

## URBANDALE PLANNING AND ZONING COMMISSION MINUTES

November 7, 2011

The Urbandale Planning and Zoning Commission met in regular session on Monday, November 7, 2011, at the Urbandale Administrative Offices Building, 3600 86<sup>th</sup> Street. Chairperson David Russell called the meeting to order at 6:00 p.m.

Commissioners present were Jeff Hatfield, Jeff Payne, Bill Kusy, Kevin Gass, Bridget Montgomery, Paul Pick, Judy Ralston-Hansen, Wayne Van Heuvelen, and David Russell. Staff members present were Paul Dekker, Director of Community Development, and Cheryl Vander Linden, Department Secretary.

The first item on the agenda was to approve the minutes from the October 10, 2011, meeting. Mr. Kusy moved, and it was seconded by Pick, to approve the October 10, 2011 minutes. On roll call; Ayes: Kusy, Pick, Montgomery, Ralston-Hansen, Van Heuvelen; Nays: none. Passes: Hatfield, Payne, Gass, Russell. Motion carried.

The next item on the agenda was the public hearing on the "Live Entertainment by Conditional Use in Restaurants in the "C-N" Neighborhood Convenience District" Amendment to the Zoning Ordinance, case no. 010-2011-03.01. If there were no objections, Mr. Russell said, he would dispense with reading the following official publication:

Case No. 010-2011-03.01

### OFFICIAL PUBLICATION

#### TO WHOM IT MAY CONCERN:

Notice is hereby given that the Urbandale Planning and Zoning Commission will hold a public hearing in the Urbandale City Hall, 3600-86<sup>th</sup> Street, Urbandale, Iowa at 6:00 p.m. on Monday, November 7, 2011, to consider an amendment to Sections 2.1, 3.72, and 5.4 of Chapter 2 of Title VII of the Code of Ordinances of the City of Urbandale, Iowa, 1999, said Chapter 2 being commonly referred to as the Zoning Ordinance.

The proposed amendments to Sections 2.1, 3.72, and 5.4 would allow restaurants located in the "C-N" Neighborhood Convenience District to offer live entertainment if granted a Conditional Use Permit, subject to compliance with conditions specified by the Zoning Ordinance and any additional conditions that may be stipulated by the Board of Adjustment. More information on this proposed amendment to the Zoning Ordinance can be obtained at the Department of Community Development, 3600-86<sup>th</sup> Street, Urbandale, Iowa between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. All interested parties either for or against this proposed amendment to the Zoning Ordinance will be heard at the time and place set forth above.

There were no objections to the official notice as published.

Mr. Dekker said this proposed amendment to the Zoning Ordinance was drafted by City staff in response to a request filed by Mr. Steve DeVolder, legal counsel for Irena's Restaurant which is located at 2301 Rocklyn Drive, i.e. the northeast corner of the Rocklyn Drive and Hickman Road intersection, after the Mayor and City Council agreed to refer the request to City staff for response. Mr. DeVolder requested that restaurants located in the "C-N" Neighborhood Convenience District be allowed to offer live entertainment if a Conditional Use Permit is granted by the Board of Adjustment. The request expressly excludes drinking places (bars, lounges, etc.).

Since this is an amendment to the "C-N" District text (i.e. District regulations), the amendment will apply to ALL properties within the "C-N" District, and all current and future restaurants located within the "C-N" District. It will NOT override any Conditions of Rezoning, existing or future, which may apply to individual properties. The existing restaurants and bars in the "C-N" District are as follows

