

**To: Mayor Steven Chirico
Liquor Commissioner
City of Naperville**

**RE: Request on Behalf of
Star 7 Corporation,
4067 S ROUTE 59
Naperville, IL, 60564-5802**

***MEMORANDUM IN SUPPORT OF REQUEST TO GRANT A
VARIANCE ALLOWING STAR 7 TO CONTINUE TO HOLD
A CLASS D LIQUOR LICENSE FOR A RELOCATION OF ITS
BUSINESS FROM 4067 S ROUTE 59 TO ACROSS THE STREET TO
3027 English Rows Avenue, Unit #115 ,***

A. It is Within the Power, the Equities and the Law of the City of Naperville for the Naperville Liquor Control Commissioner, to grant and recommend a Variance to the Current Class D License Held by Star 7, Without Any Modification to the Ordinance or Setting any Precedent.

HISTORY

Star 7 has operated its business as a package liquor Store at 4067 S Route 59, first through a license issued by Will County because originally, it was located in unincorporated Will County, and then since 2005 as a license holder in the City of Naperville when the property was annexed by the City. Thus, it has been a Class D licensee in the City of Naperville for over 17 years and as a package liquor store for longer than that. It is recognized by the City as a “Grandfathered” Class D license holder. See Group Ex A – 2pp.

BACKGROUND

Star 7 has been notified by its current landlord that it will not renew Star 7’s lease, which is set to expire in April of 2024, because the landlord wishes to redevelop the property. The landlord and Star 7 wish to accommodate an earlier move if possible. Currently, Star 7 is located in the Saddlewood Shopping Center. Star 7 would like to move now, rather than wait, since there is a space in the English Rows Shopping Center development across from Saddlewood also on Route 59, that would suit their needs. This location is .2 miles from the current Star 7 location. (See below Google map)



Variance Standards

It is within the power of the Liquor Commissioner to grant and to recommend that a Variance to the current Class D license requirements be granted for the following reasons, based on the facts, the equities, and the law.

Section 3-3-6 of the City of Naperville Liquor Code enumerates the standards to evaluate any request for variance from the Liquor License requirements. (See attached Section 3-3-6). This power was adopted in order to allow the Liquor Commissioner to consider unusual circumstances which warrant an exception to the normal requirements for the holding of any license including the Class D liquor license. Analyzing the Star 7 request for a Variance in light of these standards follows:

1. Any liquor license applicant or current liquor license holder may submit an application requesting approval of a variance to the following sections of this Title: requirements of premises or additional liquor license restrictions.

Star 7 is a long-time liquor license holder in the City of Naperville, with no history of violations.

2. Applications for said variances shall be made to the local Liquor and Tobacco Control Commissioner in writing, signed by the applicant, verified by oath or affidavit, and shall contain the statements and information and be in the form provided.

This Memo is the written request, and the Oath/Verification is attached. This memo sets forth the statements and information that support the request for a variance. If any additional form is required, please provide that and it will be submitted.

3. Upon filing a variance application, the petitioner shall pay a four-hundred-dollar (\$400.00) fee for processing the application.

The application fee is attached with this application.

4. Upon determination that the variance application is complete, the Liquor Commission shall review said application and render a recommendation which shall be subject to final review by the City Council Any recommendation by the Liquor Commission and any decision by the City Council shall be predicated on evidence and finding that:

- 4.1. The variance is in harmony with the general purpose and intent of the Liquor Control Ordinance and the variance is not precedent setting.

The variance is in harmony with the general purpose and intent of the Liquor Control Ordinance and is not precedent setting. This licensee is in a very unique position. This business is located on a piece of property originally located in unincorporated Will County, and fully licensed to sell alcohol at retail. The City previously granted a Variance to this business because of the unique history and equities. This was done in 2019, by ordinance 19-004, passed by City Council January 15, 2019, wherein the unique situation that this business was in was found to be within the purpose and intent of the Liquor Control Ordinance and not not precedent setting. No other licensee would qualify for this current variance as a business previously annexed by another licensing entity, a business located within the City for over 17, years, a business forced to move from its current location by its landlord and seeking to relocate a very short distance away, serving the same geographic area and customers wishing to purchase product from a small nearby business rather than having to travel to stores selling package goods at a greater distance and inconvenience.

