

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
NOVEMBER 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, Johnson, Stelk, Voelliger
ABSENT: None
STAFF: Connors, Fuhrman, Soenksen

Item 2. Review of Board Procedures.

Item 3. The Board to review and approve the minutes of the meeting of October 13, 2011.

On motion by Voelliger, seconded by Howe, that the minutes of the meeting of October 13, 2011 be approved as submitted.

ALL AYES

Motion carried.

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

- a. Case 11-070; 2561 - 53rd Avenue (C-2) - A request for a variance to allow outdoor operations, submitted by 53rd Avenue Pizzeria, LLC.
- b. Case 11-071; 2561 - 53rd Avenue (C-2) - A request for a special use permit to allow a bar, cocktail lounge, and tavern, submitted by 53rd Avenue Pizzeria, 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 reports. Staff reports are Annex #3 and Annex #4 to these minutes. He stated that he had received three letters expressing opposition to the request from Kevin Chanez of 2614 Heather Glen Circle, Lien Moore of 2406 Lindenwood Drive, and Kurt and Pamela Trissel of 2761 Heather Glen Circle.

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

Mark Roemer, the applicant, stated that he believes that the proposed restaurant would be a good fit for the development. He indicated that he has been involved in several similar businesses with outdoor service areas that have been very successful. Roemer explained that he has no plans to expand the proposed outdoor use area, adding that the outdoor seating area will have 6-8 small tables that seat 4. He indicated that while he is unable to determine at this time what the percentage of food versus alcohol sales will be, the business will primarily be a restaurant, not a bar. Roemer explained that he plans to import a pizza oven from Italy and will be hiring a chef. He indicated that he plans to make every effort to fit into the neighborhood without being obtrusive.

Stelk asked for clarification regarding the hours of operation. Roemer explained that the restaurant will tentatively be open Monday-Thursday from 3:00 p.m. to 10:00 p.m., Friday-Saturday from 3:00 p.m. to 12:00 a.m., and Sunday from 12:00 p.m. to 8:00 p.m. Roemer indicated that food service would stop approximately 1 hour before closing. He indicated that employees would not be allowed to park on the public streets and that the noise generated by the patrons who choose to eat outside would be no louder than the traffic noise on 53rd Avenue.

Voelliger asked if there would be a drive-up window. Roemer stated that there would be no drive-through service, adding that the existing window was used by the previous business owners. He explained that because of the uniqueness of the pizza, he does not plan to allow customers to carry it out for the first few months. He indicated that the type of pizza the restaurant will serve tastes better when it is served fresh from the oven.

Voelliger asked if the restaurant would be operated in a similar manner as Harris Pizza or Happy Joe's which also serve alcohol. Roemer confirmed this, adding that the menu has not been completely set.

Voelliger asked if the proposed use would occupy the entire building. Roemer explained that the restaurant would use approximately 2100 square feet of the nearly 4,500 square foot structure.

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

Jane Follas, 2607 Heather Glen Circle, expressed concern about the outdoor operation and the noise from any outdoor speakers. She stated that if the applicant sells the business in the future, a new owner may not be as conscientious about fitting into the neighborhood as the applicant appears to be. She stated that she feels that allowing outdoor service with background music would set a negative precedent for the neighborhood.

Connors clarified that the outdoor service of food is already allowed and that the applicant's request is for permission to serve alcohol in addition to serving alcohol on the patio. Voelliger added that the city has a noise ordinance and that the applicant will be required to abide by those regulations. Follas stated that while she understands that the city has noise regulations, she can hear outdoor band music when it takes place at a bar on Belmont Road.

Tom Follas, 2607 Heather Glen Circle, expressed concern about expanding the service of alcohol in a greater capacity than already exists in the area by allowing it to be served outside. He stated that there are already noise problems caused by patrons of The Clubhouse, a business located in the same development. He stated that he does not believe that alcohol should be allowed to be served in a residential area.

