



ZONING BOARD OF ADJUSTMENT STAFF REPORTS AND RECOMMENDATIONS JUNE 28, 2023

Item 1 ZBOA-2023-000027 City of Des Moines
Vicinity of 2806 E 29th Street Conditional Use

APPLICABLE REQUIREMENTS

TABLE 134-3.1-1. PRINCIPAL USE TABLE																						
USE CATEGORY	DISTRICTS																					
Use Subcategory Specific Use Type	A	DX1	DX2	DXR	MX1	MX2	MX3	RX1	RX2	CX	EX	I1	I2	N1, N2, N3, N4, N5	NX1	NX2, NX2a	NX3	NM	P1	P2	F	Reference
Utilities and Public Service Facilities																						
Minor	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	○	134-3.4.13
Major	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	134-3.4.13
COMMERCIAL																						
Adult Entertainment	-	-	-	-	-	-	-	-	-	-	-	○*	○*	-	-	-	-	-	-	-	-	134-3.5.1
Animal Service																						
Boarding	●	-	-	-	-	-	●	-	-	●	●	●	●	-	-	-	-	-	-	-	-	134-3.5.2
Grooming	●	●	●	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	134-3.5.2
Stable	●	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	134-3.5.2
Veterinary	●	●	●	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	134-3.5.2
Assembly and Entertainment																						
Small	-	●	●	●	○	●	●	○	●	●	●	-	-	-	-	○	○	-	-	○	-	134-3.5.3
Large	-	●	●	●	-	●	●	-	●	●	●	-	-	-	-	○	-	-	○	-	-	134-3.5.3
Events Center	-	●	●	●	-	●	●	-	●	●	●	-	-	-	-	○	-	-	○	-	-	134-3.5.3
Broadcast or Recording Studio	-	●	●	-	-	○	●	-	●	●	●	●	●	-	-	-	-	-	-	●	-	134-3.5.4
Business or Trade School	-	●	●	●	○	○	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	134-3.5.5
Commercial Service																						
Consumer Maintenance and Repair	-	●	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-	134-3.5.6
Personal Service	-	●	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-	134-3.5.6
Studio or Instructional Service	-	●	●	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	134-3.5.6
Day Care	-	●	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-	134-3.5.7
Day Services, Adult	-	●	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-	134-3.5.8
Eating and Drinking Places																						
Restaurant	-	●	●	●	●	●	●	●	●	●	●	●	-	-	-	Ⓢ	-	-	○	○	-	134-3.5.9
Bar	-	○	○	○	-	○	○	-	○	○	○	-	-	-	-	-	-	-	○	○	-	134-3.5.9
Financial Service (except as below)	-	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-	-	134-3.5.10
Bail Bonds	-	-	-	-	-	-	●*	-	-	●*	-	-	-	-	-	-	-	-	-	-	-	134-3.5.10
Delayed Deposit Service	-	-	-	-	-	-	●*	-	-	●*	-	-	-	-	-	-	-	-	-	-	-	134-3.5.10
Pawnbroker	-	-	-	-	-	-	●*	-	-	●*	-	-	-	-	-	-	-	-	-	-	-	134-3.5.10
Funeral or Mortuary Service	-	-	-	-	-	-	●	-	●	●	●	●	-	-	-	-	-	-	-	-	-	134-3.5.11
Lodging																						
Bed & Breakfast	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	-	-	○*	○*	○*	○*	-	-	-	-	134-3.5.12
Hotel/Motel	-	●	●	●	-	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-	-	134-3.5.12

KEY: ●=permitted by right | ○=permitted on upper floors only within primary footage, and in ground floor within non-primary frontage or corner lot
 ○=requires conditional use approval | *supplemental use regulations apply | --prohibited
 ②=permitted by right where district includes *-2" extension | ④=permitted by right where district includes *-4" extension
 Ⓢ = permitted except where district includes *-V" extension | Ⓢ = permitted with conditional use approval in NQ2a district only
 Ⓢ = permitted on major commercial corridors only

Sec. 134-3.4.13. Utilities and Public Service Facilities

B. Major. Infrastructure services that typically have substantial visual or operational impacts on nearby areas. Typical uses include: above-ground electric distribution substations; wastewater management facilities and filtration systems; solar farms; wind farms.

Sec. 134-6.4.8. Conditional uses.

A conditional use may not be approved unless the board of adjustment determines that the proposed use or activity complies 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 an 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 REPORT

Proposal: Construction of upgrades to existing above-ground electric distribution substation facility comprised of a new above-ground electric distribution substation, transformers, remote operation control systems, security fencing, and other associated equipment.

Appeal(s): Conditional Use (per City Code Section 134-6.4) for a “Utilities and Public Service Facility, Major” use for an above-ground electric distribution substation in the “MX1” Mixed Use District.

