

CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

Meeting Date: March 20, 2024

ITEM: 950 Jordan Creek Pkwy Unit 1130, Homegrown Restaurant– Variance of the Sign Code to accommodate an additional thirteen (13) sq ft of wall signage – Kevin Himes – VAR-006345-2024

REQUESTED ACTION: Variance of Maximum allowed sign square footage

Applicant's Request: The applicant, Kevin Himes with Luminous Neon, LLC, on behalf of the property owners, Jordan Creek Associates, LLC and North Meridian Partners, LLC, is requesting a Variance to the maximum allowed wall sign area contained in Title 9 (Zoning), Chapter 18 (Signs), Section 16 (Wall Signs) of City Code to accommodate an additional thirteen (13) square feet of wall signage. City code restricts the amount of signage a building or a tenant can have to one (1) square foot of sign area for every linear foot of building or tenant, frontage facing a street. The applicant is seeking a variance that if approved, would allow for them an additional thirteen (13) square feet of wall signage to install an additional sign on the tenant space.

History: Homegrown is a tenant of The Cunningham (aka 21WDM), a mixed-use building located on the southwest corner of Ashworth Road and Jordan Creek Parkway. The property is located within the Village on Jordan Creek PUD, which was originally adopted in 2021. The PUD does specify that wall signage for a tenant in a multi-tenant building must be located on the wall area of the tenant's location within the building and that signage with the PUD had to comply with all provisions of the City Code.

Staff Review and Comment: Staff would summarize the following key points of interest:

- City Code Requirement as Relates to Request: Code section 9-18-16: Wall Signs, Paragraph C2 states: *Sign Area Allowed: One (1) square foot of sign area is earned for every linear foot of building, or tenant, frontage facing a street when said building is set back a distance of two hundred fifty feet (250') or less from the right-of-way line or back of curb of a private street.*

Based upon the forty-foot (40') width of the tenant space fronting to Jordan Creek Parkway, the maximum area of wall signage allowed for the Homegrown Restaurant is forty (40) square feet. The tenant has one 39.93 square foot of signage already permitted and installed. To display additional signage, the applicant could cover up to 25% of their windows with signage; or they could pull short-term temporary signage permits for the display of additional signage for up to 16 days each year.

City Council Subcommittee: This item was presented to the Development and Planning City Council Subcommittee as an upcoming project only. There was no discussion on the request as the City Council does not have authority over variance requests.

Variance Findings: To grant the variance, all of the following findings must be made, or conditions and limitations, as the Board deems necessary, imposed to allow it to make said findings.

1. That the granting of the variance shall not be contrary to the public interest.
2. That without the granting of the variance, and due to special conditions, a strict application of the zoning regulations as they apply to the subject property will result in an unnecessary hardship. An “unnecessary hardship” exists when:
 - a. The subject property cannot yield a reasonable return from any use or improvement permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to increase the value in the subject property; and
 - b. The plight of the owner is due to unique circumstances not of the owner’s making and not due to the general conditions in the neighborhood; and
 - c. The use or construction to be authorized by the variance will not alter the essential character of the neighborhood.
3. That the spirit of the ordinance shall be observed when the variance is granted; and
4. Substantial justice shall be done as a result of granting the variance.

It is the responsibility of the applicant to prove to the satisfaction of the Board that the above findings can be made. The applicant’s findings to grant the variance and staff’s findings, are included herein for the Board’s consideration in making their decision.

