

BOARD OF ADJUSTMENTS

May 1, 2019
6:00 P.M.
City Council Chambers

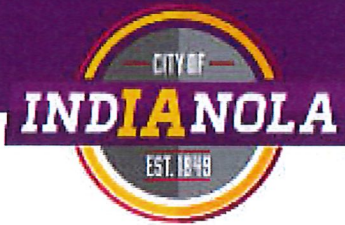
AGENDA

1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Approval of Minutes
 - A. December 5, 2018
5. New Business
 - A. Consider request from Allen and Monica Goode for a variance under the terms of Section 165.35 (3) of the Code of Ordinances of Indianola, Iowa, to permit the construction of an accessory structure at 201 W 7th Avenue, to which if constructed as requested, would not be in conformity with the requirements of Section 165.10 (2) of the Code of Ordinances of Indianola, Iowa. A variance is requested to allow the proposed detached accessory structure to be constructed in the side yard.
 - B. Consider request from Lucas Riedmann for a variance under the terms of Section 165.35 (3) of the Code of Ordinances of Indianola, Iowa, to permit the construction of an accessory structure at 1024 Scott Felton Rd, to which if constructed as requested, would not be in conformity with the requirements of Section 165.10 (2) of the Code of Ordinances of Indianola, Iowa. A variance is requested to allow the proposed detached accessory structure to be constructed at a height of 15 feet.
6. Approval of 2018 Annual Report
7. 2019 Election of Officers
8. Comments
 - A. Board Members
 - B. Staff
9. Adjournment

Distribution:

Board of Adjustment
Mayor/ City Council
City Manager
City Clerk
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Bulletin Board
KNIA/KRLS
Record Herald
Business Leader
City Attorney



BOARD OF ADJUSTMENTS

December 5, 2018
6:00 P.M.
City Council Chambers

Minutes

The meeting was called to order by Vice Chairperson Sullivan and on roll call the following members were present:

Marty Miller
Rene Soldwisch
Jim Sullivan

Members not present: Wes Sharp and Aaron Rasko

Also present: Allen Goode, Monica Goode, Scott Johnson, Kristin Brekelmans, Charlie Dissell

The minutes of the June 27, 2018, meeting were approved on a motion by Jim Sullivan seconded by Marty Miller. On voice vote: All ayes.

Consider request from Allen and Monica Goode at 201 W 7th Avenue for variances under the terms of zoning ordinance (R-3), to permit the construction of an accessory structure to which if constructed as requested, would not be in conformity with the requirements of the zoning ordinance setbacks that exist within R-3 (Mixed Residential).

Charlie Dissell presented the facts of this request for variance to the Board.

Monica Goode stood to speak regarding her request for variances, stating that putting this garage on the opposite side of the home due to slope and the need for stairs which would be deemed a hardship for her and her husband at their age. She also mentioned that there is water build up on the side of the yard, which could cause issues with the foundation of a structure on that side of the home and cause financial burdens in regards to the yard needing to be excavated.

Board members conversated on their concerns for community landscape and purpose of setbacks on this street, stating each structure is no closer than 30 feet to the road, and having a garage on this side could impede vision for drivers on the corner of S Buxton Ave and W 7th Ave.

Motion was made by Marty Miller to deny these requests for variance at 201 W 7th Ave. This motion was seconded by Rene Soldwisch. Jim Sullivan moved to vote on denial of variance as requested. On voice vote: All ayes. Motion to deny the variance request was carried unanimously.

Consider request from Scott Edward Johnston at 410 W Ashland Avenue for variances under the terms of zoning ordinance R-3, to permit the construction of an accessory structure (detached garage) to which if constructed as requested, would not be in conformity with the requirements of the zoning ordinance setbacks that exist within R-3 (Mixed Residential).

Charlie Dissell presented the facts of this request for variance to the Board.

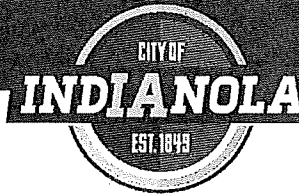
Scott Johnston stood to speak restating his reasoning behind requesting this variance.

Motion was made by Marty Miller to approve this requests for variance at 410 W Ashland. This motion was seconded by Rene Soldwisch. Jim Sullivan moved to vote on approval of variance as requested. On voice vote: All ayes. Motion to approve the variance request was carried unanimously.

Marty Miller motioned to adjourn meeting, Rene Soldwisch seconded the motion. Meeting adjourned.

James Sullivan, Vice Chairperson

Charles Dissell



COMMUNITY DEVELOPMENT
TO THE BOARD OF ADJUSTMENT OF INDIANOLA, IOWA

The undersigned does hereby request a variance under the terms of the Zoning Ordinances of the

City of Indianola, Iowa to permit the construction of a Detached accessory structure (garage)
on the west side of house; 22 ft X 36 ft.

which, if constructed as requested, would not be in conformity with the requirements of the said
Zoning Ordinance in the following particulars: we are requesting a variance to build
the garage on the west side of the house
rather than behind the house (south side). There is not sufficient
space between the house and south property line to build behind
the house, (per Zoning Ordinance requirement to build @ rear of house.)

The following special conditions and circumstances exist which are peculiar to the land, structure, or
building involved and which are not applicable to other lands, structures or buildings in the same
district. A garage was not planned at this property at the time of construction
in 1976, and the house and driveway (east side of house) were placed
on the lot without consideration of zoning requirements should a garage
be desired at a future date. 12-5-18 the BOA denied our variance
requests to build a garage on East side at location of existing driveway.
However, they recommended we consider building on west side of house.
The literal interpretation of the provisions of the Zoning Ordinance of the City of Indianola would

deprive the applicant of rights commonly enjoyed by other properties in the same district under the
terms of the said ordinance because of the following conditions: Our property does not
have a garage (either
attached or detached), as does 99% of the other properties in the
same district. We would like to build a garage to enjoy the benefits
of vehicle protection and storage space. We are requesting a variance
to build on the side of the house (west side) rather than behind
the house, as there is not sufficient space due to the placement of the house
The undersigned affirmatively states that the special conditions and circumstances set out on
the lot.

above did not result from the actions of the applicant and that the granting of this variance would not
confer on the applicant and special privilege that is denied by this ordinance to other lands,
structures or buildings in the same district.

