

ZONING BOARD OF ADJUSTMENT MEETING

CITY OF DAVENPORT, IOWA

THURSDAY, NOVEMBER 18, 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. Consider the minutes from the 9-23-21 hearing.

III. Old Business

IV. New Business

- A. 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, regarding allowed uses for this site. Property is zoned S-AG Agricultural Zoning District (and previously zoned A-1 Agriculture prior to January 20, 2019; Ward 1)
- B. Request HV21-06 of Dan Lange on behalf of Rhythm City Casino at 7077 Elmore Avenue for a hardship variance for a 167 square-foot freestanding sign which will exceed the 100 sq. ft. allowed by right. Additionally the sign will have a second electronic message component whereas the code only allows one per lot, as required by Section 17.12.060 of the municipal code. (Ward 6)
- C. 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)

V. Other Business

VI. Adjourn

City of Davenport
Zoning Board of Adjustment

Department:
Contact Info:

Date
11/18/2021

Subject:
Consider the minutes from the 9-23-21 hearing.

ATTACHMENTS:

Type	Description
▣ Exhibit	Minutes

REVIEWERS:

Department	Reviewer	Action	Date
Community Planning & Economic Development	Koops, Scott	Approved	11/15/2021 - 10:41 AM



MINUTES
Zoning Board of Adjustment
September 23, 2021



By this reference all reports, documents, presentations, videos and the hearing's video recording are incorporated into the minutes.

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 4:02 p.m.

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

Excused: None.

Staff present: Koops, Zoning Administrator Berkley, and attorney Hoyt.

II. Secretary's Report:

Minutes were approved for the 8-26-21 Hearing by voice-vote.

III. Old Business:

None.

IV. New Business:

Request HV21-05 of Kelly Mullins/Van Rycke at 3335 W. Hayes St for a Hardship Variance allow an above ground pool in the corner side yard. Section 17.09.030.A. of the Davenport Municipal Code restricts accessory structures to the rear or interior side yard having a four (4) foot setback. [Ward 2]

Koops presented the staff report. No comments were received in favor or against the request.

Approval Standards

The Zoning Board of Adjustment decision must make findings to support each of the following:

(code requirement/*applicants response*/staff comments)

1. Strict ordinance application of will result in hardship unless specific relief requested is granted.

Applicant Response:

Back yard area too small for pool. Power lines are also a factor. Safety. Safer to install pool in area next to Elsie Ave.

Staff Comments:

Items owned by the petitioner are not grounds for a hardship variance. The petitioner must work with the available land area when selecting and choosing a location for an accessory structure on the property.

2. The particular physical surroundings, shape, or topographical conditions of the specific property impose a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

Applicant Response: *none*

Staff Comments:

The need for the variance must be unique to the physical traits of the subject property. The subject property is not impaired by any particular gradient or other physical circumstance on the property. There is nothing with regards to the physical composition of the lot that would warrant the granting of a hardship variance.

3. The plight of the owner is due to unique circumstances that do not apply to a majority of adjoining or nearby property, and is not a self-created hardship.

Applicant Response: *none*

Staff Comments:

No evidence of a unique circumstance has been provided.

4. The hardship variance, if granted, will not alter the essential character of the locality.

Applicant Response:

The property is surrounded by privacy fencing.

Staff Comments:

While the fence screens the pool to some extent, visibility of the pool is still possible through the alternating board on board fencing. Additionally, there does not appear to be any other grievous situation in the neighborhood where an accessory structure is located in the secondary front yard.

Findings & Staff Recommendation:

Findings: (supported by the previous analysis)

- The petitioner has not demonstrated by reason of exceptional narrowness, shallowness, or shape of a specific piece of property, or by reason of exceptional topographical conditions or other extraordinary or exceptional situations, that this property subject to the strict application of this title results in peculiar and practical difficulties;
- Item #1 application of the ordinance creating hardship has not been demonstrated;
- Item #2 physical and topographical conditions do not limit use of the site;
- Item #3 unique circumstance has not been established;
- Item #4 essential character of the area will not be protected;

Recommendation:

Staff recommends denial of the request as it does not meet any of the approval criteria necessary for a hardship determination.

Item #1 Zoning Code Created Hardship, #2 Physical/topographical Hardship #3 Unique Circumstance Hardship and item #4 Protection of Essential Character have not been met per the approval criteria established in Section 17.14.060 of the Davenport Municipal Code.

Motion

Darland moved to approve HV21-05 as proposed, seconded by Quinn
The motion failed (0-5).

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

V. Other Business

None.

VI. Adjourn

The meeting adjourned unanimously by voice vote at approximately 4:31 p.m.

City of Davenport
Zoning Board of Adjustment

Department: DNS
Contact Info: Scott Koops, Planner II, AICP
Scott.Koops@davenportiowa.com

Date
11/18/2021

Subject:

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, regarding allowed uses for this site. Property is zoned S-AG Agricultural Zoning District (and previously zoned A-1 Agriculture prior to January 20, 2019; Ward 1)

ATTACHMENTS:

Type	Description
▣ Exhibit	Staff Report
▣ Exhibit	Exhibit A - Tami Lord Questions & Response Letter
▣ Exhibit	Exhibit B - Capranos Allowed Uses April 26 2021
▣ Exhibit	Exhibit C - Meloy Request for Interpretation May 25 2021
▣ Exhibit	Exhibit D - Zoning Administrator's Interpretation September 24 2021
▣ Exhibit	Exhibit E - Meloy Notice of Appeal & Application - October 20 2021
▣ Exhibit	Exhibit F - Timeline of Events
▣ Exhibit	Exhibit G - Zoning Interpretation & Zoning Appeals 17-13-120 & -130
▣ Exhibit	Exhibit H - Aerial Photography of 245 S Utah
▣ Exhibit	Exhibit I - JC Landscaping Web Presence
▣ Exhibit	Notice List
▣ Exhibit	Owners Notice & Map
▣ Exhibit	Application
▣ Exhibit	Comments from Adjacent Owners

REVIEWERS:

Department	Reviewer	Action	Date
Community Planning & Economic Development	Koops, Scott	Approved	11/15/2021 - 10:25 AM



**Zoning Board of Adjustment
Planning Staff Report
Appeal of Zoning Administrator's Interpretation
245 S. Utah Ave | November 18, 2021**

Description

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]

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 nursery items and transplanting of nursery trees 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 (also identified in this report as **Exhibit D. - Zoning Administrator's Interpretation**)"

Prepared by:



Scott Koops, AICP, Planner II

Attachments: ZBA Notice of appeal application, notice documents, exhibits

Exhibits:

- A. Tami Lord Questions & Response Letter (June 12, 2008)**
- B. Capranos Allowed Uses (April 26, 2021)**
- C. Meloy Request for Interpretation (May 25, 2021)**
- D. Zoning Administrator's Interpretation (September 24, 2021)**
- E. Meloy Notice of Appeal (October 20, 2021)**
- F. Timeline of Events**
- G. Zoning Code: Interpretation & Zoning Appeals (Sec 17.13.120 & .130)**
- H. Aerial Photography Review (1994, 2004 - 2021)**
- I. Site Photos**

Source Documents:

Websites www.jclandscapeandmaintenance.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 . Aerial Photography from Google Maps/Google Earth and nearmap.com services

Exhibit A. - Tami Lord Questions & Response Letter

Mr. Brown:

My husband and I live at 665 S Utah Avenue and I walk our two dogs daily on S Utah. I have a couple of things that I was wondering if you could check out.

1. There are a number of large potholes on S Utah from Highway 61 to Telegraph and also on Telegraph from Utah to Wisconsin. Do you know if they will be out soon to repair them?

2. On South Utah towards Highway 61 (Across from the Log Cabin Home) it looks like the side of road is washing away. It is sliding down into the ravine - it is close to the road. I don't know if someone needs to take a look at it before part of road goes with it.

3. My biggest concern: 245 S Utah - there is a business that has started up there - JC Landscape Maintenance. It is not a little business running out of a garage - it is good size. I would like to know the following:

a. Do they have a business license for 245 S Utah?

b. Is that property zoned commercial - the last I knew it was zoned agricultural

c. There is a ravine that runs between his property and the road and he is dumping his landscaping waste into the ravine and further down the road. Are property owners allowed to do this? It is concrete, lumber, tires, bricks, etc. Does he have a permit to do this?

d. He has some dump trucks - is that going to harm to the road - everyday use?

You are probably wishing I didn't walk the dogs! But if you check these things out for me I would appreciate it greatly.

Thank you,

Tami Lord

June 12, 2008

Ms. Tami Lord
665 South Utah Ave.
Davenport, IA 52802

Dear Ms. Lord:

Your note to Alderman Brown regarding various possible problems at 245 Utah Avenue and other issues has been passed on to several City staff members depending on their duties. The portion that relates to me is the zoning issue.

You are correct that the property in question, 245 South Utah, is zoned "A-1" Agricultural district. Among the uses allowed in the "A-1" District, however, are "plant nurseries", "greenhouses" and "truck gardening". While there is certainly room for argument, I believe that a landscaping business is close enough to these other listed legal uses that I would be very hesitant to take this issue to court as a zoning violation. I cannot see from the road whether they are raising trees or other landscape material on the property, which is how I would define a "plant nursery". If they are not growing landscaping, however, they almost certainly would begin to do so if we were to take some form of legal action. I would also expect a "plant nursery" type business to similarly have tractors, trucks, dump trucks and the other sorts of machinery currently on the property.

Regarding the dumping of various debris on site, that quite possibly is a violation. I have asked our engineering staff to take a closer look at what the company is doing in terms of dumping on the property.

Finally, with regards to your question about a business license, I did check with our business licensing official. I found that J.C. Landscape Maintenance does not have one. I was told, however, that as a service business, they are not required to have one.

Sincerely,



Kenneth Oestreich, City Planner
Office of Planning & Land Use
Community & Economic Development

Exhibit B. - Capranos Allowed Uses (April 26, 2021)



April 26, 2021

James R. Capranos
d/b/a JC Landscaping
245 S. Utah
P.O. Box 1507
Davenport, IA 52809

Re: Use of property at 245 S. Utah – zoning violation

Dear Mr. Capranos:

The property at 245 South Utah is zoned S-AG Agricultural District. The S-AG zoning classification is intended to address existing agricultural land uses and to promote the continuation of farming and other agricultural uses.

More than a decade ago a city staff person made the determination that your landscaping business was similar enough to a nursery operation that it would be allowed, but he noted that if the landscaping operation was not raising trees and other landscaping plants on the property his determination would be different.

It appears that the operational use of the property has expanded to include tree removal services and snow removal services. Those business operations are not allowed uses in S-AG zoning. Those business operations – outdoor storage and related outdoor activities – are allowed in I-2 Heavy Industrial zoning districts. Outdoor storage such as is depicted in this picture:



is prohibited. You will need to find an appropriately zoned property from which to operate your tree removal and snow removal businesses. The city will give you ___ days' to accomplish this before initiating enforcement action. Storage yards are also permitted in I-1 Light Industrial so long as they meet the principal use standards for storage yards set forth in Davenport Municipal Code §17.08.030BB.

Another issue is the continued filling of the ditch on the western and northern part of the property. It appears that you are continuing to fill the area in spite of the fact that the fill permit you previously obtained has expired. You must immediately cease placing additional fill material in the ditch. The city will not issue another fill permit for this area until it has determined that all of the filling material you have deposited into the fill area was clean fill and there is no improper material being buried there.

If you have any questions regarding this notice you may contact me.

Sincerely,

Brian Heyer
Assistant City Attorney

cc: Laura Berkley, Amy Kay, Rich Oswald

MELOY LAW OFFICE

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May 25, 2021

Laura Berkley
Zoning Administrator
City of Davenport
Davenport, Iowa

SENT BY E-MAIL & U.S. MAIL

Re: *James Capranos – April 26, 2021 land use letter from City of Davenport.*

Dear Ms. Berkley,

On Friday April 30, 2021 James Capranos went to the Davenport Public Works Building at 1200 East 46th Street, Davenport, IA, to receive a renewal of a fill dirt permit previously issued by the City. The City Public Works Department refused to renew the fill permit and handed James the attached letter dated April 26, 2021 from a Mr. Brian Heyer. The Heyer letter was not received in the mail by James Capranos from Mr. Heyer's office. If you have any proof that this letter was mailed to James Capranos please provide it to my office.

I wish to point out to you that this April 26, 2021 letter is poorly written. It contains only one reference to a Davenport zoning code section and that section is misapplied by Heyer in the letter. It does not contain any statements concerning the history of the property or any other applicable code sections to support Heyer's discontinuance of the business on the Capranos property. It does not contain copies of any previous letters from the City of Davenport on the

property. Finally, the letter has a blank line where an alleged compliance date should appear. *See p. 2 of the April 26, 2021 Letter.*

On May 4, 2021 James Capranos spoke to Mr. Heyer by telephone regarding the letter from Heyer, James Capranos received at the Public Works Building on April 30, 2021. James advised Mr. Heyer that he had only received the letter after he went to the Public Works building on April 30, 2021. James requested the name of the Complainant in this matter and Mr. Heyer refused to provide the name of the complainant, stating to James, "That's neither here nor there."

Heyer's letter dated April 26, 2021 states that "More than a decade ago a city staff person made the determination that your landscaping business was similar enough to a nursery operation that it would be allowed, but he noted that if the landscaping operation was not raising trees and other landscaping plants on the property his determination would be different" (underlining added). We hereby request a copy of this letter written more than 10 years ago that ratified James Capranos landscaping business.

We hereby request all records, reports, letters or memo's regarding the Davenport city staff person's determination made more than a decade ago regarding the Capranos' 245 South Utah Avenue real property, as stated in the Heyer April 26, 2021 letter. We believe that the city staff person referred to in the Heyer letter was City Zoning Administrator Kenneth D. Oestreich.

James Capranos next spoke with you, Laura, by telephone on Wednesday, April 12, 2021 regarding the Heyer letter. James was completely surprised by the receipt of this letter on April 30, 2021 at the Public Works Building and advised you of that. We believe that there was no legal basis to issue this letter and request that you, as the zoning administrator, review and reverse the April 26, 2021 letter. James Capranos' landscaping business was ratified by the City of Davenport as a legal use more than 10 years ago. Further, the City of Davenport installed two

prominent yellow traffic signs on both of the motorist lanes of Utah Avenue to designate and alert all motorists of the Utah entranceway to the Capranos real property is a business entranceway. *See pictures of the traffic signs installed by the City of Davenport years ago.*

This is our request to you, pursuant to the Davenport Zoning Code, to review and reverse the April 26, 2021 letter. I realize that you may feel compelled to uphold the assistant city attorney's letter, but believe that a fair and impartial review by you will lead to its reversal.

We request a hearing before you on this important land use matter before any decision is made.

We also request copies of any and all code sections that you will utilize to make your decision. Thank you.

Sincerely,


Michael J. Meloy
Attorney at Law

Cc: James Capranos



Business
Entrance





Exhibit D. - Zoning Administrator's Interpretation (September 24, 2021)



DAVENPORT
DEVELOPMENT &
NEIGHBORHOOD SERVICES

September 24, 2021

James R. Capranos
DBA JC Landscaping
245 S Utah Avenue
PO Box 1507
Davenport, IA 52809

RE: Zoning Interpretation for 245 S. Utah Avenue

Dear Mr. Capranos,

I received a letter dated May 25, 2021 in which Mr. Meloy requested a review of a letter dated April 26, 2021 from Brian Heyer. The purpose of this letter is to provide that review and Zoning interpretation.

The April 26 letter stated that the property is zoned S-AG Agricultural District which is intended to promote the continuation of farming and other agricultural uses. Also within the letter it was stated that a previous determination allowed for ancillary landscaping business uses if trees were being raised.

Mr. Heyer states that operational uses of the property have expanded to include tree removal and snow removal services which are not permitted with the S-AG zoning district and that these uses are permitted in I-1 or I-2 when complying with any associated Principal Use Standards.

The City adopted a new Zoning Code in January of 2019; however in this interpretation, I am including language from the previous zoning code as the current use was established prior to the new zoning code adoption (See enclosed pages). Under the previous code, a nursery is defined as any land used to raise trees, shrubs, flowers and other plants for sale or for transplanting.

Staff conducted a site visit on June 9, 2021 and observed the following:

1. Rows of trees on the north side of the property. The property owner stated that the newest rows were recently planted and consisted of 2-year old trees. The property owner also indicated that trees are not raised from seedling or saplings.
2. Bunkers with mulch, gravel and rock.

3. Large gravel parking lot
4. A commercial trailer listing LC Landscape & Maintenance services
5. Large metal sided building. Staff asked to see inside, but was not able to enter.
6. Additional heavy equipment such as three S750 Bobcats.
7. A fill area, which will not be addressed within this letter. This does not fall within the purview of the Zoning Administrator.

When was asked where the seedlings were located, it was stated that seedlings are not cultivated on site. There was no greenhouse for the purpose of growing trees on site. The use of the property does not meet the definition of a nursery.

It is my interpretation that the use of the property would be considered a contractor's shop and storage yard under the previous code, which were permitted in M-1 Light Industrial and M-2 Heavy Industrial. I therefore affirm that all uses associated with tree removal and snow removal are not permitted in the S-AG zoning district and would require an I-1 or I-2 zoning and any associated Principal Use Standards in the current code.

A property owner, or a person expressly authorized in writing by the property owner may file an appeal of the Zoning Administrator's interpretation. An application for appeal must be filed within 30 days of the date of this letter. After receipt of a complete application, the Zoning Board of Adjustment will consider the proposed zoning appeal at a public hearing. A Zoning Appeal application is enclosed for your review.

Sincerely,



Laura Berkley
Development & Planning Administrator

Enclosures: Letters dated April 26, 2021 and May 25, 2021; Previous Zoning Code Sections 17.04.010.236, 17.04.010.88, 17.04.010.89, Chapter 17.36; Use Matrix Table 17.08-1 from current Zoning Code, Zoning Appeal Application
CC. Mr. Mike Meloy



DAVENPORT

LEGAL DEPARTMENT

April 26, 2021

James R. Capranos
d/b/a JC Landscaping
245 S. Utah
P.O. Box 1507
Davenport, IA 52809

Re: Use of property at 245 S. Utah – zoning violation

Dear Mr. Capranos:

The property at 245 South Utah is zoned S-AG Agricultural District. The S-AG zoning classification is intended to address existing agricultural land uses and to promote the continuation of farming and other agricultural uses.

More than a decade ago a city staff person made the determination that your landscaping business was similar enough to a nursery operation that it would be allowed, but he noted that if the landscaping operation was not raising trees and other landscaping plants on the property his determination would be different.

It appears that the operational use of the property has expanded to include tree removal services and snow removal services. Those business operations are not allowed uses in S-AG zoning. Those business operations – outdoor storage and related outdoor activities – are allowed in I-2 Heavy Industrial zoning districts. Outdoor storage such as is depicted in this picture:



is prohibited. You will need to find an appropriately zoned property from which to operate your tree removal and snow removal businesses. The city will give you ____ days' to accomplish this before initiating enforcement action. Storage yards are also permitted in I-1 Light Industrial so long as they meet the principal use standards for storage yards set forth in Davenport Municipal Code §17.08.030BB.

Another issue is the continued filling of the ditch on the western and northern part of the property. It appears that you are continuing to fill the area in spite of the fact that the fill permit you previously obtained has expired. You must immediately cease placing additional fill material in the ditch. The city will not issue another fill permit for this area until it has determined that all of the filling material you have deposited into the fill area was clean fill and there is no improper material being buried there.

If you have any questions regarding this notice you may contact me.

Sincerely,

Brian Heyer
Assistant City Attorney

cc: Laura Berkley, Amy Kay, Rich Oswald

MELOY LAW OFFICE

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Molly Bonderer
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Paralegal

May 25, 2021

Laura Berkley
Zoning Administrator
City of Davenport
Davenport, Iowa

SENT BY E-MAIL & U.S. MAIL

Re: James Capranos – April 26, 2021 land use letter from City of Davenport.

Dear Ms. Berkley,

On Friday April 30, 2021 James Capranos went to the Davenport Public Works Building at 1200 East 46th Street, Davenport, IA, to receive a renewal of a fill dirt permit previously issued by the City. The City Public Works Department refused to renew the fill permit and handed James the attached letter dated April 26, 2021 from a Mr. Brian Heyer. The Heyer letter was not received in the mail by James Capranos from Mr. Heyer's office. If you have any proof that this letter was mailed to James Capranos please provide it to my office.

I wish to point out to you that this April 26, 2021 letter is poorly written. It contains only one reference to a Davenport zoning code section and that section is misapplied by Heyer in the letter. It does not contain any statements concerning the history of the property or any other applicable code sections to support Heyer's discontinuance of the business on the Capranos property. It does not contain copies of any previous letters from the City of Davenport on the

property. Finally, the letter has a blank line where an alleged compliance date should appear. See p. 2 of the April 26, 2021 Letter.

On May 4, 2021 James Capranos spoke to Mr. Heyer by telephone regarding the letter from Heyer, James Capranos received at the Public Works Building on April 30, 2021. James advised Mr. Heyer that he had only received the letter after he went to the Public Works building on April 30, 2021. James requested the name of the Complainant in this matter and Mr. Heyer refused to provide the name of the complainant, stating to James, "That's neither here nor there."

Heyer's letter dated April 26, 2021 states that "More than a decade ago a city staff person made the determination that your landscaping business was similar enough to a nursery operation that it would be allowed, but he noted that if the landscaping operation was not raising trees and other landscaping plants on the property his determination would be different" (underlining added). We hereby request a copy of this letter written more than 10 years ago that ratified James Capranos landscaping business.

We hereby request all records, reports, letters or memo's regarding the Davenport city staff person's determination made more than a decade ago regarding the Capranos' 245 South Utah Avenue real property, as stated in the Heyer April 26, 2021 letter. We believe that the city staff person referred to in the Heyer letter was City Zoning Administrator Kenneth D. Oestreich.

James Capranos next spoke with you, Laura, by telephone on Wednesday, April 12, 2021 regarding the Heyer letter. James was completely surprised by the receipt of this letter on April 30, 2021 at the Public Works Building and advised you of that. We believe that there was no legal basis to issue this letter and request that you, as the zoning administrator, review and reverse the April 26, 2021 letter. James Capranos' landscaping business was ratified by the City of Davenport as a legal use more than 10 years ago. Further, the City of Davenport installed two

prominent yellow traffic signs on both of the motorist lanes of Utah Avenue to designate and alert all motorists of the Utah entranceway to the Capranos real property is a business entranceway. *See pictures of the traffic signs installed by the City of Davenport years ago.*

This is our request to you, pursuant to the Davenport Zoning Code, to review and reverse the April 26, 2021 letter. I realize that you may feel compelled to uphold the assistant city attorney's letter, but believe that a fair and impartial review by you will lead to its reversal.

We request a hearing before you on this important land use matter before any decision is made.

We also request copies of any and all code sections that you will utilize to make your decision. Thank you.

Sincerely,

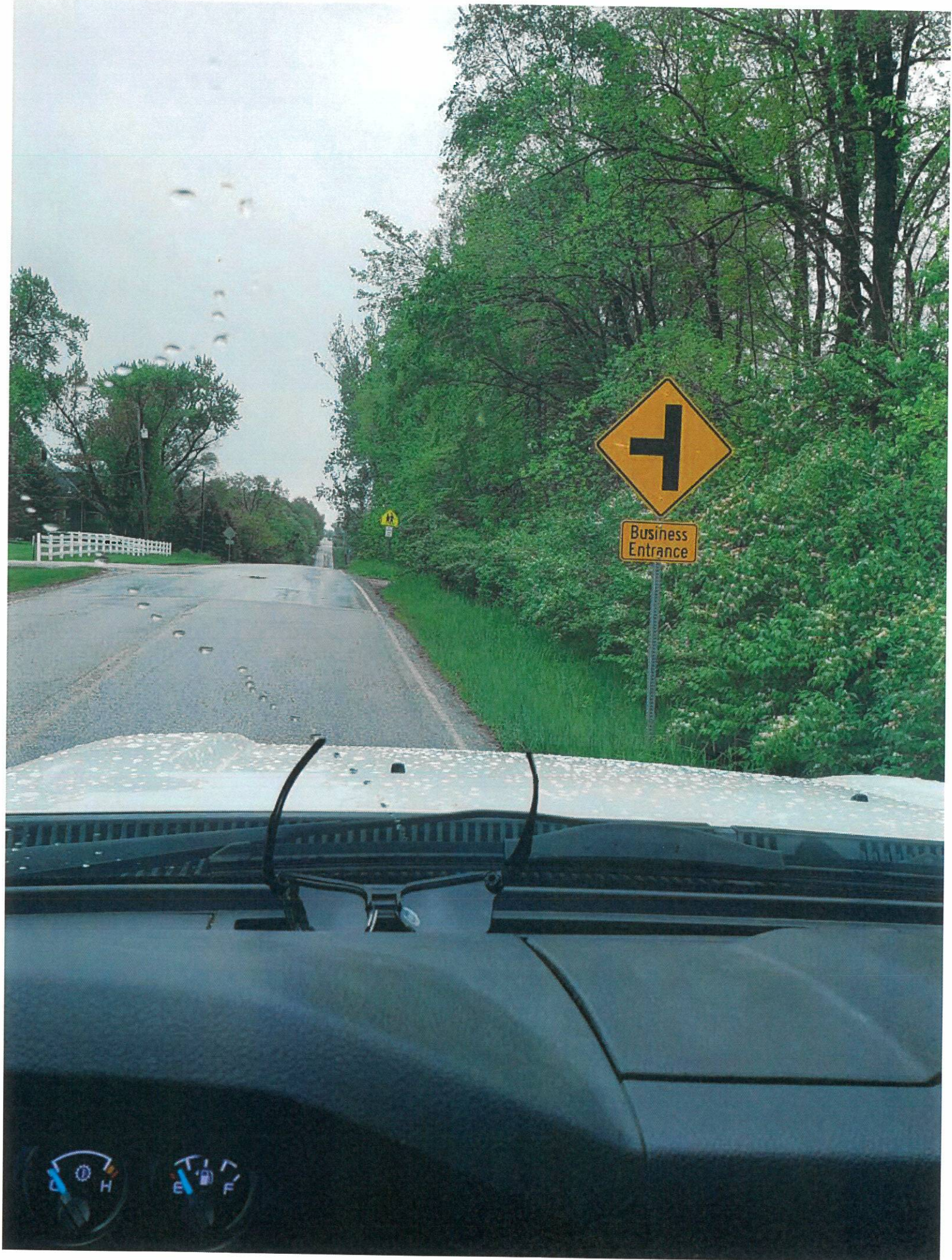

Michael J. Meloy
Attorney at Law

Cc: James Capranos



Business
Entrance





17.04.010.234 Nonprofit conservation organization.

"Nonprofit organization" means any charitable corporation, charitable association or charitable trust (such as a land trust) the purposes or powers of which include retaining or protecting the natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air and water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property. (Ord. 2006-214 § 1 (part)).

17.04.010.235 Nuisance.

"Nuisance" means an interference with the enjoyment and use of property. (Ord. 2006-214 § 1 (part)).

17.04.010.236 Nursery.

"Nursery" means any land used to raise trees, shrubs, flowers, and other plants for sale or for transplanting. (Ord. 2006-214 § 1 (part)).

17.04.010.237 Nursing home.

"Nursing home" (including convalescent home, rest home, and home for the aged) means an establishment used as a dwelling place by the aged, infirm, chronically ill or incurable afflicted persons, in which not less than three persons live or are kept or provided for on the premises for compensation, excluding clinics and hospitals and similar institutions devoted to the diagnosis, treatment or care of the sick or injured. (Ord. 2006-214 § (part): prior code § 42-2(39)).

17.04.010.238 Occupant.

"Occupant" means tenant or person in actual possession. (Ord. 2006-214 § 1 (part)).

17.04.010.239 Odor.

"Odor" means a stimulus affecting olfactory nerves. (Ord. 2006-214 § 1 (part)).

17.04.010.240 Odorous matter (also see nuisance).

"Odorous matter" means any material that is a gas, liquid or solid that causes an odor sensation to a human being. Any matter that yields an odor that is offensive in any way. (Ord. 2006-214 § 1 (part)).

17.04.010.241 Open space.

"Open space" means any land or area, the preservation of which in its present use would conserve and enhance natural or scenic resources; or protect streams or water supply; or promote conservation of soils and wetlands; or enhance the value to the public of abutting or neighborhood parks, forests, wildlife preserves, natural reservations or sanctuaries or enhance recreational activities. Open space can be either active or passive. (Ord. 2006-214 § 1 (part)).