Site Description: The subject properties are zoned “MX1” Mixed Use District. The project area is comprised of approximately 0.918 acres owned by MidAmerican Energy Company. The property contains an existing electrical substation that would be substantially demolished, and new electrical substation equipment and structures would be constructed within a similar footprint. The property has street frontage along East 29th Street and Grandview Avenue.

Neighborhood Notification Information: The subject property is located within the Fairmont Park Neighborhood and adjacent to the ACCENT Neighborhood. The neighborhood associations were notified of the Board meeting by email of the Preliminary Agenda on June 9, 2023. Additionally, an official public notice of the hearing for this specific item was mailed on June 13, 2023 to the neighborhood associations and to the primary 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 Fairmont Park Neighborhood mailings were sent to Jeff Witte, 2501 Morton Avenue, Des Moines, IA 50317. The ACCENT Neighborhood mailings were sent to Kevin Marken, 2109 E 28th Street, Des Moines, IA 50317.

The appellant must provide a summary of their neighbor communications to City Staff at least 3 days before the Zoning Board of Adjustment holds the public hearing.

Additional Information: MidAmerican Energy Company currently owns and operates an existing electrical substation on the subject property. The existing electrical substation would be substantially demolished and replaced with new electrical substation equipment and structures. The project would be constructed within the existing fenced compound area.

A temporary mobile substation would be located at the western side of the property to maintain service during construction. The temporary mobile substation would be removed, and the western portion of the site returned to the original condition once the permanent substation construction is complete. The Temporary Use was approved by the Neighborhood Services Director per ZBOA-2022-000074.

The project requires site plan and commercial plan review by the Development Services Department. This review would include landscaping and fencing requirements as required by Chapter 135.

Criteria for the Board to Consider: 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;

Staff believes that the rebuilt above-ground electric distribution substation 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 any 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 adequate supply of light and air to surrounding property if it operates in accordance with any recommended conditions of approval.

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.

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

Staff believes the proposed use would 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;

The proposed use is consistent with the general purpose of the zoning ordinance, the planning and design ordinance, and the comprehensive plan and any specific purposes established in the 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;

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

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

Staff believes the proposed use would have no significant detrimental impact on the use and enjoyment of adjoining properties if it operates in accordance with any recommended conditions of approval.

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

Staff believes that the proposed use would have adequate setbacks to protect adjacent residentially zoned property from non-residential and institutional uses if it operates in accordance with any recommended conditions of approval.

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: The proposed structures and site improvements for the substation facility would require conformance with all Building and Fire Codes with issuance of all necessary permits and site plan approval by the Development Services Department. The Site Plan must be in accordance with Municipal Code Chapter 135 (Planning and Design Ordinance).

Staff Rationale: Granting the Conditional Use with conditions would be consistent with the intended spirit and purpose of the Zoning Ordinance. Staff believes that the appellant has demonstrated the criteria necessary for granting the Conditional Use. The proposed electrical substation meets a public necessity.

STAFF RECOMMENDATION

Staff recommends approval of the requested Conditional Use, subject to the following conditions:

1. Substantial compliance with the submitted design.
2. Compliance with all applicable Building and Fire Codes with issuance of all necessary permits by the Permit and Development Center and other applicable government agencies.
3. Compliance with an approved Site Plan that satisfies the applicable standards in City Code Chapter 135.



**ZONING BOARD OF ADJUSTMENT
STAFF REPORTS AND RECOMMENDATIONS
June 28, 2023**

Item 2	ZBOA-2023-000039 6079 Southeast 14th Street	Global Des Moines LLC Type 2 Zoning Exception
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APPLICABLE REQUIREMENTS

Table 134-5.6 Signs in DX, MX, RX, CX, EX, I, P, and F Districts

TABLE 134-5.6-1. SIGNS IN DX, MX, RX, CX, EX, I, P AND F DISTRICTS									
	DX1	DX2 DXR	MX1 MX2	MX3	CX	RX	EX I	P	F
PERMITTED SIGN TYPES									
Wall	●	●	●	●	●	●	●	●	●
Monument	●	●	●	●	●	●	●	●	—
Projecting; Marquee	●	●	●	●	●	●	●	●	●
Roof	●	●	—	—	●	—	●	—	—
WALL SIGNS: MAXIMUM NUMBER AND AREA									
Maximum Number per Occupant	2	2	2	2	2	2	2	2	2
Maximum Total Sign Area (sq. ft.)	2 per linear foot of building frontage for floors 1-3	1.25 per linear foot of building frontage for floors 1-3				2 per linear foot of building frontage for floors 1-3		1.25 per linear foot of building frontage for floors 1-3	
Maximum Area of Any Single Sign	200 sq. ft.	100 sq. ft.	100 sq. ft.	200 sq. ft.	200 sq. ft.	100 sq. ft.	200 sq. ft.	200 sq. ft.	100 sq. ft.
Other Regulations	See section 134-5.6.3 of this article								
MONUMENT SIGNS: MAXIMUM NUMBER, AREA AND HEIGHT									
Maximum Number per Street Frontage	1	1	1	1	1 per 250 linear feet of frontage	1	1 per 250 linear feet of frontage	1	—
Maximum Sign Area (sq. ft.)	25	25	1 per linear foot of street frontage or 75 sq. ft., whichever is less	75	1 per linear foot of street frontage or 200 sq. ft., whichever is less	15	1 per linear foot of street frontage or 200 sq. ft., whichever is less	75	—
Maximum Height (ft.)	8 if setback less than 25 feet from property line; 15 if setback at least 25 feet from property line								—

