

NOTICE TO THE AUDIENCE. PLEASE REMEMBER THAT IF YOU ARE INTERESTED IN MATTERS ON THE AGENDA THAT WILL HAVE SUBSEQUENT MEETINGS, IT IS YOUR RESPONSIBILITY TO NOTE THE DATES, TIMES, AND PLACES. NO FURTHER LETTERS OR REMINDERS WILL BE SENT. OF COURSE, IF YOU HAVE ANY QUESTIONS ABOUT ANY GIVEN MATTER, DO NOT HESITATE TO CONTACT THE PLANNING DEPARTMENT IN THE CITY HALL ANNEX, 4403 DEVILS GLEN ROAD, BETTENDORF, IOWA (344-4100).

**MEETING NOTICE
BOARD OF ADJUSTMENT
SEPTEMBER 12, 2013
5:00 P.M.**

PLACE: Bettendorf City Hall Council Chambers, 2nd Floor, 1609 State Street

1. Roll Call: Falk _____, Gallagher _____, Johnson _____, Spranger _____, Voelliger _____
2. Review of Board Procedures.
3. The Board to review and approve the minutes of the meeting of August 8, 2013.
4. The Board to hold a public hearing on the following items:
 - a. Case 13-052; 6150 Buckskin Trail (R-1) - A request for a variance to reduce the required setback for a swimming pool from 10 feet to 6 feet, submitted by David and Kelly Elg.
 - b. Case 13-053; 2501 - 53rd Avenue (C-2) - A request for a special use permit for an outdoor service area to be similar and compatible to the uses existing within the premises, submitted by The Clubhouse. (Deferred)

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND OTHER APPLICABLE FEDERAL AND STATE LAWS, ALL PUBLIC HEARINGS AND MEETINGS HELD OR SPONSORED BY THE CITY OF BETTENDORF, IOWA, WILL BE ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES. PERSONS REQUIRING AUXILIARY AIDS AND SERVICES SHOULD CONTACT BETTENDORF CITY HALL AT (563) 344-4000 FIVE (5) DAYS PRIOR TO THE HEARING OR MEETING TO INFORM OF THEIR ANTICIPATED ATTENDANCE.

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
AUGUST 8, 2013
5:00 P.M.**

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

Item 1. Roll Call

PRESENT: Falk, Gallagher, Johnson, Voelliger
ABSENT: Spranger
STAFF: Fuhrman, Soenksen

Item 2. Review of Board Procedures.

Item 3. The Board to review and approve the minutes of the meeting of July 11, 2013.

On motion by Falk, seconded by Gallagher, that the minutes of the meeting of July 11, 2013 be approved as submitted.

ALL AYES

Motion carried.

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

- a. Case 13-040; 1742 Susan Court (R-2) - A request for a variance to allow a 6-foot high fence in a required front yard, submitted by Phillip Harms.

Voelliger 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.

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

Phillip Harms, the applicant, explained that he has a rescue greyhound dog which cannot be put on a leash because it is so fast and could choke. He added that an electric fence would not be sufficient to contain the dog and that it could jump a 4-foot high fence and escape into the community. He stated that the proposed fence is similar to those found along Devils Glen Road. He indicated that he feels that Devils Glen Road and Greenbrier Drive are very similar even though they fall into different street classifications.

Voelliger asked if the applicant plans to install a fence along the common property line with the neighbor to the west. Harms stated that the neighbor has agreed to let him connect the proposed fence with the existing one so there would not be two fences along that property line.

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

Johnson commented that while Devils Glen Road is a 2-lane street north of 53rd Avenue, it will to be widened to 4 lanes. She added that it has been graded in anticipation of the future expansion project. Soenksen stated that in the past the Board has granted variances for fence requests along streets that either were already or would eventually be 4 lanes wide.

Voelliger asked if the proposed fence would be placed on the property line. Soenksen confirmed this, adding that the property line is typically 1 foot back of sidewalk.

Johnson asked for clarification of the height and location of a fence that would be allowed on the applicant's property. Soenksen explained that because the lot is on a corner, it has two front yards with 25-foot required setbacks. He added that the applicant would be allowed to install a 4-foot high fence at the property line but that a 6-foot high fence could not be placed such that there would be any encroachment into the required setback. Soenksen indicated that when the variances were approved for the cases referenced in the staff report on Prairie Vista Drive, a 4-foot high fence was required to be placed at least 10 feet from the property line. He added that since that time the ordinance has been revised to allow 4-foot high fences on the property line.

