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**Date** May 7, 2018

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION  
GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW SALES OF  
ALCOHOLIC LIQUOR, WINE AND BEER AT 4028 EAST 14<sup>TH</sup> STREET**

**WHEREAS**, on April 25, 2018, the Zoning Board of Adjustment voted 6-1 to approve an application from Bhajan Aulakh (owner) for a variance of the separation requirement that the premises of any gas station/convenience store in a “C-2” General Retail and Highway-Oriented Commercial District seeking to sell alcoholic liquor, wine and beer be separated by at least 500 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 new 2,500-square foot gas station/convenience store building selling alcoholic liquor, wine and beer on the real property locally known as 4028 East 14<sup>th</sup> Street (“Property”), which new store building would replace an existing building on the Property where alcoholic liquor, wine and beer is currently sold; and

**WHEREAS**, the Property is located within 309’ of a licensed childcare facility at 4040 York Street; and

**WHEREAS**, the Board found that the proposed new gas station/convenience store building selling alcoholic liquor, wine and beer on the Property would not alter the essential character of the locality of the land in question, as the currently existing building sells alcoholic liquor, wine and beer, the Property’s lot line is physically separated from the licensed childcare facility by a wooded area and street right-of-way, 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 May 26, 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

41

Date May 7, 2018

(Council Communication No. 18- 219 )

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.

IN THE MATTER OF THE APPEAL FROM	:	DOCKET: <b>ZON 2018-00062</b>
	:	
<b>BHAJAN AULAKH</b>	:	<b>PUBLIC HEARING: APRIL 25, 2018</b>
ON PROPERTY LOCATED AT	:	
	:	
<b>4028 EAST 14<sup>TH</sup> STREET</b>	:	

SUBJECT OF THE APPEAL

**Proposal:** The Conditional Use Permit would allow construction of a new 2,500-square foot gas station/convenience store building, which would sell alcoholic liquor, wine, and beer. The proposed gas station/convenience store building would replace an existing gas station/convenience building where alcoholic liquor, wine, and beer is currently sold. As a gas station/convenience store, the business would be allowed to derive no more than 40% of its gross sales from alcoholic liquor, wine, beer, and/or tobacco products. The subject property is within 309 feet of a licensed childcare facility at 4040 York Street.

**Appeal(s):** Conditional Use Permit for a gas station/convenience store selling alcoholic liquor, wine, and beer in a "C-2" District.

Variance of the provision that requires 500 feet of separation distance from any licensed childcare facility.

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

FINDING

The Board finds that the appellant has satisfied the criteria necessary for granting a Conditional Use Permit to allow the proposed gas station/convenience store to sell alcoholic liquor, wine, and beer, where up to 40% of revenue may be derived from the sale of alcoholic liquor, wine, beer, and/or tobacco products. Allowing the existing gas station convenience store to replace their building with a new building will enhance the essential character of the subject property and of the surrounding neighborhood. The character of the area will be further enhanced by requiring the currently existing building to be removed within six (6) months of occupancy of the new building. The location, design, construction and operation of the use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.

The Board also finds that the appellant has satisfied the criteria necessary for granting a Variance of the provision that requires 500 feet of separation distance from any licensed childcare facility. Replacing the existing structure with alcohol sales with the proposed structure on the southern portion on the property actually shifts the sales of alcoholic liquor, wine, and beer further from the licensed childcare facility that is within the 500-foot radius. The plight of the owner is due to unique circumstances not of the owner's own making, which unique circumstances relate specifically to the land in question and not to general conditions in the neighborhood, and the use to be authorized by the Variance will not alter the essential character of the locality of the land in question.

Furthermore, 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).

BHAJAN AULAKH  
4028 EAST 14<sup>TH</sup> STREET  
ZON 2018-00062

APRIL 25, 2018

DECISION AND ORDER

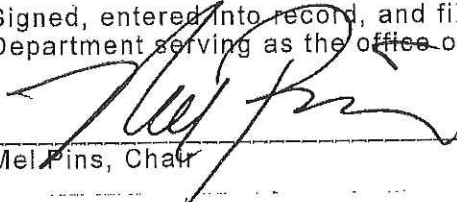
WHEREFORE, IT IS ORDERED that the appeal for a Conditional Use Permit for a gas station/convenience store selling alcoholic liquor, wine, and beer in a "C-2" District and a Variance of the provision that requires 500 feet of separation distance from any licensed childcare facility, to allow construction of a new 2,500-square foot gas station/convenience store building, which would sell alcoholic liquor, wine, and beer, where the building would replace an existing gas station/convenience store building where alcoholic liquor, wine, and beer is currently sold and where the subject property is within 309 feet of a licensed childcare facility, is **granted**, subject to the following conditions:

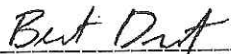
1. The gas station/convenience store shall derive no more than 40% of gross receipts from the sale of alcoholic liquor, wine, beer, and/or tobacco products, and such sales shall be limited on the property to occur only in the proposed 2,500-square foot building.
2. The existing gas station/convenience store shall be removed within six (6) months of occupancy of the proposed building.
3. The gas station/convenience store selling alcoholic liquor, wine, and/or beer shall operate in accordance with necessary licenses and/or permits obtained through the Office of the City Clerk, as approved by the City Council.
4. The business shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
5. 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.
6. The business shall not dispense alcoholic beverages from a drive-through window.
7. 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.
8. Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.
9. Any renovation or construction on the site shall be in compliance with all applicable building codes, fire codes, and site plan regulations, with issuance of all necessary permits by the Permit and Development Center.
10. If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use Permit, the Zoning Enforcement Officer may apply to the Zoning Board of Adjustment to reconsider the issuance of the Conditional Use Permit for such business.

VOTE

The foregoing Decision and Order was adopted by a vote of 6-1, with Board members Carlson, Chiodo, Gaer, Jones, Pins, and Smith voting in favor thereof and Board member Blake 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 May 1, 2018.

  
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 Mel Pins, Chair

  
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 Bert Drost, Secretary