

This item was reviewed at the public hearing at the September 14, 2009 Board of Adjustment meeting and was tabled until a letter outlining the City Attorney's opinion on the Code was received and a special meeting would be convened. The letter from the City Attorney, dated September 21, 2009, indicates the need for the requested variance is based upon how language in the Code is interpreted and shall be determined by the Board of Adjustment. The City Attorney recommendation is for the City to seek a variance for the proposed building.

Motion By: Charlson

Seconded By: Brown

Move that the tabled item from the September 14, 2009 Board of Adjustment regularly scheduled meeting be brought back for discussion.

Yes: 4

No: 0

Absent: 1

Chairperson Lampe inquired if the Commission had comments upon review of the letter. Members Brown and Gidley indicated the letter was inconclusive and put the decision to the Board of Adjustment. Leisure Services Director Tab Ray confirmed with Mr. Lampe he interpreted the letter the same way as Brown and Gidley.

Mr. Lampe confirmed with Secretary Kohout the language in the letter is defining the need for the Board of Adjustment to consider the zoning official's interpretation of the Code that the 50 foot setback is the more restrictive and applicable standard in light of the "Yards and Streets" language in the A-1 Section 100.5.03.3 of the City Code. Relief in the form of a decision on the zoning official's determination is being sought by the applicants. Mr. Lampe further confirmed with Secretary Kohout 8th Ave. is a collector street to 1st St. SW and changes designation to a local street after 1st St. SW and mirrors the "Yards and Streets" 25 foot setback requirement for collector or local street designations.

Member Charlson confirmed for Mr. Lampe his interpretation of the letter indicates the minimum and more restrictive 50 foot setback standard applies and there is no hardship defined per City Code. Mr. Charlson confirmed with Mr. Lampe the Code correction can be accomplished after review and approval by the City and further stated he would recommend this section of the Code be removed to prevent confusion in the future. He indicated the matter could be resolved after a code amendment is proposed and reviewed and ultimately approved by the City and therefore may not need a variance. Mr. Kohout confirmed for Mr. Charlson there is a public need section of the Code that a public building may be granted a variance on that grounds per review of the Code but Mr. Charlson does not see the use of the building being brought into question, but rather the setback issue.

Member Brown confirmed for the Commission that with the existence of the existing buildings not currently meeting the 50 foot setback requirements, no neighbors have objected and the hardship is a public need for the erection of a building such as the one proposed at this location due to the location and responsibilities of the Cemetery maintenance office. She continued the public need is different criteria than for a residential application.

Craig Mehmen outlined the proposal for clarification which included choosing colors and architecture that would allow the building to fit in with the existing buildings on the property. He further confirmed for the Board the proposed location would be more efficient operations for the cemetery use such as storage for black dirt.

**Board of Adjustment Minutes
September 25, 2009**

Mr. Lampe outlined the section of the letter from Mr. Carney which outlines the Code in the "Yards and Streets" section when comparing it to the other residential areas; this section may allude to how to determine setbacks for undeveloped lots. Mr. Lampe recommends the Code be interpreted as establishing the front yard setback in this case as if it were an undeveloped lot due to the proximity of the residential areas to the subject site and due to the A-1 zoning designation being present in order to contain the specified use of cemetery.

Motion By: Lampe

Seconded By: Brown

Move the building official's interpretation of City Code Section 100.5.03.2.b. for a 50 foot setback is too restrictive and section 100.5.03.3, "Yards and Streets" should be applied to this case for a 25 foot setback, therefore no variance is needed.

Yes: 3

No: 1

Absent: 1

Member Charlson cast the "no" vote.

E. Old Business:

F. New Business:

G. Adjournment:

Motion By: Brown

Seconded By: Gidley

That the Board of Adjustment meeting be adjourned.

Yes: 4

No: 0

Absent: 1