



Roll Call Number

25.0064

Agenda Item Number

43

Date January 13, 2025

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW SALES OF ALCOHOLIC LIQUOR, WINE, AND/OR BEER BY A “BAR” USE WITHIN 150 FEET OF A “PLACE OF WORSHIP” FOR PROPERTY AT 3614 6<sup>TH</sup> AVENUE OWNED BY 36 ON 6<sup>TH</sup> LLC**

**WHEREAS**, the real property locally known as 3614 6<sup>th</sup> Avenue (“Property”) is currently vacant but was previously operated as a department store or other retail establishments. The property owner seeks to operate the basement of the Property as a “Bar” use selling alcoholic liquor, wine, and beer; and

**WHEREAS**, the Property is located within 150 feet of a place of worship which is less than the separation distance required by Des Moines Municipal Code Tables 134-3.1-1 & 134-3.9-1 and sections 134-6.4 & 134-6.7; and

**WHEREAS**, Des Moines Municipal Code section 134-6.7 requires the Owner to obtain a variance from the Zoning Board of Adjustment in order to serve beer, wine, and alcoholic liquor within the Property; and

**WHEREAS**, the Owner made such application and on December 18, 2024, the Zoning Board of Adjustment voted 4-2 to approve an application from 36 on 6<sup>th</sup> LLC for a variance of the separation requirement that the premises of any bar use seeking to sell wine, beer, and alcoholic liquor be separated by at least 150 feet from any place of worship use set forth in Des Moines Municipal Code Tables 134-3.1-1 & 134-3.9-1 to allow the Owner/Occupant to operate a bar subject to the following conditions to which the Owner has agreed:

1. Any “Bar” use selling alcoholic liquor, wine, and/or beer for on-premises consumption shall be limited to 1,900 square feet within the basement.
2. Any business selling alcoholic liquor, wine, and/or beer shall operate in accordance with a liquor license obtained through the Office of the City Clerk as approved by the City Council.
3. The business shall comply with Article IV of Chapter 42 of the City Code pertaining to noise control.
4. The business shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
5. Any business selling alcoholic liquor, wine, and/or beer shall not dispense alcoholic beverages from a drive-through window.



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6. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of the business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
7. Any renovation of the building shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the City's Permit and Development Center.
8. If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use, the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use.

; and

**WHEREAS**, Iowa Code § 414.7 and Section 134-6.7.8(C) 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  
(Choose Only One)**

- 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 February 3, 2025.~~
- 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. 25-022)

Moved by Westergaard to adopt Second by Mandelbaum  
Alternative C.

APPROVED AS TO FORM:

/s/ Gary D. Goudelock Jr.  
Gary D. Goudelock Jr.  
Assistant City Attorney

\*Council Member Voss declares a conflict of interest and abstains from voting.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN	✓			
SIMONSON	✓			
*VOSS				
COLEMAN	✓			
WESTERGAARD	✓			
MANDELBAUM	✓			
GATTO	✓			
TOTAL	6			

MOTION CARRIED

APPROVED

Connie Breen  
Mayor

### CERTIFICATE

I, LAURA BAUMGARTNER, 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.

Laura Baumgartner  
City Clerk