



**City of Coralville**  
**Board of Adjustment Meeting**  
**July 18, 2022**

**Staff:** Dave Johnson, Community Development Director  
Kevin Olson, City Attorney  
Sarah Horning, Administrative Assistant

**Item 1:** Meeting called to order 5:30 PM

**Item 2:** **Roll Call:**

Present: Nicola, Pearl, Praska, Wise  
Absent: Borde

**Item 3:** **Approval of July 18, 2022 Agenda.**

**Motion to approve:** Praska

**Motion 2nd:** Nicola

**Motion carried:** 4-0

**Item 4:** **Approval of March 21, 2022 Minutes.**

**Motion to approve:** Pearl

**Motion 2nd:** Praska

**Motion carried:** 4-0

**Item 5:** **Public hearing held to consider appeal of decision by Community Development Director to deny Certificate of Occupancy for 104 1<sup>st</sup> Avenue.**

City of Coralville Attorney Kevin Olson stated that on May 20<sup>th</sup>, 2022 Community Development Director Dave Johnson issued a letter to applicant Felicite Kolie

denying a Certificate of Occupancy for 104 1<sup>st</sup> Avenue. City Attorney Olson also stated that pursuant to the City Code of Ordinances, Section 165.55, an eligible person may make an application to appeal the decision to the Board of Adjustments. On June 17, 2022, attorney Kirsten Frey, Shuttleworth & Ingersoll, P.L.C., on behalf of Brian and Bessie Ho, property owners of 104<sup>st</sup> Avenue, filed an appeal of this decision.

Staff member Dave Johnson stated that the reasons for denying the Certificate of Occupancy included that the property was in violation of the City Code of Ordinances, Section 160.23 - Nonconforming uses, specific to flood plain districts, which states that any space unoccupied for 6 months or longer must be brought up to current code to comply with current flood plain standards before it can be occupied. Staff member Johnson stated that it was initially difficult to pinpoint when the property was vacated by previous tenants, but the estimated date of vacancy based on water usage was May 2021. The City became aware of the new tenant when she applied for a sign permit in May 2022, which at the time, was beyond the required 6-month window needed to qualify for occupancy. Johnson also noted that the parking lot is need of some repair and would need new striping. He also stated that when reviewing the space in question, even though it is connected to other commercial spaces, he viewed the property as its own entity since that space has its own address and that it shares no common space or openings with the adjacent buildings like many traditional mixed-use buildings do.

**Public Hearing Open:**

Attorney Kirsten Frey, Shuttleworth & Ingersoll, P.L.C., on behalf of First Investments, LC, property owners of 104 1<sup>st</sup> Avenue, stated that in her interpretation, the property should be considered a mixed-use building, which would not make the unit in question non-conforming since the other units have remained occupied. Frey stated that the property should be considered a mixed-use building, because there is a single owner, the land is taxed as one parcel, there is no condominium declaration separating it into units, and that it is not possible for the owners to sell the units individually. Frey also stated that historically Coralville has considered this one parcel of land, citing the elevation certificate issued by the City in 2008 where it lists addresses 102, 104, and 110 all as one property, and lists only one elevation for all three addresses. Frey also stated that the burden is on the City to prove the building is non-conforming and that the owners have lost that right to use the space. Frey said that the Iowa Supreme Court ruled that a discontinuance of use caused by events beyond the control of the property owner, does not cause a loss of the right to non-conforming use and that a decrease in demand is also beyond the control of the property owner. Frey also stated that the owners were actively looking for a tenant during the 6 months of

vacancy and they were not responsible for the fact they had trouble finding one due to the COVID pandemic, which was beyond their control. Frey also asked the Board of Adjustment to consider the fact that the new tenant signed a lease in October 2021 and the tenant took possession of the space and began occupying it on November 1, 2021. Frey also noted that while not open for business at that time, the tenant was making improvements to the space, which included cleaning, painting, and laying down new flooring, and that the space was clearly being maintained by November 1, 2021, which fell within the six-month time frame from the vacation of the previous tenant. Frey also stated that she believes that the confusion on the issue was caused by circumstances beyond anyone's control. Frey stated that the improvements the tenant was making at the time of her initial occupancy did not require a building permit from the City, so in turn the City was not aware the space was occupied by November 2021. Frey also argued that had the tenant been making other improvements that required a city permit, the City would have known she was in occupancy within the six-month time frame and would have more than likely approved the occupancy permit at that time. Frey stated that for those reasons that the Board of Adjustment should overturn staff member Johnson's original decision and allow occupancy of the space.