Lead Staff Member: Emani Brinkman

Staff Report Reviews:

<input checked="" type="checkbox"/> Development Coordinator or Director	<input type="checkbox"/> Legal Department
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Publications (if applicable)

Published In:	Des Moines Register Community Section
Date(s) Published	February 22, 2022
Date(s) of Mailed Notices	February 22, 2022

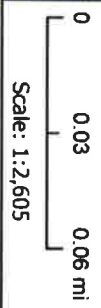
Subject Property

950 Jordan Creek Pkwy

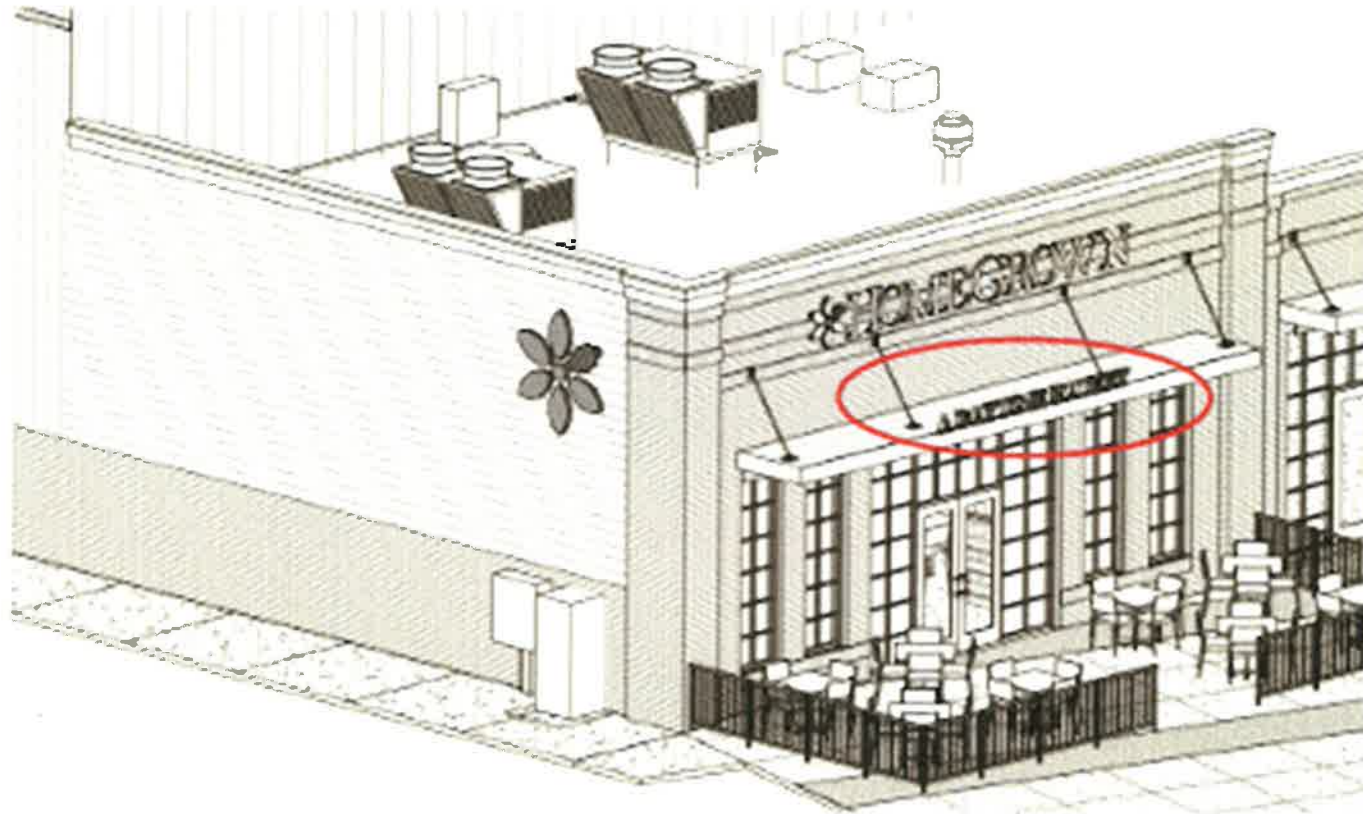


Legend

- Addresses
- City Limits
- Parcels



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Disclaimer: The City of West Des Moines makes no warranties regarding the accuracy or completeness of the data provided herein.
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Applicant's Findings

