



**BOARD OF ADJUSTMENT
STAFF REPORTS AND RECOMMENDATIONS
December 20, 2023**

Item 1	ZBOA-2023-000073 Vicinity of 1803 County Line Road	Harvest Academy Conditional Use
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APPLICABLE REQUIREMENTS

Sec. 134-3.1.1. Table of Allowed Uses.

Principal uses are allowed in accordance with Table 134-3.1-1 of this article.

TABLE 134-3.1-1. PRINCIPAL USE TABLE																						
USE CATEGORY	DISTRICTS																					
Use Subcategory	A	DX1	DX2	DXR	MX1	MX2	MX3	RX1	RX2	CX	EX	I1	I2	N1, N2, N3, N4, N5	NX1	NX2, NX2a	NX3	NM	P1	P2	F	Reference
Specific Use Type																						
RESIDENTIAL																						
Household Living																						
1 household (per lot)	●	●	●	●	●	●	●	●	●	●	-	-	-	●	●	●	●	-	-	-	-	134-3.3.1
2 households (per lot)	-	●	●	●	●	●	●	●	●	●	-	-	-	②	●	●	●	-	-	-	-	134-3.3.1
3 to 4 households (per lot)	-	●	●	●	●	●	●	●	●	●	-	-	-	④	●	●	●	-	-	-	-	134-3.3.1
5 to 8 households (per lot)	-	●	●	●	●	●	●	●	●	●	-	-	-	-	●	●	●	-	-	-	-	134-3.3.1
9 or more households (per lot)	-	●	●	●	●	●	●	●	●	●	-	-	-	-	●	●	●	-	-	-	-	134-3.3.1
Mobile home park	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	●	-	-	-	-	134-3.3.1
Group Living																						
Assisted living facility	-	●	●	●	●	●	●	●	●	●	-	-	-	-	●	●	-	-	-	-	-	134-3.3.2
Correctional placement residence	-	○*	○*	○*	○*	○*	○*	○*	○*	○*	-	-	-	-	○*	○*	-	-	-	-	-	134-3.3.2
Family home	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	-	-	-	●*	●*	●*	●*	●*	-	-	-	134-3.3.2
Home and community-based services waiver recipient residence	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	-	-	-	●*	●*	●*	●*	-	-	-	-	134-3.3.2
Shelter, temporary	-	●*	●*	●*	●*	●*	●*	●*	●*	●*	-	-	-	-	●*	●*	-	-	-	-	-	134-3.3.2
Group living not otherwise classified	-	○	○	○	○	○	○	○	○	○	-	-	-	-	○	○	-	-	-	-	-	134-3.3.2
PUBLIC, CIVIC AND INSTITUTIONAL																						
Airport																						
Airport	-	-	-	-	-	-	-	-	-	-	-	●	●	-	-	-	-	-	-	●	○	134-3.4.1
Assembly																						
Place of Worship	-	●	●	●	○	●	●	○	●	●	-	-	-	-	○	○	-	-	●	-	-	134-3.4.2
Place of Assembly	-	●	●	●	○	●	●	○	●	●	-	-	-	-	○	○	-	-	●	-	-	134-3.4.2
Cemetery																						
City-owned	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	●	-	-	134-3.4.3
Non-city-owned	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	○*	-	134-3.4.3
College or University																						
College or University	-	●	●	●	-	-	●	●	●	●	-	-	-	-	-	-	-	-	-	●	-	134-3.4.4
Fraternal Organization																						
Fraternal Organization	-	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-	●	-	134-3.4.5
Government Administration																						
Government Administration	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	●	-	134-3.4.6
Hospital																						
Hospital	-	●	●	●	-	-	●	●	●	●	-	-	-	-	-	-	-	-	-	●	-	134-3.4.7
Library or Cultural Exhibit																						
Library or Cultural Exhibit	-	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-	●	-	134-3.4.8
Public Recreation Areas																						
Public Recreation Areas	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	●	●	○	134-3.4.9
Postal Service																						
Postal Service	-	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-	●	-	134-3.4.10
Safety Service																						
Safety Service	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-	●	-	134-3.4.11
School																						
School	-	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-	●	-	134-3.4.12

KEY: ●=permitted by right | ●=permitted on upper floors only | ○=requires conditional use approval | *supplemental use regulations apply | --=prohibited
 ②=permitted by right where district includes "-2" extension | ④=permitted by right where district includes "-4" extension
 ① = permitted except where district includes "-V" extension | ③ = permitted with conditional use approval in NX2a district only
 ⑤ = permitted on major commercial corridors only

Sec. 134-3.3.2.F. Group Living, Not Otherwise Classified.

Any group living facility other than an assisted living facility, correctional placement residence, family home, home- and community-based services waiver recipient residence or temporary shelter. Group living uses not otherwise categorized are subject the following supplemental use regulations:

- 1. The proposed location must provide residents with adequate access to public transportation.*
- 2. A permit for such use is subject to reconsideration by the board of adjustment if at any time the community development director determines that the facility has become detrimental to the neighborhood.*
- 3. Each bedroom must have 80 square feet of usable floor space per bed and usable floor space of at least eight feet in any major dimension. For purposes of calculating usable floor space, any parts of a room having less than seven feet of ceiling height may not be counted. Rooms in which beds are located may not be used for purposes other than bedrooms.*
- 4. Each such facility must contain at least one lavatory and one toilet per 10 residents or fraction thereof and one tub or shower per 15 residents or fraction thereof. At least one bathroom with tub, shower, toilet and lavatory must be located on each floor that is occupied by resident bedrooms.*
- 5. Each such facility must contain areas for dining and recreational purposes. When space is used for multi-purpose dining and recreational purposes, the area must include at least 30 square feet of floor area per resident bed. When space is provided exclusively for dining, the area must include at least 15 square feet of floor area per resident bed. When space is provided to be used exclusively for recreational purposes, the area shall total at least 15 square feet of floor area per resident bed and at least 50% of the required area must be in one room.*

STAFF REPORT

Proposal: Construction of six (6) buildings that would be used for a “Group Living” use, which is part of a residential program that offers vocational training, education, peer counseling, mentoring, leadership training, and transitional services to its residents.

Appeal(s): Conditional Use for a “Group Living, not otherwise classified” residential use in an “NX2” Neighborhood Mix District.

Site Description: The subject property is located just northeast of the intersection of Fleur Drive and County Line Road. The surrounding area to the east of Fleur Drive includes undeveloped vacant land whereas to the west includes existing and future light industrial uses. The subject site is approximately 17.7 acres of undeveloped land.

Neighborhood Notification Information: The subject property is not located within a designated Neighborhood Association. All neighborhood associations were notified of the Board meeting by email of the Preliminary Agendas on November 30, 2023. Additionally, an official public notice of the hearing for this specific item was mailed on December 5, 2023, to the neighborhood association and to the titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All neighborhood mailings are sent to the primary contact designated by the recognized neighborhood association on file with the City of Des Moines' Neighborhood Services Department.

The appellant is required to hold a neighborhood outreach meeting and can provide a summary of that at the hearing.

Criteria for the Board to Consider: Taking into consideration the criteria set forth in Chapter 18B of the Iowa Code and Chapter 134 Section 134-6.4.8 of the City Code, a conditional use may not be approved unless the Board of Adjustment determines that the proposed use or activity compiles with all applicable "use" specific regulations and that the applicant has demonstrated that all of the following general standards and review criteria are met:

1. The proposed geographic location and operation of the use or activity adequately safeguards the health, safety, and general welfare of persons residing or working in adjoining or surrounding property;
2. The proposed use will not impair an adequate supply of light and air to surrounding property;
3. The proposed use will not unduly increase congestion in the streets, or public danger of fire, safety or flooding;
4. The proposed use will not diminish or impair established nearby property values;
5. The proposed use is consistent with the general purpose of this zoning ordinance, the planning and design ordinance, chapter 135 of this code, and the comprehensive plan and any specific purposes established in this zoning ordinance for the subject use;
6. The proposed use in any F zoning district is fully in compliance with chapter 50 of this code;
7. The proposed use shall have no significant detrimental impact on the use and enjoyment of adjoining properties;
8. Adequate setbacks shall be provided to protect adjacent residentially zoned property from non" residential and institutional uses; and
9. No parking should be permitted in a required front yard of an N district unless shown to be compatible with the adjoining land use.

Additional Information: The appellant is proposing a large scale multi-use project, which required rezoning of the subject property to multiple zoning districts. On June 26, 2023, the City Council by Roll Call No. 23-0940, rezoned the property to "MX3" Mixed-

Use District, "MX1" Mixed-Use District, "P2" Public, Civic and Institutional District, "II" Industrial District, and "NX2" Neighborhood Mix District classification". The development would cater to the needs of and primarily serve residents of the Harvest Academy, a rehabilitative workforce-development program. Residential use has been proposed with the development which includes townhomes or bungalow court style dwellings (approximately 6 residents per dwelling). Future 6-12 unit multifamily apartment buildings have also been proposed. Space for the Harvest Academy Moving Company is proposed, along with other commercial uses such as a thrift store, restaurant, coffee shop, and vocational training facility. These uses would be housed in a mixed-use style, new urbanist style development pattern with internal private blocks/streets.

The future residents of Harvest Academy are expected to be enrolled for a 2-year program and would be housed at the six (6) buildings that would be used for a "Group Living" use. This is part of a residential program that offers vocational training, education, peer counseling, mentoring, leadership training, and transitional services to its residents. During this program, all enrolled residents are required to rely on Harvest Academy vehicles for any trips outside of the campus.

Permit and Development Center Comments: Any conversion of the site must be in accordance with all applicable Chapter 135 Site Plan regulations and Building and Fire Codes, with issuance of any necessary permits by the City's Permit and Development Center.

