



Date July 15, 2019

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW A CONCERT VENUE TO SELL LIQUOR, WINE AND BEER WITHIN WATER WORKS PARK

WHEREAS, on June 26, 2019, the Zoning Board of Adjustment voted 6-0 to approve an application from Des Moines Water Works (applicant), represented by Ted Corrigan (officer), for a variance of the separation requirement that any tavern use selling alcoholic liquor, wine and beer be separated by at least 150 feet from any public park, to allow for the vendor(s) serving the concert venue located within Water Works Park, 2201 George Flagg Parkway, to sell alcoholic liquor, wine, and beer; and

WHEREAS, the Board found that the proposed location utilizes a flood zone to benefit the community, and that the sales of alcoholic liquor, wine and/or beer will be sufficiently separated by geography, landscaping and neighboring uses to not be detrimental to 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 July 28, 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

61

Date July 15, 2019

(Council Communication No. 19-313)

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

(ZON2019-00102)

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**

61

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 2019-00102
DES MOINES WATER WORKS	:	
ON PROPERTY LOCATED AT	:	PUBLIC HEARING: JUNE 26, 2019
VICINITY OF 2201 GEORGE FLAGG PARKWAY :	:	

SUBJECT OF THE APPEAL

Proposal: The Conditional Use Permit would allow for the sale of alcohol by a concert venue located within Water Works Park.

Appeal(s): Conditional Use Permit for a business selling alcoholic liquor, wine, and/or beer.
Variance of the provision that requires at least 150 feet of separation from any public park.

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

FINDING

The appellant has satisfied the criteria necessary for granting the requested Conditional Use Permit and the Variance of the provision that requires at least 150 feet of separation from any public park. Board members noted that a flood zone is being reutilized to benefit the community, and that the sales of alcoholic liquor, wine and/or beer is sufficiently separated by geography, landscaping, and neighborhood uses to not be a detriment to the surrounding area.

61

DECISION AND ORDER

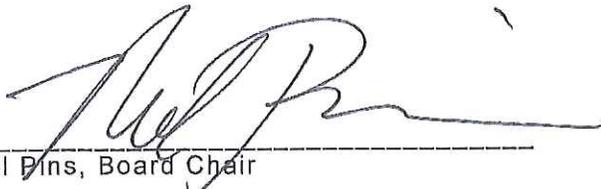
WHEREFORE, IT IS ORDERED that the appeals for a Conditional Use Permit for a business selling alcoholic liquor, wine, and/or beer and a Variance of the provision that requires at least 150 feet of separation from any public park, to allow for the sale of alcohol by a concert venue located within Water Works Park, are **granted**, subject to the following conditions:

1. Any business selling liquor, wine, and/or beer shall operate in accordance with a liquor license obtained through the Office of the City Clerk as approved by the City Council.
2. Any sale or consumption of alcohol shall be limited to the amphitheater area within Des Moines Water Works Park.
3. The business shall comply with Article IV of Chapter 42 of the City Code pertaining to noise control.
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 construction shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the Permit and Development Center.
9. 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 Board to reconsider the issuance of the Conditional Use Permit.