17.04.010.242 Open space, active.

"Open space, active" means open space that may be improved and set aside, dedicated, designated, or reserved for recreational facilities such as swimming pools, play equipment for children, ball fields, court games, picnic tables, etc. (Ord. 2006-214 § 1 (part)).

17.04.010.243 Open space, passive.

"Open space, passive" means open space that is essentially unimproved and set aside, dedicated, designated, or reserved for public or private use or for the use and enjoyment of owners or occupants. (Ord. 2006-214 § 1 (part)).

17.04.010.244 Outbuilding.

"Outbuilding" means a separate accessory building or structure not physically connected

17.04.010.80 Condominium association.

"Condominium association" means the community association which administers and maintains the common property and common elements of a condominium. (Ord. 2006-214 § 1 (part)).

17.04.010.81 Condominium conversion.

"Condominium conversion" means the conversion and subdivision of a single-ownership parcel of existing improved real property into a form of ownership for residential, commercial or industrial purposes involving the right of exclusive occupancy or separate ownership of individual units, including but not limited to condominiums, community apartments, stock cooperatives, or planned unit developments. (Ord. 2006-214 § 1 (part)).

17.04.010.82 Condominium project.

"Condominium project" means a plan or project consisting of not less than two condominium units established in conformance with state law. (Ord. 2006-214 § 1 (part)).

17.04.010.83 Condominium subdivision plan.

"Condominium subdivision plan" means the drawings attached to the master deed for a condominium subdivision project which describe the size, location, area, horizontal and vertical boundaries, and volume of each condominium unit contained in the condominium subdivision project, as well as the nature, location, and size of common elements. (Ord. 2006-214 § 1 (part)).

17.04.010.84 Connectivity.

"Connectivity" means the interconnectedness of streets, bicycle paths, transit routes and pedestrian ways. This is in contrast to use of dead-end streets, long streets with few intersections and cul-de-sacs. (Ord. 2006-214 § 1 (part)).

17.04.010.85 Conservation easement.

"Conservation easement" means the grant of a property right or interest from the property owner to a unit of government or nonprofit conservation organization stipulating that the described land shall remain in its natural, scenic, open or wooded state, precluding future or additional development. (Ord. 2006-214 § 1 (part)).

17.04.010.86 Conservation subdivision.

"Conservation subdivision" means the subdivision of land which preserves a minimum of thirty percent of the total land of the tract in permanent open space based on a site plan which identifies the conservation area as herein defined. The minimum lot size requirements as well as design requirements listed in the City of Davenport Construction and Engineering Specifications may be reduced or waived at the city's discretion in a conservation subdivision. (Ord. 2006-214 § 1 (part)).

17.04.010.87 Contextual zoning.

"Contextual zoning" means zoning that regulates the height and bulk of new buildings, their setback from the street line, and their width along the street frontage, to conform with the character of the neighborhood. (Ord. 2006-214 § 1 (part)).

17.04.010.88 Contractor's shop.

"Contractor's shop" means an enclosed space used 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. (Ord. 2006-214 § 1 (part)).

17.04.010.89 Contractor's storage yard.

"Contractor's storage yard" means an unenclosed portion of the lot or parcel upon which a construction contractor stores and maintains construction equipment and other

materials customarily 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. (Ord. 2006-214 § 1 (part)).

17.04.010.90 Convenience store.

"Convenience store" means a retail store with a floor area of less than ten thousand square feet that sells groceries and may also sell gasoline; does not include automotive service stations or vehicle repair shops. (Ord. 2006-214 § 1 (part)).

17.04.010.91 Convey.

"Convey" means to transfer all or a part of a title or equitable interest in land; to lease or assign an interest in land; or to transfer any other land interest. (Ord. 2006-214 § 1 (part)).

17.04.010.92 Cooperative.

"Cooperative" means a type of ownership characterized by collective ownership of an object by an organization whose members share in the profits or other benefits of said collective ownership. (Ord. 2006-214 § 1 (part)).

17.04.010.93 Correctional placement residence.

"Correctional placement residence" means a residential facility occupied by three or more persons who have been convicted of public offenses and who have been released to such facility during any period of probation; work release while serving a sentence in a correctional institution; or assignment to the judicial district department of correctional services after receiving a deferred sentence. (Ord. 2006-214 § 1 (part)).

17.04.010.94 Covenant, private (also see deed restriction).

"Covenant, private" means an agreement that binds and restricts the land in the hands of present owners and subsequent purchasers. They are enforced only by the landowners involved and not by the city or other public agency. (Ord. 2006-214 § 1 (part)).

17.04.010.95 Curb.

"Curb" means a stone or concrete boundary usually marking the edge of a roadway or paved area. (Ord. 2006-214 § 1 (part)).

17.04.010.96 Curb cut.

"Curb cut" means the providing of vehicular ingress and egress between property and an abutting public street. (Ord. 2006-214 § 1 (part)).

17.04.010.97 Curb radius.

"Curb radius" means the curved edge of streets at an intersection measured at the outer edge of the street curb or of the parking lane. (Ord. 2006-214 § 1 (part)).

17.04.010.98 Currency exchange (see also check-cashing facility; pay-day loan agency).

"Currency exchange" means a commercial use that exchanges common currencies, sells money orders or cashiers checks, and cashes checks as its principal business activity. This shall not include a financial institution. (Ord. 2006-214 § 1 (part)).

17.04.010.99 Cut.

"Cut" means a portion of land surface from which earth has been removed or will be removed by excavation; the depth below the original ground surface. (Ord. 2006-214 § 1 (part)).

Chapter 17.36

M-1LIGHT INDUSTRIAL DISTRICT

Sections:

- 17.36.010 Intent.
- 17.36.020 Applicability.
- 17.36.030 Use regulations.
- 17.36.040 Height, yard, lot width, and area regulations.
- 17.36.050 Off-street parking and loading regulations.

17.36.010 Intent.

This district is intended to provide for the development of any manufacturing or industrial operations which, on the basis of actual physical and operational characteristics, would not be detrimental to the surrounding area or to the community as a whole by reason of noise, dust,

smoke, odor, traffic, physical appearance, or other similar factors. (Prior code § 42-81).

17.36.020 Applicability.

The regulations set forth in this chapter, or set forth elsewhere in this title when referred to in this chapter, are the regulations in the M-1 light industrial district. (Prior code § 42-82).

17.36.030 Use regulations.

A building or premises shall be used only for the following purposes:

A. Any use permitted in the "C-4" central business district set out in Chapter 17.34 except as follows: 1) a new residential structure may be erected on or constructed within the "M-1" light industrial district only on a street whose frontage is at least thirty percent occupied by lots containing existing dwellings; or 2) new residential units may be allowed within an existing building as part of an adaptive reuse or rehabilitation of that structure. Any such adaptive reuse or rehabilitation shall generally maintain the architectural integrity of the exterior façade of the building. If a local landmark or located within a local historic district, the exterior elevations shall be approved by the historic preservation commission, otherwise the exterior elevations shall be approved by the design review committee of the city plan and zoning commission.

B. The following uses and any similar uses which do not create any more offensive noise, vibration, dust, heat, smoke, odor, glare, or other objectionable influence than the minimum amount normally resulting from other uses permitted, such permitted uses being generally light industries that manufacture, assemble, process, store, and distribute goods and materials and are in general, dependent upon raw materials refined elsewhere, and manufacturing, compounding, processing, packaging or treatment as specified of the following products or similar uses:

1. Concrete, Earthenware, Etc.
 - a. Clay, stone and glass products;
 - b. Concrete products (except central mixing and proportioning plants);
 - c. Pottery and porcelain products.
2. Food and Beverages.
 - a. Meat products, packaging and processing (no slaughtering);
 - b. Poultry packing and slaughtering (wholesale).
3. Metals and Metal Products.
 - a. Agricultural and farm implements;
 - b. Aircraft and aircraft parts;
 - c. Aluminum extrusion, rolling, fabricating and forming;
 - d. Automobile, truck, trailer, motorcycle and bicycle assembly;
 - e. Boat manufacture (vessel less than five tons);
 - f. Bolts, nuts, screws, washers, and rivets;
 - g. Containers (metal);
 - h. Culverts;
 - i. Firearms;
 - j. Heating, ventilating, cooking and refrigeration supplies and appliances;
 - k. Iron (ornamental) fabrication;
 - l. Needles and pins;
 - m. Plating, electrolytic process;
 - n. Plumbing supplies;
 - o. Safes and vaults;
 - p. Sheet metal products;
 - q. Silverware and plated ware;
 - r. Tool, die gauge and machine shops;
 - s. Tools and hardware products;
 - t. Vitreous enameled products.
4. Textiles, Bedding, and Fibers.
 - a. Hat bodies of fur and wool felt (including men's hats);
 - b. Hosiery mill;
 - c. Knitting, weaving, printing, finishing of textiles and fibers into fabric goods;
 - d. Rubber and synthetic treated fabrics (excluding all rubber and synthetic processing);
 - e. Yarn, threads, and cordage.

5. Wood and Paper Products.
 - a. Basket and hamper (wood, reed, rattan, etc.);
 - b. Boxes and crates;
 - c. Cooperage work (except cooperage stock mill);
 - d. Furniture (wood, rattan, etc.);
 - e. Pencils;
 - f. Pulp goods, pressed or molded (including paper mache products);
 - g. Shipping containers (corrugated board, fiber or wire board);
 - h. Trailer, carriage and wagon;
 - i. Veneer;
 - j. Wood products.
6. Unclassified Uses.
 - a. Animal pound for detention only;
 - b. Building materials (cement, lime, sand, gravel, lumber, and the like), storage and sales;
 - c. Carbon paper and inked ribbon manufacture;
 - d. Cigar and cigarette, chewing and smoking tobacco;
 - e. Circus and fair grounds;
 - f. Coal and coke storage and sales;
 - g. Contractor's shop and storage yard;
 - h. Drive-in or outdoor theater;
 - i. Exposition building or center;
 - j. Electric transforming station;
 - k. Feed and grain storage;
 - l. Fur finishing;
 - m. Greenhouses, wholesale;
 - n. Ice manufacture and cold storage;
 - o. Leather goods manufacture, but not including tanning operations;
 - p. Livery stables and riding academies;
 - q. Motion picture production;
 - r. Public utility storage yard;
 - s. Accessory buildings and uses customarily incident to the uses permitted by this chapter. (Ord. 2002-546 § 1 (part): Prior code § 42-83).

17.36.040 Height, yard, lot width, and area regulations.

The height, yard, lot width, and area requirements within the M-1 light industrial district shall be as required in Chapter 17.42. (Prior code § 42-84).

17.36.050 Off-street parking and loading regulations.

The off-street parking and loading requirements within the M-1 light industrial district shall be as required in Chapter 17.44. (Prior code § 42-85).

Chapter 17.38

M-2 HEAVY INDUSTRIAL DISTRICT

Sections:

- 17.38.010 Intent.
- 17.38.020 Applicability.
- 17.38.030 Use regulations.
- 17.38.040 Height, yard, lot width, and area regulations.
- 17.38.050 Off-street parking and loading regulations.

17.38.010 Intent.

This district is intended to provide for the same type of manufacturing and industrial development as in the M-1 district, but those areas where the relationship to surrounding land use would create fewer problems of compatibility and where less stringent regulatory controls may be used without causing undue hardship to surrounding neighborhoods and the community in general. (Prior code § 42-86).

17.38.020 Applicability.

The regulations set forth in this chapter, or set forth elsewhere in this title when referred to

ZONING

17 Attachment I
City of Davenport
Table 17.08-1
Use Matrix
[Amended 6-9-2021 by Ord. No. 2021-218; 6-10-2020 by Ord. No. 2020-233; 9-11-2019 by Ord. No. 2019-363]

PRINCIPAL USE	R-1	R-2	R-3	R-4	R-MF	R-MHP	C-T	C-1	C-2	C-3	C-OP	C-D	C-V	C-E	I-1	I-2	I-MU	S-AG	S-OS	S-IC	USE STANDARD
Adult Use															S	S					Sec. 17.08.030.A
Agriculture																		P			
Amusement Facility - Indoor									P	P		P	P	P	P		P				
Amusement Facility - Outdoor										S				S	P		S				
Animal Care Facility - Large Animal																					
Animal Care Facility - Small Animal							S	S	P	P		S	S	P	P		P	P			Sec. 17.08.030.B
Animal Breeder																		P			Sec. 17.08.030.B
Art Gallery							P	P	P	P		P	P	P	P		P	P			
Arts and Fitness Studio							P	P	P	P		P	P	P	P		P				
Bar									P	P		P	P	P	P		P				
Bar - Neighborhood								P													Sec. 17.08.030.C
Bed-and-Breakfast	P	P	S	S	S													P			Sec. 17.08.030.D
Billboard									P	P					P	P					Sec. 17.08.030.E
Body Modification Establishment								P	P	P		P		P	P		P			P	
Broadcasting Facility TV/Radio								P	P	P	P	P	P	P	P		P	S	P		Sec. 17.08.030.F
Campground																	P				Sec. 17.08.030.G
Car Wash									P	P				S							
Casino														P							
Cemetery																			P		
Children's Home					P				P	P				P							Sec. 17.08.030.H
Community Center	P	P	P	P	P		P	P	P	P		P	P	P			S	P	P	P	

DAVENPORT CODE

PRINCIPAL USE	R-1	R-2	R-3	R-4	R-MF	R-MHP	C-T	C-1	C-2	C-3	C-OP	C-D	C-V	C-E	I-1	I-2	I-MU	S-AG	S-OS	S-IC	USE STANDARD
Community Garden	P	P	P	P	P	P	P	P	P	P	P	P	P	P			P	P	P	P	Sec. 17.08.030.I
Conservation Area																					
Country Club																					
Cultural Facility					P		P	P	P	P		P	P	P			P		P	P	Sec. 17.08.030.J
Day-Care Center							P	P	P	P	P	P	P	P			P				Sec. 17.08.030.J
Day-Care Home	P	P	P	P	P													P			Sec. 17.08.030.K
Drive-Through Facility																					Sec. 17.08.030.L
Drug/Alcohol Treatment Facility, Residential												S		S			S			S	Sec. 17.08.030.L
Drug Treatment Clinic														S			S			P	Sec. 17.08.030.H
Domestic Violence Shelter					P			P	P	P				P			P				Sec. 17.08.030.M
Dwelling - Accessory Dwelling Unit	P	P	P	P														S			Sec. 17.08.030.N
Dwelling - Manufactured Home												P	P	P			P				Sec. 17.08.030.O
Dwelling - Multifamily					P		P	P	P	P		P	P	P			P				Sec. 17.08.030.P
Dwelling - Townhouse																					Sec. 17.08.030.P
Dwelling - Single-Family	P	P	P	P			P	P	P	P											Sec. 17.08.030.P
Dwelling - Single-Family Semidetached		P	P	P	P		P	P	P	P											Sec. 17.08.030.P
Dwelling - Two-Family (New Construction)			P	P	P		P	P	P	P											Sec. 17.08.030.P
Dwelling - Two-Family (Conversion)					P		P	P	P	P											Sec. 17.08.030.P
Educational Facility - Primary or Secondary	P	P	P	P	P															P	Sec. 17.08.030.Q
Educational Facility - University or College																				P	Sec. 17.08.030.Q
Educational Facility - Vocational																				P	Sec. 17.08.030.Q
Equine, Keeping of/Equestrian Facility	P						S	S	S				S					P	S		Sec. 17.08.030.Q
Fairground																					
Financial Institution							P	P	P	P	P	P	P	P			P				Sec. 17.08.030.R
Financial Institution, Alternative									S	S				S			P				Sec. 17.08.030.R
Food Bank																					
Food Pantry																					
Funeral Home							S	S	S	S				S			S				
Gas Station																					
Golf Course/Driving Range																					Sec. 17.08.030.S
Government Office/Facility							P	P	P	P	P	P	P	P					P	P	Sec. 17.08.030.S
Greenhouse/Nursery - Retail																					
Group Home	P	P	P	P	P													S			Sec. 17.08.030.T
Halfway House																					Sec. 17.08.030.L
Healthcare Institution																				P	

ZONING

PRINCIPAL USE	R-1	R-2	R-3	R-4	R-MF	R-MHP	C-T	C-1	C-2	C-3	C-OP	C-D	C-V	C-E	I-1	I-2	I-MU	S-AG	S-OS	S-IC	USE STANDARD
Heavy Rental and Service															P	P					
Heavy Retail														S	P		P				
Homeless Shelter									S	S				S			S			S	Sec. 17.08.030.L
Hotel									P	P	P	P	S	P			P				
Industrial - General											P					P					
Industrial - Light								P	P	P	P	P		P	P	P	P				
Industrial Design												P	P	P	P	P	P				
Live Performance Venue												P	P	P	P	P	P				
Lodge/Meeting Hall	S	S	S	S	S		P	P	P	P	P	P	P	P	P	P	P	P			Sec. 17.08.030.U
Manufactured Home Park						P															
Medical/Dental Office							P	P	P	P	P	P	P	P			P			P	
Microbrewery/Distillery/Winery									P	P		P	P	P			P				
Neighborhood Commercial Establishment		S	S	S	S																Sec. 17.08.030.V
Office							P	P	P	P	P	P	P	P	P	P	P				
Outdoor Dining								P	P	P	P	P	P	P	P	P	P			P	
Parking Lot (principal use)								P	P	P	P	P	P	P	P	P	P			P	Sec. 17.08.030.W
Parking Structure (principal use)								S	S	S	S	S	S	S	P		S			P	Chapter 17.10
Personal Service Establishment							P	P	P	P	P	P	P	P	P	P	P			P	Chapter 17.10
Place of Worship	P	P	P	P	P		S	S	P	P	P	P	P	P	P	P	P	P		P	
Private Recreation Facility								P	P	P	P	P	P	P			P			P	
Public Park								P	P	P	P	P	P	P			P	P	P	P	
Public Safety Facility							P	P	P	P	P	P	P	P			P	P	P	P	
Public Works Facility								P	P	P	P	P	P	P			P	P	P	P	
Reception Facility	S	S	S	S				S	S	P		S	S	P			P	S			Sec. 17.08.030.X
Recreational Vehicle (RV) Park																		S	S		Sec. 17.08.030.F
Research and Development											P				P	P	P			P	
Residential Care Facility					P		P	S	P	P	P	P	P	P	P	P	P			P	Sec. 17.08.030.Y
Restaurant								P	P	P	P	P	P	P	P	P	P		P	P	
Retail Goods Establishment							P	P	P	P	P	P	P	P	P	P	P			P	
Retail Alcohol Sales								P	P	P	P	S		P	P	P	P				
Retail Sales of Fireworks									P	P					P						Sec. 17.08.030.Z
Salvage Yard															P	P					
Self-Storage Facility: Enclosed									S	P	P			P	P	P	P				Sec. 17.08.030.AA
Self-Storage Facility: Outdoor										S					P	P	S				Sec. 17.08.030.AA
Social Service Center								P	P	P		P		P			P			P	

DAVENPORT CODE

PRINCIPAL USE	R-1	R-2	R-3	R-4	R-MF	R-MHP	C-T	C-1	C-2	C-3	C-OP	C-D	C-V	C-E	I-1	I-2	I-MU	S-AG	S-OS	S-IC	USE STANDARD
Solar Farm											P	P	P	P	P	P	P	S		P	Sec. 17.08.030.BB
Specialty Food Service																					
Storage Yard - Outdoor								P	P	P		P	P	P	P	P	P				Sec. 17.08.030.CC
Truck Stop																					
Vehicle Dealership - Enclosed										P	S	P		P	S		P				
Vehicle Dealership - with Outdoor Storage/Display										S				S	S		P				
Vehicle Operation Facility															P	P				P	
Vehicle Rental - Enclosed										P	S	P		P	S		P				
Vehicle Rental - with Outdoor Storage/Display										S				S	S		P				
Vehicle Repair/Service - Major										S				P	P	P	S				Sec. 17.08.030.DD
Vehicle Repair/Service - Minor									P	P				P	P	P	S				Sec. 17.08.030.DD
Warehouse															P	P	S				
Wholesale Establishment															P	P	S				
Wind Energy System											S	P	P	P	S	S		S		S	Sec. 17.08.030.EE
Wine Bar								S	P	P							P				
Winery																					
Wireless Telecommunications	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	Sec. 17.08.030.FF
Wireless Telecommunications - Stealth	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 17.08.030.FF
Design Antenna																					
Wireless Telecommunications - DAS Co-Location	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 17.08.030.FF
Wireless Telecommunications - DAS New Pole	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	Sec. 17.08.030.FF
TEMPORARY USE																					
Farmers' Market					T		T	T	T	T	T	T	T	T			T	T	T	T	Sec. 17.08.040.A
Real Estate Project Sales Office/Model Unit	T	T	T	T	T		T	T	T	T	T	T	T	T	T	T	T			T	Sec. 17.08.040.B
Temporary Cell On Wheels (COW)	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	Sec. 17.08.040.C
Temporary Contractor Office and Contractor Yard	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	Sec. 17.08.040.D
Temporary Outdoor Entertainment	T	T	T	T	T		T	T	T	T	T	T	T	T	T	T	T	T	T	T	Sec. 17.08.040.E
Temporary Outdoor Sales (No Fireworks Stand)	T	T	T	T	T		T	T	T	T	T	T	T	T	T	T	T	T		T	Sec. 17.08.040.F
Temporary Outdoor Sales - Fireworks Stand Only															T						Sec. 17.08.040.G
Temporary Outdoor Storage Container	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	Sec. 17.08.040.H



1200 E. 46th Street Davenport,
Iowa 52807
(563) 326-6198
Planning@davenportiowa.com

Complete application can be emailed to planning@davenportiowa.com

Property Address*

*If no property address, please submit a legal description of the property.

Applicant (Primary Contact)**

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Owner (if different from Applicant)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Engineer (if applicable)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Architect (if applicable)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Attorney (if applicable)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

****If the applicant is different from the property owner, please submit an authorization form or an accepted contract for purchase.**

Application Form Type:

Plan and Zoning Commission

Zoning Map Amendment (Rezoning) ☐
Planned Unit Development ☐
Zoning Ordinance Text Amendment ☐
Right-of-way or Easement Vacation ☐
Voluntary Annexation ☐

Zoning Board of Adjustment

Zoning Appeal ☒
Special Use ☐
Hardship Variance ☐

Design Review Board

Design Approval ☐
Demolition Request in the Downtown ☐
Demolition Request in the Village of East Davenport ☐

Historic Preservation Commission

Certificate of Appropriateness ☐
Landmark Nomination ☐
Demolition Request ☐

Administrative

Administrative Exception ☐
Health Services and Congregate Living Permit ☐

Request:

Please describe the zoning appeal:

Existing Zoning:

Submittal Requirements:

- The completed application form.
- A PDF that shows the location and dimensions of existing and proposed improvements affected by the appeal. If a paper copy is provided, the maximum size is 11" x 17".
- Supporting documentation and evidence.
- Recorded warranty deed or accepted contract for purchase.
- Authorization form, if applicable. If the property is owned by a business entity, please provide Articles of Incorporation.
- Required fee - \$250.

The Applicant hereby acknowledges and agrees to the following procedure and requirements:**(1) Application:**

- Prior to submission of the application for the zoning appeal, the applicant shall correspond with Planning staff to discuss the request, potential alternatives and the appeal process.
- The submission of the application does not constitute official acceptance by the City of Davenport. Planning staff will review the application for completeness and notify the applicant that the application has been accepted or additional information is required. Inaccurate or incomplete applications may result in delay of required public hearings.
- Pursuant to Section 17.14.130 of the Davenport City Code zoning appeals shall be filed in writing within 30 calendar days after the decision is rendered with the Zoning Administrator.

(2) Zoning Board of Adjustment's consideration of the zoning appeal:

- Planning staff will perform a technical review of the request and present its findings and recommendation to the Zoning Board of Adjustment.
- The Zoning Board of Adjustment will hold a public hearing and vote on the request.

(3) The staff report will be available on the City website approximately 4 days before the ZBA meeting at this location: https://www.cityofdavenportiowa.com/government/boards_commissions under Zoning Board of Adjustment > Search Minutes & Agendas.

It is the applicant's responsibility to access the website to see the staff report. Planning staff will not mail/email the report.

Applicant:

Date:

By typing your name, you acknowledge and agree to the aforementioned submittal requirements and formal procedure and that you must be present at scheduled meetings.

Received by:

Planning staff

Date:

Date of the Public Hearing:

Meetings are held in City Hall Council Chambers located at 226 West 4th Street, Davenport, Iowa.

Authorization to Act as Applicant

I, _____
authorize _____
to act as applicant, representing me/us before the Zoning Board of Adjustment for the property located
at _____.

Signature(s)*

*Please note: original signature(s) required.

ZBA Calendar 2021

ZONING BOARD OF ADJUSTMENT

***** The Applicant or their representative *MUST* be at the Meeting/Public Hearing *****

NOTE: Special Use Site Plans *MUST* be review prior to placement on the ZBA schedule.

Day:	Monday (4pm)	Thursday (4pm)
Activity:	Submittal	Meeting
Date:	12/21/20	01/14/21
	01/04/21	01/28/21
	01/19/21*	02/11/21
	02/01/21	02/25/21
	02/16/21*	03/11/21
	03/01/21	03/25/21
	03/15/21	04/08/21
	03/29/21	04/22/21
	04/19/21	05/13/21
	05/03/21	05/27/21
	05/17/21	06/10/21
	06/01/21*	06/24/21
	06/14/21	07/08/21
	06/28/21	07/22/21
	07/19/21	08/12/21
	08/02/21	08/26/21
	08/16/21	09/09/21
	08/30/21	09/23/21
	09/20/21	10/14/21
	10/04/21	10/28/21
	10/25/21	11/18/21*
	No Meeting	No Meeting (Thanksgiving)
	11/15/21	12/09/21
	No Meeting	No Meeting (Christmas)
	12/20/21	01/13/22
	01/03/22	01/27/22

Time: **Application Due:**
4:00 PM
Location: **Public Works Facility**
1200 E 46th St
Davenport IA, 52807

Meeting Appearance (REQUIRED):
4:00 PM
Council Chambers | City Hall
226 W 4th St
Davenport IA, 52801

*Date changed due to Holiday | Location/Time are subject to change
Contact planning@davenportiowa.com to confirm meeting date/time/location

Exhibit E. - Meloy Notice of Appeal & Application (October 20, 2021)

MELOY LAW OFFICE

Michael J. Meloy
Attorney at Law
2535 Tech Drive, Suite 206
Bettendorf, Iowa 52722
Telephone: 563-359-3959
Fax: 563-359-3953

Michael J. Meloy
mike@meloylaw.com
Attorney at Law

Molly Bonderer
molly@meloylaw.com
Paralegal

October 20, 2021

Laura Berkley
Development & Planning Administrator
City of Davenport
1200 East 46th Street
Davenport, Iowa
laura.berkley@davenportiowa.com

SENT BY E-MAIL

Re: Notice of Appeal - Zoning Interpretation for 245 S. Utah Avenue

Dear Ms. Berkley,

This is notice to you that we disagree with your zoning interpretation regarding the JC Landscaping Nursey located on 245 S. Utah Avenue, Davenport, Iowa. Previously the City of Davenport Zoning Department made a determination allowing for this landscaping business use on the subject property because the young trees being raised at the property site were deemed an incidental use. This was determined by former City Zoning Administrator Kenneth Oestreich.

We have submitted pictures of the site showing the trees grown. You have done a site inspection on June 9, 2021, and you viewed the rows of trees being grown on the North side of the property. *See attached photo's*. Jim stated to you that the newest rows of trees were recently planted and consisted of young trees two years old or less. While you are correct that Mr.

Capranos is not raising the trees from seedlings or saplings, the definition of a nursery does not require that.

The Davenport City Code definition for a nursery, § 17.04.010236 “Nursey” states that a nursery is any land used to raise trees, shrubs, flowers or other plants for sale or for transplanting. The definition does not state that the raising of trees has to be from a seedling. In short, a nursery does not have to grow a tree from a seed. It is common practice for a nursey to plant one or two-year-old trees for growth before they are actually sold to a third party at a later age.

Also, the common definition of nursery under the Merriam Webster Dictionary definition is also attached and does not indicate that any seedlings have to be cultivated on the property site initially to constitute a nursey. The use of the trees on the Capranos property does meet the definition of a nursey under the Davenport Zoning Ordinances as well as the common dictionary definition.

Jim has conducted his nursery and landscaping/snow removal operation from his property for the past twenty (20) years. Jim currently has five rows of young saplings on his real property. *See attached pictures of the nursery, Ex. B1 through 3.* These saplings will be sold to residential homeowners in the next year.

