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 2019-00232

DES MOINES AREA COMMUNITY COLLEGE: PUBLIC HEARING: JANUARY 22, 2020

ON PROPERTY LOCATED AT:

VICINITY OF 1100 7TH STREET:

SUBJECT OF THE APPEAL:

Proposal: Installation of additional signage throughout the campus, including the following:

- Two (2) freestanding "entrance monument" signs, each measuring 4 feet wide by 15 feet tall.
- One (1) "entrance monument" sign mounted on a retaining wall, measuring 18 feet wide by 3 feet tall.
- Three (3) freestanding "building identification" signs, each measuring 2.25 feet wide by 8 feet tall.
- One (1) wall-mounted "on-building signage" sign, measuring 2.67 feet wide by 18 feet tall.
- Three (3) freestanding "campus pedestrian orientation" signs, each measuring 2.25 feet wide by 8.33 feet tall.
- Two (2) freestanding "campus pedestrian wayfinding" signs, each measuring 1.75 feet wide by 7.33 feet tall.
- One (1) freestanding "vehicular wayfinding" sign, measuring 2 feet wide by 3 feet tall.
- Two (2) freestanding "vehicular wayfinding" signs, each measuring 2 feet wide by 4 feet tall.
- Six (6) freestanding "prairie walk and interpretation" signs, each measuring 2 feet wide by 4 feet tall.
- One (1) building-mounted 1,009-square foot digital display board.
- One (1) building-mounted 232-square foot digital display board.

Appeal(s): Special Permit for an institution of educational character.

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

FINDING

The appellant has demonstrated the criteria necessary for granting the Special Permit. The proposed signs and digital display boards 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 so long as any sign or digital display board is installed by a licensed sign contractor in accordance with a sign permit issued by the City's Permit and Development Center. The impact of the proposed signs and digital display boards would be minimal so long as any sign or digital display board is installed in accordance with the recommended conditions of approval. The proposed signs and digital display boards comply with the standards for issuance of a Special Permit, as the sign relates entirely to the permitted educational use of the property. The proposed signs and digital display boards 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.
WHEREFORE, IT IS ORDERED that the appeal for a Special Permit for an institution of educational character, to allow installation of multiple signs and display boards, is granted subject to the following conditions:

1. Any sign or digital display board constructed shall be in general conformance with the submitted design.
2. Any digital display board shall be used purely for art.
3. The electronic display component of any display board shall not display multiple pictures or graphics in a series of frames which give the illusion of motion or video, including but not limited to television screens, plasma screens, LED screens and holographic displays used to display video images.
4. The electronic display component of any sign or digital display board and each portion thereof shall be static for at least 8 seconds between any change in the display and any change between static displays shall be instantaneous.
5. No lighting shall be used in any way in connection with any sign or digital display board 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 or digital display board constructed shall not be located within any required vision clearance triangle.
7. Any sign or digital display board 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 January 27, 2020.

Nathan Blake, Vice 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 2019-00231
215 EAST 3RD STREET, LLC PUBLIC HEARING: JANUARY 22, 2020
ON PROPERTY LOCATED AT 215 EAST 3RD STREET

SUBJECT OF THE APPEAL

Proposal: Expansion of the existing tavern use to occupy the lower level of the structure. The tavern is currently allowed to occupy up to the 12,916 square feet within the ground level of the building, and up to 1,776 square feet within an outdoor patio along the north side of the building, in accordance with a Conditional Use granted by the Zoning Board of Adjustment on October 28, 2015 (ZON2015-00184) and amended by the Zoning Board of Adjustment on June 28, 2017 (ZON2017-00084).

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

FINDING

The application satisfies the criteria for granting a Conditional Use Permit, as established in City Code Section 134-954(b), so long as the business operates in accordance with the recommended conditions of approval. This is an appropriate location for a tavern, as the site is located within a portion of the Historic East Village that contains a mix of commercial and residential uses. The impacts of the tavern and outdoor service area would be minimal so long as there are not outside speakers or amplified sound and so long as the business operates in accordance with the City’s noise control regulations. 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.
WHEREFORE, IT IS ORDERED that the appeal to amend a Conditional Use for a tavern selling alcoholic liquor, wine, and beer, as originally granted by docket ZON2015-00184 and amended by docket ZON2017-000840, which is necessary in order to allow expansion of the existing tavern use to occupy the lower level of the structure, is granted subject to the following conditions:

1. Any outdoor area on alley right-of-way must be in accordance with either a Sidewalk Cafe Lease executed by the City’s Community Development Department or a vacation and lease of public right-of-way executed by the City’s Real Estate Division.