B. Maximum Height. Monument signs are subject to the following height limits, as measured from grade to the highest point on the sign:

1. If located at or within 25 feet from the front lot line, the sign may not exceed eight feet in height.

STAFF REPORT

Proposal: Installation of an illuminated monument sign, totaling 90.32-square feet of signage area, with a maximum height of 12 feet.

Appeal(s): Type 2 Zoning Exception for 4 feet over the maximum 8 feet of height allowed for a monument sign that is within 25 feet of a front property line in a “CX-V” District.

Site Description: The subject property is a 17.85-acre parcel and is located on the east side of Southeast 14th Street (U.S. Hwy 69) between Hart Avenue and East Army Post Road. It is zoned “CX-V” Mixed-Use District and contains multiple commercial buildings.

Neighborhood Notification Information: The subject property is located within the Easter Lake Area (ELANA) Neighborhood and within 250 feet of South Central DSM

Neighborhood. All neighborhood associations were notified of the Board meeting by email of the Preliminary Agenda on June 9, 2023. Additionally, an official public notice of the hearing for this specific item was mailed on June 13, 2023, to the neighborhood associations and to the primary 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 Easter Lake Area Neighborhood Association mailings were sent to Jim Bollard. The South Central DSM Neighborhood Association mailings were sent to Lisa Stocker-Ross.

The appellant must provide a summary of their neighbor communications to City Staff at least 3 days before the Board of Adjustment holds the public hearing.

Criteria for the Board to Consider: Taking into consideration the criteria set forth in Section 134-6.6.8 of the City Code and Chapter 18B of the Iowa Code, the Board shall ensure that Type 2 Zoning Exceptions may be approved only when determining that all of the following general approval standards and criteria and any other specific criteria established in this Zoning Ordinance have been met:

1. The requested Exception is reasonably necessary due to practical difficulties related to the subject property;
2. The practical difficulties related to the subject property cannot be overcome by any feasible alternative means other than an Exception;
3. The requested Exception will not have a significant adverse impact on the essential character of the surrounding area;
4. The requested Exception by its design, construction and operation:
 - a. Will adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property;
 - b. Will not impair an adequate supply of Sight and air to adjacent property;
 - c. Will not unduly increase congestion in the public streets;
 - d. Will not increase public danger of fire and safety; and
 - e. Will not diminish or impair established property values in the surrounding area.
5. The requested Exception relates entirely to a use classified by applicable district regulations as either a principal permitted use, a permitted accessory use, or a permitted sign, or to off-street parking or loading areas accessory to such a permitted use.

Permit and Development Center Comments: Any new or modified sign shall be installed in compliance with a sign permit issued by the City's Permit and Development Center to a sign contractor licensed by the City.

Additional Information: The appellant is developing the site for a Raising Cane's Chicken Fingers (restaurant). The appellant is proposing an illuminated monument sign that would be 12 feet in height and would be located within 8.8 feet of the front lot line. The "CX" District allows a monument sign to be located within 25 feet from the front lot line, so long as the sign does not exceed 8 feet in height. Staff notes City Code Section 134-5.3.5 allows this appeal to be considered as a Type 2 Zoning pursuant to City Code Section 134-6.6.

Staff Rationale: Staff believes that it is reasonably necessary to require any monument sign that is over 8 feet in height to be set back a minimum of 12.5 feet from the west frontage lot line. The appellant faces a practical difficulty in providing signage that is of a size that can adequately identify the restaurant given the scope and layout of the site. The proposed signs would not have a significant adverse impact on the essential character of the surrounding area. The proposed signs would adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property and would not impair an adequate supply of light and air to adjacent property; unduly increase congestion in the public streets; increase public danger of fire and safety; and not diminish or impair established property values in the surrounding area. It would relate entirely to a use classified by applicable district regulations as either a principal permitted use, a permitted accessory use, or a permitted sign, or to off-street parking or loading areas accessory to such a permitted use.

STAFF RECOMMENDATION

Staff recommends approval of a Type 2 Zoning Exception for a monument sign that is 4 feet over the maximum allowed 8 feet in height, subject to the following conditions:

1. Any monument sign that is over 8 feet in height shall be set back a minimum of 12.5 feet from the west frontage lot line.
2. Any signage shall be installed by a licensed sign contractor in accordance with a sign permit issued by the City's Permit and Development Center to a sign contractor licensed by the City.