Johnson stated that she believes that the difficulty that the applicant is experiencing is self-imposed, not the result of a hardship related to the property. Voelliger asked if the Board feels that proposed fence should be set further back than the property line even though there is a substantial amount of landscaping in the rear yard. He commented that a request for a 6-foot high fence to surround a pool had been considered by the Board on Rolling Hills Drive and that a variance was granted to allow the fence 10 feet from the property line.

Gallagher commented that if approved, the request would allow the first 6-foot high fence on the property line in this area and would set a precedent. Johnson asked if staff is aware of any variance requests that were granted for 6-foot high fences on local streets. Soenksen explained that to this knowledge, the variances granted for 6-foot high fences located on the property line were granted for properties adjacent to 4-lane roadways.

Harms stated that while he is unsure of the roadway classification, there is a 6-foot high fence on the property line adjacent to Crow Creek Road northwest of his home. Soenksen explained that the fence in question is actually located in Davenport, adding that Crow Creek Road, which is a divided roadway, is classified as a collector street.

Falk commented that he cannot support the request as no hardship has been established. Voelliger asked if any of the Board members would consider allowing the proposed fence 5 feet from the property line. He added that the landscaping in the rear yard would be disturbed if a fence were placed anywhere other than on the property line. Gallagher commented that the landscaping is not relevant to establishing a hardship. Voelliger suggested allowing a 6-foot high fence located 10 feet back of the property line. Johnson commented that the applicant could install a fence at the required setback line and accomplish his stated goal of containing his dog. Gallagher added that if the Board allows any variance to the required setback, it will establish a precedent for all of the homes on this type of residential street in entire city of Bettendorf.

On motion by Johnson, seconded by Falk, that a variance to allow a 6-foot high fence in a required front yard be denied in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #4 to these minutes.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 5:20 p.m.

These minutes and annexes approved _____

John Soenksen, City Planner



COMMUNITY DEVELOPMENT

City Hall Annex • 4403 Devils Glen Road, Bettendorf, Iowa 52722 • (563) 344-4083

September 12, 2013

Staff Report

Case No. 13-052

Location: 6150 Buckskin Trail

Applicant: David and Kelly Elg

Zoning Designation: R-1, Single-family Residence District

Request: Variance to reduce the required setback for a swimming pool from 10 feet to 6 feet.

Background Information and Facts

The site is located north of Hopewell Avenue at the northwest corner of Whispering Hills Drive and Buckskin Trail (see Attachment A – Location Map). The applicant would like to install an inground pool at the rear of the house within 6 feet of the property line (see Attachment B – Plot Plan). In an R-1 district the Code requires a 10-foot setback for swimming pools. The proposed pool would encroach 4 feet into the required setback.

Staff Analysis

If allowed, the pool would be approximately 33 feet by 16 feet and vary in depth from just over 3 feet to 6 feet (see Attachment C – Pool Plan). The applicant feels that some topographical issues that complicate the pool placement constitute a hardship. The yard drops approximately 6 feet on the north side of the property (see Attachment D – Site Photos). Therefore, the flattest portion of the yard large enough to accommodate the large footprint of the pool is at the chosen location. The applicant would like to place the southernmost side of the pool equidistant (6 feet) between the property line and the nearest part of the rear deck (see Attachment E – Pool Placement). This location will require the least amount of excavation to install this type and size of pool.

