

.....
Date June 13, 2022

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING USE VARIANCE TO ALLOW USE OF THE PROPERTY AT 1022 ARMY POST ROAD FOR A LIMITED “VEHICLE MAINTENANCE/REPAIR, MINOR” USE IN A “RX1” MIXED USE DISTRICT

WHEREAS, on April 18, 2022, by Roll Call No. 22-0628, the City Council held a public hearing and denied the request from John Getsy III (owner) to rezone the property locally known as 1022 Army Post Road (“Property”) from “RX1” Mixed Used District to Limited “MX3” Mixed Use District, to allow the conversion of the existing building to a “Vehicle Maintenance/Repair, Minor use; and

WHEREAS, on May 25, 2022, the Zoning Board of Adjustment voted 7-0 to approve an application from Allan Kennedy for a use variance to allow use of the property locally known as 1022 Army Post Road for a “vehicle maintenance/repair, minor” use, subject to certain conditions set forth in the Decision and Order of the Board as attached hereto; and

WHEREAS, in the Decisions and Order of the Board, the Board found that granting said variance would be consistent with the intended purpose of the zoning ordinance and the applicant had satisfied the criteria required for approval so long as the business operates in accordance with the conditions set forth therein; 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 July 1, 2022.
- 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

75

Date June 13, 2022

(Council Communication No. 22-278)

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

FORM APPROVED:

/s/ Lisa A. Wieland
Lisa A. Wieland
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
SHEUMAKER				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	

CERTIFICATE

I, LAURA BAUMGARTNER, Acting 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

Acting 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: ZBOA 2022-000038
	:	
GETSY III, JOHN	:	
	:	PUBLIC HEARING: MAY 25, 2022
ON PROPERTY LOCATED AT	:	
	:	
1022 ARMY POST ROAD	:	

SUBJECT OF THE APPEAL

Proposal: Use of property for a "Vehicle Maintenance/Repair, Minor" use.
Appeal(s): Use Variance (per City Code 134-6.7) of the uses permitted in the "RX1" Mixed Use District.

Required by City Code Table 134-5.6-1, & Sections 134-6.7 & 134-6.7.

FINDING

The Board finds that granting the requested Zoning Variance would be consistent with the intended of the Zoning Ordinance and has satisfied the criteria required for approval, so long as the business operates in accordance with the conditions of approval. It is determined that the category for "Vehicle Maintenance/Repair, Minor" is broad by definition and is not consistent with the technical service that is being proposed at this location, creating an unnecessary hardship for the appellant. The proposed use requires no tools for services and is scheduled by appointment only, with no outdoor or overnight storage of vehicles further separating its practices from the typical "Vehicle Maintenance/Repair, Minor" use category. The appellant has demonstrated that these are unique circumstances not of their own making and that they face an unnecessary hardship through their placement within and enforcement of a broadly defined category.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Use Variance (per City Code 134-6.7) of the uses permitted in the "RX1" Mixed Use District is approved, subject to the following conditions:

1. No vehicles may be stored outdoors or overnight while awaiting repair or pick-up at any given time.
2. Vehicles awaiting repair or pick-up shall not occupy parking spaces required for employee parking.
3. All vehicles shall have current license tags.
4. Outdoor storage of junk, debris, tires or vehicle parts shall be prohibited.
5. All repairs, installation, or other services shall only occur within a completely enclosed building.
6. Any reuse of the site shall be in accordance with all applicable Site Plan regulations and Building and Fire Codes, with issuance of any necessary permits by the City's Permit and Development Center.

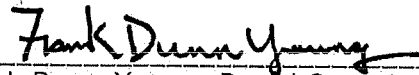
VOTE

The foregoing Decision and Order was adopted by a vote of 7-0, with all Board members present voting in favor thereof.

Signed, entered into record, and filed with the City of Des Moines Development Services Department serving as the office of the Board, on May 31, 2022.



Mel Pins, Board Chair



Frank Dunn-Young, Board Secretary