

Date June 9, 2014

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION  
GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW  
PROPERTY AT 2428 SW 9<sup>TH</sup> STREET TO BE USED AS A LIQUOR STORE**

**WHEREAS**, on May 5, 2014, by Roll Call Nos. 14-0727 to 14-0729, the City Council voted to adopt and approve the rezoning of property owned by Jerry Hoots in the vicinity of 2428 SW 9<sup>th</sup> Street from the "C-1" Neighborhood Retail Commercial District to a Limited "C-2" General Retail and Highway Oriented Commercial District classification, to allow for use as a liquor store for sale of alcoholic beverages within that portion of the property locally known as 2424 SW 9<sup>th</sup> Street; and

**WHEREAS**, on May 28, 2014, the Zoning Board of Adjustment voted 4-0 to approve an application from Jerry Hoots for a Conditional Use Permit for use of the property located at 2428 SW 9<sup>th</sup> Street as a liquor store selling alcoholic liquor, wine, and/or beer, and for a variance of the separation requirement that the premises of any liquor store seeking to sell alcoholic liquor 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); and

**WHEREAS**, the premises at issue are located within 190' of Lincoln High School property that is used for a parking lot; 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 3, 2014.
- 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

14-0899

Agenda Item Number

58

Date June 9, 2014

(Council Communication No. 14-279)

MOVED by Hensley to receive and file the staff report and comments received, and to adopt alternative C, above.

APPROVED AS TO FORM:

Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRAY	✓			
HENSLEY	✓			
MAHAFFEY	✓			
GATTO	✓			
MOORE	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

T. M. Franklin Council 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.

Diane Rauh City Clerk