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**Date** February 10, 2025

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION CONDITIONALLY GRANTING A USE VARIANCE FOR AN “OFFICE: BUSINESS OR PROFESSIONAL” USE IN A “F” FLOOD DISTRICT, ON PROPERTY AT 414 61<sup>ST</sup> STREET OWNED BY 414 61<sup>ST</sup> STREET, LLC**

**WHEREAS**, the real property locally known as 414 61<sup>st</sup> Street (“Property”), owned by 414 61<sup>st</sup> Street, LLC (“Owner”) measures approximately 1.16 acres and contains a vacant 4,868 square foot building, and is located along the west side of 61<sup>st</sup> Street to the north side of Grand Avenue, adjacent to Walnut Creek; and

**WHEREAS**, the Property is located within the FEMA-designated 100-year Floodplain and is, therefore, zoned “F” Flood District; and

**WHEREAS**, Des Moines Municipal Code sections 134-6.7 requires the Owner to obtain a variance from the Zoning Board of Adjustment in order to build or use the property for certain uses, including, but not limited, to “Office: Business or Professional” use; and

**WHEREAS**, the Owner made such application and on January 22, 2025, the Zoning Board of Adjustment voted 7-0 to approve an application from 414 61<sup>st</sup> Street for a use variance to allow the Owner/Occupant to use the property for “Office: Business or Professional” use subject to the following conditions to which the Owner has agreed:

1. Any site improvements shall be in accordance with applicable standards of Chapter 50 of the Municipal Code.
2. Any design and use of the existing building shall not impede emergency access to the subject property or surrounding neighborhood.
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. 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.
5. 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.

; and



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**WHEREAS**, Iowa Code § 414.7 and Section 134-6.7.8(C) 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 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  
(Choose One)**

- 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 February 27, 2025.
- 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. 25- 058 )

Moved by \_\_\_\_\_ to adopt. Second by \_\_\_\_\_

APPROVED AS TO FORM:

/s/ Gary D. Goudelock Jr.  
Gary D. Goudelock Jr.  
Assistant City Attorney



**Roll Call Number**

**Agenda Item Number**

48

**Date** ..... February 10, 2025 .....

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN				
SIMONSON				
VOSS				
COLEMAN				
WESTERGAARD				
MANDELBAUM				
GATTO				
TOTAL				
MOTION CARRIED			APPROVED	

**CERTIFICATE**

I, LAURA BAUMGARTNER, 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: ZBOA-2024-000079
414 61ST STREET, LLC :
ON PROPERTY LOCATED AT : PUBLIC HEARING: JANUARY 22, 2025
414 61ST STREET :

SUBJECT OF THE APPEAL

Proposal: Re-use of a vacant 4,868-square foot building for a "Business, Office" use within an "F" Flood District.

Appeal(s): Use Variance for a "Business, Office" use within an "F" Flood District.

Required by City Code Table 134-3.1-1 and Sections 134-3.5.14 & 134-6.7.

FINDING

Granting the requested Zoning Variance would be consistent with the intended spirit and purpose of the Zoning Ordinance, as the appellant has satisfied the criteria required for granting a Variance, as contained in City Code Section 134-6.7.7.A. The appellant has demonstrated that they face an unnecessary hardship, as the land in question cannot yield a reasonable return from the uses permitted by the subject "F" District zoning regulations. The plight of the owner is due to unique circumstances not of the owner's own making, which unique circumstances relate specifically to the subject property and not to general conditions in the neighborhood. Also, the use or construction to be authorized by the Zoning Variance would not alter the essential character of the area in which the subject property is located. Additionally, the proposed reuse and modifications of the building do not constitute a substantial improvement requiring the applicant to satisfy the requirements of Chapter 50 of the City Municipal Code. The appellant has met all of the Floodplain Variance regulations including good and sufficient cause, that the relief requested is the minimum necessary from the flood hazard, that the Iowa Department of Natural Resources and the City Engineer have no objections, and that it will not constitute an impediment to emergency access.

DECISION AND ORDER

*WHEREFORE, IT IS ORDERED* that the appeal for the requested Use Variance for a "Business, Office" use within an "F" Flood District, to allow re-use of a vacant 4,868-square foot building for a "Business, Office" use within an "F" Flood District, **is granted**, subject to the following conditions:

1. Any site improvements shall be in accordance with applicable standards of Chapter 50 of the Municipal Code.
2. Any design and use of the existing building shall not impede emergency access to the subject property or surrounding neighborhood.
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. 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.
5. 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.

VOTE

The foregoing Decision and Order was adopted by a vote of 7-0, with all Board members 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 January 28, 2025.

  
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Mel Pins, Board Chair

  
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Katherine Drahos, Acting Board Secretary