

NOTICE TO THE AUDIENCE. PLEASE REMEMBER THAT IF YOU ARE INTERESTED IN MATTERS ON THE AGENDA THAT WILL HAVE SUBSEQUENT MEETINGS, IT IS YOUR RESPONSIBILITY TO NOTE THE DATES, TIMES, AND PLACES. NO FURTHER LETTERS OR REMINDERS WILL BE SENT. OF COURSE, IF YOU HAVE ANY QUESTIONS ABOUT ANY GIVEN MATTER, DO NOT HESITATE TO CONTACT THE PLANNING DEPARTMENT IN THE CITY HALL ANNEX, 4403 DEVILS GLEN ROAD, BETTENDORF, IOWA (344-4100).

**MEETING NOTICE
BOARD OF ADJUSTMENT
NOVEMBER 10, 2011
5:00 P.M.**

PLACE: Bettendorf City Hall Council Chambers, 2nd Floor, 1609 State Street

1. Roll Call: Falk _____, Howe _____, Johnson _____, Stelk _____, Voelliger _____
2. Review of Board Procedures.
3. The Board to review and approve the minutes of the meeting of October 13, 2011.
4. The Board to hold a public hearing on the following items:
 - a. Case 11-070; 2561 - 53rd Avenue (C-2) - A request for a variance to allow outdoor operations, submitted by 53rd Avenue Pizzeria, LLC.
 - b. Case 11-071; 2561 - 53rd Avenue (CR-2) - A request for a special use permit to allow a bar, cocktail lounge, and tavern, submitted by 53rd Avenue Pizzeria, LLC.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND OTHER APPLICABLE FEDERAL AND STATE LAWS, ALL PUBLIC HEARINGS AND MEETINGS HELD OR SPONSORED BY THE CITY OF BETTENDORF, IOWA, WILL BE ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES. PERSONS REQUIRING AUXILIARY AIDS AND SERVICES SHOULD CONTACT BETTENDORF CITY HALL AT (563) 344-4000 FIVE (5) DAYS PRIOR TO THE HEARING OR MEETING TO INFORM OF THEIR ANTICIPATED ATTENDANCE. TEXT TELEPHONE (TTY) IS AVAILABLE AT (563) 344-4175. IN ADDITION, PERSONS USING TEXT TELEPHONE HAVE THE OPTION OF CALLING VIA THE IOWA COMPASS VOICE/TTY BY DIALING (800) 735-2942.

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
OCTOBER 13, 2011
5:00 P.M.**

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

Item 1. Roll Call

PRESENT: Falk, Johnson, Stelk, Voelliger
ABSENT: Howe
STAFF: Connors, Fuhrman, Soenksen

Item 2. Review of Board Procedures.

Item 3. The Board to review and approve the minutes of the meetings of September 8, 2011 and September 14, 2011.

On motion by Voelliger, seconded by Falk, that the minutes of the meetings of September 8, 2011 and September 14, 2011 be approved as submitted.

ALL AYES

Motion carried.

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

- a. Case 11-062; 510 Mississippi Boulevard (R-1) - A request for a variance to reduce the required rear yard setback from 40 feet to 23 feet to allow for construction of a deck, submitted by Raymond Van Severen, Jr.

Stelk 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.

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

Ray Van Severen, the applicant, explained that because of the large elevation change between his property and the one to the north, rainwater pools in his yard and often does not dissipate for several days. He indicated that the proposed deck would allow him to have more usable space in his rear yard on those occasions.

Dave Schneck, 524 Mississippi Boulevard, and Joe Kehoe, 442 Mississippi Boulevard, expressed support for the request.

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

Falk asked if the proposed plan requires the removal of any existing trees. Van Severen stated that no trees would be disturbed.

On motion by Voelliger, seconded by Falk, that a variance to reduce the required rear yard setback from 40 feet to 23 feet to allow for construction of a deck be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #4 to these minutes.

- b. Case 11-063; 3006 Magnolia Drive (R-2) - A request for a variance to reduce the required side yard setback from 5 feet to 1 foot to allow for construction of a carport, submitted by Christopher Coachman.

