

.....  
January 11, 2010

**Date**.....

**RESOLUTION APPROVING REZONING OF 3814, 3822 and 3826 57th STREET  
TO A LIMITED "C-2" DISTRICT**

WHEREAS, on December 21, 2009, by Roll Call No. 09-2269, it was duly resolved by the City Council that the application of Rich Eychaner, to rezone certain property he owns in the vicinity of 3814, 3822 and 3826 57th Street, more fully described below, be set down for hearing on January 11, 2010, at 5:00 P.M., in the Council Chambers at City Hall; and,

WHEREAS, due notice of said hearing was published in the Des Moines Register on December 30, 2009, as provided by law, setting forth the time and place for hearing on said proposed amendment to the Zoning Ordinance; and,

WHEREAS, in accordance with said notice those interested in said proposed rezoning, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council; and,

WHEREAS, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone the following described property:

The East 130 feet of Lots 36 and 37, Block P, Aviation Park, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter referred to as "3814 57th Street"); AND,

The East 130 feet of Lots 31, 32 and 33, and the North 10 feet of the East 130 feet Lot 34, Block P, Aviation Park, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter referred to as "3822-3826 57th Street ").

from the "R1-60" One-Family Low-Density Residential District to a Limited "C-2" General Retail and Highway Oriented Commercial District classification, subject to the following conditions which are agreed to and accepted by execution of an Acceptance of Rezoning Ordinance in writing by all owners of said property and is binding upon the owners and their successors, heirs and assigns as follows:

1. The property at 3814 57th Street shall be subject to the following conditions:
  - A. No buildings or parking (except drive entrances) shall be constructed or maintained within 30 feet of the front property line along 57<sup>th</sup> Street so long as there are single-family dwelling properties directly adjoining 3814 57th Street.
  - B. The following uses of structures and land shall be prohibited on 3814 57th Street:
    - (1) Adult entertainment business;
    - (2) Automobile, trailer, motorcycle, boat, and farm implement establishments for display, hire, rental, and sales;

( continued )

Date January 11, 2009

- (3) Off-premises advertising signs;
  - (4) Package goods stores for the sale of alcoholic beverages;
  - (5) Pawn businesses;
  - (6) Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity; and
  - (7) Communication Towers.
- C. Any redevelopment of 3814 57th Street shall be subject to Site plan review by the Plan and Zoning Commission.
2. The property at 3822-3826 57th Street shall be subject to the following conditions:
- A. No buildings or parking (except drive entrances) shall be constructed or maintained within 30 feet of the front property line along 57<sup>th</sup> Street so long as there are single-family dwelling properties directly adjoining 3822-3826 57th Street.
  - B. The following uses of structures and land shall be prohibited on 3814 57th Street:
    - (1) Adult entertainment business;
    - (2) Automobile, trailer, motorcycle, boat, and farm implement establishments for display, hire, rental, and sales;
    - (3) Off-premises advertising signs;
    - (4) Package goods stores for the sale of alcoholic beverages;
    - (5) Pawn businesses;
    - (6) Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity;
    - (7) Communication Towers; and,
    - (8) General motor vehicle repair.
  - C. Any redevelopment of 3822-3826 57th Street shall be subject to Site plan review by the Plan and Zoning Commission.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

- 1. Upon due consideration of the facts, statements of interested persons and arguments of counsel, the objections to the proposed rezoning of the Property to a Limited "C-2" General Retail and Highway Oriented Commercial District are hereby overruled, and the hearing is closed.

( continued )

★ **Roll Call Number**

**Agenda Item Number**

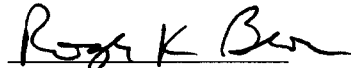
**35B**

**Date** January 11, 2009

2. The proposed rezoning is hereby found to be in conformance with the Des Moines 2020 Community Character Land Use Plan.

MOVED by \_\_\_\_\_ to adopt and approve the rezoning, subject to final passage of the rezoning ordinance.

FORM APPROVED:

  
 Roger K. Brown  
 Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED

APPROVED

\_\_\_\_\_  
 Mayor

\_\_\_\_\_  
 City Clerk

35B

December 18, 2009

Honorable Mayor and City Council  
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held December 17, 2009, the following action was taken:

**COMMISSION RECOMMENDATION:**

*Mike Simonson removed himself from consideration of the item due to conflict of interest as he represents the applicant and property owner.*

After public hearing, the members voted 10-0 as follows:



CITY PLAN AND ZONING COMMISSION  
ARMORY BUILDING  
602 ROBERT D. RAY DRIVE  
DES MOINES, IOWA 50309 -1881  
(515) 283-4182

ALL-AMERICA CITY  
1949, 1976, 1981  
2003

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Dann Flaherty	X			
Ted Irvine				X
Jeffrey Johannsen				X
Greg Jones	X			
Jim Martin	X			
Brian Millard	X			
William Page	X			
Mike Simonson				X
Kent Sovern	X			

**APPROVAL** of a request from Rich Eychaner (owner), for property located in the 3814, 3822 & 3826 57<sup>th</sup> Street to find the requested rezoning not in conformance with the existing Des Moines' 2020 Community Character Plan.

