

November 21, 2011

Date

WHEREAS, at its October 26, 2011 hearing, with a subsequent Decision and Order entered into the record on November 2, 2011, the City of Des Moines Zoning Board of Adjustment (“Board”) approved an application for a variance from American Enterprise Bank for use of property located at 3733 Easton Boulevard as a gas station/convenience store with sales of wine and beer; and

WHEREAS, pursuant to Municipal Code Section 134-954(a), sales of wine and beer at a gas station/convenience store in the C-1 district requires at least 75 feet of separation from any church, school, public park or licensed child care center; and

WHEREAS, the property is located adjacent to (within 0 feet of) the Four Mile Community Center, which is considered a public park; and

WHEREAS, in accordance with Municipal Code Section 134-65(d), if the Board grants a variance to a separation requirement, the Decision and Order shall be referred to the City Council for its review pursuant to Iowa Code Section 414.7. The City Council may review such decision within 30 days after the decision is filed. After such review, the City Council may remand the decision to the Board for further study. If the City Council does not act to review the decision within 30 days after it is filed, the decision shall become effective on the 31st day. If the City Council declines to remand the decision, the decision shall become final on the date of the council’s action. If the City council remands a decision to the Board, the effective date of the decision is delayed for 30 days from the date of remand.

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

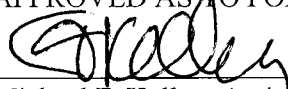
_____ The City Council remands the Decision and Order to the Zoning Board of Adjustment for further study. The effective date of the Zoning Board of Adjustment’s decision will be deferred for 30 days from the date of remand.

_____ The City Council takes no action to review the Decision and Order. The decision of the Zoning Board of Adjustment will become final on December 3, 2011.

_____ The City Council declines to remand the decision to the Zoning Board of Adjustment. The decision will become final on the date of the Council’s action.

APPROVED AS TO FORM:

Moved by _____ to adopt.



Michael F. Kelley, Assistant City Attorney

(Council Communication No. 11-708)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

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.

MOTION CARRIED

APPROVED

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.

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: ZON 2011-00179
AMERICAN ENTERPRISE BANK	:	
ON PROPERTY LOCATED AT	:	PUBLIC HEARING: OCTOBER 26, 2011
3733 EASTON BOULEVARD	:	

SUBJECT OF THE APPEAL

Proposal: Use of the 42-foot by 62-foot (2,604 square feet) square foot building for a gas station/convenience store with sales of wine and beer. The property is located adjacent to (within 0 feet of) the Four Mile Community Center, which is considered a public park.

Appeal(s): Variance of the zoning provision that requires a gas station/convenience store in the "C-1" District to have at least 75 feet of separation from any church, school, public park, or licensed child care center in order to see wine and beer.

Required by City Code Section 134-954(a)

FINDING

Granting the requested Variance would be consistent with the intended spirit and purpose of the Zoning Ordinance and in harmony with the essential character of the neighborhood. The Board finds that the appellant has demonstrated a hardship would exist if the sale of beer and wine were not permitted, as the land in question could not yield a reasonable return without the sale of beer and wine as an accessory to a convenience store. Furthermore, the impact on the adjoining Four Mile Community Center public park would be minimal given the parking lot that provides a buffer between the convenience store and all outdoor recreation areas within the park.

AMERICAN ENTERPRISE BANK
3733 EASTON BOULEVARD
ZON 2011-00179

OCTOBER 26, 2011


DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Variance of the zoning provision that requires a gas station/convenience store in the "C-1" District to have at least 75 feet of separation from any church, school, public park, or licensed child care center in order to sell wine and beer, to allow use of the 42-foot by 62-foot (2,604 square feet) square foot building for a gas station/convenience store with sales of wine and beer, while being located adjacent to (within 0 feet of) the Four Mile Community Center, which is considered a public park, is **granted. Any business selling wine and beer shall operate in accordance with a liquor license obtained through the Office of the City Clerk as approved by the City Council.**

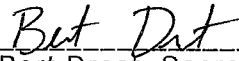
VOTE

The foregoing Decision and Order was adopted by a vote of 5-1 with Board members Clarke, Clayton, Gray, Pins, and Smith voting in favor thereof and Board member Westergaard voting in opposition thereto.

Signed and entered into record on November 2, 2011.



Bill Gray, Chair



Bert Drost, Secretary