



Date May 7, 2018

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING USE VARIANCE TO ALLOW OUTDOOR STORAGE OF INOPERABLE VEHICLES AS PART OF TOWING CONTRACTOR BUSINESS LOCATED AT 109 EAST 28TH STREET

WHEREAS, on April 25, 2018, the Zoning Board of Adjustment voted 6-0-1 to approve an application from Creighton Penney (owner) for an use variance to allow use of the property locally known as 109 East 28th Street for outdoor storage of inoperable vehicles as part of a towing contractor business, 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 May 26, 2018.
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. 18- 218 )

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

APPROVED AS TO FORM:
Glenna K. Frank, Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, and 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 2018-00048
	:	
<b>CREIGHTON PENNEY</b>	:	PUBLIC HEARING: APRIL 25, 2018
	:	
ON PROPERTY LOCATED AT	:	
	:	
<b>109 EAST 28TH STREET</b>	:	

SUBJECT OF THE APPEAL

**Proposal:** Use of the property for outdoor storage of inoperable vehicles as part of a towing contractor business. The appeals would allow outdoor storage to occur within 0 feet of the front and side properties lines and would waive the requirement that any area used for outdoor storage shall be screened. The appeals would also allow for a 6-foot tall solid fence within a required front yard setback and an 18-foot wide driveway for two-way circulation.

- Appeal(s):** Variance of the permitted uses in an "M-1" Light Industrial District.
- Variance of 25 feet less than the minimum 25-foot front yard setbacks required for outdoor storage.
  - Variance of 25 feet less than the minimum 25-foot side yard setback required for outdoor storage when adjoining an "R" Residential District.
  - Variance of the provision that requires any area used for outdoor storage to be screened by an opaque fence.
  - Variance of the provision that prohibits outdoor storage of inoperable or unsafe vehicles.
  - Variance of the provision requiring "R" District Protection.
  - Variance of 3 feet over the maximum 3 feet of height for an opaque fence within the front yard setback.
  - Exception of 2 feet less than the minimum 20 feet of width for an access drive for two-way circulation.

*Required by City Code Sections 134-1087, 134-1087(4), 134-1090(1), 134-1090(2), 134-1093, 134-1296(i)(2)(a). & 134-1377(f)(1)(b)*

CREIGHTON PENNEY  
109 EAST 28TH STREET  
ZON 2018-00048

APRIL 25, 2018

FINDING

The requested Use Variance, Variance of maximum fence height, and Exception for drive width are within the intended spirit and intent of the Zoning Ordinance. In relation to said Variances and Exception, the land in question cannot yield a reasonable return from any use permitted by the regulations of the district in which the land is located. The plight of the owner is not of the owner's own making and relate specifically to the land in question, as the site is constrained by its size, shape and placement of the existing building. It is historically configured for outside storage. It would be within the essential character of the surrounding neighborhood given the existing railroad yard and if it were to conform to recommended conditions to adequately protect the surrounding neighborhood area. the Board finds that allowing storage of inoperable vehicles or other equipment, trailers or materials within the required 25-foot side and front yard setbacks would not be within the essential character of the surrounding neighborhood, would alter the essential character of the locality of the land, and would be of the owner's own making. Given the placement of the building and the property boundary constraints, there is a practical difficulty in meeting the minimum two-way drive width that cannot be overcome by feasible alternative means, and the requested Exception for drive width is in harmony with the essential character of the neighborhood of the land in question.

DECISION AND ORDER

*WHEREFORE, IT IS ORDERED* that the appeals for a Variance of 25 feet less than the minimum 25-foot front yard setbacks required for outdoor storage, a Variance of 25 feet less than the minimum 25-foot side yard setback required for outdoor storage when adjoining an "R" Residential District, a Variance of the provision requiring "R" District Protection, and a Variance of the provision that requires any area used for outdoor storage to be screened by an opaque fence, are **denied**;

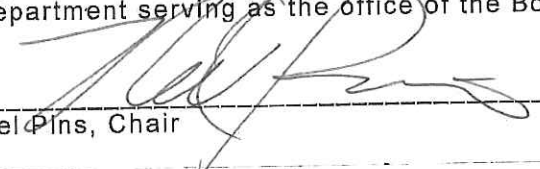
*AND, WHEREFORE, IT IS ORDERED* that the appeals for a Use Variance of the permitted uses in an "M-1" Light Industrial District, a Variance of the provision that prohibits outdoor storage of inoperable or unsafe vehicles, a Variance of 3 feet over the maximum 3 feet of height for an opaque fence within the front yard setback; and an Exception of 2 feet less than the minimum 20 feet of width for an access drive for two-way circulation, to allow use of the property for outdoor storage of inoperable vehicles as part of a towing contractor business, construction of a 6-foot tall opaque (solid) fence within a front yard area, and an 18-foot wide driveway for two-way circulation, are **granted** subject to the following conditions:

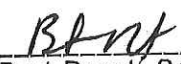
1. Any use of the property for a towing operation or outside storage shall be in accordance with a Site Plan approved by the Permit and Development Center.
2. All driveways and maneuvering aisles shall be of a permanently paved surface and all areas for storage shall be of a durable dustless surface, such as recycled asphalt product.
3. There shall be no outdoor storage of inoperable vehicles, trailers, or other materials within the required 25-foot front yard and side yard setbacks.
4. Any inoperable vehicles shall not be kept on the premises for more than 90 days and shall only be stored outside south of the building.
5. Any outside storage area shall be screened by a 6-foot tall opaque fence.
6. There shall be no vehicular access to the site from East 28<sup>th</sup> Court.

VOTE

The foregoing Decision and Order was adopted by a vote of 6-0-1, with all Board members voting in favor thereof except Blake, who abstained from voting.

Signed, entered into record, and filed with the City of Des Moines Community Development Department serving as the office of the Board, on May 1, 2018.

  
\_\_\_\_\_  
Mel Pins, Chair

  
\_\_\_\_\_  
Bert Drost, Secretary