



Date May 6, 2019

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW A HOTEL LOUNGE AND OUTDOOR PATIO TO SELL LIQUOR, WINE AND BEER

WHEREAS, on April 24, 2019, the Zoning Board of Adjustment voted 6-0 to approve an application from 207 Crocker, LLC (applicant), represented by Kalpesh Patel (officer), for a variance of the separation requirement that any business, other than a restaurant, in the "C-2" General Retail and Highway-Oriented Commercial District selling alcoholic liquor, wine and beer be separated by at least 150 feet from any public park, to allow for use of an 1,800 square foot hotel lounge area and an 1,700 square foot outdoor patio accessory to the hotel use at 207 Crocker Street to sell alcoholic liquor, wine, and beer; and

WHEREAS, the property upon which the proposed hotel lounge and outdoor patio use will occur is within approximately 100 feet of the public park located directly across 2nd Avenue to the east; and

WHEREAS, the Board found that the proposed location, design, construction and operation of the proposed use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding area, which contains primarily commercial uses, and that the proposed use is not contrary to the public interest and is in conformance with the essential character of the locality of the land in question; 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 May 26, 2019.
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

39

Date May 6, 2019

(Council Communication No. 19- 187 )

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

(ZON2019-0038)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
WESTERGAARD				
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: <b>ZON 2019-00038</b>
<b>207 CROCKER, LLC</b>	:	
ON PROPERTY LOCATED AT	:	<b>PUBLIC HEARING: APRIL 24, 2019</b>
<b>207 CROCKER STREET</b>	:	

SUBJECT OF THE APPEAL

**Proposal:** Sale of alcoholic liquor, wine, and beer within an 1,800-square foot hotel lounge area and within a 1,700-square foot outdoor patio along the east side of the building. The premise is within 100 feet of a public park located directly across 2<sup>nd</sup> Avenue to the east.

**Appeal(s):** Conditional Use Permit for a business selling alcoholic liquor, wine, and/or beer. Variance of the provision that requires any business in the "C-2" District selling alcoholic liquor, wine, and beer, which is not a restaurant, to provide at least 150 feet of separation distance from any public park.

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

FINDING

The appellant has satisfied the criteria necessary for granting the requested Conditional Use Permit with conditions to allow a tavern use as an accessory use related to the primary hotel use on the property. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding area, which contains primarily commercial uses. The business is not contrary to the public interest and will not unduly increase congestion on the streets in the adjoining area and will have a minimal impact on the surrounding properties so long as it operates in accordance with the recommended conditions of approval. If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use Permit, the Zoning Enforcement Officer may apply to the Zoning Board of Adjustment to reconsider the issuance of the Conditional Use Permit for such business.

The appellant has further satisfied the criteria necessary for granting the requested Variance to sell alcoholic liquor, wine, and beer in the "C-2" District, without operating as a restaurant and without providing at least 150 feet of separation distance from any public park. The owner has demonstrated that its plight is due to unique circumstances not of the owner's own making, which circumstances relate specifically to the land in question and not to general conditions in the neighborhood, and that the use to be authorized by the Variance will not alter the essential character of the locality of the land in question. The proposed hotel lounge and outdoor patio are separated from the public park by a heavily travelled, multi-lane street, and by the topography of the area placing the park at a much lower grade down a hill.

DECISION AND ORDER

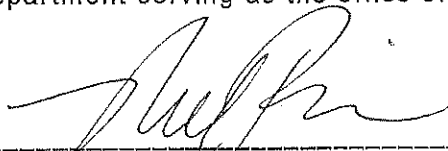
WHEREFORE, IT IS ORDERED that the appeals for a Conditional Use Permit for a business selling alcoholic liquor, wine, and/or beer and a Variance of the provision that requires any business in the "C-2" District selling alcoholic liquor, wine, and beer, which is not a restaurant, to provide at least 150 feet of separation distance from any public park, to allow sale of alcoholic liquor, wine, and beer within an 1,800-square foot hotel lounge area and within a 1,700-square foot outdoor patio along the east side of the building, are **granted**, subject to the following conditions:

1. Any business selling liquor, wine, and/or beer shall operate in accordance with a liquor license obtained through the Office of the City Clerk as approved by the City Council.
2. The business shall comply with Article IV of Chapter 42 of the City Code pertaining to noise control.
3. The business shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
4. The business shall institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
5. The business shall not dispense alcoholic beverages from a drive-through window.
6. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of the business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
7. Any renovation of the building shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the Permit and Development Center.
8. If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or 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.

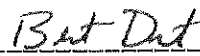
VOTE

The foregoing Decision and Order was adopted by a vote of 6-0, with all Board members present voting in favor thereof.

Signed, entered into record, and filed with the City of Des Moines Community Development Department serving as the office of the Board, on April 25, 2019.



Mel Pines, Board Chair



Bert Drost, Board Secretary