

Date October 6, 2014

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION
GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW
EXPANSION OF A RESTAURANT AT 1106 ARMY POST ROAD TO INCLUDE
OUTDOOR SALES OF BEER AND WINE DURING SPECIAL EVENTS**

WHEREAS, on September 24, 2014, the Zoning Board of Adjustment voted 7-0 to approve an application from Nick Iaria (tenant) for a variance of the separation requirement that the premises of any restaurant seeking to sell wine and beer be separated by at least 75 feet from any church, school, public park or licensed child care facility, as set forth in Municipal Code Section 134-954(a), to allow the expansion of the existing Nick's restaurant to include outdoor sales of beer and wine during special events, as set forth in the approved Special Permit, on the real property locally known as 1106 Army Post Road ("Property"); and

WHEREAS, the Property is located within 0' of a church use (Fort Des Moines Church of the Open Bible); and

WHEREAS, the Board found that the proposed expansion of Nick's restaurant to include outdoor sales of wine and beer on the Property would not alter the essential character of the locality of the land in question, as the adjoining church allows usage of the church property as part of said events; and

WHEREAS, Iowa Code §414.7 and Section 134-65(d) of the Zoning Ordinance require that any variance from a separation requirement granted by the Board be forwarded to the City Council for its review, and the City Council may remand the variance of the separation requirement 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 October 30, 2014.
- 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.

★ Roll Call Number

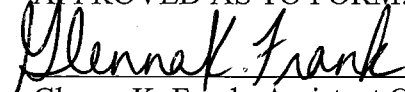
Agenda Item Number
38

Date October 6, 2014

(Council Communication No. 14- 479)

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

APPROVED AS TO FORM:


Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				

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: **ZON 2014-00160**
: :
NICK IARIA : :
: : PUBLIC HEARING: **SEPTEMBER 24, 2014**
ON PROPERTY LOCATED AT : :
: :
1106 & 1116 ARMY POST ROAD : :

SUBJECT OF THE APPEAL

Part A)

Proposal: Use of the premises for special events held from 5:00 PM to 9:00 PM each Friday evening during the months of April through September for a 5-year period ending September 30, 2019. The events would be held within the paved parking lot and grassy areas. The events would involve a stage for live entertainment and the display classic cars and bikes, with beer and wine sales occurring within a 20-foot by 10-foot area along the west façade of the building. The proposed sale of wine and beer is considered an expansion of the existing restaurant use.

Appeal(s): Special permit for sales activities and signage in conjunction with seasonal and special events.

Variance of the provision that requires any restaurant selling alcoholic liquor, wine, and/or beer to provide at least 75 feet of separation from any church, school, public park, or licensed child care facility. {The site is within 0 feet of a church (Fort Des Moines Church of the Open Bible).}

Required by City Code Sections 134-1326(18), 134-954, & 134-954(a)

Part B) NOTE: The appellant withdrew Part B during the public hearing.

~~**Proposal:** Expansion of the existing restaurant selling wine and beer to include an outdoor service area within a 60-foot by 70-foot (L-shaped) area at the southeast corner of the property.~~

~~**Appeal(s):** Variance of the provision that requires any restaurant selling alcoholic liquor, wine, and/or beer to provide at least 75 feet of separation from any church, school, public park, or licensed child care facility. {The site is within 0 feet of a church (Fort Des Moines Church of the Open Bible).}~~

~~Required by City Code Section 134-954(a)~~

NICK IARIA
1106 & 1116 ARMY POST ROAD
ZON 2014-00160

SEPTEMBER 24, 2014

FINDING

The appellant has satisfied the criteria necessary for granting the requested Special Permit so long as it is operated as described in the application except as prohibited by the conditions of approval. If the events are operated in this manner, the operation will be adequately separated from any residential use and would not cause or produce unreasonable traffic, noise, dust, odor, or litter, and will not be detrimental to the neighborhood. The appellant has satisfied the criteria necessary for granting a Variance to a separation distance requirement only so long as any outdoor sale of wine or beer on the premise only occurs during special events as set forth in the Special Permit. The appellant has demonstrated that an unnecessary hardship exists, as the revenue from beer and wine sales is necessary to offset the costs associated with holding the special events.

DECISION AND ORDER

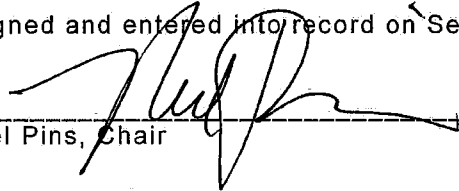
WHEREFORE, IT IS ORDERED that the appeals for a Special Permit for sales activities and signage in conjunction with seasonal and special events and a Variance of the provision that requires any restaurant selling alcoholic liquor, wine, and/or beer to provide at least 75 feet of separation from any church, school, public park, or licensed child care facility, to allow use of the premises for special events held from 5:00 PM to 9:00 PM each Friday evening during the months of April through September for a 5-year period ending September 30, 2019, where the events would be held within the paved parking lot and grassy areas and the events would involve a stage for live entertainment and the display classic cars and bikes, with beer and wine sales occurring within a 20-foot by 10-foot area along the west façade of the building at 1106 Army Post Road, are **granted** subject to the following conditions:

1. The Special Permit shall expire on September 30, 2019 at which time the Zoning Board of Adjustment may consider a subsequent request.
2. Events shall only occur between 5:00 PM and 9:00 PM on Friday evenings during the months of April, May, June, July, August, and September.
3. Any outdoor sale of wine or beer on the premise shall only occur at 1106 Army Post Road and shall only occur during special events.
4. The events, including any amplified sound or live entertainment, shall comply with Article IV of Chapter 42 of the City Code pertaining to noise control
5. Any amplified sound or live entertainment shall occur entirely on the northern portion of the property is that is zoned "C-2" District.
6. Litter and trash receptacles shall be located at convenient locations throughout the premises, and all trash and debris from the premises and adjoining right-of-way shall be removed on a daily basis.
7. The only vehicles permitted to maneuver or park on non-paved surfaces shall be those on display for the event.
8. Any stage constructed or placed on the site shall be removed by September 30 each year.
9. If at any time the Zoning Enforcement Officer determines that the conduct of the event has become detrimental to the surrounding area, the special permit would be subject to reconsideration by the Zoning Board of Adjustment.

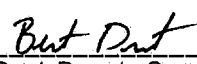
VOTE

The foregoing Decision and Order was adopted by a vote of 7-0, with all Board members present voting in favor thereof.

Signed and entered into record on September 30, 2014.



Mel Pins, Chair



Bert Drost, Secretary