**Restaurants & Bars in "C-N" District-2011**

<b>Name</b>	<b>Address</b>	<b>Street</b>	<b>Type</b>
<b>Cottontail</b>	<b>3700</b>	<b>Dennis</b>	<b>Drinking</b>
<b>Suzy Q's Lounge</b>	<b>6810</b>	<b>Douglas</b>	<b>Drinking</b>
<b>Stormy's</b>	<b>6923</b>	<b>Douglas</b>	<b>Drinking</b>
<b>Victor's Sports Club</b>	<b>7500</b>	<b>Douglas</b>	<b>Drinking</b>
<b>Mickey Finn's</b>	<b>7020 #A</b>	<b>Douglas</b>	<b>Drinking</b>
<b>Kathy's on Hickman</b>	<b>6705</b>	<b>Hickman</b>	<b>Drinking</b>
<b>Phoenix Café</b>	<b>6769</b>	<b>Hickman</b>	<b>Drinking</b>
<b>Euro Bar &amp; Grill</b>	<b>7625</b>	<b>Hickman</b>	<b>Drinking</b>
<b>Urbandale Café</b>	<b>3828</b>	<b>100th</b>	<b>Eating</b>
<b>Tsing Tsau Chinese Fast Food</b>	<b>3846</b>	<b>100th</b>	<b>Eating</b>
<b>Friedrichs Coffee &amp; Roastery</b>	<b>4632</b>	<b>86th</b>	<b>Eating</b>
<b>When Pigs Fly</b>	<b>4640</b>	<b>86th</b>	<b>Eating</b>
<b>Papa John's</b>	<b>6325</b>	<b>Douglas</b>	<b>Eating</b>
<b>Vacant (former La Hacienda's)</b>	<b>6350</b>	<b>Douglas</b>	<b>Eating</b>
<b>House of Hunan</b>	<b>6810</b>	<b>Douglas</b>	<b>Eating</b>
<b>Perkup Café</b>	<b>7003</b>	<b>Douglas</b>	<b>Eating</b>
<b>Big Sky Bread Co</b>	<b>7021</b>	<b>Douglas</b>	<b>Eating</b>
<b>Dairy Queen</b>	<b>7025</b>	<b>Douglas</b>	<b>Eating</b>
<b>El Rodeo Mexican Restaurant</b>	<b>7420</b>	<b>Douglas</b>	<b>Eating</b>
<b>Long John Silver's</b>	<b>7421</b>	<b>Douglas</b>	<b>Eating</b>
<b>Domino's Pizza</b>	<b>7620</b>	<b>Douglas</b>	<b>Eating</b>
<b>Irina's Restaurant &amp; Bar</b>	<b>2301</b>	<b>Rocklyn</b>	<b>Eating</b>

The Irena's Restaurant "zoning lot" (most of its required parking is located on a separate parcel adjoining to the north), and all other Urbandale commercial properties in the portion of the Hickman Road corridor bounded by Rocklyn Drive and the East Corporate Limits, are zoned "C-N" Neighborhood Convenience District. All of the Urbandale commercial properties fronting on Hickman to the west of Rocklyn Drive are zoned "C-O" Office/Service District, which is predominately limited to office and professional service uses. Various residential districts adjoin the commercial zoning, generally consisting of multi-family residential or single-family attached residential to the east of Rocklyn Drive, and all single-family detached residential to the west of Rocklyn Drive.

Mr. Dekker also explained that Hickman Road is the Corporate Limits between Urbandale and Windsor Heights. Windsor Heights' zoning directly to the south of Irena's, and to the west, consists of various single-family residential districts. The Windsor Heights commercial properties to the east have commercial zoning that roughly equates to Urbandale's "C-G" General Commercial District.

Mr. Dekker said Urbandale has three "conventional" zoning districts that allow restaurants and bars, those being the "C-N" Neighborhood Convenience District, the "C-G" General Commercial District, and the "C-H" Highway Oriented District. Only the "C-N" District prohibits live entertainment in restaurants and bars, due to its purpose statement.

Mr. Dekker said that at one time the permitted uses in the "C-N" District were limited to those that essentially were considered "daily needs" as opposed to nuisance/impact considerations, with the result being that uses like bars and fast-food restaurants were allowed while "low impact" uses like bookstores and camera stores were not allowed.

A major restructuring/rewrite of all of the commercial districts in the mid-1980's shifted the emphasis to the more traditional nuisance/impact considerations, while adding buffer yard and performance standard requirements, et.al. Bars and restaurants are among the uses that generate the greatest nuisance/impacts on neighboring properties, but at the same time provide desired neighborhood services. Accordingly, the prohibitions on live entertainment, and size limit on bars to keep them to a neighborhood scale, were among the performance standards that were developed to allow those uses "by right" while at the same time moderating their nuisance/impact characteristics to the extent possible.

However, almost all of the "C-N" District zoning that is mapped to the east of 86<sup>th</sup> Street, including Irena's, dates back to the 1962 Zoning Ordinance, or earlier, and much of it was developed before the buffer yard/performance standards were implemented. Accordingly, most of the "C-N" District development to the east of 86<sup>th</sup> Street lacks appropriate buffers and setbacks along the District boundaries.

Also, there are single-family residences adjacent to the District boundaries in many locations, in part because of long-standing City policies to restrict multi-family development that many cities traditionally used as "transitional" zoning. And also in part

because of Urbandale's "Midwestern suburban heritage" development patterns, wherein single-family residential "rooftops" typically have to be present in sufficient quantities to support local commercial markets.

Mr. Dekker said that in addition to prohibiting live entertainment, the "C-N" District also limits the size of bars to a 125-person capacity, and has some limits on dancing in bars to prevent their operation as dance clubs or "after hours" entertainment businesses. The stated purposes of the "C-N" District (see Ordinance excerpt below for specific language) are to primarily provide convenient shopping and services to the nearby neighborhoods, and to avoid attracting large volumes of traffic into the neighborhoods by moderating the overall scale of the commercial developments.

