



**BOARD OF ADJUSTMENT  
STAFF REPORTS AND RECOMMENDATIONS  
FEBRUARY 22, 2023**

<b>Item 1    ZBOA-2023-000002 500 Locust Street</b>	<b>317 6<sup>th</sup> Avenue LLC Conditional Use</b>
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**APPLICABLE REQUIREMENTS**

*The sale of alcoholic liquor, wine, and beer is permitted only in the zoning districts and subject to the conditions indicated in Table 134-3.9-1 of the Chapter 134 of the Municipal Code.*

TABLE 134-3.9-1. ALCOHOLIC LIQUOR, WINE AND BEER SALES												
USE	DISTRICTS											
	DX1	DX2	DXR	MX1	MX2	MX3	RX1, RX2	CX, EX, I1	I2	NX2, NX2A	P1, P2	F
<b>Retail Sales</b>												
<b>Limited</b>												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	○*	○*	-	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	○*	○*	-	-	-	-
<b>General</b>												
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	40%/75	-	40%/75	40%/75	-	40%/75	-	-	-	-
Wine and Beer Sales	40%/75	40%/75	40%/75	-	40%/75	40%/75	-	40%/75	-	-	-	-
<b>Large</b>												
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-
Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-
<b>Fuel Station</b>												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	○*	○*	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	40%/150	40%/150	-	40%/150	40%/150	-	40%/150	40%/150	-	-	-
<b>Liquor Store</b>												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	-	○*	○*	-	-	-
<b>Tobacco Store</b>												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	-	○*	○*	-	-	-
<b>Restaurant, Bar, Other Uses</b>												
Restaurant with Alcoholic Liquor, Wine and Beer Sales	50%	50%	50%	50%	50%/75	50%/75	50%/75	50%/75	50%/75	○*	○*	-
Bar	○*	○*	○*	-	○*	○*	-	○*	-	-	○*	-
Other Uses with Alcoholic Liquor, Wine and Beer Sales	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*
<b>KEY:</b> ○=requires conditional use approval   * = supplemental use regulations apply   - = prohibited												
<b>Table Notes</b>												
○ = Uses identified with a ○ symbol are allowed only if reviewed and approved in accordance with the conditional use procedures of <a href="#">134-6.4 of this chapter</a> .												
<b>40%</b> = no more than 40% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine, beer or tobacco products.												
<b>50%</b> = at least 50% of the gross receipts from sales from the premises must be derived from the sale of prepared food and food-related services. The sale of an alcoholic beverage is not the sale of prepared food and food-related services.												
<b>25%</b> = no more than 25% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine or beer.												
<b>75</b> = the licensed premises occupied by such use must be separated by at least 75 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.												
<b>150</b> = the licensed premises occupied by such use must be separated by at least 150 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.												
<b>500</b> = the licensed premises occupied by such use must be separated by at least 500 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.												
<b>1320</b> = the licensed premises occupied by such use must be separated by at least 1320 feet from the property line of the lot where any limited retail sales, fuel stations, liquor stores and tobacco stores engaged in the sale of alcoholic liquor is located.												

**In accordance with City Code Section 134-3.9.9.B, the Zoning Board of Adjustment shall apply the following criteria when considering any application for a Conditional Use for the sale of alcoholic liquor, wine, and/or beer:**

*Conditional use approval is required for the use of a premises, either as principal or accessory use, for the sale of alcoholic liquor, wine or beer, under the circumstances identified in Table 134-3.1-1 and criteria: Table 134-3.9-1 of this article. The board of adjustment is authorized to grant conditional use approval for such uses only when the business, operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:*

1. *The business conforms with the conditions identified in indicated in Table 134-3.9-1 of this article.*
2. *The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.*
3. *The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.*
4. *The business will not unduly increase congestion on the streets in the adjoining residential area.*
5. *The operation of the business will not constitute a nuisance.*

**Furthermore, in accordance with City Code Sections 134-3.9.9.C-H, the following applies for any Conditional Use for the sale of alcoholic liquor, wine, and/or beer.**

