



CITY OF IOWA CITY

IOWA CITY BOARD OF ADJUSTMENT

December 16, 2015

5:15 p.m.

NDS Conference Room

2nd Floor City Hall

STAFF REPORT

CITY OF IOWA CITY

Department of Neighborhood & Development Services

IOWA CITY BOARD OF ADJUSTMENT MEETING

Wednesday, December 16, 2015 – 5:15 PM
City Hall – NDS Conference Room (2nd Floor)

AGENDA

- A. Call to Order**
- B. Roll Call**
- C. Consider the October 14, 2015 Minutes**
- D. BOA Procedures**
- E. Discuss Informational Disclosure Form for Rental Properties**
- F. Other**
- G. Board of Adjustment Information**
- H. Adjourn**

NEXT BOARD OF ADJUSTMENT MEETING:
Wednesday, January 13
Emma Harvat Hall – City Hall

PROCEDURAL RULES

Iowa City Board of Adjustment

December 12, 2012

ARTICLE I. AUTHORITY:

The Iowa City Board of Adjustment shall have that authority ~~which that~~ is conferred by Chapter 414 of the Code of Iowa; City Code Title 14, Chapter 7, entitled "Administration," Article A, entitled "Board of Adjustment," and through the adoption of these procedural rules stated herein.

ARTICLE II. MEMBERSHIP:

Section 1. **Qualifications.** The Board of Adjustment shall consist of five (5) members appointed by the City Council. All members of the Board shall be qualified electors of the city of Iowa City, Iowa. A majority of the members of the Board shall be persons representing the public at large and shall not be involved in the business of purchasing or selling real estate.

Section 2. **Compensation.** Members shall serve without compensation, but may be reimbursed for expenses incurred for travel outside the city on designated Board business. Such expenses must be submitted to the City Manager.

Section 3. **Orientation for New Members.** Prior to the first regular meeting following their appointment, a new member shall be given an orientation briefing by City staff and be provided with a copy of the City Zoning Chapter, the Comprehensive Plan, the Board's procedural rules, and other information that would may be useful to Board members in carrying out their duties. Each new member shall be given an orientation briefing by City staff. The City Zoning Chapter and the Comprehensive Plan are made available on the City's website.

Comment [SW1]: In the interest of cost savings and waste reduction, we have not been providing hard copies of the zoning code or comp plan for some time. The documents are available on our web site and, when there is detailed consideration of the zoning code or the comprehensive plan are called for, language is excerpted or pages are photocopied and attached to the staff report.

Section 4. **Absences.** Three consecutive unexplained absences of a Board member from regular Board meetings may result in a recommendation to the City Council from the Board to discharge said member and appoint a new Board member. Members shall be removable for cause by the City Council upon written charges after a public hearing.

Section 5. **Vacancies.** Any vacancy on the Board because of death, resignation, long-term illness, disqualification, or removal shall be filled for the unexpired term by the City Council after at least thirty (30) calendar days of public notice of the vacancy as required by law.

Section 6. **Terms.** Members shall be appointed for terms of five years. No members shall be appointed to succeed themselves. However, a member appointed to fill an unexpired term with one year or less remaining may also be appointed concurrently for one full five (5) year term.

Section 7. **Resignations.** Resignation should be submitted in writing to the Board Secretary, who will transmit the resignation to the Mayor-City Council with copies to the City Manager, the Director of Planning and Community Development the Department of Neighborhood and Development Services, and the Board Chairperson, preferably at least sixty (60) days prior to the date of intended departure.

ARTICLE III. OFFICERS:

Section 1. **Number.** The officers of the Board shall be a Chairperson and a Vice-Chairperson, each of whom shall be elected by a majority vote of the members of the Board. The Board Secretary shall be a staff person, who is appointed by the Director of ~~the Department of Neighborhood and Development Services~~Planning and Community Development.

Section 2. **Election and Term of Office.** The Chairperson and Vice-Chairperson shall be elected annually at the first regular meeting of the Board each year.

Section 3. **Vacancies.** A vacancy in the office of Chairperson or Vice-Chairperson because of death, resignation, removal, disqualification, or other cause shall be filled by election from the members of the Board for the unexpired portion of the term.

Section 4. **Chairperson.** The Chairperson shall, when present, preside at all meetings, call special meetings, and in general perform all duties incident to the office of a Chairperson, and such other duties as may be prescribed by the members from time to time. Such Chairperson may administer oaths and compel the attendance of witnesses.