By separate motion Commissioners recommended 8-2 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Dann Flaherty		X		
Ted Irvine				X
Jeffrey Johannsen				X
Greg Jones	X			
Jim Martin		X		
Brian Millard	X			
William Page	X			
Mike Simonson				X
Kent Sovern	X			

**APPROVAL** of the requested amendment to the existing Des Moines' 2020 Community Character Plan revising the future land use designation from Low Density Residential to Commercial: Auto-Oriented Small-Scale Strip Development. 21-2009-4.10

By separate motion Commissioners recommended 7-3 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Dann Flaherty		X		
Ted Irvine				X
Jeffrey Johannsen				X
Greg Jones	X			
Jim Martin		X		
Brian Millard	X			
William Page		X		
Mike Simonson				X
Kent Sovern	X			

**APPROVAL** of a request to rezone 3814 57<sup>th</sup> Street from "R1-60" One Family Low-Density Residential District to a Limited "C-2" General Retail and Highway Oriented Commercial District subject to the following:

1. No buildings or parking (except drive entrances) shall be constructed within 30 feet of the front property line along 57<sup>th</sup> Street so long as there are single-family dwelling properties directly adjoining the subject property. (3818 57<sup>th</sup> Street)
2. Prohibiting the uses of:
  - a. Adult entertainment business,
  - b. Vehicle display,
  - c. Off-premises advertising signs,
  - d. Package goods stores for sale of liquor,
  - e. Pawn brokerages,
  - f. Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity; and
  - g. Communication Towers,
  - ~~h. General motor vehicle repair.~~
  - h. Any redevelopment of the site shall be subject to Site plan review by the Plan and Zoning Commission

By separate motion Commissioners recommended 9-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Dann Flaherty	X			
Ted Irvine				X
Jeffrey Johannsen				X
Greg Jones	X			
Jim Martin	X			

Brian Millard	X	
William Page	X	
Mike Simonson		X
Kent Sovern		X

**APPROVAL** of a request to rezone 3822 57<sup>th</sup> Street and 3826 57<sup>th</sup> Street from "R1-60" One Family Low-Density Residential District to a Limited "C-2" General Retail and Highway Oriented Commercial District subject to the following:

1. No buildings or parking (except drive entrances) shall be constructed within 30 feet of the front property line along 57<sup>th</sup> Street so long as there are single-family dwelling properties directly adjoining the subject property.
2. The only use of the property shall be a parking lot and access driveway to 57<sup>th</sup> Street.

Written Responses

2 In Favor  
4 In Opposition

**STAFF RECOMMENDATION TO THE P&Z COMMISSION**

Part A) Staff recommends that the Commission find the requested rezoning not in conformance with the existing Des Moines' 2020 Community Character Plan.

Part B) Staff recommends approval of the requested amendment to the Des Moines' 2020 Community Character Plan revising the future land use designation from Low Density Residential to Commercial: Auto-Oriented Small-Scale Strip Development.

Part C) Staff recommends approval of rezoning the property to a Limited "C-2" General Retail and Highway Oriented Commercial District subject to the following:

1. No buildings or parking (except drive entrances) shall be constructed within 30 feet of the front property line along 57<sup>th</sup> Street so long as there are single-family dwelling properties directly adjoining the subject property.
2. Prohibiting the uses of:
  - a. Adult entertainment business,
  - b. Vehicle display,
  - c. Off-premises advertising signs,
  - d. Package goods stores for sale of liquor,
  - e. Pawn brokerages,
  - f. Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity; and
  - g. Communication Towers,
  - h. General motor vehicle repair.

**STAFF REPORT**

**I. GENERAL INFORMATION**

1. **Purpose of Request:** The applicant is seeking to rezone property as a preliminary phase to the development of a commercial center at the northeast corner of Merle Hay Road and Douglas Avenue.
2. **Size of Site:** 20,802 square feet contained on three parcels.