Soenksen stated that the applicant has requested that the case be deferred until such time as the property line can be identified.

- c. Case 11-064; 6304 Ocean Boulevard (R-2) - A request for a variance to allow a 6-foot high fence in a required front yard, submitted by Josh and Kristi Jacobs.

Stelk 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 #5 to these minutes.

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

Josh Jacobs, the applicant, explained that the primary reasons for the request are to increase the usable rear yard and the desire to provide more security and privacy for his family.

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

On motion by Voelliger, seconded by Johnson, that a variance to allow a 6-foot high fence in a required front yard be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #6 to these minutes.

- d. Case 11-065; 4306 State Street (C-3) - A request for a variance to reduce the required side yard setback from 10 feet to 5 feet to allow for construction of a building for an auto repair business, submitted by Greg Poley.

Stelk 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 #7 to these minutes.

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

Falk asked how far the property line is from the paved portion of the recreational trail. Connors explained that the pavement is approximately 5 feet from the property line. He added that when taking into account the proposed 5-foot setback, the building would be approximately 10 feet from the paved trail.

On motion by Voelliger, seconded by Falk, that a variance to reduce the required side yard setback from 10 feet to 5 feet to allow for construction of a building for an auto repair business be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #8 to these minutes.

- e. Case 11-066; 3243 Bear Tooth Court (I-2) - An appeal of the zoning administrator's decision to prohibit a fitness center in an I-2 General Industrial District, submitted by Dennis and Teresa Achenbaugh.

Stelk 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 #9 to these minutes.

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

Dennis Achenbaugh, the applicant, stated that the ordinance allows many uses which he feels are more intense than the proposed fitness center. He explained that there is

an adequate amount of space on the property that can be used for required parking. He indicated that there is enough room for 22-23 spaces, adding that the existing businesses require only 6. He added that the owner of the adjacent business has indicated a willingness to allow patrons of the proposed business to use his parking area if necessary.

Grant McCauley, owner of the proposed business, explained that his operation is more of a personalized training studio than a fitness center, adding that he manages all of his clients on a personal level. He stated that during a typical day there are 2-3 clients with whom he consults or conducts a training session. McCauley indicated that a maximum of 8 clients would be allowed to train at one time, adding that his most busy times are early morning and late evening. He explained that clients are not allowed to come and go from the facility randomly, as he manages each client personally.

Stelk commented that it appears that the term fitness center is the one that most closely describes the proposed business. McCauley stated that he has lived in other markets where this type of facility is more common. He indicated that in those parts of the country the business is commonly referred to as a personal training studio and that those businesses tend to have a similar intensity and size as the one he is proposing.

Voelliger asked if the applicant would be willing to stripe the parking lot to aid in identification of the spaces. Achenbaugh confirmed this.

Falk asked if staff has any objection to the proposed reconfiguration of the parking arrangement which differs from the original site plan. Connors explained that when staff originally calculated the required parking for the building the square footage and proposed uses were taken into consideration. He added that because of the more intense proposed use, the case had been presented to the Board of Adjustment.

Connors reiterated that it would be simple to stripe the parking spaces. Falk stated that designating parking spaces would be helpful for visitors to the building.

Stelk commented that it is possible that a fitness center simply was not considered when the ordinance was adopted, adding that unless there is a specific reason why it was not included he is not opposed to the proposed use. Achenbaugh commented that oftentimes fitness/therapy centers are located within hospitals, which is a permitted use.

Falk asked if the only issues under consideration are the fact that the proposed use was not a listed one in the ordinance and the lack of adequate parking spaces. Soenksen explained that the reason the parking issue was raised by staff is to prevent the applicant's having to resubmit a request if the appeal is granted. He indicated that if the Board approves the applicant's special use permit, the parking requirements will have already been addressed with no need for a new site development plan to be submitted.

Connors suggested that any motion for approval be phrased such that it would prevent a much more intense fitness center type use from being allowed in a similar district.

Falk asked for staff's opinion on what type of verbiage should be used. Connors stated that the Board could grant the appeal based on the low intensity and the specific

location in question and consider future requests on a case-by-case basis. Stelk suggested that the number of clients allowed at the facility at one time could be limited. Falk concurred. Voelliger commented that it would be difficult for the city to control such a limitation.

