

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
MARCH 10, 2011
5:00 P.M.**

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

Item 1. Roll Call

PRESENT: Falk, Howe, Stelk, *Voelliger
ABSENT: McElhiney
STAFF: Connors, Fuhrman, Soenksen

Item 2. Review of Board Procedures.

Item 3. The Board to review and approve the minutes of the meeting of December 9, 2010.

On motion by Voelliger, seconded by Howe, that the minutes of the meeting of December 9, 2010 be approved as submitted.

ALL AYES

Motion carried.

Item 4. The Board to review and approve the 2010 Board of Adjustment Annual Report.

Howe commented that there has been a substantial reduction in the number of variance requests, adding that it appears as though the zoning ordinance revisions that have been made are in keeping with the expectations of the community.

On motion by Voelliger, seconded by Falk, that the 2010 Board of Adjustment Annual Report be approved as submitted.

ALL AYES

Motion carried.

Annual Report is Annex #2 to these minutes.

Item 5. Election of Officers.

On motion by Howe, seconded by Voelliger, that Stelk and McElhiney remain in their offices of Chairman and Chairman Pro Tem, respectively.

ALL AYES

Motion carried.

Item 6. The Board to hold a public hearing on the following items:

- a. Case 11-009; Lot 1, Hunter Meadows Commercial Park Second Addition (SW corner of 53rd Avenue and Falcon Avenue (C-2) - A request for a special use permit to allow a drive-up window, 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 #3 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #4 to these minutes. He explained there is no requirement for establishment of a hardship for special use permit requests, only for variance requests.

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

Ted Rebitzer, representing the applicant, stated that except for the branding elements that will appear on the restaurant, the structure will be very similar in appearance to the other buildings in the area. He indicated that a neighborhood meeting had been held and that some of the concerns of the residents will be incorporated into the final site development plan which will be submitted next week. Rebitzer stated that while many of the neighbors expressed concern about a reduction of property values, his research indicates that the opposite is true. He explained that of the 9 homes that have been sold recently that are located in close proximity to the commercial uses in the area, all but one were sold for a higher price than they were purchased. He stated that the home that did not sell for more was part of a relocation buyout, adding that this is typical of that kind of transaction.

Rebitzer stated that McDonald's has very strict guidelines on franchise operation with regard to keeping the property in good condition which includes keeping the property free of trash. He requested that he be given the opportunity to rebut any concerns that neighbors may express.

Howe asked what the hours of operation would be. Rebitzer explained that the franchisee would determine when the store would be open, adding that the restaurant will serve breakfast, lunch, and dinner.

Dave Lundy, representing Tom Lundy's estate, expressed support for the request. He stated that he and his brother Curtis Lundy feel that as one of the premier intersections in Bettendorf, the use is appropriate as it is compliant with the land use plan and zoning ordinance. Lundy requested that the Board approve the request in accordance with the recommendation which is a result of staff's comprehensive, objective analysis.

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

Dave Berntgen, 5177 Dove Court, stated that interpretation of the intent of the code and comprehensive plan is subjective. He indicated that in order to grant a special use permit, the Board must determine that a proposed use is in harmony with the area in which it is to be located, that the surrounding property will be reasonably protected, and that property values will not be diminished. Berntgen stated that he believes that a commercial development would have a negative impact on the adjacent residential properties.

Berntgen questioned why the applicant should be given a special exception that would diminish the value of the homes of owners who have paid property taxes for a considerable period of time. He stated that the applicant must establish a hardship, adding that the Board must also consider whether granting the request would impose a hardship on the neighbors while taking into consideration their public health, comfort, safety, and welfare.

Berntgen stated that he has seen children play in the commercial lots after having left Frank's Pizza. He indicated that McDonald's targets their advertising toward young children and that it is likely that the proposed restaurant would attract more of them to play there. He stated that he has neither a fence nor a dog and that it would be no problem for those children to enter his property.

Berntgen stated that some of the uses allowed in the C-2 district are more intense than others. He indicated that there is no comparison between the Red Crow Grille or Charm Boutique and a McDonald's restaurant. He stated that Section 15.22 of the code does not specifically allow a fast food restaurant and that Section 15.26.3 of the code expressly forbids a drive-in restaurant. Berntgen commented that the code is confusing to him because Section 15.23 allows a drive-up window with a special use permit which seems to be directly contradictory to other sections. He indicated that he feels that if the intent of the code is to allow a fast food restaurant in a C-2 district it would be a listed permitted use.

