



**CITY OF DERBY**  
**MEETING OF THE BOARD OF ZONING APPEALS**  
**June 23, 2016**  
**6:30 PM**

**MEETING MINUTES**

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**1. MEETING CALLED TO ORDER AT 6:30 P.M.**

**2. ROLL CALL**

Pat Baer	Present
Jessica Rhein	Absent
Justin Smith	Present
Joe Waugh	Absent
Van Willis	Present

**3. CONSIDERATION OF MINUTES:**

**3. A. Minutes of the March 31, 2016 meeting.**

**MOVED** by Pat Baer to approve the minutes of March 31, 2016 as presented, Seconded by Van Willis.

**VOTE: 3-0**

**4. NEW BUSINESS**

**4. A. Exception to allow outdoor vending machine within B-2 “Neighborhood Business District”**

General Location:

- 818 E Meadowlark Blvd. (northeast corner of Meadowlark Blvd. and Woodlawn Blvd.)

Applicant:

- Highland Pure Water & Ice

Reason for Request:

- Allow installation of an outdoor ice and water vending kiosk located within B-2 “Neighborhood Business District”

## Background Information:

- The owner of property at 818 E Meadowlark Blvd. has requested an exception (formerly conditional use) for the purpose of allowing an ice and water vending kiosk in the parking lot in front of the existing business on the property.
- The application area is legally described as the east 180 feet of Lot 1, Block G, The Oaks Addition to Derby, Sedgwick County, Kansas.
- The property is zoned B-2 "Neighborhood Business District" which is intended to accommodate retail sales of convenience goods and services in shopping districts of limited size that serve neighborhood residential uses.
  - The property is already developed for commercial purposes, and is currently occupied by a video rental business and a financial advisors office.
  - The existing uses are permitted within the B-2 zoning district.
- Surrounding properties are zoned I-1 "Institutional District," B-1 "Office Business District," R-2 "Two-family Residential" and R-1 "Single-family Residential."
  - Adjacent I-1, B-1 and R-2 zoned properties are already developed for uses permitted in their respective districts.
  - Adjacent R-1 zoned property to the north is reserved for drainage purposes and contains a detention pond.
  - R-1 zoned properties south of Meadowlark Blvd. are developed for single-family homes. Existing homes "back-up" to the arterial street and have a creek with mature trees separating the homes from the property requesting the exception.

## Staff Comments:

- The Board is authorized by Section 1004 of the zoning regulations to grant an exception allowing the use of property as authorized in the requested property's applicable zoning district.
  - The application area is located within the B-2 "Neighborhood Business District."
  - Within the B-2 zoning district, outdoor vending machines and/or outdoor storage lockers for ice or similar products is prohibited unless specifically allowed as an exception.
- When considering exceptions, the Board reviews the proposed use in accordance with procedures established by state law and standards described in Section 1004.E of the zoning regulations.
- The request for an exception requires a public hearing:
  - The notice of public hearing was published in the *Derby Informer* on June 1, 2016.
  - Notices were mailed to neighboring property owners as prescribed by state law. The certified ownership list is on file at City Hall.
- At the time of this writing, city staff has not received any communications regarding this application for exception.
- In granting an exception, the Board may attach conditions as may be necessary to comply with the standards of 1004.E, to address issues raised during the application and hearing process, or to carry out the general purpose and intent of the zoning regulations.
- An exception, if granted, with or without conditions attached, would allow the applicant to proceed with installation of an ice and water vending kiosk on the property.

- The decision of the BZA on this exception request is final and does not require any further action.

## **FINDINGS OF FACT**

Section 1004.E of the zoning regulation provides the standards for the development of findings of fact which act to support the Board of Zoning Appeals' actions. The Board may grant an exception when it makes specific written findings of fact based upon the particular evidence presented to it at the hearing which support the applicable standards.

The standards which must be considered are listed below with City staff's considerations of each of the findings included in *italics*:

### **Finding No. 1)**

The proposed exception complies with all applicable regulations, including lot size requirements, bulk regulations, use limitations and performance standards, unless a concurrent application is in process for a variance.

#### ***Staff Considerations:***

- Existing structures are compliant with all applicable zoning requirements for the B-2 zoning district.
- Outdoor vending machines and outdoor storage lockers for ice and similar products are allowed if approved as an exception. Variance provisions are not applicable in this situation.
- The applicant has submitted a site plan showing the property, platted building setbacks and locations of existing and proposed structures.
  - The proposed ice and water vending kiosk, if approved, would not impact the site size and would not exceed the maximum lot coverage or height limitations.
  - The site plan shows the proposed ice and water vending kiosk within the platted 25 ft. front building setback along Meadowlark Blvd.
  - If the exception is approved, it should be conditioned upon the kiosk being located outside of the setback.

