

The following are minutes of the Bettendorf Board of Adjustment and are a synopsis of the discussion that took place at this meeting and as such may not include the entirety of each statement made. The minutes of each meeting do not become official until approved at the next board meeting.

**MINUTES
BETTENDORF BOARD OF ADJUSTMENT
JUNE 9, 2011
5:00 P.M.**

Chairman Stelk called the meeting to order at 5:00 p.m.

Item 1. Roll Call

PRESENT: Falk, Howe, McElhiney, Stelk, Voelliger
ABSENT: None
STAFF: Connors, Fuhrman, Soenksen, Jager

Item 2. Review of Board Procedures.

Item 3. The Board to review and approve the minutes of the meeting of April 14, 2011.

On motion by Voelliger, seconded by Falk, that the minutes of the meeting of April 14, 2011 be approved as submitted.

ALL AYES

Motion carried.

Item 4. The Board to hold a public hearing on the following items:

- a. Case 11-030; 5535 Clemons Road (A-2) - A request for a special use permit to allow a 55-foot high noncommercial ham operator transmission tower, submitted by Gary Huff.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #3 to these minutes.

Stelk asked if there was anyone present wishing to speak in favor of or in opposition to the request.

Don Strobbe, 5520 Clemons Road, questioned whether the tower would cause interference with satellite television and phone reception.

Stelk commented that he is aware of several ham operator towers in the city and he has never heard of any interference occurring.

Gary Huff, the applicant, explained that he has been using ham operator equipment for approximately 7 years in the neighborhood and has never been made aware of any problems. He added that he uses electronic equipment in his home and has never experienced interference. Huff indicated that the only reason he is aware of that could cause interference is a mismatch of antennas in an improperly installed system.

Voelliger asked if the applicant plans to replace the existing tower. Huff confirmed this, adding that the tower is merely a structure with the antenna itself being placed on top of it.

Stelk stated that he is unaware of any problems related to the tower farm located near Pleasant Valley High School, adding that he has a relative who has lived there for several years. An unidentified resident stated that she is unable to receive certain radio stations as a result of interference from the tower farm.

An unidentified resident asked if the city could be involved in definitively establishing whether or not this type of interference is actually occurring. Greg Jager, city attorney, explained that cities are pre-empted from any involvement in frequency matches or mismatches, adding that that is the purview of the Federal Communications Commission (FCC). He stated that in the 1980s when a ham radio tower had caused interference with land-based telephones, the city had no authority in the matter. He added that the city facilitated the filing of the complaint with the FCC which ultimately investigated and resolved the issue.

Robert Gill, 3655 Park Avenue, stated that he has never experienced any problems with interference. He added that he has done some internet research and talked to people with experience with this issue who had indicated that once a tower reaches 20 feet in height, the electric lines are affected. He stated that his impression is that the FCC merely sends a warning letter with a reprimand and typically does not resolve the interference problem. Gill stated that filters are available to ameliorate the interference but indicated that they are expensive and have no guarantee. He reiterated that he has experienced no problems as of yet.

Stelk asked how tall the tower would be when it is not being used. Huff explained that the height of the tower ranges from 23 to 55 feet. He added that the existing tower is approximately 33 feet in height. Huff stated that he has never heard of a correlation between interference and tower height.

There being no one else present wishing to speak in favor of or in opposition to the request, Stelk closed the public hearing.

Soenksen suggested that the Board approve the request on a temporary basis and then evaluate whether or not interference occurs.

Howe explained that wireless communications reception and transmission is based on the amount of power and the height of the antenna. He indicated that because the applicant has indicated that he does not plan to increase his operating power or frequency, there is little chance of interference occurring because of the height change.

Howe suggested that the Board accept staff's suggestion of approving a temporary variance. Stelk concurred, adding that perhaps a 3-month trial could be approved so that all types of possible atmospheric effects could be evaluated.

Gill asked what he should do if he experiences any type of interference. Stelk explained that any complaints should be relayed to city staff who would then inform the Board so that action could be taken.

