

Date January 9, 2023

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION CONDITIONALLY GRANTING A USE VARIANCE FOR A “VEHICLE MAINTENANCE/REPAIR, MINOR” USE IN “N3a” NEIGHBORHOOD DISTRICT FOR PROPERTY LOCATED AT 1626 E. PARK AVE. OWNED BY SHELDON D. RONEY

WHEREAS, the real property locally known as 1626 East Park Avenue (“Property”), owned by Sheldon D. Roney (“Owner”) contains an existing 32-foot by 48-foot accessory building

WHEREAS, the property is in an “N3a” Neighborhood District; and

WHEREAS, the property owner seeks to use the accessory building for Vehicle Maintenance/Repair, Minor use which would not otherwise be allowed in the “N3a” Neighborhood district; 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 “Vehicle Maintenance/Repair, Minor” use; and

WHEREAS, the Owner made such application and on December 29, 2022, the Zoning Board of Adjustment voted 6-0 to approve an application from Sheldon D. Roney for a use variance to allow the Owner/Occupant to use the property for “Vehicle Maintenance/Repair, Minor” use subject to the following conditions to which the Owner has agreed:

1. There shall be no more than four (4) vehicles associated with the business that are parked outside on the premise at any given time. Any vehicle parked outside shall be located on the existing paved area behind a privacy fence.
2. The business shall be clearly incidental to or secondary to the residential use of the premises.
3. No more than two non-resident individuals shall be engaged or employed in the business upon the premises.
4. Hours of operation must not infringe on the residential atmosphere of the neighborhood. All outside activity related to the business must cease between the hours of 9:00 p.m. and 7:00 a.m.
5. One sign advertising the business is allowed, attached to the residence. Such sign not to exceed one square foot in total area. Freestanding signs are not permitted.
6. The occupation shall not cause or produce noise, vibration, smoke, dust, odor, or heat or any other impact of a type or quantity not in keeping with the residential character of the neighborhood.
7. No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive, or other restricted material of a type or quantity not ordinarily used for household purposes shall be used or stored on the premises, and the applicant must identify the proper disposition of any hazardous waste. No activity will be allowed which is hazardous to the public health, safety or welfare.
8. There are no outside operation, storage or display of materials or products.

Date January 9, 2023

9. Vehicles awaiting repair or pick-up shall not occupy parking spaces required for employee parking.
10. All vehicles shall have current license tags.
11. Outdoor storage of junk, debris, tires or vehicle parts shall be prohibited.
12. All repairs, installation, or other services shall only occur within a completely enclosed building.
13. Any reuse of the site shall be in accordance with all applicable Site Plan regulations and Building and Fire Codes, with issuance of any necessary permits by the City's Permit and Development Center.

; 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 use variance 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 January 29, 2023.
- 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

53

Date January 9, 2023

(Council Communication No. 23- **028**)

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				
MOTION CARRIED			APPROVED	

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.

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 2022-000129
SHELDON D. RONEY	:	
ON PROPERTY LOCATED AT	:	PUBLIC HEARING: December 21, 2022
1626 EAST PARK AVENUE	:	

SUBJECT OF THE APPEAL

Proposal: Use of property for a "Vehicle Maintenance/Repair, Minor" use.

Appeal(s): Use Variance of the uses permitted in the "N3a" Neighborhood District.

Required by City Code Table 134-3.1-1, & Section 134-6.7.

FINDING

The Board find 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 existing 32-foot by 48-foot (1,536 square feet) accessory building cannot yield a reasonable return from the uses permitted by the subject "N3a" District zoning regulations. This accessory structure, which is in addition to another 576-square foot accessory structure, provides more accessory space than necessary for a one-household residential use. 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.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for the requested Use Variance to allow a "Vehicle Maintenance/Repair, Minor" use, is **granted** subject to the following conditions:

1. There shall be no more than four (4) vehicles associated with the business that are parked outside on the premise at any given time. Any vehicle parked outside shall be located on the existing paved area behind a privacy fence.
2. The business shall be clearly incidental to or secondary to the residential use of the premises.
3. No more than two non-resident individuals shall be engaged or employed in the business upon the premises.
4. Hours of operation must not infringe on the residential atmosphere of the neighborhood. All outside activity related to the business must cease between the hours of 9:00 p.m. and 7:00 a.m.
5. One sign advertising the business is allowed, attached to the residence. Such sign not to exceed one square foot in total area. Freestanding signs are not permitted.
6. The occupation shall not cause or produce noise, vibration, smoke, dust, odor, or heat or any other impact of a type or quantity not in keeping with the residential character of the neighborhood.
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13. Any reuse of the site shall be in accordance with all applicable Site Plan regulations and Building and Fire Codes, with issuance of any necessary permits 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 Development Services Department serving as the office of the Board, on December 29, 2022.



Mel Pins, Board Chair



Frank Dunn-Young, Board Secretary