- 3. **Existing Zoning (site):** "R1-60" One-Family Low-Density Residential District.
- 4. **Existing Land Use (site):** The subject property contains three single-family dwellings on three separate parcels.
- 5. **Adjacent Land Use and Zoning:**
  - North* – "R1-60", Uses are single-family dwellings.
  - South* – "C-2", Use is Tuffy's motor vehicle repair.
  - East* – "R1-60", Uses are single-family dwellings.
  - West* – "C-2", Uses are Shops at Merle Hay Commercial Center and vacant land.
- 6. **General Neighborhood/Area Land Uses:** The subject properties are residentially developed parcels one block east of the Merle Hay Mall major commercial corridor.
- 7. **Applicable Recognized Neighborhood(s):** Merle Hay Neighborhood Association.
- 8. **Relevant Zoning History:** On October 1, 2009 the a Site Plan under design guidelines for Extension of Parking was approved by the Plan and Zoning Commission on 3822 and 3826 57<sup>th</sup> Street with the following conditions:
  - a. Compliance with all comments in the attached letter from the Permit and Development Administrator.
  - b. Compliance with all minimum standards for landscaping as per the Des Moines Landscaping Standards in the Site Plan policies for buffer yards, parking lot perimeter and open space. This includes meeting material substitution provisions.
  - c. Provision of six-foot screening of the off-street parking with a solid wooden fence installed in accordance with a Permit. This includes any necessary easements for existing fences on adjoining property as an acceptable means of meeting the requirement.
  - d. Provision of a note on the plan that all required landscaping shall be certified by the designer at installation prior to issuance of a Certificate of Zoning Compliance. The note should also indicate that required landscaping will be maintained or replaced in accordance with the approved schedule.
  - e. The applicant shall sign the 57th Street access right turn only for exiting traffic.
- 9. **2020 Community Character Land Use Plan Designation:** Low Density Residential.
- 10. **Applicable Regulations:** The Commission reviews all proposals to amend zoning regulations or zoning district boundaries within the City of Des Moines. Such amendments must be in conformance with the comprehensive plan for the City and designed to meet the criteria in §414.3 of the Iowa Code. The Commission may recommend that certain conditions be applied to the subject property if the property owner agrees in writing, in addition to the existing regulations. The recommendation of the Commission will be forwarded to the City Council.

**II. ADDITIONAL APPLICABLE INFORMATION**

- 1. **Landscaping & Buffering:** As long as there are single-family residential dwellings on the west side of 57<sup>th</sup> Street directly adjoining the subject property, staff recommends that no buildings or parking (except drive entrances) be developed within 30 feet of the front property line along 57<sup>th</sup> Street. Landscaping will be required as applicable to "C-2" Districts. This includes

requirements for bufferyard setbacks, screening and plantings along remaining residential property lines reviewed as an administrative Site Plan.

2. **Access or Parking:** Access from Commercial Zoning Districts is reviewed as part of an administrative Site Plan review.
3. **Applicant Proposed Use Limitations:** The submitted application indicated that the owner would agree to limit uses on the properties requested for rezoning as follows:

On the 3822 and 3826 57<sup>th</sup> Street property the owner would agree to prohibit the uses of adult businesses, vehicle display (excluding vehicle rental), off-premises advertising signs, pawn brokerages, payroll loan offices, and general motor vehicle repair.

On the 3814 57<sup>th</sup> Street property the owner would agree prohibit the uses of adult businesses, vehicle display (excluding vehicle rental), off-premises advertising signs, pawn brokerages, payroll loan offices.

Staff believes that general motor vehicle repair and vehicle display (including vehicle rental) would not be appropriate on any of the subject properties, due to the existing residences adjoining and across 57<sup>th</sup> Street. Should the applicant have actual proposed development of those uses, an amendment to the Zoning to remove conditions could be sought. Also Package goods stores for the sale of liquor and Communication Towers would not be appropriate this close to a single-family residential neighborhood.

4. **Des Moines' 2020 Community Character Plan:** The future land use designation for the subject property is currently Low Density Residential and would therefore require amendment to the Commercial: Auto-Oriented Small-Scale Strip Development design to allow for the proposed rezoning. The Merle Hay Neighborhood Plan was adopted as an element of the Des Moines Community Character Plan in October 2008. While the Plan did not revise the future land use for the subject property, it did contemplate support for redevelopment along the Merle Hay Road commercial corridor. The Plan seeks to "Keep the Merle Hay commercial corridor a vibrant commercial destination" as a primary commercial goal.

Staff believes that redevelopment of the intersection will require greater commercial depth in order to provide necessary parking, open space and landscaping under the current design guidelines and policies for Site Plans. Furthermore, public streets provide better transition separation from commercial use to neighboring residential use than buffering directly at adjoining property lines. Therefore it is appropriate to amend the future land use to a commercial designation for the full depth of the block between Merle Hay Road and 57<sup>th</sup> Street to allow for redevelopment.

## SUMMARY OF DISCUSSION

Erik Lundy presented staff report and recommendation.

Greg Jones asked what if the existing single-family dwelling at 3818 57<sup>th</sup> Street goes away at some point what is the trigger for allowing the zoning restriction regarding setbacks to go away.

Erik Lundy stated the way the condition is worded so the zoning restriction on the setback would be moot if the single-family dwelling at 3818 57<sup>th</sup> Street was removed.

*Jacqueline Easley joined the meeting*

Greg Jones asked if the residential house were to go away would the use restriction still remain.



