

MARSHALLTOWN

— I O W A —

BOARD OF ADJUSTMENT

Notice of Public Meeting

Tuesday, April 16, 2019 at 5:00 PM

Marshalltown City Council Chambers
10 W. State Street, Marshalltown, IA 50158

1. Call To Order & Roll Call
Danielson
Engle
Schulze
Thurston
Wenner
2. Selection Of Chair And Vice-Chair For 2019
3. PUBLIC HEARING & VARIANCE AMENDMENT: 1803 S. Center Street
Public Hearing: Written or verbal comments may be presented to the Board during the public hearing. Please state your name and address for the record.

Documents:

[041619_1803 S CENTER ST_MEMO.PDF](#)
[VARIANCE_1803_S_CENTER_ST_041619.PDF](#)

2019 Tentative Meeting Schedule

May 21, 2019 September 17, 2019

June 18, 2019 October 15, 2019

July 16, 2019 November 19, 2019

August 20, 2019 December 17, 2019

MARSHALLTOWN

I O W A

TO: Board of Adjustment

FROM: Michelle Spohnheimer, Housing & Community Development Director

DATE: April 16, 2019 – Meeting Date

VARIANCE AMENDMENT request for 1803 S. Center Street – Justin Hazen & Tyler Olson

An application for a variance amendment has been received from the owners of the property at 1803 S. Center Street. The request is to allow for an extension to the hours of operation to 10:00 PM. A variance was previously approved by the Board of Adjustment on May 15, 2018, which included a closing time of 9:00 PM.

Zone:	R-2, low Density Residential
Use:	Commercial
Comprehensive Plan:	Mixed Use

Zoning Ordinance - Chapter 34 Section 3.

3. Variations: To grant a variation in the following instances:

- a) In the yard requirements of any district where there are unusual or practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, topographical or other conditions provided such variations will not seriously affect any adjoining property or the general welfare.
- b) In the determination that a strict application of the terms of this Ordinance relating to the construction, or alterations of building or other structures, or use of land will impose upon the property owner unusual and practical difficulties or particular hardship.
- c) The following are variance review guidelines:
 - i. A variance is not the appropriate remedy for a general condition.
 - ii. Self-inflicted hardships are not grounds for a variance.
 - iii. Personal hardships are not grounds for a variance. The hardship must relate to the physical character of the property.
 - iv. Economic conditions are not grounds for a variance (solely).
 - v. Hardships must be severe. A variation from the strict application of the terms of this Ordinance shall be in harmony with its general purpose and intent, and the Board shall be satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship.
 - vi. If granted, variance must not adversely affect the neighborhood.
 - vii. All applicants must be treated fairly.
 - viii. Substantial justice will be done with the grant of the variance.
- d) In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance.

Recommendation: The Board of Adjustment may consider the amendment request or place conditions on the application as determined to be necessary.

Date Submitted & Fee Paid: 3/26/19

Hearing Date: 4/16/19

Variance Application Form

36 N. Center Street, Marshalltown, IA 50158 Ph: 641-754-5756 Fax: 641-754-5742
www.marshalltown-ia.gov

All items listed must be submitted with this application:

Failure to complete and submit all the required materials as a part of this application will result in a delay in accepting your application until it is complete.

X **A site plan, drawn in ink and to scale, which clearly shows the variance being sought. This site plan shall not be larger than 11" X 17." And must include:**

- Dimensioned property lines indicating any easements;
- Location & identification of adjacent streets and alleys;
- Location and size of all existing and proposed buildings and structures (include distances to all property lines and distances between buildings and structures.);
- Dimensioned driveways and parking areas; and
- Any other pertinent information necessary to fully understand the need for a variance.

 Site photographs showing all views of the property, including any special features such as topography and existing and adjacent structures. **Please note:** Materials submitted with the application or presented as evidence during the public hearing will not be returned and must be kept as a part of the public record.

 Completion of all of the following questions included in this application.