Staff Rationale: Granting the requested Conditional Use would be consistent with the intended spirit and purpose of the Zoning Ordinance. The applicant satisfies the criteria necessary for granting a Conditional Use Approval, so long as the use operates in accordance with the conditions of approval. The proposed geographic location and operation of the use or activity adequately safeguards the health, safety, and general welfare of persons residing or working in adjoining or surrounding property. The proposed use will not impair an adequate supply of light and air to surrounding property. The proposed use will not unduly increase congestion in the streets, or public danger of fire, safety or flooding. The proposed use will not diminish or impair established nearby property values. The proposed use is consistent with the general purpose of this zoning ordinance, the planning and design ordinance, chapter 135 of this code, and the comprehensive plan and any specific purposes established in this zoning ordinance for the subject use. The proposed use shall have no significant detrimental impact on the use and enjoyment of adjoining properties. Furthermore, the Conditional Use Approval shall be subject to reconsideration by the Board of Adjustment if at any time the Zoning Enforcement Officer determines that the facility has become detrimental to the surrounding neighborhood.

STAFF RECOMMENDATION

Staff recommends approval of the requested Conditional Use, subject to the following conditions:

1. Any conversion of the site must be in accordance with all applicable Chapter 135 Site Plan regulations and Building and Fire Codes.
2. Any “Group Living” residential use of the property shall be limited to a group living use in the form as described in the Conditional Use application, with six (6) buildings to be utilized for the residential program.
3. Each bedroom shall have at least 80 square feet of usable floor space per bed and usable floor space of at least eight feet in any major dimension. For purposes of calculating usable floor space, any parts of a room having less than seven feet of ceiling height may not be counted. Rooms in which beds are located may not be used for purposes other than bedrooms.
4. At least one bathroom with tub or shower, toilet and lavatory shall be located on each floor that is occupied by resident bedrooms.
5. The facility shall contain areas for dining and recreational purposes. When space is used for multi-purpose dining and recreational purposes, the area must include at least 30 square feet of floor area per resident bed. When space is provided exclusively for dining, the area must include at least 15 square feet of floor area per resident bed. When space is provided to be used exclusively for recreational purposes, the area shall total at least 15 square feet of floor area per resident bed and at least 50% of the required area must be in one room.
6. The Conditional Use Approval shall be subject to reconsideration by the Board of Adjustment if at any time the Zoning Enforcement Officer determines that the facility has become detrimental to the surrounding neighborhood.



ZONING BOARD OF ADJUSTMENT
STAFF REPORTS AND RECOMMENDATIONS
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Item 2	ZBOA-2023-000083	City of Des Moines Real Estate
	1 Line Drive	Conditional Use

APPLICABLE REQUIREMENTS

134-3.10.2 Authority to Approve

D. Temporary uses that do not comply with all applicable regulations and all conditions of approval may be approved in accordance with the conditional use procedures of section 134-6.4 of this article. The neighborhood services director is authorized to refer any temporary use to the board of adjustment for consideration in accordance with the conditional use procedures of section 134-6.4 of this article.

STAFF REPORT

Proposal: Use of the parking lots surrounding Principal Park stadium for special events, such as charitable events and running events, where multiple mobile food vendors can be present, along with temporary signage. The proposed use was previously allowed by a Special Permit (Docket ZON2019-00192), granted on October 24, 2018, for a 5-year period that expired on October 31, 2023. This request is for a duration with an unspecified expiration date.

Appeal(s): Conditional Use approval for a “Temporary Use” in a “P2” District to allow on site sales activities and signage in conjunction with seasonal and special events.

Site Description: The subject property is located along the east side of Southwest 2nd Avenue to the south of Martin Luther King, Jr. Parkway. It contains surface parking lots to the west and north of Principal Park (stadium). The subject property is zoned “P2” Public, Civic, and Institutional District.

Neighborhood Notification Information: The subject property is located in the Downtown Neighborhood Association. All neighborhood associations were notified of the Board meeting by email of the Preliminary Agenda on November 30, 2023. Additionally, an official public notice of the hearing for this specific item was mailed on December 5, 2023, to the neighborhood associations and to the titleholder on file with the Polk County Assessor.

All neighborhood mailings are sent to the primary contact designated by the recognized neighborhood associations on file with the City of Des Moines’ Neighborhood Services Department. The Downtown Neighborhood Association mailings were sent to Brandon Brown.

Additional Information: The Conditional Use would allow use of the parking lots surrounding Principal Park stadium for up to 15 events each year that would include charitable events and runs. Some events would be held for multiple days, such as the ChristkindlMart that is held the first weekend in December each year and runs for 4 days, with set up starting a week before the event. These events may include up to 12 food trucks that would all have proper permits from the City's fire and health inspectors. The events could start as early as 6am and run after 10pm.

Certain events would have sound, which would require sound permits. Any tent or temporary use building would require permits and inspections. The events would not include any road closures. Temporary signage could be displayed on the premises during any event. Any signs used would be small enough that they will not need a separate permit.

Zoning History: On October 24, 2018, by Docket ZON2018-00192, the Zoning Board of Adjustment granted a Special Permit for sales activities and signage in conjunction with seasonal and special events, to allow use of the parking lot to the west of the stadium for special events, such as charitable events and run events, where two or more mobile food vendors can be present subject to the following conditions:

1. The Special Permit shall be valid for a 5-year period to end October 31, 2023.
2. All events shall operate in compliance with Article IV of Chapter 42 of the Municipal Code (Noise Control Ordinance).
3. Any temporary signage for any event shall only be present on the site up to five (5) days before any event and up to five (5) days after any event.
4. Any portable toilets for any event shall only be present on the site up to one (1) day before any event and up to one (1) day after any event.
5. Any parking and/or loading by any customers and/or vendors for any event shall occur on paved surfaces only.
6. Litter and trash receptacles shall be located at convenient locations within the site, and operators of the events shall remove all trash and debris from the premises and adjoining public areas on the same day of the event at the conclusion.
7. All events shall comply with all Building and Fire Codes, including those related to any temporary or tent structures.
8. The Special Permit shall be subject to reconsideration by the Zoning Board of Adjustment at any time the Zoning Enforcement Officer determines that the event has become detrimental to the neighborhood or demonstrates a pattern of violating the conditions of the Special Permit.

Criteria for the Board to Consider: Per City Code Section 134-3.10.2, the Zoning Enforcement Officer is authorized to refer any temporary use to the board of adjustment for consideration in accordance with the conditional use procedures. Taking into consideration the criteria set forth in Chapter 18B of the Iowa Code and Chapter 134 Section 134-6.4.8 of the City Code, a conditional use may not be approved unless the Board of Adjustment determines that the proposed use or activity compiles with all applicable “use” specific regulations and that the applicant has demonstrated that all of the following general standards and review criteria are met:

1. The proposed geographic location and operation of the use or activity adequately safeguards the health, safety, and general welfare of persons residing or working in adjoining or surrounding property;
2. The proposed use will not impair an adequate supply of light and air to surrounding property;
3. The proposed use will not unduly increase congestion in the streets, or public danger of fire, safety or flooding;
4. The proposed use will not diminish or impair established nearby property values;
5. The proposed use is consistent with the general purpose of this zoning ordinance, the planning and design ordinance, chapter 135 of this code, and the comprehensive plan and any specific purposes established in this zoning ordinance for the subject use;
6. The proposed use in any F zoning district is fully in compliance with chapter 50 of this code;
7. The proposed use shall have no significant detrimental impact on the use and enjoyment of adjoining properties;
8. Adequate setbacks shall be provided to protect adjacent residentially zoned property from non-residential and institutional uses; and
9. No parking should be permitted in a required front yard of an N district unless shown to be compatible with the adjoining land use.

Staff Rationale: Granting the Conditional Use 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 the recommended conditions of approval are satisfied. The proposed location and operations would adequately safeguard the health, safety, and general welfare of persons residing or working in adjoining or surrounding property, so long as the recommended conditions of approval are satisfied. The proposed use would not impair an adequate supply of light and air to surrounding property. The

proposed use would not unduly increase congestion in the streets, or public danger of fire, safety or flooding. The proposed use would not diminish or impair established nearby property values. The proposed use is consistent with the general purpose of this zoning ordinance, the planning and design ordinance, and the comprehensive plan and any specific purposes established in this zoning ordinance for the subject use. The proposed use shall have no significant detrimental impact on the use and enjoyment of adjoining properties. The appellant has satisfied the criteria necessary for granting a Conditional Use.

Furthermore, the Conditional Use shall be subject to reconsideration by the Board of Adjustment at any time the Zoning Enforcement Officer determines that the event has become detrimental to the neighborhood or demonstrates a pattern of violating the conditions of approval.

STAFF RECOMMENDATION

Staff recommends approval of the requested Conditional Use, subject to the following conditions:

1. All events shall only occur between 6:00 AM and 11:00 PM.
2. All events shall operate in compliance with Article IV of Chapter 42 of the Municipal Code (Noise Control Ordinance). Any live music or amplified sound shall be in accordance with the appropriate Sound Permit pursuant to Chapter 42-258(e)(1) of the City Code, as issued by the City's Permit and Development Center prior to the event
3. Any temporary signage for any event shall only be present on the site up to five (5) days before any event and up to five (5) days after any event.
4. Any portable toilets for any event shall only be present on the site up to one (1) day before any event and up to one (1) day after any event.
5. Any parking and/or loading by any customers and/or vendors for any event shall occur on paved surfaces only.
6. Litter and trash receptacles shall be located at convenient locations within the site, and operators of the events shall remove all trash and debris from the premises and adjoining public areas on the same day of the event at the conclusion.
7. All events shall comply with all Building and Fire Codes, including those related to any temporary or tent structures.
8. The Conditional Use shall be subject to reconsideration by the Zoning Board of Adjustment at any time the Zoning Enforcement Officer determines that the event

has become detrimental to the neighborhood or demonstrates a pattern of violating the conditions of the Special Permit.