VOTE

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

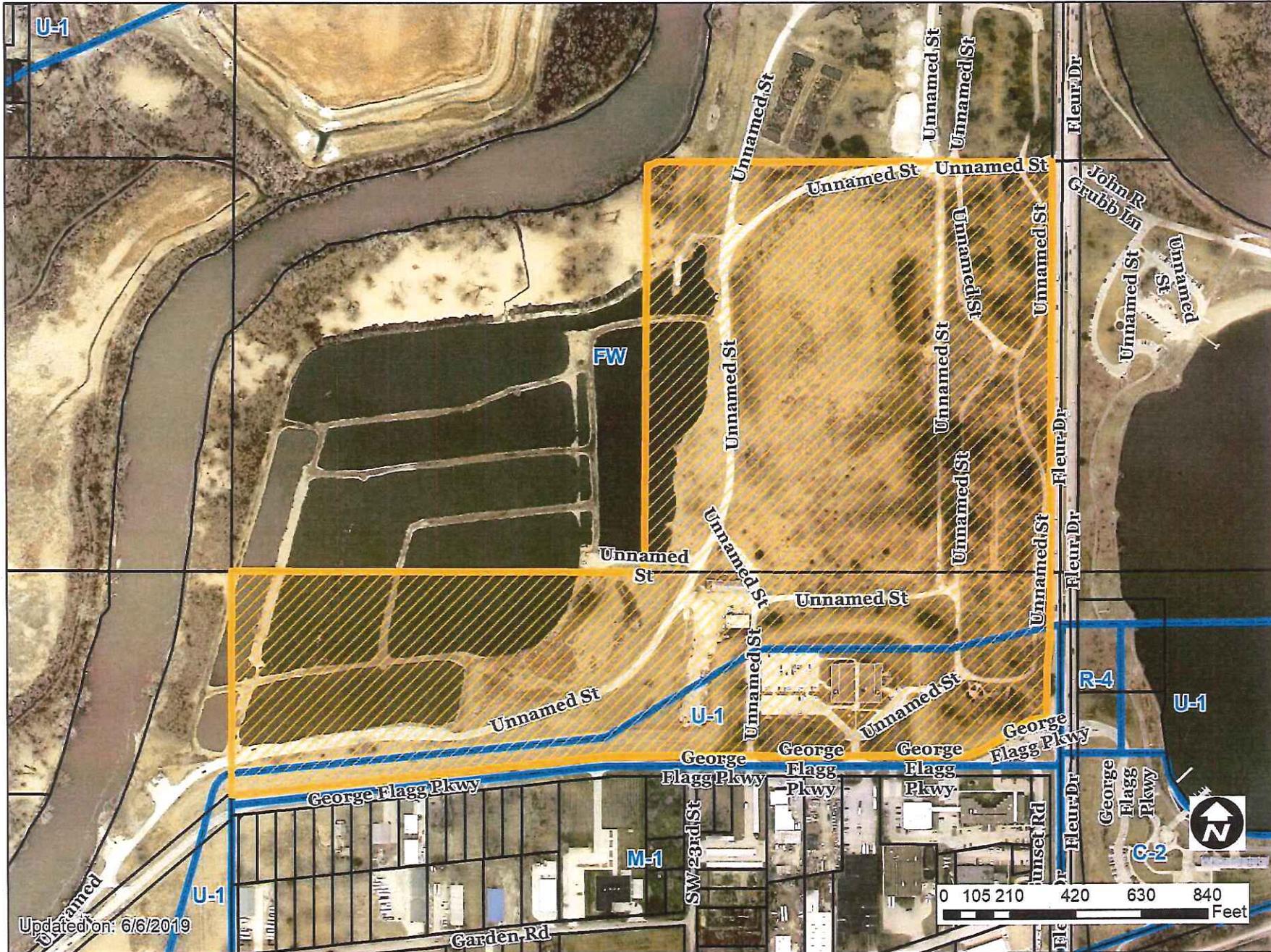
Signed, entered into record, and filed with the City of Des Moines Community Development Department serving as the office of the Board, on June 28, 2019.



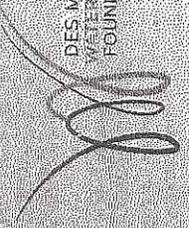
Mel Pins, Board Chair



Bert Drost, Board Secretary



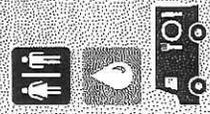
1 inch = 407 feet



DES MOINES
WATER WORKS PARK
FOUNDATION



« PARKING A



GENERAL ADMISSION

LAWN SEATING
(CHAIRS & BLANKETS ALLOWED)



