

CITY1735.DSS

Chairperson Blaser called to order the February 22, 2017, regularly scheduled meeting of the Board of Adjustment at 5:30 p.m. in the City Council Chambers, West Des Moines City Hall, located at 4200 Mills Civic Parkway, in West Des Moines, Iowa.

Roll Call: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch.....Present

Item 1 – Consent Agenda

Item 1a – Minutes of December 28, 2016

Moved by Board Member Christiansen; seconded by Board Member Celsi, to approve the December 28, 2016 meeting minutes.

Vote: Blaser, Celsi, Christiansen, Pfannkuch.....Yes
Cunningham.....Abstain

Motion carried.

Item 1a – Minutes of January 25, 2017

Moved by Board Member Celsi; seconded by Board Member Cunningham, to approve the January 25, 2017 meeting minutes.

Vote: Blaser, Celsi, Cunningham.....Yes
Christiansen, Pfannkuch.....Abstain

Motion carried.

Item 2 – Old Business

There were no Old Business items reported.

Item 3 – Public Hearings

Item 3a – Vine Street Daycare Addition, 2520 Vine Street – Allow for a building addition to expand daycare – MaHo Enterprises LLC – PC-003331-2017

Chairperson Blaser stated that the applicant has requested deferral of this item to the March 8, 2017 Board of Adjustment meeting to allow additional time to work through site issues.

Chairperson Blaser asked for a motion to defer this item to the March 8, 2017 meeting.

Moved by Board Member Pfannkuch, seconded by Board Member Celsi, the Board of Adjustment defer Item 3a, the Vine Street Daycare Addition, to the March 8, 2017 Board of Adjustment meeting.

Vote: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch.....Yes
Motion carried.

Item 3b – The Foundry Beer Hall, 111 S. 11th Street – Permitted Conditional Use Permit to Operate a drinking Place – TenX Adventures 2 LLC – PC-003341-2017

A letter with comments from the Pacific Railroad Company regarding this item was provided to the Board Members at the dais.

Chairperson Blaser opened the public hearing and asked the Recording Secretary to state when the public hearing notice was published. The Recording Secretary indicated that the notice was published on February 10, 2017, in the Des Moines Register.

Chairperson Blaser then asked for a motion to accept and make a part of the record all testimony and all other documents received at this public hearing.

Moved by Board Member Christiansen, seconded by Board Member Cunningham, the Board of Adjustment accepts and makes a part of the record all testimony and documents received at this public hearing.

Vote: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch.....Yes
Motion carried.

Nick Kuhn, 10546 NW 121st Street, Granger, stated that he is representing the beer hall and kitchen, two of the three tenants. He expressed agreement with staff conditions of approval except for the height of the proposed fence to be installed along the north property line. Mr. Kuhn informed the Board that a sound study had been conducted by their architect which compared the existing decibel levels to what was being proposed. Mr. Kuhn continued that the applicant has requested allowing the installation of a shorter fence and was prepared to raise the fence if any noise complaints were received from adjacent properties. A lower fence would help reduce costs and prevent the patio from having a “cave-like” feel. Mr. Kuhn stated that it was important to provide a positive customer experience. He reiterated that they are prepared to go to the full fence height at the request of staff, but would prefer something shorter with the provision to go higher, if necessary, and to look at decibel limits versus just a fence height to prevent sound.

Chair Blaser asked the location of the proposed outdoor patio and was informed it was to the north side of the building along Railroad Avenue. Mr. Kuhn stated that there is a “bump” in the building, and the patio would occupy from the bump out almost to the west end of the building, and it actually goes a bit further beyond the north edge of the bump out towards the neighborhood.

Chair Blaser inquired if Mr. Kuhn was aware that information was presented at the Plan and Zoning Commission on this item. Mr. Kuhn stated that he did not attend that meeting, but their architect and an engineer from Bishop Engineering had attended. He had been made aware of the information presented and the arguments regarding the installation of a lower fence.

Board Member Christiansen asked if there was a colored rendering available of the landscape plan. Planner Tragesser replied that a colored version was not available at this time. She pointed out the public patio location on a map.

Board Member Christiansen asked if the patio area was the only place that Staff was asking for the eight foot fence height. Mr. Kuhn confirmed that this was the only location which required fencing. There is a patio to the east which is not meant for public use and has mechanical units which will require screening. Mr. Kuhn reiterated that there was agreement with all other staff recommendations and conditions of approval.

