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Date February 20, 2017

RESOLUTION GRANTING AN EXCEPTION FOR FLOODPLAIN DEVELOPMENT TO LESS THAN TRINITY LLC (D/B/A CAPTAIN ROY'S) FOR THE CONCESSION AREA AT BIRDLAND MARINA PURSUANT TO DES MOINES MUNICIPAL CODE SECTION 50-35(c).

WHEREAS, Less Than Trinity LLC doing business as Captain Roy's ("Applicant") has applied for a certificate of compliance to allow construction in the Concession Area at Birdland Marina pursuant to Des Moines Municipal Code section 50-35; and,

WHEREAS, the application was denied by the City Engineer because the application does not meet the performance standards required by Des Moines Municipal Code section 50-34 (the "Performance Standards"); and,

WHEREAS, the Applicant has appealed the denial to the Council pursuant to Des Moines Municipal Code section 50-35(c) solely to seek that exceptions be made to the full application of the Performance Standards; and,

WHEREAS, pursuant to section 50-35(c), The City Council has the authority to make exceptions to the Performance Standards upon certain findings; and,

WHEREAS, the City Engineer does not object to the application if the findings necessary to grant an exception in section 50-35(c) are made and other conditions are met.

NOW THEREFORE BE IT RESOLVED by the City Council for the City of Des Moines, Iowa that:

1. Applicant has requested an exception, pursuant to section 50-35(c), to the performance requirements for floodplain development in Des Moines Municipal Code section 50-34.

2. Based on review of the application and information provided to Council in the accompanying Council Communication, Council hereby makes the following findings:

- a. The Applicant has made a showing of good and sufficient cause for the exception, based on the City's effort to add amenities to public parks and encourage the use of City parks;
- b. Council determines that a failure to grant the exception or modification would be contrary to the public interest because the project is situated in a unique location that provides to users of the Neal Smith Multi-Use Trail, Birdland Marina, Union Park and the public in general will have direct access to the

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amenity and is centrally located for all Des Moines citizens to experience; in addition, the project is deemed to be in the public interest and a part of a continued revitalization of the area and is supported by the surrounding neighborhoods.

- c. Granting the exception will not result in increased flood heights as demonstrated on the no-rise certification submitted to the DNR and determined to be correct pursuant to DNR check modelling; it will not result in additional threats to public safety, extraordinary public expense, creation of nuisances, or victimization of the public because the structure is being reinforced to withstand the forces of flood waters and a detailed flood contingency plan has been developed to minimize interior flood damage and stress human safety, the project is an amenity rather than a nuisance, and the improvements are privately funded to benefit the City; and,
- d. The exception or modification is the minimum necessary, considering the flood hazard, to afford relief because without wet flood proofing the project could not proceed safely.

3. Council finds that the City has applied for approval of this resolution to the Iowa Department Of Natural Resources ("DNR"), which has not yet granted or denied the approval or concurrence. Granting this exception is expressly conditioned on obtaining that approval or concurrence.

4. Applicant's request for an exception is hereby granted subject to the approval of the DNR any any reasonable conditions imposed by the City Engineer.

5. The exception will be effective on the date of approval by the DNR.

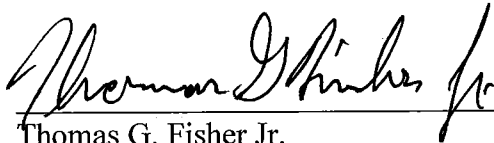
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6. Council authorizes and directs the City Manager, the Community Development Director, and the City Engineer to monitor the development of this project and the implementation and maintenance of the flood protection plan to insure compliance with all building, zoning, floodplain, and any other relevant City regulations.

(Council Communication. No. 17-093)

MOVED BY _____ to adopt.

FORM APPROVED:



Thomas G. Fisher Jr.
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
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



Less Than Trinity, LLC
DBA Captain Roy's
1706 Pennsylvania Avenue Des Moines, IA 50316
Royscaptain3@gmail.com (515) 202-0136

February 13, 2017

City of Des Moines City Council
400 Robert D Ray Drive
Des Moines, IA 50309

RE: Captain Roy's Request for Exception

Dear Mayor Cownie and members of the Des Moines City Council:

Captain Roy's has received a letter from City Engineer Cooksey which states that our application for a Certificate of Compliance with Chapter 50 of the City Code, FLOODPLAIN DEVELOPMENT has been denied due to nonconformance with the requirement to elevate or dry floodproof the structure that we propose to substantially improve. The structure, located at 1900 Saylor Road, is owned by the City of Des Moines and leased by Less Than Trinity, LLC DBA Captain Roy's.

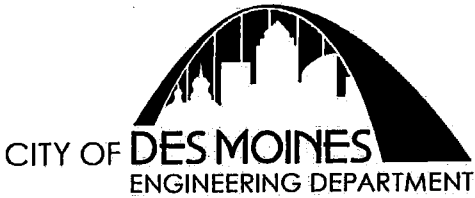
Please accept this letter as our request for the City Council to grant an exception to Sec. 50-34 (3) of the City Code and allow wet floodproofing measures in lieu of elevating or dry floodproofing the building.

The wet floodproofing measures that we propose are detailed in the attached Wet Floodproofing Scope of Work dated 01/31/2017. Additionally, we have attached our Flood Emergency Operation Plan dated 11/01/2016 and the Concession Agreement, approved by city council 11/07/2016 for your reference.

