

CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

Meeting Date: June 1, 2022

ITEM: Chicken Coop (aka 3 Sons) Patio, 5906 Ashworth Road – Approval to establish the use of an existing outdoor patio – David Anders – PC-005598-2022 (Deferred from the May 18, 2022 meeting)

RESOLUTION: Approval of Permitted Conditional Use

Background: The applicant, David Anders, and property owner, Ashworth Plaza Owner Association, request approval of a Permitted Conditional Use for that property located at 5906 Ashworth Road. Specifically, the applicant requests to use the existing outdoor patio associated with the Chicken Coop restaurant to allow patron seating and lunch and dinner service. The applicant proposes to modify the patio area by enclosing it with a 6' fence and landscaping with hours of operation from 11:00 am to 7:00 pm. Mr. Anders estimates 4 or 5 tables, with maybe 20 guests in the patio space.

Staff Review & Comment:

- ***History.*** The City Council approved the site plan for the Ashworth Place shopping center on January 3, 1994 (Case No. SP93-40). The patio space was indicated on the site plan but no improvements or use details were provided, thus the patio use was not approved as part of the site plan approval. In August 1998, the City Council approved the Permitted Conditional Use allowing use of the patio on a trial basis from August 10th to October 31st, 1998, with the following conditions:
 - 1) Back doors of restaurant cannot be propped open
 - 2) Use restricted from 11:00 am to 2:00 pm Monday thru Friday with food service to cease at 1:30 pm.
 - 3) Enclosing the patio with a 6' fence
 - 4) No ingress/egress directly to/from the parking lot other than an emergency exit gate
 - 5) Planting Skyline Honeylocust around the patio and adding soft materials to the walls to help absorb sound
 - 6) No rock bands allowed indoors or outdoors

In the spring of 1999, the approval for the use of the patio was rescinded due to complaints from the neighboring single-family residents that the conditions were not being followed. It does not appear that the patio was fenced, sound dampening materials implemented or the Honeylocust planted.

In 2017, staff had a Pre-application meeting with a representative of Stanbrough Realty Company (owners of the Ashworth Plaza center at that time) exploring the use of the patio. Staff reiterated the use was not approved and a trial use of the patio was rescinded when the restaurant did not abide by the conditions of approval.

In the spring of 2019, the 3 Sons Restaurant opened, with the owner indicating he was unaware of previous issues with patio use. In the summer of 2020, and spring of 2021, noise complaints from the neighbors were received due to unapproved use of the patio. On May 26, 2021, notice to cease use of the patio for any purpose was personally served by the Police to the restaurant.

- Development & Planning Subcommittee: Discussions regarding the possible use of the patio was held with the Development and Planning City Council Subcommittee on July 6, 2020, June 21, 2021, and April 4, 2022. Previous discussions have included arguments for and against use of the patio. At the April 4th meeting, the developer suggested that he is being restricted from using the patio due to issues caused by the previous tenant. Two residents were in attendance and explained their concerns and provided suggestions for improvements that could mitigate many of the previous issues. The Council Members were supportive of Mr. Anders use of rear patio space with conditional approval from Board of Adjustment. Minutes from previous Subcommittee meeting discussions regarding use of the patio are included in this report for informational purposes.
 - Location of the Patio: At a previous Subcommittee meeting, it was suggested that the patio be relocated to the front (north side) of the building. Staff has been in contact with the property owner of Ashworth Plaza, Benjamin Frein, to discuss the possibility; however, at this time, the owner was not in support of the front of the restaurant being used for outdoor seating.
- Neighbor Complaints: As summarized above, this patio has a history of noise and other complaints from the surrounding residential properties. While the majority of the complaints stemmed from use of the patio years ago by the original restaurant establishment, Legends American Grill, issues arose again about this time last year when the applicant started using the patio unaware that use was not approved. Comments and photos from surrounding residents related to use of the patio and general condition of the site are included in this staff report.
- Trial Use of Patio: The applicant is requesting to be allowed to use the patio for lunch and dinner service through the summer. If use of the patio is to be allowed, it is recommended that it be on a trial basis with specific conditions or restrictions and with a clear understanding that the approval can again be rescinded if problems and/or complaints arise. A trial period would give the City and the adjacent property owners, the opportunity to determine if the patio can be used under proper management without affecting the surrounding neighborhood. It is staff's recommendation that upon the expiration of this trial period, the operation of this patio be re-examined to determine whether the permit should be renewed.
- Site Compliance: In response to an adjoining property owner's complaint regarding site conditions and maintenance, Staff evaluated the site for compliance to the approved site plan. Several issues were found. As indicated by the resident, much of the original perimeter landscaping that served as a buffer to the residences has since died, many sections of the perimeter fence have deteriorated and is in need of replacement, trash enclosures need to be constructed, including enclosing of the grease receptacle, and trash and leaves have piled up along the fence. While it is doubtful that there is room to replant all of the landscape shown on the original site plan, Staff does believe there is opportunity to install some vegetation that would assist with the mitigation of issues that have arisen. Additionally, lights on the back of the building need to be adjusted or modified to address glare and spillover lighting beyond the property line. Code compliance has been notified to address the lack of trash enclosures. The property owner has noted that he has already