Chair Blaser asked if there were truck bays at the west end of property. Mr. Kuhn replied that the kitchen occupies the western third of the building. Each stall has a bay for the trucks to load up in the morning. The bays are all

glass with only one full height garage door which will allow the kitchen equipment to be moved in and out. There will be overnight covered parking for food trucks in two locations on the site.

Chair Blaser asked if Mr. Kuhn had seen the letter received by the City from the Union Pacific Railroad regarding this project. Mr. Kuhn responded that he had not seen the letter. Chair Blaser summarized that there was concern about people trespassing on the railroad tracks after having drinks at the beer hall, as well as an increase in vehicular and pedestrian traffic. Mr. Kuhn stated that there had been a public meeting and that this issue did not surface as a concern, but had been addressed. He explained that this facility will be more of a food hall and meant to have a family friendly environment by offering both food and beverage. Mr. Kuhn stated that this would be the same argument or compliant that would surface for any project built next to a railroad.

Board Member Blaser commented that it was not this body's role to address the specific concerns raised about this business by the Union Pacific Railroad Company.

Chairperson Blaser then asked for any other questions or comments from the audience.

Jeremy Christiani, 1100 50th Street, stated that this drinking place violates Iowa Code Section 123.45. The Foundry Distillery owns this property. The bar and kitchen operated by the applicant could not exist without the Foundry Distillery and will be under the direct influence for their daily operations tied together in a landlord/tenant relationship. No other business like this exists in Iowa because it is illegal. Recently, Iowa District Court ruled affirming a strengthening of Iowa's tied house laws with emphasis added to, no matter how remote or diminutive. The ruling also made it clear that there is no distinction between type of alcohol, retailed or manufactured. This PC does nothing to protect citizens' quality of life. The Valley Junction Master Plan calls for residential development on this site and adjoining sites. This bar does not respect that. In fact, this PC exploits the debatable zero foot side yard setback that will definitely become a 35 ft. side yard setback when the 52 adjacent townhouse lots are developed in phase 2. The beer garden in the building itself will become non-conforming. They may be non-conforming already due to lot Z being adjacent to commercial zoning. The beer garden is arguably in the setback now and definitely will be non-conforming soon. Why is a beer garden being allowed in the setback which is actually 200 ft. from a residence, at all? The applicant is only concerned about their patrons in the beer garden, not their neighbor's quality of life. This attitude will continue and be manifested in daily operations. If the owner and applicant don't respect Iowa law or their neighbors, they don't deserve an entitlement to be in the neighborhood. This is the first drinking establishment ever in this zoning district. Please do not set a low standard and deny this PC.

Chair Blaser asked for additional comment or discussion from the audience, seeing none, closed the public hearing.

Planner Tragesser stated that this PC was before the Board for a drinking place to be located at 111 S. 11th Street. She provided a clearer version of the site plan and the surrounding zoning designations. To the east, the property is undeveloped and zoned general industrial. To the south and west, there are industrial buildings with a general industrial zoning. The property to the north is zoned for single family residential.

Ms. Tragesser commented that there will be 192 parking spaces for the site. The bar only needs 126 stalls, and the other uses are accommodated within this number for the total site. She continued that the project meets all code requirements for site parking.

Planner Tragesser continued that there will be continuous discussion with the applicant regarding the screening of the patio under the Planned Unit Development (PUD) ordinance. Also, during the Major Modification review for the site, all parking and covered spaces for the food trucks will be going through Plan and Zoning for recommendation and City Council for approval. Ms. Tragesser reminded the Board that tonight the Board would only be approving the use for this site. She continued that the Plan and Zoning Commission has supported Staff in asking for eight foot screening. Staff does not specify what the screening would be, other than it must be at eight

feet and opaque.

Board Member Celsi asked the rationale for having a five foot versus an eight foot fence enquiring if it had to do with screening the patio from sight and/or sound, or was this a safety issue due to the rail line. Ms. Tragesser stated that installation of the fence was primarily to mitigate for sound and not for the rail line nor for sight. The General Industrial District allows up to an eight foot fence. Staff wanted an equally tall screening wall so that the sound and visual presence of the patio from residential to the north would be mitigated. The PUD has barred TV, video, amplified sound, and other noise generators from the patio.