Applicant Felicite Kolie stated that she had invested a lot of time and money into the space before applying for the Certificate of Occupancy and that she had difficulty finding the right people to help her, because most contractor's schedules were full. She also stated she did not apply for the Certificate of Occupancy earlier, because she knew everything needed to be ready for the inspection and she was not at that stage yet.

Staff member Johnson and City Attorney Olson reiterated that the City only learned the space was occupied when they received a sign permit application, which led Johnson to believe there was a new business going in that space and that the applicant proceeded with the application process in good faith and without any intention of violating city codes or rules.

Commission member Russ Wise asked what the flood designation and zoning for the property, and whether the zoning had changed in recent years. City Attorney Olson replied that the property falls within the 100-year flood plain and the current zoning designation is C-2. He also stated that in his 22-year tenure with the City, to his knowledge, this area had not been rezoned.

Commissioner Cherie Nicola noted that while Frey stated that the addresses are listed as one unit and under one parcel number, the tax records list them separately. Frey responded that while the tax amounts are listed separately, the addresses are all listed under the one parcel number and that the owners receive only one tax

bill for said property, and noted the post office does this frequently so the mail isn't misplaced. Nicola questioned whether the multiple addresses could be considered as one property since the tax bill lists the addresses separately. Frey stated that the said property taxes for each address are listed separately and then totaled into one bill, because commercial tax bills are figured differently than residential bills in that the commercial tax bills are based on the income stream of each business and that is why the individual addresses are listed, but only one tax bill is issued.

Wise asked what would happen to the space if the appeal is denied. City Attorney Olson stated that it would, more than likely be left vacant. Wise also asked what the next step would be for the applicant if this appeal was denied. Olson stated that the next step for the property owner would be to appeal it to District Court. Wise asked Olson whether the board could put conditions on the approval. Olson stated yes that the board could place conditions, but that the property owner would have the right to appeal any extra conditions made by the board.

Commissioner Sean Pearl asked staff member Johnson if his opinion has been altered with all of the information presented. Johnson responded that the letter submitted did shed some light on the sequence of events that took place and how things transpired. He also stated that to him, the one question that remains is how to look at a building and what criteria needs to be considered when making that decision.

Property owner Brian Ho stated that in his opinion the addresses should not be considered separate entities, because they all share the same boiler room, water heater, furnace and air conditioning. He also stated that they have someone lined up to stripe the parking lot. Ho said that they were largely unaware of the other repair issues in the parking lot, such as the landscaping planters, because they were hit by the snow plows when clearing the lot.

Wise asked why did the City allow for an addition of a restaurant to the front of an existing apartment building. City Attorney Olson stated that according to the City's records, it was added in 1985 and noted that zoning codes have changed significantly since then and would not be allowed by today's standards. When asked by Wise if there are comparable properties in town, Olson stated that there are not.

### **Public Hearing Closed:**

#### **a) Consideration to overturn the decision by City of Coralville to deny**

**Certificate of Occupancy.**

**Motion to consider overturning of decision: Pearl**

**Motion 2<sup>nd</sup>: Praska**

**Motion carried: 4-0**

**b) Approval of motion to overturn decision by City of Coralville to deny Certificate of Occupancy.**

**Roll Call**

**Pearl – Aye**

**Praska – Aye**

**Nicola – Aye**

**Wise - Aye**

**Motion carried: 4-0**

**Item 5: Adjourn Meeting**

**Motion to Adjourn: Pearl**

**Motion 2<sup>nd</sup>: Praska**

**Motion carried: 4-0**

**Meeting adjourned @ 6:15 PM**

Respectfully submitted,  
Sarah Horning