In 2015 the City put up traffic road signs on Utah Avenue in both directions with the words “Business Entrance”. This also indicates that the City knew Jim was operating his business for the past 20 years. *See attached photo's of two City of Davenport traffic signs – “Business Entrance” to the May 25, 2021 letter to Laura Berkley.*

Your overly restrictive interpretation that the property is a contractors storage yard is incorrect and contradicted by the Davenport City Code definition of "Nursery" and common sense.

This is notice to you that we are appealing this matter to the Davenport Zoning Board of Adjustment.

Attached is a complete application for presentation to the Zoning Board. Please advise as to public hearing date this matter will come before the Zoning Board on.

Sincerely,


Michael J. Meloy
Attorney at Law

cc: James Capranos



EXHIBIT
B-1



EXHIBIT
B-2

tabbles



EXHIBIT
B-3

MELOY LAW OFFICE

Michael J. Meloy
Attorney at Law
2535 Tech Drive, Suite 206
Bettendorf, Iowa 52722
Telephone: 563-359-3959
Fax: 563-359-3953

Michael J. Meloy
mike@meloylaw.com
Attorney at Law

Molly Bonderer
molly@meloylaw.com
Paralegal

May 25, 2021

Laura Berkley
Zoning Administrator
City of Davenport
Davenport, Iowa

SENT BY E-MAIL & U.S. MAIL

Re: *James Capranos – April 26, 2021 land use letter from City of Davenport.*

Dear Ms. Berkley,

On Friday April 30, 2021 James Capranos went to the Davenport Public Works Building at 1200 East 46th Street, Davenport, IA, to receive a renewal of a fill dirt permit previously issued by the City. The City Public Works Department refused to renew the fill permit and handed James the attached letter dated April 26, 2021 from a Mr. Brian Heyer. The Heyer letter was not received in the mail by James Capranos from Mr. Heyer's office. If you have any proof that this letter was mailed to James Capranos please provide it to my office.

I wish to point out to you that this April 26, 2021 letter is poorly written. It contains only one reference to a Davenport zoning code section and that section is misapplied by Heyer in the letter. It does not contain any statements concerning the history of the property or any other applicable code sections to support Heyer's discontinuance of the business on the Capranos property. It does not contain copies of any previous letters from the City of Davenport on the

property. Finally, the letter has a blank line where an alleged compliance date should appear. *See p. 2 of the April 26, 2021 Letter.*

On May 4, 2021 James Capranos spoke to Mr. Heyer by telephone regarding the letter from Heyer, James Capranos received at the Public Works Building on April 30, 2021. James advised Mr. Heyer that he had only received the letter after he went to the Public Works building on April 30, 2021. James requested the name of the Complainant in this matter and Mr. Heyer refused to provide the name of the complainant, stating to James, "That's neither here nor there."

Heyer's letter dated April 26, 2021 states that "More than a decade ago a city staff person made the determination that your landscaping business was similar enough to a nursery operation that it would be allowed, but he noted that if the landscaping operation was not raising trees and other landscaping plants on the property his determination would be different" (underlining added). We hereby request a copy of this letter written more than 10 years ago that ratified James Capranos landscaping business.

We hereby request all records, reports, letters or memo's regarding the Davenport city staff person's determination made more than a decade ago regarding the Capranos' 245 South Utah Avenue real property, as stated in the Heyer April 26, 2021 letter. We believe that the city staff person referred to in the Heyer letter was City Zoning Administrator Kenneth D. Oestreich.

James Capranos next spoke with you, Laura, by telephone on Wednesday, April 12, 2021 regarding the Heyer letter. James was completely surprised by the receipt of this letter on April 30, 2021 at the Public Works Building and advised you of that. We believe that there was no legal basis to issue this letter and request that you, as the zoning administrator, review and reverse the April 26, 2021 letter. James Capranos' landscaping business was ratified by the City of Davenport as a legal use more than 10 years ago. Further, the City of Davenport installed two

prominent yellow traffic signs on both of the motorist lanes of Utah Avenue to designate and alert all motorists of the Utah entranceway to the Capranos real property is a business entranceway. *See pictures of the traffic signs installed by the City of Davenport years ago.*

This is our request to you, pursuant to the Davenport Zoning Code, to review and reverse the April 26, 2021 letter. I realize that you may feel compelled to uphold the assistant city attorney's letter, but believe that a fair and impartial review by you will lead to its reversal.

We request a hearing before you on this important land use matter before any decision is made.

We also request copies of any and all code sections that you will utilize to make your decision. Thank you.

Sincerely,


Michael J. Meloy
Attorney at Law

Cc: James Capranos



Business
Entrance





No. 58

ALCOA EMPLOYEES &	)	<u>RELEASE & SATISFACTION</u>
COMMUNITY CREDIT UNION	)	Dated: Nov. 23, 2004
	)	Ack'd: Nov. 23, 2004
To	)	Filed: Nov. 30, 2004
	)	Rec'd: Doc. #2004-41778
FRANK D. HARRINGTON and	)	Cons.: Payment
WINEVA W. HARRINGTON	)	

Acknowledged as fully paid and satisfies of
record the Mortgage dated October 28, 1999 executed by
releasee, and filed of record as Document #39254-99,
records of the Recorder's Office of Scott County, Iowa.

Executed for releasor corporation by Jennifer
Quandt, Credit Department Representative and Melissa K.
Andrews, Credit Department Representative.

Statutory corporate acknowledgment affixed.

-----///-----

No. 59

WINEVA W. HARRINGTON, a	)	<u>WARRANTY DEED</u>
widow and not since	)	Dated: Nov. 10, 2004
remarried	)	Ack'd: Nov. 10, 2004
	)	Filed: Nov. 15, 2004
To	)	Rec'd: Doc. #2004-39994
	)	Cons.: \$1.00 & OVC
JAMES R. CAPRANOS	)	

Conveys real estate situated in Scott County,
Iowa, and described as follows, to-wit:

Part of the South Half (S 1/2) of the Southwest Quarter
(SW 1/4) of the Northwest Quarter (NW 1/4) and part of
the Northwest Quarter (NW 1/4) of the Southwest Quarter
(SW 1/4), all in Section 31, Township 78 North, Range 3
East of the 5th P.M., situated in the City of Davenport,
Scott County, Iowa, and being more particularly
described as follows, to-wit: Commencing at the
Southwest corner of the Northwest Quarter (NW 1/4) of
said Section 31, which point is in the center line of
Utah Avenue in said City of Davenport; thence North 01
degrees 05' East along the West line of said Northwest
Quarter (NW 1/4) of said Section 31, 108.54 feet to the
place of beginning of land herein conveyed; thence
continuing North 01 degrees 05' East along the West line
of said Northwest Quarter, 199.16 feet; thence South 89
degrees 39' 25" East, 222 feet; thence North 01 degrees
05' East, 356.20 feet to a point in the North line of
the South Half of the Southwest Quarter of the Northwest
Quarter of said Section 31; thence South 89 degrees 36'

23" East along the North line of the South Half of said Southwest Quarter of said Northwest Quarter of said Section 31, 1101.30 feet to a point in the East line of said South Half of said Southwest Quarter of said Northwest Quarter of said Section 31; thence South 01 degrees 04' 23" West along the East line of said South Half of said Southwest Quarter of said Northwest Quarter of said Section 31, 662.50 feet to the South line of said Northwest Quarter of said Section 31; thence North 89 degrees 40' 31" West along the South line of said Northwest Quarter of said Section 31, 399.30 feet; thence South 00 degrees 59' West 25 feet; thence North 89 degrees 40' 31" West 267.24 feet; thence North 145.81 feet; thence South 89 degrees 15' West 654.33 feet to the place of beginning, containing 16.76 acres including that portion thereof designated as Utah Avenue. Subject to an easement for right of way purposes over and across the West 25 feet of the real estate herein described for the use of the owners of the North Half of the Southwest Quarter of said Northwest Quarter of Section 31.

Together with an easement for right of way purposes over and across the West 25 feet of the South 108.54 feet of said South Half of said Northwest Quarter of said Section 31.

Together with a fifteen (15) foot easement for right of way purposes over and across the following described tract of real estate, to-wit: Commencing at the West line of the Northwest Quarter of said Section 31, Township 78 North, Range 3 East of the 5th P.M., 108.54 feet Northerly of the Southwest corner of said Northwest Quarter, being the Southwesterly corner of the tract hereinabove conveyed; thence South 01 degrees 05' West, fifteen (15) feet; thence North 89 degrees 15' East, 125 feet; thence Northerly parallel with the West line of said Section 31, fifteen (15) feet; thence South 89 degrees 15' West 125 feet on the place of beginning.

Excepting that tract conveyed to the State of Iowa by Warranty Deed dated August 31, 1957, recorded September 6, 1967, in Book 309 Deeds page 487, records of the Recorder's office of Scott County, Iowa.

AND

Part of the South Half (S 1/2) of the Southwest Quarter (SW 1/4) of the Northwest Quarter (NW 1/4) of Section Thirty-one (31), Township Seventy-Eight (78) North, Range Three (3) East of the Fifth (5th) P.M., particularly described as follows: Commencing at the Southwest corner of the Northwest Quarter of said Section 31; thence North on Section line 307.7 feet to the point of beginning of the tract herein conveyed; thence continuing North on Section line 356.4 feet to the Northwest corner of the South Half of the Southwest Quarter of said Northwest Quarter of said Section 31; thence East 222 feet; thence South parallel with the West line of said Section 31, 356.2 feet; thence West 222 feet to the point of beginning, subject to an easement for right of way purposes over and across the West 25 feet of the real estate herein described for use of the owners of the North Half of the Southwest Quarter of said Northwest Quarter of said Section 31.

Together with a right of way over and across the West 25 feet of the South 307.7 feet of the South Half of the Southwest Quarter and of the Northwest Quarter of said Section 31 aforesaid.

\$427.20 State Transfer Tax Stamp affixed.

-----///-----

No. 60

JAMES R. CAPRANOS, a Single)	MORTGAGE
Person)	Dated: Nov. 10, 2004
To)	Ack'd: Nov. 10, 2004
)	Filed: Nov. 15, 2004
)	Rec'd: Doc. #2004-39995
WALCOTT TRUST AND SAVINGS)	Cons.: \$275,000.00
BANK)	

Mortgages real estate situated in Scott County,
Iowa and described as follows to-wit:

Part of the South Half (S 1/2) of the Southwest Quarter (SW 1/4) of the Northwest Quarter (NW 1/4) and part of the Northwest Quarter (NW 1/4) of the Southwest Quarter (SW 1/4), all in Section 31, Township 78 North, Range 3 East of the 5th P.M., situated in the City of Davenport, Scott County, Iowa, and being more particularly described as follows, to-wit: Commencing at the Southwest corner of the Northwest Quarter (NW 1/4) of said Section 31, which point is in the center line of Utah Avenue in said City of Davenport; thence North 01 degrees 05' East along the West line of said Northwest Quarter (NW 1/4) of said Section 31, 108.54 feet to the place of beginning of land herein conveyed; thence continuing North 01 degrees 05' East along the West line of said Northwest Quarter, 199.16 feet; thence South 89 degrees 39' 25" East, 222 feet; thence North 01 degrees 05' East, 356.20 feet to a point in the North line of the South Half of the Southwest Quarter of the Northwest Quarter of said Section 31; thence South 89 degrees 36' 23" East along the North line of the South Half of said Southwest Quarter of said Northwest Quarter of said Section 31, 1101.30 feet to a point in the East line of said South Half of said Southwest Quarter of said Northwest Quarter of said Section 31; thence South 01 degrees 04' 23" West along the East line of said South Half of said Southwest Quarter of said Northwest Quarter of said Section 31, 662.50 feet to the South line of said Northwest Quarter of said Section 31; thence North 89 degrees 40' 31" West along the South line of said Northwest Quarter of said Section 31, 399.30 feet; thence South 00 degrees 59' West 25 feet; thence North 89 degrees 40' 31" West 267.24 feet; thence North 145.81 feet; thence South 89 degrees 15' West 654.33 feet to the place of beginning, containing 16.76 acres including that portion thereof designated as Utah Avenue. Subject to an easement for right of way purposes over and across the West 25 feet of the real estate herein described for the use of the owners of the North Half of the Southwest Quarter of said Northwest Quarter of Section 31.



226 West 4th Street
Davenport, Iowa 52801
(563) 326-7765
Planning@ci.davenport.ia.us

Complete application can be emailed to planning@ci.davenport.ia.us

Property Address*

***If no property address, please submit a legal description of the property.**

Applicant (Primary Contact)**

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Application Form Type:

Plan and Zoning Commission

Zoning Map Amendment (Rezoning) ☐
Planned Unit Development ☐
Zoning Ordinance Text Amendment ☐
Right-of-way or Easement Vacation ☐
Voluntary Annexation ☐

Owner (if different from Applicant)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Zoning Board of Adjustment

Zoning Appeal ☒
Special Use ☐
Hardship Variance ☐

Engineer (if applicable)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Design Review Board

Design Approval ☐
Demolition Request in the Downtown ☐
Demolition Request in the Village of
East Davenport ☐

Architect (if applicable)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Historic Preservation Commission

Certificate of Appropriateness ☐
Landmark Nomination ☐
Demolition Request ☐

Administrative

Administrative Exception ☐
Health Services and Congregate
Living Permit ☐

Attorney (if applicable)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

****If the applicant is different from the property owner, please submit an authorization form or an accepted contract for purchase.**

Request:

Please describe the zoning appeal:

James Capranos appeals the decision of a zoning interpretation for 245 South Utah Avenue, Davenport, IA 52804. The September 24, 2021 letter from the City erroneously interpreted the Davenport zoning ordinance. Mr. Capranos has operated a landscape and snow removal business for the past 20 years. The property uses were reviewed and approved by Davenport City Administrator Kenneth D. Oestreich in 2012.

We request the Zoning Board overrule the September 24, 2021 zoning decision. See May 25, 2021 and October 19, 2021 letters to the City explaining our position in detail.

Existing Zoning:

Submittal Requirements:

- The completed application form.
- A PDF that shows the location and dimensions of existing and proposed improvements affected by the appeal. If a paper copy is provided, the maximum size is 11" x 17".
- Supporting documentation and evidence.
- Recorded warranty deed or accepted contract for purchase.
- Authorization form, if applicable. If the property is owned by a business entity, please provide Articles of Incorporation.
- Required fee - \$250.

The Applicant hereby acknowledges and agrees to the following procedure and requirements:

(1) Application:

- Prior to submission of the application for the zoning appeal, the applicant shall correspond with Planning staff to discuss the request, potential alternatives and the appeal process.
- The submission of the application does not constitute official acceptance by the City of Davenport. Planning staff will review the application for completeness and notify the applicant that the application has been accepted or additional information is required. Inaccurate or incomplete applications may result in delay of required public hearings.
- Pursuant to Section 17.14.130 of the Davenport City Code zoning appeals shall be filed in writing within 30 calendar days after the decision is rendered with the Zoning Administrator.

(2) Zoning Board of Adjustment's consideration of the zoning appeal:

- Planning staff will perform a technical review of the request and present its findings and recommendation to the Zoning Board of Adjustment.
- The Zoning Board of Adjustment will hold a public hearing and vote on the request.

Applicant:

Date:

By typing your name, you acknowledge and agree to the aforementioned submittal requirements and formal procedure and that you must be present at scheduled meetings.

Received by:

Date:

Planning staff

Date of the Public Hearing:

Meetings are held in City Hall Council Chambers located at 226 West 4th Street, Davenport, Iowa.

Authorization to Act as Applicant

I,
authorize
to act as applicant, representing me/us before the Zoning Board of Adjustment for the property located
at .

Signature(s)*

*Please note: original signature(s) required.

Exhibit F. - Timeline of Events (2008-2021)

Site: 245 S. Utah and PIN [S3117-03](#)

2008, June 12:

- City Planner responds to a complaint sent to Alderman Brown
- An informational letter regarding the site was sent to Tami Lord of 665 South Utah Ave
- No on-site inspection was conducted at 245 South Utah by the City Planner
- What observations were made where all from the public right-of-way
- The letter was not addressed to Mr. Capranos and does not vested any use rights
- Equipment for a nursery was suggested as an allowed use
- Letter does not grant permission for tree trimming or snow removal equipment/business

2018, May 7:

- **Complaint for NSD Task 18-25536**
- Email reported A-1 property with a business is being run out of this property along with filling in debris into a depressed storm waterway.

2018, May 9:

- **Complaint for Natural Resources Task 18-25688:**
- This is a landscaping company; the area is used to store landscaping stone, and overburden from the businesses projects, mulch and other landscaping items.
- The items do not block the flow of water from the surrounding area.

2019, July 10:

- **Complaint for NSD Task 19-30900** - Debris letter sent to this parcel and adjoining property, 245 S. Utah Avenue owned by same person.
- Complaint about the buried debris/landfill.

2019, July 18:

- **Complaint for Natural Resources Task 19-33449**
- Complaint: Ditch line being filled with dirty fill;
- Results: Talked with owner of JC Landscape; JC Landscape will obtain a fill permit
- The ditch line was not being filled and they were told not to fill to ditch.

2020, June 24:

- **Complaint Claim for NSD Task 19-23719 –**
- Email from Community Planning and a complaint call from a resident: Claim of a business being run at this S-Ag Agricultural property; this property is zoned S-AG (ag) and is not permitted to have business operations that are not ag-related.
- JC Landscaping has business entrance sign on Utah
- JC Landscaping is store raw materials,
- 20 vehicles parked outdoors; trucks entering/exiting onto Utah on a regular basis.
- JC Landscaping is also dumping and burning trash on the property.

(Continued on the next page)

Exhibit F. - Timeline of Events (2008-2021), Continued

2021, January 8:

- **Complaint for NSD Task 20-74925**
- Notice to owner to remove and properly dispose of all railroad ties, mulch, tree limbs/debris, wooden boards and other loose garbage and trash.
- NSD instructed the JC Landscaping owner Mr. Capranos that Natural Resources states that only approved fill material, such as dirt, concrete, and concrete blocks, can be used for fill. All other non-approved material must be removed.
- Results: Van De Wiele inspected site and they are dumping RR ties, mulch, sod, tree limbs, gravel, cement chunks. I have e-mailed Nick Sim to verify what is and isn't allowed to be dumped under their permit. I will then mail out a 30 day debris letter once I hear back from Nick. 11-10-20. -Tom Van De Wiele
- Nick Sim has verified that fill can be dirt, concrete, and blocks. No trees, mulch, RR ties, or trash. Sent debris letter on 11-10-20. Van De Wiele
- Nick Sim and TVDW met with owner Jim Capranos and other workers to view progress.
- Most rail road ties have been removed; workers are continuing to remove mulch and tree debris. Staff reminded the owner his staff they need to continue to remove these items
- No more dumping shall be done until the fill permit is in place. 11-20-20. -Van De Wiele
- Nick Sim re-inspection; did not see any debris. Task closed on 1-8-21. -Tom Van De Wiele

2021, March 25:

- **Complaint for Natural Resources Task 21-17982**
- Area was cleaned of debris; waiting for PW to issue permit for fill. Pictures taken.

2021, April 26:

- **Exhibit B. Capranos Allowed Uses**
- Letter from City's Legal Department to Mr. James Capranos

2021, May 25:

- **Exhibit C. Meloy Request for Interpretation**
- Letter from Michael Meloy to the Zoning Administrator requesting a Zoning Interpretation

2021, August 27:

- **Complaint for Natural Resources Task 21-52959**
- Van De Wiele met onsite with the Development & Neighb. Services Director and Attorney Heyer
- City staff dug five (5) holes and found trees, garbage, and lumber in four (4) of the five holes
- Mr. Capranos was instructed to stop any further filling until the issues is resolve

2021, September 24:

- **Exhibit D. Zoning Administrator's Interpretation**
- Letter form Zoning Administrator to Meloy/Capranos regarding the Zoning Interpretation

2021, October 20:

- **Exhibit E. Meloy Notice of Appeal**
- Letter from Meloy to Zoning Administrator

2021, November 18:

- Public Hearing schedule to be heard by the Zoning Board of Adjustment.

Exhibit G. - Zoning Code: Interpretation & Zoning Appeals (Sec 17.13.120 & .130)

Section 17.14.120 Zoning Interpretation

A. Purpose

The interpretation authority is intended to recognize that the provisions of this Ordinance, though detailed and extensive, cannot, as a practical matter, address every specific zoning issue. However, this zoning interpretation authority is not intended to add or change the essential content of the Ordinance.

B. Initiation

The City Council, the Plan and Zoning Commission, Zoning Board of Adjustment, or a property owner in the City, or person expressly authorized in writing by the property owner, may request a zoning interpretation. All interpretation requests must be for the purpose of furthering some actual development.

C. Authority

The Zoning Administrator will review and make final decisions on written requests for zoning interpretations.

D. Procedure

All applications for interpretations must be filed with the Zoning Administrator. The Zoning Administrator must review a written request for an interpretation and render the interpretation in writing within a reasonable time. The Zoning Administrator may request additional information prior to rendering an interpretation.

Section 17.14.130 Zoning Appeals

A. Purpose

The zoning appeals process is intended to provide appropriate checks and balances on the administrative authority of the Zoning Administrator

B. Initiation

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 may file an appeal of the Zoning Administrator's decision on an administrative exception, zoning interpretation, temporary use permit, or other administrative decision related to this Zoning Ordinance.

C. Authority

The Zoning Board of Adjustment will take formal action on zoning appeal applications.

D. Procedure

All applications must be filed with the Zoning Administrator. Once it is determined that the application is complete, the Zoning Administrator will schedule the application for consideration by the Zoning Board of Adjustment.

1. After receipt of a complete application, the Zoning Board of Adjustment will consider the proposed zoning appeal at a public hearing. If, in the Zoning Board of Adjustment's judgment, the application does not contain sufficient information to properly review and consider the application, the Zoning Board of Adjustment may request additional information from the applicant and the public hearing may be continued.

2. Within 30 days of the close of the public hearing, the Zoning Board of Adjustment must either confirm or overturn the Zoning Administrator's decision.

E. Limitations on Zoning Appeals

A decision of the Zoning Administrator may only be appealed if an application is filed within 30 days of the date of notice of the Zoning Administrator's decision.

Exhibit H. Aerial Photography Review (1994, 2004 - 2021)



Zoning Review

245 S. Utah Avenue Aerial Photography Review

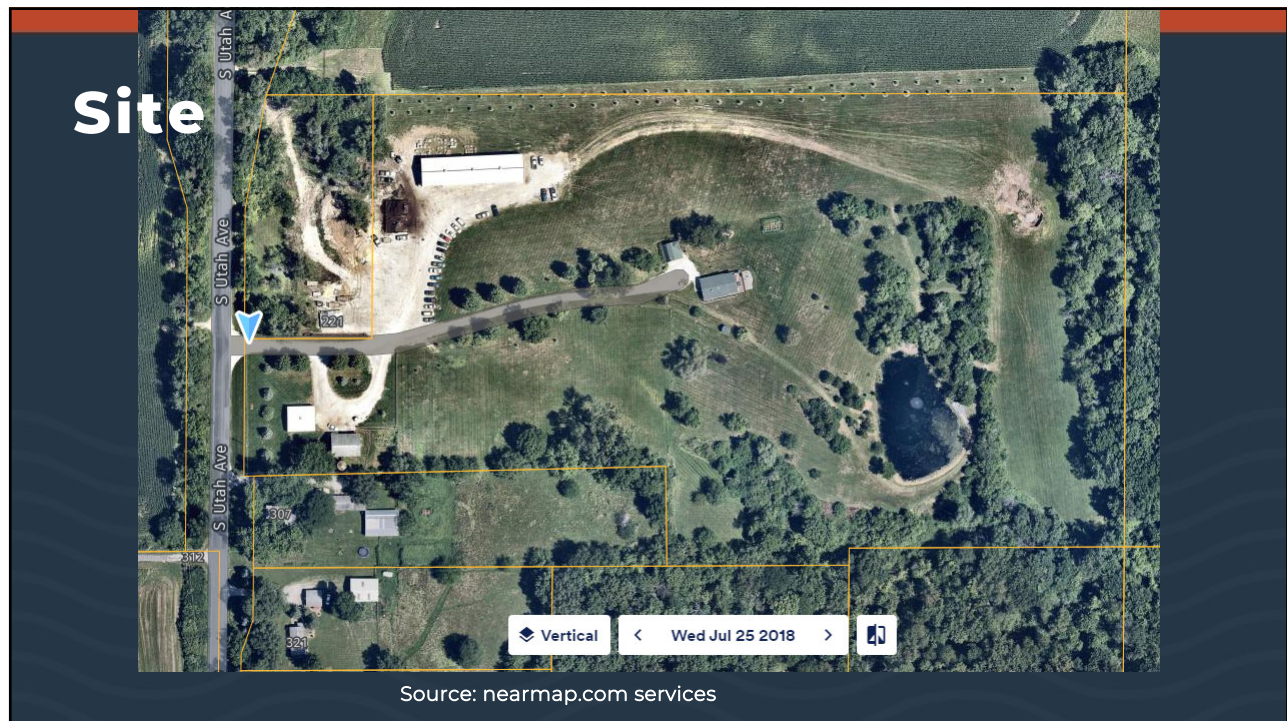
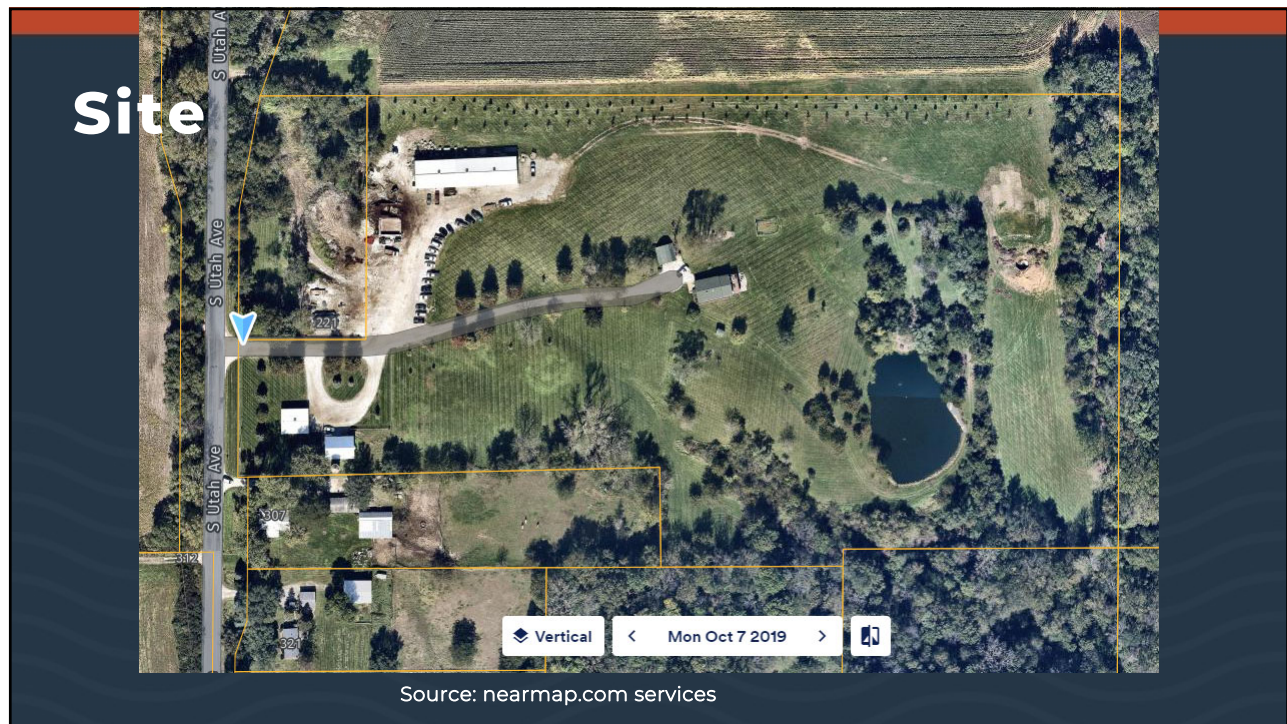
19 images from 2004-2021
(slightly more than 1 image/year)

