

 <div style="text-align: center;"> <h1 style="margin: 0;">Council</h1> <h1 style="margin: 0;">Communication</h1> <p style="margin: 0;">Office of the City Manager</p> </div>	<b>Date:</b> May 7, 2012
	<b>Agenda Item No.</b> 58 <b>Roll Call No.</b> [                      ] <b>Communication No.</b> <u>12-228</u> <b>Submitted by:</b> Phillip Delafield, Community Development Director

## AGENDA HEADING:

Dismissing proceedings on proposed rezoning of 1241 East 38th Street (requested by Arnold Dewitt).

## SYNOPSIS:

On April 9, 2012 City Staff received an e-mail from Mr. DeWitt's consulting engineer requesting withdrawal of the rezoning request prior to second reading. On April 23, 2012 the City Council continued the consideration of Mr. DeWitt's withdrawal request. The Council asked for additional information regarding the phase-in of the City's new tax abatement regulations regarding this project (see Additional Information below). Mr. DeWitt subsequently submitted plans on May 1, 2012 for review regarding compliance with the tax abatement development standards of the Second Restated Citywide Urban Revitalization Plan.

The following options exist for Council action on May 7, 2012:

- a) dismiss proceedings on the proposed rezoning per Mr. DeWitt's April 9, 2012 request; or
- b) continue any action to dismiss proceedings to May 21, 2012; or
- c) reject Mr. DeWitt's April 9, 2012 withdrawal request and schedule second reading of the rezoning ordinance for May 21, 2012.

Staff will present a recommendation at the May 7, 2012 City Council meeting subject to a final determination regarding the project's compliance with tax abatement design standards.

**FISCAL IMPACT: NONE**

## ADDITIONAL INFORMATION:

The Design Standards for commercial and multi-family residential projects under the Second Restated City-wide Urban Revitalization Plan were phased-in as part of the extension of the duration of the City-wide Urban Revitalization Area. Projects that were undertaken under the prior Restated City-wide Urban Revitalization were allowed to be completed under the terms, and within the deadlines, established by that earlier plan.

The phase-out of the prior Restated Plan was specifically addressed in the amendment approved by the City Council. Improvements to property completed in 2012 may obtain tax abatement without compliance with the Design Standards established in the Second Restated City-wide Urban Revitalization Plan, only if the improvements qualified under the prior Restate Plan. To qualify under the prior Restated Plan, the improvements must be "added on or before December 31, 2012," and be

"part of a building project on a single subdivided lot or unsubdivided parcel of property under unified ownership," for which "the necessary building permits for the project are obtained and construction on the project has commenced on or before December 31, 2011."

On November 21, 2011 the City Council voted 7-0 to refer the zoning request back to the Plan and Zoning Commission. During the Council's consideration, staff noted that the Commission could not hear the item until December 15, 2011 and that it would be difficult for the applicant to obtain necessary permits by December 31, 2011. Staff also discussed draft changes to the tax abatement design standards that were scheduled for public hearing by City Council on December 5, 2011. Mr. DeWitt addressed the Council and stated that he was willing to wait for the new tax abatement design standards to be in effect. No permits were obtained prior to December 31, 2011. Therefore, Mr. DeWitt acknowledged he would apply for tax abatement under the Second Restated Citywide Urban Revitalization Plan for the City-wide Urban Revitalization Area.

The tax abatement development standards of the Second Restated Citywide Urban Revitalization Plan are as follows:

#### 1. Landscaping

Landscaping must be provided in compliance with the City of Des Moines Landscape Standards for the C-2 District. This requirement does not relieve higher levels of landscaping that may be required by other measures.

#### 2. Sidewalks

- a) Public sidewalk must be installed along all perimeter streets in conformance with the approved site plan.
- b) Pedestrian sidewalk access must be provided between the public right-of-way and the primary building entry(s) in accordance with the approved site plan.
- c) All required sidewalks must be in good repair and not contain any defects as defined in Section 102-43 of the Des Moines Municipal Code.

#### 3. Screening

- a) Trash containers shall be fully enclosed with 100% opaque walls and gate(s) constructed of masonry, steel panels, or other durable materials approved by the Community Development Director. Wood, vinyl or chain link are not durable materials for the purposes of this requirement.
- b) Outside storage of materials or equipment must be enclosed by opaque wood or masonry fence. No stored materials may be stacked higher than the perimeter fence.
- c) Roof-mounted utilities must be screened on all sides by an architectural screen wall with a height equal to the height of the equipment, and constructed with an exterior finish and color matching the primary building exterior. Roof-mounted utilities may also be screened by a parapet wall or by setback from the edge of the building equal to five times the height of the equipment, or any combination of the above.
- d) Wall-mounted utilities must be screened on all sides by an architectural screen wall or painted to match the adjoining building finish.
- e) Ground-mounted and wall-mounted utilities and meters shall be screened, or not visible from public streets.