RESERVED
TERRACE
SEATING

RESERVED
TERRACE
SEATING

VIP
PIT



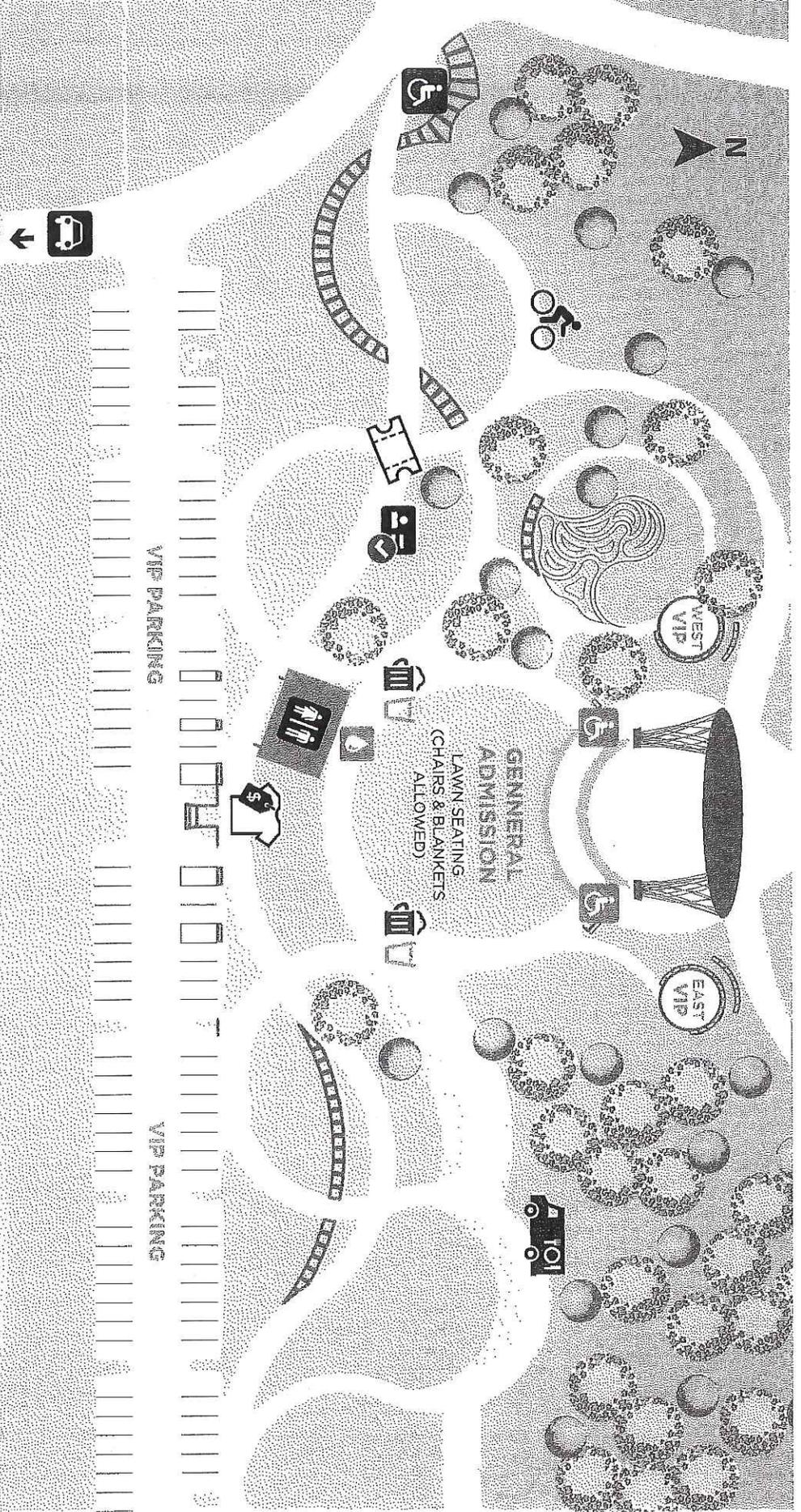
- ★ EVENT ENTRANCE
- ★ ADA SELECT PARKING CHECK-IN
- ♿ ADA SEATING
- 👤 BOX OFFICE
- 👤 ID CHECK-IN
- 👤 MERCHANDISE
- 👤 WATER STATION
- 🚲 BIKE VALET
- ♿ RESTROOM
- ★ SECURITY
- ♿ ADA SEATING
- 🏠 MEDIC
- 🚚 FOOD TRUCKS
- 🍹 BEVERAGES

Lauridsen Amphitheater

www.d5mwaterworkspark.com/events

Killenger Family Stage

www.dsrmwaterworksark.com/events



- 
BOX OFFICE
- 
ID CHECK-IN
- 
MERCHANDISE
- 
WATER STATION

- 
FOOD TRUCKS
- 
BEVERAGES
- 
LITTER / LIFT / CAR
DROP OFF / PICK UP
- 
BIKE RACKS

- 
ADA VOUCHER
- 
ADA VOUCHER
- 
ADA VOUCHER
- 
ADA VOUCHER



06/10/2019



06/10/2019

06/10/2019



FINDING

Granting the Conditional Use Permit for a concessionaire use that is accessory to the permitted recreational use within the "FW" Floodway District would be consistent with the intended spirit and purpose of the Zoning Ordinance. The proposal satisfies the criteria necessary for granting a Conditional Use Permit in the "FW" District, as the proposed location, design, construction, and operation of the use adequately safeguards the health, safety, and general welfare of persons residing or working in adjoining or surrounding property. Also, the proposed use would be an enhancement for the surrounding area and provides additional amenities that would not diminish or impair established property values in adjoining or surrounding property.