**ZONING BOARD OF ADJUSTMENT
STAFF REPORTS AND RECOMMENDATIONS
June 28, 2023**

Item 3	ZBOA-2023-000042 6025 Southeast 14th Street	Global Des Moines LLC Type 2 Zoning Exception
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APPLICABLE REQUIREMENTS

Table 134-5.6 Signs in DX, MX, RX, CX, EX, I, P, and F Districts

TABLE 134-5.6-1. SIGNS IN DX, MX, RX, CX, EX, I, P AND F DISTRICTS									
	DX1	DX2 DXR	MX1 MX2	MX3	CX	RX	EX I	P	F
PERMITTED SIGN TYPES									
Wall	●	●	●	●	●	●	●	●	●
Monument	●	●	●	●	●	●	●	●	—
Projecting; Marquee	●	●	●	●	●	●	●	●	●
Roof	●	●	—	—	●	—	●	—	—
WALL SIGNS: MAXIMUM NUMBER AND AREA									
Maximum Number per Occupant	2	2	2	2	2	2	2	2	2
Maximum Total Sign Area (sq. ft.)	2 per linear foot of building frontage for floors 1-3	1.25 per linear foot of building frontage for floors 1-3				2 per linear foot of building frontage for floors 1-3		1.25 per linear foot of building frontage for floors 1-3	
Maximum Area of Any Single Sign	200 sq. ft.	100 sq. ft.	100 sq. ft.	200 sq. ft.	200 sq. ft.	100 sq. ft.	200 sq. ft.	200 sq. ft.	100 sq. ft.
Other Regulations	See section 134-5.6.3 of this article								
MONUMENT SIGNS: MAXIMUM NUMBER, AREA AND HEIGHT									
Maximum Number per Street Frontage	1	1	1	1	1 per 250 linear feet of frontage	1	1 per 250 linear feet of frontage	1	—
Maximum Sign Area (sq. ft.)	25	25	1 per linear foot of street frontage or 75 sq. ft., whichever is less	75	1 per linear foot of street frontage or 200 sq. ft., whichever is less	15	1 per linear foot of street frontage or 200 sq. ft., whichever is less	75	—
Maximum Height (ft.)	8 if setback less than 25 feet from property line; 15 if setback at least 25 feet from property line								—

B. Maximum Height. Monument signs are subject to the following height limits, as measured from grade to the highest point on the sign:

1. If located at or within 25 feet from the front lot line, the sign may not exceed eight feet in height.

STAFF REPORT

Proposal: Installation of an illuminated monument sign, totaling 90.32-square feet of signage area, with a maximum height of 12 feet.

Appeal(s): Type 2 Zoning Exception for 4 feet over the maximum 8 feet of height allowed for a monument sign that is within 25 feet of a front property line in a “CX-V” District.

Site Description: The subject property is a 17.85-acre parcel and is located on the east side of Southeast 14th Street (U.S. Hwy 69) between Hart Avenue and East Army Post Road. It is zoned “CX-V” Mixed-Use District and contains multiple commercial buildings.

Neighborhood Notification Information: The subject property is located within the Easter Lake Area (ELANA) Neighborhood and within 250 feet of South Central DSM

Neighborhood. All neighborhood associations were notified of the Board meeting by email of the Preliminary Agenda on June 9, 2023. Additionally, an official public notice of the hearing for this specific item was mailed on June 13, 2023, to the neighborhood associations and to the primary 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 Easter Lake Area Neighborhood Association mailings were sent to Jim Bollard. The South Central DSM Neighborhood Association mailings were sent to Lisa Stocker-Ross.

The appellant must provide a summary of their neighbor communications to City Staff at least 3 days before the Board of Adjustment holds the public hearing.

Criteria for the Board to Consider: Taking into consideration the criteria set forth in Section 134-6.6.8 of the City Code and Chapter 18B of the Iowa Code, the Board shall ensure that Type 2 Zoning Exceptions may be approved only when determining that all of the following general approval standards and criteria and any other specific criteria established in this Zoning Ordinance have been met:

1. The requested Exception is reasonably necessary due to practical difficulties related to the subject property;
2. The practical difficulties related to the subject property cannot be overcome by any feasible alternative means other than an Exception;
3. The requested Exception will not have a significant adverse impact on the essential character of the surrounding area;
4. The requested Exception by its design, construction and operation:
 - a. Will adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property;
 - b. Will not impair an adequate supply of Sight and air to adjacent property;
 - c. Will not unduly increase congestion in the public streets;
 - d. Will not increase public danger of fire and safety; and
 - e. Will not diminish or impair established property values in the surrounding area.
5. The requested Exception relates entirely to a use classified by applicable district regulations as either a principal permitted use, a permitted accessory use, or a permitted sign, or to off-street parking or loading areas accessory to such a permitted use.

