

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date:	October 6, 2014
	Agenda Item No.	38
	Roll Call No.	<u>14-1599</u>
	Communication No.	<u>14-479</u>
	Submitted by:	Phillip Delafield, Community Development Director

AGENDA HEADING:

Review of Zoning Board of Adjustment decision granting a variance from a separation distance requirement to allow expansion of a restaurant at 1106 Army Post Road to include outdoor sales of beer and wine during special events.

SYNOPSIS:

On September 24, 2014, the Zoning Board of Adjustment voted 7-0 to approve a Variance of the provision that requires any restaurant selling wine and/or beer to provide at least 75 feet of separation from any church, school, public park, or licensed childcare facility. The Des Moines Church of the Open Bible immediately adjoins the subject property. The church allows usage of the church property as part of the special events and consented to the application requesting the Variance.

The Decision and Order of the Zoning Board of Adjustment’s action was executed under the signature of Chairman Mel Pins on September 30, 2014. Pursuant to Section 134-65 of the City Code, the City Council shall review the 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. If the City Council declines to remand the decision, that decision shall become final on the date of the City Council’s action (October 6, 2014). Staff recommends that the City Council not remand the Board’s decision.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

The subject property is comprised of a restaurant use (Nick’s) at 1106 Army Post Road and a church use (Fort Des Moines Church of the Open Bible) on multiple parcels in the vicinity of 1116 Army Post Road. The total area of these parcels measures 2.75 acres. The subject parcels are owned by 205 Land Investments, represented by Charles Celsi, 2809 Ashworth Road, West Des Moines, IA 50265 and Fort Des Moines Church of the Open Bible, represented Jim Beyer, Des Moines, IA 50315.

On September 24, 2014, the Zoning Board of Adjustment granted a Special Permit and a Variance to allow Nick’s Restaurant to host special events that involve a classic car and bike show and a stage for live music. Outdoor beer sales occur along the west side of the restaurant during the events. The events are held from 5:00 p.m. to 9:00 p.m. each Friday evening during the months of April through September.

A Variance to a separation distance requirement is necessary to allow Nick's restaurant to expand in order to have outdoor beer and wine sales during events. The existing restaurant is considered non-conforming with regards to the current zoning requirement that any restaurant selling beer and wine provide at least 75 feet of separation from any church, school, public park, or licensed childcare facility. The Des Moines Church of the Open Bible immediately adjoins the subject property. The church allows usage of the church property as part of the special events and consented to the application requesting the Variance.

The Zoning Board of Adjustment granted the Special Permit and Variance subject to the following conditions:

1. The Special Permit shall expire on September 30, 2019 at which time the Zoning Board of Adjustment may consider a subsequent request.
2. Events shall only occur between 5:00 p.m. and 9:00 p.m. on Friday evenings during the months of April, May, June, July, August, and September.
3. Any outdoor sale of wine or beer on the premise shall only occur at 1106 Army Post Road and shall only occur during special events.
4. The events, including any amplified sound or live entertainment, shall comply with Article IV of Chapter 42 of the City Code pertaining to noise control.
5. Any amplified sound or live entertainment shall occur entirely on the northern portion of the property is that is zoned "C-2" District.
6. Litter and trash receptacles shall be located at convenient locations throughout the premises, and all trash and debris from the premises and adjoining right-of-way shall be removed on a daily basis.
7. The only vehicles permitted to maneuver or park on non-paved surfaces shall be those on display for the event.
8. Any stage constructed or placed on the site shall be removed by September 30 of each year.
9. If at any time the Zoning Enforcement Officer determines that the conduct of the event has become detrimental to the surrounding area, the special permit would be subject to reconsideration by the Zoning Board of Adjustment.

PREVIOUS COUNCIL ACTION(S): NONE

BOARD/COMMISSION ACTION(S):

Board: Zoning Board of Adjustment.

Date: September 24, 2014

Resolution Number: ZON2014-00160

Action: Approval of a Variance of the provision that requires any restaurant selling wine and/or beer to provide at least 75 feet of separation from any church, school, public park, or licensed childcare facility subject to conditions.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the first floor of City Hall, 400 Robert D. Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to cityclerk@dmgov.org.