replaced some portions of the fence bordering the property that was falling apart, and he plans on replacing more of the existing fence this fall. The property owner has stated he would be willing to make the changes to the site that the City deems necessary for the applicant, David Anders, to have use of the patio space. Staff requests the Board provide direction as to which site improvements should be implemented immediately to aid in mitigating the patio use.

- Exterior Improvements: Prior to use of the patio, if allowed, and implementation of any exterior improvements, the applicant will need to submit and receive approval of a Minor Modification permit.
- Public Notice: At the May 18, 2022 Board of Adjustment meeting, the item was deferred for two (2) weeks. No new notices were published for this item for the June 1st, 2022 Board of Adjustment meeting because it was continued to a specific date. However, staff mailed courtesy notices of the impending deferment to the adjacent property owners on May 16, 2022.
- Traffic Analysis Findings: No Traffic Impact Study was required for the proposed use of the patio space.

Recommendation: Approve the Permitted Conditional Use request, subject to the applicant meeting all City Code requirements, and the following conditions of approval:

1. Prior to execution of any exterior modifications, the applicant shall submit and receive approval of a Minor Modification permit. The Minor Modification shall provide details for a six-foot (6') fence to enclose the patio, sound deadening measures to be located on/along the walls within the patio, patio furniture and any landscape vegetation to be implemented. Said improvements shall be constructed prior to the use of the patio.
2. Gates in the patio enclosure fence shall provide for emergency exiting only. Access to and from the patio must come through the restaurant; no direct access to or from the patio is allowed.
3. Use of the patio shall be restricted to the hours of 11:00 am to 7:00 pm weekdays and weekends until October 31st, 2022. Except for staff prepping or cleaning the patio, no individuals shall be on the patio outside of the defined hours. This includes individuals outside for smoking purposes.
4. No amplified sound on the patio shall be allowed. Additionally, no TVs shall be located on the patio or within view of patrons on the patio.
5. The side and rear doors of the restaurant shall remain closed at all times and shall not be propped open.
6. The applicant acknowledging that use of the patio is on a trial basis and the approval may be rescinded at any time should use not abide by the conditions stated herein, or if multiple valid complaints are received.
7. The property owner shall submit and receive approval of a Minor Modification permit detailing site improvements to be made which shall include at a minimum, landscape vegetation to be installed to buffer the commercial center from the adjoining residential, trash and grease receptacle enclosures, and site and building lighting modifications to negate light hotspots and spillover. Lighting modifications shall be made prior to use of the patio. All other site modifications shall be completed within 60-days from the approval of the Minor Modification. Failure to complete improvements by the defined date will result in the applicant losing ability to use the patio until the improvements are made.