Tyler Driever, 2536 Lindenwood Drive, commented that he does not believe that the proposed use is similar in any way to the businesses referenced in the staff report as they are not located near residential neighborhoods. He added that allowing outdoor service of alcohol would set a precedent for other business owners who may wish to make the same request at some point in the future.

Mike Porter, 2558 Lindenwood Drive, concurred with Driever, adding that he is under the impression that there is an ordinance prohibiting the sale of alcohol adjacent to residences. He expressed concern about the noise that would be generated by outdoor service of alcohol and the additional traffic.

Roemer stated that while he appreciates the concerns that have been expressed, he does not operate his businesses in the same manner as the one that has been the cause of most of the noise problems. He indicated that the property involved is located in a commercial district, not a residential one. Roemer stated that in his opinion, the volume of sales would be similar whether or not alcohol is served. He reiterated that his business will be primarily a restaurant, not a bar. He stated that the proposed pizzeria and a bar with outdoor service are not comparable as the business model is so dissimilar.

Roemer commented that when Beaver's East and Northwoods Steak House had been in operation he thought that they had had outdoor alcohol service. Connors confirmed this, adding that the outdoor service area is indicated on the original site development plan on the north side of the building. Roemer stated that he does not believe that his request is any different than what has already been allowed in the development.

Howe commented that while he is not opposed to allowing the service of alcohol inside, he is reluctant to allow the outdoor service of alcohol at the restaurant because of the noise that may be generated and the possibility that the business may be sold in the future. He stated that the request for outdoor alcohol service at The Clubhouse had been denied.

Roemer stated that he does not believe that the possibility that he may sell the restaurant in the future should have any bearing on the Board's decision. Howe commented that whatever decision the Board makes will be applicable to the next owner. Roemer stated that while he understands this, any future owner will be required to abide by the same rules as he.

Roemer stated he is not opposed to limiting the hours of outdoor alcohol service and that he is more than willing to compromise.

Tom Follas stated that he objects to another business that serves alcohol in his neighborhood.

Voelliger asked if it would be possible to restrict the use contingent on the applicant's continued ownership of the business and the specific use. Soenksen confirmed this, adding that several times in the past the Board has temporarily allowed a use with the caveat that the operation be reviewed at some point in the future before allowing it permanently.

On motion by Howe, seconded by Falk, that the special use permit to allow a bar, cocktail lounge, or tavern be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #5 to these minutes.

Voelliger stated that he would not be opposed to allowing outdoor service of alcohol if the applicant maintains ownership. Howe asked if Voelliger would be agree to restricting the hours of outdoor alcohol service. Voelliger confirmed this.

A discussion was held regarding what the hours of outdoor alcohol service should be. Falk suggested discontinuing alcohol service outside two hours before the close of the restaurant. Johnson commented that outdoor service of food would still be allowed. She questioned the practicality of discontinuing alcohol service so early during the summer as customers may arrive at the restaurant shortly before 8:00 p.m. on a weeknight and wish to have an alcoholic beverage. Johnson stated that customers would have to be forewarned about the regulations before being seated outside. Falk commented that he is merely attempting to make a compromise between the neighbors and the applicant's wishes.

Howe commented that he is not necessarily in favor of expanding the outdoor service of alcohol in the area even though the Beach House already has the same privilege as he feels that future business owners will make the same request. Johnson asked for clarification regarding the Beach House's outdoor service area. Connors explained that when the original site development plan for the building was approved, an outdoor service area on the north side of the building was a part of it. He indicated that he is unaware of whether or not it has ever been used. Johnson asked if the owner of the Beach House would be allowed to serve alcohol in that area. Connors confirmed this, adding that the allowed use runs with the property, not the owner.

Johnson commented her impression is that if the owner of the Beach House chooses to build a patio, he would be allowed to serve food and alcohol outdoors with no restrictions. Howe confirmed this.

Porter suggested that staff confirm whether or not outdoor service of alcohol is allowed at the Beach House before a decision on the current request is made. Connors explained that an outdoor service privilege for alcohol is granted by the Alcoholic Beverages Division of the state of Iowa as a part of the liquor licensing process.