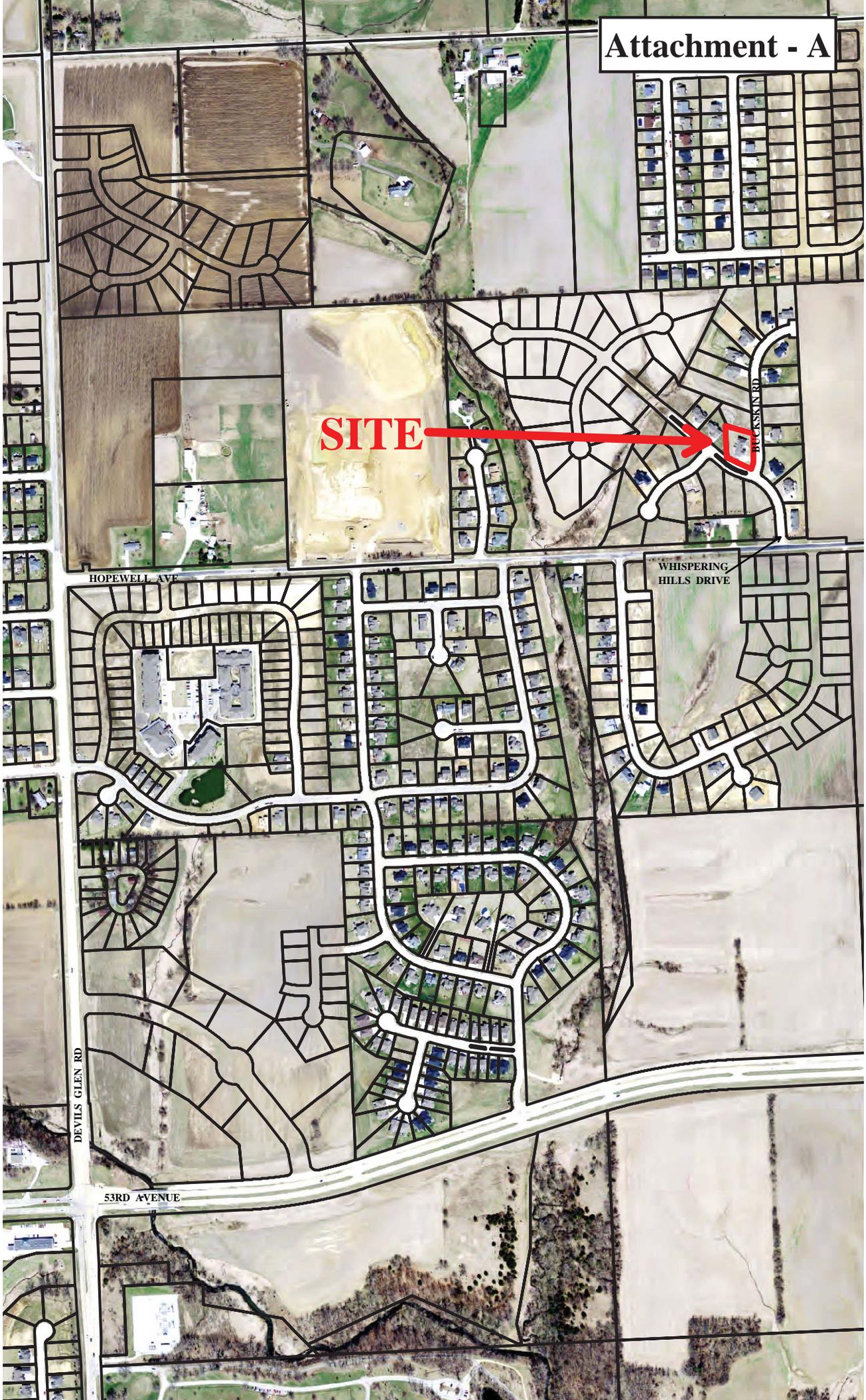
Per Code, the applicant will be required to install a fence at least 4 feet in height surrounding the pool for safety and security reasons. Staff has not seen the fence plan for this pool.

Staff Recommendation

Attachment B (Plot Plan) and Attachment E (Pool Placement) both demonstrate that there is sufficient room to place the pool on the lot and maintain the required setback. Doing so will require excavation work and add cost to the project. The variance can only be justified if the Board accepts that “added costs” represents a legitimate hardship. Staff has not been given any estimates concerning the additional costs for moving the pool to a different location on the lot.

Respectfully submitted,

John Soenksen
City Planner



SITE

BUCKSKIN RD

HOPEWELL AVE

WHISPERING HILLS DRIVE

DEVILS GLEN RD

53RD AVENUE



Whispering Hill Dr

Buckskin Trail





Case No. 13-052

APPEAL AND APPLICATION TO THE ZONING BOARD OF ADJUSTMENT OF BETTENDORF, IOWA

Part 1. Property Involved.

Street Address 6150 Buckskin Trail

Legal Description of the property. Lot 17, The Legends of Hopewell Creek, 2nd edition

Part 2. Contact Information.

