

## **Altoona Board of Adjustment Hearing – May 7, 2013 – 6:30 PM**

Members Present – Dale Sikes, John Rullman, Doug Teuber, Lea Morris

Members absent - Robert Hall

Staff Present – John Shaw, Chad Quick, Susi Hoots

Others Present – Carl Fields, Mrs. Fields, Kara Lloyd, Scott Lloyd, Mike Lloyd, Norma Teuber, Bradley Skinner, Marcia Glenn

Chairman Rullman called hearing to order.

#1. Consider an appeal of an administrative decision from Robert and Delores Johnston for the property at 120 1<sup>st</sup> Avenue North, Altoona, Iowa. The property is zoned M-1 (Limited Industrial). The appeal is of a decision by the Zoning Official that a proposed restaurant is not an accessory use and that drive-thru's are not allowed.

Bradley Skinner, Attorney, 160 Adventureland Drive NW, Altoona, Iowa, addressed the Board on behalf of the applicants. Mr. Skinner explained that although Robert Johnston is unable to attend the hearing due to a family emergency, Carl Fields, a tenant, is present as well as Scott, Mike and Carol Lloyd, prospective tenants. Mr. Skinner said they are here regarding the Zoning Administrator's decision of March 12, 2013 that a restaurant and drive-thru are not appropriate accessory uses. Skinner referred to Section 168.14.2F, added to the code in 2006. Skinner explained that Carl Fields had coffee sales and sales of barbeque and has entered a lease with the Lloyds. The Lloyds will be selling coffee produced by Carl; although Carl has sold food at this site, he has not produced the food at this site. Carl's business, Coffee Barn, manufactures coffee from beans. There is also a bookkeeping business, a development company, a storage facility in the subject building. Would this use be supplemental to those other businesses? It does not matter because of 168.14.2F. "Restaurant" would not be listed if it were not allowed. The code does not say you can't; it says the opposite. Mr. Skinner said he does not agree with the Zoning Administrator's decision and that the ordinance says it is OK. Skinner further stated: The question is the drive thru. Skinner said Mr. Johnston will have to add some parking, parking lanes, and other changes to the parking lot and the lot would have to be limited to parking for this type of business. Skinner said Mr. Johnston will have to make changes to meet city requirements and to make a drive-thru feasible. Skinner stated his argument that a drive-thru/drive-up would fall under 165.142A if it can be physically done on the subject property. Typically places to get coffee are drive-up/drive-thru. Skinner stated the decision is not correct and asked the Board to please overturn the decision.

Sikes stated he is recusing himself due to a relationship with the prospective tenants. Sikes offered to address any administrative questions posed to him. There were none. Sikes exited the chamber.

Rullman asked if Carl Fields was serving food when he started his business at this location.

Mr. Fields responded he was selling hot dogs, soup, sandwiches at first.

Mr. Skinner interjected that Carl had a conversation with Building Official Jeff Harden wherein Mr. Harden approved the food service.

Rullman asked if the new tenant would be considered the same as Fields.

Shaw said there is a distinct difference: This is an M District. The September 5, 2006 amendment 168.142F to the ordinance was precipitated by a request from Carl Fields to allow

the Coffee Barn to have limited food sales. Restaurants are not a permitted use. City Council and Staff discussed difference aspects and the City Council decided that manufacturers could sell foods that are manufactured on site. Example: Aunt Vi's manufactures noodles and could sell noodles from their site. The City Council decided to allow food sales in a limited fashion, as an accessory to a business already operating in M-1 zones. Through a memo to the Mayor, the Council directed staff to draft an ordinance amendment that would allow limited food sales but not as a principal use, only as an accessory use. Carl then added food sales. Recently Mr. Johnston talked with Chad Quick about adding a restaurant under a separate lease between Johnston and the Lloyds for the Lloyds to operate a restaurant on this site. However, a restaurant is not a principal permitted use. If the Coffee Barn leaves, the Lloyds have a direct lease with the landlord and would continue to operate, as if it were a direct lease between McDonald's and the landlord.

Shaw continued: As to the drive-up/drive thru, Section F specifically says "on site consumption or carry out" Drive-ups are customary at restaurants when the restaurants are a principal permitted use, not when part of/accessory to a manufacturing use. Shaw acknowledged the wording used may not have been the best, but this is the intent and reasoning of the Council and staff.

Rullman said this may be considered hearsay; how do we know what the City Council intended?

Shaw said that if the Council wanted restaurants in the M-1 District then restaurant would be listed in principal uses. Therefore, the intent is for restaurants to not be principal uses.

Skinner produced a drawing of the space inside the building and said that Mr. Fields leases the whole section of the building and subleases a portion of this section to the Lloyds. The Lloyds do not lease directly from landlord Johnston.

Rullman asked for input from audience. None.

Morris asked: Was barbeque served when it was Coffee Barn? Skinner replied: Yes.

Fields said that he could continue to sell hot dogs at this location himself, but instead he could make money by subleasing to the Lloyds. The Lloyds would do the work and also make money themselves. A coffee shop needs a drive-up/drive-thru. Fields said he got approved to sell hot dogs through the Board of Adjustment. (*scrivener's note: see August 1, 2006 Minutes*)

Morris agreed that a coffee shop benefits from a drive-up/drive-thru.