Board Member Celsi asked if live performances would be allowed. Ms. Tragesser responded that they could only be located on the south side of the building and not on the north.

Board Member Christiansen commented that per City Code, 126 parking stalls are required for this project and that 190 are being provided; thus, he asked if it was fair to assume that there would probably not be any queuing problems with traffic coming over the railroad tracks when entering 11th Street into the establishment. Ms. Tragesser stated that there are two entrances, off S. 9th Street and one entrance off S. 11th Street. As far as the continuous left-turn lane on Railroad Avenue and the offset of 11th Street on the north and south side, we have heard that there is concern. The traffic study did not address this situation. The queuing will be at Railroad Avenue in the continuous left lane and not so much over the top of the railroad tracks trying to get into the establishment.

Board Member Celsi stated that she attended a few of the Valley Junction Master Planning sessions when this property was discussed before it was purchased. Basically, there was interest in having the property be an extension of Valley Junction. In these discussions, there was talk about how to connect the two properties. Ms. Celsi's concern was how pedestrians get safely across the five lane roadway to this property on foot. Planner Tragesser informed the Board that this is being addressed and that an easement was obtained to provide a trail that would go along the south of the industrial properties along Lincoln Street to S. 9th Street. The Parks and Recreation Department has been very vigilant trying to obtain these connections, especially from Raccoon River Park into Valley Junction.

Board Member Celsi asked if staff would be addressing the concerns expressed in the letter received from the Union Pacific Railroad Company. Ms. Tragesser affirmed that staff would address concerns and would work with the railroad if the City was going to install crossing gates, guards, or lights when the train comes through. Since this property is not located directly adjacent to the railroad right-of-way, the City cannot require the installation of no trespassing signs.

Chair Blaser asked that if this item was approved as presented tonight, and there was a subsequent decision made regarding the fence height, would this item be brought back to the Board of Adjustment. Planner Tragesser stated that this item would not come back to the Board.

Chair Blaser felt that Mr. Christiani's comments were not Board of Adjustment issues, but wanted to ensure that Staff would address his comments. Ms. Tragesser confirmed that staff would address the issues brought forward by Mr. Christiani before going forward to City Council for approval.

Board Member Celsi commented on Mr. Christiani's remarks and that he had a point that there needed to be a delineation between manufactures and sellers. Since then, Iowa Code has made changes to allow for breweries, tasting, and manufacturing on site. She pointed out that the Iowa Alcohol Beverage Commission will not issue a liquor permit if Iowa Code is being violated. Ms. Tragesser commented as long as the distillery is manufacturing, it cannot have a tasting room.

If no other questions or comments, Chair Blaser asked for a motion and a second for this item.

Board Member Christiansen clarified that the Board would not be voting on the height of the fence, but only voting on the use and that there will be continuing discussions regarding the screening. Ms. Tragesser stated that the height would be determined at the PUD and site plan level.

Moved by Board Member Pfannkuch, seconded by Board Member Cunningham, the Board of Adjustment adopt a resolution to approve the Permitted Conditional Use Permit to allow the operation of a beer hall (SIC 5813 Drinking Establishment) at 111 S. 11th Street, subject to meeting all City Code requirements, regulations, and the following:

1. That the site improvements proposed with the Major Modifications to the Site (MaM-003257-2016) are installed and accepted by the City prior to any occupancy permit;
2. That the Planned Unit Development, The Foundry, is adopted by the City Council, prior to any building permit.
3. That prior to the use of the patio, that screening as provided for in the Planned Unit Development Ordinance (ZC-003361-2017) and the Major Modification (MaM-003257-2016) for the site is installed.

Vote: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch.....Yes
Motion carried.

Item 4 – New Business

There were no New Business items presented.

Item 5 – Staff Reports

There were no staff reports.

Item 6 – Adjournment

Chairperson Blaser asked for a motion to adjourn the meeting.

Moved by Board Member Celsi, seconded by Board Member Pfannkuch, the Board of Adjustment meeting adjourns.

Vote: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch.....Yes
Motion carried.

The meeting adjourned at 5:59 p.m.

Michael R. Blaser, Chairperson
Board of Adjustment

Kimberly Taylor, Recording Secretary