Voelliger asked for clarification of when the 3-month trial period would begin. Stelk suggested that the 3 months start after initial broadcast and indicated that the applicant should make city staff aware of that date. Other board members concurred.

On motion by Howe, seconded by Voelliger, that the special use permit to allow a 55-foot high noncommercial ham operator transmission tower be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #4 to these minutes.

- b. Case 11-031; 880 Lincoln Road (C-2) - A request for a special use permit to allow a drive-up window, submitted by Great Western Properties, LLC.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #5 to these minutes.

There being no one present wishing to speak in favor of or in opposition to the request, Stelk closed the public hearing.

On motion by Voelliger, seconded by Howe, that the special use permit to allow a drive-up window be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #6 to these minutes.

- c. Case 11-032; 2185 - 53rd Avenue (C-21) - A request for a variance to allow a drive-through lane in a front yard, submitted by McDonald's.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #7 to these minutes.

Stelk asked if there was anyone present wishing to speak in favor of or in opposition to the request.

Ted Rebitzer, realtor representing the applicant, indicated that he would be available to answer any questions the neighbors or Board members may have.

Pete Moldt, 5131 Dove Court, asked for clarification of the purpose of the public hearing as it relates to drive-up windows. Stelk explained that the issue before the Board relates to the encroachment of the drive-through lane into the front yard setback. Soenksen added that staff's interpretation of the definition of a driveway is one that typically is used for entrance to a property and is generally perpendicular to the street. He indicated that because of the revisions the applicant made to the site development plan in order to accommodate the neighbors, the drive-through lane now encroaches into the required setback.

Thomas Follas, 2607 Heather Glen Avenue, asked if approved variances remain in effect in perpetuity or if they are dependent on the specific use and the associated site development plan. Soenksen explained that approval would have to be conditioned on a specific design if the Board wishes to tie the variance request to a specific use. He added that the Decision and Order is filed at the Scott County Recorder's office.

On motion by McElhiney, seconded by Voelliger, that the variance to allow a drive-through lane in a front yard be approved in accordance with the Decision and Order.

Howe commented that this case is a very good example of the type of compromise than can be achieved when applicants, neighbors, and city staff work together. McElhiney concurred.

ROLL CALL ON MOTION

ALL AYES

Motion carried.

Decision and Order is Annex #8 to these minutes.

- d. Case 11-034; 5776 California Drive (R-1) - A request for a variance to reduce the required front yard setback from 40 feet to 35 feet to allow for construction of a house, submitted by Mark C. Wood Builder, LTD.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #9 to these minutes.

Stelk asked if there was anyone present wishing to speak in favor of the request.

Mark Wood, the applicant, explained that the existing walnut trees on the rear of the lot hampered the ability of the developer to grade the property to more closely match other lots to the north. He added that reducing the front yard setback would allow a larger, flatter rear yard for recreation purposes and lessen the possible danger the steep slope could cause. Wood stated that because the lot is located on a curve, there already is the illusion of a larger setback which would accomplish the intent of the ordinance. Wood commented that the developer might have been better served to choose a different lot in the subdivision on which to require a 40-foot front yard setback. He stated that he would like to have a greater area available in the rear yard so that the grade change is not so significant, similar to the adjacent lot which he also owns.

Voelliger commented that when he had visited the site, he spoke to the neighbor who lives to the north who had indicated support for the request.

Falk stated that it appears to him as though the setback requirements were established by the developer without benefit of a topographical analysis or even a site visit. He concurred with Wood with respect to his assertion that a different lot should have been chosen for the 40-foot setback requirement in the front yard.

McElhiney stated that while she is not typically in favor of granting variance requests for undeveloped property, she feels that the topographical features which restrict placement of a house in a reasonable manner constitute a legitimate hardship.

Howe asked for clarification regarding the variance requests that the Board had considered on Emery Court. Soenksen explained that the issues with regard to those cases had more to do with house design rather than topographical features. Howe stated that he sees a distinction between the previous cases and the current one. McElhiney commented that the owners of the properties on the east side of Emery Court had had other options with regard to house design and size that could be accommodated without need for a variance. She added that she does not see any way that a house could be reasonably placed on the lot in question without benefit of a reduction of the front yard setback requirement.

