

★ Roll Call Number

Agenda Item Number

32

Date..... December 3, 2007

An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by adding and enacting a new paragraph (g) to subsection (4) of Section 134-64 to authorize the Board of Adjustment to grant an exception under specified conditions to allow a commercial business to be operated in the "R-HD" Residential Historic District by a business owner who does not reside at the business",

which was considered and voted for the first time upon under Roll Call No. 07-<sup>2253</sup> of November 19, 2007; again presented.

MOVED by \_\_\_\_\_ that this ordinance be considered and given second vote for passage.

(Second of three required readings)

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

**CERTIFICATE**

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

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

\_\_\_\_\_  
City Clerk

MOTION CARRIED

APPROVED

.....  
Mayor

09-2253  
SSA  
32

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by adding and enacting a new paragraph (g) to subsection (4) of Section 134-64 to authorize the Board of Adjustment to grant an exception under specified conditions to allow a commercial business to be operated in the "R-HD" Residential Historic District by a business owner who does not reside at the business.

BE IT ORDAINED by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as amended by Ordinance Nos. 13,905 and 13,906 passed January 22, 2001, and by Ordinance No. 14,097 passed June 3, 2002, be and is hereby amended by adding and enacting a new paragraph (g) to subsection (4) of Section 134-64 to authorize the Board of Adjustment to grant an exception under specified conditions to allow a commercial business to be operated in the "R-HD" Residential Historic District by a business owner who does not reside at the business, as follows:

**Sec. 134-64. Powers and duties.**

The board of adjustment shall have the power and duty to:

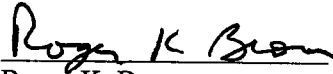
- (4) Permit the exceptions in this subsection to the district regulations set forth in this chapter, provided all exceptions shall by their design, construction and operation adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property; shall not impair an adequate supply of light and air to adjacent property; shall not unduly increase congestion in the public streets; shall not increase public danger of fire and safety; and shall not diminish or impair established property values in surrounding areas. However, nothing in this subsection shall be interpreted as authorizing the board to grant an exception to any separation requirement, or to grant an exception to permit a structure more than 75 feet in height in any CDO capitol dominance overlay district, such power being expressly denied the board. Any exception to a separation requirement granted for a structure for which a building permit has not been issued shall be null and void. In granting any exception, the board may prescribe appropriate conditions and safeguards in conformity with this chapter. The board of adjustment may permit:

07-2253  
SSA  
32

- g. Exceptions to the residency requirement in Section 134-772(15) regarding commercial uses in the R-HD District, where,
  - 1. The business is operated by a person whose bona fide and primary residence is located within the R-HD District or within 1,320 feet of the business premises, and such person holds at least a 50% ownership interest in the business.
  - 2. There is no outside operation, storage or display of materials or products.
  - 3. No alteration of the residential appearance of the premises shall occur without a Certificate of Appropriateness from the Historic Preservation Commission.
  - 4. All outside activity related to the business must cease between the hours of 10:00 p.m. to 7:00 a.m. Sunday through Thursday, and 11:00 p.m. to 7:00 a.m. on Friday and Saturday.
  - 5. The business shall not cause the congregation of business employees at the site or congestion in the availability of on-street parking.
  - 6. Only one such business may be operated within the R-HD District by the residents of any dwelling.
  - 7. The exception, if granted, shall be in effect only for so long as the business premises are owned and operated by the applicant and the applicant continues to satisfy the residency requirements of subparagraph 1, above.
  - 8. Any such exception, if granted, shall be subject to reconsideration by the board if at any time the zoning enforcement officer determines that the conduct of the business has become detrimental to the neighborhood.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

  
Roger K. Brown

Assistant City Attorney