Mike Ludwig stated the use restrictions would remain.

Mike Simonson 1717 Ingersoll, representing Rich Eychaner stated they support staff recommendations except for two items. The first issue is the prohibition of general motor vehicle repair on 3814 57<sup>th</sup> Street. Should Tuffy want to expand they would not be allowed to expand to this lot without coming back and amending the rezoning. The applicant requests that the rezoning allow general motor vehicle repair on 3814 57<sup>th</sup> Street only. The second issue is the prohibition of vehicle display use on 3822 and 3826 57<sup>th</sup> Street. Rich is talking to an entity that leases new cars and unfortunately car leasing falls under the definition of a vehicle display lot. The applicant would like the ability to park those cars on 3822 and 3826 57<sup>th</sup> Street.

Dann Flaherty voiced his concern about the little island of residential property that is left (3818 57<sup>th</sup> Street) and asked why the Commission should abandon that person because they happen to be residential.

Mike Simonson stated the rezoning would allow the applicant to tie all the properties together and at some point in time 3818 57<sup>th</sup> Street will likely become a commercial use.

### CHAIRPERSON OPENED THE PUBLIC HEARING

*The following spoke in opposition*

Jeff Anderson, Dickinson Law Firm 699 Walnut Street stated he is the grandson and representing the Donnenwerths at 3818 57<sup>th</sup> Street, Jacki Grove of 3831 57<sup>th</sup>, and Ron Fenton of 3815 57<sup>th</sup> Street. He also filed a lawsuit regarding a previous Site Plan approval for extension of parking into a residential district for 3822 and 3826 57<sup>th</sup> Street. They are opposed to the access drive from a commercial establishment to 57<sup>th</sup> Street as they believe it substantially deteriorates the residential character of the street and unfairly impedes the neighbor's enjoyment of their property and quality of life. The proposed rezoning would put the Donnenwerths, who have been living there for 60 years in an island surrounded by two commercial properties and a street that now has access to commercial property. This is a definition of spot zoning. Finally, the access drive onto 57<sup>th</sup> Street and the proposed rezoning are contrary to the City's 2020 Community Character Plan. Page 74 which states that new commercial development and expansion of existing commercial along major corridor should front upon and have primary access from the major corridors and not from an adjacent residential side street.

Brian Millard asked if Mr. Anderson considered the access onto 57<sup>th</sup> Street to be a "primary" access.

Jeff Anderson stated the primary access would definitely be from Merle Hay and Douglas but the issue is the second sentence that states it is inappropriate to introduce commercial traffic into or through a residential area.

Mary Donnenwerth 3818 57<sup>th</sup> Street stated she has been a resident on 57<sup>th</sup> Street for 60 years and is unhappy about the rezoning. The access has been used as an entrance and exit. The concerns of the rezoning are the bottleneck on 57<sup>th</sup> and Douglas causing more traffic and the decrease in property value. She asks for consideration and time when making a decision.

Will Page asked if she was a member of the Merle Hay Neighborhood Association.

Mary Donnenwerth stated she was not a member.

Jacki Grove 3831 57<sup>th</sup> Street expressed concern that the bar is located across the street. The concern is the bar patrons standing outside of the bar and the safety of the children playing in the front yard with patrons drinking and exiting onto 57<sup>th</sup> Street.

Ron Fenton 3815 57<sup>th</sup> Street stated his concern is the lighting that flashes across the street and people are not complying with the right turn only sign.

Jack Grove 3831 57<sup>th</sup> Street stated he has the same concern as Jacki and states that it is hard to make a left on 57<sup>th</sup> to Douglas at anytime of the day.

#### *Rebuttal*

Mike Simonson stated that when Mr. Eychaner purchased the property 6 years ago the bar was already there. However, when the lease comes up next year it will not be renewed. The other bar in the existing building has quite some time left on it. He reiterated that 57<sup>th</sup> Street is not the primary access and the overall site has only one full access point. It is not a spot zoning because residential zoning remains across the street from 3818 57<sup>th</sup> Street. The applicant seeks rezoning to allow them to move quickly when opportunity presents itself. The off street loading is associated with commercial property and the applicant would not allow truck traffic to enter the property from 57<sup>th</sup> Street. The most compelling issue is the Merle Hay Neighborhood Association Plan which the Plan and Zoning Commission and the City Council adopted. It contemplates rezoning of residential properties along the Merle Hay and Douglas corridors to support redevelopment of existing commercial properties.

Greg Jones asked about the north parcel. Why does the applicant believe it is necessary to rezone property at 3822 and 3826 57<sup>th</sup> Street now?

Mike Simonson stated that one reason is those opposed have filed suit to prohibit an access to 57<sup>th</sup> Street. If the property is zoned commercial the driveway is allowed by right.

