

# Meeting Minutes

## Zoning Board of Adjustment

Wednesday, September 7, 2016  
Ankeny City Hall – City Council Chambers  
410 W. First Street, Ankeny, Iowa

### CALL TO ORDER

The September 7, 2016 regular meeting of the Zoning Board of Adjustment was called to order at 5:00 pm by Chair M.Ott. Members present: J.Baxter, M.Ott, N.Sungren, K.Tomlinson, B.Walker. Staff present: E.Jensen, E.Carstens, E.Bodeker, D.Silverthorn, B.Fuglsang.

### AMENDMENTS TO THE AGENDA

There were no amendments.

### MINUTES OF THE AUGUST 16, 2016 MEETING

Motion by K.Tomlinson to approve the August 16, 2016 meeting minutes as submitted. Second by M.Ott. Motion carried 3 – 0 – 2 (Abstain: N.Sungren, B.Walker)

### COMMUNICATIONS / CORRESPONDENCE

There were no communications.

### PUBLIC HEARINGS:

**#16-20            Woodland Reserve North Condominiums**  
**103 NE 44<sup>th</sup> Street**  
**Lot 1, The Woodland Reserve Plat 6**  
**RE: Front Yard Setback - Variance**

Chair M.Ott opened the public hearing.

Brad Kuehl, Civil Design Advantage LLC, 3405 SE Crossroads Drive, Suite G, Grimes, Iowa stated he is here to represent Woodland Reserve and Haverkamp Properties for their Woodland Reserve project on the north side of Ankeny. Their request is a one-foot variance from the front yard setback of 30 feet to 29 feet for Lot 1, The Woodland Reserve Plat 6. Mr. Kuehl stated the owner is now working on financing for the project and it was discovered during their preparation of an ALTA/NSPS Land Title Survey that the NW corner of the building extends into the 30-foot front yard building setback by 1-foot. They are in need of the variance so they can move forward with financing on the project.

J.Baxter asked whether the NE corner may possibly be on the setback. Mr. Kuehl stated that it is right on the setback and was determined that the NE corner was not encroaching on the setback.

**Staff Report:** D.Silverthorn reported a one-foot variance to the Woodland Reserve PUD bulk regulations to allow a 29-foot front yard setback along the north property line at 103 Northeast 44<sup>th</sup> Street, as shown on the site plan. The subject property is located at the intersection of North Ankeny Boulevard and Northeast 44<sup>th</sup> Street. The property is zoned as PUD. The subject development consists of a multi-family residential building situated on Lot 1 of the Woodland Reserve Plat 6. The Woodland Reserve PUD Master Plan indicates 103 Northeast 44<sup>th</sup> Street as being included in Area "D" within the PUD. The bulk regulations for Area "D" require a 30-foot front yard setback for the principal structure. The northwest corner of the structure, which is used as garages, is the only portion of the structure that encroaches upon the required 30-foot front yard setback. All other setback requirements for this property are met. The garage portion of the structure is single-story, as shown on the approved elevations. The site plan for this development was approved in April, 2012. The subject building was issued a final certificate of occupancy in July 2013. At no point throughout the construction process was it known that the structure violated the required setback; however, it was discovered by the applicant

during their preparation of an ALTA/NSPS Land Title Survey for the entire Woodland Reserve property, that the NW corner of the building on said Lot 1 extends one foot into the required 30-foot front yard setback, as stated in the applicant's letter to the Board. The site plan submitted with the variance request indicates the northwest corner of the existing structure encroaching one foot upon the required 30-foot front yard setback, providing a 29-foot setback. The staff position is to grant the requested variance for the structure encroaching one foot into the required 30-foot front yard setback. The staff position is based on a determination that the resulting structure does not impair adequate supply of air and light, does not increase public danger of fire, or diminish property values; and that this request is in harmony with the intended spirit and purpose of the Ankeny Municipal Code.

M.Ott asked about the city's process on inspections for setback compliance during the construction of a building. E.Jensen stated the city does complete measurements and inspections on setbacks but due to the extreme length of the building on a curved right-of-way there is the likelihood that it was missed.

There was no one in the audience to speak for or against the proposal.

Motion by M.Ott to close the public hearing and receive and file documents. Second by J.Baxter. All voted aye. Motion carried 5 – 0.