X **Legal description of the property.** The property owner should have a copy of the legal description. If not, owners may obtain a copy of the recorded deed, which contains the legal description, from the Marshall County Recorder's Office for a fee.

X **Application fee.** A fee of **\$150 for owner-occupied residential properties** and a fee of **\$200 for any other property** is required payable to "City of Marshalltown." The fee must be paid when the application is submitted to the Housing Department.

Please type or print legibly in ink.

Property Address: 1803 S. Center St, Marshalltown IA 50158	
Owner: Justin Hazen and Tyler Olson	
Mailing Address: 2027 125th St., Liscomb IA 50148	
Phone: 641-485-8508	Fax:
Email Address: justinhazen101@gmail.com	
Owner's Agent (if applicable): Kevin R. Hitchins	
Agent Phone: 641-752-4507	Agent Fax: 641-752-5179

All of the following questions must be answered. The board will use this information to review your request. Additional information may be attached if necessary. Contact the Housing & Community Development Director at 641-754-5756 with any questions.

The applicant makes the following request:

The variance is a modification of the existing variance allowing for the operation of the property as an ice cream shop similar to the prior operation. The modification is that the existing variance allows operation until 9pm. Owners wish to operate until 10pm.

Please state your hardship.

Hardship same as original application indicating the property is not good for residential development. Zoning was changed to residential after this ice cream shop was built. The property temporarily ceased operating as an ice cream shop and therefore required a variance to resume.

In order to grant a variance, the Board of Adjustment must make a finding of unnecessary hardship. The hardship must be related to the physical aspects of the property and not a personal hardship. The granting of a variance should not merely serve as a convenience to the applicant. **To support a finding of unnecessary hardship, the board must find, based upon your evidence, that all of the following are met:**

1. **The land in question cannot yield a reasonable return if used only for a purpose allowed in the district.** State how you will lose all beneficial use and/or enjoyment of the property if the variance is not granted. You may include supporting evidence from a professional appraiser, real estate professional, or other professional. The Board may require documentation of loss of value in order to grant this variance.

The property is on the corner of two busy streets. It is not desirable for it zoned use residential. It has little or no value unless a variance is used allowing commercial operation.

2. **This variance is required because of the unique circumstances of this property and not the general conditions of the neighborhood.** The applicant must show that physical circumstances (such as an odd-shaped lot or difficult topography) on the property are unique to this property and unlike other properties in the vicinity. Also, the hardship should not be self-inflicted.

the lot location is the hardship of this lot if it were only allowed to have residential use. It is not suited for residential , but more more so for commercial use.

3. **The proposal will not alter the present character of the area or seriously affect any adjoining property.** The applicant must show that the proposal is compatible with the character of the surrounding area.

No significant changes will be made to the existing structure

4. **The variance will not be in contrary to the public interest.** The applicant must present information to indicate the variance will not impair an adequate supply of light and air to adjacent property, will not unreasonably increase the congestion in public streets or endanger public safety, nor will it devalue nearby property.

No issue here as the property will remain as it has for many years.

5. **The general intent and purpose of the Zoning Ordinance is protected.** A variance must be consistent with the intent of the Zoning Ordinance and the Comprehensive Plan. Is there another option which you could pursue that would not require a variance? If alternatives exist which do not require a variance, the proposal would not be consistent with the intent of the Zoning Ordinance and Comprehensive Plan.

