

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: April 9, 2018
	Agenda Item No. 50 Roll Call No. <u>18-608</u> Communication No. <u>18-160</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 2301 SW 9th Street to allow an existing restaurant use in a “C-O” Commercial-Residential District to have speakers for amplified sound on its patio along the north side of the building.

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 28, 2018, the Zoning Board of Adjustment voted 6-0 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 (restaurant use). The amendment allows the restaurant to have outdoor speakers for amplified sound on the patio along the north side of the building.
- The conditions imposed by the Zoning Board of Adjustment prohibit use of the patio after 10:00 p.m. and limit any use of the speakers to amplified sound that is background auditory in nature and in accordance with a type E sound permit. Furthermore, the patio to be completely removed immediately if the property is no longer used as a restaurant.
- 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.
- 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 SWD, LLC, represented by Stephanie White, 1661 Q Avenue, Madrid, IA 50156. The business is operated Clark Way, 2301 Southwest 9th Street, Des Moines, IA 50315. Previous businesses in this location were 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 (April 9, 2018).

PREVIOUS COUNCIL ACTION(S):

Date: June 12, 2017

Roll Call Number: [17-1012](#)

Action: [Review](#) of Zoning Board of Adjustment decision granting an amendment to a use variance to allow the outdoor seating area to be on the north side of the building, rather than along the west side of the building at a restaurant selling alcoholic liquor, wine and beer at 2301 SW 9th Street, subject to conditions. ([Council Communication No. 17-467](#)) 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 7-0.

BOARD/COMMISSION ACTION(S):

Board: Zoning Board of Adjustment

Date: March 28, 2018

Resolution Number: ZON2018-00037

Action: Motion to conditionally grant an amendment to the Use Variance to allow a restaurant use in a "C-0" Commercial-Residential District to have speakers for amplified sound on its patio along the north side of the building so long as certain restrictions are met.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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