

Date June 23, 2008

WHEREAS, on May 5, 2008, by Roll Call No. 08-819, the City Council denied an application from A&W Rentals LC, to rezone the property located at 2401 Easton Boulevard, from the "C-1" Neighborhood Retail Commercial District to an "M-1" Light Industrial District to allow use of the property to include an outdoor storage yard; and,

WHEREAS, by Roll Call No. 08-819, the City Council encouraged Mr. Sale to seek a use variance from the Zoning Board of Adjustment; and,

WHEREAS, on May 28, 2008, the Zoning Board of Adjustment voted 5-0 to approve an application from A&W Rentals, LC for a use variance to allow the use of the property at 2401 Easton Boulevard to include an outdoor storage yard; and,

WHEREAS, Iowa Code §414.7 and Section 134-65(d) of the Zoning Ordinance require that any use variance granted by the Board be forwarded to the City Council for its review, and the City Council may remand the use variance back to the Zoning Board of Adjustment for further study if the Council believes the use variance was improperly granted.

MOVED by \_\_\_\_\_ to receive and file.

FORM APPROVED:



Michael F. Kelley  
Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED APPROVED

Mayor

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
City Clerk

**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: <b>ZON2008-00073</b>
	:	
<b>A &amp; W RENTALS</b>	:	
	:	MEETING DATE: <b>MAY 28, 2008</b>
ON PROPERTY LOCATED AT	:	
	:	
<b>2401 EASTON BOULEVARD</b>	:	
<i>(Lot 95 of Hubbell Avenue Addition.)</i>	:	

SUBJECT OF THE APPEAL

**Proposal:** Use of the property for outdoor storage as permitted in the "M-1" Light Industrial District, with the storage occurring on the existing paved parking lot that extends to the front property line along East 24<sup>th</sup> Street.

**Appeals:** Variance for a use not permitted in the "C-1" Neighborhood Retail Commercial District.

Variance of 5 feet less than the minimum required 5-foot front yard setback along East 24th Street for a paved area used for off-street parking and storage of equipment.

*Required by City Code Sections 134-842, 134-1087(4)(b) & 134-1377(f)(2)(b)(1)*

FINDING

Granting the appeals would be consistent with the intended spirit and purpose of the Zoning Ordinance so long as the property and business is owned by A&W Rentals, LC, or Keith West. The property is located along Easton Boulevard in an area that includes a mix of industrial and commercial uses so the light industrial use of the property is in harmony with the essential character of the neighborhood. Furthermore, providing a 5-foot front yard setback is not necessary given the existing character of the surrounding area which includes multiple parking lots that extend to the front property lines. The appellant acquired the property with the parking lot constructed up to the front property line and requiring the appellant to remove a portion of it at this time would necessitate an unnecessary hardship.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeals for a Variance for a use not permitted in the "C-1" Neighborhood Retail Commercial District and a Variance of 5 feet less than the minimum required 5-foot front yard setback along East 24<sup>th</sup> Street for a paved area used for off-street parking and storage of equipment to allow use of the property for outdoor storage as permitted in the "M-1" Light Industrial District, with the storage occurring on the existing paved parking lot that extends to the front property line along East 24<sup>th</sup> Street are **granted subject to the following conditions:**

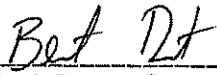
1. Any use of the property for outdoor storage shall be in accordance with a site plan as approved administratively by the Permit and Development Center.
2. Any use of the property for outdoor storage shall cease at such time that the property and business is not owned by A&W Rentals, LC, or Keith West.

VOTE

The foregoing Decision and Order was adopted by a vote 5-0 with all Board members present voting in favor thereof.

Signed and entered into record on June 9, 2008.

  
\_\_\_\_\_  
Bill Gray, Chair

  
\_\_\_\_\_  
Bert Drost, Secretary

MINUTES

ZONING BOARD OF ADJUSTMENT

May 28, 2008

PRESENT: Jeffry Clayton, Bill Gray (Chair), Mel Pins, Brook Rosenberg, LeaAnn Walker, and Linda Westergaard.

ABSENT: Thomas Clarke, Sr. (Vice Chair).

