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 2019-00039
DES MOINES VIETNAMESE BUDDHIST ASSOCIATION
ON PROPERTY LOCATED AT:
1419 & 1425 MARTIN LUTHER KING, JR. PARKWAY

PUBLIC HEARING: APRIL 24, 2019

SUBJECT OF THE APPEAL

Proposal: Conversion of the existing structure from a single-family residential use on the parcel known as 1425 Martin Luther King, Jr. Parkway to an educational use associated with the existing religious assembly use on the adjacent parcel known as 1419 Martin Luther King, Jr. Parkway. The existing structure is within 23 feet of the west (front) property line, within 6 feet of the north (side) property line, and within 15 feet of the south (side) property line. The existing detached garage would remain as an accessory structure. The proposed school and existing religious assembly uses would be served by a total of ten off-street parking spaces, including two that would be within 6 feet of the north (side) property line. The proposed use would be surrounding by a wrought iron fence with many masonry pillars.

Appeal(s): Special Permit for an institution of educational and/or religious 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 impact of the proposed use would be minimal so long as any educational use operates in accordance with the recommended conditions of approval. The proposed use would be located within the existing building and 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; and 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 a Special Permit for an institution of educational and/or religious character, to allow conversion of the existing structure from a single-family residential use on the parcel known as 1425 Martin Luther King, Jr. Parkway to an educational use associated with the existing religious assembly use on the adjacent parcel known as 1419 Martin Luther King, Jr. Parkway, is granted, subject to the following conditions:

1. Any site improvements shall be in compliance with all applicable Site Plan requirements, to the satisfaction of the City's Planning Administrator.

2. Any construction shall be in compliance with all applicable Site Plan, Building Code, and Fire Code requirements, including issuance of all necessary permits by the Permit and Development Center.

3. Any construction shall be in substantial conformance with the submitted site sketch and utilize building materials that are compatible with the surrounding neighborhood, to the satisfaction of the City's Planning Administrator.

4. No portion of any building shall be occupied until a Certificate of Occupancy has been issued by the Permit and Development Center.

5. The two lots must be combined and recorded with Polk County.

6. Any fence shall be constructed in substantial conformance with the existing fence at 1419 Martin Luther King, Jr. Parkway and installed in compliance with a permit issued by the Permit and Development Center.

7. No portion of any building or accessory structure shall be used as a dwelling unit.

8. No portion of any building or accessory structure shall be used in association with a home-based business unless the Zoning Board of Adjustment grants a Special Permit for a home occupation for such use.

9. Operation of the school shall only occur between the hours of 7:00 AM and 9:00 PM.

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 April 25, 2019.

Mel Pina, Board Chair

Bert Drost, Board 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

JULIE BROWN

ON PROPERTY LOCATED AT

321 TONAWANDA DRIVE

DOCKET: ZON 2019-00049

PUBLIC HEARING: APRIL 24, 2019

SUBJECT OF THE APPEAL

Proposal: Construction of a 2-story addition to the northeasterly façade of the dwelling, where the addition would be within 15 feet of the southeasterly (front) property line along Browns Drive and within 5 feet of the northern (side) property line. The addition would replace an existing garage.

Appeal(s): Exception of 5 feet less than the minimum required 30-foot setback from the front property line along Browns Drive.

Exception of 5 feet less than the minimum required 10-foot setback from the side (north) property line.

Required by City Code Sections 134-344(3) & 134-344(4)(a)

FINDING

Granting the 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. The appellant faces a practical difficulty in constructing an addition that is large enough to meet their needs given the location of the existing dwelling and the unusual lot configuration. The proposed addition relates entirely to a use that is allowed in an “R1-80” District.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeals for an Exception of 15 feet less than the minimum required 30-foot setback from the front property line along Browns Drive and an Exception of 5 feet less than the minimum required 10-foot setback from the side (north) property line, to allow construction of a 2-story addition to the northeasterly façade of the dwelling, where the addition would be within 15 feet of the southeasterly (front) property line along Browns Drive and within 5 feet of the northern (side) property line, are granted, subject to the following conditions:

1. Any addition shall be with building materials that are compatible with the primary dwelling.

2. Any addition shall be in compliance with all applicable Building and Fire Codes, with issuance of all necessary permits by the Permit and Development Center.

