



PLANNING AND ZONING

Cerro Gordo County Courthouse

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January 17, 2020

TO: Cerro Gordo County Board of Adjustment

FROM: John Robbins

SUBJECT: Next Meeting – *Tuesday, January 28, 2020; 4:00 p.m.; Board Room*

Ladies and Gentlemen:

The next meeting of the Cerro Gordo County Board of Adjustment is scheduled for **Tuesday, January 28, 2019 at 4:00 p.m. in the Board Room at the Courthouse**. The Board will be considering an appeal of a Zoning Administrator decision and an annual review.

New Business

1. Case No. 20-22 Douglas Owen 15518 Basswood Avenue (Lot 3 in Government Lot 4, Section 20, Clear Lake Township)

In response to an anonymous complaint, I sent a letter, dated September 17, 2019, to Mr. Owen noting a large fuel tank used for the bulk storage of motor gasoline located on his property is not a permitted use in the R-3 Single Family Residential District, or that a Zoning Permit is required for structures or change of use under Article 22(A) of the Cerro Gordo County Zoning Ordinance, if the use of the tank was not for gasoline storage. A copy of this letter, along with a photo of the approximately 200-gallon fuel tank, is included in your packets.

On October 4, 2019, Mr. Owen called me with questions about the letter. He confirmed it was a fuel tank. He had questions about requirements, and based on the conversation, I told Mr. Owen I would do a more thorough review of the county's permit requirements and whether the use is permitted in the R-3 Single Family Residential District.

On October 28, 2019, after a more thorough review and consideration, I called Mr. Owen and left a voicemail that I had come to the conclusion that the bulk storage of motor gasoline is not a permitted use in the R-3 District and would need to be removed for that type of use.

Mr. Owen called later that day to confirm the determination. He informed me that the tank currently sits empty and that the actual use for the tank was yet to be decided (He used the possibility of using the tank as a water collection system or converting it to a grill as examples.). Based on Mr. Owen stating the tank was readily movable by himself, I told Mr. Owen that a permit would not be required for the empty tank, and it could remain in place without a permit if it sat empty or was used for rain water collection. I informed Mr. Owen that the use of the tank

for bulk storage of motor gasoline would require removal of the tank. I also informed Mr. Owen he had the option to appeal my decision to the Board of Adjustment within 30 days. I have included notes of the aforementioned phone correspondence in your packet. Mr. Owen has decided to appeal the determination.

My determination is based on the listed permitted uses, both principle and accessory, of the R-3 District, which is the zoning classification of the subject property. Article 6.2 of the Zoning Ordinance provides that no land or premises may be used “except in conformity with the regulations herein specified for the District in which it is located.” I have included a copy of the district rules in your packet. The R-3 District’s principal permitted uses and accessory permitted uses are those uses permitted in the R-1 Single Family Residential District. The R-1 District permits the following principle uses:

- Single family dwellings
- Family homes in compliance with state law
- Churches or places of worship and associated uses
- Public and parochial schools and colleges for academic instruction
- Public buildings and properties of the cultural, administrative, or public service type...

The R-1 District permits the following accessory uses:

- Accessory buildings and uses customarily incident to any allowed use within the district
- Accessory utility services and equipment for use by adjacent properties
- Home occupations
- Private swimming pools
- Temporary buildings for uses incidental to construction work...
- Truck gardens, orchards, and nurseries...
- Roadside stands offering for sale only products grown on the premises...

Bulk fuel tanks are not listed as a permitted use in the district, but uses “customarily incident to any allowed use within the district” would be a potential category it could fall under. Mr. Owen states that the tank will be used for residential purposes, such as for lawnmowers, back-up generators, or utility vehicles. While Mr. Owen is correct that these are residential uses that take such fuel, the Zoning Ordinance does not prevent Mr. Owen from having gas cans or small containers, which are typical of residential uses, for that purpose.

There are no specific sizes listed within the ordinance regarding fuel storage for residential purposes, so there is a degree of interpretation needed. It is common to have gas cans or small storage containers for those purposes above, but the scale of 200 gallons for fuel storage is clearly not typical for residential uses. This leads me to determine that the scale of 200-gallons for the storage of motor gasoline is not customarily incident to any residential uses permitted in the R-3 District.

Because fuel tanks are not listed as a permitted use in the R-3 District, you will need to determine for yourselves whether bulk fuel storage in a 200-gallon fuel tank is “customarily incident to any allowed use within the district.” In making your decision, you have the options to affirm or reverse the Zoning Administrator decision, and you may modify the determination and place conditions regarding your decision based on your assessment.

If you decide that bulk fuel storage is not customarily incidental to a single-family residential use, it would be appropriate to order the removal of the tank and place a timeframe in which it

must be removed or alternatively limit the use of the tank to uses that do not include bulk fuel storage.

If you decide a bulk fuel storage is customarily incidental to a single-family residential use, you may also determine whether a Zoning Permit is required. Article 22(A) of the Zoning Ordinance states:

It shall be unlawful to do any grading, erecting, constructing, reconstructing, enlarging, altering or moving of any building or structure until a Zoning Permit shall have been issued by the Cerro Gordo County Zoning Administrator.

It shall also be unlawful to change the use or occupancy of any building, structure or land from one classification to another or to change a nonconforming use without the issuance of a Zoning Permit.

The Zoning Ordinance defines a “structure” as, “Anything constructed or erected with a rigid or fixed location on the ground, or attached to something having a permanent location on the ground, including buildings, walls, fences, decks, signs, light standards, towers, tanks and billboards.” If you decide to reverse the Zoning Administrator decision, it would be appropriate to require a Zoning Permit for a change of use, as the fuel tank will be adding fuel storage as an accessory use to the property.

Additionally, I have some safety concerns with the fuel tank being so close to a multiple residences. I inquired with the city of Clear Lake and Fire Chief Doug Meyer. According to them, the required setback distance from a residence under the International Fire Code for a 200-gallon fuel tank is 25’ from a dwelling. I would recommend that a condition of any decision state that the location of the fuel tank comply with all federal and state regulations.

Annual Inspections

2. Heartland Asphalt 20503 240th Street

Heartland Asphalt is up for its annual review, which is a condition stipulated in the Special Use Permit. A staff report for the annual review has been attached for Board members to review.