

MARSHALLTOWN

— I O W A —

BOARD OF ADJUSTMENT

Notice of Public Meeting
Tuesday, May 15, 2018 at 5:00 PM

City Council Chambers, City Hall
10 West State Street, Marshalltown IA

1. Call To Order & Roll Call

Frederick
Hitchins
Schulze
Thurston
Wenner

2. Meeting Minutes 04/17/2018

Documents:

[041718.PDF](#)

3. PUBLIC HEARING - HOME OCCUPATION SPECIAL USE PERMIT: 2107 Vermillion Lane

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:

[051518_2107 VERMILLION LN_MEMO.PDF](#)
[2107_VERMILLION_LN-HOSUP-051518.PDF](#)

4. PUBLIC HEARING - VARIANCE: 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:

[051518_1803 S CENTER ST_MEMO.PDF](#)
[1803_S_CENTER_ST-VAR-051518.PDF](#)

2018 Tentative Meeting Schedule (3rd Tuesday of the Month)

**Dates are tentative and may be changed or canceled in order to accommodate staff schedules or development need.*

April 17, 2018	May 15, 2018	June 19, 2018
July 17, 2018	August 21, 2018	September 18, 2018
October 16, 2018	November 20, 2018	December 18, 2018

MINUTES
MARSHALLTOWN BOARD OF ADJUSTMENT
APRIL 17, 2018

Call to order: 5:00 PM

Members Present: Tammie Frederick, Kevin Hitchins-Chair, David Schulze, Kelli Thurston and Bob Wenner

Members Absent: None

1. Meeting Minutes 01/16/2018

2. Meeting Minutes 02/20/2018

Motion by Thurston to approve the minutes from 01/16/2018 and 02/20/2018. Second by Schulze.

Motion Carried 5-0

3. PUBLIC HEARING - SIDEWALK DEFERMENT: 1203 S. 6th Street – MHS Properties

Spohnheimer presented an overview of the sidewalk deferment process and indicated that it is not an exemption from the requirement. The City can make the determination at any time that sidewalk should be installed and the deferment would no longer be in place.

Joe Carter, MHS Properties, presented information related to his proposed housing development, which would include a recreation trail through the development. He is requesting a sidewalk deferment since he is planning an alternative route for pedestrian traffic and due to the topography of the property along S. 6th Street.

Motion by Thurston to approve the Sidewalk Deferment for 1203 S. 6th Street. Second by Wenner. Motion Carried 5-0

4. PUBLIC HEARING - SIDEWALK DEFERMENT: 1902 E. Anson Street – SNT Trucking – Hughes Properties LLC

Spohnheimer presented an overview of the sidewalk deferment process and indicated that it is not an exemption from the requirement. The City can make the determination at any time that sidewalk should be installed and the deferment would no longer be in place. Spohnheimer also presented a map of the area showing that there are two properties in the area that have received deferments previously and two that should have installed sidewalks at the time of construction but did not comply. The City will be reviewing the area to determine next steps for compliance.

Steve Troskey, CGA, was present to discuss the proposal. He indicated that this is a warehouse expansion and it is not a pedestrian generator.

The Board discussed the request and the anticipated future requirement by the City to require sidewalk in the general area on all or part of the property. They were comfortable with a deferment until such time the City deemed sidewalk to be necessary.

Motion by Wenner to approve the Sidewalk Deferment for 1902 E. Anson Street. Second by Schulze. Motion Carried 5-0

With no further business, the Board adjourned.

Respectfully submitted,
Michelle Spohnheimer, Housing & Community Development Director

MARSHALLTOWN

— I O W A —

TO: Board of Adjustment
FROM: Michelle Spohnheimer, Housing & Community Development Director
DATE: May 15, 2018 – Meeting Date

HOME OCCUPATION SPECIAL USE PERMIT request for 2107 Vermillion Lane – Kurt Hilleman

The Home Occupation Special Use Permit request has been submitted to allow the operation of a gunsmith service home business, at a new location. This is neither a permitted nor a prohibited home occupation, which is why it is before the Board. Kurt Hilleman was previously approved for a home occupation special use permit for his gunsmith service business at 405 W. Madison St. He has now purchased a property and is requesting approval to relocate to the new address

Zone:	R-2, low Density Residential
Use:	Home Occupation
Comprehensive Plan:	Low Density Residential

Zoning Ordinance - Chapter 4 Section 11.

