

City of Atlantic
Board of Adjustment
Agenda
Monday, March 10, 2025; 5:30 P.M.
Atlantic City Hall, City Council Chambers

- I. Call to Order.
- II. Approval of Agenda.
- III. Approval of February 26, 2024, Minutes.
- IV. Public Hearing to Consider a Conditional Use Permit Application by Randall Roy for the Property located at 501 Chestnut Street that would allow for a single-family residential use on the first story of a building abutting Chestnut Street, North of 7th Street in the C-3 “Central Business” District as allowed by Section 12.30(11) of the Zoning Ordinances of the City of Atlantic, Iowa.
 - a. Opening Statement by Randall Roy, owner of 501 Chestnut Street.
 - b. Statements from Abutting and Opposite Property Owners.
 - c. Statements from the General Public.
- V. Question & Answer Period Between the Board and Randall Roy.
- VI. Order Regarding the Conditional Use Permit Application by Randall Roy for the Property located at 501 Chestnut Street that would allow for a single-family residential use on the first story of a building abutting Chestnut Street, North of 7th Street in the C-3 “Central Business” District.
- VII. Next Regular Meeting: None Scheduled
- VIII. Adjournment.

The Board of Adjustment met in special session at 5:30 P.M. with Ihnen presiding as Acting Chair. Members present were: Cappel, Munson, Krengel, and Shouse. Absent: None. Also present: Zoning Administrator Lund, At-Large Councilwoman Otte, and Massena Telephone Company CEO Mike Klocke.

Cappel moved, Munson seconded, to approve the agenda. Passed.

Ihnen next welcomed new Board members, Emily Krengel and Shawn Shouse.

Shouse moved, Cappel seconded, to approve the revised minutes of the December 11, 2023, meeting as presented. Passed.

Ihnen moved on to the nominations for Vice-Chair.

Ruge moved to nominate Fleener as Vice-Chair. Munson seconded. Passed.

Ihnen moved on to vote for Vice-Chair.

Ruge moved to appoint Fleener as Vice-Chair. Munson seconded. Passed.

Ihnen outlined the rest of the agenda and placed a 5-minute time limit during the public hearing for the applicant and required notice recipients, 2 minutes for other speakers.

Ihnen proceeded to open the public hearing to consider a conditional use permit application by Massena Telephone Company for the property currently identified as 703 East 14th Street, that would allow for the for the operation of a telephone transmission equipment building (fiber-optic network) in a R-2 Low Density Single Family Residential District as allowed by Section 5.030(7) of the Zoning Ordinances of the City of Atlantic, Iowa, with the conditional use permit transferring to a new lot that shall be identified as 1400 Olive Street, Atlantic, Iowa 50022. (pending regulatory approval).

Ihnen invited Mike Klocke, the CEO of Massena Telephone Company to speak regarding the conditional use permit application.

Mike spoke to the Board about the planned work at 703 East 14th Street.

Dana Halder of 1510 Lincoln Drive addressed the Board about traffic and parking concerns in the area where the building was proposed.

Shouse moved, Krengel seconded to Close the Public Hearing. All in favor. Passed.

Ihnen moved on to the discussion and vote a conditional use permit application by Massena Telephone Company for the property currently identified as 703 East 14th Street, that would allow for the for the operation of a telephone transmission equipment building (fiber-optic network) in a R-2 Low Density Single Family Residential District as allowed by Section 5.030(7) of the Zoning Ordinances of the City of Atlantic, Iowa, with the conditional use permit transferring to a new lot that shall be identified as 1400 Olive Street, Atlantic, Iowa 50022. (pending regulatory approval).

Regarding our ordinances, Section 25.080(1) of the Zoning Ordinance states:

“The Board of Adjustment may authorize the Zoning Administrator to issue a conditional use permit for conditional uses provided that such conditional uses or structures are in accordance with the purpose and intent of this Ordinance and are found not to be hazardous, harmful, offensive, or otherwise adverse to the environment, the applicant or the value of the neighborhood or community.”

That is the first, and broadest standard the Board will need to consider.

Section 25.080(3) outlines the process of review and approval process.

“The Board of Adjustment shall review the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, sewerage and water systems and the proposed operation.”

Ihnen stated that there are seven requirements to satisfy for the consideration of a conditional use permit as outlined in Section 25.080(5).

