

CITY1580.DSS

Chairperson Christiansen called to order the May 18, 2016, 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 February 24, 2016**

Moved by Board Member Blaser; seconded by Board Member Cunningham, to approve the February 24, 2016 meeting minutes.

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

Motion carried.

**Item 1b – Minutes of March 9, 2016**

A memo was given to the Board Members at the dais indicating that there were three members present at the March 9, 2016 meeting, but that Board Member Sherry Stewart had since resigned from the Board. Per City Attorney opinion, a vote could be taken to approve the March 9, 2016 meeting minutes by the two active members that were in attendance, Board Members Blaser and Christiansen.

Moved by Board Member Blaser; seconded by Board Member Cunningham, to approve the March 9, 2016 meeting minutes.

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

Motion carried.

**Item 1c – Minutes of April 6, 2016**

Moved by Board Member Cunningham; seconded by Board Member Blaser, to approve the April 6, 2016 meeting minutes.

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

Motion carried.

**Item 2 – Old Business**

There were no Old Business items reported.

**Item 3 – Public Hearings**

**Item 3a – Majestic Limo and Coach, 1816 Fuller Road – Allow sale of mini-buses and motor coaches (SIC-559) on property – Majestic Limousine Service LLC – PC-003055-2016**

Chairperson Christiansen 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 April 29, 2016, in the Des Moines Register.

Chairperson Christiansen 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 Blaser, seconded by Board Member Celsi, 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.

Scott Woodruff, Majestic Limousine Service LLC, 1816 Fuller Road, West Des Moines, spoke to the Board about the history and operations of the business, and that now Majestic Limousine would like to expand the business into the buying, refurbishing, and selling of mini-buses and motor coaches for other businesses in that trade.

Board Member Blaser stated that the applicant indicated that two classifications of vehicle would be available for sale, the mini-bus and motor coach. He noted that the Conditions of Approval, as recommended by staff, were broader and stated that the vehicles sold at this location would be restricted to those types of vehicles customarily used within the limousine trade, which could include stretch limousines. Mr. Woodruff responded that it could include stretch limos, but that the focus would be on mini-buses and motor coach sales. When asked, Mr. Woodruff stated that he would be amenable to a language change in the staff report that would restrict sales to mini-buses and motor coaches.

Chairperson Christiansen then asked for any other questions or comments from the audience, and upon hearing none, declared the public hearing item closed.

Moved by Board Member Blaser, seconded by Board Member Celsi, the Board of Adjustment adopt a resolution to approve the Permitted Conditional Use Permit to allow the operation of an auto dealership for the sale of mini-buses and motor coaches (SIC 559: Automotive Dealer, Not Elsewhere Classified) at 1816 Fuller Road, subject to meeting all City Code requirements and the following with the language change noted:

1. The vehicles to be sold at this location and part of this permit shall be restricted to ~~only those types of vehicles customarily used within the limousine trade~~ mini-buses and motor coaches.
2. Outdoor storage and display shall not occur in any required yard setback, open space, or required parking area, unless approved by a future site plan.
3. Any vehicle conspicuously parked adjacent to a public street for more than three hours primarily for advertisement shall be prohibited, in accordance with Tile 9, Zoning, Chapter 18, Signs.

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

**Item 3b – West Des Moines Law Enforcement Center, 250 Mills Civic Parkway – Allow an approximately 500sf addition to the West Des Moines Law Enforcement Center and a deferral of parking spaces – MML2-003061-2016**

Chairperson Christiansen 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 May 6, 2016, in the Des Moines Register.

Chairperson Christiansen 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 Cunningham, seconded by Board Member Celsi, 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.

David Harrison, Design Alliance, Inc., 14225 University Avenue, Waukee, requested approval for an addition to the WDM Law Enforcement Center stating that their company had previously completed four other remodeling projects at the Law Enforcement Center. He continued to elaborate on the proposed remodel which involves an addition of approximately 500 sf in the existing carport area. As part of the project, parking would be reduced in the area by two spaces, but the addition would be entirely underneath the roof footprint of the existing building and would not change the grading of the site.

Planner Portz commented that this request was also for deferral of parking. A location has been identified on the site that could accommodate additional parking if and when needed in the future.

Chairperson Christiansen then asked for any other questions or comments from the audience and upon hearing none, declared the public hearing item closed.

