



Roll Call Number

16-1562

Agenda Item Number

76

Date September 12, 2016

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

WHEREAS, on August 24, 2016, the Zoning Board of Adjustment voted 6-0 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") to expand to add a 211-square foot patio area along the east façade of the existing 1,560-square foot building; and

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

WHEREAS, the Board found that the proposed patio affiliated with the existing 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, the Property's lot line is physically separated by extensive fencing from the Park, 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 that the intent of the separation distance requirements of the Zoning Code have been met; 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 22, 2016.

★ Roll Call Number
16-1562

Agenda Item Number
7b

Date September 12, 2016

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.

(Council Communication No. 16-496)

MOVED by Gatto 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	✓			
MOORE		✓		
WESTERGAARD	✓			
TOTAL	5	2		

MOTION CARRIED APPROVED
T. M. Franklin 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