

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: April 11, 2016
	Agenda Item No. 59 Roll Call No. <u>16-0610</u> Communication No. <u>16-173</u> Submitted by: Phillip Delafield, Community Development Director

AGENDA HEADING:

Review of Zoning Board of Adjustment decision granting an amendment to a Use Variance for the property at 2301 SW 9th Street in order to allow the restaurant an additional year to comply with a condition of approval and in order to allow an outdoor patio.

SYNOPSIS:

Staff recommends that the Council decline to remand the decision of the Zoning Board of Adjustment granting an amendment to the Use Variance of the permitted uses in the “C-0” Commercial-Residential District.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

- On March 23, 2016, the Zoning Board of Adjustment voted 7-0 to approve a request to amend the conditions of approval for a Use Variance of the permitted uses in the “C-0” Commercial-Residential District that was approved by the Zoning Board of Adjustment on March 25, 2015.
- The Use Variance was initially granted on March 25, 2015. It allows the property to be used as a restaurant so long as conditions regarding site improvements and business operations are satisfied. The original conditions also prohibit any outdoor patio.
- The amendment granted on March 23, 2016 allows the restaurant an additional year to comply with the requirement that they provide a financial statement that demonstrates the business has been operating as a restaurant whereby at least 50% of their sales are derived from food-related purchases.
- The amendment granted on March 23, 2016 also allows the restaurant to have a patio located between the building and west (front) property line along SW 9th Street.
- The site is located at the southeast corner of SW 9th Street and Davis Street. It measures 11,865 square feet and contains a 2,532-square foot commercial structure occupied by “Rockstar Bistro.
- The site is owned by Wayne Russell, LLC, represented by Larry Barry, 901 Thomas Beck Road, Des Moines, IA 50315. The business is now operated by Nick Iaria, 2301 SW 9th Street, Des

Moines, IA 50315. The business was previously operated by Jennifer Wilson.

- 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 11, 2016).

PREVIOUS COUNCIL ACTION(S):

Date: April 6, 2015

Roll Call Number: [15-0631](#)

Action: [Review](#) of Zoning Board of Adjustment decision granting a use variance to allow a restaurant selling alcoholic liquor, wine and beer at 2301 SW 9th Street. ([Council Communication No. 15-183](#)) Moved by Gatto to receive and file the staff report and comments received, and to adopt alternative C. (C) The City Council declines to remand the decision to the Zoning Board of Adjustment. The decision of the Board becomes final on this date. Motion Carried 6-1.

BOARD/COMMISSION ACTION(S):

Board: Zoning Board of Adjustment

Date: March 23, 2016

Resolution Number: ZON2016-00040

Action: Motion to amend the conditions of approval for the Use Variance that allows the restaurant use, approved by a 7-0 vote.

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 in a "C-0" Commercial-Residential District, approved by n 5-2 vote.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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