Permit and Development Center Comments: Any new or modified sign shall be installed in compliance with a sign permit issued by the City's Permit and Development Center to a sign contractor licensed by the City.

Additional Information: The appellant is developing the site for a Dollar Tree store. The appellant is proposing an illuminated monument sign that would be 12 feet in height and would be located within 1.2 feet of the front lot line. The "CX" District allows a monument sign to be located within 25 feet from the front lot line, so long as the sign does not exceed 8 feet in height. Staff notes City Code Section 134-5.3.5 allows this appeal to be considered as a Type 2 Zoning pursuant to City Code Section 134-6.6.

Staff Rationale: Staff believes that it is reasonably necessary to require any monument sign that is over 8 feet in height to be set back a minimum of 12.5 feet from the west frontage lot line. The appellant faces a practical difficulty in providing signage that is of a size that can adequately identify the restaurant given the scope and layout of the site. The proposed signs would not have a significant adverse impact on the essential character of the surrounding area. The proposed signs would adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property and would not impair an adequate supply of light and air to adjacent property; unduly increase congestion in the public streets; increase public danger of fire and safety; and not diminish or impair established property values in the surrounding area. It would relate entirely to a use classified by applicable district regulations as either a principal permitted use, a permitted accessory use, or a permitted sign, or to off-street parking or loading areas accessory to such a permitted use.

STAFF RECOMMENDATION

Staff recommends approval of a Type 2 Zoning Exception for a monument sign that is 4 feet over the maximum allowed 8 feet in height, subject to the following conditions:

1. Any monument sign that is over 8 feet in height shall be set back a minimum of 12.5 feet from the west frontage lot line.
2. Any signage shall be installed by a licensed sign contractor in accordance with a sign permit issued by the City's Permit and Development Center to a sign contractor licensed by the City.



**BOARD OF ADJUSTMENT
STAFF REPORTS AND RECOMMENDATIONS
JUNE 28, 2023**

Item 4 ZBOA-2023-000040	Uptown Partners II Corp
4115 University Avenue	Conditional Use

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
Retail Sales												
Limited												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	○*	○*	-	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	○*	○*	-	-	-	-
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	-	-	-	-
Large												
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-
Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-
Fuel Station												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	○*	○*	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	40%/150	40%/150	-	40%/150	40%/150	-	40%/150	40%/150	-	-	-
Liquor Store												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	-	○*	○*	-	-	-
Tobacco Store												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	-	○*	○*	-	-	-
Restaurant, Bar, Other Uses												
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	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*
KEY: ○=requires conditional use approval * = supplemental use regulations apply - = prohibited												
Table Notes												
○ = Uses identified with a ○ symbol are allowed only if reviewed and approved in accordance with the conditional use procedures of 134-6.4 of this chapter .												
40% = 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.												
50% = 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.												
25% = 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.												
75 = 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.												
150 = 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.												
500 = 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.												
1320 = 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 Criteria. 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 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 the premises for a small event space, with sales of alcoholic liquor, wine, and beer for on-premise consumption. The use would include approximately 2,393 square feet of area within an existing building that was previously used as a restaurant.

Appeal(s): Conditional Use for an “Other” use selling alcoholic liquor, wine, and beer for on-premises consumption in a “MX2” District.

Site Description: The subject property is zoned “MX2” Mixed Use District and is located along the northeast corner of University Avenue and 42nd Street, in the Uptown Center shopping area. The subject business is within an existing one-story building with multiple tenants, which includes a mix of retail, office, and restaurant uses.

Neighborhood Notification Information: The subject property is located within the Drake Neighborhood and within 250 feet of the Waveland Park Neighborhood. All neighborhood associations were notified by email of the Preliminary Agenda on June 9, 2023. Additionally, official public notices of the hearing for this specific item were emailed on June 13, 2023, 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 association on file with the City of Des Moines. The Downtown Drake Neighborhood Association mailings were mailed to Courtney Ackerson, 979 26th Street, Des Moines, IA 50311 and the Waveland Park Neighborhood Association mailings were sent to Nick Coleman, 4612 Kingman Boulevard, Des Moines, IA 50311.

The appellant is required to hold a neighborhood meeting and must provide a summary of that meeting to City Staff at least 3 days before the Zoning Board of Adjustment holds the public hearing.

Additional Information: The existing 1-story building is divided into multiple tenant bays including the Moxie Kitchen and Events space, which occupies approximately

2,393 square feet of space. The appellant is proposing a commercial kitchen space available for monthly or hourly rental. This includes an approximately 1,000 square feet space to host events such as cooking classes, cocktail hour or formal dinners for up to 50 persons at a time. The requested Conditional Use would allow alcohol sales for on-site consumption at the proposed event space.

