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REVISED

## ZONING BOARD OF ADJUSTMENT

Monday, October 12, 2015 @ 3:00 PM  
Third Floor Council Chamber  
101 1<sup>st</sup> Street SE, Cedar Rapids IA 52401

### DECISION AND ORDER

**Members Present:** Chair Todd Barker, Vice-Chair Bill Vernon, Sue Lowder,  
Nancylee Ziese and Jim Vancura

**Staff Present:** Joe Mailander, Vern Zakostelecky, Ruth Fuessley, Dave Houg  
Kevin Ciabatti and Patricia A Pfiffner

**Others Present:** Justin Johnson, Wilkus Architects, David Cleary, Thang Neuyen  
Dustin L Benish, Howard Strobel, Kyle Slater, Uriah Mead & Debra Viers,

#### NEW BUSINESS

Chair Todd Barker called the October 12, 2015 regular Board of Adjustment meeting to order at 3:00 PM. Attendance taken and a quorum declared. The Board of Adjustment is a Quasi-Judicial Board created by the City of Cedar Rapids. The Board is empowered to vary the regulations of the Zoning Ordinance in harmony with its general purpose and intent where the Board makes Finding of Fact that there are practical difficulties or unnecessary hardships in the way of carrying out the literal provisions of the Ordinance.

This Board reviews Conditional Use requests. When considering a Conditional Use, the Board will keep in mind the following: Is the requested use consistent with the intent and purpose of the Ordinance and with the Future Land Use policy plan; will the use have a substantial adverse effect upon adjacent property and the character of the neighborhood; and will the proposed use be compatible with the immediate neighborhood. This Board also reviews Variance requests. A Variance request should only be granted if the Petitioner establishes that an unnecessary hardship will result if the Zoning regulations are enforced. There are seven criteria for actions on a Variance which were to be addressed in your application. To review they are: Unique Circumstances, Not exclusively for financial gain, Hardship not self-created, Substantial rights denied, not special privilege, not detrimental and No other remedy. A general rule of thumb is that a Variance should prevent a hardship, not grant a special privilege not available to other landowners in similar situation.

Typically "Unnecessary Hardship" means: The land in question cannot yield a reasonable return if used only for the purpose allowed in that zone; the issue in question is due to unique circumstances and not to the central

conditions of the neighborhood; the hardship must not be self-created; and the use authorized by the Variance will not alter the essential character of the locality.

We are an independent volunteer Board of citizens appointed by the Mayor and approved by the City Council. We are not part of the City Administration. We are governed by both City and State Codes and Ordinances. The Board is made up of five Board members. The Chair cannot make a motion but has a vote. There must be three (3) affirmative votes to pass. No motion made by the Board will be the same as a denial. Today we have 5 members present.

As a Board of the City, we welcome all testimony. We make our decisions based on the facts and evidence allowed under City Code, presented at this open meeting. While your case is being read by our Secretary we ask that the Petitioner comes forward so your testimony can be heard and recorded. Please give your name and address for the record. You will then be able to present your case. If the proceedings become lengthy, we may ask that testimony be focused on the new facts or evidence not already presented. We will then ask for any objectors. At that time objectors will come forward, state name and address for the record, and then state your objections. The Board will then give the City Staff an opportunity to present information for the case. I will then call for any Board questions or any Board discussion. Final summaries and additional comments may then take place. Based on a motion and a second the Chair will then call for a vote. If your Variance is approved, please understand that you may still have to comply with other regulations and codes, such as applicable Building Codes, to work within. Please visit with the Building Services Department Official for any clarifications. Today there are 5 Board Members present. We do have a quorum. Bill Vernon moved to approve the September 14, 2015 Board of Adjustment minutes, seconded by Sue Lowder, motion carried.

**Request to Table, so moved.**

**Item VII: V68-022102-2015: 9900 6<sup>th</sup> Street SW (Variance)**

Consideration of a Variance for Reduced Setback Front Yard Landscape, Reduced Replacement Trees in an I 1 Light Industrial Zone District as requested by Daniel Feuerbach (Titleholder). *Case Manager: Dave Houg*

**Request to Table, so moved.**

**Item IX: V50-021332-2015: 909 Hull Avenue SE (Variance)**

Consideration of a Variance for a "Time Extension to Maintain a Detached Accessory Structure" stand-alone garage) beyond 120 days as required per 32.04.010.C1. Requesting additional 24 months in an R-3D Two Family Residence Zone District by (Titleholder) Curtis L Belden. *Case Manager: Ruth A Fuessley*

**COND-021486-2015:** A Public Hearing regarding an application submitted by (*Petitioner*) Chipotle Mexican Grill, Inc., for Edgewood Partners, LLC (Titleholder) whose address is 500 1<sup>st</sup> Avenue NE, Suite 301, hereby petitions the Board of Adjustment to authorize the issuance of a Certificate of Occupancy for a Conditional Use, which is listed and described as an "Outdoor Service Area" in Subsection 32.04.020 of the Municipal Code, and which is to be located upon the premises at 2360 Edgewood Road SW, Suite 110 Cedar Rapids, IA located in the C-2 Zone District, under the authority granted to the Board of Adjustment by Section 32.02.030 of said Municipal Code.