Sources: Google Maps/Google Earth and nearmap.com services

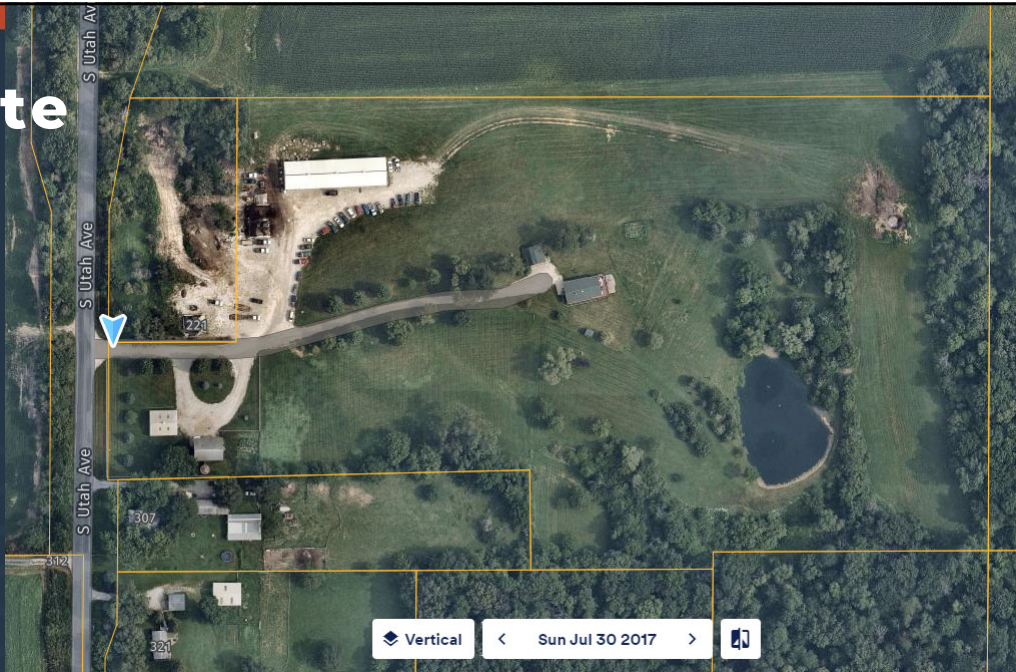


Source: nearmap.com services





Site

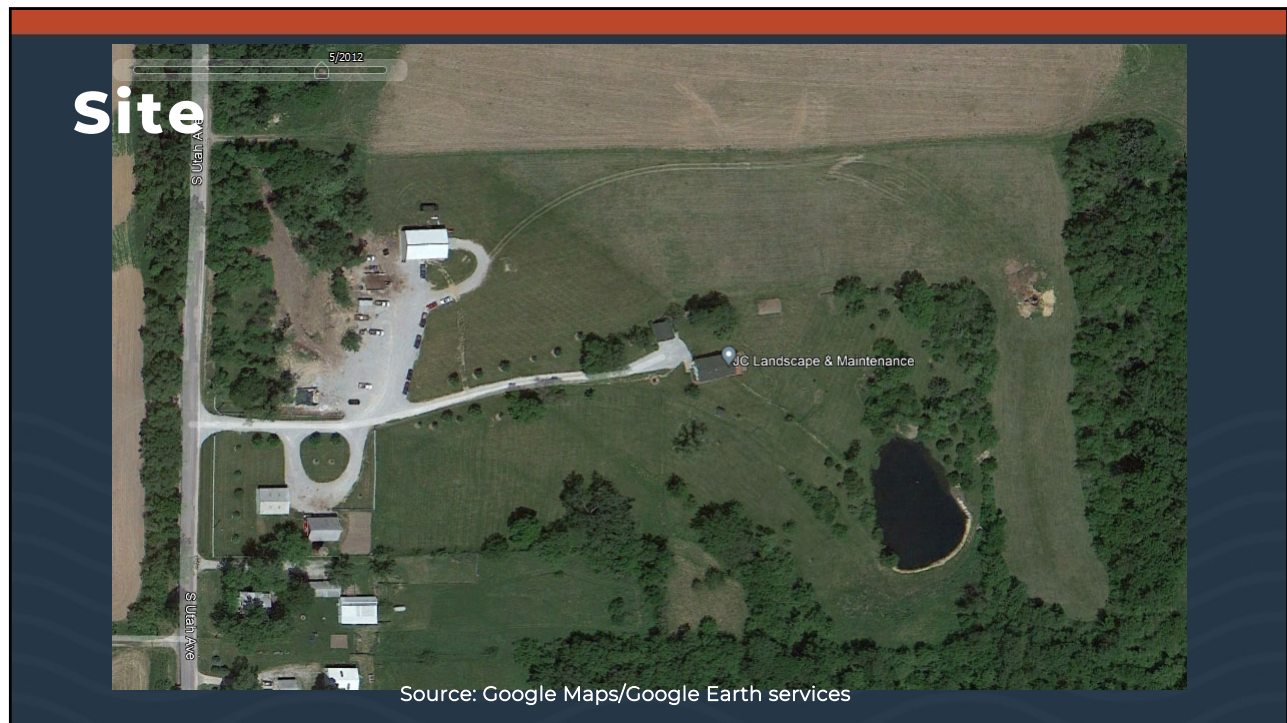


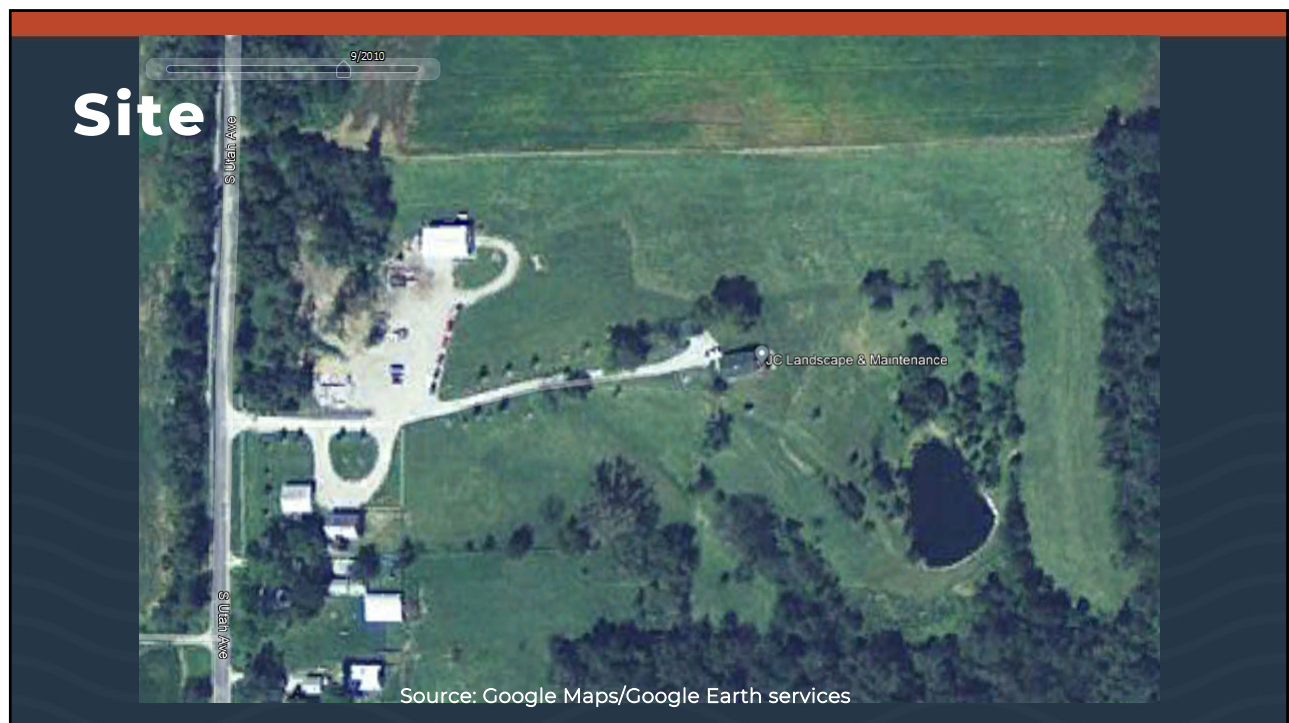
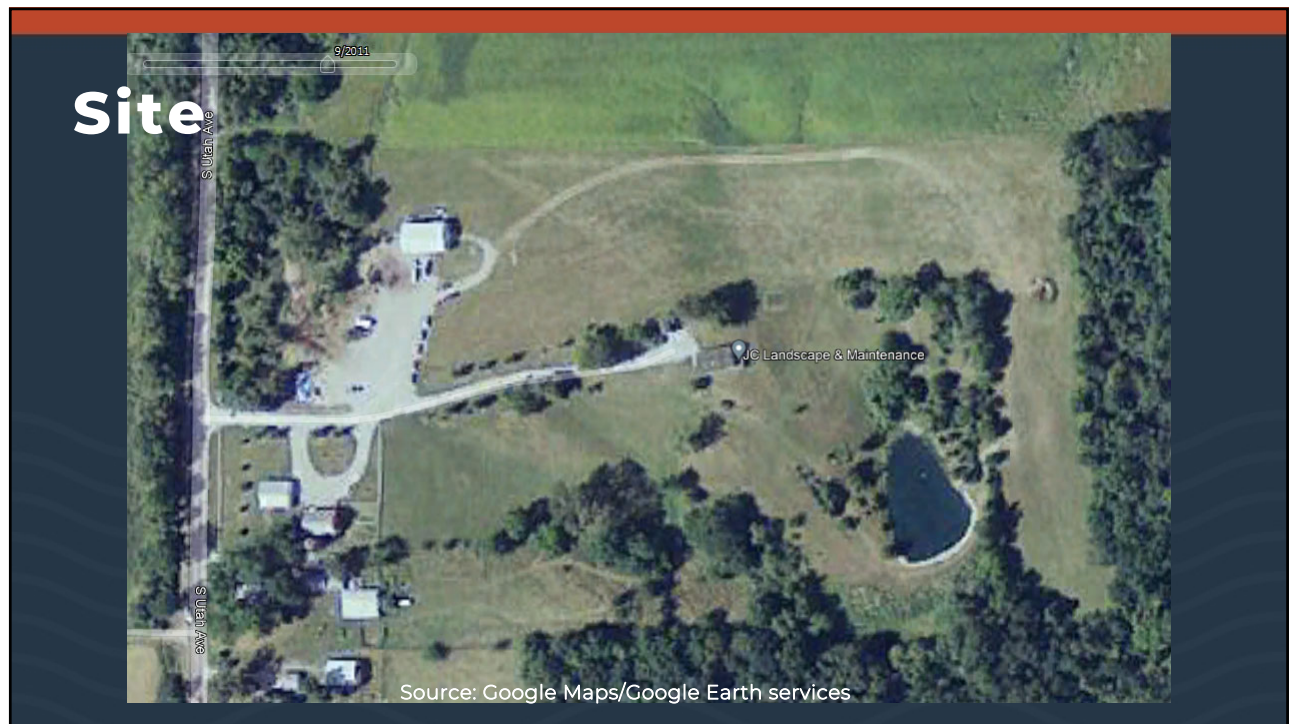
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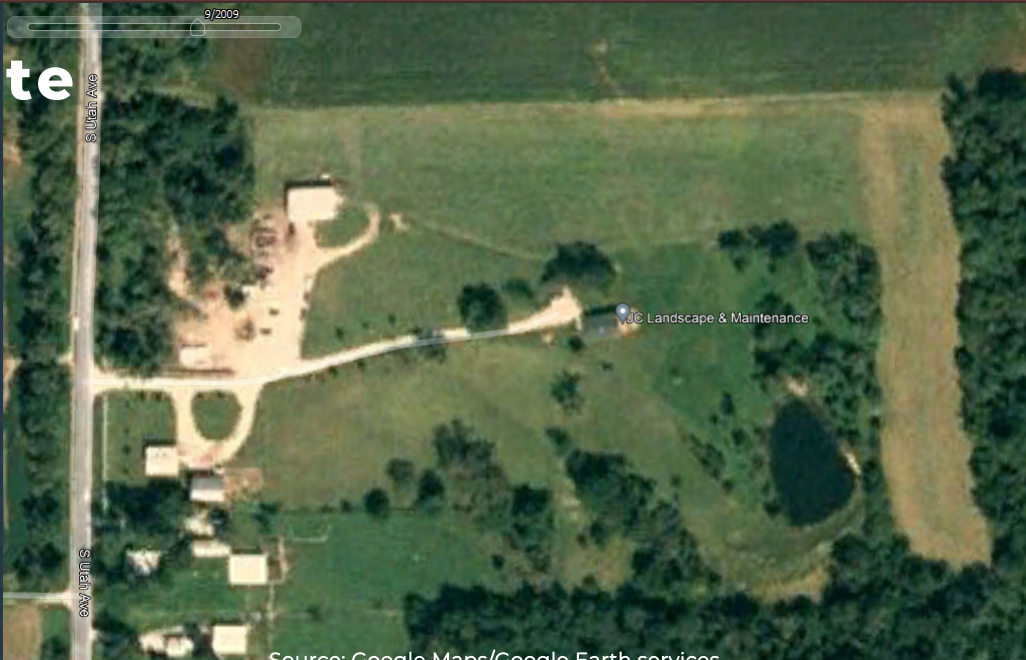


Source: nearmap.com services





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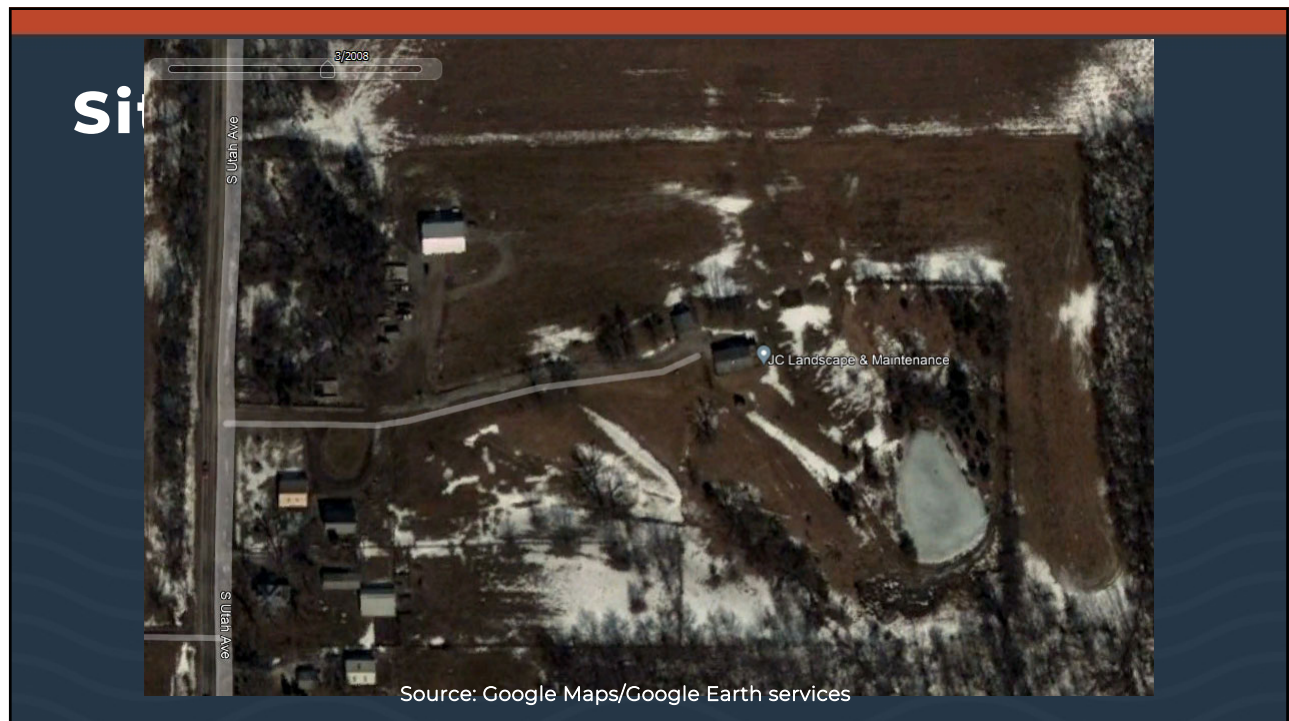
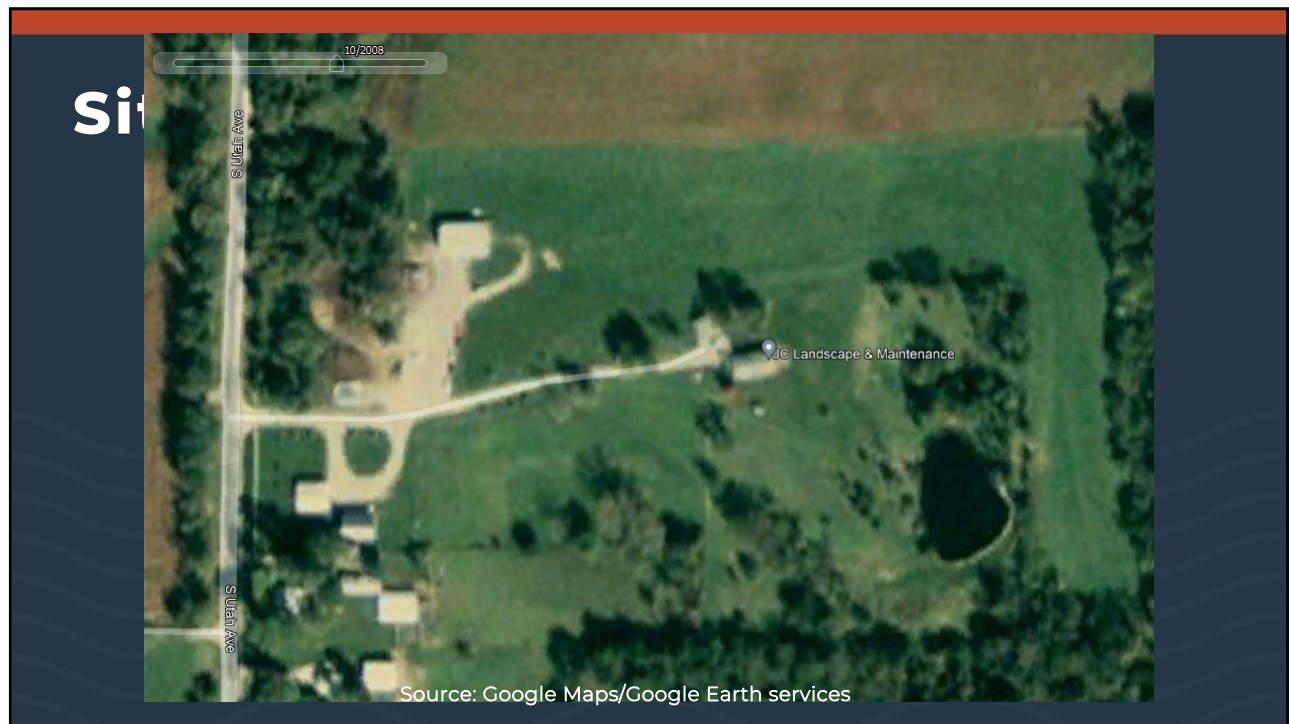


Source: Google Maps/Google Earth services

Site



Source: Google Maps/Google Earth services

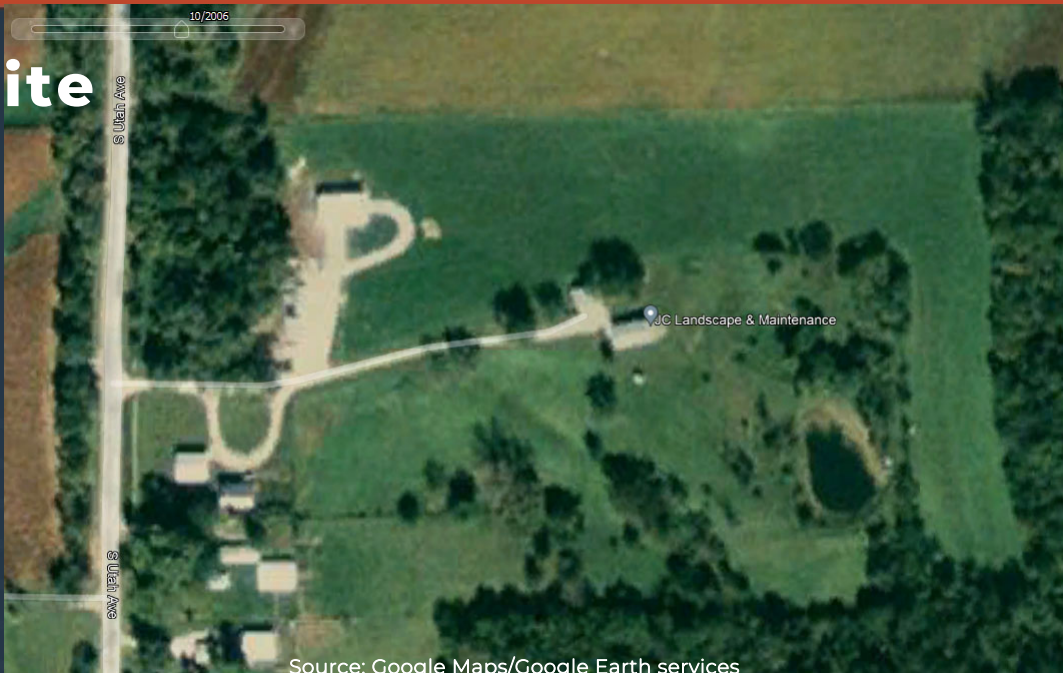


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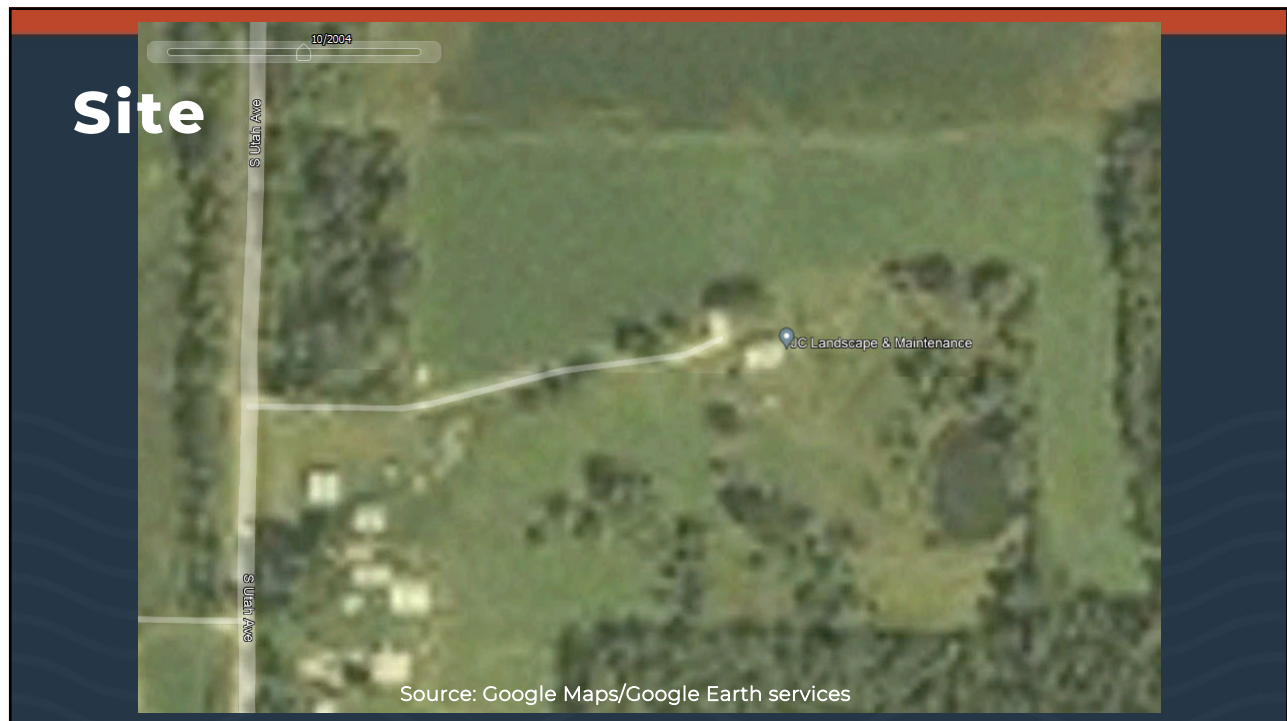
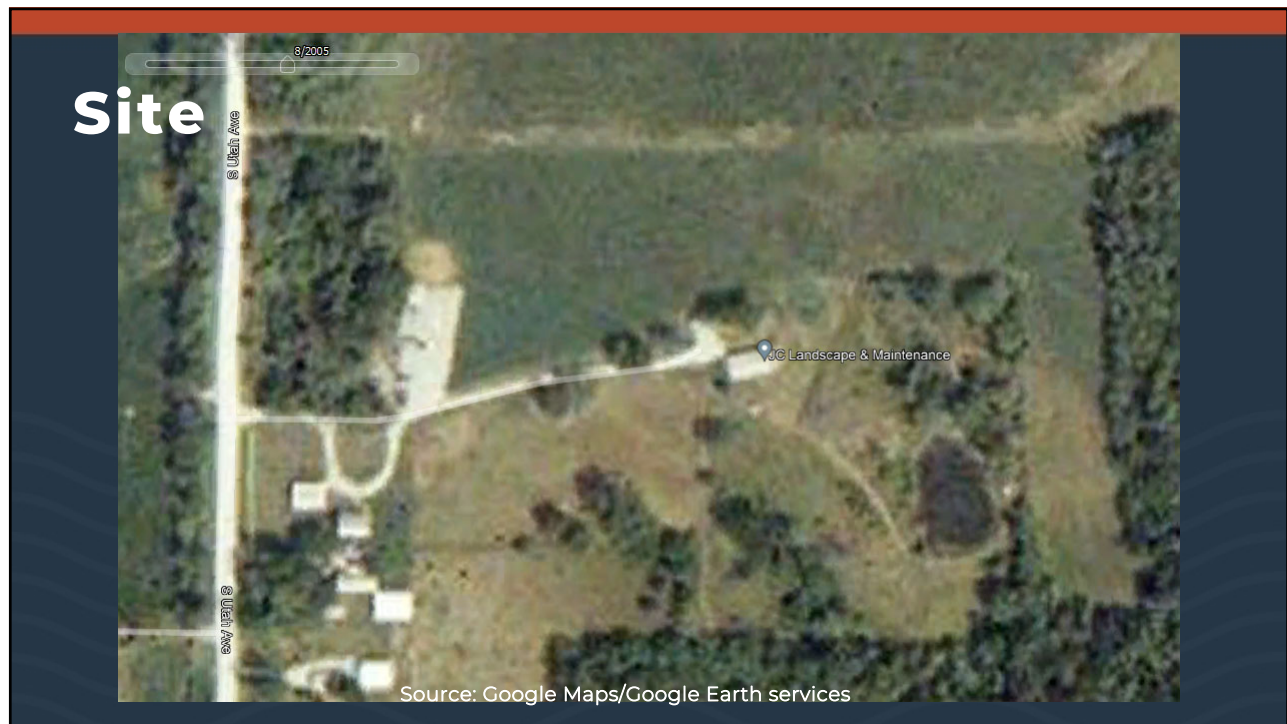


