

Date May 18, 2009

**REVIEW OF BOARD OF ADJUSTMENT DECISION  
TO AMEND A USE VARIANCE AT  
2511 COTTAGE GROVE AVENUE**

WHEREAS, on April 22, 2009 the City of Des Moines Zoning Board of Adjustment (“Board”) voted 5-0 in favor of an application to allow expansion of an existing restaurant and catering business at 2511 Cottage Grove Avenue, Des Moines, Iowa, which has been permitted by a previously granted use variance. The Board’s decision was filed of record on April 29, 2009; and

WHEREAS, Iowa Code Section 414.7 and City of Des Moines Municipal Code Section 134-65(d) provide that the City Council shall review the Board’s decision within thirty (30) days after the decision is filed, and that after such review the Council may (1) remand the decision to the Board for further study; (2) approve the Board’s decision; or (3) take no action. If the City Council declines to remand a decision, the Board’s decision becomes final on the date of the Council’s action; and

WHEREAS, Community Development staff has recommended that the City Council concur with the Board’s decision and decline the option to remand this matter to the Board for additional review.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Des Moines, Iowa as follows:

(Choose One)

\_\_\_\_\_

The City Council CONCURS WITH AND APPROVES the April 29, 2009 decision of the Zoning Board of Adjustment to amend a use variance at 2511 Cottage Grove Avenue. The Board’s decision shall become final on the date of this action.

\_\_\_\_\_

The City Council DECLINES TO REVIEW the Zoning Board of Adjustment’s decision. The Board’s decision shall become final on June 1, 2009.

★ Roll Call Number

Agenda Item Number


76

Date May 18, 2009

The City Council REMANDS the Zoning Board of Adjustment's decision to the Board for further study.

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

APPROVED AS TO FORM:

  
Michael F. Kelley  
Assistant City Attorney

(Council Communication No. 09-319 )

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
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 2009-00044</b>
	:	
<b>STEVE WASSON</b>	:	
	:	MEETING DATE: <b>APRIL 22, 2009</b>
ON PROPERTY LOCATED AT	:	
	:	
<b>2511 COTTAGE GROVE AVENUE</b>	:	

SUBJECT OF THE APPEAL

**Proposal:** Expansion of an existing restaurant and catering business permitted by a previously granted Use Variance. The expansion would include construction of a 17-foot by 13-foot (221 square feet) outdoor service area covered by a canopy structure and a 17-foot by 15-foot (255 square feet) outdoor service area that would be within 10 feet of the south front property line and 18 feet of the north rear property line. In addition, the appeal would allow construction of a 6-foot tall ornamental wrought iron fence within the minimum required front yard area.

**Appeal(s):** Amend Use Variance to allow expansion of the existing restaurant and catering business.  
  
Variance of 20 feet less than the minimum required 30-foot front yard setback.  
  
Exception of 12 feet less than the minimum required 30-foot rear yard setback.  
  
Exception of 2 feet over the maximum allowed 4 feet of height for a wrought iron fence within the minimum required front yard.

*Required by City Code Sections 134-412, 134-414(3), 134-414(5), 134-1296(i)(3)(a), & 134-1377(23)*

FINDING

Granting the Amendment to the Use Variance, the Variances and the Exceptions **with conditions** would be consistent with the intended spirit and purpose of the Zoning Ordinance. The proposed expansion of the business would not unduly increase congestion in the public streets or increase public danger of fire and safety. The proposed fence would adequately safeguard the health, safety and welfare of occupants of the adjoining and surrounding property and would be visually appealing. It is reasonable to not require construction of off-street parking since doing so would create more of a visible commercial impact than the patio expansion.

DECISION AND ORDER

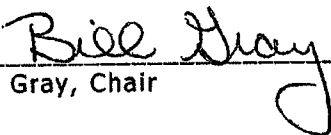
*WHEREFORE, IT IS ORDERED* that the appeals to allow expansion of a restaurant and catering business permitted by a previously approved Use Variance to include construction of a 17-foot by 13-foot (221 square feet) outdoor service area covered by a canopy structure, a 17-foot by 15-foot (255 square feet) outdoor service area that would be within 10 feet of the south front property line and 18 feet of the north rear property line, and construction of a 6-foot tall ornamental wrought iron fence within the front yard area are **granted subject to the following conditions:**

1. The two parcels comprising the subject property shall be combined to create a single parcel.
2. Any covered patio, non-covered patio, and/or fence shall be constructed in substantial compliance with the submitted site sketch and elevations.
3. Any covered patio shall be constructed with building materials that are compatible with the existing structure.
4. The hours of operation shall be limited to between 7:00 AM and 10:00 PM.
5. Any covered or non-covered patio shall be constructed in compliance with a Site Plan as approved by the Permit and Development Center.
6. Any covered patio, non-covered patio, and/or fence shall be constructed in compliance with all applicable building codes with issuance of all necessary permits by the Permit and Development Center.