Dated this 2nd day of April, 20 19.

Allen L. Goode
Monica J. Goode
Applicant

Receipt # 17.000218

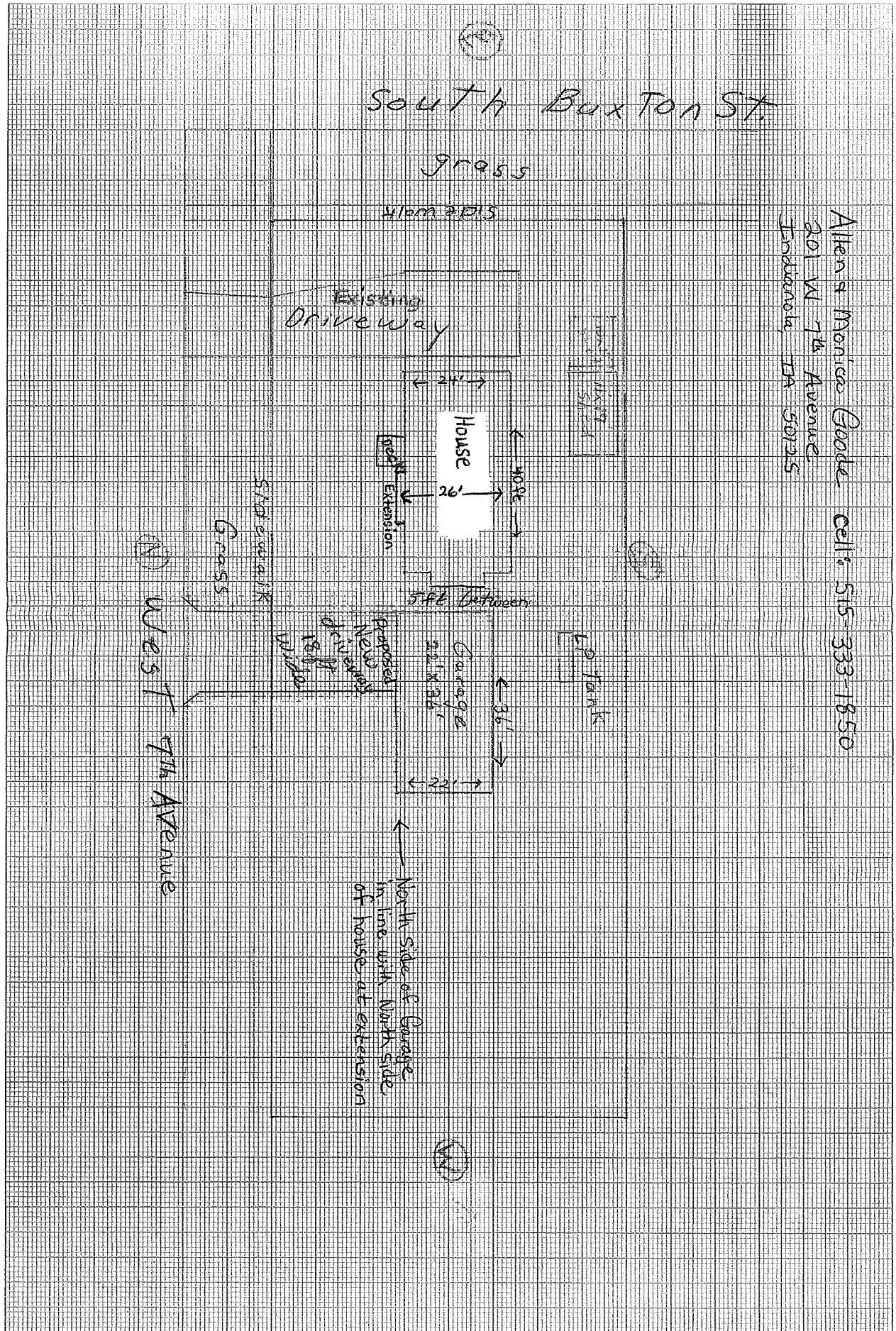
Applicant Full Name Printed: Allen L. Goode
Monica J. Goode

