

Date December 17, 2012

WHEREAS, at its November 28, 2012 hearing, with a subsequent Decision and Order entered into the record on December 4, 2012, the City of Des Moines Zoning Board of Adjustment ("Board") approved an application from Greg Robinson for a Use Variance for use of property located at 4540 Lower Beaver Road (Property) for continued use as a garage for general motor vehicle repair. (A use variance was previously granted for a five-year period on November 28, 2007; and

WHEREAS, pursuant to Municipal Code Section 134-587, the relief granted by the Board required a use variance because the Property is in a district zoned R-4 Multiple-Family Residential and a garage for general motor vehicle repair is not a principal permitted use in an R-4 district; and

WHEREAS, in accordance with Municipal Code Section 134-65(d), if the Board grants a variance to a use requirement, the Decision and Order shall be referred to the City Council for its review pursuant to Iowa Code Section 414.7. The City Council may review such 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 does not act to review the decision within 30 days after it is filed, the decision shall become effective on the 31<sup>st</sup> day. If the City Council declines to remand the decision, the decision shall become final on the date of the council's action, i.e. December 17, 2012. If the City Council remands a decision to the Board, the effective date of the decision is delayed for 30 days from the date of remand.

Date..... December 17, 2012

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, as follows:

\_\_\_\_\_ The City Council remands the Decision and Order to the Zoning Board of Adjustment for further study. The effective date of the Zoning Board of Adjustment's decision will be deferred for 30 days from the date of remand.


\_\_\_\_\_ The City Council takes no action to review the Decision and Order. The decision of the Zoning Board of Adjustment will become final on January 4, 2013.

\_\_\_\_\_ The City Council declines to remand the decision to the Zoning Board of Adjustment. The decision will become final on the date of the Council's action.

Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

(Council Communication No. 12-619 )

  
 \_\_\_\_\_  
 Michael F. Kelley  
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

MOTION CARRIED APPROVED

**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.**

\_\_\_\_\_ Mayor

\_\_\_\_\_ 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.

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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.

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IN THE MATTER OF THE APPEAL FROM	:	DOCKET: <b>ZON 2012-00205</b>
<b>GREG ROBINSON</b>	:	
ON PROPERTY LOCATED AT	:	PUBLIC HEARING: <b>NOVEMBER 28, 2012</b>
<b>4540 LOWER BEAVER ROAD</b>	:	

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SUBJECT OF THE APPEAL

**Proposal:** The Use Variance would allow continued use of the property as a garage for general motor vehicle repair. (A Use Variance was previously granted for a 5-year period on November 28, 2007.)

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

*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 garage for general motor vehicle repair. The appellant installed site improvements in 2006 as required by the initial Use Variance granted for a two-year period in 2005 and as required by the subsequent Use Variance granted for a 5-year period in 2007. If the appellant 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 10 years, with future extensions subject to reconsideration by the Zoning Board of Adjustment.

DECISION AND ORDER

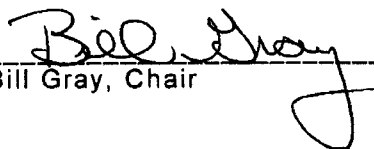
WHEREFORE, IT IS ORDERED that the appeal for a Variance of the principle permitted uses in the "R-4" Multiple-Family Residential District, to allow continued use of the property as a garage for general motor vehicle repair, is **granted subject to the following conditions:**


1. 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 insure 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.

VOTE

The foregoing Decision and Order was adopted by a vote of 5-0, with all Board members present voting in favor thereof.

Signed and entered into record on December 4, 2012.

  
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Bill Gray, Chair

  
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Bert Drost, Secretary