



Date January 13, 2025

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW SALES OF ALCOHOLIC LIQUOR, WINE, AND/OR BEER BY A “BAR” USE WITHIN 150 FEET OF A “PLACE OF WORSHIP” FOR PROPERTY AT 3614 6TH AVENUE OWNED BY 36 ON 6TH LLC

WHEREAS, the real property locally known as 3614 6th Avenue (“Property”) is currently vacant but was previously operated as a department store or other retail establishments. The property owner seeks to operate the basement of the Property as a “Bar” use selling alcoholic liquor, wine, and beer; and

WHEREAS, the Property is located within 150 feet of a place of worship which is less than the separation distance required by Des Moines Municipal Code Tables 134-3.1-1 & 134-3.9-1 and sections 134-6.4 & 134-6.7; and

WHEREAS, Des Moines Municipal Code section 134-6.7 requires the Owner to obtain a variance from the Zoning Board of Adjustment in order to serve beer, wine, and alcoholic liquor within the Property; and

WHEREAS, the Owner made such application and on December 18, 2024, the Zoning Board of Adjustment voted 4-2 to approve an application from 36 on 6th LLC for a variance of the separation requirement that the premises of any bar use seeking to sell wine, beer, and alcoholic liquor be separated by at least 150 feet from any place of worship use set forth in Des Moines Municipal Code Tables 134-3.1-1 & 134-3.9-1 to allow the Owner/Occupant to operate a bar subject to the following conditions to which the Owner has agreed:

1. Any “Bar” use selling alcoholic liquor, wine, and/or beer for on-premises consumption shall be limited to 1,900 square feet within the basement.
2. Any business selling alcoholic 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.
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. Any business selling alcoholic liquor, wine, and/or beer shall not dispense alcoholic beverages from a drive-through window.

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6. 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.
7. Any renovation of the building shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the City's Permit and Development Center.
8. 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, the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use.

; and

WHEREAS, Iowa Code § 414.7 and Section 134-6.7.8(C) 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
(Choose Only One)**

- 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 February 3, 2025.
- 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

43

Date January 13, 2025

(Council Communication No. 25-022)

Moved by _____ to adopt. Second by _____

APPROVED AS TO FORM:

/s/ Gary D. Goudelock Jr.
Gary D. Goudelock Jr.
Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include BOESEN, SIMONSON, VOSS, COLEMAN, WESTERGAARD, MANDELBAUM, GATTO, and TOTAL. Includes MOTION CARRIED and APPROVED labels.

CERTIFICATE

I, LAURA BAUMGARTNER, 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.

Mayor

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: ZBOA-2024-000074
36 ON 6TH LLC :
ON PROPERTY LOCATED AT : PUBLIC HEARING: DECEMBER 18, 2024
3614 6TH AVENUE :

SUBJECT OF THE APPEAL

Proposal: Use of up to a 4,400-square foot area within the basement of the building for a "Bar" use, with sales of alcoholic liquor, wine, and/or beer for on-premises consumption. The site is within 150 feet of a property that contains a place of worship.

Appeal(s): Variance of the provision that requires any "Bar" use in an "MX2" District selling alcoholic liquor, wine, and beer for on premise consumption to provide at least 150 feet of separation distance from the property line where any church or place of worship, school, public park or licensed childcare facility is located.

Conditional Use for a "Bar" use selling alcoholic liquor, wine and/or beer for on premises consumption in "MX2" Mixed Use District.

Required by City Code Tables 134-3.1.1, 134-3.9-1, & Sections 134-6.4. & 134-6.7.

FINDING

The Board finds that, in this instance, granting the requested Variance of the separation distance and Conditional Use for a "Bar" use would be consistent with the intended spirit and purpose of the Zoning Ordinance. The criteria required for granting a Variance, as contained in City Code Section 134-6.7.7.A, has been satisfied. The appellant has demonstrated that they face an unnecessary hardship, as the land in question cannot yield a reasonable return from the uses permitted by the subject "MX2" District zoning regulations, as the function of basement space is an undesirable fit for retail, office, or residential use due to its closed layout and lack of street presence. Furthermore, the plight of the owner is due to unique circumstances not of the owner's own making, which unique circumstances relate specifically to the subject property and not to general conditions in the neighborhood. The building was originally built as a large department store which is not consistent with consumer shopping behavior. The appellant

Continued on the following page

has presented a full historic renovation of the premises which includes a mix of commercial and residential uses. For this to occur, the basement must be occupied and equally play a role in financing the cost of renovation. Also, the use or construction to be authorized by the Variance will not alter the essential character of the area in which the subject property is located. Without full renovation, the building would continue to remain underutilized and continue to deteriorate. Thus, the property would not yield a reasonable return.

Furthermore, the Board finds that granting the Conditional Use would be consistent with the intended spirit and purpose of the Zoning Ordinance and in harmony with the essential character of the neighborhood. The application satisfies the criteria necessary for granting a Conditional Use for a "Bar" use with on-premises consumption of alcoholic liquor, wine, and/or beer. The impacts of a "Bar" use with sales and/or consumption of alcoholic liquor, wine, and beer would be minimal so long as the business operates in accordance with the City's noise control regulations and in accordance with the conditions of the approval. The use would not unduly increase congestion in the streets and would not constitute a nuisance if operated in accordance with all conditions of approval.

Lastly, 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, the Zoning Enforcement Officer may apply to the Zoning Board of Adjustment to reconsider the issuance of the Conditional Use for such business.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for the requested Variance to a separation distance requirement **is granted**.

VOTE ON APPEAL ITEM 1 - VARIANCE

The foregoing Decision and Order regarding the requested variance was adopted by a vote of 4-2, with Board members Cedillo, Gaer, Jones, and Roe voting in favor thereof, and Board members DeSio and Pins voting in opposition thereto.

FURTHERMORE, IT IS ORDERED that the appeal for the requested Conditional Use for a "Bar" use **is granted** subject to the following conditions:

1. Any "Bar" use selling alcoholic liquor, wine, and/or beer for on-premises consumption shall be limited to 1,900 square feet within the basement.
2. 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.
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. Any business selling alcoholic liquor, wine, and/or beer shall not dispense alcoholic beverages from a drive-through window.
6. 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.
7. Any renovation of the building shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the City's Permit and Development Center.
8. 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, the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use.

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36 ON 6TH LLC
3614 6TH AVENUE
ZBOA 2024-000074

DECEMBER 18, 2024

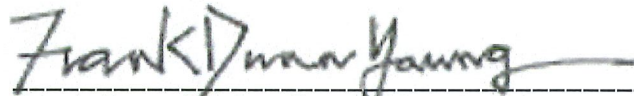
VOTE ON APPEAL ITEM 2 – CONDITIONAL USE PERMIT

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 Development Services Department serving as the office of the Board, on January 3, 2025.



Mel Pins, Board Chair



Frank Dunn-Young, Board Secretary