2. Criteria:

- a) No Exterior Display. That in connection with which there is no display that will indicate from the exterior that the building is being utilized in part for any purpose other than that of a dwelling, with the exception of section ‘d’ herein;
- b) Residential Design Features. That the building shall include no features of design not customary for residential use;
- c) Residential Character. That the building or premises occupied shall not be rendered objectionable or detrimental to the residential character of the neighborhood due to exterior appearance or by the emission of dust, gas, noise, odor, or smoke, or in any other way.
- d) Signs. Any sign utilized by a home occupation in an “R” district shall be limited to one building mounted sign which shall not exceed one square foot in area.
- e) Equipment. Any merchandise or stock in trade sold, repaired or displayed shall be stored entirely within the residential structure or in an accessory building.
- f) Employment. On-site employees must be members of the immediate family residing on the premises. Additional employees may be permitted as required by law or may be permitted through the Special Use Permit process by the Board of Adjustment.
- g) Traffic and Parking. Traffic generated by the home occupation shall not be objectionable to the neighboring residents. Off-street parking shall be adequate to accommodate the parking demand generated by the home occupation.
- h) Structural modifications or additions to the residence for the expansion of a home-occupation are prohibited.
- i) Non-compliance. Any home-occupation which does not abide by the terms of this section shall be punishable under the Violation and Penalty section of the zoning ordinance.

Recommendation: The Board of Adjustment may consider the request and place conditions on the application as determined to be necessary. I have not had any concerns or complaints related to this business at the current location.

DATE SUBMITTED & FEE PAID: 4/23/08
HEARING DATE: 5/15/08



Special Use & Home Occupation Special Use Permit Application
36 N. Center Street, Marshalltown, IA 50158 Ph: 641-754-5756 Fax: 641-754-5742

All items listed must be submitted with this application:

- A site plan, drawn in ink to scale. This site plan shall not be larger than 11" X 17."
- Any other applicable drawings or diagrams. Home Occupation Special use permits must submit a floor plan diagram.
- Application fee. A \$300 fee is required for a special use request (\$50 for a Home Occupation Special Use request). Make check payable to "City of Marshalltown." The fee must be paid when the application is submitted to the Housing Department.
- Legal description of the property. The property owner should have a copy of the legal description of the property. *Please note that the tax description on the Marshall County assessor's webpage is NOT the legal description.* The legal description is listed on the property's abstract or owners may obtain a copy of the recorded deed from the Marshall County Recorder's Office for a fee.

It is the burden of the applicant 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. For all special use requests, with the exception of a Home Occupation Special Use request, the Plan & Zoning Commission shall first review the proposal and make a recommendation to the Board of Adjustment.

Attendance at all meetings is required.

Please type or print legibly in ink.

Property Address: 2107 Vermillion Lane, Marshalltown Iowa 50158
Owner: Kurt Hilleman
Mailing Address: 2107 Vermillion Lane, Marshalltown Iowa 50158
Phone: 954 830-7301
Email: Stevr808@yahoo.com
Owner's Agent (if applicable):
Agent Address:
Agent Phone:
Agent Email:

The board will use this information to review your request. Please attach any additional supporting information. If you have any questions, please contact the Zoning Department at 754-5756.
Please describe the request and what justification there is for the proposal. Attach additional pages if necessary. If applicable, please provide a description of the business or use, discuss any signage to be used, and parking issues.

Owner/Agent Signature:
Date:

For background have been a licensed gunsmith in FL since 1998 and have been operating in Marshalltown since November of 2017 at 405 W. Madison St.

Basic gunsmithing, repair and replacement of parts. Won't be doing any kind of manufacturing, won't be working with chemicals or anything of that sort. Won't be engaged in reloading for commercial purposes so no gunpowder will be stored on site. I don't even reload for personal use, don't have the time.

Specialize in high end firearms and special purpose firearms. Majority of my projects are sent in from out of state. Won't be much in the way of foot traffic and I'm available by appointment only - no walk ins.

I won't have a showroom or storefront set up on property. Any local sales will be done on a special order bases as I try not to have in stock inventory or the overhead associate with it. The only time any inventory would be maintained is prior to events like local gun shows.

If you need clarification or additional information on anything, please let me know.

Thanks,

Kurt Hilleman

Home Occupation Registration Form

City of Marshalltown, 24 North Center Street, Marshalltown, IA 50158

Phone: 641-754-5756; Fax: 641-754-5742

This form must be complete or the application cannot be accepted.

Applicant Name: Kurt Hilleman	Business Name: Kurt Hilleman
Address: 2107 Vermillion Ln , Marshalltown, IA 50158	
Phone: 954 830-7301	Fax: N/A

Please describe your home occupation (attach additional information if necessary).

Gunsmith Service - Basic repair and parts replacement. Licensed gunsmith since 1999. No signage will be used.