M.Ott stated he would like the irregularity of the lot included in their motion.

**Board Action on Filing #16-20 property at 103 NE 44<sup>th</sup> Street**

Motion by J.Baxter that the Zoning Board of Adjustment grant a variance to the Woodland Reserve PUD to allow a 1-foot variance to the required 30-foot front yard setback for an existing multi-family residential building based on a finding that the resulting structure does not impair adequate supply of air and light, does not increase public danger of fire, or diminish property values and that the request is in harmony with the intended spirit and purpose of the Ankeny Municipal Code; and it is needed based on the exceptional narrowness, shallowness, or shape of the property.

Second by K.Tomlinson. All voted aye. Motion carried 5 – 0.

**#16-21            Firetrucker LLC dba Firetrucker Brewery  
716 SW 3<sup>rd</sup> Street  
Lot 6 & 7, Arthur Place and Parcel "A" of Lots 8 & 9  
RE: Special Use Permit – Outdoor Service Area**

Chair M.Ott opened the public hearing.

Dan Heiderscheit, 1129 NW Wagner, Ankeny, owner of Firetrucker Brewery. Mr. Heiderscheit stated he is hopeful that the renewal process this year for their Special Use Permit will be easier than it has been in the past. He believes everything went very well over the last year with no issues. He stated he knows that they have had discussions in the past regarding several issues and they have made adjustments to assure everything would go smoothly this year. Mr. Heiderscheit believes the only open questions are related to the portable toilets and they are working on a solution within the back building. He stated the way business has been going, they have used it more for storage rather than a service area so they are looking at a way to possibly make the two restrooms in this building work for the code requirement. Mr. Heiderscheit asked if anyone has any questions.

K.Tomlinson asked if they already have indoor restrooms. Mr. Heiderscheit stated they do have indoor restrooms, it has to do with the number of restrooms, so they are providing portable toilets outside. Mr. Heiderscheit stated they are trying to see how they can make the two restrooms work that are not being used in the back of building by bringing them up to code. He plans to work with the city on this.

M.Ott asked if he had any issues, complaints from the surrounding residents. K.Tomlinson asked if he heard about the one complaint on July 8<sup>th</sup>. Mr. Heiderscheit stated that he did not hear of any in the last year. M.Ott asked about any issues with the church. Mr. Heiderscheit stated that it has not been an issue. There has been a discussion with the church about parking and how he would help with signage and has not heard anything since that point in time.

J.Baxter asked if they had a timeframe as to when the permanent restrooms would be available. Mr. Heiderscheit stated they would need them by next spring before the beer garden could open.

**Staff Report:** E.Bodeker reported the applicant is requesting a special use permit to allow an outdoor service area with background music for Firetrucker Brewery at 716 SW 3<sup>rd</sup> Street. Firetrucker Brewery is requesting a renewal for their special use permit to continue the use of an outdoor service area with music where patrons may be served alcohol. Firetrucker Brewery is located at 716 SW 3<sup>rd</sup> Street in the Uptown area and is zoned C-2A. The outdoor service area is located north of the existing building, between the building and an existing steel building to the north, and can hold up to 159 occupants based on square footage. The property has residential zoning adjacent to the outdoor service area to the east. The proximity of the outdoor service area to a residential zoning district and the use of sound, other than sound arising from conversation of patrons, are the conditions which require the establishment to obtain special use permit. A condition of the special use permit that was approved August 18, 2015, was that the special use permit was not up for automatic staff approval, and would need to come before the Board for renewal. The last special use permit was approved by the Board on August 18, 2015. The Board granted Firetrucker a special use permit with the following conditions:

1. The permittee must comply with, and noise enforcement will be in accordance with, Municipal Code Chapter 44, Noise Control.
2. Permitted hours for the outdoor service area are Tuesday-Thursday 4:00 p.m. to 10:00 p.m.; Friday-Saturday 12:00 p.m. to 11:00 p.m.; Sunday 12:00 p.m. to 8:00 p.m.
3. All appropriate building permits and building code regulations need to be reviewed and met.
4. Sufficient portable toilets (a minimum of two) will be provided as a temporary solution for the 159 additional people on site. Permanent restrooms will be required within a year.
5. Site lighting will be directed away from adjoining property and downward.
6. This special use permit is not up for automatic staff approval. Approval of subsequent special use permits must come before this board.

