

BOARD OF ZONING ADJUSTMENT
December 10, 2009

The Board of Zoning Adjustment Meeting was held on Thursday December 10, 2009 in the City Hall 3rd Floor Courtroom, Aberdeen, South Dakota with Dan Zumbaum presiding as Acting Chairman. Acting Chairman Babcock called the meeting to order. Members present at roll call were Kezar, VanDeRostyne, Weigel, and Zumbaum. Absent were: Sikkink and Babcock. Also present were Ken Hubbart, City Planner, Brett Bill, Planning & Zoning Director, Stuart Nelson, Assistant City Engineer, Barry Dunlavy, Building Inspector, Chad Nilson, Building Inspector, Rob Baumgartner, Code Enforcement Officer, and Paula Nelson, Board of Zoning Adjustment Secretary.

VanDeRostyne moved and Kezar seconded to approve the Board of Zoning Adjustment minutes of November 12, 2009, all members voting aye, the motion carried.

Acting Chairman Zumbaum began with new business as follows:

- 1) Kimberly Nelson requested permission, as per site plan submitted, to operate a daycare as a home occupation, which would be a Special Exception in an (R-2) Medium Density Residential Zoning District, all on Lot 16, Block 2, Forest Acres First Addition, a.k.a. 1403 Seventh Street S. Kimberly Nelson was present to represent the property. Following discussion VanDeRostyne moved and Kezar seconded to approve with the following stipulations: 1) Any provided yard/play area must be maintained as a fenced in area prior to the operation of this daycare commencing, 2) All applicable state regulations must be met, 3) No more than one individual other than the owner, may work at the daycare at one time, 4) Pending notification that the applicant and members of the household have not been rejected by the state due to abuse or neglect, 5) A floor plan must be submitted for review showing the location used for childcare, 6) Age range of children, the number of children and hours of operation must be submitted, 7) This special exception is for the owner, as long as she/he is the owner/operator of the proposed use, 8) Announced and unannounced inspections must be permitted by operator, 9) The operator must schedule a home inspection with the Building Inspection Department and/or the Fire Marshal in order to verify that Building and Fire Code requirements are met, and any required changes or modifications must be made, and 10) Owner/operator and any employees must be licensed with the City of Aberdeen. Upon roll call, all members voting aye, the motion carried. **SPECIAL EXCEPTION APPROVED.**
- 2) Jennifer Rathert requested permission, as per site plan submitted, to operate a daycare as a home occupation, which would be a Special Exception in an (R-2) Medium Density Residential Zoning District, all on Lot 12, Block 2, Homes Are Possible Fourth Subdivision, a.k.a. 917 Plum Lane. Jennifer Rathert was present to represent the property. Following discussion Kezar moved and VanDeRostyne seconded to approve with the following stipulations: 1) Any provided yard/play area must be maintained as a fenced in area prior to the operation of this daycare commencing, 2) All applicable state regulations

must be met, 3) No more than one individual other than the owner, may work at the daycare at one time, 4) Pending notification that the applicant and members of the household have not been rejected by the state due to abuse or neglect, 5) A floor plan must be submitted for review showing the location used for childcare, 6) Age range of children, the number of children and hours of operation must be submitted, 7) This special exception is for the owner, as long as she/he is the owner/operator of the proposed use, 8) Announced and unannounced inspections must be permitted by operator, 9) The operator must schedule a home inspection with the Building Inspection Department and/or the Fire Marshal in order to verify that Building and Fire Code requirements are met, and any required changes or modifications must be made, and 10) Owner/operator and any employees must be licensed with the City of Aberdeen. Upon roll call, all members voting aye, the motion carried. **SPECIAL EXCEPTION APPROVED.**

- 3) Nicholas Rayman and Tammy L. Pierce-Cerny request permission, as per site plan submitted, to operate a daycare as a home occupation, which would be a Special Exception in an (C3/R4) Central Business/Special Density Residential Zoning District, all on Lot 5, Fletcher's First Replat of Lots 12-16, Block 34, Second Addition, a.k.a. 318 Sixth Avenue SW. Tammy L. Pierce-Cerny was present to represent the property. Following discussion VanDeRostyne moved and Weigel seconded to approve with the following stipulations: 1) Any provided yard/play area must be maintained as a fenced in area prior to the operation of this daycare commencing, 2) All applicable state regulations must be met, 3) No more than one individual other than the owner, may work at the daycare at one time, 4) Pending notification that the applicant and members of the household have not been rejected by the state due to abuse or neglect, 5) A floor plan must be submitted for review showing the location used for childcare, 6) Age range of children, the number of children and hours of operation must be submitted, 7) This special exception is for the owner, as long as she/he is the owner/operator of the proposed use, 8) Announced and unannounced inspections must be permitted by operator, 9) The operator must schedule a home inspection with the Building Inspection Department and/or the Fire Marshal in order to verify that Building and Fire Code requirements are met, and any required changes or modifications must be made, and 10) Owner/operator and any employees must be licensed with the City of Aberdeen. Upon roll call, all members voting aye, the motion carried. **SPECIAL EXCEPTION APPROVED.**
- 4) Presentation College requested permission, as per site plan submitted, to 1) construct a wind generator tower, which would be an Appeal to the Board of Zoning Adjustment, and 2) to construct a wind generator tower 80' tall rather than the permitted 35', which would be a 45' Maximum Height Variance, all on Block 1, Presentation Heights Addition, NW¼ Sec. 12-T123N-R64W, a.k.a. 224 Fifteenth Avenue NW. Steve Sommers was present to represent the property. Following discussion Kezar moved and Zumbaum seconded to deny agenda item #1. Upon roll call, Kezar - aye, VanDeRostyne, Weigel, Zumbaum - nay (1-aye,3-nay), the motion failed. Following further discussion VanDeRostyne moved and Weigel seconded to approve agenda item #1 with the following stipulations: 1) Plans must be submitted for review and a permit must be obtained prior to work commencing, 2) All