**Disposition:** By a vote of 5-0 the Board of Adjustment approved COND-021486-2015 an application submitted by (*Petitioner*) Chipotle Mexican Grill, Inc., for Edgewood Partners, LLC (Titleholder) whose address is 500 1<sup>st</sup> Avenue NE, Suite 301, hereby petitions the Board of Adjustment to authorize the issuance of a Certificate of Occupancy for a Conditional Use listed and described as an "Outdoor Service Area" located upon the premises at 2360 Edgewood Road SW, Suite 110 Cedar Rapids, IA IN A C-2 Zone District. Following discussion Nancy Lee Ziese moved for approval subject to stated conditions. Bill Vernon seconded, motion approved unanimously. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that COND021486-2015 is hereby approved subject to stated conditions:

1. The current project is not complete, fencing and a gate must still be installed. The gate must meet all Fire Department regulations related to entry/egress points. The gate shall be used only as an

emergency entry/egress route unless the beer garden is staffed continually during normal business hours.

2. The outdoor service area must have fencing. The fencing requirements, for an outdoor service area with limited staffing, must be of sufficient height to deter the passing of alcoholic beverages over the top of the fence. The fence must also be designed in such a manner as to prohibit the passing of alcoholic beverages through it. The fencing requirements, for an outdoor service area that is staffed full time during normal business hours, can vary some from the above requirements. For those outdoor service areas a specific fence design must be submitted and it will be evaluated on a case-by-case basis.
3. The Police Department shall re-inspect the outdoor service area prior to the issuance of a Certificate of Occupancy.

**V51-021395-2015:** A Public Hearing regarding an application submitted by (*Petitioner*) David Cleary for Matthew J Shea hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new 9 feet by 36 feet single story addition – (attached garage with 2 feet overhang) to an existing single family dwelling that would be as close as 4 feet from the interior side property line in lieu of the minimum required 5 feet setback and the overhang would be as close as 2 feet in lieu of the minimum required 3 feet setback on the property at 916 Norwood Drive SE, R-3 Single Family Residence Zone District.

**Disposition:** By a vote of 5-0 the Board of Adjustment approved V51-021395-2015 an application submitted by (*Petitioner*) David Cleary for Matthew J Shea requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new 9 feet by 36 feet single story addition – (attached garage) that would be as close as 4 feet from the interior side property line in lieu of the minimum required 5 feet setback and the overhang would be as close as 2 feet in lieu of the minimum required 3 feet setback on the property at 916 Norwood Drive SE, R-3 Single Family Residence Zone District. Following discussion Nancy Lee Ziese moved for approval citing not detrimental. Bill Vernon seconded, motion approved unanimously. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V51-021395-2015 is hereby approved as written.

**V63-021963-2015:** A Public Hearing regarding an application submitted by (*Petitioner*) Thang Neuyen requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new 4 by 12 foot addition (covered porch with up to 2 foot overhang) to the front of an existing single family dwelling is hereby denied because the location of the proposed structure will not comply with provisions of the Municipal Code on the property at 3141 Emerald Avenue SE, R-3 Single Family Residence Zone District.

**Disposition:** By a vote of 5-0 the Board of Adjustment approved V63-021963-2015 an application submitted by (*Petitioner*) Thang Neuyen requesting that the Board of Adjustment authorizes the issuance of a Building Permit to construct a new 4 by 12 foot addition (covered porch with up to 2 foot overhang) to the front of an existing single family dwelling is hereby denied because the location of the proposed structure will not comply with provisions of the Municipal Code on the property at 3141 Emerald Avenue SE, R-3 Single Family Residence Zone District. Following discussion Bill Vernon moved for approval citing unique circumstances. Sue Lowder seconded, motion carried unanimously. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V63-021963-2015 is hereby approved as written.

**V64-022027-2015:** A Public Hearing regarding an application submitted by (*Petitioners*) Dustin L Benish and Tiffany K Duncan hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new 10 feet by 35 feet single story carport addition when combined with all detached accessory structures on the lot would have an aggregate 1,336 square feet in lieu of the maximum 900 square feet permitted and be constructed of material different from the primary structure, providing a metal roof in lieu of asphalt shingles currently on the primary structure/dwelling on property located at 5730 Colorado Drive SW, in an R-2 Single Family Residence Zone District.

