

Date November 19, 2012

WHEREAS, at its October 24, 2012 hearing, with a subsequent Decision and Order entered into the record on October 30, 2012, the City of Des Moines Zoning Board of Adjustment ("Board") approved an application from Convenience Stores LSG & MGMT, LLC for a Conditional Use Permit for use of property located at 3804 Hubbell Avenue (Property) for use as liquor store with sales of alcoholic liquor; and

WHEREAS, pursuant to Municipal Code Section 134-954(a), a conditional Use Permit for sales of alcoholic liquor at the Property for a liquor store in a C-2 district requires:

- (a) Variance of the provision that requires any new liquor store have 500 feet of separation from any church, school, public park, or licensed child care facility.
- (b) Variance of the provision that requires any new liquor store have a 1/4 -mile of separation from any other limited food sales establishment, limited retail sales establishment, gas station/convenience store and liquor store engaged in the sale of alcoholic liquor.

WHEREAS, the subject property is within 80 feet of the church as 3800 East Douglas Avenue, within 380 feet of the daycare at 3909 Hubbell Avenue, and within 748 feet of the gas station/convenience store selling alcoholic liquor at 3700 Hubbell Avenue; and

WHEREAS, the Zoning Board of Adjustment's decision was based upon the following findings:

- The business is currently permitted to sell alcoholic liquor as a limited food sales establishment until December 31, 2013 so long as no more than 50% of the gross receipts from sales on the premises are derived from the sale of alcoholic liquor, wine, beer or tobacco products (50% was the requirement in 2010 when the liquor license was initially issued for a grocery/convenience store). The Board does not believe that allowing this business to be classified as a liquor store, doing business in a similar manner as it currently operates, where more than 50% of sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products, would create additional impacts on the surrounding area or cause a proliferation of liquor stores within the City.
- The Board finds that the business operators have established a history of a well-run and well-managed store. If the Zoning Enforcement Officer determines that the operation of the liquor store becomes a nuisance or if the operation of the liquor store violates the requirements of City Code Section 134-954(c) applicable to any establishment issued a Conditional Use Permit, the Conditional Use Permit would be subject to amendment or revocation by the Zoning Board of Adjustment.

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- The Board finds that the limited size of the site and the existing layout of the site present a functional obsolescence where the only beneficial use of the property is as a liquor store. This functional obsolescence presents a hardship for the appellant since it significantly limits their options for altering their business model to change the ratios of products sold and limits their options for redevelopment of the property to another use.
- The competing gas station/convenience store at 3700 Hubbell Avenue has a license to sell alcoholic liquor. The Board finds that an unnecessary hardship exists in providing the required 1,320 feet (1/4-mile) of separation for this establishment engaged in the sale of alcoholic liquor. The Board finds that the existing 748 feet of separation is adequate given the fact that Hubbell Avenue is a major commercial corridor.
- The Board also finds that the appellant has demonstrated that an unnecessary hardship exists in providing the required 500 feet of separation from the church at 3800 East Douglas Avenue and the licensed child care facility at 3909 Hubbell Avenue. The Board believes the location meets the intent of the separation requirements since the distances, when measured as how a person would physically travel from the liquor store to the church or daycare (instead of measuring the distances between property lines), would be approximately 500 feet.

WHEREAS, in accordance with Municipal Code Section 134-65(d), if the Board grants a variance to a separation requirement, the Decision and Order shall be referred to the City Council for its review pursuant to Iowa Code Section 414.7. The City Council may review such decision within 30 days after the decision is filed. After such review, the City 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 the decision, the decision shall become final on the date of the council's action, i.e. November 19, 2012. 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; and

WHEREAS, staff recommends that the City Council remand the decision to the Board of Adjustment for reconsideration with regard to a finding that that a liquor store is "the only beneficial use of the property"; that use of "physical travel distance" as a method to calculate separation distance directly conflicts with Chapter 10 of the City Code; and that the designation of Hubbell Avenue as a major commercial corridor is insufficient basis for granting a Variance to the required separation distance.

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NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, as follows:

✓ The City Council remands the Decision and Order to the Zoning Board of Adjustment for further study. The effective date of the Zoning Board of Adjustment's decision will be deferred for 30 days from the date of remand.

_____ The City Council takes no action to review the Decision and Order. The decision of the Zoning Board of Adjustment will become final on November 29, 2012.

_____ The City Council declines to remand the decision to the Zoning Board of Adjustment. The decision will become final on the date of the Council's action.

Moved by Mahaffey to adopt. The City Council will send a letter to the Zoning Board of adjustment regarding their concerns.

APPROVED AS TO FORM:

[Signature]

Michael F. Kelley
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			
MOTION CARRIED			APPROVED	

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.

[Signature]
T. M. Franklin Council Mayor

[Signature]
Diane Rauh City Clerk