required inspections must be completed, 3) FAA approval must be obtained if necessary, and 4) No structure, road or walkway can be within falling perimeter of tower/blades. Upon roll call, VanDeRostyne, Weigel, Zumbaum - aye, Kezar - nay (3-aye,1-nay), the motion carried. **APPEAL APPROVED.** Following further discussion VanDeRostyne moved and Zumbaum seconded to approve agenda item #2. Upon roll call, Kezar - nay, VanDeRostyne, Weigel, Zumbaum - aye (1-nay,3-aye), the motion carried. **MAXIMUM HEIGHT VARIANCE APPROVED.**

- 5) Steven Nemmers requested permission, as per site plan submitted, for an existing residence to remain 13' from the North property line rather than the required 15', which would be a 2' Building Variance and 4.5' from the South property line rather than the required 5', which would be a .5' Building Variance in order to construct a front deck, all on Lot 1, Block 34, Thomas Addition, a.k.a. 1002 Washington Street S. Steve Nemmers was present to represent the property. Following discussion Kezar moved and VanDeRostyne seconded to approve with the following stipulations: 1) Plans must be submitted for review and a permit must be obtained prior to work commencing, 2) Property pins must be located for inspection and setbacks must be verified, 3) All required inspections must be completed. Upon roll call, all members voting aye, the motion carried. **BUILDING VARIANCES APPROVED.**
- 6) John & Colette Carrels requested permission, as per site plan submitted, to 1) construct a 6'x8' (48sf) monument sign rather than the 16sf permitted for nonconforming businesses in a (R-3) High Density Residential Zoning District and 2) in addition to the existing 175sf of signage on this location (223sf total), which would be a 187sf maximum signage variance for a non-conforming business, all on The North 115' of Lot 2 & The North 115' of the West 100' of Lot 1, Block 16, Smith Addition, a.k.a. 805 State Street S. Chris Woolverton and Patrick King of QQP/Creative Signs were present to represent the property. Following discussion VanDeRostyne moved and Kezar seconded to deny agenda item #1, all members voting nay, the motion failed. Following further discussion VanDeRostyne moved and Zumbaum seconded to approve agenda item #1 with the following stipulations: 1) A sign permit must be obtained prior to erection of sign, 2) All existing signage must be removed prior to installation of this sign, and 3) Property must be rezoned to (C-1) Neighborhood Commercial District. Upon roll call, all members voting aye, the motion carried. **MAXIMUM SIGNAGE VARIANCE APPROVED.** Following further discussion Kezar moved and Weigel seconded to approve agenda item #2, all members voting aye, the motion carried. **MAXIMUM SIGNAGE VARIANCE APPROVED.**
- 7) Comfort Hauck requested permission, as per site plan submitted, to construct a second principal structure on the same lot as an existing principal structure, which would be an Appeal to the Board of Zoning Adjustment of Section 905 of Article IX of the Aberdeen Zoning Ordinance, all on the South 60' of Lot 9, Block 3, College Subdivision of Blocks 8-11, Simmon's First Addition, a.k.a. 1409 Main Street S. Emily Shaving and Tom Hulbert were present to represent the property. Following discussion VanDeRostyne moved and Kezar seconded to deny, all members voting aye, the motion carried. **APPEAL DENIED.**

Acting Chairman Zumbaum continued with other business as follows:

- 1) Ken Hubbart presented a copy of the approved Zoning Board of Adjustment Order for Dennis Hellwig's request to operate a packing plant.
- 2) Ken Hubbart stated that no information has been received from Judge Portra regarding Usselman's pending lawsuit.
- 3) Brett Bill stated that the City is taking Terry Hettich to court regarding his junk dealership violations on the property by the overpass.

Following further discussion Kezar moved for adjournment, seconded by Sikkink, all members voting aye, the meeting was adjourned until January 14, 2010.

Paula Nelson
Board of Zoning Adjustment Secretary
December 10, 2009