Applicant Name David + Kelly Elg Phone 563-332-0875

Address 6150 Buckskin Trail, Bettendorf FAX _____

E-mail Address: kelelg73@gmail.com

Owner Name David + Kelly Elg Phone same as above

Address same as above FAX _____

E-mail Address: _____

Agent _____ Phone _____

Address _____ FAX _____

E-mail Address: _____

Part 3. Type of Application. (check at least one)

1. Variance/Exception. Before the Board of Adjustment grants approval of a variance to the City of Bettendorf Zoning Ordinance, all of the following conditions **MUST** be met:

- (a) That the granting of the exception will not permit any use in any district which would be in conflict with the permitted uses of such district under the terms of this ordinance.
- (b) That it will not impair an adequate supply of light and air to adjacent property.
- (c) That it will not unreasonably increase the congestion in public streets.
- (d) That it will not increase the danger of fire or of the public safety.
- (e) That it will not unreasonably diminish or impair established property values within the surrounding areas.
- (f) That it will not in any other respect impair the public health, comfort, safety, morals, or welfare of the inhabitants of the city.

2. Special Use Permit. Before the Board of Adjustment grants approval of a special use permit, all of the following conditions **MUST** be met:

- (a) The proposed use is designated by this ordinance as a special use in the district in which the use is to be located.
- (b) The proposed use will comply with all applicable regulations in the district in which the use is to be located.
- (c) The location and size of the proposed use, the nature and intensity of the operation involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the district in which it is located.
- (d) The location, nature, and height of buildings, walls, and fences and the nature and extent of the landscaping on the site are such that the use will not unreasonably hinder or discourage the appropriate development and use of adjacent land and buildings.
- (e) Parking areas will be of adequate size for the particular use, properly located, and suitably screened from adjoining uses and the entrance and exit drives will be laid out so as to prevent traffic hazards and nuisances.
- (f) The proposed use will not cause substantial injury to the value of other property in the neighborhood.
- (g) Conditions in the area have substantially changed and at least one year has elapsed since any denial by the Board of Adjustment of any prior application for a special use permit that would have authorized substantially the same use of all or part of the site.
- (h) The Board of Adjustment shall impose such conditions and restrictions upon the premises benefited by a special use permit as may be necessary to assure compliance with the above standards, to reduce or minimize the effect of such permit upon other properties in the neighborhood, and to better carry out the intent of this ordinance. Failure to comply with such conditions or restrictions shall constitute a violation of this ordinance.

3. Other. _____
(Attach a separate sheet and explain in detail.)

Part 4. General Information.

Section(s) of Zoning Ordinance Involved _____ Existing Zoning _____

Part 5. Reasons for Application. In the space below, give a general description of the activity desired and principal reasons why this application should be granted by the Board. If this application is for a variance, please state the hardship which the zoning ordinance imposes on the property. Use the following criteria as justification for the requested variance. Use additional sheets if necessary.

- (a) It shall be the property owner's responsibility to show that the terms of this ordinance will impose unusual and practical difficulties or particular hardships. The hardship established by the property owner must not be SELF-IMPOSED. A self-imposed hardship is NOT justification for the approval of a variance request.
- (b) If the variance granted is in harmony with the general purpose, intent, and spirit of this ordinance.
- (c) If the board determines that the granting of the requested variance will not serve merely as a convenience to the applicant, but will alleviate a demonstrable hardship as to warrant a variance from the official city plan as established by Ordinance No. 381 of the city, and at the same time the surrounding property will be reasonably protected.
- (d) That by granting the request for a variance substantial justice shall be done.

We, the homeowners, would like to install an inground swimming pool, but because of a 10' set back, it would put the pool too close to the existing deck. Due to safety concerns, it would be too close to the deck without the city granting us a variance. - We are requesting a variance of 4 feet into the 10 foot set-back. We will be installing a 5 foot aluminum fence along the property line, all per city code.

Part 6. Attachments. The following items are attached and are a part of this application.

- () 1. Scale accurate site plan, at a scale of 1" = 20' or other suitable scale, showing adjacent street, property line, building location of existing and proposed buildings and other important features of the property. Required with all applications.
- () 2. Legal Description. (If not shown on page 1.)
- () 3. Floor plan if internal design of building is part of application.
- () 4. List additional attachments.