2. Any business selling alcoholic liquor, wine, and beer shall operate in accordance with the necessary permits obtained through the Office of the City Clerk as approved by the City Council.

3. Any business shall comply with Article IV of Chapter 42 of the City Code pertaining to noise control. However, any outdoor area shall have no outside speakers or amplified sound.

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 any 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. Any renovation of the structure, as well as any use of the lower level of the structure, shall be in compliance with all applicable Building and Fire Codes, with issuance of all necessary permits by the Permit and Development Center.

9. If the Zoning Enforcement Officer determines at any time that the operation of such a business becomes a nuisance, exhibits a pattern of violating the conditions set forth in the Conditional Use, or violates the requirements of City Code Section 134-954(c), the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use.

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 27, 2020

Nathan Blake, Vice 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 WADE INVESTMENTS, LLC ON PROPERTY LOCATED AT 1433 WALNUT STREET

DOCKET: ZON 2019-00233
PUBLIC HEARING: JANUARY 22, 2020

SUBJECT OF THE APPEAL
Proposal: Use of the eastern tenant bay within the building, generally measuring 24 feet by 58 feet (1,392 square feet), for a tavern type business that would also involve retail sales of wine for off-premise consumption.

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

Required by City Code Section 134-3.8

FINDING
The application satisfies the criteria for granting a Conditional Use, as established in City Code Section 134-3.8.1. This is an appropriate location for the proposed use, as the site is located in the mixed-use downtown. The impacts of the tavern and limited retail sales would be minimal so long as the business operates in accordance with the City's noise control regulations and in accordance with the conditions of the 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 of a Conditional Use for a business selling alcoholic liquor, wine, and/or beer, to allow use of the eastern tenant bay within the building, generally measuring 24 feet by 58 feet (1,392 square feet), for a tavern type business that would also involve retail sales of wine for off-premise consumption, 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. Any retail sale of alcohol for off-premise consumption shall be limited to wine (no alcoholic liquor or beer). Furthermore, no more than 40 percent of the gross receipts from sales by the business may be derived from the sale of wine for off-premise consumption.

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

4. The business shall not have any outdoor components unless the Zoning Board of Adjustment grants a future amendment to the Conditional Use Permit that allows for such.

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 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.

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 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 January 27, 2020

Nathan Blake, Vice 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 2019-00234
322 E COURT, LLC PUBLIC HEARING: JANUARY 22, 2020
ON PROPERTY LOCATED AT
322 EAST COURT AVENUE

SUBJECT OF THE APPEAL
Proposal: Expand existing tavern use that is operating within 5,000 square feet within the eastern portion of the building, as well a 583-square foot patio to south of the building and a 553-square foot patio to the east of the building, to also include the production and distribution of beer for off-premises sales.

Appeal(s): Amend Conditional Use for a business selling alcoholic liquor, wine, and beer.

Conditional Use for a limited fabrication and production use within the DX2 District.

Required by City Code Sections 134-3.1.1, 134-3.8, & 134-3.6.1

FINDING
The appellant has satisfied the criteria necessary for granting the amendment to the Conditional Use for a business selling alcoholic liquor, wine, and beer. 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. Any outdoor speakers or amplified sound 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 should be limited to two (2) calendar days within any given month. 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 also satisfied the criteria necessary for granting the Conditional Use for a limited fabrication and production use within the "DX2" District. The proposed use would adequately safeguard the health, safety, and general welfare of persons residing or working in adjoining or surrounding property. The proposed use would not impair an adequate supply of light and air to surrounding property. The proposed use would not unduly increase congestion in the streets, or public danger of fire, safety or flooding. The proposed use would not diminish or impair established nearby property values. The proposed use would be consistent with the general purpose of the zoning ordinance, the planning and design ordinance, chapter 135 of the municipal code, and the comprehensive plan. The proposed use would have no significant detrimental impact on the use and enjoyment of adjoining properties.
DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal to amend Conditional Use for a business selling alcoholic liquor, wine, and beer, as originally granted by docket ZON2018-00121, to allow expansion of an existing tavern use that is operating within 5,000 square feet within the eastern portion of the building, as well a 583-square foot patio to south of the building and a 553-square foot patio to the east of the building, is granted subject to the following conditions:

