



COMMUNITY DEVELOPMENT DEPARTMENT

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Planning • Zoning • Building Safety • Construction Inspection Services • Public Health • Housing Inspections • Code Enforcement

MEMORANDUM

To: Zoning Board of Adjustment
From: Andrew Fangman, Assistant Community Development
Date: August 28, 2020
Re: Appeal Case #ZBAV30

INTRODUCTION: Appeal Case #ZBAV30, has been filed by John Dabeet, 2515 Lucas Street, appealing a determination by the City of Muscatine Community Development Department that a fence locating on an adjoining property, 2519 Lucas Street, does not exceed the maximum height of 6' as allowed per City Code Section 10-22-1(J)(3)

BACKGROUND:

John Dabeet, of 2015 Lucas Street has files appeal on a determination by the City of Muscatine Community Development Department that two portions of fencing locating on an adjoining property, 2519 Lucas Street, does not exceed the maximum height of 6' as allowed per City Code Section 10-22-1(J)(3).

Fence A, was constructed straddling a terrace near a shared driveway located on the parcel containing 2519 Lucas Street, but which contains a shared driveway to which 2515 Lucas Street has access right to through an easement. This fence is of unusual type of construction, with the slats and vast majority of the fence sitting on higher terraced are on top of a small retaining wall, but with the supporting posts extending from the lower area at the bottom of the retaining wall. See map and diagram on page 3.

Fence B is located going up a sloped area which contains a shared property line between 2515 and 2519 Lucas Street. It is comprised of 6' planks, which originally, except for a 3' to 4' long section rest directly on the ground which at the time of Mr. Dabeet's initial complaint the planks were 3" to 4" above the ground, which means that in these locations the fence was exceeding the maximum allowed height of 6'. See map and diagram on page 3.

Mr. Dabeet is appealing the method by which the Community Development Department measured the height of these fences for the purposed of compliance with City Code.

Chapter 22 of Title 10 of City Code contains regulations for fences. Section 10-22-1(J) establishes a maximum allowed height of 6' for fences located in the side or rear yards, for properties located in a residential zoning district. However, Chapter 22, does not specify how a fence is to measured to determine compliance with the established limits on allowed heights. Nor, is fence height a defined term in Chapter 32 of Title 10, which is definition chapter for Title 10, the zoning ordinance.

Section 10-31-3(A) establishes that it is duty of the Community Development Director to enforce Title 10. As City Code does specify exactly how the height of a fence is to be measure, this determination initially falls to the Community Development Director as part of their established enforcement duty. Under Section 10-31-C-(1)(a) such a determination can appealed to the Zoning Board of Adjustment is there is alleged error in the determination.

As with fences, Title 10 establishes maximum allowed height for buildings. However, unlike is the case for fences, Title 10 contains a defined methodology of how buildings are to measured in order to determine compliance with established building height restrictions. It is possible to apply this same methodology to measuring the height of a fence. It is the determination of that Community Development Director, that the application of this methodology that is most constant with the intent of the zoning ordinance, and should be the one used.

“Building Height” is defined in Chapter 32 as “Building Height: The vertical distance from the grade to (a) the highest point of a flat roof; (b) the deck line of a mansard roof; (c) the average height between eaves and ridge for gable, hip, and gambrel roofs; or (d) the average height between high and low points of a shed roof.”

Fences are most similar to a flat roof. So, the height would be is measure from the highest point to grade. The critical point in the fence you have a concern with is where grade is measure from. Chapter 32 defines grade as *“The average level of the finished surface of the ground adjacent to the exterior walls of the building.”*