Part 7. Signature.

I (we) depose and say that all the information contained in this application and the statements contained in the papers submitted herewith are true. Witness our Hands and Seals this 30th day of August, 20 13.

Signature of Applicant *Kelly G* Signature of Owner *Kelly G*
 (The owner **MUST** indicate his consent to this application by signing above. Application without the signature of the owner will not be processed)

State of Iowa)
) SS
 County of Scott)

Before me the undersigned Notary Public, in and for the County and State, personally appeared applicant(s) and separately and severally acknowledge the execution of the foregoing application is his/her voluntary act and deed, for the purposes therein expressed.

Witness my Hand and Notarial Seal this 30 day of Aug., 20 13.



John Soenkse
 Notary Public in and for Scott County, Iowa

Part 10. Filing Fee.

\$ 50.00 Single Family/Two-family Residential Variance
 \$ 100.00 All Other Applications

Received by *John So*
 Amount 50.00 Date 8/30/2013



COMMUNITY DEVELOPMENT

City Hall Annex • 4403 Devils Glen Road, Bettendorf, Iowa 52722 • (563) 344-4083

September 12, 2013

Staff Report

Case No. 13-053

Location: 2501 – 53rd Avenue

Applicant: The Clubhouse

Zoning Designation: C-2, Community Shopping District.

Request: Special use permit for an outdoor service area to be similar and compatible to the uses existing within the premises.

Background Information and Facts

The site is located at the Crow Ridge Plaza Shopping Center on 53rd Avenue and involves the tenant in the center of the “L”-shaped building (see Attachment A – Location Map). The Clubhouse has an enclosed front entry area that they would like to use as an outdoor service area (see Attachment B – Site Plan).

Staff Analysis

Section 21.10.e.1 of The Code states that a special use permit should not be granted unless it meets nine specified criteria. The following is staff’s analysis of those criteria:

- (1) The proposed use is designated by this ordinance as a special use in the district in which the use is to be located.

The applicant has indicated that the outdoor service area will simply be an extension of the uses currently existing within the building and therefore “is a similar and compatible use” as listed as one of the enumerated special uses under the C-2 District (Section 15.23.1).

- (2) The proposed use will comply with all applicable regulations in the district in which the use is to be located.

If approved, staff will monitor and ensure that all codes are complied with if the request is approved.

- (3) The location and size of the proposed use, the nature and intensity of the operation involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the district in which it is located.

An outdoor service area exists in this shopping center at Crust Stone Oven Pizza. The outdoor service area being proposed by The Clubhouse will measure approximately 24 feet by 40 feet. The Crust Stone Oven Pizza outdoor service area measures

approximately 18 feet by 36 feet and allows enough room for 9 customer tables and seating for 36 people. The Clubhouse request appears to be in harmony with the existing conditions at the shopping center.

- (4) The location, nature and height of buildings, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not unreasonably hinder or discourage the appropriate development and use of adjacent land and buildings.

The request is almost identical to the outdoor service area already existing at this shopping center for Crust Stone Oven Pizza and therefore appears to be consistent with the other activities occurring in the shopping center.

- (5) Parking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining uses, and the entrance and exit drives will be laid out so as to prevent traffic hazards and nuisances.

If approved, the outdoor service area will be on the north side of the building opposite the residential area. This provides more screening than was being proposed in 2011 for the outdoor service area on the south side of the building. The proposed outdoor service area is surrounded by 4-foot high railings similar to the enclosure of the Crust Stone Oven Pizza outdoor service area. If approved, the area will have no impact on parking area, traffic flow patterns, and will not impede any drives, entrances or exists to the shopping center.

- (6) The proposed use will not cause substantial injury to the value of other property in the neighborhood.

In June of 2011 the Clubhouse requested permission to have an outdoor service area on the rear (south side) of the building adjacent to the neighboring residences. That plan was denied by the Board because it did not meet the above standard.

Neighbors from the surrounding residential area voiced objections to any outdoor service area at the 2011 meeting, and the Board made it clear at that time that they felt the outdoor service area at either location at The Clubhouse should be denied. The following is an excerpt from the minutes of that meeting: "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". The entire section of the minutes concerning that case during the 2011 meeting are attached to this report (Attachment C).

