

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 14, 2017
5:00 P.M.**

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

Item 1. Roll Call

PRESENT: Falk, Gallagher, Spranger, Voelliger
ABSENT: Clements
STAFF: Curran, Fuhrman, Soenksen, Connors

Item 2. Review of Board procedures.

Item 3. The Board to review and approve the minutes of the meeting of August 10, 2017.

On motion by Falk, seconded by Gallagher, that the minutes of the meeting of August 10, 2017 be approved as submitted.

ALL AYES

Motion carried.

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

- a. **Case 17-066; Lot 3, Interstate 74 Technology Park Fifth Addition (C-6)** – A request for a variance to allow parking in a required front yard adjacent to Tanglefoot Lane, submitted by Strategic Behavioral Health, LLC/Rob Elsner. (Deferred from meeting of August 10, 2017)
- b. **Case 17-067; Lot 3, Interstate 74 Technology Park Fifth Addition (C-6)** – A request for a variance to allow parking in a required front yard adjacent to Interstate 74, submitted by Strategic Behavioral Health, LLC/Rob Elsner. (Deferred from meeting of August 10, 2017)

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.

Gallagher asked if a hospital is allowed in the C-6 district and could be constructed if the variances are granted. Soenksen confirmed this, adding that the C-6 district has a 50-foot front yard setback while the C-3 district has a 20-foot front yard setback. He indicated that

technically the parking as proposed would encroach into the required front yard as the property is not yet rezoned to C-3. Spranger asked if the rezoning is in process. Soenksen confirmed this. Connors stated that the rezoning request was recommended for approval by the Planning and Zoning Commission and that the public hearing and first reading of the ordinance would be held September 19.

Voelliger asked if there would be 20 feet of greenspace along Tanglefoot Lane. Soenksen stated that there would be approximately 54 feet of greenspace between the parking area and the paved portion of Tanglefoot Lane.

Voelliger asked why the existing building is included on the drawing. Soenksen explained that the building shown on the site plan is not existing and that plans for its construction have been abandoned. He added that Case 17-071 which was related to the construction of that future building was withdrawn.

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 Gallagher, seconded by Spranger, that a variance to allow parking in a required front yard adjacent to Tanglefoot Lane be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #4 to these minutes.

On motion by Gallagher, seconded by Spranger, that a variance to allow parking in a required front yard adjacent to Interstate 74 be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #5 to these minutes.

- c. **Case 17-071; Lot 3, Interstate Technology Park Fifth Addition (C-6)** – A request for a variance to reduce the required rear yard setback from 50 feet to 5 feet and to reduce the required side yard setback from 10 feet to 5 feet to allow construction of a future structure, submitted by Strategic Behavioral Health, LLC/Rob Elsner. **(Withdrawn)**
- d. **Case 17-073; 3665 Devils Glen Road (A-1)** – A request for expansion of a non-conforming use (indoor storage units), submitted by Build to Suit/Kevin Koellner.

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 commented that the enclosed storage units are a major improvement over the original outdoor storage.

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

Voelliger asked if there is adequate space for both the proposed building addition and for customers to access the units. Soenksen explained that the applicant plans to replat the lot and incorporate land from the lot to the south to facilitate access to the new storage units. Connors added that the entirety of the building addition would be located on the original lot.

Falk commented that none of the current Board members were serving at the time the current use was allowed. He asked if it is Curran's opinion that the proposed addition is in keeping with the original use. Curran stated that his opinion is that the proposed building addition is not an expansion of the original non-conforming use. He explained that when comparing the original grandfathered non-conforming use which was outdoor storage, the proposed addition to an indoor storage building is not an expansion.

On motion by Falk, seconded by Gallagher, that the expansion of a non-conforming (indoor storage units) use be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #7 to these minutes.

- e. **Case 17-074; 2515 - 53rd Avenue (C-2)** – A request for a special use permit to allow an outdoor service area, submitted by Devon Hill.

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. He added that he received letters of opposition from Jenny Terronez (5153 Brentwood Drive) and John and Paulette Scheetz (5247 Brentwood Drive). Soenksen stated that an email in support of the request had been received from Shawn Langan shortly before the public hearing. He indicated that staff encouraged the applicant to hold a neighborhood meeting prior to the public hearing and supplied him with the addresses of the neighbors on the north side of Lindenwood Drive. He stated that he is unaware of whether or not that meeting was held.

