



## AGENDA MEMORANDUM

Public Hearing & Resolution for the City Council Meeting 08/10/21

**DATE:** July 14, 2021

**TO:** Peter Zaroni, City Manager

**FROM:** Al Raymond, AIA, Director  
Development Services Department  
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Variance, per §4-5(a), Code of Ordinances, for the property located at 1911 South Staples Street

### **CAPTION:**

Variance Case No. 21ZN1026, Adam Stern: (District 2); a Resolution to grant a variance to §4-5(a), Code of Ordinances allowing the sale of alcoholic beverages for on-premise consumption within 300 feet of a public or private school on the property located at 1911 South Staples Street, which is generally located at the south-southwest corner of South Staples and 15<sup>th</sup> Streets, identified as Lots 13 through 16 out of Block 1305 of the Merchants Addition, Number 6, and zoned "CN-1," Neighborhood Commercial District.

### **SUMMARY:**

The purpose of the request is to permit the operation of a membership club/lodge that primarily sells alcoholic beverages for on-premise consumption to its members on a property that is located less than 300 feet from the west property line of the Metro Elementary School of Design, a CCISD magnet school. The subject property is the site of the former "Pleasures" adult entertainment club, which ceased operations in November of 2020. The new property owner seeks to redevelop the site as a jazz venue and does not wish to resurrect the adult entertainment use.

### **BACKGROUND:**

The subject property, located at 1911 South Staples Street and identified as Lots 13 through 16, Block 1305, Merchants Addition, Number 6 (Tax ID No. 5096-1305-0130), is 0.18 acres in size and is currently zoned "CN-1," Neighborhood Commercial District. The subject property is located more than 1,800 linear feet from the Six Points intersection, a historic area established in the early 1900's that serves as a key hub for growth in the central city and a major redevelopment focus. The subject property, which was platted and recorded in 1910 contains a +/-4,200-square-foot building that was built in 1955. Since July of 2020, the property owner is Voodoo Promotions, LLC; Adam Stern is one of the company's principals.

The prior tenant, "Pleasures," was an adult entertainment club which had been in place for more than two decades. On March 19, 2020, a series of executive orders effectively shut down all bars

in the state in response to the COVID-19 pandemic; bars were allowed to reopen at 50% capacity on October 14. On September 14, however, Texas Alcoholic Beverage Commission (Commission) license number MB246036 was voluntarily surrendered by the adult club's owner, Syed Rahman. The adult club remained as a BYOB operation until its sexually oriented business (SOB) license was revoked on November 24 by the Corpus Christi Police Department under §48-21(b)(4) of the Code of Ordinances. The adult club permanently ceased all operations on November 26. No requests for appellate relief appear to have been filed. According to Police Department statistics, the former adult club had 189 calls for service during a six-year period from 2016 to 2021. Of those calls, 49 were categorized as incidents that largely consisted of public intoxication, indecent exposure, assault or theft. The year 2020 had the greatest level of police related activity at 15 calls and 49 incidents. Adult entertainment and SOBs are locally governed by Chapter 48 of the City's Code of Ordinances.



### **ANALYSIS AND FINDINGS:**

Per §4.5.2, Table 4.5.2 of the UDC, taverns and lounges are not allowed in the "CN-1" Zoning District. Membership clubs and lodges, being a commercial indoor recreational use, however, are allowed uses; alcohol sales for on-premise consumption is a permissible ancillary activity for a membership club or lodge. The UDC defines neither "membership club" nor "lodge." The petitioner seeks to redevelop the property as a jazz club open exclusively to members and does not wish to revive the SOB.

Membership clubs and on-premise consumption of alcoholic beverages are mutually exclusive uses. There are some membership-driven clubs throughout Corpus Christi that have active Commission licenses which allow for on-premise alcoholic beverage consumption (e.g.: Corpus Christi Country Club, River Hills Country Club), but there are also several local membership clubs that do not carry such licensing (e.g.: Bay Yacht Club, Southside Rotary Club, Padre Island Yacht Club). Locally, there are no known membership-driven clubs similar to that being proposed by the applicant, however.