**C. Supplemental Use Regulations.** *Any conditional use approval granted by the board of adjustment for the use of a premises, either as principal or accessory use, for the sale of alcoholic liquor, wine, and beer is subject to the following supplemental use regulations, together with such additional special conditions as may be reasonably required by the board of adjustment to ensure that the conditional use review approval criteria of paragraph B of this subsection, are satisfied:*

1. *Any parking area provided for the use of customers of the business must be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site must be landscaped and illuminated so as to minimize hiding places for possible criminal activity.*
2. *The business shall comply with the noise control regulations of article IV of chapter 42 of this code. Outside speakers and amplified sound is prohibited except when used in compliance with a type E sound permit.*
3. *Any such business must comply with the following requirements:*
  - a. *Every limited retail sales establishment, fuel station and tobacco store shall display alcoholic liquor only in a locked case or behind a counter accessible only to employees. Any other business selling alcoholic liquor for off premises consumption shall either:*
    - i. *Display alcoholic liquor only in a locked case or behind a counter accessible only to employees;*
    - ii. *Employ an electronic security cap or tag system on all containers of alcoholic liquor on display;*  
*or*
    - iii. *Have more than one employee on duty at all times the business is open to the public.*

*b. Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.*

*c. Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.*

*d. Not dispense alcoholic beverages from a drive-through window.*

*4. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.*

*5. The conditional use approval is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions of the conditional use approval.*

*6. If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions of the conditional use approval, the zoning enforcement officer may apply to the board of adjustment to reconsider conditional use approval for such business. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such business at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board of adjustment finds that the operation of such business exhibits a pattern of violating the conditions of the conditional use, the board shall have the authority to amend or revoke the conditional use approval.*

***D. Report of Findings.*** *Upon reasonable suspicion that any fuel station, or retail sales establishment, or other uses with sales for on-premise consumption excluding restaurants and bars, derives more than 40% of its gross receipts from the sale of alcoholic liquor, wine, beer or tobacco products, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 40% of its gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products. In such event it shall be presumed that more than 40% of the gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for fuel station and retail sales establishments, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts 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 in the preceding six months.*

***E. Report of Findings - Restaurant.*** *Upon reasonable suspicion that any restaurant does not derive at least 50% of its gross receipts from the sale of prepared food and food-related services, the zoning enforcement officer may require that the owner or operator or the restaurant demonstrate within 45 days that during the prior six months at least 50% of its gross receipts were derived from the sale of prepared food and food-related services. In such event it shall be presumed that less than 50% of the restaurant's gross receipts are derived from the sale of prepared food and food-related services, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for restaurants, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of alcoholic beverages and from the sale of prepared food and food-related services exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months.*

***F. Report of Findings - Tobacco Store.*** *Upon reasonable suspicion that any tobacco store derives more than 25% of its gross receipts from the sale of alcoholic liquor, wine or beer, the zoning enforcement*

*officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 25% of the gross receipts from sales were derived from the sale of alcoholic liquor, wine or beer. In such event it shall be presumed more than 25% of its gross receipts from sales are derived from the sale of alcoholic liquor, wine or beer, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for tobacco stores, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts 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 in the preceding six months.*

**G. Prohibited Accounting for Alcoholic Beverages.** *The sale of an alcoholic beverage and any of its component ingredients whether mixed into one beverage or sold separately to the same customer, regardless of intent, shall not be divided for accounting purposes under this chapter.*

**H. Effective Date.** *All fuel stations, retail sales establishments, tobacco stores and restaurants that have not continuously held an alcoholic liquor license or a beer or wine permit since July 1, 2012, shall comply with the requirements of paragraphs A., B., C., D., E., F., and G. of this subsection. Any fuel station, retail sales establishment, tobacco store or restaurant which has continuously held an alcoholic liquor license or a wine or beer permit since July 1, 2012, shall comply with paragraphs A., B., C., D., E., F., and G. of this subsection, exclusive of any changed separation requirements, commencing on December 31, 2013, and prior to that date shall continue to be subject to the general regulations regarding nonconforming uses, as set forth in section 134-7.2 of this code.*

## **STAFF REPORT**

**Proposal:** Use of a 2,000 square foot area within the lower level for a theater use with on premise consumption of alcoholic liquor, wine, and/or beer.

