

Date November 9, 2015

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION GRANTING A USE VARIANCE TO ALLOW RETENTION OF A SALAD DRESSING MANUFACTURING USE LOCATED AT 3601 6<sup>TH</sup> AVENUE**

**WHEREAS**, on October 28, 2015, the Zoning Board of Adjustment voted 7-0 to approve an application from William Wheeler (owner) for a use variance to allow use of 7,932 square feet within the building located at 3601 6<sup>th</sup> Avenue to be used for retention of a tenant's manufacturing use that involves production, bottling, packaging and distribution of salad dressing, subject to certain conditions set forth in the Decision and Order of the Board; 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 variance was improperly granted.

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

**ALTERNATIVE RESOLUTIONS**

- A The City Council remands the Decision and Order to the Zoning Board of Adjustment for further study. The effective date of the Board's decision will be deferred for 30 days from the date of this remand.
- B The City Council takes no action to review the Decision and Order. The decision of the Board will become final on December 4, 2015.
- C The City Council declines to remand the decision to the Zoning Board of Adjustment. The decision of the Board becomes final on this date.

(Council Communication No. 15- 599 )

MOVED by \_\_\_\_\_ to receive and file the staff report and comments received, and to adopt alternative \_\_\_\_\_, above.

APPROVED AS TO FORM:

Glenna K. Frank  
Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
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>ZON 2015-00194</b>
<b>WILLIAM WHEELER</b>	:	
ON PROPERTY LOCATED AT	:	<b>PUBLIC HEARING: OCTOBER 28, 2015</b>
<b>3601 6<sup>TH</sup> AVENUE</b>	:	

SUBJECT OF THE APPEAL

**Proposal:** Use of the 7,932-square foot structure for a manufacturing use that involves preparing, bottling, packaging, and distributing salad dressing.

**Appeal(s):** Use Variance of the permitted uses in a "C-2" General Retail and Highway-Oriented Commercial District.

*Required by City Code Section 134-947*

FINDING

Representations made at the hearing indicated that the proposed use would have no negative impact or effect on the neighborhood, and that the Neighborhood Association is supporting of the proposed Use Variance, although the Association has not taken formal action in support thereof. The appellant further explained that only personal vehicles, rather than trucks, are to be used for the business, and thus no impact on parking should occur.

Granting the Use Variance with conditions 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 the business is operated in compliance with the conditions of approval. The long term vitality of a commercial property and district is dependent on the ability to attract and retain stable tenants. Traditional commercial districts with historic buildings and limited parking face challenges in competing with new development. The health of traditional commercial districts is vital to the health of adjoining neighborhoods and the city as a whole. The appellant faces a hardship in keeping a tenant in the subject building in order to provide enough cash flow to maintain the property. The impact of the subject business is limited given the small-scale nature of its operations, and the proposed zoning relief does not impact the SSMID district which is not in the purview of the Board.

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WILLIAM WHEELER  
3601 6<sup>TH</sup> AVENUE  
ZON 2015-00194

-2-

OCTOBER 28, 2015

DECISION AND ORDER

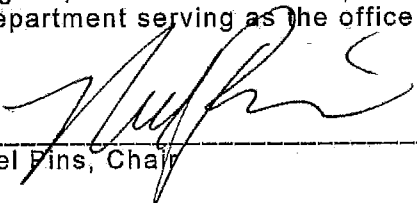
WHEREFORE, IT IS ORDERED that the appeal for a Use Variance of the permitted uses in a "C-2" General Retail and Highway-Oriented Commercial District to allow use of the 7,932-square foot structure for a manufacturing use that involves preparing, bottling, packaging, and distributing salad dressing, is **granted**, subject to the following conditions:

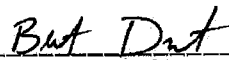
1. No use other than salad dressing production, bottling, packaging and distribution is hereby granted by this Use Variance.
2. The maximum area to be dedicated within the subject building to this use is 7,932 square feet.
3. Any conversion of space to the proposed use shall be in compliance with all applicable Building and Fire Codes with issuance of all necessary permits by the City's Permit and Development Center.
4. There shall be no outside storage or operation related to the business.

VOTE

The foregoing Decision and Order was adopted by a vote of 7-0, with all Board members 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 November 4, 2015.

  
\_\_\_\_\_  
Mel Pins, Chair

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