

June 14, 2010
Date

REVIEW OF BOARD OF ADJUSTMENT DECISION TO
GRANT A USE VARIANCE AT 5101 S.E. 40TH STREET

WHEREAS, on April 29, 2009 the city of Des Moines Zoning Board of Adjustment ("Board") voted 4-1 in favor of retention of a contractor's storage yard in the A-I Agricultural District for a period of no more than six (6) months at 5101 S.E. 40th Street, Des Moines, Iowa. The Board's decision was ratified and filed of record on May 26, 2010; and


WHEREAS, Iowa Code Section 414.7 and City of Des Moines Municipal Code Section 134-65(d) provide that the City Council shall review the Board's decision within thirty (30) days after the decision is filed, and that after such review the Council may (1) remand the decision to the Board for further study; (2) approve the Board's decision; or (3) take no action. If the City Council declines to remand a decision, the Board's decision becomes final on the date of the Council's action; and

WHEREAS, Community Development staff has recommended that the City Council concur with the Board's decision and decline the option to remand this matter to the Board for additional review.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that the City Council receive, file and take no further action on this matter.

APPROVED AS TO FORM:

Moved by _____ to adopt.



Michael F. Kelley, Assistant City Attorney

(Council Communication No. 10-365)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
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
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
KINGSTON PROPERTIES, LLC
ON PROPERTY LOCATED AT
5101 SE 40TH STREET

DOCKET: ZON 2010-00055
MEETING DATE: APRIL 28, 2010
RATIFICATION DATE: MAY 26, 2010

SUBJECT OF THE APPEAL

- Proposal:** Retention of a contractor's outdoor storage yard.
- Appeals:** Variance to allow a use not permitted in the "A-1" Agricultural District.
Required by City Code Section 134-307

FINDING

Granting the Use Variance to allow permanent retention of a contractor's storage yard would not be consistent with the intended spirit and purpose of the Zoning Ordinance or in harmony with the essential character of the neighborhood. The land in question can produce a reasonable return since it largely undeveloped and could easily be marketed for a use that is allowed in the "A-1" Agricultural District, such as a nursery or a commercial stable. The surrounding area consists of large lot single-family residential development and agricultural uses. The 2020 Community Character Plan Future Land Use Map designation for this area is "Agricultural". A contractor storage yard is an industrial use and the Community Character Plan generally states that industrial areas should be concentrated and well-separated from residential uses. Furthermore, the plight of the owner (Union State Bank) is of their own making since they failed to do a reasonable investigation to discover the zoning violation in existence when they issued a loan to the entity that would later turnover the property to the current owner through foreclosure. Allowing the existing tenant a period of time to relocate is reasonable. Therefore, a temporary Variance is appropriate in this instance.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Variance to temporarily allow a use not permitted in the "A-1" Agricultural District to allow temporary retention of a contractor's outdoor storage yard is granted subject to the following conditions:

1. Any use of the property for a contractor's storage yard shall cease within six (6) months or no later than October 28, 2010.
2. There shall be no outdoor storage of vehicles or junk and debris associated with any contractor's storage yard during the six (6) months ending October 28, 2010 during which the contractor's storage yard is permitted to remain.
3. The Decision and Order shall be presented to the Board for ratification (approval) on May 26, 2010.

VOTE


The foregoing Decision and Order was adopted by a vote of 4-1 with Board members Flaten, Gray, Pins, and Westergaard voting in favor thereof and Board member Clarke voting in opposition thereto. Board members Clayton and Rosenberg were absent.

RATIFICATION OF DECISION AND ORDER


This Decision and Order was presented to the Board of Adjustment for review and approval at its next regularly scheduled meeting on May 26, 2010. At that time a motion to approve the approval of this Decision and Order was made by Board member Pins and seconded by Board member Clarke. The motion passed upon the following vote:

Member	Yea	Nay	Abstain	Absent
Thomas Clarke, Sr.	X			
Jeffry Clayton			X	
LeaAnn Flaten				X
William Gray	X			
Mel Pins	X			
Brook Rosenberg				X
Linda Westergaard	X			

Signed and entered into record on May 26, 2010.



Bill Gray, Chair



Bert Drost, Secretary