Granting the Conditional Use Permit for signage that would otherwise be allowed in the "C-1" Neighborhood Retail Commercial District would be consistent with the intended spirit and purpose of the Zoning Ordinance, and granting the requested variance of two (2) wall-mounted signs over the maximum two (2) wall-mounted signs, as otherwise allowed in a "C-1" District, is also appropriate as the applicant demonstrated an unnecessary hardship in advertising the location of the building for vehicular, boat, and bicycle customers due to its unique location which is not of the owner's own making, and demonstrated that granting the variance will not alter the essential character of the locality of the land. While it is reasonable to allow the business to have the wall-mounted signs as proposed, any freestanding sign should comply with the "FSO" Freestanding Signs Overlay District regulations, which regulations require monument signs with durable bases, and limit any sign within 25 feet of the front property line to 8 feet in height and any sign greater than 25 feet from the property line to 15 feet in height. The applicant did not show that an unnecessary hardship existed as a reasonable return can be yielded by the land in question without the variance relief, and the use proposed by the variance would alter the essential character of the locality of the land in question. The Board found that the proposed freestanding signs were out of proportion for the park location and did not fit aesthetically with the riverfront location of the property. Therefore, the requested Variances pertaining to the proposed freestanding signs should be denied.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeals for a Conditional Use Permit for a use that is accessory to a recreational use within the "FW" Floodway District, a Conditional Use Permit for signage that would otherwise be allowed in the "C-1" Neighborhood Retail Commercial District, a Variance of two (2) wall-mounted signs over the maximum two (2) wall-mounted signs, as otherwise allowed in a "C-1" District, to allow use of an existing 1,728-square foot storage building for a concessionaire use accessory to the permitted public recreation use, and installation of four (4) wall-mounted signs with a combined 64 square feet of signage area, including a 4-foot by 4-foot (16 square feet) sign on each of the four (4) facades of the building, are **granted** subject to the following conditions:

1. Any construction shall comply with all applicable Building Codes & Site Plan regulations, with issuance of all necessary permits by the Permit and Development Center.
2. Any signage shall be installed by a licensed sign contractor in accordance with a sign permit issued by the Permit and Development Center.
3. Any freestanding sign shall be in accordance with the regulations applicable in both the "C-1" Neighborhood Retail Commercial District and the "FSO" Freestanding Signs Overland District.

AND WHEREFORE, IT IS ORDERED that the appeals for a Variance of one (1) freestanding sign over the maximum allowed one (1) freestanding sign, as otherwise allowed in a "C-1" District, an Exception of 6 feet over the maximum 12-foot dimension permitted for any freestanding sign, as otherwise allowed in a "C-1" District, a Variance of the definition of a monument sign required for a freestanding sign in the "FSO" Freestanding Sign Overlay District, which requires any freestanding sign to have a sign base that is at least 25 percent of the total sign height, and a Variance of 20 feet over the maximum 15 feet of height allowed for a sign that is located more than 25 feet from a front lot line, to allow installation of two (2) freestanding pole signs, each measuring 2 feet by 18 feet (36 square feet) and having a maximum height of 35 feet are **denied**.

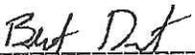
VOTE

The foregoing Decision and Order was adopted by a vote of 5-0, 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 March 27, 2017.



Dave Gaer, Acting Chair



Bert Drost, Secretary

Item ZON2019-00102

Date 6/13/19

(am) (am not) in favor of the request.

SOUTHWESTERN HILLS
NEIGHBORHOOD ASSOCIATION

(Circle One)

Print Name George Davis

RECEIVED
COMMUNITY DEVELOPMENT,

Signature [Signature]

JUN 20 2019

Address 3124 SW 29th

Reason for opposing or approving this request may be listed below:

Southwestern Hills neighborhood ASSOC
HAS NO PROBLEM WITH ALCOHOLIC SALES
DURING ADULT CONCERTS.
[Signature]
President

Item ZON2019-00102

Date 6-14-19

(am) (am not) in favor of the request.

(Circle One)

Print Name CHARLES L. BROWN

RECEIVED
COMMUNITY DEVELOPMENT

Signature Charles L. Brown

JUN 20 2019

Address 1490 Dover Bay Blvd. Clear, La.
50325

Reason for opposing or approving this request may be listed below:

Item ZON2019-00102

Date 6.13.19

GRAY'S LAKE NEIGHBORHOOD ASSOCIATION

(am) (am not) in favor of the request.

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

Print Name RICK TROWER

Signature [Signature]

JUN 20 2019

Address 1315 BROAD ST

Reason for opposing or approving this request may be listed below:

on behalf of Gray's Lake
Neighborhood Assoc. - I support
this request.

Item ZON2019-00102

Date _____

(am) (am not) in favor of the request.

