

.....
Date March 23, 2009

WHEREAS, on January 26, 2009, by Roll Call No. 09-090 it was duly resolved by the City Council that the request from Ronald Brenizer, Jr. to rezone property located at 4506 Southwest 9th Street from C-1A Neighborhood Commercial Reuse District to Limited C-2 General Retail and Highway Oriented Commercial District, to allow a construction contractor's business limited to use of the building for offices and for parking over-the-road vehicles related to the business, rezoning would be heard in Council Chambers at 5:00 p.m. on February 9, 2009 and that notice of the proposal be published according to law; and

The subject property is more specifically described as follows:

S 165 F E 125 F LT 20 & TRI PC LT C E & ADJ AMEND PLACE, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

WHEREAS, due notice of hearing was published in the Des Moines Register on January 29, 2009, setting forth the time and place for hearing on the proposed rezoning; and

WHEREAS, on February 9, 2009 by Roll Call No. 09-277 the City Council continued the hearing on the proposed rezoning until March 9, 2009 at 5:00 p.m., and instructed Mr. Brenizer to work with the Community Development Department to create a plan and cost estimate to bring the property into compliance with the Zoning Code and Site Plan regulations and guidelines; and

WHEREAS, Community Development staff have met with the applicant to outline requirements for bringing the property into compliance with development regulations. At this time the applicant and all owners have not yet agreed to the imposition of the following conditions to run with the land and be binding upon al successors, heirs and assigns as part of the ordinance to rezone the property:

- A. Prohibit the use of the property for adult entertainment business, automobile establishments for display, hire, rental or sales, package goods liquor stores, pawn shops, financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles, off-premises advertising signs, and taverns and night clubs.
- B. Conformance with current Site Plan requirements, including landscaping standards and paving of all off-street parking; the property shall be brought into conformance with an approved Site Plan to the extent it does not eliminate minimum required parking and maneuvering.
- C. Enclose and gate all outdoor trash receptacles with an enclosure built of block, stone, masonry or other material compatible with the primary building, and with 100% opaque metal gates.

Date March 23, 2009

- D. Prohibit storage of materials or equipment outside of a building.
- E. That the City Council will initiate rezoning a C-1 district classification in the event the property is not brought into compliance with current Site Plan regulations and all other zoning conditions on or before October 31, 2009.

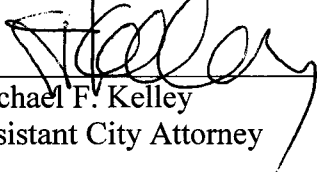
WHEREAS, in accordance with the published notice those interested in the proposed rezoning, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to City Council.

WHEREAS, the applicant has requested that the hearing on his proposed rezoning be postponed until the April 6, 2009 City Council meeting.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that at applicant's request the hearing on the proposed rezoning is continued until April 6, 2009 at 5:00 p.m. in Council Chambers, City Hall in Des Moines, Iowa.

Moved by _____ to open hearing and to continue the hearing until April 6, 2009 at 5:00 p.m. in Council Chambers, City Hall in Des Moines

APPROVED AS TO FORM:



Michael F. Kelley
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				
MOTION CARRIED		APPROVED		
_____ Mayor				

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.

City Clerk

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Prepared by: Michael F. Kelley, Assistant City Attorney, 400 Robert Ray Dr., Des Moines, IA 50309 515/283-4124
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: David Holmes and H & J Investments Corporation; Ronald M. Brenizer and Sandra J. Brenizer
Grantee's Name: City of Des Moines, Iowa
Legal Description:

S 165 F E 125 F LT 20 & TRI PC LT C 3E & ADJ AMEND PLACE, an Official Pat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

ACCEPTANCE OF REZONING ORDINANCE

The undersigned hereby states, warrants and agrees as follows:

1. That David Holmes and H & J Investments Corporation, as titleholders and Ronald M. Brenizer and Sandra J. Brenizer as contract purchasers are the sole owners of the Property in the vicinity of 4506 SW 9th Street, more specifically described above.