In November of 2011 the Board approved an outdoor service area at this shopping center for Crust Stone Oven Pizza, and staff is not aware of any complaints associated with that approval. There was a condition placed on the Crust Stone Oven Pizza approval stating that the outdoor service area was not to be used after 10:00 pm Monday through Saturday and not after 9:00 pm on Sundays.

Given the conditional approval that subsequently occurred for an outdoor service area at this shopping center, the Board may feel that conditions have changed significantly enough to reconsider the opposition to the outdoor service area at The Clubhouse originally requested in 2011.

- (7) Conditions in the area have substantially changed, and at least one year has elapsed since any denial by the board of adjustment of any prior application for a special use permit that would have authorized substantially the same use of all or part of the site.

The denial of the proposed outdoor service area occurred in June of 2011. Over a year has lapsed since this request was originally made. Moving the outdoor service area from the south side of the building directly next to residences to the north side of the building represents a "substantial change" as enumerated in Standard #7 above.

- (8) The board of adjustment shall impose such conditions and restrictions upon the premises benefited by a special use permit as may be necessary to assure compliance with the above standards, to reduce or minimize the effect of such permit upon other properties in the neighborhood, and to better carry out the general intent of this ordinance. Failure to comply with such conditions or restrictions shall constitute a violation of this ordinance.

The Board placed hours of operation restrictions on the outdoor service area at Crust Stone Oven Pizza. If this request is allowed, hours of operation restrictions would be consistent with the previous approval. The Board also warned Crust Stone Oven Pizza that they would review the approval if complaints were raised about the volume of music being played or if patrons became noisy at the outdoor service area.

- (9) The proposed use is consistent with the Bettendorf Comprehensive Plan and serves to further the goals of the plan.

The Board has recognized outdoor service areas as consistent with the comprehensive plan for certain commercial type uses. It has become common for restaurants or where alcoholic beverages are served to have an outdoor deck, patio, or service area. Many already exist in the city including:

- Governor's
- Caddy's Sports Bar and Grill
- Harrington's Pub
- Papi's Bar & Bites (former)
- Grinders Spaghetti House

Staff Recommendation

If the Board feels that circumstances have changed substantially since the 2011 request and the fact that an outdoor service area was approved at this shopping center in November of 2011, then the current request may be consistent with the previous approval.