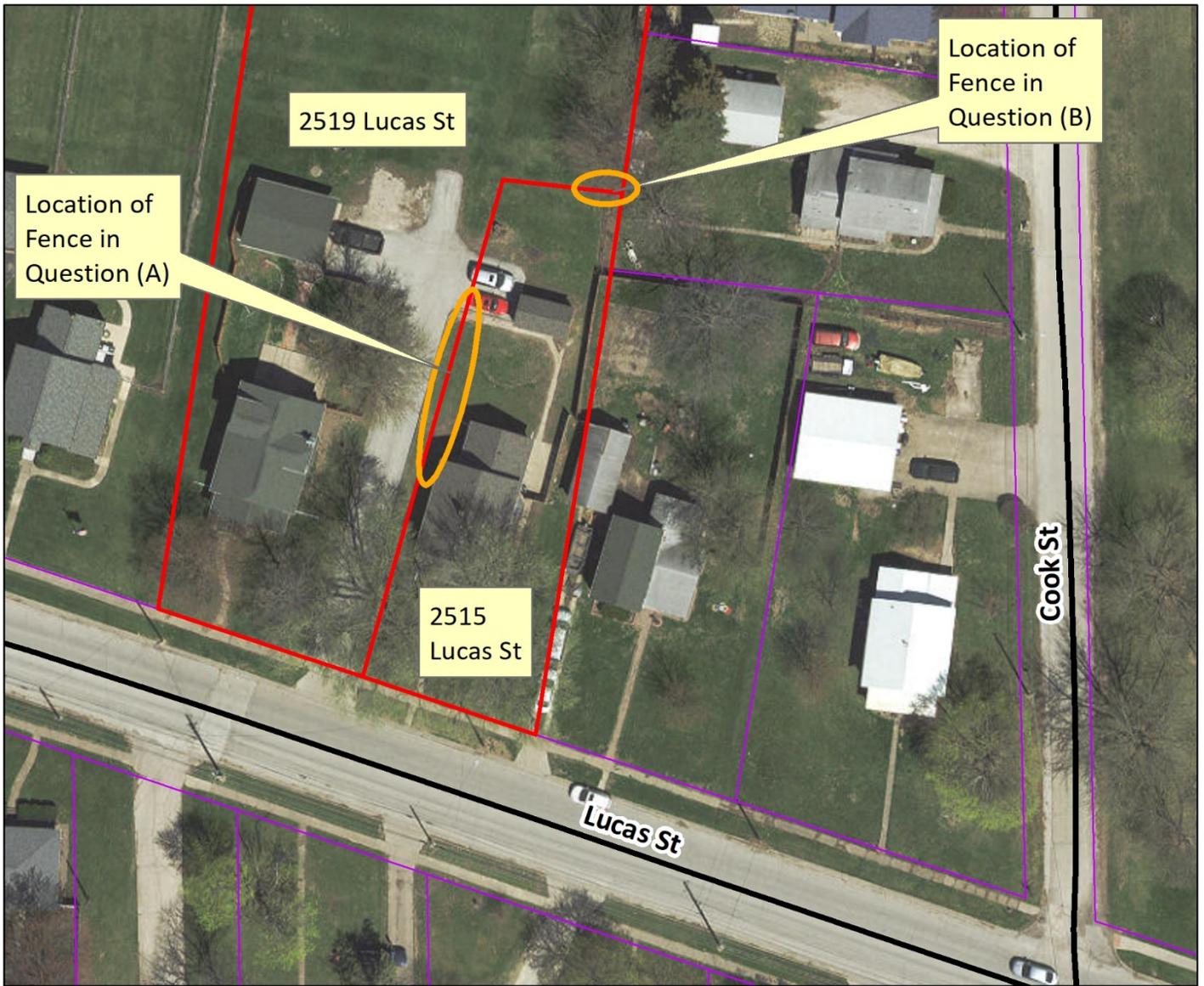
As such, the measurement would be taken from directly where the fence touches the ground. From there average the average grade level would be calculated, from which no part of the fence could be 6’ higher than. Using this method, it was determined that Fence A was 6 and a third of an inch. The owner of the fence was issued a notice to trim the fence down to 6’ or less. They did comply with this notice and trimmed the fence the fence down below 6’.

Similarly, as fence height is determined by where the fence meets the adjoining grade, the owner of Fence be was able to cure the violation of City Code by raising the grade of the ground underneath the fence.

