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Date December 9, 2013

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION TO GRANT A
VARIANCE TO A SEPARATION DISTANCE REQUIREMENT AND A
CONDITIONAL USE PERMIT TO ALLOW USE OF PROPERTY AT 727 SE 14th
STREET AS A GAS STATION/CONVENIENCE STORE WITH ALCOHOLIC
LIQUOR SALES.

WHEREAS, on November 20, 2013, the Zoning Board of Adjustment voted 4-2 to approve an application from USA Petroleum, LLC, for a variance from the zoning provision that requires any gas station/convenience store which sells alcoholic liquor to have a 500 foot separation from any church, school, public park or licensed child care center, and for a Conditional Use Permit, to allow the gas station/convenience store at 727 SE 14th Street to sell alcoholic liquor within 190 feet of a church; and,

WHEREAS, Iowa Code §414.7 and Section 134-65(d) of the Zoning Ordinance require that any variance from a separation requirement granted by the Board 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 use 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 December 26, 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- 582)

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



Roll Call Number

Agenda Item Number

49

Date December 9, 2013

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FORM APPROVED:

Roger K. Brown

Roger K. Brown

Assistant City Attorney

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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: ZON 2013-00180
	:	
USA PETROLEUM, LLC	:	
	:	PUBLIC HEARING: NOVEMBER 20, 2013
ON PROPERTY LOCATED AT	:	
	:	
727 SOUTHEAST 14TH STREET	:	

SUBJECT OF THE APPEAL

Proposal: The Conditional Use Permit is sought to allow the existing gas station/convenience store to sell alcoholic liquor. Since the business is operating as a gas station/convenience store, no more than 40% of revenue would be allowed to be derived from the sale of liquor, wine, beer, and tobacco products. The subject property is within 190 feet of the church at 715 Southeast 14th Court.

Appeal(s): Conditional Use Permit for a gas station/convenience seeking to sell alcoholic liquor.

Variance of the provision that requires any gas station/convenience seeking to sell alcoholic liquor have 500 feet of separation from any church, school, public park, or licensed child care facility.

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

FINDING

Granting the requested Conditional Use Permit to allow the gas station/convenience store to sell alcoholic liquor within a 16-foot long cabinet behind the counter would be consistent with the intended spirit and purpose of the Zoning Ordinance. As a gas station/convenience store, no more than 40% of revenue would be allowed to be derived from the sale of alcoholic liquor, wine, beer, and tobacco products. The appellant has satisfied the criteria necessary for granting a Variance to the separation requirement. The appellant has demonstrated that an unnecessary hardship exists, as the gas station has not been able to yield a reasonable return even after introducing multiple accessory uses, including selling fried chicken and mobile phones. The existing underground fuel tanks also pose a significant liability for the appellant if the business closes and the site ceases to sell fuel. The Board finds that the sale of alcoholic liquor, in addition to the already permitted sale of wine and beer, would have a minimal impact on surrounding properties so long as any liquor available for sale is kept behind the counter where it is accessible only to store employees. Furthermore, the location of the site along the Southeast 14th Street commercial corridor and on the fringe on an industrial area adequately safeguards the health, safety and general welfare of persons residing in the surrounding area. The Conditional Use Permit shall be subject to amendment or revocation if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use Permit.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeals for a Conditional Use Permit for a gas station/convenience seeking to sell alcoholic liquor and a Variance of the provision that requires any gas station/convenience seeking to sell alcoholic liquor have 500 feet of separation from any church, school, public park, or licensed child care facility, to allow the existing gas station/convenience store to sell alcoholic liquor, where no more than 40% of revenue would be allowed to be derived from the sale of liquor, wine, beer, and tobacco products, are **granted with the condition that any liquor available for sale shall be kept within a maximum 16-foot by 2-foot (32 square feet) cabinet located behind the counter where it is accessible only to store employees.**

Furthermore, as a gas station/convenience store, no more than 40% of revenue would be allowed to be derived from the sale of liquor, wine, beer, and tobacco products. Any sale of alcohol shall be in accordance with a liquor license obtained through the Office of the City Clerk as approved by the City Council. The Conditional Use Permit shall be subject to amendment or revocation if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use Permit.


Furthermore, in accordance with City Code Section 134-954(c), any Conditional Use Permit granted by the Zoning Board of Adjustment for the use of a premises for the sale of alcoholic liquor, wine and beer, shall be subject to the following general conditions:

1. Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.
2. The business shall comply with article IV of chapter 42 of this Code pertaining to noise control. The business shall have no outside speakers or amplified sound except when used in compliance with a type E sound permit.
3. Any such business must comply with the following requirements:
 - (a) Every limited food sales establishment, limited retail sales establishment and gas station/convenience store shall display alcoholic liquor only in a locked case or behind a counter accessible only to employees. Any other business selling alcoholic liquor for off premises consumption shall either: i) display alcoholic liquor only in a locked case or behind a counter accessible only to employees; ii) employ an electronic security cap or tag system on all containers of alcoholic liquor on display; or iii) have more than one employee on duty at all times the business is open to the public.
 - (b) Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
 - (c) Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
 - (d) Not dispense alcoholic beverages from a drive-through window.
4. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
5. The conditional use permit is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the conditional use permit.
6. If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions set forth in the conditional use permit, the zoning enforcement officer may apply to the board to reconsider the issuance of the conditional use permit for such business. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such business at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board finds that the operation of such business exhibits a pattern of violating the conditions set forth in the conditional use permit, the board shall have the authority to amend or revoke the conditional use permit.

VOTE

The foregoing Decision and Order was adopted by a vote of 4-2, with Board members Gray, Pins, Smith, and Westergaard voting in favor thereof, and Board members Christensen and Mortice voting in opposition thereto.

Signed and entered into record on November 26, 2013.



Bill Gray, Chair



Bert Drost, Secretary