To grant a conditional use permit, the Board of Adjustment must find that:

- a. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.
- b. That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted and will not substantially diminish and impair property values within the neighborhood.
- c. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- d. Those adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.

- e. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- f. That the conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance, be modified as provided in Article 23.
- g. That the proposed use shall be consistent with the comprehensive plan.

The consensus of the Board was that the facts support subsections a through g of the Zoning Ordinance.

Ihnen asked if there was a motion to approve the conditional use permit application.

Shouse moved to approve the conditional use permit for the Massena Telephone Company for the property currently identified as 703 East 14th Street, that would allow for the for the operation of a telephone transmission equipment building (fiber-optic network) in a R-2 Low Density Single Family Residential District as allowed by Section 5.030(7) of the Zoning Ordinances of the City of Atlantic, Iowa, with the conditional use permit transferring to a new lot that shall be identified as 1400 Olive Street, Atlantic, Iowa 50022. Munson seconded. All in favor. Passed

Ihnen proceeded to discussion and recommendation on future meeting dates and times. Nothing conclusive was determined.

The next regular meeting is not scheduled.

Munson moved, Cappel seconded, to adjourn at 7:37 P.M. Passed.

Chair

Attest:_____
Secretary



CONDITIONAL USE PERMIT APPLICATION

Applicant must complete the following information

Address where the conditional use permit will be applied: 501 Chestnut Street, Atlantic, IA, 50022

Applicant's Name: Randall Roy

Applicant's current Phone: 712-590-0373

Applicant's Current Address: 65484 550th Street, Griswold, IA, 51535

Affidavit: Are you, the applicant, authorized on behalf of the property owner to make an application for the conditional use permit being applied? ☒ YES ☐ NO

Legal Description of the Affected Premises

Addition: _____ Block: 33 Lot: 1 - 2

Zoning District: _____ Property Use: Commercial

Explanation for the Conditional Use Permit Sought by Applicant:

We have a main floor of 6250 square feet. We have a 2500 square feet mezzanine that we would like to use as a 1 bedroom apartment and be able to live onsite where we currently work. We own this building and there are no loans or liens against it. The mezzanine has its own bathroom and a shower is being added. The living quarters will be completely isolated from the main floor working environment.

This section to be completed by Applicant

Supporting Information

The Board of Adjustment may authorize the Zoning Administrator to issue a conditional use permit for conditional uses provided that such conditional uses or structures are in accordance with the purpose and intent of this Ordinance and are found not to be hazardous, harmful, offensive, or otherwise adverse to the environment, the applicant or the value of the neighborhood or community. While it is not required, a professional land use attorney may be consulted in drafting answers to these questions and/or submit answers in a paper that address these questions in substitution of the supporting information pages.

Will the establishment, maintenance, or operation of the proposed conditional use be detrimental to or endanger the public health, safety, morals, comfort, or general welfare?

No

Will the conditional use be injurious to the use and enjoyment of other property in the immediate vicinity? Will the conditional use permit substantially diminish and impair property values within the neighborhood?

No

This section to be completed by Applicant

Will the establishment of the conditional use impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district?

No

Are there adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided to the site?

Yes

Have adequate measures been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets?

Yes. We have our own parking behind our building.

Does the conditional use, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance, be modified as provided in Article 23?

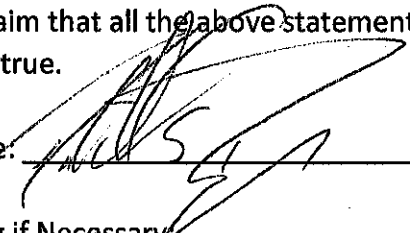
YES, I BELIEVE SO.

This section to be completed by Applicant

Is the proposed use consistent with the comprehensive plan?

YES

Affidavit: I hereby claim that all the above statements and statements contained in any attached papers are true.

Applicant's Signature: 

Date: 2/3/25

Attach the following if Necessary:

- A. A letter of authorization from the owner or lessee
- B. Additional justification for the request.
- C. Site plans or building permit applications that may be relevant to the application.

