

 <p style="text-align: center;"><b>Council Communication</b> Office of the City Manager</p>	<b>Date:</b> December 17, 2012
	<b>Agenda Item No.</b> 54 <b>Roll Call No.</b> <u>12-1976</u> <b>Communication No.</b> <u>12-619</u> <b>Submitted by:</b> Phillip Delafield, Community Development Director

**AGENDA HEADING:**

Review of the November 28, 2012 decision of the Zoning Board of Adjustment to conditionally approve a Use Variance to allow continued use of the property at 4540 Lower Beaver Road as a garage for general motor vehicle repair.

**SYNOPSIS:**

On November 28, 2012, the Zoning Board of Adjustment voted 5-0 to conditionally approve a Use Variance requested to allow continued use of the property as a garage for general motor vehicle repair. The subject property is in an “R-4” (Multiple Family Residential) District and is owned by Greg Robinson, PO Box 35, Oakland, Iowa 51560. The Decision and Order of the Zoning Board of Adjustment’s action was executed under the signature of Chairman Bill Gray on December 4, 2012. Pursuant to Section 135-65 of the City Code, the City Council shall review the Board’s decision within 30 days after the decision is filed. After such review, the City Council may remand the decision to the Board for further study. If the City Council declines to remand the decision, that decision shall become final on the date of the City Council’s action (December 17, 2012). Staff recommends that the City Council NOT remand the Board’s decision.

**FISCAL IMPACT: NONE**

**ADDITIONAL INFORMATION:**

The Zoning Board of Adjustment’s approval of the use variance is subject to the following conditions:

1. The Use Variance shall expire 10 years after the date the Decision and Order is signed (December 4, 2022). Any future extension of the Use Variance shall be subject to reconsideration by the Zoning Board of Adjustment.
2. Outside storage of materials or equipment such as barrels, tires and tools is prohibited. All existing outdoor storage shall be removed by December 31, 2012.
3. Display of vehicles for sale is prohibited.
4. Outdoor repair and servicing of vehicles is prohibited.
5. Outdoor display of automobile accessories is prohibited.
6. All refuse and trash disposal containers are contained within an enclosure that complies with the Site Plan regulations.
7. Parking of all vehicles associated with the business, such as wrecking trucks, shall be outside of the required 25-foot front yard building setback.

8. Automobiles shall only be parked in marked parking spaces in accordance with the approved Site Plan.
9. All landscaping shall be continuously maintained or replaced in accordance with the approved Site Plan for the life of the Certificate of Occupancy.
10. A copy of the Board's Decision and Order shall be recorded at the appellant's expense to ensure that future property owners are aware of these conditions.
11. The Zoning Enforcement Officer shall bring the Use Variance back to the Zoning Board of Adjustment for reconsideration at anytime the use becomes a nuisance to surrounding properties or violates the conditions approval.

The subject property generally measures 150 feet by 120 feet (0.4 acres) and contains a 51-foot by 28-foot (1,428 square feet) commercial building with two (2) bays for automotive repair. It is located along the west side of Lower Beaver Avenue within a predominantly residential area. A legal non-conforming convenience store is located adjacent to the south and an apartment complex is located adjacent to the north and west.

On March 28, 2005, by Roll Call No. 05-773, the City Council denied a request to rezone the property from "R-4" (Multiple Family Residential) to Limited "C-2" (General Retail and Highway Oriented Commercial). The property had previously been used as a gas station, with motor vehicle repair as an accessory use. However, the business lost non-conforming rights for the motor vehicle repair when it removed the gasoline sales portion of the business.

On May 25, 2005, the Zoning Board of Adjustment granted a Use Variance to allow the repair garage for a 2-year period and on November 28, 2007, the Board granted a subsequent Use Variance for a 5-year period.

**PREVIOUS COUNCIL ACTION(S):**

Date: March 28, 2005

Roll Call Number: 05-773

Action: On request from Lower Beaver Conoco, to rezone property at 4540 Lower Beaver Road from "R-4" (Multiple Family Residential) to "C-2" (General Retail and Highway-Oriented Commercial), to allow conversion of the use from a legal non-conforming gas station to a garage for general motor vehicle repair. Moved by Vlassis to adopt and to DENY the proposed rezoning. Motion Carried 7-0.

**BOARD/COMMISSION ACTION(S):**

Board: Zoning Board of Adjustment

Date: November 28, 2012

Docket Number: ZON2012-00205

Action: Conditional approval of appeal for a Use Variance to allow garage of general automotive repair for a period of 10 years, by a 5-0 vote.

Board: Zoning Board of Adjustment

Date: November 28, 2007

Docket Number: ZON2007-00185

Action: Conditional approval of appeal for a Use Variance to allow garage of general automotive repair for a period of 5 years, by a 6-0 vote.

Board: Zoning Board of Adjustment

Date: May 25, 2005

Docket Number: ZON2005-00054

Action: Conditional approval of appeal for a Use Variance to allow garage of general automotive repair for a period of 2 years, by a 7-0 vote.

Board: Plan and Zoning Commission

Date: February 17, 2005

Resolution Number: ZON2005-00006

Action: Recommended denial of request for rezoning to "C-2" (General Retail & Highway-Oriented Commercial) by a 14-0 vote.

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

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