



**Date** September 12, 2022

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION CONDITIONALLY GRANTING A USE VARIANCE FOR AN “OFFICE: BUSINESS OR PROFESSIONAL” USE IN A “F” FLOOD DISTRICT, ON PROPERTY AT 3732 EASTON BOULEVARD OWNED BY JAIME VILLAFANA**

**WHEREAS**, the real property locally known as 3732 Easton Boulevard (“Property”), owned by Jaime Villavana (“Owner”) measures approximately 21,338 square feet (.5 acres), contains a vacant 2,800 square foot building, and is located along the north side of Easton Boulevard, adjacent to the Fourmile Creek Greenway; and

**WHEREAS**, most of the Property, as well as the properties to the west and north, are within the FEMA-designated 100-year Floodplain and is, therefore, zoned “F” Flood District is located within 75 feet of Columbus Park which is less than the separation distance required by Des Moines Municipal Code Tables 134-3.1-1 & 134-3.9-1; and

**WHEREAS**, Des Moines Municipal Code section 134-6.7 requires the Owner to obtain a variance from the Zoning Board of Adjustment in order to build or use the property for certain uses, including, but not limited, to “Office: Business or Professional” use; and

**WHEREAS**, the Owner made such application and on August 24, 2022, the Zoning Board of Adjustment voted 5-0 to approve an application from Jaime Villafana for a use variance to allow the Owner/Occupant to use the property for “Office: Business or Professional” use subject to the following conditions to which the Owner has agreed:

1. Any design and use of the existing building shall comply with the final floodproofing design pursuant to the requirements of Chapter 50 of the Municipal Code.
2. Any design and use of the existing building shall not impede emergency access to the subject property or surrounding neighborhood.
3. No construction or improvements within the property shall commence prior to obtaining a Flood Permit and Building Permit.
4. So long as the property is zoned “F” Flood District, no outdoor storage shall be allowed on premises of the subject property.
5. Any use of the existing buildings shall be in accordance with all Building Codes and Fire Codes, with issuance of all necessary permits by the City’s Permit and Development Center.
6. A copy of the Board’s Decision and Order shall be recorded at the appellant’s expense to ensure that any future property owners are aware of these conditions.



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- 7. The Zoning Enforcement Officer shall bring the Use Variance back to the Zoning Board of Adjustment for reconsideration at any time that the use becomes a nuisance to surrounding properties or violates the conditions approval.

; and

**WHEREAS**, Iowa Code § 414.7 and Section 134-6.7.8(C) 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 variance of the separation requirement 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  
(Choose One)**

- 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 October 1, 2022.
- 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.



**Roll Call Number**

**Agenda Item Number**

71

**Date** September 12, 2022

(Council Communication No. 22-399)

Moved by \_\_\_\_\_ to adopt. Second by \_\_\_\_\_

APPROVED AS TO FORM:

/s/ Gary D. Goudelock Jr.  
Gary D. Goudelock Jr.  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
SHEUMAKER				
VOSS				
WESTERGAARD				
TOTAL				

**CERTIFICATE**

I, LAURA BAUMGARTNER, 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: **ZBOA 2022-000085**  
: :  
**JAIME VILLAFANA** : :  
: : **PUBLIC HEARING: AUGUST 24, 2022**  
ON PROPERTY LOCATED AT : :  
: :  
**3732 EASTON BOULEVARD** :

SUBJECT OF THE APPEAL

**Proposal:** Re-use of a vacant 2,804-square foot building for a "Business, Office" use within an "F" District.

**Appeal(s):** Use Variance (per City Code Section 134-6.7) for a "Business, Office" use within an "F" Flood District.

*Required by City Code Table 134-3.1-1 and Sections 134-3.5.13, 134-3.9.6, & 134-6.7.*

FINDING

The Board finds that granting the requested Zoning Variance would be consistent with the intended spirit and purpose of the Zoning Ordinance, as the appellant has satisfied the criteria required for granting a Variance, as contained in City Code Section 134-6.7.7.A. The appellant has demonstrated that they face an unnecessary hardship, as the land in question cannot yield a reasonable return from the uses permitted by the subject "F" District zoning regulations. 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 subject property and not to general conditions in the neighborhood. Also, 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. Without an appropriate floodproofing solution, the building will continue to remain vacant and unusable, and the property will not yield a reasonable return. The appellant has demonstrated a workable solution that conceptually satisfies the requirements of Chapter 50 of the City Municipal Code.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Use Variance (per City Code Section 134-6.7) for a "Business, Office" use within an "F" Flood District, to allow Re-use of a vacant 2,804-square foot building for a "Business, Office" use within an "F" District, is **granted**, subject to the following conditions:

1. Any design and use of the existing building shall comply with the final floodproofing design pursuant to the requirements of Chapter 50 of the Municipal Code.
2. Any design and use of the existing building shall not impede emergency access to the subject property or surrounding neighborhood.
3. No construction or improvements within the property shall commence prior to obtaining a Flood Permit and Building Permit.
4. So long as the property is zoned "F" Flood District, no outdoor storage shall be allowed on premises of the subject property.
5. Any use of the existing buildings shall be in accordance with all Building Codes and Fire Codes, with issuance of all necessary permits by the City's Permit and Development Center.
6. A copy of the Board's Decision and Order shall be recorded at the appellant's expense to ensure that any future property owners are aware of these conditions.
7. The Zoning Enforcement Officer shall bring the Use Variance back to the Zoning Board of Adjustment for reconsideration at any time that the use becomes a nuisance to surrounding properties or violates the conditions approval.

VOTE

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

Signed, entered into record, and filed with the City of Des Moines Development Services Department serving as the office of the Board, on August 30, 2022.



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Mel Pins, Board Chair



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Frank Dunn-Young, Board Secretary