



Roll Call Number

Agenda Item Number

5

Date January 12, 2015

Be it resolved by the City Council of the City of Des Moines, Iowa.

That the following application is hereby submitted for consideration to the Iowa Alcoholic Beverages Division of the Iowa Department of Commerce:

Family Pantry, 4538 Lower Beaver Road, renewal Class E Liquor License with C Beer and B Wine. (Zoning Department recommends denial).

Moved by _____ to deny.

FORM APPROVED:

Douglas P. Philip
Assistant City Attorney

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

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.

MOTION CARRIED

APPROVED

Mayor

City Clerk



December 29, 2014

ASZA, Inc.
 d/b/a Family Pantry
 c/o Registered Agent Azhar Iqbal
 4538 Lower Beaver Road
 Des Moines, IA 50310

Re: Notice of Zoning Violation
 Subject Property –Family Pantry, 4538 Lower Beaver Avenue, Des Moines

Dear Mr. Azhar Iqbal:

The operation of the Family Pantry store on the subject property listed above has been treated as a legal non-conforming use of the property as a Limited Food Sales Establishment, in the R-4 Multiple Family Residential District. Pursuant to Section 134-1352 (b) of the Municipal Code of the City of Des Moines, a legal nonconforming use as a Limited Food Sales Establishment is allowed to continue so long as it remains otherwise lawful. However, the City has imposed new zoning regulations which more specifically distinguish between those business to be treated as a Limited Food Sales Establishment with accessory sales of alcoholic beverages, and those businesses which will be treated as a Liquor Store because of their impact upon neighboring properties.

Family Pantry is in violation of the City of Des Moines Zoning Ordinance as follows:

1. The business is not in compliance with Section 134-954 for continuing to sell liquor, wine and beer without a Conditional Use Permit.

Ordinance No. 15,133, passed September 10, 2012, amended Section 134-954 of the Des Moines Municipal Code, to require all new businesses selling alcoholic liquor, wine or beer obtain a conditional use permit before commencing operation, and to require all existing businesses that have continuously held an alcoholic liquor license or a wine or beer permit since July 1, 2012, obtain a Conditional Use Permit to continue selling alcoholic liquor, wine or beer after December 31, 2013.

2. Family Pantry is not in compliance with Section 134-954 for failure to limit sales of alcoholic liquor, wine, beer or tobacco products to 40 percent or less of the gross receipts from all sales.

- a) Ordinance No. 15,133, passed September 10, 2012, amended Section 134-954 of the Des Moines Municipal Code, to require that a Limited Food Sales Establishment derive no more than 40% of its gross receipts from the sale of alcoholic liquor, wine, beer or tobacco products. This requirement was immediately applicable to new Limited Food Sales Establishments, and became applicable on December 31, 2013, to establishments that have continuously held an alcoholic liquor license or a wine or beer permit since July 1, 2012.
 - b) On November 11, 2014, we received from you an audit showing that about 68% of sales at this store are derived from alcoholic liquor, wine, beer and tobacco. In accordance with Section 134-954(a) of the Municipal Code of the City of Des Moines, no more than 40 percent of the gross receipts from sales from a Limited Food Sales Establishment may be derived from the sale of alcoholic liquor, wine, beer or tobacco products.
3. Family Pantry is not in compliance with Section 134-954(a) and (f) for selling alcoholic liquor, wine and beer in an R-4 District.
- a) Ordinance No. 15,133, passed September 10, 2012, amended Section 134-954 of the Des Moines Municipal Code, to prohibit the sale of alcoholic beverages by Limited Food Sales Establishment located in the R-4 District and all other residential zoning districts. This requirement was immediately applicable to new Limited Food Sales Establishments, and became applicable on December 31, 2013, to establishments that have continuously held an alcoholic liquor license or a wine or beer permit since July 1, 2012.
 - b) The sale of alcoholic liquor, wine and beer is no longer allowed under Section 134-954(a) in the R-4 District or any other residential district.

Family Pantry must complete the following actions within ninety (90) days from the date of this notice in order to remedy the above-stated zoning violations:

- 1. Apply for and obtain rezoning of the subject property from the R-4 District to the C-2, NPC or a less restrictive zoning district in order to continue sales of alcoholic liquor, wine, and beer, or rezoning to the C-1 or a less restrictive zoning district to continue sales of wine and beer (with no alcoholic liquor sales).
- 2. a) If the rezoning is denied, then the business must apply for and obtain a Use Variance from the Zoning Board of Adjustment to allow the operation of a business selling wine and beer, with or without the sale of alcoholic liquor, in the R-4 District.
- b) Apply for and obtain a Conditional Use Permit from the Zoning Board of Adjustment and demonstrate, by audit after six months, compliance with the 40 percent sales limit on alcoholic liquor, wine, beer and tobacco products; or on wine, beer and tobacco products (with no alcoholic liquor sales), depending upon the rezoning or use variance obtained.

