

Date August 10, 2015

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION
GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW AN
OUTDOOR PET EXERCISING AREA ACCESSORY TO A VETERINARY CLINIC
USE ON THE PROPERTY AT 3451 HUBBELL AVENUE**

WHEREAS, on July 22, 2015, the Zoning Board of Adjustment voted 6-0 to approve an application from MW Veterinary Properties, LC (applicant) for a variance of the separation requirement that any outdoor exercise runway for an animal hospital, veterinary clinic, or kennel be at least 200 feet from any "R" District boundary, as set forth in Municipal Code Section 134-947(c)(1), to allow for an outdoor pet exercising area accessory to a veterinary clinic use on the real property locally known as 3451 Hubbell Avenue; and

WHEREAS, the proposed outdoor exercise area is located within approximately 40' of an "R1-60" One-Family Low-Density Residential District; and

WHEREAS, the Board found that the proposed outdoor animal exercising area would be in harmony with the essential character of the locality of the land in question so long as it is screened by a 6-foot tall opaque fence, and that the applicant demonstrated an unnecessary hardship as all portions of the subject property are either within 200 feet of an "R" District or along Hubbell Avenue; and

WHEREAS, Iowa Code §414.7 and Section 134-65(d) of the Zoning Ordinance require that any variance from a separation requirement granted by the Board be forwarded to the City Council for its review, and the City Council may remand the variance of the separation requirement back to the Zoning Board of Adjustment for further study if the Council believes the 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 August 27, 2015.
- 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.

★ Roll Call Number

Agenda Item Number

37

Date August 10, 2015

(Council Communication No. 15- 437)

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

APPROVED AS TO FORM:

Glenna K. Frank
Glenna K. Frank, Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE | | | | |
| COLEMAN | | | | |
| GATTO | | | | |
| GRAY | | | | |
| HENSLEY | | | | |
| MAHAFFEY | | | | |
| MOORE | | | | |
| 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**

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 2015-00115 |
| MW VETERINARY PROPERTIES, LC | : | PUBLIC HEARING: JULY 22, 2015 |
| ON PROPERTY LOCATED AT | : | |
| 3451 HUBBELL AVENUE | : | |

SUBJECT OF THE APPEAL

Proposal: Use of an existing fenced-in area southeast of the existing building for outdoor pet exercising accessory to a veterinary clinic use on the property. This outdoor area is within approximately 40 feet of an "R1-60" One-Family Low-Density Residential District to the southeast on the property at 3416 East 35th Street.

Appeal(s): Variance of the provision that requires at least 200 feet of separation from any "R" or "C-0" District boundary for any outdoor exercise runway for an animal hospital, veterinary clinic, or kennel.

Required by City Code Section 134-947(c)(1)

FINDING

Granting the Variance with conditions would be consistent with the intended spirit and purpose of the Zoning Ordinance. The proposed outdoor animal exercising area would be in harmony with the essential character of the locality of the land in question so long as it is screened by a 6-foot tall opaque fence. The appellant faces an unnecessary hardship in providing an outdoor animal exercise area, as all portions of the subject property are either within 200 feet of an "R" District or along Hubbell Avenue that has the propensity to generate noise. The impacts of the use will be minimal so long as animals utilizing any outdoor exercising area are monitored at all times to ensure they do not generate excessive noise and all animal waste shall be removed daily from the any outdoor exercising runway for a kennel use. Furthermore, the owner of the residentially-zoned property in close proximity to the site has provided written comments in favor of granting the Variance.

MW VETERINARY PROPERTIES, LC
3451 HUBBELL AVENUE
ZON 2015-00115

JULY 22, 2015

DECISION AND ORDER

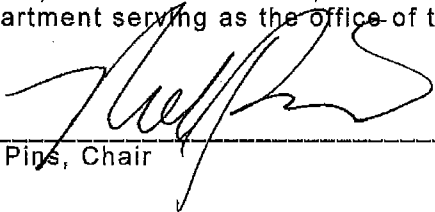
WHEREFORE, IT IS ORDERED that the appeal for a Variance of the provision that requires at least 200 feet of separation from any "R" or "C-0" District boundary for any outdoor exercise runway for an animal hospital, veterinary clinic, or kennel, to allow use of an existing fenced-in area southeast of the existing building for outdoor pet exercising accessory to a veterinary clinic use, is **granted** subject to the following conditions:

1. Animals utilizing any outdoor exercising area shall be monitored at all times to ensure they do not generate excessive noise.
2. All animal waste shall be removed daily from the any outdoor exercising runway for a kennel use.
3. Any outdoor exercising space shall be separated from any R-District by a 6-foot tall opaque fence.

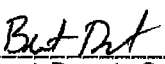
VOTE

The foregoing Decision and Order was adopted by a vote of 6-0, with all Board members present voting in favor thereof.

Signed, entered into record, and filed with the City of Des Moines Community Development Department serving as the office of the Board, on July 28, 2015.



 Mel Pips, Chair



 Bert Drost, Secretary