Source: Google Maps/Google Earth services

Site



Source: Google Maps/Google Earth services



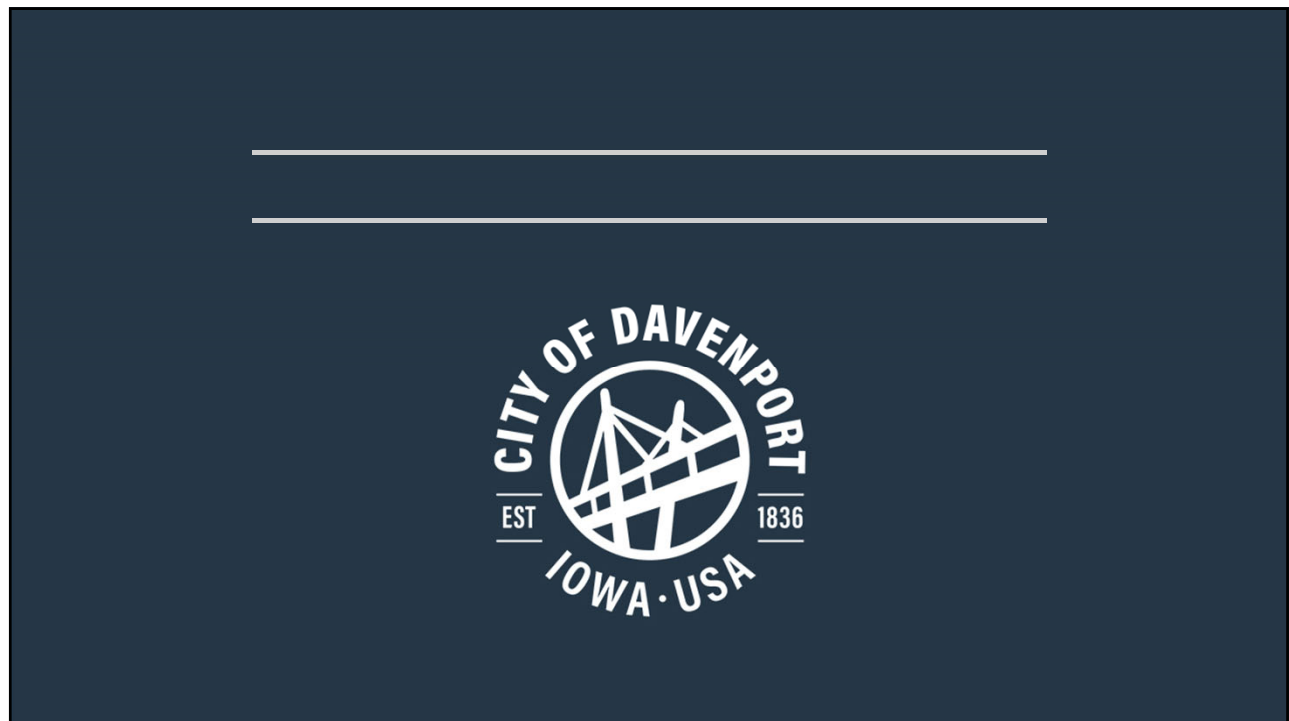


Exhibit I. - JC Landscaping Web Presence

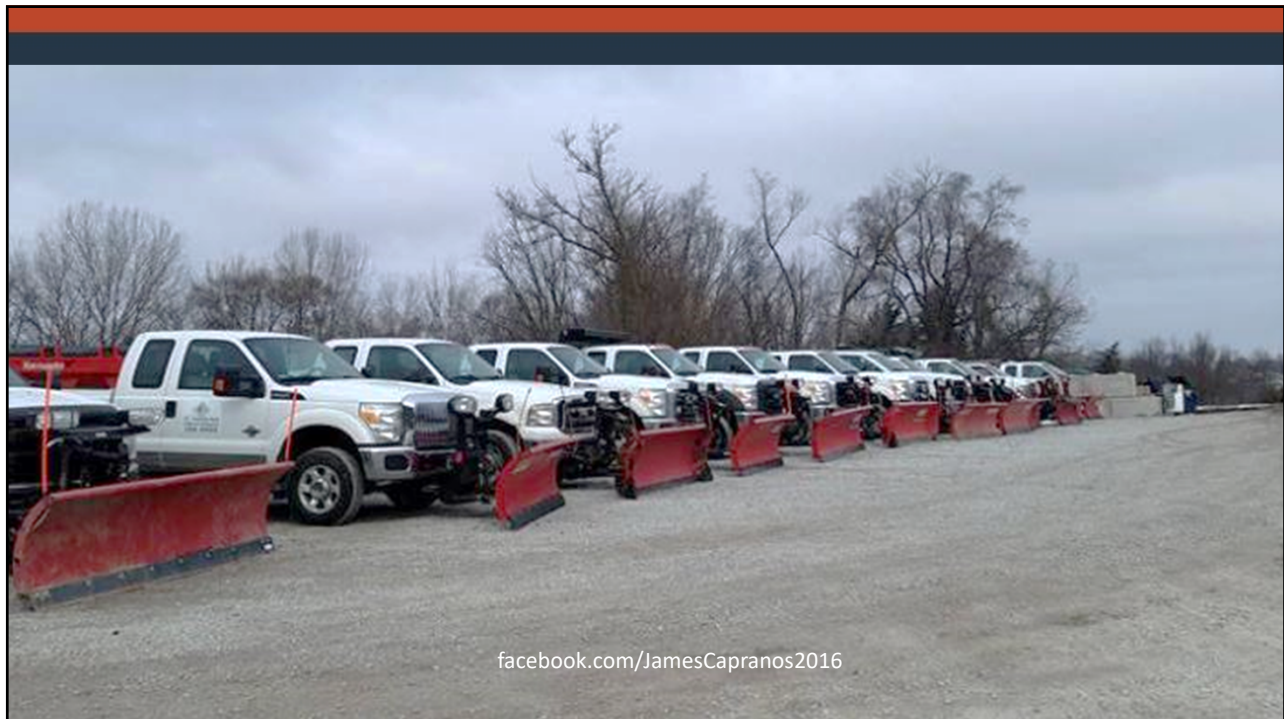


Zoning Review

245 S. Utah Avenue Web Presence Review:

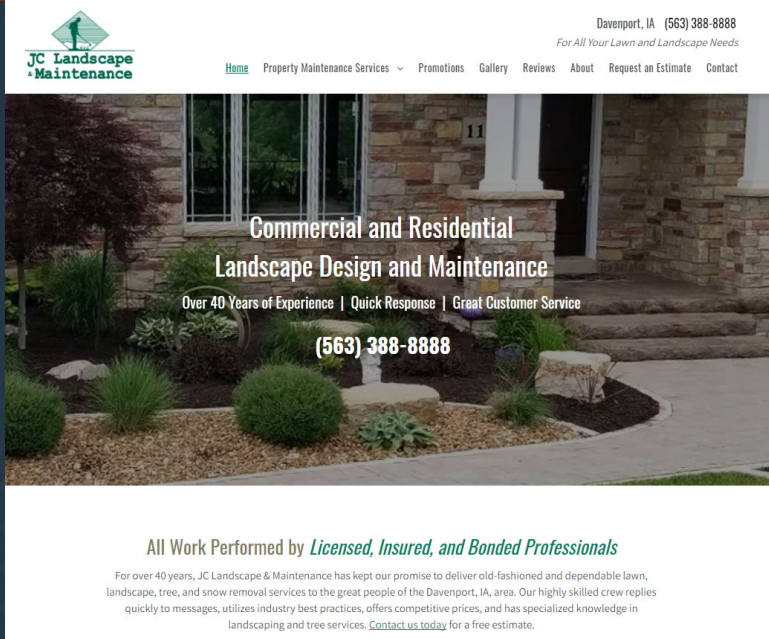
Sources:

jclandscapemaintenance.com,
facebook.com/JCLandscapeandMaintenance,
facebook.com/James.Capranos,
ScottCountyIowa.com,
Quad City Times, and
KWQC.com



facebook.com/JamesCapranos2016

Site



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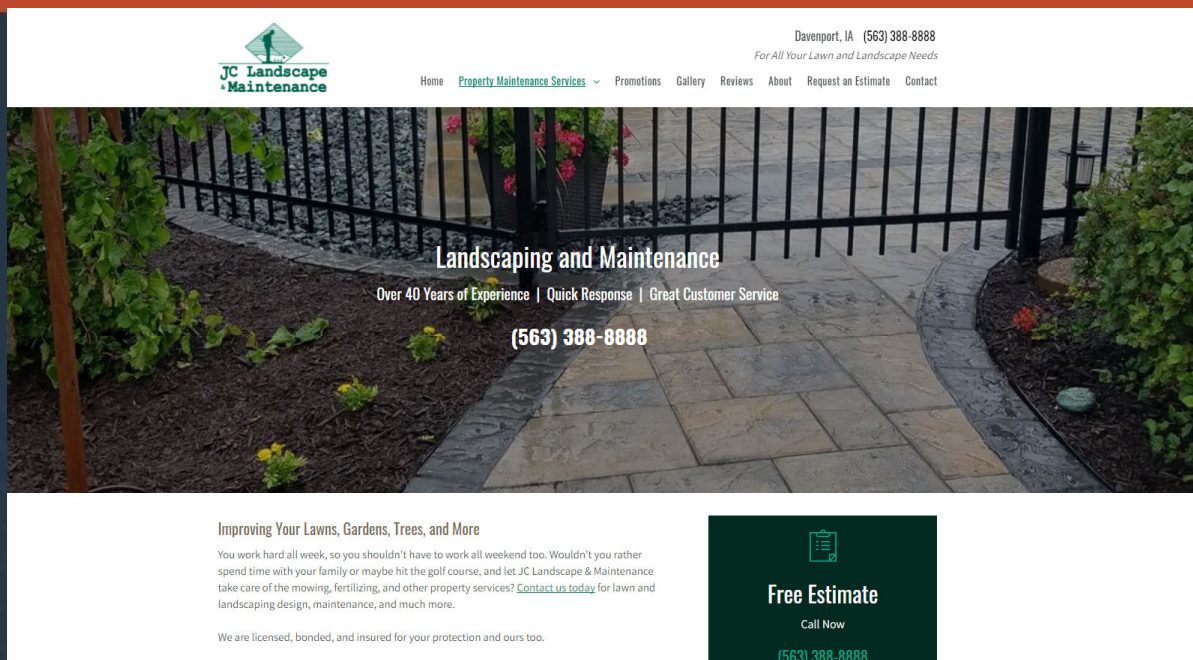
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For over 40 years, JC Landscape & Maintenance has kept our promise to deliver old-fashioned and dependable lawn, landscape, tree, and snow removal services to the great people of the Davenport, IA, area. Our highly skilled crew replies quickly to messages, utilizes industry best practices, offers competitive prices, and has specialized knowledge in landscaping and tree services. [Contact us today](#) for a free estimate.

Source: jclandscapemaintenance.com



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You work hard all week, so you shouldn't have to work all weekend too. Wouldn't you rather spend time with your family or maybe hit the golf course, and let JC Landscape & Maintenance take care of the mowing, fertilizing, and other property services? [Contact us today](#) for lawn and landscaping design, maintenance, and much more.

We are licensed, bonded, and insured for your protection and ours too.

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Source: jclandscapemaintenance.com

Landscaping Services Include

- Asian, English, and tropical landscapes
- Landscape design
- Borders
- Core aeration
- Erosion control
- Design
- Fertilization
- Field and lawn mowing
- Grounds maintenance
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- Perennials, shrubs, and trees
- Tree and shrub planting
- Bush trimming
- Drainage
- Irrigation systems
- Tree removal
- Tree and bush trimming
- Stump grinding



I got everything I asked for and they came in under my budget. I highly recommend JC Landscape. I wish I had taken before and after pictures. My yard looks amazing!

- Mandy Sinnott Hitchcock



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Nobody knows winter storms like we do in the Midwest, and nobody takes care of commercial snow removal like JC Landscape & Maintenance. Don't wait for a storm to hit to call for help. When snow is in the forecast, [contact us](#) ahead of time to be sure you're one of the first to get cleared so your doors will be open for business as usual.

We are licensed, bonded, and insured for your protection and ours too.



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Source: jclandscapemaintenance.com

Commercial Snow Removal Includes

- Parking lots
- Driveways
- Entrances and exits
- Walkways



The best in the Quad Cities. Everyone has a lot of experience.

- Daniel Koczak



Tree Removal and Tree Trimming

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Save \$50 when you schedule your next tree removal or tree trimming service - JC Landscape & Maintenance

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Hardscaping

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It's About Family, Friends, and Fresh Air

You paid a good deal of money for your home, including the outside. So why not create a great outdoor living space where you can spend more time outdoors? [Contact us](#) at JC Landscape & Maintenance for a patio, walkway, outdoor kitchen, fire pit, and anything else that gets you out of the house to enjoy fresh air with family and friends.

We are licensed, bonded, and insured for your protection and ours too.
See our other Hardscaping images on the [Gallery](#) page.



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Source: jclandscapemaintenance.com

Hardscaping Services Include

- Patios
- Retaining walls
- Borders
- Walkways
- Outdoor kitchens
- Fire pits
- Decks
- Outdoor lighting



What a great company and staff! These guys are PRO's and have a great work ethic. I highly recommend using them for any new patios and decks!

- Greg Hilbert



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Did you know people who spend more time near trees have a longer life expectancy? Did you also know JC Landscape & Maintenance handles trimming and other services to help your trees grow properly? If you have a tree or branches that seem in danger of falling, [contact us](#) to protect your home and family before a tragedy happens.

We are licensed, bonded, and insured for your protection and ours too.
See our other Tree Service images on the [Gallery](#) page.



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Tree and Property Care Includes

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Great service clean up and tree removal.

-anonymous

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Five Stars!

- Brian Andresen



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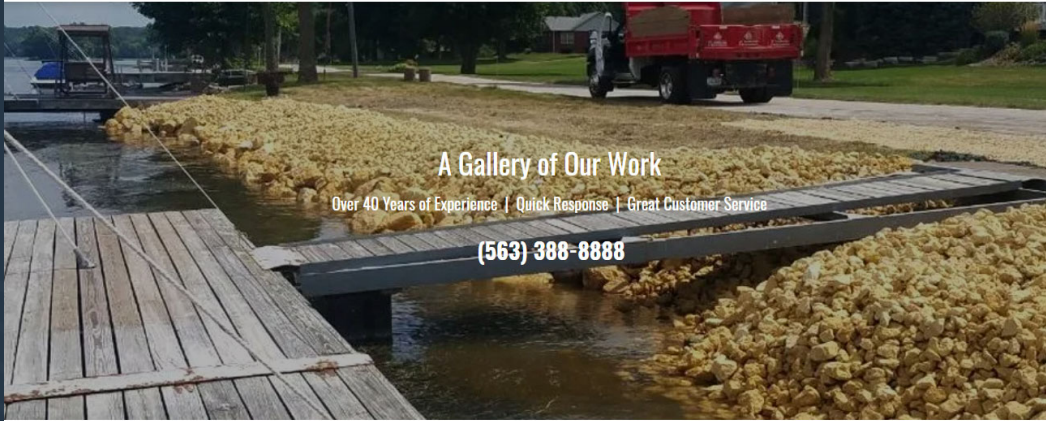
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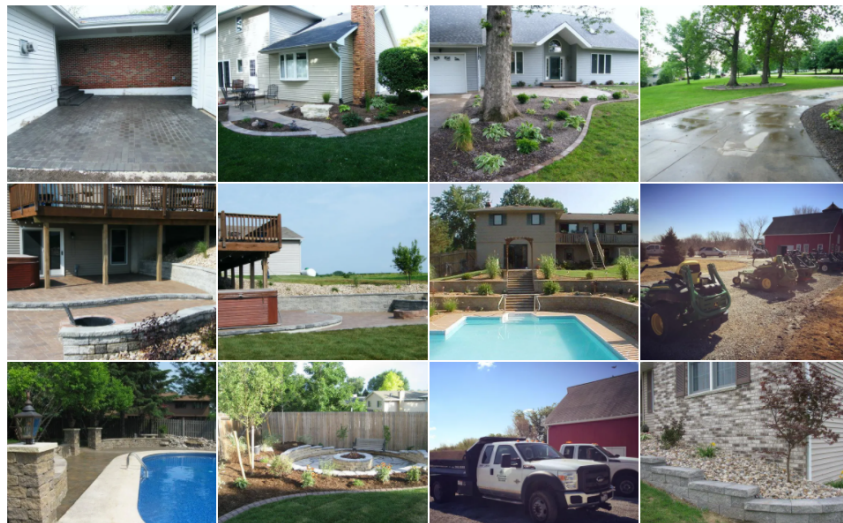
Take a Look at What We Can Do for You

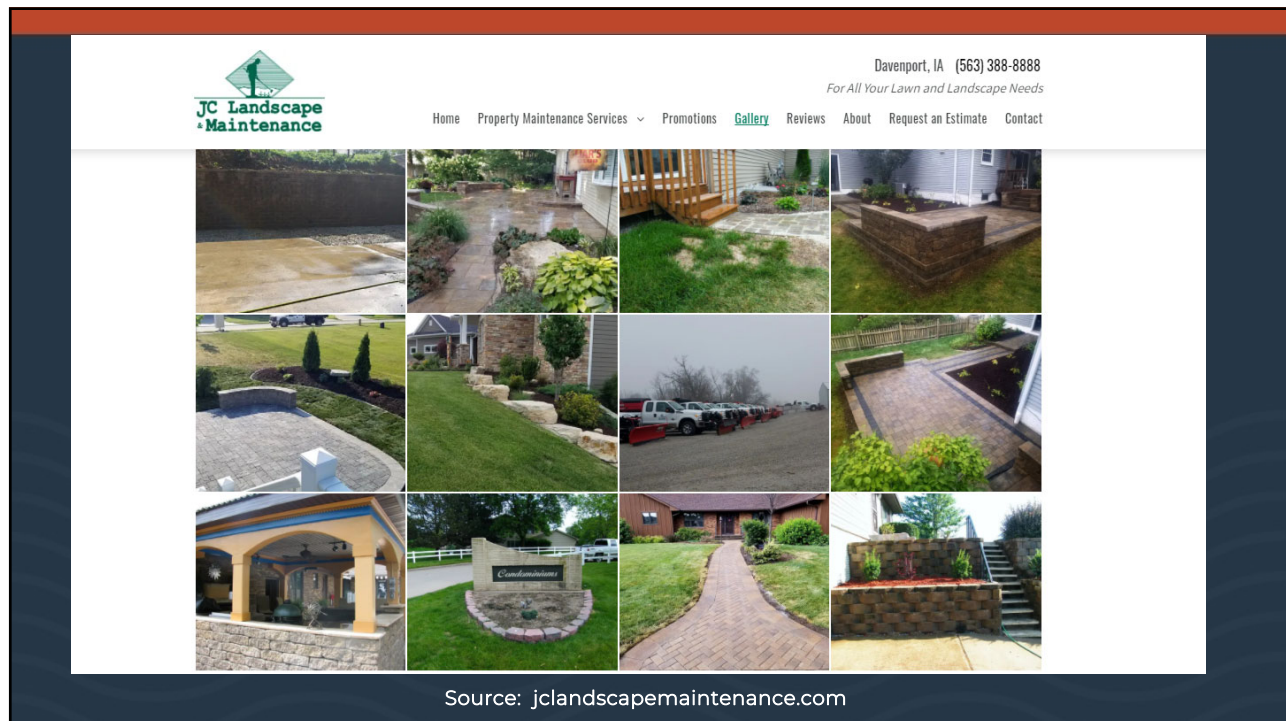
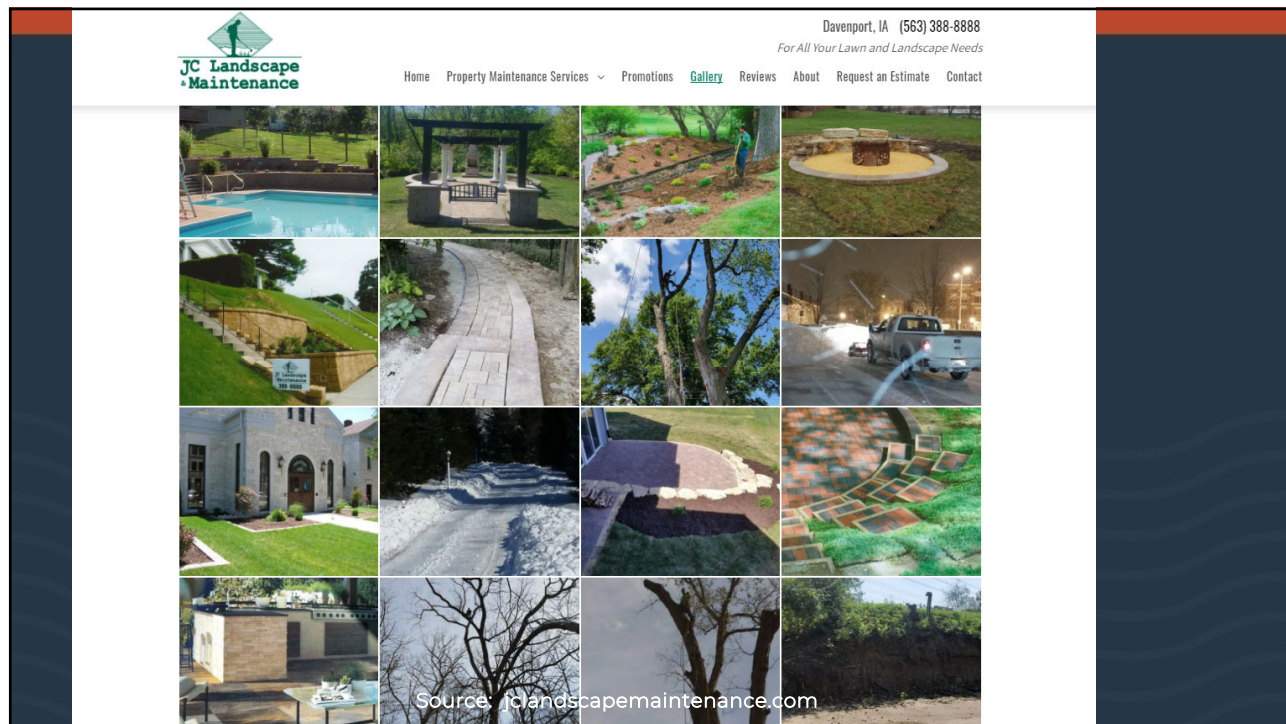
Anyone can claim to deliver outstanding lawn and [landscape design and maintenance](#), but JC Landscape & Maintenance prefers to show you exactly what we can do for your property. Browse through the images below, and then [contact us today](#) for a free estimate on our commercial and residential services that also include [hardscaping](#), [tree trimming and removal](#), and [snow removal](#) in the Davenport, IA, area.

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Take a Look at What We Can Do for You

Anyone can claim to deliver outstanding lawn and [landscape design and maintenance](#), but JC Landscape & Maintenance prefers to show you exactly what we can do for your property. Browse through the images below, and then [contact us today](#) for a free estimate on our commercial and residential services that also include [hardscaping](#), [tree trimming and removal](#), and [snow removal](#) in the Davenport, IA, area.

Source: jclandscapemaintenance.com




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10 Ratings & Reviews

Here's what our satisfied clients are saying...

Dana M C



JC landscape is outstanding. I have a relative Lee large property and they cleaned up so well It hasn't looked so good in years. I highly recommend JC. Great company.

9/16/2021

Lori



They tore out and rebuilt a retaining wall for us. We are very satisfied with how it turned out and would use them again for our landscaping needs. They were very professional, very polite, and cleaned everything up before leaving.

6/21/2021

Lori



They tore out and rebuilt a retaining wall for us. We were very satisfied with their work. They were very professional, very polite, and cleaned up before leaving. We would use them again.

6/21/2021

Source: jclandscapemaintenance.com

LG



Professional! Shows wonderful team work and went the extra mile to get the job done safely and complete assessment of what needed to be done. Very pleased. Marycrest resident.

6/7/2021

Ronda H



Super impressed with crew! Big silver maple down and stump ground in same day. Cleanup and seeding the next day. Highly recommend this company and their superior work ethic.

6/3/2021

Barbara M



This was my first time using JC Landscape but would not hesitate to refer them. They had tree down and hauled away. Stump ground out and seeded next day. Clean and efficient!

10/26/2020

SJ C



I've used JC Landscape twice this year to make my newly purchased home in Bettendorf even better. First time was for tree trimming which turned out great. Most recently they turned a constantly muddy area into a much more functional area with river rock and better drainage. Again, they did an A+ job at a reasonable price. I would use them again with no hesitation.

4/8/2020

Source: JCLandscapaeMaintenance.com

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JC Landscape & Maintenance provides landscaping design and maintenance, hardscaping, snow removal, and tree services to the Davenport, IA, area.

Specialties

- Irrigation systems
- Landscape design
- Landscaping
- Snow removal
- Stump grinding
- Outdoor kitchens
- Outdoor lighting
- Patios
- Tree removal
- Tree trimming

Payment Types

- Cash
- Check
- MasterCard
- Visa

Languages

- English

Source: JCLandscapeMaintenance.com

JC Landscape & Maintenance
October 25, 2019

HIBU.US

From a JC Landscape & Maintenance customer
Weekly lawn mowing, right on schedule. Our lawn is plush and green and very well groomed. Couldn't be happier!

Source: JCLandscapeMaintenance.com



Source: JCLandscapeMaintenance.com



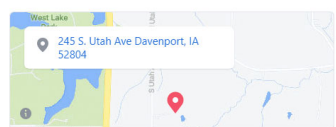
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854 people follow this

32 people checked in here

<http://www.jclandscapeandmaintenance.com/>

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jcland8888@msn.com

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Landscape Company

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August 26, 2020 · [View](#)

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13



Storm sends snow removers into overdrive

February 1, 2011 | Quad-City Times, The (IA)
 Author/Byline: Rashah McChesney; rmccchesney@qctimes.com | Page: A3 | Section: News
 484 Words | Readability: Lexile: 1250, grade level(s): 11-12
[Read News Document](#)

Quad-City **snow** removal companies agree that their equipment waits to break down until they're in the middle of plowing a lot.

So, several of them spent the day Monday preparing their trucks for the worst, hoping for the best and fielding phone calls from concerned and prospective clients.

Eric Harrison runs a one-man **snow** removal operation in Davenport, and he was busy all day checking his equipment, stocking his truck and making sure that he's ready for what he thinks will be a few sleepless nights.

Harrison, of Eric's **Snow** Removal, said if 18 inches actually falls, it will be the first time that he has dealt with a **storm** of that magnitude. He expects he will spend his night driving back and forth along his route trying to keep up with the rate the **snow** is falling.

"There's going to come a point in time where I'm going to have to say 'Well, I've got to go home and get a couple of hours of sleep,'" he said. "It's one of those things where I'd like to keep up on it, but unfortunately, there's only so much that I'll be able to do and I will have to get some sleep."

He said he got calls Monday from people anticipating that they'll need his help to clear their homes.

"I have more than enough to keep me busy, especially on something like this," Harrison said. "I'm not really able to help too many other people out."

Jim Capranos, owner of JC Landscape Maintenance, runs a much larger operation.

He has 16 drivers and an additional 30 people who clear snow off sidewalks and driveways, but he still faces a challenge in handling what, according to National Weather Service predictions, could be fast accumulations and blizzard-like conditions.

"It's supposed to be windy so, you know, you do all of that work, and then it just blows right back," Capranos said.

His drivers also will need to take breaks to sleep, and the work isn't easy.

City Times

Storm sends snow removers into overdrive

February 1, 2011 | Quad-City Times, The (IA)
 Author/Byline: Rashah McChesney; rmccchesney@qctimes.com | Page: A3 | Section: News
 484 Words | Readability: Lexile: 1250, grade level(s): 11-12
[Read News Document](#)

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6 News Tracking the Curve Weather Sports Livestream Hometown Hero Scoreboard

By Mariana Domingues

Published: Apr. 17, 2018 at 6:33 PM CDT

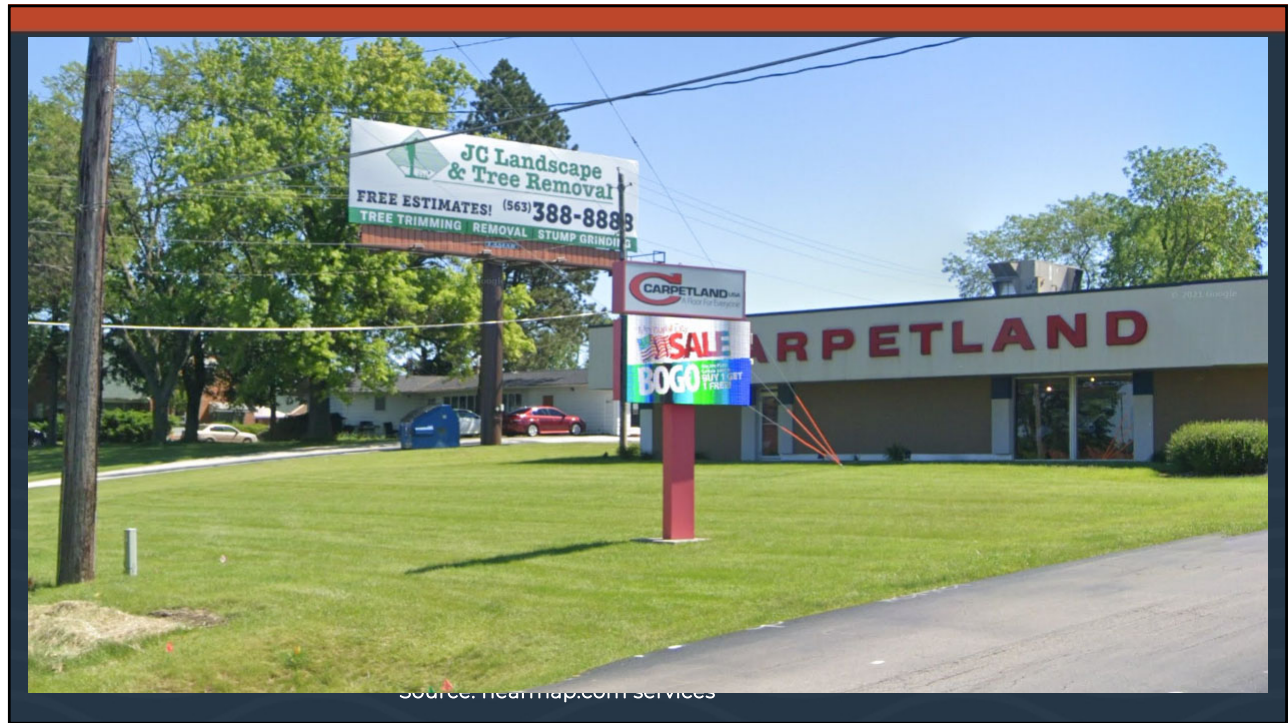


Many of us continue to make adjustments to the changing Spring weather.

