

Meeting Minutes
Zoning Board of Adjustment
Tuesday, April 2, 2019
Ankeny City Hall – City Council Chambers
410 W. First Street, Ankeny, Iowa

CALL TO ORDER

The April 2, 2019 regular meeting of the Zoning Board of Adjustment was called to order at 5:00 p.m. by Chair M.Ott. Members present: J.Baxter, M.Ott, N.Sungren, B.Walker, and K.Tomlinson. Staff present: E.Jensen, E.Carstens, D.Gervais, K.Gorman, B.Fuglsang.

AMENDMENTS TO THE AGENDA

There were no amendments to the agenda.

MINUTES OF THE FEBRUARY 5, 2019 MEETING

Motion by K.Tomlinson to approve the February 5, 2019 meeting minutes as submitted. Second by J.Baxter. Motion carried 4 – 0 – 1 (Abstain: N.Sungren).

COMMUNICATIONS / CORRESPONDENCE

M.Ott asked to have the record reflect that members of the Board received correspondence from Bob and Cheryl Goree regarding Item #19-01 that will be received and filed as part of the public hearing.

BUSINESS ITEMS

PUBLIC HEARINGS:

#19-01

Jeremy Boka
Uptown Garage Brewing Company
305 SW Walnut Street
Lot 7, OP Outlot 1 Town of Ankeny
RE: Special Use Permit

Chair M.Ott opened the public hearing.

Marcus Pitts, part owner in both the Uptown Garage Brewing Company and the building at 301 SW Walnut Street, Ankeny. He thanked the Board for their time and stated their request is to receive a Special Use Permit to allow outdoor seating, games, and music that runs in accordance with the hours of operation of what they are proposing for the use.

M.Ott asked Mr. Pitts about the statement on their letter of request regarding hours changing based on special events. He wanted to confirm whether they were requesting special hours from the Board with this request for certain special events. Marcus Pitts said that the operations personnel would have to answer that question as he deals more with the real estate. M.Ott stated the Board will set the patio hours as part of the Special Use Permit at the meeting tonight, so if they want different hours for special events they will have to address those at a later time.

The Board had no further questions.

Staff Report: K.Gorman reported Jeremy Boka and Uptown Garage Brewing Company is requesting a special use permit for an outdoor service area with sound where patrons may be served alcohol. He stated the subject property is zoned C-2A, Central Business Commercial District. Neighboring properties located directly to the north, south, east, and west of the subject property are zoned C-2A. He stated the proximity of the outdoor service area is within 500 feet of 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 a Special Use Permit. K.Gorman explained that the proposed outdoor service area is located at the rear of 305 SW Walnut Street, on the east side of the existing building. The patio will offer seating for 60 patrons, as well as yard games and bicycle parking. Staff notified all property owners within 250' of 305 SW Walnut Street of this appeal by mail on March 22, 2019. He shared that staff has received one piece of correspondence expressing concern, and it is included with the Board's information. K.Gorman presented an exhibit that shows the proximity of residential dwellings to the proposed outdoor service area. He stated that the applicant has indicated that they plan to have speakers and entertainment on the patio with the estimated hours of 3:00 p.m. – 10:00 p.m. Monday through

Thursday, 12:00 p.m. – 12:00 a.m. Friday, 10:00 a.m. – 12:00 a.m. Saturday, and 10:00 a.m. – 10:00 p.m. Sunday. The staff position regarding the request of a Special Use Permit for an outdoor service area for Uptown Garage Brewing Company is to recommend approval by the Board of Adjustment 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 Permit and those hours shall be specifically set out in the Noise Permit.
2. All appropriate building permits and building code regulations need to be reviewed and met.
3. Hours of operation: 3:00 p.m. – 10:00 p.m. Monday through Thursday, 12:00 p.m. – 12:00 a.m. Friday, 10:00 a.m. – 12:00 a.m. Saturday, and 10:00 a.m. – 10:00 p.m. Sunday;
4. This special use permit may be reviewed annually by staff for approval.