Johnson stated that without definitive confirmation of whether the Beach House is allowed to serve alcohol outside without any restrictions, she is not comfortable placing different limitations on the current applicant. Stelk commented that it would seem to be inconsistent to allow outdoor service of alcohol with no restrictions for one business but not another, especially since they are located in the same development. Johnson commented that the fact that staff is not aware of whether the other business in the development has ever utilized the allowable outdoor service area does not necessarily mean that it won't be used in the future. She reiterated that she is not comfortable treating two businesses in the same development differently. Soenksen stated that each decision is made individually based on different factors such as proximity to residences, adding that the proposed outdoor service area for The Clubhouse was much nearer to homes than that for the original Beaver's East restaurant. Johnson stated that the outdoor service area for the proposed pizzeria is much further away from residences than the one that was approved for the Beach House building. She suggested that the case be deferred until such time as a definitive answer with regard to the outdoor service area for the Beach House is available. Howe asked Johnson if her decision would be based on whether the Beach House is allowed to serve alcohol outside. Johnson explained that she feels that the two businesses are very similar, adding that another option would be for the applicant to accept the restrictions that the Board has mentioned. She indicated that if it later becomes known that there are no restrictions on outdoor service of alcohol at the Beach House, perhaps the applicant could return to the Board to request that any hours of operation restrictions be waived. Roemer stated that he would prefer that the Board make a final decision at the meeting and review the request in one year after more information is available about the Beach House. He explained that he would like to be allowed to serve alcohol outside each night until 10:00 p.m. as it would be very difficult to move customers who may be drinking an alcoholic beverage inside the restaurant at a certain time when there may be no indoor tables available. Roemer stated that moving those customers would be especially difficult during the summer months when it stays light until a much later hour. He stated that he would be willing to abide by the 10:00 p.m. restriction even if it turns out that the Beach House is allowed to serve alcohol much later, adding that a review of his operation could take place after one year. He indicated that it is unlikely that the restaurant would be open until April 2012 because of the remodeling that must be completed first. He requested that a final decision be made so that he may proceed with demolition on the interior of the building and so that the lease date does not have to be revised.

Connors stated that he would check the details of the liquor license details of the other business that were located in the building that currently houses the Beach House. Voelliger stated that he would like to give the applicant a chance to start his business now. He added that he is amenable to approving the request with the caveats that no alcohol may be consumed outside after 10:00 p.m. and that the business remain under the current applicant's ownership. He stated that if the business is sold, the new owner must return to the Board for permission to continue the use.

Driever expressed concern about the precedent that may be set by allowing alcohol service outside.

Tom Follas stated that he believes that his property is closer to the proposed outdoor service area than the closest house to the outdoor area at the Beach House. He expressed concern about the noise that will affect his neighborhood, adding that he does not believe that this use is appropriate for the area. Stelk explained that the special use permit has already been approved. Johnson added that food service is allowed without any additional approval required by the Board. She indicated that the only issue at hand is whether alcohol is allowed to be served outside.

Johnson suggested that alcohol be allowed to be served until 9:00 p.m. outside on weeknights as most outdoor service will occur during the summer when it stays light until at least that time. She indicated that it will likely be very commonplace for customers to arrive at the restaurant later in the evening who wish to eat outside and have an alcoholic beverage.

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

On motion by Voelliger, seconded by Falk, that the variance to allow outdoor operations be approved in accordance with the Decision and Order and subject to the applicant's continued ownership of the business and the restriction of consumption of alcohol in the outdoor service area to no later than 9:00 p.m. on weeknights and 10:00 p.m. on weekend nights.

ROLL CALL ON MOTION

AYE: Falk, Johnson, Stelk, Voelliger

NAY: Howe

Motion carried.

Decision and Order is Annex #6 to these minutes.

Stelk commented that in one year the case would be reviewed.

Soenksen announced that Stelk has officially resigned from the Board and expressed staff's appreciation of his decades of service to the city.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 6:10 p.m.

These minutes and annexes approved

John Soenksen
City Planner