

Date December 2, 2019

## REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW SALES OF ALCOHOLIC LIQUOR, WINE AND BEER AT 3104 UNIVERSITY AVENUE

WHEREAS, on November 20, 2019, the Zoning Board of Adjustment voted 5-1 to approve an application from Kum and Go L.C., for certain requests seeking zoning code relief to allow redevelopment of this site, which requests included a variance of the separation requirement that the premises of any gas station/convenience store in an NPC - Neighborhood Pedestrian Commercial Zoning District seeking to sell alcoholic liquor, wine and beer be separated by at least 500 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 new gas station/convenience store building selling alcoholic liquor, wine and beer on the real property locally known as 3104 University Avenue ("Property"), which new store building would replace Kum and Go's existing building on the Property where wine and beer is currently sold; and

WHEREAS, the Property is located within 202' of a property at 3223 University Avenue, which contains both a church and a licensed childcare facility; and

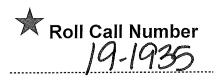
WHEREAS, the Board found that the proposed new gas station/convenience store building selling alcoholic liquor, wine and beer on the Property would not alter the essential character of the locality of the land in question, as the currently existing building sells wine and beer, another nearby business sells alcoholic liquor, wine, and beer, the Property's lot line is physically separated from the licensed childcare facility by an arterial street right-of-way, 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

- <u>A</u> 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.
- $\underline{B}$  The City Council takes no action to review the Decision and Order. The decision of the Board will become final on December 23, 2019.
- <u>C</u> The City Council declines to remand the decision to the Zoning Board of Adjustment. The decision of the Board becomes final on this date.



Date December 2, 2019

(Council Communication No. 19-<u>508</u>)

MOVED by Manuelloum to adopt alternative \_\_\_\_\_, above.

Agenda Item Number

36

APPROVED AS TO FORM:

Judy K. Parter-Kruse

Judy K. Parks-Kruse Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT	CERTIFICATE
COWNIE	V				
BOESEN	~				<ul> <li>I, P. KAY CMELIK, 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.</li> <li>IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.</li> </ul>
COLEMAN	V				
GATTO	6				
GRAY	V				
MANDELBAUM	L				
WESTERGAARD	~				
TOTAL	7			· ·	
MOTION CARRIED APPROVED					- City Clerk