K.Tomlinson asked how many parking spaces are required based on 278 people. K.Gorman stated that part of the C-2A zoning code is that there are no specific parking requirements. He stated that part of the concept shown by the applicant are about five parking stalls at the rear of the alley but as part of the buildout for this establishment they were not required to add any parking. K.Tomlinson wanted to know if the City is okay with that. E.Carstens stated that the zoning does not require it so the City cannot require it. He further shared that all of Uptown is zoned C-2A.

N.Sungren stated comparatively with the setbacks to the residential, how does it compare to Firetrucker. E.Carstens shared that the residents are closer to Firetrucker than the residents are to this establishment. K.Gorman commented that Firetrucker has residential dwellings sharing the property line. N.Sungren then commented that the applicant is asking for live music on the patio. E.Carstens stated this Special Use Permit would not allow live music on the patio. They would need to get a Noise Permit for anything above background music.

N.Sungren then informed everyone in the Council Chambers that no live music will be allowed with this Special Use Permit. She stated that they would have to apply for a special Noise Permit. E.Carstens stated the Special Use Permit will only allow background music. It would not allow bands with amplified sound. He further stated that if they wanted to have outside music with bands and amplified sound they would need to get a Noise Permit through the City Clerk. He further shared that an establishment is only allowed 6 of them per year through the City Clerk and anything over 6 would take Council action. E.Carstens further shared that any Noise Permit would have to fall within the hours approved by this Board with their Special Use Permit.

Julee Erickson, 409 SW Walnut Street, stated that there is about 18 children living within the 500 feet and about 5 children within the 250 feet to the proposed patio. She shared that she really likes her neighborhood because it is unique. She understands the need for business but she thinks there needs to be more discernment regarding businesses like this right next to a residential area. Julee Erickson stated she is not in favor of the outdoor patio and her issues are the potential for noise, safety, people walking around at night, especially with an alley. She also stated that parking is a big concern but she understands that it is not part of this approval. She presented a petition signed by 20 property owners or residents who live within 500 feet from the proposed patio area that are not in favor of the outdoor service area. She thanked the Board for their time and consideration.

M.Ott shared with everyone in the Council Chambers that this Board is only reviewing the outdoor patio, the Board has no control over the actual use within the building.

Zelda Larson, 302 SW 3rd Street, stated that she is totally against the outdoor patio that this establishment is promoting. They have lived in the residential area over 20 years. They love the area and enjoy the quietness and the uniqueness of the Uptown area. She feels the patio area will bring unnecessary noise and traffic to their residential area. She stated loud talking and laughing will take place late into the evening every day of the week. Zelda Larson commented that they will not be able to have their windows open and she is definitely concerned about patrons parking on the residential side streets. She stated that she already hears the marching band from the school and music from Hawkeye Park in the summer. She asked them to reconsider and not continue forward with the outside patio. She also shared that there is a safety concern of the children coming and going from the dance studio with a beer environment next door. Please reconsider the outdoor patio.

Terry Van Oort, 302 SW Walnut Street, stated he has been there since 1985. He reestablished his holistic integrated medicine practice across the street about 2 ½ years ago. He has concerns about the outdoor patio. He shared that the hours of the patio would be a big problem since the nature of his work requires a quiet

healing environment. He shared that his business hours are sometimes late into the evenings and Saturdays. He is opposed to the outdoor patio. He also commented that he has a real big concern about parking, as he wants to keep his off-street parking intact. Terry Van Oort stated he is not sure how the owners of the Uptown Garage Brewing Company plan to address the parking. J.Baxter asked if Mr. Van Oort has private parking signs on his property. Terry Van Oort commented no, but people tend to ignore signs. He strongly opposes this proposal.