There being no one present wishing to speak in favor of or in opposition to the request, Stelk closed the public hearing.

On motion by Voelliger, seconded by McElhiney, that a variance to reduce the required front yard setback from 40 feet to 35 feet to allow for construction of a house be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #10 to these minutes.

- e. Case 11-035; 2501 - 53rd Avenue (C-2) - A request for a special use permit to allow a bar with an outdoor service area, submitted by The Clubhouse.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #11 to these minutes. Soenksen stated that he had been contacted by John Scheetz, 5247 Brentwood Drive, and had received a letter from Lawrence Barker of 2579 Lindenwood Drive who had both expressed opposition to the outdoor service area. Letter is Annex #12 to these minutes.

Stelk asked if there was anyone present wishing to speak in favor of the request.

Chris Larson, co-owner, explained that he and his partners would like to contain their customers who smoke to the rear of the building in a fenced area that is not visible. He added that the proposed outdoor area would be surrounded by an 8-foot high fence and covered with an awning.

Howe asked for clarification of the proposed hours of operation. Larson explained that the facility would be open from 7am to 2am.

Stelk asked if there was anyone present wishing to speak in opposition to the request.

Debbie Potts, 2448 Lindenwood Drive, stated that she is opposed to the proposed outdoor service area as it will only exacerbate existing problems the neighborhood experiences caused by employees of other businesses who smoke behind the building. She indicated that her family has already had to make lifestyle changes because of the noise and smoke, adding that she is opposed to the fact that this type of activity would go on until 2am.

Tom Follas, 2607 Heather Glen Avenue, expressed opposition to any outdoor service area even if it is located on the north side of the building under the covered area, adding that the noise associated with that type of use would be unacceptable to him. He indicated that he is not opposed to the indoor component of the business.

Soenksen indicated that John Scheetz had also expressed opposition to an outdoor service area being allowed on the north side of the building because of the noise that would be generated by it.

Martha Nankivell, 2470 Lindenwood Drive, stated that prior to purchasing her property she had asked city staff for information about what type of structure would be built behind her home and what type of business would be located there. She explained that she had been assured that there would be upscale retail and a coffee shop with limited hours so that neighbors would not be disturbed. Nankivell expressed opposition to the location of a bar behind her house, adding that noise already carries dramatically from the commercial property to the residential ones. She stated that she had not been made aware that the Beach Club which is located just west of The Clubhouse is now constructing an outdoor seating area on the west side of the building, not on the north side as she had been informed. She expressed concern about the expansion of the outdoor areas of the properties to the north of her home. Nankivell stated that the rear drive area of the strip mall is not used only for employee access. She indicated that it is also used for access for trash removal and delivery vehicles. She encouraged the Board members to continue to abide by the city's mission detailed on the website, a part of which states that Bettendorf is a city for families.

Larson explained that his business is not just a bar and that it is family-friendly indoor country club and that all ages are welcome. He indicated that he is sensitive to the fact that there are homes very close which is the reason why he would like to fence the outdoor area and cover it with an awning. He stated that because smoking is an activity associated with a bar, he would like to confine it to one area. Larson explained that he and his partners are making every attempt to have an upscale business.

Mike Porter, 2558 Lindenwood Drive, stated that he had also spoken with city staff and realtors before he purchased his home who had indicated that any business located north of his home would be an office with 9am to 5pm hours of operation. He asked what type of approval is required for a bar. Jager explained that some commercial districts allow establishments that serve alcohol as a permitted use or special use. Porter stated that Frank's Pizza was required to obtain a special use permit. He reiterated that the neighbors had not been made aware of the outdoor seating area at the Beach Club, adding that he is opposed to the outdoor expansion primarily because of the noise. He added that he does not believe that it is appropriate for a smoking section to be located directly adjacent to residential homes.