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

Print Name Lee Larsen Southside
Autobody

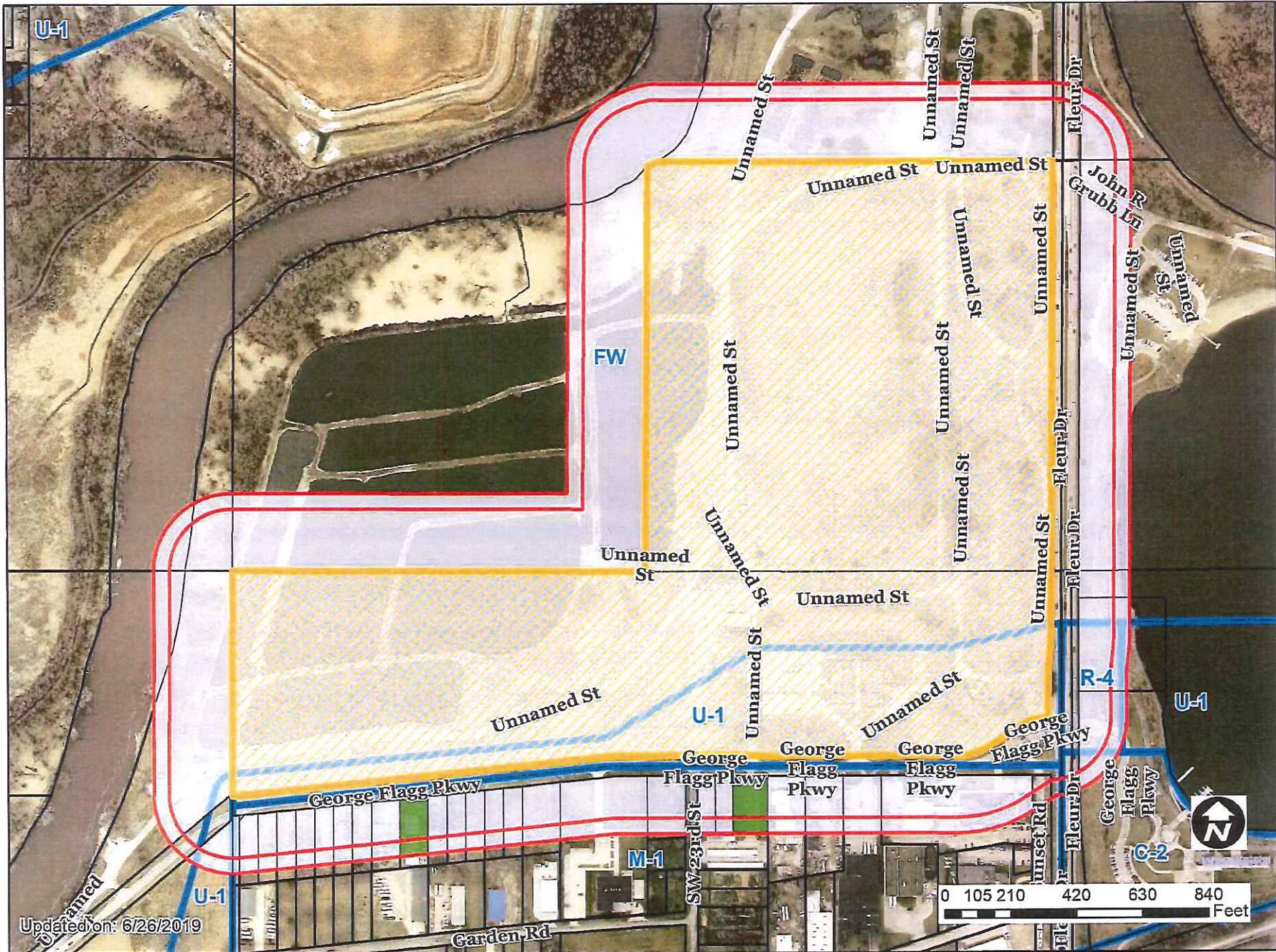
Signature [Signature]

JUN 20 2019

Address 2516 George Flagg Pl

Reason for opposing or approving this request may be listed below:

AOK Go for it!



Updated on: 6/26/2019

1 inch = 407 feet

STAFF REPORT & MEETING SUMMARY

Item 22	ZON2019-00102	Des Moines Water Works
2201 George Flagg Pkwy		Conditional Use Permit & Variance

APPLICABLE REQUIREMENTS

Sec. 134-954. Selling of liquor, wine and beer.

The use of land in all districts for the sale of alcoholic liquor, wine and beer is subject to the restrictions set forth in this section.

- a. The sale of alcoholic liquor, wine and beer is permitted only in the zoning districts and subject to the conditions applicable to the business identified in the table below:

	Sale of Alcoholic Liquor		Sale of Wine and Beer	
	C-1, C-1A & D-R Districts	C-2, NPC and less restrictive Districts	C-1, C-1A & D-R Districts	C-2, NPC and less restrictive Districts
Food Sales Establishments and Retail Sales Establishments				
<i>Limited</i> (less than 12,000 sq ft)	Not Allowed	CUP 40% of sales 500 feet 1/4 mile	CUP 40% of sales 150 feet	CUP 40% of sales 150 feet
<i>General</i> (12,000 sq ft or larger, but less than 40,000 sq ft)	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet
<i>Large</i> (40,000 sq ft or larger)	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet
Gas Station/ Convenience Stores (not allowed in D-R)	Not Allowed	CUP 40% of sales 500 feet 1/4 mile	40% of sales 150 feet (C-1 & C-1A only)	40% of sales 150 feet
Liquor Stores	Not Allowed	CUP 500 feet 1/4 mile	Not Allowed	CUP 150 feet
Tobacco Stores	Not Allowed	CUP 25% 500 feet 1/4 mile	CUP 25% 150 feet	CUP 25% 150 feet
Restaurants	50% of sales 75 feet	50% of sales 75 feet	50% of sales 75 feet	50% of sales 75 feet
Taverns and Night Clubs (not allowed in C-1 and C-1A)	CUP (D-R only)	CUP 150 feet	CUP (D-R only)	CUP 150 feet

Where used in the table above the following terms shall have the meaning identified below:

- 1) **CUP means that a conditional use permit must be obtained for such use as further provided in this section.**
 - 2) 40% of sales means that no more than 40 percent of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine, beer or tobacco products.
 - 3) 50% of sales means that at least 50 percent of the gross receipts by a restaurant must be derived from the sale of prepared food and food-related services.
 - 4) 25% means that no more than 25% of the gross receipts from sales shall be derived from the sale of alcoholic liquor, wine or beer.
 - 5) 75 feet means that the premises occupied by such use must be separated by at least 75 feet from any church, school, public park or licensed child care facility as defined by I.C. ch. 237A. However, this condition is not applicable in the C-3, C-3A, C-3B, C3-R and D-R Districts.
 - 6) **150 feet means that the premises occupied by such use must be separated by at least 150 feet from any church, school, public park or licensed child care facility as defined by I.C. ch. 237A. However, this condition is not applicable in the C-3, C-3A, C-3B, C3-R and D-R Districts.**
 - 7) 500 feet means that the premises occupied by such use must be separated by at least 500 feet from any church, school, public park or licensed child care facility as defined by I.C. ch. 237A. However, this condition is not applicable in the C-3, C-3A, C-3B, C3-R and D-R Districts.
 - 8) 1/4 mile means that the premises occupied by such use must be separated by at least one-fourth mile from any other limited food sales establishment, limited retail sales establishment, gas station/convenience store, liquor store and tobacco store engaged in the sale of alcoholic liquor. However, in the C-3, C-3A, C-3B, C3-R and D-R Districts this condition is only applicable to liquor stores.
- b. A conditional use permit is required for the use of a premises for the sale of alcoholic liquor, wine or beer, under the circumstances identified in subsection (a), above. The board shall grant such a conditional use permit only where the business, when operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:
1. The business conforms with the conditions identified in subsection (a), above.
 2. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.
 3. The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.
 4. The business will not unduly increase congestion on the streets in the adjoining residential area.
 5. The operation of the business will not constitute a nuisance.
- c. Any conditional use permit granted by the board of adjustment for the use of a premises for the sale of alcoholic liquor, wine and beer shall be subject to the following general conditions, together with such additional special conditions as may be reasonably required by the board to ensure that the criteria in subsection (b), above, are satisfied:
1. 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.
 2. The business shall comply with article IV of chapter 42 of this Code pertaining to noise control. The business shall have no outside speakers or amplified sound except when used in compliance with a type E sound permit.

3. *Any such business must comply with the following requirements:*
 - (a) *Every limited food sales establishment, limited retail sales establishment, gas station/convenience store and tobacco store shall display alcoholic liquor only in a locked case or behind a counter accessible only to employees. Any other business selling alcoholic liquor for off premises consumption shall either: i) display alcoholic liquor only in a locked case or behind a counter accessible only to employees; ii) employ an electronic security cap or tag system on all containers of alcoholic liquor on display; or iii) have more than one employee on duty at all times the business is open to the public.*
 - (b) *Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.*
 - (c) *Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.*
 - (d) *Not dispense alcoholic beverages from a drive-through window.*
4. *Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.*
5. *The conditional use permit is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the conditional use permit.*
6. *If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions set forth in the conditional use permit, the zoning enforcement officer may apply to the board to reconsider the issuance of the conditional use permit for such business. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such business at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board finds that the operation of such business exhibits a pattern of violating the conditions set forth in the conditional use permit, the board shall have the authority to amend or revoke the conditional use permit.*

STAFF REPORT

Proposal: The Conditional Use Permit would allow for the sale of alcohol at a concert venue located within Water Works Park.