Leisha Barcus asked if the applicant was asking for the automobile use because of the potential tenant.

Mike Simonson stated that they don't know for sure, but would like the commercial zoning.

Dann Flaherty expressed concern that they are isolating the 3818 57<sup>th</sup> Street.

Mike Simonson stated that is the reason the site plan approval process is in place.

Leisha Barcus asked if the use of 3822 and 3826 57<sup>th</sup> Street could be restricted to only a parking lot and driveway to 57<sup>th</sup> Street.

Mike Ludwig stated that the Commission can recommend any condition that they want on the zoning. The applicant would have to agree to those conditions in writing prior to the City Council hearing and the Council would have to vote to approve those conditions.

The Comprehensive Plan is a policy guide for the City. The Zoning Ordinance and the Site Plan Ordinance are law implement the Comprehensive Plan. Under either "R1-60" or "C-2" zoning a driveway to 57<sup>th</sup> Street can be allowed. The Plan and Zoning Commission granted a driveway under the provisions in the "R1-60" district. The neighbors have challenged that approval. The driveway would be allowed by right under the "C-2" zoning.

The Merle Hay Neighborhood Plan did anticipate future actions to rezone residential properties abutting existing commercial properties along Merle Hay Road and Douglas Avenue corridors. The reason they did not do those changes as part of the neighborhood plan was if the City legislatively rezoned those properties it would not be able to put any conditions on the zoning of those properties. The idea was as individual projects came forward those projects would be evaluated for their impacts on the neighborhood and the appropriate conditions could be

recommended to be placed on the zoning of those properties. The staff recommendation that was presented to the Commission had numerous conditions which attempted to address impacts on the residential neighborhood.

**CHAIRPERSON CLOSED THE PUBLIC HEARING**

Kent Sovern asked for separate votes on the properties.

Mike Simonson asked if there are no "C-2" uses allowed on 3822 and 3826 57<sup>th</sup> Street does that mean they can even park on it?

Dann Flaherty clarified that what Leisha was saying is only parking would be permitted with an access drive to 57<sup>th</sup> Street.

Will Page asked what position did the Merle Hay Neighborhood Association take.

Erik Lundy showed a copy of the letter from the Merle Hay Neighborhood Association in support of the Site Plan to expand the parking lot with a driveway to 57<sup>th</sup> Street and redevelopment of the NE corner of Merle Hay Road and Douglas Avenue.

Leisha Barcus moved staff recommendation for 3814 57<sup>th</sup> Street except the prohibition on general motor vehicle repair and 3822 and 3826 57<sup>th</sup> Street to restrict all "C-2" uses except for the parking lot and an access to 57<sup>th</sup> Street.

Kent Sovern asked that a friendly amendment be added that would require any development on 3814 57<sup>th</sup> Street to provide a buffer of 27 feet to 3818 57<sup>th</sup> Street.

Leisha Barcus asked for the applicant's input on the friendly amendment.

Mike Simonson stated the applicant would not be in support of the friendly amendment because they would end up with a buffer yard wider than the entire width of the residence.

Brian Millard stated that the Plan and Zoning Commission could propose a condition that any redevelopment of 3814 57<sup>th</sup> Street will require a Site Plan review by the Plan and Zoning Commission.

Leisha Barcus stated objected to Kent's friendly amendment but agrees with Brian to put a condition requiring Plan and Zoning Commission review for any redevelopment of 3814 57<sup>th</sup> Street.

Mike Ludwig asked that the applicant address their timeline to install landscaping since they were unable to install before the weather changed and if the landscaping on the approved Site Plan exceeds "C-2" standards.

Mike Simonson stated as soon as they can in the spring it will go in, right now it is purchased and sitting in a nursery. He confirmed that the approved landscaping exceeds "C-2" minimum standards.

Brian Millard asked that the applicant would take a look at the lighting overspill.

Mike Simonson agreed.

## **COMMISSION ACTION**

Leisha Barcus moved staff recommendation to find the requested rezoning not in conformance with the existing Des Moines' 2020 Community Character Plan.

Motion passed 10-0.

Leisha Barcus moved staff recommendation to amend the Des Moines' 2020 Community Character Plan revising the future land use designation from Low Density Residential to Commercial: Auto-Oriented Small-Scale Strip Development.

Motion passed 8-2 (Dann Flaherty and Jim Martin were in opposition).

Leisha Barcus moved to approve the rezoning of 3814 57<sup>th</sup> Street from "R1-60" One Family Low-Density Residential District to a Limited "C-2" General Retail and Highway Oriented Commercial District subject to the following:

1. No buildings or parking (except drive entrances) shall be constructed within 30 feet of the front property line along 57<sup>th</sup> Street so long as there are single-family dwelling properties directly adjoining the subject property. (3818 57<sup>th</sup> Street)
2. Prohibiting the uses of:
  - a. Adult entertainment business,
  - b. Vehicle display,
  - c. Off-premises advertising signs,
  - d. Package goods stores for sale of liquor,
  - e. Pawn brokerages,
  - f. Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity; and
  - g. Communication Towers,
  - ~~h. General motor vehicle repair.~~
  - h. Any redevelopment of the site shall be subject to Site plan review by the Plan and Zoning Commission.