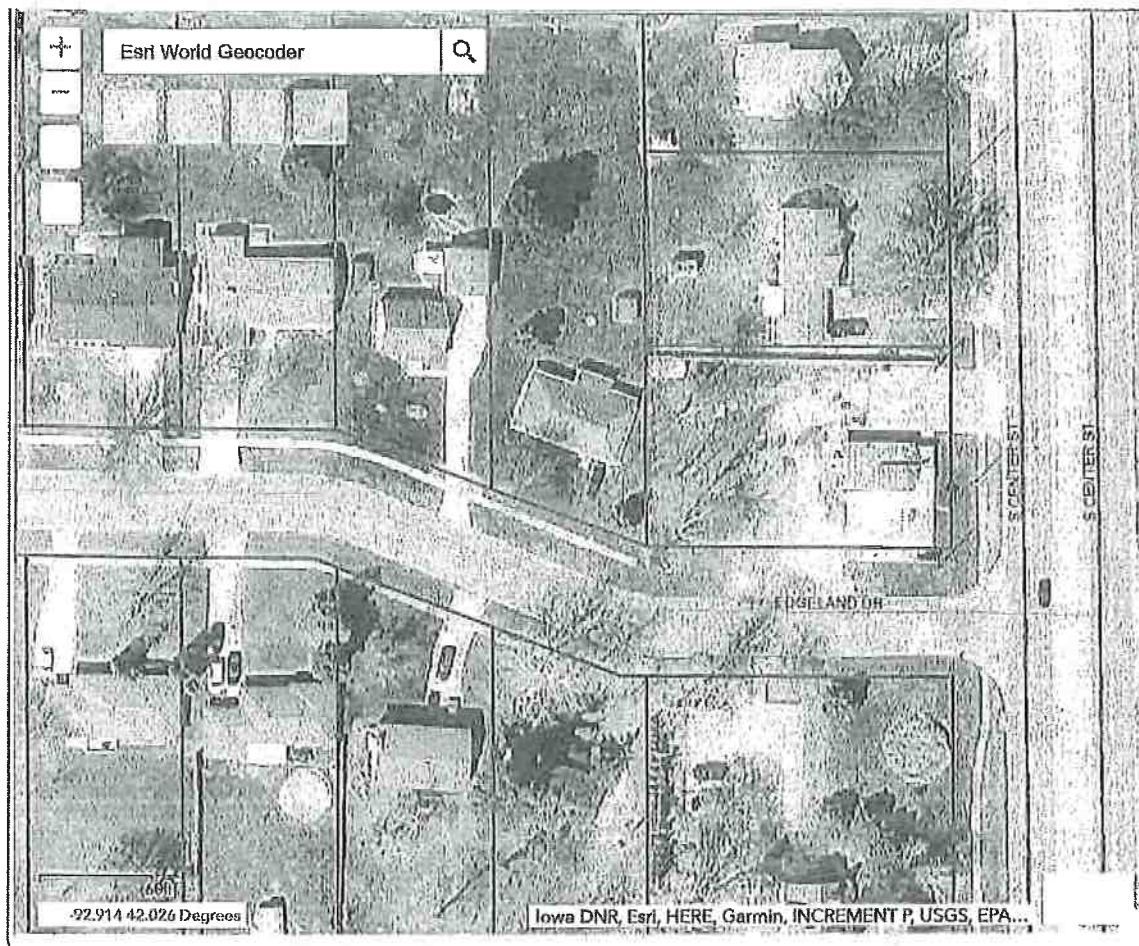
None

Additional Comments and Information:

Attach additional information as necessary.

As evidenced by the signature(s) below, I (we) certify that I (we) have been denied a building/zoning permit, that I (we) have submitted all the required information to appeal for a variance, and that said information is factual.

Owner Signature:	Date:
-OR- Agent Signature: 	Date: 3/26/19



Copyright © 2009-2015, DEVNET, Inc. All rights reserved.
wEdge version 3.1
Data updated 2018/04/20

Legal description to 1803 S. Center St., Marshalltown IA 50158

Lot 2 of Lot 1 of Lot 1 of Lot 5, except the South 1 foot thereof, and Lot 3 of Lot 1 of Lot 5, all in the subdivision of the Northeast Quarter of the Southwest Quarter of Section 2 Township 83 North, Range 18 West of the 5th P.M., Marshall County, Iowa, subject to easements and right of ways of record, also known as 1803 South Center Street, Marshalltown, Iowa 50158.

Tax Parcel ID# 11-02-327-026