**Disposition:** By a vote of 4-1 the Board of Adjustment approved V64-022027-2015 an application submitted by (*Petitioner*) Dustin L Benish and Tiffany K Duncan hereby requesting that the Board of Adjustment authorize the

issuance of a Building Permit to construct a new 10 feet by 35 feet single story carport addition when combined with all detached accessory structures on the lot would have an aggregate 1,336 square feet in lieu of the maximum 900 square feet permitted and be constructed of material different from the primary structure, providing a metal roof in lieu of asphalt shingles currently on the primary structure/dwelling on property located at 5730 Colorado Drive SW, in an R-2 Single Family Residence Zone District. Following discussion Sue Lowder for approval citing not detrimental. Nancylee Ziese seconded, motion carried by split vote 4-1. Bill Vernon opposed. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V64-022027-2015 is hereby approved as written.

**V65-022066-2015:** A Public Hearing regarding an application submitted by (*Petitioners*) Howard W & Barbara J Strobel hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new open deck addition that would be as close as 12 feet from the corner side property line in lieu of the minimum required 15 feet corner side yard setback on the property at 1926 Coldstream Avenue NE, R-2 Single Family Residence Zone District.

**Disposition:** By a vote of 5-0 the Board of Adjustment approved V65-022066-2015 an application submitted by (*Petitioners*) Howard W & Barbara J Strobel hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new open deck addition that would be as close as 12 feet from the corner side property line in lieu of the minimum required 15 feet corner side yard setback on the property at 1926 Coldstream Avenue NE, R-2 Single Family Residence Zone District. Following discussion, Nancylee Ziese moved for approval citing not detrimental. Bill Vernon seconded, motion carried unanimously. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V65-022066-2015 is hereby approved as written.

**V67-022079-2015:** A Public Hearing regarding an application submitted by (*Petitioner*) Kyle Slater hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new single story dwelling with two-stall attached accessory structure (residential garage with up to 1 foot overhang including the gutters) that would be 9 feet from the corner side property line (North elevation) in lieu of the minimum 15 feet corner side yard setback required on the property at 2112 Stone Ridge Drive SW, R-3 Single Family Residence Zone District.

**Disposition:** By a vote of 5-0 the Board of Adjustment approved V67-022079-2015 an application submitted by (*Petitioner*) Kyle Slater hereby requesting that the Board of Adjustment authorizes the issuance of a Building Permit to construct a new single story dwelling with two-stall attached accessory structure (residential garage with up to 1 foot overhang including the gutters) that would be 9 feet from the corner side property line (North elevation) in lieu of the minimum 15 feet corner side yard setback required on the property at 2112 Stone Ridge Drive SW, R-3 Single Family Residence Zone District. Following discussion Sue Lowder moved for approval citing unique circumstances. Bill Vernon seconded, motion carried unanimously. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V67-022079-2015 is hereby approved as written.

**V40-020385-2015:** A Public Hearing regarding an application submitted by (*Petitioner*) Debra Viers and Uriah Mead hereby requesting that the Board of Adjustment authorizes the issuance of a Building Permit to maintain an existing 7 by 16 feet open deck that is 0 inches from the interior side property line in lieu of the minimum required 5 feet single interior side yard setback on the property at 1006 12<sup>th</sup> Street NE, R-3 Single Family Residence Zone District.

**Disposition:** By a vote of 5-0 the Board of Adjustment approved V40-020385-2015 an application submitted by (*Petitioner*) Debra Viers and Uriah Mead hereby requesting that the Board of Adjustment authorizes the issuance of a Building Permit to maintain an existing 7 by 16 feet open deck that is 0 inches from the interior side property line in lieu of the minimum required 5 feet single interior side yard setback on the property at 1006 12<sup>th</sup> Street NE, R-3 Single Family Residence Zone District. Following discussion Bill Vernon moved for approval subject to conditions. Sue Lowder seconded, motion carried unanimously. Therefore, be it resolved by the Board of Adjustment of the City of Cedar Rapids, Iowa that V40-020385-2015 is hereby approved subject to conditions:

1. Not to encroach over property line .
2. The deck shall be in compliance with all applicable building codes and setbacks within 30 days of the Boards decision (2015 construction season).
3. The deck shall remain open, not covered or enclosed and not for open storage purposes.

**Old Business**

Discussion pertaining to a Petitioner not in attendance the month their respective docket is on the Board of Adjustment Agenda. Following discussion, it was affirmed Petitioner(s) are at risk if they fail to appear. The Board will make decision based on the specific situation/circumstance. The docket will be tabled or denied. If denied, procedures for a Successful Application to be followed.

Motion to adjourn at 4:25 PM, motion carried.  
Prepared by Patricia A Pfiffner, Recording Secretary