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 property is not subject to separation distance requirements since it is an "Other" use within an "MX2" District.

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.

The subject property is in an area that includes a mix of commercial, retail, office, and residential uses. 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 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 proposed use is consistent with the general purpose of the zoning ordinance, the planning and design ordinance, chapter 135 of the City's code, and the comprehensive plan.

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 an 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 obtained through the Office of the City Clerk as approved by the City Council.

Any construction on the site must be in accordance with all applicable requirements of Chapter 135 of the City's code, and Building and Fire Codes, with issuance of any necessary permits by the City's Permit and Development Center.

Staff Rationale: The application satisfies the criteria for granting a Conditional Use to allow the sale of alcoholic liquor, wine, and beer for on premises consumption within an existing 2392-square foot building that was previously used as a restaurant. This is an appropriate location for the proposed use. The proposed use would adequately safeguard the health, safety and general welfare of persons residing in the surrounding area so long as it operates in accordance with the recommended conditions of approval. The proposed use is adjoining a residential neighborhood to the north and will not a

significant detrimental impact upon the adjoining residential uses so long as uses comply with the conditions of approval.

Furthermore, 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 of Adjustment to reconsider the issuance of the Conditional Use for such business.

STAFF RECOMMENDATION

Staff recommends approval of the requested Conditional Use, subject to the following conditions:

1. Any business selling alcoholic liquor, wine, and/or beer shall operate as a “Small Assembly and Entertainment” use within an area of approximately 2393-square feet of the existing building.
2. 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.
3. 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.
4. 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.
5. 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.
6. The hours of operation for event space activities shall be limited as follows:
Sunday through Thursday: 8:00 a.m. – 10:00 p.m., and
Friday and Saturday: 8:00 a.m. – midnight.

Notwithstanding the foregoing, the hours of operation for Public Holidays (defined below) and the day preceding Public Holidays shall be limited as follows:

8:00 a.m. – midnight.

“Public Holiday” as used herein includes: New Year’s Day, Birthday of Martin Luther King Jr., Memorial Day (the last Monday in May), Independence Day (July 4), Labor Day (the first Monday in September),

Veterans Day (November 11), Thanksgiving (the fourth Thursday in November), and Christmas Day (December 25).

7. 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.
8. Any renovation of the building shall be in compliance with all applicable building and fire codes and Chapter 135 of the Planning and Design Ordinance, with issuance of all necessary permits by the City's Permit and Development Center.
9. 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.



**BOARD OF ADJUSTMENT
STAFF REPORTS AND RECOMMENDATIONS
JUNE 28, 2023**

Item 5 ZBOA-2023-000041 1011 Locust Street	Temple Partners LP Conditional Use
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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
Retail Sales												
Limited												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	○*	○*	-	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	○*	○*	-	-	-	-
General												
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	-	-	-	-
Large												
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-
Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-
Fuel Station												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	○*	○*	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	40%/150	40%/150	-	40%/150	40%/150	-	40%/150	40%/150	-	-	-
Liquor Store												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	-	○*	○*	-	-	-
Tobacco Store												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	-	○*	○*	-	-	-
Restaurant, Bar, Other Uses												
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	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*
KEY: ○=requires conditional use approval * = supplemental use regulations apply - = prohibited												
Table Notes												
○ = Uses identified with a ○ symbol are allowed only if reviewed and approved in accordance with the conditional use procedures of 134-6.4 of this chapter .												
40% = 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.												
50% = 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.												
25% = 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.												
75 = 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.												
150 = 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.												
500 = 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.												
1320 = 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 Criteria. 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 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 the premises for a large event space, with sales of alcoholic liquor, wine, and beer for on-premises consumption. The use would include approximately 16,000 square feet of area within the fourth floor of an existing building that is used as an event space.

Appeal(s): Conditional Use for an “Other” use selling alcoholic liquor, wine, and beer for on-premises consumption in a “DX1” District.

Site Description: The subject property is zoned “DX1” Downtown District and is located along the north side of Locust Street. The subject business is within the fourth floor of an existing 5-story building, which includes a mix of restaurant, retail, office and event space uses.

Neighborhood Notification Information: The subject property is located within the Downtown Des Moines Neighborhood. All neighborhood associations were notified by email of the Preliminary Agenda on June 9, 2023. Additionally, official public notices of the hearing for this specific item were emailed on June 13, 2023, 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 association on file with the City of Des Moines. The Downtown Des Moines Neighborhood Association mailings were mailed to Brandon Brown, 120 SW 5th Street, Unit 101, Des Moines, IA 50309.

The appellant is required to hold a neighborhood meeting and must provide a summary of that meeting to City Staff at least 3 days before the Zoning Board of Adjustment holds the public hearing.

