

 <p style="text-align: center;"><b>Council Communication</b> Office of the City Manager</p>	<b>Date:</b> April 6, 2015
	<b>Agenda Item No.</b> 51 <b>Roll Call No.</b> <u>15-0631</u> <b>Communication No.</b> <u>15-183</u> <b>Submitted by:</b> Phillip Delafield, Community Development Director

**AGENDA HEADING:**

Review of Zoning Board of Adjustment decision granting a Use Variance to allow a restaurant use selling alcoholic liquor, wine, and beer at 2301 Southwest 9th Street.

**SYNOPSIS:**

On March 25, 2015, the Zoning Board of Adjustment voted 5-2 to conditionally approve a variance of the permitted uses in a "C-0" Commercial-Residential District, to allow use of the 2,532-square-foot building for a restaurant use selling alcoholic liquor, wine, and beer.

The Decision and Order of the Zoning Board of Adjustment’s action was executed under the signature of Chairman Mel Pins on March 31, 2015. 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 (April 6, 2015). Staff recommends that the City Council not remand the Board’s decision.

**FISCAL IMPACT: NONE**

**ADDITIONAL INFORMATION:**

The subject property is an 11,865-square-foot parcel along the east side of Southwest 9th Street, just south of Davis Avenue. It contains a 2,532-square-foot structure, currently occupied as Rockstar Bar & Grill. The property is zoned “C-0” Commercial-Residential District. The subject property is owned by Wayne Russell, LLC, represented by Larry Barry, 901 Thomas Beck Road, Des Moines, IA 50315. The current business is operated by Rockstar Bar & Grill, represented by Jennifer Wilson, 2301 Southwest 9th Street, Des Moines, IA 50315.

The subject property has been occupied by a restaurant use in the past, which was permitted as a legal nonconforming use in the “C-0” (Commercial-Residential) District. However, the Zoning Enforcement Officer recently determined the premise lost its legal nonconforming status as a restaurant use since the restaurant operator failed to submit a requested audit within 45 days, as required by City Code Section 134-954(e). This loss of the legal nonconforming status necessitates a Use Variance in order for the premise to continue being used as a restaurant.

The Zoning Board of Adjustment granted the Use Variance subject to the following conditions:

1. The sale of alcoholic liquor, wine, and beer shall only be ancillary to restaurant use, where at least 50% of the gross receipts must be derived from the sale of prepared food and food-related services.
2. Prior to November 15, 2015, the business shall submit an audit (prepared by a certified public accountant licensed by the State of Iowa) to the Zoning Enforcement Officer that demonstrates the percent of the gross receipts were derived from the sale of prepared food and food-related services during the six (6) month period beginning May 1, 2015 and ending October 31, 2015. The results of the audit shall be shared with the Zoning Board of Adjustment members.
3. The restaurant use shall be contained within the existing 2,532-square-foot structure and shall not be expanded to include any outdoor patio or outdoor seating area.
4. Prior to May 1, 2016, the existing parking lot shall be substantially improved in accordance with a Site Plan approved by the City's Permit and Development Center that satisfies current regulations relating to paving setbacks, landscaping, and screening.
5. Prior to May 1, 2016, the existing retaining wall around the perimeter of the parking lot shall be improved with a uniform design and placement as approved by the City's Planning Administrator.
6. Prior to May 1, 2016, the public sidewalk along Davis Avenue shall be improved with a uniform design and placement as approved by the City's Planning Administrator. As of the date of this order, no portion of the sidewalk shall be used at any time for parking.
7. If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or does not satisfy the conditions of approval, the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Variance.

**PREVIOUS COUNCIL ACTION(S):**

Date: December 22, 2014

Roll Call Number: [14-1963](#)

Action: [On](#) request from Wayne Russell, LLC to rezone 2301 SW 9th Street from "C-0" (Commercial-Residential) to "C-2" (General Retail and Highway-Oriented Commercial) to allow conversion of the existing restaurant use to a tavern use. Moved by Hensley to adopt and DENY the proposed rezoning. Motion Carried 7-0.

**BOARD/COMMISSION ACTION(S):**

Board: Zoning Board of Adjustment

Date: March 25, 2015

Resolution Number: ZON2015-00026

Action: Motion to conditionally grant a Use Variance to allow a restaurant use on the property, by a 5-2 vote.

Board: Zoning Board of Adjustment

Date: February 25, 2015

Resolution Number: ZON2015-00026

Action: Motion to deny a Use Variance to allow a tavern use on the property, by a 6-0 vote.

Board: Plan & Zoning Commission

Date: November 20, 2014

Resolution Number: ZON2014-00205

Action: Recommended denial of a request to rezone 2301 Southwest 9th Street from “C-0” (Commercial-Residential) to “C-2” (General Retail and Highway-Oriented Commercial), by a 9-0 vote.

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

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