

★ **Roll Call Number**

Agenda Item Number

44

Date February 8, 2010

An Ordinance entitled, "AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 3814, 3822 and 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",

which was considered and voted upon for the first time under Roll Call No. 10-056 of January 11, 2010, and considered and voted upon for the second time under Roll Call No. 10-135 of January 25, 2010, again presented.

MOVED by _____ that this ordinance do now pass.

NOTE: Six affirmative votes required for passage due to the filing of a sufficient protest.

ORDINANCE NO. _____

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

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.

Mayor

City Clerk

10-135

39
44



January 21, 2010

Des Moines City Council

Dear Council Members;

As part of our rezoning application for 3814, 3822 and 3826 – 57th Street we are listing the efforts we've made to accommodate the immediate neighbors regarding the existing driveway to 57th Street.

- Installed a Right Turn Only sign at exit.
- Installed a Stop Sign at exit after the January 11, 2010 Council meeting.
- When weather permits, install speed bump in driveway per suggestion at Council meeting.
- Complete landscaping of parking lot when weather permits.
- Provide more buffering to north side of 3818 – 57th Street than required by code.
- We were scheduled to be at the Merle Hay Neighborhood Association on January 21 to review plans, but that meeting has been postponed until January 28, which we will attend.
- Letters have been sent to each neighbor who filed a written protest.
 - We had previously (October, 2009) offered to provide landscaping to the two homes immediately across from the driveway (3823 and 3827 – 57th Street).
 - We have now extended that offer to an additional neighbor on each side (3819 and 3831 – 57th Street) as well as the two previous homes.
 - A letter has been sent to the owners of 3818 – 57th Street (c/o their attorney) asking again for written instructions regarding fence improvements on the north edge of their property.
 - All protesting neighbors have been asked in writing for any other suggestions they have to reduce the impact of the driveway. To date, no replies have been received to any of these offers.
- We previously scheduled a neighborhood meeting and sent invitations to all neighbors within 250 feet. Only a representative of the Merle Hay Neighborhood Association attended.

We appreciate your support of this rezoning request on January 11, 2010, and ask for your support for the second reading and waiver of the third reading.

Sincerely,

Rich Eychaner

ORDINANCE NO. _____

350
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3944

AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 3814, 3822 and 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.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, be and the same is hereby amended by rezoning and changing the district classification of certain property located in the vicinity of 3814, 3822 and 3826 57th Street, more fully described as follows, from the "R1-60" One-Family Low-Density Residential District to a Limited "C-2" General Retail and Highway Oriented Commercial District classification:

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").

Sec. 2. That this ordinance and the zoning granted by the terms hereof are subject to the following imposed additional conditions which have been agreed to and accepted by execution of an Acceptance of Rezoning Ordinance by all owners of said property and are 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 57th Street so long as there are single-family dwelling properties directly adjoining 3814 57th Street.

ORDINANCE NO. _____

- 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; 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 57th Street so long as there are single-family dwelling properties directly adjoining 3822-3826 57th Street.
 - B. Only the following uses of structures or land shall be permitted upon 3822-3826 57th Street: Parking lot and access driveway to 57th Street.
 - C. Any redevelopment of 3822-3826 57th Street shall be subject to Site plan review by the Plan and Zoning Commission.

Sec. 3. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Sec. 4. The City Clerk is hereby authorized and directed to cause a certified copy of the Acceptance of Rezoning Ordinance, this ordinance, a vicinity map, and proof of publication of this ordinance, to be properly filed in the office of the Polk County Recorder.

FORM APPROVED:

Roger K. Brown

Roger K. Brown

Assistant City Attorney

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ITEM # 35C

35C
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 3944

Request from Rich Eychaner (owner) to rezone property located in the 3814, 3822 & 3826 57 th Street. Subject property also owned by AZ, LLC represented by Rich Eychaner (officer).				File # ZON2009-00217	
Description of Action	Rezone property from "R1-60" One-Family Low-Density Residential District to Limited "C-2" General Retail and Highway Oriented Commercial District, to allow redevelopment for a commercial center and associated loading and off-street parking areas.				
2020 Community Character Plan	Low-Density Residential				
Horizon 2025 Transportation Plan	No Planned Improvements				
Current Zoning District	"R1-60" One-Family Low-Density Residential District,				
Proposed Zoning District	Limited "C-2" General Retail and Highway Oriented Commercial District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	4	11		25	
Outside Area	2				
Plan and Zoning Commission Action	Approval	7-3; 9-1	Required 6/7 Vote of the City Council	Yes	X
	Denial			No	

Rich Eychaner - 3814, 3822 & 3826 57th Street

ZON2009-00217



39 44
10-135

Prepared by: Roger K. Brown, Assistant City Attorney, 400 Robert Ray Dr., Des Moines, IA
50309 515/283-4541
Return Address: City Clerk - City Hall, 400 Robert Ray Dr., Des Moines, IA 50309
Taxpayer: No change
Title of Document: Acceptance of Rezoning Ordinance
Grantor's Name: Rich Eychaner and AZ, LLC
Grantee's Name: City of Des Moines, Iowa
Legal Description:

The East 130 feet of Lots 31, 32, 33, 36, 37, 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 the "Property").

ACCEPTANCE OF REZONING ORDINANCE

The undersigned hereby state, warrant and agree as follows:

1. That Rich Eychaner, a single person, is the sole owner of the portion of the Property commonly known as 3814 57th Street, and more specifically described as follows:

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").

