

**CITY OF OKOBOJI BOARD OF ADJUSTMENT MINUTES  
FOR THE MEETING HELD ON WEDNESDAY, JUNE 14<sup>th</sup>, 2017 AT 6:00 P.M.  
OKOBOJI CITY HALL**

The Board of Adjustment for the City of Okoboji met on the above date at 6:00 P.M. in the Okoboji City Hall. Board members present were Owen Primavera, Dennis Colton, Joyce Waddell, and Ann Fitzgibbons. Absent: Rebecca Peters. Others present were: Terry Monk, Travis Monk, Judy Burke, Kristi Leigh, Misty Katzfey, David Stein and Jason Peters.

Owen Primavera chaired the meeting and called the meeting to order at 6:00 p.m. Introductions were made at this time.

Primavera explained the agenda for the meeting. Board to conduct a public hearing on Kristy Leigh's Application for Conditional Use Permit at 1302 Highway 71 North, Okoboji, Iowa to formalize Okoboji Commons Hotel, LLC's outdoor service area for food and beverage. Board to conduct a public hearing to consider a variance request by Okoboji Commons Hotel, LLC's of 1302 Highway 71 North, Okoboji, Iowa to place a small structure, not on a foundation, on the property as an accessory building. The small structure proposed would be 132 square feet. Article XI Section 11.12 (3) states that small structures are exempt from obtaining a construction permit. Zoning administrator has determined the structure proposed would not qualify as small structure and the structure constitutes a non-conformity. Non-conformities are not allowed as defined in Article XIV General Regulations. This non-conformity precludes the proposed structure as presented.

Primavera read into the record the public hearing notice and staff report to the Board dated June 9<sup>th</sup>, 2017.

Primavera entertained a motion to approve the minutes of previous meeting from 05/24/2017. Fitzgibbons/Waddell moved to approve. All ayes. Motion carried.

Primavera stated that the Planning and Zoning Board met before the Board of Adjustment meeting and recommended that the Conditional Use permit for an outdoor service area for food and beverage be approved. Administrator Peters explained the history as to how it was discovered that a conditional use permit for an outdoor service area for food and beverage was not granted at the time Okoboji Commons Hotel LLC's liquor license was granted and why the applicants are formally asking for the conditional use permit at this time. Administrator Peters explained that Lot 5 is zoned both commercial and residential and there were concerns raised at the Planning and Zoning meeting regarding the residential zoned area being allowed as an outdoor service area for food and beverage.

A discussion between the Board and those in attendance took place regarding the current use of the area zoned residential by Okoboji Commons Hotel and their guests. Primavera expressed concerns regarding the use of alcohol in the area zoned residential.

A discussion took place between the Board and Attorney Stein regarding the recommendation that was made by Planning and Zoning. A discussion took place between the

Board and those in attendance regarding whether liquor sold by the Hotel could be brought down to the beach. The applicants stated that the alcohol sold at the Smack Shack does not leave the area they have set up for outdoor service. A discussion took place between the Board and those in attendance regarding whether alcohol brought in by the Hotel's guest can be brought down to the area zoned residential.

Judy Burke asked whether this conditional use permit will be reviewed every year. Attorney Stein stated that once the outdoor service area is granted it will not be reviewed every year. Travis Burke stated that he was concerned over noise in the area zoned residential. The applicants stated they do not want to run a bar in area and want to run an orderly business.

A discussion took place between the Board and the applicants regarding whether liquor will be served in the area zoned residential and what conditions could be placed on the conditional use permit. Administrator Peters explained that the conditional use permit is not limited to just the sale of alcohol, but it was for the outdoor service of any food and beverages. Fitzgibbons stated that it made sense to her to limit the outdoor service area for food and beverage to areas of the lot zoned commercial.

Primavera asked if the public had any other comments or questions regarding the conditional use permit for an outdoor service area for food and beverage. With none received, Primavera closed the public hearing for the conditional use permit.

A discussion between the Board members took place regarding where the cottages sit in relation to Lot 5. Judy Burke explained to the Board the history of the road easement through the property and that the cottages are zoned R-2.

Primavera read into the record each of the factors listed in Article XVIII, Section 18.5 of the City's Zoning Ordinance for which the Board shall take into consideration when deciding whether to grant a conditional use permit. Administrator Peters stated that it was up to the Board to decide how each factor applies. Fitzgibbons inquired as to whether the outdoor service area can be limited to the area by the Smack Shack. Fitzgibbons stated that she felt comfortable that the outdoor service area for food and beverage fell within each of the conditions. Fitzgibbons stated that she did have some concern if the Hotel would set up an outdoor service area right on lot line.

