

Date November 18, 2013

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING A VARIANCE TO THE REQUIRED 150 FOOT SEPARATION FROM ANY CHURCH, SCHOOL, PUBLIC PARK OR LICENSED CHILD CARE CENTER, TO ALLOW USE OF THE PROPERTY AT 501 SCOTT AVENUE AS A BREWERY WITH RETAIL AND TAP ROOM COMPONENTS

WHEREAS, on October 23, 2013, the Zoning Board of Adjustment voted 4-0 to approve an application from SE Bottoms, LLC, represented by Mason Groben, Officer, for a variance of the zoning provision that requires any business like a tavern or night club which sells liquor, wine or beer to have a 150 foot separation from any church, school, public park or licensed child care center, to allow the brewery at 501 Scott Avenue to have a tasting and retail sales area; and,

WHEREAS, Iowa Code §414.7 and Section 134-65(d) of the Zoning Ordinance require that any variance granted by the Board from a separation requirement be forwarded to the City Council for its review, and the City Council may remand the variance back to the Zoning Board of Adjustment for further study if the Council believes the variance was improperly granted.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, as follows:

ALTERNATIVE RESOLUTIONS

- A The City Council remands the Decision and Order to the Zoning Board of Adjustment for further study. The effective date of the Board's decision will be deferred for 30 days from the date of this remand.
B The City Council takes no action to review the Decision and Order. The decision of the Board will become final on November 28, 2013.
C The City Council declines to remand the decision to the Zoning Board of Adjustment. The decision of the Board becomes final on this date.

( Council Communication No. 13- 565 )

MOVED by \_\_\_\_\_ to receive and file the staff report and comments received, and to adopt alternative \_\_\_\_\_, above.



**Roll Call Number**

**Agenda Item Number**

59

**Date** November 18, 2013

FORM APPROVED:

Roger K. Brown

Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MOORE				
<b>TOTAL</b>				
MOTION CARRIED			APPROVED	
_____ Mayor				

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_ City Clerk



**ZONING BOARD OF ADJUSTMENT  
CITY OF DES MOINES, IOWA  
DECISION AND ORDER**

This Decision and Order of the Board of Adjustment does not constitute approval of any construction. All necessary permits must be obtained before any construction is commenced upon the Property. A Certificate of Occupancy must be obtained before any structure is occupied or re-occupied after a change of use.

Any use allowed by this Decision and Order shall not be commenced or resumed until all the requirements imposed on such use by the Zoning Ordinance and this Order have been satisfied.

The use allowed by this Order must be commenced within **two years** or this Order will be void and of no further force and effect.

IN THE MATTER OF THE APPEAL FROM	:	DOCKET: <b>ZON 2013-00170</b>
	:	
<b>SE BOTTOMS, LLC</b>	:	
	:	PUBLIC HEARING: <b>OCTOBER 23, 2013</b>
ON PROPERTY LOCATED AT	:	
	:	
<b>501 SCOTT AVENUE</b>	:	

SUBJECT OF THE APPEAL

**Proposal:** Conversion of a 5,446-square foot portion of the existing building to a brewery use (Madhouse Brewery). The use would include a 1,300-square foot room for tasting and retail sales, and a 24-foot by 48-foot (1,152 square feet) patio to the west of the building. Alcohol consumption would be permitted throughout the entire premise, as brewery tours would be offered by the business. The site is within 82 feet of Allen Park. The site includes 15 off-street parking spaces.

**Appeal(s):** Conditional Use Permit for a business selling wine, liquor, and/or beer.

Variance of the provision that requires any new tavern-type use to have 150 feet of separation from any church, school, public park, or licensed child care facility.

*Required by City Code Sections 134-954 & 134-954(a)*

FINDING

Granting the requested Conditional Use Permit and Variance would be consistent with the intended spirit and purpose of the Zoning Ordinance and in harmony with the essential character of the neighborhood, as the appeals would allow the permitted brewery use to sell its products on the premises in a tap room and a retail setting. Such sales would only occur as a minor component of the overall business that would function as a beer production facility, which is a permitted use in the "M-1" Light Industrial District. The proposed tap room for beer tasting and retail sales is represented to regularly serve no more than 50 customers at any time. Except for the required 150 foot separation from a park, the business as proposed at this site meets the Conditional Use Permit criteria provided in the Zoning Ordinance for a business selling alcoholic liquor, wine, or beer. The location of the proposed use in an industrial area adequately safeguards the health, safety and general welfare of persons residing in the surrounding area. Furthermore, the proposed business at this site meets the Variance criteria provided in the Zoning Ordinance for a variance from the required 150 foot separation from a park. A financial hardship would exist if the permitted brewery use were not allowed to sell its products on the premises in a tap room or a retail setting. The impact of the brewery on the nearby Allen Park would be minimal since the park no longer functions as a typical public park and is primarily used for community gardens.

DECISION AND ORDER

**WHEREFORE, IT IS ORDERED** that the appeals for a Conditional Use Permit for a business selling wine, liquor, and/or beer and a Variance of the provision that requires any new tavern-type use to have 150 feet of separation from any church, school, public park, or licensed child care facility, to allow conversion of a 5,446-square foot portion of the existing building to a brewery use (Madhouse Brewery) that would include a 1,300-square foot room for tasting and retail sales accessory to the brewery use, as well as an 1,152-square foot patio to the west of the building, are **granted. Any retail sale of alcohol or any on-site consumption of alcohol must be accessory to a brewery use operating on the premises and must be in accordance with the proper license or beer permit obtained through the Office of the City Clerk as approved by the City Council.**


Furthermore, in accordance with City Code Section 134-953(c), any Conditional Use Permit granted by the Zoning Board of Adjustment for the use of a premises for the sale of alcoholic liquor, wine and beer, shall be subject to the following general conditions:


1. Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.
2. The business shall comply with article IV of chapter 42 of this Code pertaining to noise control. The business shall have no outside speakers or amplified sound except when used in compliance with a type E sound permit.
3. Any such business must comply with the following requirements:
  - (a) Every limited food sales establishment, limited retail sales establishment and gas station/convenience store shall display alcoholic liquor only in a locked case or behind a counter accessible only to employees. Any other business selling alcoholic liquor for off premises consumption shall either: i) display alcoholic liquor only in a locked case or behind a counter accessible only to employees; ii) employ an electronic security cap or tag system on all containers of alcoholic liquor on display; or iii) have more than one employee on duty at all times the business is open to the public.
  - (b) Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
  - (c) Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
  - (d) Not dispense alcoholic beverages from a drive-through window.
4. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
5. The conditional use permit is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the conditional use permit.
6. If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions set forth in the conditional use permit, the zoning enforcement officer may apply to the board to reconsider the issuance of the conditional use permit for such business. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such business at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board finds that the operation of such business exhibits a pattern of violating the conditions set forth in the conditional use permit, the board shall have the authority to amend or revoke the conditional use permit.

VOTE

The foregoing Decision and Order was adopted by a vote of 4-0, with all Board members present voting in favor thereof.

Signed and entered into record on October 29, 2013.

  
\_\_\_\_\_  
Bill Gray, Chair

  
\_\_\_\_\_  
Erik Lundy, Secretary