Connors stated that the rumors that have been circulating about the outdoor seating at the Beach Club are untrue. He explained that the construction taking place at that location on the west side of the building will be used for an indoor waiting area. He added that any future outdoor use will take place on the north side of the building as indicated on the original site development plan. Connors stated that he is unaware of any plans to use that area for outdoor seating.

AJ Paul, co-owner, explained that one of the reasons for the proposed outdoor fenced area is to contain the customers who smoke in a controlled environment. He indicated that if the fenced area is not allowed, customers will be free to roam the area and could

actually be closer to the homes. He stated that he is respectful of the fact that the business is located close to homes and has been making every attempt to control any external noise. Paul indicated that he would appreciate hearing from the neighbors if they have been disturbed by noise.

Nankivell suggested that the back doors be locked to prevent customers from exiting to the rear of the building. Larson explained that code requires that there be 3 working fire exits.

Chris Bries, 2492 Lindenwood Drive, stated that the neighbors in the area can hear the activities of the employees of the strip mall when they are outside. She indicated that this type of noise is acceptable during business hours, but is opposed to patrons smoking and drinking outside until 2am. Bries stated that she already can smell the food from the restaurant while she is in her home and does not want the smell of smoke coming in at all hours of the day and night.

Lien Moore, 2406 Lindenwood Drive, stated that because she lives directly south of the former Northwoods Steak House, she can hear the noise generated by the activities associated with the business at all hours of the day and night such as doors opening and when trash is removed. She expressed opposition to another business in the neighborhood being allowed to stay open until 2am. Moore requested that the Board deny the applicant's request.

Tyler Driever, 2536 Lindenwood Drive, expressed concern about what other types of uses may be allowed if the request for outdoor service is approved. He stated that while he is willing to accept a certain amount of inconvenience caused by the commercial businesses in the area, he is opposed to such late hours of operation.

Pete Moldt, 5131 Dove Court, suggested that the applicants install a panic door instead of allowing customers to use the fire doors for access. He stated that he does not believe that customers should be smoking at the rear of the building.

Paul asked if the neighbors have experienced any disruptions since the business has been open. Follas confirmed this, adding that he has not been able to sleep without ear plugs because of the noise from radios and tires.

Kelly Meyer, 2459 Lindenwood Drive, stated that in her opinion allowing people to congregate outside until 2am is unacceptable because of the noise associated with this type of business. She indicated that she believes that it is disrespectful of the applicants to have a patio with that kind of activity so near the rear yards of the neighbors.

Howe asked if staff had considered the impact that reducing the width of the driveway would have on service and delivery vehicles. He commented that the driveway was designed to be that particular width for a reason, adding that narrowing that access could become a safety issue. McElhiney concurred, adding that access to the second building would also be affected at such time as it is constructed. She indicated that fire apparatus also uses that driveway area. Soenksen stated that the patio would reduce the driveway width by approximately half.

Howe commented that the needs of the other tenants in the building should be taken into consideration as well. McElhiney stated that she feels that no business should be allowed to have a negative impact on other residents. She added that a business decision should not be allowed to impede their neighbors from enjoying their own property. She indicated that she feels that the rear driveway should be used for service vehicles only and that the character of the neighborhood should be preserved. Voelliger concurred.

On motion by Voelliger, seconded by McElhiney, that a special use permit to allow a bar with an outdoor service area be denied in accordance with the Decision and Order.

Soenksen explained that the request has two components - the outdoor service area and the indoor bar area. He requested that the Board clarify whether their intent is to deny the entire request or only the outdoor service areas.

McElhiney stated that she is opposed to the approval of the outdoor service areas. She added that while she is not necessarily in favor of the business having such late hours she is aware that a restriction on them is not in the Board's purview. Stelk commented that the original motion was to deny the entire request, adding that if that is not the Board's intent it should be amended.

Voelliger amended his motion such that no outdoor service will be allowed on either the north or south sides of the building but that indoor service will be allowed. McElhiney accepted the amendment.

