

CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

Meeting Date: September 20, 2023

ITEM: XCaret Club and Lounge, LLC (aka Kaos Club), 2700 University Avenue, Suite 200 – Approval of a Permitted Conditional Use Permit to establish an Event Venue land use – Denny Elwell Company – PC-006180-2023

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

Background: Jorge Oscar Sanchez, XCaret Club and Lounge owner, in cooperation with Blake Brown with Denny Elwell Company, on behalf of the property owner, MDM Equity – 2021, LLC, request approval of a Permitted Conditional Use for that property located at 2700 University Avenue, Suite 200. Specifically, Mr. Brown requests approval to operate an Event Venue (SIC 79). Mr. Sanchez will be subleasing the venue to Juvenal Briones. Per a liquor permit application, Juvenal Briones with JB Iowa Entertainment will operate the event venue under the name Club Ambia in the current XCaret Club space. The use is classified as a Permitted Conditional (Pc) Use in the zoning code. The applicant currently does not have a liquor license for this site and operates XCaret Club as a BYOB (bring your own beverage) 21 and older establishment. As stated, Mr. Briones (Club Ambia) has a liquor license application submitted for City Council's consideration. If the liquor license is approved by City Council, JB Iowa Entertainment would have to apply for another Permitted Conditional Use Permit request to operate as a Bar due to the senior apartment building that is under construction immediately to the south and within 300' of the proposed bar.

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 Mr. Sanchez, this business operated as XCaret Club and Lounge ("XCaret") at this location and has done so since approximately October 2018. At the time, staff was unaware of the private events being hosted, and Mr. Sanchez was 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 of the 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.

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 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. In September 2022, the Board approved two Permitted Conditional Use (Pc) Land Use Permits to establish a Bar and an Event Venue. The approval included a condition that the permits were valid only until September 6, 2023 (PC-005725-2022). With the approval of the Pc permit valid for one (1) year, it was specifically noted in the condition that it was the applicant's duty to apply for a renewal for this year. The City Council denied Mr. Sanchez's Liquor License Application on September 19, 2022. This made the Board's approval of the Bar Land Use invalid, and the business has been operating as only an

Event Venue with BYOB since.

In May 2023, the City adopted an amendment to city code that separated bar use (no food served) from a bar/restaurant (sells less food than alcohol, minors restricted during certain times & open past midnight). As noted in the 'Background' section above, if a liquor permit is granted to JB Iowa Entertainment, the business operator will need to obtain approval of either a Bar/Restaurant Class 2 or Bar use.

- Traffic Analysis Findings: A Traffic Impact Study for the proposed land use was not required.
- Staff Comment:
 - Legal: It is relevant to look at the history of the property, specifically the operation of XCaret due to the previous lease holder, Jorge Oscar Sanchez's prior involvement in the management and operation of the business. In October 2020, the City denied XCaret'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 allowed any person eighteen (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.

More recently, in the past year, police have received complaints about the business. Those complaints were mainly underage persons consuming alcohol and selling alcohol without a liquor license. Police looked into it but were not able to confirm that was happening.

In May 2023, the City Council amended the regulations pertaining to Beer and Liquor Control. These amendments included a change to prohibit any business operating as a BYOB or a Bar (does not serve any food) to be restricted to 21 and older. Additionally, any business classified as a Bar/Restaurant Class 2 (sells more alcohol than food) to be restricted to 21 and older after 9 p.m. Since these amendments, XCaret has had to operate as a 21 and older establishment.

The City Council amendments also included a list of exception certificates that could be obtained upon the proper showing as to the specific operation of the establishment. The Board does not have authority to approve an exception certificate related to alcohol sales/consumption on the premises. If the Pc is approved, it is in no way granting an exception certificate to the business. Any exception certificate shall be reviewed and approved by the Chief of Police.

With this continued behavior since the previous Pc approval last September, Staff has concerns that the proposed use will not be operated in a manner that assures compatibility of property uses within the general area. Therefore, staff would recommend conditioning the Land Use permit again to only be valid for one (1) 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 establishment is relevant and whether to impose any conditions.

- **Signage:** As part of the review of this event venue renewal request, it was noted by the City's Sign Administrator, that XCaret never applied for a sign permit thus their current sign is illegal. Staff recommends a condition that prohibits operation of Club Ambia, or reopening of XCaret or Kaos Club until such time that the applicant submits and receives approval of a sign permit and pays all applicable fees.
- **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: Approve the Permitted Conditional Use request to operate an event venue, subject to the applicant meeting all City Code requirements.

1. The Applicant acknowledging and agreeing the approval for the request is valid only until September 20, 2024. 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 20, 2024.
2. The Applicant acknowledging that no operation by JB Iowa Entertainment of Club Ambia or of XCaret Club and Lounge (aka Kaos Club) by Mr. Sanchez shall occur until such time that appropriate sign permits are submitted to and approved by the city and all applicable fees paid in full.

Lead Staff Member: Emani Brinkman

Approval Meeting Date:

Board of Adjustment	September 20, 2023
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Staff Report Reviews:

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

Publications (if applicable)

Published In:	Des Moines Register Community Section
Date(s) Published	9/8/23
Date(s) of Mailed Notices	9/6/23

Council Subcommittee Review (if applicable)

Subcommittee	Development & Planning			
Date Reviewed	9/18/23			
Recommendation	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Split <input type="checkbox"/>	No Discussion <input type="checkbox"/>

Location Map



Prepared by: Emani Brinkman, 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-2023-15

**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 EVENT VENUE**

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, the applicant, Jorge Oscar Sanchez with XCaret Club and Lounge (aka Kaos Club), in cooperation with Blake Brown with Denny Elwell Company, on behalf of the property owner, MDM Equity – 2021, LLC, request approval of a Permitted Conditional Use permit 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, the request complies with applicable findings and provisions of Title 9, the Comprehensive Plan, and City Code; 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-006180-2023) subject to compliance with all the conditions in the staff report, dated September 20, 2023, 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 20, 2023.

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 20, 2023, by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

Recording Secretary

Exhibit A: Conditions of Approval

1. The Applicant acknowledging and agreeing the approval for the request is valid only until September 20, 2024. 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 20, 2024.
2. The Applicant acknowledging that no operation by JB Iowa Entertainment of Club Ambia or of XCaret Club and Lounge (aka Kaos Club) by Mr. Sanchez shall occur until such time that appropriate sign permits are submitted to and approved by the city and all applicable fees paid in full.

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.