



Date December 12, 2022

RECEIVE AND REFER COMMUNICATION FROM THE ZONING BOARD OF ADJUSTMENT REGARDING REQUEST FOR DEVELOPMENT SERVICES DEPARTMENT TO REVIEW THE SEPARATION DISTANCE REQUIREMENTS FOR RESTAURANT AND RETAIL USES SELLING ALCOHOLIC LIQUOR, WINE, AND BEER IN CERTAIN ZONING DISTRICTS

Communication from the Zoning Board of Adjustment asking for referral to Development Services Department of Municipal Code Section 134.3 regarding the separation distance requirements for sales of alcoholic liquor, beer, and wine in certain zoning districts for review and possible revisions/

Moved by _____ to receive the attached communication from the Zoning Board of Adjustment, and to refer to the Development Services Department.

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	

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.

Mayor

City Clerk



November 16, 2022

RE: Request from Zoning Board of Adjustment for Zoning Code Review of Certain Limited Alcohol Sales

Dear Mayor Cownie and Members of the City Council:

Through our appointed duties as the Zoning Board of Adjustment, a concern with a provision of the zoning code has come to our attention. We respectfully request your assistance in referring the matter to city staff for review and possible revision of the regulations.

This situation concerns the zoning ordinance Chapter 134.3 – Uses – Accessory Uses – Alcoholic Liquor, Wine and Beer Sales. This ordinance requires that in order for a restaurant to sell alcohol for on-premise consumption, there must be a 75-foot separation distance from any school, place of worship, public park, or licensed child care facility, unless the restaurant is located in a DX1, DX2, DXR and MX1 district. There have been many cases where restaurants had existed and sold alcohol for on-premise consumption within this separation distance, but if the restaurant use had lapsed for more than 6 months, the use allowance for alcoholic sales expired.

Under the current ordinance, the Board could only consider reinstating such sale of alcohol for on-premise consumption through a variance, which would require that the Board determine there is no other reasonable use of the property available unless the variance is granted. This variance 'test' is difficult for an applicant to meet, and has resulted in some restaurants remaining closed, or going out of business. The ordinance does not allow the Board to otherwise consider the proposed use and provide the option of a conditional use approval, in order to establish appropriate guidelines and oversight to ensure that the on-premise consumption of alcohol in the restaurant does not cause a detriment to the surrounding area.

Additionally, the Board has reviewed requests where smaller grocery stores, defined as "Retail Sales, Limited" had sought to sell only wine and beer in addition to other grocery products, yet such a small grocery store is required to have a 150-foot separation distance from any school, place of worship, public park, or licensed child care facility in many zoning districts, including within the MX2 and MX3 districts, which otherwise have fairly intensive commercial uses. Again, the variance criteria do not provide the Board with the ability to consider other factors related to the location, operation, and establishment of reasonable conditions that could otherwise ensure that the proposed use with limited alcohol sales is compatible.

The Board requests that the Council consider minor changes in Chapter 134.3 that would remove the 75-foot separation requirement for alcohol sales for on-premise consumption within a restaurant, with the addition of review and consideration by the Board through conditional use allowances, as well as removal of the 150 foot separation requirement for wine and beer sales for a "Retail Sales, Limited" use in an MX2 and MX3 district, with commensurate review and consideration by the Board for a conditional use.



The Board fully understands the intent of the zoning ordinance to ensure that alcohol sales do not unduly affect the essential character and harmony of the surrounding area. The Board understands that there must be additional separation distances for more intensive locations that sell alcohol, such as liquor stores, tobacco stores, fuel stations, and retail sales - both general and large. However, the Board feels that the separation distances for alcohol sales at restaurants and retail sales-limited classifications, particularly when only beer and wine sales are involved as described above, are unduly restrictive, where a conditional use restriction by the Board could provide appropriate oversight to allow reasonable business activities that include the sale of alcohol at these locations.

The Board only requests to have these suggestions considered as part of any periodic, future updates or revisions that may be made to this or other areas of the zoning ordinance. Thank you for your review and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mel Pins". The signature is stylized and cursive.

Mel Pins
Chair
Zoning Board of Adjustment