2. That in the event the City of Des Moines, Iowa, acts to rezone the Property from C-1A Neighborhood Commercial Reuse to Limited C-2 General Retail and Highway Oriented Commercial District, to a Limited C-2 General Retail and Highway Oriented Commercial District classification we agree and accept 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 the Property:

- A. Prohibit the use of the property for adult entertainment business, automobile establishments for display, hire, rental or sales, package goods liquor stores, pawn shops, financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles, off-premises advertising signs, and taverns and night clubs.
- B. Conformance with current Site Plan requirements, including landscaping standards and paving of all off-street parking; the property shall be brought into conformance with an approved Site Plan to the extent it does not eliminate minimum required parking and maneuvering.

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- C. Enclose and gate all outdoor trash receptacles with an enclosure built of block, stone, masonry or other material compatible with the primary building, and with 100% opaque metal gates.
- D. Prohibit storage of materials or equipment outside of a building.
- E. That the City Council will initiate rezoning a C-1 district classification in the event the property is not brought into compliance with current Site Plan regulations and all other zoning conditions on or before October 31, 2009.

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

4. 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.

(Signature pages to follow)

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**DAVID HOLMES and H & J
INVESTMENTS CORPORATION**

By _____
David Holmes, President
Titleholder and Contract Seller

STATE OF IOWA)
) ss:
COUNTY OF POLK)

This instrument was acknowledged before me on _____, 2009, by **David Holmes** who is President of **H & J Investments Corporation**, who is personally known to me and who is executing this document on his own behalf and who has been authorized by the Board of Directors to execute this document on behalf of **H & J Investments Corporation**.

Notary Public in the State of Iowa
My commission expires: _____

**RONALD M. BRENIZER and
SANDRA J. BRENIZER**

By _____
Ronald M. Brenizer
Contract Purchaser

By _____
Sandra J. Brenizer
Contract Purchaser

STATE OF IOWA)
) ss:
COUNTY OF POLK)

This instrument was acknowledged before me on _____, 2009, by **Ronald M. Brenizer and Sandra J. Brenizer**, who are personally known to me or who have provided identification pursuant to and sufficient under Iowa law.