A variance shall only be granted if all of the following findings are made; or if conditions and limitations, as the Board deems necessary, are imposed to allow it to make said findings. **It shall be the responsibility of the applicant to prove to the satisfaction of the Board that the following findings can be made: Please see Exhibit C for additional Applicant Findings.**

1. That the granting of the variance shall not be contrary to the public interest:
APPLICANT RESPONSE: *Being such a small amount of square footage, we do not believe this addition would be contrary to the public interest. Furthermore, we believe this would be helpful to the public to clearly identify the business as a restaurant and would help to avoid confusion in the parking lot.*

2. That without the granting of the variance, and due to special conditions, a strict application of the zoning regulations as they apply to the subject property will result in an unnecessary hardship. An "unnecessary hardship" exists when:
 - a. The subject property cannot yield a reasonable return from any use or improvement permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to increase the value in the subject property; and
 - b. The plight of the owner is due to unique circumstances not of the owner's making and not due to the general conditions in the neighborhood; and
 - c. The use or construction to be authorized by the variance will not alter the essential character of the neighborhood.**APPLICANT RESPONSE:** *Considering the square footage as the regulations allow, the size of the parking lot and also considering the distance to the street, The owner and architect were forced to produce the business name as large as possible. Without the minimal increase in square footage of sign we believe the public will have difficulties depicting what this business is, therefore, the property may not yield a reasonable return. The plight of the owner is due to unique circumstances, the size of the lineal store frontage, the size of the parking lot and the distance from street to door, are not of the owner's making. The use or construction to be authorized by the variance will not alter the essential character of the neighborhood.*

3. That the spirit of the ordinance shall be observed when the variance is granted; and
APPLICANT RESPONSE: *This addition to the signage area is very minimal and it being constructed of like materials, the design and aesthetics of the addition will match the allowable element above it. It will blend in with the elements around it and at the same time help the owners further describe the product being offered.*

4. Substantial justice shall be done as a result of the granting of the variance.
APPLICANT RESPONSE: *Substantial Justice... The business owner and associates would be very grateful for the granting of this variance and would view that outcome as a fair and reasonable one.*

Staff's Findings

A variance shall only be granted if all of the following findings are made; or if conditions and limitations, as the Board deems necessary, are imposed to allow it to make said findings. **It shall be the responsibility of the applicant to prove to the satisfaction of the Board that the following findings can be made:**

1. That the granting of the variance shall not be contrary to the public interest:
STAFF'S RESPONSE: *The granting of this variance is not contrary to the public interest.*
2. That without the granting of the variance, and due to special conditions, a strict application of the zoning regulations as they apply to the subject property will result in an unnecessary hardship. An "unnecessary hardship" exists when:
 - a. The subject property cannot yield a reasonable return from any use or improvement permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to increase the value in the subject property; and
 - b. The plight of the owner is due to unique circumstances not of the owner's making and not due to the general conditions in the neighborhood; and
 - c. The use or construction to be authorized by the variance will not alter the essential character of the neighborhood.

STAFF'S RESPONSE:

- a. *Staff does not believe an "unnecessary hardship" exists in that the property could still yield a "reasonable return". The property is a mixed-use building and has an established anchor restaurant. Additionally, there are 199 apartment units proposed in the building. Speaking specifically to this unit, the property is already identified by the name of the restaurant and there are other options for added identification through window signage and short-term signage that is available that is believed would remedy the concerns for which the additional wall signage being proposed is to address.*
 - b. *Staff does not believe that the plight of the owner is due to unique circumstances and is due to general conditions in the neighborhood. In fact, the subject site was already constructed and therefore the conditions of visibility to Jordan Creek Parkway, as well as the arrangement of parking and other tenant bays within the site, would have been known to the applicant when they choose the location. These conditions are the same for the other units within the same mixed-use building.*
 - c. *Staff does not believe that by allowing the variance the essential character of the neighborhood would be altered.*
3. That the spirit of the ordinance shall be observed when the variance is granted; and
STAFF'S RESPONSE: *There are numerous situations across the city with similar building to street frontages, as well as situations in which intervening buildings between the street and tenant space exist. The tenants in these developments have followed the applicable sign code provisions and there has been no indication that the lack of signage is causing them any issues with patrons finding them. The purpose of the sign ordinance is to provide a comprehensive and balanced legal framework for the regulation of signs and graphics.*