Respectfully submitted,

John Soenksen
City Planner

Attachment - A

GLEN EAGLES DR

HEATHER GLEN CIR

53RD AVE

53RD AVE

SITE

BRENTWOOD DR

ROSEHILL AVE

18TH ST

LINDENWOOD DR

19TH ST

COUNTRYSIDE LN





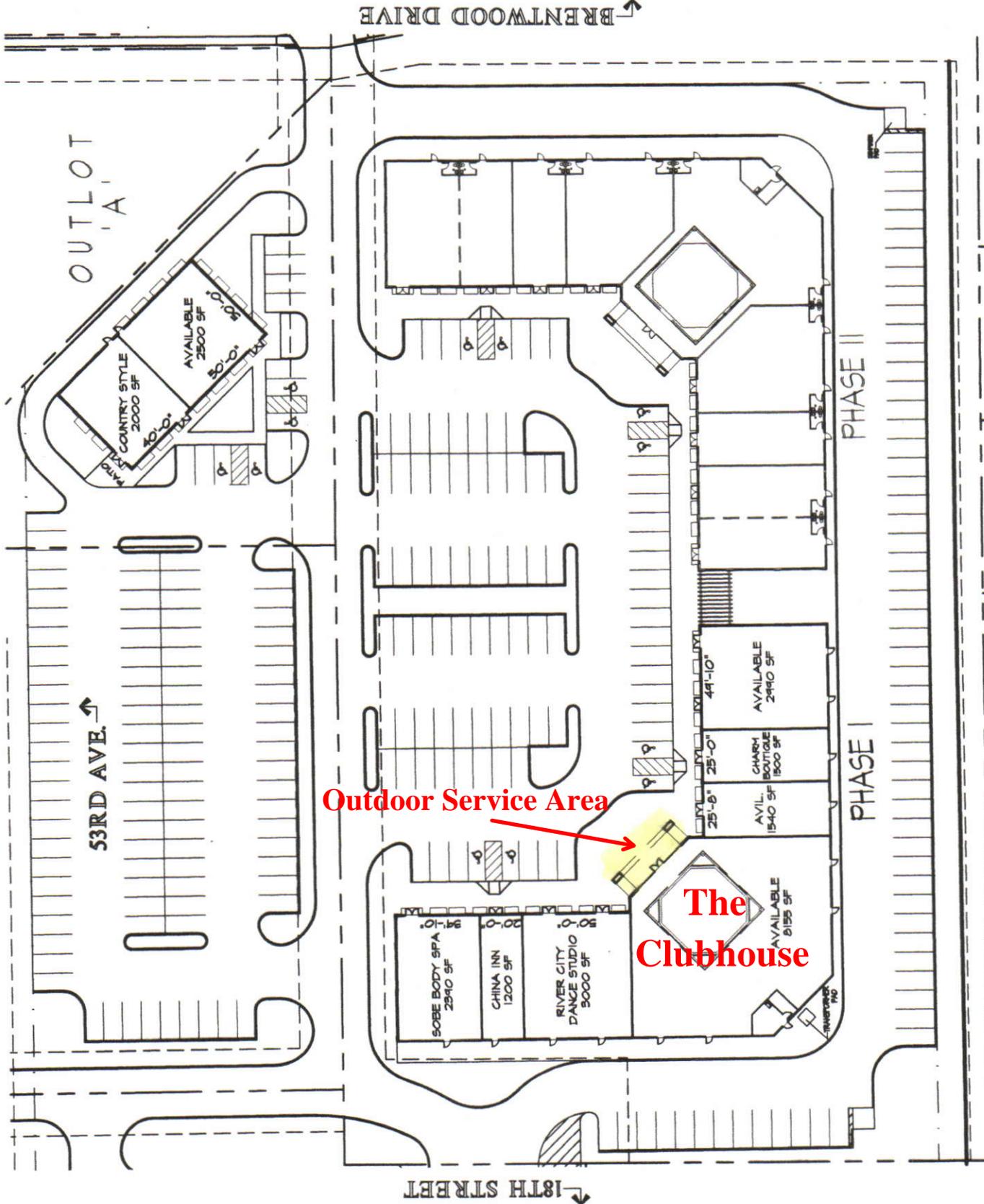
DOWNING ARCHITECTS PC
245 Eighth St.
Brentwood, IA 52722
P 563.355.1858
F 563.355.1857

CROW RIDGE PLAZA
HILLCREAST PARTNERS
1878 ST. & 5RD AVE.
BENTONVILLE, IOWA

0 0417

6 NOV
9 JAN
19 MA
10 MA

SITE PLAN



Outdoor Service Area

The Clubhouse

OUTLET A

53RD AVE.

187TH STREET

PHASE II

PHASE I

SITE PLAN
SCALE: 1" = 60'



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

- 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.



Case No. 13-053

APPEAL AND APPLICATION TO THE ZONING BOARD OF ADJUSTMENT OF BETTENDORF, IOWA

Part 1. Property Involved. 2501 53rd Ave Bettendorf, IA 52722
Street Address

Legal Description of the property. Part of lot 2 and all of outlot A of Crow Ridge Plaza addition, Bettendorf, IA

Part 2. Contact Information.
Applicant Name The Clubhouse Phone 563-332-1561
Address 2501 53rd Ave Bettendorf, IA 52722 FAX —
E-mail Address: ajpaul@gclubhouse.com

Owner Name Chris Larson Phone 563-340-7818
Address _____ FAX _____
E-mail Address: colarson@gclubhouse.com

Agent Alex Paul Phone 563-209-1646 *
Address 4373 18th St Bettendorf, IA 52722 FAX _____
E-mail Address: ajpaul@gclubhouse.com

Part 3. Type of Application. (check at least one)