To the north of the subject property is a +/-9.29-acre property that contains a public magnet school campus, the Metropolitan Elementary School of Design. According to historical records, a public school has existed on the property since 1936. Per §4-5(a), Code of Ordinances, any business within the city's limits that sells alcoholic beverages for on-premise consumption must be separated from an existing church, public or private school, child care facility or hospital by a minimum distance of 300 feet. §4-5(b) requires that minimum distance separation must be measured according to §109.33(b) of the Texas Alcoholic Beverage Code (TABC). Local jurisdictions are pre-empted from regulating alcohol businesses, except as allowed by state law, therefore minimum spacing requirements must correspond to current TABC standards. In this case, the most direct straight-line distance between the property lines of both the subject property and the school site is roughly 100 feet, hence the need for a variance.

The following land use matrix is also being provided for general reference:

Cardinal Direction	Zoning	Existing Land Use
Subject Property	CN-1, Neighborhood Commercial District	Vacant Commercial Building
North	RS-TF, Two-family District	Vacant Residential Land; Public School
South	CN-1, Neighborhood Commercial District	Retail strip center; Auto repair
East	RS-6, Single-family 6 District	Single-family Residential
West	RS-TF, Two-family District	Retail strip center; Outdoor storage; Auto repair; Multi-family

### **Conformance to City Policy**

The subject property is located within a designated Community Development Block Grant (CDBG) area as well as the Southeast Area Development Plan (ADP). The Southeast ADP was adopted in 1995 and offers little to no guidance on redevelopment goals or treatments along South Staples Street, south of the Six Points intersection. The Southeast ADP is currently undergoing substantial changes, however, and will soon be rebranded as the Midtown ADP. The proposed land use and the underlying zoning is consistent with the governing Future Land Use designation of Commercial.

The property is located in the "CN-1," Neighborhood Commercial zoning district. Neighborhood Commercial zoning districts provide areas for commercial activity such as the sale of convenience goods and personal services that primarily benefit nearby residential areas. Retail sales and service uses, which includes sales- and service-oriented businesses (liquor stores, tobacco stores, convenience stores selling beer and wine and vape stores) and most personal services (tattoo parlors, payday loan establishments, massage therapists and repair-oriented businesses), as well as indoor recreational uses (except for bars, taverns and smoking lounges), are permitted in this zoning district. Membership clubs and lodges are considered indoor recreational uses. Adult entertainment or sexually oriented businesses are not permitted in the "CN-1" zoning district.

### **Findings**

§109.33(a), TABC, authorizes the City Council to adopt spacing regulations for certain alcoholic establishments. §4-5(a) of the Code of Ordinances defers to §109.33(b), TABC, which requires any business that sells alcoholic beverages for on-premise consumption to be located at least 300 feet from an existing church, public or private school or hospital. For public and private schools only, distance is measured in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections (RE: §109.33[b][1]). Distance separations involving churches and hospitals, on the other hand, use a front door-to-front door method. §109.33(e), TABC, authorizes the City Council to grant variances from spacing requirements if they meet certain criteria. Per §4-5(f), City Code, the City Council

may, upon application of a business regulated under this section, allow a variance to the regulation if the Council determines that:

1. *Enforcement of the regulation in a particular instance is not in the best interest of the public.* Several states have laws that set minimum distance requirements between alcohol sellers and schools, churches, colleges or universities, playgrounds or other designated places, mostly out of compulsions to safeguard public health and safety by establishing safe and reasonable distance separations between disparate uses. Local codes require a minimum 300-foot separation from private or public schools, as measured from property line to property line; this requirement is irrespective of, and mutually exclusive from, any associated or secondary land use in conjunction with the alcoholic beverage service use, whether that associated use is either an SOB or a musical entertainment venue.

In comparison, although the distance between property lines falls well below the required minimum standard, the door-to-door distance measurement between the club's front door and the school's front-door entrance (as would be applied to churches and hospitals) is over 1,200 feet, or four times the minimum school distance standard, especially when such factors as building siting and differences in property locations and sizes are considered. While there were numerous incidents involving the police during the life of the SOB, there is no appreciable evidence to suggest that a similar record of activity would occur if a jazz club were to operate in its stead. Lastly, the operational hours between both the school and the jazz club are substantially different, with little to no overlap. Any unusual overlaps in operation could be mitigated through open discourse and mutually coordinated efforts between all parties.