Section 5. **Vice-Chairperson.** When the Chairperson is absent or abstaining, the Vice-Chairperson shall perform the duties of the Chairperson and shall have all the powers of and be subject to all the restrictions upon the Chairperson.

Section 6. **Acting Chairperson.** In the absence and/or due to the abstention of both the Chairperson and Vice-Chairperson, the remaining three-member Board may elect a member to serve as Acting Chairperson. The Acting Chairperson shall perform the duties of the Chairperson and when so acting shall have all the powers of and be subject to all the restrictions upon the Chairperson.

Section 7. **Secretary.** The appointed staff person, who serves as the Board's Secretary, shall be responsible for maintaining the office of the Board, receiving and filing Board decisions and orders, posting and publishing notices as required by law, and for maintaining minutes and other records of the Board's proceedings.

ARTICLE IV. APPLICATIONS:

Section 1. **Application Forms.** ~~Any application for a request or appeal~~ to the Board of Adjustment shall be filed with the City Clerk on forms provided by the Secretary of the Board. The Secretary's office is located in the Department of ~~Neighborhood and Development Services~~Planning and Community Development. Forms are also available ~~on the City's website and~~ in the office of the City Clerk. In the appropriate cases, the Building Inspector shall transmit to the Secretary all documents constituting a record, upon which the Board shall act.

Section 2. ~~Application Submittal of Appeals.~~ Applications or appeals ~~peals~~ to the Board shall be filed with the City Clerk within a reasonable time period, not to exceed 30 calendar days after the action appealed from, and shall specify the grounds for such appeal. An appeal from a decision by the Building Inspector to issue a building permit shall not be deemed to have been filed within a reasonable time if such appeal is filed more than ten (10) business days after construction work pursuant to such permit is

observable from adjacent properties of the public right-of-way or ten (10) business days after an alleged violation of the zoning code is similarly observable. Applicants may appeal an approval or a denial of a Certificate of Appropriateness from the Historic Preservation Commission within a conservation district by filing a letter with the City Clerk within ten (10) business days after a Resolution of Denial is filed by the Commission.

Section 3. **Application Filing Fee.** The applicant shall complete the required forms, providing all information requested on the form, and any additional information as requested by the Secretary of the Board. A filing fee shall be paid upon presentation of the application. Application fees are established by resolution of the City Council.

Section 4. **Party of Interest.** ~~Requests-Applications~~ for a variance or special exception must be filed on behalf of the real party in interest, such as the owner or contract purchaser.

Section 5. **Case Number.** An application filed according to the above procedure shall be given a case number within five (5) business days of the filing date. Case numbers will be assigned according to the order in which applications are received.

ARTICLE V. NOTICE:

Section 1. **Notice Letters.** No less than seven (7) business days prior to the public hearing, the Secretary of the Board shall send notice by mail to all property owners of record within 300 feet of the subject property. Such notice shall include a description of the action requested along with the time and location of the meeting. The applicant shall be formally notified of the time and place of the hearing, in writing, by the Secretary of the Board.

Section 2. **Newspaper Notice.** Notice of the time and place of public hearings shall be published in a newspaper of general circulation not more than twenty (20) calendar day nor less than seven (7) business days prior to the hearing. It shall contain the street address or location of the property and a brief description of the nature of the application or appeal.

Section 3. **Notice Sign.** No less than seven (7) business days prior to the public hearing, the Applicant shall post a sign on or near the property upon which the application is being made, and shall remove the sign immediately following the public hearing on the application. The sign will be provided to the applicant(s) by the Board Secretary.

ARTICLE VI. HEARING:

Section 1. **Regular Hearings.** Hearings will be held as needed at a regular time and place to be set by the members of the Board.

Section 2. **Special Hearings.** Special hearings or meetings of the Board may be called by the Chairperson and shall be called by the Chairperson or Vice-Chairperson at the request of three (3) or more members of the Board.

Section 3. **Place of Hearings.** All hearings and meetings of the Board shall be open to the public and shall be in a place accessible to people with disabilities.

Section 4. **Quorum.** Three members of the Board shall constitute a quorum.

Section 5. **Applicant Representation.** The applicant may, at the time of the public hearing, appear on their own behalf and be represented by agent and/or counsel. The applicant or their representative may present oral argument and testimony; witnesses, including experts; and may submit written evidence and exhibits in the form of statements, photos, charts, or other relevant evidence. In the absence of the applicant or their representative(s), the Board may proceed to act on the matter based on the information provided.