Appeal(s): Conditional Use Permit for a business selling alcoholic liquor, wine, and/or beer.

Variance of the provision that requires at least 150 feet of separation from any public park.

Site Description: The subject property is zoned "FW" Floodway District. The site is within the Flood Way on the Federal Insurance Rate Maps. The site currently contains the open space area that is being developed within an amphitheater use. The entire Water Works Park measures over 1,500 acres.

Neighborhood Notification Information: The subject property is not located within a recognized neighborhood area but is within 250 feet of the Gray's Lake Neighborhood across Fleur Drive to the east and the Southwestern Hills Neighborhood across George Flagg Parkway to the south. All neighborhood associations were notified of the Board meeting by mailing of the Preliminary Agenda on June 7, 2019. Additionally, an official

public notice of the hearing for this specific item was mailed on June 10, 2019 to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All neighborhood mailings are sent to the primary contact designated by the recognized neighborhood association on file with the City of Des Moines' Neighborhood Development Division. The Gray's Lake Neighborhood mailings were sent to Rick Trower, 1310 Broad Street, Des Moines, Iowa 50315. The Southwestern Hills Neighborhood mailings were sent to George Davis, 3124 Southwest 29th Street, Des Moines, IA 50321.

Zoning History: On October 25, 2019, the Zoning Board of Adjustment granted the appeals necessary to allow redevelopment of a portion of Water Works Park with multiple components, including but not limited to, an open-air amphitheater canopy, park shelter, restrooms, natural playscape, paths, landscaping, and off-street parking. The approval was subject to the following conditions:

1. Compliance with all permitting requirements of the Iowa Department of Natural Resources (IDNR).
2. Compliance with all requirements for issuance of a Certificate of Compliance with Chapter 50 of the City Code Floodplain Development Regulations by City Engineering Department.
3. Compliance with the Traffic Impact Analysis process in accordance with the City Council policy prior to consideration of a Site Plan or Building Plans review.
4. Compliance with all applicable Site Plan Regulations and Building and Fire Codes with issuance of all necessary permits by the Permit and Development Center and other applicable government agencies.

Additional Information: The Conditional Use Permit would allow for the future concert venue to sell alcohol. The proposed sale of alcohol is considered to be a "tavern" use since the sale of alcohol for on-premise consumption would not occur as part of a restaurant use, where at least 50% of sales are derived from food-related products.

Criteria for the Board to Consider: Taking into consideration the criteria set forth in Chapter 134 of the City Code and Chapter 18B of the Iowa Code, the Board shall grant a Conditional Use Permit for the use of any premises for the sale of alcoholic liquor, wine or beer only where the business, when operated in conformance with such reasonable conditions as may be imposed by the Board, satisfies the following criteria:

1. The business conforms with the conditions identified in City Code subsection 134-954(a).

In order to sell alcoholic liquor, wine, and/or beer, the site must be separated by

at least 150 feet from any church, school, public park or licensed child care facility. The premise is located within a public park (Des Moines Water Works Park). Therefore, for the Board to grant the Conditional Use Permit, it must also grant a Variance to the separation distance requirement.

2. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.

The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons in the surrounding area, as there are no residential uses in close proximity.

3. The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.

The business is sufficiently separated from any residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon any residential uses. The nearest residential uses are located at least 2,500 feet to the east and to the north.

4. The business will not unduly increase congestion on the streets in the adjoining residential area.

The subject property is located on the fringe of the downtown area along Fleur Drive and George Flagg Parkway. The proposed sale of alcoholic liquor, wine, and beer would have a minimal impact on the traffic volumes and pattern and would not increase congestion in the area.

5. The operation of the business will not constitute a nuisance.

If granted, 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), as provided in the "Applicable Requirements" section of this report.

Taking into consideration the criteria set forth in Chapter 134 of the City Code and Chapter 18B of the Iowa Code, the Board shall ensure that granting of a Variance will not be contrary to the public interest, where owing to special conditions a literal enforcement of the regulations will result in unnecessary hardship, and so that the spirit

of this chapter shall be observed and substantial justice done. To establish unnecessary hardship a property owner must show all of the following elements:

1. The land in question cannot yield a reasonable return from any use permitted by the regulations of the district in which the land is located. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the land in question. It is not sufficient merely to show that the value of the land has been depreciated by the regulations or that a variance would permit the owner to maintain a more profitable use.
2. The plight of the owner is due to unique circumstances not of the owner's own making, which unique circumstances must relate specifically to the land in question and not to general conditions in the neighborhood.
3. The use to be authorized by the variance will not alter the essential character of the locality of the land in question.