3. Any addition constructed shall be in substantial conformance with the submitted site sketch and building elevations with building materials that are compatible with the existing structure and surrounding neighborhood.

4. Provision of a paved off-street parking space that is outside of the minimum required front yard setback and accessed by a paved driveway.

5. No portion of any addition shall be used in association with a commercial business or a home-based business.

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 April 25, 2019.

Mel Pins, Board Chair

Bert Drost, Board 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

500 SOUTHEAST 6TH STREET, LLC
ON PROPERTY LOCATED AT
401 SOUTHEAST 5TH STREET

DOCKET: ZON 2019-00050
PUBLIC HEARING: APRIL 24, 2019

SUBJECT OF THE APPEAL

Proposal: Construction of a 15-foot by 31.5-foot (472.5 square feet) addition to the east facade of the existing building, where the addition would be within 13 feet of the north (front) property line along Raccoon Street.

Appeal(s): Exception of 12 feet less than the minimum required 25-foot front yard setback. Required by City Code Section 134-1090(1)

FINDING:

Granting the Exception 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 so long as the addition is constructed with building materials that are compatible with the existing structure. The impact of the addition on the surrounding neighborhood would be minimal given the large size of the parcel and the addition’s placement onto the existing motor vehicle repair building. The appellant faces an unnecessary hardship in providing handicap access to the existing office located on the second floor. The proposed addition relates entirely to a use that is permitted in the “M-1” zoning district. Any relief should be subject to compliance with an approved Site Plan meeting all the off-street parking requirements.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for an Exception of 12 feet less than the minimum required 25-foot front yard setback, to allow construction of a 15-foot by 31.5-foot (472.5 square feet) addition to the east facade of the existing building, where the addition would be within 13 feet of the north (front) property line along Raccoon Street, is granted, subject to the following conditions:

1. Any addition shall comply with all applicable Building Codes along with issuance of all necessary permits by the Permit and Development Center.
2. Any addition constructed shall be built with building materials that match the existing structure.
3. Any addition shall be constructed in compliance with Site Plan requirements including paved parking and landscaping as approved 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 April 25, 2019.

Mel Parks, Board Chair

Bert Drost, Board 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 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

FAREWAY STORES, INC.
ON PROPERTY LOCATED AT
3000 SOUTHEAST 22ND STREET

DOCKET: ZON 2019-00052
PUBLIC HEARING: APRIL 24, 2019

SUBJECT OF THE APPEAL

Proposal: Conversion of the existing structure from a food and retail sales establishment use to a religious assembly use. The existing structure is within 30 feet of the north (front) property line along East Virginia Avenue and within 23.5 feet of the west (side) property line.

Appeal(s): Exceptions of up to 11.5 feet less than the minimum 35 feet of setback required from any property line.

Required by City Code Sections 134-842(1), 134-807(1), 134-587(1), 134-552(1), 134-482(1), & 134-342(2)

FINDING

Granting the Exceptions 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. While the proposed use is permitted in the “C-1” District, the re-occupancy of an existing commercial building with the church use is triggering the need for relief. There is practical difficulty in relocation or partial demolition of the existing building to meet the minimum setback for the church use. The proposed exceptions relate entirely to a use that is allowed in the “C-1” zoning district. 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.
FAREWAY STORES, INC.
3000 SOUTHEAST 22ND STREET
ZON 2019-00052

-2- APRIL 24, 2019

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for Exceptions of up to 11.5 feet less than the minimum 35 feet of setback required from any property line, to allow conversion of the existing structure from a food and retail sales establishment use to a religious assembly use within 30 feet of the north (front) property line and within 23.5 feet of the west (side) property line, is granted, subject to the condition that any change in occupancy shall be in compliance with all applicable Building and Fire Codes requirements, with issuance of all necessary permits and approval of a Site Plan 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 April 25, 2019

Mel Pnis, Board Chair

Bert Drost, Board 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
CITY OF DES MOINES
ON PROPERTY LOCATED AT
VICINITY OF 1101 HICKMAN ROAD

DOCKET: ZON 2019-00054
PUBLIC HEARING: APRIL 24, 2019

SUBJECT OF THE APPEAL
Proposal: Installation of a 3.5-foot by 7-foot (24.5 square feet) sign identifying Prospect Park near the northwest corner of the intersection of Hickman Road and Prospect Road. The sign would be located outside of any required vision clearance triangle.