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

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

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 any loitering on the premises.

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 structure, as well as any operation of the business, 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, exhibits a pattern of violating the conditions set forth in the Conditional Use, or violates the requirements of City Code Section 134-3.8.1.C, the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use.

Continued to page 3.
DECISION AND ORDER (Continued from page 2.)

AND, WHEREFORE, IT IS ORDERED that the appeal for a Conditional Use for a limited fabrication and production use within the DX2 District, to allow for the production and distribution of beer for off-premises sales, is granted subject to the following conditions:

1. No part of the use may be a residential use.

2. No odors, gases, noise, vibration, pollution of air, water or soil, or lighting shall be emitted onto any adjoining property so as to create a nuisance.

3. The owner or occupant must provide the community development director with an acceptable written statement describing the use and the nature of any odors, gases, noise, vibration, and other environmental impacts that may be generated by such use; and certifying that the use upon the property will be operated in a manner that does not permit any odors, gases, noise, vibration, pollution of air, water or soil, or lighting to be emitted onto any adjoining property so as to create a nuisance.

4. The use shall be operated in strict conformance with the written statement provided to the community development director.

5. Any renovation of the structure, as well as any operation of the business, shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the Permit and Development Center.

6. If the zoning enforcement officer determines at any time that the applicant or property owner or designee exhibits a pattern of violating the conditions set forth in the conditional use approval, the zoning enforcement officer may apply to the board to reconsider the issuance of the conditional use.

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 27, 2020

Nathan Blake, Vice 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 2019-00230
AHC WOODLAND, LLC PUBLIC HEARING: JANUARY 22, 2020
ON PROPERTY LOCATED AT VICINITY OF 3323 INGERSOLL AVENUE

SUBJECT OF THE APPEAL
Proposal: Retention of a dumpster on the property that is not within a dumpster enclosure structure and setting off-street parking requirements for multiple-family residential uses on property located within the "NPC" Neighborhood Pedestrian Commercial District at the time of site plan submission for such property.

Appeal(s): Appeal of the Zoning Enforcement Officer's determination that the property does not have a legal non-conforming right to have a dumpster without a dumpster enclosure and an appeal of the Zoning Enforcement Officer's determination that there is insufficient off-street parking for the property.

Required by retired City Code Section 134-63

PART A)
DECISION & ORDER
WHEREFORE, IT IS ORDERED that an appeal of the Zoning Enforcement Officer's determination that there is insufficient off-street parking for the property, being untimely, shall not be considered.

VOTE
The foregoing Decision and Order was adopted by a vote of 6-0, with all Board members present voting in favor thereof.

FINDING
The Board found that it cannot consider an appeal of the Zoning Enforcement Officer's determination that there is insufficient off-street parking for the property since the appeal was not filed in a timely manner as established by the Rules of Procedure for the Zoning Board of Adjustment, Article II(4), and stated in the Zoning Enforcement Officer's letter dated December 17, 2018, which appellant acknowledged having received.
PART B)

DECISION & ORDER

WHEREFORE, IT IS ORDERED that the Zoning Enforcement Officer's determination that the property does not have a legal non-conforming right to have a dumpster without a dumpster enclosure, shall not be overturned.

VOTES

An initial vote to uphold the Zoning Enforcement Officer's determination that the property does not have a legal non-conforming right to have a dumpster without a dumpster enclosure, failed by a vote of 3-3, with Board members Carlson, Gaer, and Jones voting in favor thereof and Board members Blake, Gross, and Smith voting in opposition thereto.