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

On motion by Johnson, seconded by Falk, that the appeal of the zoning administrator's decision to prohibit a fitness center in an I-2 General Industrial District be granted by specifically allowing a low-intensity, personalized strength training studio in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #10 to these minutes.

Stelk introduced Bryce Johnson, the newest member of the Board of Adjustment.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 5:50 p.m.

These minutes and annexes approved

John Soenksen
City Planner



COMMUNITY DEVELOPMENT
City Hall Annex • 4403 Devils Glen Road, Bettendorf, Iowa 52722 • (563) 344-4100

November 10, 2011

Staff Report

Case No. 11-070 and Case No. 11-071

Location: 2561 – 53rd Avenue

Applicant: 53rd Avenue Pizzeria, LLC

Zoning Designation: C-2, Community Shopping District

Requests: Variance to allow outdoor operations and a special use permit to allow a bar, cocktail lounge, or tavern.

Background Information and Facts

The site involved is located at the intersection of 53rd Avenue and Brentwood Drive and concerns the building located in the northeast corner of the Crow Ridge Plaza development (see Attachment A – Location Map). The applicant would like to open a restaurant and be permitted to use the existing patio for outdoor operations which would include the service of alcoholic beverages.

The following codes are applicable to these requests:

- Section 15.28.1 specifies that all business will be conducted within enclosed buildings.
- Section 15.23.4 specifies that a bar, cocktail lounge, or tavern is permitted as a special use.

Staff Analysis

The building is the previous location of Country Style Ice Cream and Seeds Café, both of which utilized the existing outdoor service area located on the northwest side of the building (see Attachment B – Outdoor Service Area Photo). Neither of the previous business owners served alcohol on the premises. Because the applicant plans to do so, there may be the potential for increased use of the outdoor service area. Staff feels that this anticipated increase merits additional review by the Board.

It has become common for restaurants or where alcoholic beverages are served to have an outdoor deck or patio. Many already exist in the city including:

- Governor's
- Caddy's Sports Bar and Grill
- Harrington's Pub
- Papi's Bar & Bites
- Grinders Spaghetti House

Staff is not aware of any complaints related to the outdoor operations of any of the referenced businesses.

In the past, the small size of the existing outdoor service area limited the number of services tables to three or four. The size of the patio will not support any significant addition of tables or seating.

Staff observed the following with regard to the patio as it relates to the surrounding neighborhood:

- The patio area is significantly separated from surrounding properties (see Attachment C – Separation Illustration). The closest neighboring property is 5247 Brentwood Drive which is 268 feet away. The next three closest properties are 2607 and 2611 Heather Glen Circle which are 291 feet away and 2624 Rosehill Avenue which is 327 feet away.
- Attachment D shows that because of the way the section of the building that will house the proposed restaurant is oriented there is additional buffering between the patio and the homes on Brentwood Drive and Rosehill Avenue. The top picture shows the outdoor service area and was taken directly west of the business looking due east toward the two houses. The bottom picture was taken in the driveway of the Brentwood Drive residence looking due west toward the business. Attachment D demonstrates that both visibility and sound from outdoor operations will be buffered by the building.
- Attachment E demonstrates the separation of the patio area from the homes on Heather Glen Circle to the north. The 291-foot separation includes a divided four-lane roadway, a raised berm on the north side of the roadway with a fence on top, and significant landscaping that is substantially taller than the fence.

Staff Recommendation

Regarding the variance to allow outdoor business operations:

1. Staff feels that the request is consistent with other restaurants where alcohol is served and which have outdoor service areas.
2. The outdoor service area was indicated on the originally approved site plan and has been used for several years with no complaints.