Notary Public in the State of Iowa
My commission expires: _____

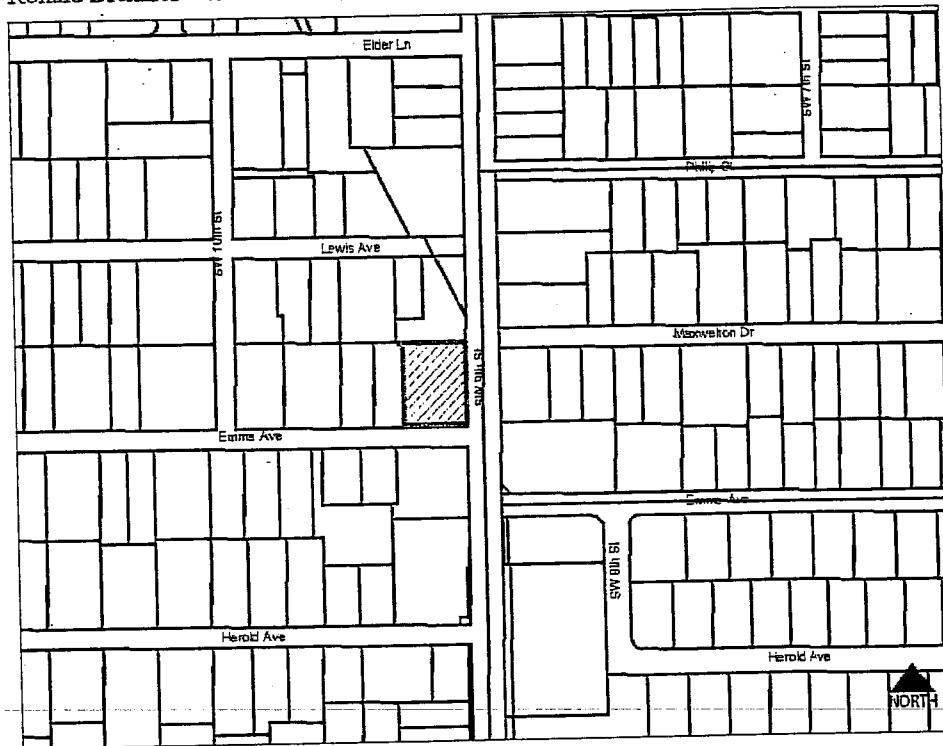
09-414 09-229

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Request from Ronald Brenizer Jr. (contract owner) to rezone property located at 4506 Southwest 9 th Street from "C-1A" Neighborhood Commercial Reuse District to Limited "C-2" General Retail and Highway Oriented Commercial District, to allow a construction contractors business limited to use of the building for offices and the site for parking of over-the-road vehicles related to the business.			File # ZON2008-00179		
Description of Action	Rezone property located at 4506 Southwest 9 th Street from "C-1A" Neighborhood Commercial Reuse District to Limited "C-2" General Retail and Highway Oriented Commercial District, to allow a construction contractors business limited to use of the building for offices and the site for parking of over-the-road vehicles related to the business.				
2020 Community Character Plan	Commercial: Auto-Oriented Small-Scale Strip Development				
Horizon 2025 Transportation Plan	SW 9 th Street from Raccoon River to Army Post Road to widen from 4 lanes undivided to 5 lanes undivided				
Current Zoning District	"C-1A" Neighborhood Commercial Reuse 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	1	4		>20%	
Outside Area				>20%	
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	7-3		No	

Ronald Brenizer - 4506 SW 9th Street

ZON2008-00179



09-414

Date _____
Agenda Item 4841
Roll Call # 09/227
313

January 16, 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 January 15, 2009, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 7-3 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			
Bruce Heilman	X			
Ted Irvine		X		
Jeffrey Johannsen				X
Greg Jones	X			
Frances Koontz				X
Jim Martin	X			
Brian Millard	X			
Mike Simonson		X		
Kent Sovern	X			

APPROVAL of a request from Ronald Brenizer Jr. (contract owner) to find the proposed rezoning not in conformance with the Des Moines' 2020 Community Character Plan's future land use designation of Commercial: Auto-Oriented, Small-Scale Strip Commercial.

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			
Bruce Heilman	X			
Ted Irvine		X		
Jeffrey Johannsen				X
Greg Jones	X			
Frances Koontz				X
Jim Martin	X			
Brian Millard	X			
Mike Simonson		X		
Kent Sovern	X			

DENIAL to rezone property located at 4506 Southwest 9th Street, from "C-1A" Neighborhood Commercial Reuse District to Limited "C-2" General Retail and Highway Oriented Commercial District, to allow a construction contractors business limited to use of the building for offices and the site for parking of over-the-road vehicles related to the business. (ZON2008-00179)

Written Responses

- 1 In Favor
- 4 In Opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the requested rezoning with the recommended conditions be found in conformance with the Des Moines' 2020 Community Character Plan's future land use designation of Commercial: Auto-Oriented, Small-Scale Strip Commercial.

Part B) Staff recommends approval of the requested rezoning subject to the owner of the property agreeing to the following conditions:

1. Prohibiting the use of the property adult entertainment business, automobile establishments for display, hire, rental, or sales; financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles; off-premises advertising signs; outdoor storage, package goods stores for the sale of alcoholic beverages; pawn brokerages; and taverns and nightclubs.
2. The site, including landscaping standards and paving of all off-street parking, shall be brought into conformance with an approved Site Plan to the extent it does not eliminate minimum required parking and maneuvering.
3. Any outdoor trash receptacles shall be enclosed and gated with an enclosure built of block, stone, masonry or other material compatible with the primary building, and with 100% opaque metal gates.
4. No materials or equipment shall be stored outside of a building.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to continue use of the property for a building contractor business office with the outside parking of over-the-road vehicles. This is currently in violation of the approved "C-1A" re-use plan that allows for the only use above "C-1" permitted uses to be auto glass repair business. The "C-2" District zoning is required to allow a contractor business.
2. **Size of Site:** 20,556 square feet (0.47 acres).
3. **Existing Zoning (site):** "C-1A" Neighborhood Commercial Reuse District.
4. **Existing Land Use (site):** "Brothers Gutter" contractor business office with outside storage of trailers, equipment, and vehicles involved in the business. The building was originally developed for a full-service gas station.
5. **Adjacent Land Use and Zoning:**

