



Date June 8, 2015

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING A USE VARIANCE TO ALLOW A LIMITED FOOD/RETAIL SALES ESTABLISHMENT SELLING ALCOHOLIC LIQUOR, WINE, AND BEER ON THE PROPERTY AT 4538 LOWER BEAVER ROAD

WHEREAS, on May 27, 2015, the Zoning Board of Adjustment voted 4-2 to approve an application from Azhar Iqbal (applicant) for a use variance to allow real property locally known as 4538 Lower Beaver Road to continue to be used as a Limited Food/Retail Sales Establishment (Family Pantry) selling alcoholic liquor, wine and beer, subject to certain conditions set forth in the Decision and Order of the Board; 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 July 2, 2015.
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. 15- 288)

MOVED by _____ to receive and file the staff report and comments received, and to adopt alternative _____, above.

APPROVED AS TO FORM:
Glenna K. Frank, Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GATTO, GRAY, HENSLEY, MAHAFFEY, MOORE, 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.

MOTION CARRIED APPROVED
Mayor

City Clerk



**ZONING BOARD OF ADJUSTMENT
CITY OF DES MOINES, IOWA
DECISION AND ORDER**

This Decision and Order of the Board of Adjustment does not constitute approval of any construction. All necessary permits must be obtained before any construction is commenced upon the Property. A Certificate of Occupancy must be obtained before any structure is occupied or re-occupied after a change of use.

Any use allowed by this Decision and Order shall not be commenced or resumed until all the requirements imposed on such use by the Zoning Ordinance and this Order have been satisfied.

The use allowed by this Order must be commenced within **two years** or this Order will be void and of no further force and effect.

IN THE MATTER OF THE APPEAL FROM	:	DOCKET: ZON 2015-00070
AZHAR IQBAL	:	
ON PROPERTY LOCATED AT	:	PUBLIC HEARING: MAY 27, 2015
4538 LOWER BEAVER ROAD	:	

SUBJECT OF THE APPEAL

Proposal: Use of the 2,604-square foot building for a Limited Food/Retail Sales Establishment (Family Pantry) selling alcoholic liquor, wine, and beer. As a Food/Retail Sales Establishment, no more than 40% of gross receipts from sales on the premises may be derived from the sale of alcoholic liquor, wine, beer, and tobacco products. A request to rezone the property to "C-2" District was denied by the City Council on April 6, 2015.

Appeal(s): Use Variance of the permitted uses in an "R-4" District (Limited Food/Retail Sales Establishment selling alcoholic liquor, wine, and beer).

Conditional Use Permit for a Limited Food/Retail Sales Establishment selling alcoholic liquor, wine, and beer.

Required by City Code Section 134-587 & 134-954.

FINDING

The appellant, through its legal counsel, both business owners, and store manager, presented information relating to the business. The appellant represented, in part, that the owners had run the business as a family-oriented store serving the neighborhood and local area for 12 years, and that a hardship would exist without approval of the Use Variance and Conditional Use Permit as no form of alcohol would be allowed to be sold due to City zoning requirements, which would cause a significant loss of revenue for all sales and failure to be able to maintain the business. A representative of the Lower Beaver Neighborhood Association spoke on behalf of himself and the Association in support of the appellant, stating, in part, that the Association gave unanimous support to the requested appeals without conditions, and addressing the willingness of the business owners to make changes requested by the Association and to have a 10-year police record without reported incident at the premises. No public opposition was presented during the hearing.

During Board deliberations, Board members found, in part, that approval of the Use Variance and Conditional Use Permit would not disrupt the character of the neighborhood and that alcoholic liquor has been sold for the past 12 years without neighborhood disruption; that the police report without incident was unusual; that the business appears to have good owners and proposed changes; that the business may fail without Board approval and its continued use was preferred over a blighted and vacant building; that the neighborhood support and immediate response to Neighborhood Association requests and changes made by the owners made the appellant an example of well-functioning limited food/retail sales establishment; and that due to the R-4 zoning, the lot would be too small for reuse and the building would be vacant without Board relief.

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For these reasons, granting the requested Use Variance for a 10-year period would be consistent with the intended spirit and purpose of the Zoning Ordinance and in harmony with the essential character of the locality of the land in question so long as any limited food/retail sales establishment selling alcohol operates in compliance with the conditions of approval. The appellant has demonstrated that an unnecessary hardship exists, as the size of the parcel and the fact that it adjoins an auto repair use prevent the land in question from being redeveloped, and thus yield a reasonable return, for any use permitted in the "R-4" Multiple-Family Residential District. The impacts of the requested use will be minimized by the required site improvements, such as planting additional landscaping, constructing a refuse collection container enclosure, and removing the existing freestanding pole sign.

Furthermore, the appellant has satisfied the criteria necessary for granting a Conditional Use Permit. The impacts of the use will be minimal so long as the sale of alcoholic liquor, wine, and beer is ancillary to a limited food/retail sales establishment, where no more than 40% of gross receipts from sales on the premises may be derived from the sale of alcoholic liquor, wine, beer, and tobacco products. If the Zoning Enforcement Officer determines at any time that the operation of such a business becomes a nuisance, exhibits a pattern of violating the conditions set forth in the Conditional Use Permit, or violates the requirements of City Code Section 134-954(c), the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use Permit.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeals for a Use Variance of the permitted uses in an "R-4" District (Limited Food/Retail Sales Establishment selling alcoholic liquor, wine, and beer) and a Conditional Use Permit for a Limited Food/Retail Sales Establishment selling alcoholic liquor, wine, and beer, to allow use of the 2,604-square foot building for a Limited Food/Retail Sales Establishment (Family Pantry) selling alcoholic liquor, wine, and beer, where as a Food/Retail Sales Establishment, no more than 40% of gross receipts from sales on the premises may be derived from the sale of alcoholic liquor, wine, beer, and tobacco products, are **granted**, subject to the following conditions:

1. The Use Variance shall expire 10 years after the date the Decision and Order is signed (June 2, 2025). Any future extension of the Use Variance is subject to reconsideration by the Zoning Board of Adjustment.
2. The sale of alcoholic liquor, wine, and beer shall only be ancillary to a limited food/retail sales establishment, where no more than 40% of gross receipts from sales on the premises may be derived from the sale of alcoholic liquor, wine, beer, and tobacco products.
3. Any business selling alcoholic liquor, wine, and beer shall operate in accordance with the necessary permits obtained through the Office of the City Clerk as approved by the City Council.
4. Prior to January 15, 2016, the business shall furnish a statement prepared and verified by a certified public accountant identifying the total dollar volume of all sales, and separately identifying the total dollar volume of sales derived from the sale of alcoholic beverages, from the sale of tobacco products, and from the sale of all other merchandise and food exclusive of alcoholic beverages and tobacco products, from the business premises during the six (6) month period July, 1, 2015 and ending December 31, 2015.
5. The business shall only operate between the hours of 6:00 AM and 11:00 PM on Sundays through Thursdays and between the hours of 6:00 AM and 12:00 AM (midnight) on Fridays and Saturdays.

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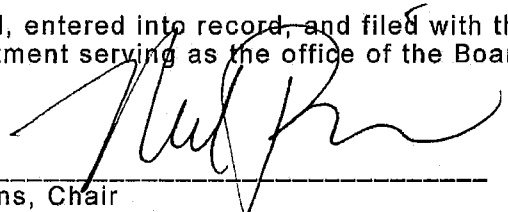
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6. There shall be no signage or advertisement for, or references to, wine and beer visible from outside of the enclosed building.
7. Prior to May 31, 2016, the existing freestanding pole sign shall be removed. Any replacement sign shall comply with the "FSO" Freestanding Signs Overlay District, which limits the sign to 8 feet in height and requires a minimum 2-foot tall masonry base.
8. Prior to May 31, 2016, the site shall be brought into conformance with the landscape standards applicable to the "C-2" District. The landscaping shall be maintained for the life of the business.
9. Prior to May 31, 2016, the refuse collection container shall be screened by an enclosure constructed of masonry walls and steel gates.
10. The business shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
11. The business shall institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
12. The business shall not dispense alcoholic beverages from a drive-through window.
13. 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.
14. Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.
15. If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance, exhibits a pattern of violating the conditions set forth in the Conditional Use Permit, or violates the requirements of City Code Section 134-954(c), the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use Permit.
16. The Decision and Order shall be recorded at the Polk County Recorder's Office at the appellant's expense to ensure that future property owners are aware of these conditions.

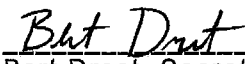
VOTE

The foregoing Decision and Order was adopted by a vote of 4-2, with Board members Christensen, Pins, Blake and Smith voting in favor thereof and Board members Westergaard and Mortice voting in opposition thereto.

Signed, entered into record, and filed with the City of Des Moines Community Development Department serving as the office of the Board, on June 2, 2015.



Mel Pins, Chair



Bert Drost, Secretary

June 8, 2015

Des Moines City Council
City Hall
400 Robert D Ray Drive
Des Moines, IA 50309

RE: Agenda Item #65 - ZBOA decision regarding the Family Pantry

Mr. Mayor & Honorable Council Members,

It has been quite a lot of work for everyone to get to where we are now. I first want to thank each one of you for working with the residents of our neighborhood to not allow a rezoning of this property. All along, many residents and our board have advised these business owners that we would not support a rezoning, but we would work with them to help them remain in business. For this, they would need to agree to quite a few conditions and with the 40/60 rule for alcohol/cigarette sales vs food/other sales at their convenience store.

The support for this business was due in part that they had not been a nuisance or inflicted harm upon our neighborhood. The ten (10) year report from the police department backs this up.

Since before this business came before you, the owners have removed their alcohol signs from the windows, repaired their parking lot, added a significant amount of food, tidied up both inside and outside and have gone through all the steps to become eligible for the Supplemental Nutrition Assistance Program (SNAP) that will help them generate even more food sales and in turn, serve those in need in our community.

The Zoning Board of Adjustment, by a vote of 4-2, decided to support the neighborhood's desire to allow this business another chance. Their ruling came with a lot of discussion and a significant number of conditions, sixteen (16) in fact. Conditions that the business owners have agreed to. These sixteen conditions from the Zoning Board of Adjustment will significantly change the appearance and operation of this convenience store going forward.

Conditions such as C-2 landscaping, a masonry dumpster enclosure with steel gates, removal of their pole sign, no signage or advertisement of alcohol to be seen from outside the store, limited hours of operation, adequate lighting of the parking lot, trash receptacles, no loitering signage and more. There's even a requirement that the Use Variance expires in ten (10) years.

So what if... you might be asking yourself? They are required to complete all the conditions/enhancements prior to May 31, 2016. They are also going to be watched by the city's zoning enforcement officer and could be brought back before the Zoning Board of Adjustment if they fail to meet the conditions. On top of all of that, they are to conduct a verified audit by a CPA of all sales between July 1, 2015 and December 31, 2015, and then provide it to the city prior to January 15, 2016.... ***They have just six (6) months to show that their business plan has worked.***

The Lower Beaver Neighborhood Board has met several times to mull over the situation... discussing what we felt met our neighborhood plan and the neighborhood as a whole. We have brought this situation before the residents of our neighborhood and had an owner and the manager answer questions at a LBNA general meeting and at our board meeting. In each case, the residents were satisfied with the answers they have been given and the final vote by our board was unanimous to support this business and their business plan.

We have faith that this business is making every effort to meet the requests of the residents of our neighborhood and the city of Des Moines. ***They realize that even though we are very supportive of their efforts, we intend to hold them accountable to all the conditions the Zoning Board of Adjustment has placed upon them.***

With this, we again thank each one of you, city staff and the Zoning Board of Adjustment members for working with the residents of the Lower Beaver Neighborhood. We hope that each one of you can believe that the decision by the Zoning Board of Adjustment is a huge step forward for our neighborhood and the city of Des Moines.

Thanks for your consideration.

Brian L Millard
President, Lower Beaver Neighborhood Association
3920 Lynner Drive
Des Moines, IA 50310
(515) 202-2788
<http://www.lowerbeaver.org>
<https://www.facebook.com/LowerBeaverNeighborhood>

*The LBNA was recognized by the City of Des Moines on July 24, 2000.
We became a designated Des Moines neighborhood on November 21, 2011.
On May 6th, 2013, our neighborhood plan was accepted by the city council.*