

CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

Meeting Date: September 7, 2022

ITEM: Kaos Club, 2700 University Avenue, Suite 200 – Approval of two Permitted Conditional Use Permits to operate a Bar/Restaurant (Drinking Place) and Event Venue land uses – JG Asset's and Management LLC – PC-005725-2022

RESOLUTION: Approval of Permitted Conditional Use Establishing Bar/Restaurant (Drinking Place) Land Use

RESOLUTION: Approval of Permitted Conditional Use Establishing Event Venue Land Use

Background: The applicant, JG Asset's and Management LLC, dba Kaos Club, and property owner, MDM EQUITY - 2021, LLC, request approval of a Permitted Conditional Use for that property located at 2700 University Avenue, Suite 200. Specifically, the applicant requests to operate as a Bar/Restaurant (SIC 58: Eating and Drinking Places, Bar/Restaurant less than 300' of residential, also referred to as a Drinking Place in City Code) within their 7,488-square foot tenant space in the Governor Square development. Additionally, the business hosts private events, such as performances for which they charge an entry fee or cover charge to attend the event, thus necessitating approval to operate an Event Venue (SIC 79). Both of these uses are classified as Permitted Conditional (Pc) Uses in the zoning code. The applicant currently does not have a valid liquor license for this site but has an application submitted for City Council's consideration. If the liquor license is denied by City Council the applicant's request to operate as a Bar/Restaurant would be void; however, the business could still operate as an Event Venue if the Pc is approved by the Board of Adjustment.

Staff Review & Comment:

- **History:** This property was originally platted in October of 1975. According to the County Assessor, the building was constructed around 1986. Per the applicant, this business currently operates as Xcaret Club & Lounge ("Xcaret") at this location and has done so since approximately October 2018. At the time, no residential was proposed within 300' of this business, so no Pc was required to operate a bar/restaurant, and staff was unaware of the private events being hosted, so they were unaware of the need for obtaining a Pc from the City to operate as an event center. In October 2018, Xcaret obtained a liquor license from the City; however, in October 2020 the City denied the request for a renewal liquor license citing the applicant did not meet the minimum statutory qualifications. Since the denial of the liquor license, Xcaret has continued to operate as an event venue with BYOB. The proposed business is now being renamed to Kaos Club and the Pc requirement came to their attention when they submitted a request for a new liquor license. Per code only those bar/restaurant operations within 300' of residential uses must obtain Pc approval. In May 2022, City Council approved a preliminary plat/site plan for a 44-unit residential senior living facility (PPSP-005351-2021) directly southwest of the proposed club. Although Xcaret once operated as a bar/restaurant prior to the recently approved adjacent residential use, any rights held under the previous use were lost when they could not obtain a liquor license. The request from the applicant to operate as a bar/restaurant is considered a change in use (from the current use as an Event Venue with BYOB to a bar/restaurant), thus triggering the need for a Pc for the bar/restaurant use.

- Traffic Analysis Findings: A Traffic Impact Study for the proposed land uses was not required.
- Staff Comment:

- Legal. It is relevant to look at the history of the property, specifically the operation of Xcaret due to Mr. Sanchez's prior involvement in the management and operation of the business. In October 2020, the City denied Xcaret Club & Lounge's renewal application for a liquor license due to the misrepresentation that Mr. Sanchez would not have any managerial or operational control of the business. Mr. Sanchez had previously been denied his application for a liquor license due to material misrepresentations on his application, therefore the subsequent approval of the liquor license was to his wife, Maria Mendoza, for Xcaret was conditioned upon his limited involvement of only 'booking the entertainment'. However, it was brought to staff's attention that Mr. Sanchez had more involvement in the business and in staff's opinion, Xcaret is operated, at least in part by Mr. Sanchez.

Second, Xcaret illustrated to the City they had an unwillingness to comply with applicable laws, ordinances and regulations. This was evidenced by the failure to report income tax which resulted in a criminal conviction, two violations of the Governor's proclamation regarding COVID health restrictions and denying the West Des Moines Police Department entry into the establishment.

Due to pending appeals, Xcaret was allowed to operate as a bar/drinking establishment until February 2022. Since then, Xcaret has operated as an Event Venue with BYOB (bring your own beverage) and allows any person 18 years and older to enter. Even as an establishment unable to sell/distribute alcohol, Xcaret has continued to, in staff's opinion, operate in a manner that does not protect the public health, safety, and welfare. In June 2022, staff received a complaint from a concerned parent whose underage son had gone to Xcaret twice in the previous month and obtained alcohol at the establishment from other patrons then came home intoxicated. Also in June 2022, Xcaret was found to have allowed BYOB after hours (after 2:00 am) in violation of West Des Moines City Code.