Please check the appropriate category for your home occupation:

- | | |
|---|---|
| <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Office facilities for accountant, architect, engineer, lawyer, clergyman, or other similar professional occupations. <input type="checkbox"/> Office facilities for telecommuters, salesmen, sales representatives, manufacturer's representatives, and other similar trades or occupations <input type="checkbox"/> Home sewing or tailoring. <input type="checkbox"/> Studio for an artist, photographer, writer, or composer. | <ul style="list-style-type: none"> <input type="checkbox"/> Telephone answering. <input type="checkbox"/> Catering, home-cooking and preserving for the purpose of selling the product. <input type="checkbox"/> Tutoring or giving lessons, limited to four students simultaneously. <input type="checkbox"/> Day care homes.
(List the number of permitted Children: _____) <input type="checkbox"/> None of the above, Special Use permit required. <input type="checkbox"/> None of the above, use "grandfathered". |
|---|---|

The following home occupations are prohibited: Animal hospitals, private clubs, restaurants, stables and kennels, automobile repair or auto body shops (More than 2 vehicles per year which are not registered at the residence and are rebuilt, repaired, or reconstructed shall constitute an automobile repair or auto body shop), automobile paint shops, any occupation which is considered illegal by law, and any use which does not meet the Home occupation regulations.

Home Occupation Regulations

- a) **Appearance.** That in connection with which there is no display that will indicate from the exterior that the building is being utilized in part for any purpose other than that of a dwelling, with the exception of one home occupation sign defined in section c) below.
Initial that you understand this appearance requirement: KH

- b) **Design.** That the building shall include no features of design not customary for residential use; That the building or premises occupied shall not be rendered objectionable or detrimental to the residential character of the neighborhood due to exterior appearance or by the emission of dust, gas, noise, odor, or smoke, or in any other way.
Initial that you understand this design requirement: KH

- c) **Signs.** Any sign utilized by a home occupation in an "R" (residential zoning) district shall be limited to one building mounted sign which shall not exceed one square foot in area.

Attach a photo or drawing of the home occupation sign to be used showing all dimensions and where it will be mounted. Initial that you understand this design requirement: KH

d) Equipment. Any merchandise or stock in trade sold, repaired or displayed shall be stored entirely within the residential structure or in an accessory building.

Are any dangerous materials stored? _____ Yes No

If yes, please list the materials: _____

e) Employment. On-site employees must be members of the immediate family residing on the premises. Additional employees may be permitted as required by law or may be permitted through the Home Occupation Special Use Permit process by the Board of Adjustment.

How many people are employed? ONE

How many employees are not members of the immediate family residing on the premises? NONE

List all employees: KURT HILLEMANN

f) Traffic and Parking. Traffic generated by the home occupation shall not be objectionable to the neighboring residents. Off-street parking shall be adequate to accommodate the parking demand generated by the home occupation.

How many visits per day are made to your business? LESS THAN ONE.

How many parking spaces are available? 5

g) Structural modifications. Structural modifications or additions to the residence for the expansion of a home occupation is prohibited.

Initial that you understand this requirement: KH

h) Non-compliance. Any home-occupation which does not abide by the terms of this section shall be punishable under the Violation and Penalty section of the zoning ordinance. Any person, firm or corporation who violates, disobeys, omits, neglects, or refuses to comply with, or who resists the enforcement of any of the provisions of this Ordinance shall, upon conviction, be fined not more than one hundred (\$100.00) dollars for each offense. After a written notice of such violation, each day that the violation is permitted to exist beyond the expiration of the time designated on said notice, shall constitute a separate offense.

- Please read the attached Section 10-Home Occupations excerpt from the Zoning Ordinance.
- Please attach a photo of the residence and site map showing parking.
- This home occupation permit does NOT continue with the land and is NOT transferable.
- Any changes to the operation of the home occupation requires a re-registration.

Agreement: I hereby state I have received, have read and understand the terms of the home occupation section of the Zoning Ordinance of 1998. I agree to comply with the ordinance.

Signature of applicant: 

Date: 4-20-2018

- Home Occupation permitted
- Home Occupation grandfathered (Legal non-conforming)
- Special Use permit granted on _____

Zoning Officer, City of Marshalltown

Date



Map

Workshop

Vermillon Lane

Parking

Vermillon Ln

Google

Map data ©2018 Google United States 3D Earth view is not available Terms Send feedback 20 ft

Navigation icons: person, minus, plus, and a circular icon.