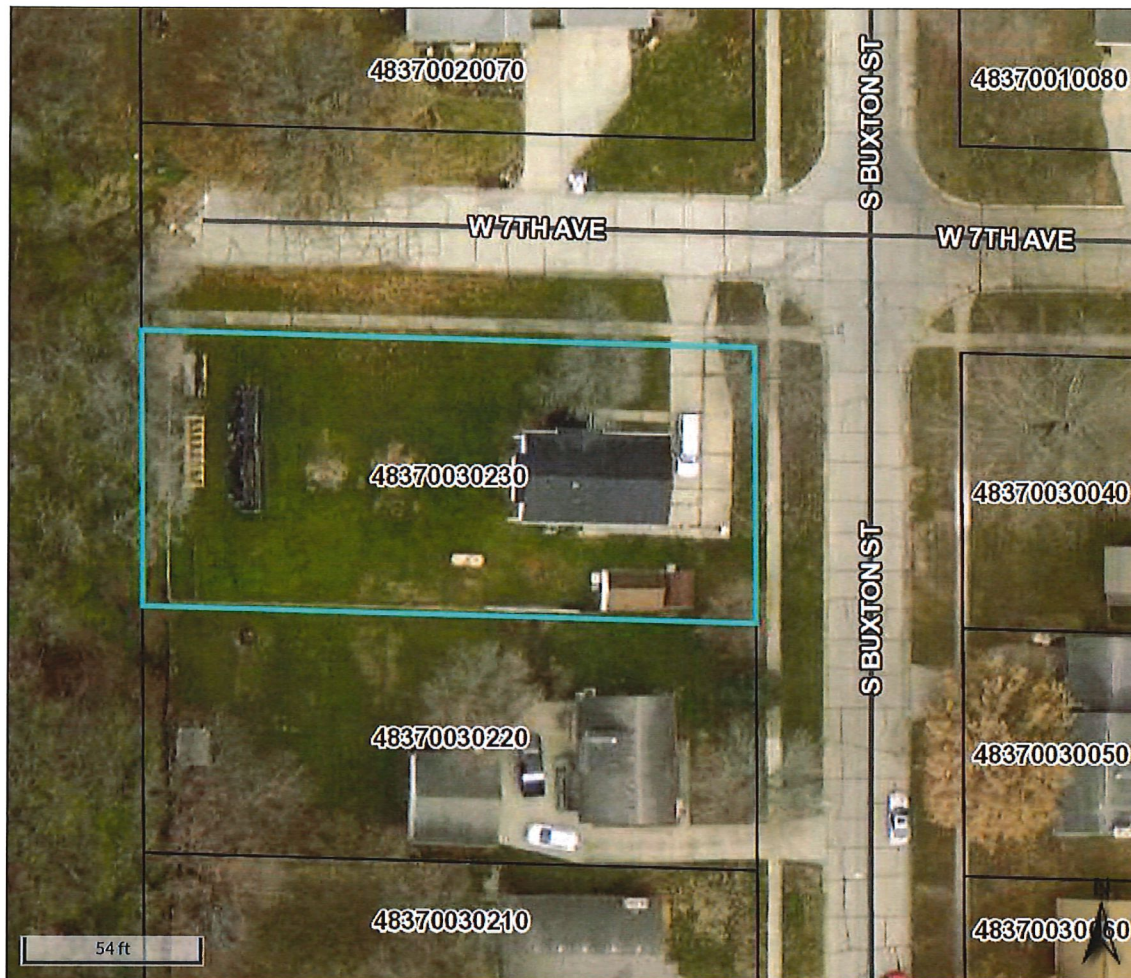
Applicant Mailing Address: 2920 Highway 69 Forest City IA 50436

Email Address: jagoode@wcta.tel.net

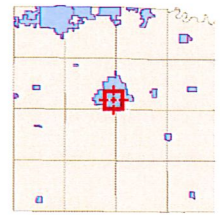
Contact Number: 515-333-1850

Property Address: 201 W 7th Avenue
Indianola, IA 50125





Overview



Legend

Roads

-  <all other values>
 -  Interstate
 -  Highway
 -  Ramp
 -  County Gravel
 -  County Level B
 -  County Level C
 -  City Gravel
 -  City Street
 -  Private Street
 -  Corporate Limits
 -  Parcels
 -  Political Township
- ##### Major Roads
-  County Hwy
 -  State Hwy
 -  US Hwy
 -  Interstate
 -  Water

Parcel ID	48370030230	Alternate ID	n/a	Owner Address	GOODE, MONICA J/ALLEN L
Sec/Twp/Rng	n/a	Class	R		2920 HIGHWAY 69
Property Address	201 W 7TH AVE	Acreage	n/a		FOREST CITY IA 50436
	INDIANOLA				
District	48300				
Brief Tax Description	25-76-24 INDIAN KNOLLS SUB DIV LOT 23 BLK 3				
	(Note: Not to be used on legal documents)				

Disclaimer:

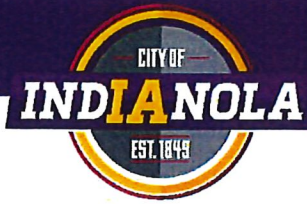
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Developed by  **Schneider**
GEOSPATIAL



COMMUNITY DEVELOPMENT
TO THE BOARD OF ADJUSTMENT OF INDIANOLA, IOWA

The undersigned does hereby request a variance under the terms of the Zoning Ordinances of the City of Indianola, Iowa to permit the construction of a 1,200 square foot tradition stick built detached garage
with shop with a 4/12 pitch for a total height not to exceed 15 feet.

which, if constructed as requested, would not be in conformity with the requirements of the said Zoning Ordinance in the following particulars: the structure will be 15 feet in height which is greater than permitted
in Section 165.10 (2) of the Code of Ordinance of Indianola

The following special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district. ____

The existing lot is nearly 6 acres in which the structure will be build on and will be lower then the existing log home structure on the lot.

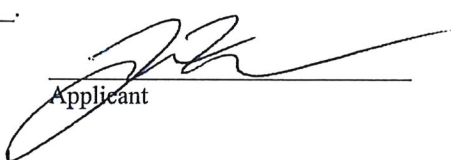
The literal interpretation of the provisions of the Zoning Ordinance of the City of Indianola would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the said ordinance because of the following conditions: Do to the location on the existing home and its proximity
to adjacent sewer easement we are unable to build the garage attached to the existing home. Thus we are proposing a detached garage.

The undersigned affirmatively states that the special conditions and circumstances set out above did not result from the actions of the applicant and that the granting of this variance would not confer on the applicant and special privilege that is denied by this ordinance to other lands, structures or buildings in the same district.

Dated this 10 day of April, 20 19.

