



Roll Call Number

Agenda Item Number

48 ✓

Date August 6, 2018

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING USE VARIANCE TO ALLOW OFFICE, RETAIL OR TIRE REPAIR BUSINESS ON PROPERTY LOCATED AT 2200 EASTON BOULEVARD

WHEREAS, on July 25, 2018, the Zoning Board of Adjustment voted 6-0 to approve an application from Angel Groff (owner) for an use variance to allow use of the property locally known as 2200 Easton Boulevard for any use permitted in the "C-2" General Retail and Highway-Oriented Commercial District, including an office or retail use in addition to the previously approved tire repair business use, but specifically excluding a vehicle display lot, 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 August 24, 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. 18-415)

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

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: <b>ZON 2018-00120</b>
<b>ANGEL GROFF</b>	:	
ON PROPERTY LOCATED AT	:	<b>PUBLIC HEARING: JULY 25, 2018</b>
<b>2200 EASTON BOULEVARD</b>	:	

SUBJECT OF THE APPEAL

**Proposal:** Use of the property for any use as permitted in the "C-2" District, excluding a vehicle display lot use, and retention of an off-street parking lot that is within 2.5 feet of the front property lines along Easton Boulevard and East 22nd Street. (On May 23, 2018, the Zoning Board of Adjustment approved Docket ZON2018-00073 to a Use Variance to allow use of the property for a tire repair shop.)

**Appeal(s):** Amend Variance of the permitted uses in an "R1-60" One-Family Low-Density Residential District to allow commercial uses in addition to a tire repair shop.

Amend Variance of 27.5 feet less than the minimum 30 feet of setback required for off-street parking and loading from a front property line in a Residential District.

*Required by City Code Sections 134-412, 134-1377(f)(2)(a)(8), 134-1377(m)(1), & 134-414(3), and Docket ZON2018-00073)*

FINDING

While it would not be appropriate to revise the conditions of approval to allow any use as permitted in the "C-2" District, excluding a vehicle display lot use, it would be appropriate to allow an office or retail use, in addition to the allowed tire repair business use. The Board finds that the amendment to the Use Variance and Variance is within the intended spirit and intent of the Zoning Ordinance only so long as the permitted commercial uses are limited to office, retail, and tire repair. 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 ("R1-60" One-Family Low-Density Residential District). The plight of the owner is due to unique circumstances not of the owner's own making and relating 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 an auto-oriented business with a parking lot that has minimal setbacks. The Board finds that it would be within the essential character of the surrounding neighborhood if the business were to conform to multiple conditions of approval that would adequately protect the surrounding neighborhood area.

DECISION AND ORDER

*WHEREFORE, IT IS ORDERED* that the appeal to amend a Variance of the permitted uses in an "R1-60" One-Family Low-Density Residential District to allow commercial uses in addition to a tire repair shop and to amend a Variance of 27.5 feet less than the minimum 30 feet of setback required for off-street parking and loading from a front property line in a Residential District, to allow use of the property for additional uses as permitted in the "C-2" District, excluding a vehicle display lot use, and retention of an off-street parking lot that is within 2.5 feet of the front property lines along Easton Boulevard and East 22<sup>nd</sup> Street, are **granted** subject to the following conditions:

1. Any commercial use of the property shall be limited to an office use, retail use, or tire repair shop business and shall not occur until a Certificate of Occupancy has been issued for such.
2. Any use of the property for an office use, retail use, or tire repair shop business shall be in accordance with a Site Plan as approved by the Permit and Development Center.
3. Any use of the existing buildings shall be in accordance with all Building Codes and Fire Codes, with issuance of all necessary permits by the City's Permit and Development Center.
4. There shall be no outdoor storage of any equipment or materials, including but not limited to new or used tires, barrels, or tools.
5. No vehicle shall be kept on the premise for more than 48 consecutive hours.
6. Display of vehicles for sale is prohibited.
7. Outdoor repair and servicing of vehicles is prohibited.
8. Outdoor display of automobile accessories or tires is prohibited.
9. All refuse and trash disposal containers are contained within an enclosure that complies with all Zoning and Site Plan regulations.
10. Automobiles shall only be parked in marked parking spaces in accordance with the approved Site Plan.
11. All landscaping required on the approved Site Plan shall be continuously maintained for the life of the Certificate of Occupancy.
12. Any signage for the business shall be limited to a wall-mounted sign that complies with the sign regulations applicable in a "C-1" District.
13. A copy of the Board's Decision and Order shall be recorded at the appellant's expense to ensure that any future property owners are aware of these conditions.
14. The Zoning Enforcement Officer shall bring the Use Variance back to the Zoning Board of Adjustment for reconsideration at any time that the use becomes a nuisance to surrounding properties or violates the conditions approval.

ANGEL GROFF  
2200 EASTON BOULEVARD  
ZON 2018-00120

JULY 25, 2018

VOTE

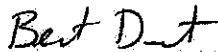
The foregoing Decision and Order was adopted by a vote of 6-0, with all Board members present voting in favor thereof.

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



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Mel Pines, Chair



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Bert Drost, Secretary