JC Landscape and Maintenance has started doing spring cleanup work like spreading mulch, trimming bushes, and patio work, but a cold spring means a slow start to landscaping season this year.

"Actually yesterday, we were out doing some salting... Normally we're mowing by this time of year, so it'd be nice to do one or the other, not both," said Jim Capranos, owner of JC Landscape and Maintenance.

They were making the most of the slightly warmer weather today and were outside spreading mulching, but are also prepared for any possible snow.



AA21-01 Adjacent Owner Notice List

Parcel	Property Address	Owner Name	Owner Street	Owner CityStateZip
Petitioner:	245 S UTAH AVE S3117-03	JAMES R CAPRANOS	245 S UTAH AV PO BOX 1507	DAVENPORT IA 52809
Petitioner:	221 S UTAH AVE S3117-02	JAMES R CAPRANOS	245 S UTAH AV PO BOX 1507	DAVENPORT IA 52809
Neighborhood: None				All Alderman Notified
Ward/Ald:		1 Dunn		Notices Sent: 7
23133-01A	321 S UTAH AVE	ROBERT & CAROL BROWER TRUST	351 S UTAH AVE	DAVENPORT IA 52804
23133-02A	401 S UTAH AVE	DOUGLAS & LORI RUDEN TRUST	401 S UTAH AV	DAVENPORT IA 52804
23133-09A	6318 W RIVER DR	OETZEL ENTERPRISES LLC	6132 W RIVER DR	DAVENPORT IA 52802
23135-01		OETZEL ENTERPRISES LLC	6132 W RIVER DR	DAVENPORT IA 52802
S3117-01	307 S UTAH AVE	DOUGLAS & DENISE KROEGER	307 S UTAH AVE	DAVENPORT IA 52804
S3117-04		PATRICK FENNELLY	2313 W LOMBARD ST	DAVENPORT IA 52804
S3119-05		PATRICK FENNELLY	2313 W LOMBARD ST	DAVENPORT IA 52804
S3623-01		JOHN & REGINA GERDES JT TRUST	1468 NW 122ND ST	CLIVE IA 50325-8103
823639003	312 S Utah AVE	ERIC & MARY HAUT	646 S UTAH AV	DAVENPORT IA 52804



Public Hearing Notice | Zoning Board of Adjustment

Date: 11/18/2021 **Location:** Council Chambers | City Hall | 226 W. 4th ST.

Time: 4:00:00 PM **Subject:** Public Hearing for Administrative Appeal before Zoning Board of Adjustment

EXAMPLE NOTICE
7 NOTICES SENT

To: All property owners within 200' of the subject property **245 South Utah Avenue.**

What is this About?

This notice is being sent to inform you that a public hearing will be held for an Administrative Appeal. The purpose of the Administrative Appeal is to appeal the interpretation or application of the zoning ordinance.

Request/Case Description

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, regarding allowed uses for this site. Property is zoned S-AG Agricultural Zoning District (and previously zoned A-1 Agriculture prior to January 20, 2019; Ward 1)

What are the Next Steps after the Public Hearing?

For ZBA appeals, the ruling is effective immediately. Rulings of the Zoning Board of adjustment are final. The applicant may request reconsideration at the next public hearing, and aggrieved parties may file a writ of certiorari with the district court.

Would You Like to Submit an Official Comment?

As a property owner/occupant you may have an interest in commenting on the proposed request via email or in person at the public hearing. Official comments must have written signatures sent to planning@davenportiowa.com (no later than 12:00 PM *one day before* the public hearing) or to: Planning, 1200 E 46th St, Davenport IA 52807.

Do You Have Any Questions?

If you have any questions or if accommodations are needed for any reason, please contact the planner assigned to this project (Scott Koops, AICP) at scott.koops@davenportiowa.com or 563-328-6701. Interpretive services are available at no charge. Servicios interpretativos libres estan disponibles. TTY: (563) 326-6145

Please note items may be removed or tabled to a future hearing date at the request of the Applicant or Commission/Board. Those interested verifying case actions and/or tablings, please contact Planning at 563-326-6198 or planning@davenportiowa.com for updates.

Zoning Board of Adjustment Property Owner Notice Area Map

Subject property is outlined in red. The Adjacent property owner notice area is in green.





226 West 4th Street
Davenport, Iowa 52801
(563) 326-7765
Planning@ci.davenport.ia.us

Complete application can be emailed to planning@ci.davenport.ia.us

Property Address*

***If no property address, please submit a legal description of the property.**

Applicant (Primary Contact)**

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Application Form Type:

Plan and Zoning Commission

Zoning Map Amendment (Rezoning) ☐
Planned Unit Development ☐
Zoning Ordinance Text Amendment ☐
Right-of-way or Easement Vacation ☐
Voluntary Annexation ☐

Owner (if different from Applicant)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Zoning Board of Adjustment

Zoning Appeal ☒
Special Use ☐
Hardship Variance ☐

Design Review Board

Design Approval ☐
Demolition Request in the Downtown ☐
Demolition Request in the Village of
East Davenport ☐

Engineer (if applicable)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Historic Preservation Commission

Certificate of Appropriateness ☐
Landmark Nomination ☐
Demolition Request ☐

Architect (if applicable)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Administrative

Administrative Exception ☐
Health Services and Congregate
Living Permit ☐

Attorney (if applicable)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

****If the applicant is different from the property owner, please submit an authorization form or an accepted contract for purchase.**

Request:

Please describe the zoning appeal:

James Capranos appeals the decision of a zoning interpretation for 245 South Utah Avenue, Davenport, IA 52804. The September 24, 2021 letter from the City erroneously interpreted the Davenport zoning ordinance. Mr. Capranos has operated a landscape and snow removal business for the past 20 years. The property uses were reviewed and approved by Davenport City Administrator Kenneth D. Oestreich in 2012.

We request the Zoning Board overrule the September 24, 2021 zoning decision. See May 25, 2021 and October 19, 2021 letters to the City explaining our position in detail.

Existing Zoning:

Submittal Requirements:

- The completed application form.
- A PDF that shows the location and dimensions of existing and proposed improvements affected by the appeal. If a paper copy is provided, the maximum size is 11" x 17".
- Supporting documentation and evidence.
- Recorded warranty deed or accepted contract for purchase.
- Authorization form, if applicable. If the property is owned by a business entity, please provide Articles of Incorporation.
- Required fee - \$250.

The Applicant hereby acknowledges and agrees to the following procedure and requirements:

(1) Application:

- Prior to submission of the application for the zoning appeal, the applicant shall correspond with Planning staff to discuss the request, potential alternatives and the appeal process.
- The submission of the application does not constitute official acceptance by the City of Davenport. Planning staff will review the application for completeness and notify the applicant that the application has been accepted or additional information is required. Inaccurate or incomplete applications may result in delay of required public hearings.
- Pursuant to Section 17.14.130 of the Davenport City Code zoning appeals shall be filed in writing within 30 calendar days after the decision is rendered with the Zoning Administrator.

(2) Zoning Board of Adjustment's consideration of the zoning appeal:

- Planning staff will perform a technical review of the request and present its findings and recommendation to the Zoning Board of Adjustment.
- The Zoning Board of Adjustment will hold a public hearing and vote on the request.

Applicant:

Date:

By typing your name, you acknowledge and agree to the aforementioned submittal requirements and formal procedure and that you must be present at scheduled meetings.

Received by:

Date:

Planning staff

Date of the Public Hearing:

Meetings are held in City Hall Council Chambers located at 226 West 4th Street, Davenport, Iowa.

Authorization to Act as Applicant

I,
authorize
to act as applicant, representing me/us before the Zoning Board of Adjustment for the property located
at .

Signature(s)*

*Please note: original signature(s) required.

MELOY LAW OFFICE

Michael J. Meloy

Attorney at Law

2535 Tech Drive, Suite 206

Bettendorf, Iowa 52722

Telephone: 563-359-3959

Fax: 563-359-3953

Michael J. Meloy

mike@meloylaw.com

Attorney at Law

Molly Bonderer

molly@meloylaw.com

Paralegal

October 20, 2021

Laura Berkley

Development & Planning Administrator

City of Davenport

1200 East 46th Street

Davenport, Iowa

laura.berkley@davenportiowa.com

SENT BY E-MAIL

Re: Notice of Appeal - Zoning Interpretation for 245 S. Utah Avenue

Dear Ms. Berkley,

This is notice to you that we disagree with your zoning interpretation regarding the JC Landscaping Nursey located on 245 S. Utah Avenue, Davenport, Iowa. Previously the City of Davenport Zoning Department made a determination allowing for this landscaping business use on the subject property because the young trees being raised at the property site were deemed an incidental use. This was determined by former City Zoning Administrator Kenneth Oestreich.

We have submitted pictures of the site showing the trees grown. You have done a site inspection on June 9, 2021, and you viewed the rows of trees being grown on the North side of the property. *See attached photo's*. Jim stated to you that the newest rows of trees were recently planted and consisted of young trees two years old or less. While you are correct that Mr.

Capranos is not raising the trees from seedlings or saplings, the definition of a nursery does not require that.

The Davenport City Code definition for a nursery, § 17.04.010236 “Nursey” states that a nursery is any land used to raise trees, shrubs, flowers or other plants for sale or for transplanting. The definition does not state that the raising of trees has to be from a seedling. In short, a nursery does not have to grow a tree from a seed. It is common practice for a nursey to plant one or two-year-old trees for growth before they are actually sold to a third party at a later age.

Also, the common definition of nursery under the Merriam Webster Dictionary definition is also attached and does not indicate that any seedlings have to be cultivated on the property site initially to constitute a nursey. The use of the trees on the Capranos property does meet the definition of a nursey under the Davenport Zoning Ordinances as well as the common dictionary definition.

Jim has conducted his nursery and landscaping/snow removal operation from his property for the past twenty (20) years. Jim currently has five rows of young saplings on his real property. *See attached pictures of the nursery, Ex. B1 through 3.* These saplings will be sold to residential homeowners in the next year.

In 2015 the City put up traffic road signs on Utah Avenue in both directions with the words “Business Entrance”. This also indicates that the City knew Jim was operating his business for the past 20 years. *See attached photo’s of two City of Davenport traffic signs – “Business Entrance” to the May 25, 2021 letter to Laura Berkley.*

Your overly restrictive interpretation that the property is a contractors storage yard is incorrect and contradicted by the Davenport City Code definition of "Nursery" and common sense.

This is notice to you that we are appealing this matter to the Davenport Zoning Board of Adjustment.

Attached is a complete application for presentation to the Zoning Board. Please advise as to public hearing date this matter will come before the Zoning Board on.

Sincerely,


Michael J. Meloy
Attorney at Law

cc: James Capranos



EXHIBIT
B-1



EXHIBIT
B-2



EXHIBIT
B-3

MELOY LAW OFFICE

Michael J. Meloy
Attorney at Law
2535 Tech Drive, Suite 206
Bettendorf, Iowa 52722
Telephone: 563-359-3959
Fax: 563-359-3953

Michael J. Meloy
mike@meloylaw.com
Attorney at Law

Molly Bonderer
molly@meloylaw.com
Paralegal

May 25, 2021

Laura Berkley
Zoning Administrator
City of Davenport
Davenport, Iowa

SENT BY E-MAIL & U.S. MAIL

Re: *James Capranos – April 26, 2021 land use letter from City of Davenport.*

Dear Ms. Berkley,

On Friday April 30, 2021 James Capranos went to the Davenport Public Works Building at 1200 East 46th Street, Davenport, IA, to receive a renewal of a fill dirt permit previously issued by the City. The City Public Works Department refused to renew the fill permit and handed James the attached letter dated April 26, 2021 from a Mr. Brian Heyer. The Heyer letter was not received in the mail by James Capranos from Mr. Heyer's office. If you have any proof that this letter was mailed to James Capranos please provide it to my office.

I wish to point out to you that this April 26, 2021 letter is poorly written. It contains only one reference to a Davenport zoning code section and that section is misapplied by Heyer in the letter. It does not contain any statements concerning the history of the property or any other applicable code sections to support Heyer's discontinuance of the business on the Capranos property. It does not contain copies of any previous letters from the City of Davenport on the

property. Finally, the letter has a blank line where an alleged compliance date should appear. *See p. 2 of the April 26, 2021 Letter.*

On May 4, 2021 James Capranos spoke to Mr. Heyer by telephone regarding the letter from Heyer, James Capranos received at the Public Works Building on April 30, 2021. James advised Mr. Heyer that he had only received the letter after he went to the Public Works building on April 30, 2021. James requested the name of the Complainant in this matter and Mr. Heyer refused to provide the name of the complainant, stating to James, "That's neither here nor there."

Heyer's letter dated April 26, 2021 states that "More than a decade ago a city staff person made the determination that your landscaping business was similar enough to a nursery operation that it would be allowed, but he noted that if the landscaping operation was not raising trees and other landscaping plants on the property his determination would be different" (underlining added). We hereby request a copy of this letter written more than 10 years ago that ratified James Capranos landscaping business.

We hereby request all records, reports, letters or memo's regarding the Davenport city staff person's determination made more than a decade ago regarding the Capranos' 245 South Utah Avenue real property, as stated in the Heyer April 26, 2021 letter. We believe that the city staff person referred to in the Heyer letter was City Zoning Administrator Kenneth D. Oestreich.

James Capranos next spoke with you, Laura, by telephone on Wednesday, April 12, 2021 regarding the Heyer letter. James was completely surprised by the receipt of this letter on April 30, 2021 at the Public Works Building and advised you of that. We believe that there was no legal basis to issue this letter and request that you, as the zoning administrator, review and reverse the April 26, 2021 letter. James Capranos' landscaping business was ratified by the City of Davenport as a legal use more than 10 years ago. Further, the City of Davenport installed two

prominent yellow traffic signs on both of the motorist lanes of Utah Avenue to designate and alert all motorists of the Utah entranceway to the Capranos real property is a business entranceway. *See pictures of the traffic signs installed by the City of Davenport years ago.*

This is our request to you, pursuant to the Davenport Zoning Code, to review and reverse the April 26, 2021 letter. I realize that you may feel compelled to uphold the assistant city attorney's letter, but believe that a fair and impartial review by you will lead to its reversal.

We request a hearing before you on this important land use matter before any decision is made.

We also request copies of any and all code sections that you will utilize to make your decision. Thank you.

Sincerely,


Michael J. Meloy
Attorney at Law

Cc: James Capranos



Business
Entrance





Business
Entrance



No. 58

ALCOA EMPLOYEES &	)	<u>RELEASE & SATISFACTION</u>
COMMUNITY CREDIT UNION	)	Dated: Nov. 23, 2004
	)	Ack'd: Nov. 23, 2004
To	)	Filed: Nov. 30, 2004
	)	Rec'd: Doc. #2004-41778
FRANK D. HARRINGTON and	)	Cons.: Payment
WINEVA W. HARRINGTON	)	

Acknowledged as fully paid and satisfies of
record the Mortgage dated October 28, 1999 executed by
releasee, and filed of record as Document #39254-99,
records of the Recorder's Office of Scott County, Iowa.

Executed for releasor corporation by Jennifer
Quandt, Credit Department Representative and Melissa K.
Andrews, Credit Department Representative.

Statutory corporate acknowledgment affixed.

-----///-----

No. 59

WINEVA W. HARRINGTON, a	)	<u>WARRANTY DEED</u>
widow and not since	)	Dated: Nov. 10, 2004
remarried	)	Ack'd: Nov. 10, 2004
	)	Filed: Nov. 15, 2004
To	)	Rec'd: Doc. #2004-39994
	)	Cons.: \$1.00 & OVC
JAMES R. CAPRANOS	)	

Conveys real estate situated in Scott County,
Iowa, and described as follows, to-wit:

Part of the South Half (S 1/2) of the Southwest Quarter
(SW 1/4) of the Northwest Quarter (NW 1/4) and part of
the Northwest Quarter (NW 1/4) of the Southwest Quarter
(SW 1/4), all in Section 31, Township 78 North, Range 3
East of the 5th P.M., situated in the City of Davenport,
Scott County, Iowa, and being more particularly
described as follows, to-wit: Commencing at the
Southwest corner of the Northwest Quarter (NW 1/4) of
said Section 31, which point is in the center line of
Utah Avenue in said City of Davenport; thence North 01
degrees 05' East along the West line of said Northwest
Quarter (NW 1/4) of said Section 31, 108.54 feet to the
place of beginning of land herein conveyed; thence
continuing North 01 degrees 05' East along the West line
of said Northwest Quarter, 199.16 feet; thence South 89
degrees 39' 25" East, 222 feet; thence North 01 degrees
05' East, 356.20 feet to a point in the North line of
the South Half of the Southwest Quarter of the Northwest
Quarter of said Section 31; thence South 89 degrees 36'

23" East along the North line of the South Half of said Southwest Quarter of said Northwest Quarter of said Section 31, 1101.30 feet to a point in the East line of said South Half of said Southwest Quarter of said Northwest Quarter of said Section 31; thence South 01 degrees 04' 23" West along the East line of said South Half of said Southwest Quarter of said Northwest Quarter of said Section 31, 662.50 feet to the South line of said Northwest Quarter of said Section 31; thence North 89 degrees 40' 31" West along the South line of said Northwest Quarter of said Section 31, 399.30 feet; thence South 00 degrees 59' West 25 feet; thence North 89 degrees 40' 31" West 267.24 feet; thence North 145.81 feet; thence South 89 degrees 15' West 654.33 feet to the place of beginning, containing 16.76 acres including that portion thereof designated as Utah Avenue. Subject to an easement for right of way purposes over and across the West 25 feet of the real estate herein described for the use of the owners of the North Half of the Southwest Quarter of said Northwest Quarter of Section 31.

Together with an easement for right of way purposes over and across the West 25 feet of the South 108.54 feet of said South Half of said Northwest Quarter of said Section 31.

Together with a fifteen (15) foot easement for right of way purposes over and across the following described tract of real estate, to-wit: Commencing at the West line of the Northwest Quarter of said Section 31, Township 78 North, Range 3 East of the 5th P.M., 108.54 feet Northerly of the Southwest corner of said Northwest Quarter, being the Southwesterly corner of the tract hereinabove conveyed; thence South 01 degrees 05' West, fifteen (15) feet; thence North 89 degrees 15' East, 125 feet; thence Northerly parallel with the West line of said Section 31, fifteen (15) feet; thence South 89 degrees 15' West 125 feet on the place of beginning.

Excepting that tract conveyed to the State of Iowa by Warranty Deed dated August 31, 1957, recorded September 6, 1967, in Book 309 Deeds page 487, records of the Recorder's office of Scott County, Iowa.

AND

Part of the South Half (S 1/2) of the Southwest Quarter (SW 1/4) of the Northwest Quarter (NW 1/4) of Section Thirty-one (31), Township Seventy-Eight (78) North, Range Three (3) East of the Fifth (5th) P.M., particularly described as follows: Commencing at the Southwest corner of the Northwest Quarter of said Section 31; thence North on Section line 307.7 feet to the point of beginning of the tract herein conveyed; thence continuing North on Section line 356.4 feet to the Northwest corner of the South Half of the Southwest Quarter of said Northwest Quarter of said Section 31; thence East 222 feet; thence South parallel with the West line of said Section 31, 356.2 feet; thence West 222 feet to the point of beginning, subject to an easement for right of way purposes over and across the West 25 feet of the real estate herein described for use of the owners of the North Half of the Southwest Quarter of said Northwest Quarter of said Section 31.

Together with a right of way over and across the West 25 feet of the South 307.7 feet of the South Half of the Southwest Quarter and of the Northwest Quarter of said Section 31 aforesaid.

\$427.20 State Transfer Tax Stamp affixed.

-----///-----

No. 60

JAMES R. CAPRANOS, a Single)	MORTGAGE
Person)	Dated: Nov. 10, 2004
To)	Ack'd: Nov. 10, 2004
)	Filed: Nov. 15, 2004
)	Rec'd: Doc. #2004-39995
WALCOTT TRUST AND SAVINGS)	Cons.: \$275,000.00
BANK)	

Mortgages real estate situated in Scott County,
Iowa and described as follows to-wit:

Part of the South Half (S 1/2) of the Southwest Quarter (SW 1/4) of the Northwest Quarter (NW 1/4) and part of the Northwest Quarter (NW 1/4) of the Southwest Quarter (SW 1/4), all in Section 31, Township 78 North, Range 3 East of the 5th P.M., situated in the City of Davenport, Scott County, Iowa, and being more particularly described as follows, to-wit: Commencing at the Southwest corner of the Northwest Quarter (NW 1/4) of said Section 31, which point is in the center line of Utah Avenue in said City of Davenport; thence North 01 degrees 05' East along the West line of said Northwest Quarter (NW 1/4) of said Section 31, 108.54 feet to the place of beginning of land herein conveyed; thence continuing North 01 degrees 05' East along the West line of said Northwest Quarter, 199.16 feet; thence South 89 degrees 39' 25" East, 222 feet; thence North 01 degrees 05' East, 356.20 feet to a point in the North line of the South Half of the Southwest Quarter of the Northwest Quarter of said Section 31; thence South 89 degrees 36' 23" East along the North line of the South Half of said Southwest Quarter of said Northwest Quarter of said Section 31, 1101.30 feet to a point in the East line of said South Half of said Southwest Quarter of said Northwest Quarter of said Section 31; thence South 01 degrees 04' 23" West along the East line of said South Half of said Southwest Quarter of said Northwest Quarter of said Section 31, 662.50 feet to the South line of said Northwest Quarter of said Section 31; thence North 89 degrees 40' 31" West along the South line of said Northwest Quarter of said Section 31, 399.30 feet; thence South 00 degrees 59' West 25 feet; thence North 89 degrees 40' 31" West 267.24 feet; thence North 145.81 feet; thence South 89 degrees 15' West 654.33 feet to the place of beginning, containing 16.76 acres including that portion thereof designated as Utah Avenue. Subject to an easement for right of way purposes over and across the West 25 feet of the real estate herein described for the use of the owners of the North Half of the Southwest Quarter of said Northwest Quarter of Section 31.



John Richard Gerdes, Jr.

Cell:

1468 NW 122nd Street
Clive, Iowa 50325-8103

E-Mail: john.gerdes@hotmail.com

Date: Thursday 11 November 2021

To: Development and Neighborhood Services
Laura Berkley
Development & Planning Administrator
1200 East 46th Street
Davenport, Iowa 52807

Reference: Zoning Interpretation for 245 S. Utah Avenue / James R. Capranos / DBA JC Landscaping

Attention: Zoning Board of Adjustment Meeting 18 November 2021

Dear Ms Berkley,

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.

Sincerely,

John Gerdes

11/16/2021

Reference: Zoning Interpretation for 245 S. Utah Avenue / James R. Capranos / DBA JC /
Landscaping

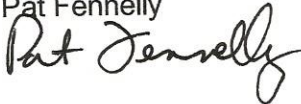
Attention: Zoning Board of Adjustment Meeting 18 November 2021

I purchased 59.1 acres on Utah Avenue 09/29/2017. My property borders both the North and East boundaries of the Capranos property. Over the last four years I have observed the JC Landscaping operation. Equipment and materials including pick-up trucks, plow trucks, dump trucks, salt spreaders, large tree trimming trucks, wood chippers, skid loaders, tractors, mowers, enclosed trailers, open trailers, dump trailers, have all been observed on the property. There is also an area constructed to hold bulk salt.

In conclusion, I agree 100% with the city of Davenport zoning interpretation of this property.

Thank You for your time in this matter,

Pat Fennelly

A handwritten signature in black ink that reads "Pat Fennelly". The signature is written in a cursive, flowing style.

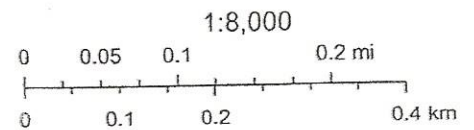
Please see attached pictures

ArcGIS Web Map



2/4/2019 11:14:48 PM

- Parks
- City Limit
- Street Centerline (Labels only)
- Zoning Districts
 - R-1 Single-Family Residential District
 - R-2 Single-Family Residential District
- Creeks
 - Named Creeks
 - Unnamed Tributaries
 - Piped Creeks



Scott County Iowa, Bi-State Regional Commission



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About Us

JC Landscape & Maintenance serves the Quad City area with unsurpassed landscape design solutions. We have the training, knowledge and experience to create and maintain an amazing, harmonious outdoor living area for you, your family and friends.

Locally owned and operated by James Capranos, JC Landscape & Maintenance has been offering professional services to residential, commercial and industrial customers in the Quad City area for almost three decades.

At JC Landscape & Maintenance, we are licensed, insured and bonded for all your landscaping needs, including new construction, installation, repair, remodeling and maintenance services.

We also speak English and Spanish and offer senior and volume discounts; call for details.

References are available upon request and Emergency service is also available!

Call your professional landscape designers at JC Landscape & Maintenance now!

JC Landscape & Maintenance
Davenport, Iowa
Phone: 563-387-9104

Commercial • Industrial • Residential

Professional Landscape Design & Installation

Snow Removal • Plowing • Ice Control

A-1 Zowing

If You Would Like A Free Estimate or Have A Question About Our Service.....

Contact our professional landscaping company in Davenport, Iowa for landscape maintenance and lawn care services. "Pick Up the Phone Because You Deserve Us!"