Voelliger stated that when an applicant requests a liquor license part of the process is related to hours of operation. He added that the applicants are compliant with the requirements of their liquor license and that hours of operation cannot be limited. Jager explained that he is not aware of any time when the city has limited the hours of operation of an establishment that serves alcohol. He indicated that typically restaurants set the end of their hours of operation at their own discretion. He offered to further investigate the matter if the Board so wishes, adding that since home rule was instituted the hours of operation are regulated by the state.

McElhiney stated that because the applicants have indicated that they are primarily a business which provides a simulated golf experience, she does not feel that it is necessary to limit hours of operation. Howe concurred, adding that he is strongly opposed to restricting the hours of operation for a business that serves alcohol.

Myron Bries, 2492 Lindenwood Drive, asked for clarification of the meaning of the motion since the establishment already has a bar inside. Soenksen explained that the Board has made a motion to approve the indoor bar area but prohibit the use of any outside area for any activities associated with the business. Connors explained that when the primary source of revenue for a business is unrelated to alcohol sales, a special use permit for a bar is not required. He commented that the applicants have indicated that their primary business activity is related to golf. He indicated that staff's

interpretation is that a special use permit for a bar is not required. He added staff is of the opinion that the issue should be made more clear in case the business model changes at some time in the future.

McElhiney commented that the intent of the motion is the deny the applicant the use of the outdoor area for any business-related activities.

Jager suggested that the Board divide the request into two parts. He indicated that the since the City Council has already issued a liquor license for the business which allows the service of alcohol during the hours prescribed by the state, the issue of indoor service is moot. He added that the only question remaining for the Board is whether to expand the existing allowable use by permitting an outdoor service area.

Falk commented that the application states that the request is for a special use permit to allow an outdoor service area consisting of a patio surrounded by an 8-foot high fence and covered by an awning. He suggested that the proper course of action for the Board would be to deny the application, adding that the issue of the bar component of the business is not applicable as it is not addressed. Jager explained that if the Board takes a strict constructionist approach to the case, it may restrict analysis of other cases in the future. He added that if the Board feels that the specific request listed on the application is the only issue that should be addressed, the entire application can be denied with the result being that no outdoor business activities are allowed but that the current indoor activities are not affected.

Howe suggested that the verbiage in the Decision and Order be made clear that outside activities are not allowed to take place on either the north or south sides of the building. McElhiney concurred.

Paul asked what the ramifications would be for the business owners if patrons use the rear of the property to smoke. Follas commented that whether the applicants control their customers activities would be a good determination of their ability to be good neighbors. Howe explained that this issue would not be in the Board's purview, adding that every business must deal with this type of problem.

Nankivell stated that should there be a number of customers who smoke outside at the rear of the building who become a public nuisance, she is sure that there are legal remedies. She reiterated the suggestion that the fire doors be restricted to exit only to prevent this problem.

ROLL CALL ON MOTION

ALL AYES

Motion carried.

Decision and Order is Annex #13 to these minutes.

- f. Case 11-036; 5726 Joshua Street (R-2) - A request for a variance to reduce the required side yard setback from 5 feet to 3 feet to allow for construction of a utility shed, submitted by Allen Sims, Jr.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #14 to these minutes.

Stelk asked if there was anyone present wishing to speak in favor of the request.

Allen Sims, Jr., the applicant, explained that had mistakenly poured the foundation for the utility shed in the wrong location and therefore the shed had been placed in the required setback.

Stelk commented that he had visited the site and could barely see the roofline of the shed because of the 6-foot fence on the property line.

Falk asked if staff makes any effort to determine whether a particular variance would be in conflict with restrictive covenants governing subdivisions. Soenksen explained that typically homeowners are advised to check to see if there are any additional restrictions when they apply for a building permit. Connors added that the city does keep track of covenants and has no authority to enforce them.

On motion by McElhiney, seconded by Voelliger, that a variance to reduce the required side yard setback from 5 feet to 3 feet to allow for construction of a utility shed be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #15 to these minutes.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 6:45 p.m.

These minutes and annexes approved

John Soenksen
City Planner