

Date August 13, 2012

WHEREAS, at its July 25, 2012 hearing, with a subsequent Decision and Order entered into the record on July 31, 2012, the City of Des Moines Zoning Board of Adjustment ("Board") approved an application for a use variance from Jose Luis Gonzalez for a 15,960 square foot property in the vicinity of 2001 Clark Street for a general motor vehicle repair shop use; and

WHEREAS, the Board approved a use variance for a use not permitted in the C-1 Neighborhood Retail Commercial District; and

WHEREAS, the proposed vehicle repair use satisfies the criteria necessary for granting a Use Variance, as it would not alter the essential character of the surrounding area so long as it operates in accordance with the conditions of approval. The proposed use of this property for a vehicle repair business is appropriate given its location along Martin Luther King, Jr. Parkway, which includes other auto-oriented commercial uses. Furthermore, the existing commercial building was constructed with a design and dimensions that are not conducive for retail or other uses permitted in the Limited C-1 District. Therefore, the Use Variance to allow an auto repair business within the Limited C-1 District is necessary for the property to yield a reasonable return, and is otherwise appropriate in this instance so long as the business operates in accordance with the following conditions:

1. Any display of vehicles for sale shall be prohibited.
2. Any outdoor repair or servicing of vehicles shall be prohibited.
3. Any outdoor display of automobile accessories and storage of materials or equipment, such as barrels, tires and tools, shall be prohibited.
4. Any refuse and trash disposal containers shall be contained within the building or an outdoor enclosure that complies with the Zoning Ordinance.
5. Submittal and review of a Site Plan in accordance with Site Plan regulations by September 28, 2012.
6. Installation of landscaping in accordance with standards in the Site Plan policies for C-1 Districts as approved by the Community Development Director.
7. Substantial conformance with the approved Site Plan by December 31, 2012.
8. Any use of on-street parking spaces for customer or business vehicles shall be prohibited.
9. A signed copy of the Zoning Board of Adjustment's decision and order shall be recorded with Polk County at the appellant's expense as assurance that future property owners become aware of these conditions.
10. Hours of operation shall be between 7:00 a.m. and 6:00 p.m.
11. The Zoning Board of Adjustment shall reconsider the Use Variance if it is found by the Zoning Officer that the appellant or their successors have not complied with all conditions of approval.
12. The Zoning Enforcement Officer shall have the authority to extend the deadlines in the aforementioned conditions so long as the property is actively working towards satisfying all of the conditions of approval.

★ Roll Call Number

12-1310

Agenda Item Number

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Date August 13, 2012

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WHEREAS, in accordance with Municipal Code Section 134-65(d), if the Board grants a variance to a use requirement, the Decision and Order shall be referred to the City Council for its review pursuant to Iowa Code Section 414.7. The City Council may review such decision within 30 days after the decision is filed. After such review, the City Council may remand the decision to the Board for further study. If the City Council does not act to review the decision within 30 days after it is filed, the decision shall become effective on the 31<sup>st</sup> day. If the City Council declines to remand the decision, the decision shall become final on the date of the council's action. If the City Council remands a decision to the Board, the effective date of the decision is delayed for 30 days from the date of remand.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, as follows:


\_\_\_\_\_ The City Council remands the Decision and Order to the Zoning Board of Adjustment for further study. The effective date of the Zoning Board of Adjustment's decision will be deferred for 30 days from the date of remand.

\_\_\_\_\_ The City Council takes no action to review the Decision and Order. The decision of the Zoning Board of Adjustment will become final on September 24, 2012.

✓ \_\_\_\_\_ The City Council declines to remand the decision to the Zoning Board of Adjustment. The decision will become final on the date of the Council's action.

Moved by Giess to adopt.

APPROVED AS TO FORM:



Michael F. Kelley  
Assistant City Attorney

(Council Communication No. 12-416)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

T. M. Franklin 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.

Diane Rauh City Clerk