

Date September 12, 2016

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING A USE VARIANCE TO ALLOW PARKING USE LOCATED AT 801 SOUTHEAST 7TH STREET

WHEREAS, on August 24, 2016, the Zoning Board of Adjustment voted 6-0 to approve an application from Gregory Wilson (owner) for a use variance to allow use of the real property located at 801 Southeast 7th Street for parking of one semi-truck with trailer that is owned and operated by Mr. Wilson for an independent trucking business, where the parking occurs within zero feet of the north front property line along an alley right-of-way, 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 September 22, 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. 16-495)

MOVED by _____ to adopt alternative _____, above.

APPROVED AS TO FORM:


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 2016-00133
GREGORY WILSON	:	
ON PROPERTY LOCATED AT	:	PUBLIC HEARING: AUGUST 24, 2016
801 SOUTHEAST 7TH STREET	:	

SUBJECT OF THE APPEAL

Proposal: Use of the property for parking of one (1) semi-truck with trailer that is owned and operated by the appellant (Gregory Wilson) for an independent trucking business, where the parking occurs within 0 feet of the north front property line along Maury Street and within 0 feet of the east rear property line along an alley right-of-way.

Appeal(s): Variance of the permitted uses in the "R1-60" One-Family Low-Density Residential District.

Variance of 30 feet less than the minimum 30-foot front yard setback required for off-street parking.

Required by City Code Sections 134-412 & 134-414(3)

FINDING

In reviewing the applicable criteria, the Board finds that the applicant is faced with an unnecessary hardship. In this instance the applicant has claimed that the use of the property for parking of the tractor/trailer has remained the same since owning the property beginning in 1991. He has also claimed that at that time he sought permission from the City to allow the use of the property. While there is not any recorded documents to verify this in terms of formal actions by the City, the evidence does support the claimed continuous use over that period. Therefore, the request Use Variance does not present any changes to the established essential character of the surrounding neighborhood.

While there are other uses of the land that would be permitted under the current zoning, to not allow the continued use of the land enjoyed by the appellant for over 25 years would present a situation where he is no longer allowed reasonable use of the property. There is not a requested intensification for a more profitable use, so this would diminish the use of the land. Recent changes to the City's comprehensive plan with the adoption of the PlanDSM Creating Our Tomorrow has established future land use designation for the property that did not allow for rezoning of the property thereby allowing the continued use. This decision of the City Council has presented the appellant with a circumstance not of his own making.

GREGORY WILSON
801 SOUTHEAST 7TH STREET
ZON 2016-00133

AUGUST 24, 2016

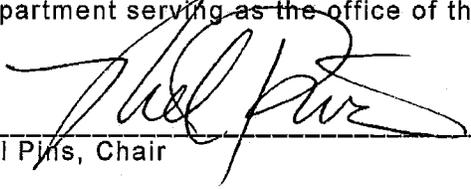
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeals for a Variance of the permitted uses in the "R1-60" One-Family Low-Density Residential District and a Variance of 30 feet less than the minimum 30-foot front yard setback required for off-street parking, to allow use of the property for parking of one (1) semi-truck with trailer that is owned and operated by the appellant (Gregory Wilson) for an independent trucking business, where the parking occurs within 0 feet of the north front property line along Maury Street and within 0 feet of the east rear property line along an alley right-of-way, are **granted** subject to the use being limited to the parking of one (1) semi-tractor with trailer on the existing paved surface location, with semi semi-tractor with trailer owned and operated by the appellant (Gregory Wilson) for an independent trucking business.

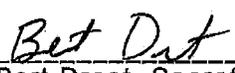
VOTE

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 August 30, 2016.



Mel Pims, Chair



Bert Drost, Secretary