To maintain the spirit of the ordinance, this framework must be applied equally, unless the Board of Adjustment believes the applicant has been deprived of all beneficial or productive use of the subject property with the application of these regulations. Should the request be approved, there could be a precedent established in the granting of this variance that could be used in the future, thereby altering the spirit of the ordinance.

4. Substantial justice shall be done as a result of the granting of the variance.

STAFF'S RESPONSE: *Since staff believes there is no "hardship," Staff does not believe that there is an injustice to be corrected by the granting of the variance. The amount of allowable wall signage was a known factor that should have been considered when the applicant did their due diligence in considering leasing the space. The size of the existing sign essentially utilizing all of their allowable square footage that was permitted was the choice of the property owner.*

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

RESOLUTION BOA-2024-04

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES,
(APPROVING / DENYING) THE VARIANCE REQUEST TO ALLOW
THIRTEEN (13) SQUARE FEET OF ADDITIONAL WALL FOR THAT
PROPERTY LOCATED AT 950 JORDAN CREEK PKWY**

WHEREAS, pursuant to the provisions of Title 9, Chapter 1 et seq, of the West Des Moines Municipal Code, the property owners, Jordan Creek Associates, LLC and North Meridian Partners, LLC, have requested approval of a Variance from Title 9 (Zoning), Chapter 18 (Signs), Section 16 (Wall Signs), Subsection C (*Sign Area Formula For Wall Signs*), of the wall signage allowance resulting in an additional thirteen (13) square feet of allowed wall signage for that property located at 950 Jordan Creek Road and legally described as:

**LOT 1 AND LOT 3 OF THE VILLAGE ON JORDAN CREEK PARKWAY PLAT 1, AN
OFFICIAL PLAT, WEST DES MOINES, DALLAS COUNTY, IOWA**

AND

**COMMENCING AT THE NORTHEAST CORNER OF SECTION 11 IN TOWNSHIP 78 NORTH,
OF RANGE 26 WEST OF THE 5TH P.M., DALLAS COUNTY, IOWA, THENCE SOUTH 45
FEET; THENCE SOUTHWESTERLY PARALLEL WITH THE NORTH LINE OF SAID
SECTION 11, 580 FEET TO THE PLACE OF BEGINNING; THENCE SOUTH 300 FEET;
THENCE SOUTHWESTERLY PARALLEL WITH THE NORTH LINE OF SAID SECTION 11,
146 FEET; THENCE NORTH 300 FEET; THENCE NORTHEASTERLY PARALLEL WITH THE
NORTH LINE OF SAID SECTION 11, 146 FEET TO THE PLACE OF BEGINNING; EXCEPT
PART TAKEN FOR ROAD.**

AND

COMMENCING AT THE NORTHEAST CORNER OF SECTION 11 IN TOWNSHIP 78 NORTH OF RANGE 26 WEST OF THE 5TH P.M., WEST DES MOINES, DALLAS COUNTY, IOWA, THENCE SOUTH 45 FEET, THENCE SOUTHWESTERLY PARALLEL WITH THE NORTH LINE OF THE SAID SECTION 433 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 300 FEET, THENCE SOUTHWESTERLY PARALLEL WITH THE NORTH LINE OF SAID SECTION, 147 FEET, THENCE NORTH 300 FEET, THENCE NORTHEASTERLY PARALLEL WITH THE NORTH LINE SAID SECTION, 147 FEET TO THE PLACE OF BEGINNING, EXCEPT LAND DEEDED TO THE CITY WEST DES MOINES IN BOOK 2001, PAGE 13369.

