

Date September 8, 2014

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION  
GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW A  
RESTAURANT SELLING WINE AND BEER ON THE PROPERTY AT  
1951 INDIANOLA AVENUE**

**WHEREAS**, on August 27, 2014, the Zoning Board of Adjustment voted 7-0 to approve an application from Michael Leo (applicant) for a variance of the separation requirement that the premises of any restaurant seeking to sell wine and beer be separated by at least 75 feet from any church, school, public park or licensed child care facility, as set forth in Municipal Code Section 134-954(a), to allow for a restaurant selling wine and beer on the real property locally known as 1951 Indianola Avenue ("Property"); and

**WHEREAS**, the Property is located within 0' of a public park use (Columbus Park); and

**WHEREAS**, the Board found that the proposed restaurant selling wine and beer on the Property would not alter the essential character of the locality of the land in question, as the public recreational facilities at Columbus Park have been moved to the northern portion of the Park at least 180' from the Property, that the Property's lot line is physically separated by extensive fencing from the Park, and that the applicant demonstrated a hardship insofar as previous restaurants operating on the Property have been unable to sustain a viable business operation without the sale of wine or beer; 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 September 26, 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

14-1412

Agenda Item Number

45

Date September 8, 2014

(Council Communication No. 14- 445 )

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

APPROVED AS TO FORM:

Glenna K. Frank  
Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
HENSLEY	✓			
MAHAFFEY	✓			
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.

T. M. Franklin Mayor

Diane Rauh City Clerk