You can contact City staff at 283-4200 to set up a development conference to discuss the rezoning options, the application for a Conditional Use Permit, and if needed the Use Variance.

If you fail to take action to bring the rezoning process within thirty (30) days from the date of this notice to remedy the zoning violations, the City may take the appropriate legal action to obtain a court order directing that the violation(s) be abated. If so, a civil suit may be filed in Polk County District Court, pursuant to Section 134-32 of the Municipal Code of the City of Des Moines, Iowa. A civil penalty and/or an order will be sought by the City to enjoin you from allowing the subject property to remain in violation and any other relief the court may deem reasonable to ensure compliance. The City may also ask that the Court order all costs of the court action, fines, and any other costs incurred by the City to abate the violation be entered against you as a personal judgment and/or against the subject property as an in rem judgment.

If you feel that you have received this notice in error or disagree with the determination of the violation, you may appeal this determination to the Zoning Board of Adjustment for the City of Des Moines by filing a notice of appeal within 10 days.

Sincerely,



SuAnn Donovan
Neighborhood Inspection Administrator
Deputy Zoning Enforcement Officer
602 Robert D. Ray Drive
Des Moines, IA 50309
smdonovan@dmgov.org

NOTE: Any order, decision or determination made by this office in the enforcement of the Zoning Ordinance may be appealed to the Zoning Board of Adjustment. The Procedural Rules of the Zoning Board of Adjustment provide that you, as the party to whom this communication is directed, must file the appeal with the Community Development Department within ten days of the date of this communication. Any other aggrieved person seeking to appeal this order, decision or determination must file the appeal within ten days of actual notice by such person of such order, decision, or determination, which in no event shall be later than ten days after commencement of such physical construction or use. Any appeal not timely filed may be rejected by the Board.



December 29, 2014

ASZA, Inc.
 d/b/a Family Pantry
 c/o Registered Agent Azhar Iqbal
 4538 Lower Beaver Road
 Des Moines, IA 50310

Re: Liquor License Renewal
 Subject Property – Family Pantry, 4538 Lower Beaver Avenue, Des Moines

Dear Mr. Azhar Iqbal:

The liquor license for the Family Pantry store on the subject property listed above will expire on January 21, 2015. Chapter 10 of the Des Moines Municipal Code requires said license to be renewed in order for sales of alcoholic liquor and/or wine and beer, as applicable per the license, to continue after January 21, 2015. The City has received your application to renew the liquor license.

As set forth in the Notice of Zoning Violation dated December 16, 2014, the store is not in compliance with Section 134-954 of the City of Des Moines Zoning Ordinance for (1) failure to obtain a Conditional Use Permit; (2) failure to limit sales of alcoholic liquor, wine, beer or tobacco products to 40 percent or less of the gross receipts from all sales; and (3) sales of alcoholic liquor, wine and beer in an R-4 Multiple Family Residential District.

Your application for renewal of the liquor license for this store is scheduled to come before the Des Moines City Council for consideration on January 12, 2015. Due to the ongoing zoning violations, the City staff will be obligated to recommend that the application be denied, or that the consideration of the application be continued to a later date to allow time to remedy the zoning violations. If the application is continued, the existing license will continue in effect until a final decision is made on the pending application.

The City staff will consider supporting a continuance only if the business has demonstrated a willingness to timely remedy the zoning violations as provided in the Notice. If the business does not demonstrate a willingness to timely the zoning violations, Staff will have no option but to request denial of the liquor license.

5

Sincerely,



Susan Donovan

Neighborhood Inspection Zoning Administrator

602 Robert D. Ray Drive

Des Moines, IA 50309

smdonovan@dmgov.org



January 11, 2015

Des Moines City Council
400 Robert D. Ray Dr.
Des Moines, IA 50309

RE: Agenda Item #5 – Family Pantry

Mayor Cownie and City Council Members,

The Lower Beaver Neighborhood Association Board Members are in support of city staff's recommendation to deny the renewal of the Class E Liquor License with C Beer and B Wine privileges for the Family Pantry.

A business that exceeds 40% of its sales is not allowed in this location and we support that position of the City of Des Moines.

We thank each one of you for working with our neighborhood and all the others in our city.

Thanks for your consideration

Brian L Millard
President, Lower Beaver Neighborhood