Marlyn Larson, 302 SW 3rd Street, stated 250-feet is not very far and asked why the mailing did not go out to residents more than the 250-feet. M.Ott shared the notification requirement by Iowa law is 250-feet. Marlyn Larson responded by asking why in other documents does it talk about 500-feet. E.Carstens shared that if a patio that serves beer/alcohol is proposed within 500-feet of any residential property, they have to come before the Zoning Board of Adjustment for a Special Use Permit. The State code for sending notifications to surrounding residential is 250-feet. Marlyn Larson commented that when it comes to the requirement you should be taking into account the effect on people not the distance. He stated he understands background music on the outside patio, but not if it is piped music from the band that is playing on the inside. He commented it would be loud and very disruptive to the residents in the area, further than 250-feet. He feels the hours presented are too late for loud music. Marlyn Larson stated he was reading the City ordinance document on noise and as he reads it the limits during the week should be 9:00 p.m. and the limits on the weekends should be 11:00 p.m. He asked why they need it later than those hours. He shared that there has always been a lot of traffic on SW Walnut Street with the dance studio and it will be enhanced by having an outdoor seating arrangement. He said the 4-feet high structure around the patio will not keep the noise level down. He said they have lived there for 20 years and they enjoy the downtown area. He is all for the downtown to grow but please consider his point of view.

Joseph Ethington, 210 SW Pleasant Street, stated he lives within 250-feet. He stated that on the drawing of the establishment they have written *"outdoor patio for drinks and live music"* and asked if the music from the band playing inside will be piped outside. He asked if the Noise Permit is what the Zoning Board of Adjustment will be considering. M.Ott stated the Noise Permit would have to be issued by the City Clerk. The Zoning Board of Adjustment is only considering the outdoor patio Special Use Permit for serving of beer. He stated the applicant would have the ability to have ambient music but there is a Noise Ordinance in Ankeny that would control whether they were in violation. Joseph Ethington stated he reviewed the Noise Ordinance and as he understands it amplified speaker music may only be loud enough to be heard at the City right-of-way, so that would be the streets and the alleyway. He asked if that is correct. E.Jensen stated he does not know how the police enforce the ordinance, but the intent would be that the music on the patio is loud enough for the patrons to hear it and not for the neighboring properties. Joseph Ethington further stated if they followed the Noise Ordinance, then they would not have all the noise concerns. If it is not followed, residents could call in a complaint. E.Jensen stated that if anyone feels the patio is violating the Noise Ordinance, they would want to contact the police, and make a report and if there is enough complaints, the police will notify staff and the Special Use Permit would be brought back before Zoning Board of Adjustment for reconsideration. E.Carstens explained that the Special Use Permit is tied to their liquor license and it renews each year when they renew their liquor license. Staff checks with police, fire and code enforcement to see if there are any complaints before it is renewed. Joseph Ethington agrees that more business downtown is a good thing but he hopes that they take into consideration that the neighbors do not want a lot of music and noise filtering over onto their properties. He then provided the Board a letter from a neighbor, Thomas Bullock, 209 SW Pleasant Street, who could not attend the public hearing.

John Schoolen, 413 SW Walnut Street, stated he does not live at this address but owns the vacant lot. He shared that him and his wife are hoping to build a retirement home on the lot in about 13-14 years. He likes the area and everything about Ankeny but his concern with the patio. He stated the people will leave the patio through the alley and walk down the sidewalk that the City owns and relieve themselves in the area. He is not against this type of business he just does not like the idea of people leaving the patio area and not going back through the building to exit. He also shared that he is concerned about the parking.

Forest Collins, 309 SW Pleasant Street, shared he has lived there since 1976 and when he sits on his patio he will be in direct view of the outdoor patio. He said that there is nothing to break the noise or the view. He explained that the previous business owner did not cause any noise after 8:00 p.m. at night. There is no comparison between a mechanics shop and this type of establishment as it relates to noise. He originally did not think it was a bad idea but then realized that if there were people out on the patio until 10 p.m. he would not get a good night's sleep. He commented that a 4-foot wall would not break much noise. He did share that it will really depend on their plan for the sound, and the direction they point the speakers.

