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 2018-00249

CLIPPERNOMICS, LLC PUBLIC HEARING: JANUARY 23, 2019

ON PROPERTY LOCATED AT

6007 SOUTHWEST 9TH STREET

SUBJECT OF THE APPEAL

Proposal: Conversion of the building to a barber shop and/or beauty parlor use, with up to 16 operators, while providing at least 27 off-street parking spaces.

Appeal(s): Exception of up to five (5) parking spaces less than the minimum 32 parking spaces required for a barber shop and/or beauty parlor use with up to 16 operators (2 spaces per operator).

Required by City Code Section 134-1377(a)(2)

FINDING

Granting the Exception would be consistent with the intended spirit and purpose of the Zoning Ordinance and within the essential character of the neighborhood of the land in question. The appellant faces a practical difficulty in complying with the off-street parking requirements given the limited size of the parcel, the placement and size of the existing building and the need to provide adequate pavement setbacks. This limits the amount of space available to dedicate to parking stalls. The requested relief relates entirely to a use allowed in the "C-2" General Retail and Highway-Oriented Commercial District.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for an Exception of up to five (5) parking spaces less than the minimum 32 parking spaces required for a barber shop and/or beauty parlor use with up to 16 operators (2 spaces per operator), to allow conversion of the building to a barber shop and/or beauty parlor use, with up to 16 operators, while providing at least 27 off-street parking spaces, is granted, subject to any development being constructed in compliance with all applicable Site Plan and Building Codes, with issuance of all necessary permits by the Permit and Development Center.

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 January 29, 2019.

Mel Piers, Chair

Bert Drost, Secretary
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**

**DMPS (MOULTON)**

**ON PROPERTY LOCATED AT**

**1541 8TH STREET**

**DOCKET: ZON 2018-00251**

**PUBLIC HEARING: JANUARY 23, 2019**

**SUBJECT OF THE APPEAL**

**Proposal:** Use of a portion of the school building for an after-school childcare use operated by an entity other than Des Moines Public Schools.

**Appeal(s):** Special Permit for an institution of an educational, philanthropic, and/or eleemosynary character.

*Required by City Code Section 134-1326(4)*

**FINDING**

Granting the Special Permit would be consistent with the intended spirit and purpose of the Zoning Ordinance and in harmony with the essential character of the locality of the land in question. The proposed use complies with the standards for issuance of a Special Permit, as it relates entirely to the permitted educational use of the property. The proposal would adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property; would not unduly increase congestion in the public streets; would not increase public danger of fire and safety; would not diminish or impair established property values in surrounding areas; and would have no significant detrimental impact on the use and enjoyment of adjoining properties.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Special Permit for an institution of an educational, philanthropic, and/or eleemosynary character, to allow use of a portion of the school building for an after-school childcare use operated by an entity other than Des Moines Public Schools, is granted.

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 January 29, 2019.

Mel Pirs, Chair

Bert Drost, Secretary
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

JAIME HERNANDEZ

ON PROPERTY LOCATED AT

2549 EAST 23RD STREET

DOCKET: ZON 2018-00261

PUBLIC HEARING: JANUARY 23, 2019

SUBJECT OF THE APPEAL

Proposal: Construction of a 10-foot by 25-foot (250 square feet) carport addition to the north façade of the dwelling that would be within 5 feet of the north street side property line along East Sheridan Avenue. The dwelling has an existing 8-foot south side yard setback, resulting in a combined 13 feet of side yard setbacks.

Appeal(s): Exception of 1 foot less than the minimum 6 feet of side yard setback required for a single-family dwelling on a Lot of Record with 60 feet of lot width (10%).

Exception of 2 feet less than the minimum 15 feet of combined side yard setbacks required for a single-family dwelling.

Required by City Code Sections 134-1296(b)(2) & 134-414(4)(a)

FINDING:

Granting the requested Exceptions with conditions would be consistent with the intended spirit and purpose of the Zoning Ordinance and in harmony with the essential character of the neighborhood of the land in question. Since the proposed carport would be readily visible from East Sheridan Avenue, it would be appropriate to provide a decorative railing extending approximately 3.5 feet above grade along the north and east perimeters of the carport. The appellant faces a practical difficulty in constructing an addition that cannot be overcome by any feasible alternative means other than the requested Exceptions given the size of the parcel and the placement of the existing dwelling or the parcel. The proposed addition relates entirely to a permitted use allowed by the "R1-60" District.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeals for an Exception of 1 foot less than the minimum 6 feet of side yard setback required for a single-family dwelling on a Lot of Record with 80 feet o’ lot width (10%) and an Exception of 2 feet less than the minimum 15 feet of combined side yard setbacks required for a single-family dwelling, to allow construction of a 10-foot by 25-foot (250 square feet) carport addition to the north façade of the dwelling that would be within 5 feet of the north street side property line along East Sheridan Avenue, are granted, subject to the following conditions:

1. Any carport addition shall include a decorative railing extending approximately 3.6 feet above grade along the north and east perimeters of the carport, to the satisfaction of the City’s Planning Administrator.