Lead Staff Member: Kate Devine	
Approval Meeting Date:	
Board of Adjustment	June 1, 2022
Staff Report Reviews:	
<input checked="" type="checkbox"/> Development Coordinator (or) <input type="checkbox"/> Director <input type="checkbox"/> Legal Department	
Publications (if applicable)	
Published In:	Des Moines Register Community Section
Date(s) Published	5/6/22
Date(s) of Mailed Notices	5/6/22
Council Subcommittee Review (if applicable)	
Subcommittee	Development & Planning
Date Reviewed	4/4/22
Recommendation	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Split <input type="checkbox"/> No Discussion

Prepared by: Kate DeVine, City of West Des Moines Development Services Dept., 515-222-3620
When Recorded, Development Services, City of West Des Moines, PO Box 65320, West Des Moines, IA
Return to: 50265-0320

RESOLUTION NO. BOA-2022-04

A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES, APPROVING A PERMITTED CONDITIONAL USE PERMIT TO ALLOW THE USE OF THE PATIO SPACE LOCATED AT 5906 ASHWORTH ROAD

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, the applicant, David Anders, and property owner, Ashworth Plaza Owners Association, request approval of a Permitted Conditional Use permit for that property located at 5906 Ashworth Road and legally described in attached Exhibit 'B'. The applicant is requesting approval allowing the use of the existing patio space; and

WHEREAS, studies and investigations were made, and staff reports, and recommendations were submitted which is made a part of this record and herein incorporated by reference; and

WHEREAS, the request complies with applicable findings and provisions of Title 9, the Comprehensive Plan, and City Code; and

WHEREAS, on this day this Board of Adjustment held a duly noticed Public Hearing to consider the Permitted Conditional Use permit application.

NOW, THEREFORE, The Board of Adjustment hereby approves the Permitted Conditional Use permit (PC-005598-2022) subject to compliance with all the conditions in the staff report, dated June 1, 2022, including conditions added at the meeting, and attached hereto as Exhibit "A". Violation(s) of any such condition(s) shall be grounds for revocation of the entitlement, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on June 1, 2022.

Michele Stevens, Chairperson
Board of Adjustment

ATTEST:

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Board of Adjustment of the City of West Des Moines, Iowa, at a regular meeting held on June 1, 2022, by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

Recording Secretary

Exhibit A: Conditions of Approval

1. Prior to execution of any exterior modifications, the applicant shall submit and receive approval of a Minor Modification permit. The Minor Modification shall provide details for a six-foot (6') fence to enclose the patio, sound deadening measures to be located on/along the walls within the patio, patio furniture and any landscape vegetation to be implemented. Said improvements shall be constructed prior to the use of the patio.
2. Gates in the patio enclosure fence shall provide for emergency exiting only. Access to and from the patio must come through the restaurant; no direct access to or from the patio is allowed.
3. Use of the patio shall be restricted to the hours of 11:00 am to 7:00 pm weekdays and weekends until October 31st, 2022. Except for staff prepping or cleaning the patio, no individuals shall be on the patio outside of the defined hours. This includes individuals outside for smoking purposes.
4. No amplified sound on the patio shall be allowed. Additionally, no TVs shall be located on the patio or within view of patrons on the patio.
5. The side and rear doors of the restaurant shall remain closed at all times and shall not be propped open.
6. The applicant acknowledging that use of the patio is on a trial basis and the approval may be rescinded at any time should use not abide by the conditions stated herein, or if multiple valid complaints are received.
7. The property owner shall submit and receive approval of a Minor Modification permit detailing site improvements to be made which shall include at a minimum, landscape vegetation to be installed to buffer the commercial center from the adjoining residential, trash and grease receptacle enclosures, and site and building lighting modifications to negate light hotspots and spillover. Lighting modifications shall be made prior to use of the patio. All other site modifications shall be completed within 60-days from the approval of the Minor Modification. Failure to complete improvements by the defined date will result in the applicant losing ability to use the patio until the improvements are made.