Live entertainment by nature usually attracts customers from well beyond the nearby neighborhoods, since any given type of entertainment has a "fan base appeal" that isn't attractive to all potential customers in the neighborhoods but does appeal to a spectrum of the community/region. Nonresidents are less likely to be considerate of adjoining residents, due to anonymity. Live entertainment also tends to generate more "boisterous behavior" by customers, by reason of being with friends/family they may not see often, being in a celebratory mood, etc. Accordingly, live entertainment was found to be contrary to the purposes of the "C-N" District, by drawing in traffic from outside of the neighborhood among other factors. It also generates the higher degrees of/less controllable nuisance/impact characteristics of bars and restaurants, such as noise and "anti-social behavior", and accordingly needed to be restricted in locations that could least tolerate them (i.e. "C-N" District to east of 86<sup>th</sup> lacks buffers, and has single-family residences adjoining).

Mr. Dekker said, conversely, the "C-G" and "C-H" Districts are intended to serve the entire community/region; mapped to incorporate large areas and provide a broad array of products and services; and to be separated from single-family residential and other sensitive uses by transitional zoning, buffers, performance standards, et.al. Accordingly, the "C-G" and "C-H" Districts allow both restaurants and bars to offer live entertainment and dancing without limitation (unless Conditions of Rezoning were established during a rezoning of a given property) other than on adult entertainment, in accordance with the purposes of those two zoning districts to serve the entire community and draw customers from a large area. Adult entertainment, live or otherwise, is allowed only in the "C-H" District by conditional use. "P.U.D." Planned Unit Development District zoning is regulated by separate Planned Unit Development Master Plans that are at least to some extent unique. P.U.D. Master Plans that include retail commercial zoning may or may not allow live entertainment or other restrictions on bars and restaurants, depending on their characteristics.

The applicable existing Zoning Ordinance regulations are as follows:

Section 2, Definition #60:

*60. Restaurant, standard. An establishment whose principal business is cooking and*

*preparation of food to sell for consumption within the restaurant building and whose principal method of operation is characterized by customers being seated by a restaurant employee and provided with an individual menu, and who are served by a restaurant employee at the same table or counter at which food and beverages are consumed; also including cafeteria line service offering a wide selection of main courses and other menu items, but not including any restaurant offering drive-thru service or service directly to the customer in a motor vehicle. Delicatessens, establishments whose principal business is the sale of pizza or of ice cream, yogurt or milk products are specifically included in the definition.*

Section 3.72 - "C-N" NEIGHBORHOOD CONVENIENCE DISTRICT:

- A. Purpose. *It is the purpose of this district to provide areas for convenient shopping by residents of the adjacent neighborhood, but not of such size and variety as to attract substantial volumes of traffic from outside of the neighborhood. Such areas typically will include a food supermarket as the principal tenant, and other establishments supplying commodities or performing personal services for the daily living needs of the residents of the neighborhood.*

*It is not intended that any area be mapped of such size as to allow all or a substantial number of the permitted uses to locate within it, but rather to establish a range of individual uses which supply appropriate commodities and services and thereby provide an opportunity to create a suitable mix of specialty shops which will facilitate the economic success of the shopping area, and through normal interaction of the combination allow it to be more successful than might otherwise be probable. Accordingly, it is intended that such areas be mapped in location and of limited size to reflect the neighborhood scale, to encourage a compact design which is oriented to pedestrian as well as vehicular traffic, and further intended to avoid linear retail strips by separating such areas with other types of development.*

Permitted uses:

17. *Eating places, including drive-in and carry-out establishments subject to the provisions of Section 5, but not including caterers (5812) or live entertainment.*
18. *Drinking places, but not including discotheques or live entertainment (5813), and not to exceed an occupancy of 125 persons; the area utilized for dancing shall not exceed one-eighth (1/8) of the patron area excluding restrooms and foyers, and dancing shall cease when the bar closes to the public.*

Mr. Dekker explained that a text amendment to allow live entertainment in some manner appeared to be the only viable option for Mr. DeVolder to pursue on behalf of his client.

In some locations it may be appropriate/desirable to rezone a property to allow a desired use, depending on the characteristics of the location/environ, intent/desire of the

petitioner, and Comprehensive Plan. Or, in limited circumstances a “use variance” might be justified.

However, rezoning was NOT found to be an appropriate option for Irena’s. First, the rezoning of a single property to a less restrictive zoning district, for example to “C-G” General Commercial which allows bars and restaurants to have live entertainment, is considered to be illegal “spot zoning”. Attempting to rezone the entire Hickman corridor to the west of Rocklyn Drive from “C-N” to “C-G” did not appear to conform to the Comprehensive Plan, along with raising other potential issues. “P.U.D.” Planned Unit Development zoning also did not appear to be an option because the Zoning Ordinance requires a to be a minimum of two acres in area, a size that is well-established by case law to be the minimum size that avoids findings of illegal spot zoning or abuse of variances/exceptions to the required uniform application of ordinances. It is very difficult to incorporate multiple ownerships into a Planned Unit Development, post-development.

