

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: June 8, 2015
	Agenda Item No. 65 Roll Call No. <u>15-976</u> Communication No. <u>15-288</u> Submitted by: Phillip Delafield, Community Development Director

AGENDA HEADING:

Review Zoning Board of Adjustment decision granting a Use Variance to allow a Limited Food/Retail Sales Establishment selling alcoholic liquor, wine and beer at 4538 Lower Beaver Road.

SYNOPSIS:

On May 27, 2015, the Zoning Board of Adjustment voted 4-2 to conditionally approve a Variance of the permitted uses in an "R-4" Multiple-Family Residential District, to allow use of the 2,604-square-foot building for a Limited Food/Retail Sales Establishment (Family Pantry) selling alcoholic liquor, wine, and beer. As a Food/Retail Sales Establishment, no more than 40% of gross receipts from sales on the premises may be derived from the sale of alcoholic liquor, wine, beer, and tobacco products.

The Decision and Order of the Zoning Board of Adjustment’s action was executed under the signature of Chairman Mel Pins on June 2, 2015. 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 (June 8, 2015). Staff recommends that the City Council not remand the Board’s decision.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

The subject property is located along the west side of Lower Beaver Road in the Lower Beaver Neighborhood. The site includes a 2,604-square-foot commercial building occupied by a Limited Food/Retail Sales Establishment known as Family Pantry. The subject property is zoned “R-4” Multiple-Family Residential District. The subject property and business are owned and operated by Azhar Iqbal, 4538 Lower Beaver Road, Des Moines, IA 50310.

Since the property is zoned “R-4” Multiple-Family Residential District, it was required to first seek a rezoning to a zoning district, such as “C-2” General Retail and Highway-Oriented Commercial District, that would allow consideration of a Conditional Use Permit necessary for the sale of alcoholic liquor, wine, and/or beer. On April 6, 2015, the City Council denied a request to rezone the property to “C-2” District. Thus, the appellant sought a Use Variance that would also allow consideration of a Conditional Use Permit for a Limited Food/Retail Sales Establishment, where no more than 40% of the gross receipts from sales on the premises are derived from alcoholic liquor, wine, beer, and tobacco products.

On May 27, 2015, the Zoning Board of Adjustment granted the Use Variance and Conditional Use Permit subject to the following conditions:

1. The Use Variance shall expire 10 years after the date the Decision and Order is signed (June 2, 2025). Any future extension of the Use Variance is subject to reconsideration by the Zoning Board of Adjustment.
2. The sale of alcoholic liquor, wine, and beer shall only be ancillary to a limited food/retail sales establishment, where no more than 40% of gross receipts from sales on the premises may be derived from the sale of alcoholic liquor, wine, beer, and tobacco products.
3. Any business selling alcoholic liquor, wine, and beer shall operate in accordance with the necessary permits obtained through the Office of the City Clerk as approved by the City Council.
4. Prior to January 15, 2016, the business shall furnish a statement prepared and verified by a certified public accountant identifying the total dollar volume of all sales, and separately identifying the total dollar volume of sales derived from the sale of alcoholic beverages, from the sale of tobacco products, and from the sale of all other merchandise and food exclusive of alcoholic beverages and tobacco products, from the business premises during the six (6) month period July, 1, 2015 and ending December 31, 2015.
5. The business shall only operate between the hours of 6:00 AM and 11:00 PM on Sundays through Thursdays and between the hours of 6:00 AM and 12:00 AM (midnight) on Fridays and Saturdays.
6. There shall be no signage or advertisement for, or references to, wine and beer visible from outside of the enclosed building.
7. Prior to May 31, 2016, the existing freestanding pole sign shall be removed. Any replacement sign shall comply with the "FSO" Freestanding Signs Overlay District, which limits the sign to 8-feet in height and requires a minimum 2-foot tall masonry base.
8. Prior to May 31, 2016, the site shall be brought into conformance with the landscape standards applicable to the "C-2" District. The landscaping shall be maintained for the life of the business.
9. Prior to May 31, 2016, the refuse collection container shall be screened by an enclosure constructed of masonry walls and steel gates.
10. The business shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
11. The business shall institute a strict no loitering policy, conspicuously post one (1) or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
12. The business shall not dispense alcoholic beverages from a drive-through window.
13. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of the business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
14. Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one (1) footcandle of light on the parking surface at all times. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.
15. If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance, exhibits a pattern of violating the conditions set forth in the Conditional Use Permit, or violates the requirements of City Code Section 134-954(c), the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use Permit.
16. The Decision and Order shall be recorded at the Polk County Recorder's Office at the appellant's expense to ensure that future property owners are aware of these conditions.

PREVIOUS COUNCIL ACTION(S):

Date: April 6, 2015

Roll Call Number: [15-0621](#)

Action: Items regarding 4538 Lower Beaver Road: Azhar Iqbal and Dominic Mathew (owners), to allow the right to request a Conditional Use Permit to continue selling alcoholic liquor, wine and beer as part of either a limited food/retail sales establishment or as a liquor store

(B) Hearing on rezoning the property from “R-4” (Multiple-Family Residential) to “C-2” (General Retail and Highway-Oriented Commercial). Moved by Gray to DENY. Motion Carried 6-1.

BOARD/COMMISSION ACTION(S):

Board: Zoning Board of Adjustment

Date: May 27, 2015

Resolution Number: ZON2015-00070

Action: Motion to conditionally grant a Use Variance and Conditional Use Permit to allow a Limited Food/Retail Sales Establishment use on the property, approved by a 4-2 vote.

Board: Plan & Zoning Commission

Date: February 19, 2015

Resolution Number: ZON2015-00009

Action: Motion to recommend approval of a request to rezone property from “R-4” Multiple-Family Residential District to “C-2” General Retail and Highway-Oriented Commercial District, approved by a 7-2 vote.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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