

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
SEPTEMBER 18, 2014
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 August 14, 2014.

On motion by Falk, seconded by Johnson, that the minutes of the meeting of August 14, 2014 be approved as submitted.

ALL AYES

Motion carried.

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

- a. Case 14-067; 2404 Hunter Road (R-2) - A request for a variance to allow a 6-foot high fence in a required front yard, submitted by Jeff and Jennifer Wellman.

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. Soenksen stated that he had received a letter in support of the request from Mac and Jenny Rice of 2350 Hunter Road. Letter is Annex #4 to these minutes.

Johnson asked if it would necessary specify where the fence is to be located because of the easement located on the property. Soenksen suggested that the motion could be to approve the request as submitted.

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

ALL AYES

Motion carried.

Decision and Order is Annex #5 to these minutes.

- b. Case 14-068; 710 - 28th Street (R-2) - A request for a variance to allow a deck in a required front yard, submitted by Ron Grenko.

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 #6 to these minutes.

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

Carlos Ramirez, 617 - 28th Street, expressed support for the request.

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

Mike Drinkall, 718 - 28th Street, stated that he believes that the proposed deck is too large given the size of the house. He indicated that the view from his home would be severely limited by the proposed deck. He stated that it is his understanding that the applicant wishes to build such a large deck because of the steep slope of the yard which is very difficult to mow. Drinkall suggested that a compromise could be reached by having the applicant repurpose the existing deck and installing landscaping in front of it so that there would not be as large a yard to be mown and maintained. He stated that the proposed deck would be the largest protrusion in the area.

Mike Kleinschmidt, representing the applicant, stated that he believes that Drinkall will be able to see over the proposed deck to the river. He indicated that the only time of the year when the proposed deck might hamper Drinkall's view would be during winter when there is no foliage on the many trees in the neighborhood. Kleinschmidt stated that the steep slope in the yard is a safety hazard for his father-in-law who has great difficulty mowing the lawn, adding that the proposed deck would extend approximately 6-8 feet further into the yard than the existing one. He indicated that the applicant plans to also install some plantings around the deck. He explained that it is not financially feasible for the homeowners to hire a contractor to regrade the lot so that it is not so steep.

Voelliger asked if the proposed deck would have the same type of railings as the existing one. Kleinschmidt explained that the railings would be a baluster type made of metal.

Johnson asked if the variance is only required because of the established setback in the area. Soenksen confirmed this. Johnson asked if the applicant obtained a variance for the existing deck. Soenksen stated that this is not the case. He commented that there are encroachments into the front yard setback of many of the homes in the neighborhood.

Voelliger asked if the proposed deck would ever be enclosed. Kleinschmidt stated that it would not.

Falk asked if the applicant has considered lowering the overall height of the deck by using stairs from the door. Kleinschmidt stated that he believes that stepping down to a deck would cause a tripping hazard.

Drinkall reiterated that he is not opposed to the size of the existing deck but believes that the proposed deck is too large. He indicated that there are many methods that could be used to reduce the size of the yard that needs to be mown including landscaping. He stated that it would not be necessary to terrace the entire yard to reduce the slope.

Johnson commented that it is not the Board's purview to regulate the size of the proposed deck. She indicated that it would be very difficult for her to deny the request because there already is a deck and the functional use of the 'front' yard is as a rear yard. Drinkall stated that the platted front yard is on 28th Street.

Johnson asked if the applicant would be allowed to replace the existing deck if it deteriorated to the point that it had to be removed if a variance were not granted. Soenksen stated that the applicant could make a similar request at that point.

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

On motion by Johnson, seconded by Falk, that a variance to allow a deck in a required front yard be granted in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #7 to these minutes.

- c. Case 14-069; 4340 Tanglewood Road (A-1) - A request for a variance to reduce the required side yard setback from 50 feet to 25 feet and to increase the allowable height of an accessory building from 15 feet to 29 feet to allow construction of a barn to be used for storage of farm equipment, submitted by Chad Miller.

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 #8 to these minutes.

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

On motion by Falk, seconded by Gallagher, that a variance to reduce the required side yard setback from 50 feet to 25 feet and to increase the allowable height of an accessory building from 15 feet to 29 feet to allow construction of a barn to be

used for storage of farm equipment be granted in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #9 to these minutes.

- d. Case 14-070; 3412 State Street (C-4) - A request for a variance to reduce the required front yard setback from 20 feet to 0 feet to allow construction of a parking lot and installation of an on-premises identification sign, submitted by Green Valley Properties, LLC.

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 #10 to these minutes.

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

Rhiannon Tucker, representing the applicant, stated that the house that is on-site is currently being renovated for use as an office. She added that the one-lane driveway on the property is not functional for parking nor is it safe for motorists to back out onto State Street. She indicated that the proposed location of the parking lot is the most logical.