A subsequent vote to overturn the Zoning Enforcement Officer's determination that the property does not have a legal non-conforming right to have a dumpster without a dumpster enclosure, also failed by a vote of 3-3, with Board members Blake, Gross, and Smith voting in favor thereof and Board members Carlson, Gaer, and Jones voting in opposition thereto.

FINDING

Since the motion to overturn the Zoning Enforcement Officer's determination regarding the dumpster enclosure requirement did not obtain the concurring vote of four (4) members of the Board in favor of the appeal, the appeal is deemed denied. Therefore, any dumpster located on the property must be screened on all sides by an enclosure constructed from brick, masonry or other durable materials approved by the Planning Director and situated on a concrete pad.

Signed, entered into record, and filed with the City of Des Moines Community Development Department serving as the office of the Board, on January 27, 2020.

Nathan Blake, Vice 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 2019-00235

THOMAS E. YAW; BOBBI J. YAW;
CARL J. YAW, JR; & CHERILL L. YAW

ON PROPERTY LOCATED AT PUBLIC HEARING: JANUARY 22, 2020

VICINITY OF 919 SOUTHEAST 21ST STREET

SUBJECT OF THE APPEAL

Proposal: Continued use of the property for a salvage yard, while rescinding the previously approved Conditional Use Permits and issuing a single Conditional Use Permit, in order to verify appropriate conditions of approval and to eliminate any conditions of approval that are no longer applicable or practical.

Appeal(s): Rescind previously approved Conditional Use Permits, including those with docket numbers 73-120, 14-94-1.13, & ZON2012-00038, and consideration of a single Conditional Use Permit for a use in an "M-2" Heavy Industrial District that is not otherwise permitted in an "M-1" Light Industrial District

Variance to the provision requiring all driveways, parking lots and areas used for temporary storage of vehicles shall be surfaced with an asphaltic or Portland cement binder pavement or such other surfaces as shall be approved by the city engineer so as to provide a durable and dustless surface.

Required by City Code Sections 134-1122(5) & 134-1122(5)(f), and Docket Numbers 73-120, 14-94-1.13, & ZON2012-00038
FINDING

During the hearing, the appellant's attorney withdrew the request for a Variance to the provision requiring all driveways, parking lots and areas used for temporary storage of vehicles shall be surfaced with an asphaltic or Portland cement binder pavement or such other surfaces as shall be approved by the city engineer so as to provide a durable and dustless surface.

The Board found that it would be appropriate to rescind previously approved Conditional Use Permits, including those with docket numbers 73-120, 14-94-1.13, & ZON2012-00038, and to grant a new Conditional Use Permit in order to verify appropriate conditions of approval and to eliminate any conditions of approval that are no longer applicable or practical. The appellant has satisfied the criteria necessary for granting the Conditional Use Permit. Any use of the site for a salvage yard must be in accordance with a Site Plan amendment reviewed and approved by the City’s Permit and Development Center that satisfies all conditions of approval. All driveways, parking lots and required impermeable areas for fluid recovery and dismantling should be surfaced with Portland Cement Concrete or Hot Mix Asphalt pavement at such time that the existing material is replaced and/or maintained. The appellant should provide a landscaping component to the site. While it is not practical to compromise the levee with tree plantings nearby, as the root systems may weaken the integrity of the levee design, it is practical to require within 2 years that 10-foot wide buffers should be provided along the east and west perimeters and a minimum 12,000-square foot open space area be provided near the north perimeter of the property to the east of the primary building. Overstory trees should be planted and maintained (40 feet on center) within these east and west perimeter buffers and the open space area shall be planted with at least 3 overstory trees, 3 evergreens and 3 shrubs. This would be in the spirit of the previous Board approvals and consistent with the landscape requirements as applicable to “M” Districts.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the previously approved Conditional Use Permits, including those with docket numbers 73-120, 14-94-1.13, & ZON2012-00038, are rescinded.

And, WHEREFORE, IT IS ORDERED that the appeal for a single Conditional Use Permit for a use in an “M-2” Heavy Industrial District that is not otherwise permitted in an “M-1” Light Industrial District, to allow continued use of the property for a salvage yard, is granted, subject to the following conditions:

1. Any use of the site for a salvage yard shall be in accordance with a Site Plan as reviewed and approved by the City’s Permit and Development Center.