AND

THE WEST 150 FEET OF THE EAST 433 FEET OF THE SOUTH 300 FEET OF THE NORTH 345 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 11 IN TOWNSHIP 78 NORTH OF RANGE 26 WEST OF THE 5TH P.M., DALLAS COUNTY, IOWA, EXCEPT THAT PART DEEDED TO THE CITY OF WEST DES MOINES IN WARRANTY DEED IN BOOK 2001, PAGE 16371.

AND

THE SOUTH 150 FEET OF THE NORTH 195 FEET OF THE EAST 283 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 11, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE 5TH P.M., DALLAS COUNTY, IOWA, EXCEPT THAT PART DEEDED TO THE CITY OF WEST DES MOINES IN WARRANTY DEED RECORDED IN BOOK 2001, PAGE 11203 AND QUIT CLAIM DEED RECORDED IN BOOK 2001, PAGE 12444.

AND

SOUTH 150 FEET OF THE NORTH 345 FEET OF THE EAST 283 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 11 IN TOWNSHIP 78 NORTH OF RANGE 26 WEST OF THE 5TH CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA, EXCEPT THE EAST 82.50 FEET THEREOF

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, on March 20, 2024, the Board of Adjustment held a duly noticed public hearing to consider the application for a Variance (VAR-006345-2024); and

WHEREAS, based upon a review of the submitted variance request, the Board of Adjustment finds (**In Favor of Applicant's Findings, In Favor of Staff Findings, or in Favor of the Board's Findings**) _____ as attached at Exhibit B.

NOW, THEREFORE, the Board of Adjustment of the City of West Des Moines does resolve that a Variance Request to allow a variance to allow an additional thirteen (13) square feet of wall signage above the allowed forty (40) square feet of signage is (**approved / denied**).

PASSED AND ADOPTED on March 20, 2024.

Angie Pfannkuch, Chair

ATTEST:

Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Board of Adjustment for the City of West Des Moines, Iowa, at a regular meeting held on March 20, 2024, by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

ATTEST:

Recording Secretary

Exhibit A
Conditions of Approval

- 1. None

Exhibit B
Board of Adjustment Findings

 (316) 683-2611

3/14/2024

Re: HomeGrown Restaurant at The Cunningham

To the Board of Adjustment

We are very excited to be in West Des Moines, The Cunningham Development is a great addition to the continuing growth we've seen in your city. We look forward to bringing our culture of kindness and hospitality to a city where so much of it already exists.

We have been a part of WDSM since 2007 when we opened the Applebee's, and Iowa since 1981. When we started to grow our HomeGrown concept we sought out locations in WDSM and were thrilled when the Cunningham became available to us.

Our overarching intent with this variance is to assist the local public in identifying where we are and who we are.

Our request to add "A Daytime Eatery" would bring it in line with our signage across all of our locations, I have included examples of some of our other restaurants. The "A Daytime Eatery" is to clearly identify our business as a restaurant, and not cause any confusion with local patrons. We've found that people don't always associate the name HomeGrown with a restaurant and have assumed it to be anything from a home goods store to a marijuana dispensary.

When we originally designed the full sign including "A Daytime Eatery" within the allowable square footage the sign was too small to be legible from the road. The Cunningham has no monument signage for its commercial tenants, which makes it the only means of identifying this location. Our suite has a large paved area and a parking lot between the building frontage and Jordan Creek Parkway that means for passing traffic the sign would be very hard to read.

We've designed the additional signage to be attractive and interesting, enhancing the overall appearance of the development rather than detracting from it. Our intent in using channel letters on a raceway was to keep the sign as minimal as possible and setting it on the awning provides some interest and dimensionality to the sign.

We appreciate your time in considering our variance request, we're targeting an open date of Mid/late April, we'd love it if you stopped by.

Best Wishes,

David Edleston
Thrive Restaurant Group

The Cunningham



A Selection of other HomeGrown locations