STAFF: Erik Lundy, Senior City Planner; Bert Drost, Senior City Planner; Michael Kelley, Legal Counsel; and SuAnn Donovan, Zoning Enforcement Officer.

\* \* \* \* \*

**Item 20 ZON2008-00073 A & W Rentals, 2401 Easton Blvd  
Use Variance and Variance**

**APPLICABLE REQUIREMENTS**

**Sec. 134-842. Principal permitted uses.**

*Please refer to the City Code for the lengthy list of uses permitted in the "C-1" District. In summary, the C-1 neighborhood retail commercial district is intended to provide for the convenience shopping of persons living in neighborhood residential areas and for general uses and activities of a retail and personal service character. Only those uses are permitted which are necessary to satisfy the local needs which occur so frequently as to require commercial facilities in proximity to residential areas. In addition, low-intensity business and professional offices are permitted.*

**Sec. 134-1377. Off-street parking area required.**

- (f) *District parking lot requirements. Every parcel of land used as a public or private parking area, including a commercial parking lot, shall be developed and maintained in accordance with the following:*
  - (2) *Setbacks. Setbacks shall be as follows:*
    - b. *Commercial (C, except C-3A and C-3) and industrial (M) districts. Setbacks for commercial and industrial districts shall be as follows, except where a greater setback is required in the C-1 and C-2 districts by the landscaping standards for site plan approval:*
      - 1. *Five feet along any street right-of-way and along any alley lines bordering an R district. Exception: No setback is required along that portion of an alley across from a residential parking lot.*

**STAFF REPORT**

**Proposal:** Use of the property for outdoor storage as permitted in the "M-1" Light Industrial District, with the storage occurring on the existing paved parking lot that extends to the front property line along East 24th Street.

**Appeal(s):** Variance for a use not permitted in the "C-1" Neighborhood Retail Commercial District.

Variance of 5 feet less than the minimum required 5-foot front yard setback along East 24th Street for a paved area used for off-street parking and storage of equipment.

**Site Description:** The subject property generally measures 50 feet by 177 feet (8,882 square feet) includes a one-story structure containing 1,696 square feet. The balance of the site is a paved parking lot. The site is located in the ACCENT Neighborhood on the southeast corner of Easton Boulevard and East 24<sup>th</sup> Street in an area that includes a mix of commercial and industrial uses.

**Criteria for the Board to Consider:** The Board shall ensure that granting of a Variance will not be contrary to the public interest, where owing to special conditions a literal enforcement of the regulations will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done. To establish unnecessary hardship a property owner must show all of the following elements:

1. The land in question cannot yield a reasonable return from any use permitted by the regulations of the district in which the land is located. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the land in question. It is not sufficient merely to show that the value of the land has been depreciated by the regulations or that a variance would permit the owner to maintain a more profitable use.
2. The plight of the owner is due to unique circumstances not of the owner's own making, which unique circumstances must relate specifically to the land in question and not to general conditions in the neighborhood.
3. The use to be authorized by the variance will not alter the essential character of the locality of the land in question.

**Additional Information:** The appellant is seeking to use the existing parking lot to store 6 trailers used in common with an entertainment business (carnival equipment). These trailers include two that are 16 feet long, two that are 20 feet long, and two that are 24 feet long. The existing parking lot extends to the west property line, which is along the east curb of East 24<sup>th</sup> Street.

On May 5, 2008, the City Council denied the appellant's request to rezone the property from "C-1" Neighborhood Retail Commercial District to "M-1" Light Industrial District. At the time the rezoning was denied, the Council stated that the proposed use would be better suited for a Use Variance to allow an outdoor storage yard in the "C-1" District.