A possible application to the Board of Adjustment for a “use variance” did not appear likely to meet the required findings for approval, i.e. uniqueness of the property, hardship imposed by the Ordinance rendering the property unusable or creating substantial hardship, satisfying the spirit and intent of the Ordinance, and being the only viable option. The Board is not empowered to allow uses that are not listed, or that cannot be found to be substantially similar to a permitted use, and in the case of the “C-N” District restaurants are expressly prohibited from offering live entertainment.

City staff discussed the situation with Mr. DeVolder prior to the submittal of his request, and noted that the concerns pertaining to live entertainment in the “C-N” District apply much more strongly to bars than to most “standard restaurants” (sometimes referred to as “sit-down restaurants”). The customers of standard restaurants are likely to be primarily attracted by the uniqueness/quality of the restaurant menu and service, and focused on comparatively quiet enjoyment of a meal rather than on being entertained. And accordingly, if entertainment is provided by a restaurant, it would generally be intended to contribute to the overall ambiance of the restaurant, rather than being a primary attractant in itself.

However as previously noted, there are many locations within the “C-N” that are very sensitive to even low levels of nuisance/impact, that need a continued high degree of protective controls, so an amendment to allow live entertainment in restaurants “by right” appeared to be inappropriate. On the other hand, there also are “C-N” locations where the impacts would be minimal, or at least could be minimized with “targeted” controls/conditions.

Mr. Dekker said, therefore, the Conditional Use Permit process appeared to be an appropriate mechanism to utilize, in that the Board of Adjustment presumably would deny permission for live entertainment if a restaurant is/intended to locate in a sensitive area, or to offer live entertainment of a type or with characteristics that might be harmful to the neighborhood (for example, dinner theater or other performance-oriented entertainment where the entertainment might be the draw rather than the creation of

ambiance, in an inappropriate neighborhood setting, or late hours more in keeping with a bar than standard restaurant et.al). The Conditional Use process includes staff analysis and report to the Board, a public hearing with notice to adjoining property owners, and the ability of the Board to impose whatever conditions it might deem appropriate, within the confines of the Zoning Ordinance and applicable law.

There also are many situations where there are only narrow distinctions between a restaurant with a lounge or an extensive menu of alcoholic beverages, and a bar that offers food. The Conditional Use process allows more control over operations.

Mr. DeVolder's client intends to operate only as a restaurant, and accordingly his request excluded bars. It also appeared, from the discussion with staff, that the intent in providing live entertainment would probably satisfy most concerns pertaining to location, if it is in fact geared towards added ambiance for the restaurant.

Mr. Dekker said that Sections 1.1 through 1.3 of the proposed Ordinance No. 2011-18 would amend the Zoning Ordinance to allow live entertainment to be offered by standard restaurants in the "C-N" District, upon approval of a Conditional Use Permit. Of those, Section 1.3 is the "meat" of the amendment, by establishing the minimum conditions that must be met by the restaurant. A great deal of this section is focused on clear definition of what, how, and when the entertainment will be provided; preventing "loopholes" between an application as a restaurant and operation as a bar; "locking in" the nature of the entertainment so it cannot "evolve" from what was represented to the Board/at the public hearing, into something that is significantly different; and provisions for expiration/renewal and for possible revocation if problems do arise, rather than "running with the land" as is more customary for conditional use permits.

Mr. Dekker said that staff recommends approval of the attached Ordinance No. 2011-18, amending the Zoning Ordinance to allow restaurants in the "C-N" Neighborhood Convenience District to offer live entertainment upon approval of a Conditional Use Permit as follows:

SECTION 1. Title VII, Chapter 2, Sections 2.1, 3.72, and 5.4 of the Code of Ordinances of the City of Urbandale, Iowa, 1999 are hereby amended as follows:

1.1 Section 2.1 is hereby amended by adding the following definition and renumbering all existing definitions in alphabetically:

"56. Person. Any natural person, corporation, partnership, joint venture, association (including formally organized owners' or neighborhood associations), trust, or any other entity recognized by law."

1.2 Section 3.72 paragraph B entitled "Permitted Uses" is hereby amended by revising the existing item 17 to read as follows:

“17. Eating places, including both standard and fast-food restaurants (5812) and including carry-out service but not including caterers, and not including live entertainment performances except when allowed by Conditional Use Permit.”