Exhibit B: Legal Description

TENNANT SPACE COMMONLY KNOWN AS 5906 ASHWORTH ROAD,
LOCATED WITHIN LOTS 1 AND 2, WENTWORTH PLAZA PLAT 1, OFFICIAL
PLAT NOW IN AND FORMING A PART OF THE CITY OF WEST DES MOINES,
POLK COUNTY, IOWA.

**CITY OF WEST DES MOINES
DEVELOPMENT AND PLANNING
CITY COUNCIL SUBCOMMITTEE MEETING
Zoom Electronic Meeting**

Monday, July 6, 2020

Attending:

Council Member Matt McKinney
Council Member Renee Hardman
City Manager Tom Hadden
Deputy City Manager Jamie Letzring
City Attorney Richard Scieszinski
Development Director Lynne Twedt
Development Coordinator Linda Schemmel
Building Official Rod Van Genderen

Finance Director Tim Stiles
City Engineer Brian Hemesath
Principal Engineer Ben McAlister
Planner Brian Portz
Planner Kara Tragesser
Planner Bryce Johnson
Planner Karen Marren

Guests: General Items:

Scott Hatfield, Plan & Zoning Commission
Kathy Bolten, Business Record
Doug Ernst, Walnut Creek

Guests: Engineering Interns:

Hannah Debruin
Sonja Lunde
Mason Boyer

The meeting of the Development and Planning City Council Subcommittee was called to order at 8:03 AM.

1. 3-Sons Patio: David Anders

Director Twedt informed the committee that the applicant is requesting use of the rear patio space due to social distancing requirements, however there is a history of use of this space being prohibited. She noted that the applicant was not in attendance at the meeting and provided a brief overview of the history of the issue, requesting direction from the committee advising how to proceed. Previous use of the patio at the rear of this retail area was discontinued due to complaints of noise by nearby residents and lack of compliance with permitted use restrictions. City Manager Hadden inserted that the City has received a comment letter already from a neighbor requesting that use of the patio be denied.

Council Member McKinney stated his desire to provide support for all businesses faced with the current pandemic challenges. He questioned how many tables could be used with social distancing. Council Member Hardman agreed, adding that use of the back area of the site would continue to engender neighbor complaints. Director Twedt estimated 3-5 tables would be possible in the rear patio area with social distancing and pointed out that the exterior building walls would reflect sound, regardless of type of fencing which might be added to mitigate. She proposed discussing options with the business owner and the retail strip owner regarding the potential relocation of a patio at the front of the strip center.

Direction: Council Members were supportive of staff discussing options with the property owner and business owner to find a location for outdoor seating which would minimize impact to the adjacent residential area.

**CITY OF WEST DES MOINES
DEVELOPMENT AND PLANNING
CITY COUNCIL SUBCOMMITTEE MEETING
Training Room**

Monday, June 21, 2021

Attending:

Council Member Matt McKinney
Council Member Renee Hardman
City Manager Tom Hadden
Deputy City Manager Jamie Letzring
City Attorney Richard Scieszinski
Development Director Lynne Twedt
Development Coordinator Linda Schemmel
Joe Cory, Public Services Deputy Director

Building Official Rod Van Genderen
Principal Engineer Ben McAlister
Planner Brian Portz
Planner Kara Tragesser
Planner Bryce Johnson
Fire Marshal Mike Whitsell
Brian Hemesath, City Engineer
Eric Petersen, Traffic Engineer

Guests Online:

Brad Lott
Larry Wheeler
Zoom User

Guests In Training Room:

Dave Lavender

The meeting of the Development and Planning City Council Subcommittee was called to order at 8:01 AM.