Soenksen commented that the reason that the applicant chose the proposed location for the on-premises identification sign is that the existing mature trees could impede visibility of it if it were placed in a different location. He indicated that the other signs in the area at a similar setback, adding that because of the width of the State Street right-of-way the sign would be approximately 31 feet from the road.

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

On motion by Gallagher, seconded by Falk, that a variance to reduce the required front yard setback from 20 feet to 0 feet to allow for construction of a parking lot and installation of an on-premises identification sign be granted in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #11 to these minutes.

- e. Case 14-071; 2207 Falcon Avenue (C-2) - A request for a special use permit to allow an outdoor service area, submitted by Mark Roemer.

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 #12 to these minutes. Soenksen added that the neighbors would like the assurance from the Board that the location of the proposed patio will not change and that the proposed restaurant will not change into a completely different use such as a bar.

Voelliger asked if the proposed outdoor service area would be similar to the one at Sports Fans Pizza. Soenksen confirmed this.

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

Mark Roemer, the applicant, indicated that he has tried to alleviate as many of the concerns expressed by the neighbors as he can and held a neighborhood meeting for that purpose. He explained that the site development plan for the project was approved at the Planning and Zoning Commission meeting on September 17. He added that if the location of the proposed outdoor service area were to change, he would be required to resubmit the site development plan. Roemer stated that he has no desire to do so as he made a conscious decision to locate the patio as far from the residents as possible. He stated that he has no way to control what type of use a future owner may decide to have in that space. Roemer indicated that he has no intention of selling Crust, Red Crow Grille, or the proposed restaurant at any time in the near future. He stated that as long as he owns the space, it will be a restaurant/pub similar to Governor's.

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

Dave Berntgen, 5177 Dove Court, stated that he does not necessarily believe that the retail businesses listed in the staff report are accurate comparisons because of the nature of the business and/or their proximity to residences. Berntgen asked why Roemer is not required to obtain a special use permit for a bar, cocktail, lounge or tavern for the proposed use as he was required to do for Crust. He asked for clarification between the definition of a restaurant and a bar and whether the designation is assigned based on square footage, revenue, or some other method. He expressed concern about customers who could leave the restaurant at 2:00 a.m. after having been drinking alcohol on a school night. Berntgen expressed concern that the proposed restaurant could cause a possible reduction in property values and impair the health, public safety, comfort, morals, and welfare of the residents. He stated that he believes that the standards listed in the staff report lack relevant criteria as they relate to possible conditions that could be imposed on the applicant if the special use permit is granted.

Johnson explained that the Board does not have the authority to prevent a business owner from opening a restaurant.

Roemer reiterated that the restaurant he plans to open will not be like The Clubhouse. He stated that there will be no parking spaces in the rear of the lot, adding that this will prevent employees and customers from congregating there. He indicated that his understanding is that a bar is defined as a use where no food is served, adding that he will be opening a restaurant

that also serves alcohol. Roemer stated that the restaurant will in no way negatively impact the public's safety, adding that he believes that the business will add variety and value to Bettendorf because customers from the entire Quad City area will likely patronize it. He explained that his understanding is that a special use permit for a bar, cocktail lounge, and tavern was required for Crust because the use of the facility changed from one where alcohol was not served. He added that this would not be the case for the new restaurant.

Amanda Backstrom, 5148 Dove Court, stated that because there are two sets of back yards adjacent to the proposed restaurant and patio it is vastly different from Crust. She asked that the request be denied. She stated that while Roemer does not believe the restaurant will affect the health, safety, and welfare of the residents, he is proposing an outdoor patio where drinking and smoking are allowed. She stated that Roemer has no way of controlling the noise level and how much people smoke on the patio, adding that there are small children who play in the rear yards adjacent to the proposed restaurant. Backstrom requested that Roemer be required to install a fence on the berm to help keep unwanted behavior contained and prevent people from trespassing in their back yards. Voelliger explained that the site plan already shows a fence to be placed on the berm on the west and south property lines. Roemer stated that according to Iowa state law no smoking is allowed on an outdoor patio attached to a restaurant.

Marguerite Ford, 2217 Lindenwood Drive, expressed opposition to the proposed outdoor patio. She stated that she does not want her children to hear the conversations of people who are on the patio.

Todd Kaelin, 2214 Lindenwood Drive, requested that no activity at all be allowed on the patio after 9:00 p.m. on weekdays and 10:00 p.m. on weekends. He added that in his opinion it would defeat the purpose of limiting the hours when alcohol is allowed to be served on the patio if customers were allowed to sit there until 2:00 a.m. He requested that there be no outdoor music allowed on the patio.

Julie Fee, 2192 Lindenwood Drive, stated that while Roemer had indicated that he does not plan to build a patio on the west side of the building, he did not say that there wouldn't be an outdoor area on the south or east sides. She expressed concern that her husband will not be able to have a restful night's sleep if an outdoor patio is allowed.

