



Roll Call Number

Agenda Item Number

52

Date January 8, 2008

**REVIEW OF DECEMBER 20, 2007 DECISION OF THE BOARD OF
ADJUSTMENT TO CONDITIONALLY APPROVAL A USE VARIANCE
TO ALLOW A GARAGE FOR GENERAL MOTOR VEHICLE
REPAIR AT 4540 LOWER BEAVER ROAD**

WHEREAS, on November 28, 2007 the Zoning Board of Adjustment voted 6-0 to approve a use variance to allow property owned by Greg Robinson, P.O. Box 240173, Honolulu, HI 96824 at 4540 Lower Beaver Road in Des Moines (R-4 Multiple Family Residential District) to be used for general motor vehicle repair, subject to certain conditions set forth in the Decision and Order of the Zoning Board of Adjustment dated December 20, 2007; and

WHEREAS, pursuant to Municipal Code Section 135-65(d) and Code of Iowa Section 414.7, the Decision and Order granting the use variance has been forwarded in a timely manner to the City Council for its review, and the City Council may remand the use variance back to the Zoning Board of Adjustment for further study if the City Council believes the use variance was improperly granted.

(Council Communication No. 08- 022)

Moved by _____ to receive and file.

APPROVED AS TO FORM:


Michael F. Kelley
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk

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

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

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

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

IN THE MATTER OF THE APPEAL FROM	:	DOCKET: ZON2007-00185
	:	
GREG ROBINSON	:	
	:	MEETING DATE: NOVEMBER 28, 2007
ON PROPERTY LOCATED AT	:	
	:	
4540 LOWER BEAVER ROAD	:	

SUBJECT OF THE APPEAL

Proposal: Continue to use the property as a garage for general motor vehicle repair after discontinuing the sales of fuel thereby ending the legal non-conforming rights for use as a Gas Station with vehicle repair as an accessory use. A Use Variance previously granted on May 25, 2005 for a 2-year period has expired.

Appeal(s): Variance of the principle permitted uses in the "R-4" Multiple-Family Residential District. (Use Variance)

Required by City Code Section 134-587

FINDING

Granting the Variance **with conditions** would be consistent with the intended spirit and purpose of the Zoning Ordinance and in harmony with the essential character of the neighborhood. The appellant faces an unnecessary hardship because the design and layout of the existing building is suited for use as a service station. The appellant installed improvements in 2006 as required by the use variance previously approved in 2005. If the appellant provides the landscaping certification by June 1, 2008 and continues to maintain the site in accordance with the approved site plan, the continued use as a garage for general motor vehicle repair will not alter the essential character of the neighborhood. The use variance should be approved for a period of no greater than 5 years. Future extensions are subject to reconsideration by the Board of Adjustment.

DECISION AND ORDER

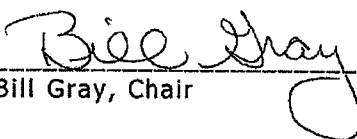
WHEREFORE, IT IS ORDERED that the appeal for a Variance of the principle permitted uses in the "R-4" Multiple-Family Residential District to allow continued use of the property as a garage for general motor vehicle repair is **granted subject to the following conditions:**

1. Display of vehicles for sale is prohibited.
2. Outdoor repair and servicing of vehicles is prohibited.
3. Outdoor display of automobile accessories and storage of materials or equipment such as barrels, tires and tools is prohibited.
4. All refuse and trash disposal containers are contained within an enclosure that complies with the Site Plan regulations.
5. Parking of all vehicles associated with the business such as wrecking trucks shall be outside of the required 25-foot front yard building setback.
6. Automobiles shall only be parked in marked parking spaces in accordance with an approved site plan.
7. The owner/applicant shall submit a certification from a licensed landscape architect or certified nurseryman no later than June 1, 2008, that all landscaping on the site has been installed in the locations designated on the site plan and that all plant materials are alive and properly maintained.
8. All landscaping shall be continuously maintained or replaced in accordance with the approved site plan for the life of the certificate of occupancy.
9. **The building and fence shall be entirely painted an earth tone color by June 1, 2008.**
10. The Use Variance shall expire 5 years after the date the Decision and Order is signed. Any future extension of the use variance shall be subject to reconsideration by the Board of Adjustment.
11. A copy of the Board's decision and order shall be recorded at the appellant's expense to insure that future property owners are aware of these conditions.
12. In June of 2008, City staff shall inspect the premises for compliance with the conditions set forth in the Decision and Order and submit a report of the findings to the Zoning Board of Adjustment.

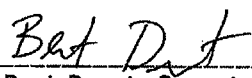
VOTE

The foregoing Decision and Order was adopted by a vote of 6-0 with all Board members present voting in favor thereof.

Signed and entered into record on December 5, 2007 and amended on December 20, 2007.



Bill Gray, Chair



Bert Drost, Secretary