Further, allowing the location to move from the current one to a nearby one will not increase the number of existing Class D licenses as Star 7 would surrender its current location license and then be issued the same type of license for its relocated premises, and is in conformity with the ordinance which allows only one Class D license in a shopping center as there is no other Package Goods licensee in the English Rows Shopping center.

The Naperville Liquor Code also provides for the relocation of an existing license in Section 3-3-12.9.2: "A liquor license shall allow the sale of alcoholic liquor only on the premises described in the application. Such location may be changed with a written request as approved by the local Liquor Commissioner."

4.2. Strict enforcement of the Liquor Control Ordinances would result in Practical difficulties due to special and/or unusual circumstances surrounding the property and circumstances substantially outside the petitioner's control;

The Licensee did not choose to just try to find a new location but has been forced by its landlord to do so. The Licensee would prefer not to have to incur the expense and disruption of moving its business. The redevelopment of the property from which Star 7 is being forced to move would no doubt benefit the City and its residents when approved by the City. The surrounding residents of the English Rows PUD and the residents currently surrounding the Saddlewood Shopping Center will have similar convenient access to a small business as they currently have.

4.3. The variance, if granted, will not alter the essential character of the liquor establishment or underlying liquor license requirements and will not be a substantial detriment to adjacent property.

The nature of the current business and the nature of the business at the new location will not change. The current location is in a neighborhood shopping center. The new location is in a neighborhood shopping center. The purpose of such centers as defined in the Naperville zoning code is to provide convenience shopping for persons living in adjacent residential areas. See Code 6-7A-1, below. The nature of this business is a small package goods liquor license. The current and new locations share the shopping center with other small businesses which also serve the nearby community. In addition, both locations are just off of Route 59 and are convenient to consumers living nearby or traveling in Naperville who want a place to shop without having to deal with large crowds and enjoy an in and out shopping experience.

This English Rows shopping center was created as an important and integral part of the PUD which includes townhouses, greenery, parking, traffic flow, loading facilities and an integrated experience for the residents of the same. It is not a stand alone shopping center. When the PUD was amended to include this shopping center, its purpose was to include commercial space. See PUD ordinance 05-019.

The change to a very nearby center is not a detriment to the adjacent property, but rather continues the convenient access to this business that nearby residents currently enjoy. It continues a local benefit.

6-7A-1: - INTENT:

The neighborhood convenience shopping center district is intended to provide convenience shopping for persons living in adjacent residential areas. Permitted uses shall be those which are necessary to satisfy basic shopping needs which occur daily or frequently and so require facilities in relative proximity to places of residence. These facilities shall be in the form of a shopping center.

(Ord. 80-5, 1-21-1980)

5. The variance, if granted, shall be subject to the transferability restrictions established in Section 3-3-5 of this Title. Upon suspension, revocation, or nonrenewal of a liquor license, said variance shall also become null and void.

The licensee Acknowledges and accepts this provision.

- B. Granting the requested Variance does not violate the Spirit or the Letter of the Naperville Liquor Control Ordinance and is in compliance with the zoning code, and within the Power of the Liquor Commissioner.

Package Liquor Stores are a permitted use in both the Saddlewood Shopping center and the English Rows Shopping Center under the zoning code for a neighborhood convenience shopping center. Code, 6-7A-2.

Next, we must look to the liquor code provisions. The definition of a Shopping Center in the liquor code is very similar to that in the zoning code.

“An integrated group of commercial establishments which is planned as a unit with customer and employee parking provided on site, provision for goods delivery separated from customer access, aesthetic consideration and protection from the elements” Code 3-3-3.

The English Rows Shopping Center is part of a Planned Unit Development (PUD). Thus, the center is viewed as a whole and not just the buildings within the center. The English Rows Shopping Center occupies a lot which is 1.42 acres in size, or 61,866.2 feet. It is taxed as a benefit to the City. The total building size for those three buildings in this shopping center admittedly is 38,496 sq ft. However, both the Zoning and Liquor codes direct evaluation of size to the entire required composition of the center and not just the buildings as a standard. These other characteristics are required parts of a neighborhood shopping center.

