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 2019-00223
111 EAST GRAND, LLC
ON PROPERTY LOCATED AT
111 EAST GRAND AVENUE
PUBLIC HEARING: DECEMBER 18, 2019

SUBJECT OF THE APPEAL

Proposal: Installation of a 1.5-foot by 8-foot (12 square feet) wall-mounted sign that would project up to 2 feet into East Grand Avenue right-of-way. The sign would identify an occupant with frontage on the first floor of the building but would be partially placed on the facade of the 2nd floor of the building.

Appeal(s): Variance to allow a sign to be placed partially on a non-occupant wall.

Required by City Code Section 134-1043

FINDING

Granting the requested Variance would be consistent with the intended spirit and purpose of the Zoning Ordinance. The appellant faces a hardship in installing the projecting sign on the building, given the minimum height clearance required above the sidewalk. The proposed sign would slightly over lap into occupant space of the second floor but would not give the appearance of such based on the design of the building. The sign would be consistent with the essential character of the surrounding Historic East Village area.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for an Variance to allow a sign to be placed partially on a non-occupant wall, to allow installation of a 1.5-foot by 8-foot (12 square feet) wall-mounted sign that would project up to 2 feet into East Grand Avenue right-of-way, which would identify an occupant with frontage on the first floor of the building but would be partially placed on the façade of the 2nd floor of the building, is granted, subject to installation of the sign by a licensed sign contractor in accordance with a permit issued 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 December 20, 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: DOCKET: ZON 2019-00225
CASEY'S MARKETING COMPANY
ON PROPERTY LOCATED AT: PUBLIC HEARING: DECEMBER 18, 2019
5150 EAST 14TH STREET:

SUBJECT OF THE APPEAL
Proposal: Allow a gas station/convenience store to have sales of alcoholic liquor in addition to the otherwise permitted sales of wine and beer. As a gas station/convenience store, the business would be allowed to derive no more than 40% of its gross sales from alcoholic liquor, wine, beer, and/or tobacco products.

Appeal(s): Conditional Use for a gas station convenience store selling alcoholic liquor.

Required by City Code Section 134-954

FINDING
The appellant has satisfied the criteria necessary for granting the requested Conditional Use with conditions. The subject property satisfies the separation distance requirements. 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, the Zoning Enforcement Officer may apply to the Zoning Board of Adjustment to reconsider the issuance of the Conditional Use for such business.
WHEREFORE, IT IS ORDERED that the appeal for a Conditional Use for a gas station convenience store selling alcoholic liquor, is granted to allow a gas station/convenience store to have sales of alcoholic liquor in addition to the otherwise permitted sales of wine and beer, subject to the following conditions:

1. The sale of alcoholic liquor, wine, and/or beer shall only be ancillary to a gas station/convenience store, where no more than 40% of gross receipts from sales on the premises may be derived from the sale of alcoholic liquor, wine, beer, and/or tobacco products.

2. The business selling alcoholic liquor, wine and/or beer shall be in accordance with the necessary permit and/or license obtained through the Office of the City Clerk as approved by the City Council.

3. Display of any alcoholic liquor shall only be within a locked case or behind a counter accessible only to employees.

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

5. 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.

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

7. 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.

8. Parking areas 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.

9. Any construction on the site shall be in compliance with all applicable Building and Fire codes, with issuance of all necessary permits by the City's Permit and Development Center.

10. 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, the Zoning Enforcement Officer may apply to the board to reconsider the issuance of the Conditional Use for such 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 December 20, 2019.

Mei 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 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 AND JERI HAMMEN
ON PROPERTY LOCATED AT
2908 67TH STREET

SUBJECT OF THE APPEAL
Proposal: The appeal would allow up to 696 square feet of paved area within the front yard area along Sherrick Avenue. The paving would be used for driveway and off-street parking purposes.

Appeal(s): Exception of 54 square feet over the maximum 642 square feet of area (25%) allowed for driveway and off-street parking purposes in a front yard that measures 2,568 square feet in area.