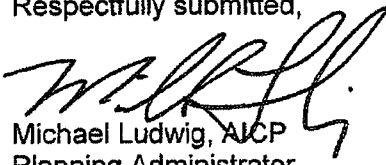
Motion passed 7-3 (Dann Flaherty, Jim Martin and Will Page were in opposition).

Leisha Barcus moved to approve the rezoning of 3822 57<sup>th</sup> Street and 3826 57<sup>th</sup> Street from "R1-60" One Family Low-Density Residential District to a Limited "C-2" General Retail and Highway Oriented Commercial District subject to the following:

1. No buildings or parking (except drive entrances) shall be constructed within 30 feet of the front property line along 57<sup>th</sup> Street so long as there are single-family dwelling properties directly adjoining the subject property.
2. The only use of the property shall be a parking lot and access driveway to 57<sup>th</sup> Street.

Motion passed 9-1 (Kent Sovern was in opposition).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Ludwig', is written over the typed name.

Michael Ludwig, AICP  
Planning Administrator

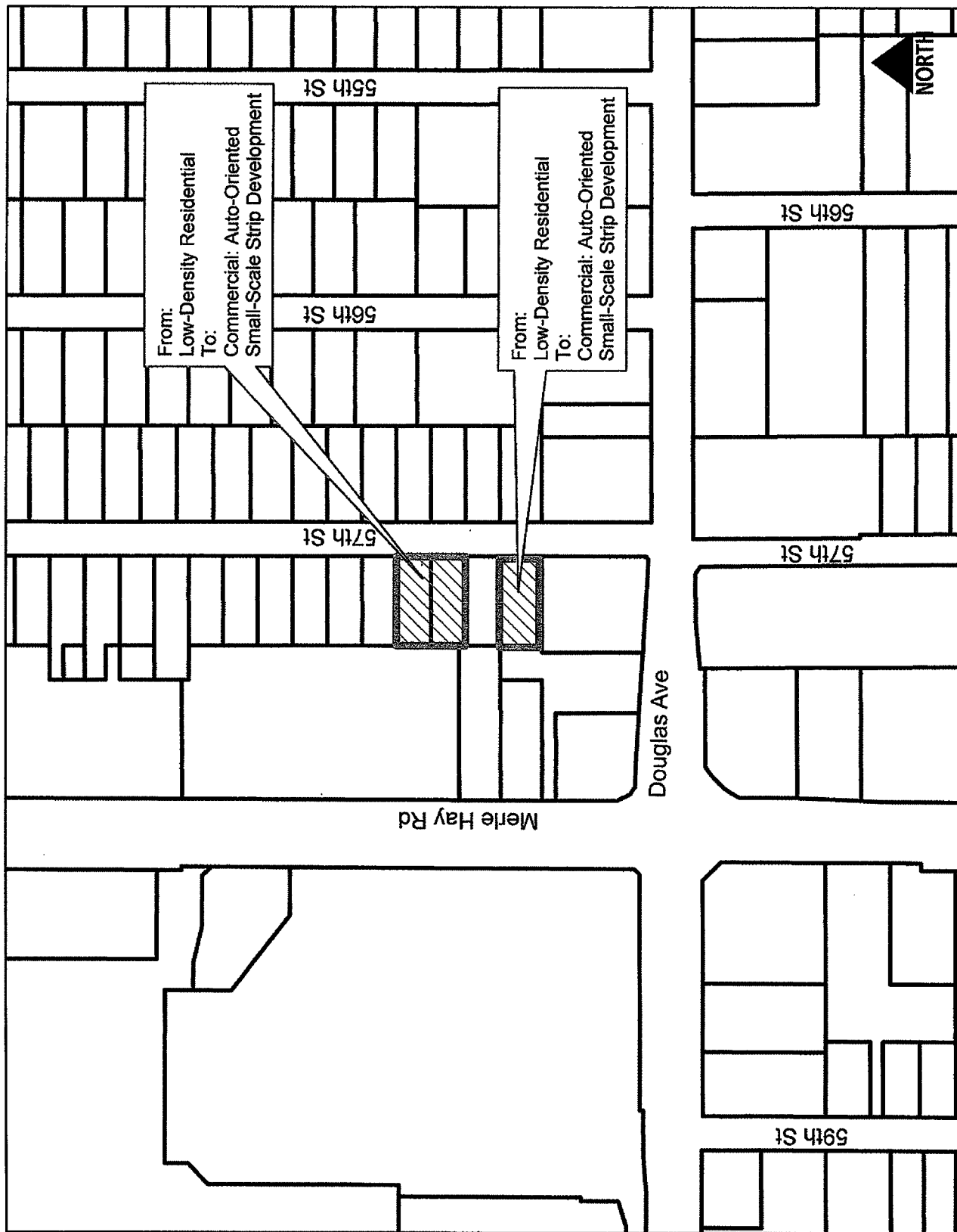
MGL:clw

Attachment

Rich Eychaner - 3814, 3822 & 3826 57th Street

21-2009-4.10

35B





DICKINSON  
MACKAMAN TYLER & HAGEN PC  
ATTORNEYS & COUNSELORS

35B  
Jeffrey J. Andersen  
(515) 246-4503  
jandersen@dickinsonlaw.com

December 14, 2009

RECEIVED

DEC 16 2009

COMMUNITY DEVELOPMENT  
DEPARTMENT

Des Moines Plan & Zoning Commission  
Armory Building  
602 Robert D. Ray Drive  
Des Moines, IA 50309

Re: Rezoning on 57<sup>th</sup> St.

Dear Commission Members:

As you likely know, Eychaner Properties has filed an application to rezone 3814, 3822, and 3826 57<sup>th</sup> St. from R1-60 to C-2. This letter is on behalf of John and Mary Donnenwerth of 3818 57<sup>th</sup> St., Jacki Grove of 3831 57<sup>th</sup> St., Ron Fenton of 3815 57<sup>th</sup> St., and Mark Andersen of 3823 57<sup>th</sup> St. (together, "neighbors"). These residents are the closest to the proposed rezoning and would be the most affected.

For background purposes, Eychaner Properties had previously filed a site plan with the Plan and Zoning Commission ("Commission") for an expansion of off-street parking for the Shops at Merle Hay into the residentially-zoned 57<sup>th</sup> St., specifically, on lots 3822 and 3826. The site plan also proposed an access drive from the expanded parking onto 57<sup>th</sup> St. that would serve as an entrance and exit for the Shops at Merle Hay. According to the Staff Report of the Commission, the site plan would add approximately 11 parking spaces for use by the Shops at Merle Hay. The neighbors listed above appeared at the Commission hearing on October 1, 2009 and opposed the access drive. The neighbors did not oppose the additional parking. Contrary to Staff recommendations, the Commission approved the access drive. The neighbors, having no recourse to appeal to city council, filed a lawsuit on October 30, 2009, challenging the Commission approval of an access drive on the bases that: 1) Section 82 of the City Code regarding site plans does not authorize approval of commercial access drives onto residential streets; 2) the additional parking proposed in the site plan was not required by city code; 3) the proposed extension of parking immediately abuts a public street or alley; and 4) it constitutes spot zoning. The city attorney has answered the petition and the matter is still pending in Polk County District Court. It is the neighbors' contention that the rezoning application currently before the Commission would have been the proper procedure for authorizing a commercial access drive onto a residential street and that the prior site plan procedure should be void as to the access drive.

The neighbors oppose the rezoning for many of the same reasons that they opposed the access drive. The neighbors have lived on 57<sup>th</sup> street for many years. John and Mary

December 14, 2009

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Donnenwerth have lived there since 1949. Through these years they have seen a lot of commercial development in the area. Despite these developments, 57<sup>th</sup> St. has always retained its residential character. An access drive from a commercial establishment to 57<sup>th</sup> St. would substantially deteriorate this historic residential character of the street and would unfairly impede on the neighbors quiet enjoyment of their property and quality of life. The Shops at Merle Hay currently houses a bar that attracts late night traffic, light, and noise. Another bar, Hugh's Jungle Room, is located close by and would also attract parking and traffic on 57<sup>th</sup> St. if an access drive is installed. Further, it is not known what type of establishment would be put in the proposed new development. The neighbors on the west side of 57<sup>th</sup> St. would be in a direct line with the headlights of every vehicle that exits onto 57<sup>th</sup> St. The light, noise, traffic, odor, and debris incident to a commercial entrance/exit are not things 57<sup>th</sup> St. residents should have to bear.

Aside from the access drive, a rezoning from R1-60 to C-2 would open the door to future commercial development directly on 57<sup>th</sup> St. Such developments would be subject to site plan review only and the neighbors would have no ability to appeal to their elected officials to oppose them. Finally, the proposed rezoning would leave John and Mary Donnenwerth on an island surrounded by commercial property from three sides. Imposing this burden on them in their 60<sup>th</sup> year at 3818 57<sup>th</sup> St. is unfair and unduly burdensome.

