Board in opposition to the Board. He stated the following:

Please let me explain my interest in this meeting and its outcome. Although my current residence is in Clive, Iowa, I own a couple of hundred acres of agricultural land on Utah Ave. both north and south of Telegraph Road which immediately borders the Capranos property. I also own the two family farmhouses and buildings east along Telegraph Road from Utah Ave. I have spent well over a million dollars on the maintenance and improvement of this family farming operation over my lifetime. My family started farming this property in 1863. So, I have a keen personal interest in overseeing the future value of this real estate.

While there are several ideas floating around concerning this Zoning Interpretation, I wanted to make up my own mind by observing the Capranos operation personally. I am currently living at my 6620 Telegraph Road property while it is being renovated, to become my retirement home, so I took the opportunity to observe.

On 9 November 2021 I parked on my farm ground across the street from the Capranos business. I observed the following:

- 1. 66 vehicles entered and/or left his property from 8am to 10am, consisting of cars, big pick-up trucks hauling trailers of equipment, dump trucks, skid-steers, woodchippers, two large bucket trucks, tanker trucks, and other equipment I couldn't identify.*
- 2. The two things I did not see was any plant material leaving the property, or any customers coming to the property. In fact, he has a big no trespassing sign up in his driveway.*
- 3. During this same period there were 23 vehicles that simply drove past the business. This means 74% of the traffic, 3 out of every 4 vehicles resulted from the Capranos business operation.*
- 4. There were at least two skid steers staging snow ploughs on his property for this winter. So, it is apparent the activity will not slow down.*

On 10 November 2021 I parked as before to determine if the prior day was an abnormality.

- 1. There was no noticeable change in the traffic percentages or volume.*

The neighborhood has had several residential properties built in the last couple of years ranging from \$600,000 to over \$1,000,000. These properties are less a quarter mile from my property and a half mile from the Capranos trucking company. But when three quarters of the traffic on the street are heavy trucks this real estate market will die, and property values will plummet. No one wants to send their child out to the street to wait for the school bus with the commercial trucking traffic.

While Mr. Capranos is probably very proud of his business success, this neighborhood is set up for agricultural and residential use. Parents, children, and retirees live here, farmers still work the fields here. What happens one or two years from now, when the trucking company has grown 10, 20, or even 30 percent? The Capranos trucking company needs to find an area more suitable for its needs.

Finally, I ask you to make your decision about allowing this commercial trucking company to continue its operation in its present location based on the following criteria.

- 1. Do what's best for Davenport.*
- 2. Follow the zoning rules and regulations in fairness to all.*
- 3. Consider what neighborhood infrastructures will need to change to support the Capranos business.*

4. Please help protect me and my neighbors from the significant loss (financial and aesthetic) we would experience if the Capranos commercial trucking company is allowed to continue its operations at this location.

Appreciate your time and thank you for allowing me this opportunity to express my fears and concerns regarding this matter.

Also speaking in opposition was Eric Haut of 312 S. Utah Avenue, He stated why is dumping occurring, why is that being done, and obviously it is now taken care of. I do not see a nursery and I do not see Ag. I would like to see it stay Ag.

Final Comments were made by Mr. Meloy and Mr. Capranos.
Staff also provided their closing comments.

Loebach asked what would be a reasonable time in which it have this action take effect. Legal staff responded that 30 to 60 days would be a reasonable time, however the issue before the Board is whether or not to confirm the Zoning Administrator's decision.

Chairman Reistroffer asked for a motion.

Motion

Darland moved to confirm, seconded by Loebach, the interpretation of the Zoning Administrator in the letter address to James Capranos dated September 24, 2021 identified as **Exhibit D. - Zoning Administrator's Interpretation**".

The motion carried (4-1) confirming the Administrator's interpretation.

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

Request HV21-07 of Brian Wahl on behalf of Pleasure Pools and Spas at 4114 Brady Street for a hardship variance from certain Table 17.05-2 design standards for a proposed C-3 commercial building, including visible entrance, amount of transparency/windows, and roofline variation requirements. Proposed building is to be located to the rear (west) of the adjacent building located at 4020 Brady Street, being partially visible from Welcome Way. [Ward 7]

Koops presented the staff report to the Board.

Findings & Staff Recommendation:

Findings: (supported by the previous analysis)

- Item #1 application of the ordinance creating hardship has been established;
- Item #2 physical and topographical conditions of the site do limit the use;
- Item #3 unique circumstance has been established;
- Item #4 protection of essential character has been established;

Recommendation:

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

The petitioner addressed the Board and explained their request.

No comments were received either in support or opposition to the request.

Motion

Quinn moved to approve the request of HV21-07, seconded by Loebach; the motion carried unanimously. (5-0)

Boyd-Carlson, yes; Darland, yes; Loebach, yes; Quinn, yes; and Reistroffer, yes.

V. Other Business

None.

VI. Adjourn

The meeting adjourned unanimously by voice vote at approximately 5:59 p.m.