Additional Information: The existing 5-story building is divided into multiple tenant bays including the temple of the Temple for the Performing Arts event space, which currently occupies approximately 16,000 square feet of space on the fourth floor of the building. Top It Off, LLC, operated by the applicant, would exclusively hold the liquor

license for the event space. The requested Conditional Use would allow them to control alcohol sales during events. The events are generally held between the hours of 4:00PM and 11:00PM, any day of the week events are booked.

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 property is not subject to separation distance requirements since it is zoned "DX1" District.

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.

The subject property is in an area that includes a mix of office and retail uses. 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 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 proposed use is consistent with the general purpose of the zoning ordinance, the planning and design ordinance, chapter 135 of the City’s code, and the comprehensive plan.

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 an 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 obtained through the Office of the City Clerk as approved by the City Council.

Any construction on the site must be in accordance with all applicable Chapter 135 Site Plan regulations and Building and Fire Codes, with issuance of any necessary permits by the City's Permit and Development Center.

Staff Rationale: The application satisfies the criteria for granting a Conditional Use to allow the sale of alcoholic liquor, wine, and beer for on premises consumption within an existing 16,000-square foot large event space. This is an appropriate location for the proposed use. The proposed use would adequately safeguard the health, safety and general welfare of persons residing in the surrounding area so long as it operates in accordance with the recommended conditions of approval. The proposed use is sufficiently separated from any 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.

Furthermore, 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 of Adjustment to reconsider the issuance of the Conditional Use for such business.

STAFF RECOMMENDATION

Staff recommends approval of the requested Conditional Use, subject to the following conditions:

1. Any business selling alcoholic liquor, wine, and/or beer shall operate as a "Large Assembly and Entertainment" use within an area of approximately 16,000-square feet on the fourth floor of the building.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. Any renovation of the building shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the City's Permit and Development Center.
8. 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.



**BOARD OF ADJUSTMENT
STAFF REPORTS AND RECOMMENDATIONS
JUNE 28, 2023**

Item 6 ZBOA-2023-000038 2120 Ingersoll Avenue	Edwin Allen Conditional Use
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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
Retail Sales												
Limited												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	○*	○*	-	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	○*	○*	-	-	-	-
General												
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	-	-	-	-
Large												
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-
Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-
Fuel Station												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	○*	○*	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	40%/150	40%/150	-	40%/150	40%/150	-	40%/150	40%/150	-	-	-
Liquor Store												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	-	○*	○*	-	-	-
Tobacco Store												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	-	○*	○*	-	-	-
Restaurant, Bar, Other Uses												
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	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*
KEY: ○*requires conditional use approval * = supplemental use regulations apply - = prohibited												
Table Notes												
○ = Uses identified with a ○ symbol are allowed only if reviewed and approved in accordance with the conditional use procedures of 134-6.4 of this chapter .												
40% = 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.												
50% = 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.												
25% = 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.												
75 = 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.												
150 = 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.												
500 = 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.												
1320 = 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 Criteria. 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 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: Conversion of an existing 5,496-square foot building from a “Restaurant” use to a “Bar” use, where more than 50% of sales could be derived from the sale of alcoholic liquor, wine, and/or beer.

Appeal(s): Conditional Use for a “Bar” use selling alcoholic liquor, wine, and beer for on-premises consumption in a “MX2” District.

Site Description: The subject property measures 17,175 square feet (0.394 acres) and contains an existing 2-story commercial building and parking lot. The subject property is located on the southwest corner of the Martin Luther King, Jr. Parkway and Ingersoll Avenue intersection. The area contains a mix of commercial and multi-household residential uses.

Neighborhood Notification Information: The subject property is in the Woodland Heights Organization Neighborhood and within 250 feet of the Sherman Hill Neighborhood. All neighborhood associations were notified of the Board meeting by email of the Preliminary Agenda on June 9, 2023. Additionally, an official public notice of the hearing for this specific item was mailed on June 13, 2023, to 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 Woodland Heights Organization mailings were sent to Cameron Gale. The Sherman Hill mailings were sent to Angela Broughton-Romain.

The appellant is required to hold a neighborhood meeting and must provide a summary of that meeting to City Staff at least 3 days before the Zoning Board of Adjustment holds the public hearing.

Additional Information: The property is zoned “MX2” District. A “bar” use with on-premises consumption of alcoholic liquor, wine and/or beer is a Conditional Use in this district, requiring Board of Adjustment approval.

Approximately 2 years ago the property was developed with a 2-story, 5,496-square foot building for restaurant use. The applicant is proposing to operate as a bar since they are not able to maintain compliance with the provision that at least 50% of a restaurant's gross receipts from sales from the premises must be derived from the sale of prepared food and food-related services. The bar would operate from 11:00 AM – 12:00 AM, Sunday through Thursday, and from 11:00AM – 2:00AM Friday and Saturday. The use would include a full menu with appetizers, entrees, pizza, and sandwiches. The venue would host live music and private events.

Staff estimates the maximum building occupancy including patio space is 362 people.

