

Date June 13, 2016

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING A
TEMPORARY USE VARIANCE TO ALLOW USE OF EXISTING ACCESSORY STRUCTURE
LOCATED AT 5311 SOUTHWEST 9TH STREET**

WHEREAS, on May 25, 2016, the Zoning Board of Adjustment voted 5-1 to approve an application from George Michael Clayton (owner) for a temporary use variance to allow continued use until June 1, 2017, of an existing 1,157 square foot accessory structure on the eastern portion of the real property located at 5311 Southwest 9th Street for equipment storage, to be operated in common with the existing automobile service garage business on the western portion of the property, subject to certain conditions set forth in the Decision and Order of the Board as attached hereto; 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 June 30, 2016.
- 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. 16-305)

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				
MOORE				
WESTERGAARD				
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 2016-00075
GEORGE MICHAEL CLAYTON	:	
ON PROPERTY LOCATED AT	:	PUBLIC HEARING: MAY 25, 2016
5311 SOUTHWEST 9 TH STREET	:	

SUBJECT OF THE APPEAL

Proposal: Use of an existing 1,157-square structure on the eastern portion of the property as expansion of the existing automobile service garage business operating within a 4,278-square foot structure on the western portion of the property. The property would provide a total of eight (8) off-street parking spaces. The eastern portion of the subject property is zoned "R1-60" One-Family Low-Density Residential District.

Appeal(s): Use Variance of the permitted uses in an "R1-60" One-Family Low-Density Residential District (automobile service garage).
Exception of two (2) off-street parking spaces less than the minimum ten (10) off-street parking spaces required for 5,435 square feet of automobile service garage use (1 space per 600 square feet).

Required by City Code Sections 134-412 & 134-1377(a)(1)

FINDING

Granting the Use Variance and Exception in perpetuity would not be consistent with the intended spirit and purpose of the Zoning Ordinance or in harmony with the essential character of the neighborhood. The appellant has not established an unnecessary hardship, as the land in question can yield a reasonable return since it can continue to be used for off-street parking accessory to the permitted use on the portion of the property that is zoned "C-2" District or since the site can be redeveloped for any other use permitted by the "R1-60" regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the land in question. It is not sufficient merely to show that the value of the land has been depreciated by the regulations or that a Variance would permit the owner to maintain a more profitable use. Furthermore, it would not be appropriate to expand the existing auto repair use at this site given the limited ability to provide the minimum required off-street parking spaces. The appellant has not satisfied the criteria necessary for granting an Exception to the number to minimum number of off-street parking spaces that would be required if the business were permitted to expand into the accessory structure. Such an Exception in perpetuity would not be within the essential character of the surrounding area, as it would lead to an increase in the number of vehicles.

However, it would be appropriate to grant a temporary Use Variance and Exception to expire on June 1, 2017 to allow the appellant time to transition from the use of the building for storage purposes. No later than June 1, 2017, the accessory structure shall either be removed from the site or modified to provide the minimum required 10-foot setback from the "R1-60" District Zoning Boundary.

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GEORGE MICHAEL CLAYTON
5311 SOUTHWEST 9TH STREET
ZON 2016-00075

MAY 25, 2016

DECISION AND ORDER

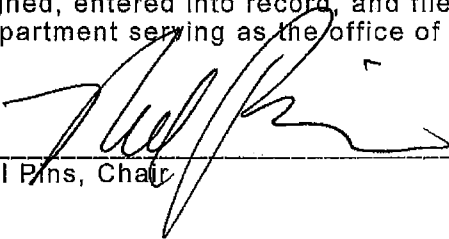
WHEREFORE, IT IS ORDERED that the appeals for a Use Variance of the permitted uses in an "R1-60" One-Family Low-Density Residential District (automobile service garage) and an Exception of two (2) off-street parking spaces less than the minimum ten (10) off-street parking spaces, to allow use of an existing 1,157-square structure on the eastern portion of the property as expansion of the existing automobile service garage business, where the property would provide a total of eight (8) off-street parking spaces, in perpetuity are **denied**. However, the Board finds that it's appropriate to **temporarily grant** the appeals for a period to expire June 1, 2017, subject to the following condition:

1. No later than June 1, 2017, the accessory structure on the eastern portion of the subject property shall either be removed from the site or modified to provide the minimum required 10-foot setback from the "R1-60" District zoning boundary.
2. If the current business tenant vacates the premise or discontinues use of the accessory structure before June 1, 2017, the accessory structure shall immediately either be removed from the site or modified to provide the minimum required 10-foot setback from the "R1-60" District zoning boundary

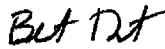
VOTE

The foregoing Decision and Order was adopted by a vote of 5-1, with Board members Chiodo, Gaer, Carlson, Pins and Smith voting in favor thereof, and Board member Blake voting against.

Signed, entered into record, and filed with the City of Des Moines Community Development Department serving as the office of the Board, on June 1, 2016.



 Mel Pins, Chair



 Bert Drost, Secretary