Section 6. **Briefs.** The Board may request written briefs for legal argument. Applicants may submit written briefs if they so choose.

Section 7. **Conduct of Hearing.** Order and decorum shall be maintained at the hearing by the Chairperson of the Board of Adjustment, so as to allow an orderly presentation of evidence wherever possible. The Chair may swear witnesses and direct order of testimony. The Chair shall avoid testimony that is overly redundant. The Chair may provide for recesses during the deliberation, as appropriate.

Any Board member who has he/she has a legal conflict of interest shall recuse him/herself from the decision-making process. A member who has a legal conflict of interest or otherwise elects to recuse him/herself due to a perceived conflict of interest shall state the reason for recusal prior to discussion of the matter under consideration and may choose to leave the meeting room for the duration of the proceedings for that application.

Section 8. **Hearing Order.** The order of hearing shall be as follows:

1. Staff presentation of the facts of the case and recommendation to the board.
2. Statement by proponents of the application.
3. Statement by opponents of the application.
4. Rebuttal by proponents and then by opponents.
5. General discussion by the Board.

Section 9. **Board Deliberation.** After all parties have been heard, the public hearing will be declared closed so that the Board may deliberate the case. The Board must state findings of fact and conclusions of law. These facts and legal conclusions must be set forth in writing as required by Iowa Law. The Board may request additional comments

from the participants. An application may be deferred or withdrawn at the request of the applicant at any time before a decision is made by the Board.

Section 10. **Board Motions.** Motions may be made and seconded by any member of the Board other than the Chair. Motions are always made in the affirmative, approving the requested action.

Section 11. **Board Voting.** After a motion and discussion, the Board shall be polled for votes. The concurring vote of three (3) members of the Board shall be required to uphold an appeal, to decide in favor of a special exception, or to grant a variance.

Voting on Board decisions will be by roll call and will be recorded by yeas and nays. Every member of the Board, including the Chairperson, shall cast a vote on each motion. Proxy votes are not allowed.

~~A Board member may abstain if he or she believes there is a conflict of interest. Any member that elects to abstain from voting shall state the reason for the abstention at the time of voting. Prior to the discussion of the matter under consideration, a member who plans to abstain from voting should inform the Board, and refrain from discussion and deliberation on a case where a conflict of interest exists for that Board member. An abstaining Board member may choose to leave the meeting room for the duration of the proceedings for that application.~~

Section 12. **Legal Advisor.** The City Attorney or a designated representative shall act as legal counsel to the Board.

Section 13. **Conduct of Meetings.** Except as otherwise provided herein, Roberts Rules of Order Newly Revised shall be used to conduct Board hearings and meetings.

ARTICLE VII. RECORDS:

Section 1. **Record of Hearings.** Audio recordings shall be made for all hearings and such recordings shall be kept for a period of no less than six (6) weeks. Minutes shall be produced from such recordings, and forwarded to the City Council after approval by the Board or the Secretary of the Board. All minutes shall be maintained by the Secretary of the Board, and shall also be on file at the City Clerk's office. The applicant may request a court reporter at the applicant's own expense.

Section 2. **Case Files.** The Secretary of the Board shall keep a file of all cases, including forms and additional information. Said file shall be a public record and available for public inspection during business hours. Copies may be made available upon request, at cost.

Section 3. **Transcript.** Upon request, a transcript of the audio recording of the Board's deliberation will be made, at cost to the requestor. In the case of an appeal to district court there is no charge for the transcript.

ARTICLE VIII. DECISIONS:

Section 1. Whenever possible, decisions by the Board shall be made at the same hearing wherein the testimony and presentation of evidence are considered.

Section 2. Formal decisions shall be made in writing, setting forth findings of fact and conclusions of law as required by Iowa law.

Section 3. Each decision shall be filed with the City Clerk within a reasonable time after the Board hearing, and shall be stamped by the Clerk to indicate the date and time of filing. The Clerk will forward the decision to the Johnson County Recorder's Office, for recording at the city's expense.

Section 4.

A copy of said decision shall be forwarded by the Secretary of the Board to the applicant, the Building Inspector, the City Attorney's Office, and any Attorney of Record within a reasonable time after filing with the City Clerk.

Section 5.