Receipt #

13.021124


Applicant

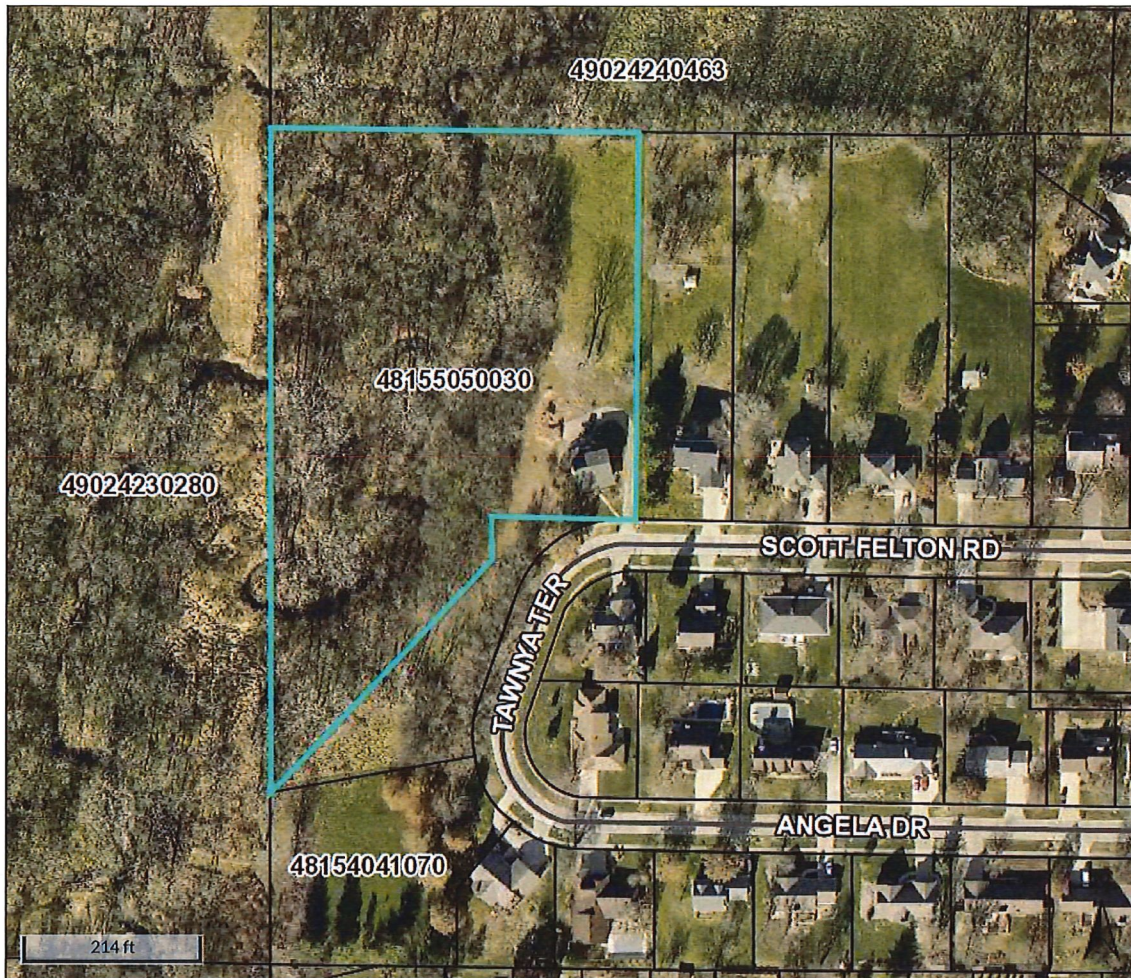
Applicant Full Name Printed: Lucas Riedmann

Applicant Mailing Address: 1024 Scott Felton Rd, Indianola, Iowa 50125

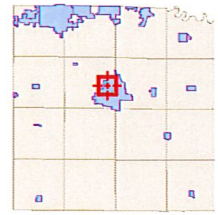
Email Address: LRiedmann@tcco.com

Contact Number: 1-816-490-2652





Overview



Legend

Roads

-  <all other values>
 -  Interstate
 -  Highway
 -  Ramp
 -  County Gravel
 -  County Level B
 -  County Level C
 -  City Gravel
 -  City Street
 -  Private Street
 -  Corporate Limits
 -  Parcels
 -  Political Township
- ##### Major Roads
-  County Hwy
 -  State Hwy
 -  US Hwy
 -  Interstate
 -  Water

Parcel ID	48155050030	Alternate ID	n/a	Owner Address	RIEDMANN, LUCAS
Sec/Twp/Rng	n/a	Class	R		1024 SCOTT FELTON RD
Property Address	1024 SCOTT FELTON RD	Acreage	4.15		INDIANOLA IA 50125
	INDIANOLA				
District	48300				
Brief Tax Description	24-76-24 COUNTRY CLUB HEIGHT PLAT 5 LOT 3				
	(Note: Not to be used on legal documents)				

Disclaimer:

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BOARD OF ADJUSTMENTS

Annual Report – 2018

Board Members

<u>Name</u>	<u>Present</u>	<u>Absent</u>	<u>Term Expires</u>
Marty Miller	5	1	12/31/19
Aaron Rasko	4	1	12/31/18
Weston Sharp	3	3	12/31/21
James Sullivan	6	0	12/31/20
Rene Soldwisch	4	2	12/31/22

The Board of Adjustment held six meetings in 2018.

A brief review of each meeting follows:

January 2018

No meeting held in January.

February 7, 2018

Variance

Consider the application from Des Moines Metro Opera to construct an addition at 106 West Boston Avenue, which is in an R-3 (Mixed Residential) zoning classification. The applicant requests an off street parking variance requiring zero stalls be installed.

Consider the application from Rodney Goodrich to construct an accessory structure at 208 North 7th Street, which is in an R-1 (Single Family Dwelling) zoning classification. The applicant requests a variance to allow for an accessory structure without an existing primary structure on the property.

Special Use Exception Use

Consider the application from Barbara Yearous for a special exception use for a bed and breakfast at 1301 South K Street, which is in an R-1 (Single Family Dwelling) zoning classification.

March 7, 2018

Variance

Consider the application from Ben Carpenter to construct a garage at 208 North B Street, which is in an R-3 (Mixed Residential) zoning classification. The applicant requests a 5 foot variance, leaving a zero foot side yard setback.

April 4, 2018

Variance

Consider the application from John and Kelly Freshly to construct an attached garage at 510 North O Street, which is in an R-1 (Single Family Residential) zoning classification. The applicant requests an eight foot variance, leaving a two foot side yard setback.