1. Chicken Coop (aka: 3-Sons) Patio Use: David Anders

Director Twedt provided a summary of the history of construction of this retail area without patio, conditional approval of patio uses on a trial basis, restrictions and recent citation for unauthorized patio use by current owners at the address 5906 Ashworth Road. Neighbors Larry Wheeler and Dave Lavender spoke against any use of rear patio or bar at this location citing proximity to neighbors and history of noise and disturbance to the adjacent residential area. Applicant was not present at the meeting. Council Member McKinney asked if there is an application for use of the patio space. Director Twedt stated that the current owner asked to be placed on the agenda to discuss the possible use. She added that any application for permitted conditional use would go before the Board of Adjustment and the neighbors would be notified as it would be a public hearing. Staff recommend against use of a patio at the rear of the property, with the exception of a possible trial use over the lunch hour only.

Council Member McKinney noted that there was no applicant present, and given staff recommendation and the input from residents, he didn't believe he had the basis to move anything forward. Council Member Hardman concurred, stating without the owner present, and after hearing the public comment, she agreed that she wouldn't want it in her back yard either. She noted that there is a trend to be outdoors and use exterior dining places, and if there was an application to consider for lunch-time dining, that might be considered. Ms. Hardman concluded she did not support evening use of the patio.

Direction: Council Members were not supportive of use of rear patio space without conditional approval from the Board of Adjustment.

**CITY OF WEST DES MOINES
DEVELOPMENT AND PLANNING
CITY COUNCIL SUBCOMMITTEE MEETING
Training Room**

Monday, April 4, 2022

Attending:

Council Member Matt McKinney	Principal Engineer Ben McAlister
Council Member Doug Loots	Planner Kara Tragesser
City Manager Tom Hadden	Fire Marshal Mike Whitsell
Assistant City Attorney Jessica Spoden	City Engineer Brian Hemesath
Development Director Lynne Twedt	
Development Coordinator Linda Schemmel	

Guests:

Item #1 -

Jamie Myers, Destination Homes
Ed Pelds, Pelds Design
Daniel Willrich, Pelds Design
Anthony Paustian, Glen Oaks HOA
Sasi Karuturi, Destination Homes
Tom & Jo Scheller (Online)
Mark Rosenberg (Online)
Unidentified phone number (Online)

Item #2 -

David Anders, 3 Sons LLC
David and Lynn Lavender
Brad Litt

Item #3 -

Abby & Cory Sharp, Sharp Assets LLC

The meeting of the Development and Planning City Council Subcommittee was called to order at 7:30 AM. Council Member Doug Loots was present in the absence of Council Member Renee Hardman. Council Member McKinney brought the meeting to order and announced that the applicant would be allowed to speak first, following by public comment. He announced that he lives in the Glen Oaks area, however in a different part of the development from what was being discussed today.

2. Chicken Coop (aka: 3-Sons) Patio, 5904 Ashworth Road

Director Twedt provided history of the patio use and restrictions at this location, noting this was triggered by an application for a liquor permit with outdoor service. The liquor permit is not an issue, the patio behind The Chicken Coop restaurant has not been allowed to be used due to noise concerns which the neighbors have been dealing with for years. In order to use the patio, Mr. Anders would have to apply for a conditional use permit from the Board of Adjustment. The BOA can deny or put restrictions on the use with approval.

Council Member McKinney stated this had come through two or three times during his tenure.

David Anders informed that he was not aware when he rented the space that he was not allowed to use the patio. He stated whatever happened during the 26 years that Legends occupied the space was before he took over the lease in 2019, and those complaints were before his time. Mr. Anders stated he would like to remodel the patio area and be open from 11 am to 8 pm. He noted that he has several neighbors who are regular customers. He asked the process, to know what he needs to do. Mr. Anders informed that he had come before the subcommittee a couple years ago but withdrew as he was in the process of trying to save his business. He noted that he seems to be the only restaurant without a patio and believes

adding the service would help him make the business successful. Mr. Anders stated he's making an effort to be a good neighbor and noted that a complaint about a basketball hoop that was put up during an absence, which he would have removed if he had known about it.