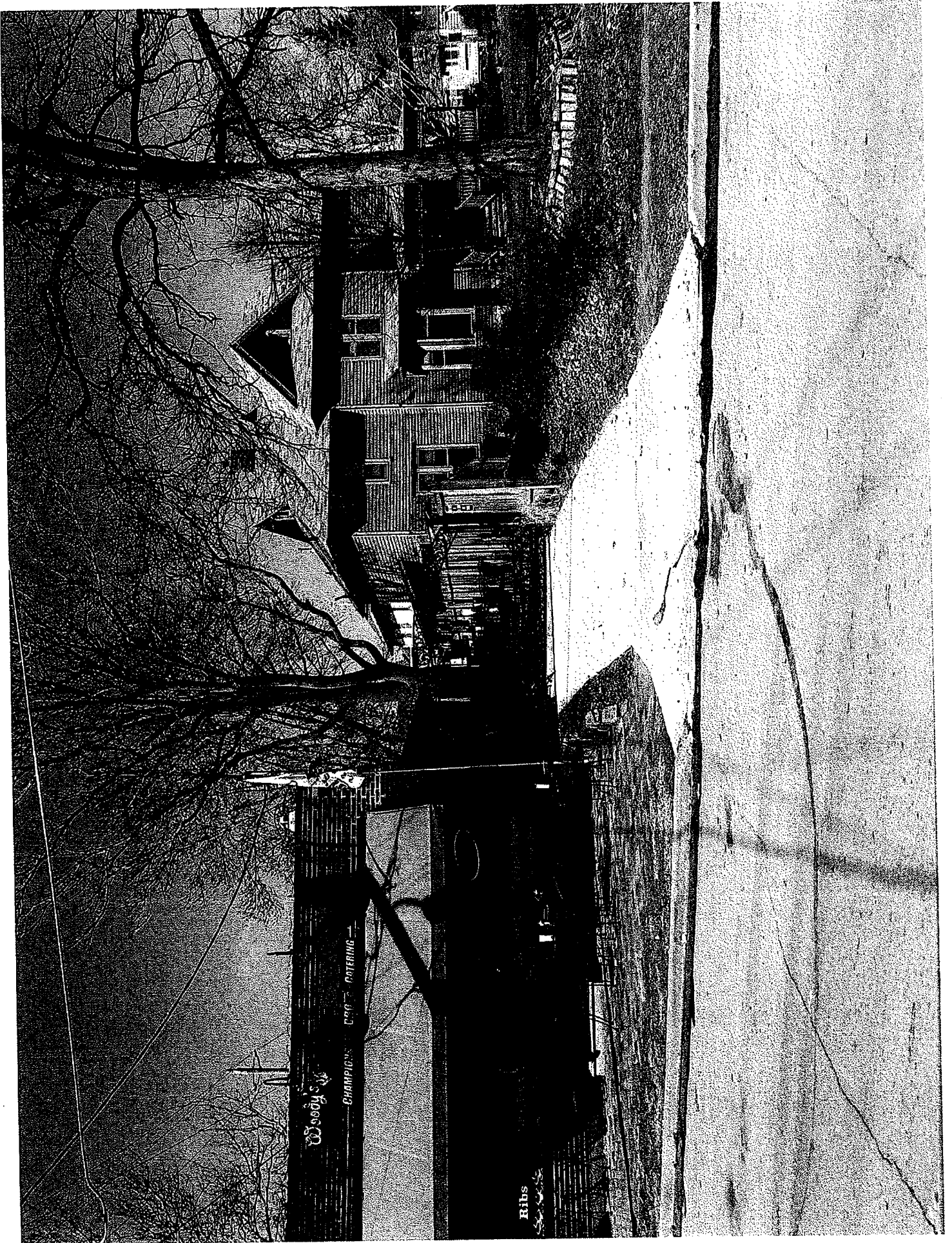
VOTE

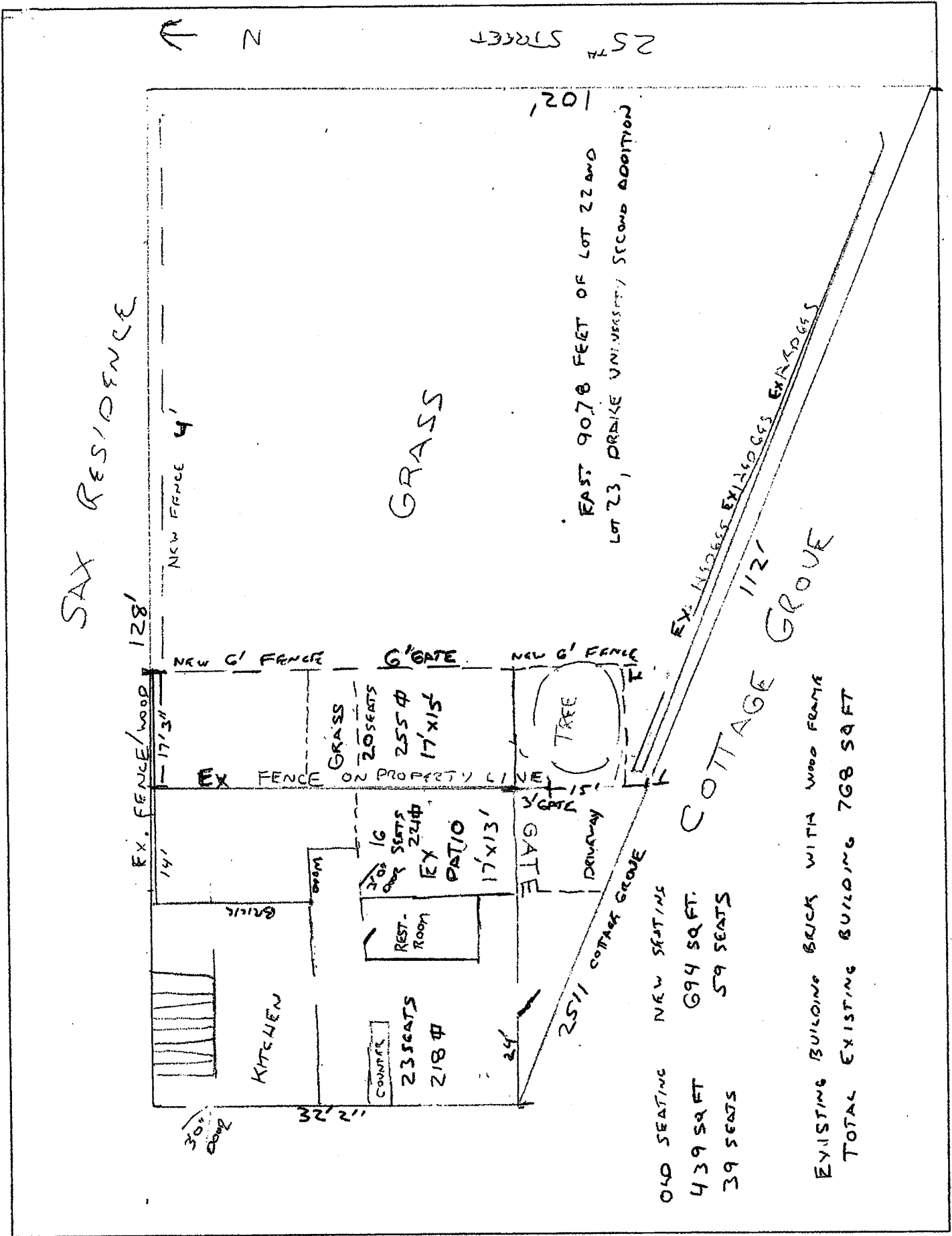
The foregoing Decision and Order was adopted by a vote of 5-0 with all Board members present voting in favor thereof.

Signed and entered into record on April 29, 2009.