**ZONING BOARD OF ADJUSTMENT
STAFF REPORTS AND RECOMMENDATIONS
December 20, 2023**

Item 3 ZBOA-2023-000085 3101 Ingersoll Avenue	JP Morgan Chase Bank NA Type 2 Zoning Exceptions
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APPLICABLE REQUIREMENTS

Table 134-5.6 Signs in DX, MX, RX, CX, EX, I, P, and F Districts

TABLE 134-5.6-1. SIGNS IN DX, MX, RX, CX, EX, I, P AND F DISTRICTS									
	DX1	DX2 DXR	MX1 MX2	MX3	CX	RX	EX I	P	F
PERMITTED SIGN TYPES									
Wall	●	●	●	●	●	●	●	●	●
Monument	●	●	●	●	●	●	●	●	—
Projecting; Marquee	●	●	●	●	●	●	●	●	●
Roof	●	●	—	—	●	—	●	—	—
WALL SIGNS: MAXIMUM NUMBER AND AREA									
Maximum Number per Occupant	2	2	2	2	2	2	2	2	2
Maximum Total Sign Area (sq. ft.)	2 per linear foot of building frontage for floors 1-3	1.25 per linear foot of building frontage for floors 1-3				2 per linear foot of building frontage for floors 1-3		1.25 per linear foot of building frontage for floors 1-3	
Maximum Area of Any Single Sign	200 sq. ft.	100 sq. ft.	100 sq. ft.	200 sq. ft.	200 sq. ft.	100 sq. ft.	200 sq. ft.	200 sq. ft.	100 sq. ft.
Other Regulations	See section 134-5.6.3 of this article								
MONUMENT SIGNS: MAXIMUM NUMBER, AREA AND HEIGHT									
Maximum Number per Street Frontage	1	1	1	1	1 per 250 linear feet of frontage	1	1 per 250 linear feet of frontage	1	—
Maximum Sign Area (sq. ft.)	25	25	1 per linear foot of street frontage or 75 sq. ft., whichever is less	75	1 per linear foot of street frontage or 200 sq. ft., whichever is less	15	1 per linear foot of street frontage or 200 sq. ft., whichever is less	75	—
Maximum Height (ft.)	8 if setback less than 25 feet from property line; 15 if setback at least 25 feet from property line								—
PROJECTING AND MARQUEE SIGNS									
Maximum Number	May be used in lieu of wall signs or in addition to wall signs, but the total number of wall signs, projecting signs and roof signs may not exceed the maximum number of wall signs allowed in accordance with this table.								
Maximum Sign Area	Same as apply to wall signs								
Maximum Projection	May not project more than seven feet from the wall of the building to which they are attached.								
Minimum Vertical Clearance	Must be mounted to provide at least nine feet vertical clearance above the sidewalk, driveway or other ground surface beneath the sign								
Other Regulations	See section 134-5.6.6 of this article and 134-5.6.9 of this article								
AWNING AND CANOPY SIGNS									
Regulations	See section 134-5.6.7 of this article								
ROOF SIGNS									
Maximum Number	May be used in lieu of wall signs or in addition to wall signs in those districts that expressly allow roof signs, but the total number of wall signs, projecting signs and roof signs may not exceed the maximum number of wall signs allowed in accordance with this table.								—
Maximum Sign Area	Same as apply to wall signs								
Maximum Height	Mounted height of a roof sign may not exceed eight feet. The combined height of a roof sign and the building upon which the sign is mounted may not exceed the maximum height limit of the subject zoning district or the subject building type.								—
Other Regulations	See section 134-5.6.8 of this article								
ELECTRONIC AND MULTI-VISION DISPLAYS ON MONUMENT SIGNS									
Regulations	See section 134-5.7 of this article								
Table Notes: ● = Permitted, subject to compliance with all applicable regulations of this article — = Prohibited									

134-5.3.4 PLACEMENT OF WALL SIGNS

A. A non-frontage wall may use up to 50% of the signage area earned on one frontage wall.

STAFF REPORT

Proposal: Installation of the following signs attributed to the property's south frontage, with a combined 84 square feet of signage area:

- An approximately 2.25-foot by 11.75-foot (26.5 square feet) illuminated channel letters canopy sign on the south frontage wall of the building.
- An approximately 3.33-foot by 17.25-foot (57.5 square feet) illuminated channel letters wall sign on the north non-frontage wall of the building.

And, installation of the following signs attributed to the property's east frontage, with a combined 94.75 square feet of signage area:

- An approximately 3.33-foot by 17.25-foot (57.5 square feet) illuminated channel letters wall sign on the east frontage wall of the building.
- An approximately 2.66-foot by 14-foot (37.25 square feet) illuminated channel letters wall sign on the west non-frontage wall of the building.

Appeal(s): Type 2 Zoning Exception of two (2) wall signs over the maximum allowed two (2) wall signs earned per occupant.

Type 2 Zoning Exception of 12.5 square feet over the maximum 45 square feet of signage area allowed for a sign on the north (non-frontage) wall, which is based on 50% of the signage area earned for the south (frontage) wall of the building.

Type 2 Zoning Exception of 27.25 square feet over the maximum 67.5 square feet of signage area earned on the east frontage wall.

Type 2 Zoning Exception of 3.5 square feet over the maximum 33.75 square feet of signage area allowed for a sign on the west (non-frontage) wall, which is based on 50% of the signage area earned for the east (frontage) wall of the building.

Site Description: The subject property is a 10,604-square foot (0.243-acre) parcel with a newly constructed 3-story office building. The subject property is located on the northwest corner of the intersection of Ingersoll Avenue and 31st Street. The subject property is zoned "MX2" Mixed Use District.

Neighborhood Notification Information: The subject property is located within the North of Grand Neighborhood and within 250 feet of the Woodland Heights Organization. All neighborhood associations were notified of the Board meeting by email of the Preliminary Agenda on November 30, 2023. Additionally, an official public notice of the hearing for this specific item was mailed on December 5, 2023, to the neighborhood associations and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All mailings are sent to the primary contact designated by the recognized neighborhood association on file with the City of Des Moines' Neighborhood Development Division. The North of Grand Neighborhood Association mailings were sent to Marshall James. The Woodland Heights Organization Neighborhood Association mailings were sent to Cameron Gale.

Criteria for the Board to Consider: Taking into consideration the criteria set forth in Section 134-6.6.8 of the City Code and Chapter 18B of the Iowa Code, the Board shall ensure that Type 2 Zoning Exceptions may be approved only when determining that all of the following general approval standards and criteria and any other specific criteria established in this Zoning Ordinance have been met:

1. The requested Exception is reasonably necessary due to practical difficulties related to the subject property;
2. The practical difficulties related to the subject property cannot be overcome by any feasible alternative means other than an Exception;
3. The requested Exception will not have a significant adverse impact on the essential character of the surrounding area;
4. The requested Exception by its design, construction and operation:
 - a. Will adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property;
 - b. Will not impair an adequate supply of Sight and air to adjacent property;
 - c. Will not unduly increase congestion in the public streets;
 - d. Will not increase public danger of fire and safety; and
 - e. Will not diminish or impair established property values in the surrounding area.
5. The requested Exception relates entirely to a use classified by applicable district regulations as either a principal permitted use, a permitted accessory use, or a permitted sign, or to off-street parking or loading areas accessory to such a permitted use.

Permit and Development Center Comments: Any new or modified sign shall be installed in compliance with a sign permit issued by the City's Permit and Development Center to a sign contractor licensed by the City.

Staff Rationale: The appellant has satisfied the criteria necessary for granting the three (3) requested Type 2 Zoning Exceptions, so long as any signage is installed in accordance with the recommended conditions of approval.

Granting a Type 2 Zoning Exception of 12.5 square feet over the maximum 45 square feet of signage area allowed for a sign on the north (non-frontage) wall, a Type 2 Zoning Exception of 27.25 square feet over the maximum 67.5 square feet of signage area earned on the east frontage wall, and a Type 2 Zoning Exception of 3.5 square feet over the maximum 33.75 square feet of signage area allowed for a sign on the west (non-frontage) wall would be consistent with the intended spirit and purpose of the Zoning Ordinance and the required criteria for its approval. The requested Exceptions are reasonably necessary due to practical difficulties related to the subject property. The requested Exceptions by design, construction and operation would adequately safeguard the health, safety, and welfare of the occupants of adjoining and surrounding property; would not impair an adequate supply of light and air to adjacent property; would not unduly increase congestion in the public streets; would not increase public danger of fire and safety; and would not diminish or impair established property values in the surrounding area. The requested Exceptions would not have a significant adverse impact on the essential character of the surrounding area. Furthermore, the requested Exceptions relate entirely to a use classified by applicable district regulations as either a principal permitted use, a permitted accessory use, or a permitted sign, or to off-street parking or loading areas accessory to such a permitted use.

STAFF RECOMMENDATION

Staff recommends approval of revised Type 2 Zoning Exceptions, subject to the following conditions:

1. The building shall have a maximum of four (4) wall signs.
2. The building shall have a maximum of 57.5 square feet of cumulative wall signage area allowed for a sign on the north (non-frontage) wall, which is based on 50% of the signage area earned for the south (frontage) wall of the building.
3. The building shall have a maximum of 94.75 square feet of wall signage area for any single wall sign earned on the east frontage wall.
4. The building shall have a maximum of 37.25 square feet of wall signage area allowed for a sign on the west (non-frontage) wall, which is based on 50% of the signage area earned for the east (frontage) wall of the building.
5. Any sign shall be installed in compliance with a sign permit issued by the City's Permit and Development Center to a sign contractor licensed by the City.