Reconsideration: Upon written request, the Board may reconsider a decision on a special exception or variance application. A request for reconsideration must be made within ten (10) business days of the meeting at which a vote on the application was originally taken and shall articulate and be based on evidence that was not presented or was unavailable at the time of the original hearing. A motion to reconsider must be made at the subsequent meeting by a member of the Board who voted on the prevailing side. If a motion to reconsider is approved, the application will be placed on the agenda of the next meeting in order to satisfy the requirement for public notice and hearing. No decision may be reconsidered more than once. Appeals to the Board may not be reconsidered.

ARTICLE IX. AMENDMENTS TO THE PROCECURAL RULES.

Section 1. A concurring vote of three (3) of the members of the Board shall be necessary to amend these procedural rules. Such proposed amendments shall be presented in writing at any regular meeting or at any special meeting called for that purpose. Amendments shall go into effect upon approval by the City Council.



CITY OF IOWA CITY
INFORMATIONAL DISCLOSURE AND ACKNOWLEDGMENT FORM
City of Iowa City, 410 E. Washington Street, Iowa City, IA 52240
Call Housing and Inspection Services for questions at (319) 356-5130
www.icgov.org/housing

Note: All information must be entered on form. "SEE LEASE" entries are not acceptable.

1. **Unit Address:** _____
2. **City Website.** The website for the City of Iowa City is www.icgov.org and it provides extensive information about the City of Iowa City and its services. To access information concerning the Department of Housing and Inspection Services, including the Rental Housing Inspection Division, go to www.icgov.org/housing. To access the City Code, click on www.icgov.org/citycode.
3. **Occupancy.** The maximum occupants/tenants for this unit are ____ unrelated persons. Maximum occupancy is available on the Housing and Inspection Services web page on the City website at the link entitled "rental permit" (<http://www.iowa-city.org/icgov/apps/gen/rentals.asp>). Nothing in this document prevents the owner or operator from limiting the number of tenants to less than the maximum allowable occupancy permitted by the City Code.
4. **Tenants.** The names of the tenants, including those under 18 years of age, who may occupy this unit:

Name of Tenant _____ _____ _____	Name of Tenant _____ _____ _____
---	---
5. **Fines.** The undersigned acknowledge that we are responsible for complying with the maximum occupancy limits of the City Code and that the City Code provides that violation of the maximum occupancy limit can result in a \$750.00 fine for the first violation (the City Code also provides that each day is considered a new violation) to the owner, operator, and/or tenant.
6. **Sleeping Rooms.** Basements, attics, and other rooms cannot be used as sleeping rooms if they do not comply with requirements for windows, exits, square footage, and other Housing Code requirements.

Basement is:	<input type="checkbox"/> Habitable	<input type="checkbox"/> Non-Habitable
Attic is:	<input type="checkbox"/> Habitable	<input type="checkbox"/> Non-Habitable
7. **Trash/Recycling.** Complete this only if this unit has four (4) dwelling units or less. Trash and recycling pickup for this unit is _____ (day of the week). City Code section 16-3H-9D provides that garbage receptacles can be brought to the curb after 3 PM the day before pickup and must be brought back to the property on the same day as collection. If the City has provided a "refuse cart" (i.e., City garbage can) it must be used. If the City has not provided a "refuse cart" each unit can place up to two 35-gallons containers for pickup, and the containers must be stored (when not at the curb for collection) at an approved location (sideyard or backyard). Note: In neighborhoods where new "refuse carts" have been delivered, their use is required. Compliance with the collection and storage requirements for refuse carts is the same as any other solid waste container. Additional garbage or oversized garbage can be picked up for an additional charge. Contact 356-5180 for specifics on those charges. A City supplied blue recycling container or other approved container shall be used for recycling. Recycling information is available online at www.icgov.org/garbage or by telephoning 356-5180.
8. **Parking.** We acknowledge that we cannot park on the grass or across the public sidewalk and that the Landlord provides ____ off-street paved parking spaces or other parking areas as approved by the City.

9. **Noise/Disorderly House.** It is a simple misdemeanor (a crime, with a fine of \$65 to \$625 plus surcharge and court costs) to keep a "disorderly house." Under Iowa City Code section 8-5-5, a "disorderly house" is:

No person shall permit or suffer to continue, without taking legal steps to prevent the same, any quarreling, fight, disorderly conduct, or other conduct or condition that threatens injury to person or damage, or loud, raucous, disagreeable noises to the disturbance of the neighborhood, or to the disturbance of the general public, upon a premises owned by the person or in the person's possession. For purposes of this Section, "to the disturbance of the general public" includes the disturbance of persons beyond the subject premises and/or to the disturbance of person upon public places, including peace officers.