Staff has concerns based on this previous operation of the same business simply under a different name by the applicant that the proposed use will not be operated in a manner that assures compatibility of property uses within the general area. Therefore, legal staff would recommend conditions on the hours of operation and a condition the permit is only valid for one year from the date of issuance. This would allow the Board to reevaluate based on the operation whether the applicant has proven the required findings as noted in city code have been met. Ultimately, it is the Board's decision to determine whether the manner of operation of the previous establishment is relevant and whether to impose any conditions.

- Hours of Operation. Given the proximity of future residential uses and due to the nature of the use (i.e. DJ and other amplified musical performances), staff would recommend the Board of Adjustment place a condition restricting the hours of operation that align with similar uses in the immediate area. There are two similar uses in the immediate area that received Pc approval those being Ironside Axe Throwing (PC-005822-2022) and Your Private Bar (PC-004068-2018). Ironside Axe Throwing's hours of operation are:
 - Monday closed
 - Tuesday 5:00pm – 10:00pm
 - Wednesday 11:00am – 1:00pm and 5:00pm – 10:00pm

- Thursday 5:00pm – 10:00pm
- Friday 3:00pm – 11:00pm
- Saturday 12:00pm – 11:00pm, and
- Sunday 2:00pm – 7:00pm.

Your Private Bar is an event venue with varying hours of operation depending on their client's needs, but are open no later than 2:00 am with most events ending around 12:00 am.

The applicant has indicated the proposed business' hours of operation will be Friday and Saturday 9:00pm – 2:00am; however, previously Xcaret has been known to be open until 4:00 am. In considering the similar businesses in the immediate area and the City as a whole, staff would recommend a condition of approval restricting hours of operation no later than twelve o'clock (12:00) midnight on Friday and Saturdays and no later than ten o'clock (10:00) pm Sunday through Thursday. If the Board approves specific hours of operation, but different hours are desired by the applicant in the future, the Pc would need to be reapproved by the Board of Adjustment.

- Off-Street Parking. The proposed land use will require 1 parking space for every 50 square feet of gross floor area (GFA) per city code, which equates to 150 parking spaces. Based on staff's calculations, the existing commercial center has sufficient parking for the additional demand. The land use has already been operating at this location (as Xcaret) and staff has not received any complaints regarding a need for additional parking.
- Denials by Board of Adjustment. The zoning code notes once an application is denied by the Board of Adjustment, the Board may decline to consider an application that is substantially the same for a period of twelve (12) months after a decision by the Board or court. A violation of any condition placed by the Board may result in the Permitted Conditional (Pc) Use permit being void and no longer allowed.

Recommendation (Bar/Restaurant): Approve the Permitted Conditional Use request, subject to the applicant meeting all City Code requirements, and the following conditions of approval:

1. The Applicant acknowledging and agreeing the establishment shall be closed by 12:00 am (midnight) on Friday and Saturday, and closed by 10:00 pm Sunday through Thursday.
2. The Applicant acknowledging and agreeing the approval for the request is valid only until September 6, 2023. With the approval of the Pc permit valid for one (1) year, it is the applicant's duty to apply for a renewal with sufficient time for consideration by the Board of Adjustment before September 6, 2023.
3. The Applicant acknowledging and agreeing the approval of the Pc permit for the Bar/Restaurant is conditioned upon the Applicant obtaining a valid liquor license.

Recommendation (Event Center): Approve the Permitted Conditional Use request, subject to the applicant meeting all City Code requirements, and the following conditions of approval:

1. The Applicant acknowledging and agreeing the establishment shall be closed by 12:00 am on Friday and Saturday and closed by 10:00 pm Sunday through Thursday.
2. The Applicant acknowledging and agreeing the approval for the request is valid only until September 6, 2023. With the approval of the Pc permit valid for one (1) year, it is the applicant's duty to apply for a renewal with sufficient time for consideration by the Board of Adjustment before September 6, 2023.