BOARD OF ADJUSTMENT

☐ Approved

☐ Denied

Date: _____ Fees: _____

PRESIDING CHAIR OF THE BOARD OR BOARD SECRETARY: _____

Comments:

This section to be completed by Zoning Administrator



23 East 4th Street
Atlantic, IA 50022
City Hall: (712) 243-4810
Fax: (712) 243-4407
www.atlanticiowa.com

CITY OF ATLANTIC STAFF ANALYSIS

Topic: Conditional Use Permit for Randy's Computers at 501 Chestnut Street.
Prepared For: Board of Adjustment
Date: March 10, 2025
Staff Contact: John Lund (712) 243-4810 johnlund@cityofatlantic.com

Analysis

Mr. Randall Roy has applied for a Conditional Use Permit that would allow for a single-family residential use on the first story of a building abutting Chestnut Street, North of 7th Street in the C-3 Central Business District as allowed by section 12.30(11) of the Zoning Ordinances of the City of Atlantic, Iowa. Application for the Conditional Use Permit is for the property located at 501 Chestnut Street.

The Board of Adjustment will have to hold a public hearing before discussion can commence on the conditional use permit application. Following the public hearing, the Board will then proceed to review the conditional use permit itself, using the standards outlined in the Zoning Ordinance and listed in this analysis.

The facts of the application are as follows.

- The proposed site of the ground floor residence is 501 Chestnut Street. This is indicated in the yellow box on the image found on the top of page 2.
- 501 Chestnut Street is in the "C-3" Central Business District. The zoning for the surrounding property is also C-3.
- 501 Chestnut Street is owned by Randall and Jamie Roy, 65484 550th Street, Griswold, Iowa, 51535.



- Mr. Roy states the following concerning their proposed use of the property:

“We have a main floor of 6,250 square feet. We have 2,500 square feet mezzanine that we would like to use as a 1 bedroom apartment and be able to live onsite where we currently work. We own this building and there are no loans or liens against it. The mezzanine has its own bathroom and a shower is being added. The living quarters will be completely isolated from the main floor working environment.”
- The following images were provided directly by the applicants. The first image is a shot of the stairs leading up to the mezzanine. The applicants believe it could be argued that it's not a main area.



- Below is a shot of the mezzanine from the showroom. The left, open side is going to be enclosed like the right side, and they are going to put a locking door at the top of the stairs.



- The following image is a shot of the open room at the top of the stairs.



- The image on the following page is a shot of the back hall that leads to the bathroom, and the corner on the left is where the shower is going to go.



- The final two images are pictures of the closed room.



- At the time of writing this analysis, there were no calls, e-mails, or letters of support or opposition to the proposed project.
- All required notices and mailings have been issued within the timelines outlined under Section 25.080(4).

Atlantic Zoning Ordinance, Comprehensive Plan, and Standards of Review

The duties of the Board and how a decision is to be arrived at are outlined in our Zoning Ordinance and Iowa Case law, with case law largely focused on the Board being bound to its own ordinances.

Regarding our ordinances, Section 25.080(1) of the Zoning Ordinance states:

“The Board of Adjustment may authorize the Zoning Administrator to issue a conditional use permit for conditional uses provided that such conditional uses or structures are in accordance with the purpose and intent of this Ordinance and are found not to be hazardous, harmful, offensive, or otherwise adverse to the environment, the applicant or the value of the neighborhood or community.”

That is the first, and broadest standard the Board will need to consider.

Section 25.080(3) outlines the process of review and approval process.

“The Board of Adjustment shall review the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, sewerage and water systems and the proposed operation.”

Lastly, there are seven requirements to satisfy for the consideration of a conditional use permit as outlined in Section 25.080(5).

To grant a conditional use permit, the Board of Adjustment must find that:

- a. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.
- b. That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted and will not substantially diminish and impair property values within the neighborhood.
- c. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- d. Those adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.

- e. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- f. That the conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance, be modified as provided in Article 23.
- g. That the proposed use shall be consistent with the comprehensive plan.

The Board must come to a conclusion on each of these standards. Each of the standards must be satisfied in order to approve the conditional use permit. Even the failure of one standard would be fatal to the application.

Regarding the Zoning Regulations that concern the standards outlined in f. and g., the following information is relevant.

Section 12.010 of the ordinance states the purpose and intent of the “C-3” Central Business District:

“The C-3 Central Business District is established to provide a District of concentrated retail commercial and service uses that are intended to service the needs of the local trade area. The "C-3" District is intended to be located only in the downtown area of the City and to be expanded out from that central area in an orderly and progressive manner as demand for additional commercial land is generated.”

Permitted uses in this zone include:

- Business sales and services conducted entirely within the building, including those with incidental manufacturing or processing of goods. Restaurants are exempt from this requirement.
- Offices and clinics.
- Automotive sales.
- Hotels and motels.
- Publicly owned and operated buildings.
- For properties abutting Chestnut Street, North of 7th Street, Second Story and above: Dwellings: Single-family, two-family, and multi-family.

Conditional uses in C-3 are as follows:

- Public utility and service uses, including but not limited to electric sub-stations, gas regulator stations, radio and television transmitting towers.
- Telephone transmission equipment buildings.

- Railroad right-of-way.
- Day care centers and nursery schools.
- Light manufacturing, assembly or treatment of articles or merchandise from the following previously prepared material: canvas, cellophane, cloth, fiber, glass, leather, paper, plastic precious or semiprecious metals, textiles and yarn provided that no raw materials or manufactured products are stored outside the building other than for loading and unloading operations and further providing that such use is not noxious or offensive by reason of vibration or noise beyond the confines of the building or emission of dust, fumes, gas, odor, or smoke.
- Lumberyard provided that the operation is conducted within the building or screened area.
- Railroad freight stations, trucking or motor freight terminals provided that service yards or docks are at least 100 feet from an "R" District.
- Automobile repair garage doing major repair.
- All other uses of a similar character as may be determined by the Board of Adjustment.
- Churches.
- For properties abutting Chestnut Street, North of 7th Street, First Story: Dwellings: Single-family, two-family, and multi-family.

Standard g addresses the Comprehensive Plan. The Comprehensive Plan is a document the State requires us to have for the long-term planning and development of the community. Our Comprehensive Plan was updated in 2018 and addresses many different issues. Page 34 of the Comprehensive Plan addresses Commercial Land Use, with “Central Business Development” and “Downtown Development.” As distinct areas.

The following is found directly in the plan:

“Central Business Development: The central business district is located in the downtown area along Chestnut Street. Businesses in this district may include retail, restaurants, offices, hotels, and residential dwellings. Unlike other districts, the central business district is confined to one area, but it may grow outward from Chestnut Street as demand increases. Currently, there are approximately 28 blocks included in this district from 8th to 2nd Street and the railroad. Ideal development for this area would continue outwards towards Cedar Street and Maple Street.

Downtown Development: Historic downtown stretches 4 blocks from the intersection of 6th and Chestnut to the railroad and Chestnut and provides a variety of businesses, restaurants, apartments, and other services. With the street-scaping improvements that have taken place here, the area appeals to pedestrians, promotes walkability, and provides an aesthetically appealing location for businesses. The downtown area is different than

others since it must grow continuously. Even with this restricted growth, there is still a great amount of opportunity as there are a number of vacant storefronts that can be filled by new businesses.”

Page 39 of the Plan also covers Atlantic’s land use categories and characteristics. The following is listed “Downtown Mixed Use.”

Downtown Mixed Use	Traditional downtown district includes mix of uses, primarily commercial, office, and upper level residential.	Establishes mixed use pattern in the traditional city center.
	Should be the primary focus of major civic uses, including government, cultural services, and other civic facilities.	District may expand with appropriately designed adjacent projects that respect pedestrian scale, design patterns and setbacks within the district.
	Developments outside the center of the city should be encouraged to have “downtown” characteristics, including mixed use buildings and an emphasis on pedestrian scale.	Historic preservation is a significant value.
		Good pedestrian and bicycle links should be provided to surrounding residential areas.
		Zoned as CBD (Commercial- Central Business District)

Page 41 of the Plan outlines future land use, with the following stated about commercial:

“Commercial areas often consist of retail and office uses with the option for mixed-use buildings. Mixed-use buildings in Atlantic are readily found in the downtown area and consist of a building with a business located in the ground level and another use, such as residential apartments, located on the upper level. These commercial uses provide jobs, services, and retail options for residents and visitors. Commercial zones will continue to grow around existing hubs of commercial activity along 7th street, downtown, and highway 6 on the edges of Atlantic.

