

February 11, 2013

Date

WHEREAS, at its January 23, 2013 hearing, with a subsequent Decision and Order entered into the record on January 29, 2013, the City of Des Moines Zoning Board of Adjustment (“Board”) approved an application from Alegiant, LLC for a use variance for use of property located at 2324 Southwest 9th Street for variance of the principal permitted uses in the C-1 Neighborhood Retail Commercial District to allow reuse of the property for a plumbing and heating shop with an office; and

WHEREAS, the Zoning Board of Adjustment's findings, decision and order are attached hereto and incorporated herein as if set forth in full; and

WHEREAS, in accordance with Municipal Code Section 134-65(d), if the Board grants a variance to a use requirement, the Decision and Order shall be referred to the City Council for its review pursuant to Iowa Code Section 414.7. The City Council may review such decision within 30 days after the decision is filed. After such review, the City Council may remand the decision to the Board for further study. If the City Council does not act to review the decision within 30 days after it is filed, the decision shall become effective on the 31st day. If the City Council declines to remand the decision, the decision shall become final on the date of the council’s action, i.e. January 29, 2013. If the City Council remands a decision to the Board, the effective date of the decision is delayed for 30 days from the date of remand; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, as follows:

_____ The City Council remands the Decision and Order to the Zoning Board of Adjustment for further study. The effective date of the Zoning Board of Adjustment’s decision will be deferred for 30 days from the date of remand.

_____ The City Council takes no action to review the Decision and Order. The decision of the Zoning Board of Adjustment will become final on March 1, 2013.

_____ The City Council declines to remand the decision to the Zoning Board of Adjustment. The decision will become final on the date of the Council’s action.

APPROVED AS TO FORM:

Moved by _____ to adopt.



Michael F. Kelley, Assistant City Attorney

(Council Communication No. 13-063)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

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.

MOTION CARRIED APPROVED

_____ Mayor

_____ 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: ZON 2012-00232
	:	
ALEGIANT, LLC	:	
	:	PUBLIC HEARING: JANUARY 23, 2013
ON PROPERTY LOCATED AT	:	
	:	
2324 SOUTHWEST 9 TH STREET	:	

SUBJECT OF THE APPEAL

Proposal: The appeal for a Use Variance would allow reuse of the property for a plumbing and heating shop with an office. The other appeals would retention of an off-street parking lot that is within 0 feet of the front property lines along both Southwest 9th Street and Kirkwood Avenue. The parking lot includes three (3) 60-degree angled spaces to the east of the building and one (1) 90-degree angled parking space to the south of the building that is within 0 feet of the south front property line. The angled spaces would be 8 feet wide and accessed by a 12-foot maneuvering aisle.

Appeal(s): Variance of the principal permitted uses (Use Variance) in the "C-1" Neighborhood Retail Commercial District.

Variance of 5 feet less than the minimum required 5-foot paving setback from a front property line.

Exception of 2 feet less than the minimum 10-foot width required for 60-degree angle parking spaces.

Exception of 4 feet less than the minimum 16 feet of maneuvering space required for 60-degree angle parking spaces.

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

FINDING

Granting the appeals 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 all storage on the site, including the parking of trailers, occurs within an enclosed building. The appellant faces a hardship in reusing the existing building for a use that is permitted in the "C-1" District given its original development as a vehicle service station. The subject property is small in area and there is limited space available for off-street parking and maneuvering. The appellant faces a hardship and practical difficulty in meeting the minimum required dimensions for parking lot setback, parking space width, and maneuvering space width given the placement of the existing building on the site. The parking lot would be within the essential character of the neighborhood so long as a landscaped area is provided in the southeast corner of the parking lot.

DECISION AND ORDER

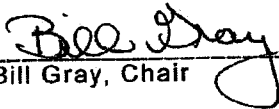
WHEREFORE, IT IS ORDERED that the appeals for a Variance of the principal permitted uses (Use Variance) in the "C-1" Neighborhood Retail Commercial District, a Variance of 5 feet less than the minimum required 5-foot paving setback from a front property line, an Exception of 2 feet less than the minimum 10-foot width required for 60-degree angle parking spaces, and an Exception of 4 feet less than the minimum 16 feet of maneuvering space required for 60-degree angle parking spaces, to allow reuse of the existing building and parking lot as a plumbing and heating shop, and to allow retention of the off-street parking lot with four (4) spaces that is within 0 feet of the front property lines along both Southwest 9th Street and Kirkwood Avenue, are **granted subject to the following conditions:**

1. Prohibition of outside storage of materials, equipment, and trailers. This shall not preclude the parking of a company vehicle that dually functions as personal transportation for the appellant.
2. Provision of a landscaped area in the southeast corner of the parking lot.
3. 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 4-0-1, with Board members Gray, Pins, Smith, and Westergaard voting in favor thereof, Board member Rosenberg abstaining, and Board members Christensen and Clarke absent.

Signed and entered into record on January 29, 2013.



Bill Gray, Chair



Bert Drost, Secretary