

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: February 20, 2017
	Agenda Item No. 9 Roll Call No. <u>17-257</u> Communication No. <u>17-093</u> Submitted by: Pamela S. Cooksey, P.E., City Engineer and Phillip Delafield, Community Development Director

AGENDA HEADING:

Granting an Exception for Floodplain Development to Less than Trinity LLC (DBA Captain Roy’s) for the concession area at Birdland Marina pursuant to Des Moines Municipal Code Section 50-35(c).

SYNOPSIS:

The proposal involves making substantial improvements and wet flood proofing measures to an unused existing building in the 100-year floodplain of the Des Moines River at the Birdland Marina. The applicant has been working with the Park and Recreation Department to create an amenity in the park.

The City Engineer denied the application from Less Than Trinity, LLC for a Certificate of Compliance with Chapter 50 of the City Code, FLOODPLAIN DEVELOPMENT since it does not conform to the requirement to elevate or dry flood proof substantially improved structures in flood prone areas as per Sec. 50-34 (3). In such cases, Sec. 50-35 (c), provides that the applicant may appeal this decision in writing to the City and ask for an exception to Sec. 50-34 of the Code in order to further the public interest. The Council has sole authority to grant an exception in the public interest and the City Engineer does not object to the request for an exception in this situation. Additionally, Sec. 50-35 (c) requires such exceptions to be considered as a variance to the Code to be approved by City Council with affirmation of five (5) findings as stated below:

(1) A showing of good and sufficient cause: The City has made it a focus to assess options Citywide and add amenities to public lands that encourage outdoor activities, various park uses and projects to stimulate economic growth. This project is intended to further that effort.

(2) A determination that failure to grant the exception or modification would result in exceptional hardship to the applicant or would be contrary to the public interest: This project is situated in a unique location that users of the Neal Smith Multi-Use Trail, Birdland Marina, Union Park and the public in general will have direct access to and is centrally located for all Des Moines citizens to experience. The project is considered to be in the public interest and part of a continued revitalization of that region that is supported by the surrounding neighborhoods.

(3) A determination that the exception or modification will not result in increased flood heights, additional threats to public safety, extraordinary public expense, creation of nuisances, or victimization of the public: A no-rise certification has been submitted and the Iowa Department of Natural Resources (IDNR) has checked the computer modelling against their program and has concurred with that determination. The City relies on the IDNR for such technical expertise. The project should not pose additional threat to public safety since the structure is

being reinforced to withstand the forces of flood waters. Those structural calculations will be reviewed during the building permit review process. Also, a detailed flood contingency plan has been developed to minimize interior flood damage and stress human safety. The City will provide sewer and water service only as this is public property. The City considers the project to be an amenity and not a nuisance. The improvements are privately funded and developer will not seek FEMA flood insurance or public assistance.

(4) A determination that the exception or modification is the minimum necessary, considering the flood hazard, to afford relief: The variance to allow wet flood proofing is considered to be the minimum necessary to allow the project to proceed. A lesser standard would undoubtedly result in greater damage to the structure should flooding occur.

(5) And a showing that the exception or modification has received the concurrence or approval of the state department of natural resources: The action of this Council shall be effective upon receiving the concurrence of the IDNR and approval of the Zoning Board of Adjustment.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

- The proposal includes significant wet flood proofing measures as summarized below:
 - A detailed Flood Contingency Plan of Action;
 - Reuse of the existing steel siding;
 - Reinforcement of existing the structural columns and their footings;
 - Water resistant insulation and wall covering on exterior walls;
 - Automatically actuated floodwater vents on exterior walls;
 - Interior wall of steel studs and concrete backer board panels;
 - Installing the HVAC system and hot water heater in the attic space above the 100-year flood level;
 - Plumbing fixtures and features will be stainless steel or porcelain for ease of cleaning;
 - Major appliances to be plug-in type with quick disconnect for water, if appropriate; and
 - The majority of the electrical system will be above the 100-year flood level with some switches and outlets below the 100-year flood level.

- Council may grant an exception to full application of the performance standards of Section 50-34 of this article in order to further the public interest.

PREVIOUS COUNCIL ACTION(S): NONE

Date: January 23, 2017

Roll Call Number: [17-0142](#)

Action: [On](#) Amendment to Concession Agreement for the Birdland Marina with Less Than Trinity, LLC d/b/a Captain Roy's. ([Council Communication No. 17-029](#)) Moved by Westergaard to adopt; refer to the City Manager for review and recommendation regarding changes to the regulations regarding grease interceptors. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Funding and construction of the following utility services to connect to the concession building in the concession area: sanitary sewer line, a 4-inch water service line, fire hydrant, and grease interceptor of at least 1,500 gallons, estimated to cost \$120,000.

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