



**Date** March 7, 2016

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION  
GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW A  
GAS STATION/CONVENIENCE STORE ON THE PROPERTY AT  
2930 HICKMAN ROAD TO SELL WINE AND BEER**

**WHEREAS**, on February 24, 2016, the Zoning Board of Adjustment voted 5-1 to approve an application from Git-N-Go Convenience Stores, Inc. (applicant) for a variance of the separation requirement that any Gas Station/Convenience Store selling wine and beer in a "C-1" Neighborhood Retail Commercial District be separated by at least 150 feet from any school, to allow for continued use of an existing 2,752 square foot building with a future 292 square foot building addition as a Gas Station/Convenience Store selling wine and beer on the real property locally known as 2930 Hickman Road; and

**WHEREAS**, the proposed Gas Station/Convenience Store use is within approximately 70 feet of Monroe Elementary School; and

**WHEREAS**, the Board found that the appellant faces an unnecessary hardship in utilizing the property in any manner other than the gas station/convenience store usage, as it has been designed and constructed for such use and has underground fuel storage tanks, that beer and wine sales accessory to the gas station use are necessary for the applicant to have a successful business, that the impact to the school use would be minimal due to the separation and buffering of the school entrance and site security, and that the previously operated gas station at this location caused no known negative impact to the surrounding neighborhood; 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 March 26, 2016.



Roll Call Number

Agenda Item Number

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Date March 7, 2016

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. 16- III )

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

APPROVED AS TO FORM:

Glenna K. Frank

Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
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.

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IN THE MATTER OF THE APPEAL FROM : DOCKET: **ZON 2016-00030**  
: :  
**GIT-N-GO CONVENIENCE STORES, INC.** : :  
: : PUBLIC HEARING: **FEBRUARY 24, 2016**  
ON PROPERTY LOCATED AT : :  
: :  
**2930 HICKMAN ROAD** : :

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SUBJECT OF THE APPEAL

**Proposal:** Use of an existing 2,752-square foot building, with a future 292-square foot building addition, for a Gas Station/Convenience Store selling wine and beer. As a Gas Station/Convenience Store in a "C-1" District, no more than 40% of gross receipts from sales on the premises may be derived from the sale of wine, beer, and tobacco products. The site is within 70 feet of an existing school (Monroe Elementary School) at 3015 Francis Avenue.

**Appeal(s):** Variance of the provision that requires any Gas Station/Convenience Store selling wine and beer in a "C-1" Neighborhood Retail Commercial District to be separated by at least 150 feet from any school.

*Required by City Code Section 134-954*

FINDING

Granting the requested appeal is within the intent and spirit of the Zoning Ordinance since the appellant has satisfied the criteria necessary for granting the requested Variance to the separation distance requirement. The appellant faces an unnecessary hardship in utilizing the property. A gas station convenience store is the most reasonable economic use of the property since it has been designed and constructed for such use and since it has underground fuel storage tanks. The appellant has indicated that it is reasonably necessary to have beer and wine sales accessory to the gas station use in order to have a successful business. The impact of the beer and wine sales on the nearby school use would be minimal since the entrance to the school is on the opposite side of the school building. The business is separated and buffered from the school building by 30<sup>th</sup> Street, a retaining wall, and a chain link fence. Furthermore, the previous gas station convenience store that operated on the subject property also sold beer and wine with no known negative impacts on the surrounding neighborhood.

GIT-N-GO CONVENIENCE STORES, INC  
2930 HICKMAN ROAD  
ZON 2016-00030

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FEBRUARY 24, 2016

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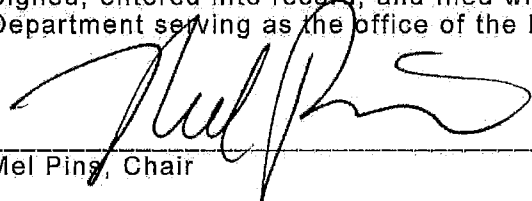
DECISION AND ORDER

*WHEREFORE, IT IS ORDERED* that the appeal for a Variance of the provision that requires any Gas Station/Convenience Store selling wine and beer in a "C-1" Neighborhood Retail Commercial District to be separated by at least 150 feet from any school, to allow use of an existing 2,752-square foot building with a future 292-square foot building addition, for a gas station/convenience store selling wine and beer, where the site is within 70 feet of an existing school (Monroe Elementary School) at 3015 Francis Avenue, is **granted. As a gas station/convenience store in a "C-1" District, no more than 40% of gross receipts from sales on the premises may be derived from the sale of wine, beer, and tobacco products.**

VOTE

The foregoing Decision and Order was adopted by a vote of 5-1, with Board members Gaer, Smith, Pins, Blake and Carlson voting in favor thereof and Board member Mortice voting in opposition thereto.

Signed, entered into record, and filed with the City of Des Moines Community Development Department serving as the office of the Board, on March 1, 2016.

  
\_\_\_\_\_  
Mel Ping, Chair

  
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Bert Drost, Secretary