The definition in the liquor code for a Class D Package Store license as to the “Requirements of Premises” *refer only to a “center containing not less than 60,000 sq. ft., max one per center” and do not refer to building size alone.* Code 3-3-11.2 This is in contrast to the definition of a Class G – Beer and Wine Package sale, which specifically refers to building size in providing “Must be located in a shopping center containing not less than 60,000 square feet of **gross building floor area**, or a B1 zoned property containing at least 45,000 square feet of **gross building floor area**.” Code 3-3-11.2. *In interpreting legislation, consideration must be given to the fact that different language was used to define the Class D vs. the Class G licenses. This is a significant difference in the language of these two classes of licenses.*

- C. Other Factors should be considered in weighing whether to grant a variance and which should be considered as a whole in determining the Spirit of the Law in granting this variance.

While the licensee is aware that the City has often looked mainly to building sizes in evaluating a Class D Variance, the above directs the City to look to total lot size and function. Both these factors will be discussed in light of Zoning considerations.

1. Overview: For years prior to being annexed into the City of Naperville and continuing to this day, the Petitioner has successfully and quietly operated the Star 7 package liquor store at its current location of 4067 S. Route 59 in Naperville despite the gross square footage of the “shopping center” in which operates being less than the 60,000 square foot threshold required under Section 3-3-11.2 of the City’s Liquor Code. Star 7’s current permission is expressly memorialized (despite the center being less than 60,000 square feet) in the annexation agreement agreed to by the landlord and the City. The current landlord has requested that Star 7 voluntarily give up its tenancy so that the landlord can redevelop the building or property. In order for Star 7 to move, the City’s Liquor Code requires Star 7 to seek and receive permission from the City to transfer the liquor license to a new address.
2. The Issue: Star 7 is willing to assist the landlord by looking at alternative locations, and has indeed found an ideal location a few hundred feet south of the current location and also directly on Illinois Rte. 59. However, this closest (and therefore unlikely to result in customers going to another store) and most ideal location is also a part of a shopping center that is less than 60,000 square feet of gross building area. Therefore, in order for Star 7 to help the landlord and move to a new space, a variance is required.
3. Thesis: Star 7’s requested variance is warranted under the circumstances because all of the policies under which the City has adopted its 60,000 square foot minimum are satisfied by Star 7’s proposed new location, and in the past the City as approved a similar application where the City allowed the square footage of multiple non-retail buildings in a “shopping center” to be aggregated in order to meet with 60,000 square foot minimum.
4. The Liquor Code Provisions at Issue:
 - a. Section 3-3-11.2 of the City’s Liquor Code details the types of liquor licenses the City issues for off-premises consumption. A store with a Class D license “must be located in a center containing not less than 60,000 sq. ft., max 1 per center.”
 - b. The term “center” is not defined, although the term “shopping center” is. Section 3-3-3 defines a “shopping center” as “An integrated group of commercial establishments which is planned as a unit with customer and employee parking provided on site, provision for goods delivery separated from customer access, aesthetic consideration and protection from the elements.”
5. Analysis of How The City May Interpret the Term “Shopping Center”:
 - a. While it is the Petitioner’s understanding that the City has at times measured the square footage of a “shopping center” as the square footage under roof, there is nothing in the code that requires this. Indeed, there is direct precedent that the City has on at least one occasion (and likely more) interpreted the term “shopping center” to not simply refer to the size of a building under roof, but instead, in appropriate circumstances, interpreted it to include multiple separate stand-alone buildings in a development that functions as a single “center.”

- b. For example, in 2010, the City issued a Class D license to JP Liquors for 1292 Rickert Drive. The City inquired as to the square footage of the center, and learned that it is only by aggregating 1284, 1288, 1292, and 1296 Rickert Drive that the “center” is close to 60,000 square feet.

