



**Date** August 8, 2022

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW SALES OF ALCOHOLIC LIQUOR, WINE, AND/OR BEER BY A “RESTAURANT” USE IN “RX1” MIXED USE DISTRICT FOR PROPERTY AT 1828 HUBBELL AVENUE OWNED BY JAVIER PLESENT**

**WHEREAS**, the real property locally known as 1828 Hubbell Avenue (“Property”) has been operating as a restaurant use and the Property Owner/Restaurateur seeks to offer beer, wine, and alcoholic liquor for sale accessory to the restaurant uses; and

**WHEREAS**, the Property is located within 75 feet of Ashfield Park which distance is less than the separation distance required by Des Moines Municipal Code Tables 134-3.1-1 & 134-3.9-1; and

**WHEREAS**, Des Moines Municipal Code section 134-6.7 requires the Owner to obtain a variance from the Zoning Board of Adjustment in order to serve beer, wine, and alcoholic liquor within the Property; and

**WHEREAS**, the Owner made application for such variance and on July 27, 2022, the Zoning Board of Adjustment voted 4-1 to approve an application from Javier Plesent for a variance of the separation requirement that the premises of any restaurant seeking to sell wine, beer, and alcoholic liquor be separated by at least 75 feet from any church, school, public park, or licensed child care facility set forth in Des Moines Municipal Code Tables 134-3.1-1 & 134-3.9-1 to allow the Owner to sell such beverages as an accessory use to the restaurant use subject to the following conditions to which the Owner has agreed:

1. There shall be no visible advertisement or identification of any alcoholic liquor, wine, or beer, including lighted or unlighted signage or logos, displayed outside of the building or on the inside of the windows.
2. Any sale of alcoholic liquor, wine, and/or beer shall be accessory to a “Restaurant” use, where at least 50% of the gross receipts from sales from the premises must be derived from the sale of prepared food and food-related services.
3. Any “Restaurant” shall only operate between the hours of 10:00 AM to 10:00 PM on Sundays, Mondays, Tuesdays, Wednesdays, and Thursdays, and between the hours of 10:00AM to 11:00PM on Fridays and Saturdays.
4. Any “Restaurant” selling alcoholic 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.

**Date** August 8, 2022

5. There shall be no patio or outdoor serving area unless that Board of Adjustment grants an amendment to the Variance allowing such.
6. Any business selling alcoholic liquor, wine, and/or beer shall comply with Article IV of Chapter 42 of the City Code pertaining to noise control.
7. Any business selling alcoholic liquor, wine, and/or beer shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
8. Any business selling alcoholic liquor, wine, and/or beer 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.
9. Any business selling alcoholic liquor, wine, and/or beer shall not dispense alcoholic beverages from a drive-through window.
10. 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.
11. Any renovation of the building shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the City's Permit and Development Center.

; and

**WHEREAS**, Iowa Code § 414.7 and Des Moines Municipal Code Section 134-6.7.8(C) 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.

**Date** August 8, 2022

- B. The City Council takes no action to review the Decision and Order. The decision of the Board will become final on September 1, 2022.
  
- 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. 22-356)

Moved by \_\_\_\_\_ to adopt. Second by \_\_\_\_\_

APPROVED AS TO FORM:

/s/ Gary D. Goudelock Jr.  
 Gary D. Goudelock Jr.  
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
SHEUMAKER				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

\_\_\_\_\_  
 Mayor

**CERTIFICATE**

I, LAURA BAUMGARTNER, 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: ZBOA 2022-000048
JAVIER PLESENT :
ON PROPERTY LOCATED AT : PUBLIC HEARING: JULY 27, 2022
1828 HUBBELL AVENUE :

SUBJECT OF THE APPEAL

Proposal: Use of a 2,483-square foot building for a "Restaurant" use with sales of alcoholic liquor, wine and/or beer. As a "Restaurant" use at least 50% of the gross receipts from sales from the premises must be derived from the sale of prepared food and food-related services in an "RX1" District. The subject property is within 14 feet of Ashfield Park.

Appeal(s): Variance (per City Code Section 134-6.7) of the required 75-foot separation distance from a public park required for a restaurant selling alcoholic liquor, wine and/or beer for on premise consumption.

Required by City Code Table 134-3.1-1, Table 134-3.9-1, & Section 134-6.7.

FINDING

The Variance would be consistent with the intended spirit and purpose of the Zoning Ordinance and would not alter the essential character of the locality of the land in question. The impact of the proposed restaurant use with alcohol service would be minimal since a majority of the portion of Ashfield Park that is frequently used is not within 75 feet of the subject property and is separated from the park by the existing building and extensive fencing. Furthermore, the impacts of any sale of alcoholic liquor, wine, and/or beer shall be accessory to a "Restaurant" use, where at least 50% of the gross receipts from sales from the premises must be derived from the sale of prepared food and food-related services. The appellant has adequately demonstrated that a hardship exists in that other restaurants that have operated on the premise prior have been unable to sustain a viable business operation without the sale of beer or wine. The Board further finds that the appellant has met the intent of the separation distance requirements of the Zoning Code.

JAVIER PLESENT  
1828 HUBBELL AVENUE  
ZBOA 2022-000048

-2-

July 27, 2022

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Variance of 61 feet of the required 75-foot separation distance from a public park necessary for a business selling alcoholic liquor, wine and/or beer for off premise consumption, is **granted**, subject to the following conditions:

1. There shall be no visible advertisement or identification of any alcoholic liquor, wine, or beer, including lighted or unlighted signage or logos, displayed outside of the building or on the inside of the windows.
2. Any sale of alcoholic liquor, wine, and/or beer shall be accessory to a "Restaurant" use, where at least 50% of the gross receipts from sales from the premises must be derived from the sale of prepared food and food-related services.
3. Any "Restaurant" shall only operate between the hours of 10:00 AM to 10:00 PM on Sundays, Mondays, Tuesdays, Wednesdays, and Thursdays, and between the hours of 10:00AM to 11:00PM on Fridays and Saturdays.
4. Any "Restaurant" selling alcoholic 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.
5. There shall be no patio or outdoor serving area unless that Board of Adjustment grants an amendment to the Variance allowing such.
6. Any business selling alcoholic liquor, wine, and/or beer shall comply with Article IV of Chapter 42 of the City Code pertaining to noise control.
7. Any business selling alcoholic liquor, wine, and/or beer shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
8. Any business selling alcoholic liquor, wine, and/or beer 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.
9. Any business selling alcoholic liquor, wine, and/or beer shall not dispense alcoholic beverages from a drive-through window.
10. 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.
11. Any renovation of the building shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the City's Permit and Development Center.

VOTE

The foregoing Decision and Order was adopted by a vote of 4-1, with all Board members present voting.

Signed, entered into record, and filed with the City of Des Moines Development Services Department serving as the office of the Board, on August 2, 2022.

  
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Mel Pins, Board Chair

  
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Frank Dunn-Young, Board Secretary