### **Finding No. 2)**

The proposed exception will not cause substantial injury to the value of other property in the neighborhood.

#### ***Staff Considerations:***

- The proposed outdoor vending machine, if approved, would be a use accessory to a permitted use within the B-2 zoning district.
- The proposed exception is not generally injurious to surrounding property values.
  - Uses on adjacent sites are generally commercial in nature and are not anticipated to be detrimentally impacted by an accessory outdoor vending machine.
  - Residential properties near the area are separated from the site by arterial streets. In addition, the nearest R-1 single-family homes are screened from the property by a creek with mature

- trees and vegetation. Neighbors have constructed 6 ft. high privacy fences to screen rear yards from the arterial street.
- Existing parking lot screening on the property also softens the visual impact of accessory uses located within the parking lot and contributes to the overall visual quality of the site.

**Finding No. 3)**

The location and size of the exception, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the exception will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the exception will so dominate the immediate neighborhood, consideration shall be given to: a) The location, nature and height of buildings, structures, walls and fences on the site; the hours of operation; and b) The nature and extent of landscaping and screening on the site.

**Staff Considerations:**

- The proposed location of the vending kiosk is very visible in the front yard along an arterial street.
  - The location was intentionally selected for its high visibility, but consequently, also has a very strong visual presence in the front yard of the property. The central location obstructs the view of the building behind.
  - An alternative location nearer to the east side of the property should be considered to prevent the proposed accessory structure from obscuring the view of the principal building behind it.
- The proposed use is an ice and water vending kiosk. Customer visits will be very short in duration, as it does not take long to obtain ice or water from the dispensing unit. Therefore, long lines and high volume at any given moment is not expected. The intensity of the use is not anticipated to have detrimental impacts to surrounding properties.
- The proposed vending kiosk is approximately 130 sq. ft. (roughly 19 ft. by 7 ft.). The overall height, including rooftop units, is 13 ft.
- The relative small size of the proposed accessory structure will not dominate the immediate neighborhood or prevent development of neighboring properties.
- Most surrounding properties are already developed, so there is little or no risk to development of the area.

**Finding No. 4)**

Off-street parking and loading areas will be provided in accordance with the standards set forth in Article 5 of the zoning regulations. Such areas may be screened from adjoining residential uses and located so as to protect such residential uses from injurious effects.

**Staff Considerations:**

- Existing development already has existing off-street parking that exceeds the minimum parking requirements for the uses on the property (23 parking spaces required, 55 provided).

- Addition of the requested exception is not expected to significantly increase the need for off-street parking spaces.
  - The accessory structure is proposed to occupy 2 parking spaces, with a third needed to access the dispensing area of the vending machine.
  - Reduction of the total off-street parking on the site by the proposed 3 parking spaces will not reduce the available parking spaces below the minimum required.
- The parking lot has existing landscaping and screening installed to meet the minimum screening required at the time of site plan review.
  - Existing screening is intended to screen the parking lot from public view, but is not intended to screen the proposed outdoor vending machine.
  - Additional screening is not required by zoning.
- Existing mature trees and vegetation along the creek provides visual screening between the proposed exception and the nearest residential uses.

**Finding No. 5)**

Adequate utility, drainage, sidewalks and other such necessary facilities have been installed or will be provided by platting, dedications and/or guarantees.

**Staff Considerations:**

- The site of the proposed exception is already developed for commercial uses and existing utilities are in place to provide municipal services needed.
  - Stormwater drainage from the site was contemplated during site plan review, and will not be impacted if the proposed exception is approved.
  - An existing sidewalk is adjacent to the site along Meadowlark Blvd. and is sufficient to serve the site.
  - No additional dedications or guarantees for public facilities are necessary.
- Water service for the proposed exception may be extended from the public waterline along Meadowlark Blvd. or may be connected to the private service line for the existing building.
- Excess water from the proposed vending machine, as well as wastewater from the water softener and reverse osmosis systems shall be collected and discharged to the public sanitary sewer system. A connection to the private service line to the existing building will be sufficient to accomplish this.

**Finding No. 6)**

Adequate access roads, entrance and exit drives and/or access control is available or will be provided by platting, dedications and/or guarantees and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.

**Staff Considerations:**

- Meadowlark Blvd. is immediately adjacent to the proposed site, and provides adequate and appropriate access to the property.

- Access control limits access to one opening to the property as well as the undeveloped lot to the west. The existing driveway location is sufficient to provide access to both the property requesting the exception and the undeveloped property to the west.
- No additional dedications or guarantees for roads or access control are necessary as a result of this exception request.