1.3 Section 3.72 paragraph D entitled “Conditional Uses” is hereby amended by adopting a new item 1 as follows and renumbering the existing item 1 and all subsequent existing items in said paragraph D in consecutive order:

“1. Live entertainment performances in standard restaurants, subject to the requirements of Section 5.4.”

1.3 Section 5.4 is hereby amended by deleting the existing Subsection 5.426, entitled “Restaurants” and adopting a new Subsection 5.426 to read as follows:

“5.426 Restaurants. Standard restaurants located in the “C-N” Neighborhood Convenience District may be allowed to offer or provide live entertainment performances if the Board of Adjustment makes the required findings for the granting of a Conditional Use Permit, which Permit shall be subject to the following conditions together with any additional conditions of approval that the Board may find to be necessary and appropriate:

- A. Nothing in this section shall be construed to allow live entertainment in any drinking place, or the exposure of specified anatomical areas or the conduct of adult entertainment of any kind, as either a principal use or as an accessory to a restaurant use, at any time or in any location.
- B. The entertainment shall be provided concurrently with or upon completion of the serving of restaurant meals to the restaurant’s customers, as opposed to entertainment being provided to an audience that is generally separate and distinct from customers who consumed a restaurant meal or in a portion of the premises where the consumption of restaurant meals is not the primary use of the space.
- C. An application for a Conditional Use Permit to provide live entertainment shall include a description of the general nature and type of the restaurant and the entertainment. Such description shall become a binding set of conditions on the Permit, and shall not be altered or deviated from, except for adjustments to menu offerings or prices that may be necessary from time to time to cover customary restaurant expenses or to respond to customer tastes and preferences.

The application for a Permit shall at a minimum include a description of the following:

1. The restaurant proprietor's certification that the business will in fact be operated as a standard restaurant, herein defined and distinguished from a drinking place as being an operation that will at all times receive not less than 60% of its net operating revenues from the sale of meals that are prepared and consumed on the premises, along with non-alcoholic beverages served in conjunction with the meals, as opposed to alcoholic beverages or any other legal intoxicants or stimulants.
  2. Days of the week and the daily starting and ending times when entertainment will be provided; and the general duration of any single performance if more than one show or session will be provided in any single day.
  3. Type of entertainment, whether instrumental music, individual singer, singing group or band, dance, comedy, theatrical, readings, talk or speech, performance art, or some other specified type; the usual number of performers in any individual session or offering; and whether the performers are in-house, expected to visit repeatedly at some regular frequency, or are short-stay performers who may or may not perform again at the restaurant on another occasion.
  4. Whether the restaurant customers will be required to pay a charge or fee of any sort, regardless of whether the charge or fee is separate or is levied through increased prices for food or drinks on days when live entertainment is being provided, and including a description of any alterations or deviations from the restaurant's customary menu and pricing that may be instituted relative to the times when entertainment is being offered, together with any other information that may be necessary to determine fees or charges related to the provision of live entertainment.
  5. Any additional information that the Department of Community Development may find necessary to adequately evaluate the application and advise the Board as to its merits.
- D. A Permit shall run only with the person who is the proprietor of the restaurant at the time of application for a Permit, and shall not run with the land or the operation of a restaurant under a succession of proprietors. Such Permit shall not be transferable to another proprietor, and shall immediately expire with any change to the restaurant proprietor changes or substantial alteration of the restaurant operations. Each Permit shall be valid for not more than five years after the date of the Board's approval, provided that the Permit may be administratively extended by the Department of Community Development for an additional five years if the restaurant's provision of live entertainment has been in full compliance with all requirements and regulations for the duration of the initial five years of validity.

This provision shall not be construed to prohibit a proprietor from applying for a new Permit or further extension of an existing Permit, nor to prohibit a new proprietor or substantially altered restaurant operation from applying for its own first-time Permit in accordance with all of the requirements of this Section.

- E. The entertainment performance and all sounds emanating from or related to the performance shall be limited to and contained within the interior of the restaurant building or tenancy, as the case may be. Sound from or associated with the performance shall not be intentionally transmitted to any outdoor areas, nor allowed to be of such volume, character, or nature that it is discernable at the boundaries of the parcel on which the restaurant is located, whether intentional or unintentional. All windows and doors shall remain closed at all times during performances, and during preparations before and after performances, to minimize the incidental transmission of sound.
- F. A Permit shall immediately be suspended on a temporary basis, to be followed by a public hearing before the Board at its next regularly scheduled meeting following publication and notice in accordance with the requirements for a new Permit application, upon a determination by City staff that any of the following appears to have occurred:
1. Misrepresentation of any material fact in an application for s Permit.
  2. Any change in the ownership, proprietorship, or interest in the business which was not reported to the Department of Community Development.
  3. Any event which would have resulted in disqualification from receiving the Permit when originally issued.

