



**Roll Call Number**

14-1599

**Agenda Item Number**

38

**Date** October 6, 2014

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION  
GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW  
EXPANSION OF A RESTAURANT AT 1106 ARMY POST ROAD TO INCLUDE  
OUTDOOR SALES OF BEER AND WINE DURING SPECIAL EVENTS**

**WHEREAS**, on September 24, 2014, the Zoning Board of Adjustment voted 7-0 to approve an application from Nick Iaria (tenant) 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 the expansion of the existing Nick’s restaurant to include outdoor sales of beer and wine during special events, as set forth in the approved Special Permit, on the real property locally known as 1106 Army Post Road (“Property”); and

**WHEREAS**, the Property is located within 0’ of a church use (Fort Des Moines Church of the Open Bible); and

**WHEREAS**, the Board found that the proposed expansion of Nick’s restaurant to include outdoor sales of wine and beer on the Property would not alter the essential character of the locality of the land in question, as the adjoining church allows usage of the church property as part of said events; 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 October 30, 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.

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(Council Communication No. 14-479)

MOVED by Moore 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

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GATTO, GRAY, HENSLEY, MAHAFFEY, MOORE, and TOTAL (7).

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 Council Mayor

Diane Rauh City Clerk