Appeal(s): Conditional Use Permit for a sign in a “FW” Floodway District.

Required by City Code Sections 134-1223(8) & 134-847

FINDING

Granting the Conditional Use Permit for signage that would otherwise be allowed in the “C-1” Neighborhood Retail Commercial District would be consistent with the intended spirit and purpose of the Zoning Ordinance so long as the sign is constructed in substantial conformance with the submitted design. The impact of the proposed sign would be minimal so long as any sign is constructed in accordance with the recommended conditions of approval. The proposed sign complies with the standards for issuance of a Conditional Use Permit, as the sign relates entirely to the permitted community use of the property. The proposed signage 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 impair an adequate supply of light and air to surrounding property; would not unduly increase congestion in the streets, or public danger of fire, safety and flood; would not diminish or impairestablished property values in surrounding areas, and would be in accord with the intent, purpose and spirit of this chapter and the comprehensive plan.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Conditional Use Permit for a sign in a "FW" Floodway District, to allow installation of a 3.5-foot by 7-foot (24.5 square feet) sign identifying Prospect Park near the northwest corner of the intersection of Hickman Road and Prospect Road, is granted, subject to the following conditions:

1. Compliance with all permitting requirements of the Iowa Department of Natural Resources (IDNR) and the U.S. Army Corps of Engineers.

2. Compliance with all applicable Site Plan, Building Code, and Fire Code requirements, with issuance of all necessary permits by the Permit and Development Center.

3. Any sign constructed shall be a monument sign with a 24-inch tall concrete base.

4. Any sign constructed shall have two parallel sign faces not to exceed 3.5-foot by 7-foot (24.5 square feet).

5. No lighting shall be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of any street, or is of such low intensity or brilliance as to not cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

6. Any sign constructed shall not be located within any required vision clearance triangle.

7. Any sign constructed shall be installed by a licensed sign contractor in accordance with a sign permit issued 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 April 25, 2019.

Mel Bins, Board Chair

Bert Drost, Board 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

1306 DIAMOND VIEW, LLC
ON PROPERTY LOCATED AT

1300 SOUTHEAST 1ST STREET

DOCKET: ZON 2019-00037
PUBLIC HEARING: APRIL 24, 2019

SUBJECT OF THE APPEAL

Proposal: Retention of a portable storage container on the southern portion of the site, which is used for storage. The appellant indicates that the portable storage container would only be on the property for a temporary period.

Appeal(s): Variance to the definition of "accessory structure", which prohibits portable storage containers from being used as an accessory structure.

Required by City Code Section 134-3 (definition of Accessory Structure)

FINDING

Granting the Variance on a permanent basis would not be consistent with the intended spirit and purpose of the Zoning Ordinance or within the essential character of the locality of the land in question. The intent of the Zoning Ordinance is that accessory structures be of a permanent and durable design. Therefore, a storage container does not comply with the definition of "accessory building" in Section 134-3 of the Zoning Ordinance. The appellant has not demonstrated an unnecessary hardship, as the plight of the owner is not due to unique circumstances not of the owner's own making, nor relates specifically to the land in question rather than to general conditions in the neighborhood. The appellant further has not shown that the property cannot yield a reasonable return from any use permitted by the regulations of the "D-R" zoning district. However, the appellant has shown that an unnecessary hardship exists on a temporary basis due to the immediate need for storage, which need is not due to the owner's own making, and has further shown the ability and intent to remove the portable storage container from the property no later than December 31, 2019.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Variance to the definition of "accessory structure", which prohibits portable storage containers from being used as an accessory structure, to allow retention of a portable storage container on the southern portion of the site, which is used for storage, is denied.

And, WHEREFORE, a temporary Variance to the definition of "accessory structure", which prohibits portable storage containers from being used as an accessory structure, to allow retention of a portable storage container on the southern portion of the site, which is used for storage, is granted until December 31, 2019, at which time said temporary Variance shall immediately and automatically terminate.

VOTE

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

Signed, entered into record, and filed with the City of Des Moines Community Development Department serving as the office of the Board, on April 25, 2019.