Following its public hearing and a finding that any of the above are factual, the Board may thereafter revoke the Conditional Permit either temporarily or permanently.

- G. Habitual violations of any one or combination of the following, habitual being defined for the purpose of this section as more than two incidents in any calendar month or more than six in any calendar year, as substantiated by City staff, shall be grounds for immediate suspension of the Permit on a temporary basis, to be followed by a public hearing before the Board at its next regularly scheduled meeting following publication and notice in accordance with the requirements for a new Permit application.
1. Habitual noise or other nuisance disturbances originating from the restaurant or its patrons.
  2. Habitual violation of the restaurant's maximum capacity as established by the Zoning Ordinance, Building Code, Fire Code, or limitations placed on the Permit by the Board of Adjustment.
  3. Inadequate parking, as evidenced by vehicles being parked in landscaping areas; in circulation aisles or fire lanes; on the street; or on adjoining properties for which no formal arrangements exist with the owners thereof to allow such parking.
  4. Illicit drug use or sales, vandalism, unlawful assembly, or other criminal activity occurring on or near the restaurant premises that the Urbandale

Police Department or other law enforcement officials finds to be caused by or associated with the restaurant or its patrons.

5. Violations of liquor control regulations, regardless of whether such violations result in suspension or revocation of the restaurant's liquor license.

Following its public hearing and a finding that allegations of habitual violations are factual, the Board may thereafter revoke the Conditional Permit either temporarily or permanently, or place whatever additional conditions upon the Permit that it finds necessary to protect the public health, safety, and welfare and to advance the City Council's intent to allow live entertainment in such restaurants only if such operations do not create ongoing disturbances or nuisances for residents or nearby property owners.

Mr. Russell asked the live entertainment take place outside?

Mr. Dekker said no, it has to be inside, with all doors and windows closed.

Mr. Russell asked how late could the entertainment go?

Mr. Dekker said the Ordinance doesn't set a limit set. What the Ordinance does require is that the applicant has to stipulate the days and hours as part of their application, and how many performances will occur and the general duration. The way that conditional use permits work is that those become binding conditions. Also, conditional use permits are subject to public hearings, so the surrounding neighbors are going to be notified. And between Staff consideration and review of the application, comments from the neighbors, and the Board's own concerns, I felt that the hours are likely to be worked out to be what is appropriate to the location and situation.

Mr. Russell asked is there a reason why the proposed Ordinance wasn't drafted to include a time limit? Midnight, 2:00 a.m.?

Mr. Dekker said no, not really, other than what I just stated. There are limitations set how late alcoholic beverages can be sold, and the "C-N" zoning district language does state, at least in the case of a bar, that no "after-hours" business allowed.

Mr. Russell said yes, but this is a restaurant.

Mr. Dekker said that's correct, that for a restaurant there generally aren't hour limitations set by other ordinances or codes. But, at the same time if you think about how restaurants operate, most restaurants are really kind of done serving food by 10:00 p.m., so I'd expect most restaurants to shut down their live entertainment about then as well. But, if their filing states a performance will occur post-meal, or whatever, and run until 12:00 or however late, if staff, the neighbors, and Board don't feel that will be a problem, then it could run later. Conversely, if the Board finds that running the entertainment later than 10:00, or 8:00, whatever, is a concern, regardless of what the applicant wants to do, the Board can limit the live entertainment to an earlier hour.

Mr. Gass said you did say that the Board of Adjustment has the discretion not to approve a permit based on a list of criteria?

Mr. Dekker said correct. The Board has to apply the criteria listed in this Ordinance, and then there are additional criteria in the Zoning Ordinance that they have to apply to all conditional use applications.

Mr. Hatfield asked is a fast food restaurant allowed to offer live entertainment?

Mr. Dekker said no, it's not allowed for a fast food restaurant. Obviously you'd not expect any of the corporate fast food restaurants to want to do that, those that you usually would think of as being fast food. But, if you look at the definition for a fast food restaurant, the types of restaurants that borderline on being a bar would have a lot of those same characteristics. Limited food menu, maybe "serve yourself", and that sort of thing. So it's another protection to delineate between bars and restaurants, and help keep live entertainment to spilling over into bars, where the concerns about problems are much stronger.

Mr. Russell asked is there going to be an audit of the 60/40% rule? The proposed ordinance requires that to be considered a restaurant, the business has to generate over 60% of its gross revenue from food sales. Do you periodically review that?

Mr. Dekker said I would not expect that to be done on a normal basis. That would only be deployed as an enforcement tool if the operations came into question, which usually would mean that the business is creating problems.

Mr. Gass said it would be interesting to see how many of these places, if this passes, will all of a sudden have live entertainment.

Mr. Russell said there is no maximum size limit for a restaurant?