2. Any carport addition shall be constructed with building materials that are compatible with the existing dwelling, including asphalt shingles, and shall be painted to match the existing dwelling.

3. Any carport addition shall be constructed in conformance with all applicable Building Codes with issuance of all necessary permits by the City’s Permit and Development Center.

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 January 29, 2019.

Mei Pims, Chair

Bert Drost, Secretary
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 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
MICHAEL SIX
ON PROPERTY LOCATED AT
4502 SOUTHEAST 14TH STREET

DOCKET: ZON 2018-00247
PUBLIC HEARING: JANUARY 23, 2019

SUBJECT OF THE APPEAL
Proposal: Use of the existing building for a commercial use and retention of an existing pole sign structure.

Appeal(s): Part A) Appeal of the zoning determination dated November 30, 2018 that states use of this land and structure has ceased for more than six (6) months and, therefore, the property has lost its legal non-conforming rights, including those for the free-standing pole sign.

Required by City Code Sections 134-63 & 134-1353

If the Board upholds the zoning determination in Part A, the Board shall consider the following:

Part B) Variance of the provisions that require any freestanding sign to be a monument sign with a maximum height of 8 feet.

Required by City Code Section 134-1276(p)(4)

PART A

FINDING
The Board finds that it must uphold the Zoning Enforcement Officer's determination that the subject property was vacant and not in use for more than a six (6) month period and, therefore, the property has lost its legal non-conforming rights, including those for the free-standing pole sign. During the hearing, the Zoning Enforcement Officer provided substantial evidence that proves the building was been vacant for a period of at least six (6) months. Photos from numerous inspections conducted from December of 2015 to October of 2018 were presented as evidence demonstrated the vacancy. At no time was the structure foun to be occupied.

DECISION AND ORDER
WHEREFORE, IT IS ORDERED that the Zoning Enforcement Officer's determination dated November 30, 2018 that states use of this land and structure has ceased for more than six (6) months, is upheld, and, therefore, the property has lost its legal non-conforming rights, including those for the free-standing pole sign.
VOTE
The foregoing Decision and Order was adopted by a vote of 4-3, with Board members Carlson, Chiodo, Jones, and Pins voting in favor thereof and with Board members Blake, Gaer, and Smith voting in opposition thereto.

PART B
FINDING
The Board finds that it must deny the Variance of the provisions that require any freestanding sign to be a monument sign with a maximum height of 8 feet. Granting the Variance would not be consistent with the intended spirit and purpose of the Zoning Ordinance. The appellant has not demonstrated that 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 or that the plight of the owner is due to unique circumstances not of the owner’s own making. Should a business establish legal occupancy on the subject property in the future, they would be able to install a monument sign and/or building mounted signage that complies with the Zoning Ordinance and they would be able to utilize a lease arrangement with the billboard owner on the same property. Installing signage that complies with regulations is an expense that is faced by businesses across the City and not due to unique circumstances relate specifically to the land in question or the general conditions in the neighborhood.

DECISION AND ORDER
WHEREFORE, IT IS ORDERED that the appeal for a Variance of the provisions that require any freestanding sign to be a monument sign with a maximum height of 8 feet, to allow retention of an existing pole sign structure, is denied.

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 Community Development Department serving as the office of the Board, on January 29, 2019.

Mei Pins, Chair

Bert Drost, Secretary
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 2018-00255
SOUTHEAST 23RD STREET PROPERTY, LLC
PUBLIC HEARING: JANUARY 23, 2019
ON PROPERTY LOCATED AT

1635 DE WOLF STREET

SUBJECT OF THE APPEAL

Proposal: Resume use of the property for junk or salvage yard for outdoor storage of inoperable vehicles.

Appeal(s): Appeal of the zoning determination dated December 20, 2018 that states the property at 1635 De Wolf Street does not have legal non-conforming rights to use the property for a salvage yard since outdoor storage of inoperable vehicles has lapsed for more than six (6) months.