Required by City Code Section 134-1377(m)(3)

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 of the land in question. There is a practical difficulty in having sufficient off-street parking for a two-family dwelling unit due to the placement of the existing dwelling and the challenges of the surrounding terrain. The impact of the proposed expansion on the character of the neighborhood would be minimal as it is an architectural element that is typical of two-family dwellings. The additional pavement relates entirely to a permitted use allowed in the "R-2" District.
MICHAEL AND JERI HAMMEN
2908 67TH STREET
ZON 2019-00227

DECEMBER 18, 2019

WHEREFORE, IT IS ORDERED that the appeal for an Exception of 54 square feet over the maximum 642 square feet of area (25%) allowed for driveway and off-street parking purposes in a front yard that measures 2,568 square feet in area, to allow up to 696 square feet of paved area within the front yard area along Sherrick Avenue, is granted subject to the following conditions:

1. The property shall not contain more than 696 square feet of pavement within the front yard area along Sherrick Avenue.

2. Any widening of the drive approach is subject to issuance of a curb cut permit from the City’s Permit and Development Center and shall not exceed 24 feet in width.

3. Any construction shall be in compliance with all applicable 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 December 20, 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 DOCKET: ZON 2019-00195
MERLE HAY MALL PUBLIC HEARING: DECEMBER 18, 2019
ON PROPERTY LOCATED AT
4000 MERLE HAY ROAD

SUBJECT OF THE APPEAL
Proposal: Reinstallation of an existing 9.75-foot tall by 11.08-foot wide (108.06 square feet) freestanding directory sign atop a 1.08-foot tall by 5-foot wide masonry base. This existing sign has lost its legal-nonconforming status since it was removed from the site for repair after being damaged by a motorist. The sign is nonconforming since the masonry base of the sign does not extend from grade to the bottom of the sign face across the entire width of the sign face and since the height of the sign base is less than 25 percent of the total sign height.

Appeal(s): Variance of the provision that requires any freestanding (non-wall-mounted) sign be a monumental sign.

Variance to the definition of “sign, freestanding monument”, which requires a sign base that extends from grade to the bottom of the sign face across the entire width of the sign face, and requires the height of the sign base to be not less than the larger of 2 feet or 25 percent of the total sign height.

Required by City Code Sections 134-3(definition of sign, freestanding monument) & 134-1276(p)(4)

FINDING

The appellant has satisfied the criteria necessary for granting the Variances. The appellant has demonstrated that the signage regulations create a hardship in re-installing a previously existing sign that matches the design of the other existing signs throughout the mall’s campus. The sign to be authorized by the Variance is internal to the mall campus and will not alter the essential character of the locality of the land in question. Denial of the variances would be contrary to the public interest, since the existence of uniform signage throughout that property significantly enhances traffic safety within that campus. Furthermore, 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.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeals for a Variance of the provision that requires any freestanding (non-wall-mounted) sign be a monumental and a Variance to the definition of "sign, freestanding monument", which requires a sign base that extends from grade to the bottom of the sign face across the entire width of the sign face, and requires the height of the sign base to be not less than the larger of 2 feet or 25 percent of the total sign height, to allow reinstallation of an existing 9.75-foot tall by 11.08-foot wide (108.06 square feet) freestanding directory sign atop a 1.08-foot tall by 5-foot wide masonry base, are granted subject to the following conditions:

1. The sign shall be installed in accordance with the submitted design, which matches that of the other existing signs on the Merle Hay Mall campus

2. Any sign 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 5-1, with Board members Gaer, Gross, Jones, Pins, and Smith, and 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 December 20, 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

DOCKET: ZON 2019-00222

HARVEY PARKS PROPERTIES, LLC

PUBLIC HEARING: DECEMBER 18, 2019

ON PROPERTY LOCATED AT

1159 24TH STREET

SUBJECT OF THE APPEAL

Proposal: Amend Conditional Use granted on March 28, 2018, by Docket ZON2018-00017, that allows use of a 2,912-square foot area within the existing building for a performing arts venue, with sales and consumption of alcoholic liquor, wine, and beer permitted throughout.