Lead Staff Member: Bryce Johnson

Approval Meeting Date:

Board of Adjustment	September 7, 2022
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Staff Report Reviews:

<input checked="" type="checkbox"/> Development Coordinator (or) <input type="checkbox"/> Director <input checked="" type="checkbox"/> Legal Department

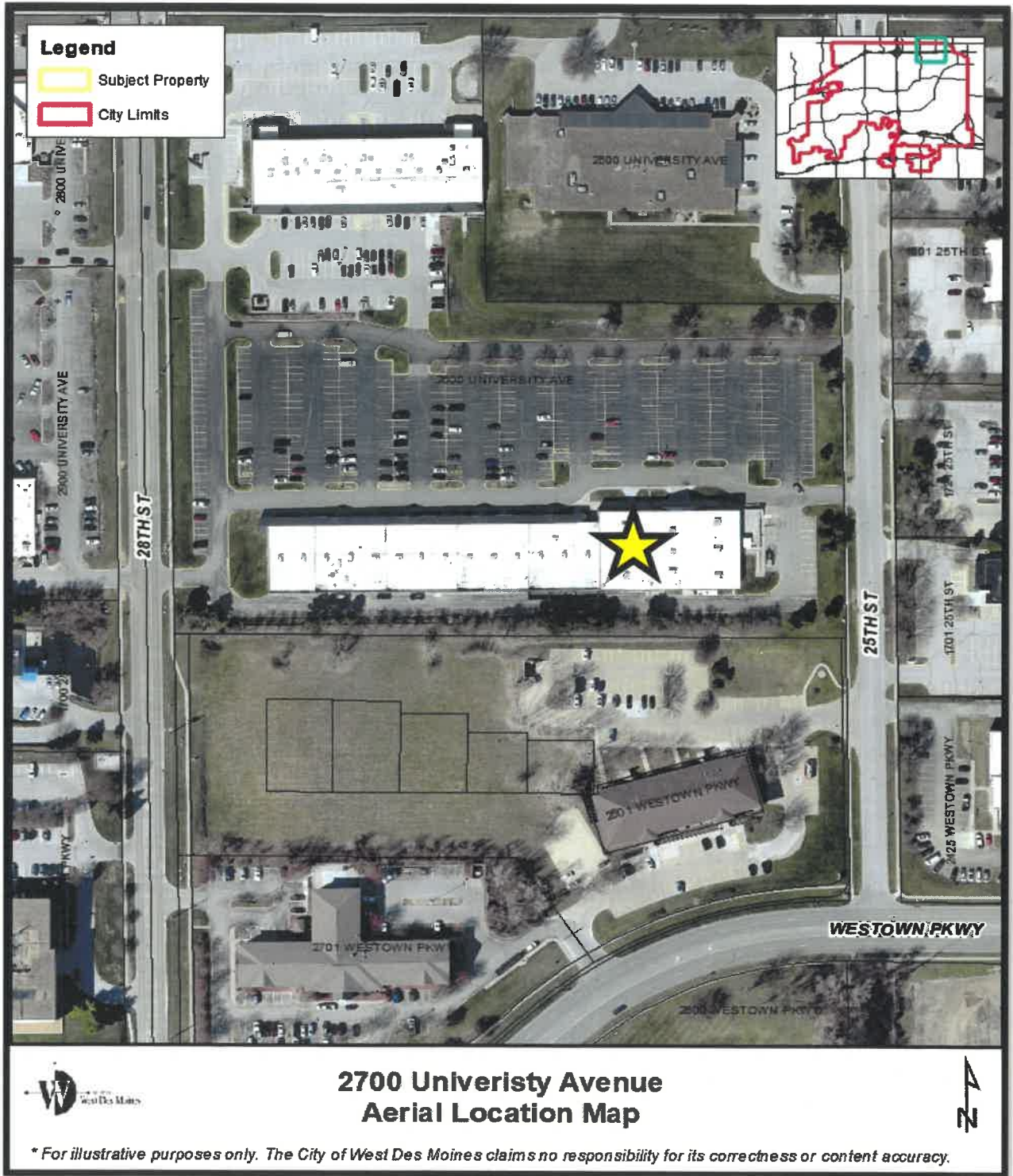
Publications (if applicable)

Published In:	Des Moines Register Community Section
Date(s) Published	8/30/22
Date(s) of Mailed Notices	8/26/22

Council Subcommittee Review (if applicable)

Subcommittee	Development & Planning			
Date Reviewed	9/6/22			
Recommendation	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Split <input type="checkbox"/>	No Discussion <input type="checkbox"/>

Location Map



Prepared by: Bryce Johnson, City of West Des Moines Development Services Dept., 515-222-3620
When Recorded, Development Services, City of West Des Moines, PO Box 65320, West Des Moines, IA
Return to: 50265-0320

RESOLUTION NO. BOA-2022-15

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE
CITY OF WEST DES MOINES, APPROVING A PERMITTED CONDITIONAL
USE PERMIT TO ALLOW A 7,488-SQUARE FOOT BAR/RESTAURANT WITHIN 300 FEET
OF RESIDENTIAL USES**

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, the applicant, JG Asset's and Management LLC, dba Kaos Club, and property owner, MDM EQUITY - 2021, LLC, request approval of a Permitted Conditional Use for that property located at 2700 University Avenue, Suite 200 and legally described in attached Exhibit 'B'. The applicant is requesting approval allowing a bar/restaurant (drinking place) to operate within 300-feet of residential uses; and

WHEREAS, studies and investigations were made, and staff reports, and recommendations were submitted which is made a part of this record and herein incorporated by reference; and

WHEREAS, on this day this Board of Adjustment held a duly noticed Public Hearing to consider the Permitted Conditional Use permit application.

