

Date November 9, 2015

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING A USE VARIANCE TO ALLOW EXPANSION OF AN EXISTING AUTO BODY REPAIR SHOP USE IN THE VICINITY OF 1157 15TH STREET

WHEREAS, on October 28, 2015, the Zoning Board of Adjustment voted 7-0 to approve an application from ASA, LLC, doing business as Action Auto Body (applicant) for a use variance to allow real property in the vicinity of 1157 15th Street to be used for expansion of an existing auto body repair shop to include a new structure measuring 6,240 square feet, for a total of 10,923 square feet of building area for the auto body repair use, subject to certain conditions set forth in the Decision and Order of the Board; 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 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 4, 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.

(Council Communication No. 15- 600)

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 2015-00187
ASA, LLC (DBA ACTION AUTO BODY, LLC)	:	
ON PROPERTY LOCATED AT	:	PUBLIC HEARING: OCTOBER 28, 2015
VICINITY OF 1157 15 TH STREET	:	

SUBJECT OF THE APPEAL

Proposal: Expansion of an existing auto body repair shop use (Action Auto Body) to include a new structure measuring 78 feet by 80 feet (6,240 square feet), which would be within 18 feet of the west (front) property line, within 25 feet of the north (side) property line, and within 24 feet of the east (rear) property line. The existing building measures 86 feet by 54.45 feet (4,683 square feet), resulting in a combined 10,923 square feet of building area for the auto body repair use. The site contains 11 off-street parking spaces.

Appeal(s): Use Variance of the permitted uses in a C-2" General Retail and Highway-Oriented Commercial District and an "R-3" Multiple-Family Residential District (auto body repair).

Exception of 12 feet less than the minimum required 30-foot front yard setback.

Exception of 11 feet less than the minimum required 35-foot rear yard setback.

Exception of 7 parking spaces less than the minimum 18 off-street parking spaces required for 10,923 square feet of auto body repair use (1 space per 600 square feet).

Required by City Code Section 134-947, 134-552, 134-554(4), 134-554(6), 134-1276(h), 134-1296(f) & 134-1377(a)(1)

FINDING

Granting the appeals would be consistent with the intended sprit and purpose of the Zoning Ordinance and in harmony with the essential character of the neighborhood of the land in question so long as the business complies with the conditions of approval. Given that the existing auto-body repair shop may continue to operate as a legal non-conforming use in the "C-2" District, the only reasonable economic use for the remaining undeveloped property to the north would be for expansion of the business, as it would not be suitable for residential use that would be expected to make a reasonable return. However, in order to protect the character of the surrounding neighborhood, any new structure shall provide a minimum 4-foot brick, decorative block, or stone wainscot along the entire south and west facades, exclusive of door openings. Furthermore, in order to protect the general health, safety and welfare of residents in the surrounding neighborhood, any new paint spray booth should be of a water borne technology that is non-flammable.

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ASA, LLC (DBA ACTION AUTO BODY, LLC)
VICINITY OF 1157 15TH STREET
ZON 2015-00187

OCTOBER 28, 2015

FINDING (Continued)

The appellant has demonstrated that a practical difficulty exists in meeting the minimum required front and rear yard setbacks given the existing dimensions of the property. The proposed setbacks would not be adverse to the existing character of the commercial buildings located along 15th Street or the surrounding residential uses. The appellant has also demonstrated that a practical difficulty exists in providing the minimum required number of off-street parking spaces given the existing dimensions of the property. The impact of granting the Exception to parking requirement would be minimal since the proposed building would have the ability to store at least eight (8) vehicles, thereby reducing the number of outdoor parking spaces that are necessary for the business. In addition, a representative of the Cheatom Park Neighborhood Association was present at the hearing to express support for the appellant's requests, indicating that granting the relief would provide a good addition to the neighborhood.

DECISION AND ORDER

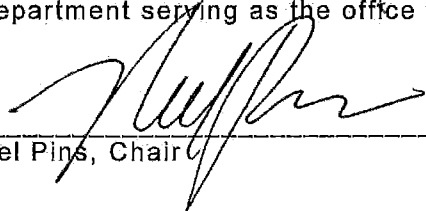
WHEREFORE, IT IS ORDERED that the appeals for a Use Variance of the permitted uses in a C-2" General Retail and Highway-Oriented Commercial District and an "R-3" Multiple-Family Residential District (auto body repair), an Exception of 12 feet less than the minimum required 30-foot front yard setback, an Exception of 11 feet less than the minimum required 35-foot rear yard setback and an Exception of 7 parking spaces less than the minimum 18 off-street parking spaces required for 10,923 square feet of auto body repair use (1 space per 600 square feet), to allow expansion of an existing auto body repair shop use (Action Auto Body) to include a new structure measuring 78 feet by 80 feet (6,240 square feet), which would be within 18 feet of the west (front) property line, within 25 feet of the north (side) property line, and within 24 feet of the east (rear) property line, are **granted** subject to the following conditions:

1. Any new auto-body repair shop shall comply with all applicable Building and Fire Codes as well as Site Plan requirements, with issuance of all necessary permits by the Permit and Development Center.
2. Any new auto-body repair shop shall provide a minimum 4-foot brick, decorative block, or stone wainscot along the entire south and west facades exclusive of door openings.
3. Any new paint spray booth on the premises shall be of a water borne, non-flammable technology.


VOTE

The foregoing Decision and Order was adopted by a vote of 7-0, with all Board members 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 November 4, 2015.



Mel Pins, Chair



Bert Drost, Secretary