



Roll Call Number

18-0608

Agenda Item Number

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Date April 9, 2018

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING AN AMENDMENT TO USE VARIANCE TO ALLOW A RESTAURANT SELLING ALCOHOLIC LIQUOR, WINE, AND BEER ON THE PROPERTY AT 2301 SOUTHWEST 9<sup>TH</sup> STREET**

**WHEREAS**, on March 25, 2015, the Zoning Board of Adjustment voted 5-2 to approve an application from Wayne Russell, LLC (applicant) for a use variance to allow real property locally known as 2301 Southwest 9<sup>th</sup> Street to continue to be used as a restaurant selling alcoholic liquor, wine and beer, subject to certain conditions set forth in the Decision and Order of the Board; and

**WHEREAS**, on April 6, 2015, by Roll Call No. 15-0631, City Council received and filed the staff report and comments regarding said use variance and declined to remand the decision to the Zoning Board of Adjustment, resulting in the Board's decision to approve the use variance becoming final on April 6, 2015; and

**WHEREAS**, on March 23, 2016, the Zoning Board of Adjustment voted 7-0 to approve an application from Wayne Russell, LLC (applicant) to amend said use variance to allow an additional year (until November 15, 2016) to prove compliance with the auditing requirements for a restaurant due to the change in ownership of the business tenant, and to allow an outdoor patio along the west side of the building so long as no speakers or amplified sound occur thereon; and

**WHEREAS**, on April 11, 2016, by Roll Call No. 16-0610, City Council received and filed the staff report and comments regarding said use variance and remanded the decision to the Zoning Board of Adjustment for further study; and

**WHEREAS**, on April 27, 2016, the Zoning Board of Adjustment voted 6-0 to revise the March 23, 2016 Decision and Order and require any outdoor patio be completely removed immediately if the property is no longer used as a restaurant; and

**WHEREAS**, on December 21, 2016, the Zoning Board of Adjustment voted 7-0 to approve an application from Wayne Russell, LLC (applicant) to amend said use variance and modify Conditions #2 and #4 thereof to allow an additional four-month period (until March 15, 2017) to prove compliance with the auditing requirements for a restaurant due to a second change in ownership of the business tenant, and to allow an additional nineteen-month period (until December 1, 2017) to substantially improve the existing parking lot in accordance with a Site Plan as approved by the City's Permit and Development Center with further requirements as set forth in the Board's Decision and Order; and

**WHEREAS**, on January 9, 2017, by Roll Call No. 17-0066, the City Council received and filed the staff report and comments regarding said use variance and declined to remand the decision to the Zoning Board of Adjustment, resulting in the Board's decision to approve the use variance becoming final on January 9, 2017; and

**WHEREAS**, on May 24, 2017, the Zoning Board of Adjustment voted 6-0 to approve an application from SDW, LLC (applicant) to amend said use variance and modify Condition #3 to allow the outdoor patio or seating area to be located along the north side of the building, rather than along the west side of the building, and subject to further requirements on patio construction and use as set forth in the Board's Decision and Order; and



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WHEREAS, on June 12, 2017, by Roll Call No. 17-1012, the City Council received and filed the staff report and comments regarding said use variance and declined to remand the decision to the Zoning Board of Adjustment, resulting in the Board's decision to approve the use variance becoming final on June 12, 2017; and

WHEREAS, on March 28, 2018, the Zoning Board of Adjustment voted 5-1 to approve an application from SDW, LLC (applicant) to amend said use variance and modify Condition #3 to allow outdoor speakers on the outdoor patio, subject to conditions set forth in the Board decision; and

WHEREAS, Iowa Code §414.7 and Section 134-65(d) of the Zoning Ordinance require that any use variance granted by the Board be forwarded to the City Council for its review, and the City Council may remand the use variance 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 April 28, 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.

(Council Communication No. 18-160)

MOVED by Coleman 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, BOESEN, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, and TOTAL.

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.

Mayor signature: J. McFranklin

City Clerk signature: Diane Rauh