

February 11, 2013

Date

WHEREAS, at its January 23, 2013 hearing, with a subsequent Decision and Order entered into the record on January 29, 2013, the City of Des Moines Zoning Board of Adjustment ("Board") approved an application from Available Materials Handling, LLC for a use variance for use of property located at 2135 Scott Avenue for variance of the principal permitted uses in the M-1 Light Industrial District to allow the use of a 100-foot by 300-foot paved area for outdoor storage of junk and salvage equipment; and

WHEREAS, the Zoning Board of Adjustment's findings, decision and order are set forth as in the attachment hereto and are incorporated herein as if set forth in full; 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 31st 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. January 29, 2013. 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; and

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 March 1, 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.

APPROVED AS TO FORM:

Moved by _____ to adopt.



Michael F. Kelley, Assistant City Attorney

(Council Communication No. 13-063)

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.

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: ZON 2012-00231
ANTHONY HOLT, DBA AVAILABLE	:	
MATERIAL HANDLING, LLC	:	
ON PROPERTY LOCATED AT	:	PUBLIC HEARING: JANUARY 23, 2013
2135 SCOTT AVENUE	:	

SUBJECT OF THE APPEAL

Proposal: The use of a 100-foot by 300-foot (30,000 square feet) paved area for outdoor storage of junk and salvage equipment. Inoperable equipment or materials would be stored on the premise for no longer than six (6) months.

Appeal(s): Variance of the principal permitted uses (Use Variance) in the "M-1" Light Industrial District.

Required by City Code Section 134-1087

FINDING

Granting the requested Use Variance would be consistent with the intended spirit and purpose of the Zoning Ordinance and in harmony with the essential character of the area so long as the conditions established in this Decision and Order are satisfied. The appellant's attempt to rezone the property from "M-1" Light Industrial District to "M-2" Heavy Industrial District was denied by the City Council. The appellant faces an unnecessary hardship in using the property for the storage of inoperable equipment given the "M-1" Light Industrial District designation. The impact of the proposed use would be minimal since it is surrounded by heavy industrial uses, including several nearby salvage uses.

DECISION AND ORDER


WHEREFORE, IT IS ORDERED that the appeal for a Variance of the principal permitted uses in the "M-1" Light Industrial District, to allow use of a 100-foot by 300-foot (30,000 square feet) paved area for outdoor storage of junk and salvage equipment, is **granted subject to the following conditions:**

1. Use of the property shall be limited to those uses as permitted in the "M-1" District and for the receiving and unloading of machinery classified as construction equipment such as forklifts, backhoes, dozers, scrapers, skid steers, tele-handlers, wheel loaders, etc.
2. This use shall only be permitted for so long as the property is in continuous operation in good standing by the appellant or other legal entity, as controlled by Anthony Holt or his lineal descendants, under the conditions of this decision. This use shall not be assigned to any other entity.
3. Any dismantling and salvaging is prohibited on the property except as necessary for transport to and from the property.
4. Any reconditioning and salvaging of the equipment shall take place at other locations where it is legally permitted.
5. Any inoperable machinery may only be stored on premises for a period not to exceed six (6) months.
6. Any storage of inoperable machinery shall be limited to a 30,000-square foot area marked on a paved surface to be located at the northeast corner of the property as designated on the submitted site sketch.

VOTE

The foregoing Decision and Order was adopted by a vote of 4-0, with Board members Gray, Rosenberg, Smith, and Westergaard voting in favor thereof and Board members Christensen, Clarke, and Pins absent.

Signed and entered into record on January 29, 2013.



Bill Gray, Chair



Bert Drost, Secretary