Required by City Code Sections 134-63 134-1352(a)(3) & 134-1353(a)

FINDING

The Board finds that it must uphold the Zoning Enforcement Officer’s determination dated December 20, 2018. The Zoning Enforcement Officer provided substantial evidence that provided the property at 1635 De Wolf Street was vacant and not in use for at least six (6) months, beginning around June 6, 2018. During the hearing, the appellant was unable to demonstrate that the use of the property for a salvage yard use had not lapsed for more than six (6) months. Therefore, any reuse of the property for a salvage yard use must be in accordance with a Conditional Use Permit issued by the Zoning Board of Adjustment and with all Site Plan requirements.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the Zoning Enforcement Officer's determination dated December 20, 2018 that states use of the property for outdoor storage of inoperable vehicles has lapsed for more than six (6) months, is upheld, and, therefore, property at 1635 De Wolf Street does not have legal non-conforming rights to use the property for a salvage yard.

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 Community Development Department serving as the office of the Board, on January 29, 2019.

Mel Pines, Chair

Bert Drost, Secretary
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 2018-00256

322 E COURT, LLC

PUBLIC HEARING: JANUARY 23, 2019

ON PROPERTY LOCATED AT

322 EAST COURT AVENUE

SUBJECT OF THE APPEAL

Proposal: Use of up to 2,700 square feet within the northeastern portion of the existing building, including a small area within a mezzanine level, for a tavern use.

Appeal(s): Conditional Use Permit for a tavern selling alcoholic liquor, wine, and beer. Required by City Code Section 134-954

FINDING

Granting the continuance would allow the owner of the proposed business to continue discussions with the property's titleholder.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Conditional Use Permit for a tavern selling alcoholic liquor, wine, and beer, to allow use of up to 2,700 square feet within the northeastern portion of the existing building, including a small area within a mezzanine level, for a tavern use, is continued to the February 27, 2019 Zoning Board of Adjustment meeting.

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 Community Development Department serving as the office of the Board, on January 29, 2019.

Mel Pins, Chair

Bert Drost, Secretary
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 THOMPSON PROPERTIES, LC ON PROPERTY LOCATED AT 1105 EAST BROADWAY AVENUE

DOCKET: ZON 2018-00257 PUBLIC HEARING: JANUARY 23, 2019

SUBJECT OF THE APPEAL

Proposal: Retention of four (4) mechanical equipment units along the northside of the building that are visible from East Broadway Avenue.

Appeal(s): Variance of the provision that requires any mechanical equipment unit that would be visible from a street to be screened from view.

Required by City Code Sections 134-1276(t)(1)

FINDING

Granting the Variance would be consistent with the intended spirit and purpose of the Zoning Ordinance, as the existing mechanical equipment is not readily visible from East Broadway Avenue since it is substantially setback from the front property line and since an existing parking lot provides significant buffering and screening. The Board finds that granting the Variance would be in harmony with the essential character of the land in question, as the appellant provided multiple photographs that demonstrate other properties in close proximity do not provide screening of mechanical equipment. Furthermore, the Board finds that the appellant would face a hardship if they were required to provide screening material since the site has been designed to accommodate the mechanical equipment in its current configuration.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Variance of the provision that requires any mechanical equipment unit that would be visible from a street to be screened from view, to allow retention of four (4) mechanical equipment units along the northside of the building that are visible from East Broadway Avenue is granted.

VOTE

The foregoing Decision and Order was adopted by a vote of 6-1, with Board members Carlson, Chiodo, 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 Community Development Department serving as the office of the Board, on January 29, 2019.

Mel Pins, Chair

Bert Drost, Secretary
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

TIM HALL, SR.

ON PROPERTY LOCATED AT

3017 DEAN AVENUE

DOCKET: ZON 2018-00258

PUBLIC HEARING: JANUARY 23, 2019

SUBJECT OF THE APPEAL

Proposal: Retention of a single-family dwelling located with 0 feet of the south (rear) property line on the existing 75-foot by 123-foot (9,225 square feet) parcel which also contains a permitted two-family dwelling located within 0 feet of the west (side) property line.

Appeal(s): Appeal of the zoning determination that the property does not have legal non-conforming rights for any residential use other than a permitted two-family dwelling.

