



## Legislation Text

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**File #:** 19-038, **Version:** 1

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### **CITY COUNCIL AGENDA ITEM**

#### **ACTION REQUESTED:**

Pass the ordinance approving a variance to allow the issuance of a Class D - Package Store liquor license for a premise less than 60,000 square feet to Star 7 Corporation at 4067 South Route 59.

**DEPARTMENT:** Legal Department

**SUBMITTED BY:** Jennifer Lutzke, Senior Assistant City Attorney

#### **BOARD/COMMISSION REVIEW:**

The Liquor Commission considered this matter on January 3, 2019 and voted unanimously to recommend approval of the variance.

#### **BACKGROUND:**

Star 7 is a package liquor store located at 10300-10350 State Route 59 commonly known as Saddlewood Commercial Complex.

Under the Naperville liquor code, package liquor licenses are generally relegated to large shopping centers unless they are grandfathered in as having been established prior to the package liquor licenses regulations that contain shopping center square footage location limitations.

Star 7 has a Class D package liquor license that requires that premises be in a shopping center containing at least 60,000 square feet. Star 7 is in a shopping center that contains less than 60,000 square feet.

Star 7 was established as part of the Saddlewood Commercial Complex development that was annexed into the City in 2006. The annexation agreement, contains a grandfathering provision allowing for the issuance of the Class D liquor license to Star 7 irrespective of the fact that it was not located within a qualifying shopping center. The annexation agreement provides that the grandfathering provision expires on April 30, 2019 and does not allow for the continued operation of a liquor store unless Naperville's Liquor Code is amended to allow the issuance of a liquor license. A copy of the annexation agreement is attached.

Recently, the City was contacted by Irene Bahr, an attorney for Star 7, concerning renewal of its liquor license. After speaking with staff, the attorney for Star 7 submitted a memorandum containing three proposals to address the expiration of the grandfathering provision. One of the proposals was that a variance could be granted under the Liquor Code to allow Star 7 to continue to operate.

On January 3, 2019, Star 7 petitioned the Liquor Commission for a variance to the Class D - Package Store liquor license square footage requirement so that Star 7 may continue to operate within the

Saddlewood Commercial Complex. There were no objections to the request and the Liquor Commission voted unanimously to recommend approval of the variance to City Council. Draft minutes from the January 3, 2019 Liquor Commission meeting are attached.

**DISCUSSION:**

On September 6, 2016, Council approved repealing and replacing the Liquor Code. The new code created a procedure for processing variances to liquor license requirements.

The variance process for liquor licensing sets forth the following factors for consideration of a variance:

1. The variance is in harmony with the general purpose and intent of the Liquor Control Ordinance and the variance is not precedent setting; and
2. Strict enforcement of the Liquor Control Ordinances would result in practical difficulties due to special and/or unusual circumstances surrounding the party and circumstances substantially outside the petitioner's control; and
3. The variance, if granted, will not alter the essential character of the liquor establishment or underlying liquor license requirements and will not a substantial detriment to adjacent property.

Star 7 is in a unique position in that it is a business located on a parcel of property that was annexed into Naperville. It has operated as a Class D liquor licensee since the annexation in 2006 without any violations. Star 7 has submitted the \$400 fee for processing the variance. If the variance is granted, Star 7 is still required to comply with all other conditions of the Class D liquor license and the Naperville Municipal Code. The only exception would be as to the size of the shopping center.

If the variance is not granted Star 7 will likely have to close its business and vacate its leased space upon the expiration of its liquor license on April 30, 2019.

**FISCAL IMPACT:**

Continued receipt of annual liquor license fee and corresponding sales tax.