Regarding the nine point evaluation of the special use for alcohol service specified by Code:

1. A bar, cocktail lounge, and tavern is a permitted special use in the C-2, Community Shopping District.
2. The proposed use will be required to comply with all applicable regulations in the district.
3. The original site plan of this development showed that the location and size of the proposed use, the nature and intensity of the operation involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it was in harmony with the appropriate and orderly development of the district.
4. The original site plan approval also showed that the location, nature and height of buildings, walls and fences, and the nature and extent of the landscaping on

- the site are such that the use will not unreasonably hinder or discourage the appropriate development and use of adjacent land and buildings.
5. Parking areas continue to be of adequate size for the particular use, properly located and suitably screened from adjoining uses, and the entrance and exit drives are laid out so as to prevent traffic hazards and nuisances.
 6. Based on staff's evaluation of the building layout, location, and orientation combined with the outdoor service area separation and buffering from the involved neighboring properties suggests that the use will not cause substantial injury to the value of other property in the neighborhood.
 7. No special use has been denied that was associated with the property.
 8. Staff does not recommend any additional restriction in addition to those specified by the Code.
 9. The future land use plan specifies that this area is to be developed as commercial. The use is consistent the Bettendorf Comprehensive Plan as related to future land use for this request.

The analysis demonstrates that the variance request to allow outdoor operations is consistent with previous cases that were approved. Staff recommends approval of the special use permit.

Respectfully submitted,

John Soenksen
City Planner

Attachment - A



- Section Corner (No Ties)
- ▲ Section Corner (Corner Certificate)
- Section Corner (Scott County Tie)
- County Boundary
- ▭ City Limit
- ▭ Political Township Boundary
- ▭ Geographic Township Boundary
- - - Section Line
- Quarter Section Line
- Quarter Quarter Section Line

- ▭ Subdivision Boundary
- ▭ Parcel
- ▭ Block
- Lot Line
- Right of Way
- ▭ Park
- ▭ Building Footprint
- ◆ Parcel Point
- Address Point

- Interstate
- U.S. Highway
- State Highway
- County Route: Major Road
- Local Road
- Ramp
- Alley/Access Road
- Bike Trail
- Railroad

- 9408660018 Parcel Identification Number
- 19 Lot Number
- 912 Address Number
- 1444.00 Subdivision Name
- 9408500019 Parcel Point Identification Number
- 2 Block Number
- 40 Right of Way Dimension
- 175.00 Parcel Dimension
- 107.65 Lot Dimension