Attached is Mr. Dabeet’s reasoning for why he feels that

BACKUP INFORMATION:

1. Application and Supporting Material from John Dabeet



Fence A (Viewed from West)



Fence A (Viewed from East)



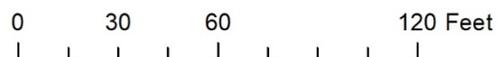
Fence B



Appeal Case #ZBAV30, has been filed by John Dabeet, 2515 Lucas Street, appealing a determination by the City of Muscatine Community Development Department that a fence locating on an adjoining property, 2519 Lucas Street, does not exceed the maximum height of 6' as allowed per City Code Section 10-22-1(J)(3)



Appeal #ZBAV-30



Dear Zoning Board members,

As a law abiding citizen, I decided to come to you to present my case as I didn't get a satisfactory answer from the city zoning office. I decided to appeal my case for the following reasons:

1. Based on Mr. Fangman original determination that part of the fence is not in compliance with the city code, the city inspector decision to put dirt under the area and consider that part of the fence as in compliance is a flat wrong and not satisfactory with the city code. During the hearing, I will present you to why the city inspector made that decision.
2. It is a safety issue. As we back up our cars from our parking place, we are not able to see if cars are coming through the driveway or not and an accident can happen any moment due to the height of the fence alongside the driveway. If we measure the fence alongside the driveway from the driveway side in which the pieces of wood that holds the fence sit on the driveway, you will find it more than 7 feet long. Let's remember that the fence sit on an easement.

I look forward to attend your September meeting and to answer any questions that you might have. Please feel free to connect with me at 563-554-1353 any time you have any questions or if you need more photos as I have hundreds of photos that I can share with you.

With respect,
John Dabeet
563-554-1353

Dear Mayor Broderson,

June 17, 2020

I hope this finds you and your loved ones safe and well during this challenging time.

I like to bring to your attention an issue that I have been dealing with for almost a year and during that time I dealt with the Zoning office and in particular with Mr. Fangman. I couldn't peruse the case for some time as my mom got sick and ended up with a heart surgery and it took me more than three months taking care of her and then we started to deal with COVID-19 but I feel it is time to introduce the issue to you and ask you and the City Council to make a decision as Mr. Fangman unfortunately did not follow the City Code in executing a case that is very clear against the city code.

First of all: When I started to communicate with Mr. Fangman via e-mails, phone calls and even stopped at the office to talk to him, he didn't respond to my many e-mails and phone calls for a month before Council member Kelcey Brackett connected with him.

Some samples of our communications:

You wrote on Sept. 23rd, 2019:

One panel circled below, measured 6" above the limit of 6'.

On Oct. 1st, 2019:

We will send a letter to the owner of the fence, compelling them to bring the portions of the fence that we have found to be **out compliance with City Code, back into compliance with City Code.**

On Oct. 15th, 2019:

Mr. Dabeet, I know the inspector has made contact with your neighbor on this, I do not know what the exact deadline that she gave them to bring their fence into compliance, I will ask her this when I see her in the morning.

On Oct. 18th, 2019:

Mr. Dabeet, **the inspector reported**, upon reinspection, that ground surrounding that fence had be raised. This being the case it became code compliant.

I responded to Mr. Fangman and said:

I like to understand how something that is not in compliance with city code become ok by just dropping some dirt under it. The fact is very clear, that piece is still 6 inches above city code. I respectfully request an answer regarding this issue.

(Please refer to pictures 1 – 3, pictures shows how the part of the fence is not in compliance with the City code according to Mr. Fangman and as a matter of fact notice the fence is at different heights in many areas of the fence.

The neighbor filled the gap with dirt based on the recommendation of **the city inspector Michelle and Mr. Fangman decided to close the file.** At the same time the neighbor decided to build a fence along the driveway for which I have an easement rights and

when I contacted Mr. Fangman about it, he informed me that he can't do anything about it due to no city code that can be used to follow in this case. I requested to send the case to the Zoning board and he never did claiming that there is no such a law that can be used to decide on the fence along the drive way. During that time that fence along the drive way became a full fence as you can see in pictures (4, 5, and 6) which caused a fear that as we pull our cars back, we will not be able to see if any car is coming through the drive way which will put my family and kids in danger of getting hit by a car. I invite you to come and visit and will explain everything in details also as we back up to exit the drive way due to that fence, we really can't see if any car is coming through or not. I expect one day our car will get hit by any car coming in while we are leaving. If you measure the fence from the base up along the drive way (the drive way side) it measures to almost eight feet.