The applicant is proposing the hours for the outdoor service area remain the same and requesting that this special use permit be up for automatic staff renewal. Condition 4 in the August 2015 approval for the outdoor service area permitted portable toilets as a temporary solution for the additional people on site. The patio was first approved by the Zoning Board of Adjustment in 2014. At that time the applicant had indicated that they would be remodeling the back building and would include restrooms that are required by the Plumbing Code for that patio in the remodel. Based on that information, staff recommended and the Zoning Board of Adjustment approved the patio for 159 seats with the condition that the two portable toilets be provided as a temporary solution and that permanent bathrooms would be required within one year. At the May 2015 renewal the Zoning Board of Adjustment approved the special use permit with the condition that sufficient toilets (a minimum of two) will be provided as a temporary solution for the 159 additional people on site and that permanent restrooms will be required within three months. Then in August 2015 staff recommended and the Board approved the temporary bathrooms to be allowed for an additional year. Staff's recommendation is to include a condition to allow use of the patio with the temporary toilets through the remainder of the calendar year (2016), but

will require the applicant to have permanent restrooms in place, as required by the Plumbing Code, prior to use of the patio in 2017.

J.Baxter asked that if the applicant does not have the permanent toilets at the opening of the beer garden then they would not be able to open it in 2017? E.Bodeker stated that is how it is written at this time. J.Baxter stated is the applicant aware of that as well, and that is okay. Mr. Heiderscheit stated he is aware of the condition.

E.Bodeker reported in the past year there was only one complaint filed with the Police Department, Fire Department and the Building Department/Code Enforcement. The Clerk's office received a noise complaint from one of the residences in the 200 block of SW Scott Street on Friday, July 8<sup>th</sup>. The complaint was regarding loud music coming from the patio area of the establishment. There was no noise permit issued for that day. The complaint was forwarded to the Police Department from the Clerk's office. The Police Department did not respond to the scene of the complaint due to the amount of time between the complaint and notification from the Clerk's office. Therefore, City staff does not know if there was a violation of the noise ordinance during that time. Nothing was noted from the Fire Department or the Building Department/Code Enforcement. The staff position for the request for a special use permit for the use of sound on the outdoor service area of Firetrucker Brewery is to recommend approval by the BOA with the following conditions:

1. The permittee must comply with, and noise enforcement will be in accordance with, Municipal Code Chapter 44, Noise Control. If a Noise Permit is issued in accordance with Chapter 44, hours of operation for the event shall be consistent with the hours set out in this special use permit and those hours shall be specifically set out in the Noise Permit.
2. Permitted hours for the outdoor service area are Tuesday-Thursday 4:00 p.m. to 10:00 p.m.; Friday-Saturday 12:00 p.m. to 11:00 p.m.; Sunday 12:00 p.m. to 8:00 p.m.
3. Sufficient portable toilets (a minimum of two) will be provided as a temporary solution for the 159 additional people on site for the remainder of 2016 but permanent restrooms will be required prior to the use of the patio in 2017.
4. The special use permit may be automatically approved by staff.

K.Tomlinson asked why were condition #3 and #5 taken out from last year's conditions. E.Bodeker stated there were no new building code regulations that needed to be reviewed and there has not been any complaints on site lighting. K.Tomlinson asked how condition #3 will be enforced. E.Jensen stated there would be a follow up inspection.

There was no one in the audience to speak for or against the proposal.

Motion by J.Baxter to close the public hearing and file and receive documents. Seconded by N.Sungren. All voted aye. Motion carried 5 – 0.

J.Baxter stated there is no one here this evening with a complaint about the permit, no one has filed a letter objecting and there is one record of a possible complaint that was unsubstantiated. Nothing has really changed. In fact, they are agreeing to even more restrictions than they had before, by not opening the beer garden until they have permanent restrooms in place.

#### **Board Action on Filing #16-21 property at 716 SW 3<sup>rd</sup> Street**

Motion by J.Baxter that the Zoning Board of Adjustment grant a special use permit in accordance with Sections 130.07 and 196.02(1) (I) to Firetrucker Brewery for an outdoor service area to run concurrently and terminate with a liquor license for said establishment provided the following is met:

1. The permittee must comply with, and noise enforcement will be in accordance with, Municipal Code Chapter 44, Noise Control. If a Noise Permit is issued in accordance with

Chapter 44, hours of operation for the event shall be consistent with the hours set out in this special use permit and those hours shall be specifically set out in the Noise Permit.