Keeping a "disorderly house" is also a municipal infraction (civil offense) under section 8-5-5C punishable by a civil penalty of \$750 for the first offense and \$1,000 for the second and subsequent offenses, plus court cost. Failure to answer the door when the police arrive may result in a municipal infraction being issued to all tenants.

10. **Snow and Grass.** City Code section 16-1A-8A provides that snow must be removed within 24 hours of a 1-inch snowfall and section 6-3-2 provides that lawns/grass/weeds cannot exceed 10 inches in height. Pursuant to the lease, we acknowledge that the Tenant/Landlord (cross out one) is responsible for snow removal and the Tenant/Landlord (cross out one) is responsible for mowing the grass. Regardless of the agreement between the landlord and the tenant, the City Code provides that the City may hold the owner, operator, or tenant ultimately responsible, and violation of either section noted above can result in a fine of \$250.00 for the first violation and/or the City mowing the grass/shoveling the snow and assessing the cost of doing so to the property owner.
11. **Neighborhood Services Coordinator.** Iowa City has a neighborhood services coordinator. For more information, call 356-5237 or go to the City website (www.icgov.org/neighborhoodservices).
12. **State Law.** The Iowa Uniform Residential Landlord and Tenant Act (Iowa Code Chapter 562A) can be found at the Iowa City Public Library and can be accessed on the internet at www.legis.iowa.gov.
13. **Rental Deposits.** The Iowa law on rental deposits can be found at Section 562A.12 of the Iowa Code. The landlord has the right to withhold from the rental deposit (also called the security deposit) such amounts as are reasonably necessary to restore the premises to the condition at the commencement of the tenancy, ordinary wear and tear excepted. The tenants need to provide the landlord with the tenant's mailing address or delivery instructions for return of the rental deposit. Additional information related to leases, move-in, move-out, and checklist may be found on the website at <http://web.offcampuspartners.com/116/resource/iowa/?p=tenant>

We, the undersigned, have read the Informational Disclosure and Acknowledgment form and completed the blanks to the best of our knowledge.

Landlord: _____

Date: _____

Tenant: _____

Date: _____

Tenant: _____

Date: _____

Tenant: _____

Date: _____

Tenant: _____

Date: _____

Tenant: _____

Date: _____

****Note** All tenants, except minor children of tenants, must sign this form even if they have an oral rental agreement.**

**MINUTES
BOARD OF ADJUSTMENT
OCTOBER 14, 2015 – 5:15 PM
EMMA J. HARVAT HALL, CITY HALL**

PRELIMINARY

MEMBERS PRESENT: Larry Baker, Gene Chrischilles, Connie Goeb, Becky Soglin
MEMBERS ABSENT: Brock Grenis,
STAFF PRESENT: Susan Dulek, Sarah Walz
OTHERS PRESENT: Richard Arthur

CALL TO ORDER:

The meeting was called to order at 5:15 PM.

ROLL CALL:

A brief opening statement was read by Baker outlining the role and purpose of the Board and the procedures that would be followed the meeting.

CONSIDERATION OF THE SEPTEMBER 14, 2015 MEETING MINUTES:

Soglin moved to approve the September 14, 2015 minutes.

Chrischilles seconded the motion.

A vote was taken and the motion carried 4-0.

SPECIAL EXCEPTION ITEM EXC15-00011:

Discussion of an application submitted by Hidalgo Properties, LLC, for a special exception to allow residential uses above first floor commercial in the Community Commercial (CC-2) zone located at 1950 S. Gilbert Street.

Walz began by showing a location map of the property and the zoning, the location is the corner of south Gilbert Street and Southgate Avenue. Properties to the east and to the south are in the CI-1 zone which are undeveloped properties. Properties to the west and north are zoned CC-2. Walz explained that when the last South District Plan was adopted in 1997 most all of these properties were zoned CI-1 (the intensive commercial zone) which allows uses like car repair or uses that require large machinery or outdoor storage. In 2006 properties along Stevens Drive, the subject property, and the property across Gilbert Street were brought into the CC-2 zone at their request. Per the zoning the applicant is allowed to develop a commercial property, retail or office use, but to allow mixed-use or residential uses above the ground floor requires a special exception. That was true in the zoning code from 2005 and in the current zoning code. Residential uses are not allowed in CI-1 zones. The applicant is proposing to build a two story structure with commercial

spaces on the ground floor and multi-family uses above. The current floor plan shows eight one-bedroom units. There is parking available for eight bedrooms.