  
\_\_\_\_\_  
Bill Gray, Chair

  
\_\_\_\_\_  
Bert Drost, Secretary





SAX RESIDENCE

GRASS

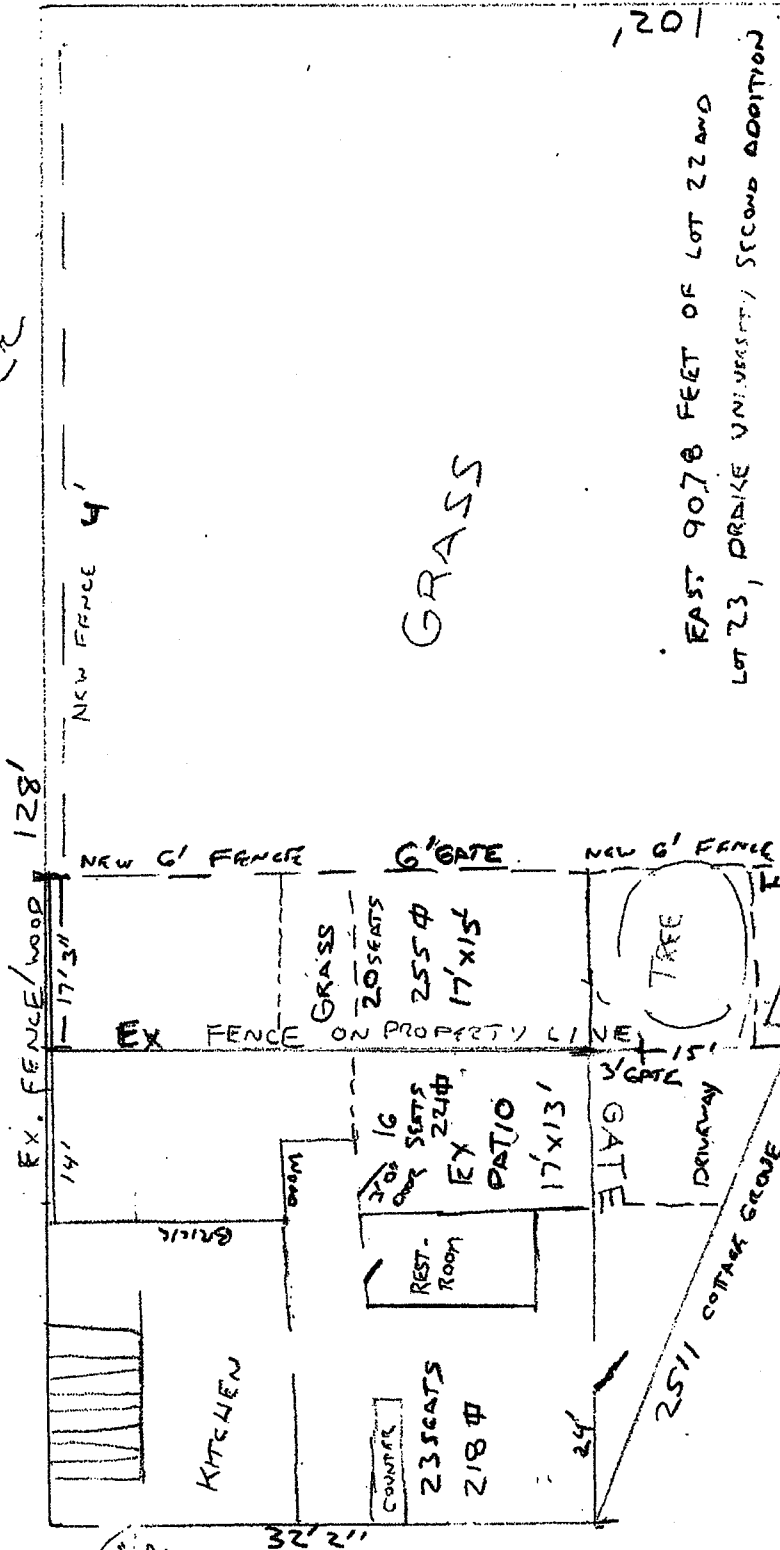
COTTAGE GROVE

25th STREET

EAST 90.78 FEET OF LOT 22 AND LOT 23, DRINKIE UNIVERSITY SECOND ADDITION

OLD SEATING 439 SQFT  
 NEW SEATING 694 SQFT  
 39 SEATS 59 SEATS

EXISTING BUILDING BRICK WITH WOOD FRAME  
 TOTAL EXISTING BUILDING 768 SQFT



WOODS'S SMOKES SHOP #108  
 2811 COTTAGE GROVE  
 DES MOINES, IA  
 STEVE WATSON  
 377-0005  
 DATE: 10-10-08  
 DRAWN BY: JKE  
 OWNER: CHAIRS DECK ENCLOSURE

**Moekly Fabrications Company**  
 Phone 515-697-0260 Fax 515-697-0261  
 107 Campus Drive  
 Des Moines, IA 50314-0803

