

**MINUTES**  
**ZONING BOARD OF ADJUSTMENT**  
**January 20, 2015**

1. CALL TO ORDER.

Chairman Kent called the regular monthly meeting to order at 7:01PM.

Chairman Kent indicated that Greg Kingery could not attend tonight's meeting in person due to traveling but will be participating as permitted per Section 21.8 of the Iowa Code via phone.

2. ROLL CALL.

Members Present: Roth, Sunderman, Gibson, Kent and Kingery (via phone)

Members Absent: None

Staff Present: Treharne, Hockett

3. ELECTION OF OFFICERS.

Chairman Kent indicated that he would like Election of Officers moved to the end of the meeting. There was no objection.

4. MINUTES.

Zoning Board of Adjustment – November 12, 2014

Motion by Roth, seconded by Sunderman to approve the November 12, 2014 Zoning Board of Adjustment minutes as submitted.

All "Ayes", motion approved.

5. CONSENT CALENDAR.

- a. Motion to receive and file all correspondence from applicants and staff reports regarding variance requests on the January 20, 2015 Marion Zoning Board of Adjustment agenda.

Motion by Kingery seconded by Roth to receive and file all correspondence from applicants and staff reports regarding variance requests on the January 20, 2015 Marion Zoning Board of Adjustment agenda. All "Ayes", motion approved.

6. APPEALS.

- a. Jim Bouslog, owner – 360 7<sup>th</sup> Avenue, Marion, Iowa – Requesting a variance from Section 176.31-9F(3) of the Marion Code of Ordinances to allow a monument sign be closer than the required five (5) feet from right-of-way and from Section 176.31-5B(7) of the Marion Code of Ordinances to allow a monument sign have less than the required 40% width of the total faceplate width and to allow the support structure be constructed with material that does not match the material of the principle building.

ZBA Resolution No. 15-01 approving the variance request.

ZBA Resolution No. 15-01 denying the variance request.

Hockett presented the staff report and indicated that the sign was damaged when a vehicle left the roadway and the applicant is seeking to reinstall the sign as it existed prior to the accident and to match the other existing sign to the east of the subject location.

Jim Bouslog, 360 7th Avenue spoke in favor of the request and indicated that he would like to maintain a uniform look and reuse some of the salvaged materials from the sign.

Motion by Gibson, seconded by Kingery to approve the variance requests from variance from Section 176.31-9F(3) of the Marion Code of Ordinances to allow a monument sign be closer than the required five (5) feet from right-of-way and from Section 176.31-5B(7) of the Marion Code of Ordinances to allow a monument sign have less than the required 40% width of the total faceplate width and to allow the support structure be constructed with material that does not match the material of the principle building, as a significant hardship exists.

Roll call to Approve the request:

Gibson – Aye

Roth – Aye

Sunderman – Aye

Kent – Aye

Kingery - phone connection was disconnected

Variance was Approved (4-0)

Phone connection with Kingery was reestablished.

- b. Mooney-Engle Land Company, owner – 900 Barrington Parkway, Marion, Iowa – Requesting a conditional use pursuant to the conditions placed on Ordinance No. 13-14-4(K) to allow for a permitted restaurant to have hours of operation extend into the times between 11:00 p.m. and 6:00 a.m. Case #14-02C

ZBA Resolution No. 15-02 approving the variance request.

ZBA Resolution No. 15-02 denying the variance request.

Hockett presented a staff report and indicated that the Marion Planning and Zoning Commission, after a lengthy meeting, found that the proposed request meets the standards for review of a conditional use request as provided within the Marion zoning regulations and recommend approval of the extension of hours of operation (6-2 vote).

Gibson indicated that it appeared that the developer was supportive of the request to restrict hours of operation per the staff report as well as the zoning supportive of the restaurant.

Hockett indicated that the original zoning of the property was O-1, Office Transitional which did not have hours of operation restrictions but

restricted restaurant development. The zoning was changed to allow the use, but at the time of approval the City Council placed the extended hours of operation as a conditional use.