John Mischel, 318 SW Pleasant Street and 316 SW Pleasant Street, stated that to access his small house you have to use the alley. He is concerned that when this establishment opens up, everyone will park in the alley and he will have difficulties getting to his little house. He also shared that in the winter there will be issues on getting the alley plowed. He commented that he has grandchildren who will be able to see patrons inebriated and does not understand why an establishment with alcohol wants to be located in a residential area. He stated he is totally opposed to this request. He thanked the Board for their time.

Mindy Carratt and Brayden Carratt (8 yrs old), 322 SW Pleasant Street, stated she has lived in their home for 16 years. She said if this patio is approved, she feels it should be completely fenced in with a privacy fence. She said children could climb over a 4-foot fence. She also has concerns with the parking for this establishment and feels a better use for the area behind the business would be for parking. She further shared her concern about the noise, as any noise would make it difficult for sleeping. Mindy Carratt further stated that the alleyway behind her house has no lighting, which will not deter any unwanted activity happening behind her house. She feels that as a homeowner she would feel obligated to replace her chain link fence with a privacy fence to keep her children safe near the alley. She also would like the Board to take into consideration the dance studio, as there are young girls that are dropped off in the evenings. Mindy Carratt stated she does not have a problem with the new business, she just does not think a patio for 60 people outside in the alley area is a good fit. Brayden Carratt shared that people could jump their fence, come into their yard and pool in the summer.

Marcus Pitt thanked everyone for all the comments. He stated that he heard comments that does strike home for him. He shared that first, and foremost there was mention of the history of Uptown Ankeny. He shared that he also has small children, he lives in Ankeny, his parents and grandparents were born and raised in Ankeny. He totally understands Ankeny and appreciates everyone's comments. He does intend on this establishment being a family friendly facility. He presented the site plan and shared that they have plans for a kids area inside and shuffle board outside. He said they really tried to keep in mind a family friendly atmosphere. He said he heard someone call it a tavern. He stated that is not the goal, it is a family friendly taproom type atmosphere. He shared there is going to be conference room space for events. Their plan is for music to play inside on a stage and the music outside would be ambient music. He further shared that if there were complaints, they would definitely make sure they were handled right away. He reaffirmed with everyone that they would go through the proper channels before they made the decision to have any live music outside their establishment.

E.Carstens reiterated to everyone in the Council Chambers that the Board is only approving a patio that they can serve beer on with background ambient music. If any noise were louder than what is in the Noise Control chapter of the code, they would be in violation.

Terry Van Oort asked the Board how they consider what hours the business can operate. M.Ott stated the Zoning Board of Adjustment has no control over their business hours inside the establishment. The Board is only controlling the hours of operation for the outside patio.

Julie Erickson stated since this is in such close proximity of a residential area the hours during the week until 10:00 p.m. and weekends until midnight, in her opinion, is too late. She shared that consistently having outdoor noise for that many hours throughout the week and the month it is a huge concern.

M.Ott stated to let the record reflect that the Board received correspondence from Bob and Cheryl Goree, 218 SW Pleasant Street, Thomas Bullock, 209 SW Pleasant Street and a Petition signed by owners or residents within 500-feet.

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

M.Ott shared that the requests the Board receives for new businesses are very tough as there is no history for them. The Board has to approve in good faith that the business will operate within the laws of the City. He stated if it is approved, the residents need to make sure they file their complaints with the police since that is how the Board will be informed. M.Ott further stated that the Board does not control the use, traffic or parking and in his opinion, it has no impact on the issuance of the permit for the outdoor patio. He does understand the resident's concerns but not relevant to their decision. N.Sungren asked what the hours are for the patio at Firetrucker. K.Gorman shared they are 4:00 p.m. - 10:00 p.m. Tuesday – Thursday, 12:00 p.m. – 11:00 p.m. Friday – Saturday and Sunday 12:00 p.m. – 8:00 p.m. K.Tomlinson asked Mr. Pitts if there are any plans for lighting in the alleyway. He was unsure as to what the plan is for lighting. J.Baxter asked Mr. Pitts if there are any special