Assistant City Attorney Jessica Spoden stated that the business has not had an outdoor service privilege during Mr. Ander's ownership. The uniformed officer showed up to the basketball complaint was to address any adult drinking that may have been going on behind the restaurant. She noted that alcohol is a highly regulated industry in the state of Iowa, and if adults were drinking outdoors that would have violated the state permit.'

Mr. Anders stated they've tried hard to manage the outdoor space in the back, and he believes use of the patio may help fix this problem. Ms. Spoden noted that if the use of the patio is approved by the Board of Adjustment, there's no objection for the outdoor privileges to be allowed with the liquor permit.

Council Member McKinney asked for public comment.

David Lavender stated he's lived at 5800 Ashworth Road since 1984. He said noise from the parking lot is an ongoing problem. One problem is the use of the backdoor as a main entrance. He suggested the installation of a solid fence all the way around and changing the door to an emergency exit only. He stated it would help a lot if the back door was not an entrance, this would reduce a lot of the noise.

Mr. Anders stated that the veterinary staff, his own employees, and some regular customers park in the back. He agreed that he would be willing to put in a fence if that would make a difference. He stated he's concerned about the safety of children behind the building due to the pizza delivery drivers.

Mr. Lavender agreed that people might need to park in back, but could walk around the front for access, and this might also reduce the number of children playing in the back. Mrs. Lavender stated you see this at many other restaurants as well.

Brad Litt, 912 58th Street, stated his backyard is directly behind the restaurant. His backyard view is The Chicken Coop. His concern was that the owner of the retail strip mall hasn't done a good job of maintaining the site and has not replaced trees that have died.

Council Member McKinney stated that the fence and addition of trees were two suggestions to mitigate the issues. Mr. Anders agreed. Mr. Litt stated that the fence would not change his view, adding that the exterior lights are a problem, and that there are no noise buffers, which makes it impossible for them to open their second-floor windows. He noted that trash has been an ongoing problem. He stated he hasn't met the owner of the strip mall. Mr. Anders agreed that the trash is an issue. He informed that his business usually closes down by 9 pm during the week.

Mr. Litt commented that he thinks the owner of the strip mall is responsible for the maintenance and replacement of the buffer trees. He stated he brought this up with Legends in 2017, and that even the fence bordering the property is falling apart, and he lacks confidence that there will be any improvement since there hasn't been any in the 20 years he's lived there.

Council Member McKinney asked what the standard is that the city has to adopt or follow. Attorney Spoden responded that for an alcohol license, the owner has to meet the criteria of

having a good moral character, and that Mr. Anders meets the criteria, and is therefore allowed to have the alcohol license for inside the restaurant. Staff are seeking Subcommittee's recommendation regarding use of the patio, which will be provided to the Board of Adjustment. Ms. Spoden noted that this would be another opportunity for concerned residents to speak. Ultimately it would lead to a final decision by the Board of Adjustment. From there the privilege of outdoor liquor service could be added by the City and approved by Council.

Director Twedt inserted that the Board of Adjustment can put whatever restrictions they feel are necessary to allow the use of the patio, or they have the right to deny the use.

Council Member Loots stated he believed there could be a balance to the issue, doing some remodeling with a fence and exit-only. He stated as a business owner he thinks Mr. Anders should do all he can to work with the neighbors. Stopping service at 8PM would probably help.

Council Member McKinney asked what was being asked of the subcommittee today. Director Twedt stated Staff would like to know if there is support for Mr. Anders to request a conditional use permit from the Board of Adjustment, whether for a trial period or restricted hours.

Council Member Loots recommended coming up with a plan that's feasible for the business owner, and work with the neighbors and take it back to the BOA for a trial period.