Voelliger asked if the proposed outdoor service area would be screened in any way from the residential area. Soenksen stated that the applicant did not include any plans for screening with the application.

Falk stated that he would abstain from discussion and voting regarding Case 17-074.

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

Heather Hayes, representing the applicant, stated that the proposed restaurant would be approximately 2000 square feet in size with an 820 square foot outdoor service area. She explained that the plan is to have a moderately upscale restaurant and bar targeting families, singles, and business clientele. Hayes stated that there would be multiple dining options including indoor seating, bar seating, and seasonal outdoor dining and drinks. She indicated that she believes that the restaurant's unique concept would be an asset to the city and the surrounding neighborhood.

Hayes explained that the proposed hours of operation would be Monday-Thursday from 11:00 am to 10:00 pm, Friday-Saturday from 11:00 am to 12:00 am, and Sunday from 12:00 pm to 9:00 pm. She stated that there would be space for approximately 50 seats inside including the building and 25 seats outside on the patio area.

Hayes stated that she appreciates the concerns of the residential neighbors who live close to the proposed restaurant/bar. She indicated that the layout of the patio will include more intimate seating, bench seating, a casual area with a fireplace, and the bar seating. She explained that the pass-through bar may have garage-door style or sliding windows separating it from the indoor seating. She indicated that there would be some type of awning or cover to protect customers from the elements.

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

Tyler Driever, 2536 Lindenwood Drive, stated that while outdoor alcohol service area is allowed at Crust and Central Standard, he is opposed to the current request because of its location. He indicated that the proposed outdoor service area is very close to single-family homes, adding that the patio at Crust is much further away and is located closer to 53rd Avenue. Driever stated that at Central Standard the patio is located such that it is on the north side of the building away from the residences. He explained that at the public hearing regarding a proposed outdoor service area for Crust, Soenksen had indicated that each request should be evaluated individually and that the outdoor service area for The Clubhouse had been denied because of its proximity to the residences. Driever stated that the owner of Central Standard had indicated that he made a conscious decision to locate the patio as far from the residences as possible and configured the building such that there would be no parking spaces in the rear of the lot to prevent customers and employees from congregating in that area. Driever stated that at the public hearing Falk had indicated that he felt that the residents on Lindenwood Drive would be shielded from the outdoor service area by the berm, landscaping, fence, and the building itself. He indicated that this is not the case for the proposed outdoor service area as demonstrated in the photo that he submitted showing the view from a second story window in his home. He stated that while on occasion he can hear

music from the patio at Crust, it is not oppressive. Driever expressed concern about the garage door style opening from the inside to the patio. He indicated that not only will the neighbors have to contend with the noise from the patio but they will also be able to hear sounds from inside the restaurant and bar.

David Nankivell, 2470 Lindenwood Drive, stated that when The Clubhouse was in Operation at Crow Ridge Plaza he made many phone calls to the Police Department regarding noise complaints. He indicated that he sees no reason this would not be the case if the current request is approved. Nankivell stated that he believes there are many more appropriate locations in the city for the proposed use that are not adjacent to single-family homes. He expressed concern that customers of the proposed business would trespass onto the adjacent residential properties as has occurred in the past. He stated that if the second L-shaped building is ever constructed on the adjacent lot, the noise would be funneled into the residential neighborhood. He indicated that he would not be opposed to retail or commercial uses similar to those currently located in the development.

Voelliger asked if the traffic at the rear of the commercial development is bothersome. Nankivell stated that noise is generated by the trucks, employees, and customers of the butcher who has recently moved into the development. He indicated that the business sometimes has weekend activities that can be noisy. He added that the other restaurants in the area tend to close earlier than is proposed for the new business and that they are respectful of the neighborhood.

Hayes asked if it would be possible for the case be deferred until such time as a new concept could be presented that may address the concerns of the neighbors. Voelliger stated that the public hearing would remain open until the next meeting.

Martha Nankivell, 2470 Lindenwood Drive, asked if the neighbors would be allowed to continue to express their concerns if the case is deferred. Voelliger confirmed this, adding that the public hearing would still be open next month.

Kelly Meyer, 2459 Lindenwood Drive, requested that the case not be deferred. She stated that the neighbors have been put off every time they attend meetings of this type. She stated that she wants the neighbors to continue to be able to express their concerns.

Voelliger asked Curran if it would be appropriate to continue to receive public comment since the applicant has requested a deferral. Curran explained that the Board could make a motion for deferral but that it would be allowable for the residents to continue to comment.