- 1. Variance/Exception. Before the Board of Adjustment grants approval of a variance to the City of Bettendorf Zoning Ordinance, all of the following conditions **MUST** be met:
 - (a) That the granting of the exception will not permit any use in any district which would be in conflict with the permitted uses of such district under the terms of this ordinance.
 - (b) That it will not impair an adequate supply of light and air to adjacent property.
 - (c) That it will not unreasonably increase the congestion in public streets.
 - (d) That it will not increase the danger of fire or of the public safety.
 - (e) That it will not unreasonably diminish or impair established property values within the surrounding areas.
 - (f) That it will not in any other respect impair the public health, comfort, safety, morals, or welfare of the inhabitants of the city.
- 2. Special Use Permit. Before the Board of Adjustment grants approval of a special use permit, all of the following conditions **MUST** be met:
 - (a) The proposed use is designated by this ordinance as a special use in the district in which the use is to be located.
 - (b) The proposed use will comply with all applicable regulations in the district in which the use is to be located.
 - (c) The location and size of the proposed use, the nature and intensity of the operation involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the district in which it is located.
 - (d) The location, nature, and height of buildings, walls, and fences and the nature and extent of the landscaping on the site are such that the use will not unreasonably hinder or discourage the appropriate development and use of adjacent land and buildings.
 - (e) Parking areas will be of adequate size for the particular use, properly located, and suitably screened from adjoining uses and the entrance and exit drives will be laid out so as to prevent traffic hazards and nuisances.
 - (f) The proposed use will not cause substantial injury to the value of other property in the neighborhood.
 - (g) Conditions in the area have substantially changed and at least one year has elapsed since any denial by the Board of Adjustment of any prior application for a special use permit that would have authorized substantially the same use of all or part of the site.
 - (h) The Board of Adjustment shall impose such conditions and restrictions upon the premises benefited by a special use permit as may be necessary to assure compliance with the above standards, to reduce or minimize the effect of such permit upon other properties in the neighborhood, and to better carry out the intent of this ordinance. Failure to comply with such conditions or restrictions shall constitute a violation of this ordinance.
- 3. Other. _____

Part 4. General Information.

Section(s) of Zoning Ordinance Involved 15.28.1, 15.28.4 Existing Zoning C-2 Community Shopping district

Part 5. Reasons for Application. In the space below, give a general description of the activity desired and principal reasons why this application should be granted by the Board. If this application is for a variance, please state the hardship which the zoning ordinance imposes on the property. Use the following criteria as justification for the requested variance. Use additional sheets if necessary.

- (a) It shall be the property owner's responsibility to show that the terms of this ordinance will impose unusual and practical difficulties or particular hardships. The hardship established by the property owner must not be SELF-IMPOSED. A self-imposed hardship is NOT justification for the approval of a variance request.
- (b) If the variance granted is in harmony with the general purpose, intent, and spirit of this ordinance.
- (c) If the board determines that the granting of the requested variance will not serve merely as a convenience to the applicant, but will alleviate a demonstrable hardship as to warrant a variance from the official city plan as established by Ordinance No. 381 of the city, and at the same time the surrounding property will be reasonably protected.
- (d) That by granting the request for a variance substantial justice shall be done.

We are requesting that customers of The Clubhouse, be allowed to carry and consume alcohol, outdoors, on the north side of the building in a designated area under the existing canopy and inside the patio fence.

Part 6. Attachments. The following items are attached and are a part of this application.

- () 1. Scale accurate site plan, at a scale of 1" = 20' or other suitable scale, showing adjacent street, property line, building location of existing and proposed buildings and other important features of the property. Required with all applications.
- () 2. Legal Description. (If not shown on page 1.)
- () 3. Floor plan if internal design of building is part of application.
- () 4. List additional attachments.

Part 7. Signature.

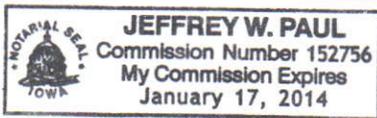
I (we) depose and say that all the information contained in this application and the statements contained in the papers submitted herewith are true. Witness our Hands and Seals this 26th day of August, 20 13.

Signature of Applicant [Signature] Signature of Owner [Signature]
(The owner **MUST** indicate his consent to this application by signing above. Application without the signature of the owner will not be processed)

State of Iowa)
) SS
County of Scott)

Before me the undersigned Notary Public, in and for the County and State, personally appeared applicant(s) and separately and severally acknowledge the execution of the foregoing application is his/her voluntary act and deed, for the purposes therein expressed.

Witness my Hand and Notarial Seal this 26th day of August, 20 13.



[Signature]
Notary Public in and for Scott County, Iowa

Part 10. Filing Fee.

\$ 50.00 Single Family/Two-family Residential Variance
\$ 100.00 All Other Applications

Received by [Signature]
Amount \$100.00 Date 8-27-2013
cash