Mr. Litt asked what obligation the strip mall has to address those concerns. Attorney Spoden advised that he take it to Code Enforcement, Community Compliance which is complaint based, and could review the original landscaping plan that was required by the City to determine if there is something not in compliance and issue a notice and move through that process.

Mr. Litt stated when he moved in, they couldn't even see the strip mall. Council Member McKinney asked if he had provided his contact information and advised moving forward with that.

Council Member McKinney stated if the owner is looking at limiting the hours, maybe there's a balance with the emergency exit to allow this use. Mr. Lavender inserted that limiting the entrance to the backdoor would help a lot.

Council Member Loots thanked Mr. Lavender for bringing a suggestion of a solution with his concern.

Director Twedt asked how many tables and people Mr. Anders thought he would have out on the patio. Mr. Anders estimated 4 or 5 tables, with maybe 20 guests, for approximately 30 days per year, depending on the weather. Service would primarily be during lunch, and then from 4pm – 7pm.

Attorney Spoden cautioned that if the Board of Adjustment places conditions on the approval, and those conditions aren't met, then he could lose the privileges for outdoor service.

Mr. Lavender pointed out that Legends used to have live bands performing inside the restaurant, and he would like a restriction not allowing amplified music or live games, especially anything amplified on the patio. He concluded that his bedroom window is 110 feet from the patio.

Direction: Council Members were supportive of Mr. Anders applying for a conditional use permit and providing fencing with an emergency exit only access out the back side of the building.

From: [larry wheeler](#)
To: [DeVine, Kate](#)
Subject: Fwd: [EXT] 3 Sons Patio Bar Operations
Date: Thursday, May 19, 2022 1:03:47 PM

Hello again. FYI. Here are the questions that I sent to Mayor Trimble on 5/9. As mentioned, one of my questions relates to alcohol being served on the patio and/or taken out by customers to drink on the patio? In the past the City has not allowed any use of alcohol on the patio? Is this still the case? This needs to be addressed and made clear to the Chicken Coop whatever the policy or city code is. Enforcement is critical here. I assume the City still does not allow open containers of alcohol to be taken out of bars or any eating establishments? The Chicken Coop is a sports bar first and a restaurant second, whose advertising mascot is a chicken with a beer mug in its hand.

In the past I have had issues with beer bottles, beer cans, broken liquor bottles, and other garbage thrown over my fence into my backyard. This has been discussed in past city meetings. You may also want to contact other business owners in the strip mall to see what their concerns are as well? Concerns do exist as reported to me by these business owners.

Thanks.

Larry Wheeler

Sent from my iPad

Begin forwarded message:

From: larry wheeler <Larrywheeler1@msn.com>
Date: May 9, 2022 at 8:19:36 PM CDT
To: "Trimble, Russ" <Russ.Trimble@wdm.iowa.gov>
Subject: Re: [EXT] 3 Sons Patio Bar Operations

Russ, I just received the Notice of Public Hearing on the Chicken Coop Sports Bar patio request. I can assure you all the neighbors are totally opposed to the proposed hours even to the point that a law firm may be hired if needed to fight the proposal with injunctions as the proposal stands now. This sounds to me like an all day long patio hour operation to include lunch and dinner till 7PM. When does the so called lunch hour start and end? Same for Dinner? We would be shocked if the 7PM shutdown is enforced at all. They may stop serving at 7PM but people will remain on the patio drinking till who knows when? I do not see management telling paying customers to get off the patio at 7PM. Then there is the issue of music bands inside playing at night with open patio doors.

I believe that serving alcohol or drinking alcoholic beverages on the patio is against city ordinance still? This has been the case in the past. This needs to be addressed at the meeting, not afterwards. The proposed 6 ft fence will not stop the

noise that will be created from the patio. We have 6 ft fences now on our property line and it does nothing to stop the noise. It also creates a driving hazard in back of the strip mall since the patio is in the back with little room for safe driving. I would think the City would have concerns about that, as well as the property owner of the strip mall? Has the strip mall owner been consulted about this patio request? Seems there would be some serious liability issues here for them if a car accident should occur.