Moved by Board Member Pfannkuch, seconded by Board Member Celsi, the Board of Adjustment adopt a resolution approving the modification to a Permitted Conditional Use Permit to allow the construction of an approximately 500sf building addition within the existing footprint of the building, subject to the applicant meeting all City Code requirements and the following:

1. Deferral of the installation of up to 111 parking stalls required until such time that need for all or part of the deferred parking is warranted as determined by vehicles parking on the grass or other non-designated parking areas occurs or parking off-site is occurring due to the lack of available parking stalls. Prior to implementation of additional parking to satisfy the deferred parking stalls, the applicant shall submit and receive approval of a Minor Modification Level 2 application to the City identifying the location and engineering details for the stalls to be implemented and impacts of the installation on storm water management facilities that may be required of the site.

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

**Item 3c – 904 9th Street and 905 Grand Avenue – Approval of a 3,200 sf drinking establishment with food service and outdoor patio and approval of a forty (40) foot variance from the forty five (45) foot front yard building setback requirement along Grand Avenue, a twenty (20) foot variance from the forty five (45) foot front yard building setback requirement along 9th Street, an allowance to install a 6’ solid fence along the north property boundary in lieu of providing a 30’ wide landscaped buffer, and a waiver of 19 of the 46 parking stalls for the construction of a drinking establishment/restaurant building – Boggs Properties, LLC – PC-003068-2016**

A memo written to staff from Antonio Colacino, Bradshaw, Fowler, Proctor & Fairgrace, P.C., was provided to

the Board Members at the dais regarding this item.

Chairperson Christiansen 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 May 6, 2016, in the Des Moines Register.

Chairperson Christiansen 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 Celsi, seconded by Board Member Pfannkuch, 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.

Amy Boggs, owner of Sully’s, 110 Grand Avenue, West Des Moines, stated that she had been working with the staff to relocate their establishment to accommodate a City storm water sewer project. With the relocation, two major goals were identified: (1) to stay in the immediate area to maintain their regular customer base and (2) to own the land so as not to be subject to a lease agreement. She continued that they have plans for a new building with a kitchen and patio. With the installation of a kitchen, Ms. Boggs felt that this would be moving the business concept from a drinking establishment to a bar/restaurant. She continued that there were not many options in this area, and that the 9<sup>th</sup> Street and Grand Avenue corner had been identified as the best option. The new building will have a unique Irish pub design.

Ms. Boggs addressed the objection from the neighbor at 1001 Grand Avenue that was given to the Board members. She stated that the hours of operation would be different and not in conflict with the surrounding businesses; the required distance from churches and the child day care had been met; and, pending approval of this request, a plan was in place for parking with an accepted agreement for use of the 916 9<sup>th</sup> Street lot. She continued that there was willingness to install a fence to the west to alleviate any privacy concerns. Ms. Boggs mentioned the other restaurants located in the area and compared her establishment to Gilroy’s that recently located on 8<sup>th</sup> Street. Ms. Boggs summarized by stating that Sully’s has been in West Des Moines for over 40 years and had established good relationships with their neighbors.

Jamie Malloy, Studio Melee, 1312 Locust, Des Moines, architect on the project, provided a rendering of the proposed location and discussed the placement of the building. He continued that the area seems like a large site, but significant set-backs are located on all sides. With development of the site, there will be a right-of-way adjustment at Grand and 9<sup>th</sup> Street resulting in the loss of 10 ft to the south and 5 ft to the east. Setbacks are to be measured from these ultimate right-of-way lines. When the building is placed in the center of the property to meet setback requirements, there would be no room left for drive aisles and adequate parking. Several options for parking placement have been investigated and the proposed layout will provide the most spaces on site, while locating the building towards the front to provide a more attractive view from the street and additional separation of the building from the adjacent residential and office properties. To accomplish this, reductions in required setbacks will be required.

Development Coordinator Schemmel commented that there is on street parking available on the west side of 9<sup>th</sup> Street while no parking is allowed on Grand Avenue.

Board Member Blaser asked what were the customary hours of business. Ms. Boggs replied that they are open from 3 pm until 2 am during the week; weekend hours are from noon until 2 am.

Board Member Blaser inquired how she envisioned customers entering the establishment from the over-flow

parking lot. Ms. Boggs responded that customers would have to walk down the sidewalk on 9<sup>th</sup> Street, as there was a fence located on the north side of the property which would prohibit cutting through.

Board Member Blaser asked what fence was being proposed with the owner of the 1001 property owner. Ms. Boggs stated that a 6 ft privacy fence could be erected or whatever would be needed to screen the area.

Board Member Cunningham asked the zoning of the property. Ms. Boggs responded that it had a Neighborhood Commercial designation.

Chairperson Christiansen inquired what would be the beverage to food percentage. Ms. Boggs estimated that there would be 30 to 35 percent food sales.

