

Date June 12, 2017

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION
GRANTING AN AMENDMENT TO USE VARIANCE TO ALLOW A RESTAURANT SELLING
ALCOHOLIC LIQUOR, WINE, AND BEER ON THE PROPERTY AT
2301 SOUTHWEST 9TH STREET**

WHEREAS, on March 25, 2015, the Zoning Board of Adjustment voted 5-2 to approve an application from Wayne Russell, LLC (applicant) for a use variance to allow real property locally known as 2301 Southwest 9th Street to continue to be used as a restaurant selling alcoholic liquor, wine and beer, subject to certain conditions set forth in the Decision and Order of the Board; and

WHEREAS, on April 6, 2015, by Roll Call No. 15-0631, City Council received and filed the staff report and comments regarding said use variance and declined to remand the decision to the Zoning Board of Adjustment, resulting in the Board's decision to approve the use variance becoming final on April 6, 2015; and

WHEREAS, on March 23, 2016, the Zoning Board of Adjustment voted 7-0 to approve an application from Wayne Russell, LLC (applicant) to amend said use variance to allow an additional year (until November 15, 2016) to prove compliance with the auditing requirements for a restaurant due to the change in ownership of the business tenant, and to allow an outdoor patio along the west side of the building so long as no speakers or amplified sound occur thereon; and

WHEREAS, on April 11, 2016, by Roll Call No. 16-0610, City Council received and filed the staff report and comments regarding said use variance and remanded the decision to the Zoning Board of Adjustment for further study; and

WHEREAS, on April 27, 2016, the Zoning Board of Adjustment voted 6-0 to revise the March 23, 2016 Decision and Order and require any outdoor patio be completely removed immediately if the property is no longer used as a restaurant; and

WHEREAS, on December 21, 2016, the Zoning Board of Adjustment voted 7-0 to approve an application from Wayne Russell, LLC (applicant) to amend said use variance and modify Conditions #2 and #4 thereof to allow an additional four-month period (until March 15, 2017) to prove compliance with the auditing requirements for a restaurant due to a second change in ownership of the business tenant, and to allow an additional nineteen-month period (until December 1, 2017) to substantially improve the existing parking lot in accordance with a Site Plan as approved by the City's Permit and Development Center with further requirements as set forth in the Board's Decision and Order; and

WHEREAS, on January 9, 2017, by Roll Call No. 17-0066, the City Council received and filed the staff report and comments regarding said use variance and declined to remand the decision to the Zoning Board of Adjustment, resulting in the Board's decision to approve the use variance becoming final on January 9, 2017; and

WHEREAS, on May 24, 2017, the Zoning Board of Adjustment voted 6-0 to approve an application from SDW, LLC (applicant) to amend said use variance and modify Condition #3 to allow the outdoor patio or seating area to be located along the north side of the building, rather than along the west side of the

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building, and subject to further requirements on patio construction and use as set forth in the Board's Decision and Order; and

WHEREAS, Iowa Code §414.7 and Section 134-65(d) of the Zoning Ordinance require that any use variance granted by the Board be forwarded to the City Council for its review, and the City Council may remand the use variance 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 1, 2017.
- 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. 17- 467)

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

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SDW, LLC
2301 SOUTHWEST 9TH STREET
ZON2017-00078

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MAY 24, 2017

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the conditions of approval for Use Variance of the permitted uses in a "C-0" Commercial-Residential District, as originally granted by the Board on March 25, 2015 (ZON2015-00026) and amended by the Board on both April 27, 2016 (ZON2016-00040) and December 21, 2016 (ZON2016-00195), in order to allow construction of a 502-square foot patio to the north of the building, are **amended as follows:**

1. The sale of alcoholic liquor, wine, and beer shall only be ancillary to restaurant use, where at least 50 percent of the gross receipts must be derived from the sale of prepared food and food-related services.
2. Prior to March 15, 2017, the business shall submit a statement prepared and verified by a certified public accountant to the Zoning Enforcement Officer that demonstrates the percent of the gross receipts were derived from the sale of prepared food and food-related services during the six (6) month period beginning September 1, 2016 and ending February 28, 2017. The results of the audit shall be shared with the Zoning Board of Adjustment members.
3. Any outdoor patio or outdoor seating area for the restaurant shall be in accordance with the following:
 - a. Any patio shall be located along the north side of the building in general conformance with the submitted sketch.
 - b. Any patio shall be constructed in accordance with all Building Codes with issuance of all necessary permits by the City's Permit & Development Center.
 - c. There shall be no outdoor speakers, amplified sound, or live entertainment.
 - d. Any patio shall not be used after 10:00 PM.
 - e. Any patio shall be completely removed immediately if the property is no longer used as a restaurant.
4. Prior to December 1, 2017, the existing parking lot shall be substantially improved in accordance with a Site Plan as approved by the City's Permit and Development Center. In addition to the standard Site Plan requirements, the following shall apply:
 - a. The Site Plan shall include a row of shrubs along the east and south perimeters of the parking lot in order to provide screening.
 - b. The appellant shall make a good faith effort to reconfigure the angled parking spaces as 60-degree parking spaces in order to provide additional maneuvering space within the parking lot.
5. Prior to May 1, 2016, the existing retaining wall around the perimeter of the parking lot shall be improved with a uniform design and placement as approved by the City's Planning Administrator.
6. Prior to May 1, 2016, the public sidewalk along Davis Avenue shall be improved with a uniform design and placement as approved by the City's Planning Administrator. As of the date of this order, no portion of the sidewalk shall be used at any time for parking.
7. If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or does not satisfy the conditions of approval, the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Variance.
8. The Use Variance shall terminate immediately in the event that the restaurant usage reverts to a bar/tavern usage.

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SDW, LLC
2301 SOUTHWEST 9TH STREET
ZON2017-00078

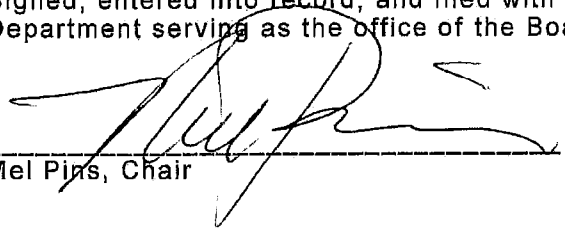
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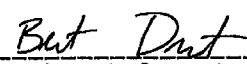
VOTE

The foregoing Decision and Order was adopted by a vote of 6-0, with all Board members present 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 May 31, 2017.



Mel Pias, Chair



Bert Drost, Secretary