Walz also noted the property is located in the 500 year floodplain. Iowa City's floodplain regulations are some of the strictest in the state and exceed the state and federal standards. Iowa City's standards state that they allow development in the floodplain so long as the property is raised above the floodplain level or build the property to a floodplain standard so that it can be secured in the case of a flood. In this case, the residential units are on the second floor—above the floodplain. The ground floor of the building must be flood-proofed or raised one foot above the 500-year flood level.

Walz stated the specific standards for this application are; the proposed dwellings must be located above the street level floor of a building and the applicant is proposing to locate multi-family (apartment) units on the second floor, it must meet the residential density standards and this proposal of eight one-bedroom units does meet that standard, to provide for safe access for residents in a mixed-use building and it must have at least one door facing the public street—this proposal has east and west facing entrances. The east facing entrance provides an elevator, which is required by the building code to facilitate handicapped access. The applicant must flood proof the building one foot above the floodplain level (646.5 feet) which is about the three foot level on this building. The next two standards deal with the ground floor level of the building and commercial design standards and the applicant must show they comply with those standards when they submit final building design plans.

Walz next reviewed the general standards. The specific proposed exception will not be detrimental to or endanger the public health, safety, comfort or general welfare. Staff found the following:

- The subject property is centrally located in close proximity to commercial areas and employment centers .
- The property is served directly by a continuous sidewalk network that connects to the Waterfront Drive commercial area to the east and to the Gilbert Street commercial area to the north. A connection to the Iowa River and Highway 6 trails is located approximately a quarter mile to the north.
- The area is served by two bus routes-Broadway and Cross Park. Both routes have stops at the corner of Southgate and Gilbert.
- On-street parking is allowed along Southgate Avenue.
- The residential entrance at the east end of the building provides elevator access to the second floor. This will allow the applicant to provide, upon request of a tenant, a handicapped parking space adjacent to the entrance.
- In order to promote the health, safety, and comfort of the residents, the applicant should fence in the open space area at the east end of the building to prevent trespassing from adjacent commercial property to the north and east. Staff recommends that the applicant provide a functional amenity, such as a picnic table or seating, in this area. This will allow the open space area to safely serve as private recreation space for the residents.
- The subject property is located in the 500-year floodplain and therefore must comply with the floodplain regulations.

Walz explained that staff believed the proposed exception would not be injurious to the use and enjoyment of other property in the immediate vicinity and would not substantially diminish or impair property values in the neighborhood because other properties in the immediate vicinity have residential units above the commercial level, as noted in the staff report. Also, additional multi-family development is anticipated as part of Riverfront Crossings. Properties to the east and

south are currently undeveloped. The submitted site plan shows that the applicant is able to provide more than the minimum parking required for the commercial and residential uses and on-street parking is allowed on Southgate Avenue.

Walz said that in order to develop the subject property, a common driveway access should be provided from Southgate Avenue. This will require the applicant to locate a shared curb cut/driveway along the east property line and to provide a cross access easement so that vehicles may move between properties once the abutting property develops. The applicant should also establish a cross access easement between the subject property and the CC-2 property to the north (which is under the same ownership). This will ensure continued cross access should either property change ownership or redevelop. Cross access minimizes the number of curb cuts onto the adjacent streets and thereby reduces traffic conflicts.

Walz explained that the property owner was required to dedicate 10-feet along Southgate Avenue to the right-of-way. As a result, the south property line is approximately 11 feet north of the sidewalk. If the applicant is unable to achieve the required 10-foot setback along the south side of the parking lot, a minor modification can reduce the setback by up to 15%. She note that there is adequate space for bike parking on both the east and west ends of the building and that tenant bike parking should be provided at the east end of the building. A dumpster location should be provided at the east end of the site as well. This may reduce the number of parking spaces. However, by providing more compact spaces, such as along the west side of the parking area, the applicant should be able to retain 32 spaces. The applicant will also be required to provide a detailed landscape plan showing the required parking area screening and trees in order to secure a building permit-east end for tenant use; west end for commercial use.