**Appeal(s):** Conditional Use for an “Other” use selling alcoholic liquor, wine, and/or beer for on premise consumption within a “DX1” District.

**Site Description:** The subject property measures 17,756 square feet (0.408 acres) and contains an existing building and parking garage. The property is located on the southeast corner of the 6<sup>th</sup> Avenue and Locust Street intersection. The property is zoned “DX1” Downtown Mixed-Use District.

**Neighborhood Notification Information:** The subject property is within the Downtown Des Moines Neighborhood Association. All neighborhood associations were notified of the Board meeting by email of the Preliminary Agenda on February 2, 2023. Additionally, an official public notice of the hearing for this specific item was mailed on February 7, 2023, to the neighborhood associations and the titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All mailings are sent to the primary contact designated by the recognized neighborhood association on file with the City of Des Moines’ Neighborhood Development Division. The Downtown Neighborhood Association mailings were sent to Brandon Brown, 120 SW 5<sup>th</sup> Street, Unit 101, Des Moines, IA 50309.

**Additional Information:** The property is zoned “DX1” District, which allows for a theater use since it is within the “small, Assembly and Entertainment” use category (per City Code Section 134-3.5.3). However, a Conditional Use from the Board of Adjustment is required in order to allow for sales of alcoholic liquor, wine and/or beer for on-premises consumption.

The proposed theater use would comprise approximately 2,000 square feet within the lower level of the existing building. It would only operate from 4:00 PM – 2:00 AM each Friday and Saturday evening. Generally, the business would be open from November through September in any year. The use would not operate during the month of October since there is a haunted house attraction that operates in the lower level of the building at that time. The theater use would offer theatrical entertainment and would also be open for receptions and private events.

**Criteria for the Board to Consider:** Taking into consideration Chapter 18B of the Code of Iowa, the board of adjustment is authorized to grant conditional use approval for businesses selling alcoholic liquor, wine, and/or beer only when the business, operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:

1. The business conforms with the conditions identified and indicated in Table 3.9-1 of Chapter 134 of the City Code.

*The application satisfies these requirements.*

2. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.

*Staff believes that the proposed use would adequately safeguard the health, safety and general welfare of persons residing in the area so long as it operates in accordance with the recommended conditions of approval.*

3. The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.

*Staff believes that the proposed use would have minimal impact on the surrounding properties if it operates in accordance with the recommended conditions of approval.*

4. The business will not unduly increase congestion on the streets in the adjoining residential area.

*The proposed use would not likely cause congestion in the surrounding area.*

5. The operation of the business will not constitute a nuisance.

*If granted, the Conditional Use would be subject to amendment or revocation if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use, or if the operation violates the requirements of City Code Section 134-3.8.1.C, as provided in the "Applicable Requirements" section of this report.*

Taking into consideration Chapter 18B of the Code of Iowa, the board of adjustment is authorized to grant conditional use approval if the board determines that the proposed use or activity complies with all applicable uses-specific regulations and if the applicant has demonstrated that all of the following general standards and review criteria are met:

1. The proposed geographic location and operation of the use or activity adequately safeguards the health, safety, and general welfare of persons residing or working in adjoining or surrounding property.

*Staff believes that the proposed use would adequately safeguard the health, safety, and general welfare of persons residing or working in adjoining or surrounding property if it operates in accordance with the recommended conditions of approval.*

2. The proposed use will not impair an adequate supply of light and air to surrounding property.

*Staff believes that the proposed use would not impair an adequate supply of light and air to surrounding property.*

3. The proposed use will not unduly increase congestion in the streets, or public danger of fire, safety or flooding.

*Staff believes that the proposed use would not unduly increase congestion in the streets, or public danger of fire, safety or flooding if it operates in accordance with the recommended conditions of approval.*

4. The proposed use will not diminish or impair established nearby property values.

*Staff believes that the proposed use would not diminish or impair established nearby property values if it operates in accordance with the recommended conditions of approval.*

5. The proposed use is consistent with the general purpose of this zoning ordinance, the planning and design ordinance, chapter 135 of this code, and the comprehensive plan and any specific purposes established in the zoning ordinance for the subject use.