Required by City Code Sections 134-63, 134-342, 134-412, & 134-1352

FINDING

The Board finds that it must uphold the Zoning Enforcement Officer’s determination that the property is only permitted to retain the existing two-family dwelling. The Zoning Enforcement Officer provided substantial evidence that demonstrates the structure at the rear of the property has not been occupied or used as a single-family dwelling for a period over six (6) months in length. In fact, testimony provided during the hearing indicated that the structure has been vacant for at least three (3) years, as the property went through a tax sale process. Furthermore, the structure has been designated as a "public nuisance", during which time the structure has not been occupied.

Evidence was presented to the Board that the two-family dwelling on the property is a permitted use; however, no documentation was presented or available to demonstrate that the accessory structure in the rear yard of the property was used as a single-family dwelling, in continuous use with valid rental certificates or owner occupancy. Therefore, the property should be made to conform with the removal and/or use of the accessory structure at the rear of the property as an accessory structure with 10 dwelling component.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the Zoning Enforcement Officer's determination that the property is only permitted to retain the existing two-family dwelling, is upheld.

VOTE

The foregoing Decision and Order was adopted by a vote of 5-2, with Board members Blake, Chiodo, Gaer, Jones, and Pina voting in favor thereof and Board members Carlson and Smith voting in opposition thereto.

Signed, entered into record, and filed with the City of Des Moines Community Development Department serving as the office of the Board, on January 29, 2019.

Mel Pina, Chair

Bert Drost, Secretary
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

LANY DM, LLC

ON PROPERTY LOCATED AT

2535 HUBBELL AVENUE

DOCKET: ZON 2018-00259

PUBLIC HEARING: JANUARY 23, 2019

SUBJECT OF THE APPEAL

Proposal: Conversion of the existing building (generally measuring 550 feet by 210 feet and up to 28 feet in height) to a miniwarehouse use, and construction of three (3) additional miniwarehouse buildings that would each measure 160 feet by 30 feet. The appellant does not propose to provide a controlled access and fenced compound around the facility.

Appeal(s): Variance to the definition of "miniwarehouse", which states a miniwarehouse building shall not exceed 25 feet in height or 150 feet in any other dimension, which would allow for conversion of the existing retail structure generally measuring 550 feet by 210 feet and up to 28 feet in height.

Variance to the definition of "miniwarehouse", which states a miniwarehouse building shall not exceed 150 feet in any other dimension, which would allow for construction of three (3) additional miniwarehouse buildings that would each measure 160 feet by 30 feet.

Variance of the requirement that requires any miniwarehouse use to provide a controlled access and fenced compound which would allow the three (3) additional miniwarehouse buildings to be constructed without a fenced compound and controlled access.

Required by City Code Sections 134-3 (definition of miniwarehouse), 134-1053, & 134-947(c)(20)

During the public hearing, the appellant verbally withdrew the appeal for Variance to the definition of "miniwarehouse", which states a miniwarehouse building shall not exceed 150 feet in any other dimension, which would allow for construction of three (3) additional miniwarehouse buildings that would each measure 160 feet by 30 feet.
PART A

FINDING

Granting the Variance to the definition of "minwarehouse" to allow conversion of the oversized existing retail building for minwarehouse use would be consistent with the intended spirit and purpose of the Zoning Ordinance and in harmony with the essential character of the locality of the land in question and the surrounding neighborhood area so long as the site is developed in accordance with the recommended conditions of approval. The size of the existing building, which exceeds the size limitations in the ordinance definition of "minwarehouse", is a unique circumstance not of the applicant's own making and specific to the land in question and not to general conditions in the neighborhood. Removal or partial deconstruction of the existing building to meet the maximum height and length dimensions would not be reasonable. The existing building was not built for minwarehouse use. To reduce the size to meet the standard would devalue the structure beyond what would provide a reasonable return given the buildings existing value. Removing the existing building entirely presents additional costs beyond demolition. In order to redevelop the site with new buildings equivalent to the existing building area there would be significant expense given the existing regulatory Zone A floodplain.

To mitigate the impact of the relief for an oversize minwarehouse building, there are necessary site enhancements around the immediate perimeter of the building that should be required, such as additional landscape plantings beyond the minimum necessary for the site plan policies. Also, the front of the building should have an architectural treatment that brings down the scale of the height and length of the building. The submitted renderings of other big box conversions the appellant has developed indicate use of additional windows revealing more of the interior of the building, architectural metal accent features, and awnings, as examples.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Variance to the definition of "minarehouse", which states a minwarehouse building shall not exceed 25 feet in height or 150 feet in any other dimension, which would allow for conversion of the existing retail structure generally measuring 550 feet by 210 feet and up to 28 feet in height, is granted, subject to the following conditions:

1. Any conversion of the building is subject to compliance with all Building Codes and Site Plan regulation with necessary permits issued by the Permit and Development.