Consider the application from Mike Spores to construct a garage at 511 North Y Street, which is in an A-1 (Agriculture) zoning classification. The applicant requests a 1,750 square feet variance exceeding the limit of 1,050 square feet and a mean height variance request of 78" over the 144" maximum.

May 2, 2018

Variance

Consider the application from Ben Carpenter to construct a front porch at 208 North B Street, which is in an R-3 (Mixed Residential) zoning classification. The applicant requests an 11' variance leaving a 14' front yard setback.

Consider the application from Shawn Bright to construct a residential addition at 303 North Howard Street, which is in an R-3 (Mixed Residential) zoning classification. The applicant requests a 14' variance leaving an 11' front yard setback.

June 27, 2018

Side Street Setback Variance

Consider the application from Barbara Lightfoot to construct a residential addition at 600 N Howard Street, which is in an R-3 (Mixed Residential) zoning classification. The applicant requests an 13' variance leaving a 7' side street setback.

July 2018

No meeting held in July.

August 2018

No meeting held in August.

September 2018

No meeting held in September.

October 2018

No meeting held in October.

November 2018

No meeting held in November.

December 5, 2018

Side Street Setback Variance

Consider request from Allen and Monica Goode at 201 W 7th Avenue for variances under the terms of zoning ordinance R-3, to permit the construction of an accessory structure to which if constructed as requested, would not be in conformity with the requirements of the zoning ordinance setbacks that exist within R-3 (Mixed Residential).

Special Use Exception

Consider request from Scott Edward Johnston at 410 W Ashland Avenue for variances under the terms of zoning ordinance R-3, to permit the construction of an accessory structure (detached garage) to which if constructed as requested, would not be in conformity with the requirements of the zoning ordinance setbacks that exist within R-3 (Mixed Residential).



BOARD OF ADJUSTMENTS

2019 Election of Officers

Current Board Members

<u>Name</u>	<u>Term Expires</u>
Marty Miller	12/31/19
James Sullivan	12/31/20
Weston Sharp	12/31/21
Rene Soldwisch	12/31/22
Bill Mettee	12/31/23

CHAIRPERSON

VICE CHAIR



Roles and Responsibilities – Elected Officials

The elected body (city council or county board of supervisors) is the primary policy-making entity responsible for setting the direction of the community's government. The policy dimension of planning and zoning is substantial: It addresses how land in the community is to be used in the future. Councils and boards of supervisors are the key drivers of land use policy. Several activities of the elected body have an impact on community land use. Perhaps the three most important are: (1) adopting and amending plans and ordinances; (2) approving some types of development proposals; and (3) making appointments to boards, commissions and (in some communities) staff positions.

(1) Adopting Plans and Ordinances

The primary tools for guiding land use and development are the comprehensive plan, the zoning ordinance and the subdivision ordinance. The elected body plays a critical role in the development and application of all three.

The comprehensive plan establishes long-range goals and objectives for all activities that affect growth and development in the community, including public and private land development proposals, expenditure of funds for infrastructure and public facilities, and methods to address issues of pressing concern. The plan provides the underpinnings for the zoning ordinance and other development regulations. The comprehensive plan is adopted by resolution of the elected body after the planning commission holds its own public hearings and forwards its recommendations to the elected body.

The zoning ordinance is the primary mechanism for implementing the policies of the comprehensive plan. The zoning ordinance assigns compatible land uses to defined districts throughout the community, and it controls the placement, height, bulk and coverage of buildings and other structures. The elected body adopts the zoning ordinance after the planning commission develops the ordinance and holds public hearings.

The subdivision ordinance regulates the division of land into two or more parcels, lots or sites for building. It is one of the essential tools used by cities to influence the layout of lots and streets, coordinate the construction of public infrastructure to support homes and businesses, and, generally, assure that land divisions are consistent with community goals. Counties use subdivision regulations to control congestion on county roads, protect highly productive farmland from development and reduce the need to provide urban levels of public services to rural areas. The subdivision ordinance is adopted by the elected body, generally after the planning commission develops the ordinance and holds public hearings.

(2) Approving Development Proposals

There are several circumstances under which state law or local ordinances may require the elected body to approve specific development proposals initiated by landowners. In doing so the elected body is implementing pre-established policy by applying the standards set forth in the plan and ordinance. In these cases the elected body is wearing a different hat; acting more like a judge and jury than a policy-making body.

Rezoning. A rezoning is a request by a landowner to change the district classification of his or her parcel. It is also known as a map amendment, because the request is, in effect, to change the designation of the parcel on the zoning map.

Site plans. The Iowa Code gives the elected body the authority to approve site development plans via a separate ordinance. Many communities require elected body approval of major site plans, while minor plans are handled by zoning staff.

Site plans are scale drawings that depict the general layout of a subdivision or development project, the proposed access, roads, building footprints, sewer and water infrastructure, lighting, and other features. Site plans are used to insure zoning ordinance compliance and to study both the on-site and off-site impacts of a proposed development. These impacts include traffic flow, ingress and egress, storm water drainage, grading, landscaping, lighting and parking. A site plan can vary in detail depending on the size and complexity of the project, and the administrative needs

and capacity of the local government. Some site plans are highly detailed, while others are simply sketches drawn on a zoning permit form.

Subdivision plats. If a local government has adopted subdivision regulations, Iowa Code § 354.8 requires the elected body to review and approve subdivision plats prior to recording. A "plat" is simply a graphical representation of the subdivision of land. The elected body should consider "the possible burden on public improvements" and balance the "interests between the proprietor, future purchasers, and the public interest. The elected body must apply "reasonable standards and conditions" when reviewing subdivisions and must require compliance with all applicable state laws. The elected body approves the subdivision plat via a resolution that is certified and recorded, along with the plat, with the county recorder, auditor and assessor. Most communities require that the planning commission review subdivision plats before they are taken up by the elected body.