*The subject use is consistent with the general purpose of this zoning ordinance, the planning and design ordinance, chapter 135 of the municipal code, and the comprehensive plan and any specific purposes established in the zoning ordinance for the subject use.*

6. The proposed use in an F zoning district is fully in compliance with chapter 50 of this code.

*This criterion is not applicable, as the subject property is not located in a F zoning district.*

7. The proposed use shall have no significant detrimental impact on the use and enjoyment of adjoining properties.

*Staff believes that the proposed use would not have an impact on the surrounding properties if it operates in accordance with the recommended conditions of approval.*

8. Adequate setbacks shall be provided to protect adjacent residentially zoned property from non-residential and institutional uses.

*The proposed use would be adequately setback from any residentially zoned property.*

9. No parking should be permitted in a required front yard of an N district unless shown to be compatible with the adjoining land use.

*This criterion is not applicable, as the subject property is not located in an N district.*

**Permit and Development Center Comments:** Any sale of alcoholic liquor, wine and beer must be in accordance with the proper license or permit obtained through the Office of the City Clerk as approved by the City Council.

Any construction must be in accordance with all applicable Site Plan requirements, Building Codes, and Fire Codes, with issuance of all necessary permits by the City's Permit and Development Center. Furthermore, Staff recommends that prior to issuance of any liquor license, the site must be determined to be in compliance with all site plan requirements.

**Staff Rationale:** The application has satisfied the criteria necessary for granting a Conditional Use for a theater use with on-premise consumption of alcoholic liquor, wine, and/or beer. This is an appropriate location for the proposed use, as the site is designated as Downtown Mixed-Use, which includes a mix of high density residential uses, pedestrian oriented retail, and office use with an emphasis on active uses at intersections. The impacts of a use with sales and/or consumption of alcoholic liquor, wine, and beer would be minimal so long as the business operates in accordance with the City's noise control regulations and in accordance with the conditions of the approval. If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use, the Zoning Enforcement Officer may apply to the Zoning Board of Adjustment to reconsider the issuance of the Conditional Use for such business.

### **STAFF RECOMMENDATION**

Staff recommends approval of the requested Conditional Use for a 2,000 square foot area within the lower level of the building for a theater use with on premise consumption of alcoholic liquor, wine, and/or beer, subject to the following conditions:

1. Any business selling alcoholic liquor, wine, and/or beer shall operate as a theater or a similar use within the "small, assembly and entertainment" use category, per City Code Section 134-3.5.3.
2. Any business selling alcoholic liquor, wine, and/or beer shall be limited to 2,000 square feet of area within the lower level of the existing building.
3. Any business with sales of alcoholic liquor, wine and/or beer shall only operate between the hours of 4:00 PM to 2:00 AM each Friday and Saturday, during the month of November through September each year. Alcohol sales shall not be permitted during the month of October in any year.
4. Any business selling alcoholic liquor, wine, and/or beer shall operate in accordance with a liquor license obtained through the Office of the City Clerk as approved by the City Council.
5. Prior to issuance of any liquor license, the site must be determined to be in compliance with all site plan requirements.
6. Any sale of alcoholic liquor, wine, and/or beer for off-premise consumption shall be in accordance with all State and local laws or ordinances.
7. Any business selling alcoholic liquor, wine, and/or beer shall comply with Article IV of Chapter 42 of the City Code pertaining to noise control.

