

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: January 9, 2017
	Agenda Item No. 52 Roll Call No. <u>17-0066</u> Communication No. <u>17-002</u> Submitted by: Phillip Delafield, Community Development Director

AGENDA HEADING:

Review of Zoning Board of Adjustment decision granting an amendment to a Use Variance to allow a restaurant use selling alcoholic liquor, wine, and beer at 2301 Southwest 9th Street additional time to comply with previous conditions of approval.

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 December 21, 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. The amendment allows the restaurant an additional five (5) months 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 area derived from food-related purchases.
- The amendment also allows the restaurant additional time to bring the site into compliance with the required site plan. The restaurant recently had a Site Plan prepared that maximized the number of off-street parking spaces that can be provided on the site.
- The Use Variance was initially granted on March 25, 2015. It allowed the property to be used as a restaurant so long as conditions regarding site improvements and business operations were satisfied.
- A previous amendment to the Use Variance was granted on March 23, 2016, which allowed 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 area derived from food-related purchases. It also allowed the restaurant to have a patio located between the building and west (front) property line along Southwest 9th Street.

- On April 11, 2016, the Decision & Order was reviewed by City Council and remanded to the Board for further study. On April 27, 2016 the Board revised the conditions of approval to explicitly state that in the event that the restaurant usage reverts to a bar/tavern usage, the Use Variance shall terminate and the patio shall be removed immediately.
- The site is located at the southeast corner of Southwest 9th Street and Davis Street. It measures 11,865 square feet and contains a 2,532-square-foot commercial structure occupied by “The Angry Goldfish”. It was previously 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 Stephanie White, 2301 Southwest 9th Street, Des Moines, IA 50315. The business was previously operated by Nick Iaria and 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 (January 9, 2017).

PREVIOUS COUNCIL ACTION(S):

Date: April 11, 2016

Roll Call Number: [16-0610](#)

Action: [Review](#) of Zoning Board of Adjustment decision granting an amendment to the use variance to allow a restaurant selling alcoholic liquor, wine and beer at 2301 SW 9th Street and to allow an outdoor patio. ([Council Communication No. 16-173](#)) Moved by Hensley to receive and file the staff report and comments received, and to adopt alternative A; and for the Mayor to send a letter outlining the Council’s concerns. Motion Carried 7-0. (A) The City Council remands the Decision and Order to the Zoning Board of Adjustment for further study. The effective date of the Board’s decision will be deferred for 30 days from the date of this remand.

Date: April 6, 2015

Roll Call Number: [15-0632](#)

Action: [Consideration](#) of renewal Class C Liquor License for Rockstar Bar & Grill, 2301 SW 9th Street. Moved by Gatto to approve. Motion Carried 6-1.

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: December 21, 2016

Resolution Number: ZON2016-00195

Action: Motion to conditionally grant an amendment to the Use Variance to allow a restaurant use in a “C-0” Commercial-Residential District, approved by a 7-0 vote.

Board: Zoning Board of Adjustment

Date: April 27, 2016

Resolution Number: ZON2015-00040

Action: Motion to revise conditions of approval in response to Council’s remand of the Use Variance to allow a restaurant use in a “C-0” Commercial-Residential District, approved by a 6-0 vote.

Board: Zoning Board of Adjustment

Date: March 23, 2016

Resolution Number: ZON2015-00040

Action: Motion to grant an amendment to the Use Variance to allow a restaurant use in a “C-0” Commercial-Residential District, 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 a 5-2 vote.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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