(3) Appointing Land Use Decision Makers

The experiences and beliefs of the individuals appointed to these positions affect the way land use policies are developed and implemented. For planning commissions this means that policy recommendations coming from the commission to the elected body are reflective of the members' opinions about growth and development, property rights, and the future. The board of adjustment interprets the ordinance and applies strict criteria in deciding appeals, special exceptions and variances. Therefore its members must recognize the limited scope of the board's authority.

Appointing planning commissioners. The Iowa Code mandates the appointment of a planning commission if the local government chooses to undertake zoning. The Iowa Code gives city and county elected officials wide latitude on the appointment of planning commissioners, with two exceptions. For counties, the Iowa Code requires the county board of supervisors to make appointments such that "a majority of [county planning commission] members shall reside within the county but outside the corporate limits of any city." For cities exercising extraterritorial zoning controls, the city planning commission must include two representatives appointed by the county board of supervisors. In all cases the size of the planning commission is left to the discretion of the elected body.

Appointing board of adjustment members. The Iowa Code requires a county's board of adjustment to be five members, a majority of whom must live in the county but outside the corporate limits of any city. A city board of adjustment may be five, seven or nine members, but a majority of the board must not be involved in the business of purchasing or selling real estate. In both cases the Iowa Code specifies how the terms are to be staggered, and requires a majority of the board's membership to be present to conduct official business.

Roles and Responsibilities – The Zoning Board of Adjustment

Iowa Code §§ 335.15 (counties) and 414.12 (cities) provide identical mandates for zoning boards of adjustment. These statutes are very specific in limiting the functions of the board of adjustment to (1) hearing appeals of decisions made by the zoning administrator, (2) granting or denying special exceptions (also referred to as “special uses” or “conditional uses”), and (3) granting or denying variances.

Appeals

Zoning administrators are given the authority to make many decisions relating to the interpretation and implementation of the zoning ordinance. If a landowner is dissatisfied with a zoning administrator's decision, the landowner has a right to appeal the decision to the board of adjustment. The board's role is to review the zoning administrator's interpretation of the ordinance and the given facts, based on the purpose and intent of the regulations, and render a decision affirming or overturning the administrator's determination. If the zoning administrator's decision is reasonable, it should be given the benefit of the doubt.

Special Exceptions, aka Special Uses or Conditional Uses

In each zoning district two broad classes of land uses are explicitly identified: (1) permitted uses, which are those listed by the ordinance as being allowed by right in any location, and (2) special exceptions, which are listed by the ordinance as being permissible only at the discretion of the zoning board of adjustment. Special exceptions are generally unique uses that are slightly out of character with permitted uses. In order to be granted a special exception by the board of adjustment, the applicant must be able to show that the requested use can be made to fit into its surroundings.

Variances

A variance is a minor exception to the existing zoning rules to allow a landowner to do what is generally forbidden by the ordinance. In order to be granted a variance, the applicant carries the burden of proving to the board that strict enforcement of the terms of the ordinance will inflict an unnecessary hardship on the landowner.

Administratively, the board of adjustment is a forum of last resort. The only appeal from the decision of the board of adjustment is to the court system. In too many communities, however, this arrangement has led to the mistaken assumption that the board of adjustment is the final authority on almost all zoning matters. Individuals will go to the board any time they feel the ordinance is “too strict,” and some boards will grant almost any relief requested by landowners. In these communities boards of adjustment are treating their zoning regulations as suggestions, not as law. In reality, the board of adjustment is bound by relatively strict criteria found in the zoning ordinance that define the limits of its discretion to grant variances or special exceptions and to overturn decisions of the zoning administrator.

The Purpose of the Comprehensive Plan

The comprehensive plan, also known as a general plan, master plan or land use plan, is a document designed to guide the future actions of a city or county. The Iowa Supreme Court has stated that the legal purpose of the comprehensive plan is to "direct use and development of property by dividing it into districts according to present and potential uses." The comprehensive plan also presents a vision for the future with long-range goals and objectives for all activities that affect the local government. This includes guidance on how to make decisions on public and private land development proposals, the expenditure of public funds, and issues of pressing concern (such as farmland preservation for counties, or the rehabilitation of older neighborhoods in cities). Most plans are written to provide direction for ten to twenty years after their adoption. Plans should receive a considered review and possible update every five years.

A city or county comprehensive plan serves the following functions:

- The plan provides continuity. The plan provides continuity across time, and gives successive public bodies a common framework for addressing land use issues.
- It is the means by which a community can balance competing private interests. John Public may want to store oil drums on his property. Jane Citizen, his neighbor, would like to open a restaurant on her property. Planning seeks to strike a balance among the many competing demands on land by creating development patterns that are orderly and rational, and provide the greatest benefits for individuals and the community as a whole.
- It is the means by which a community can protect public investments. Planning is the means by which a community avoids digging up last year's new road to lay this year's new sewer pipe. It is also less expensive for a community to provide public services to well planned, orderly and phased development patterns than to low-density, scattered development.
- It allows communities to plan development in a way that protects its valued resources. Planning can identify environmental features like wetlands, agricultural lands, woods and steep slopes, and suggest strategies for preserving those resources from destruction or degradation by development.
- It provides guidance for shaping the appearance of the community. A plan can set forth policies that foster a distinctive sense of place.
- It promotes economic development. The plan contains valuable information that aids firms in determining where to locate.
- It provides justification for decisions. Plans provide a factual and objective basis to support zoning decisions, and they can be used by communities to defend their decisions if challenged in court.
- Through public dialogue, citizens express a collective vision for the future. Last, but certainly not least, the planning process provides citizens an opportunity to brainstorm, debate and discuss the future of their community. A plan developed through a robust public input process will enjoy strong community support. Subsequent decisions that are consistent with the plan's policies are less likely to become embroiled in public controversy.