Grid icon

Location pin icon

Street view pegman icon



Recorded: 03/29/2018 at 11:14:31 AM
 Amt: \$12.00 Page 1 of 1
 Revenue Tax: \$295.20
 Marshall County Iowa
 Nan Benson County Recorder

File **2018-00001510**

\$295.20
 \$ 12.00

WARRANTY DEED - JOINT TENANCY



Return to: Paula Marie Thumm-Hilleman & Kurt Hilleman, 2107 Vermillion Ln., Marshalltown, IA 50158
 Preparer: Brian L. Danielson, 103 W. State St., Marshalltown, IA 50158, (641) 753-6659
 Taxpayer: Paula Marie Thumm-Hilleman & Kurt Hilleman, 2107 Vermillion Ln., Marshalltown, IA 50158

For the consideration of One (\$1.00)----- Dollar(s) and other valuable consideration, Ronald Earl Duimstra and Julaine Rae Duimstra, husband and wife do hereby Convey to Paula Marie Thumm-Hilleman and Kurt Hilleman, wife and husband,

Paula Marie Thumm-Hilleman and Kurt Hilleman, wife and husband, as Joint Tenants with Full Rights of Survivorship, and not as Tenants in Common, the following described real estate in Marshall County, Iowa:

Lot 4, Block 1, Maples Estates First Addition to Marshall, Marshall County, Iowa.

Grantors do Hereby Covenant with grantees, and successors in interest, that grantors hold the real estate by title in fee simple; that they have good and lawful authority to sell and convey the real estate; that the real estate is free and clear of all liens and encumbrances except as may be above stated; and grantors Covenant to Warrant and Defend the real estate against the lawful claims of all persons except as may be above stated. Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the real estate. Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

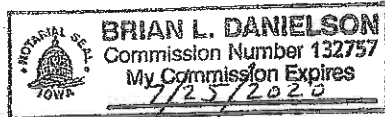
Dated on March 20, 2018

Ronald Earl Duimstra
 Ronald Earl Duimstra (Grantor)

Julaine Rae Duimstra
 Julaine Rae Duimstra (Grantor)

STATE OF IOWA, COUNTY OF MARSHALL

This record was acknowledged before me on March 20, 2018, by Ronald Earl Duimstra and Julaine Rae Duimstra, husband and wife



Brian L. Danielson
 Signature of Notary Public

MARSHALLTOWN

— I O W A —

TO: Board of Adjustment
FROM: Michelle Spohnheimer, Housing & Community Development Director
DATE: May 15, 2018 – Meeting Date

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

An application for a variance has been received from the proposed buyers of the property at 1803 S. Center Street requesting continuation of the use as an ice cream shop. A variance was previously approved by the Board of Adjustment for the current owners to continue operation with a condition that the property/business be owned/operated by family members to the original owner. The prospective buyers are not related and are looking to purchase the property and continue the operation.

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 request, make a determination on the hardship and place conditions on the application as determined to be necessary.

Date Submitted & Fee Paid: 4/22/18

Hearing Date: 5/15/18

Variance Application Form

36 N. Center Street, Marshalltown, IA 50158 Ph: 641-754-5756 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 all 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 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:	
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 Zoning at 641-752-3454 with any questions.

The applicant makes the following request:

Variance to be granted to allow for the operation of the property as an ice cream shop similar to the current "Freeze" that has been operating under a variance

Please state your hardship. The property operated as an ice cream shop for many years. The location right on Center St. is not a good location for new residential development as it is too close to both Center St. and Edgeland Dr. Without a variance this property would not be able to be used since it was changed to residential zoning long after the Tasty Freeze began operating at this location.

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.

As stated above, the property is the corner of two busy streets. It is not desirable for its zoned used residential. It has little to no value unless a variance can be granted allowing a 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 much more appropriate 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 changes will be made as the existing structure will be used.

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 prior.

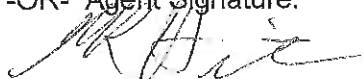
5. **The general intent and purpose of the Zoning Ordinance is protected.** A variance must be consistent with the intent of the Zoning Ordinance and the Comprehensive Plan. Is there another option which you could pursue that would not require a variance? If alternatives exist which do not require a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