Appeal(s): Amend Conditional Use for a business selling alcoholic liquor, wine, and beer in an "NPC" District.

Required by City Code Section 134-954 & Docket ZON2018-00017

FINDING

Granting the request to amend the Conditional Use for a gallery and performing arts assembly use selling alcoholic liquor, wine, and/or beer would be consistent with the intended spirit and purpose of the Zoning Ordinance. It is reasonable to revise "condition 2" that limits the sale of alcohol to "ticketed" events so long as any sale of alcohol is limited to public or private events and/or performances within the gallery and performing arts assembly space. It is also reasonable to allow the business to have sale or service of alcohol between 11:00 PM and 1:00 AM on no more than six (6) occasions during any calendar year, and to allow the business to remain open from midnight to 2:00 AM during those same occasions.

The property satisfies the minimum separation distance requirements and the proposed location, design, construction and operation of the particular use would adequately safeguard the health, safety and general welfare of persons residing in the adjoining or surrounding residential area. The business would be 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 would not unduly increase congestion on the streets in the adjoining residential area, as it is located in a pedestrian-oriented area that includes a mix of commercial and residential uses. The Conditional Use Permit would be subject to amendment or revocation if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use Permit, or if the operation violates the requirements of City Code Section 134-954(c).
WHEREFORE, IT IS ORDERED that the appeal to amend a Conditional Use for a business selling alcoholic liquor, wine, and beer in an "NPC" District, to allow use of a 2,912-square foot area within the existing building for a performing arts venue, with sales and consumption of alcoholic liquor, wine, and beer permitted throughout, is granted subject to the following conditions, which replace those contained in Docket ZON2018-00017:

1. Any business selling alcoholic liquor, wine, and/or beer shall operate as a gallery and performing arts assembly use that occupies no more than 3,000 square feet of gross floor area.
2. Any sale of alcoholic liquor, wine, and/or beer shall only occur during public or private events and/or performances within the gallery and performing arts assembly space.
3. Any sale or service of liquor, wine, and/or beer on the premises shall cease by 11:00 PM, except for up to six (6) occasions during any calendar year where the sale or service of liquor, wine, and/or beer on the premise shall be allowed to occur until 1:00 AM.
4. Any events held on the premises shall cease by 12:00 AM (midnight), except for up to six (6) occasions during any calendar year where the event on the premise shall be allowed to occur until 2:00 AM.
5. Any sale of alcoholic liquor, wine, and/or beer shall operate in accordance with the appropriate licenses and/or permits obtained through the Office of the City Clerk as approved by the City Council.
6. The business shall comply with article IV of chapter 42 of the City Code pertaining to noise control.
7. The business shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
8. 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.
9. 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.
10. 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.
11. The business shall not dispense alcoholic beverages from a drive-through window.
12. 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.
13. 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.

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 December 20, 2019.

Mel Pinn, 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 DOCKET: ZON 2019-00226

GARY REESER

ON PROPERTY LOCATED AT PUBLIC HEARING: DECEMBER 18, 2019

728 EAST BORDER STREET

SUBJECT OF THE APPEAL

Proposal: Conversion of an existing structure on a 7.19-acre parcel to a single-family residential use. The existing structure is within 7 feet of the westerly property line along right-of-way for Highway 5. The appeals would also allow for retention of a graveled driveway and graveled parking space.

Appeal(s): Exception of 2.81 acres less than the minimum 10 acres of area required for a single-family residential use in an "A-1" District.

Variance of 48 feet less than the minimum 55-foot side yard setback required in an "A-1" District.

Variance of the requirement that a single-family residential use must provide a minimum of one (1) off-street parking space located outside of the minimum required front yard setback and that is accessed by a paved driveway.