NOW, THEREFORE, The Board of Adjustment hereby approves the Permitted Conditional Use permit (PC-005725-2022) subject to compliance with all the conditions in the staff report, dated September 7, 2022, including conditions added at the meeting, and attached hereto as Exhibit " A". Violation(s) of any such condition(s) shall be grounds for revocation of the entitlement, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on September 7, 2022.

Michele Stevens, Chairperson
Board of Adjustment

ATTEST:

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Board of Adjustment of the City of West Des Moines, Iowa, at a regular meeting held on September 7, 2022, by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

Recording Secretary

Exhibit A: Conditions of Approval

1. The Applicant acknowledging and agreeing the establishment shall be closed by 12:00 am (midnight) on Friday and Saturday, and closed by 10:00 pm Sunday through Thursday.
2. The Applicant acknowledging and agreeing the approval for the request is valid only until September 6, 2023. With the approval of the Pc permit valid for one (1) year, it is the applicant's duty to apply for a renewal with sufficient time for consideration by the Board of Adjustment before September 6, 2023.
3. The Applicant acknowledging and agreeing the approval of the Pc permit for the Bar/Restaurant is conditioned upon the Applicant obtaining a valid liquor license.

Exhibit B: Legal Description

THE NORTH 820 FEET OF LOT 1 IN WESTOWN PARK, EXCEPT THE NORTH 10 FEET THEREOF AND EXCEPT THE SOUTH 374 FEET OF THE NORTH 384 FEET OF THE EAST 423 FEET THEREOF, ALL INCLUDED IN AN FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA.

Prepared by: Bryce Johnson, City of West Des Moines Development Services Dept., 515-222-3620
When Recorded, Development Services, City of West Des Moines, PO Box 65320, West Des Moines, IA
Return to: 50265-0320

RESOLUTION NO. BOA-16

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE
CITY OF WEST DES MOINES, APPROVING A PERMITTED CONDITIONAL
USE PERMIT TO ALLOW A 7,488-SQUARE FOOT EVENT VENUE**

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, the applicant, JG Asset's and Management LLC, dba Kaos Club, and property owner, MDM EQUITY - 2021, LLC, request approval of a Permitted Conditional Use for that property located at 2700 University Avenue, Suite 200 and legally described in attached Exhibit 'B'. The applicant is requesting approval allowing an event venue; and

WHEREAS, studies and investigations were made, and staff reports, and recommendations were submitted which is made a part of this record and herein incorporated by reference; and

WHEREAS, on this day this Board of Adjustment held a duly noticed Public Hearing to consider the Permitted Conditional Use permit application.

NOW, THEREFORE, The Board of Adjustment hereby approves the Permitted Conditional Use permit (PC-005725-2022) subject to compliance with all the conditions in the staff report, dated September 7, 2022, including conditions added at the meeting, and attached hereto as Exhibit " A". Violation(s) of any such condition(s) shall be grounds for revocation of the entitlement, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on September 7, 2022.

Michele Stevens, Chairperson
Board of Adjustment

ATTEST:

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Board of Adjustment of the City of West Des Moines, Iowa, at a regular meeting held on September 7, 2022, by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

Recording Secretary

Exhibit A: Conditions of Approval

1. The Applicant acknowledging and agreeing the establishment shall be closed by 12:00 am on Friday and Saturday and closed by 10:00 pm Sunday through Thursday.
2. The Applicant acknowledging and agreeing the approval for the request is valid only until September 6, 2023. With the approval of the Pc permit valid for one (1) year, it is the applicant's duty to apply for a renewal with sufficient time for consideration by the Board of Adjustment before September 6, 2023.

Exhibit B: Legal Description

THE NORTH 820 FEET OF LOT 1 IN WESTOWN PARK, EXCEPT THE NORTH 10 FEET THEREOF AND EXCEPT THE SOUTH 374 FEET OF THE NORTH 384 FEET OF THE EAST 423 FEET THEREOF, ALL INCLUDED IN AN FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA.