

.....
Date April 5, 2021.....

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING A VARIANCE FROM SEPARATION REQUIREMENTS TO ALLOW ANIMAL SERVICE USE WITH AN OUTDOOR EXERCISE RUN AT 601 ARMY POST ROAD

WHEREAS, on March 24, 2021, the Zoning Board of Adjustment voted 5-1 to approve an application from February 30th Properties, LLC, requesting zoning code relief to allow redevelopment of this site, specifically, a variance from the requirement that outdoor boarding or outdoor exercise runways in an “Animal Service” use provide at least 200 feet of separation distance from any “N” Neighborhood District, as set forth in Municipal Code Section 134-3.5.2, to allow for redevelopment of the site with a veterinary clinic having a fenced outdoor exercise runway on the real property locally known as 601 Army Post Road (“Property”); and

WHEREAS, all portions of the Property are located within 200’ of a row of residentially zoned properties that occupy the south side of the block of Lally Street that lies between Southwest 6th Street and Southwest 7th Street, and which are developed with single family homes; and

WHEREAS, the Board found that the proposed new veterinary clinic with outdoor exercise runway would not alter the essential character of the locality of the land in question, as this site fronts Army Post Road and is consistent with the commercial development in the vicinity along that major arterial street; that owner’s plight is due to the ‘L’ shape of the site, which is a unique circumstance not of this owner’s making; and that the owner has demonstrated an unnecessary hardship, in that this Property has zoning which is limited to Boarding uses defined by the Animal Service use category, but there is no location on the site where compliance with the separation distance is possible, effectively rendering the site unusable; and that the intention of the separation requirement is met by fencing, landscape buffering and limited hours of use of the runway; and

WHEREAS, Iowa Code §414.7 and Section 134-6.7.8(C) of the Zoning Ordinance require that any variance from a separation requirements granted by the Board be forwarded to the City Council for its review, and the City Council may remand the variance of the separation requirement 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 April 29, 2021.
- 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.

★ Roll Call Number

Agenda Item Number

28

Date April 5, 2021

(Council Communication No. 21- 153)

MOVED by _____ to adopt alternative _____, above.

APPROVED AS TO FORM:

Judy K. Parks-Kruse
Judy K. Parks-Kruse
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED APPROVED

Mayor

CERTIFICATE

I, P. Kay Cmelik, 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 2021-00027
	:	
FEBRUARY 30TH PROPERTIES, LLC	:	
	:	PUBLIC HEARING: MARCH 24, 2021
ON PROPERTY LOCATED AT	:	
	:	
VICINITY OF 601 ARMY POST ROAD	:	

SUBJECT OF THE APPEAL

Proposal: Use of the property for an "Animal Service" use, that would include an outdoor exercise runway, generally measuring 50 feet by 100 feet, which would be within 20 feet of the northerly property line adjoining an "N3a" Neighborhood District. The outdoor exercise runway would be surrounded by an 8-foot tall solid wood fence.

Appeal(s): Zoning Variance (per City Code Section 134.6.7) of the provision that requires outdoor boarding or outdoor exercise runways for an "Animal Service" use to provide at least 200 feet of separation distance from any "N" Neighborhood District.

Required by City Code Section 134-3.5.2

FINDING

Granting the requested Variance would be consistent with the intended spirit and purpose of the Zoning Ordinance, as the criteria required for granting a Variance, as contained in City Code Section 134-6.7.7.A, have been satisfied. The appellant has demonstrated that they face an unnecessary hardship, as the land in question cannot yield a reasonable return from the uses permitted on the property. The conditional zoning that was recently imposed by Ordinance 15,971 generally limits use of the property to uses as defined by the Animal Service Use Category. However, all portions of the subject property are within 200 feet of an "N" District as measured to the property lines of the nearest residential lot. Although the homes on the adjacent lots are not near their lot lines, the point from which measurement is made leaves no opportunity for outdoor boarding of animals or an outdoor exercise runway for animals, without this Variance. The result, without this variance, is that no part of the property can be used for the specific use which is permitted by the conditional zoning of this property. Any impacts of outdoor boarding or an outdoor exercise runway would be minimal given the site's location along the heavily-travelled Army Post Road and given the fact that it would be surrounded by a minimum 6-foot tall solid wood fence as well as further insulated from noise by overstory trees that the developer is planting. The outdoor exercise runway will be in use during daytime hours, which is also likely to minimize disturbance to nearby residents.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Zoning Variance (per City Code Section 134.6.7) of the provision that requires outdoor boarding or outdoor exercise runways for an "Animal Service" use to provide at least 200 feet of separation distance from any "N" Neighborhood District, to allow use of the property for an "Animal Service" use, that would include an outdoor exercise runway, generally measuring 50 feet by 100 feet, which would be within 20 feet of the northerly property line adjoining an "N3a" Neighborhood District, is **granted**.

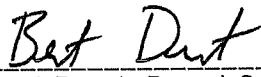
VOTE

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

Signed, entered into record, and filed with the City of Des Moines Development Services Department serving as the office of the Board, on March 29, 2021.



Mel Pins, Board Chair



Bert Drost, Board Secretary