**ZONING BOARD OF ADJUSTMENT
STAFF REPORTS AND RECOMMENDATIONS
December 20, 2023**

Item 4	ZBOA-2023-000087	Brooks Family Revocable Trust
	2001 Southeast 6th Street	Type 2 Zoning Exceptions

APPLICABLE REQUIREMENTS

Table 134-5.6 Signs in DX, MX, RX, CX, EX, I, P, and F Districts

TABLE 134-5.6-1. SIGNS IN DX, MX, RX, CX, EX, I, P AND F DISTRICTS									
	DX1	DX2 DXR	MX1 MX2	MX3	CX	RX	EX I	P	F
PERMITTED SIGN TYPES									
Wall	●	●	●	●	●	●	●	●	●
Monument	●	●	●	●	●	●	●	●	—
Projecting; Marquee	●	●	●	●	●	●	●	●	●
Roof	●	●	—	—	●	—	●	—	—
WALL SIGNS: MAXIMUM NUMBER AND AREA									
Maximum Number per Occupant	2	2	2	2	2	2	2	2	2
Maximum Total Sign Area (sq. ft.)	2 per linear foot of building frontage for floors 1-3	1.25 per linear foot of building frontage for floors 1-3				2 per linear foot of building frontage for floors 1-3		1.25 per linear foot of building frontage for floors 1-3	
Maximum Area of Any Single Sign	200 sq. ft.	100 sq. ft.	100 sq. ft.	200 sq. ft.	200 sq. ft.	100 sq. ft.	200 sq. ft.	200 sq. ft.	100 sq. ft.
Other Regulations	See section 134-5.6.3 of this article								
MONUMENT SIGNS: MAXIMUM NUMBER, AREA AND HEIGHT									
Maximum Number per Street Frontage	1	1	1	1	1 per 250 linear feet of frontage	1	1 per 250 linear feet of frontage	1	—
Maximum Sign Area (sq. ft.)	25	25	1 per linear foot of street frontage or 75 sq. ft., whichever is less	75	1 per linear foot of street frontage or 200 sq. ft., whichever is less	15	1 per linear foot of street frontage or 200 sq. ft., whichever is less	75	—
Maximum Height (ft.)	8 if setback less than 25 feet from property line; 15 if setback at least 25 feet from property line								—
PROJECTING AND MARQUEE SIGNS									
Maximum Number	May be used in lieu of wall signs or in addition to wall signs, but the total number of wall signs, projecting signs and roof signs may not exceed the maximum number of wall signs allowed in accordance with this table.								
Maximum Sign Area	Same as apply to wall signs								
Maximum Projection	May not project more than seven feet from the wall of the building to which they are attached.								
Minimum Vertical Clearance	Must be mounted to provide at least nine feet vertical clearance above the sidewalk, driveway or other ground surface beneath the sign								
Other Regulations	See section 134-5.6.6 of this article and 134-5.6.9 of this article								
AWNING AND CANOPY SIGNS									
Regulations	See section 134-5.6.7 of this article								
ROOF SIGNS									
Maximum Number	May be used in lieu of wall signs or in addition to wall signs in those districts that expressly allow roof signs, but the total number of wall signs, projecting signs and roof signs may not exceed the maximum number of wall signs allowed in accordance with this table.								—
Maximum Sign Area	Same as apply to wall signs								
Maximum Height	Mounted height of a roof sign may not exceed eight feet. The combined height of a roof sign and the building upon which the sign is mounted may not exceed the maximum height limit of the subject zoning district or the subject building type.								—
Other Regulations	See section 134-5.6.8 of this article								
ELECTRONIC AND MULTI-VISION DISPLAYS ON MONUMENT SIGNS									
Regulations	See section 134-5.7 of this article								
Table Notes: ● = Permitted, subject to compliance with all applicable regulations of this article — = Prohibited									

134-5.3.4 PLACEMENT OF WALL SIGNS

A. A non-frontage wall may use up to 50% of the signage area earned on one frontage wall.

STAFF REPORT

Proposal: Installation of one (1) approximately 4.08-foot by 27.20-foot (111.06 square feet) non-illuminated wall sign on the north frontage wall of the building. This is in addition to two (2) existing 16-square foot (32-square foot total) non-illuminated wall signs on the north façade of the building, resulting in a cumulative 143.06 square feet of signage area.

Appeal(s): Type 2 Zoning Exception for 1 sign over the allowed 2 signs earned from the north occupant wall.

Type 2 Zoning Exception of 8.06 square feet of signage area over the maximum 135 square feet of total signage area earned in the “MX1” Mixed-Use District.

Type 2 Zoning Exception of 11.06 square feet of sign area over the maximum 100 square foot allowed for any single wall sign in the “MX1” Mixed-Use District.

Site Description: The subject property is a 14,380-square foot (0.330-acre) parcel with a 2-story retail grocery constructed circa 1880. The subject property is located on the southeastern corner of the intersection of Southeast 6th Street and Hartford Avenue. The subject property is zoned “MX1” Mixed Use District.

Neighborhood Notification Information: The subject property is located within the Indianola Hills Neighborhood. All neighborhood associations were notified of the Board meeting by email of the Preliminary Agenda on November 30, 2023. Additionally, an official public notice of the hearing for this specific item was mailed on December 5, 2023, to the neighborhood associations and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All mailings are sent to the primary contact designated by the recognized neighborhood association on file with the City of Des Moines’ Neighborhood Development Division. The Indianola Hills Neighborhood Association mailings were sent to Molly Hanson.

Criteria for the Board to Consider: Taking into consideration the criteria set forth in Section 134-6.6.8 of the City Code and Chapter 18B of the Iowa Code, the Board shall ensure that Type 2 Zoning Exceptions may be approved only when determining that all of the following general approval standards and criteria and any other specific criteria established in this Zoning Ordinance have been met:

1. The requested Exception is reasonably necessary due to practical difficulties related to the subject property;
2. The practical difficulties related to the subject property cannot be overcome by any feasible alternative means other than an Exception;

3. The requested Exception will not have a significant adverse impact on the essential character of the surrounding area;
4. The requested Exception by its design, construction and operation:
 - a. Will adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property;
 - b. Will not impair an adequate supply of light and air to adjacent property;
 - c. Will not unduly increase congestion in the public streets;
 - d. Will not increase public danger of fire and safety; and
 - e. Will not diminish or impair established property values in the surrounding area.
5. The requested Exception relates entirely to a use classified by applicable district regulations as either a principal permitted use, a permitted accessory use, or a permitted sign, or to off-street parking or loading areas accessory to such a permitted use.

Permit and Development Center Comments: Any new or modified sign shall be installed in compliance with a sign permit issued by the City's Permit and Development Center to a sign contractor licensed by the City.

Staff Rationale: The appellant has satisfied the criteria necessary for granting the three (3) requested Type 2 Zoning Exceptions, so long as any signage is installed in accordance with the recommended conditions of approval.

Granting a Type 2 Zoning Exception to allow one (1) sign over the maximum allowed two (2) signs earned on the north frontage wall, a Type 2 Zoning Exception to allow 8.06 square feet of signage area over the maximum allowed 135 square feet of total signage area earned in the "MX1" Mixed-Use District, and a Type 2 Zoning Exception of 11.06 square feet over the maximum allowed 100 square feet allowed for any single wall sign in the "MX1" Mixed-Use District would be consistent with the intended spirit and purpose of the Zoning Ordinance and the required criteria for its approval. The requested Exceptions are reasonably necessary due to practical difficulties related to the subject property. The requested Exceptions by design, construction and operation would adequately safeguard the health, safety, and welfare of the occupants of adjoining and surrounding property; would not impair an adequate supply of light and air to adjacent property; would not unduly increase congestion in the public streets; would not increase public danger of fire and safety; and would not diminish or impair established property values in the surrounding area. The requested Exceptions would not have a significant adverse impact on the essential character of the surrounding area. Furthermore, the requested Exceptions relate entirely to a use classified by applicable district regulations as either a principal permitted use, a permitted accessory use, or a permitted sign, or to off-street parking or loading areas accessory to such a permitted use.

STAFF RECOMMENDATION

Staff recommends approval of the requested Type 2 Zoning Exceptions, subject to the following conditions:

1. The building shall have a maximum of three (3) wall signs.
2. The building shall have a maximum of 143.06 square feet of cumulative wall signage area.
3. The building shall have a maximum of 111.06 square feet of wall signage area for any single wall sign.
4. Any sign shall be installed in compliance with a sign permit issued by the City's Permit and Development Center to a sign contractor licensed by the City.



**ZONING BOARD OF ADJUSTMENT
STAFF REPORTS AND RECOMMENDATIONS
December 20, 2023**

Item 5	ZBOA-2023-000089	City of Des Moines/Airport Vicinity of 2455 Leland Avenue	Type 2 Zoning Exceptions
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APPLICABLE REQUIREMENTS

134-5.4 Signs Allowed in All Districts

TABLE 134-5.6-1. SIGNS IN DX, MX, RX, CX, EX, I, P AND F DISTRICTS									
	DX1	DX2 DXR	MX1 MX2	MX3	CX	RX	EX I	P	F
PERMITTED SIGN TYPES									
Wall	●	●	●	●	●	●	●	●	●
Monument	●	●	●	●	●	●	●	●	—
Projecting; Marquee	●	●	●	●	●	●	●	●	●
Roof	●	●	—	—	●	—	●	—	—
WALL SIGNS: MAXIMUM NUMBER AND AREA									
Maximum Number per Occupant	2	2	2	2	2	2	2	2	2
Maximum Total Sign Area (sq. ft.)	2 per linear foot of building frontage for floors 1-3	1.25 per linear foot of building frontage for floors 1-3					2 per linear foot of building frontage for floors 1-3		1.25 per linear foot of building frontage for floors 1-3
Maximum Area of Any Single Sign	200 sq. ft.	100 sq. ft.	100 sq. ft.	200 sq. ft.	200 sq. ft.	100 sq. ft.	200 sq. ft.	200 sq. ft.	100 sq. ft.
Other Regulations	See section 134-5.6.3 of this article								
MONUMENT SIGNS: MAXIMUM NUMBER, AREA AND HEIGHT									
Maximum Number per Street Frontage	1	1	1	1	1 per 250 linear feet of frontage	1	1 per 250 linear feet of frontage	1	—
Maximum Sign Area (sq. ft.)	25	25	1 per linear foot of street frontage or 75 sq. ft., whichever is less	75	1 per linear foot of street frontage or 200 sq. ft., whichever is less	15	1 per linear foot of street frontage or 200 sq. ft., whichever is less	75	—
Maximum Height (ft.)	8 if setback less than 25 feet from property line; 15 if setback at least 25 feet from property line								—

STAFF REPORT

Proposal: Installation of the following two (2) signs appurtenant to a driveway:

- One (1) 28.2-square foot (4.7-foot by 6-foot) that is 13 feet in height.
- One (1) 22.88-square foot (3.98-foot by 6-foot) that is 13 feet in height.