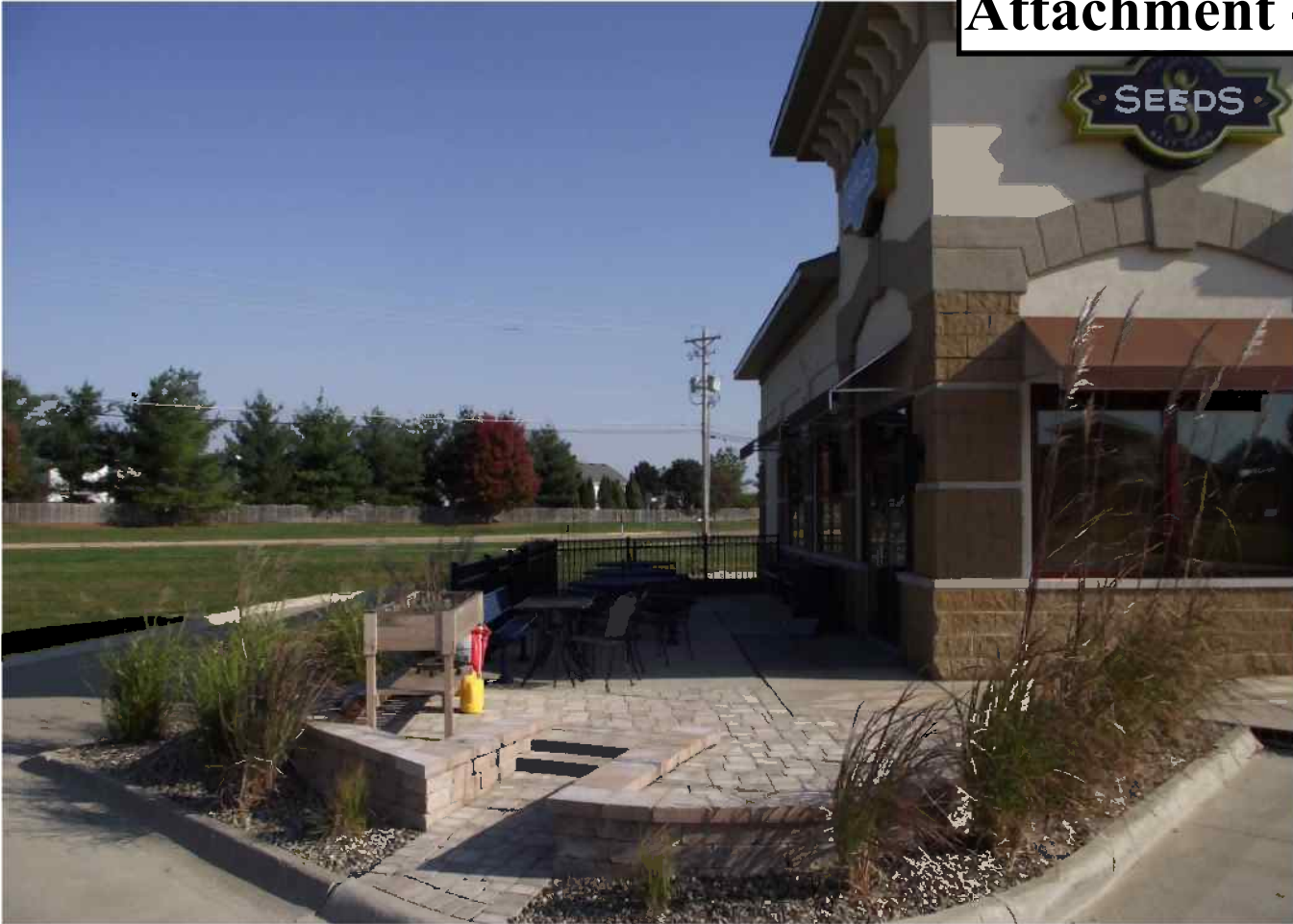
1 inch = 100 feet

The information herein is to be used for reference purposes only and is not intended for conveyances, as a substitute for a legal survey or property abstract. The maps and data are subject to constant change and are provided without warranty of any kind, express or implied.

Map information is believed to be accurate, complete and up to date but cannot be guaranteed. Scott County, Iowa its agents, consultants, contractors or employees shall be held harmless from any and all claims or causes of action due to or arising out of the use or inability to use the maps or data represented herein.

www.scottcountyIowa.com
Date Printed: 11/01/2011

Attachment - B





291'

268'

327'

Attachment - D



Attachment - E



Case No. 11-070, 11-071

APPEAL AND APPLICATION TO THE ZONING BOARD OF ADJUSTMENT OF BETTENDORF, IOWA

Part 1. Property Involved.

Street Address 2561 ~~E~~ S3rd AVE, BETH

Legal Description of the property. LOT 2 CROWRIDGE PLAZA ADD

Part 2. Contact Information.

Applicant Name 53rd AVE PIZZERIA, LLC Phone 563-650-6572

Address 2550 MIDDLE RD, BETH, SUITE 300 FAX _____

E-mail Address: MARK.PEEMER@gmail.com

Owner Name MARK PEEMER Phone 563-650-6572

Address 2550 MIDDLE ROAD, BETH, SUITE 300 FAX _____

E-mail Address: MARK.PEEMER@gmail.com

Agent _____ Phone _____

Address _____ FAX _____

E-mail Address: _____

Part 3. Type of Application. (check at least one)

X 1. Variance/Exception. Before the Board of Adjustment grants approval of a variance to the City of Bettendorf Zoning Ordinance, all of the following conditions **MUST** be met:

11-070

- (a) That the granting of the exception will not permit any use in any district which would be in conflict with the permitted uses of such district under the terms of this ordinance.
- (b) That it will not impair an adequate supply of light and air to adjacent property.
- (c) That it will not unreasonably increase the congestion in public streets.
- (d) That it will not increase the danger of fire or of the public safety.
- (e) That it will not unreasonably diminish or impair established property values within the surrounding areas.
- (f) That it will not in any other respect impair the public health, comfort, safety, morals, or welfare of the inhabitants of the city.

