



Roll Call Number

19-0389

Agenda Item Number

44

Date March 11, 2019

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING USE VARIANCE TO ALLOW LIMITED FOOD/RETAIL SALES ESTABLISHMENT SELLING ALCOHOLIC LIQUOR ON PROPERTY LOCATED AT 1372 EAST 14TH STREET

WHEREAS, on February 27, 2019, the Zoning Board of Adjustment voted 7-0 to approve an application from Shop N Save Number 2, LLC for an use variance to allow use of the property locally known as 1372 East 14th Street to sell alcoholic liquor, in addition to the sale of wine and beer, subject to certain conditions set forth in the Decision and Order of the Board as attached hereto; and

WHEREAS, the Zoning Board of Adjustment approval of the use variance was consistent with the court's ruling in Polk County District Court Case No. CVCV056228 remanding the matter to the Board for proceedings in accordance with said ruling, which ruling allowed Shop N Save Number 2, LLC to continue to sell alcoholic liquor due to the specific facts presented in the case and related to the site in question; and

WHEREAS, the approved use variance does not constitute a change in use at the subject property but rather allows Shop N Save Number 2, LLC to continue to sell alcoholic liquor, wine and beer within the requirements of the City's Zoning Ordinance, including but not limited to the conditional use permit process; 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 5, 2019.
- 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. 19-110)

MOVED by Westergaard 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.

J. M. Frankin Cownie Mayor

Diane Rauh City Clerk