#### 4. Building Materials

- a) Minimum of 75% of the surface area (exclusive of windows and doors) of facades fronting and perpendicular to a public street must be glass, brick, concrete panels, architectural concrete block (such as split-face or burnished block), architectural metal panels or stone.
- b) All buildings shall have window and door openings comprising at least 20% of the surface area of each facade fronting public streets. However, those portions of such a facade adjoining areas of a building devoted to processing, manufacturing or storage uses associated with an industrial use of the building need only have window and door openings comprising at least 20% of the area of first floor such facade, up to a maximum elevation of 14 feet.
- c) No building elevation should have exterior insulation and finish system (EIFS) within 5' of the finished grade.
- d) As an alternative to conforming with the requirements set forth above in this paragraph 4, all facades fronting and perpendicular to a public street must be constructed of materials and with a design approved by the Community Development Director as being consistent with the overall intent and purpose of these Commercial Construction and Sustainability Design Standards, and providing an equivalent level of quality and durability.

## 5. Underground Utilities

All utility service lines to the property shall be underground, unless otherwise allowed by an approved site plan.

## 6. Signage

Free standing signs must be monument signs or directory signs (no pole-mounted signage). A monument sign is defined as a sign that is permanently attached to a structure that is built on grade (affixed to the ground).

## 7. Site Custodial

- a) All obsolete unneeded curb cuts, drive approaches, signs, sign poles, sign bases, concrete and paving islands shall be removed.
- b) Drive approaches shall be in good repair, properly sized and located.

## 8. Sustainability

The development must provide a minimum of four (4) of the following sustainable features:

- a) Bike racks for public use that provide a minimum of 10% of the automobile parking provided.
- b) Permeable pavement for a minimum of 30% of the paved area.
- c) Green roof on 50% of the rooftop area.
- d) Rain garden(s) that absorb 25% of runoff from impervious surfaces during a 1 ¼ "rain event over 24 hours.
- e) Exceed applicable energy code by 15%.
- f) 50% increase in required landscaping.
- g) 90% of exterior building elevations constructed from renewable materials.
- h) Primary entry within ¼ mile of a DART transit stop.
- i) Redevelopment of a previously-developed site.
- j) Renovation of an existing building.

## 9. Historic and Cultural Resources

If the project includes a site with a historic building that is on the National Register of Historic Places or deemed eligible for the Register of Historic Places, the building must be retained if feasible, considering the condition of the property.

Mr. Dewitt submitted plans to staff for formal review against the tax abatement design standards on May 1, 2012 and has indicated specific concerns regarding design standards 2 (sidewalks), 4a (75% masonry); 4b (20% window/door openings facing street). Staff will attempt to report a final determination regarding compliance with the tax abatement design standards at the May 7, 2012 meeting. If Mr. DeWitt cannot comply with tax abatement design standards, it appears that the combination of proposed zoning conditions and tax abatement standards may result in a project that is not financially feasible.

**PREVIOUS COUNCIL ACTION(S):**

Date: April 23, 2012

Roll Call Number: [12-0652](#)

Action: Dismissing proceedings on proposed rezoning of 1241 East 38<sup>th</sup> Street (requested by Arnold DeWitt via e-mail on April 9, 2012). Moved by Mahaffey to continue the proceedings to the May 7, 2012 Council meeting; refer to the City Manager for review and recommendation regarding projects that were started prior to the new tax abatement ordinance, and that now fall under the new rules. Motion Carried 7-0.

Date: March 26, 2012

Roll Call Number: [12-0485](#) and [12-0486](#)

Action: Public hearing [on](#) request from Arnold DeWitt to rezone 1241 East 38<sup>th</sup> Street from “R1-60” (One-Family Low-Density Residential) to Ltd. “C-2” (General Retail and Highway-Oriented Commercial) to allow for expansion of existing mini-warehouse complex, subject to conditions. Moved by Mahaffey to adopt and approve the rezoning, subject to final passage of the rezoning ordinance. Motion Carried 7-0. (A) [First](#) consideration of ordinance above. Moved by Mahaffey that this ordinance be considered and given first vote for passage. Motion Carried 7-0.

Date: March 12, 2012

Roll Call Number: [12-0386](#)

Action: Set date of hearing [on](#) request from Arnold DeWitt to rezone 1241 East 38<sup>th</sup> Street from “R1-60” (One-Family Low-Density Residential) to Ltd. “C-2” (General Retail and Highway-Oriented Commercial) to allow for expansion of existing mini-warehouse complex, subject to conditions, (3-26-12). Moved by Hensley to adopt. Motion Carried 7-0.

Date: November 21, 2011

Roll Call Number: [11-1997](#)

Action: Public hearing [on](#) recommended denial of request from Arnold DeWitt to rezone property in vicinity of 1241 East 38<sup>th</sup> Street from “R1-60” (One-Family Low-Density Residential) to Ltd. “C-2” (General Retail and Highway-Oriented Commercial). Moved by Mahaffey to refer this item back to the Plan and Zoning Commission. Motion Carried 7-0.