Gibson inquired as to what is permitted on the property.

Hockett indicated that it is zoned C-3, General Commercial but conditioned on the zoning within the C-2, and C-1 zoning districts which is most office uses, commercial retail without the outside storage component.

Mr. Mooney, 862 Archer Drive explained the difficulty of locating a restaurant in this location without changing the hours of operation to remain competitive with other areas of the metro. He presented hours of operation and site plans that have been approved in Cedar Rapids and noted that the surrounding communities are far less restrictive than Marion. He went on to explain the significance of Tower Terrace Road, as a major arterial, to the development of north Marion.

Dave Drown, 6627 Spring Grove Court NE, supports the request for the amended hours of operation and believes this will be a quality business for Tower Terrace Road and this type of restaurant operator. For Marion business to grow in north Marion, supportive types of businesses needed to be provided for.

Ray Brown, 4120 Creekview Drive, supports the request for the amended hours of operation as President / CEO of the ESCO Group and sees the restaurant as a valuable asset to Marion and the future development along Tower Terrace Road.

Laura Fauchier, 1595 25th Avenue, owner of Marion Dental a local business supports the request.

Laura Geary Bell, 2325 24th Avenue, supports the amended hours of operation as it is the right location for this business.

Mike Mach, 2500 22nd Avenue, not concerned about noise as the noise from Linn Mar can be heard day long for over a mile away and that this type of restaurant will not add to the noise.

Jill Ackerman 2420 Indian Creek Road on behalf of the Marion Chamber of Commerce Board of Directors supports the expansion of hours to expand Marion's quality of life with more diverse restaurant options as well as meeting the goals and objectives of the imagin8 Initiatives for more dining in Marion. Marion loses approximately \$16.9 million dollars per year to other communities for restaurant type activities. She also, submitted a letter of support.

Judy Ramsey, 3755 McGowan Blvd, supports the request for expanded hours of operations.

Tim Beauchamp, 7655 Normandy Drive, works at the ESCO Group in Marion as well has children attending Linn Mar. He supports the development of Tower Terrace Road and the hours of operation.

Nick Glew, 3403 Penny Lane, on behalf of the Marion Economic Development Corporation (MEDCO) Board of Directors and supports the expansion of hours of operation. Tower Terrace Road has been constructed for this type of project.

Speaking on behalf of himself Mr. Glew indicated that the reasons they built where they built was for the hope of this type of development and personally supports the request.

Kingery, wanted clarification about the hours of operation and that that is what was going to be debated, not the restaurant.

Gibson indicated that this was correct.

Jeff Koffron, 1830 Indian Creek Road, indicated his support for the expansion of hours of operation as the community can police any potential violations with noise and liquor license.

Rene Nelson 4040 W. 33rd Avenue, submitted a petition with over 200 signatures opposed to the expansion of hours on its setting a precedent, zoning evolution and caused difficulties, property impacts and comparison to other facilities with concerns that those in favor do not live in this immediate area of the request. Concerned about traffic through the development with the extended hours of operation.

Melanie Richert, 300 Irish Drive, is opposed to the expansion of hours of operation, and that the examples are not a true comparison to the proposed site as they are much further from residential neighborhoods and from local high schools. Present street views toward the subject property for adjacent residential properties. Concerned about the precedent being sent that could potentially devalue the neighborhood.

Tom Mark 3909 Shady Oak Drive, expressed his opposition to the variance extension of hours of operation. Felt the Planned Development Zoning provided protection with the zoning change in 2013 to C-3 over objection of the neighborhood and from that hours of operation was discussed. Felt the hours of operation to expand were in conflict with the recent discussion regarding Marion's branding effort to attract and be a great place for families.

Treharne clarified that this is a conditional use not a variance request as they are two very different approval processes.

Tim Isenberg, 1925 Sugar Ridge Drive, representing the Linn Mar Board of Education indicated the Board opposition to the hours of operation as it may conflict with Linn Mar events that operate potentially in the late hours, the safety of students and families is one of the Board's biggest concerns.