As you can imagine, the dirt that Mr. Fangman accepted as a solution to the violation of the city code based on inspector Michelle recommendation started to wash away with rain and snow as you see in pictures 9, and 10 which will take us again to the city code violation.

By now, you can imagine what the neighbor did couple weeks ago, she decided to fill the gap again with dirt and again the dirt started to wash away as you see with pictures 11, 12, 13.

You can see 3 seconds video number 14 that shows the neighbor behind the fence filling the gap with dirt couple weeks ago.

Couple days ago she was out talking loud to someone and she said she is planning to close the entry point on my side to prevent me and prevent my wife from coming in and park our cars on our property according to the easement that we have. Picture 15 shows our entry point to our property where we park our cars.

Picture 16 shows how when we back up, we will not have any view of the drive way in case a car is coming and as I said, my fear for my kids and wife to get hit one day by a car coming through the drive way.

I would like to ask you and the City Council to make a decision first to bring the fence in the back to compliance according to the city code and not accept the use of dirt as a solution to go around the code, and second I would like you to make a decision on the fence that sits on the drive way and measure to almost eight feet from the base and prevent us from seeing anything as we back up and creates a dangerous situation to my family and kids.

The neighbor action devaluated the value of my property greatly in case I decided to sell in the future.

Please accept my apology for any inconvenience and as a good citizen that follows the rule of law I ask you and the city council to rule on this issue.

All my respects and if anyone would like to communicate with me, please feel free to call me with any questions that you might have. The harassment to my kids and family is a non-stop with that neighbor and it is my duty to protect them.

All my respects,

John Dabeet

2515 Lucas Street

563-554-1353

Since this letter, Greg Jenkins came to my house, and looked around and measures the fence in different places and he was wondering how Michelle will make that determination of accepting the dirt under the piece that is not in compliance.

On June 18, the Mayor wrote a message to Jodi asking for clarification.

On June 22nd, Jodi responded to Mayor's e-mail

On June 23rd, I responded to Mayor and Jodi's email by saying:

Thank you Mayor!

Jodi's respond doesn't make any sense to me because she is trying to justify a violation of a code by giving my neighbor a way to go around the code.

For me, if she is in violation, she should bring that fence the 6 inches down.

If you have a minute, please call me.

I really appreciate your help

With respect,
John Dabeet

On June 23rd, Mayor wrote Jodi's back based on my e-mail.

On June 30th, I sent the Mayor an e-mail to find out if they made any decision since I didn't hear from the Zoning office.

July 1st, Greg Jenkins and I communicated with each other regarding the same issue.

July 13th, I sent Greg an e-mail to ask him if the Zoning office made any decisions as I didn't hear back from them.

On July 16th, Jodi wrote me this following e-mail.

Good Morning Mr. Dabeet,

Per my voicemail, Greg Jenkins, Interim City Administrator, and Michelle Metzger, Code Official, came out to your property to evaluate the compliance of the fence built by the property owner adjacent to you. The placement and height of the fence were evaluated for compliance with City Code. The fence was determined to be in compliance and no further action can be taken by our office.

Best wishes & Stay well,

Jodi

On July 16th, I wrote her back:

Hello Jodi,

First of all, thank you for communicating back with me.

Second, I can't describe my disappointment in your decision when your office stated a fact that part of the fence is not in compliance with the code and by putting dirt under it (we sent many pictures that showed you how rain washes the dirt out) and you are still insisting that the neighbors fence are in compliance.

I respectfully request moving this dispute to the City Zoning board and please let me know of the procedure and steps to meet with the Zoning board.

Thanks,

John Dabeet

563-554-1353

I never heard back from her since that e-mail.

I have every e-mail document you wish to look at any time you wish. This issue has been more than a year and I am really very disappointed by the work of the Zoning office.

Please let me know when you are willing to come and will take you around and explain the whole story.