From: Bright, Nancy
Sent: Tuesday, March 30, 2010 6:09 PM
To: Jones, Greg; Thorsen, Suzanne
Cc: Trotz, Emy
Subject: 1292 W Rickert Dr - need gross building floor area

Pratik Patel was at the TBO meeting this morning and wants to do a build-out and get a package goods (Class D) liquor license at 1292 W. Rickert Drive, Suite 108. This is currently Brighton Plaza but was brought in as a PUD and Subdivision under the name Old Kent Plaza.

The 1989 PUD shows the following buildings and lists the total building floor area as 59,030 sq. ft..

- 1284 Rickert Drive
- 1288 Rickert Drive
- 1292 Rickert Drive
- 1296 Rickert Drive

Although upon information and belief these four buildings were processed as a planned unit development, the City’s position that this is a “shopping center” reveals that the term is not to be strictly construed, for functionally, the four buildings are sufficiently disconnected that they do not operate as a single “shopping center,” for a number of reasons:

1. First, the 1284 building on the northwest corner is separated from the other three buildings by a drive aisle that is sufficiently wide and functions as a roadway that it is functionally separated from the other three buildings.



2. Second, only the 1292 building on the east side is a traditional shopping destination, for the other three buildings are non-shopping uses (1296 (south building) is a Fifth-Third Bank and houses Caton Commercial Real Estate Group, 1284 is BMO Harris Bank, and 1288 is a Century 21 brokerage).
3. Third, in addition to three of the buildings being functionally separated, they are also separated by

distance: the separation from the south end of the 1288 (north) building to the north end of the 1296 south building is approximately 545 feet.



- c. The Petitioner is not suggesting the City was wrong in processing the Rickert Drive development as a “shopping center.” Quite the contrary, the Petitioner submits that it was wholly appropriate for the City to have aggregated the square footage of the four buildings for the JP Liquors application. The definition of a “shopping center” suggests the City should consider four elements: a) customer and employee parking provided on site, b) provision for goods delivery separated from customer access, c) aesthetic consideration, and d) protection from the elements.”
 - i. For the Rickert Drive application, the first two elements are satisfied with the four buildings all being in the same general area off 75th Street and provide both a) (parking provided) and b) provision for deliveries. Star 7 submits this alone was sufficient, for the third element of aesthetics could be argued either way given the different designs of the four buildings.