2. Any conversion of the building is subject to provision of enhanced landscaping around the immediate perimeter of the building, to be reviewed by the Planning Administrator with the required Site Plan.

3. Any conversion of the building is subject to provision of architectural features and material variation to minimize the height and expanse of the building, to be reviewed by the Planning Administrator with the approved Site Plan.

4. Any use of the site for minarehouse use is subject to an approved Site Plan in compliance with current Site Plan policies including conformance with landscaping requirements applicable in "C-2" Districts.

VOTE

The foregoing Decision and Order was adopted by a vote of 6-1, with Board members Blake, Carlson, Chiodo, Gaer, Pins, and Smith voting in favor thereof and Board member Jones voting in opposition thereto.
PART B

FINDING

A motion to grant the requested Variance of the requirement that requires any miniwarehouse use to provide a controlled access and fenced compound failed to receive the four (4) affirmative votes necessary for it to pass. Therefore, the appeal is deemed denied.

The staff recommendation and discussion at the hearing indicate that granting the Variance of the requirement that any miniwarehouse use provide a controlled access and fenced compound would not be consistent with the intended spirit and purpose of the Zoning Ordinance. The appellant has not demonstrated that they face an unnecessary hardship in regard to the controlled access and fencing for the 3 additional miniwarehouse buildings. The land in question can yield a reasonable return from any use permitted by the regulations of the district in which the land is located, following approval of the variance allowed in Part A. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the land in question. It is not sufficient merely to show that the value of the land has been depreciated by the regulations or that a variance would permit the owner to maintain a more profitable use. Construction of any new buildings would be of the appellant’s own making. Any exterior storage unit access to the existing building should be within a fenced compound area with decorative fencing and masonry pillars in order to maintain the essential character of the locality of the land in question.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Variance of the requirement that requires any miniwarehouse use to provide a controlled access and fenced compound which would allow the three (3) additional miniwarehouse buildings to be constructed without a fenced compound and controlled access, failed by a vote of 3 to 4. Therefore, the appeal is deemed denied.

VOTE

The variance request set forth in Part B is deemed denied due to a Board vote of 3-4, with Board members Carlson, Gaar, and Smith voting in favor of the requested variance and Board members Blake, Chiodo, Jones, and Pins voting in opposition thereto.

Signed, entered into record, and filed with the City of Des Moines Community Development Department serving as the office of the Board, on January 29, 2019.

[Signature]
Mel Pins, Chair

[Signature]
Bert Drost, Secretary
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

R & S PARTNERSHIP

ON PROPERTY LOCATED AT

221 63rd STREET

DOCKET: ZON 2018-00260  
PUBLIC HEARING: JANUARY 23, 2019

SUBJECT OF THE APPEAL

Proposal: Conversion of 4,420 square feet within the existing building to an assembly/health club use, while providing at least 41 off-street parking spaces accessed by a 22-foot wide drive aisle.

Appeal(s): Variance of 74 parking spaces less than the minimum 115 spaces required for 4,420 square feet of assembly/health club use (1 space per 150 square feet) and 16,820 square feet of retail use (1 space per 200 square feet).

Exception of 2 feet less than the minimum 24 feet of drive aisle width required for 90-degree angle parking spaces.

Required by City Code Sections 134-1377(a)(5 & 24) & 134-1377(g)(1)

FINDING

Granting the Variance would be consistent with the intended spirit and purpose of the Zoning Ordinance. The appellant has demonstrated that they face an unnecessary hardship in providing the minimum required parking spaces since they are unable to acquire additional land. The plight of the owner is due to unique circumstances not of the owner’s own making, which unique circumstances relate specifically to the land in question and not to general conditions in the neighborhood, including but not limited to prior acquisitions of land from the property for surrounding public improvement projects that lessened the amount of available parking on the site. Furthermore, the use to be authorized by the Variance will not alter the essential character of the locality of the land in question.

Granting the Exception would be consistent with the intended spirit and purpose of the Zoning Ordinance and in harmony with the essential character of the neighborhood of the land in question. The appellant faces a practical difficulty providing a 24-foot wide parking lot drive aisle given the placement of the building on the parcel in relationship to the front property line, which practical difficulty cannot be overcome by any feasible alternative means other than an Exception. The requested relief relates entirely to off-street parking accessory to an use allowed in the “C-2” General Retail and Highway-Oriented Commercial District.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Variance of 74 parking spaces less than the minimum 115 spaces required for 4,420 square feet of assembly/health club use (1 space per 150 square feet) and 16,820 square feet of retail use (1 space per 200 square feet), to allow conversion of 4,420 square feet within the existing building to an assembly/health club use, is granted, so long as no more than 4,420 square feet within the building is used for an assembly/health club use.