2. *Enforcement of the regulation constitutes waste or inefficient use of land or other resources.* South Staples Street is a major thoroughfare that also serves as a gateway corridor into both the downtown area and the Six Points activity center. A jazz club on the premises could positively contribute to area redevelopment, given the property's location along the corridor and proximity to Six Points. On the other hand, given the number of permitted uses in the "CN-1" zoning district, the applicant fails to satisfactorily show that the proposed jazz club is the highest and best reuse, let alone the only reasonable and suitable use of the property.
3. *Enforcement of the regulation creates an undue hardship on an applicant for a license or permit.* Unusual events, such as the COVID-19 pandemic and the state's executive orders in response to the emergency, could be seen as a form of undue hardship that contributed to the demise of what once were nonconforming uses that had been in place since 1994, one of which was alcohol service. The year culminated in the voluntary surrender of the alcohol service license on September 14 and the permanent closure of the SOB on November 26; as a consequence, neither an SOB, bar nor tavern may legally operate on the subject property under current circumstances. All things considered, the petitioner did purchase the property in July of 2020 and, as a result, voluntarily inherited the history of the property and its stigmas as well as its underlying zoning. Any perceived hardship endured by the petitioner may be seen as self-inflicted, new visioning of the property notwithstanding.
4. *Enforcement of the regulation does not serve its intended purpose, is not effective or necessary, or for any other reason, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines it is in the best interest of the community.* Distance separation requirements vary by state and local jurisdictions, but they generally mandate a minimum distance between an establishment with a liquor license and neighboring religious institutions, schools, or other licensed liquor establishments. Laws such as these exist because local jurisdictions want to prevent an oversaturation of bars with liquor licenses in a particular area. These jurisdictions may also want to make sure that drinking establishments are not located too close to schools to prevent access of alcohol

beverages by minors, or other public policy-based rationale. However, with respect to the land area of the school property, the location of the prospective membership club/lounge compared to the location of the school's primary building, the type of public venue being proposed and the distance separations cited in Finding number one, application of the regulation may not appear to be prudent in this particular instance.

**Public Input Process**

Per §4-5(g), Code of Ordinances, "...the city council will hold a public hearing to receive input from the public on the requested variance. The city secretary shall publish a notice of the public hearing in the newspaper at least ten (10) days before the hearing date (Legal ad was published on July 29, 2021). Written notice of the public hearing before the city council on the requested variance must be sent to the owners of real property within three hundred (300) feet of the property on which the variance is requested. Separate notices must be sent to any church, child care facility, daycare center, public or private school, or public hospital located within three hundred (300) feet of the property on which a variance is requested and to the superintendent of the school district in which the property requesting the variance is located. The notice may be served by its deposit, properly addressed with postage paid, in the United States mail."

Number of notices mailed:      Forty-two (42) within a 300-foot notice area, mailed July 23, 2021

Number of responses  
received by staff to date:      IN FAVOR      OPPOSED  
Four (4) inside notification area,      Two (2) inside notification area,  
as of August 5, 2021      as of August 5, 2021

**ALTERNATIVES:**

1. Approval of a Resolution to grant a variance to §4-5(a), Code of Ordinances allowing the sale of alcoholic beverages for on-premise consumption within 300 feet of a public or private school on the property located at 1911 South Staples Street, subject to conditions as deemed necessary and appropriate by the City Council; OR
2. Denial of a Resolution to grant a variance to §4-5(a), Code of Ordinances allowing the sale of alcoholic beverages for on-premise consumption within 300 feet of a public or private school on the property located at 1911 South Staples Street, due to alternate Findings as established by the City Council.

**FISCAL IMPACT:**

There is no fiscal impact associated with this item.

**RECOMMENDATION:**

Staff recommends DENIAL of the variance request.

**LIST OF SUPPORTING DOCUMENTS:**

Resolution  
Presentation – Zoning and Notice Map