actions that are being taken for sound control besides the 4-foot wall. Mr. Pitts said they talked about a sound design feature on the inside but he does not have any formal decision on the outside. K.Tomlinson asked if they would be open to installing a taller fence or more privacy style fence. Mr. Pitts said he would have to defer that to the architects. J.Baxter shared that the business can still have the patio without Board approval, the Special Use Permit allows them to take their beer out onto the patio and to have sound on the patio. K.Tomlinson commented that the Board could approve it not allowing speakers on the patio. M.Ott shared that he has no issue with amending the hours. J.Baxter commented that it sounds like the business owner is willing to be a good neighbor. He further commented that it is a commercial property, and the Board needs to have respect for the property rights of homeowners, this applicant is also a property owner and they want to see them use the property the way they want to, as nobody wants to be told what they can and cannot do on their property. J.Baxter stated that this is a Special Use Permit and the Board can place restrictions on it but there also has been an investment made by the business owner to open a specific concept but he does sympathize with the homeowners and understands their concerns.

Board member B.Walker left the meeting at 6:21 p.m.

J.Baxter stated he would be okay with reducing the hours. N.Sungren commented that she would like to see them come back next year for approval from the Board. K.Tomlinson recommended that the Board not allow speakers on the patio. J.Baxter commented that if the Board does not allow speakers that may encourage them to open the garage door. There were no further comments.

Board Action on Filing #19-01 property located at 305 SW Walnut Street

Motion by M.Ott that the Zoning Board of Adjustment grant a Special Use Permit in accordance with Sections 130.07 and 196.02 (1) (l) to Uptown Garage Brewing Company at 305 SW Walnut Street for an outdoor service area, to run concurrently and terminate with a liquor license for said establishment provided the following conditions are 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. All appropriate building permits and building code regulations need to be reviewed and met.
3. Hours of operation: 3:00 p.m. – 10:00 p.m. Monday through Thursday, 12:00 p.m. – 11:00 p.m. Friday, 10:00 a.m. – 11:00 p.m. Saturday, and 10:00 a.m. – 8:00 p.m. Sunday.
4. Special Use Permit may not be automatically approved by staff, renewal of subsequent Special Use Permits must come before the Board.

Second by N.Sungren. Motion carried 4 – 1 (Nay: K.Tomlinson)

**#19-02 SB Communities, LLC c/o Jerry Slusky
d/b/a The Sterling Prairie Trail North
PART OF SW ¼ LYING S OF JOHN DEERE PLACE PLAT 2 SEC 23-80-24
RE: Conditional Use Permit**

Chair M.Ott opened the public hearing.

Chair M.Ott stated that the applicant has requested that the Zoning Board of Adjustment table action on the Conditional Use Permit application until the May 7, 2019 meeting.

Motion by J.Baxter to table action on #19-02, SB Communities, LLC c/o Jerry Slusky Conditional Use Permit until the May 7, 2019 Zoning Board of Adjustment meeting. Second by M.Ott. All voted aye. Motion carried 5 – 0.

**#19-03 Lebeda Mattress
1325 SW State Street
Lot 2, Vintage Hills Plat 3
RE: Conditional Use Permit**

Chair M.Ott opened the public hearing.

Roger Silver, Nilles and Associates, Inc., 1250 SW State Street, Ankeny and Todd Petersen, Lebeda Mattress, 3675 Industrial Avenue, Marion, Iowa stated their request is for a Conditional Use Permit. Roger Silver stated that the proposed site is located north of Lincoln Savings Bank and south of the recently constructed dentist facility. He stated the Prairie Trail Zoning Ordinance #1570 requires a Conditional Use Permit for furniture stores within the Business Park Precincts.

The Board had no questions.