Date: November 7, 2011

Roll Call Number: [11-1913](#)

Action: Public hearing [on](#) request from Arnold DeWitt to rezone property in vicinity of 1241 East 38<sup>th</sup> Street from “R1-60” (One-Family Low-Density Residential) to Ltd. “C-2” (General Retail and Highway-Oriented Commercial). Moved by Mahaffey to adopt and to continue the public hearing until November 21, 2011 at 5:00 PM. Motion Carried 7-0.

Date: October 10, 2011

Roll Call Number: [11-1728](#)

Action: Public hearing [on](#) request from Arnold DeWitt to rezone property in vicinity of 1241 East 38<sup>th</sup> Street from “R1-60” (One-Family Low-Density Residential) to Ltd. “C-2” (General Retail and Highway-Oriented Commercial). Moved by Mahaffey to adopt, and to continue the public hearing until November 7, 2011. Motion Carried 7-0.

Date: September 26, 2011

Roll Call Number: [11-1627](#)

Action: Set date of hearing [on](#) request from Arnold DeWitt to rezone property in vicinity of 1241 East 38<sup>th</sup> Street from “R1-60” (One-Family Low-Density Residential) to Ltd. “C-2” (General Retail and Highway-Oriented Commercial), (10-10-11). Moved by Hensley to adopt. Motion Carried 7-0.

## **BOARD/COMMISSION ACTION(S):**

Board: Plan and Zoning Commission

Date: March 1, 2012

Resolution Number: ZON2011-00110

Action: The Commission voted 10-0 to recommend approval of an amendment to the 2020 Community Character Plan Future Land Use Map designation from Low Density Residential to Commercial: Auto-Oriented Small Scale Strip Development for the subject property excluding the north 110 feet. Also, voted 10-0 to recommend approval of rezoning of the subject property (excluding the north 110 feet) from “R1-60” One-Family Low Density Residential to Limited “C-2” General Retail and Highway Oriented Commercial District subject to the following conditions:

- A. Only the uses of structures or land listed below shall be permitted upon the property:
1. Any use allowed in the “R1-60” One-Family Low-Density Residential District.
  2. Mini-warehouse self-storage complex.

B. If the property is developed for use as a mini-warehouse self-storage complex, then such development shall comply with the following additional requirements:

1. Access shall be provided from an internal drive approach from the existing facility to the south and not from East 38th Street.
2. The side of any building upon the property facing East 38th Street shall be in earth tone colors.
3. No storage units within the westernmost building on the site shall be constructed with doors facing East 38th Street.
4. No storage units within the easternmost building on the site shall have doors facing the east property line.
5. All exterior lighting fixtures shall be shielded so as not to illuminate into surrounding residentially-zoned properties.
6. Any signage upon the property shall comply with the “C-1” Neighborhood Retail Commercial District Regulations. No off-premises advertising signs shall be located upon the property.
7. Any fencing along East 38th Street shall be of wrought iron or tubular steel construction painted earth tones or black to complement the buildings, with masonry pillars.
8. A minimum 25-foot wide setback shall be maintained along the eastern and western boundaries of the property. The setback area shall be landscaped in accordance with a plan approved by the Planning Administrator.
9. A minimum 10-foot wide setback shall be maintained along the northern boundary of any development. The setback area shall be landscaped in accordance with a plan approved by the Planning Administrator.
10. The hours of operation shall be limited to 6:00 AM to 10:00 PM.
11. No surface water detention shall be released onto any adjoining residential property.
12. No permit for construction shall be issued until such time that all zoning violations for the existing miniwarehouse use at 3800 East University Avenue have been remedied.
13. No permit for construction shall be issued until such time that the entire site and the 100-foot wide area adjacent to the north have been graded to the satisfaction of the Engineering staff of the Permit and Development Center in accordance with a grading permit and soil erosion control plan.
14. Release the easement on Robert Anderson’s property at 1232 East 40th Street.
15. The four lots on Mahaska Avenue shall be 110 feet deep from north to south.
16. If there is a retaining wall between the storage units and the residential lots on Mahaska Avenue, it should not be more than four feet in elevation.
17. The four parcels on Mahaska Avenue shall be graded so they are buildable.
18. That all seven pages of the “Staff Report and Recommendation” be part of the record.

Board: Plan and Zoning Commission

Date: February 16, 2012

Resolution Number: N/A

Action: Continued hearing to March 1, 2012.

Board: Plan and Zoning Commission

Date: December 15, 2011

Resolution Number: N/A

Action: Held public hearing (item referred back from City Council) and continued the item to February 16, 2012 to allow the applicant to meet with the Gray's Wood Neighborhood Association to discuss leaving up to 120 feet along Mahaska Avenue zoning "R1-60."

Board: Plan and Zoning Commission

Date: September 15, 2011

Resolution Number: ZON2011-00110

Action: Recommended denial of proposed 2020 Community Character Land Use Plan Future Land Use Map amendment and rezoning to C-2 General Retail and Highway Oriented Commercial District.

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

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