

**Meeting Minutes**  
**Zoning Board of Adjustment**  
Wednesday, September 4, 2019  
Ankeny City Hall – City Council Chambers  
410 W. First Street, Ankeny, Iowa

**CALL TO ORDER**

The September 4, 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, K.Tomlinson. Absent: B.Walker. Staff present: E.Jensen, E.Carstens, D.Gervais, D.Silverthorn, R.Hulstrom, B.Fuglsang.

**AMENDMENTS TO THE AGENDA**

There were no amendments to the agenda.

**MINUTES OF THE JUNE 18, 2019 MEETING**

Motion by N.Sungren to approve the August 20, 2019 meeting minutes as submitted. Second by K.Tomlinson. Motion carried 4 – 0.

**COMMUNICATIONS / CORRESPONDENCE**

There were no communications.

**BUSINESS ITEMS**

**PUBLIC HEARINGS:**

**#19-08**

**Magee's Irish Pub, LLC**  
**1610 SW Main Street, Suite 107**  
**Lot 1, The District at Prairie Trail Plat 6**  
**RE: Special Use Permit**

Chair M.Ott opened the public hearing.

Board member B.Walker arrived at 5:03 p.m.

Andrew Martin, 514 NE Georgetown Boulevard, Ankeny, Owner of Magee's Irish Pub, LLC shared that he is requesting a Special Use Permit to be part of the District's concept and vision. He stated that with this particular location, there would be no residential concerns and the District, by design, is an entertainment destination. Andrew Martin said that there are other establishments in this area with audio playing outside. He thanked the Board for their consideration.

K.Tomlinson asked if the patio is covered. Andrew Martin stated that the patio has a permanent awning. He said it is part of the physical structure of the building. He further shared that the sound would be on the side of the building facing southwest toward Main Street.

The Board had no further questions.

D.Gervais reported that Magee's Irish Pub, LLC is proposing an outdoor service area with sound to be located at 1610 SW Main Street, Suite 107. She stated the property is within the Prairie Trail Planned Unit Development Zoning District. D.Gervais explained that the location is east of SW State Street and north of SW Vintage Parkway off SW Main Street. She shared that the outdoor patio is on the southeast corner of the building and the nearest existing residential is approximately 700-feet to the northeast. D.Gervais stated the 445-square foot ground floor patio would have 10 tables with seating for approximately 38 patrons. The operating hours of the business and outdoor service areas are proposed to be 8:00 a.m. – 2:00 a.m. on weekends, federal holidays, eve of federal holidays, St. Patrick's Day, and the eve of St. Patrick's Day and 10:00 a.m. - 2:00 a.m. on weekdays. She said the owner is requesting that the outdoor service area have 2-4 outdoor speakers, which will play music and sporting events, which would be in compliance with the Ankeny Municipal Code Chapter 44, Noise Control. The staff position is to recommend that the Zoning Board of Adjustment grant a Special Use Permit to Magee's Irish Pub, LLC for an outdoor service area as proposed.

K.Tomlinson asked staff if they knew what the hours are for Whiskey River and Taco Hangover. E.Carstens shared that he believes Whiskey River is open until 2:00 a.m. and believes that Taco Hangover's closing hours are earlier than 2:00 a.m.

M.Ott confirmed that due to the PUD there could ultimately be residential closer to this establishment but the nearest actual established residential is 700-feet away. D.Gervais stated yes.

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

Andrew Martin shared that they are only planning to install two speakers, since two will adequately provide sound for the space. He also said that the Landlord has agreed to the hours of operation that they have requested.

The Board had no further questions.

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

There was no further discussion by the Board.

**Board Action on Filing #19-08 property located at 1610 SW Main Street, Suite 107**

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 Magee's Irish Pub, LLC 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 Permit and those hours shall be specifically set out in the Noise Permit.
2. Hours of operation 8:00 a.m. – 2:00 a.m. on weekends, federal holidays, eve of federal holidays, St. Patrick's Day, and the eve of St. Patrick's Day and 10:00 a.m. - 2:00 a.m. on weekdays.
3. Seating on the patio for 38 persons.
4. The Special Use Permit may be reviewed annually by staff for approval.

Second by M.Ott. Motion carried 5 – 0.

**#19-09                      Julie Good  
                                    115 SW 32<sup>nd</sup> Court  
                                    Lot 48, Siena Hills Plat 1  
                                    RE: Variance - Fence**

Chair M.Ott opened the public hearing.