The proposed use will be consistent with the Comprehensive Plan, as amended. The current Comprehensive Plan shows this area as appropriate for commercial development. The draft of the South District Plan that is currently in front of City Council for approval contemplates mixed-use development in this area. Walz explained the purpose of a mixed-use zone is to provide a transition from commercial and employment centers to less intensive residential zones.

Staff recommends approval of EXC15-00011, a special exception to allow residential units (up to 8 bedrooms) above the ground floor commercial on property located in the Community Commercial (CC-2) zone at 1950 South Gilbert Street subject to the following conditions:

Substantial compliance with the site plan and elevations submitted, with the following adjustments:

- 10-foot setback between the west property line and the parking area.
- Bike parking to be provided for residential and commercial uses; parking for residential uses to be located at the east end of the building.
- Pedestrian access to the West entrance from Gilbert Street.
- One handicapped parking space should be located directly adjacent to one of the commercial entrances.
- Curb cut/driveway access from Southgate Avenue must be provided along the east property line in compliance with a common access easement in place on the properties.
- Open space area to the east of the building should be enclosed by a fence along the north and east property line. For the benefit of the residents, the applicant should provide some functional amenity such as a picnic table or seating within this area.
- Applicant must secure a minor modification to reduce the parking setback along the south property line
- Applicant must provide a cross access easements with the commercial properties the north

- and east.
- Building must meet the standards for development located in the floodplain.
- The ground floor of the building must meet the ground floor commercial building standards.

Chrischilles asked if there were currently sidewalks along Southgate Drive and Walz confirmed there were.

Soglin asked to see the floodplain map and pointed out that even in a 100 year flood event the property would be surrounded by water. Walz agreed and said the property may not be accessible during a 100-year flood event. Soglin asked if in previous flood events there were mandatory evacuations and Dulek said in 2008 only Parkview Terrace was a mandatory evacuation. Soglin noted her concern if the residences on this property were inaccessible due to a flood.

Chrischilles asked how many commercial spaces were in the proposed property. Walz said there is space three or four but the applicant could address what his intent is.

Soglin questioned the letter the Board received from the property owner across the street from this proposal that stated they were only allowed to build a single story commercial structure and why was that person was not able to ask for a special exception. Walz was unable verify whether FAA regulations had limited the height of the property in question, but at the time that property was developed it was in the CI-1 zone and that zone does not allow second floor multi-family residential uses. The property is now zoned CC-2—the zoning was changed from CI-1 to CC-2 at the request of the owner and was part of the same rezoning that made the property at 1950 Gilbert part of the CC-2 zone.

Baker asked the applicant to come forward to answer questions.

Richard Arthur (applicant, 1950 South Gilbert Street) is seeking the special exception. He and his wife currently own the property at 1930 South Gilbert Street and when they first married they worked out of that building and lived above it as well. During the flood of 2008 they were evacuated and not allowed to return to their building for a little over a week.

Chrischilles asked how many commercial units would be in the proposed property. Arthur replied they would have three commercial spaces. Arthur noted that the letter from the neighbor stated a concern about an ability to lease or rent the spaces he owns and the addition of the new building would be too much supply. Arthur said of the three spaces he projects to have in the new building two of the spaces already have interested renters. He noted that his current business is as a CPA and he works closely with the Hispanic population, especially restaurants and construction companies. Arthur does not believe the tenants he will have in his commercial spaces will be those his neighbor would be attract to his building.

Chrischilles asked how many current commercial spaces Arthur owned. Arthur said there were three commercial spaces in his current building but as soon as the new building is constructed it will only be two because one of the tenants will move to the new building and Arthur will expand his business office. Chrischilles asked if the neighbor's commercial spaces were all rented and Arthur thought there might be one vacancy in his building.

Goeb asked about the upstairs of Arthur's current building. Arthur said there were five units on the upper level, his wife and he lived in one of the one-bedroom units at one time but now live over on McCollister Boulevard with their three children.

Soglin noted in the new building there would be eight one-bedroom units and eight parking spaces and if the units had couples sharing the units there may not be enough parking spaces. Arthur noted that in their current building the commercial tenants use their spaces during the day but the apartment tenants can use them in the evenings so the spaces are not used at the same time of the day. He also noted there are extra spaces in the site plan for overages. Arthur also mentioned several tenants bike or walk to work and don't have cars or need parking spaces.

Goeb asked how the current building at 1930 South Gilbert Street was allowed to be built with apartments on the upper level. Walz was unsure, but thought it must have been built under a previous zoning code when that was permitted. Arthur noted his building was built in 1984.

