



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.



Roll Call Number

22-1299

Agenda Item Number

59

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.



Roll Call Number

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Agenda Item Number

59

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 Gatto to adopt alternative C.

Second by Sheumaker.

APPROVED AS TO FORM:

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

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, MANDELBAUM, SHEUMAKER, VOSS, WESTERGAARD, and TOTAL (7 yeas).

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.

J. M. Franklin Cownie Mayor

Laura Baumgartner City Clerk