Meyer stated that while many restaurants in the Quad City area have outdoor service areas, they are not located directly adjacent to single-family homes. She stated that a few people coming outside of The Clubhouse to smoke at the rear of the building was considered to be too loud, adding that the City required the owners to restrict access to the back door. She stated that the proposed outdoor service area would be much more expansive given that there would be 25 people having drinks passed through the bar and congregating on the patio. She stated that when owners of The Clubhouse requested permission for an outdoor

service area their request was denied because it was too close to the residences. She questioned why the Board was considering the current request.

Meyer asked for clarification of the percentage of sales of food versus alcohol. Hayes stated that there would be more sales of food than alcohol. Meyer stated that the design of the patio includes elements that would encourage customers to stay outside. She indicated that when people are drinking, they tend to become louder and expressed concern about the effect the noise would have on children in the neighborhood. She questioned whether the applicant plans to have music on the patio.

Curran explained that it would be the Board's decision on how to handle the applicant's request for deferral.

Mike Porter, 2558 Lindenwood Drive, commented that he would be okay with a restaurant/bar which is inside the building, but is opposed to the outdoor service area adjacent to a residential neighborhood. He stated that noise caused by smokers outside and vehicle engines in the parking is an issue now and that trash often blows around the development. He commented that he does not believe that there is any kind of buffer that could be provided that would be acceptable to the neighbors.

Voelliger asked if any consideration has been given to a different concept for the patio that might address the neighborhood concerns. Hayes stated that she would be willing to re-evaluate the design and submit a different concept at a future meeting. She indicated that there are technologies that can be used to reduce the noise from an outdoor patio. Hayes explained that it is not their intention to create a problem for the neighborhood, adding that she believes that the restaurant would add value to the area. She stated that soft music would be played only inside the restaurant. She reiterated that a buffer could be created with technology to lessen the impact of the noise of people talking and that she would be willing to change the hours of operation of the patio.

Connors asked if a neighborhood meeting had been held. Hayes stated that she had reached out to the neighbors. Connors asked again if there had been a neighborhood meeting. Hayes stated that there was no meeting, adding that a flyer with contact information was sent to the addresses provided by the city and that one of the neighbors had called her. Connors suggested that this might be a learning experience for the applicant and encouraged her to have a neighborhood meeting before the request is addressed at a future meeting.

Driever stated that because of the narrowness of the site, he does not believe that there is an acceptable solution. He indicated that if the patio were to be placed on the front of the building, he would not necessarily be opposed. He stated that he has spoken to some of the residents who live on Lindenwood Drive near Central Standard who expressed to him that while they can hear customers on the patio, the noise is at an acceptable level.

Laurie Hueser, 2514 Lindenwood Drive, asked for feedback from the Board members as to how they feel about the request as the neighbors are very concerned about the possibility of the request being granted. Curran explained that the Board has no obligation to indicate how they would vote. Voelliger added that the Board would not disclose any decision until there is

a vote, reiterating that the applicant has requested a deferral. He indicated that if the applicant provides a different concept, the Board must consider it. Hueser stated that there are many other sources of noise besides people talking and those caused by vehicles. She indicated that clanking of dishes and cleaning activities after the restaurant is closed also generate noise. She stated that she is not opposed to this type of restaurant but indicated that she does not want it to be located in her back yard.

Michelle Dunlavy, 2580 Lindenwood Drive, expressed concern about the possibility that customers would be able to see in to the homes of the neighbors.

Chris Bries, 2492 Lindenwood Drive, asked for clarification of the number of outdoor seats that would be on the patio. She indicated that she had spoken to Hayes who had stated that there would be 48 outdoor seats, adding that the graphic shows only 25. Hayes stated that she had determined that there would not be enough space for 48 outdoor seats.

Bries stated that The Clubhouse had originally been billed as a place to golf indoors but that it had morphed into a very loud bar. She expressed concern that this may be the case with the proposed patio. She reiterated that the noises generated by the trash collector early in the morning and the sounds of people talking in the parking are already a problem. She stated that it is very difficult to get rid of a nuisance business once it has been allowed.

On motion by Voelliger, seconded by Spranger, Case 17-074 be deferred to the next regularly scheduled meeting.

ROLL CALL ON MOTION

AYE:	Gallagher, Spranger, Voelliger
NAY:	None
ABSTAIN:	Falk

Motion carried.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 5:55 p.m.

These minutes and annexes approved _____

John Soenksen, City Planner