Nonconforming Uses

A nonconforming use is generally defined as "a land use or structure that was legal when established, but does not conform to the restrictions of the current zoning ordinance." The term "nonconforming use" actually covers several situations, including nonconforming uses, nonconforming lots and nonconforming structures.

The pattern that is created as new areas develop and older areas redevelop means that some long-established uses simply do not meet newly adopted regulations such as setback requirements, use requirements or minimum lot sizes. Rather than require the immediate elimination of these long-established uses (which could open up the community to liability) the zoning ordinance will outline a set of conditions for the continued existence of nonconforming uses.

Landowners are given some latitude with nonconforming uses to change the original use "if the changes are not substantial and do not impact adversely on the neighborhood." However, expansion, enlargement or intensification of nonconforming uses is strictly prohibited. Another way to think about it is that any change that increases the negative impact on surrounding properties should be prohibited. To decide if the aggravation is increased, courts examine the nature and extent of the changes to the nonconforming use and their effects on the surrounding area. The Iowa Supreme Court stated this principle quite eloquently when it said "the prohibition against expanding or enlarging a non-conforming use defends against the growth of a pre-existing aggravation. That pre-existing aggravation, the nonconforming use, survives as a matter of grace. The public is not required to expand upon that grace to its increasing aggravation."

To prevent nonconforming uses from becoming blights, communities should allow for routine maintenance and repair.

Resumption of a use or structure after it has been "destroyed" is likewise prohibited. Zoning ordinances traditionally have set a specific threshold (often 50% of assessed value) for defining this destruction, and courts generally defer to the stated threshold. Recently some communities have been redrafting their ordinances to relax this requirement—permitting reconstruction if the structure was destroyed by an act of God and the new structure will be of the same size, area, use, etc.

Once a nonconforming use has been "abandoned," its resumption can also be prohibited. The courts seem to make a distinction between "abandonment" (indicating no intent to resume the use) and "discontinuance" (use stopped temporarily, but with every intention of resuming), but the courts have also had considerable difficulty over the years defining the distinction. They seem to give landowners the benefit of the doubt when they eventually try to re-establish nonconforming uses after periods of nonuse. Local governments also have difficulty establishing abandonment, both in terms of timing and whether a property is being used. Most ordinances state a time period (usually six months to a year) that creates a presumption of abandonment if the property is not used for that period.

Special Uses and Conditional Uses (Special Exceptions)

The Board of Adjustment has the power to "hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance" (Iowa Code §§ 335.15 (counties) and 414.12 (cities)).

The terms "special use," "use exception" and "conditional use" are frequently found in zoning ordinances, and are generally synonymous with the term "special exception."

Zoning districts are defined within the zoning text. In each district, two broad classes of land uses are explicitly identified: (1) permitted uses, which are those listed by the ordinance as being allowed by right in any location, and (2) special exceptions, which are listed by the ordinance as being permissible only at the discretion of the zoning board of adjustment. Special exceptions are generally uses that are unique and slightly out of character with permitted uses. With conditions imposed by the board of adjustment, an appropriate special exception is one that can be made to fit into its surroundings.

In order to be granted a special exception, the applicant carries the burden of proving to the board that, given the imposition of conditions, the requested use will comply with the standards established in the ordinance. If the use cannot be made to fit, then it is within the board's discretion to deny the special exception. A board of adjustment's power to grant special exceptions, therefore, must be governed by adequate guidelines. The zoning ordinance includes general criteria for granting special exceptions. The criteria typically state something to the effect that, with the imposition of conditions, the special exception will be:

- Compatible with the principles and objectives of the plan.
- Compatible with uses permitted in the zoning district under which it is regulated.
- Compatible with existing or planned uses of nearby properties.
- Will not endanger public health or safety.

The ordinance typically includes specific criteria that must be met, in addition to the general criteria, before certain types of special exceptions will be approved. Home occupations, cell towers and some specific commercial uses often carry such specific criteria that must be met.

Commonly imposed conditions of approval include buffering, hours of operation, site improvements or submission of special site plans (such as landscaping or parking). Conditions carry the same force of law as the ordinance; that is, a violation of a condition is subject to enforcement proceedings just as violation of any provision of the ordinance itself.

Variances

The board of adjustment has the power to:

Authorize upon appeal in specific cases such *variance* from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done. Iowa Code §§ 335.15 (counties) and 414.12 (cities).

A variance is an authorization to allow a landowner to do something that is generally forbidden by the ordinance. In order to be granted a variance, the applicant carries the burden of proving to the board that strict enforcement of the terms of the ordinance will inflict an unnecessary hardship on the landowner. Iowa courts have set out specific criteria that must be satisfied before the zoning board of adjustment may find that an unnecessary hardship exists, sufficient to grant a landowner a variance. The landowner must satisfy all three parts of the test to be granted a variance:

1. The land in question cannot yield reasonable return if used only for purpose allowed in that zone,
2. The plight of the landowner is due to unique circumstances and not to general conditions in neighborhood, and
3. The use to be authorized by variance will not alter essential character of locality.

The Iowa courts have established several guidelines for assessing whether the above-listed criteria have been met:

- Lack of a "reasonable return" may be shown by proof that the owner has been deprived of all beneficial use of his land. All beneficial use is said to have been lost where the land is not suitable for any use permitted by the zoning ordinance.
 - o It is not sufficient to show that the value of land merely has been depreciated by the zoning regulations, or that a variance would permit a landowner to maintain a more profitable use.
 - o It is not sufficient to show mere inconvenience to the applicant.
- Problems common to several properties do not constitute "unique circumstances." The appropriate response is through a zoning amendment, not wholesale application of the discretionary power of the board of adjustment.
- The "unique circumstances" must not be created by the landowner's own actions. For example, a landowner cannot build a house to fill the building envelope of a lot (i.e., so that the walls are built to the minimum front, side and rear setback lines), then seek a variance to put a porch or deck on that house that will violate a setback.
- When a landowner purchases property he or she assumes the circumstances created by the previous landowner.
- A variance that alters the "essential character of the area" is beyond the authority of the board of adjustment to grant. The board cannot grant a variance that, in effect, constitutes a zoning amendment. Factors to consider in determining whether a variance will alter the "essential character of the neighborhood" include the degree of variation from district regulations, the size of the parcel, and the parcel's size and character in relation to the size of the district.

