



Roll Call Number

18-0077

Agenda Item Number

52

Date January 8, 2018

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION
GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW A
BUSINESS SELLING WINE OR BEER AT 900 42ND STREET**

WHEREAS, RSC Partners, LLC, as property owner, has requested that its tenant Pinot's Palette be allowed to sell wine and beer from its existing business on the real property locally known as 900 42nd Street ("Property"); and

WHEREAS, the Property is located within 64 feet of a school use for Hubbell Elementary School and for Roosevelt High School; and

WHEREAS, on December 20, 2017, the Zoning Board of Adjustment voted 4-3 to approve an application from RSC Partners, LLC, on behalf of Pinot's Palette, for a variance of the separation requirement that the premises of any business seeking to sell wine and beer for on-premises consumption (other than a restaurant) must be separated by at least 150 feet from any property containing a school use, as set forth in Municipal Code Section 134-954(a), to allow for the existing business to sell wine and beer on the Property, and the Board found that the selling of alcohol would give the existing business greater control over alcohol consumption than the current practice of allowing patrons to bring alcohol to the premises and would be compatible with the character of the surrounding area; 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 January 27, 2018.
- 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. 18- DID)

MOVED by Mandelbaum 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	✓			
BOESEN	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
WESTERGAARD	✓			
TOTAL	7			
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