

Date June 9, 2014

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION
GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW
PROPERTY AT 2428 SW 9TH STREET TO BE USED AS A LIQUOR STORE**

WHEREAS, on May 5, 2014, by Roll Call Nos. 14-0727 to 14-0729, the City Council voted to adopt and approve the rezoning of property owned by Jerry Hoots in the vicinity of 2428 SW 9th Street from the “C-1” Neighborhood Retail Commercial District to a Limited “C-2” General Retail and Highway Oriented Commercial District classification, to allow for use as a liquor store for sale of alcoholic beverages within that portion of the property locally known as 2424 SW 9th Street; and

WHEREAS, on May 28, 2014, the Zoning Board of Adjustment voted 4-0 to approve an application from Jerry Hoots for a Conditional Use Permit for use of the property located at 2428 SW 9th Street as a liquor store selling alcoholic liquor, wine, and/or beer, and for a variance of the separation requirement that the premises of any liquor store seeking to sell alcoholic liquor be separated by at least 500 feet from any church, school, public park or licensed child care facility, as set forth in Municipal Code Section 134-954(a); and

WHEREAS, the premises at issue are located within 190’ of Lincoln High School property that is used for a parking lot; 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 of the separation requirement 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 July 3, 2014.
- 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.

★ Roll Call Number

Agenda Item Number

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Date June 9, 2014

(Council Communication No. 14-279)

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

APPROVED AS TO FORM:

Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRAY				
HENSLEY				
MAHAFFEY				
GATTO				
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 2014-00073
	:	
JERRY HOOTS	:	
	:	PUBLIC HEARING: MAY 28, 2014
ON PROPERTY LOCATED AT	:	
	:	
2428 SOUTHWEST 9TH STREET	:	

SUBJECT OF THE APPEAL

Proposal: The Conditional Use Permit is sought to allow the business to continue selling alcoholic liquor, wine, and beer. The business is considered a liquor store since more than 40% of revenue is derived from the sale of liquor, wine, beer, and tobacco products. The business' premise is within 190 feet of the property associated with Lincoln High School located immediately to the west.

Appeal(s): Conditional Use Permit for a liquor store selling alcoholic liquor, wine, and/or beer.

Variance of the provision that requires any liquor store seeking to sell alcoholic liquor, wine, and beer to 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 Conditional Use Permit and Variance would be consistent with the intended spirit and purpose of the Zoning Ordinance and in harmony with the essential character of the neighborhood so long as the business operates in compliance with all conditions of approvals. The appellant faces an unnecessary hardship in utilizing the existing building, given its limited size and irregular shape. The business has been operating for many years without any issues. If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use Permit, the Zoning Enforcement Officer may apply to the Zoning Board of Adjustment to reconsider the issuance of the Conditional Use Permit for such business.

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JERRY HOOTS
2428 SOUTHWEST 9TH STREET
ZON 2014-00073

MAY 28, 2014

DECISION AND ORDER

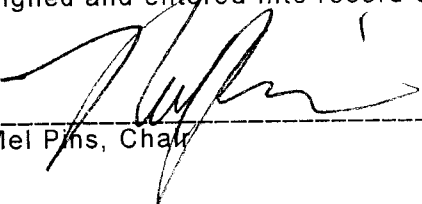
WHEREFORE, IT IS ORDERED that the appeals for a Conditional Use Permit for a liquor store selling alcoholic liquor, wine, and/or beer, and a Variance of the provision that requires any liquor store seeking to sell alcoholic liquor, wine, and beer to have 500 feet of separation from any church, school, public park, or licensed child care facility, to allow the business to continue selling alcoholic liquor, wine, and beer, where the business is considered a liquor store since more than 40% of revenue is derived from the sale of liquor, wine, beer, and tobacco products, and where the business' premise is within 190 feet of the property associated with Lincoln High School located immediately to the west, are **granted** subject to the following conditions:

1. Any business selling liquor, wine, and/or beer shall operate in accordance with a liquor license obtained through the Office of the City Clerk as approved by the City Council.
2. The business shall display alcoholic liquor only in a locked case or behind a counter accessible only to employees.
3. The business shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
4. The business shall institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
5. The business shall not dispense alcoholic beverages from a drive-through window.
6. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of the business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
7. 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.
8. Any renovation on the site shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the Permit and Development Center.
9. If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use Permit, the Zoning Enforcement Officer may apply to the Zoning Board of Adjustment to reconsider the issuance of the Conditional Use Permit for such business


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 2, 2014.



 Mel Pms, Chair



 Bert Drost, Secretary