Thanks a million,

John Dabeet

2515 Lucas Street

563-554-1353

follow up

Inbox



Royal-Goodwin, Jodi

Thu, Jul 16, 11:14 AM (5 days ago)

to me, Greg, Diana

Good Morning Mr. Dabeet,

Per my voicemail, Greg Jenkins, Interim City Administrator, and Michelle Metzger, Code Official, came out to your property to evaluate the compliance of the fence built by the property owner adjacent to you. The placement and height of the fence were evaluated for compliance with City Code. The fence was determined to be in compliance and no further action can be taken by our office.

Best wishes & Stay well,
Jodi

--

Jodi Royal-Goodwin
Community Development Director
City of Muscatine
215 Sycamore St
Muscatine, IA 52761
www.muscatineiowa.gov
563-262-4141
jroyal-goodwin@muscatineiowa.gov



johndabeet <johndabeet@gmail.com>

Thu, Jul 16, 12:17 PM (5 days ago)

to Jodi, Greg, Diana

Hello Jodi,

First of all, thank you for communicating back with me.

Second, I can't describe my disappointment in your decision when your office stated a fact that part of the fence is not in compliance with the code and by putting dirt under it (we sent many pictures that showed you how rain washes the dirt out) and you are still insisting that the neighbors fence are in compliance.

I respectfully request moving this dispute to the City Zoning board and please let me know of the procedure and steps to meet with the Zoning board.

Thanks,
John Dabeet
563-554-1353

Sent from my Sprint Samsung Galaxy S10+.



ReplyReply allForward

Broderson, Diana

Thu, Jun 18,
10:17 AM

to Jodi, bcc: me

Good morning Jodi,
Please see the letter, photos, and video below that I received from Mr. Dabeet regarding a fence that his neighbor installed last year. I became aware of this situation about a year ago when I was contacted regarding this fence being out of compliance. Apparently, Mr. Dabeet has an easement to utilize the driveway of the neighbor to get to his property which the neighbor does not like. The neighbor then erected a fence leaving just a car width for Mr. Dabeet to get through to his property. It appeared that the fence was also over the height restriction when measured from the ground. The solution then was given that they could pour some dirt at the bottom of the fence so the measurement would then be from the top of the dirt making it shorter. This seems ridiculous to me as a solution not only because it circumvents the meaning of the code to begin with but also because as you see from the photos, the new dirt that is poured there washes away with rain.

Can you shed any light on this issue so it can be resolved?
Thank you for your help.

dlb

Diana L. Broderson
Mayor
City of Muscatine
215 Sycamore Street
Muscatine, IA 52761
563-264-1550
563-264-0750 fax
www.muscatineiowa.gov
dbroderson@muscatineiowa.gov

Broderson, Diana

Tue, Jun 23,
11:00 AM

to me

Good morning John,
Please see below the information that Jodi Royal Goodwin shared regarding your situation. She shared that she will have the inspector return to the property again for another inspection.

dlb

Diana L. Broderson
Mayor
City of Muscatine
215 Sycamore Street
Muscatine, IA 52761
563-264-1550
563-264-0750 fax
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dbroderson@muscatineiowa.gov

----- Forwarded message -----

From: **Royal-Goodwin, Jodi** <jroyal-goodwin@muscatineiowa.gov>
Date: Mon, Jun 22, 2020 at 4:17 PM
Subject: Re: Zoning Office issues
To: Broderson, Diana <dbroderson@muscatineiowa.gov>
Cc: Jenkins, Greg <gjenkins@muscatineiowa.gov>

Mayor,

We worked on this issue with Mr. Dabeet this past year, and the inspector went out and measured all fences from the highest point of the fence to grade, which is the defined process determining height. To be compliant no part of the fence could be 6' higher than grade. Altering the grade would change the height of the fence, and in this case there was a section that was too tall (circled in red in his photos) and the property owner elected to raise the surface grade rather than reduce the "structure" height. Unfortunately, if the dirt is not compacted in the area correctly it will wash out and be non-compliant again.

I will have the inspector go out again. The fence owner will be required to address the noncompliant section, and if the selected method is to fill the washed out grade we will inform them it needs to be compacted to avoid washing out.

Issues with the easement or other access are civil matters between the two property owners, and the courts if either chooses to go that direction.

