

Date September 8, 2014

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION
GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW A
RESTAURANT SELLING WINE AND BEER ON THE PROPERTY AT
1951 INDIANOLA AVENUE**

WHEREAS, on August 27, 2014, the Zoning Board of Adjustment voted 7-0 to approve an application from Michael Leo (applicant) for a variance of the separation requirement that the premises of any restaurant seeking to sell wine and beer be separated by at least 75 feet from any church, school, public park or licensed child care facility, as set forth in Municipal Code Section 134-954(a), to allow for a restaurant selling wine and beer on the real property locally known as 1951 Indianola Avenue (“Property”); and

WHEREAS, the Property is located within 0’ of a public park use (Columbus Park); and

WHEREAS, the Board found that the proposed restaurant selling wine and beer on the Property would not alter the essential character of the locality of the land in question, as the public recreational facilities at Columbus Park have been moved to the northern portion of the Park at least 180’ from the Property, that the Property’s lot line is physically separated by extensive fencing from the Park, and that the applicant demonstrated a hardship insofar as previous restaurants operating on the Property have been unable to sustain a viable business operation without the sale of wine or beer; 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 September 26, 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

45

Date September 8, 2014

(Council Communication No. 14- 445)

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				
GATTO				
GRAY				
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 2014-00130
MICHAEL LEO	:	
ON PROPERTY LOCATED AT	:	PUBLIC HEARING: AUGUST 27, 2014
1951 INDIANOLA AVENUE	:	

SUBJECT OF THE APPEAL

Proposal: Reuse of the existing 1,560-square foot building for a restaurant selling wine and beer, where no more than 50% of gross receipts from sales on the premises may be derived from the sale of wine and beer. The site is within 0 feet of a public park (Columbus Park).

Appeal(s): Variance of the provision that requires any restaurant selling wine and/or beer to provide at least 75 feet of separation from any church, school, public park, or licensed childcare facility.

Required by City Code Section 134-954(a)

FINDING

Granting the Variance would be consistent with the intended spirit and purpose of the Zoning Ordinance and will not alter the essential character of the locality of the land in question. The impact would be minimal since the portion of Columbus Park that is within 75 feet of the subject property is seldom used by the public since the majority of park features, including playground, splash pad, and tennis courts, are located within the northern portion of the park and at least 180 feet from the subject property, and the subject property is separated from the park by extensive fencing. Furthermore, the impacts of the proposed wine and beer sales would be minimal since it would occur only as part of a restaurant use, where no more than 50% of gross receipts from sales on the premises may be derived from the sale of wine and beer. The appellant has adequately demonstrated that a hardship exists in that recent restaurants that have operated on the premise have been unable to sustain a viable business operation without the sale of beer or wine.

MICHAEL LEO
1951 INDIANOLA AVENUE
ZON 2014-00130

AUGUST 27, 2014

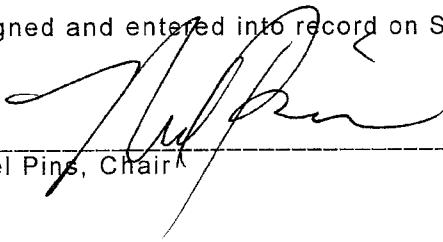
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Variance of the provision that requires any restaurant selling wine and/or beer to provide at least 75 feet of separation from any church, school, public park, or licensed childcare facility, to allow reuse of the existing 1,560-square foot building for a restaurant selling wine and beer, where the site is within 0 feet of a public park (Columbus Park), is **granted. As a restaurant, at least 50 percent of the gross receipts must be derived from the sale of prepared food and food-related services**

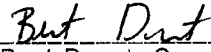
VOTE

The foregoing Decision and Order was adopted by a vote of 7-0, with all Board members voting in favor thereof.

Signed and entered into record on September 2, 2014.



Mel Pins, Chair



Bert Drost, Secretary