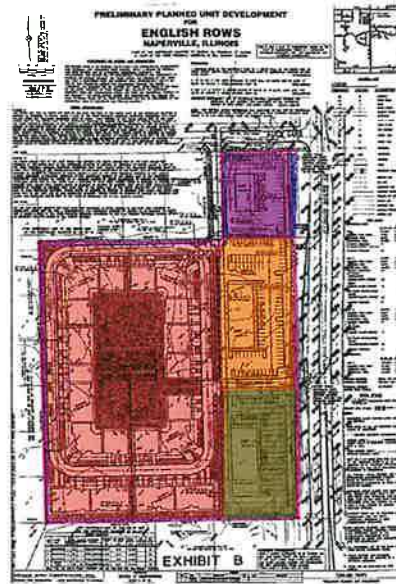


- ii. Finally, the fourth element (protection from the elements) is reasonably excused here because it is an outdoor shopping area.
 - d. Although the Freedom of Information Act request response for Jay's Food and Liquors, 535 Fairway Drive did not produce this level of detailed information, the Petitioner believes it is likely the City processed this application in a like manner, aggregating multiple buildings in a shopping area to reach the 60,000 square foot threshold.
- 6. **Land Use/Zoning Facts for Star 7 Application:** The following facts relate to the land use and zoning elements of the shopping center for Star 7's current location as well as the proposed new location:
 - a. The current location is on the east side of the building that is on the southwest corner of Rte. 59 and 103rd Street. It is in the southern portion of the building, approximately 300 feet south and 200 feet west of this major intersection in a commercial corridor.
 - b. The proposed new location is only approximately 360 feet to the south of the current location.
 - c. The proposed new location is part of a mixed use planned unit development that was processed as a single PUD. When the commercial square footage of the three buildings is combined with the non-commercial square footage (just as the City aggregated the one commercial building with the three office buildings for the Rickert Drive shopping center), the total square footage of the English Rows PUD to which Star 7 requests permission to move is in excess of 810,000 square feet.
 - d. The only structure separating the current location and the proposed new location is a small, multi-tenant commercial building (hereinafter referred to as the "North Building").
 - e. The proposed new location is in a multi-tenant shopping center (hereinafter referred to as the "Central Building"), and immediately to the south of the Central Building is a third, multi-tenant shopping center building (hereinafter the "South Building").
 - f. The North Building, the Central Building, and the South building function very much as a single shopping destination, sharing drive aisles and parking spaces. The three buildings combined total 24,740 square feet according to the assessor's data.
- 7. **Analysis:** While the City's decision to grant a liquor license variance to allow Star 7 to move to another location that is also less than 60,000 square feet will technically be founded solely in the City's Liquor Code, there are two primary reasons why it is appropriate for the City to grant this variance. First, a comparison of the City's approval of the JP Liquors application, while not binding, is helpful in establishing the appropriateness of both. Second, a review of the zoning aspects of the City's approvals for both Star 7's current and proposed locations provide strong support for Star 7's Liquor Code variance request.
 - a. First, a comparison of how the City processed the Star 7 application is helpful. Just as the JP Liquors request was approved by aggregating the square footage of one commercial building with three non-shopping buildings, so too is it appropriate for the City to aggregate all of the square footage of the English Rows PUD to establish that the new location exceeds the 60,000 square foot minimum, for the following reasons:
 - i. This area on the west side of Route 59 south of 103rd Street functions even more as an integrated shopping area than the Rickert Road's four-building shopping center. Star 7's proposed location is within a distinct, discrete, compact but large set of four buildings from the corner of Rte. 59 and 103rd on the north, extending without any breaks in the commercial buildings nearly 1300 feet south of 103rd. This is much larger than the approximately 700 linear feet of distance from the north end to the south end of the Rickert Road frontage.

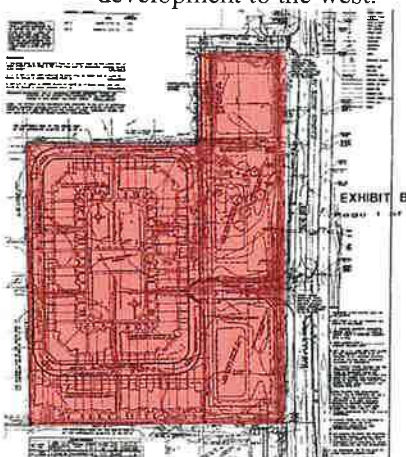


- ii. Moreover, the City processed the English Rows PUD as an integrated development, with the hundreds of residences immediately adjacent and to the west of the proposed new location being designed to draw customers to the shopping areas. In other words, the function of the PUD and how the City intended it to be developed as a whole makes the inclusion of the English Rows residences as or more appropriate than the inclusion of two bank buildings and a brokerage office in the Rickert “shopping center”
- iii. Furthermore, the basis to view Star 7’s new location as a “shopping center” are as strong or perhaps even stronger than the analysis for the Rickert Drive approvals. First, in both, customer and employee parking were provided on site. Second, in both, provision for goods delivery separated from customer access is present. Third, unlike the differences among the buildings on Rickert Drive, the English Rows buildings tie into each other from an aesthetic perspective, for the elevations of the buildings were all included in Exhibit B for the Preliminary Plat of Subdivision in Ordinance No. 04-006. Finally, in both, because they are outdoor shopping centers, protection from the elements is not a significant issue, although overhangs do offer customers some level of protection.
- b. As for zoning, although the building on the corner of Rte. 59 and 103rd is separated by Alice road, the separation is quite similar to the functional separation of the 1284 Rickert building from the other three.
- c. Moreover, while the North Building, the Central Building, and the South Building are all stand-alone shopping center buildings each of which are individually under the 60,000 square foot requirement, from a zoning perspective, it is appropriate for the City to process the variance request as if the three buildings in the PUD, the English Rows residences, and even the current building in which Star 7 resides, as if they were part of a single shopping center for the following reasons:

- d. First, aside from the corner building, the other three buildings and the English Rows residences were originally processed by the City as part of a single planned unit development (P.C. Case #1425). See here for Exhibit B of Ordinance No. 04-006, where the North Building is in purple, the Central Building is in orange, and the South Building is in green.