49

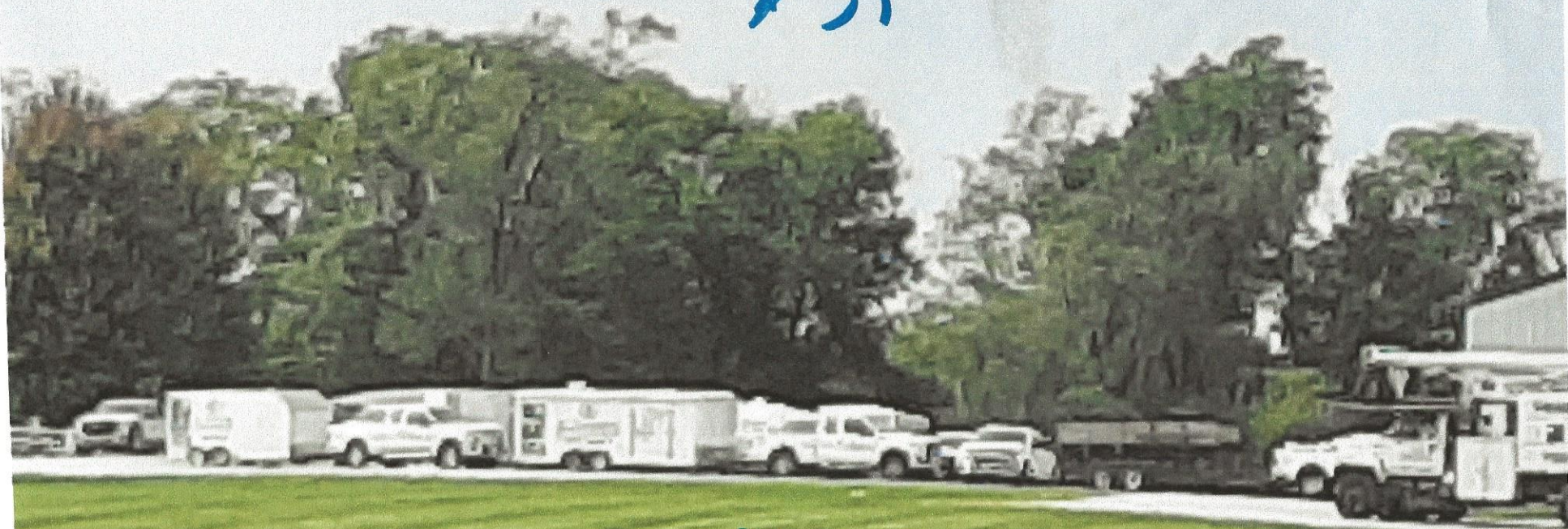


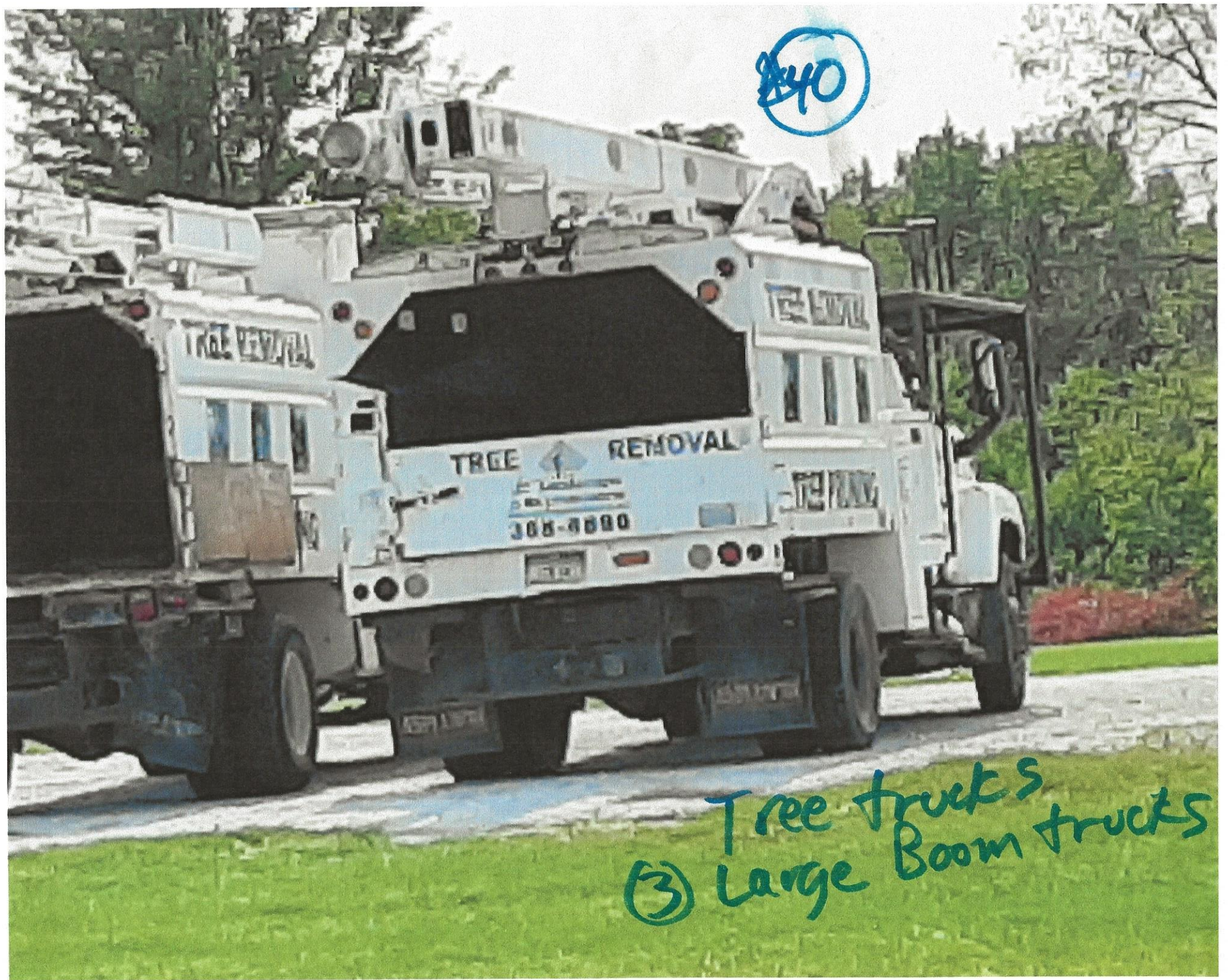
~~48~~



39

Summer trucks & trailers
Tree trucks







#43

Sold
Trucks



City of Davenport
Zoning Board of Adjustment

Department: DNS
Contact Info: Scott Koops, Planner II, AICP
Scott.Koops@davenportiowa.com

Date
11/18/2021

Subject:

Request HV21-06 of Dan Lange on behalf of Rhythm City Casino at 7077 Elmore Avenue for a hardship variance for a 167 square-foot freestanding sign which will exceed the 100 sq. ft. allowed by right. Additionally the sign will have a second electronic message component whereas the code only allows one per lot, as required by Section 17.12.060 of the municipal code. (Ward 6)

ATTACHMENTS:

Type	Description
▣ Exhibit	Staff Report
▣ Exhibit	Application
▣ Exhibit	Application Plans
▣ Exhibit	Notice List
▣ Exhibit	Owners Notice & Map
▣ Exhibit	Comment 1
▣ Exhibit	Comment 2

REVIEWERS:

Department	Reviewer	Action	Date
Community Planning & Economic Development	Koops, Scott	Approved	11/15/2021 - 10:28 AM



**Zoning Board of Adjustment
Planning Staff Report – 2nd Freestanding Sign
October 22, 2020**

Description

Request HV21-06 of Dan Lange on behalf of Rhythm City Casino at 7077 Elmore Avenue for a hardship variance for a 167 square-foot freestanding sign which will exceed the 100 sq. ft. allowed by right. Additionally the sign will have a second electronic message component whereas the code only allows one per lot, as required by Section 17.12.060 of the municipal code. (Ward 6)

Background & Discussion

Rhythm City Casino was approved and built under the pre-2019 Zoning Code. At the time the building was constructed, only one electronic message sign (EMS) was allowed, just as is the case under the present 2019 Zoning Code. Presently freestanding signs are allowed to be no more than 100 square feet in sign face area (only counted on one side of a double faced sign).

The petitioner already has two (2) building mounted electronic signs on the rear elevation of the building which is visible from Interstate 80.

Proposed Freestanding Sign:



Proposed Sign Location:



Rear Elevation:



Rear Signs on the west and north facades
(Photo is taken from I-80 facing south/southeast)

Public Input

Notices were sent to adjacent property owners within 200 feet of the request. Two comments was received from outside the 200 foot notice area. They attached to this report.

Protest Locations: 2930 E 65th St, 6449 Fairhaven Rd.

Purpose of a Hardship Variance

Davenport Municipal Code Section 17.14.060 states: *The purpose of the hardship variance process is to provide a narrowly circumscribed means by which relief may be granted from unforeseen applications of this Ordinance that create practical difficulties or particular hardships.*

Approval Standards

The Zoning Board of Adjustment decision must make findings to support each of the following: (code requirement/ applicants response/staff comments)

1. Strict application of this Ordinance will result in hardship unless the specific relief requested is granted.

Applicant Response:

The current location of the property abuts both Interstate 80 north and Elmore Avenue to the south. The existing message center [sign] on the north side of the building is not visible from Elmore Avenue, in turn creating a hardship to effectively advertise our business to the transient customer.

The size of the sign was determined by placing targets at the preferred location. We selected the site that was proportionate to the overall height of our structure; while providing maximum advertising opportunities to those potential customers driving by on Elmore Avenue.

Staff Comments:

Petitioner states preference on siting and sizing were the rational for having a EMS at the proposed location.

A third electronic message sign (EMS) is a convenience to the petitioner. The property already has a very large EMS two sign display at the rear of the building which directly faces and is readily visible from the Interstate. The petitioner had the opportunity to choose location of the EMS. The additional EMS is a convenience to the petitioner as the business is readily identified with the rear EMS and with an allowed freestanding sign which could be constructed along Elmore Avenue. The property is allowed by right a 25-foot tall freestanding sign no larger in area than 100 square feet, without the need for a hardship variance.

Historically there has not been any link (in this City or many other near-by cities, to an increased sign size (height/areas) with the number of stories or largesse of building.

2. The particular physical surroundings, shape, or topographical conditions of the specific property impose a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

Applicant Response:

Refer to the site plan attached.

Staff comments:

No evidence has been submitted that support a hardship due to "particular physical surroundings, shape, or topographical conditions which impose a particular hardship upon the owner". The only matter is the issue of convenience; the petitioner would find it convenient to have an additional electronic message sign; there is and would not be, any hardship if the request were to be denied.

3. The plight of the owner is due to unique circumstances that do not apply to a majority of adjoining or nearby property, and is not a self-created hardship.

Applicant Response:

There is no other site that is as large as this property and face both Interstate 80 and Elmore.

Staff Comments:

The size of the site does not change the situation at hand. The petitioner has a simple choice, choose which roadway the EMS will be visible from. The plight of the owner is due solely to personal convenience.

4. The hardship variance, if granted, will not alter the essential character of the locality.

Applicant Response:

The property is a casino and we believe that this additional sign will enhance the essential character of the location and its business. The additional electronic message center on Elmore will allow us to effectively market our business.

Staff Comments:

The property does already have two (2) EMS, allowing the business to market the property. No evidence has been supplied to justify a third EMS for this property as compared to any other property in the City.

Findings & Staff Recommendation:

Findings: (Per the analysis above)

- Item #1 application of the ordinance creating hardship has not been established;
- Item #2 physical surroundings imposing hardship has not been established;
- Item #3 unique circumstance has not been established;
- Item #4 protection of essential character has not been established;
- The submitted application does not provide the necessary evidence required to prove that any of the zoning code's approval standards have been met.

Recommendation:

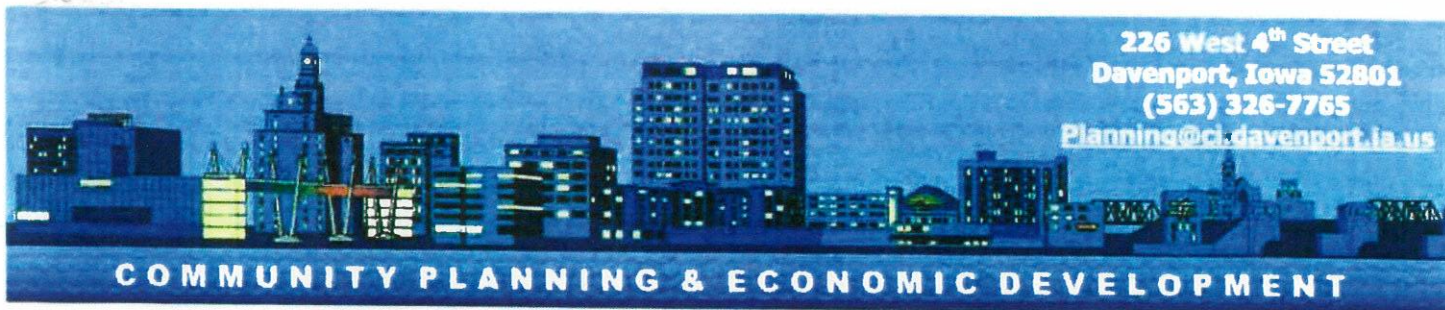
Staff recommends denial of the requested hardship variance based on the findings of the staff report.

Prepared by:



Scott Koops, AICP, Planner II

Attachments: ZBA Application/plans, Notice Documents



226 West 4th Street
Davenport, Iowa 52801
(563) 326-7765
Planning@ci.davenport.ia.us

Complete application can be emailed to planning@ci.davenport.ia.us

Property Address*

*If no property address, please submit a legal description of the property.

Applicant (Primary Contact)**

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Application Form Type:

Plan and Zoning Commission

- Zoning Map Amendment (Rezoning) ☐
Planned Unit Development ☐
Zoning Ordinance Text Amendment ☐
Right-of-way or Easement Vacation ☐
Voluntary Annexation ☐

Owner (if different from Applicant)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Zoning Board of Adjustment

- Zoning Appeal ☐
Special Use ☐
Hardship Variance ☒

Design Review Board

- Design Approval ☐
Demolition Request in the Downtown ☐
Demolition Request in the Village of East Davenport ☐

Engineer (if applicable)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Historic Preservation Commission

- Certificate of Appropriateness ☐
Landmark Nomination ☐
Demolition Request ☐

Architect (if applicable)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Administrative

- Administrative Exception ☐
Health Services and Congregate ☐
Living Permit ☐

Attorney (if applicable)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

****If the applicant is different from the property owner, please submit an authorization form or an accepted contract for purchase.**

Request:

Please describe the variance(s) requested:

- 1) Exceed the maximum allowed area of 100 square feet for the freestanding sign.
- 2) Permission to have a third message center on the property where one is allowed

*
IN OUR OPINION THIS NEW REQUEST SHOULD BE CONSIDERED
2ND MESSAGE SIGN. SINCE THE 2 - WALL MOUNTED SIGNS
ARE WITHIN 7-10 FEET OF THE CORNER, THEY ARE CONSIDERED
AS ONE. LANDLORD WOULD HAVE SUBMITTED IT AS ONE SIGN AS PART
OF THE ORIGINAL APPLICATION

Existing Zoning:

Submittal Requirements:

- The completed application form.
- A PDF that shows the location and dimensions of existing and proposed structures affected by the hardship variance. If a paper copy is provided, the maximum size is 11" x 17".
- Description and evidence that demonstrates consistency with the criteria listed in Section 17.14.060 of the Davenport Municipal Code.
- Recorded warranty deed or accepted contract for purchase.
- Authorization form, if applicable. If the property is owned by a business entity, please provide Articles of Incorporation.
- Required fee - \$200.

The Applicant hereby acknowledges and agrees to the following procedure and requirements:**(1) Application:**

- Prior to submission of the application for the hardship variance, the applicant shall correspond with Planning staff to discuss the request, potential alternatives and the hardship variance process.
- The submission of the application does not constitute official acceptance by the City of Davenport. Planning staff will review the application for completeness and notify the applicant that the application has been accepted or additional information is required. Inaccurate or incomplete applications may result in delay of required public hearings.

(2) Public Notice for the Zoning Board of Adjustment public hearing:

- Planning staff will send a public hearing notice to surrounding property owners.

(3) Zoning Board of Adjustment's consideration of the hardship variance:

- Planning staff will perform a technical review of the request and present its findings and recommendation to the Zoning Board of Adjustment.
- The Zoning Board of Adjustment will hold a public hearing and vote on the request.

Provide description and evidence that demonstrates consistency with the following criteria listed in Section 17.14.060 of the Davenport Municipal Code:

The strict application of the terms of this Ordinance will result in hardship unless the specific relief requested is granted.

The location of the property with fronts on Interstate 80 and Elmore Avenue and the overall size of the property create a hardship to effectively advertise our business to the mobile consumers.

The message centers already present on the walls facing Interstate 80 are not visible on the Elmore side of the property.

The ~~appropriate~~ ^{PLACING} size of the sign was determined by ~~lifting~~ ^{placing} a target at the location of the sign and determining ~~what was~~ the appropriate size based on the size of the property and the effectiveness to potential customer's passing by.

THE CURRENT LOCATION OF THE PROPERTY ABUTS BOTH I-80 TO THE NORTH AND ELMORE AVENUE TO THE SOUTH. THE EXISTING MESSAGE CENTER ON THE NORTH SIDE OF THE BUILDING ~~ARE~~ IS NOT VISIBLE FROM ELMORE AVENUE, IN TURN, CREATING A HARDSHIP TO EFFECTIVELY ADVERTISE OUR BUSINESS TO THE TRANSIENT CUSTOMER.

THE SIZE OF THE SIGN WAS DETERMINED BY PLACING ^{VARIOUS SIZES} TARGETS AT THE PROPOSED LOCATION. WE SELECTED THE SIZE THAT WAS PROPORTIONATE TO THE OVERALL HEIGHT OF OUR STRUCTURES; WHILE PROVIDING MAXIMUM ADVERTISING OPPORTUNITIES TO THOSE POTENTIAL CUSTOMERS' DRIVING BY ON ELMORE AVENUE.

Provide description and evidence that demonstrates consistency with the following criteria listed in Section 17.14.060 of the Davenport Municipal Code:

The particular physical surroundings, shape, or topographical conditions of the specific property impose a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

refer to site plan attached.

Provide description and evidence that demonstrates consistency with the following criteria listed in Section 17.14.060 of the Davenport Municipal Code:

The plight of the owner is due to unique circumstances that do not apply to a majority of adjoining or nearby property, and is not a self-created hardship.

There is no other site that is as large as this property and face both interstate 80 and Elmore.

Provide description and evidence that demonstrates consistency with the following criteria listed in Section 17.14.060 of the Davenport Municipal Code:

The hardship variance, if granted, will not alter the essential character of the locality.

The Property is a casino and we believe that this additional sign will enhance the essential character of the location and its business.

THE ADDITIONAL MESSAGE CENTER ON E/MORE
GIVE OUR FACILITY INCREASED VISIBILITY AND
WILL ALLOW US TO EFFECTIVELY MARKET OUR
BUSINESS.

Applicant: Dan Lange

Date: 10/25/2021

By typing your name, you acknowledge and agree to the aforementioned submittal requirements and formal procedure and that you must be present at scheduled meetings.

Received by: _____

Planning staff

Date: _____

Date of the Public Hearing: _____

Meetings are held in City Hall Council Chambers located at 226 West 4th Street, Davenport, Iowa.

Authorization to Act as Applicant

I, Mo Hyder

authorize Dan Lange

to act as applicant, representing me/us before the Zoning Board of Adjustment for the property located at _____

Mo Hyder

Regional Vice President & General Manager

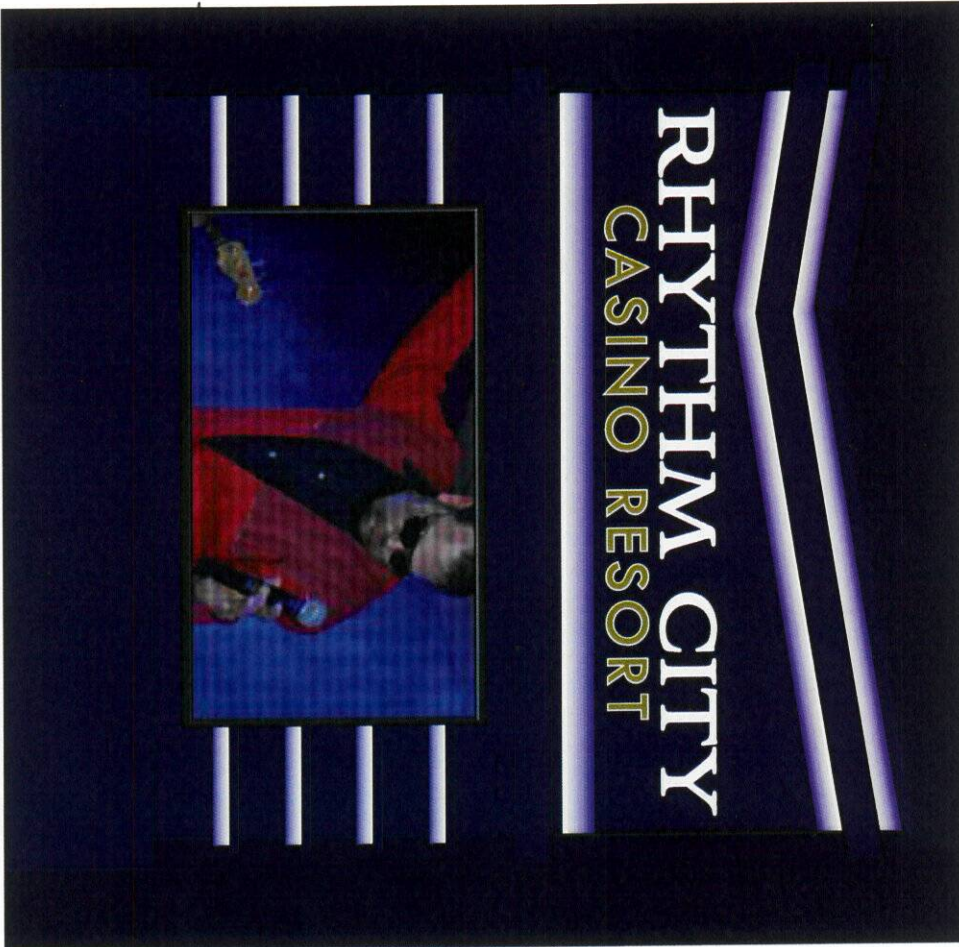
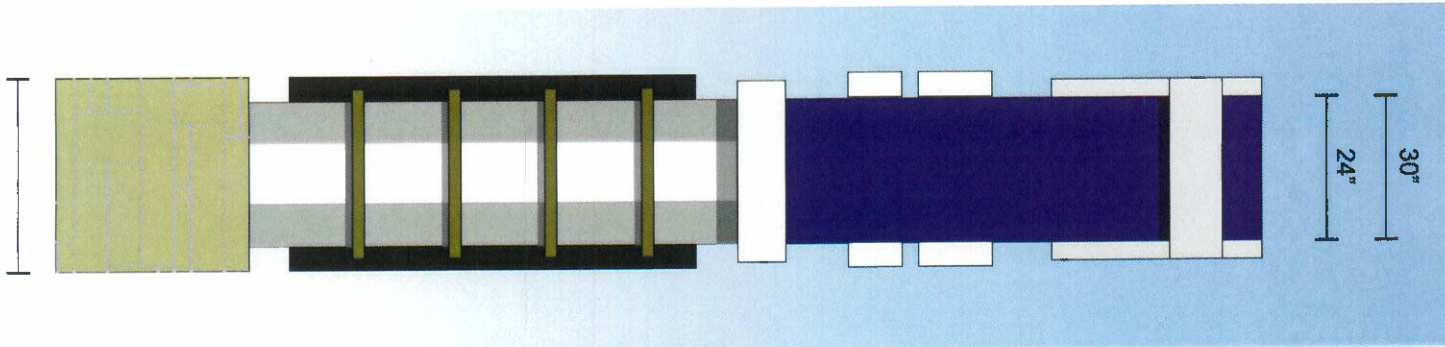
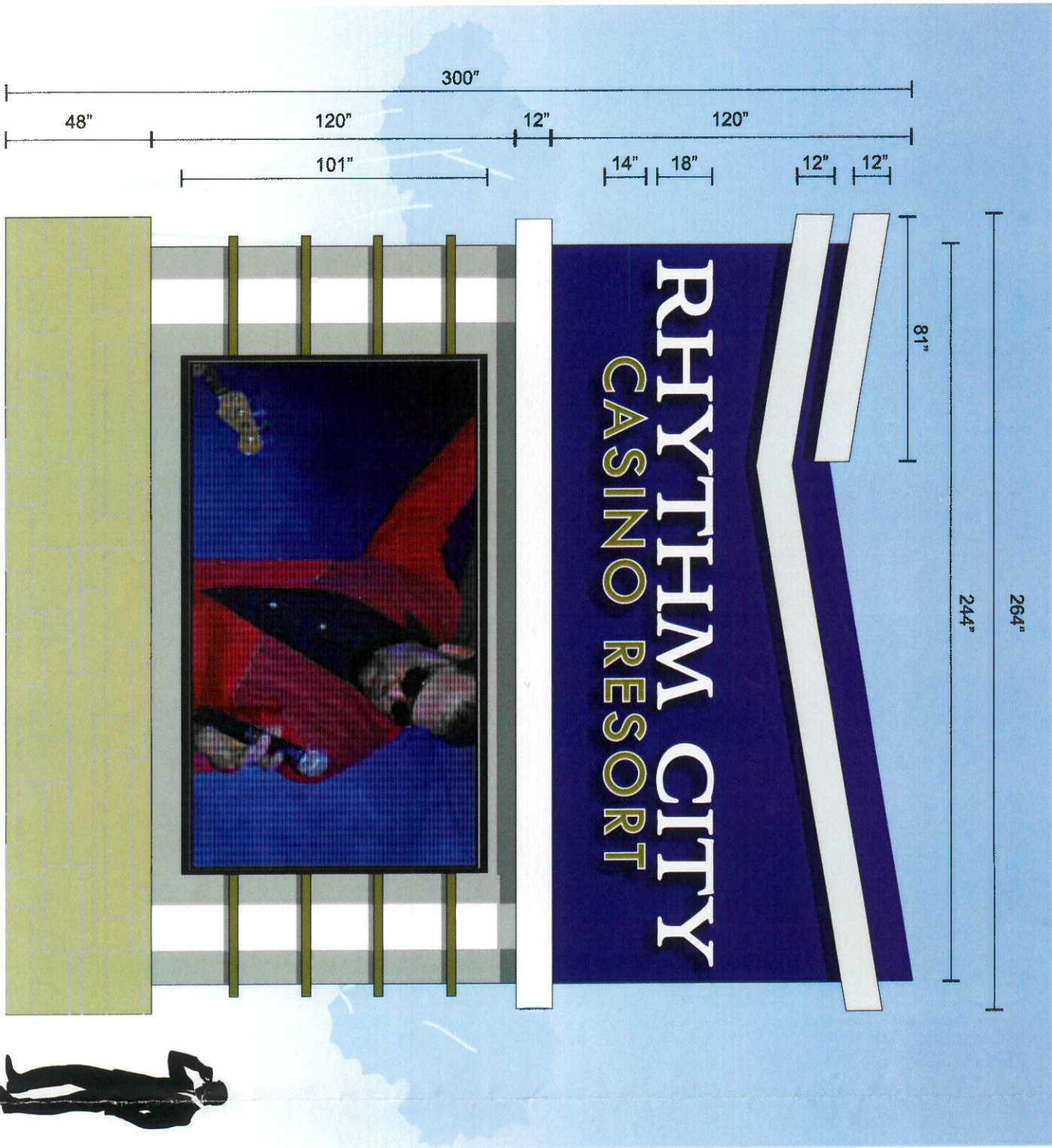
Signature(s)*

*Please note: original signature(s) required.

OCTOBER 25, 2021

These plans are the exclusive property of the Lange Sign Group and are the result of the original work of it's employees, they are submitted to your company for the sole purpose of your consideration of whether to purchase from Lange Sign Group. A sign manufactured according to these plans, distribution, or exhibition of these plans to anyone other than the employees of your company or use of these plans to construct a sign similar to the one embodied herein is expressly forbidden.

© COPYRIGHT 2016 LSG



Night View

Furnish and install D/F Fabricated aluminum sign. Fabricated from square aluminum tubing with flat aluminum panels attached.

Main Cabinet sprayed blue to match logo. Decorative roof bars sprayed gray to match building, with white LED illumination Series 240 illuminated (face-it) channel letters with white acrylic faces over laid with translucent gold vinyl. Illuminated with white LED's, cans sprayed white. Color LED message center

Fabricated aluminum pipe covers sprayed gray and white to match building with 3" square aluminum gold tubing decorative bars sprayed gold, with white LED lighting. Limestone base to match building

PMS 2736C	PMS 4505C	To match building	White

Callaghan Group
Sedro Blaine, WA
360-855-1400
www.callaghan.com

McClure

2001 Broadway, 4th Fl.
New York, NY 10018
Tel: 212/693-6200
Fax: 212/693-6201
E-mail: info@mcclure.com
Web: www.mcclure.com

BAXTER
CONS. RUCTION CO

Receivables	
No.	Description
8 2412215	Autosaurus 666

Contractor Name	250000
State	00000000
Proj. Acct.	00
Contract Desc	NOVA FUND
Contracting	NO
Comp. Acct.	00 12 0000
Project Title	
Rhythm City Casino and Hotel	

Sheet Title
PROPOSED JOINT PLAN

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HV21-06 Adjacent Owner Notice List

Parcel	Property Address	Owner Name	Owner Street	Owner CityStateZip
Petitioner:	7077 ELMORE AV	RHYTHM CITY CASINO LLC	7077 ELMORE AVE	DAVENPORT IA 52807
Neighborhood:	None			All Alderman Notified
Ward/Ald:		6 Jobgen		Notices Sent: 5
Y0605A01		QC EQUITY INVESTMENTS LLC	201 HARRISON ST STE 402	DAVENPORT IA 52801
Y0501A04		QC EQUITY INVESTMENTS LLC	201 HARRISON ST STE 402	DAVENPORT IA 52801
Y0517A05		QC EQUITY INVESTMENTS LLC	201 HARRISON ST STE 402	DAVENPORT IA 52801
Y0623A06		KAHL HOME FOR AGED AND INFIRM	6701 JERSEY RIDGE RD	DAVENPORT IA 52807
Y0501A03A	3130 VETERANS MEMORIAL PKWY	MMK INC (Deed)	3225 AVE N	FORT MADISON IA 52627



Public Hearing Notice | Zoning Board of Adjustment

Date: 11/18/2021 **Location:** Council Chambers | City Hall | 226 W. 4th ST.
Time: 4:00:00 PM **Subject:** Public Hearing for Hardship Variance before Zoning Board of Adjustment

QC EQUITY INVESTMENTS LLC
201 HARRISON ST STE 402
DAVENPORT IA 52801

To: All property owners within 200' of the subject property **7077 Elmore Avenue.**

What is this About?

