



Agenda Item:

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COUNCIL COMMUNICATION

City Manager's Office

GENERAL INFORMATION

Agenda Date: 03/28/05
05-157

Communication No.:

Agenda Item Type: Ordinance

Roll Call No.:

Submitted by: Larry Hulse, Community Development Director

SUBJECT—

Public Hearing regarding request from Jerry Sale (Lessee) d/b/a Lower Beaver Conoco located at 4540 Lower Beaver Road to:

- Amend the Des Moines 2020 Community Character Land Use Plan by amending the future land use designation from Medium Density Residential to Commercial: Auto-Oriented, Small Scale Strip Development.
- Rezone subject property from the “R-4” Multiple Family Residential District to a Limited “C-2” General Retail and Highway Oriented Commercial District to allow conversion of the property to a garage for general motor vehicle repair as a primary use, after discontinuing gasoline sales with accessory motor vehicle repairs as a legal non-conforming use.

SYNOPSIS—

On February 17, 2005 the Plan and Zoning Commission voted 14-0 to recommend denial of the requested land use plan amendment and rezoning. The Commission believes that it is more appropriate that the use of the property be processed as a use variance from the Board of Adjustment rather than a rezoning. The City Code states that no appeal for a use variance shall be considered by the Board of Adjustment unless a proposed amendment to rezone the subject property to a district classification permitting such use has been considered and denied by the City Council within the preceding year. A decision of the Board of Adjustment regarding any use variance would be forwarded to the City Council.

FISCAL IMPACT—

None

RECOMMENDATION—

Denial

BACKGROUND—

The property in questions has historically been used as a gas station with accessory garage for general motor vehicle repair. That use was allowed as a legal non-conforming use in the R-4, Multiple Family Residential District. The property owner removed underground fuel tanks from the property and as a result, changed the primary use of the property to general motor vehicle repair. This change eliminated their right to exist as a legal non-conforming use. If the property is rezoned to limited C-2, General Retail and Highway Oriented Commercial District, general motor vehicle repair would become a permitted use and would be allowed to operate on the property in perpetuity. If the rezoning is denied by Council, the applicant could request a use variance from the Board of Adjustment. The Board could recommend the same conditions on the use variance as staff proposed for the rezoning. In addition, the Board of Adjustment could recommend an expiration date for a use variance. Such an expiration date would retain the opportunity to fulfill the vision of the 2020 Community Character Plan Land Use Map designation for Medium Density Residential on the subject property.