



Roll Call Number

Agenda Item Number

5 ✓

Date August 11, 2014

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that the following Beer/Liquor applications are hereby submitted for approval to the Alcoholic Beverage Division of the Iowa Department of Commerce:

SPECIAL EVENTS APPLICATIONS

- (A) NICKS 1106 ARMY POST RD Five (5) Day License CLASS B BEER LICENSE FOR CLASSIC CAR SHOW ON AUGUST 15, 2014. PENDING APPROVAL OF ELECTRICAL AND ZONING DEPARTMENTS.
(B) NICKS 1106 ARMY POST RD Five (5) Day License CLASS B BEER LICENSE FOR CLASSIC CAR SHOW ON AUGUST 22, 2014. PENDING APPROVAL OF ELECTRICAL AND ZONING DEPARTMENTS.
(C) NICKS 1106 ARMY POST RD Five (5) Day License CLASS B BEER LICENSE FOR CLASSIC CAR SHOW ON AUGUST 29, 2014. PENDING APPROVAL OF ELECTRICAL AND ZONING DEPARTMENTS.

Zoning Department recommends denial

FORM APPROVED:

[Signature]

Douglas P. Philiph Assistant City Attorney

Moved by \_\_\_\_\_ to deny.

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GATTO, GRAY, HENSLEY, MAHAFFEY, MOORE, and TOTAL.

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk



August 8, 2014

South Side Foods, Inc.  
 d/b/a Nick's  
 Nick Iaria  
 1106 Army Post Road  
 Des Moines, IA 50315

Re: Five day liquor licenses

Dear Mr. Iaria,

We have reviewed the application and the applicable zoning restrictions as it relates to the liquor license applications for sales of alcohol in the parking lot and determined sales in the parking is an expansion of a legal nonconforming status and cannot be allowed.

The zoning ordinance was amended in 1998 establishing percentages of sales and separation distances for restaurants. The ordinance required that a restaurant must have 50% sales in food and be 75 feet from a church. Separation is measured lot line to lot line. Your lot is directly adjacent to a church to the west. This is currently set out in Section 134-954 of the Municipal Code of the City of Des Moines.

We have determined that 1106 Army Post had a liquor license prior to the 1998 amendment and therefore has legal non-conforming rights to the current liquor license as a restaurant within 75 feet of a church.

Pursuant to Section 134-1353(d) of the Municipal Code a business holding a liquor license which is nonconforming shall not change in anyway the occupant capacity of the business premise. The sale of alcohol in the parking lot changes the occupant capacity of the business premise.

Consequently, Development Zoning Division of the Community Development Department is recommending denial of the application for the liquor license. The application for the license will be heard by the Des Moines City Council on August 11, 2014. You have the right to be present and present evidence or comment during the hearing.

For future use of the parking lot for sale of beer or alcohol you could seek a variance of the separation requirement from the Zoning Board of Adjustment. This could be done at the same

5

time you request a use permit for the car show events. The church will have to agree to the use permit for the parking of vehicles on their parking during the events. Additionally, if you want bands that play louder than 65dBAs you will need to have a variance of the required sound limitations.

Please feel free to contact me with any questions or concerns about the denial and processing appeals to the Zoning Board of Adjustment.

Sincerely,



SuAnn Donovan  
Neighborhood Inspection Administrator  
Deputy Zoning Enforcement Officer  
602 Robert D. Ray Drive  
Des Moines, IA 50309  
[smdonovan@dmgov.org](mailto:smdonovan@dmgov.org)

NOTE: Any order, decision or determination made by this office in the enforcement of the Zoning Ordinance may be appealed to the Zoning Board of Adjustment. The Procedural Rules of the Zoning Board of Adjustment provide that you, as the party to whom this communication is directed, must file the appeal with the Community Development Department within ten days of the date of this communication. Any other aggrieved person seeking to appeal this order, decision or determination must file the appeal within ten days of actual notice by such person of such order, decision, or determination, which in no event shall be later than ten days after commencement of such physical construction or use. Any appeal not timely filed may be rejected by the Board.