Remember that a variance should protect a landowner's property right, not grant a landowner a special privilege unavailable to other landowners.

Rules of Decorum for Audience at Board of Adjustment Hearings

Although the public hearing process is governed by certain rules, the Board of Adjustment strives to conduct hearings in a relaxed and informal manner. The procedure used by the Board during the public hearing is as follows:

1. The planner/zoning administrator presents a staff report including any recommendations.
2. The applicant/proponent of the proposal is given an opportunity to speak.
3. Audience members may enter testimony.
4. At the Board's discretion, the applicant/proponent, zoning administrator, and/or audience members are given an opportunity to enter rebuttal testimony.
5. The Board may then close the public hearing, or continue the public hearing to another date.

The Board may request clarification of the issues presented or may ask questions at any time during the hearing. Cross examination of persons entering testimony, applicants, staff or the Board by any other party is not permitted.

Please follow these simple rules if you will be testifying during the public hearing:

1. Come to the speaker's podium/microphone and state your name and address.
2. Keep your comments as brief as possible.
3. Keep your comments relevant to the proposal and the issues.
4. Try not to duplicate information that has already been presented.

The Board of Adjustment also encourages the submission of written testimony and information. These materials are reviewed prior to a decision. All written and graphic material presented at the hearing must be retained as a part of the permanent record. Copies of items such as photographs, reports, etc., should be made prior to submission to the Board of Adjustment, as they may not be returned.

The public hearing is recorded on tape. Please state your name each time you address the Board of Adjustment or are requested to respond to a question from the Board of Adjustment. The audio recording does not recognize head nods or shoulder shrugs. When referencing written material please refer to it by exhibit number. When referencing locations on a map please describe the location with as much detail as possible, rather than pointing to it or saying "over here."

Persons attending public hearings are also expected to conduct themselves with decorum to assure fairness and equity in the proceedings. Participants must:

- Step to the podium/microphone each time you wish to be recognized by the Board of Adjustment to offer a comment, or to ask or answer a question, and state your name for the record.
- Address all testimony, comments and questions to the Board and not the other participants, the applicant or the staff. The Board will determine the appropriateness of all questions, and when and where to direct them.
- Allow others in attendance an opportunity to present their testimony. Do not interrupt the proceedings with applause, heckling, outbursts or other disruptive behavior.
- Address the issues and application that are before the Board. These proceedings are not the forum to discuss the appropriateness of particular land use policies or regulations, or alternatives.
- Turn off all audible communications devices such as pagers and cellular telephones.

Conflicts of Interest

Acting as a public servant on an elected or appointed body requires loyalty to the public. Conflicts of interest arise when a public servant is in the position of deciding between public duty and private interests. The two most common conflict of interest situations are (1) when a member is in a position to gain financially from a decision being rendered, and (2) when the member is a relative of an interested party.

The most obvious example of a financial conflict is when a board member has an ownership interest in a property that is the subject of a requested action. But a review of court cases from around the country quickly reveals the range of possible conflict situations:

- The member is in a business relationship with the applicant.
- The member's business partner is in a business relationship with the applicant.
- The member is employed by a company that stands to gain from approval of the development proposal.
- The member owns a business that would directly compete with the applicant's business.

The tangle of familial relationships that can potentially give rise to conflict of interest questions is equally broad:

- The member's spouse is the realtor working with the applicant holding an option to purchase contingent upon rezoning.
- The member's elderly mother lives near the property proposed for a shopping mall.
- The member's elderly mother owns a small interest in the strip mall for which a special exception has been requested.
- The member's nephew is an attorney with the firm representing the applicant.

The Iowa Supreme Court has determined that business dealings and familial relationships—standing alone—are not disqualifying interests. Local governments would be seriously handicapped if any conceivable interest, no matter how remote and speculative, would require the disqualification of a zoning official. The court has stated that for a conflict of interest to exist:

- The board or commission member's interest in the matter must be different from that which he or she holds in common with members of the public.
- The interest must be "direct, definite, capable of demonstration, not remote, uncertain, contingent, unsubstantial or merely speculative."

If a conflict of interest does not exist, it is the board or commission member's duty to participate and vote, even if the situation might be uncomfortable because it involves a friend or associate.

A Pre-hearing Ethics Checklist

Elected officials, planning commissioners and board of adjustment members should review the following list in advance of hearing every application brought by a landowner to judge whether a situation might be present that would prevent them from taking part in the case.

Do you own the property that is the subject of this case?

Do you own property, the value of which may be affected by the decision in this case?

Could your business potentially benefit from, or be harmed by, the decision in this case? Could you be involved in the project as...

☐ architect

☐ attorney

☐ builder

☐ developer

☐ subcontractor

☐ engineer

☐ land surveyor

☐ mortgage broker/agent

☐ realtor

Do you have stock or any other type of ownership interest (including a silent limited partnership interest) in any company or organization that could potentially benefit from, or be harmed by, the decision in this case?

Are you on the board of, or a member of any not-for-profit organization that could potentially benefit from, or be harmed by, the decision in this case?

Could a member of your immediate family benefit from, or be harmed by, the decision in this case (consider property interests and the other potential situations posed by the previous questions)?

Has a party to the case spoken to you about the particulars outside the normal development review process?

Have you already made up your mind about this case?

Do you, or a member of your immediate family serve in another public office? If so, have you or that family member been involved in this case in that public capacity?

If you answered **yes** to any of these questions you should consult your city or county attorney to further investigate whether you should recuse yourself from the proceedings.