Each decision granting a Use Variance or a **Variance from any separation** requirement shall be referred to the City Council for review pursuant to I.C. § 414.7. The City Council shall review such decision within 30 days after the decision is filed. After such review, the council may remand the decision to the Board for further study. If the City Council does not act to review the decision within 30 days after it is filed, the decision shall become effective on the 31st day. If the City Council declines to remand a decision, that decision shall become final on the date of the council's action. If the City Council remands a decision to the Board, the effective date of the decision is delayed for 30 days from the date of remand.

Upon remand of a decision from the City Council, the matter shall be placed on the agenda for further study at the first Board meeting after such council action. If, for any reason, the Board does not hold a regularly scheduled meeting during such 30-day period, it shall be required to hold a special meeting and consider an act upon the remanded decision within such 30-day period. At such meeting, the Board shall act to either affirm its earlier decision or grant a rehearing. A rehearing shall be treated in the same manner as an appeal pursuant to section 134-63, except that no fee shall be payable. If the Board grants a rehearing, its initial decision shall be deemed to have been withdrawn. The Board decision on rehearing is not reviewable by the City Council and shall be final upon filing.

Permit and Development Center Comments: Any construction must be in compliance with current Site Plan regulations and with current Building and Fire Codes, with issuance of any necessary permits by the Permit and Development Center.

Any sale of alcoholic liquor, wine, and/or beer must be in accordance with the proper license obtained through the Office of the City Clerk as approved by the City Council.

Staff Rationale: The appellant has not satisfied the criteria necessary for granting the requested Conditional Use Permit since the premise does not provide the minimum 150 feet of separation required from a public park. Therefore, in order to grant the Conditional Use Permit as requested, the Board must also grant a Variance to this separation distance requirement. The appellant has not satisfied the criteria necessary for granting a Variance. An unnecessary hardship has not been demonstrated, as the land in question can yield a reasonable return from the uses permitted on the property. The property can continue to function as a park. It is not sufficient merely to show that the value of the land has been depreciated by the regulations or that a Variance would permit the owner to maintain a more profitable use.

STAFF RECOMMENDATION

Staff recommends denial of the Conditional Use Permit and the necessary Variance to a separation distance requirement.

If the Board is inclined to grant the Variance and the Conditional Use Permit, Staff recommends the following conditions:

1. Any business selling liquor, wine, and/or beer shall operate in accordance with a liquor license obtained through the Office of the City Clerk as approved by the City Council.
2. Any sale or consumption of alcohol shall be limited to the amphitheater area within Des Moines Water Works Park.
3. The business shall comply with Article IV of Chapter 42 of the City Code pertaining to noise control.
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 construction shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the Permit and Development Center.
9. 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 Board to reconsider the issuance of the Conditional Use Permit.

If the Board grants the Variance, that decision would then be reviewed by City Council.

BOARD ACTION

APPELLANT OR REPRESENTATIVE: Sam Carroll, 4340 Allison Avenue.

SUPPORT: Sam Summers, 640 56th Street.

OPPOSITION: None.

FINDING: The appellant has satisfied the criteria necessary for granting the requested Conditional Use Permit and the Variance of the provision that requires at least 150 feet of separation from any public park. Board members noted that a flood zone is being reutilized to benefit the community, and that the sales of alcoholic liquor, wine and/or beer is sufficiently separated by geography, landscaping, and neighborhood uses to not be a detriment to the surrounding area.

ACTION OF THE BOARD: Motion to grant the Conditional Use Permit, subject to the following conditions:

1. Any business selling liquor, wine, and/or beer shall operate in accordance with a liquor license obtained through the Office of the City Clerk as approved by the City Council.
2. Any sale or consumption of alcohol shall be limited to the amphitheater area within Des Moines Water Works Park.
3. The business shall comply with Article IV of Chapter 42 of the City Code pertaining to noise control.
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 construction shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the Permit and Development Center.
9. 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 Board to reconsider the issuance of the Conditional Use Permit.

MOTION: Chiodo. Second by Pins.

VOTE: A vote of 6-0-0-1 was registered as follows:

	Aye	Nay	Abstain	Absent
Blake	X			
Carlson	X			
Chiodo	X			
Gaer	X			
Jones	X			
Pins	X			
Smith				X