Appeal(s): Type 2 Zoning Exceptions for two (2) signs appurtenant to a driveway that are 5-foot over the maximum 8-foot in height allowed in the “P2” Public, Civic, and Institutional District.

Type 2 Zoning Exception for one (1) sign appurtenant to a driveway that is 16.2 square feet over the maximum twelve (12) square feet allowed in the “P2” Public, Civic, and Institutional District.

Type 2 Zoning Exception for one (1) sign appurtenant to a driveway that is 10.88 square feet over the maximum twelve (12) square feet allowed in the “P2” Public, Civic, and Institutional District.

Required by City Code Table 134-5.6-1 & Sections 134-5.4.2.B, 134-5.3.5, & 134-6.6.

Site Description: The subject property contains the Des Moines International Airport complex and is generally bound by McKinley Avenue to the north, Fleur Drive to the east and Army Post Road to the south. It is zoned "P2" Public, Civic, and Institutional District.

Neighborhood Notification Information: The subject property is in the Southwestern Hills Neighborhood and within 250 feet of the Watrous South Neighborhood. All neighborhood associations were notified of the Board meeting by mailing of the Preliminary Agenda on November 30, 2023. Additionally, an official public notice of the hearing for this specific item was mailed on December 5, 2023 to the neighborhood associations and to the titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All neighborhood mailings are sent to the primary contact designated by the recognized neighborhood associations on file with the City of Des Moines' Neighborhood Services Department. The Southwestern Hills Neighborhood Association mailings were sent to George Davis, 3124 SW 29th Street, Des Moines, IA 50321. The Watrous South Neighborhood Association mailings were sent to James Spiller, P.O. Box 35845, Des Moines, IA 50315.

Criteria for the Board to Consider: Taking into consideration the criteria set forth in Section 134-6.6.8 of the City Code and Chapter 18B of the Iowa Code, the Board shall ensure that Type 2 Zoning Exceptions may be approved only when determining that all of the following general approval standards and criteria and any other specific criteria established in this Zoning Ordinance have been met:

1. The requested Exception is reasonably necessary due to practical difficulties related to the subject property;
2. The practical difficulties related to the subject property cannot be overcome by any feasible alternative means other than an Exception;
3. The requested Exception will not have a significant adverse impact on the essential character of the surrounding area;
4. The requested Exception by its design, construction and operation:
 - a. Will adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property;
 - b. Will not impair an adequate supply of Sight and air to adjacent property;
 - c. Will not unduly increase congestion in the public streets;
 - d. Will not increase public danger of fire and safety; and
 - e. Will not diminish or impair established property values in the surrounding area.

5. The requested Exception relates entirely to a use classified by applicable district regulations as either a principal permitted use, a permitted accessory use, or a permitted sign, or to off-street parking or loading areas accessory to such a permitted use.

Permit and Development Center Comments: Any new or modified sign shall be installed in compliance with a sign permit issued by the Permit and Development Center to a sign contractor licensed by the City.

Additional Information: The proposed signage would include two (2) new directional signs appurtenant to a driveway within the Airport's internal street network. The signs provide wayfinding information for various parking lots within the campus. The first sign is 28.2-square foot (4.7-foot by 6-foot) that is 13 feet in height for an "Employee" parking lot. The second sign is 22.88-square foot (3.98-foot by 6-foot) that is 13 feet in height and provides multiple directional signage.

Both the signs are 5 foot above the allowed 8 foot height, and 16.2 square foot, and 10.88 square foot respectively, above the maximum twelve (12) square foot area allowed in a "P2" District pursuant to Section 134-5.4.2.B of the Code.

Zoning History: On July 26, 2022, the Board of Adjustment approved a requested Conditional Use for a "Bar" or "Other" use in the "P2" District.

On January 25, 2023, the Board of Adjustment approved a requested Type 2 Zoning Exception of two (2) wall signs over the maximum number of 2 wall signs earned per occupant.

Staff Rationale: Staff believes that the appellant has satisfied the criteria necessary for granting the requested Type 2 Zoning Exceptions. The requested Exceptions are reasonably necessary due to practical difficulties related to the subject property. The entire Des Moines International Airport campus is roughly over 1,500 acres in area and includes multiple buildings and designated parking lots. The proposed signs are necessary, appropriate, and consistent in scale to match the size of the campus and other existing wayfinding signs. They are also necessary for the safety of the travelling public to navigate a large campus with various destinations. The requested Exceptions by their design, construction and operation would adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property, would not impair an adequate supply of light and air to adjacent property, would not unduly increase congestion in the public streets, would not increase public danger of fire and safety; and would not diminish or impair established property values in the surrounding area. Furthermore, the requested Exceptions relate entirely to a use permitted by applicable zoning district regulations.

STAFF RECOMMENDATION

Staff recommends approval of the requested Type 2 Zoning Exceptions, subject to the following conditions:

1. Any signs installed shall be in general conformance with the character elevations submitted with the application.
2. Any sign shall be installed in compliance with a sign permit issued by the City's Permit and Development Center to a sign contractor licensed by the City.



**ZONING BOARD OF ADJUSTMENT
STAFF REPORTS AND RECOMMENDATIONS
DECEMBER 20, 2023**

Item 6	ZBOA-2023-000081 1453 Searle Street	Dora Medrano Appeal of Administrative Decision
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APPLICABLE REQUIREMENTS

TABLE 134-3.1-1. PRINCIPAL USE TABLE																						
USE CATEGORY	DISTRICTS																					
Use Subcategory	A	DX1	DX2	DXR	MX1	MX2	MX3	RX1	RX2	CX	EX	I1	I2	N1, N2, N3, N4, N5	NX1	NX2, NX2a	NX3	NM	P1	P2	F	Reference
Specific Use Type																						
RESIDENTIAL																						
Household Living																						
1 household (per lot)	●	○	○	●	○	○	○	●	●	○	-	-	-	●	●	●	●	-	-	-	-	134-3.3.1
2 households (per lot)	-	○	○	●	○	○	○	●	●	○	-	-	-	②	●	●	●	-	-	-	-	134-3.3.1
3 to 4 households (per lot)	-	○	○	●	○	○	○	●	●	○	-	-	-	④	●	●	●	-	-	-	-	134-3.3.1
5 to 8 households (per lot)	-	○	●	●	○	○	○	●	●	○	-	-	-	-	●	●	●	-	-	-	-	134-3.3.1
9 or more households (per lot)	-	○	●	●	○	○	○	●	●	○	-	-	-	-	●	●	●	-	-	-	-	134-3.3.1

3.3.1 HOUSEHOLD LIVING

Residential occupancy of a household unit by a household. When household units are rented, tenancy is arranged on a month-to-month or longer basis. Uses where tenancy may be arranged for a shorter period are not considered household living; they are considered a form of lodging. Households involving residential rental shall also comply with all requirements of chapter 60 of this code.

6.9.2 RIGHT TO APPEAL

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the zoning enforcement officer or of any other administrative officer in the enforcement of this chapter or of the state zoning laws.

STAFF REPORT

Proposal: Allowance of a commercial dump truck vehicle, which has been determined not customary nor incidental to the residential uses permitted in and found in the N3b Neighborhood District, to be kept on the subject property as accessory to the existing one household residential use.

Appeal(s): Appeal of the Zoning Enforcement Officer’s determination that the on-site storage of commercial vehicles is not customarily incidental to the permitted residential use of the property and, therefore, is prohibited by the Zoning Ordinance.

Site Description: The subject property is 0.344 acres (15,000 square feet) and includes a one-household dwelling unit, a detached garage, and shed. The property is zoned “N3b” Neighborhood District.

Neighborhood Notification Information: The subject property is within the Fairmount Park Neighborhood. All neighborhood associations were notified of the Board meeting by email of the Preliminary Agenda on November 30, 2023. Additionally, an official public notice of the hearing for this specific item was mailed on December 5, 2023, to the neighborhood associations and to the titleholder on file with the Polk County Assessor.

All neighborhood mailings are sent to the primary contact designated by the recognized neighborhood association on file with the City of Des Moines. The Fairmount Park Neighborhood mailings were sent to Jeff Witte.

Zoning Enforcement History: An anonymous citizen complaint was filed with the City of Des Moines’ Zoning Enforcement Division on November 23, 2022 indicating that there was illegal business activity occurring on a residential property. Zoning Enforcement Staff inspected the property on November 28, 2022. The inspection found that the property was in violation, including prohibited use of the property for Junk/Salvage Yard, Industrial Service Intensive, Vehicle Repair and Accessory Outdoor Equipment and Material Storage uses. A notice of violation (Exhibit A - included) was sent to the property owner on December 6, 2022.

The property was reinspected on January 9, 2023, February 14, 2023, and March 15, 2023, with gradual improvements noted. The complaint indicated most evidence was on site during weekends. Inspection on April 4, 2023, revealed all violations had returned to the property. A referral to the City’s Legal Department was made on the same day for filing in district court for civil infractions.