8. Any business selling alcoholic liquor, wine, and/or beer shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
9. Any business selling alcoholic liquor, wine, and/or beer shall institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs and cooperate with police in addressing loitering on the premises.
10. Any business selling alcoholic liquor, wine, and/or beer shall not dispense alcoholic beverages from a drive-through window.
11. 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.
12. Any construction shall be in accordance with all applicable Building and Fire Codes, with issuance of all necessary permits by the City's Permit and Development Center.
13. If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use, the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use.



ZONING BOARD OF ADJUSTMENT  
STAFF REPORTS AND RECOMMENDATIONS  
FEBRUARY 22, 2023

**Item 2 ZBOA-2023-000003  
4815 Grand Avenue**

**Heather K. Scott  
Temporary Use**

**APPLICABLE REQUIREMENTS**

***134-3.10.1 Description and Purpose***

- A. *A temporary use is the use of private property that does not required a building permit and that may or may not comply with the use and lot and building regulations of the zoning district in which the temporary used is located.*
- B. *The temporary use regulations of this section are intended to permit such occasional, temporary uses and activities when consistent with the purposes and regulations of this zoning code.*

***134-3.10.2 Authority to Approve***

- D. *Temporary uses that do not comply with all applicable regulations and all conditions of approval may be approved in accordance with the conditional uses procedures of section 134-6.4 of this article. The community development director is authorized to refer any temporary use to the board of adjustment for consideration in accordance with the conditional use procedures of section 134-6.4 of this article.*

**STAFF REPORT**

***Proposal:*** Temporary use of the garage and rear yard of the property for a maximum six (6) events each year between June 1<sup>st</sup> to November 30<sup>th</sup>, where the events would be related to an accessory art studio use on the residential property.

***Appeal(s):*** Temporary Use approval for a “Temporary Use” in a “N1b” District.

***Site Description:*** The subject property is 19,500 square feet (0.448 acres) in area and contains a 1-story, single-family home with a detached garage in the rear yard area. The site is located along the north side of Grand Avenue midblock between Country Club Boulevard and Polk Boulevard. The property is zoned “N1b” Neighborhood District.

***Neighborhood Notification Information:*** The subject property is within the area shared Waterbury and Westwood Neighborhoods. The neighborhood associations were notified of the Board meeting by mailing of the Preliminary Agenda on February 2, 2023. Additionally, an official public notice of the hearing for this specific item was mailed on February 7, 2023 to the neighborhood associations and to the titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All neighborhood mailings are sent to the primary contact designated by the recognized neighborhood associations on file with the City of Des Moines’ Neighborhood Development Division. The shared Waterbury and Westwood Neighborhood Association mailings were sent to Kyle Vrchota, 343 51<sup>st</sup> Street, Des Moines IA 50312.

**Additional Information:** The appellant is proposing to host a series of events to celebrate and showcase local artists as they pursue their trade. The events would be invitation-only and would be held once per month running from June 1<sup>st</sup> to November 30<sup>th</sup> each calendar year. The proposed events would be located in the garage and the grassy areas to the northwest of the garage building within the rear yard of the subject property. There would be no admission charged to attend the events and all refreshments would be provided for free. Attendance for each event is expected to be between 20 and 50 people over a 3-hour period, generally between 7:00 PM and 10:00 PM. The appellant has indicated that the attendees are instructed to park on Polk Boulevard to east. However, many of the attendees would be living within walking distance.

Generally, an artist studio would be allowed by a Type 1 Home Occupation and would be subject to administrative review however, it was determined by the Zoning Enforcement Officer to be a Type 3 Home Occupation subject to Board of Adjustment consideration due to the frequency of events proposed. Any Type 3 Home Occupation is subject to supplemental regulations which limit the hours of operation, limit the number of clients or customers onsite to the Board's discretion, and limits the number of non-resident employees.

