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Date January 8, 2018

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION  
GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW A  
BUSINESS SELLING WINE OR BEER AT 900 42<sup>ND</sup> STREET**

**WHEREAS**, RSC Partners, LLC, as property owner, has requested that its tenant Pinot's Palette be allowed to sell wine and beer from its existing business on the real property locally known as 900 42<sup>nd</sup> Street ("Property"); and

**WHEREAS**, the Property is located within 64 feet of a school use for Hubbell Elementary School and for Roosevelt High School; and

**WHEREAS**, on December 20, 2017, the Zoning Board of Adjustment voted 4-3 to approve an application from RSC Partners, LLC, on behalf of Pinot's Palette, for a variance of the separation requirement that the premises of any business seeking to sell wine and beer for on-premises consumption (other than a restaurant) must be separated by at least 150 feet from any property containing a school use, as set forth in Municipal Code Section 134-954(a), to allow for the existing business to sell wine and beer on the Property, and the Board found that the selling of alcohol would give the existing business greater control over alcohol consumption than the current practice of allowing patrons to bring alcohol to the premises and would be compatible with the character of the surrounding area; 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 January 27, 2018.
- 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

52

Date January 8, 2018

(Council Communication No. 18- DID )

MOVED by \_\_\_\_\_ to adopt alternative \_\_\_\_\_, above.

APPROVED AS TO FORM:

Glenna K. Frank  
Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
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.

<p>IN THE MATTER OF THE APPEAL FROM  <b>RSC PARTNERS, LLC</b>  ON PROPERTY LOCATED AT  <b>900 42<sup>ND</sup> STREET</b></p>	<p>: : : : : : : : : : :</p>	<p><b>DOCKET: ZON 2017-00198</b>  <b>PUBLIC HEARING: DECEMBER 20, 2017</b></p>
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**SUBJECT OF THE APPEAL**

**Proposal:** The Conditional Use Permit would allow the existing business (Pinot's Palette) to sell and serve alcoholic liquor, wine, and/or beer to patrons who are gathered for painting in a group setting, where the premise is within 64 feet of a parcel that contains Hubbell Elementary School and athletic fields for Roosevelt High School. Patrons are currently permitted to bring their own alcoholic liquor, wine, and/or beer to the premise.

**Appeal(s):** Conditional Use Permit for a business selling alcoholic liquor, wine, and/or beer. Variance of the requirement that any business selling alcoholic liquor, wine, and/or beer for on-premises consumption (other than a restaurant) must provide a minimum of 150 feet of separation distance from any property containing a school use.

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

**FINDING**

The Board finds that it would be appropriate to grant the Conditional Use Permit and Variance to the separation distance requirement only so long as the business operates in strict compliance with the conditions of the approval. The Board finds that the appellant has demonstrated a hardship that is necessary to grant the Variance. Allowing alcohol sales would have minimal impacts on surrounding properties so long as alcohol sales are limited to wine and beer, do not occur during hours that the nearby school is in session, and are allowed only for preregistered customers. The Board also finds that the proposed alcohol sales may actually have less of an impact on surrounding properties than the business' current practice where patrons bring their own alcohol to the premises, as allowing the business to sell alcohol would give them greater control over alcohol consumption. The Board also finds that the selling of alcohol would be compatible with the character of the surrounding area, which includes multiple existing restaurants and businesses where alcohol is sold. The site is sufficiently separated from nearby residential uses to the east and west, as it is along the 42<sup>nd</sup> Street commercial corridor near Interstate 235 where the existing noise, vibration, and light is more detrimental than that which would be anticipated from the sale of alcohol.

The Conditional Use Permit would be subject to amendment or revocation if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use Permit.

DECISION AND ORDER

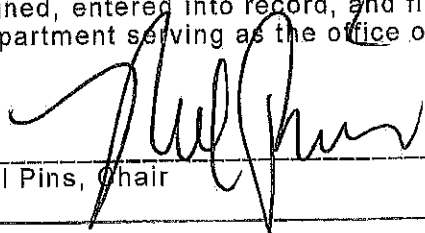
WHEREFORE, IT IS ORDERED that the appeals for a Conditional Use Permit for a business selling wine and/or beer and a Variance of the requirement that any business selling wine and/or beer for on-premises consumption (other than a restaurant) must provide a minimum of 150 feet of separation from any property containing a school use, to allow the existing business (Pinot's Palette) to sell and serve wine and/or beer to patrons who are gathered for painting in a group setting, where the premise is within 64 feet of a parcel that contains Hubbell Elementary School and athletic fields for Roosevelt High School, are **granted** subject to the following conditions:

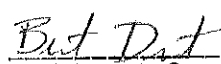
1. Any business selling wine and/or beer shall operate as a business where patrons have pre-registered to gather for painting and/or art classes in an instructor-led group setting. The sale of alcoholic liquor shall be prohibited.
2. Any business selling wine, and/or beer shall operate in accordance with the appropriate licenses and/or permits obtained through the Office of the City Clerk as approved by the City Council.
3. There shall be no signage or advertisement for, or references to, wine or beer visible from outside of the enclosed buildings. This shall not be interpreted to prohibit display of the current business' name "Pinot's Palette".
4. Any sale or service of wine and/or beer shall only occur between 5:00 PM and 10:00 PM on Mondays, Tuesdays, Wednesdays, Thursdays, and Fridays, and between 12:00 PM (noon) and 10:00 PM on Saturdays and Sundays.
5. The business shall comply with article IV of chapter 42 of the City Code pertaining to noise control.
6. The business shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
7. 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.
8. 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.
9. Any renovation of the building shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the Permit and Development Center.
10. The Conditional Use Permit would be subject to amendment or revocation if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use Permit, or if the operation violates the requirements of City Code Section 134-954(c).

VOTE

The foregoing Decision and Order was adopted by a vote of 4-3, with Board members Carlson, Chiodo, Gaer, and Pins voting in favor thereof and Board members Blake, Mortice, and Smith 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 December 27, 2017.

  
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 Mel Pins, Chair

  
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 Bert Drost, Secretary