2. All driveways, parking lots and required impermeable areas for fluid recovery and dismantling shall be surfaced with Portland Cement Concrete or Hot Mix Asphalt pavement at such time that the existing material is replaced and/or maintained. All other areas for storage shall be surfaced with pavement or Recycled Asphalt Product at such time that the existing material is replaced and/or maintained.

3. Any encroachment of junk and salvage vehicles onto adjacent property not owned in common to the west shall be removed.

4. Any use of the site for a salvage yard shall be screened by a minimum 8-foot tall metal fence with uniform color and material. All fences shall be maintained in good repair.

Continued on page 3.
THOMAS E. YAW; BOBBI J. YAW; CARL J. YAW, JR; & CHERILL L. YAW
VICINITY OF 919 SOUTHEAST 21ST STREET
ZON 2019-00235 -3- JANUARY 22, 2020

Continued from page 2.

5. Within 2 years of the date of the decision and order, landscaping shall be provided in the form of 10-foot wide buffers along the east and west perimeters and a minimum 12,000-square foot open space area near the north perimeter of the property to the east of the primary building. Overstory trees shall be planted and maintained (40 feet on center) within the east and west perimeters and the open space area shall be planted with at least 3 overstory trees, 3 evergreens and 3 shrubs.

6. Any dismantling or repair of vehicles shall occur only upon an impermeable surface with adequate provision for the collection and disposal of fluids and wastes.

7. Junk and salvage materials shall not be stacked higher than the perimeter fence within 75 feet of the fence and shall not be stacked higher than 25 feet elsewhere on the site.

8. The best practical control technology shall be employed to minimize any obnoxious or offensive odor, dust, smoke, gas, noise, or similar nuisance generated by the proposed use, and the best practical means known shall be employed for the disposal of refuse matter.

9. Should any operation of the use exhibit activity constituting a public nuisance, then the Zoning Enforcement Office shall have cause to bring the matter back for reconsideration of the Conditional Use by the Board.

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 27, 2020

Nathan Blake, Vice 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 2020-00004
R M MADDEN CONSTRUCTION  PUBLIC HEARING: JANUARY 22, 2020
ON PROPERTY LOCATED AT
801 SOUTHEAST 28TH STREET

SUBJECT OF THE APPEAL

Proposal: Use of the property for a one-household dwelling use with the assurance that it could be reestablished if damaged or destroyed in the future. The construction of the dwelling commenced prior to adoption of the new Zoning Ordinance and a 100% rebuild letter is required for the purchaser's financing.

Appeal(s): Variance of the provision that states: If a structure containing a nonconforming use is damaged or destroyed to the extent of 50% or more of its replacement cost at time of damage or destruction, by any means, including damage or destruction by repair, alteration, replacement or upgrade, exclusive of the foundation, the nonconforming use may not be re-established. If the structure is damaged or destroyed to the extent of less than 50% of its replacement cost at the time of damage or destruction by any means, including damage or destruction by repair, alteration, replacement or upgrade, exclusive of the foundation, the nonconforming use may be re-established to the extent it existed before the damage, provided that a permit application to allow the re-establishment is filed within six months of the damage.

Required by City Code Section 134-7.2.5

FINDING

The appellant has satisfied the criteria necessary for granting a Variance. The appellant faces a hardship in utilizing a single-family dwelling that was recently constructed in accordance with the regulations that were in effect at the time that the building permit was issued for its construction. The subject property cannot yield a reasonable return from any use permitted by the subject zoning regulations in "EX" District. The plight of the owner is due to unique circumstances not of the owner's own making. The use or construction to be authorized by the zoning variance will not alter the essential character of the area in which the subject property is located.
WHEREFORE, IT IS ORDERED that the appeal for a Variance of the City Code Section 134-7.2.5, in order to allow use of the property for a one-household dwelling use with the assurance that it could be reestablished if damaged or destroyed in the future, 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 27, 2020

Nathan Blake, Vice Chair
Bert Drost, Board Secretary