1. Board Of Adjustment Packet

    Documents:

        MEMO - ITEM 2.PDF
        VARIANCE APPLICATION - ITEM 3.PDF
        BOARD OF ADJUSTMENT AGENDA JUNE 3, 2014 - ITEM 1.PDF

Memorandum

To: Board of Adjustment

From: Stephen Troskey – City Planner

Date: October 23, 2017

Re: **1803 South Center Street**

Tasty Freeze has been closed for over a year and seeks to reopen. Because it has been closed for longer than six months the property must revert to the underlying zoning district where restaurants are not allowed; R2 Low Density Residential.

Rather than applying to rezone the property the owners seeks to apply for a use variance. In consulting with our attorney and Iowa State University land-use law experts we have realized this situation is ideal for a use variance, which is allowed under current code. What makes this situation unique compared to other non-confirming uses is that the structure predates most of the houses in the area, the use, in our opinion, would not be detrimental to the surrounding neighborhood, it is across the street from a Regional Commercial zoning district, and because if the Tasty Freeze were shut down the variance would cease. Rezoning the property would result in that property allowing any use we permit in commercial districts, such as car dealerships, retail, bar, or other high-impact uses.

A use variance should be used and approved as infrequently as possible but because of the criteria listed above, we feel it is appropriate to allow Tasty Freeze to apply for a use variance.

I can be reached at stroskey@ci.marshalltown.ia.us or 641-752-3154.

CHRIS
(C) 832-692-5800

the City of Marshalltown

VARIANCE APPLICATION PACKET

36 N. Center Street, Marshalltown, IA 50158
Ph: 641-752-3154 Fax: 641-754-5742
www.ci.marshalltown.ia.us

Purpose: Zoning regulations include specific development standards. There are occasions, however, when the strict application of such standards may be inappropriate because of unique characteristics of the property. The variance procedure is designed to permit minor adjustment to the zoning regulations where there are unique or extraordinary circumstances applying to a parcel of land or building that prevent the property from being used to the extent intended by the zoning. Unique circumstances may include factors such as the size, shape, topography, vegetation, wetlands, or other unique characteristics of the land.

Pre-Application Meeting: The applicant is required to meet with the Zoning Administrator prior to submitting an application to discuss the feasibility of the request as well as any possible alternatives that may eliminate the need for a variance or improve the chance of the variance being granted. A preliminary site plan should be brought to this meeting to review the project design as it relates to the zoning requirements.

Application Packet: Applications will not be accepted unless complete. All required items must be submitted with the 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.

Submission Deadline: Please refer to the attached meeting and deadline schedule. The complete application with fee must be submitted by 5:30 p.m. on the deadline date to the Housing & Community Development Department Office, located on the first floor of City Hall, 24 N. Center St.

Board Meetings: The Board of Adjustment considers the facts presented by the applicant in the application and testimony given at the public hearing, and makes the final decision, based on the standards in the Ordinance. The Board meetings are held at 5:00 p.m. on the first and third Tuesday of each month in the City Council Chambers, second floor of City Hall, 24 N. Center St. Attendance at the meeting is required.

It is the burden of the property owner to provide sufficient facts with this application and at the Board of Adjustment meeting to support a finding that all the standards for approval have been met. The concurring vote of three (3) members of the Board is necessary to decide any issue before the board regardless of the number of members present at the meeting. The Board is a five (5)-member board. Appeals to the decision of the Board of Adjustment can be made in District Court.

Notifications: The City will place a sign on the property to notify the public that a variance request has been submitted. The sign includes the city's phone number so that concerned individuals will have an opportunity to learn about the proposal and can present information on this matter to the board at the public hearing. A notice of public hearing is also published in the newspaper.

Date Submitted & Fee Paid: _____ *Hearing Date:* _____

Variance Application Form

36 N. Center Street, Marshalltown, IA 50158 Ph: 641-752-3454 Fax: 641-754-5742
www.ci.marshalltown.ia.us

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.

✓ **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 <u>all</u> of the following questions included in this application.**

✓ **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.

✓ **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 South Center Street Marshalltown, Iowa 50158	
Owner: Chris N. Bacon	
Mailing Address: 1713 South Center Street Marshalltown, Iowa 50158	
Phone: 832-692-5800	Fax:
Email Address: cbacon@baconnelson.com	
Owner's Agent (if applicable):	
Agent Phone:	Agent Fax:

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 Zoning at 641-752-3454 with any questions.

The applicant makes the following request: A VARIANCE for the TASTEE FREEZ, Aka TASTY FREEZE, to Reopen June 2014 and operate same Annually on a seasonal basis (APPROX April to October yearly) on going.

Please state your hardship. 1. TASTEE FREEZ, Aka TASTY FREEZE, WAS not opened IN 2013 And delAyed opening in 2014 due to:
1. It WAS under a PURCHASE CONTRACT which WAS RESOLVED 6/18/13 through default proceedings which actually occured in late 2012. 2. Royden Bacon, owner, died 5/1/13. 3. Estate issue Resolved REGARDING the business ownership 5/8/14.

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.
   1. This property has been allowed to be a commercial with a TASTEE FREEZ, Aka TASTY FREEZE building on it since 1954.
   2. HAS operated for 58 of 59 yearly seasonal periods each year from APPROX April through October. Business did not Any Revenue for owner for 2013.
   3. Being a seasonal business, opening in June 2014 would allow the business to gain A reasonable Return in the PRIMARY months of the season.
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.
   1. The building and parking lot HAVE not changed in sixty YEARS.
   2. Historically, this property has been commercial since 1954, surrounded by residential properties while being Adjacent to an existing high traffic commercial district on the east side of center street.

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.

1. The Tastee Freez, AKA Tasty Freeze, has had the same long term historical use since 1954.

2. The Tastee Freez, AKA Tasty Freeze, has been Adjacent in proximity to an existing high traffic commercial district on the east side of centre Street.

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.

1. The location and size of the existing building and the dimensioned driveways and parking areas and property lines have not been Altered nor changed over sixty years.
2. Entrance off center Street and the two entrances off Edgeland provide for an efficient traffic flow in and out, eliminating congestion.
3. Proposed cosmetic pedestrian "fences" will further insure public safety.

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. No

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: [signature]	Date: 05-09-2014
-OR- Agent Signature:	Date:

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Satellite View of My House

Note: This free street level "Find My House" service is available for addresses in the USA, Canada, France, Germany, Italy, Spain, Japan, Australia, and New Zealand. Additional countries will be added as Google Maps launches in other countries.

Example USA entry: 1234 MyStreet, MyCity, MyState Zipcode

1803 south center street marshalltown iowa 50158 Go!

Like 7,960 people like this. Sign Up to see what your friends like.

Fizber Street View allows visitors to view and navigate street level imagery. It's almost like walking down the actual street!

↓ **Tick marks** zoom in and out. **Map-Satellite-Hybrid** selects view.

Proposed "Fencing" to protect public from cars.

Notice of Public Meeting
BOARD OF ADJUSTMENT

Agenda for Tuesday, June 3rd, 2014 – 5:00 p.m.
City Council Chambers, City Hall
10 West State Street, Marshalltown IA

Committee Members:

Darrell Eaton
Kevin Hitchins
G Ward Miller
David Schulze
Sherm Welker

Call to Order:

Roll Call: Welker

1. Approve Agenda

2. Review and approval of the Minutes from 05-06-14

Old Business:

3. None

New Business:

4. Variance – 1803 South Center Street

Date Posted: 05-27-14

http://www.ci.marshalltown.ia.us/meetings/view/MeetingID/1102