The access drive onto 57<sup>th</sup> St. and the proposed rezoning are also contrary to the city's 2020 Community Character Plan ("Community Plan"). Page 74 of the Community Plan, which is enclosed, states that "[n]ew commercial development and expansion of existing commercial along major corridors should front upon and have primary access from the major corridor and not from an adjacent residential side street. *It is inappropriate to introduce commercial traffic into or through a residential area.*" (emphasis added). Such a departure from the Community Plan is inappropriate and unduly burdensome on the neighbors.

It should be made clear that the neighbors do not oppose development on the corner of Merle Hay and Douglas. The neighbors do not even oppose the expansion of parking onto lots 3822 and 3826, assuming adequate setbacks and foliage. They merely oppose a commercial access road introducing commercial traffic into their neighborhood. There is no reason the development and beautification of the corner of Merle Hay and Douglas cannot proceed without imposing the burden of a commercial access road on 57<sup>th</sup> St. No other commercial property on Merle Hay Road has ever had access to 57<sup>th</sup> St. Such access has been sought in the past and has been denied. The development of the corner of Merle Hay and Douglas can and should proceed without rezoning 57 St. and drastically altering the residential character of the neighborhood.



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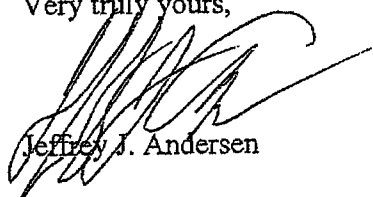
DICKINSON, MACKAMAN, TYLER & HAGEN, P.C.

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If you have any questions or would like to discuss any of the above feel free to contact me at the telephone number given above.

Very truly yours,



Jeffrey J. Andersen

JJA/lks  
Enclosure

## Land Use Transitions

The co-existence of dissimilar land uses directly adjacent to each other has the potential to create nuisances. There are currently many situations in Des Moines where a lack of careful site planning for in-fill commercial development and institutions adjacent to, or within a neighborhood has resulted in serious nuisance issues for residences. The consequence of these conflicts may be a disinvestment in the residential property.

This plan promotes a healthy mix of commercial and residential land uses for Des Moines and recognizes the importance of institutions, such as churches and schools, as important components of a neighborhood. However, there is an accepted level of privacy associated with the immediate environment of one's home. The yard area of residence is private, not public space, and interventions to it such as light, noise, or people is an infringement on one's privacy. On the other hand, undesirable views of parking lots, and service areas, from a residential property is also an infringement.

New commercial development and expansion of existing commercial along major corridors should front upon and have primary access from the major corridor and not from an adjacent residential side street. It is inappropriate to introduce commercial traffic into or through a residential area. The impacts of such commercial expansion upon the adjacent residential neighborhood, as outlined in this section, should be a primary consideration in determining the appropriateness of the development request.



*A wooden fence and pedestrian archway provide a transition and connection between residential on Linden and the back of commercial buildings on Ingersoll Avenue.*

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Item ZDN2009-00217 Date 12-12-09

I (am)  (am not) in favor of the request.

(Circle One)

RECEIVED  
COMMUNITY DEVELOPMENT

Print Name JOHN W. DONNENWERTH

Signature John W. Donnenerth

Address 3818 57th Street - DM, IA

DEC 16 2009

Reason for opposing or approving this request may be listed below:

DEPARTMENT  
The increase of traffic it is already hard  
to get on <sup>to</sup> Douglas and off of it when making  
a left hand turn. It would cause a real bottleneck.  
There are far too many strip malls & empty  
rental places all around. I do not want  
any entrances & exits on to and from 57th st.

Item ZON2009-00217 Date 12-14-09

I (am)  (am not) in favor of the request.

REC (Circle One) COMMUNITY DEVELOPMENT

Print Name Mart Andersen

Signature [Signature]

DEC 17

Address 3823 57th Street

Reason for opposing or approving this request may be listed below:

I oppose this rezoning due to the fact it impacts our neighborhood Business District & Lossing our neighborhood. Also the increase in Traffic's impacts & Progress streets. Also the lighting from that area's. The neighborhood has been existing & would not have been removed.

Reason for ~~opposing~~  approving this request may be listed below:  
needed to rebuild obsolete building at Merle Hay - Douglas

Address 5715 DOUGLAS / 3801 3815 3821 + 3839 MERLE HAY

Signature [Signature]

Print Name RICH ECHTNER

COMMUNITY DEVELOPMENT  
DEC 11 2009

I (am)  (am not) in favor of the request.

Item ZON2009-00217 Date 12-10-09

I (am)  (am not) in favor of the request.

REC (Circle One) COMMUNITY DEVELOPMENT

Print Name Azucena Burden

Signature [Signature]

DEC 14 2009

Address 3814, 3822, 3826, 3830, 3834, 3838, 3842

3846 + 3900-57th Streets

Reason for ~~opposing~~  approving this request may be listed below:

NECESSARY FOR REVITALIZATION OF MERLE HAY COMMERCIAL AREA

[Signature]