



Date July 13, 2009

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

WHEREAS, on June 24, 2009 the City of Des Moines Zoning Board of Adjustment (“Board”) voted 4-0 in favor of an application to amend a use variance 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 as amended, which amendment was approved by the City Council on May 18, 2009 by Roll Call No. 09-926. The Board’s decision was filed of record on June 30, 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 June 30, 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 July 31, 2009.



Roll Call Number

Agenda Item Number

75

Date July 13, 2009

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

Moved by _____ to adopt.

(Council Communication No. 09- 486)

APPROVED AS TO FORM:

Michael F. Kelley
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VCLASSIS				
TOTAL				
MOTION CARRIED			APPROVED	

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.

Mayor

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.

IN THE MATTER OF THE APPEAL FROM

DOCKET: **ZON2009-00044**

STEVE WASSON

MEETING DATE: **JUNE 24, 2009**

ON PROPERTY LOCATED AT

2511 COTTAGE GROVE AVENUE

SUBJECT OF THE APPEAL

Proposal: Expansion of a restaurant allowed by a previously approved Use Variance to allow construction of a 17-foot by 13-foot (221 square feet) canopy and a 17-foot by 20-foot (340 square feet) outdoor service area that would be within 10 feet of the north side property line. *(On April 22, 2009, the Board granted an appeal to allow construction of a 17-foot by 13-foot canopy and a 17-foot by 15-foot outdoor service area that would be within 18 feet of the north property line.)*

Appeal(s): Amend Use Variance to allow expansion of the existing restaurant and catering business.

Required by City Code Section 134-412

FINDING

Granting the Amendment to the Use Variance 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. Furthermore, the visual impact of an additional 5 feet of outdoor service area is minimal. The fence surrounding the outdoor seating area would adequately safeguard the health, safety and welfare of occupants of the adjoining and surrounding property.

STEVE WASSON
2511 COTTAGE GROVE AVENUE
ZON2009-00044

JUNE 24, 2009

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal to amend a Use Variance to allow expansion of the existing restaurant and catering business allowed by a previously approved Use Variance to allow construction of a 17-foot by 13-foot (221 square feet) canopy and a 17-foot by 20-foot (340 square feet) outdoor service area that would be within 10 feet of the north side property is **granted subject to the following conditions:**

1. Any covered patio or non-covered patio shall be constructed in substantial compliance with the submitted site sketch and elevations.
2. Any covered patio shall be constructed with building materials that are compatible with the existing structure.
3. The hours of operation shall be limited to between 7:00 AM and 10:00 PM.
4. Any covered or non-covered patio shall be constructed in compliance with a Site Plan as approved by the Permit and Development Center.
5. 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 4-0 with all Board members present voting in favor thereof.

Signed and entered into record on June 30, 2009.



 Thomas Clarke, Sr., Vice Chair



 Bert Drost, Secretary