**Finding No. 7)**

Adequate fire and police protection will be provided which promotes the safety of individuals and property.

**Staff Considerations:**

- The proposed site is already within the area served by City police and fire protection services. Installation of the proposed accessory structure will not increase the demand for police and fire protection beyond what can be accommodated with existing resources. There is adequate fire and police protection at this location to promote the safety of individuals and property.

**Finding No. 8)**

Orderly land use planning will be achieved in keeping with the goals and proposals of the Comprehensive Plan.

**Staff Considerations:**

- Existing developed properties surrounding the proposed location were developed in accordance with the goals and policies of the Comprehensive Plan and applicable subdivision and zoning regulations of the City.
- Addition of the proposed outdoor vending machine will support the intended uses of the B-2 zoning district by providing service to neighborhood residential uses.

**RECOMMENDATION OF PROFESSIONAL STAFF:**

*Based on the preceding findings, City staff is supportive of, and recommends approval of an exception to allow installation of the desired outdoor vending machine on the property described as the east 180 feet of Lot 1, Block G, The Oaks Addition to Derby, Sedgwick County, Kansas.*

*City staff's recommendation for approval is subject to the following conditions:*

1. *The outdoor vending machine shall be limited to an ice and water vending kiosk installed in accordance with the approved site plan.*
2. *The location of the kiosk shall be along the east edge of the existing parking lot to minimize visual impact to the site.*
3. *The kiosk shall be located outside of the platted 25 ft. front building setback.*
4. *The kiosk and area for customers shall not interfere with required vehicle circulation aisles or pedestrian paths.*
5. *Wastewater from the proposed vending machine shall be collected and discharged to the public sanitary sewer system.*
6. *The exception shall comply with all other applicable zoning, building and code requirements of the City.*

Recommend a Motion to:

- Issue an exception by permit based on the findings described in the written staff report, subject to conditions 1-6 recommended by city staff.

### **PUBLIC HEARING OPENED**

**Justin Smith, Chairman** opened the public hearing and determined that a quorum was present.

**Cody Bird, City Planner** announced that proper notice had been given in accordance with state law.

**Smith** asked board members to report any *ex parte* communications. No *ex parte* communications were reported.

**Bird** presented the staff report.

**Damoon Kirby with Highland Ventures (Applicant)** presented a summary of the project and the proposed ice vending machine. He asked the board to consider the staff recommendation to locate the machine nearer to the east property line. He suggested that the machine be located nearer to the center of the parking lot as originally proposed due to visibility concerns. He stated the central location was selected for high visibility and marketing purposes. He thanked the board for their consideration of his request.

**Smith** asked for any other public comments. No other public comments were presented.

### **PUBLIC HEARING CLOSED**

The board deliberated the findings of fact and adopted the written findings as presented in the staff report.

**MOVED** by Van Willis to issue an exception by permit based on the findings described in the written staff report, subject to conditions 1-6 recommended by city staff, Second by Pat Baer.

**VOTE: 3-0**

Other: Joe Waugh (Absent)  
Jessica Rhein (Absent)

#### **4.B. Election of Officers**

Background Information:

- Article 10, Section 1001 of the Derby Zoning Regulations provides for election of a Chairperson and Vice-Chairperson.
- The Chairperson and Vice-Chairperson must be members of the Board.

- The Board must also appoint a Secretary, who need not be a member of the Board. Typically, the City Planner serves as *ex officio* Secretary of the Board, and an election for that office is not required.

Staff Comments:

- The process for such elections is as follows:
  - The floor is opened for nominations. Nominations (with seconds) are received. The floor is closed, and nominees are then voted on publicly.
  - A majority vote of the members present and voting is required to elect the officers.
  - The term for each officer is one year.
  - Officers shall take office at the next meeting.

Recommended Action:

- Conduct an election for Chairperson and Vice-Chairperson of the Derby Board of Zoning Appeals and appoint the Derby City Planner as *ex officio* Secretary of the Board.

Smith nominated Pat Baer for Chairperson, seconded by Van Willis.

**VOTE: 2-0**

Other: Pat Baer (Abstain)  
Joe Waugh (Absent)  
Jessica Rhein (Absent)

Smith nominated Willis as Vice-Chairperson, seconded by Pat Baer.

**VOTE: 2-0**

Other: Van Willis (Abstain)  
Joe Waugh (Absent)  
Jessica Rhein (Absent)

**5. ADJOURNMENT**

**MOVED** by Smith to adjourn at 7:15 p.m., Second by Baer.

**VOTE: 3-0**

Other: Joe Waugh (Absent)  
Jessica Rhein (Absent)

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Stephanie Cox  
Recoding Secretary

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Patrick S. Baer  
Chairperson