


COUNCIL COMMUNICATION

 CITY OF DES MOINES OFFICE OF THE CITY MANAGER	Number:	19-110	Meeting:	March 11, 2019
	Agenda Item:	44	Roll Call:	19-389
	Submitted by:	Chris Johansen, Community Development Director		

AGENDA HEADING:

Review of Zoning Board of Adjustment decision granting a Use Variance to allow use of the property at 1372 East 14th Street for a limited food/retail sales establishment selling alcoholic liquor in a “C-1” Neighborhood Retail Commercial District.

SYNOPSIS:

Staff recommends that the Council decline to remand the decision granting a Use Variance to allow use of the property at 1372 East 14th Street for a limited food/retail sales establishment selling alcoholic liquor in a “C-1” Neighborhood Retail Commercial District.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

- On May 27, 2015, the Board of Adjustment denied a Use Variance to allow use of the property for a limited food/retail sales establishment selling alcoholic liquor in a “C-1” Neighborhood Retail Commercial District. However, at that time, the Board did grant a Conditional Use Permit for a limited food/retail sales establishment selling wine and beer.
- On March 28, 2018, the Board of Adjustment upheld the Zoning Enforcement Officer’s determination that the business cannot continue sales of alcoholic liquor with a class “E” liquor license.
- The appellant appealed that decision in court (Polk County District Court Case No. CVCV056228). Due to the evidence presented at the Board hearing and facts specific to the subject property, the court overturned the Board’s decision. On January 15, 2019, the District Court remanded the appeal back to the Board of Adjustment for further proceedings consistent with the court’s determination that the subject property could sell alcoholic liquor.
- City staff and the appellant negotiated a settlement providing for issuance of a Use Variance and amendment to the existing Conditional Use Permit for sales of wine and beer, to add sales of alcoholic liquor and make additional minor revisions to the 2015 appeal.

- On February 27, 2019, the Board of Adjustment conditionally granted a Use Variance that allowed amendment of the business' Conditional Use Permit necessary for the business to sell alcoholic liquor in a "C-1" Neighborhood Retail Commercial District.
- The approval of the Use Variance and Conditional Use Permit is consistent with the settlement reached between City staff and the appellant following the court's determination.
- The site is located along the west side of East 14th Street at its intersection with Cleveland Avenue. It is located within the Capitol Park Neighborhood.
- The business is operated by Shop N Save Number 2, LLC, represented by Santokh Singh Nagra, 2015 Olson Drive, Waukee, IA 50263.
- The property is currently owned by Dover Holding, LLC, 2100 S Ocean Boulevard, Suite 501N, Palm beach, FL 33480, and formerly owned by Stratford Holding, LLC, represented by Mark Langfan, 119 West 57th Street, Suite 9, New York, NY 10019.
- Pursuant to City Code Section 134-65, 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 (March 11, 2019).

PREVIOUS COUNCIL ACTION(S):

Date: April 6, 2015

Roll Call Number: [15-0626](#)

Action: On request from Stratford Holdings, LLC to rezone 1372 E. 14th Street from "C-1" (Neighborhood Retail Commercial) to "C-2" (General Retail and Highway-Oriented Commercial) to allow the right to request a Conditional Use Permit that is necessary to continue selling liquor, wine and beer as either a limited food sales establishment or as a liquor store. (Plan and Zoning Commission recommends DENIAL) Moved by Mahaffey to adopt and DENY the proposed rezoning, and to make the following findings of fact regarding the proposed rezoning: a. The City Plan and Zoning Commission vote 9-0 to recommend denial of the requested zoning of the property to "C-2" General Retail and Highway-Oriented Commercial District to allow the right to request a Conditional Use Permit for the existing business to continue to sell alcoholic liquor as either a limited food/retail sales establishment or a liquor store. b. The proposed rezoning is not in conformance with the character of the adjoining residential neighborhood, due to the proximity of single-family residences and safety concerns, and is not supported by the Northeast Neighbors, Inc. consortium of neighborhood associations. c. As currently zoned, the owner may request a Conditional Use Permit to continue sales of wine and beer on the property as a limited food/retail sales establishment. d. If the application of the existing zoning regulations has the effect of denying the owner all economic use of the property, then the appropriate remedy is to seek relief from the Zoning Board of Adjustment. Motion Carried 6-1.

BOARD/COMMISSION ACTION(S):

Board: Zoning Board of Adjustment

Date: February 27, 2019

Resolution Number: ZON2016-00076.

Action: Voted 7-0 to conditionally grant a Use Variance to allow use of the property for a limited food/retail sales establishment selling alcoholic liquor in a “C-1” Neighborhood Retail Commercial District.

Board: Zoning Board of Adjustment

Date: March 28, 2018

Resolution Number: ZON2016-00076

Action: Voted 6-0 to uphold the Zoning Enforcement Officer’s determination that the business cannot continue sales of alcoholic liquor with a class “E” liquor license.

Board: Zoning Board of Adjustment

Date: May 27, 2015

Resolution Number: ZON2015-00076

Action: Voted 4-2 to deny a Use Variance to allow use of the property for a limited food/retail sales establishment selling alcoholic liquor in a “C-1” Neighborhood Retail Commercial District but to grant a Conditional Use Permit for a limited food/retail sales establishment selling wine and beer.

Board: Plan & Zoning Commission

Date: March 5, 2015

Resolution Number: ZON2015-00030

Action: Voted 9-0 to recommend denial of a request to rezone the property from “C-1” Neighborhood Retail Commercial District to “C-2” General Retail and Highway-Oriented Commercial District.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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