Mr. Dekker said no, not for a restaurant. There is a 125 person maximum occupancy for a bar in the "C-N" District. Back in the day, when we were revising the commercial districts in the Zoning Ordinance, we did a fairly extensive bar tour to determine what the size of a neighborhood bar appeared to be, versus a bar that was geared towards attracting a broader crowd. All of the neighborhood bars seemed to pretty much be around a 100-person occupancy, so we set the maximum capacity at 125 people for the "C-N" District. Anything larger than that was set up from a bigger area instead of just from a neighborhood, and they usually have entertainment or some sort of draw to appeal to a larger crowd. That's what the "C-G" and "C-H" Districts are set up to do, to serve a broader market. So there aren't any limitations on bars in those two districts, and if someone wants to operate a "party bar" or whatever, those are the zoning districts where they can do that and generally not affect single-family residents.

But, to answer your specific question, there isn't a maximum size for a restaurant in the

“C-N” or any other zoning district. At the same time, if there is a large restaurant in the “C-N” District that wants to offer live entertainment, the conditional use permit will still allow the Board to exercise control over the live entertainment if the restaurant is problematic. The Board couldn’t do anything about the restaurant as long as it didn’t offer live entertainment, but it could deny the entertainment if the Board found that the entertainment might exacerbate the problematic situation.

Mr. Kusy said if we approve this, this applies to the establishments that are listed in the staff report?

Mr. Dekker said not all, because some of them would be defined as fast food restaurants, for example Long John Silver’s and Papa John’s. But the majority of those would be defined as a “standard restaurant.”

Mr. Kusy asked is there “C-N” ground that’s not developed, that could have this use?

Mr. Dekker said there’s not much if any undeveloped “C-N” zoning where this ordinance might be really important because of a lack of buffers and adjoining single-family residential. Any “C-N” zoning out west will have all of current buffer yard requirements and probably has some conditions of zoning, as well. This is mostly going to be of use in the older area to the east of 86<sup>th</sup> Street, either for a restaurant that replaces one of the existing restaurants or for a redevelopment of some sort. There are a number of residential properties that have “C-N” zoning, and some commercial properties that might be considered underdeveloped or functionally obsolete, that conceivably could become restaurant properties through redevelopment at some point in the future, so the list of current restaurants isn’t a finite or absolute list. So, there’s not any vacant “C-N” ground per se where this will be especially important, but there could be new developments.

Mr. Kusy said if we approve this, these that do want to, would have to get a permit that would be just specific to the proprietor, correct?

Mr. Dekker said correct, a permit is not transferable to another proprietor, nor can they deviate from what they said they were going to do when they applied for the permit.

Mr. Kusy asked is that permitting through you, or do they have to go through the Board of Adjustment?

Mr. Dekker said it has to go through Board of Adjustment, and requires a public hearing, except that a renewal can be issued by City staff if there haven’t been any problems or violations.

Mr. Van Heuvelen said this request obviously emanated from Irena’s. Has there been any other interest from any of the other establishments at all? Or have you polled them to see if they’re interested in being a part of this process?

Mr. Dekker said no, there hasn't been in the "C-N" district. I think the only restaurant in Urbandale that currently offers some sort of live entertainment is "Sam and Gabe's", and they're location is zoned "C-H", where live entertainment is allowed.

Mr. Kusy said I believe Friederich's, which is on here, have some limited entertainment, don't they? Maybe a guitar player?

Mr. Dekker said not that I'm aware of.

Mr. Van Heuvelen asked has this proposed amendment been passed by Irena's, and are they in favor of it and can live with it, particularly the mechanism for the habitual offender, if something goes wrong there? Are they in agreement?

Mr. Dekker said I've talked to her legal counsel and he indicated that he didn't see any concerns. I'll let her speak for herself.

Mr. Russell asked if there was anyone present who wish to speak in favor of this proposal?

Ms. Irina Khartchenko, Irina's Restaurant, 2301 Rocklyn Drive, said we have looked at the ordinance and ask for your approval. I would be happy to answer any questions.

There was no one present who wished to speak in opposition.

Mr. Gass moved, and it was seconded by Montgomery, to close the public hearing. On roll call; Ayes: Gass, Montgomery, Hatfield, Payne, Kusy, Pick, Ralston-Hansen, Van Heuvelen, Russell; Nays: none. Passes: none. Motion carried.

Mr. Payne said it seems to me like there was an awful lot of work and thought put into this. It seems to make pretty good sense. I like the conditional use permit, where they have to apply for it and to get approved, and it has to follow set-out criteria. So I congratulate Staff for putting a nice ordinance in place.

Mr. Russell said the Board could make it a little more restrictive too, couldn't they?

Mr. Dekker said what's in this proposed ordinance are the minimums that they have to do. The Board could always include additional conditions as part of a permit approval, within reason. Obviously they can't do anything of a discriminatory or arbitrary nature.