AND, WHEREFORE, IT IS ORDERED that the appeal for an Exception of 2 feet less than the minimum 24 feet of drive aisle width required for 90-degree angle parking spaces, to allow conversion of 4,420 square feet within the existing building to an assembly/health club use, while providing at least 41 off-street parking spaces accessed by a 22-foot wide drive aisle, is granted.

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 Community Development Department serving as the office of the Board, on January 29, 2019.

Mel Pins, Chair

Bert Drost, Secretary
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

GIT-N-GO CONVENIENCE STORES, INC.
ON PROPERTY LOCATED AT
1829 6TH AVENUE

DOCKET: ZON 2018-00262
PUBLIC HEARING: JANUARY 23, 2019

SUBJECT OF THE APPEAL

Proposal: Sale of wine and beer by an existing limited food and retail sales establishment (In & Out Market) operating within a 30-foot by 66-foot (1,980 square feet) commercial building. As a limited food and retail sales establishment, the business would be allowed to derive no more than 40% of its gross sales from wine, beer, and/or tobacco products.

Appeal(s): Conditional Use Permit for a limited food and retail sales establishment selling wine and beer in a “C-1” District.

Required by City Code Section 134-954

FINDING

The Boards finds that the appellant has satisfied the criteria necessary for granting the Conditional Use Permit. However, multiple conditions of approval are reasonably necessary to ensure that the business would not become a nuisance. The business conforms with the separation distance requirements contained in City Code subsection 134-954(a). The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area. The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses. The business will not unduly increase congestion on the streets in the adjoining residential area. If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use Permit, the Zoning Enforcement Officer may apply to the Zoning Board of Adjustment to reconsider the issuance of the Conditional Use Permit for such business.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that an appeal for a Conditional Use Permit for a limited food and retail sales establishment selling wine and beer in a "C-1" District, to allow the sale of wine and beer by an existing limited food and retail sales establishment (In & Out Market) operating within a 30-foot by 66-foot (1,980 square feet) commercial building, is granted, subject to the following conditions:

1. All site lighting shall be directed downward and shielded from adjoining properties. Any pole mounted lighting along private walkways shall not exceed 15 feet in height and any pole mounted lighting in a parking area shall not exceed 20 feet in height. All existing light fixtures that do not comply with these standards shall be replaced.

2. All refuse collection containers shall be stored within an enclosure constructed of masonry walls with solid steel gates.

3. The limited food and retail sales establishment shall derive no more than 40% of its gross receipts from the sale of wine, beer, and/or tobacco products.

4. Any sale of wine and beer shall be in accordance with necessary permits obtained through the Office of the City Clerk, as approved by the City Council.

5. The business shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.

6. The business shall institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.

7. The business shall not dispense alcoholic beverages from a drive-through window.

8. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of the business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.

9. Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.

10. Any renovation or construction on the site shall be in compliance with all applicable building codes, fire codes, and site plan regulations, with issuance of all necessary permits by the Permit and Development Center.

11. Exterior lighting and video surveillance shall be placed on all sides of the exterior of the building.

12. There shall be no public access to outdoor electrical outlets.

13. The City of Des Moines Police shall be authorized to enforce no trespassing during non-business hours.

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14. If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use Permit, the Zoning Enforcement Officer may apply to the Zoning Board of Adjustment to reconsider the issuance of the Conditional Use Permit for such business.

15. Any business selling wine or beer shall operate with an owner-operator model, where the owner(s) of the business runs the day-to-day operations of the business.

16. Any business selling wine or beer shall only operate between the hours of 7:00 AM and 11:00 PM.

17. Any business selling wine or beer shall not dedicate more than 300 square feet of area to the display or storage of wine and/or beer.

18. Advertisements of wine and beer shall be non-existent on all windows and other externally visible surfaces of the building.

VOTE

The foregoing Decision and Order was adopted by a vote of 5-2, with Board members Blake, Carlson, Gaer, Jones, and Smith voting in favor thereof and Board members Chiodo and Pins voting in opposition thereto.

Signed, entered into record, and filed with the City of Des Moines Community Development Department serving as the office of the Board, on January 28, 2019.

[Signatures]

Mel Pins, Chair

Bert Drost, Secretary