Mel Pins, Board Chair

Bert Drost, Board 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

207 CROCKER, LLC

ON PROPERTY LOCATED AT

207 CROCKER STREET

DOCKET: ZON 2019-00038

PUBLIC HEARING: APRIL 24, 2019

SUBJECT OF THE APPEAL

Proposal: Sale of alcoholic liquor, wine, and beer within an 1,800-square foot hotel lounge area and within a 1,700-square foot outdoor patio along the east side of the building. The premise is within 100 feet of a public park located directly across 2nd Avenue to the east.

Appeal(s): Conditional Use Permit for a business selling alcoholic liquor, wine, and/or beer. Variance of the provision that requires any business in the "C-2" District selling alcoholic liquor, wine, and beer, which is not a restaurant, to provide at least 150 feet of separation distance from any public park.

Required by City Code Sections 134-954 & 134-954(a)

FINDING

The appellant has satisfied the criteria necessary for granting the requested Conditional Use Permit with conditions to allow a tavern use as an accessory use related to the primary hotel use on the property. 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 area, which contains primarily commercial uses. The business is not contrary to the public interest and will not unduly increase congestion on the streets in the adjoining area and will have a minimal impact on the surrounding properties so long as it operates in accordance with the recommended conditions of approval. 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.

The appellant has further satisfied the criteria necessary for granting the requested Variance to sell alcoholic liquor, wine, and beer in the "C-2" District, without operating as a restaurant and without providing at least 150 feet of separation distance from any public park. The owner has demonstrated that its plight is due to unique circumstances not of the owner's own making, which circumstances relate specifically to the land in question and not to general conditions in the neighborhood, and that the use to be authorized by the Variance will not alter the essential character of the locality of the land in question. The proposed hotel lounge and outdoor patio are separated from the public park by a heavily travelled, multi-lane street, and by the topography of the area placing the park at a much lower grade down a hill.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeals for a Conditional Use Permit for a business selling alcoholic liquor, wine, and/or beer and a Variance of the provision that requires any business in the “C-2” District selling alcoholic liquor, wine, and beer, which is not a restaurant, to provide at least 150 feet of separation distance from any public park, to allow sale of alcoholic liquor, wine, and beer within an 1,800-square foot hotel lounge area and within a 1,700-square foot outdoor patio along the east side of the building, are granted, subject to the following conditions:

1. Any business selling liquor, wine, and/or beer shall operate in accordance with a liquor license obtained through the Office of the City Clerk as approved by the City Council.

2. The business shall comply with Article IV of Chapter 42 of the City Code pertaining to noise control.

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

4. 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.

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

6. 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.

7. Any renovation of the building shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the Permit and Development Center.

8. 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 Board to reconsider the issuance of the Conditional Use Permit.

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 April 25, 2019.

Mel Pin, Board Chair

Bert Drost, Board 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
RE3, LLC
ON PROPERTY LOCATED AT
440 EAST GRAND AVENUE

DOCKET: ZON 2019-00042
PUBLIC HEARING: APRIL 24, 2019

SUBJECT OF THE APPEAL
Proposal: Use of up to 1,500 square feet of area within the 1st floor of the existing building, as well as up to 2,000 square feet of area within an outdoor patio space, for a tavern use.

Appeal(s): Conditional Use Permit for a tavern selling alcoholic liquor, wine, and/or beer.

Required by City Code Section 134-954

FINDING
The appellant has satisfied the criteria necessary for granting the Conditional Use Permit with conditions to allow a tavern use. 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 area, which contains a mix of commercial and residential uses. The business will not unduly increase congestion on the streets in the adjoining area, and will have a minimal impact on the surrounding properties so long as it operates in accordance with the recommended conditions of approval. 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 the appeal for a Conditional Use Permit for a tavern selling alcoholic liquor, wine, and/or beer, to allow use of up to 1,500 square feet of area within the 1st floor of the existing building, as well as up to 2,000 square feet of area within an outdoor patio space, for a tavern use, is granted, subject to the following conditions:

1. Any business selling liquor, wine, and/or beer shall operate in accordance with a liquor license obtained through the Office of the City Clerk as approved by the City Council.

2. The business shall comply with Article IV of Chapter 42 of the City Code pertaining to noise control. Any outdoor speakers or amplified sound shall only be in accordance with the appropriate sound permit. While the premise is allowed to obtain a Class E permit to allow for background sound that is auditory in nature only, any special events requiring a less restrictive sound permit shall be limited to two (2) calendar days within any given month.

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

4. 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.

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

6. 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.

7. Any renovation of the building shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the Permit and Development Center.

8. 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 Board to reconsider the issuance of the Conditional Use Permit.

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 April 25, 2019.

Mel Pils, Board Chair

Bert Drost, Board 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

RONDA HOOD
ON PROPERTY LOCATED AT
3826 GRAND AVENUE

DOCKET: ZON 2019-00048
PUBLIC HEARING: APRIL 24, 2019

SUBJECT OF THE APPEAL

Proposal: Use of a 600-square foot area within the basement of the dwelling for a business involving counseling and therapy services. The business would employ the applicant and two (2) non-resident individuals.

Appeal(s): Special Permit for a home occupation.

Required by City Code Section 134-1326(10)

FINDING

The proposed business satisfies the criteria necessary for granting the Special Permit. Any impacts of the proposed business would be minimal so long as the business operates in accordance with the conditions of approval, and specifically the condition that only one non-resident individual shall be engaged or employed in the business upon the premises. The proposed home occupation would be located within the existing building and 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; and 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. The Special Permit for a home occupation shall be subject to reconsideration by the Board if at any time the Zoning Enforcement Officer determines that the conduct of the occupation has become detrimental to the neighborhood.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Special Permit for a home occupation, to allow use of a 600-square foot area within the basement of the dwelling for a business involving counseling and therapy services, is granted, subject to the following conditions:

1. The occupation shall be clearly incidental to or secondary to the residential use of the premises.
2. No more than one non-resident individual shall be engaged or employed in the business upon the premises.
3. One sign advertising the business is allowed, attached to the residence. Such sign shall not exceed one square foot in total area. Free-standing signs are not permitted.
4. The occupation shall not cause or produce noise, vibration, smoke, dust, odor, or heat or any other impact of a type or quantity not in keeping with the residential character of the neighborhood.
5. No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive, or other restricted material of a type or quantity not ordinarily used for household purposes shall be used or stored on the premises, and the applicant must identify the proper disposition of any hazardous waste. No activity is allowed which is hazardous to the public health, safety or welfare.
6. There shall be no outside operation, storage or display of materials or products.
7. No more than one-half of the area of one floor level of the dwelling or accessory building shall be used for such business, including the storage of materials or products.
8. No alteration of the residential appearance of the premises shall occur.
9. Hours of operation must not infringe on the residential atmosphere of the neighborhood. All outside activity related to the business must cease between the hours of 9:30 a.m. and 7:00 a.m.
10. The home occupation, including any business storage, shall not displace or impede use of parking spaces required by this chapter. The home occupation shall not displace, interfere with or impede access to public parking.
11. The home occupation shall not cause the congregation of business employees at the site or congestion in the availability of on-street parking.
12. The business must be of a type that would be permitted anywhere in the C-2 general retail and highway oriented commercial district without approval from the board of adjustment.
13. This Special Permit for a home occupation shall be in effect only for so long as the premises are owned and occupied by the applicant.
14. This Special Permit for a home occupation shall be subject to reconsideration by the board if at any time the zoning enforcement officer determines that the conduct of the occupation has become detrimental to the neighborhood.

VOTE

The foregoing Decision and Order was adopted by a vote of 4-2, with Board members Smith, Jones, Gaer and Chiodo voting in favor thereof, and Board members Pins and Carlson voting against.

Signed, entered into record, and filed with the City of Des Moines Community Development Department serving as the office of the Board, on April 25, 2019.

Mel Pins, Board Chair

Bert Drost, Board 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 2019-00051

MATT & MELISSA SHIELDS

PUBLIC HEARING: APRIL 24, 2019

ON PROPERTY LOCATED AT

4319 KINGMAN BOULEVARD

SUBJECT OF THE APPEAL

Proposal: Construction of a 19.5-foot by 30-foot, 2-story addition to the north facade of the existing building, where the addition would be within 2 feet of the north (side) property line. The proposed addition would replace an existing attached garage.

Appeal(s): Variance of 5 feet less than the minimum required 7-foot side yard setback.

Required by City Code Section 134-414(4)(a)

FINDING

Granting the requested Variance with conditions would be consistent with the intended spirit and purpose of the Zoning Ordinance and would not alter the essential character of the locality of the land in question. The plight of the owner is due to unique circumstances not of the owner’s own making, which relate specifically to the land in question and not to general conditions in the neighborhood, given that the subject property is a corner lot with street frontage along the south and west. The existing dwelling is generally located in the northeast corner of the lot. As a result, the balance of the site is located between the house and the streets. This greatly diminishes the options for where an addition could be located. The existing dwelling contains a brick chimney that runs up the west facade of the building. Therefore, it is not practical to construct an addition to the west of the dwelling. Providing a seven-foot setback from the north property line would require the addition to be 16 feet wide. This is not wide enough to provide adequate garage space. The proposed 20-foot width for the garage is the narrowest dimension typically used in constructing a functional two-car garage. The proposed design would blend in with the historic architecture of the existing dwelling.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Variance of 5 feet less than the minimum required 7-foot side yard setback, to allow construction of a 19.5-foot by 30-foot, 2-story addition to the north facade of the existing building, where the addition would be within 2 feet of the north (side) property line, is granted, subject to the following conditions:

1. Any addition shall be constructed in substantial conformance with the submitted design to the satisfaction of the Planning Administrator.

2. Any addition shall be constructed with building materials that are compatible with the existing dwelling to the satisfaction of the Planning Administrator.

3. Any 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 April 25, 2019.

Mel Pins, Board Chair

Bert Drost, Board 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  
MFS MLK, LLC  
ON PROPERTY LOCATED AT  
3401 MARTIN LUTHER KING, JR. PARKWAY  
DOCKET: ZON 2019-00055  
PUBLIC HEARING: APRIL 24, 2019

SUBJECT OF THE APPEAL
Proposal: Conversion of the existing building (generally measuring 501 feet by 120 feet and up to 35 feet in height) to a miniwarehouse use. The proposed use would contain 517 storage spaces while providing 27 off-street parking spaces.

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.

Variance of 30 parking spaces less than the minimum 57 off-street parking spaces required for 517 storage spaces (1 parking space per 10 storage spaces, plus 5 spaces for use of prospective customers).

Required by City Code Sections 134-3(definition of miniwarehouse) & 134-1377(a)(20)

FINDING
Granting the requested Variances would be consistent with the intended spirit and purpose of the Zoning Ordinance and would not alter the essential character of the locality of the land in question, so long as the site is developed in accordance with the recommended conditions of approval. The owner has demonstrated that its plight is due to unique circumstances not of its own making, which unique circumstances relate specifically to the land in question and not to general conditions in the neighborhood.

Requiring partial demolition of the building so that it complies with the maximum height and length dimension requirements of a "miniwarehouse" as required by the Municipal Code would not be reasonable. Drastically reducing the size of the building would devalue the structure beyond what would provide a reasonable return given the buildings existing value. The building occupies a predominate amount of the site leaving limited opportunities to provide off-street parking while providing space for storm water management and open space requirements. Requiring the number of units to be reduced to lower the number of required parking spaces would cause an unnecessary hardship as unit sizes would have to increase beyond what is demanded by the target market or areas within the building would have to be left vacant.

Improvements to the building and site improvements around the perimeter of the building are necessary to mitigate the impact of an oversized miniwarehouse building on the surrounding area. Architectural treatments and plantings that visually break up the building and reduce its visual scale shall be provided.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that an appeals for a 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 and a Variance of 30 parking spaces less than the minimum 57 off-street parking spaces required for 517 storage spaces (1 parking space per 10 storage spaces, plus 5 spaces for use of prospective customers), to allow conversion of the existing building (generally measuring 501 feet by 120 feet and up to 35 feet in height) to a miniwarehouse use, are 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 use of the site for miniwarehouse 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.

3. Any conversion of the building is subject to provision of enhanced landscaping around the perimeter of the building as reviewed and approved by the Planning Administrator with the require Site Plan.

4. Any conversion of the building is subject to provision of architectural features that minimize the height and expanse of the building to the satisfaction of the Planning Administrator.

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 April 25, 2019.

