

Date September 12, 2016

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

WHEREAS, on August 24, 2016, the Zoning Board of Adjustment voted 6-0 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") to expand to add a 211-square foot patio area along the east façade of the existing 1,560-square foot building; and

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

WHEREAS, the Board found that the proposed patio affiliated with the existing 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, the Property's lot line is physically separated by extensive fencing from the Park, 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 that the intent of the separation distance requirements of the Zoning Code have been met; 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 22, 2016.

★ Roll Call Number

Agenda Item Number

76

Date September 12, 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. 16 496)

MOVED by _____ 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 | | | | |
| MOORE | | | | |
| WESTERGAARD | | | | |
| TOTAL | | | | |
| MOTION CARRIED | APPROVED | | | |

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.

Mayor

City Clerk

7p



**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** of this Order will be void and of no further force and effect.

IN THE MATTER OF THE APPEAL FROM
MICHAEL LEO (DBA STRUDL HAUS, LLC)
ON PROPERTY LOCATED AT
1951 INDIANOLA AVENUE

DOCKET: ZON 2016-00121
PUBLIC HEARING: AUGUST 24, 2016

SUBJECT OF THE APPEAL

Proposal: Expansion of the existing restaurant with wine and beer sales, to add a 211-sqaure foot patio area along the east façade of the existing 1,560-square foot building. The property is within 0 feet of the adjoining Columbus Park (public park) to the north and east.

Appeal(s): Amend Variance of the provision that requires any restaurant selling wine and/or beer to have at least 75 feet of separation from any church, school, public park or licensed day care facility; as granted by the Zoning Board of Adjustment on August 27, 2014 (ZON2014-00130).

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

FINDING

Granting the amendment to the Variance would be consistent with the intended spirit and purpose of the Zoning Ordinance and would not alter the essential character of the locality of the land in question. The impact of the proposed patio as a component of the existing restaurant use 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 proposed patio is separated from the park by the existing building and extensive fencing. Furthermore, the impacts of the proposed patio would be minimal since any sale of wine and beer 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 other restaurants that have operated on the premise prior to Strudl Haus have been unable to sustain a viable business operation without the sale of beer or wine. The Board further finds that the appellant has met the intent of the separation distance requirements of the Zoning Code.

76

MICHAEL LEO (DBA STRUDL HAUS, LLC)
1951 INDIANOLA AVENUE
ZON 2016-00121

AUGUST 24, 2016

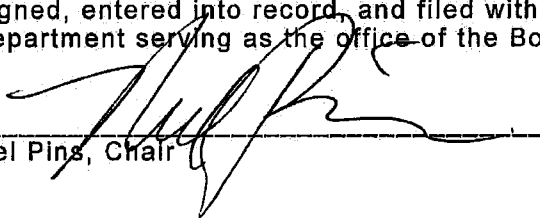
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal to amend a Variance of the provision that requires any restaurant selling wine and/or beer to have at least 75 feet of separation from any church, school, public park or licensed day care facility, as granted by the Zoning Board of Adjustment on August 27, 2014 (ZON2014-00130), to allow expansion of the existing restaurant with wine and beer sales, to add a 211-sqaure foot patio area along the east façade of the existing 1,560-square foot building, where the property is within 0 feet of the adjoining Columbus Park (public park) to the north, is **granted** in accordance with the following conditions which amend and replace the conditions set forth in the August 27, 2014 Decision and Order (ZON2014-00130): (1) any sale of wine and beer on the premise shall only occur as part of a restaurant use, and (2) no more than 50% of gross receipts from sales on the premises may be derived from the sale of wine and beer.


VOTE

The foregoing Decision and Order was adopted by a vote of 6-0, with all Board members voting in favor thereof.

Signed, entered into record, and filed with the City of Des Moines Community Development Department serving as the office of the Board, on August 30, 2016.



Mel Pins, Chair



Bert Drost, Secretary