Granting an exception to allow wet floodproofing of the structure would allow Captain Roy's to rehabilitate an abandoned building into a vibrant concession stand serving the residents of Des Moines; therefore we believe it would be consistent with Sec. 50-34 (c), which allows for an exception to be granted in furtherance of the public interest.

Respectfully,

Jack Daugherty, Owner
Captain Roy's



February 13, 2017

Mr. Jack Daugherty
Less Than Trinity, LLC
d/b/a Captain Roy's
1706 Pennsylvania Avenue
Des Moines, Iowa 50316

RE: Birdland Concession Utilities
City Activity ID 11-2017-008

Dear Mr. Daugherty:

Your application for a Certificate of Compliance with Chapter 50 of the City Code, FLOODPLAIN DEVELOPMENT has been denied since it does not conform to the requirement to elevate or dry floodproof substantially improved structures in flood prone areas as per Sec. 50-34 (3). Furthermore, as detailed in Sec. 50-35 (c), you may appeal this decision in writing to the City and ask for an exception to Sec. 50-34 (3) of the Code in order to further the public interest.

As I understand, you are proposing significant wet floodproofing measures and have an emergency flood contingency plan. You might briefly allude to those in your letter, in support of your request and attach those documents to the letter. Additionally, your partnership with the Park and Recreation Department should be included.

Sincerely,

Pamela S Cooksey
Pamela S Cooksey, P.E.
City Engineer

cc: Scott E. Sanders, City Manager



STATE OF IOWA

TERRY E. BRANSTAD, GOVERNOR
KIM REYNOLDS, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
CHUCK GIPP, DIRECTOR

2/3/2017

LESS THAN TRINITY LLC & CITY OF DES MOINES
C/O ANDREW JUDD
STANLEY CONSULTANTS
5775 WAYZATA BLVD STE 300
MINNEAPOLIS, MN 55416

Project Description: Proposed Birdland Marina Site Concession and Entertainment Improvement Project Including: 35.9'x48.6' Building Reconstruction Maintaining Existing Footprint, 22.0'x26.0' River Viewing Platform Partially Extended Into River with 3.75' Tall Wood Perimeter Railing/Fence, 5' Wide Wooden Ramp to Top of River Viewing Platform, 6' Tall Wooden Safety Fencing Surrounding Entire Site, 25'(long)x10'(Wide) Converted Pontoon Boat Stage Flood Anchored To Site with Chains to Constructed Concrete Pier Anchor, 5' Wide Wooden Ramp to Top of Stage, Utility Poles for Speakers and Lighting Elevated Above MPL, At-Grade Parking Pavement, and At-Grade Sidewalks Pavement; (Des Moines River)

Project Location(s): County: Polk, QTR-QTR: SE, Quarter: NW, Section: 35, Township: T79N, Range: R24W, Iowa, Within the Incorporated Limits of the City of Des Moines.
Iowa DNR Work Record Number: 84148

Dear Mr. Judd:

This letter is in response to your Flood Plain Development Permit application on behalf of the City of Des Moines & Less Than Trinity LLC concerning the above referenced project. This submittal included a site plan from ERG signed on Feb. 2, 2017, and this no-rise certification review is based upon that exhibit and modeling submitted with that exhibit.

The project is in the Floodway and Floodway Fringe of the Des Moines River, as shown in the Floodway Mapping covering this area published by the Federal Emergency Management Agency (FEMA). The City of Des Moines has a flood plain management ordinance that is approved by this Department. The approval of the ordinance empowers the City to review and permit certain types of flood plain development in lieu of this Department. If you have not yet done so, please contact Charles Lepak, City of Des Moines Flood Plain Manager at 515-283-4095 for assistance on applying for the local flood plain permit.

Due to the delegation of the site plan review and permitting to the City, the Iowa DNR did not review this project. However, the City did make a technical assistance request for a review of the no-rise certification modeling. The Iowa DNR has completed their review of the submitted plans and modeling, and determined that the Iowa DNR check modeling shows the proposed improvements cause less than 0.01 feet of rise to the Q100 water surface profile.

No land or water under the jurisdiction of the State of Iowa is involved in the project area; therefore, a sovereign lands construction permit pursuant to Chapter 461A of the Iowa Code will not be required for this project.

The applicant is responsible for complying with all other local, state and federal statutes, ordinances, rules and permit requirements applicable to the construction, operation and maintenance of the approved works. Approval through the Corps of Engineers Section 404 Permit Program may be required for this project.

If you have any questions, please contact me by phone at 515-725-8356 or by email at chad.billings@dnr.iowa.gov.

Sincerely,



Chad Billings
Flood Plain Management and Dam Safety Section

CC : Pamela Cooksey; City of Des Moines; 1551 E Martin Luther King Jr. Parkway; Des Moines, IA 50317
Jack Daugherty; Less Than Trinity LLC; 1706 Pennsylvania Ave; Des Moines, IA 50316
Charles Lepak; City of Des Moines; Permit and Development Center; 602 Robert D Ray Dr; Des Moines, IA
50309-1891
Iowa DNR Field Office: 5
Ward Lenz; Rock Island District, U.S. Army Corps of Engineers; P.O. Box 2004; Rock Island, IL 61204-2004