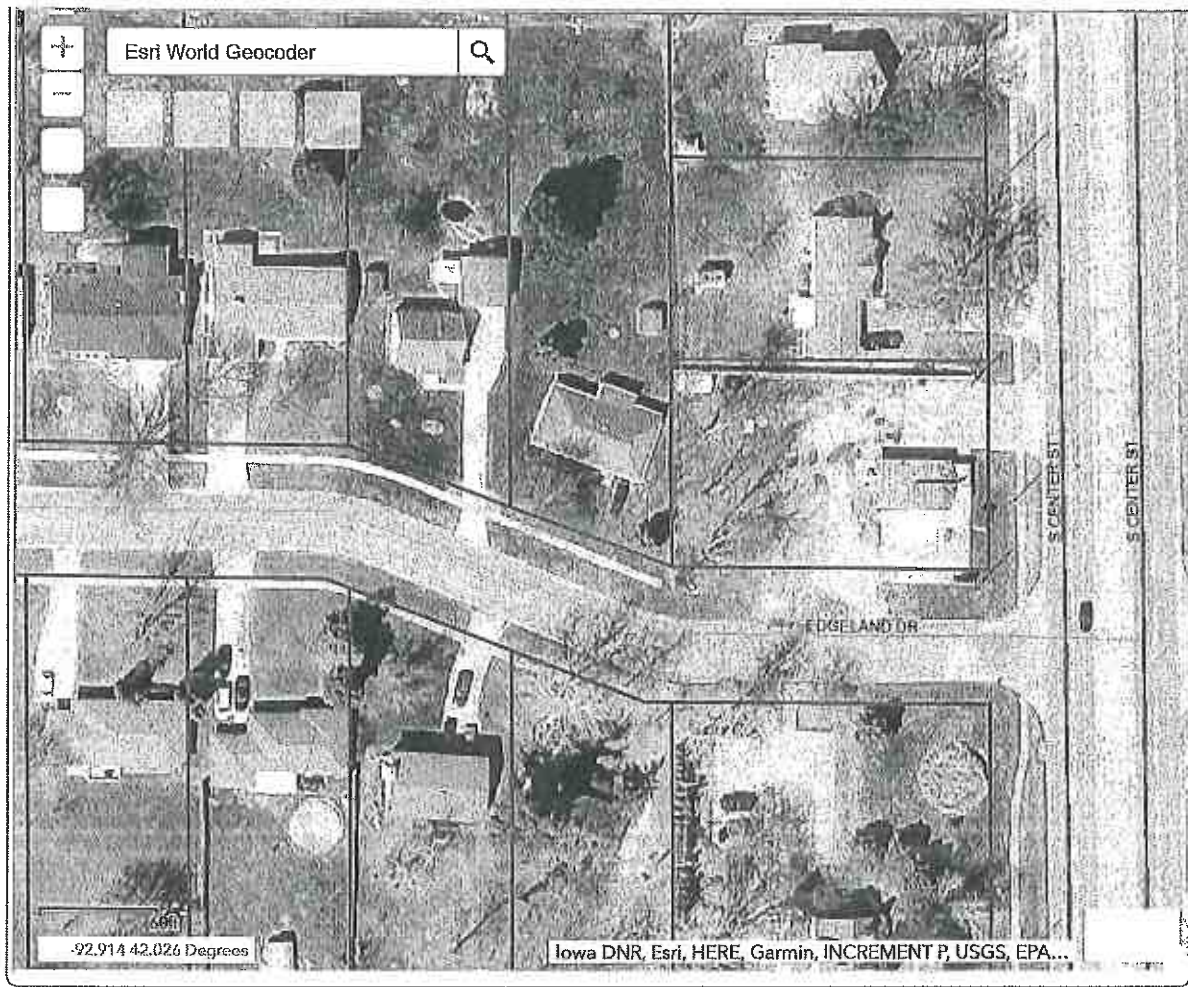
None

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: 4-23-18



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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

Board of Adjustment

As co-owner of the property at 1803 South Center Street and was the family representative at the last hearing to preserve the variance, I would like the board to know that as myself and the other co-owner (Brett Bacon) vetted the prospective buyers that our realtor brought to us, we felt it was not only in our best interest, but also in the interest of the City of Marshalltown to begin entering into an agreement with Justin Hazen for the sale of this property.


Mr. Hazen indicated and assured us that he wanted to continue operating on this property an ice cream shop, which would preserve a legacy that Marshalltown has known since the early 1960's.

As the primary representative of the Bacon Family, we hope the Board approves his application for a new variance to continue the icon at 1803.

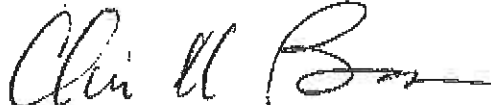
Chris N Bacon

Chris N Bacon

We, the current owners of 1803 S. Center St. Marshalltown, IA do hereby consent the purchasers Justin Hazen and Tyler Olson proceeding with a variance request to continue to operate at the location as an ice cream shop.



Brett K. Bacon
Brett K. Bacon



Chris N. Bacon
Chris N. Bacon