Berntgen explained that throughout the zoning ordinance there are many examples of requirements for minimizing the impact of a noxious use on a less intense one. He commented that it was never the intent of the ordinance for a C-2 district to be located directly adjacent to a residential neighborhood.

Berntgen stated that at the neighborhood meeting he had asked where in Bettendorf a fast food restaurant is located so close to a residential home and was given the example of Burger King on Devils Glen Road. He explained after viewing the properties he found that the homes in question are on an unimproved street and certainly do not resemble the homes in his neighborhood. He stated that he had done further research and discovered that the homes in question are not in an R-2 district, but in an A-2 district. Berntgen asked if there are any locations in Bettendorf where a fast food restaurant is located next to an R-2 district. He commented that the Seeds restaurant cannot be used for comparison as it is located across the street from the homes. He added that the

drive-up windows are also dissimilar in that McDonald's uses a speaker for communication.

Berntgen stated that the property where his home is now located was rezoned to R-2 from C-5 in 1992. He added that the C-5 district was intended to buffer the residential subdivisions to the south from the commercial property further north. He explained that the developer of the property had requested a rezoning because he found that the property in question was not marketable, adding that most people consider the rezoning to be a mistake. Berntgen stated that he feels that the unintended consequences of that mistake should be mitigated rather than to skirt the rules of the ordinance and allow a special use in place of an allowed use.

Berntgen stated that he does not believe that there is any public need for a McDonald's restaurant at the proposed location. He added that it should be located somewhere else in Bettendorf. He reiterated that he does not believe that the commercial uses on the east side of 18th Street are similar in intensity to a McDonald's restaurant, the majority of which are open during limited hours of the day.

Berntgen stated that the Board must carefully consider the impact of light, noise, and smells on the abutting residential properties. He requested that the Board not make another mistake like the rezoning of the C-5 property in 1992. He indicated that he does not believe that adequate evidence has been presented to indicate that property values will not be negatively affected. He stated that even though he had purchased his property subsequent to the rezoning, oftentimes circumstances change. He added that he could have had no way to know that a fast food restaurant would be located next to his property. Berntgen stated that the city never intended to contribute to the devaluation of residential property as he claims occurred during the housing bubble when the value of many houses declined.

Berntgen suggested that the Board impose conditions related to hours of operation, noise generation, restrictions on truck deliveries and garbage collection, lighting, and screening.

Julie Berntgen, 5177 Dove Court, read a letter opposing the request from Mandy Brown of 5253 Dove Court. Letter is Annex #5 to these minutes.

Pete Moldt, 5131 Dove Court, asked for clarification of two items noted on the site plan. Richard Panner, representing the applicant, explained that the first item that Moldt had indicated is a trash corral and the second a storage building. Moldt stated that the trash corral is only 75 feet from the Berntgen property, adding that he does not believe that the statement in the staff report regarding the distance from the restaurant to the nearest residential property is accurate. He indicated that he feels that the distance should be measured from the trash corral which means that the proposed restaurant is closer to residential property than any of the examples cited in the report.

Penny Sue Jagers, 5200 Dove Court, expressed concern about the noise that will be generated by the restaurant. She indicated that the speakers for the drive-up window are located such that she believes that they will create a nuisance. Jagers stated that

she has learned that the drive-up windows of 71% of the McDonald's restaurants in the Iowa Quad Cities are open 24 hours per day. She stated that even though she has a 6-foot high fence, there will not be an adequate buffer to protect her from the noise. She reiterated the concern about trash pick-up and truck deliveries occurring during normal sleeping hours.