Antonio (Tony) Colacino, Bradshaw Law Firm, 801 Grand Avenue, Des Moines, spoke on behalf of the owner of the property located at 1001 Grand Avenue situated immediately west of the 904 9<sup>th</sup> Street and 905 Grand Avenue property.

Mr. Colacino stated that the owner objects to approval of the Conditional Use Permit as requested, as well as to each variance requested. It is believed that the development of this site, as proposed, would be grossly over built for this site. Mr. Colacino speculated that this application would not have gotten this far but that the City of West Des Moines wants their existing property as stated by the applicant. Mr. Colacino also mentioned that the application, as stated in the staff report, was for a drinking establishment and not a restaurant. He provided that the neighborhood consists of various churches, as well as an apartment building and a childcare center. He stated that drinking establishments are not an appropriate fit. He also commented on the separate parking lot, and that it would be located across from the childcare center.

Mr. Colacino continued by focusing on the requested variances and that which if allowed would alter the character of the area. He stated that his client was strongly opposed to granting a series of variances for the property, especially the setback variance along Grand Avenue as it would be a 90% reduction from the existing setback requirements. He stated that the requested setback variance of 20 feet along 9<sup>th</sup> street is also extraordinary as it would be a 45% reduction from the existing requirements. Mr. Colacino further noted that the requested parking variance would reduce the existing number of required spaces by more than 40%. He argued that under the City zoning code, the Code of Iowa and Supreme Court case law, the applicant must establish hardship to obtain a variance, which in this case cannot be done.

Mr. Colacino continued that the staff report compared new construction to buildings across the street to the east on 9<sup>th</sup> Street and on Grand Avenue. One building was a cleaners built in 1954 and the other an office building built in 1951. Since that time the road has been widened and has encroached into the properties. Mr. Colacino then made the point that this is not adequate justification to allow a new building to have similar setbacks.

Mr. Colacino expressed that his client had two primary concerns. One, if the setbacks are allowed, his client would be looking out over a building on Grand Avenue. Second, there would not be enough parking to support the requested use. Mr. Colacino mentioned that his client had owned property that was located next to a bar (Wellman's Pub) which created many problems, especially problems due to over-flow parking.

Mr. Colacino summarized by reiterating that the requested variances were extreme. It was felt that granting the variances would impact the value of property in the area and would be detrimental to the public welfare. He stated that the application should be denied.

Penny Bassman, 804 48<sup>th</sup> Street, West Des Moines, stated she was the owner of an 11-unit apartment building located on 9<sup>th</sup> Street north of the subject properties. She described the apartments as decent, all one bedroom apartments which attract mostly single working people. She currently has eleven tenants. She did not think the

setbacks on Grand Avenue and 9<sup>th</sup> Street would affect her tenants but she would not be in favor of a patio to the north of the building as there would be a noise factor. Ms. Bassman did express concern with the parking spots. She has eleven parking spots delineated for her tenants. Four other spots can be accommodated along the driveway to her apartment unless it snows. Ms. Bassman stated that she did not want to stand in the way of progress, but noise, parking, and the patio location were her biggest concerns.

Tom Bernau, 1001 Grand Avenue, West Des Moines stated that the testimony indicated that the parking lot would be subject to a lot-tie agreement. He questioned the 200 ft distance requirement from the daycare to the proposed drinking establishment which he thought would be in violation of City Code. He also noted that he was the previous owner of the property located at 590 Market Street in West Des Moines which was a block up the street from Wellman's, a very successful bar. There was restricted parking associated with Wellmans, but it was still impossible to conduct business along Market Street with the limited parking even with the different hours of operation. He felt that there could be a better location for this proposed business, especially since this is not an urban area.

Amy Boggs, 110 Grand Avenue, West Des Moines, stated that it was not a valid comparison to the Wellman's roof top patio establishment since there was such a difference in the location (area of town), size, and capacity. She commented that the proposal to use the property at 916 9<sup>th</sup> Street for additional parking was not included in the original request for the conditional use permit, but that she had recently negotiated an agreement to purchase the property and was including the property for use as a parking lot as part of this proposal. She also stated that the proposed building would line up with the building at 1001 Grand Avenue and all the buildings to the east.

Board Member Cunningham commented that he did not understand the setback comparison with the 1001 Grand Avenue building because Grand Avenue curves, giving each building a different setback. Ms. Boggs acknowledged that the setback is different, but stated that when viewed east-to-west, the building fronts would line up. Board Member Cunningham commented that when looking from the street under this proposal, one would see a building on what is now a vacant lot with a significantly different set back from the other buildings.