Baker opened the public hearing.

Chrischilles noted letter the Board received from the neighbor and how much weight it should be given. The letter states concern about buildings with apartments above and that allows for the commercial units to be rented at lower costs—the author of the letter believes that is not fair to other commercial properties in the area. Walz noted that developing a property with commercial and residential above is a far more expensive prospect, with the infrastructure and size of the building needed. The applicant is providing one floor of residential, which is an expensive prospect, but one that adjacent property owners in the CC-2 could also seek through the same process.

Goeb noted the other property owner built his building in a time where the second story residential was not allowed and that just sometimes happens. She feels his points are valid, but denying this application does not help that property owner in any way.

Soglin agreed that there is no evidence on the over saturation and also feels that when there is residential above commercial that sometimes limits what can be in that commercial space so there is no disturbance to the residences. She also noted that in terms of the second general standard, it is not diminishing or impairing the property values in the area but rather would increase the values.

Goeb noted her concern about residences in the floodplain and fears people trying to get back into their building during a flood event. Walz said that the building being constructed with flood doors would not allow anyone to enter during a flood event. Goeb was glad to hear that, but also said there is a cost for people having to be relocated during a flood. Chrischilles asked if renters were made aware that they are in a floodplain and what that could mean when they sign a lease. Walz said that could be a condition on the special exception that it is disclosed on the lease and that requirement would stay with the property and be required of any future owner of the building.

Arthur said his current lease does not mention anything about possible floods. He said he would be willing to add that to his leases as it is important to inform people there is a risk.

Dulek noted it would be an informational item in the lease, it is not saying it would be a requirement stating the landlord has to do X or the tenant has to do Y.

Baker asked if the Board could make a recommendation to City Staff that all leases have the flood information in them. Walz said they could draft a request to the Planning Office to have that added to leases within City floodplains. Walz will draft a request and have the Board sign it at a future meeting.

Baker closed the public hearing.

Soglin moved to approve EXC15-00011, a special exception to allow residential units (up to 8 bedrooms) above the ground floor commercial on property located in the Community Commercial (CC-2) zone at 1950 South Gilbert Street subject to the conditions list in the staff recommendation plus that the information disclosure form on the lease disclose that the property is in the 500 year floodplain.

Chrischilles seconded the motion.

Soglin stated that regarding EXC15-00011 she concurs with the findings set forth in the Staff report of October 14, 2015 and conclude that the general and specific criteria are satisfied unless amended or opposed by another Board member she recommends that the Board adopt the findings in the staff report for the approval of this application. She also noted regarding the second general standard, although the Board received a letter stating some concerns there was no evidence in the letter that this proposed special exception presents an unfair advantage. Also regarding the first general standard and the regard to public safety the issue about the floodplain has been satisfied.

Chrischilles and Goeb concurred with the finding of facts.

A vote was taken and the motion passed 4-0.

Baker declared the motion for the special exception approved, noting that anyone wishing to appeal the decision to a court of record may do so within 30 days after the decision is filed with the City Clerk's Office.

OTHER:

Walz said she was unsure if there was any applications for the November meeting but if there is a meeting it will be on November 18, a week later than usual and be held at the Robert A. Lee Recreation Center.

Soglin asked about the conditions of landscaping that was added to the exception for the drive-thru at the Dodge Street HyVee and would like Staff to report if the landscaping at the location is appropriate. Walz said that HyVee never built the drive-thru any conditions imposed with the special exception are no longer valid.

ADJOURNMENT:

Soglin moved to adjourn.

Chrischilles seconded the motion.

The meeting was adjourned on a 4-0 vote.

**BOARD OF ADJUSTMENT
ATTENDANCE RECORD
2014 - 2015**

NAME	TERM EXP.	11/12	1/14	2/11	4/8	5/13	6/10	8/12	9/9	9/14	10/14
BAKER, LARRY	1/1/2017	X	X	X	X	X	X	X	X	X	X
GOEB, CONNIE	1/1/2020	X	X	X	X	X	X	X	X	X	X
GRENIS, BROCK	1/1/2016	X	X	X	O/E	X	O/E	X	X	X	O/E
CHRISCHILLES, T. GENE	1/1/2019	X	O/E	X	X	X	X	X	X	X	X
SOGLIN, BECKY	1/1/2018	X	X	X	X	X	X	X	X	X	X

KEY: X = Present
 O = Absent
 O/E = Absent/Excused
 --- = Not a Member