Mr. Russell asked could they shorten the time from five years to three years?

Mr. Dekker said yes, five years is the maximum for an initial permit, but the Board could limit it to a shorter time.

Mr. Russell asked on a given case, where they might say we're going to try this out for a couple of years and see how it works, and grant it subject to a two-year time period?

Mr. Dekker said yes, the Board could do that. I thought five years was appropriate as an initial maximum because that's how long most business leases run. We're not out to make work for ourselves or anyone else, and we're trying to stay out of the way of the business as much as we can while still maintaining a balance with the rights of other businesses and of residents to a peaceful coexistence. But, if there are concerns the Board could limit the permit to a shorter time. Or, if a permit is granted but problems then crop up, the ordinance allows that to be brought up for consideration by the Board and the permit to be terminated at about any time.

Mr. Russell said so you feel there are enough safeguards in the Ordinance, and that the along with having to go through the Board of Adjustment process, that it should weed out any potential problems.

Mr. Dekker said yes, I think so. I think the Ordinance should do pretty well at preventing problems, while at the same time having some flexibility and being reasonably easy to deal with for a good operator. Nothing is ever entirely bulletproof, and with a bad operator anything can turn into a big fight and the necessity to enter into court action. But, I think that if that ever becomes necessary the Ordinance provides the tools to be successful in such a fight.

Mr. Hatfield said if you use Sam & Gabe's as a template, I think what they're doing would fit in quite well in a neighborhood setting, without creating any problems. It's food, not alcohol-fueled, it's adults eating and being entertained by good music during their meal, and there's no problems. So, if that's the template, and there is lots of structure involved to make sure that's the template, I will move for approval.

Mr. Hatfield moved, and it was seconded by Ralston-Hansen, to approve "Live Entertainment by Conditional Use in Restaurants in the "C-N" Neighborhood Convenience District" Amendment to the Zoning Ordinance, subject to Staff recommendations. On roll call; Ayes: Hatfield, Ralston-Hansen, Payne, Kusy, Gass, Montgomery, Pick, Van Heuvelen, Russell; Nays: none. Passes: none. Motion carried.

Mr. Russell said it now goes to the City Council for their consideration.

Regarding Staff reports, Mr. Dekker said nothing was filed in time for the next meeting, so we will not meet on November 21 as originally scheduled. We will have a meeting on December 5, to have a public hearing for the rezoning of a property that's located on the north side of Douglas, in the vicinity of 149<sup>th</sup> and 150<sup>th</sup> Streets, one of few remaining vacant properties to the south of Meredith Drive. Some of you might know that as the Cahalan property. It's about 35 acres in area, and the request is to rezone from "A-1" to "R-1S".

Mr. Dekker said the final plat for Bent Creek Ridge has also been filed. You approved the rezoning and preliminary plat for that development a few weeks ago.

Mr. Russell said I see that a lot of dirt has been moved from the Hy-Vee site, for their new store.

Mr. Dekker said that's just a small start.

Mr. Russell asked is that dirt that's been placed on the City's corner going to be leveled out to the street, after they take those guy wires out of telephone poles?

Mr. Dekker said yes, the ditch on the south side of Douglas that now carries all of the storm water, will be replaced by a storm sewer and the ditch will be totally filled in so it will look like a City street. There won't be any ditches between 86<sup>th</sup> Street and the creek.

Mr. Russell said so the bank on the Hy-Vee site is going to be lowered even more than it already is?

Mr. Dekker said the west part of the site, where the new store will be located, is pretty much down to where it's going to be. But it didn't change all that much from the floor level of the old retail strip center, specifically that of the bar at the far west end. So, where you are seeing the grading done now really isn't changing very much from what it was.

But the corner, at 86<sup>th</sup> and Douglas where the garden center was and the HyVee convenience store is, and all of the existing parking in front of the existing store, will be lowered by about 6 feet to be down at sidewalk level, sitting just above the street level about what you'd expect from a flat site. So that's when the big volumes of dirt will be coming off the site. This is just a comparatively small operation, what they're doing right now.

Mr. Russell asked what are they going to with all of that dirt?

Mr. Dekker said to the extent that the City can accommodate it, we'll use it for the Douglas streetscape to get rid of the ditches, to the extent that the City has the money to do that. It's been on my bucket list for 30-some years, and I hope I make it!

Ms. Montgomery asked so it's official that there's not a meeting on November 21?

Mr. Dekker said correct, there will not be a meeting on the 21<sup>st</sup>.

Mr. Russell said the Planning & Zoning Commission will have their annual holiday get-together following the meeting on December 5.

Ms. Montgomery said don't forget to vote tomorrow!

The meeting adjourned at 6:27 p.m.