A court hearing was scheduled by the District Court for June 26, 2023, with case number CI 9867. Following the court hearing, the titleholder and appellants agreed to a stipulated agreement (Exhibit B – included) filed with the court on July 28, 2023. The agreement provided for the fine and admission of guilt. After payment of fines and given the previous inspection of the property on June 20, 2023, demonstrating compliance with the notice of violation, the court order was released (Exhibit C - included) at the request of the title holder and filed on August 9, 2023.

A new citizen complaint was received on August 29, 2023. The property was reinspected by the Zoning Inspector on September 1, 2023, where again multiple violations were observed to have returned to the property. A new notice of violation (Exhibit D - included) was sent to the title holders and contract buyers, and occupants on September 6, 2023.

Communication (Exhibit E - included) was received along with necessary fees by the City Zoning Enforcement Division on September 25, 2023, from the appellant requesting a formal written determination of the notice of violation. The communication made specific reference to what constitutes vehicles and equipment that are not normal

or customary to the residential use of the property, including a dump truck vehicle admittedly used with the appellant's business.

On September 27, 2023 the acting Zoning Enforcement Officer issued a written determination (Exhibit F - included) upholding the findings in the notice of violation sent on September 6, 2023. Based on that determination, the appellant has filed initial appeal of that determination with the Zoning Board of Adjustment on October 5, 2023, within the 10-day timeframe following the determination. The application for appeal was determined to be completed on November 28, 2023, with all necessary fees paid in full.

Criteria for the Board to Consider: Per Chapter 134 Section 134-6.9.7.C, in exercising the appeal power, the board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end has all the powers of the neighborhood services director from whom the appeal is taken. The concurring vote of four of the members of the board shall be necessary to reverse any order, requirement, decision or determination of the zoning enforcement officer or of any other administrative officer.

Zoning Enforcement Officer Rationale: The appellant, who is a contract buyer of the property, has filed an appeal of the Zoning Determination (Exhibit F - included) made by the acting Zoning Enforcement Officer on September 27, 2023, regarding the notice of violation and interpretation of use activity which is not customary to any permitted residential use of the property and therefore constitutes a prohibited use of the property.

It is unusual that there was a previous court-ordered stipulated agreement acknowledging guilt on almost the same set of circumstances under current consideration. However, the written letter of determination was predominately based on the merits of the most recent violations observed by the Zoning Inspector on September 1, 2023, and the request for a determination by the appellant made on September 25, 2023. This was reviewed in the context of how the activity fits within the intent of Chapter 134 the Zoning Ordinance.

The written administrative determination was not in agreement with the communication made by the appellant. The appellant argued that the types of vehicles associated with their business kept on the property, particularly a dump truck modification to a heavy-duty pick-up truck, was something that would be considered customary to any of the permitted uses within the N3b Neighborhood District zoning classification which primarily allows one household residential use.

While there are examples of some of the vehicles and trailers observed on the property that could be considered the same and customary, there were observed vehicles and equipment that were not considered customary and therefore a prohibited use of the property. The test of whether they are customary in the residentially zoned setting is further evidenced by the complaint of impact to the sensibilities of neighbors occupying nearby properties. Furthermore, the fact that a commercial operators license isn't necessary to operate the vehicle is not material to whether it is considered to be

associated with business activity versus what is customary to what is expected to be kept on residential property.

The Board should consider whether the expected residential character and intent of the “N3b” Zoning District would be maintained if these types of commercial vehicles were to be considered customary for this setting and the average household kept such vehicles on a daily basis. Section 134-2.2.5 describes the “N3b Neighborhood District is intended to preserve the scale and character of residential developed predominantly during the 1950s through 1970s typically in the ranch, split-level, or cottage style pursuant to House B building type. In general Section 134-2.2.5 states the N Districts are established to protect the character of existing residential neighborhoods and set the character of new neighborhoods throughout the city. The acting Zoning Enforcement Officer has made a written finding that these commercially used vehicles would not meet that intent laid out in the Zoning Ordinance.

STAFF RECOMMENDATION

Staff recommends that the Board affirm the determination of the acting Zoning Enforcement Officer in accordance with their authority in Chapter 134 Section 134-6.9.7.C and order all property owners, contract buyers, and occupants to comply with the notice of violation for case ZONE-2023-000438 issued by the City on September 6, 2023.



**ZONING BOARD OF ADJUSTMENT
STAFF REPORTS AND RECOMMENDATIONS
DECEMBER 20, 2023**

Item 7 ZBOA-2023-000088 4140 Park Avenue	Brew Oil, LLC Conditional Use
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APPLICABLE REQUIREMENTS

The sale of alcoholic liquor, wine, and beer is permitted only in the zoning districts and subject to the conditions indicated in Table 134-3.9-1 of Chapter 134 of the Municipal Code.

TABLE 134-3.9-1. ALCOHOLIC LIQUOR, WINE AND BEER SALES													
USE	DISTRICTS												
	DX1	DX2	DXR	MX1	MX2	MX3	RX1, RX2	CX, EX, I1	I2	NX2, NX2A	P1, P2	F	
Retail Sales													
Limited													
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	O+ 40%/500 1320	O+ 40%/500 1320	O+ 40%/500 1320	-	-	-	-	
Wine and Beer Sales	-	O+ 40%/150	O+ 40%/150	O+ 40%/150	O+ 40%/150	O+ 40%/150	O+ 40%/150	O+ 40%/150	-	-	-	-	
General													
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	40%/75	-	40%/75	40%/75	-	40%/75	-	-	-	-	
Wine and Beer Sales	40%/75	40%/75	40%/75	-	40%/75	40%/75	-	40%/75	-	-	-	-	
Large													
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-	
Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-	
Fuel Station													
Alcoholic Liquor, Wine and Beer Sales	-	-	-	O+ 40%/500 1320	O+ 40%/500 1320	O+ 40%/500 1320	-	O+ 40%/500 1320	O+ 40%/500 1320	-	-	-	
Wine and Beer Sales	-	40%/150	40%/150	-	40%/150	40%/150	-	40%/150	40%/150	-	-	-	
Liquor Store													
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	O+ 500 1320	-	O+ 500 1320	O+ 500 1320	-	-	-	
Wine and Beer Sales	-	O+ 150	O+ 150	O+ 150	O+ 150	O+ 150	-	O+ 150	O+ 150	-	-	-	
Tobacco Store													
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	O+ 25%/500 1320	-	O+ 25%/500 1320	O+ 25%/500 1320	-	-	-	
Wine and Beer Sales	-	O+ 25%/150	O+ 25%/150	O+ 25%/150	O+ 25%/150	O+ 25%/150	-	O+ 25%/150	O+ 25%/150	-	-	-	
Restaurant, Bar, Other Uses													
Restaurant with Alcoholic Liquor, Wine and Beer Sales	50%	50%	50%	50%	50%/75	50%/75	50%/75	50%/75	50%/75	50%/75	O+ 50%/75	O+ 50%/75	-
Bar	O+	O+	O+	-	O+ 150	O+ 150	-	O+ 150	-	-	O+ 150	-	
Other Uses with Alcoholic Liquor, Wine and Beer Sales	O+	O+	O+	O+	O+	O+	O+	O+	O+	O+	O+	O+	
KEY: O+=requires conditional use approval * = supplemental use regulations apply - = prohibited													
Table Notes													
O = Uses identified with a O symbol are allowed only if reviewed and approved in accordance with the conditional use procedures of 134-6.4 of this chapter .													
40% = no more than 40% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine, beer or tobacco products.													
50% = at least 50% of the gross receipts from sales from the premises must be derived from the sale of prepared food and food-related services. The sale of an alcoholic beverage is not the sale of prepared food and food-related services.													
25% = no more than 25% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine or beer.													
75 = the licensed premises occupied by such use must be separated by at least 75 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.													
150 = the licensed premises occupied by such use must be separated by at least 150 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.													
500 = the licensed premises occupied by such use must be separated by at least 500 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.													
1320 = the licensed premises occupied by such use must be separated by at least 1320 feet from the property line of the lot where any limited retail sales, fuel stations, liquor stores and tobacco stores engaged in the sale of alcoholic liquor is located.													

In accordance with City Code Section 134-3.9.9.B, the Zoning Board of Adjustment shall apply the following criteria when considering any application for a Conditional Use for the sale of alcoholic liquor, wine, and/or beer:

Conditional use approval is required for the use of a premises, either as principal or accessory use, for the sale of alcoholic liquor, wine or beer, under the circumstances identified in Table 134-3.1-1 and criteria: Table 134-3.9-1 of this article. The board of adjustment is authorized to grant conditional use approval for such uses only when the business, operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:

1. *The business conforms with the conditions identified in indicated in Table 134-3.9-1 of this article.*
2. *The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.*
3. *The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.*
4. *The business will not unduly increase congestion on the streets in the adjoining residential area.*
5. *The operation of the business will not constitute a nuisance.*

Furthermore, in accordance with City Code Sections 134-3.9.9.C-H, the following applies for any Conditional Use for the sale of alcoholic liquor, wine, and/or beer.

C. Supplemental Use Regulations. *Any conditional use approval granted by the board of adjustment for the use of a premises, either as principal or accessory use, for the sale of alcoholic liquor, wine, and beer is subject to the following supplemental use regulations, together with such additional special conditions as may be reasonably required by the board of adjustment to ensure that the conditional use review approval criteria of paragraph B of this subsection, are satisfied:*

1. *Any parking area provided for the use of customers of the business must be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site must be landscaped and illuminated so as to minimize hiding places for possible criminal activity.*
2. *The business shall comply with the noise control regulations of article IV of chapter 42 of this code. Outside speakers and amplified sound is prohibited except when used in compliance with a type E sound permit.*
3. *Any such business must comply with the following requirements:*
 - a. *Every limited retail sales establishment, fuel station and tobacco store shall display alcoholic liquor only in a locked case or behind a counter accessible only to employees. Any other business selling alcoholic liquor for off premises consumption shall either:*
 - i. *Display alcoholic liquor only in a locked case or behind a counter accessible only to employees;*
 - ii. *Employ an electronic security cap or tag system on all containers of alcoholic liquor on display;*
or
 - iii. *Have more than one employee on duty at all times the business is open to the public.*
 - b. *Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.*

c. Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.

d. Not dispense alcoholic beverages from a drive-through window.

4. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.

5. The conditional use approval is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions of the conditional use approval.

6. If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions of the conditional use approval, the zoning enforcement officer may apply to the board of adjustment to reconsider conditional use approval for such business. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such business at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board of adjustment finds that the operation of such business exhibits a pattern of violating the conditions of the conditional use, the board shall have the authority to amend or revoke the conditional use approval.

D. Report of Findings. *Upon reasonable suspicion that any fuel station, or retail sales establishment, or other uses with sales for on-premise consumption excluding restaurants and bars, derives more than 40% of its gross receipts from the sale of alcoholic liquor, wine, beer or tobacco products, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 40% of its gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products. In such event it shall be presumed that more than 40% of the gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for fuel station and retail sales establishments, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of alcoholic beverages, from the sale of tobacco products, and from the sale of all other merchandise and food exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months.*

E. Report of Findings - Restaurant. *Upon reasonable suspicion that any restaurant does not derive at least 50% of its gross receipts from the sale of prepared food and food-related services, the zoning enforcement officer may require that the owner or operator of the restaurant demonstrate within 45 days that during the prior six months at least 50% of its gross receipts were derived from the sale of prepared food and food-related services. In such event it shall be presumed that less than 50% of the restaurant's gross receipts are derived from the sale of prepared food and food-related services, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for restaurants, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of alcoholic beverages and from the sale of prepared food and food-related services exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months.*

F. Report of Findings - Tobacco Store. *Upon reasonable suspicion that any tobacco store derives more than 25% of its gross receipts from the sale of alcoholic liquor, wine or beer, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 25% of the gross receipts from sales were derived from the sale of alcoholic liquor, wine or beer. In such event it shall be presumed more than 25% of its gross receipts from sales are derived from the sale of alcoholic liquor, wine or beer, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements*

of this section for tobacco stores, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of alcoholic beverages, from the sale of tobacco products, and from the sale of all other merchandise and food exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months.

G. Prohibited Accounting for Alcoholic Beverages. *The sale of an alcoholic beverage and any of its component ingredients whether mixed into one beverage or sold separately to the same customer, regardless of intent, shall not be divided for accounting purposes under this chapter.*

H. Effective Date. *All fuel stations, retail sales establishments, tobacco stores and restaurants that have not continuously held an alcoholic liquor license or a beer or wine permit since July 1, 2012, shall comply with the requirements of paragraphs A., B., C., D., E., F., and G. of this subsection. Any fuel station, retail sales establishment, tobacco store or restaurant which has continuously held an alcoholic liquor license or a wine or beer permit since July 1, 2012, shall comply with paragraphs A., B., C., D., E., F., and G. of this subsection, exclusive of any changed separation requirements, commencing on December 31, 2013, and prior to that date shall continue to be subject to the general regulations regarding nonconforming uses, as set forth in section 134-7.2 of this code.*

STAFF REPORT

Proposal: Use of a 2,646-square foot building for a “Limited Retail Sales” business with sale of alcoholic liquor, wine and/or beer. As a “Limited Retail Sales” use, no more than 40% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine, beer, and/or tobacco products.

Appeal(s): Conditional Use for a “Limited Retail Sales” use selling alcoholic liquor, wine and/or beer for off-premises consumption in an “MX3” District.

Site Description: The subject property is a 22,341.4-square foot (0.51-acre) property located on the south side of Park Avenue to the east of Southwest 42nd Street. The property contains a vacant 2,646-square foot building with a surface parking lot, which was previously a fuel station/convenience store. The subject property was recently rezoned to Limited “MX3” Mixed Use District.

Neighborhood Notification Information: The subject property is within the Southwestern Hills Neighborhood Association. All neighborhood associations with a contact on file were notified of the request by email of the Preliminary Agenda on November 30, 2023. Additionally, official public notices of the hearing for this specific item were mailed on December 5, 2023, to the titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All neighborhood mailings are sent to the primary contact designated by the recognized neighborhood association on file with the City of Des Moines’ Neighborhood Services Department. The Southwestern Hills Neighborhood Association mailings were sent to George Davis.

The appellant must provide a summary of their neighbor communications to City Staff at least 3 days before the Zoning Board of Adjustment holds the public hearing.

Additional Information: The subject property is zoned Limited “MX3” Mixed Use District, which would allow for redevelopment of an existing building as a “Retail Sales, Limited” use, with sales of alcoholic liquor, wine, and/or beer only so long the Zoning Board of Adjustment grants any Conditional Use for such use. As a “Retail Sales, Limited” use, the property would be subject to no more than 40 percent of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine, beer or tobacco products.

The “MX3” District allows a “Limited Retail Sales” use with alcoholic liquor, wine, and/or beer sales as a Conditional Use so long as the licensed premises occupied by such use is separated by at least 500 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility; and, separated by at least 1,320 feet from the property line of any limited retail sales, fuel station, liquor store, and tobacco store uses engaged in the sale of alcoholic liquor. The subject property satisfies these separation distance requirements.

The applicant is proposing to reuse the existing building primarily as a coffee shop and general convenience store, with accessory sales of alcoholic liquor, wine, beer, and/or tobacco products projected to be less than 40 percent of the gross revenue on site. The submitted sketch indicates that approximately 500 square feet of the 2,646-square foot building would be dedicated to alcohol sales. The applicant intends to be open seven days a week from 6:00AM to 11:00PM each day.

Zoning History: On September 21, 2023, the Plan and Zoning Commission recommended denial of a request to amend the PlanDSM future land use designation of the property from Neighborhood Mixed Use to Community Mixed Use, and denial of a request to rezone the property from “RX1” Mixed Use District to “MX3” Mixed Use District.

However, on November 6, 2023, the City Council voted to rezone 4140 Park Avenue from “RX1” Mixed Use District to Limited “MX3” Mixed Use District to allow for the redevelopment of an existing building as a convenience store with liquor sales. It was determined that with the following zoning conditions, it was not necessary to amend the the future land use classification for the property from Neighborhood Mixed Use to Community Mixed Use:

1. Any use as permitted and limited in the "RX1" Mixed Use District.; and/or
2. A "Retail Sales, Limited" or "Fuel Station" use, with sales of alcoholic liquor, wine, and/or beer only so long as the Zoning Board of Adjustment grants any Conditional Use necessary for such use.

Criteria for the Board to Consider: Taking into consideration Chapter 18B of the Code of Iowa, the board of adjustment is authorized to grant conditional use approval for businesses selling alcoholic liquor, wine, and/or beer only when the business, operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:

1. The business conforms with the conditions identified in indicated in Table 3.9-1 of Chapter 134 of the City Code.

The application satisfies the separation distance requirements. There is no place of worship, school, park, or licensed childcare facility within 500 feet of the site, or another similar establishment engaged in the sale of alcoholic liquor within ¼-mile of the site.

2. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.

The subject property is located within an area that includes a mix of residential uses and small-scale commercial uses along Park Avenue. Staff believes that the proposed use would adequately safeguard the health, safety and general welfare of persons residing in the surrounding area so long as it operates in accordance with the recommended conditions of approval.

3. The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.

Staff believes that the proposed use would have minimal impact on the surrounding properties so long as it operates in accordance with the recommended conditions of approval.

4. The business will not unduly increase congestion on the streets in the adjoining residential area.

The proposed use would have minimal impact on the traffic patterns in the area and is not anticipated to increase congestion in the area.

5. The operation of the business will not constitute a nuisance.

If granted, the Conditional Use would be subject to amendment or revocation if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use, or if the operation violates the requirements of City Code Section 134-3.9.9.C, as provided in the "Applicable Requirements" section of this report.

Taking into consideration Chapter 18B of the Code of Iowa, the board of adjustment is authorized to grant conditional use approval if the board determines that the proposed use or activity complies with all applicable uses-specific regulations and if the applicant has demonstrated that all of the following general standards and review criteria are met:

1. The proposed geographic location and operation of the use or activity adequately safeguards the health, safety, and general welfare of persons residing or working in adjoining or surrounding property.

Staff believes that the proposed use would adequately safeguard the health, safety, and general welfare of persons residing or working in adjoining or surrounding property if it operates in accordance with the recommended conditions of approval.

2. The proposed use will not impair an adequate supply of light and air to surrounding property.

Staff believes that the proposed use would not impair an adequate supply of light and air to surrounding property.

3. The proposed use will not unduly increase congestion in the streets, or public danger of fire, safety or flooding.

Staff believes that the proposed use would not unduly increase congestion in the streets, or public danger of fire, safety or flooding if it operates in accordance with the recommended conditions of approval.

4. The proposed use will not diminish or impair established nearby property values.

Staff believes that the proposed use would not diminish or impair established nearby property values if it operates in accordance with the recommended conditions of approval.

5. The proposed use is consistent with the general purpose of this zoning ordinance, the planning and design ordinance, chapter 135 of this code, and the comprehensive plan and any specific purposes established in the zoning ordinance for the subject use.

The proposed use is consistent with the general purpose of the zoning ordinance, the planning and design ordinance, chapter 135 of the City's code, and the comprehensive plan.

6. The proposed use in an F zoning district is fully in compliance with chapter 50 of this code.

This criterion is not applicable, as the subject property is not located in an F zoning district.

7. The proposed use shall have no significant detrimental impact on the use and enjoyment of adjoining properties.

Staff believes that the proposed use would not have an impact on the surrounding properties if it operates in accordance with the recommended conditions of approval.

8. Adequate setbacks shall be provided to protect adjacent residentially zoned property from non-residential and institutional uses.

The proposed use would be adequately setback from any residentially zoned property.

9. No parking should be permitted in a required front yard of an N district unless shown to be compatible with the adjoining land use.