If the property would have been rezoned to “M-1” Light Industrial District, the proposed use would have had to conform with the following regulations provided in City Code Section 134-1087(4):

Contractor's equipment storage yard or plant; truck terminal or storage yard; rental of equipment commonly used by contractors; and storage yards for vehicles of a delivery or hauling service, subject to the following requirements:

- (a) All areas used for outside storage shall be designed to allow no part of any stored material, vehicles or equipment to encroach into the required setbacks, and shall be maintained with both a dustless surface and a drainage system approved by the city engineer;
- (b) All areas used for outside parking of vehicles shall be set back 10 feet and screened by a 6 foot high solid opaque fence from any adjoining R district or portion of a PUD district designated for residential use; shall be set back 5 feet from any adjoining streets and alleys; and, shall be maintained with both a dustless surface and a drainage system approved by the city engineer, unless a higher standard is imposed by the site plan regulations in Chapter 82.
- (c) 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, and shall be so graded and drained as to dispose of all surface water accumulation within the area.
- (d) No outside storage of inoperable or unsafe vehicles in quantities constituting a junk yard as defined by section 134-3.

In order to minimize the visual impact of the proposed use, staff recommends that any portion of the site used for outdoor storage be screened with a 6-foot-tall solid fence and setback 5 feet from the front property line adjoining East 24<sup>th</sup> Street. Staff also recommends that the paving within the five-foot setback be removed and replaced with landscaping in accordance with the standards as applicable to the “C-1” District, which require one overstory tree and three shrubs per 100 lineal feet.

The appellant has indicated that they do not wish to provide a fence because they believe it would provide a screen for vandals once inside the fence. Furthermore, the appellant has indicated they do not wish to remove any of the existing paving on the site due to the cost of such activity.

**Permit and Development Center Comments:** Any use of the property for outdoor storage must be in accordance with a site plan as approved administratively by the Permit and Development Center. A site plan is required because this would be a change in use of the property.

**Staff Rationale:** Staff believes that the proposed Use Variance would be in harmony with the essential character of the neighborhood so long as any portion of the site used for outdoor storage shall be screened with a 6-foot-tall solid fence that is setback 5 feet from the front property line adjoining East 24<sup>th</sup> Street. The subject property is located along Easton Boulevard in an area that includes a mix of commercial and industrial uses. However, staff does not believe granting a Variance of 5 feet less than the minimum required 5-foot setback would be in character of the neighborhood as a 5-foot setback is necessary to minimize the impact of outdoor storage.

## **STAFF RECOMMENDATION**

Part A) Staff recommends approval of the requested Use Variance subject to the following:

1. Any portion of the site used for outdoor storage shall be screened with a 6-foot-tall solid fence that is setback 5 feet from the front property line adjoining East 24<sup>th</sup> Street.
2. Pavement between any fence and the west property line adjoining East 24<sup>th</sup> Street shall be removed and landscaped in accordance with the landscape standards as applicable to the "C-1" District.
3. Any use of the property for outdoor storage shall be in accordance with a site plan as approved administratively by the Permit and Development Center.

Part B) Staff recommends denial of the Variance of 5 feet less than the minimum required 5-foot setback.

## **PUBLIC HEARING AND BOARD ACTION**

APPELLANT OR REPRESENTATIVE: Jeff Waldron, 215 10<sup>th</sup> Street, Suite 1300.

SUPPORT: Bob Mahaffey, 400 Robert D. Ray Drive.

OPPOSITION: None.

FINDING: Granting the appeals would be consistent with the intended spirit and purpose of the Zoning Ordinance so long as the property and business is owned by A&W Rentals, LC, or Keith West. The property is located along Easton Boulevard in an area that includes a mix of industrial and commercial uses so the light industrial use of the property is in harmony with the essential character of the neighborhood. Furthermore, providing a 5-foot front yard setback is not necessary given the existing character of the surrounding area which includes multiple parking lots that extend to the front property lines. The appellant acquired the property with the parking lot constructed up to the front property line and requiring the appellant to remove a portion of it at this time would necessitate an unnecessary hardship.

ACTION OF THE BOARD: Motion to grant the appeals to the property at 2401 Easton Boulevard subject to the following:

1. Any use of the property for outdoor storage shall be in accordance with a site plan as approved administratively by the Permit and Development Center.

- 2. Any use of the property for outdoor storage shall cease at such time that the property and business is not owned by A&W Rentals, LC, or Keith West.

MOTION: Westergaard. Second by Walker.

VOTE: A vote of 5-0 was registered as follows:

	Aye	Nay	Abstain	Absent
Clarke				X
Clayton				X
Gray	X			
Pins	X			
Rosenberg	X			
Walker	X			
Westergaard	X			