

.....  
**Date** November 18, 2013

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING  
A VARIANCE TO THE REQUIRED 75 FOOT SEPARATION FROM ANY  
CHURCH, SCHOOL, PUBLIC PARK OR LICENSED CHILD CARE CENTER,  
TO ALLOW USE OF PROPERTY AT 1000 THOMAS BECK ROAD AS A  
RESTAURANT WITH LIQUOR, WINE AND BEER SALES

WHEREAS, on October 23, 2013, the Zoning Board of Adjustment voted 4-0 to approve an application from Benskin Bros., Inc., for a variance of the zoning provision that requires any new restaurant selling liquor, wine or beer to have a 75 foot separation from any church, school, public park or licensed child care center, to allow the property at 1000 Thomas Beck Road to be used as a restaurant that sells liquor, wine and beer; and,

WHEREAS, Iowa Code §414.7 and Section 134-65(d) of the Zoning Ordinance require that any variance granted by the Board from a separation requirement be forwarded to the City Council for its review, and the City Council may remand the variance 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.
- B The City Council takes no action to review the Decision and Order. The decision of the Board will become final on November 28, 2013.
- 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. 13- 556 )

MOVED by \_\_\_\_\_ to receive and file the staff report and comments received, and to adopt alternative \_\_\_\_\_, above.

★ **Roll Call Number**

**Agenda Item Number**

58

Date November 18, 2013

-2-

FORM APPROVED:

*Roger K. Brown*

Roger K. Brown

Assistant City Attorney

G:\USERS\RKBrown\Rog Docs\Zoning\Bd of Adj\Use Variance\Benskin Bros-RC.doc

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MOORE				
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 2013-00168</b>
	:	
<b>BENSKIN BROS, INC.</b>	:	
	:	PUBLIC HEARING: <b>OCTOBER 23, 2013</b>
ON PROPERTY LOCATED AT	:	
	:	
<b>VICINITY OF 1000 THOMAS BECK ROAD</b>	:	

SUBJECT OF THE APPEAL

**Proposal:** Conversion of the existing 80-foot by 125-foot (10,000 square feet) structure to a restaurant use that would sell liquor, wine, and beer. The site is within 50 feet of MacRae Park. The site currently includes 30 off-street parking spaces and the appellant indicates at least 37 additional parking spaces would be provided within 2 years.

**Appeal(s):** Variance of the provision that requires any new restaurant selling liquor, wine, or beer to have at least 75 feet of separation from any church, school, public park, or licensed child care facility.

Variance of 37 parking spaces less than the minimum required 67 off-street parking spaces required for 10,000 square feet of restaurant area (1 space per 150 square feet).

*Required by City Code Sections 134-954 & 134-1377(a)(23)*

FINDING

Granting the Variances would be consistent with the intended spirit and purpose of the Zoning Ordinance and within the essential character of the area. The appellant has demonstrated that a hardship exists in that they are unable to acquire additional land necessary to achieve a 75-foot separation distance from the back portion of the public park, which is necessary for a restaurant to sell liquor, wine, or beer. The appellant has demonstrated that they could potentially meet the separation requirement by replatting the parcel in order to create a 25-foot wide strip along the east site boundary. However, the Board finds the benefits of such would be negligible, as the resulting 25 strip of land would not be readily useable and the restaurant building and parking lot would be no further from the nearby public park. Furthermore, the property contains sufficient vacant ground to accommodate any overflow from the paved parking lot and it is reasonable to allow the appellant two years to provide the additional paved off-street parking.

If at any time the Zoning Enforcement Officer determines that operation of the business or parking associated with the business constitutes a nuisance, the Variance shall be subject to reconsideration by the Board.

BENSKIN BROS, INC.  
VICINITY OF 1000 THOMAS BECK ROAD  
ZON 2013-00168

OCTOBER 23, 2013

DECISION AND ORDER

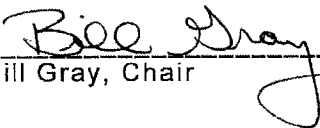
*WHEREFORE, IT IS ORDERED* that the appeals for a Variance of the provision that requires any new restaurant selling liquor, wine, or beer to have at least 75 feet of separation from any church, school, public park, or licensed child care facility and a Variance of 37 parking spaces less than the minimum required 67 off-street parking spaces required for 10,000 square feet of restaurant area (1 space per 150 square feet), to allow conversion of the existing 80-foot by 125-foot (10,000 square feet) structure to a restaurant use that would sell liquor, wine, and beer, while providing 30 off-street parking spaces, are **granted, subject to the following conditions.**


1. The minimum required number of paved off-street parking spaces (calculated as 1 space per 150 square feet of the restaurant use) shall be provided within two (2) years by October 29, 2015.
2. The Variance shall be subject to reconsideration if the Zoning Enforcement Officer determines that operation of the business or parking associated with the business constitutes a nuisance.

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 October 29, 2013.

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

  
 \_\_\_\_\_  
 Erik Lundy, Secretary