David Fenton, 5182 Dove Court, stated that he is opposed to the proposed restaurant being located next to a residential neighborhood as there are more appropriate locations in Bettendorf. He expressed concern about the impact of traffic, noise, smells, litter, and congregations of youth. He stated that none of the other fast food drive-up restaurants in Bettendorf abut residential property that is intended to remain so per the comprehensive plan. Fenton stated that he believes that staff misrepresented the fact that restricting access to Falcon Avenue only will reduce traffic congestion on 53rd Avenue. He stated that approximately 80% of sales at fast food restaurants occur at the drive-up window. He indicated that during a 12-hour period, a typical fast food restaurant has approximately 1200 customers. He stated that there are no sidewalks in the area and so it is destined to become primarily a drive-up restaurant, although some will enter the store. He questioned why McDonald's was not asked to provide traffic information or customer volumes. Fenton stated that because most customers will enter the site from 53rd Avenue, it will create traffic congestion which is not in the best interests of the citizens of Bettendorf. He suggested that a more appropriate zoning for the property in question would be C-5 and that the City should acquire the property and rezone it. He indicated that the City should then use it for commercial office space. He acknowledged that the applicant would be allowed to build the restaurant without a drive-up window with no further action by the city. He stated that granting the special use request would exacerbate the mistake that was made to rezone the abutting properties in 1992. Fenton stated that the noise from the speakers would mean that residents would not be able to keep their windows open.

Connors commented that one of the first things that city staff had requested of the applicant is a traffic study. He explained that the traffic study, which was completed at the applicant's expense, did not show that a traffic signal light would be warranted at the Falcon Drive intersection with 53rd Avenue.

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

Voelliger commented that the area in question has been controversial for many years because the developer had been unable to sell many of the lots. He explained that the City Council had granted the developer permission to rezone the area south of Falcon Avenue to residential. He indicated that the residents on Lindenwood Drive and Dove Court should have been aware of the fact that their homes are located adjacent to a commercial district when they were purchased. Voelliger stated that there is no way to control what kind of development may take place on a vacant lot.

Howe stated that while he appreciates the concerns that were expressed about having a fast food restaurant near a residential neighborhood, most of them are not in the Board's purview. He expressed concern about the traffic patterns, the hours of

operation, and the noise issue. He asked if consideration had been given to utilizing technology such that a loud speaker would not be necessary. Ross Yeschek, representing the applicant, stated that the speakers will be directed such that as little noise as possible reaches the residential properties. He explained that the screening that will be used will aid in that effort as well. Howe asked if there is any data available regarding the decibel level generated by the speakers. Yeschek stated that he does not have that available right now, but could obtain it. He indicated that some of the McDonald's restaurants in the area had used the face to face drive-up window rather than a speaker system, but that it had not worked very well.

Howe asked if staff had given any consideration to the noise that will be generated by the development. Soenksen explained there are two developments that use speakers and are near residential neighborhoods. He indicated that the distance from the speaker to the nearest residential structure is 137 feet at Burger King and 151 feet at the car wash on Devils Glen Road. Falk commented that the physical presence of a vehicle between the speaker and the residential homes will likely muffle the sound.

Howe stated that he does not see a preponderance of evidence to suggest the applicant's request should be denied.

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

Soenksen clarified the fact that the proposed development is not for a drive-in restaurant as was indicated by one of the objectors. He explained that an example of a drive-in restaurant as defined by the ordinance is a Sonic restaurant. Howe commented that he believes that the Board is aware that the request is for a traditional drive-up window.

ROLL CALL ON MOTION

ALL AYES

Motion carried.

Decision and Order is Annex #6 to these minutes.

*At this time, Voelliger left.

- b. Case 11-010; 4513 Stone Haven Drive (R-2) - A request for a variance from the required established setback from 39 feet to 25 feet to allow for construction of a garage, submitted by George and Toni Hallas.

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 #3 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 the request.

George Hallas, the applicant, explained that he had been unaware of the established setback requirement. He commented that the proposed structure will be similar in appearance to the house.

Howe stated that while there is no visible hardship, there is a large disparity between the front yard setbacks in the neighborhood. He expressed concern that the structure, once completed, will overwhelm the neighborhood. He stated that is in support of the request.

Falk asked if the proposed structure would cause a violation of the garage to living area ratio requirement. Soenksen stated that it would not as some of the new space would be designated as non-vehicle storage.

Falk expressed concern about the appearance of the structure once the addition is complete. He asked if the applicant had considered placing the addition alongside the existing garage and eliminating the need for a variance. Hallas explained that if the garage is placed further back, it would impinge on the view from the kitchen and breakfast room windows. He added that none of the neighbors with whom he spoke had expressed any objections. Howe commented that because there is a large variation in the neighborhood with regard to the appearance of the homes, the proposed addition will not appear to be obtrusive.

On motion by Howe, seconded by Falk, that the variance from the required established setback from 39 feet to 25 feet to allow for construction of a garage be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #8 to these minutes.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 6:25 p.m.

These minutes and annexes approved

John Soenksen
City Planner