Jodi

--

Jodi Royal-Goodwin
Community Development Director
City of Muscatine
215 Sycamore St
Muscatine, IA 52761

www.muscatineiowa.gov
563-262-4141
jroyal-goodwin@muscatineiowa.gov

johndabeet <johndabeet@gmail.com>

Tue, Jun 23,
11:32 AM

to Diana

Thank you Mayor!

Jodi's respond doesn't make any sense to me because she is trying to justify a violation of a code by giving my neighbor a way to go around the code. For me, if she is in violation, she should bring that fence the 6 inches down. If you have a minute, please call me. I really appreciate your help

With respect,
John Dabeet

Broderson, Diana

Tue, Jun 23,
11:59 AM

to Jodi, Richard, me

Good morning Jodi,
I heard back from Mr. Dabeet. He wishes to take his concern regarding the height of the fence to Planning and Zoning and/or the Council as a whole. He believes, and I am inclined to agree, that adding dirt (or anything else) to the bottom of the fence to make the fence "shorter" makes no sense at all. The ordinance is in place to make sure that visibility over the top for drivers is safe by restricting the height of the fence, not just to limit the length of the fence top to bottom. There would be no purpose for that but just a random rule. Rather, the safety reason behind the ordinance is being circumvented by adding dirt to the bottom of the fence so that the tape measure is higher up when you measure.

What process should Mr. Dabeet follow to have this looked at by Planning and Zoning and/or Council?

dlb

Diana L. Broderson
Mayor

City of Muscatine
215 Sycamore Street
Muscatine, IA 52761
563-264-1550
563-264-0750 fax
www.muscatineiowa.gov
dbroderson@muscatineiowa.gov

Broderson, Diana

Jun 23, 2020,
2:50 PM

to me

See below for Jodi's answer. I will get back to you when I hear back again.
Thanks.

dlb

Diana L. Broderson
Mayor
City of Muscatine
215 Sycamore Street
Muscatine, IA 52761
563-264-1550
563-264-0750 fax
www.muscatineiowa.gov
dbroderson@muscatineiowa.gov

----- Forwarded message -----

From: **Royal-Goodwin, Jodi** <jroyal-goodwin@muscatineiowa.gov>
Date: Tue, Jun 23, 2020 at 2:42 PM
Subject: Re: Zoning Office issues
To: Broderson, Diana <dbroderson@muscatineiowa.gov>
Cc: Jenkins, Greg <gjenkins@muscatineiowa.gov>

Mayor,

We are looking at the options available to Mr. Dabeet and will get back to everyone.
Jodi

johndabeet <johndabeet@gmail.com>

Jun 30, 2020,
10:12 AM

to Diana

Any updates Mayor?

Millions of thanks in advance.

John Dabeet

Sent from my Sprint Samsung Galaxy S10+.

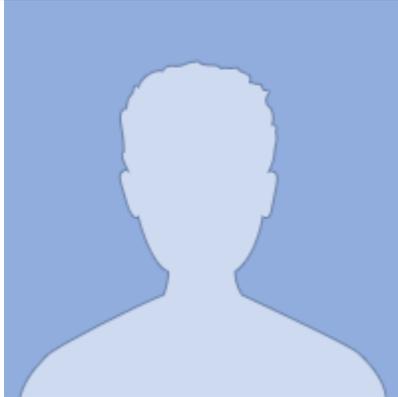
----- Original message -----

From: "Broderson, Diana" <dbroderson@muscatineiowa.gov>

Date: 6/23/20 2:50 PM (GMT-06:00)

To: John Dabeet <johndabeet@gmail.com>

Subject: Fwd: Zoning Office issues



Diana Broderson

Jun 30, 2020,
1:01 PM

to me

John,
Greg Jenkins said he is meeting with you tomorrow. If that is not correct, please let me know.
Thanks.

Sent from my iPhone
Diana Broderson
Mayor
City of Muscatine

John Dabeet <johndabeet@gmail.com>

Jul 1, 2020,
9:09 AM

to Greg

Hello Greg,

Millions of thanks, Greg! It was nice seeing you. Please see the pictures and letter I sent to Mayor.

Please let me know if you have any questions.

Thanks,
John Dabeet
563-554-1353





















