



Date March 11, 2019

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING USE VARIANCE TO ALLOW LIMITED FOOD/RETAIL SALES ESTABLISHMENT SELLING ALCOHOLIC LIQUOR ON PROPERTY LOCATED AT 1372 EAST 14TH STREET

WHEREAS, on February 27, 2019, the Zoning Board of Adjustment voted 7-0 to approve an application from Shop N Save Number 2, LLC for an use variance to allow use of the property locally known as 1372 East 14th Street to sell alcoholic liquor, in addition to the sale of wine and beer, subject to certain conditions set forth in the Decision and Order of the Board as attached hereto; and

WHEREAS, the Zoning Board of Adjustment approval of the use variance was consistent with the court’s ruling in Polk County District Court Case No. CVCV056228 remanding the matter to the Board for proceedings in accordance with said ruling, which ruling allowed Shop N Save Number 2, LLC to continue to sell alcoholic liquor due to the specific facts presented in the case and related to the site in question; and

WHEREAS, the approved use variance does not constitute a change in use at the subject property but rather allows Shop N Save Number 2, LLC to continue to sell alcoholic liquor, wine and beer within the requirements of the City’s Zoning Ordinance, including but not limited to the conditional use permit process; 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 April 5, 2019.
- 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

44

Date March 11, 2019

(Council Communication No. 19- 110)

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

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, and 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: ZON 2016-00077
STATFORD HOLDING, LLC /	:	
SHOP N SAVE NUMBER 2, LLC	:	PUBLIC HEARING: FEBRUARY 27, 2019
ON PROPERTY LOCATED AT	:	
1372 EAST 14 TH STREET	:	

SUBJECT OF THE APPEAL

Proposal: Use of the 2,156-square foot building for a "Limited Food/Retail Sales Establishment" (Shop N Save) with sales of alcoholic liquor, wine, and beer.

Appeal(s): Appeal of the Zoning Enforcement Officer's determination that the applicant may not continue sales of alcoholic liquor with a class "E" liquor license.

Use Variance of the permitted uses in a "C-1" District (Limited Food/Retail Sales Establishment selling alcoholic liquor, wine, and beer).

Conditional Use Permit for a Limited Food/Retail Sales Establishment selling alcoholic liquor, wine, and beer.

Required by City Code Sections 134-63, 134-842, & 134-954

FINDING

Based on the court-ordered direction in Polk County District Court case number CVCV056228 and based on the negotiated settlement, the Board finds it would be appropriate to overturn the Zoning Enforcement Officer's determination that the applicant may not continue sales of alcoholic liquor with a class "E" liquor license; to grant a Use Variance of the permitted uses in a "C-1" District; and to amend the Conditional Use Permit granted on May 27, 2015 for a Limited Food/Retail Sales Establishment to allow sales of alcoholic liquor in addition to wine and beer, subject to the conditions of approval. If the Zoning Enforcement Officer determines at any time that the operation of such a business becomes a nuisance, exhibits a pattern of violating the conditions set forth in the Conditional Use Permit, or violates the requirements of City Code Section 134-954(c), the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use Permit.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal of the Zoning Enforcement Officer's determination that the applicant may not continue sales of alcoholic liquor with a class "E" liquor license is hereby **overruled**, and WHEREFORE IT IS ORDERED that the appeal for a Use Variance of the permitted uses in a "C-1" District (Limited Food/Retail Sales Establishment selling alcoholic liquor, wine, and beer) and the amendment to the Conditional Use Permit granted on May 27, 2015, to allow for sales of alcoholic liquor in addition to wine and beer, are **granted** subject to the following conditions:

1. The sale of alcoholic liquor, wine, and beer shall only be ancillary to a limited food/retail sales establishment, where no more than 40% of gross receipts from sales on the premises may be derived from the sale of alcoholic liquor, wine, beer, and tobacco products.
2. Any business selling alcoholic liquor, wine and beer shall operate in accordance with the necessary permits obtained through the Office of the City Clerk as approved by the City Council.
3. Prior to July 15, 2020, the business shall furnish a statement prepared and verified by a certified public accountant identifying the total dollar volume of all sales, and separately identifying the total dollar volume of sales derived from the sale of alcoholic beverages, from the sale of tobacco products, and from the sale of all other merchandise and food exclusive of alcoholic beverages and tobacco products, from the business premises during the twelve (12) month period July 1, 2019 and ending June 30, 2020.
4. The business shall only operate between the hours of 9:00 AM and 12:00 AM on Mondays through Saturdays and between the hours of 10:00 AM and 10:00 PM on Sundays.
5. There shall be no signage or advertisement for, or references to, liquor, wine or beer visible from outside of the enclosed building, exclusive of one (1) sign no larger than 2 feet by 3 feet in store window.
6. Prior to May 31, 2020, the existing freestanding pole sign shall be removed. Any replacement sign shall comply with the "FSO" Freestanding Signs Overlay District, which limits the sign to 8 feet in height and requires a minimum 2-foot tall masonry base.
7. Prior to May 31, 2020, the appellant shall establish a 5-foot paving setback, including green space and landscaping if determined necessary by City staff, along the north and east front property lines.
8. The business shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
9. 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.
10. The business shall not dispense alcoholic beverages from a drive-through window.
11. 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.

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DECISION AND ORDER (continued from page 2)

12. 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.
13. There shall be no transient merchant sales located on the subject property.
14. If the Zoning Enforcement Officer determines at any time that the operation of such a business becomes a nuisance, exhibits a pattern of violating the conditions set forth in the Conditional Use Permit, or violates the requirements of City Code Section 134-954(c), the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use Permit.
15. The Decision and Order shall be recorded at the Polk County Recorder's Office at the appellant's expense to ensure that future property owners are aware of these conditions.

VOTE

The foregoing Decision and Order was adopted by a vote of 7-0, 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 March 6, 2019.



Mel Pins, Board Chair



Bert Drost, Board Secretary