X 2. Special Use Permit. Before the Board of Adjustment grants approval of a special use permit, all of the following conditions **MUST** be met:

11-071

- (a) The proposed use is designated by this ordinance as a special use in the district in which the use is to be located.
- (b) The proposed use will comply with all applicable regulations in the district in which the use is to be located.
- (c) The location and size of the proposed use, the nature and intensity of the operation involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the district in which it is located.
- (d) The location, nature, and height of buildings, walls, and fences and the nature and extent of the landscaping on the site are such that the use will not unreasonably hinder or discourage the appropriate development and use of adjacent land and buildings.
- (e) Parking areas will be of adequate size for the particular use, properly located, and suitably screened from adjoining uses and the entrance and exit drives will be laid out so as to prevent traffic hazards and nuisances.
- (f) The proposed use will not cause substantial injury to the value of other property in the neighborhood.
- (g) Conditions in the area have substantially changed and at least one year has elapsed since any denial by the Board of Adjustment of any prior application for a special use permit that would have authorized substantially the same use of all or part of the site.
- (h) The Board of Adjustment shall impose such conditions and restrictions upon the premises benefited by a special use permit as may be necessary to assure compliance with the above standards, to reduce or minimize the effect of such permit upon other properties in the neighborhood, and to better carry out the intent of this ordinance. Failure to comply with such conditions or restrictions shall constitute a violation of this ordinance.

3. Other. _____

(Attach a separate sheet and explain in detail.)

Part 4. General Information.

Section(s) of Zoning Ordinance Involved 15.28.1 Existing Zoning C-2, Comm. Shopping Distr.

15.23.4

Part 5. Reasons for Application. In the space below, give a general description of the activity desired and principal reasons why this application should be granted by the Board. If this application is for a variance, please state the hardship which the zoning ordinance imposes on the property. Use the following criteria as justification for the requested variance. Use additional sheets if necessary.

- (a) It shall be the property owner's responsibility to show that the terms of this ordinance will impose unusual and practical difficulties or particular hardships. The hardship established by the property owner must not be SELF-IMPOSED. A self-imposed hardship is NOT justification for the approval of a variance request.
- (b) If the variance granted is in harmony with the general purpose, intent, and spirit of this ordinance.
- (c) If the board determines that the granting of the requested variance will not serve merely as a convenience to the applicant, but will alleviate a demonstrable hardship as to warrant a variance from the official city plan as established by Ordinance No. 381 of the city, and at the same time the surrounding property will be reasonably protected.
- (d) That by granting the request for a variance substantial justice shall be done.

11-070

We are requesting that the new Pizzeria and PUB be allowed to continue to use the outdoor dining area and also be allowed to serve & consume alcohol in the designate area that has been used in the past as an eating area.

11-071

su to allow bar, cocktail lounge, tavern.

Part 6. Attachments. The following items are attached and are a part of this application.

- () 1. Scale accurate site plan, at a scale of 1" = 20' or other suitable scale, showing adjacent street, property line, building location of existing and proposed buildings and other important features of the property. Required with all applications.
- () 2. Legal Description. (If not shown on page 1.)
- () 3. Floor plan if internal design of building is part of application.
- () 4. List additional attachments.

Part 7. Signature.

I (we) depose and say that all the information contained in this application and the statements contained in the papers submitted herewith are true. Witness our Hands and Seals this 20th day of October, 20 11.

Signature of Applicant [Signature] Signature of Owner _____

(The owner MUST indicate his consent to this application by signing above. Application without the signature of the owner will not be processed)

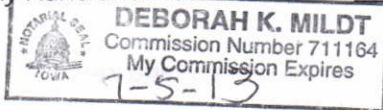
State of Iowa)

SS

County of Scott)

Before me the undersigned Notary Public, in and for the County and State, personally appeared applicant(s) and separately and severally acknowledge the execution of the foregoing application is his/her voluntary act and deed, for the purposes therein expressed.

Witness my Hand and Notarial Seal this 20th day of October, 2011.



[Signature]
Notary Public in and for Scott County, Iowa

Part 10. Filing Fee.

\$ 50.00 Single Family/Two-Family Residential Variance
\$100.00 All Other Applications

Received by [Signature]

Amount 100.00 Date 10/20/11