Shaw pointed out there is some confusion. Shaw said his decision letter of March 12, 2013, as stated in the letter, was based upon Mr. Johnston's representation that Johnston is going to have a separate lease with the Lloyds. Now, for the first time, it is being stated that the Lloyds are subletting from Mr. Fields.

Quick said he was told from the beginning that it was a separate lease between the landlord and the Lloyds and the only relationship with Mr. Fields was the selling of coffee produced by Mr. Fields.

Skinner stated the Lloyds are leasing from Carl Fields; Carl has the lease with the Lloyds as Mr. Johnston cannot lease an area that is already leased to Mr. Fields to a third party/someone else.

Quick posed the question: If Carl Fields stops producing coffee at this site what happens? Skinner stated that: Yes, if Carl stops making coffee then the food sales stop as then there is no accessory use.

Shaw stated: If the lease was through Carl, and the Coffee Barn vacated/left, then the food service would have to vacate. The landlord/property owner's statement that he has a direct lease to the Lloyds was the basis for our letter and position. In light of this new information Shaw suggested staff continue the discussion with Carl Fields and the Lloyds and stated there is no reason for the appeal.

Fields indicated unwillingness for the Board to continue the matter as no one wants another month's delay.

Shaw said if the Lloyds are subletting from Fields it is a different discussion. While he would do a review and consult the city attorney, he felt the earlier decision would be reversed as there is no separate and complete lease between the property owner/landlord and Lloyds.

It was agreed by Shaw and Skinner that the drive-thru remains to be addressed and should be addressed by the Board.

Rullman asked for clarification of the location of the drive-thru window on the east side of the building.

Quick provided a drawing of Mr. Johnston's site plan proposal, which has not been approved or accepted by the city. The proposal would close off an existing overhead door, relocate a pedestrian door, and reconfigure parking.

Skinner pointed out that there are two issues: The Board of Adjustment is being asked to allow a drive-thru but not the actual feasibility of a drive-thru. Shaw concurred that the design elements are not the purview of the Board of Adjustment.

Morris asked if the M-1 District Regulations Chapter 168 states there can or cannot be a drive-thru. Shaw responded that the permitted accessory use does not say "drive-up" or "drive-thru" and only says "for consumption on site or carryout". Other districts that do allow restaurants as principal uses do not limit or mention drive-ups or drive-thru.

Skinner pointed out that no definition of "drive-thru" appears.

Teuber moved to approve the allowance of a drive-thru. Seconded by Rullman. Vote: Yes: Teuber, Rullman. No: Morris.

Sikes returned to the chamber.

#2. Consider a request for a conditional use permit from Jerry Glenn to operate a home business at 503 1<sup>st</sup> Avenue South, Altoona. The permit would allow Mr. Glenn to operate a computer service and repair business in his home.

Marcia Glenn, 503 1<sup>st</sup> Avenue South, Altoona, Iowa, addressed the Board by saying Jerry Glenn is unable to attend as he is recovering from surgery. Mrs. Glenn explained that Jerry Glenn is handicapped and cannot work outside of home. He works on computers for income and for something to do. Mrs. Glenn further stated that they own one vehicle. Customers drop off and pick up the computers; however, if that is a problem, she would be willing to pick up the computers.

Rullman asked if Jerry Glenn can operate a vehicle. Mrs. Glenn responded that he cannot at this time.

Rullman asked how many people reside at this house. Mrs. Glenn said there are six people and there are always four cars there, although one recently was parked across the street.

Teuber asked how many computers are being worked on at a time. Mrs. Glenn said normally one at a time.

Teuber asked how many computers are worked on in a week. Mrs. Glenn responded two or three, depending on what is needed. Also that Jerry has good days and bad days.

Rullman asked if Jerry Glenn's condition will get better. Mrs. Glenn said no.

Rullman pointed out there is a roofing business to the south and there is a business across the street.

Sikes asked why this home occupation was not approved based upon Ordinance Section 167.15.2.

Shaw explained that staff was not initially apprised of Jerry's handicapped homebound status.

Sikes asked for the ordinance section that mentions traffic.

Shaw said staff is very limited as to what staff can approve and anything else has to come before the Board of Adjustment. 167.15.2C includes language that the occupation will not increase the number of average daily auto trips generated by the residence. Every home occupation is different and unique.

Teuber said there could be no heavy traffic generated if Jerry is only working on one or two computers a week.

Sikes stated the traffic due to this business would not be statistically increased.

Sikes moved to approve the conditional use permit. Seconded by Teuber. Vote: Yes – Sikes, Teuber, Morris, Rullman. No – None.

3. Approve minutes of the April 2, 2013 hearing.

Sikes moved to approve the minutes as presented. Seconded by Morris. Vote: Yes – Sikes, Morris, Teuber, Rullman. No – None.

Next hearing scheduled for Tuesday, June 4, 2013 at 6:30 p.m.

Hearing Adjourned at 7:34 p.m.

Respectfully submitted,

Susi Hoots

Community Services Administrative Assistant