Board Member Cunningham asked where the patio was to be located. Ms. Boggs informed him that the patio would be located on the west side of the building. If there was concern, it could be located to the east.

Jamie Malloy added that the building will not be on the street, but located about 40 ft off the street. He clarified that because the road curves, there is a very large grass right-of-way with a large distance from the building and sidewalk. Board Member Cunningham commented that with the 40 ft setback, there would be no parking in front. Mr. Malloy stated that this was correct and that there would be no paving in front.

Brenda Jackson, Director of Real-estate working for Mr. Bernau, 1001 Grand Avenue, West Des Moines, stated that the reason for purchasing the 1001 Grand Avenue property was the quiet and serene environment and the many surrounding professional offices. She stated that she has managed several properties over the last ten years and knows that if the proposed business was located right next door, there would be noise, parking, and safety issues.

Chairperson Christiansen then asked for any other questions or comments from the audience and upon hearing none, declared the public hearing closed and asked for staff comments.

Planner Portz provided a current zoning map of the area and pointed out that the neighborhood commercial zoning was depicted in red, the area in blue signified office, and the area in yellow depicted single family residential with residential high density to the north. The Neighborhood Commercial zoning classification requires a minimum lot size of 60,000 sf. Since this property is about 23,000 sf in size, development of the site would necessitate the need for setback variances to provide adequate site circulation and the need to maximize the number of parking spaces on the site.

Mr. Portz continued that staff's recommendation was for the deferral of 14 spaces and a waiver of five spaces. The requirement is for 46 spaces; there are 27 on the proposed site and 14 more spaces could be accommodated on the 916 9<sup>th</sup> Street lot if needed in the future. Mr. Portz explained that this was also a request for a variance from a buffer requirement to allow a fence on the north side of the property. A picture of the existing fence and trees was provided. In addition, the applicant will add additional landscaping as a part of their site plan. He commented that when measuring the distance requirement for a drinking establishment from a church or daycare, it is measured from the drinking establishment building to the church or daycare building. The distance from the church was measured and found to meet the code requirements.

Development Coordinator Schemmel added that staff would be amenable to adding the condition that the applicant secure the property to the north for parking with the restriction that nothing else could be developed on that property. This would ensure that there would be no obstruction if the parking lot was required to be completed at a later date. Staff would also support a requirement for the construction of a fence to the west, if the Board wanted to add this condition.

Board Member Blaser stated that he felt the real crux of the issue was not the approval of the variances, but the request for a Conditional Use Permit to allow a drinking establishment in the neighborhood. This may be the focus as he believed that a hardship had been established to grant the variances in this particular case. He then asked who was the owner of the property to the north that was to be purchased.

Chairperson Christiansen reopened the Public Hearing at 6:38 pm.

Ms. Boggs, 110 Grand Avenue, West Des Moines, provided that the current owner of the property at 904 and 916 9<sup>th</sup> Streets and 905 Grand Avenue is the Iowa Medical Society. Her intent would be to purchase all three properties together. This offer was pending subject to approval of the variances and the Permitted Condition Use Permit.

Chairperson Christiansen reclosed the public hearing and asked for additional discussion or comment.

Chairperson Christiansen inquired if this was the location of the former Corso Pizza and was informed that it was.

Board Member Cunningham asked and was informed that the Board had the discretion to assess the proposed use of the property and its impact on the other businesses and properties in the area.

Chairperson Christiansen asked if the Site Plan would come to the Board of Adjustment as it related to this property. Ms. Schemmel stated that it would come before the Board of Adjustment for review along with the development criteria.

Ms. Schemmel explained that the Neighborhood Commercial designation was the lowest density commercial use. It is intended to provide services for the surrounding neighborhood. Conditional Use Permits are in place for uses that may be appropriate for the zoning district, but have some potential side effects that may be detrimental to the specific site. The Board of Adjustment can make the determination if the use is appropriate for a particular site. The approval of the variances and the Permitted Conditional Use Permit are two separate considerations and require two separate votes. The approval of the variances are not specific to the use of a bar. Ms. Schemmel continued that if the site is developed, it would be difficult to meet setbacks regardless of the use.

Chairperson Christiansen asked if the site was explored enough as it relates to the Permitted Conditional Use Permit for this applicant. Ms. Schemmel responded that the information on the proposed use and intensity have been brought forward for consideration on potential impact to the surrounding neighborhood. Staff is aware of the neighbors' concerns and any specific mitigation measures would be addressed through the site plan process.