- e. Second, when the subdivision was approved by the City, it was approved as an integrated, single planned unit development under the same approval ordinance (Ordinance No. 04-146. See Exhibit B of Ordinance No. 04-146 approving all three commercial lots, along with the residential English Rows development to the west.



- f. Because the North Building, the Central Building, and the South Building were all conceived, planned, approved, and developed as a single integrated shopping center albeit with three different commercial buildings and multiple residential buildings, the separateness of the buildings is not substantively significant. The commercial buildings share common parking and circulation aisles, and effectively operate as the same shopping center despite their technical separateness. To only look to the square footage of the Central Building for the Liquor License variance request, and completely ignore the square footage of the two sister commercial buildings to the north and south and also ignore the residential buildings intentionally located adjacent to the commercial buildings to feed them with customers would be to elevate form over substance. It would also diverge from the City's approval of the Rickert Drive development where the majority of the square footage was non-commercial in nature. By virtue of their common development "DNA", coupled with the integrated nature of the parking and drive aisles, it is appropriate for the City to analyze Star 7's petition as if the 60,000 square foot threshold is satisfied by the three buildings approved as a single planned unit development.

CONCLUSION

This request meets all standards for granting variance set forth in the Ordinance and allows the Liquor Commissioner the leeway to evaluate such requests on a case by case basis where the factors outlined are met. This request meets the standards.

The unique factors of this request would not open the door or expand the general desire of the City to limit the number of Class D licenses as there will be no increase in the number of Class D licenses, but rather keep the number and licensees the same.

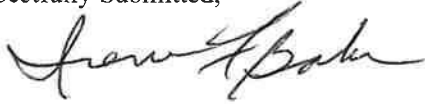
The Equities of the circumstances where the licensee is being forced to move or have its long operating business destroyed are unique and it is within the power of the Liquor Commissioner to grant this Variance without creating a precedent based upon the special factors applicable here.

While the Petitioner does not suggest the City has no choice but to approve the variation, given the small distance between the current and future location, the fact that the two locations are both in the same shopping area, and the City's approval of at least one other Class D license based on the aggregation of non-shopping square footage, Star 7's variation request is warranted. Moreover, the grant will facilitate the redevelopment of the building/property in which Star 7 currently resides, which is a further benefit to the City and its citizens.

The City's wise manner of processing and approving the three buildings as a single PUD addressed, in a comprehensive manner, the buildings as a single shopping center. This comprehensive nature of the development of the shopping center into which Star 7 respectfully requests to move ensured that years ago, traffic, parking, circulation, and other zoning factors were all appropriately considered and incorporated into the Central Building. This approach gives the City assurances that the proper amenities, parking, circulation, and other elements of the current location that has served Star 7 and its patrons so well for decades are also in place for Star 7's proposed location. Given that there are no new traffic impacts (its

current clients will be a short distance from the current location using the same streets and ingress/egress points), stormwater impacts, architectural impacts, or other similar zoning matters that might otherwise arise, the zoning analysis herein, although not dispositive, all militate in favor of allowing the City to feel comfortable that the variance to allow Star 7 to move to another location that, as it is with its current location, has less than 60,000 gross building square feet, is nonetheless appropriate and should be granted.

Respectfully Submitted,



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Affidavit in Support of Memo
Memorandum Requesting
Variance Re: Star 7

Now comes the undersigned, on behalf of the Licensee corporation and does swear/affirm that the statements contained in the attached Memorandum are true and correct to the best of his knowledge.



Amiras Savani
President of Star-7 Corporation

Subscribed and Sworn/Affirmed to before me This

13th Day of FEBRUARY, 2023



Notary Public

