

Date December 9, 2013

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING A USE VARIANCE TO ALLOW PROPERTY AT 301 & 309 SE 8TH STREET TO BE USED AS A BEVERAGE CONTAINER RECYCLING FACILITY FOR A TERM OF 10 YEARS

WHEREAS, on November 20, 2013, the Zoning Board of Adjustment voted 6-0 to approve an application from Raccoon Street Warehouse, LLC, for a use variance for a term of 10 years to allow a 1.93 acre parcel of property at 301 & 309 SE 8th Street within the "M-1" Light Industrial District to be used as a beverage container recycling facility, which would otherwise be required to be in the "M-2" Heavy Industrial District; and,

WHEREAS, Iowa Code §414.7 and Section 134-65(d) of the Zoning Ordinance require that any use variance granted by the Board be forwarded 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 Council believes the use variance was improperly granted.

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

ALTERNATIVE RESOLUTIONS

- A The City Council remands the Decision and Order to the Zoning Board of Adjustment for further study. The effective date of the Board's decision will be deferred for 30 days from the date of this remand.
B The City Council takes no action to review the Decision and Order. The decision of the Board will become final on December 26, 2013.
C The City Council declines to remand the decision to the Zoning Board of Adjustment. The decision of the Board becomes final on this date.

(Council Communication No. 13- 580)

MOVED by _____ to receive and file the staff report and comments received, and to adopt alternative _____, above.

Date December 9, 2013

FORM APPROVED:

Roger K. Brown

Roger K. Brown

Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
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 2013-00173
	:	
RACCOON STREET WAREHOUSE, LLC	:	
	:	PUBLIC HEARING: NOVEMBER 20, 2013
ON PROPERTY LOCATED AT	:	
	:	
301 & 309 SOUTHEAST 8TH STREET	:	

SUBJECT OF THE APPEAL

Proposal: Use of the 1.93-acre property for a beverage container recycling facility, which requires an "M-2" Heavy Industrial District zoning designation. The use would occur within an existing 34,800-square foot warehouse and an existing 15,764-square foot warehouse. The building on the southwestern portion of the site would be removed to accommodate loading docks and off-street parking spaces. The appellant has requested the Use Variance for a 10-year period to end November 20, 2023.

Appeal(s): Use Variance to allow a use not permitted in the "M-1" Light Industrial District.

Required by City Code Section 134-1087

FINDING

Granting the requested Use Variance for an approximate 10-year period to end August 26, 2024 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 it operates in accordance with the recommended conditions of approval. The vacated warehouse buildings present an unnecessary hardship under the criteria. It is conceivable that it would not be financially possible to yield a reasonable return on the property to resume a warehouse business on the site. Complete redevelopment of the property at this time would also present significant challenges given the current real estate conditions in the area. It is reasonable to allow the proposed use to operate for a 10-year period while the surrounding area transitions from industrial uses to residential and commercial uses in accordance with the "Market District of East Village Urban Design Study". The August 26, 2024 expiration date allows the appellant time to prepare the site and renovate the building and still be able to operate the business for a 10-year period.

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RACCOON STREET WAREHOUSE, LLC
301 & 309 SOUTHEAST 8TH STREET
ZON 2013-00173

-2-

NOVEMBER 20, 2013

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Use Variance for a use not permitted in the "M-1" Light Industrial District, to allow use of the 1.93-acre property for a beverage container recycling facility within an existing 34,800-square foot warehouse and an existing 15,764-square foot warehouse, is **granted subject to the following conditions:**

1. The Use Variance shall expire August 26, 2024. Any future extension of the Use Variance shall be subject to reconsideration by the Zoning Board of Adjustment.
2. Use of the property is limited to those uses permitted in the "M-1" District or a beverage container recycling facility.
3. Any use of the premise shall be in accordance with a Site Plan as reviewed and approved by the Permit and Development Center that shall conform to the standards, including paving and landscaping.
4. All buildings must demonstrate compliance with occupancy requirements. Any building conversion or modifications must be in accordance with all applicable Building Codes with issuance of all necessary permits by the Permit and Development Center.
5. Outside storage of materials or equipment, such as barrels, containers, pallets, and tools is prohibited.
6. All refuse and trash disposal containers are contained within an enclosure that complies with the Site Plan regulations.
7. Any vehicle on the premise shall only be parked in marked parking spaces in accordance with the approved Site Plan.
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. All operations shall be in accordance with the City's Noise Control Ordinance.
10. A copy of the Board's Decision and Order shall be recorded with the Polk County Recorder 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 6-0, with all Board members present voting in favor thereof.

Signed and entered into record on November 26, 2013.



 Bill Gray, Chair



 Bert Drost, Secretary