This notice is being sent to inform you that a public hearing will be held for a Hardship Variance. The purpose of the Hardship Variance is to grant permission to waive or alter a size or dimensional code requirement.

Request/Case Description

Request HV21-06 of Dan Lange on behalf of Rhythm City Casino at 7077 Elmore Avenue for a hardship variance for a 167 square-foot freestanding sign which will exceed the 100 sq. ft. allowed by right. Additionally the sign will have a second electronic message component whereas the code only allows one per lot, as required by Section 17.12.060 of the municipal code. (Ward 6)

What are the Next Steps after the Public Hearing?

For approved ZBA requests, the ruling is effective immediately. Rulings of the Zoning Board of adjustment are final. The applicant may request reconsideration at the next public hearing, and aggrieved parties may file a writ of certiorari with the district court.

Would You Like to Submit an Official Comment?

As a property owner/occupant you may have an interest in commenting on the proposed request via email or in person at the public hearing. Official comments must have written signatures sent to planning@davenportiowa.com (no later than 12:00 PM *one day before* the public hearing) or to: Planning, 1200 E 46th St, Davenport IA 52807.

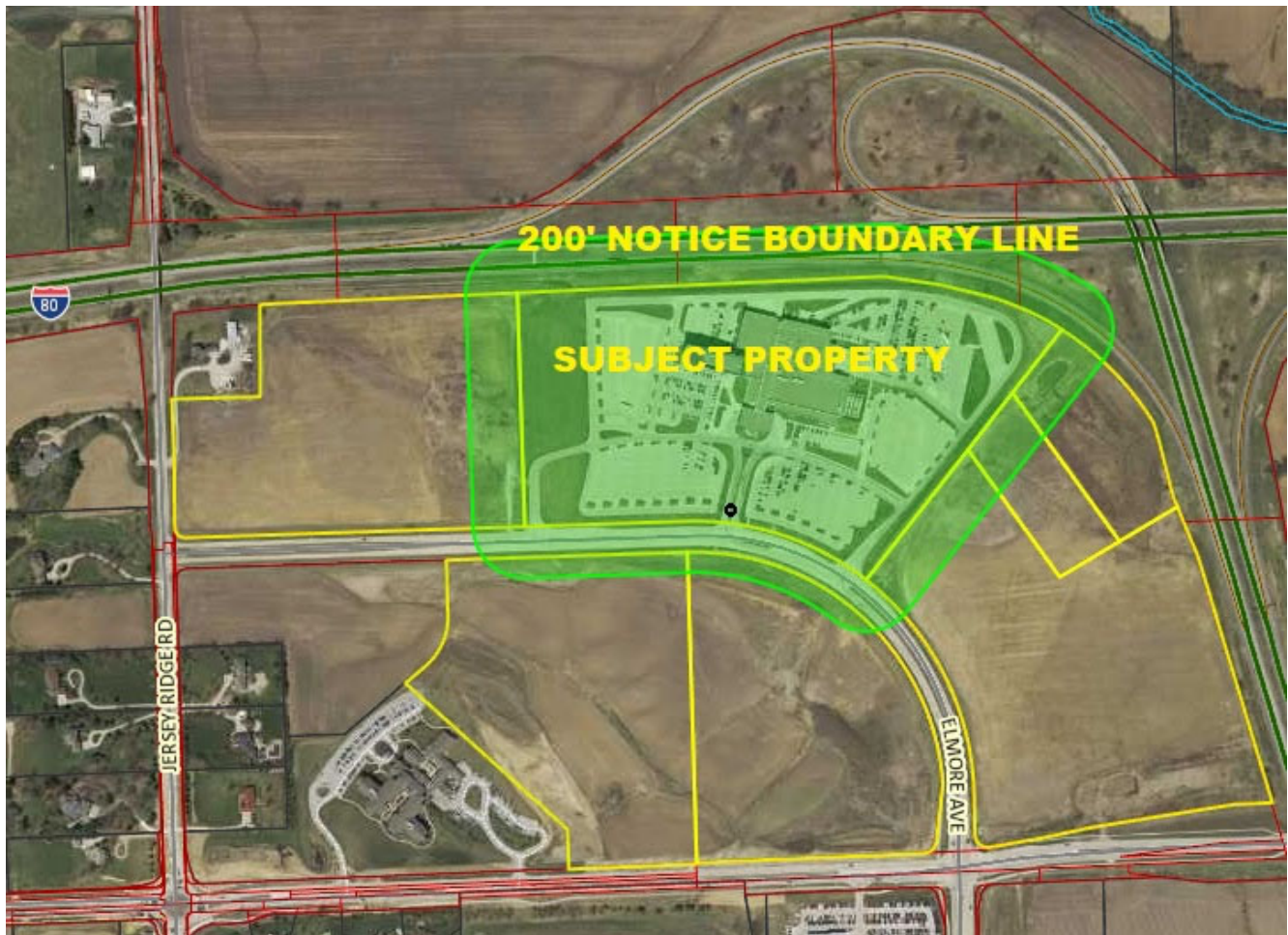
Do You Have Any Questions?

If you have any questions or if accommodations are needed for any reason, please contact the planner assigned to this project (Scott Koops, AICP) at scott.koops@davenportiowa.com or 563-328-6701. Interpretive services are available at no charge. Servicios interpretativos libres estan disponibles. TTY: (563) 326-6145

Please note items may be removed or tabled to a future hearing date at the request of the Applicant or Commission/Board. Those interested verifying case actions and/or tablings, please contact Planning at 563-326-6198 or planning@davenportiowa.com for updates.

Zoning Board of Adjustment Property Owner Notice Area Map

Subject property is outlined in red. The Adjacent property owner notice are in green.



To: Davenport Zoning Board of Adjustment
Date: 11/10/2021

Subject: Rhythm City Requested Hardship Variance for a 167 Sq Ft sign

Our names are Mark & Becky Hausmann, we live at 2930 E. 65th St, Davenport. We are contacting you today in regards to the hardship variance request submitted by Rhythm City to install a 167 Sq Ft sign and message board in front of their facility on Elmore Avenue. Unfortunately we will be out of town when you are having your public mtg on this topic, so we are submitting our objection to the variance in writing.

Our home is situated on the North side of Jersey Farms Subdivision and right in line with the Casino front (South Side). Back when the casino was built there was never any mention of a wall of strobe-like lights that can now be seen directly from the North side of our house. Lights, that is our understanding, are at or above allowable intensity levels and the strobe feature is also not allowed. Furthermore it is also our understanding that you all tested and were made aware that this was in violation and choose not to address the violation.

We realize that situation is in the past, but now you have a new variance request. However it is important that you understand our current overall prospective. We already avoid sitting out in our 3-season porch at night due to the current lights and now for some reason the Casino feels they need to add an additional huge electric light and message board to the illegal lighting situation already there. A sign, that will be 167 Sq Ft, which is well beyond the 100 Sq Ft limit. This additional sign will take a bad situation that we've had to resolve ourselves to live with and make it way worse.

I suspect there will be a significant portion of the sign that will be laminated in very bright lights or colors. Let's be honest, anyone driving down that portion of Elmore Ave is most likely already heading to the Casino. A large, brightly lit sign planted out front of the Casino is not going to draw more people to the casino. They already have such a sign facing out onto I-80, where there is the possibility of drawing people in. This one will, in our mind, do virtually nothing.

If the Casino is not drawing enough visitation such that they feel they have to file a "Hardship" variance for a sign, there is something else wrong in their business model. A sign is not going to do anything but upset the area homeowners, who were here long before they were.

Please deny this Hardship variance and side with the folks that live here.

cc: Alderman Ben Jobgen, Tom Jacobson

Thank you

Mark Hausmann



Becky Hausmann



Protest - Mikki Cook at 6449 Fairhaven Rd

From: Mikki Cook <mikki62cook@gmail.com>
Sent: Saturday, November 13, 2021 8:33 AM
To: Planning
Subject: [EXT] Proposed signage for The Casino at Elmore & Veterans Memorial Pkwy.

Hello,

My husband & I just moved to Jersey Farms from out of State. We love our quiet neighborhood! We do have a problem with the 24/7 BRIGHT lights of the car dealership literally in our backyard, now you want to allow 24/7 BRIGHT LIGHTS to advertise a casino we see from our backyard too! Not to mention it is designed to exceed all allowed measurements for signage. The Casino building itself is illuminated in rainbow color at night!! This sign will also be a distraction for drivers & blur the traffic lights, making this intersection unsafe for all. Everyone can see that huge casino property from the proposed signage sight! PLEASE don't allow yet another BRIGHT sign in this area. It is unnecessary & will be intrusive for our dwindling peaceful area.

Respectfully Opposed,

Mikki Cook Morrissey
John Morrissey
6449 Fairhaven Rd
Davenport IA 52807
309-798-9242

City of Davenport
Zoning Board of Adjustment

Department: DNS
Contact Info: Scott Koops, Planner II, AICP
Scott.Koops@davenportiowa.com

Date
11/18/2021

Subject:

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)

ATTACHMENTS:

Type	Description
▣ Exhibit	Staff Report
▣ Exhibit	Notice List
▣ Exhibit	Owners Notice & Map
▣ Exhibit	Application

REVIEWERS:

Department	Reviewer	Action	Date
Community Planning & Economic Development	Koops, Scott	Approved	11/15/2021 - 2:22 PM



**Zoning Board of Adjustment
Planning Staff Report
Reduction of Design Standards | 4114 Brady St
November 18, 2021**

Description

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]

Background & Discussion

The petitioner is proposing to construct 60' x 120' building which will be used to store items for the retail building located to the northeast. The building is not open to the public and is behind an existing building. The building sits atop a tall (more than one story) retaining wall along side of Welcome Way, which technically is adjacent right-of-way, even though the building will not be visible to traffic on the street.

Site: (Existing site with outdoor storage)



Site: (Existing site on left with outdoor storage)



(Proposed site on right with enclosed storage)



Site: (Existing)



Site: (Building Mockup)



Purpose of a Hardship Variance

In the Davenport Municipal Code, Section 17.14.060 states: *The purpose of the hardship variance process is to provide a narrowly circumscribed means by which relief may be granted from unforeseen applications of this Ordinance that create practical difficulties or particular hardships.*

Approval Standards

The Zoning Board of Adjustment decision must make findings to support each of the following: (code requirement/ *applicant's response*/staff comments)

1. Strict application of this Ordinance will result in hardship without the specific relief requested.

Applicant Response:

The design standard is requesting that we make the side facing Welcome Way appear to be a retail store, where in essence it is a non-public storage building for our existing retail store. There is no entrance or possible entrance from Welcome Way. Customers will not have access to this building. This portion of the property is currently being used for outside storage and the area looks messy. By doing this storage building we will not only be cleaning this area up, we will also be deterring theft that has been consistently increasing in this area. If we were to add 35% of windows to the side, it will encourage even more theft, as well as more cost due to security and added materials.

Staff Comments:

Staff concurs with the applicant response. As the building is not open to the public, there is not a need to have access to the site via a sidewalk and as the building is not visible to pedestrians or vehicles on Welcome Way, increased design standards lose their merit.

2. The particular physical surroundings, shape, or topographical conditions of the specific property impose a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

Applicant Response:

The only access to this building would be through our property and a 25' easement. Making this appear as a Retail building would only confuse customers, as there would be no access for the general public.

Staff:

Access to the site from Welcome Way is not possible due to the large retaining wall which is over one story in height. There is no means by which a sidewalk would be able to access Welcome Way and provide access to this non-public building. The intent of the ordinance is to provide walkable neighborhoods with buildings accessible to pedestrians. As the site does not have any sidewalks along Welcome Way, it does not make sense to require the additional design standards for this building. The physical surroundings and topography of this lot do impact the development and do provide grounds for a hardship variance determination.

3. The plight of the owner is due to unique circumstances that do not apply to a majority of adjoining or nearby property, and is not a self-created hardship.

Applicant Response:

Completing this storage building as intended would still improve and clean up the appearance of our area. The buildings to the left and to the right are vacant and does not give a good impression of Brady Street. I feel any other business would agree that this is a major improvement.

Staff:

Given the location of the proposed building on a double frontage lot with the building to be built above the street grade and set back from the property line, a case can be made for unique circumstances supporting a hardship determination.

4. The hardship variance, if granted, will not alter the essential character of the locality.

Applicant Response:

The storage building would not alter the characteristics of our area, as it will match the other existing buildings on site.

Staff:

The character of the area will not be impacted by the by the proposed use as the building will be at the rear of a deep lot that is accessed from Brady St, and which is not readily visible from or near Welcome Way. Protection of essential character has been established.

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.

Prepared by:



Scott Koops, AICP, Planner II

Attachments: ZBA application/plans, notice documents

ParcelId	OwnerName	OwnerAddress1
P1301-15B	PWS HOLDINGS 19 IA LLC (Deed)	4609 33RD AVE STE 400
P1308-03	SONSY LLC (Deed)	1115 N ELM ST
P1308-04	NORTHTOWN PLAZA PARTNERS LLC (Deed)	2401 CORAL CT - STE 1
P1307-01A	SALVATION ARMY (Deed)	PO BOX 1656
P1307-02B	MANDELA PROPERTIES LLC (Deed)	904 MIDDLE RD
P1307-13A	HANDICAPPED DEVELOPMENT CENTER (Deed)	3402 HICKORY GROVE RD
P1308-10	BENITTA BERKE TRUSTEE (Deed)	125 N HALSTED ST #203
P1307-01B	MANDELA PROPERTIES LLC (Deed)	904 MIDDLE RD
P1307-03B	MANDELA PROPERTIES LLC (Deed)	904 MIDDLE RD
P1308-09A	MTJB LLC (Deed)	4114 N BRADY ST
P1405-07J	MACERICH NORTH PARK MALL LLC (Deed)	PO BOX 4085
P1308-09C	4020 BRADY PF LLC (Deed)	345 3RD ST
P1308-09D	PLEASURE POOL CO OF IOWA (Deed)	4114 N BRADY ST
P1308A02	GREENSTATE CREDIT UNION (Deed)	2355 LONDON RD
P1405-02C	CITIZENS FEDERAL SAVINGS & LOA (Deed)	PO BOX 4085
P1405-02C	MACERICH NORTH PARK MALL LLC (Mail To)	PO BOX 4085

OwnerCityStZip

FARGO ND 58104

WEST LIBERTY IA 52776

CORALVILLE IA 52241

DAVENPORT IA 52809

BETTENDORF IA 52722

DAVENPORT IA 52806

CHICAGO IL 60661

BETTENDORF IA 52722

BETTENDORF IA 52722

DAVENPORT IA 52806

SANTA MONICA CA 90411-4085

LAGUNA BEACH CA 92651

DAVENPORT IA 52806

NORTH LIBERTY IA 52317

SANTA MONICA CA 90411-4085

SANTA MONICA CA 90411-4085



Public Hearing Notice | Zoning Board of Adjustment

Date: 11/18/2021 **Location:** City Hall | 226 W 4th ST | Council Chambers
Time: 4:00:00 PM **Subject:** Public Hearing for Hardship Variance before Zoning Board of Adjustment

Example Notice
Ward 7

To: All property owners within 200' of the subject property **4114 Brady Street.**

What is this About?

This notice is being sent to inform you that a public hearing will be held for a Hardship Variance. The purpose of the Hardship Variance is to grant permission to waive or alter a size or dimensional code requirement.

Request/Case Description

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)

What are the Next Steps after the Public Hearing?

For approved ZBA requests, the ruling is effective immediately. Rulings of the Zoning Board of adjustment are final. The applicant may request reconsideration at the next public hearing, and aggrieved parties may file a writ of certiorari with the district court.

Would You Like to Submit an Official Comment?

As a property owner/occupant you may have an interest in commenting on the proposed request via email or in person at the public hearing. Official comments must have written signatures sent to planning@davenportiowa.com (no later than 12:00 PM *one day before* the public hearing) or to: Planning, 1200 E 46th St, Davenport IA 52807.

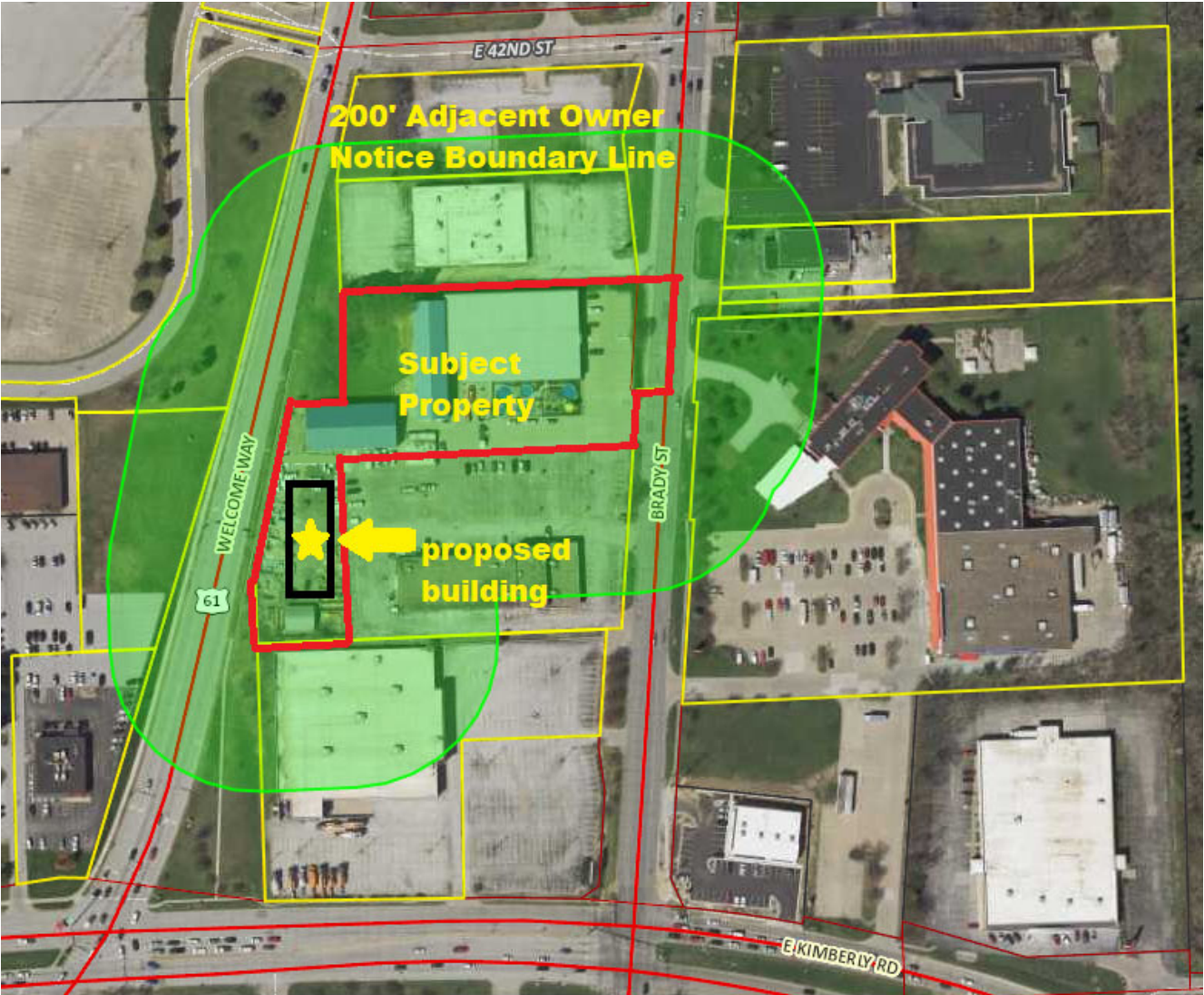
Do You Have Any Questions?

If you have any questions or if accommodations are needed for any reason, please contact the planner assigned to this project (Scott Koops, AICP) at scott.koops@davenportiowa.com or 563-328-6701. Interpretive services are available at no charge. Servicios interpretativos libres estan disponibles. TTY: (563) 326-6145

Please note items may be removed or tabled to a future hearing date at the request of the Applicant or Commission/Board. Those interested verifying case actions and/or tablings, please contact Planning at 563-326-6198 or planning@davenportiowa.com for updates.

Zoning Board of Adjustment Property Owner Notice Area Map

Subject property is outlined in red. The Adjacent property owner notice are in green.





1200 E 46th Street Davenport,
Iowa 52807
(563) 326-6198
Planning@davenportiowa.com

Complete application can be emailed to planning@davenportiowa.com

Property Address*

*If no property address, please submit a legal description of the property.

Applicant (Primary Contact)**

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Application Form Type:

Plan and Zoning Commission

Zoning Map Amendment (Rezoning)
Planned Unit Development
Zoning Ordinance Text Amendment
Right-of-way or Easement Vacation
Voluntary Annexation

Owner (if different from Applicant)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Zoning Board of Adjustment

Zoning Appeal
Special Use
Hardship Variance

Engineer (if applicable)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Design Review Board

Design Approval
Demolition Request in the Downtown
Demolition Request in the Village of
East Davenport

Architect (if applicable)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

Historic Preservation Commission

Certificate of Appropriateness
Landmark Nomination
Demolition Request

Administrative

Administrative Exception
Health Services and Congregate
Living Permit

Attorney (if applicable)

Name:
Company:
Address:
City/State/Zip:
Phone:
Email:

****If the applicant is different from the property owner, please submit an authorization form or an accepted contract for purchase.**

17.14.060 Hardship Variance

A. Purpose

The purpose of the hardship variance process is to provide a narrowly circumscribed means by which relief may be granted from unforeseen applications of this Ordinance that create practical difficulties or particular hardships.

B. Initiation

A property owner in the City, or person expressly authorized in writing by the property owner, may file an application for a hardship variance. A property owner, or his/her designee, may only propose a hardship variance for property under his/her control.

C. Authority

1. The Zoning Board of Adjustment will take formal action on hardship variance applications. However, the Zoning Administrator is authorized to grant certain administrative exceptions, as described in Section 17.14.070.
2. Hardship variances to allow uses that are not allowed within a zoning district are prohibited.

D. Procedure

All applications must be filed with the Zoning Administrator. Once it is determined that the application is complete, the Zoning Administrator will schedule the application for consideration by the Zoning Board of Adjustment.

1. After receipt of a complete application, the Zoning Board of Adjustment will consider the proposed hardship variance at a public hearing. If, in the Zoning Board of Adjustment's judgment, the application does not contain sufficient information to enable proper review and consideration, the Zoning Board of Adjustment may request additional information from the applicant and the public hearing may be continued.
2. The Zoning Board of Adjustment must evaluate the application based upon the evidence presented at the public hearing, pursuant to the approval standards of this section.
3. The Zoning Board of Adjustment must approve, approve with conditions, or deny the hardship variance within 30 days of the close of the public hearing, unless an extension is agreed to by the applicant.
4. The Zoning Board of Adjustment may impose conditions and restrictions upon the hardship variance as deemed necessary for the protection of the public health, safety, and welfare. The Zoning Board of Adjustment may grant a hardship variance that is less than that requested when it has been decided that the applicant is entitled to some relief of the hardship, but not to the entire relief requested in the hardship variance application.

E. Approval Standards

The Zoning Board of Adjustment decision must make findings to support each of the following:

1. The strict application of the terms of this Ordinance will result in hardship unless the specific relief requested is granted.
2. The particular physical surroundings, shape, or topographical conditions of the specific property impose a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.
3. The plight of the owner is due to unique circumstances that do not apply to a majority of adjoining or nearby property, and is not a self-created hardship.
4. The hardship variance, if granted, will not alter the essential character of the locality.

F. Expiration

An approved hardship variance will expire one year from the date of approval unless a building permit is obtained or construction has begun prior to the end of the one year period. The Zoning Board of Adjustment may grant an extension for a period of validity longer than one year as part of the original approval. An applicant may apply in writing for an extension of time at any time prior to the date of expiration.

Request:

Please describe the variance(s) requested:

Existing Zoning:

Submittal Requirements:

- The completed application form.
- A PDF that shows the location and dimensions of existing and proposed structures affected by the hardship variance. If a paper copy is provided, the maximum size is 11" x 17".
- Description and evidence that demonstrates consistency with the criteria listed in Section 17.14.060 of the Davenport Municipal Code.
- Recorded warranty deed or accepted contract for purchase.
- Authorization form, if applicable. If the property is owned by a business entity, please provide Articles of Incorporation.
- Required fee - \$200.

The Applicant hereby acknowledges and agrees to the following procedure and requirements:

(1) Application:

- Prior to submission of the application for the hardship variance, the applicant shall correspond with Planning staff to discuss the request, potential alternatives and the hardship variance process.
- The submission of the application does not constitute official acceptance by the City of Davenport. Planning staff will review the application for completeness and notify the applicant that the application has been accepted or additional information is required. Inaccurate or incomplete applications may result in delay of required public hearings.

(2) Public Notice for the Zoning Board of Adjustment public hearing:

- Planning staff will send a public hearing notice to surrounding property owners.

(3) Zoning Board of Adjustment's consideration of the hardship variance:

- Planning staff will perform a technical review of the request and present its findings and recommendation to the Zoning Board of Adjustment.
- The Zoning Board of Adjustment will hold a public hearing and vote on the request.

(4) The staff report will be available on the City website approximately 4 days before the ZBA meeting at this location: https://www.cityofdavenportiowa.com/government/boards_commissions under Zoning Board of Adjustment > Search Minutes & Agendas.

It is the applicant's responsibility to access the website to see the staff report. Planning staff will not mail/email the report.

Provide description and evidence that demonstrates consistency with the following criteria listed in Section 17.14.060 of the Davenport Municipal Code:

The strict application of the terms of this Ordinance will result in hardship unless the specific relief requested is granted.

Provide description and evidence that demonstrates consistency with the following criteria listed in Section 17.14.060 of the Davenport Municipal Code:

The particular physical surroundings, shape, or topographical conditions of the specific property impose a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

Provide description and evidence that demonstrates consistency with the following criteria listed in Section 17.14.060 of the Davenport Municipal Code:

The plight of the owner is due to unique circumstances that do not apply to a majority of adjoining or nearby property, and is not a self-created hardship.

Provide description and evidence that demonstrates consistency with the following criteria listed in Section 17.14.060 of the Davenport Municipal Code:

The hardship variance, if granted, will not alter the essential character of the locality.

Applicant:

Date:

By typing your name, you acknowledge and agree to the aforementioned submittal requirements and formal procedure and that you must be present at scheduled meetings.

Received by:

Planning staff

Date:

Date of the Public Hearing:

Meetings are held in City Hall Council Chambers located at 226 West 4th Street, Davenport, Iowa.

Authorization to Act as Applicant

I,
authorize
to act as applicant, representing me/us before the Zoning Board of Adjustment for the property located
at .

Signature(s)*

*Please note: original signature(s) required.

ZBA Calendar 2021

ZONING BOARD OF ADJUSTMENT

*** The Applicant or their representative **MUST** be at the Meeting/Public Hearing ***

NOTE: Special Use Site Plans **MUST** be review prior to placement on the ZBA schedule.

Day:	Monday (4pm)	Thursday (4pm)
Activity:	Submittal	Meeting
Date:	12/21/20	01/14/21
	01/04/21	01/28/21
	01/19/21*	02/11/21
	02/01/21	02/25/21
	02/16/21*	03/11/21
	03/01/21	03/25/21
	03/15/21	04/08/21
	03/29/21	04/22/21
	04/19/21	05/13/21
	05/03/21	05/27/21
	05/17/21	06/10/21
	06/01/21*	06/24/21
	06/14/21	07/08/21
	06/28/21	07/22/21
	07/19/21	08/12/21
	08/02/21	08/26/21
	08/16/21	09/09/21
	08/30/21	09/23/21
	09/20/21	10/14/21
	10/04/21	10/28/21
	10/25/21	11/18/21*
	No Meeting	No Meeting (Thanksgiving)
	11/15/21	12/09/21
	No Meeting	No Meeting (Christmas)
	12/20/21	01/13/22
	01/03/22	01/27/22

	<u>Application Due:</u>	<u>Meeting Appearance (REQUIRED):</u>
Time:	4:00 PM	4:00 PM
Location:	Public Works Facility 1200 E 46th St Davenport IA, 52807	Council Chambers City Hall 226 W 4th St Davenport IA, 52801

*Date changed due to Holiday | Location/Time are subject to change
Contact planning@davenportiowa.com to confirm meeting date/time/location