I can go on here but won't. The City Council has always taken a very firm anti patio stance on this patio request for years now. I don't see anything different about this request now. We hope the Council's support for our neighborhood will continue. Please forward this to the appropriate Council members and city manager, and perhaps your legal dept. Our voices will be heard at the meeting.

Thank you.

Larry Wheeler
909 59th St
West Des Moines, IA
50266

Sent from my iPad

On Apr 3, 2022, at 3:15 PM, Trimble, Russ
<Russ.Trimble@wdm.iowa.gov> wrote:

Larry,

I received your email and I understand your concerns. Let me ask you a question. Are there hours of operation that you would be able to tolerate if we allowed them to use the patio? for example – maybe 11 AM until 8 PM? I'm just curious if there is some happy medium here. This of course would have to be strictly enforced as well. Please let me know.

Russ

Sent from my iPhone

On Apr 3, 2022, at 1:33 PM, West Des Moines, IA
<webmaster@wdm.iowa.gov> wrote:

Message submitted from the <West Des Moines, IA>
website.

Site Visitor Name: Larry Wheeler
Site Visitor Email: larrywheeler1@msn.com

This is Larry Wheeler at 909 59th St in West Des Moines, just behind 3 Sons Patio Bar In back of the strip mall, less than 50 ft from their patio. I hear on very short notice to the neighbors that 3 Sons has again requested to use their patio bar in back and that there is a meeting planned to discuss this tomorrow. Some of us have jobs that we have to go to so I will not be unable to attend. As I have stated along with all of my neighbors to the former mayor, Steve Gaer, and to all city council members numerous times, all of the neighbors are opposed to any use of the patio bar due to the excessive noise and disruption it would cause in our backyards. Due to poor city zoning planning years ago when the strip mall was built that even past city council members have admitted was terrible, the neighbors have had to put up with sports bar business operations at this address for years now which was placed far too close to our homes, let alone having a patio bar in the back of a strip mall which is totally unnecessary. Last year, 3 Sons had a basketball court set up in back of the patio in the parking lot which needless to say created a public hazard for people driving in back of the building. I filed a complaint on this with the Mayor. As we have seen in the past, patio bar hours are seldom enforced, people are loud and drunk on the patio and show no respect for the neighbors. Customers of the sports bar sit in the back parking lot long after closing and are drinking and throwing their beer cans and beer bottles over the fence and into my backyard and others. They play their car radios late into the night, past 12am. 3 Sons also have live music bands playing late into the night with the patio doors wide open for all neighbors to have to listen to. Police were called. Will not be any different.

Please forward this message to all city council members and others involved in this issue so they understand our position.

Thank you,

Larry Wheeler
Ph. 515-991-1982

From: bradlitt@sbsicwa.com
To: [Development Services Inbox](#)
Cc: [DeVine, Kate](#); [Twedt, Lynne](#); [Trimble, Russ](#)
Subject: [EXT] 3 Son's Patio Bar Operation
Date: Wednesday, May 18, 2022 12:10:30 PM

Quick note to continue to express opposition to 3 Son's Bar Operation request. Neighbors continue to experience noise, trash and general lack of maintenance of the strip mall property bordering our properties. I mentioned at the Development Sub-committee meeting on this topic last month, that the condition of the strip mall fence and the loss of sound and visual barriers (landscaping) along the fence contribute to our issue. I was asked to contact Code Enforcement on this topic...Eric Boike (Code Enforcement) indicated they do not have responsibility for ensuring businesses maintain sound and/or visual landscaping required when the facilities were built to protect boarding neighbors. He referred me back to Lynne Twedt...I sent Lynne a message on 04/24 and have not heard back. I think deterioration of the Landscaping and fencing bordering our properties (which was put in place to shield neighbors from the strip mall) should be addressed before discussion of expanding use of the patio is entertained.

Thanks!

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