The Board will have to interpret what guidance, if any, the Comprehensive Plan offers in regard to a change in property use within the C-3 District and what role mixed use or residential space on a portion of the ground level, not including the storefront, may be appropriate or not appropriate for the district.

Case Law Guidance from the Iowa Supreme Court on Conditional Use Permits and the Role of the Board of Adjustment

The Iowa Supreme Court has provided critical guidance to local government Boards of Adjustment over the decades through their various rulings. The following cases outline the duties of the Board and where the burden of evidence and review reside in adjudicating a conditional use permit.

First, in *Johnson v. Board of Adjustment (1976)* the Supreme Court determined the burden of proof resides on the applicant, not the Board, in justifying why a conditional use permit should be issued.

Second, the *Citizens Against the Lewis and Clark (Mowery) Landfill v. Pottawattamie County Board of Adjustment (1979)* states that the Board of Adjustment must make written findings on its proceedings and that these findings must be sufficient to allow any Court reviewing the Board's ruling to determine if factual basis and legal principles upon which the board acted were indeed factual, legal, and reasonable.

Next, the Court is largely deferential to the Board of Adjustment. The Board's decision is given similar weight as a verdict of a jury. The Courts generally confine their review to the substance of the local government's own ordinance, facts of the case and process in which the decision is rendered. Specifically, in *Cyclone Sand & Gravel Co. v. Zoning Board of Adjustment (1984)* the Supreme Court set a standard that if the reasonableness of the Board's decision is "open to a fair difference of opinion, the court may not substitute its decision for that of the Board."

In *Willet v. Cerro Gordo County Zoning Board of Adjustment (1992)* the Court accepted of the conditional use permit concept, understanding that these permits are to provide some flexibility in contrast to an otherwise rigid Zoning Ordinance. Further, they acknowledge the authority of a Board of Adjustment to place reasonable limitations on a conditional use permit to mitigate incompatible uses.

In *W & G McKinney Farms, L.P. v. Dallas County Board of Adjustment (2004)* the Court cites *Cyclone* stating "An application for a conditional use permit must meet all conditions of an ordinance. The failure to satisfy even one of the ordinance's conditions is fatal to a permit application." Further in *McKinney* the question of the Comprehensive Plan is addressed. The document itself is viewed as a legitimate document for evaluating applications and uses the words contained within as a basis for review.

Conclusion

The Board of Adjustment may accept the application without conditions, accept the application and place conditions of operation attached to the permit or may reject the application entirely. In arriving at a decision the Board should keep the following in mind:

- The primary issue to be considered is if a first floor, single family residential unit is appropriate use for 501 Chestnut Street as it is located the C-3 "Central Business District."
- The only issue to be addressed by the Board is if the criteria provided by the Zoning Ordinance are satisfied for a conditional use permit.
- Section 25.080(1) states that a permit shall not be issued that is "otherwise adverse to the environment, the applicant or the value of the neighborhood or community." This last sentence indicates that community desires and needs play a role with conditional use permits. However, caution is to be exercised, decisions narrowly based on passion and subjective feelings are unlikely to be given favorable consideration by a court, as opposed to those based on sound logic, professional knowledge, and broad consideration of multiple factors.
- The impact of the proposed living quarters on the existing, permitted uses of the abutting properties is relevant to the Board's deliberations.

- All requirements for a conditional use permit must be satisfied for the permit to be granted. Failure on any one requirement should result in a rejection of the application. Again, the burden is on the applicant to prove these are being satisfied.
- Whether the permit application is granted or denied, findings of fact should be made prior to the decision.
- A majority of the Board will be required to either approve or reject the application, meaning that three members must vote in favor of the motion on the floor for it to be adopted, if there is a full quorum.
- Unlike variances, site plan reviews, or rezoning applications, I do not have a professional opinion to offer on this application. In those circumstances, Iowa Courts have set hidden standards in case law that really direct the Board of Adjustment or Planning & Zoning Commission to a legally defensible conclusion. However, when it comes to interpreting the definitions of the Zoning Ordinance and Conditional Use Permits, the Courts are deferential and treat the Board of Adjustment like a jury making a verdict. The only thing we will be held accountable for would be if we ignore our own ordinance or place arbitrary or capricious standards to this application in contrary to prior precedent.