Administrator Peters explained that if a conditional use permit was granted under the wording of Planning and Zoning recommendation, it would be for all the areas zoned commercial. The applicants stated that when they came before the Council for their liquor license they had asked for the whole property and did not want to have to piecemeal where they could have an outdoor service area. A discussion between the Board and the applicants took place regarding the liquor license that was granted to the Hotel. The applicants stated that they have never wanted to have liquor in area zoned residential.

Fitzgibbons asked whether restrictions could be put on where the outdoor service area could be allowed. Administrator Peters stated that it was within the Board's power to restrict the areas. A discussion took place regarding what activities the Hotel would like to have on the

property and what times they foresee having activities on the property. Fitzgibbons stated based on the code they have to be careful to protect the residents in the area.

A discussion took place between the Board and the applicants regarding what would happen if the business would be sold. Kristi Leigh suggested that the conditional use permit be limited to their business and if the business is sold the permit could be reviewed. Waddell stated that this could affect the applicants' ability to sell the business. A discussion took place regarding the history of the property being purchased by the applicants. Fitzgibbons suggested that the conditional use could be limited to the areas zoned commercial, the hours of operation and to the current owners. A discussion between the Board took place regarding these restrictions.

Fitzgibbons/Colton moved to approve the a conditional use permit for an outdoor service area for food and beverage that is to be limited to those areas zoned commercial in Lot 5, Village Oaks and this conditional use permit will not transfer automatically upon the sale of the business and/or property and must be reviewed and approved by appropriate City Staff and Boards. Roll call vote. All present voted in favor. Unanimously approved 4-0. Motion carried.

Primavera opened the public hearing for variance request for the proposed coffee structure. Administrator Peters explained that he had met with representatives of the Okoboji Commons Hotel on several occasions regarding the possibility of putting a trailer, with wheels removed, on their property from which they would serve coffee. Administrator Peters stated that he had tried to find a situation where this would fit under the code. He stated that the proposed structure would not fall under the 100 square foot exemption and he felt that the trailer could fall under the definition of a recreational vehicle. Administrator Peters stated that based on these factors he told the applicants that this structure would not be allowed and they were within their rights to appeal his decision to the Board.

Kristi Leigh stated that before the moratorium went into place due to food trucks they were planning on putting this trailer on their property. She also stated they have been meeting with the City in an effort to try to find a way to allow this structure.

Primavera stated that the first time he had seen a picture of the proposed trailer was on Monday and that he felt the structure was a camper. Primavera stated that he supported a coffee shop but they need to comply with the size requirements and that the structure proposed is a recreational vehicle. Kristi Leigh stated that they were willing to make the trailer look more esthetically pleasing to the Board. Primavera stated that he did not want to encourage people putting campers on commercial property as permanent structures.

Kristi Leigh asked whether a one year exemption could be allowed so that the trailer could operate during this season. A discussion took place between the applicants and the Board regarding where the structure is at this time and what the applicants have done to renovate the trailer.

A discussion between the Board, Administrator Peters, and the applicants took place regarding the status of the transient merchant permits in the City, how the moratorium was put into place, and how this effected the applicants.

Misty Katzfey stated that they built the structure and have spent money to put in electrical and plumbing so that the trailer could be a permanent structure. Colton stated that structure does not look permanent. The applicants stated that they felt this was a part of the appeal of the structure.

Administrator Peters stated that there were two issues on the table. The first is whether the structure qualifies for the variance requested and second whether the structure falls within the definition of recreational vehicles.

A discussion took place between the Board and the applicants on whether this proposed structure is a recreational vehicle. Primavera stated he felt it was recreational vehicle. Waddell stated even though the camper does not have a motor, it still would be recreational vehicle.

A discussion took place regarding grounds to deny the requests made by the applicants. Primavera stated that he felt the structure was over the 100 square feet and it was in fact a recreational vehicle. Waddell/Colton moved to deny the variance request based on the fact the structure is over the 100 square feet and that the proposed structure falls within the definition of recreational vehicle under the code. Roll call vote. All present voted in favor. Unanimously approved 4-0. Motion carried.

With nothing further to discuss Waddell/Fitzgibbons moved to adjourn. All ayes. Motion carried. Meeting was adjourned at 8:00 P.M.

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Jason Peters  
City Clerk/City Administrator  
Zoning Administrator.