Dorice Ramsey, 542 Barrington Parkway, opposed to the proposed hours of operation on behalf of the signers of the petition regarding the safety of the children and the conflict that extended school hours may have with this restaurant beyond the permitted hours.

Dawn Christianson, 3099 3rd Street, opposed to the bar operation and the hours of operation and the conflict with the school activities that are completed outside normal school hours. Wants to maintain a family friendly community.

Kevin Kamp, 4041 Shady Oak Drive, feels that Marion has numerous other restaurants that could operate within the hours of operation at this site. The development of other sites along Tower Terrace could support the hours of operation better than this site.

Steve Point, 715 Barrington Parkway, expressed their opposition to the hours of operation as it is not family friendly toward Marion on behalf of the 200 signatures of the petition. Presented police reports for the Bushwood Bar in Cedar Rapids the same operator as the proposed restaurant. Read website reviews and happy hour specials that is offered at Bushwoods on Edgewood. Established neighborhood will be effected by noise and traffic.

Jessica Horaney, 217 Barrington Court, stated they moved to the area for the opportunities that Tower Terrace Road would bring; however, is opposed to the hours of operation and reiterated the previous comments. With the growth population around Tower Terrace, business will come within a few years and they will be businesses that don't need to be opened for extended hours. The zoning ordinances in place for public health, morals and general welfare of the people and that existing properties and uses must be protected from other uses.

Marylyn Mark, 3909 Shady Oak Drive, the previous zoning agreement came with a closing time of 11:00 p.m. and Mr. Mooney wants more than the previous agreement. The sports bar is not a restaurant. Quality of life with balance development is what Marion is about. Schools are too close to the proposed site. Mrs. Mark presented photographs of the neighborhood of the proximity of homes and schools near the proposed site. Parking would also appear to be a problem with the amount of parking provided. The hours are for the protection of the residents. The commercial should be moved someplace else to the east or the west and allow homes to build around them rather than the other way.

John Tracey, 350 Irish Drive, does not want a restaurant or bar behind his neighborhood. Concerned about commercial development along Tower Terrace Road, and does not complain about the existing buildings but wants to ensure that quality development continues.

Linda Miller, 4001 N. 10th Street, has lived in area for over 30 years and remembers Mr. Mooney saying he would not put a bar in this area and does not support the extension of hours. She disagreed with much of the data presented by the applicant.

Stephanie Redderson, 262 Barrington Court, supports a restaurant but what is proposed is not a restaurant it is a bar. Driving passed this building and walking passed this area late at night is a concern. She was also concerned about level of noise from a bar with outside noise.

Mary Driscoll, 427 Barrington Parkway, opposed to bar at this location. Wants to see quality growth, but concerns with safety of a bar so near the neighborhood and schools.

There was no further comments for or against the request.

Gibson indicated that the board would take a five minute break before reconvening.

Chairman Kent reconvened the meeting.

Motion by Gibson, seconded by Sunderman to deny a conditional use pursuant to the conditions placed on Ordinance No. 13-14-4(K) to allow for a permitted restaurant to have hours of operation extend into the times between 11:00 p.m. and 6:00 a.m. ZBA Resolution No. 15-02.

Gibson was concerned about approval, the first is setting precedent as Tower Terrace continues to development and does not feel a bar with those hours is appropriate to the neighborhood, the second concern is that the City Council has established an ordinance that limits the hours and puts the burden on the Board rather than the Council as they are the elected officials. The applicant did not meet the criteria for review for the granting of a conditional use.

Roll call to Deny the request:

Gibson	– Aye
Roth	– Aye
Sunderman	– Aye
Kent	– Nay
Kingery	- Nay

Conditional use was denied (3-2)

Regarding the election of officers, Motion by Gibson, seconded by Kingery to retain the officers from the current year.

All "ayes" motion carried

## 7. ADJOURNMENT.

There being no further discussion, the meeting was adjourned at 9:42 PM

Respectfully Submitted,

Gordon Gibson, Secretary