Julie Good, 115 SW 32<sup>nd</sup> Court, Ankeny, stated that she is requesting a variance to the corner lot setback requirement. She shared that due to their lot's irregular shape they really do not have a backyard. She shared that most of their yard is on the east side. Julie Good explained that for them to have a useable yard, they would like to enclose the side yard with a privacy fence. She commented that she does not believe visibility to the corner will be an issue and said they checked with their neighbors to the east and they do not have any issues with the proposed fence.

M.Ott verified that the Browns were their neighbors to the east. Julie Good stated yes.

The Board had no further questions.

D.Silverthorn reported that the appellant is requesting a variance to Ankeny Municipal Code Section 191.14.2, allowing a four-foot front yard setback for a proposed six-foot wooden fence that encroaches 26 feet into the 30-foot minimum required front yard setback. He shared that the subject property is zoned Siena Hills PUD, with permitted land uses and regulations similar to the standard R-2, One-Family and Two-Family Residence District. D.Silverthorn stated the subject property is a corner lot, which requires the house and the proposed fence to abide by the front yard setback regulations along SW Logan Street and SW 32<sup>nd</sup> Court. He said the Polk County Assessor identifies the shape of this property as "irregular," whereas most corner lots are generally identified as "rectangular." He stated that the lot's irregular shape is consequential to the cul-de-sac bulb located near the eastern portion of the property, which prevents the property from being otherwise rectangular. D.Silverthorn presented a drawing depicting where the appellant by right would be permitted to construct a 42-inch wooden fence or 48-inch chain-link fence along the property line, not requiring a variance and where the six-foot wooden fence is proposed to be constructed in-line with the primary building façade. He then provided the Board with background information on a similar variance that was requested in the surrounding Siena Hills neighborhood, which was denied. He shared examples of approved fence variances dating back to 2016 specific to corner lot properties that were approved, with conditions, typically requiring landscaping. D.Silverthorn further stated that the neighboring property owners to the east of this property stated that they were okay with Julie Good's request. The staff position for this request is that the Zoning Board of Adjustment grant a variance to Ankeny Municipal Code Section 191.14.2, allowing a four-foot front yard setback for a proposed six-foot wooden fence that encroaches 26 feet into the 30-foot minimum required front yard setback, for property located at 115 SW 32<sup>nd</sup> Ct,



as shown on the submitted plan. This position is based on a determination that the shape of the specific property is exceptional; that the decreased front yard setback from the resulting fence would not impair adequate supply of air and light, would not increase public danger of visibility, or diminish property values; and that this request is in harmony with the intended spirit and purpose of the Ankeny Municipal Code.

K.Tomlinson confirmed that staff's recommendation does not include a condition for landscaping. D.Silverthorn stated that since the fence location would be 5-feet from the sidewalk, which would only leave 4-feet for landscaping; they wanted to leave it up to the Board's discretion. He believes that the previous variance requests had more setback provided which then allowed more space for landscaping.

The Board had no further questions.

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

Motion by B.Walker to close the public hearing, and receive and file documents. Second by K.Tomlinson. All voted aye. Motion carried 5 – 0.

J.Baxter shared that it is definitely an irregular lot. M.Ott stated that he does not see the need for landscaping on this particular lot because of its location and make-up. N.Sungren, J.Baxter and B.Walker agreed with M.Ott. K.Tomlinson expressed some reservations about not requiring landscaping.

**Board Action on Filing #19-09 property located at 115 SW 32<sup>nd</sup> Court**

Motion by M.Ott that the Zoning Board of Adjustment grant a variance to Ankeny Municipal Code Section 191.14.2, allowing a four-foot front yard setback for a proposed six-foot wooden fence that encroaches 26 feet into the 30-foot minimum required front yard setback, for property located at 115 SW 32<sup>nd</sup> Court, as shown on the submitted plan.

The Board's position is based on a determination that the shape of the specific property is exceptional; that the decreased front yard setback from the resulting fence would not impair adequate supply of air and light, would not increase public danger of visibility, or diminish property values; and that this request is in harmony with the intended spirit and purpose of the Ankeny Municipal Code.

Second by J.Baxter. Motion carried 5 – 0.

**#19-10**

**Cancun Restaurant and Cantina  
2785 N Ankeny Boulevard, Suites 11 & 12  
-EX Village at Briarwood Park – Lot 3, Briarwood Plat 17  
RE: Special Use Permit**

Chair M.Ott opened the public hearing.