Staff Report: D.Gervais reported that 1325 SW State Street is located east of SW State Street and north of SW Magazine Road. She shared the surrounding properties include both commercial and residential uses including Lincoln Savings Bank to the south and Vintage Hills Cooperative to the east. D.Gervais stated the site and surrounding property is zoned as part of the Prairie Trail PUD and the site is part of the Business Park Precinct. D.Gervais stated that DRA is currently the property owner and Lebeda Mattress is the applicant for the Conditional Use Permit. The proposal is to construct a 5,700 square-foot building described as a mattress gallery showroom. She stated there would be no production of mattresses or warehousing on site, delivery of mattresses will not originate from this site and there will be no delivery trucks stationed to this site. She explained that the Prairie Trail PUD document requires a Conditional Use Permit for certain uses depending on the location within designated precincts. A Conditional Use Permit allows the Board to review potential uses in Prairie Trail to ensure the use is appropriate within the development. She stated retail including furniture/appliance stores and mattress stores are allowed but only after review to ensure, the use is appropriate within the development. D.Gervais stated the site access is proposed from a private drive shared by Ankeny Family Dental Center and Vintage Hills Cooperative. An ingress/egress easement runs along the east property boundary of this site providing a second access for Lincoln Savings Bank. She stated a mattress store is considered a low-volume traffic generator for parking requirements and the site is sized appropriately to accommodate the parking needs. She stated the private drive and existing easement areas can accommodate the increase in traffic that would be generated by a mattress store. She said the architecture and signage review will be provided by the Architectural Review Board. The staff position is to approve this Conditional Use Permit for Lebeda Mattress at 1325 SW State Street.

Dr. Stan Gelfond, one of the owners of Ankeny Family Dental Center, 1225 SW State Street, stated that he and his partner are against Lebeda Mattress going in next door to them. He stated their initial decision to invest in Prairie Trail was based on the plans that were already in place for the type of businesses that could go into the area. He is asking the Board to stay consistent with that original plan. He further stated that there is a difference between retail and professional services and if the Board looks at the businesses in the vicinity and across the street, there is an engineering firm, chiropractor, eye doctor, and a bank and all those offer a very different type of service. Placing Lebeda Mattress into this area would not be consistent with the surrounding businesses. He also stated that the current businesses are locally owned, and Lebeda Mattress is a large franchise that you see popping up all over. He stated that Prairie Trail is unique in its own way and feels Lebeda Mattress would not be a good fit for the area. Dr. Stan Gelfond stated that if they knew that Lebeda Mattress would be going next door to them they would have reconsidered where they built their dentist office. He stated his other concern is that the businesses that are around him usually stay long term and he feels retail stores seem to close down after a few years and then something else moves in. Retail itself is not meant to last like the brick and mortar type businesses that are here to stay.

Roger Silver stated that the client has taken this proposal to the Architectural Review Board and they are planning on a brick and mortar building. They do understand where they are placing their building and they are selecting architecture to comply with the area.

Todd Petersen shared that he wanted to respond to the comment made about them being a big national chain. He stated they are an Iowa company and all their beds are made in Marion, Iowa. They are factory direct. He said they really like Ankeny and that is why they chose Ankeny for their gallery showroom. Todd Petersen stated that he has been with Lebeda Mattress for 26 years and their plan is to have the brick and mortar building in Prairie Trail around for a long time.

Motion by J.Baxter to close the public hearing, and receive and file documents. Second by K.Tomlinson. All voted aye. Motion carried 4 – 0.

M.Ott commented that he does not share the same concerns as the dental office. It is not a high volume furniture store.

Board Action on Filing #19-03 property located at 1325 SW State Street

Motion by J.Baxter that the Zoning Board of Adjustment grant a Conditional Use Permit to allow Lebeda Mattress to operate a furniture store in the Business Park Precinct of Prairie Trail.

Second by M.Ott. All voted aye. Motion carried 4 – 0.

REPORTS

Renewed Special Use Permits

#15-19 – 410 N Ankeny Blvd. – Hy-Vee Market Café

#17-02 – 106 SW State Street, Ste. 100 – Wheel House Pizza Pub

#16-03 – 1375 Vintage Parkway – District 36 Wine Bar & Grille

There being no further business, the meeting adjourned at 6:34 p.m.

Submitted by Brenda Fuglsang, Recording Secretary



Zoning Board of Adjustment