Soensken explained that typically a special use permit for an outdoor service area would be approved or denied prior to the Planning and Zoning Commission's review of the site development plan. He stated that because no quorum was available for the regularly scheduled Board meeting, the site development plan has already been recommended for City Council approval by the Commission. He reiterated that the submitted plan as shown by Roemer is the approved plan and cannot be changed without further review by the Commission.

Julie Berntgen, 5177 Dove Court, asked for clarification of the definition of a restaurant. She expressed concern that the proposed use would be more like a bar than a restaurant. Connors explained that staff determines whether a business is a restaurant or bar based on percentages of predicted receipts for food and alcohol.

Roemer stated that if someone decides to lease the center space of the building and obtains a liquor license, it could be a bar. He explained again that the business to which the proposed

patio would be attached is a restaurant/pub and that the percentage of food to alcohol receipts will likely be 60/40 as is indicated on his business plan. He stated that none of the activities that take place in the restaurant are relevant to his request for a special use permit for an outdoor service area. He reiterated that a restaurant is a permitted use in a C-2 district.

Johnson stated that the Board has no authority to restrict the hours of operation inside the restaurant.

Kristi Ziskovsky, 5200 Dove Court, expressed opposition to the proposed outdoor patio. She expressed concern about the possibility that the lighting of the parking lot may overflow to her rear yard. Johnson explained that the lighting of the site is not in the Board's purview.

A brief discussion was held regarding the outdoor service area for the restaurant at 5185 - 18th Street. Soenksen explained that there is an outdoor patio on the north side of the restaurant.

Falk stated that in his opinion the residents on Lindenwood Drive will be completely shielded from the proposed outdoor service area by the berm, landscaping, fence, and the building itself. He indicated that the proposed location of the building and patio is the best possible for the residents and that any activity there will be mitigated by the configuration of the site.

Johnson asked if the patio would be covered which may lessen some of the sound that may escape the patio. Roemer explained that in his experience sound reverberates off of canopies which actually increase the level of sound.

Johnson reiterated that the only issue before the Board is whether to allow an outdoor service area.

A brief discussion was held regarding what types of restrictions could be placed on the hours of operation of the patio or noise levels that emanate from it. Voelliger commented that the police department would respond to any complaints regarding noise.

Dave Berntgen asked why The Clubhouse was denied an outdoor service area. Voelliger explained that The Clubhouse does not serve food and is not a restaurant. Soenksen added that the Board had made a distinction between an outdoor service area that is attached to a restaurant as compared to one that is attached to a bar. He indicated that if in the future the proposed use changes such that it is no longer a restaurant but a bar, the use of the patio could be restricted. Falk stated that there was already an established pattern of disturbance at The Clubhouse which factored into the Board's decision, adding that the first request for an outdoor service area was to be located at the rear of the building directly adjacent to residential back yards. He indicated that when The Clubhouse then requested an outdoor service area to be located on the front of the building it was also denied because none of the noise problems had been mitigated by the owners at that time.

A brief discussion was held regarding what restrictions had been imposed on the operation of the outdoor service area at Crust. Roemer commented that while food service is allowed on that patio when the restaurant is open, rarely do customers use the patio after alcohol is no longer be served outside. He reiterated that in all likelihood he will operate the restaurant and that it will be restaurant/pub. He explained that if in the future ownership of the restaurant changes

hands and the owner wants to open a bar, that person would have to approach the Board of Adjustment for a special use permit because the use has changed.

Johnson commented that to her recollection the only time the Board has denied a request for an outdoor service area had been for a bar. She added that the proposed use is very similar to existing restaurants in the city. Connors suggested that requiring a review of the outdoor service area operation at such time as a future owner wishes to open a bar would increase the level of comfort for the neighbors.

A brief discussion was held regarding the limitations that may be imposed on the hours that alcohol may be served on the patio. Roemer stated that he plans to request that the Board allow alcohol to be served on the patio at Crust until 10:00 p.m. on weekdays. Voelliger explained that the original Decision and Order had indicated that a review would take place in the future to determine if there had been any adverse effects on the neighborhood caused by the outdoor service area. He added that allowing alcohol to be served outside until 10:00 p.m. seems to be a very reasonable request. Falk concurred, and suggested that a precedent should be established so that no business owner has any sort of advantage over another based on hours during which alcohol can be served on an outdoor patio.

Voelliger asked if Roemer would have to submit his request at a future meeting or if the matter could be decided at this meeting. Connors stated that the request would have to be made separately.

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

On motion by Johnson, seconded by Gallagher, that a special use permit for an outdoor service area be granted in accordance with the Decision and Order and with the conditions that it be allowed only as an ancillary use to a restaurant, that alcohol service on the patio must cease at 10:00 p.m., and that if the use changes the Board must approve a new special use permit.

ALL AYES

Motion carried.

Decision and Order is Annex #13 to these minutes.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 6:30 p.m.

These minutes and annexes approved _____

John Soenksen, City Planner