There would be another public hearing and the neighbors within a 370 ft radius would be notified.

Chairperson Christiansen asked if in her opinion was this a Permitted Conditional Use for this Neighborhood Commercial designation, and Ms. Schemmel responded that drinking establishments if allowed, are considered Permitted Conditional Uses for those commercial zoning districts.

Director Twedt clarified regarding notice that the property owner for 910 9<sup>th</sup> Street would have been notified, but the eleven apartment residents would not have been notified separately. She continued that if the Board approved this request, a fence to the west could be a condition of approval.

Board Member Blaser commented that there was a reason that the 904 and 905 9<sup>th</sup> Street properties have been sitting empty for a while. He noted that the logical buyer may be the owner of 1001 Grand Avenue, but this has not occurred. He would be supportive of a Permitted Conditional Use Permit as drinking establishments are allowed in this district and there are bars in the vicinity. He did not think the concern raised regarding overlap of working hours between the office use and the drinking establishment was persuasive, but that he did have concern with the reduction in parking spaces. He reiterated that he would be supportive of granting the Permitted Conditional Use Permit subject to the stated concern.

Board Member Cunningham stated that his concern was the opposite. He felt that the proposal fits within the definition of the commercial use, but that there would be a significant impact if this use was allowed since the area is surrounded by office buildings, churches, and a daycare center. If the Board did approve this use, his inclination would be to vote in favor of the variances as this site could not be developed or be successful without the variances.

Chairperson Christiansen reopened the meeting at 6:46 p.m.

Mr. Colacino, 801 Grand Avenue, Des Moines, commented that if the proposal includes the 916 9<sup>th</sup> Street property, does that property need to be rezoned to Neighborhood Commercial, since it has a residential zoning designation. He also was unaware if there was notification that the 916 9<sup>th</sup> Street property was going to be rezoned or be included in the request for the permitted conditional use permit. He felt this question should be considered before moving forward. The Board agreed that this was a fair point to be considered as it was not included as part of the proposal.

Ms. Schemmel stated that, as far as she knew, the noticing boundary was drawn around the original application. She would need to discuss with the City Attorney to determine if there was a need to re-notice. Ms. Schemmel did note that a portion of the parking lots for the adjacent offices are zoned residentially.

Board Member Blaser asked if the 916 9<sup>th</sup> Street would have to be a rezoned to be a part of this project. Ms. Schemmel stated that typical zoning does not allow parking on a separate parcel which is why there is a requirement for a lot tie for this application. Ms. Schemmel will discuss with the City Attorney if tied together, would the zoning have to be changed.

Chairperson Christiansen suggested that this item be continued to allow staff time to obtain additional information in order for the Board to make an informed decision on this item. He asked the applicant if there were any issues if the item was continued.

Ms. Boggs stated that her only issue was the pending property purchase, but that she would request additional time. She again addressed the parking issue. From her perspective, there would be no significant change in parking from what is needed for their current location, and that the additional lot to be purchased may never be needed.



Based on discussion, Ms. Schemmel recommended that the hearing on the Permitted Conditional Use Permit and the variance approvals be continued for two weeks to allow staff to determine the need for a re-noticing regarding the use of 916 9<sup>th</sup> Street for parking.

Chairperson Christiansen then asked for any other questions or comments from the audience and upon hearing none, declared the public hearing item closed.

Permitted Conditional Use Permit & Variances

Moved by Board Member Blaser, seconded by Board Member Celsi, the Board of Adjustment defer this item for two weeks to allow staff and the applicant to work through the noticing issues.

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

Board Member Blaser inquired if the members would be able to attend the next meeting scheduled for June 1, 2016. All board members confirmed that they had no conflicts at this time and would be able to attend.

**Item 4 – New Business**

Board Member Blaser distributed a draft resolution regarding “extraneous conditions of approval” to the Board Members and requested that it be placed as an agenda item for discussion at a future meeting.

**Item 5 – Staff Reports**

Chairperson Christiansen asked for nominations for Chairperson and Vice Chairperson for the coming year.

Moved by Board Member Celsi, seconded by Board Member Pfannkuch, to nominate Board Member Blaser as Chairperson and Board Member Cunningham as Vice Chairperson for the coming year.

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

Board Members Blaser and Cunningham agreed to serve in this capacity.

**Item 6 – Adjournment**

Chairperson Christiansen asked for a motion to adjourn the meeting.

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

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

The meeting adjourned at 7:00 p.m.

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Erik P. Christiansen, Chairperson  
Board of Adjustment

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Kimberly Taylor, Recording Secretary