

★ **Roll Call Number**

Agenda Item Number

5

Date March 9, 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:

University Grocery, 2121 University Avenue, new Class C Beer Permit with B Wine Permit. **(Zoning Department recommends denial).**

Moved by _____ to deny.

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



**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 2015-00014**
BEST FOOD MART 2, LLC :
ON PROPERTY LOCATED AT : PUBLIC HEARING: **FEBRUARY 25, 2015**
2121 UNIVERSITY AVENUE :

SUBJECT OF THE APPEAL

Proposal: Use of up to 900 square feet within the easternmost commercial bay of the existing building for a tobacco store selling wine and beer. A tobacco store is defined in the Zoning Ordinance as a place of business primarily engaged in the retail sale of tobacco and tobacco-related products, provided that no more than 25% of the gross receipts from sales shall be derived from the sale of alcoholic liquor, wine or beer, and all sales of alcoholic liquor, wine or beer are for off-premises consumption only. There is one (1) church and two (2) licensed child care facilities within 500 feet of the site.

Appeal(s): Conditional Use Permit for a tobacco store selling wine and beer in a "C-2" District.

Variance of the provision that requires any tobacco store selling wine and beer to provide at least 150 feet of separation from any church.

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

FINDING

The public hearing included representations by both the applicant and neighborhood opponents to the proposed Conditional Use Permit and Variance. Both opponents, including a residential neighbor across the street from the subject property, stated that the residential area was much quieter during the time period that the business had been closed, and that it was not sufficiently separated from the adjoining residential area due to noise and safety concerns. The neighbor indicated that the property could be used for grocery and tobacco sales, without sales of alcoholic beverages. The Zoning Enforcement officer further clarified the intent of the Zoning Ordinance in relation to enforcement of separation requirements from churches and similar facilities.

In deliberations, Board members found that the area had an over-concentration of sales of alcoholic beverages, due to the presence of the gas station/convenience store immediately to the west of the subject property. Board members found the proximity of the subject property to a church, as well as to a single-family dwelling with 150' of the property and child care facilities in the area, disqualified the subject property from the current proposed relief. Board members were concerned with impacts to nearby residential properties and the stability of the neighborhood as discussed by the neighbors. Even if a Conditional Use Permit were to be issued to the new owner, the Board members did not find that the criteria for granting a Variance to the separation requirements had been met for the reasons stated below. The Board members further determined that the property is able to yield a reasonable return from grocery sales or other permitted business uses, without adding sales of alcoholic beverages.

FINDING (continued from page 1)

The appellant has not satisfied the criteria necessary for granting a Conditional Use Permit for a tobacco store selling wine and beer. The subject property does not meet the minimum separation requirements from any church, as there is a church within 120 feet. The appellant has not satisfied the criteria necessary for granting the requested Variance to the separation requirement. The appellant has not demonstrated that an unnecessary hardship exists, as the land in question can yield a reasonable return from the uses permitted on the property, as the zoning on the property permits any use as allowed in the "C-2" General Retail and Highway-Oriented Commercial District. There are reasonable permitted uses for the premises that do not require a separation distance from the nearby church. The owner's request to use the subject property for sales of alcoholic beverages, rather than for any other permitted purpose, is of the owner's own making and is not unique to the land in question, and would alter the essential character of the locality of the land given its proximity to residential and church uses. The essential character of the locality of the land would further be altered by allowing a second store selling alcoholic beverages in the neighborhood, due to the existence of a gas station/convenience store in the immediate vicinity of the subject property. Furthermore, the premise is not sufficiently separated from residential uses to adequately safeguard the health, safety and general welfare of persons residing in the adjoining or surrounding residential area. This was evidenced by documented nuisances experienced when a previous tenant of the property was operating a business selling alcohol.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeals for a Conditional Use Permit for a tobacco store selling wine and beer in a "C-2" District and a Variance of the provision that requires any tobacco store selling wine and beer to provide at least 150 feet of separation from any church, to allow use of up to 900 square feet within the easternmost commercial bay of the existing building for a tobacco store selling wine and beer, where a tobacco store is defined in the Zoning Ordinance as a place of business primarily engaged in the retail sale of tobacco and tobacco-related products, provided that no more than 25% of the gross receipts from sales shall be derived from the sale of alcoholic liquor, wine or beer, and all sales of alcoholic liquor, wine or beer are for off-premises consumption only, and where there is one (1) church and two (2) licensed child care facilities within 500 feet of the site, are **denied**.

VOTE

The foregoing Decision and Order was adopted by a vote of 5-0, with all Board members present voting in favor thereof.

Signed and entered into record on March 4, 2015.



Mel Pms, Chair



Bert Drost, Secretary

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March 3, 2015

Best Food Mart 2 LLC
d/b/a University Grocery
Manjeet Aulakh
85 Chambery Blvd
Johnston, IA 50131

Re: 2121 University – Class C Beer Permit with B Wine Permit

Dear Sir/Madam,

The application by Best Food Mart 2 LLC d/b/a University Grocery, for a new Class C Beer Permit with B Wine Permit for the University Grocery at 2121 University is scheduled to come before the Des Moines City Council for consideration on March 9, 2014.

On February 25, 2015, the Zoning Board of Adjustment denied a Conditional Use Permit for the sale of wine and beer at this premises.

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.

Since the sale of alcoholic beverages at this premises is now prohibited without a Conditional Use Permit the City staff is obligated to recommend that the application be denied.

Sincerely,

A handwritten signature in black ink, appearing to read "SuAnn Donovan". The signature is written in a cursive style with a large, looping initial "S".

SuAnn Donovan
Deputy Zoning Enforcement Officer
602 Robert D. Ray Drive
Des Moines, IA 50315
smdonovan@dmgov.org