Required by City Code Sections 134-310(1)(a), 134-310(4), 134-1377(a)(8)(a) & 134-1377(m)(1)

FINDING

The appellant has satisfied the criteria necessary for granting the requested appeals. Granting the requested appeals to allow a single-family dwelling on the property would be consistent with the intended spirit and purpose of the Zoning Ordinance. The relief requested would not alter the essential character of the locality of the land in question since the structure that will be modified into a residence has been in existence in its present location for some time. The appellant faces a practical difficulty in assembling additional land to create a 10-acre parcel and faces a hardship in providing a 55-foot setback given the placement of the existing structure. The plight of the owner is due to unique circumstances not of the owner's own making. Furthermore, it would not be reasonable to require the appellant to pave the driveway since the property is located on a graveled roadway.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeals for an Exception of 2.81 acres less than the minimum 10 acres of area required for a single-family residential use in an "A-1" District, a Variance of 48 feet less than the minimum 55-foot side yard setback required in an "A-1" District, and a Variance of the requirement that a single-family residential use must provide a minimum of one (1) off-street parking space located outside of the minimum required front yard setback, to allow conversion of an existing structure to a single-family residential use and allow retention of a graveled driveway and graveled parking space, are granted.

Please note that any construction on the site must be in compliance 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 4-2, with Board members Blake, Gaer, Pins and Smith, and voting in favor thereof, and Board members Gross and Jones 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 December 20, 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 2019-00228
KENNETH AND JULIE REDD: PUBLIC HEARING: DECEMBER 18, 2019
ON PROPERTY LOCATED AT: 1006 39TH STREET

SUBJECT OF THE APPEAL

Proposal: Construction of a 24-foot by 36-foot (864 square feet) garage that would be within 30 feet of the east property line along 39th Street and within 16 feet of the south property line along School Street. The garage would be 1.5 stories with a maximum height of 21 feet. The garage would be accessed by a new driveway from School Street.

Appeal(s):

Exception of 4 feet less than the calculated minimum required 34-foot setback from the east front property line along 39th Street.

Exception of 14 feet less than the minimum required 30-foot setback from the south front property line along School Street.

Exception of 4 feet over the maximum 17 feet of height allowed for an accessory structure.

Exception of a 0.5 story over the maximum 1 story allowed for an accessory structure.

Exception of 8 feet less than the minimum 24 feet of maneuvering space required for a garage.

Required by City Code Sections 134-1276(e), 134-414(3), 134-414(6)(b), 134-414(7)(b), & 134-1377(g)
FINDING

Granting the appeals as requested 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 proposed structure would be in harmony with the essential character of the neighborhood of the land in question so long as it is constructed in accordance with the conditions of approval. The appellant faces a practical difficulty in locating the detached garage in the rear yard area, given the placement of the existing detached garage, 2 mature trees, a deck, and a swimming pool.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeals for an Exception of 4 feet less than the calculated minimum required 34-foot setback from the east front property line along 39th Street, an Exception of 14 feet less than the minimum required 30-foot setback from the south front property line along School Street, an Exception of 4 feet over the maximum 17 feet of height allowed for an accessory structure, an Exception of a 0.5 story over the maximum 1 story allowed for an accessory structure, and an Exception of 8 feet less than the minimum 24 feet of maneuvering space required for a garage, to allow construction of a 1.5-story (21 feet tall) garage that would be within 30 feet of the east property line along 39th Street and within 16 feet of the south property line along School Street, are granted subject to the following conditions:

1. The accessory structure shall be constructed of materials compatible with the principal single-family dwelling, such as horizontal lap siding and asphalt shingles.

2. The design of the accessory structure shall include the following:
   a. The gable area on both the north and south ends of the structure shall include a centered window that is at least 10 square feet in area.
   b. The gable area on both the north and south ends of the structure shall be sided with an accent material, such as siding with a shake pattern.
   c. At least one window that is at least 10 square feet in area shall be provided on the both the east and west sides of the ground level of the structure.
   d. A dormer with a window shall be provided on both the east and west sides of the roof of the structure.

3. No portion of the accessory structure shall be used as a dwelling unit, unless such use complies with all zoning and building code requirements.

4. No portion of the accessory structure shall be used in association with a commercial business or a home-based business.

5. The accessory structure shall be in compliance with all applicable 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 4-2, with Board members Blake, Gaer, Pins and Smith, and voting in favor thereof, and Board members Gross and Jones 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 December 20, 2019.

Bert Drost, Board Secretary