

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: November 19, 2012
	Agenda Item No. 47 Roll Call No. <u>12-1809</u> Communication No. <u>12-580</u> Submitted by: Phillip Delafield, Community Development Director

AGENDA HEADING:

Review of the October 24, 2012 decision of the Zoning Board of Adjustment to grant two variances to separation requirements and a Conditional Use Permit to allow conversion of the existing use (Nat’s Liquor) from a limited food sales establishment to a liquor store.

SYNOPSIS:

On September 10, 2012, the City Council amended City Code Section 134-954 to revise the allowed locations of businesses engaged in the sale of alcoholic liquor, wine, or beer for off-premises consumption. The revised requirements require any new liquor store to provide at least 500 feet of separation from any church, school, public park, or licensed child care facility and at least a ¼-mile of separation from any other limited food sales establishment, limited retail sales establishment, gas station/convenience store and liquor store engaged in the sale of alcoholic liquor.

The application to convert the business at 3804 Hubbell Avenue to a liquor store does not satisfy these requirements. There is a church (Experience Church) at 3800 East Douglas Avenue that is within 80 feet of the site. There is a licensed daycare for up to 8 children operated by Annie Johnson (DHS Provider ID 30307 with license valid through October 1, 2013) at 3909 Hubbell Avenue that is within 380 feet of the site. There is a gas station/convenience store selling alcoholic liquor (QuikTrip) at 3700 Hubbell Avenue that is within 748 feet of the site.

On October 24, 2012, the Zoning Board of Adjustment voted 6-0 to approve the Variances to separation requirements and the Conditional Use Permit that allows for the conversion of the existing use (Nat’s Liquor) from a limited food sales establishment with no more than 50% of revenue derived from the sale of alcoholic liquors, wine, beer, and tobacco products, to a liquor store where up to 100% of revenue may be derived from sale of alcoholic liquors, wine, beer, and tobacco products.

The Zoning Board of Adjustment’s decision was based upon the following findings:

- The business is currently permitted to sell alcoholic liquor as a limited food sales establishment until December 31, 2013 so long as no more than 50% of the gross receipts from sales on the premises are derived from the sale of alcoholic liquor, wine, beer or tobacco products (50% was the requirement in 2010 when the liquor license was initially issued for a grocery/convenience store). The Board does not believe that allowing this business to be classified as a liquor store, doing business in a similar manner as how to they currently operate, where more than 50% of sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products, would create additional impacts on the surrounding area or cause a proliferation of liquor stores within the City.

- The Board finds that the business operators have established a history of a well-run and well-managed store. If the Zoning Enforcement Officer determines that the operation of the liquor store becomes a nuisance or if the operation of the liquor store violates the requirements of City Code Section 134-954(c) applicable to any establishment issued a Conditional Use Permit, the Conditional Use Permit would be subject to amendment or revocation by the Zoning Board of Adjustment.
- The Board finds that the limited size of the site and the existing layout of the site present a functional obsolescence where the only beneficial use of the property is as a liquor store. This functional obsolescence presents a hardship for the appellant since it significantly limits their options for altering their business model to change the ratios of products sold and limits their options for redevelopment of the property to another use.
- The competing gas station/convenience store at 3700 Hubbell Avenue has a license to sell alcoholic liquor. The Board finds that an unnecessary hardship exists in providing the required 1,320 feet (1/4-mile) of separation for this establishment engaged in the sale of alcoholic liquor. The Board finds that the existing 748 feet of separation is adequate given the fact that Hubbell Avenue is a major commercial corridor.
- The Board also finds that the appellant has demonstrated that an unnecessary hardship exists in providing the required 500 feet of separation from the church at 3800 East Douglas Avenue and the licensed child care facility at 3909 Hubbell Avenue. The Board believes the location meets the intent of the separation requirements since the distances, when measured as how a person would physically travel from the liquor store to the church or daycare (instead of measuring the distances between property lines), would be approximately 500 feet.

Pursuant to Section 135-65 of the City Code, the City Council shall review any decision of the Board that grants a Variance to separation requirements contained in the Zoning Ordinance. The City Council must review Board's decision within 30 days after the decision is filed. After such review, the City Council may remand the decision to the Board for further study within 30 days of the Council's review. If the City Council declines to remand the decision, that decision shall become final on the date of the City Council's action (November 19, 2012).

Staff recommends that the City Council remand the decision to the Board of Adjustment for reconsideration with regard to a finding that that a liquor store is "the only beneficial use of the property;" that use of "physical travel distance" as a method to calculate separation distance directly conflicts with Chapter 10 of the City Code and previous measurement for all separation uses; and that the designation of Hubbell Avenue as a major commercial corridor is an insufficient basis for granting a variance to the required separation distance.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

The 28,314-square foot property known as 3804 Hubbell Avenue contains a 24-foot by 43-foot (1,032 square feet) building occupied by Nat's Liquor, operated by Jasjit Nat, 3804 Hubbell Avenue, Des Moines, Iowa 50317. The subject property is located at the northeast corner of Hubbell Avenue and

East 38th Street. The site is zoned "C-2" (General Retail and Highway-Oriented Commercial) and is owned by Convenience Store Lsg & Mgmt, LLC, represented by Beckey Dhaliwal, 4455 Acre View Court, Brookfield, Wisconsin 53005-1211.

The subject property was developed as a gas station/convenience store in 1972, at which time a Certificate of Occupancy was issued to Vickers Refining Company. In approximately 2010, the fuel pumps were removed and the business has since been operating as a "limited food sales establishment." As such, the business has been permitted to sell alcoholic liquor, in addition to wine and beer in accordance with a Liquor License (initially issued October 13, 2010) so long as no more than 50 percent of the gross receipts from sales on the premises are derived from the sale of alcoholic liquor, wine, beer or tobacco products. The business has been unable to demonstrate that it is currently complying with the 50% threshold. It is considered an illegal "liquor store" for zoning purposes, which necessitates the requested Variances and Conditional Use Permit to legalize the business as a liquor store.

PREVIOUS COUNCIL ACTION(S): NONE

BOARD/COMMISSION ACTION(S):

Board: Zoning Board of Adjustment

Date: October 24, 2012

Resolution Number: ZON2012-00093

Action: Approved a variance of the provision that requires any new liquor store have 500 feet of separation from any church, school, public park, or licensed child care facility and a Variance of the provision that requires any new liquor store have a ¼-mile of separation from any other limited food sales establishment, limited retail sales establishment, gas station/convenience store and liquor store engaged in the sale of alcoholic liquor. The variances to separation requirements allowed the Zoning Board of Adjustment to also grant a Conditional Use Permit for the conversion of the use from a limited food sales establishment with no more than 50% of revenue derived from the sale of alcoholic liquors, wine, beer, and tobacco products, to a liquor store where up to 100% of revenue may be derived from sale of alcoholic liquors, wine, beer, and tobacco products.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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