2. Permitted hours for the outdoor service area are Tuesday-Thursday 4:00 p.m. to 10:00 p.m.; Friday-Saturday 12:00 p.m. to 11:00 p.m.; Sunday 12:00 p.m. to 8:00 p.m.
3. Sufficient portable toilets (a minimum of two) will be provided as a temporary solution for the 159 additional people on site for the remainder of 2016 but permanent restrooms will be required per the Plumbing Code prior to the use of the patio in 2017.
4. The special use permit may be automatically approved by staff.

Second by K.Tomlinson. All voted aye. Motion carried 5 – 0.

**#16-22            Caliber Iowa LLC**  
**NE Corner of Irvinedale Drive & NW 18<sup>th</sup> Street**  
**Parcel 2016-76 BK 15973 PG 427**  
**RE: Adjustment to Existing Zoning Line**

Chair M.Ott opened the public hearing.

Eric Cannon, 2727 SW Snyder Boulevard, Ankeny, Iowa, stated he is here on behalf of Snyder & Associates and Caliber Iowa LLC. They are here regarding a need for a minor adjustment to the zoning line. The original zoning line was established on a rough concept that was developed for the property. At this point, they have moved forward with a detailed site design drawing and now the zoning line becomes a property line when it comes into use. It is running right through a garage that is purposed for the project so they need to adjust the line roughly 27' on one side and about 25' on the other.

**Staff Report:** E.Bodeker reported the applicant is requesting an exception to the district regulations to move zoning district boundary approximately 25.28 feet to follow the north property line of the proposed Lot 48, Village at Trestle Crossing Plat 1 final plat. The City code requires that the zoning district boundaries act as property lines in determining required setbacks. The existing zoning line was established with the original master concept for the Trestle Crossing development. The zoning for the proposed area was approved July 20<sup>th</sup>, 2015. Zoning is approved prior to a piece of ground being platted. The proposed Lot 48, Village at Trestle Crossing (the area south of the zoning line) is zoned C-1, Neighborhood Retail Commercial District with taverns and lounges eliminated from the permitted uses. Lots 45, 46, and 47, of the proposed Village at Trestle Crossing Plat 1 final plat (north and east of the existing zoning line) are zoned R-3, Multiple-Family Residence District restricted to 8 units/acre. The proposal is to adjust the C-1/R-3 zoning line to align with the north property line of the proposed Lot 48. The proposed zoning district change does not create any additional Lots, it only cleans things up from an enforcement point of view and allows the developer to place garages near the property line, instead of having to use the existing zoning line to meet required setbacks. The request would continue to meet the intent of the original zoning that was approved in 2015. The Ankeny Zoning Code grants the Board of Adjustment the authority to adjust zone district line up to 40 feet in any one direction as an exception to the Code where a district divides a Lot in single ownership. The staff position is to approve the requested zone district changes to match the north property line of the proposed Lot 48, Village at Trestle Crossing Plat 1.

There was no one in the audience to speak for or against the proposal.

Motion by M.Ott to close the public hearing and file and receive documents. Seconded by K.Tomlinson. All voted aye. Motion carried 5 – 0.

**Board Action on Filing #16-22 property at NE Corner of Irvinedale Drive & NW 18<sup>th</sup> Street**

Motion by M.Ott that the Zoning Board of Adjustment approve the requested zone district extension of R-3 on Lot 48 of the proposed Village at Trestle Crossing Plat 1 Final Plat and the Board finds the requested zone district line adjustments fall within the designated guidelines of the exceptions to district boundaries the Board is authorized to grant, and that the health, safety and welfare of the occupants of adjoining and surrounding property is adequately safeguarded.

Second by N.Sungren. All voted aye. Motion carried 5 – 0.

There being no further business, the meeting adjourned at 5:30 pm.

Submitted by Brenda Fuglsang, Recording Secretary

A handwritten signature in cursive script that reads "Brenda Fuglsang".

Zoning Board of Adjustment