2. That in the event the City of Des Moines, Iowa, acts to rezone 3814 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, Rich Eychaner agrees and accepts on behalf of the owners to the imposition of the following conditions to run with the land and be binding upon all successors, heirs and assigns as part of the ordinance so rezoning such land:

- A. No buildings or parking (except drive entrances) shall be constructed or maintained within 30 feet of the front property line along 57th 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;
 - (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.

3. That AZ, LLC, an Iowa limited liability company, is the sole owner of the portion of the Property commonly known as 3822-3826 57th Street, and more specifically described as follows:

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").

4. That in the event the City of Des Moines, Iowa, acts to rezone 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, AZ, LLC, agrees and accepts on behalf of the owners to the imposition of the following conditions to run with the land and be binding upon all successors, heirs and assigns as part of the ordinance so rezoning such land:

- A. No buildings or parking (except drive entrances) shall be constructed or maintained within 30 feet of the front property line along 57th 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 3822-3826 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.


5. A certified copy of the rezoning ordinance shall be attached hereto, and a certified

39

copy of this document and the rezoning ordinance shall be recorded by the City in the land records of the County Recorder to memorialize the rezoning of the Property as identified above.

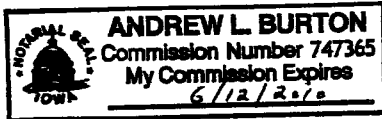
6. That in the event any portion of the Property is hereafter rezoned to a district classification different from Limited "C-2", then this Acceptance shall be immediately terminated as applied to the real estate so rezoned on the effective date of such rezoning, and the conditions agreed to herein shall be rendered null and void, provided, if there be any such rezoning to a more restricted zoning classification, any then legal actual use of such real estate shall become a legal non-conforming use.

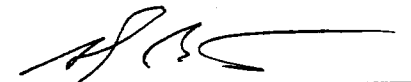
The words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

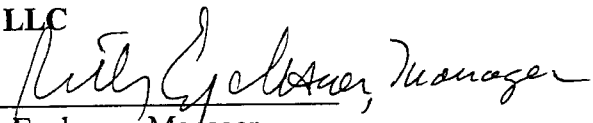

Rich Eychaner

State of Iowa)
County of Polk) SS:

This instrument was acknowledged before me on January 8, 2010, by **Rich Eychaner**, to me personally known.

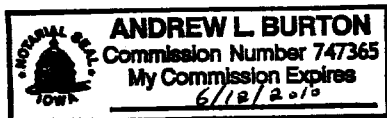




Notary Public in the State of Iowa
My commission expires: 6/12/10

AZ, LLC
By: 
Rich Eychaner, Manager

State of Iowa)
County of Polk) SS:

This instrument was acknowledged before me on January 8, 2010, by **Rich Eychaner** as the Manager of **AZ, LLC**, an Iowa limited liability company, on behalf of whom the instrument was executed.




Notary Public in the State of Iowa
My commission expires: 6/12/10

10-135

10-055
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31

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 57th 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 57th 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 57th Street so long as there are single-family dwelling properties directly adjoining the subject property. (3818 57th 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			

10-055
39 44

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

APPROVAL of a request to rezone 3822 57th Street and 3826 57th 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 57th 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 57th 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 57th 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 57th 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 57th 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 57th Street. Landscaping will be required as applicable to "C-2" Districts. This includes

10-055
3944

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 57th 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 57th 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 57th 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 57th 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 57th 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 57th 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 57th 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 57th Street only. The second issue is the prohibition of vehicle display use on 3822 and 3826 57th 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 57th Street.

Dann Flaherty voiced his concern about the little island of residential property that is left (3818 57th 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 57th 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 57th Street, Jacki Grove of 3831 57th, and Ron Fenton of 3815 57th Street. He also filed a lawsuit regarding a previous Site Plan approval for extension of parking into a residential district for 3822 and 3826 57th Street. They are opposed to the access drive from a commercial establishment to 57th 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 57th 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 57th 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 57th Street stated she has been a resident on 57th 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 57th 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 57th 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 57th Street.

Ron Fenton 3815 57th 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 57th Street stated he has the same concern as Jacki and states that it is hard to make a left on 57th 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 57th 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 57th 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 57th 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 57th Street now?

Mike Simonson stated that one reason is those opposed have filed suit to prohibit an access to 57th 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 57th 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 57th Street could be restricted to only a parking lot and driveway to 57th 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 57th 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

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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 57th 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 57th 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 57th Street and redevelopment of the NE corner of Merle Hay Road and Douglas Avenue.

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

Kent Sovern asked that a friendly amendment be added that would require any development on 3814 57th Street to provide a buffer of 27 feet to 3818 57th 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 57th 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 57th 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 57th 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 57th Street so long as there are single-family dwelling properties directly adjoining the subject property. (3818 57th 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).

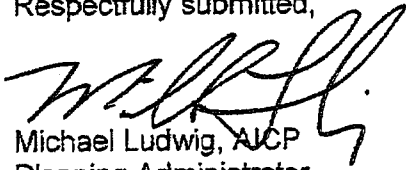
Leisha Barcus moved to approve the rezoning of 3822 57th Street and 3826 57th Street from "R1-60" One Family Low-Density Residential District to a Limited "C-2" General Retail and Highway Oriented Commercial District subject to the following:

1. No buildings or parking (except drive entrances) shall be constructed within 30 feet of the front property line along 57th 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 57th Street.

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

12135
39
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Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment