



**ZONING BOARD OF ADJUSTMENT  
STAFF REPORTS AND RECOMMENDATIONS  
SEPTEMBER 27, 2023**

<b>Item 1</b>	<b>ZBOA-2023-000066 2510 Ingersoll Avenue</b>	<b>Woodsonia Donuts, LLC Type 2 Zoning Exceptions</b>
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**Item 1 was continued from the August 23, 2023 Zoning Board of Adjustment meeting. The appellant has since revised their request, as noted in this report.**

**APPLICABLE REQUIREMENTS**

**5.6.2 PERMITTED SIGN TYPES**

The sign types identified in Table 134-5.6-1 of this article are allowed in DX, MX, RX, CX, EX, I and P zoning districts in addition to those signs identified in section 134-5.4 of this article.

TABLE 134-5.6-1. SIGNS IN DX, MX, RX, CX, EX, I, P AND F DISTRICTS									
	DX1	DX2 DXR	MX1 MX2	MX3	CX	RX	EX I	P	F
<b>PERMITTED SIGN TYPES</b>									
Wall	●	●	●	●	●	●	●	●	●
Monument	●	●	●	●	●	●	●	●	—
Projecting; Marquee	●	●	●	●	●	●	●	●	●
Roof	●	●	—	—	●	—	●	—	—
<b>WALL SIGNS: MAXIMUM NUMBER AND AREA</b>									
Maximum Number per Occupant	2	2	2	2	2	2	2	2	2
Maximum Total Sign Area (sq. ft.)	2 per linear foot of building frontage for floors 1-3	1.25 per linear foot of building frontage for floors 1-3					2 per linear foot of building frontage for floors 1-3		1.25 per linear foot of building frontage for floors 1-3
Maximum Area of Any Single Sign	200 sq. ft.	100 sq. ft.	100 sq. ft.	200 sq. ft.	200 sq. ft.	100 sq. ft.	200 sq. ft.	200 sq. ft.	100 sq. ft.
Other Regulations	See section 134-5.6.3 of this article								
<b>MONUMENT SIGNS: MAXIMUM NUMBER, AREA AND HEIGHT</b>									
Maximum Number per Street Frontage	1	1	1	1	1 per 250 linear feet of frontage	1	1 per 250 linear feet of frontage	1	—
Maximum Sign Area (sq. ft.)	25	25	1 per linear foot of street frontage or 75 sq. ft., whichever is less	75	1 per linear foot of street frontage or 200 sq. ft., whichever is less	15	1 per linear foot of street frontage or 200 sq. ft., whichever is less	75	—
Maximum Height (ft.)	8 if setback less than 25 feet from property line; 15 if setback at least 25 feet from property line								
<b>PROJECTING AND MARQUEE SIGNS</b>									
Maximum Number	May be used in lieu of wall signs or in addition to wall signs, but the total number of wall signs, projecting signs and roof signs may not exceed the maximum number of wall signs allowed in accordance with this table.								
Maximum Sign Area	Same as apply to wall signs								
Maximum Projection	May not project more than seven feet from the wall of the building to which they are attached.								
Minimum Vertical Clearance	Must be mounted to provide at least nine feet vertical clearance above the sidewalk, driveway or other ground surface beneath the sign								
Other Regulations	See section 134-5.6.6 of this article and 134-5.6.9 of this article								
<b>AWNING AND CANOPY SIGNS</b>									
Regulations	See section 134-5.6.7 of this article								
<b>ROOF SIGNS</b>									
Maximum Number	May be used in lieu of wall signs or in addition to wall signs in those districts that expressly allow roof signs, but the total number of wall signs, projecting signs and roof signs may not exceed the maximum number of wall signs allowed in accordance with this table.								—
Maximum Sign Area	Same as apply to wall signs								—
Maximum Height	Mounted height of a roof sign may not exceed eight feet. The combined height of a roof sign and the building upon which the sign is mounted may not exceed the maximum height limit of the subject zoning district or the subject building type.								—
Other Regulations	See section 134-5.6.8 of this article								
<b>ELECTRONIC AND MULTI-VISION DISPLAYS ON MONUMENT SIGNS</b>									
Regulations	See section 134-5.7 of this article								
Table Notes: ● = Permitted, subject to compliance with all applicable regulations of this article   — = Prohibited									

### **134-5.2 Prohibited Signs and Sign Characteristics**

The following signs and sign characteristics are prohibited:

Q. Pole signs except as expressly allowed by the regulations of this chapter.

### **STAFF REPORT**

~~**Proposal:** Alteration and expansion of an existing freestanding pole sign within a vision clearance triangle with a maximum height of 15 feet containing a 6.83-foot wide by 9.46-foot tall (64.64 square feet) internally illuminated main cabinet and an internally illuminated changeable cabinet. This free-standing sign is in addition to a permitted freestanding sign (16 square feet) utilized on site.~~

Installation of an illuminated monument sign, totaling 44.27-square feet with a maximum height of 15 feet. This free-standing sign is in addition to a permitted freestanding sign (16 square feet) utilized on site. The applicant previously requested for alteration and expansion of an existing freestanding pole sign within a vision clearance triangle with a maximum height of 15 feet containing a 6.83-foot wide by 9.46-foot tall (64.64 square feet) internally illuminated main cabinet and an internally illuminated changeable cabinet.

~~**Appeal(s):** Variance of the provision that prohibits a non-conforming “pole sign” from being enlarged or altered in a way which increases its non-conformity.~~

~~Variance of the provision that prohibits any sign within a vision clearance triangle.~~

~~Type 2 Zoning Exception of 5.64 square feet over the maximum 75 square feet earned on the street frontage.~~

Type 2 Zoning Exception of 7 feet over the maximum 8 feet of height allowed for a sign that is located within 25 feet of a front property line in an “MX3” District.

Type 2 Zoning Exception for a monument sign with a monument base height that is 1.75 feet less than the minimum required 3.75 feet of height (25% of the overall sign height).

Type 2 Zoning Exception for 1 freestanding sign over the maximum 1 sign earned on the street frontage.

**Site Description:** The subject property measures 41,728 square feet (0.958-acres) and contains an existing 3,873-square foot restaurant (Starbucks). The property is on the south side of Ingersoll Avenue between 24<sup>th</sup> Street and 28<sup>th</sup> Street. The property is zoned “MX3” Mixed Use District.

**Neighborhood Notification Information:** The subject property is within the Woodland Heights Organization Neighborhood. All neighborhood associations were notified of the Board meeting by email of the Preliminary Agenda on September 8, 2023. Additionally,

an official public notice of the hearing for this specific item was mailed on September 19, 2023, to the titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All mailings are sent to the primary contact designated by the recognized neighborhood association on file with the City of Des Moines' Neighborhood Development Division. The Woodland Heights Organization mailings were sent to Cameron Gale.

**Criteria for the Board to Consider:** Taking into consideration the criteria set forth in Section 134-6.6.8 of the City Code and Chapter 18B of the Iowa Code, the Board shall ensure that Type 2 Zoning Exceptions may be approved only when determining that all of the following general approval standards and criteria and any other specific criteria established in this Zoning Ordinance have been met:

1. The requested Exception is reasonably necessary due to practical difficulties related to the subject property;
2. The practical difficulties related to the subject property cannot be overcome by any feasible alternative means other than an Exception;
3. The requested Exception will not have a significant adverse impact on the essential character of the surrounding area;
4. The requested Exception by its design, construction and operation:
  - a. Will adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property;
  - b. Will not impair an adequate supply of Sight and air to adjacent property;
  - c. Will not unduly increase congestion in the public streets;
  - d. Will not increase public danger of fire and safety; and
  - e. Will not diminish or impair established property values in the surrounding area.
5. The requested Exception relates entirely to a use classified by applicable district regulations as either a principal permitted use, a permitted accessory use, or a permitted sign, or to off-street parking or loading areas accessory to such a permitted use.

**Additional Information:** The appeals related to the sign were continued from the August 23, 2023 Zoning Board of Adjustment meeting to allow the applicant time to work with staff on a compromise. The appeals as amended would allow installation of an illuminated monument sign, totaling 44.27-square feet with a maximum height of 15 feet. This free-standing sign would be in addition to a permitted freestanding sign (16 square feet) utilized on site. The applicant previously requested for an alteration and expansion of an existing freestanding pole sign that is within a vision clearance triangle along Ingersoll Avenue, that would have a maximum height of 15 feet and would contain

a 6.83-foot wide by 9.46-foot tall (64.64 square feet) internally illuminated main cabinet and an internally illuminated changeable cabinet. The amended sign would be used to identify a use (future “MoLo” hotel) that is on the parcel adjacent to the south. This freestanding sign is in addition to another freestanding sign (16 square feet) on the site that identifies the “Starbucks” restaurant.

Historically, the Howard Johnson Hotel located at 2525 Grand Avenue has maintained an easement for the existing access drive and the existing freestanding pole sign that is located on the parcel known as 2510 Ingersoll Avenue (Starbucks). This parcel previously contained a restaurant associated with the Howard Johnson Hotel, but the parcel was later split so that the restaurant could be sold to separate ownership. It is typical for extensive site improvements to trigger the removal of an existing pole sign or when it has lost its non-conforming status (discontinued use for a period of more than 6 months per Section 134-7.3.7. of the City Code). However, the pole sign remains.

In accordance with City Code Section 134-6.6.2.3, Exceptions to allow a pole sign may occur when the Zoning Board of Adjustment determines that there is no feasible location for the placement of a monument sign that is outside of the vision clearance triangle required by City Code Section 114-14 and the proposed sign does not obstruct the vision of drivers entering or exiting the subject or adjoining properties. Under the current circumstances, this appeal would not be applicable as there are numerous locations for which a monument sign could be located on site outside of a vision clearance triangle.

**Permit and Development Center Comments:** Any new or modified sign shall be installed in compliance with a sign permit issued by the City’s Permit and Development Center to a sign contractor licensed by the City.

**Staff Rationale:** The appellant has satisfied the criteria necessary for granting the three (3) requested Type 2 Zoning Exceptions, so long as any freestanding sign on the property is a monument sign and is not within a required vision clearance triangle. Staff also believes that it is reasonably necessary to allow the height of any monument sign within 25 feet of a front lot line to be 15 feet in height with a monument base height that is 1.75 feet less than the minimum required 3.75 feet of height (25% of the overall sign height) as this would help alleviate pedestrian visibility concerns along the frontage. The appellant faces a practical difficulty in providing signage that is of a size that can adequately identify the hotel to the south, given the scope and configuration of the site. A 15-foot-tall monument sign would not have a significant adverse impact on the essential character of the surrounding area. Such a sign would adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property and would not impair an adequate supply of light and air to adjacent property; unduly increase congestion in the public streets; increase public danger of fire and safety; and not diminish or impair established property values in the surrounding area. It would relate entirely to a use classified by applicable district regulations as either a principal permitted use, a permitted accessory use, or a permitted sign, or to off-street parking or loading areas accessory to such a permitted use.

**STAFF RECOMMENDATION**

Staff recommends approval of the requested amended Type 2 Zoning Exception of 7 feet over the maximum 8 feet of height allowed for a sign that is located within 25 feet of a front property line for 1 freestanding sign over the maximum 1 sign earned on the street frontage, the requested Type 2 Zoning Exception, and the requested Type 2 Zoning Exception for a monument sign with a monument base height that is 1.75 feet less than the minimum required 3.75 feet of height (25% of the overall sign height), subject to the following conditions:

1. Any freestanding sign shall be a monument sign located outside of any required vision clearance triangle.
2. Any monument sign shall be limited to no more than 15 feet in height if located within 25 feet of a front lot line.
3. Any monument sign shall be limited to a maximum of 44.27 square feet in area.
4. Any signage shall be installed by a licensed sign contractor in accordance with a sign permit issued by the City's Permit and Development Center to a sign contractor licensed by the City.



BOARD OF ADJUSTMENT  
STAFF REPORTS AND RECOMMENDATIONS  
SEPTEMBER 27, 2023

<b>Item 2</b>	<b>ZBOA-2023-000065</b> <b>2525 Grand Avenue</b>	<b>Terrace Hill I, LLC</b> <b>Type 2 Zoning Exceptions</b>
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*This item was withdrawn by the applicant.*



**ZONING BOARD OF ADJUSTMENT  
STAFF REPORTS AND RECOMMENDATIONS  
September 27, 2023**

<b>Item 3 ZBOA-2023-000072 4545 Fleur Drive</b>	<b>Raccoon Valley Investment Company Conditional Use</b>
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**APPLICABLE REQUIREMENTS**

*The sale of alcoholic liquor, wine, and beer is permitted only in the zoning districts and subject to the conditions indicated in Table 134-3.9-1 of Chapter 134 of the Municipal Code.*

TABLE 134-3.9-1. ALCOHOLIC LIQUOR, WINE AND BEER SALES												
USE	DISTRICTS											
	DX1	DX2	DXR	MX1	MX2	MX3	RX1, RX2	CX, EX, I1	I2	NX2, NX2A	P1, P2	F
<b>Retail Sales</b>												
<b>Limited</b>												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	○*	○*	-	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	○*	○*	-	-	-	-
<b>General</b>												
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	40%/75	-	40%/75	40%/75	-	40%/75	-	-	-	-
Wine and Beer Sales	40%/75	40%/75	40%/75	-	40%/75	40%/75	-	40%/75	-	-	-	-
<b>Large</b>												
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-
Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-
<b>Fuel Station</b>												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	○*	○*	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	40%/150	40%/150	-	40%/150	40%/150	-	40%/150	40%/150	-	-	-
<b>Liquor Store</b>												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	-	○*	○*	-	-	-
<b>Tobacco Store</b>												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	-	○*	○*	-	-	-
<b>Restaurant, Bar, Other Uses</b>												
Restaurant with Alcoholic Liquor, Wine and Beer Sales	50%	50%	50%	50%	50%/75	50%/75	50%/75	50%/75	50%/75	○*	○*	-
Bar	○*	○*	○*	-	○*	○*	-	○*	-	-	○*	-
Other Uses with Alcoholic Liquor, Wine and Beer Sales	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*
<b>KEY:</b> ○=requires conditional use approval   * = supplemental use regulations apply   - = prohibited												
<b>Table Notes</b>												
○ = Uses identified with a ○ symbol are allowed only if reviewed and approved in accordance with the conditional use procedures of <a href="#">134-6.4 of this chapter</a> .												
<b>40%</b> = no more than 40% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine, beer or tobacco products.												
<b>50%</b> = at least 50% of the gross receipts from sales from the premises must be derived from the sale of prepared food and food-related services. The sale of an alcoholic beverage is not the sale of prepared food and food-related services.												
<b>25%</b> = no more than 25% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine or beer.												
<b>75</b> = the licensed premises occupied by such use must be separated by at least 75 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.												
<b>150</b> = the licensed premises occupied by such use must be separated by at least 150 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.												
<b>500</b> = the licensed premises occupied by such use must be separated by at least 500 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.												
<b>1320</b> = the licensed premises occupied by such use must be separated by at least 1320 feet from the property line of the lot where any limited retail sales, fuel stations, liquor stores and tobacco stores engaged in the sale of alcoholic liquor is located.												

**In accordance with City Code Section 134-3.9.9.B, the Zoning Board of Adjustment shall apply the following criteria when considering any application for a Conditional Use for the sale of alcoholic liquor, wine, and/or beer:**

*Conditional use approval is required for the use of a premises, either as principal or accessory use, for the sale of alcoholic liquor, wine or beer, under the circumstances identified in Table 134-3.1-1 and criteria: Table 134-3.9-1 of this article. The board of adjustment is authorized to grant conditional use approval for such uses only when the business, operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:*

1. *The business conforms with the conditions identified in indicated in Table 134-3.9-1 of this article.*
2. *The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.*
3. *The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.*
4. *The business will not unduly increase congestion on the streets in the adjoining residential area.*
5. *The operation of the business will not constitute a nuisance.*

**Furthermore, in accordance with City Code Sections 134-3.9.9.C-H, the following applies for any Conditional Use for the sale of alcoholic liquor, wine, and/or beer.**

**C. Supplemental Use Regulations.** *Any conditional use approval granted by the board of adjustment for the use of a premises, either as principal or accessory use, for the sale of alcoholic liquor, wine, and beer is subject to the following supplemental use regulations, together with such additional special conditions as may be reasonably required by the board of adjustment to ensure that the conditional use review approval criteria of paragraph B of this subsection, are satisfied:*

1. *Any parking area provided for the use of customers of the business must be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site must be landscaped and illuminated so as to minimize hiding places for possible criminal activity.*
2. *The business shall comply with the noise control regulations of article IV of chapter 42 of this code. Outside speakers and amplified sound is prohibited except when used in compliance with a type E sound permit.*
3. *Any such business must comply with the following requirements:*
  - a. *Every limited retail sales establishment, fuel station and tobacco store shall display alcoholic liquor only in a locked case or behind a counter accessible only to employees. Any other business selling alcoholic liquor for off premises consumption shall either:*
    - i. *Display alcoholic liquor only in a locked case or behind a counter accessible only to employees;*
    - ii. *Employ an electronic security cap or tag system on all containers of alcoholic liquor on display; or*
    - iii. *Have more than one employee on duty at all times the business is open to the public.*
  - b. *Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.*



*c. Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.*

*d. Not dispense alcoholic beverages from a drive-through window.*

*4. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.*

*5. The conditional use approval is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions of the conditional use approval.*

*6. If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions of the conditional use approval, the zoning enforcement officer may apply to the board of adjustment to reconsider conditional use approval for such business. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such business at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board of adjustment finds that the operation of such business exhibits a pattern of violating the conditions of the conditional use, the board shall have the authority to amend or revoke the conditional use approval.*

**D. Report of Findings.** *Upon reasonable suspicion that any fuel station, or retail sales establishment, or other uses with sales for on-premise consumption excluding restaurants and bars, derives more than 40% of its gross receipts from the sale of alcoholic liquor, wine, beer or tobacco products, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 40% of its gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products. In such event it shall be presumed that more than 40% of the gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for fuel station and retail sales establishments, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts 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 in the preceding six months.*

**E. Report of Findings - Restaurant.** *Upon reasonable suspicion that any restaurant does not derive at least 50% of its gross receipts from the sale of prepared food and food-related services, the zoning enforcement officer may require that the owner or operator or the restaurant demonstrate within 45 days that during the prior six months at least 50% of its gross receipts were derived from the sale of prepared food and food-related services. In such event it shall be presumed that less than 50% of the restaurant's gross receipts are derived from the sale of prepared food and food-related services, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for restaurants, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of alcoholic beverages and from the sale of prepared food and food-related services exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months.*

**F. Report of Findings - Tobacco Store.** *Upon reasonable suspicion that any tobacco store derives more than 25% of its gross receipts from the sale of alcoholic liquor, wine or beer, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 25% of the gross receipts from sales were derived from the sale of alcoholic liquor, wine or beer. In such event it shall be presumed more than 25% of its gross receipts from sales are derived from the sale of alcoholic liquor, wine or beer, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements*

*of this section for tobacco stores, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts 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 in the preceding six months.*

**G. Prohibited Accounting for Alcoholic Beverages.** *The sale of an alcoholic beverage and any of its component ingredients whether mixed into one beverage or sold separately to the same customer, regardless of intent, shall not be divided for accounting purposes under this chapter.*

**H. Effective Date.** *All fuel stations, retail sales establishments, tobacco stores and restaurants that have not continuously held an alcoholic liquor license or a beer or wine permit since July 1, 2012, shall comply with the requirements of paragraphs A., B., C., D., E., F., and G. of this subsection. Any fuel station, retail sales establishment, tobacco store or restaurant which has continuously held an alcoholic liquor license or a wine or beer permit since July 1, 2012, shall comply with paragraphs A., B., C., D., E., F., and G. of this subsection, exclusive of any changed separation requirements, commencing on December 31, 2013, and prior to that date shall continue to be subject to the general regulations regarding nonconforming uses, as set forth in section 134-7.2 of this code.*

## **STAFF REPORT**

**Proposal:** Conditional Use for an existing 17,248 square foot movie theater and café, classified as an “Other” use with sales of wine and beer for on premises consumption.

**Appeal(s):** Conditional Use for an “Other” use (“Assembly and Entertainment, Small” use) selling wine and beer for on-premises consumption in a “CX” District.

**Site Description:** The subject property is an irregularly-shaped parcel measuring 2.678 acres (116,675 square feet) and is located on the northeastern periphery of the mixed-use commercial area located at the intersection of Fleur Drive and McKinley Avenue. It contains a 17,248-square foot commercial structure used as a cinema and a surface parking lot. The property is zoned “CX” Mixed-Use District.

**Neighborhood Notification Information:** The subject property is within the Watrous South Neighborhood. All neighborhood associations with a contact on file were notified of the request by email of the Preliminary Agenda on September 8, 2023. Additionally, official public notices of the hearing for this specific item were mailed on September 12, 2023 to the titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All neighborhood mailings are sent to the primary contact designated by the recognized neighborhood association on file with the City of Des Moines. The Watrous South Neighborhood Association were mailed to George Davis.

The appellant must provide a summary of their neighbor communications to City Staff at least 3 days before the Zoning Board of Adjustment holds the public hearing.

**Additional Information:** On September 26, 2001, by Docket No. ZON2001-00093, the Zoning Board of Adjustment granted a Conditional Use for a business having a liquor license to allow, with a City Council Liquor License, the sales of beer and food in

conjunction with the primary movie theater use, with consumption within 100% of the 17,248 square foot building subject to meeting all provisions for liquor licensing under the City Code.

**Criteria for the Board to Consider:** Taking into consideration Chapter 18B of the Code of Iowa, the board of adjustment is authorized to grant conditional use approval for businesses selling alcoholic liquor, wine, and/or beer only when the business, operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:

1. The business conforms with the conditions identified in indicated in Table 3.9-1 of Chapter 134 of the City Code.

*The application as proposed satisfies the separation distance requirements. There are no separation distance requirements for an "Other" use ("Assembly and Entertainment, Small" use).*

2. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.

*The subject property is located within an area that includes a mix of commercial and residential uses. Staff believes that the proposed use would adequately safeguard the health, safety and general welfare of persons residing in the surrounding area so long as it operates in accordance with the recommended conditions of approval.*

3. The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.

*Staff believes that the proposed use would have minimal impact on the surrounding properties if it operates in accordance with the recommended conditions of approval.*

4. The business will not unduly increase congestion on the streets in the adjoining residential area.

*The proposed amendment would have minimal impact on the traffic patterns in the area and is not anticipated to increase congestion in the area.*

5. The operation of the business will not constitute a nuisance.

*The existing Conditional Use or amended Conditional Use would be subject to amendment or revocation if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use, or if the operation violates the*

*requirements of City Code Section 134-3.9.9.C, as provided in the “Applicable Requirements” section of this report.*

Taking into consideration Chapter 18B of the Code of Iowa, the board of adjustment is authorized to grant conditional use approval if the board determines that the proposed use or activity complies with all applicable uses-specific regulations and if the applicant has demonstrated that all of the following general standards and review criteria are met:

1. The proposed geographic location and operation of the use or activity adequately safeguards the health, safety, and general welfare of persons residing or working in adjoining or surrounding property.

*Staff believes that the proposed use would adequately safeguard the health, safety, and general welfare of persons residing or working in adjoining or surrounding property if it operates in accordance with the recommended conditions of approval.*

2. The proposed use will not impair an adequate supply of light and air to surrounding property.

*Staff believes that the proposed use would not impair an adequate supply of light and air to surrounding property.*

3. The proposed use will not unduly increase congestion in the streets, or public danger of fire, safety or flooding.

*Staff believes that the proposed use would not unduly increase congestion in the streets, or public danger of fire, safety or flooding if it operates in accordance with the recommended conditions of approval.*

4. The proposed use will not diminish or impair established nearby property values.

*Staff believes that the proposed use would not diminish or impair established nearby property values if it operates in accordance with the recommended conditions of approval.*

5. The proposed use is consistent with the general purpose of this zoning ordinance, the planning and design ordinance, chapter 135 of this code, and the comprehensive plan and any specific purposes established in the zoning ordinance for the subject use.

*The proposed use is consistent with the general purpose of the zoning ordinance, the planning and design ordinance, chapter 135 of the City’s code, and the comprehensive plan.*

6. The proposed use in an F zoning district is fully in compliance with chapter 50 of this code.

*This criterion is not applicable, as the subject property is not located in an F zoning district.*

7. The proposed use shall have no significant detrimental impact on the use and enjoyment of adjoining properties.

*Staff believes that the proposed use would not have an impact on the surrounding properties if it operates in accordance with the recommended conditions of approval.*

8. Adequate setbacks shall be provided to protect adjacent residentially zoned property from non-residential and institutional uses.

*The proposed use would be adequately setback from any residentially zoned property.*

9. No parking should be permitted in a required front yard of an N district unless shown to be compatible with the adjoining land use.

*This criterion is not applicable, as the subject property is not located in an N district.*

**Permit and Development Center Comments:** Any sale of alcoholic liquor, wine, and/or beer must be in accordance with the proper license obtained through the Office of the City Clerk as approved by the City Council.

**Staff Rationale:** The application satisfies the criteria for granting a Conditional Use for an “Other” use (“Assembly and Entertainment, Small” use) to allow the sale of wine and beer for on-premises consumption in a “CX” District. The proposed use would adequately safeguard the health, safety and general welfare of persons residing in the surrounding area so long as it operates in accordance with the recommended conditions of approval. The proposed use is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses. Furthermore, 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 Zoning Board of Adjustment to reconsider the issuance of the Conditional Use for such business.

### **STAFF RECOMMENDATION**

Staff recommends approval of the requested Conditional Use for an “Other” use (“Assembly and Entertainment, Small” use) selling wine and beer for on-premises consumption in a “CX” District, subject to the following conditions:

1. All sale of wine and/or beer shall be accessory to a theater or assembly use within the existing building.

2. The business selling wine, and/or beer shall operate in accordance with the necessary permits obtained through the Office of the City Clerk as approved by the City Council.
3. Any 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. 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.
6. Any renovation on the site shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the Permit and Development Center.
7. 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 or the requirements contained in City Code Section 134-3.8.1, the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use.



ZONING BOARD OF ADJUSTMENT  
 STAFF REPORTS AND RECOMMENDATIONS  
 SEPTEMBER 27, 2023

<b>Item 4 ZBOA 2023-000075</b>	<b>Kemin Holdings, LLC</b>
<b>Vicinity of 2100 Maury Avenue</b>	<b>Conditional Use</b>

**APPLICABLE REQUIREMENTS**

**Table 134-3.1-1**

**134-3.6.1 FABRICATION AND PRODUCTION**

*Uses primarily involved in the manufacturing, processing, fabrication, packaging, or assembly of goods made for the wholesale market/ for transfer to other plants, or for firms or consumers.*

**D. Intensive.** *Uses that regularly use hazardous chemicals or procedures or produce hazardous byproducts, including the following: manufacturing of acetylene, cement lime, gypsum or plaster-of-paris, chlorine, corrosive acid or fertilizer, insecticides, disinfectants, poisons, explosives, paint, lacquer, varnish, petroleum products, coal products, plastic and synthetic resins, radioactive materials, and above ground storage of flammable and combustible liquids in excess of 1,000 gallons. This subcategory also includes petrochemical tank farms, gasification plants, foundries, chrome plating, smelting, electroplating, fiberglass manufacturing, animal slaughtering, oil refining, asphalt and concrete plants, flour mills, paper products manufacturing, and tanneries. Intensive industrial uses have high potential for external impacts on the surrounding area in terms of noise, vibration, odor, hours of operation, and traffic.*

**STAFF REPORT**

Proposal: Expansion of the existing “Industrial: Fabrication & Production, Intensive” use by converting 8,792 square feet of existing warehouse space to production area in addition to installation of storage tanks and exterior equipment related to the project.

Appeal(s): Conditional Use for an “Industrial: Fabrication & Production, Intensive” use in an “I2” District.

**Site Description:** The subject property is zoned “I2” Industrial District. It is a 19.31-acre property located within the southern portion of the primary Kemin campus that is located between Martin Luther King, Jr. Parkway to the north and Maury Street to the south. There is an existing 23,714 square foot warehouse in which 8,792 square foot of space will be converted to a production area.

**Relevant Zoning History:** On July 25, 2012, by Docket No. ZON2012-00121, the Board granted a Conditional Use to allow expansion of the existing facility (to the south at 2100 Maury Street) with construction of four (4) 20,000-gallon, above ground storage tanks within a 40.3-foot by 40.33-foot (1,625 square feet) area to the west side of “Building 2”.

On August 27, 2014, by Docket No. ZON2014-00146, the Board granted a Conditional Use for construction of a 12,500-square foot facility for a chemical freeze-spraying process that would include installation of eight (8) accessory 10,000-gallon above ground storage tanks for Palm oil and two (2) accessory 15,000-gallon above ground storage tanks for liquid Nitrogen.

On September 27, 2017, by Docket No. ZON2017-00047, the Board granted a Conditional Use to allow expansion of the existing use of the property for the manufacturing of food additives, to also include a delivery site for production process chemicals within the eastern portion of the property. The area will consist of bulk storage within a 22-foot tall by 28-foot diameter above-ground storage tank for combustible chemicals, rail spurs holding a maximum of four rail tankers, related unloading equipment and pumps, and a pipe rack delivery system.

On January 22, 2021, by Docket No. ZON2020-00167, the Board granted a Conditional Use to allow expansion of the existing “Industrial: Fabrication & Production, Intensive” use to include operations within a new building that would generally measure 100 feet by 135 feet.

On June 23, 2021, by Docket No. ZON2021-00075, the Board granted a Condition Use to allow expansion of the existing “Industrial: Fabrication & Production, Intensive” use to include operations within a new approximate 11,000-square building addition.

On November 17, 2021, by Docket No. ZBOA-2021-000052, the Board granted a Conditional Use to allow expansion of the existing “Industrial: Fabrication & Production, Intensive” use to include operations within an existing 5,000-square foot building that was primarily used for warehousing.

**Neighborhood Notification Information:** The subject property is not within 250 feet of any recognized neighborhood. All neighborhood associations were notified of the Board meeting by email of the Preliminary Agenda on September 8, 2023. Additionally, an official public notice of the hearing for this specific item was mailed on September 12, 2023 to the titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All neighborhood mailings are sent to the primary contact designated by the recognized neighborhood association on file with the City of Des Moines’ Neighborhood Development Division.

With any Conditional Use application, the appellant is obligated to conduct a neighborhood outreach meeting and must provide a summary of that outreach to City Staff at least 3 days before the Zoning Board of Adjustment holds the public hearing.

**Criteria for the Board to Consider:** Taking into consideration the criteria set forth in Chapter 18B of the Iowa Code and Chapter 134 Section 134-6.4.8 of the City Code, a conditional use may not be approved unless the Board of Adjustment determines that the proposed use or activity compiles with all applicable “use” specific regulations and that the applicant has demonstrated that all of the following general standards and review criteria are met:



1. The proposed geographic location and operation of the use or activity adequately safeguards the health, safety, and general welfare of persons residing or working in adjoining or surrounding property;
2. The proposed use will not impair an adequate supply of light and air to surrounding property;
3. The proposed use will not unduly increase congestion in the streets, or public danger of fire, safety or flooding;
4. The proposed use will not diminish or impair established nearby property values;
5. The proposed use is consistent with the general purpose of this zoning ordinance, the planning and design ordinance, chapter 135 of this code, and the comprehensive plan and any specific purposes established in this zoning ordinance for the subject use;
6. The proposed use in any F zoning district is fully in compliance with chapter 50 of this code;
7. The proposed use shall have no significant detrimental impact on the use and enjoyment of adjoining properties;
8. Adequate setbacks shall be provided to protect adjacent residentially zoned property from non" residential and institutional uses; and
9. No parking should be permitted in a required front yard of an N district unless shown to be compatible with the adjoining land use.

**Additional Information:** The proposed use would be located within an existing warehouse building. The conversion of 8,792 square feet of space would include the addition of tanks, boilers, air compressors and dryers inside the existing building and a storage tank, chiller and air handling equipment outside the building. The proposed conversion would be an expansion of their production capacity.

**Permit and Development Center Comments:** Any building construction must be in conformance with an approved Site Plan per Chapter 135 of the City Code and all applicable Building and Fire Codes, with issuance of any necessary permits by the City's Permit and Development Center.

**Staff Rationale:** Granting the Conditional Use would be consistent with the intended spirit and purpose of the Zoning Ordinance and in harmony with the essential character of the neighborhood so long as the business is operated in compliance with the recommended conditions. This impact of the proposed use would be minimal since it is located within a large industrial campus adequately separated from residential

neighborhoods. Furthermore, the proposed use is compatible with the surrounding heavy industrial uses.

**STAFF RECOMMENDATION**

Staff recommends approval of the requested Conditional Use, subject to the following conditions:

1. Any building modifications shall be in accordance with all applicable Building and Fire Codes, with issuance of all necessary permits by the Permit and Development Center.
2. Any site development shall be in accordance with a Site Plan approved in accordance with all applicable standards contained in City Code Chapter 135.
3. Best practical control technology in the design of the project shall be implemented for control of any hazardous materials and/or odors as part of the use.
4. 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 or the requirements contained in City Code Section 134-3.8.1, the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use.



**ZONING BOARD OF ADJUSTMENT  
STAFF REPORTS AND RECOMMENDATIONS  
SEPTEMBER 27, 2023**

<b>Item 5</b>	<b>ZBOA-2023-000044 3826 Douglas Avenue</b>	<b>Knapp Investments, LLC Conditional Use</b>
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*Item 5 was continued from the August 23, 2023 Board of Adjustment meeting.*

**APPLICABLE REQUIREMENTS**

*The sale of alcoholic liquor, wine, and beer is permitted only in the zoning districts and subject to the conditions indicated in Table 134-3.9-1 of Chapter 134 of the Municipal Code.*

TABLE 134-3.9-1. ALCOHOLIC LIQUOR, WINE AND BEER SALES												
USE	DISTRICTS											
	DX1	DX2	DXR	MX1	MX2	MX3	RX1, RX2	CX, EX, I1	I2	NX2, NX2A	P1, P2	F
<b>Retail Sales</b>												
<b>Limited</b>												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	○*	○*	-	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	○*	○*	-	-	-	-
<b>General</b>												
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	40%/75	-	40%/75	40%/75	-	40%/75	-	-	-	-
Wine and Beer Sales	40%/75	40%/75	40%/75	-	40%/75	40%/75	-	40%/75	-	-	-	-
<b>Large</b>												
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-
Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-
<b>Fuel Station</b>												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	○*	○*	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	40%/150	40%/150	-	40%/150	40%/150	-	40%/150	40%/150	-	-	-
<b>Liquor Store</b>												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	-	○*	○*	-	-	-
<b>Tobacco Store</b>												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○*	-	○*	○*	-	-	-
Wine and Beer Sales	-	○*	○*	○*	○*	○*	-	○*	○*	-	-	-
<b>Restaurant, Bar, Other Uses</b>												
Restaurant with Alcoholic Liquor, Wine and Beer Sales	50%	50%	50%	50%	50%/75	50%/75	50%/75	50%/75	50%/75	○*	○*	-
Bar	○*	○*	○*	-	○*	○*	-	○*	-	-	○*	-
Other Uses with Alcoholic Liquor, Wine and Beer Sales	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*
KEY: ○=requires conditional use approval   * = supplemental use regulations apply   - = prohibited												
<b>Table Notes</b>												
○ = Uses identified with a ○ symbol are allowed only if reviewed and approved in accordance with the conditional use procedures of <a href="#">134-6.4 of this chapter</a> .												
40% = no more than 40% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine, beer or tobacco products.												
50% = at least 50% of the gross receipts from sales from the premises must be derived from the sale of prepared food and food-related services. The sale of an alcoholic beverage is not the sale of prepared food and food-related services.												
25% = no more than 25% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine or beer.												
75 = the licensed premises occupied by such use must be separated by at least 75 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.												
150 = the licensed premises occupied by such use must be separated by at least 150 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.												
500 = the licensed premises occupied by such use must be separated by at least 500 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.												
1320 = the licensed premises occupied by such use must be separated by at least 1320 feet from the property line of the lot where any limited retail sales, fuel stations, liquor stores and tobacco stores engaged in the sale of alcoholic liquor is located.												

**In accordance with City Code Section 134-3.9.9.B, the Zoning Board of Adjustment shall apply the following criteria when considering any application for a Conditional Use for the sale of alcoholic liquor, wine, and/or beer:**

*Conditional use approval is required for the use of a premises, either as principal or accessory use, for the sale of alcoholic liquor, wine or beer, under the circumstances identified in Table 134-3.1-1 and criteria: Table 134-3.9-1 of this article. The board of adjustment is authorized to grant conditional use approval for such uses only when the business, operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:*

1. *The business conforms with the conditions identified in indicated in Table 134-3.9-1 of this article.*
2. *The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.*
3. *The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.*
4. *The business will not unduly increase congestion on the streets in the adjoining residential area.*
5. *The operation of the business will not constitute a nuisance.*

**Furthermore, in accordance with City Code Sections 134-3.9.9.C-H, the following applies for any Conditional Use for the sale of alcoholic liquor, wine, and/or beer.**

**C. Supplemental Use Regulations.** *Any conditional use approval granted by the board of adjustment for the use of a premises, either as principal or accessory use, for the sale of alcoholic liquor, wine, and beer is subject to the following supplemental use regulations, together with such additional special conditions as may be reasonably required by the board of adjustment to ensure that the conditional use review approval criteria of paragraph B of this subsection, are satisfied:*

1. *Any parking area provided for the use of customers of the business must be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site must be landscaped and illuminated so as to minimize hiding places for possible criminal activity.*
2. *The business shall comply with the noise control regulations of article IV of chapter 42 of this code. Outside speakers and amplified sound is prohibited except when used in compliance with a type E sound permit.*
3. *Any such business must comply with the following requirements:*
  - a. *Every limited retail sales establishment, fuel station and tobacco store shall display alcoholic liquor only in a locked case or behind a counter accessible only to employees. Any other business selling alcoholic liquor for off premises consumption shall either:*
    - i. *Display alcoholic liquor only in a locked case or behind a counter accessible only to employees;*
    - ii. *Employ an electronic security cap or tag system on all containers of alcoholic liquor on display;*  
*or*
    - iii. *Have more than one employee on duty at all times the business is open to the public.*
  - b. *Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.*

*c. Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.*

*d. Not dispense alcoholic beverages from a drive-through window.*

*4. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.*

*5. The conditional use approval is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions of the conditional use approval.*

*6. If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions of the conditional use approval, the zoning enforcement officer may apply to the board of adjustment to reconsider conditional use approval for such business. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such business at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board of adjustment finds that the operation of such business exhibits a pattern of violating the conditions of the conditional use, the board shall have the authority to amend or revoke the conditional use approval.*

**D. Report of Findings.** *Upon reasonable suspicion that any fuel station, or retail sales establishment, or other uses with sales for on-premise consumption excluding restaurants and bars, derives more than 40% of its gross receipts from the sale of alcoholic liquor, wine, beer or tobacco products, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 40% of its gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products. In such event it shall be presumed that more than 40% of the gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for fuel station and retail sales establishments, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts 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 in the preceding six months.*

**E. Report of Findings - Restaurant.** *Upon reasonable suspicion that any restaurant does not derive at least 50% of its gross receipts from the sale of prepared food and food-related services, the zoning enforcement officer may require that the owner or operator or the restaurant demonstrate within 45 days that during the prior six months at least 50% of its gross receipts were derived from the sale of prepared food and food-related services. In such event it shall be presumed that less than 50% of the restaurant's gross receipts are derived from the sale of prepared food and food-related services, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for restaurants, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of alcoholic beverages and from the sale of prepared food and food-related services exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months.*

**F. Report of Findings - Tobacco Store.** *Upon reasonable suspicion that any tobacco store derives more than 25% of its gross receipts from the sale of alcoholic liquor, wine or beer, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 25% of the gross receipts from sales were derived from the sale of alcoholic liquor, wine or beer. In such event it shall be presumed more than 25% of its gross receipts from sales are derived from the sale of alcoholic liquor, wine or beer, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for tobacco stores, prepared and verified by a certified public accountant as the result of an*

*agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts 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 in the preceding six months.*

**G. Prohibited Accounting for Alcoholic Beverages.** *The sale of an alcoholic beverage and any of its component ingredients whether mixed into one beverage or sold separately to the same customer, regardless of intent, shall not be divided for accounting purposes under this chapter.*

**H. Effective Date.** *All fuel stations, retail sales establishments, tobacco stores and restaurants that have not continuously held an alcoholic liquor license or a beer or wine permit since July 1, 2012, shall comply with the requirements of paragraphs A., B., C., D., E., F., and G. of this subsection. Any fuel station, retail sales establishment, tobacco store or restaurant which has continuously held an alcoholic liquor license or a wine or beer permit since July 1, 2012, shall comply with paragraphs A., B., C., D., E., F., and G. of this subsection, exclusive of any changed separation requirements, commencing on December 31, 2013, and prior to that date shall continue to be subject to the general regulations regarding nonconforming uses, as set forth in section 134-7.2 of this code.*

## **STAFF REPORT**

**Proposal:** Sale of wine and/or beer by an existing “Limited Retail Sales” business within an 800-square foot leased area. As a “Limited Retail Sales” use, no more than 40% of the gross receipts from sales from the premises may be derived from the sale of wine, beer, and/or tobacco products.

**Appeal(s):** Conditional Use for a “Limited Retail Sales” use selling alcoholic liquor, wine and/or beer for off-premise consumption in a “RX1” District.

**Site Description:** The subject property is an 800-square feet tenant space located within three parcels measuring a combined 53,807 square feet (1.235-acre) on the south side of Douglas Avenue at the intersection with 38<sup>th</sup> Street. The property contains a multi-use building consisting of multiple retail tenants on the main floor and several residential dwelling units on the upper level. The subject property is zoned “RX1” Mixed Use District and has a land use designation of Neighborhood Mixed Use.

**Neighborhood Notification Information:** The subject property is located in the Beavertdale Neighborhood Association and within 250 feet of the Lower Beaver Neighborhood Association. All neighborhood associations with a contact on file were notified of the request by email of the Preliminary Agenda on August 4, 2023, and September 8, 2023. Additionally, official public notices of the hearing on August 23 and September 27 for this specific item were mailed on August 8, 2023, and September 12, 2023, respectively, to the titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All neighborhood mailings are sent to the primary contact designated by the recognized neighborhood association on file with the City of Des Moines. The Beavertdale Neighborhood Association mailings were sent to Marcus Coenen, PO Box 30175, Des Moines, IA 50310.

The appellant must provide a summary of their neighbor communications to City Staff at least 3 days before the Zoning Board of Adjustment holds the public hearing.

**Additional Information:** The subject property is zoned “RX1” District. The “RX1” District allows a “Limited Retail Sales” use with alcoholic liquor, wine, and beer sales as a Conditional Use so long as the licensed premises occupied by such use is separated by at least 500 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility; and, separated by at least 1,320 feet from the property line of any limited retail sales, fuel station, liquor store, and tobacco store uses engaged in the sale of alcoholic liquor. The subject property does satisfy the separation distance requirements. However, the “Limited Retail Sales” use would be restricted to no more than 40% of gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine, beer, and tobacco products.

The appellant is proposing to add the sale of alcoholic liquor, wine and beer to an existing grocery store that has operated for the last 4 years. The store is approximately 800-square feet with grocery area at the center and cooler and storage spaces along the perimeter.

**Criteria for the Board to Consider:** Taking into consideration Chapter 18B of the Code of Iowa, the board of adjustment is authorized to grant conditional use approval for businesses selling alcoholic liquor, wine, and/or beer only when the business, operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:

1. The business conforms with the conditions identified in indicated in Table 3.9-1 of Chapter 134 of the City Code.

*The application as proposed satisfies the separation distance requirements. There is no place of worship, school, park, or licensed childcare facility within 500 feet of the site, or another similar establishment engaged in the sale of alcoholic liquor within ¼-mile of the site.*

2. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.

*The subject property is located within an area that contains commercial uses along Douglas Avenue. Staff believes that the proposed use would adequately safeguard the health, safety and general welfare of persons residing in the surrounding area for beer and wine sales and so long as it operates in accordance with the recommended conditions of approval.*

3. The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.

*Staff believes that the sale of alcoholic liquor could have an impact on the surrounding properties to the immediate south of the subject site. The impacts could be minimized by the sale of beer and wine only and so long as operations are in accordance with the recommended conditions of approval.*

4. The business will not unduly increase congestion on the streets in the adjoining residential area.

*The proposed use would have minimal impact on the traffic patterns in the area and is not anticipated to increase congestion in the area.*

5. The operation of the business will not constitute a nuisance.

*If granted, the Conditional Use would be subject to amendment or revocation if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use, or if the operation violates the requirements of City Code Section 134-3.9.9.C, as provided in the "Applicable Requirements" section of this report.*

Taking into consideration Chapter 18B of the Code of Iowa, the board of adjustment is authorized to grant conditional use approval if the board determines that the proposed use or activity complies with all applicable uses-specific regulations and if the applicant has demonstrated that all of the following general standards and review criteria are met:

1. The proposed geographic location and operation of the use or activity adequately safeguards the health, safety, and general welfare of persons residing or working in adjoining or surrounding property.

*Staff believes that the proposed use would adequately safeguard the health, safety, and general welfare of persons residing or working in adjoining or surrounding property for beer and wine sales only and so long as it operates in accordance with the recommended conditions of approval.*

2. The proposed use will not impair an adequate supply of light and air to surrounding property.

*Staff believes that the proposed use would not impair an adequate supply of light and air to surrounding property.*

3. The proposed use will not unduly increase congestion in the streets, or public danger of fire, safety or flooding.

*Staff believes that the proposed use would not unduly increase congestion in the streets, or public danger of fire, safety or flooding if it operates in accordance with the recommended conditions of approval.*

4. The proposed use will not diminish or impair established nearby property values.



*Staff believes that the proposed use would not diminish or impair established nearby property values if it operates in accordance with the recommended conditions of approval.*

5. The proposed use is consistent with the general purpose of this zoning ordinance, the planning and design ordinance, chapter 135 of this code, and the comprehensive plan and any specific purposes established in the zoning ordinance for the subject use.

*The proposed use is consistent with the general purpose of the zoning ordinance, the planning and design ordinance, chapter 135 of the City's code, and the comprehensive plan.*

6. The proposed use in an F zoning district is fully in compliance with chapter 50 of this code.

*This criterion is not applicable, as the subject property is not located in an F zoning district.*

7. The proposed use shall have no significant detrimental impact on the use and enjoyment of adjoining properties.

*Staff believes that the proposed use would not have an impact on the surrounding properties for the sale of beer and wine only and if it operates in accordance with the recommended conditions of approval.*

8. Adequate setbacks shall be provided to protect adjacent residentially zoned property from non-residential and institutional uses.

*The proposed use would be adequately setback from any residentially zoned property for the sale of beer and wine only and if it operates in accordance with the recommended conditions of approval.*

9. No parking should be permitted in a required front yard of an N district unless shown to be compatible with the adjoining land use.

*This criterion is not applicable, as the subject property is not located in an N district.*

**Permit and Development Center Comments:** Any redevelopment on the site must be in accordance with all applicable Building and Fire Codes, with issuance of any necessary permits by the City's Permit and Development Center.

Any sale of alcoholic liquor, wine, and/or beer must be in accordance with the proper license obtained through the Office of the City Clerk as approved by the City Council.

**Staff Rationale:** The application does not satisfy the criteria necessary for granting a Conditional Use for selling alcoholic liquor, wine and/or beer for off-premise consumption due to potential impacts on the residential areas to the south that are not adequately set back from such uses. However, staff believes that the request does satisfy the criteria to grant a Conditional Use for the sale of wine and beer only subject to the recommended conditions of approval.

This is an appropriate location for the sale of beer and wine, as the property is located along a major commercial corridor and is adequately separated from any church or place of worship, public park, school, or licensed childcare facility. The proposed use would adequately safeguard the health, safety and general welfare of persons residing in the surrounding area for the sale of beer and wine, and so long as it operates in accordance with the recommended conditions of approval. The proposed use is sufficiently separated from adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the sale of alcoholic liquor, wine and beer, from having a significant detrimental impact upon the adjoining residential uses.

Furthermore, 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 of Adjustment to reconsider the issuance of the Conditional Use for such business.

### **STAFF RECOMMENDATION**

Staff recommends denial of the Conditional Use for a “Limited Retail Sales” use selling alcoholic liquor, wine and/or beer for off-premises consumption in a “RX1” District.

Staff recommends approval of a Conditional Use for a “Limited Retail Sales” use selling wine and/or beer for off-premises consumption in a “RX1” District, subject to the following conditions:

1. Sale of alcoholic liquor shall be prohibited.
2. Any business selling wine and/or beer shall operate as a “Limited Retail Sales” use and shall derive no more than 40% of gross receipts from the sale of wine, beer, and tobacco products.
2. Any “Limited Retail Sales” use with sales of wine and/or beer shall only operate between the hours of 9 AM to 9 PM Monday through Friday, between the hours of 9 AM to 8 PM on Saturdays, and between the hours of 11 AM to 6 PM on Sundays.
3. There shall be no visible advertisement or identification of any wine or beer, including lighted or unlighted signage or logos, displayed outside of the building or on the inside of the windows. There may be generic signs for “wine” and/or “beer” only.

4. Any business selling wine and/or beer shall operate in accordance with the necessary permit or license obtained through the Office of the City Clerk as approved by the City Council.
5. Any sale of wine and/or beer for off-premises consumption shall be in accordance with all State and local laws or ordinances.
6. Any business selling wine, and/or beer shall comply with Article IV of Chapter 42 of the City Code pertaining to noise control.
7. Any business selling wine and/or beer shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
8. Any business selling wine and/or beer shall not dispense alcoholic beverages from a drive-through window.
9. 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.
10. There shall be no public access to outdoor electrical outlets.
11. 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.
12. Any renovation of the building shall be in compliance with all applicable building and fire codes, as well as any necessary site plan, with issuance of all necessary permits by the City's Permit and Development Center.
13. 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.



**ZONING BOARD OF ADJUSTMENT  
STAFF REPORTS AND RECOMMENDATIONS  
SEPTEMBER 27, 2023**

<b>Item 8</b>	<b>ZBOA-2023-000067 821 East Euclid Avenue</b>	<b>East Euclid 821, LLC Amend Conditional Use</b>
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**APPLICABLE REQUIREMENTS**

*The sale of alcoholic liquor, wine, and beer is permitted only in the zoning districts and subject to the conditions indicated in Table 134-3.9-1 of Chapter 134 of the Municipal Code.*

TABLE 134-3.9-1. ALCOHOLIC LIQUOR, WINE AND BEER SALES												
USE	DISTRICTS											
	DX1	DX2	DXR	MX1	MX2	MX3	RX1, RX2	CX, EX, I1	I2	NX2, NX2A	P1, P2	F
<b>Retail Sales</b>												
<b>Limited</b>												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	O*	O*	O*	-	-	-	-
Wine and Beer Sales	-	O*	O*	O*	O*	O*	O*	O*	-	-	-	-
<b>General</b>												
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	40%/75	-	40%/75	40%/75	-	40%/75	-	-	-	-
Wine and Beer Sales	40%/75	40%/75	40%/75	-	40%/75	40%/75	-	40%/75	-	-	-	-
<b>Large</b>												
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-
Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-
<b>Fuel Station</b>												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	O*	O*	O*	-	O*	O*	-	-	-
Wine and Beer Sales	-	40%/150	40%/150	-	40%/150	40%/150	-	40%/150	40%/150	-	-	-
<b>Liquor Store</b>												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	O*	-	O*	O*	-	-	-
Wine and Beer Sales	-	O*	O*	O*	O*	O*	-	O*	O*	-	-	-
<b>Tobacco Store</b>												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	O*	-	O*	O*	-	-	-
Wine and Beer Sales	-	O*	O*	O*	O*	O*	-	O*	O*	-	-	-
<b>Restaurant, Bar, Other Uses</b>												
Restaurant with Alcoholic Liquor, Wine and Beer Sales	50%	50%	50%	50%	50%/75	50%/75	50%/75	50%/75	50%/75	50%/75	O*	O*
Bar	O*	O*	O*	-	O*	O*	-	O*	-	-	O*	-
Other Uses with Alcoholic Liquor, Wine and Beer Sales	O*	O*	O*	O*	O*	O*	O*	O*	O*	O*	O*	O*
<b>KEY:</b> O=requires conditional use approval   * = supplemental use regulations apply   - = prohibited												
<b>Table Notes</b>												
O = Uses identified with a O symbol are allowed only if reviewed and approved in accordance with the conditional use procedures of <a href="#">134-6.4 of this chapter</a> .												
40% = no more than 40% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine, beer or tobacco products.												
50% = at least 50% of the gross receipts from sales from the premises must be derived from the sale of prepared food and food-related services. The sale of an alcoholic beverage is not the sale of prepared food and food-related services.												
25% = no more than 25% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine or beer.												
75 = the licensed premises occupied by such use must be separated by at least 75 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.												
150 = the licensed premises occupied by such use must be separated by at least 150 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.												
500 = the licensed premises occupied by such use must be separated by at least 500 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.												
1320 = the licensed premises occupied by such use must be separated by at least 1320 feet from the property line of the lot where any limited retail sales, fuel stations, liquor stores and tobacco stores engaged in the sale of alcoholic liquor is located.												

**In accordance with City Code Section 134-3.9.9.B, the Zoning Board of Adjustment shall apply the following criteria when considering any application for a Conditional Use for the sale of alcoholic liquor, wine, and/or beer:**

*Conditional use approval is required for the use of a premises, either as principal or accessory use, for the sale of alcoholic liquor, wine or beer, under the circumstances identified in Table 134-3.1–1 and criteria: Table 134-3.9–1 of this article. The board of adjustment is authorized to grant conditional use approval for such uses only when the business, operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:*

1. *The business conforms with the conditions identified in indicated in Table 134-3.9–1 of this article.*
2. *The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.*
3. *The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.*
4. *The business will not unduly increase congestion on the streets in the adjoining residential area.*
5. *The operation of the business will not constitute a nuisance.*

**Furthermore, in accordance with City Code Sections 134-3.9.9.C-H, the following applies for any Conditional Use for the sale of alcoholic liquor, wine, and/or beer.**

**C. Supplemental Use Regulations.** *Any conditional use approval granted by the board of adjustment for the use of a premises, either as principal or accessory use, for the sale of alcoholic liquor, wine, and beer is subject to the following supplemental use regulations, together with such additional special conditions as may be reasonably required by the board of adjustment to ensure that the conditional use review approval criteria of paragraph B of this subsection, are satisfied:*

1. *Any parking area provided for the use of customers of the business must be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site must be landscaped and illuminated so as to minimize hiding places for possible criminal activity.*
2. *The business shall comply with the noise control regulations of article IV of chapter 42 of this code. Outside speakers and amplified sound is prohibited except when used in compliance with a type E sound permit.*
3. *Any such business must comply with the following requirements:*
  - a. *Every limited retail sales establishment, fuel station and tobacco store shall display alcoholic liquor only in a locked case or behind a counter accessible only to employees. Any other business selling alcoholic liquor for off premises consumption shall either:*
    - i. *Display alcoholic liquor only in a locked case or behind a counter accessible only to employees;*
    - ii. *Employ an electronic security cap or tag system on all containers of alcoholic liquor on display; or*
    - iii. *Have more than one employee on duty at all times the business is open to the public.*
  - b. *Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.*

*c. Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.*

*d. Not dispense alcoholic beverages from a drive-through window.*

*4. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.*

*5. The conditional use approval is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions of the conditional use approval.*

*6. If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions of the conditional use approval, the zoning enforcement officer may apply to the board of adjustment to reconsider conditional use approval for such business. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such business at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board of adjustment finds that the operation of such business exhibits a pattern of violating the conditions of the conditional use, the board shall have the authority to amend or revoke the conditional use approval.*

**D. Report of Findings.** *Upon reasonable suspicion that any fuel station, or retail sales establishment, or other uses with sales for on-premise consumption excluding restaurants and bars, derives more than 40% of its gross receipts from the sale of alcoholic liquor, wine, beer or tobacco products, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 40% of its gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products. In such event it shall be presumed that more than 40% of the gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for fuel station and retail sales establishments, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts 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 in the preceding six months.*

**E. Report of Findings - Restaurant.** *Upon reasonable suspicion that any restaurant does not derive at least 50% of its gross receipts from the sale of prepared food and food-related services, the zoning enforcement officer may require that the owner or operator or the restaurant demonstrate within 45 days that during the prior six months at least 50% of its gross receipts were derived from the sale of prepared food and food-related services. In such event it shall be presumed that less than 50% of the restaurant's gross receipts are derived from the sale of prepared food and food-related services, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for restaurants, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of alcoholic beverages and from the sale of prepared food and food-related services exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months.*

**F. Report of Findings - Tobacco Store.** *Upon reasonable suspicion that any tobacco store derives more than 25% of its gross receipts from the sale of alcoholic liquor, wine or beer, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 25% of the gross receipts from sales were derived from the sale of alcoholic liquor, wine or beer. In such event it shall be presumed more than 25% of its gross receipts from sales are derived from the sale of alcoholic liquor, wine or beer, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for tobacco stores, prepared and verified by a certified public accountant as the result of an*

*agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts 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 in the preceding six months.*

**G. Prohibited Accounting for Alcoholic Beverages.** *The sale of an alcoholic beverage and any of its component ingredients whether mixed into one beverage or sold separately to the same customer, regardless of intent, shall not be divided for accounting purposes under this chapter.*

**H. Effective Date.** *All fuel stations, retail sales establishments, tobacco stores and restaurants that have not continuously held an alcoholic liquor license or a beer or wine permit since July 1, 2012, shall comply with the requirements of paragraphs A., B., C., D., E., F., and G. of this subsection. Any fuel station, retail sales establishment, tobacco store or restaurant which has continuously held an alcoholic liquor license or a wine or beer permit since July 1, 2012, shall comply with paragraphs A., B., C., D., E., F., and G. of this subsection, exclusive of any changed separation requirements, commencing on December 31, 2013, and prior to that date shall continue to be subject to the general regulations regarding nonconforming uses, as set forth in section 134-7.2 of this code.*

## **STAFF REPORT**

**Proposal:** Amend the conditions of an approved Conditional Use for a Liquor Store use within the 3,684-square foot building to expand the permitted hours of operation from 8:00AM to 11:00PM, to 8:00AM to 12:00AM (midnight). As a Liquor Store, up to 100% of the gross receipts from sales can be derived from the sale of alcoholic liquor, wine, beer, and/or tobacco products.

**Appeal(s):** Amend Conditional Use (Docket ZON2020-00048, as initially granted on September 25, 2019, and amended on May 27, 2020) for a Liquor Store use selling alcoholic liquor, wine, and/or beer.

**Site Description:** The subject property measures 140 feet by 120 feet (16,800 square feet) and is located at the southwest corner of East Euclid Avenue and Wright Street. The site contains a 3,684-square foot commercial structure used as a Liquor Store and a surface parking lot. The property is zoned "MX3" Mixed-Use District.

**Neighborhood Notification Information:** The subject property is within the Highland Park Neighborhood. All neighborhood associations with a contact on file were notified of the request by email of the Preliminary Agenda on August 4, 2023. Additionally, official public notices of the hearing for this specific item were mailed on August 8, 2023 to the titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All neighborhood mailings are sent to the primary contact designated by the recognized neighborhood association on file with the City of Des Moines. The South Central DSM Neighborhood Association were mailed to Sherri Rosener, 1206 Oak Park Avenue, Des Moines, IA 50313.

The appellant must provide a summary of their neighbor communications to City Staff at least 3 days before the Zoning Board of Adjustment holds the public hearing.

**Additional Information:** On September 25, 2019, the Zoning Board of Adjustment granted a Conditional Use (ZON2019-00155) for a Liquor Store use, to allow sale of alcoholic liquor, wine, and beer within an existing 1,537-square foot building. As a Liquor Store, up to 100% of the gross receipts from sales can be derived from the sale of alcoholic liquor, wine, beer, and/or tobacco products. The approval was subject to the following conditions:

1. Any renovation or construction on the site shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the Permit and Development Center.
2. Any liquor store shall be limited to the existing 1,537-square foot building.
3. Any sale of alcoholic liquor, wine, and/or beer shall be in accordance with the necessary license and/or permits obtained through the Office of the City Clerk as approved by the City Council.
4. Any sale of alcoholic liquor for off premises consumption shall either: i) display alcoholic liquor only in a locked case or behind a counter accessible only to employees; ii) employ an electronic security cap or tag system on all containers of alcoholic liquor on display; or iii) have more than one employee on duty at all times the business is open to the public.
5. The business shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
6. 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. The City of Des Moines Police shall be authorized to enforce no trespassing during non-business hours.
7. The business shall not dispense alcoholic beverages from a drive-through window.
8. 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.
9. 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.
10. Any renovation or construction on the site shall be in compliance with all applicable building codes, fire codes, and site plan regulations, with issuance of all necessary permits by the Permit and Development Center.
11. Any use of the site shall be in accordance with a Site Plan as approved by the City's Permit and Development Center that complies with all Site Plan requirements, including those pertaining to landscaping, screening, and pavement setbacks.
12. 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 Permit, the Zoning Enforcement Officer may apply to the Zoning Board of Adjustment to reconsider the issuance of the Conditional Use Permit for such business.
13. The liquor store shall only operate between the hours of 8:00 AM and 11:00 PM as indicated by the appellant.



14. The building shall be renovated in general conformance with the drawing presented to the Board during the public hearing. However, more restrictive City requirements shall have precedence.
15. There shall be no more than one (1) sign, which must be unlit and not larger than 2 feet by 3 feet in size, identifying alcohol within any window that is visible from outside of the building.
16. There shall be no public access to outdoor electrical outlets.
17. The City of Des Moines Police shall be authorized to enforce loitering and/or trespassing on the property.

On May 27, 2020, the Zoning Board of Adjustment amended this Conditional Use to revise condition 2, which limited the liquor store to the existing 1,537-square foot building. This amendment allowed multiple building additions, which increased the size of the liquor store from 1,537 square feet to 3,674 square feet. The proposed additions included a 782-square foot addition to the west façade, a 1,004-square foot addition to the east façade, a 140-square foot addition to the south facade, and a 191-square foot addition to the south facade. The Conditional Use (Docket ZBOA-2020-000048) approved and granted the request subject to the following conditions:

1. Any renovation or construction on the site 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.
2. Any liquor store shall be limited to a 3,674-square foot building, where no more than 2,000 square feet of floor space (or 54.4% of floor space if the building is less than 3,674 square feet) is dedicated to alcohol sales, and where the building has been constructed in compliance with a Site Plan that satisfies the provisions of City Code Chapter 135, inclusive of any Type 2 Design Alternatives granted by the City's Plan & Zoning Commission.
3. Any sale of alcoholic liquor, wine, and/or beer shall be in accordance with the necessary license and/or permits obtained through the Office of the City Clerk as approved by the City Council.
4. Any sale of alcoholic liquor for off premises consumption shall either: i) display alcoholic liquor only in a locked case or behind a counter accessible only to employees; ii) employ an electronic security cap or tag system on all containers of alcoholic liquor on display; or iii) have more than one employee on duty at all times the business is open to the public.
5. The business shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
6. 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. The City of Des Moines Police shall be authorized to enforce no trespassing during non-business hours.
7. The business shall not dispense alcoholic beverages from a drive-through window.
8. 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.

9. 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.
10. Any use of the site shall be in accordance with a Site Plan as approved by the City's Permit and Development Center that complies with all Site Plan requirements, including those pertaining to landscaping, screening, and pavement setbacks.
11. 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 or the requirements contained in City Code Section 134-3.8.1, the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use.
12. The liquor store shall only operate between the hours of 8:00 AM and 11:00 PM as indicated by the appellant.
13. The building shall be renovated in general conformance with the drawing presented to the Board during the public hearing. However, more restrictive City requirements shall have precedence.
14. There shall be no more than one (1) sign, which must be unlit and not larger than 2 feet by 3 feet in size, identifying alcohol within any window that is visible from outside of the building.
15. There shall be no public access to outdoor electrical outlets.
16. The City of Des Moines Police shall be authorized to enforce loitering and/or trespassing on the property.

The appellant is now seeking an amendment to the Conditional Use that would revise condition 12, which limits the liquor store to liquor store to only operating between the hours of 8:00 AM and 11:00 PM. The appellant is proposing to be allowed to be open until 12:00 AM (midnight), which would allow them to operate for an additional hour each day.

**Criteria for the Board to Consider:** Taking into consideration Chapter 18B of the Code of Iowa, the board of adjustment is authorized to grant conditional use approval for businesses selling alcoholic liquor, wine, and/or beer only when the business, operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:

1. The business conforms with the conditions identified in indicated in Table 3.9-1 of Chapter 134 of the City Code.

*The application as proposed satisfies the separation distance requirements. There is no place of worship, school, park, or licensed childcare facility within 500 feet of the site, or another similar establishment engaged in the sale of alcoholic liquor within ¼-mile of the site.*

2. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.

*The subject property is located immediately adjacent to one-household residential uses, both to the west and south. Therefore, expanding the hours of operation would not adequately safeguard the health, safety and general welfare of persons residing in the surrounding area.*

3. The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.

*The subject property is located immediately adjacent to one-household residential uses, both to the west and south. Therefore, expanding the hours of operation could have a significant detrimental impact upon the adjoining residential uses.*

4. The business will not unduly increase congestion on the streets in the adjoining residential area.

*The proposed amendment would have minimal impact on the traffic patterns in the area and is not anticipated to increase congestion in the area.*

5. The operation of the business will not constitute a nuisance.

*The existing Conditional Use or amended Conditional Use would be subject to amendment or revocation if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use, or if the operation violates the requirements of City Code Section 134-3.9.9.C, as provided in the "Applicable Requirements" section of this report.*

Taking into consideration Chapter 18B of the Code of Iowa, the board of adjustment is authorized to grant conditional use approval if the board determines that the proposed use or activity complies with all applicable uses-specific regulations and if the applicant has demonstrated that all of the following general standards and review criteria are met:

1. The proposed geographic location and operation of the use or activity adequately safeguards the health, safety, and general welfare of persons residing or working in adjoining or surrounding property.
2. The proposed use will not impair an adequate supply of light and air to surrounding property.
3. The proposed use will not unduly increase congestion in the streets, or public danger of fire, safety or flooding.
4. The proposed use will not diminish or impair established nearby property values.

5. The proposed use is consistent with the general purpose of this zoning ordinance, the planning and design ordinance, chapter 135 of this code, and the comprehensive plan and any specific purposes established in the zoning ordinance for the subject use.
6. The proposed use in an F zoning district is fully in compliance with chapter 50 of this code.
7. The proposed use shall have no significant detrimental impact on the use and enjoyment of adjoining properties.
8. Adequate setbacks shall be provided to protect adjacent residentially zoned property from non-residential and institutional uses.
9. No parking should be permitted in a required front yard of an N district unless shown to be compatible with the adjoining land use.

**Permit and Development Center Comments:** Any sale of alcoholic liquor, wine, and/or beer must be in accordance with the proper license obtained through the Office of the City Clerk as approved by the City Council.

**Staff Rationale:** The appellant has not satisfied the criteria for amending the Conditional Use as requested, as expanding the hours of operation could have a detrimental impact upon the adjoining residential uses since the business is not sufficiently separated from adjoining residential area by distance, landscaping, walls, or structures to prevent any noise, vibration or light generated by the business. Staff does not believe that circumstances of the site at the time of the Board's previous decision (May 27, 2020) have materially changed so as to potentially alter the reasons that produced or supported the previous decision to enact conditions restricting the hours during which the business may be open.

### **STAFF RECOMMENDATION**

Staff recommends denial of the requested amendment to the Conditional Use to expand the permitted hours of operation from 8:00AM to 11:00PM, to 8:00AM to 12:00AM (midnight).