This criterion is not applicable, as the subject property is not located in an N district.

Permit and Development Center Comments: Any redevelopment on the site must be in accordance with all applicable Building and Fire Codes, with issuance of any necessary permits by the City's Permit and Development Center.

Any sale of alcoholic liquor, wine, and/or beer must be in accordance with the proper license obtained through the Office of the City Clerk as approved by the City Council.

Staff Rationale: The application satisfies the criteria necessary for granting Conditional Use. This is an appropriate location for the proposed use, as the property is adequately separated from any church or place of worship, public park, school, or licensed childcare facility. The proposed use would adequately safeguard the health, safety and general welfare of persons residing in the surrounding area so long as it operates in accordance with the recommended conditions of approval. The proposed use is sufficiently separated from any adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.

Furthermore, if the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use, the Zoning Enforcement Officer may apply to the Board of Adjustment to reconsider the issuance of the Conditional Use for such business.

STAFF RECOMMENDATION

Staff recommends approval of the requested Conditional Use, subject to the following conditions:

1. Any "Limited Retail Sales" use with sales of alcoholic liquor, wine, beer, or tobacco products shall only operate between the hours of 6:00 AM to 11:00 PM.

2. There shall be no visible advertisement or identification of any alcoholic liquor, wine, or beer, including illuminated or non-illuminated signage or logos, displayed outside of the building or on the inside of the windows. There may be generic signs for “alcoholic liquor”, “wine” and/or “beer” only.
3. Any business selling alcoholic liquor, wine, beer or tobacco products shall operate in accordance with the necessary permit or license obtained through the Office of the City Clerk as approved by the City Council.
4. Any sale of alcoholic liquor, wine, beer, or tobacco products for off-premises consumption shall be in accordance with all State and local laws or ordinances.
5. Any business selling alcoholic liquor, wine, beer, or tobacco products shall comply with Article IV of Chapter 42 of the City Code pertaining to noise control.
6. Any business selling alcoholic liquor, wine, beer, or tobacco products shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
7. Any business selling alcoholic liquor, wine, beer, or tobacco products shall not dispense alcoholic beverages from a drive-through window.
8. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of the business shall remove all trash and debris from the premises and adjoining public areas daily.
9. There shall be no public access to outdoor electrical outlets.
10. Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site shall be landscaped and illuminated to minimize hiding places for possible criminal activity.
11. Any renovation of the building shall be in compliance with all applicable building and fire codes, as well as any necessary site plan, with issuance of all necessary permits by the City’s Permit and Development Center.
12. If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use, the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use.



**ZONING BOARD OF ADJUSTMENT
STAFF REPORTS AND RECOMMENDATIONS
DECEMBER 20, 2023**

Item 8	ZBOA-2023-000092 1900 Arlington Avenue	Starlink LLC Use Variance
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APPLICABLE REQUIREMENTS

TABLE 134-3.1-1. PRINCIPAL USE TABLE																						
USE CATEGORY	DISTRICTS																		Reference			
Use Subcategory	A	DX1	DX2	DXR	MX1	MX2	MX3	RX1	RX2	CX	EX	I1	I2	N1, N2, N3, N4, N5	NX1	NX2, NX2a	NX3	NM	P1	P2	F	Reference
Specific Use Type																						
RESIDENTIAL																						
Household Living																						
1 household (per lot)	●	◐	◐	●	◐	◐	◐	●	●		-	-	-	●	●	●	●	●	-	-	-	134-3.3.1
2 households (per lot)	-	◐	◐	●	◐	◐	◐	●	●		-	-	-	②	●	●	●	-	-	-	-	134-3.3.1
3 to 4 households (per lot)	-	◐	◐	●	◐	◐	◐	●	●		-	-	-	④	●	●	●	-	-	-	-	134-3.3.1
5 to 8 households (per lot)*	-	◐	●	●	◐	◐	●	●	●	●	-	-	-	-	●	●	●	-	-	-	-	134-3.3.1
9 or more households (per lot)*	-	◐	●	●	◐	◐	●	●	●	●	-	-	-	-	-	●	●	-	-	-	-	134-3.3.1
Key:																						
● = permitted by right																						
◐ = permitted on upper floors only within primary footage, and in ground floor within non-primary frontage or corner lot																						
○ = requires conditional use approval																						
* = supplemental use regulations apply																						
- = prohibited																						
② = permitted by right where district includes "-2" extension																						
④ = permitted by right where district includes "-4" extension																						
V = permitted except where district includes "-V" extension																						
R = permitted with conditional use approval in NX2a district only																						
M = permitted on major commercial corridors only																						

STAFF REPORT

Proposal: Use of the existing structure for a multiple-household residential use with up to seven (7) dwelling units.

Appeal(s): Use Variance of the uses permitted in the "N5" Neighborhood District.

Site Description: The subject property contains a 2½-story structure with paved parking between the southern facade and the Franklin Avenue right-of-way. The property is zoned "N5" Neighborhood District.

Neighborhood Notification Information: The subject property is within the River Bend Neighborhood. All neighborhood associations with a contact on file were notified of the request by emailing of the Preliminary Agenda on November 30, 2023. Additionally, official public notices of the hearing for this specific item were mailed on December 5, 2023 to the River Bend Neighborhood Association and the titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All neighborhood mailings are sent to the primary contact designated by the recognized neighborhood association on file with the City of Des Moines. The River Bend Neighborhood mailings were sent to Kathy Hellstern.

Zoning History: On May 17, 2023, the Historic Preservation Commission conditionally approved a Certificate of Appropriateness to allow repair or reconstruction of an existing front deck and repair or replacement of the existing windows, subject to the following conditions:

- Use of wood windows without metal cladding, with review and approval of the selected product by staff prior to purchase.
- The front deck footprint shall be maintained with any renovation work.
- Front deck lattice work shall have a frame/be panelized.

At that time, the Historic Preservation Commission also approved an indefinite continuance of the request to repair the existing egress stairs from the second and third floors to allow the applicant time to clarify the zoning status of the subject property.

On June 5, 2023, a Letter of Zoning Determination for the subject property was issued by the Deputy Director of Neighborhood Services at the request of the property owner and appellant. The Letter stated that the subject property had non-conforming rights as a multiple-household residential use on December 15, 2019 when the current Zoning Code was established. The last valid rental certificate for the subject property expired on September 7, 2020. The non-conforming use was discontinued September 8, 2021 following a one year lapse in renewal of that rental certificate. Staff notes that the appellant acquired the property on the recorded sale date of April 19, 2022 according to the Polk County Assessor's webpage. The appellant subsequently filed an application to rezone the property.

On September 7, 2023, the Plan and Zoning Commission continued a request to rezone the subject property from "N5" Neighborhood District to "NX1" Mixed Use District, to allow reuse of the existing structure for multiple-household residential use with up to seven (7) dwelling units to the September 21, 2023 meeting of the Plan and Zoning Commission. Staff notes that the staff report recommended approval of the request to rezone the property from "N5" Neighborhood District to "NX1" Neighborhood Mix District, subject to use of the Property containing no more than five (5) dwelling units. The pre-existing conditions of the site include five (5) off-street paved parking spaces. The appellant requested continuation of the request at the September 21, 2023 meeting to the October 5, 2023 meeting of the Plan and Zoning Commission.

On October 5, 2023, the Plan and Zoning Commission forwarded the request to rezone the subject property from "N5" Neighborhood District to "NX1" Mixed Use District, to allow reuse of the existing structure for multiple-household residential use with up to seven (7) dwelling units, to the City Council without a recommendation as the Commission was unable to reach a majority vote on the request.

On November 20, 2023, the City Council denied the request to rezone the property from "N5" Neighborhood District to "NX1" Mixed Use District. Therefore, the appellant is

eligible to request a Use Variance from the Board that would allow a multiple-household residential use with up to seven (7) dwelling units.

Criteria for the Board to Consider: Per City Code Section 134-6.7.8, each decision of the board of adjustment to grant a Zoning Use Variance must be referred to the city council for review. The city council must then review the board of adjustment's decision within 30 days after the decision is signed and filed. Following the city council's review, the council may remand the decision to the board of adjustment for further study. If the city council does not act to review the decision within 30 days after it is signed and filed, the board of adjustment's decision becomes effective on the 31st day. If the city council declines to remand a decision, the board of adjustment's decision becomes final and effective on the date of the council's action to decline remand. If the city council remands a decision to the board of adjustment, the effective date of the board's decision is delayed for 30 days from the date of city council remand.

Upon remand of a decision from the city council, the board of adjustment must conduct a rehearing on the matter for further study and action at a regularly scheduled or special-called board meeting held during the 30-day delay period. Following the close of the rehearing, the board of adjustment must act to either affirm its initial decision on the zoning use variance or variance from any separation distance requirement or withdraw its initial decision and issue a new decision on the applicable variance. Upon completion of the rehearing process, the board of adjustment's decision is not subject to review by the city council and becomes final and effective upon filing.

Permit and Development Center Comments: As applicable, any reuse on the site must 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, including obtainment of a Certificate of Appropriateness.

Staff Rationale: Granting the requested Zoning Use Variance would not be consistent with the intended spirit and purpose of the Zoning Ordinance, as the appellant has not satisfied the criteria required for granting a Variance as contained in City Code Section 134-6.7.7. The appellant has not demonstrated that they face an unnecessary hardship, as the land in question can yield a reasonable return from the uses permitted on the property. 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.

STAFF RECOMMENDATION

Staff recommends denial of the requested Use Variance.

However, should the Board determine that the appellant has met the criteria for granting a Use Variance, staff would recommend any approval include the following conditions:

1. There shall be no more than five (5) dwelling units associated with the subject property.
2. There shall be no more than the five (5) off-street paved parking spaces on the site.
3. Any emergency egress for the structure shall be fully enclosed.
4. 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, including obtainment of any necessary Certificates of Appropriateness.