**Criteria for the Board to Consider:** Per City Code Section 134-3.10.2, the Zoning Enforcement Officer is authorized to refer any temporary use to the Board of Adjustment for consideration in accordance with the conditional use procedures. Taking into consideration the criteria set forth in Chapter 18B of the Iowa Code and Chapter 134 Section 134-6.4.8 of the City Code, a conditional use may not be approved unless the Board of Adjustment determines that the proposed use or activity compiles with all applicable "use" specific regulations and that the applicant has demonstrated that all of the following general standards and review criteria are met:

1. The proposed geographic location and operation of the use or activity adequately safeguards the health, safety, and general welfare of persons residing or working in adjoining or surrounding property;
2. The proposed use will not impair an adequate supply of light and air to surrounding property;
3. The proposed use will not unduly increase congestion in the streets, or public danger of fire, safety or flooding;
4. The proposed use will not diminish or impair established nearby property values;
5. The proposed use is consistent with the general purpose of this zoning ordinance, the planning and design ordinance, chapter 135 of this code, and the comprehensive plan and any specific purposes established in this zoning ordinance for the subject use;

6. The proposed use in any F zoning district is fully in compliance with chapter 50 of this code;
7. The proposed use shall have no significant detrimental impact on the use and enjoyment of adjoining properties;
8. Adequate setbacks shall be provided to protect adjacent residentially zoned property from non" residential and institutional uses; and
9. No parking should be permitted in a required front yard of an N district unless shown to be compatible with the adjoining land use.

**Staff Rationale:** Granting the Temporary Use subject to conditions would be consistent with the intended spirit and purpose of the Zoning Ordinance and in harmony with the essential character of the neighborhood. So long as the conditions of approval are satisfied, the proposed location and operations would adequately safeguard the health, safety, and general welfare of persons residing or working in adjoining or surrounding property. The proposed use would not impair an adequate supply of light and air to surrounding property. The proposed use would not unduly increase congestion in the streets, or public danger of fire, safety or flooding. The proposed use would not diminish or impair established nearby property values. The proposed use is consistent with the general purpose of this zoning ordinance, the planning and design ordinance, and the comprehensive plan and any specific purposes established in this zoning ordinance for the subject use. The proposed use shall have no significant detrimental impact on the use and enjoyment of adjoining properties. The appellant has demonstrated the criteria necessary for granting a Temporary Use.

Furthermore, the Temporary Use shall be subject to reconsideration by the Board of Adjustment at any time the Zoning Enforcement Officer determines that the event has become detrimental to the neighborhood or demonstrates a pattern of violating the conditions of approval.

### **STAFF RECOMMENDATION**

Staff recommends approval of the proposed Temporary use, subject to the following conditions:

1. The Temporary Use for special events shall be valid for a 5-year period to end November 30, 2027, at which time a subsequent Temporary Use can be requested from the Zoning Board of Adjustment.
2. Any special event shall be related to an accessory art studio use on the residential property.
3. Any special event activities shall take place entirely within the detached garage and/or rear yard area private property.

4. Any special event shall be held between June 1 and November 30 in any year, with no more than one (1) special event occurring in any month.
5. The events shall only occur between 6:00 PM and 9:00 PM on any Sunday through Thursday or between 7:00 PM and 10:00 PM on any Friday or Saturday. Any live music or amplified sound shall cease by 10:00 PM during any event and shall only be acoustical in nature. Any amplified sound shall comply in accordance with a "Type A" Sound Permit issued pursuant to Chapter 42-258(e)(1) of the City Code by the Permit and Development Center prior to the event.
6. Set up for any event shall occur within 24 hours prior to the start of any event, and any tear down for any event shall be completed no later than 24 hours after the end of any event.
7. Any portable toilets placed on the site for any event shall only be present within 24 hours prior to the start of any event, and shall be removed from the site no later than 24 hours after the end of any event.
8. Any temporary signs shall be no more the 24 square feet in area and shall only be displayed on the day of each event.
9. Litter and trash receptacles shall be located at convenient locations throughout the premises, and all trash and debris from the premises and adjoining right-of-way shall be removed immediately at the conclusion.
10. Any Temporary Use shall be subject to reconsideration by the Zoning Board of Adjustment at any time the Zoning Enforcement Officer determines that the event has become detrimental to the neighborhood or demonstrates a pattern of violating the conditions of the Temporary Use.