

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date	March 23, 2009
	Agenda Item No. 37 Roll Call No. <u>09-</u> Communication No. <u>09-162</u> Submitted by: Larry Hulse, Community Development Director	

AGENDA HEADING:

Request from Ronald Brenizer Jr. to rezone 4506 SW 9th Street from a “C1-A” (Neighborhood Commercial Reuse) District to a Limited “C-2” (General Retail and Highway Oriented Commercial) District to allow a construction contractor’s business on the subject property.

SYNOPSIS:

City staff have prepared a letter of zoning acceptance per the Council’s directive on March 9, 2009 and forwarded it to the applicant and property owner (see “*Exhibit A*”). Pursuant to Iowa Code Chapter 414, the Council may impose conditions on a property owner which are in addition to existing regulations if the additional conditions have been agreed to in writing by the property owner before the public hearing or any adjournment of the hearing. If the applicant returns a signed copy of *Exhibit A* prior to the March 23, 2009 City Council hearing then staff will recommend approval of the zoning. If the applicant fails to return a signed copy of *Exhibit A* prior to the hearing, then staff will recommend denial of the rezoning request. The Plan and Zoning Commission recommended DENIAL of the initial zoning request. Therefore, this zoning request requires 6 votes for approval.

FISCAL IMPACT: NONE

Amount: N/A

Funding Source: N/A

ADDITIONAL INFORMATION:

The applicant is seeking to change the zoning to retain an existing contractor’s business that is located on the site without a valid Certificate of Occupancy. The current approved “C-1A” zoning allows uses permitted in the “C-1” (Neighborhood Retail Commercial) District and automobile glass repair. The requested rezoning to a Limited “C-2” District would allow a contractor’s business without outdoor storage of equipment, subject to compliance with Site Plan requirements applicable to the change of use.

Community Development staff have met with Mr. Brenizer to outline requirements for bringing the property into compliance with development regulations. *Exhibit A* specifies that the property owner will voluntarily agree to the following zoning conditions on the property:

- Prohibit the use of the property for adult entertainment business, automobile establishments for display, hire, rental or sales, package goods liquor stores, pawn shops,

financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles, off-premises advertising signs, and taverns and night clubs.

- Conformance with current Site Plan requirements, including landscaping standards and paving of all off-street parking; the property shall be brought into conformance with an approved Site Plan to the extent it does not eliminate minimum required parking and maneuvering.
- Enclose and gate all outdoor trash receptacles with an enclosure built of block, stone, masonry or other material compatible with the primary building, and with 100% opaque metal gates.
- Prohibit storage of materials or equipment outside of a building.
- That the City Council will initiate rezoning a C-1 district classification in the event the property is not brought into compliance with current Site Plan regulations and all other zoning conditions on or before October 31, 2009.

If the requested zoning is approved, the applicant will be obligated to follow Site Plan and Building Occupancy requirements through the City's administrative processes no later than October 31, 2009. Outdoor storage of contractor's equipment on-site will require either "M-1" (Light Industrial) District zoning or a use variance from the Zoning Board of Adjustment (request for M-1 zoning must first be denied). In the absence of M-1 zoning or a use variance, Mr. Brenizer will have to store all contractor materials and equipment within the on-site building or at a permitted off-premise location.

PREVIOUS COUNCIL ACTION(S):

Date: March 9, 2009

Roll Call Number: 09-414

Action: On Request from Ronald Brenizer Jr. to rezone 4506 SW 9th Street from "C1-A" (Neighborhood Commercial Reuse) to Ltd. "C-2" (General Retail and Highway Oriented Commercial) to allow a construction contractors business. Plan and Zoning Commission recommends DENIAL, (continued from 2-9-09). (Council Communication No. 09-139)

) Moved by Hensley to continue to the March 23rd Council meeting at 5:00 PM to allow time to create a comprehensive list of agreed-upon conditions for the property. Motion Carried 7-0.

Date: February 9, 2009

Roll Call Number: 09-227

Action: On Request from Ronald Brenizer Jr. to rezone 4506 SW 9th Street from "C1-A" (Neighborhood Commercial Reuse) to Ltd. "C-2" (General Retail and Highway Oriented Commercial) to allow a construction contractors business. Plan and Zoning Commission recommends DENIAL. Requires 6 votes for approval. Moved by Hensley to continue to March 9, 2009 at 5:00 PM. Mr. Brenizer will work with the Community Development Department to create a plan and cost estimate to bring the property into compliance. Motion Carried 7-0.

Date: January 26, 2009

Roll Call Number: 09-090

Action: On Request from Ronald Brenizer Jr. to rezone 4506 SW 9th Street from "C1-A" (Neighborhood Commercial Reuse) to Ltd. "C-2" (General Retail and Highway Oriented Commercial) to allow a construction contractors business, (2-9-09). Plan and Zoning Commission recommends DENIAL. Moved by Vlassis to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S):

Date: January 15, 2009.

Roll Call Number: N/A.

Action: Voted 7-3 in support of a motion recommending DENIAL of a request to find the proposed rezoning in conformance with the Des Moines' 2020 Community Character Plan and to rezone property from "C-1A" (Neighborhood Commercial Reuse District) to Limited "C-2" (General Retail and Highway Oriented Commercial District).

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Second and third reading of the proposed ordinance unless waived by the City Council. If the applicant fails to comply with the conditions of *Exhibit A*, the City Council will initiate rezoning of the subject property back to a C-1 District classification.

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