Mel Pins, Board Chair

Bert Drost, Board 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 2019-00056

DAVID PIPER

PUBLIC HEARING: APRIL 24, 2019

ON PROPERTY LOCATED AT

3708 SOUTHWEST 13TH STREET

SUBJECT OF THE APPEAL

Proposal: Construction of an 18-foot by 42-foot (756 square feet) accessory structure, with a maximum height of 25 feet. The proposed structure would be setback 15 feet from the south (street side) property line along Birch Lane and would be positioned with a 30-degree angle relative to the front property line. This accessory structure would be in addition to an existing 23.67-foot by 39.67-foot (939 square feet) accessory structure, resulting in a combined 1,695 square feet of aggregate area of accessory structures.

Appeal(s): Variance of 695 square feet over the maximum allowed 1,000 square feet of aggregate area for accessory structures.

Exception of 8 feet over the maximum 17 feet of height allowed for an accessory structure.

Required by City Code Sections 134-414(6)(b), 134-414(7)(b), & 134-1276(c)(3)

FINDING

Granting the Variance with conditions would not be consistent with the intended spirit and purpose of the Zoning Ordinance or in harmony with the essential character of the locality of the land in question. The appellant has not demonstrated that the construction of the garage would meet the criteria for finding an unnecessary hardship, as he has not shown that the land in question cannot yield a reasonable return from any use permitted in the "R1-60" zoning district, and has not shown that his plight is due to unique circumstances not of his own making.

Granting the Exceptions of 500 square feet over the maximum allowed 1,000 square feet of aggregate area for accessory structures and for 4 feet over the maximum 7 feet of height allowed for an accessory structure, allowing a garage that would be 14-foot by 40-foot (560 square feet) and 21 feet in height, along with retention of the existing garage, 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, so long as the garage would be constructed in accordance with recommended conditions to ensure it is within the essential character of the surrounding residential neighborhood area. The appellant faces a practical difficulty related to the land in question in providing an adequately sized accessory structure for storage of an RV. The applicant acquired the property with

(continued)
FINDING

the existing three-car garage. It would not be reasonable or practical to deconstruct the existing garage to provide total area capacity for the garage needed for an RV. The exceptions relate entirely to a permitted accessory use in the "R1-60" zoning district. The applicant indicated at the hearing that he did not anticipate the structure to exceed 20-21 feet in height.

While the existing structures on the property are primarily brick, the Board wants to ensure that the appellant constructed the garage with durable materials of a residential character, such as cement board siding and asphalt shingles. The proposed metal pole barn structure to be within 15 feet of the public residential street would not be in character with the neighborhood. Historically it was common for subordinate structures to brick homes to be constructed with wood siding. While the accessory structure would fit the scale of the lot and the existing dwelling and the development pattern of the area, the proposed angle of the structure would be very visible and not in character. Any garage should be built with the narrower dimension parallel to the public street. To achieve this, the structure could be placed in a location on the lot with a separate driveway that would minimize the impact to existing trees.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that appeal for a Variance of 695 square feet over the maximum allowed 1,000 square feet of aggregate area for accessory structures, is denied.

AND, WHEREFORE, IT IS ORDERED that the revised appeal for an Exception of 500 square feet over the maximum allowed 1,000 square feet of aggregate area for accessory structures and appeal for an Exception of 4 feet over the maximum 17 feet of height allowed for an accessory structure, to allow construction of an 18-foot by 42-foot (756 square feet) accessory structure, with a maximum height of 21 feet, and retention of an existing 939 square foot accessory structure, where the proposed structure would be setback 15 feet from the south (street side) property line along Birch Lane and would be positioned with a 30-degree angle relative to the front property line, are granted, subject to the following conditions:

1. Any additional accessory structure shall be in compliance with all applicable Building Codes, with issuance of all necessary permits by the Permit and Development Center.
2. Any additional accessory structure built shall be constructed of materials compatible with the principal single-family dwelling and existing detached garage, such as cement board siding and asphalt shingles.
3. Any additional accessory structure built shall have the narrower dimension parallel to Birch Lane and shall not be any closer to the public street than the existing single-family dwelling.
4. No portion of any accessory structure shall be used as a dwelling unit.
5. No portion of any accessory structure shall be used in association with a commercial business or a home based business.

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 April 25, 2019.

Mel Pins, Board Chair

Bert Drost, Board Secretary