Tanner Hensley, 12516 Winston Avenue, Urbandale, Iowa representing Cancun Restaurant and Cantina along with Candelario Cedillo, Owner, 4001 EP True Parkway, Apt. 130, West Des Moines, Iowa. Tanner Hensley stated that they are requesting a Special Use Permit to allow the serving of alcohol on a patio at a new lease location, formerly Noodle Zoo. He explained that they are looking to have approximately 32 seats on an existing uncovered sunken patio. He said there would be light amplified sound, which would be conversational and it would be in full accordance with the noise ordinance requirements. There would be no live music. Tanner Hensley shared that along the east and southeast of the patio, there is multi-family residential and further beyond that to the east is single-family residential. He stated they are requesting the hours to be 11:00 a.m. to 10:00 p.m. Monday through Sunday.

M.Ott asked what percentage of sales would come from alcohol. Tanner Hensley stated that he does not have that number but an estimation would be maybe 20-25%, it is mainly dining. J.Baxter inquired as to the depth of the sunken patio. Tanner Hensley shared that it is 12-15-feet; it is a tapering wall down to ground level and it is fairly, sunken from all the residential locations. J.Baxter asked if there is a barrier between the patio and the parking lot. Tanner Hensley shared that there is a railing currently in place. The Board reviewed the current picture of the patio area.

The Board had no further questions.

R.Hulstrom reported Cancun Restaurant and Cantina is requesting a Special Use Permit for an outdoor service area located at 2785 N Ankeny Blvd, Suites 11 & 12. She stated it is generally located south of NE 28<sup>th</sup> Street and east of N Ankeny Boulevard. She shared that the property is zoned C-2, General Retail, Highway-Oriented, and Central Business Commercial District and the properties directly to the north, east, and south of the subject property are also zoned C-2. The property to the west is zoned R-3, Multiple-Family Residence District and is part of the Georgetown development. She commented that although the property directly east is zoned commercial, the use is residential. R.Hulstrom explained that the closest residential building is approximately 125 feet from the outdoor service area. She

further explained that 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 a Special Use Permit. R.Hulstrom presented the drawing of the proposed outdoor patio area for the Cancun Restaurant and Cantina showing eight tables with seating for 32 patrons. She explained that they are requesting that there be amplified sound on the patio area that includes light background music. They are not proposing any live music. She said the proposed patio hours are to be consistent with the restaurant hours, 11:00 a.m. to 10:00 p.m., and seven days a week. The staff position for the request of a special use permit for an outdoor service area for Cancun Restaurant and Cantina 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 between 11:00 a.m. to 10:00 p.m., 7 days a week.
4. This Special Use Permit may be reviewed annually by staff for approval.

M.Ott asked if the townhomes are a permitted use in C-2 zoning. E.Carstens stated yes. The Board inquired as to which surrounding properties were notified of this request. R.Hulstrom shared with the Board the properties who received the mailed public notices.

The Board had no further questions.

Andrew Martin, 514 NE Georgetown Boulevard, Ankeny, Owner of the Cabaret Sports Bar and Grill stated that his business is in the same complex and wanted to share his support for this request as he feels it falls in line with what other businesses have requested in this particular complex.

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

There was no further discussion by the Board.

The Board had no issues with the request.

#### **Board Action on Filing #19-10 property located at 2785 N Ankeny Boulevard, Suites 11 & 12**

Motion by J.Baxter that the Zoning Board of Adjustment grant a Special Use Permit for an outdoor service area with background sound in accordance with Sections 130.07 and 196.02(1)(I) to Cancun Restaurant and Cantina at 2785 N Ankeny Boulevard, Suites 11 & 12, 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 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 between 11:00 a.m. to 10:00 p.m., 7 days a week.
4. This Special Use Permit may be reviewed annually by staff for approval.

Second by M.Ott. Motion carried 5 – 0.

#### **REPORTS**

##### **Renewed Special Use Permits**

- #16-13 2785 N Ankeny Blvd. – Cabaret
- #16-14 1350 SW Vintage Parkway – Whiskey River
- #16-18 2510 SW White Birch Drive, Ste. 8 & 9 – The Whiskey House

There being no further business, the meeting adjourned at 5:41 p.m.

Submitted by Brenda Fuglsang, Recording Secretary

  
Zoning Board of Adjustment