

January 27, 2012

Date.....

WHEREAS, at its December 21, 2011 hearing, with a subsequent Decision and Order entered into the record on December 29, 2011, the City of Des Moines Zoning Board of Adjustment ("Board") approved an application for a variance from Vom Fass in the Shops at Roosevelt for use of property located at 833 42<sup>nd</sup> Street for use as a limited retail establishment with sales of alcoholic liquor; and

WHEREAS, pursuant to Municipal Code Section 134-954(a), sales of alcoholic liquor at a limited retail sales establishment in an NPC district requires at least 150 feet of separation from any church, school, public park or licensed child care center; and

WHEREAS, the property is located within 70 feet of Hubbell Elementary School property at 800 42<sup>nd</sup> Street; 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 31<sup>st</sup> 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.

WHEREAS, on January 23, 2012 by Roll Call No. 12-0131, the City Council received and filed comments concerning the above-described application for a variance and continued the matter to the special City Council meeting to be held on January 27, 2012 at 4:15 p.m. in Council Chambers, City Hall, 400 Robert D. Ray Drive in Des Moines, Iowa.

Date..... January 27, 2012

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 January 29, 2012.

\_\_\_\_\_ 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.

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

APPROVED AS TO FORM:

  
 \_\_\_\_\_  
 Michael F. Kelley  
 Assistant City Attorney

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

★ Roll Call Number

12-0131

Agenda Item Number

~~12-0131~~

January 23, 2012

Date

WHEREAS, at its December 21, 2011 hearing, with a subsequent Decision and Order entered into the record on December 29, 2011, the City of Des Moines Zoning Board of Adjustment ("Board") approved an application for a variance from Vom Fass in the Shops at Roosevelt for use of property located at 833 42<sup>nd</sup> Street for use as a limited retail establishment with sales of alcoholic liquor; and

WHEREAS, pursuant to Municipal Code Section 134-954(a), sales of alcoholic liquor at a limited retail sales establishment in an NPC district requires at least 150 feet of separation from any church, school, public park or licensed child care center; and

WHEREAS, the property is located within 70 feet of Hubbell Elementary School property at 800 42<sup>nd</sup> Street; 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 31<sup>st</sup> 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 January 29, 2012.

\_\_\_\_\_ 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 *Hensley* to receive and file comments and continue to the special City Council meeting on 1-27-12 at 4:15 PM

(Council Communication No. 12034)

Michael F. Kelley, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

*T. M. Franklin Cownie*  
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.

*Diane Rauh*

City Clerk