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Date January 13, 2014

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING
A USE VARIANCE TO ALLOW PROPERTY AT 6220 GRAND AVENUE
TO BE USED AS AN AMUSEMENT ENTERTAINMENT ENTERPRISE
BUSINESS

WHEREAS, on December 18, 2013, the Zoning Board of Adjustment voted 6-0 to approve an application from Oreo Junction, LLC, for a use variance to allow property at 6220 Grand Avenue, including a portion thereof within the "F-W" Floodway District, to be used as an amusement entertainment enterprise business that would include a go-kart track, a "kiddie" go-cart track, a miniature golf area, baseball/softball batting practice cages and a zip line structure, and the reuse of an existing office/concession stand structure and storage sheds; 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 January 19, 2014.
- 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.

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

★ **Roll Call Number**

Agenda Item Number

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Date December 9, 2013

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FORM APPROVED:

Roger K Brown

Roger K. Brown

Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
VOSS				
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**

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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.

<p>IN THE MATTER OF THE APPEAL FROM OREO JUNCTION, LLC ON PROPERTY LOCATED AT 6220 GRAND AVENUE</p>	<p>: : : : : : : : :</p>	<p>DOCKET: ZON 2013-00191 PUBLIC HEARING: DECEMBER 18, 2013</p>
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SUBJECT OF THE APPEAL

Proposal: Reuse of the property for an amusement enterprise business that would include a go-kart track, a "kiddie" go-kart track, a miniature golf area, baseball/softball batting practice cages, a paintball shooting range, and a new zip line structure. This would include reuse of existing paved parking areas, an existing 29-foot by 57-foot office/concession structure, and existing 12-foot by 24-foot and 10-foot by 12-foot storage sheds.

Appeal(s): Conditional Use Permit for an amusement enterprise in a "U-1" Flood Plain District.

Variance of permitted uses (Use Variance) in an "FW" Floodway District.

Conditional Use Permit for off-street parking spaces incidental and accessory to a permitted in a district adjoining an "FW" Floodway District.

Required by City Code Sections 134-64(2)&(3), 134-65, 134-1222, 134-1192(5)&(6)(a), & 134-1223(10)

FINDING

Granting the Use Variance and Conditional Use Permits 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 amusement enterprise business operates in accordance with the conditions established in the Decision and Order. The appellant has demonstrated that the proposed use would adequately safeguard the health, safety and welfare of persons in the surrounding area so long as it is conducted in conformance with all applicable flood plain regulations. The subject property is already developed for an amusement enterprise use. The Board finds that not allowing the portion of the site that is located in the "FW" District to be reused would cause an unnecessary hardship, as that portion of the site includes the existing concession building and existing batting cages.

DECISION AND ORDER

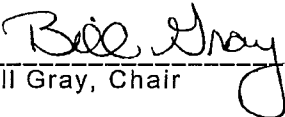
WHEREFORE, IT IS ORDERED that the appeals for a Conditional Use for an amusement enterprise in a "U-1" Flood Plain District, a Variance of permitted uses (Use Variance) in an "FW" Floodway District, and a Conditional Use Permit for off-street parking spaces incidental and accessory to a permitted in a district adjoining an "FW" Floodway District, to allow reuse of the property for an amusement enterprise business that would include a go-kart track, a "kiddie" go-kart track, a miniature golf area, baseball/softball batting practice cages and a new zip line structure, are **granted subject to the following conditions:**

1. Prohibition of any type of shooting range or shooting gallery on the site.
2. Compliance with the City's Flood Plain Development Regulations, including the provision of a certification of no rise in base flood elevation by a Professional Engineer (PE) licensed in the State of Iowa.
3. Issuance of all necessary permits and completion of work certifications by the U.S. Army Corps of Engineers and the Iowa DNR.
4. Any use of the premise shall be in accordance with a Site Plan as reviewed and approved by the City's Permit and Development Center, which shall conform to the standards, including paving and landscaping.
5. All buildings shall demonstrate compliance with occupancy requirements. Any building modifications shall be in accordance with all applicable Building Codes with issuance of all necessary permits by the Permit and Development Center.
6. All refuse and trash disposal containers shall be contained within an enclosure that complies with the Site Plan regulations.
7. All landscaping shall be continuously maintained or replaced in accordance with the approved Site Plan for the life of the Certificate of Occupancy.
8. All operations shall be in accordance with the City's Noise Control Ordinance.
9. A copy of the Board's Decision and Order shall be recorded with the Polk County Recorder at the appellant's expense to ensure that future property owners are aware of these conditions.
10. The Zoning Enforcement Officer shall bring the Conditional Use Permits and 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.

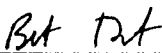
VOTE

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 December 20, 2013.



Bill Gray, Chair



Bert Drost, Secretary