Zoning Enforcement Comments: The property owner was issued Class E Liquor License in 2021 and a renewal in 2022 based on the filing of a Liquor License agreement on August 9, 2021, and again on August 3, 2022. These were signed by the owner and notarized indicating agreement that at least half (50%) of the gross receipts will be derived from the sale of prepared food and food-related services. On March 23, 2023, a report issued by the State of Iowa Alcoholic Beverages Division indicated that a breakdown of sales activity based on a review of the sales data on inspection revealed that only 32% of the revenues were due to food sales activity over a 4-month period. This provided suspicion that the premise was not operating as a Restaurant. This prompted a letter to be served to the owner indicating that in order to comply with Section 134-3.9.9.E, a report prepared by a Certified Public Accountant must be provided within 45 days demonstrating the necessary revenue to be classified as a Restaurant Use; or the owner could apply for the Conditional Use to be considered a Bar use.

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. The property is 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 childcare facility as defined by Iowa Code Chapter 237A, is located.

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 does not believe that the proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the area as there have been numerous complaints regarding the premise's impacts on neighboring property. During a two-year period ending on June 1, 2023, the Police Department received a total of 133 calls for service to this establishment. Seventy-one (71) of them were classified as "disturbing the peace" calls and were mostly related to loud music. These calls represent 53.4% of the calls received during this period. The remaining calls include disputes, assaults, fights and a shooting, among other things.

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 does not believe that 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. Numerous complaints have been filed relative to noise and vibration emitted from the premises. During a two-year period ending on June 1, 2023, the Police Department received a total of 133 calls for service to this establishment. Seventy-one (71) of them were classified as "disturbing the peace" calls and were mostly related to loud music.

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

Staff believes that the proposed use would likely cause congestion in the area. Complaints have been made regarding an overflow of parking, and loitering taking place on adjacent properties from patrons of the restaurant.

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

The business operated has had numerous complaints relative to noise, traffic, and disturbances due to activity related from the premises. During a two-year period ending on June 1, 2023, the Police Department received a total of 133 calls for service to this establishment. Seventy-one (71) of them were classified as "disturbing the peace" calls and were mostly related to loud music. These calls represent 53.4% of the calls received during this period. The remaining calls include disputes, assaults, fights and a shooting, among other things.

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 does not believe that the proposed use would adequately safeguard the health, safety, and general welfare of persons residing or working in adjoining or surrounding property as numerous disturbances have been reported. During a two-year period ending on June 1, 2023, the Police Department received a total of 133 calls for service to this establishment. Seventy-one (71) of them were classified as “disturbing the peace” calls and were mostly related to loud music. These calls represent 53.4% of the calls received during this period. The remaining calls include disputes, assaults, fights and a shooting, among other things.

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 unduly increase congestion in the streets as complaints have been made regarding an overflow of parking taking place on adjacent properties.

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

Staff believes that the proposed use would diminish or impair established nearby property values based on the volume of calls received by the Police Department and the long term impact that has on the desirability of the area.

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.

To be consistent with the general purpose of the zoning ordinance, the planning and design ordinance, chapter 135 of this code, and the comprehensive plan a use must be compatible with the character of an area and negative impacts must be mitigated. The existing operations are negatively impacting the surrounding

area, as demonstrated by the number of complaints received by the Police Department. Switching from a restaurant use classification to a more intense bar use would not mitigate the existing negative impacts. The proposal does not comply with this criterion.

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 have a detrimental impact on the use and enjoyment of adjoining properties. Numerous complaints have been filed relative to the current restaurant business operations. These complaints include excessive noise and vibrations related to loud music, restaurant patron parking on adjacent lots, and disturbing the peace.

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

The surrounding area is zoned for mixed-use including residential uses. The proposed use is not adequately setback from residences in the area, as demonstrated by the number of complaints received by the Police Department.

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 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.

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.

Staff Rationale: The appellant has not satisfied the criteria for granting a Conditional Use for a conversion of an existing 5,496-square foot building from a "Restaurant" use to a "Bar" use, where more than 50% of sales could be derived from the sale of alcoholic liquor, wine, and/or beer. The proposed location, design, construction, and

operation of the particular use would not adequately safeguard the health, safety and general welfare of persons residing in the area, as there have been numerous complaints regarding activities related to the premises. The business is not sufficiently separated from 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, as disturbances from noise and vibrations emitted from the premises have been reported. Overflow parking from the business has contributed to congestion in the area. The current business operation has had a detrimental impact on the use and enjoyment of adjoining properties, as demonstrated by the number of complaints received by the Police Department.

STAFF RECOMMENDATION

Staff recommends denial of the requested Conditional Use for a “Bar” use selling alcoholic liquor, wine, and beer for on premises consumption based on the finding that the proposed “Bar” use has not demonstrated that it would meet the criteria for granting a Conditional Use.