North – "C-1", Use is vehicle display lot.

South – “C-1”, Use is office building.

East – “C-1”, Uses are a pizza delivery restaurant; and a commercial center with an insurance office, pharmacy, and medical clinic.

West – “R1-60”, Use is a two-family dwelling.

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6. **General Neighborhood/Area Land Uses:** The subject property is located along the Southwest 9th Street Commercial Corridor on the northwest corner of the intersection with Emma Avenue.
7. **Applicable Recognized Neighborhood(s):** Watrous South Neighborhood.
8. **Relevant Zoning History:** The City Council rezoned the property from “C-1” to “C-1A” on February 3, 1997. This included the approval of a reuse plan that restricted the use of the property to “C-1” permitted uses and auto glass repair use only.
9. **2020 Community Character Land Use Plan Designation:** Commercial: Auto-Oriented, Small-Scale Strip Commercial.
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, prior to the City Council Hearing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Landscaping & Buffering:** The site is developed based on the original site development of a gas station. The “C-1A” reuse plan required a 6-foot tall opaque fence along the west property line to protect adjoining residential property. The property has limited open space with no landscape perimeter along Southwest 9th Street and a narrow landscape perimeter west of the south drive entrance along Emma Avenue. The site is mostly built or paved, with a rock or gravel surface generally west and south of the building.

Staff believes that the owner of the property should agree, as a condition of any rezoning, to comply with the current landscaping requirements as part of Site Plan to the extent that it does not remove the ability to meet minimum off-street parking requirements. This would involve removing paving along the Southwest 9th Street perimeter, adding plant material to meet open space and perimeter landscaping minimums, and providing a trash enclosure for any outdoor receptacles amongst other requirements. Any enclosure should be built of block, stone, masonry or other material compatible with the primary building, and with 100% opaque metal gates.

2. **Access or Parking:** There is access to the site from two drive entrances off Southwest 9th Street and one drive entrance off Emma Avenue. The applicant plans to keep over-the-road vehicles related to the business parked on-site in addition to customer and employee parking.

The property has been recently cited by zoning enforcement inspectors regarding outdoor storage of equipment and materials related to the contractor business. The applicant has agreed to cease this activity and store those items in a legal location. The Zoning Ordinance requires that all vehicles be parked on a paved surface. Staff believes that the owner of the property should agree to comply with Site Plan regulations as a condition of the rezoning to

include paving of all parking areas and removal of non-paved gravel surfaces that won't be paved for parking.

3. **2020 Community Character Plan:** Staff believes that the scale of the developed site is within the neighborhood scale intended by the Commercial: Auto-Oriented, Small-Scale Strip Commercial designation.

Staff believes that the adjoining surrounding residential neighborhood would be served by prohibiting several uses that would present a negative impact to include: adult entertainment business, automobile establishments for display, hire, rental, or sales; financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles; off-premises advertising signs; outdoor storage, package goods stores for the sale of alcoholic beverages; pawn brokerages; and taverns and nightclubs.

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation.

Jacqueline Easley left @7:10 p.m.

Brian Millard asked about the canopy out front and whether staff is going to require them remove it.

Erik Lundy stated that he would check into whether there were legal non-conforming rights.

Brian Millard asked what the City ordinance is of the outdoor storage of tires and has any voluntary abatement by the owner occurred at all since July.

Erik Lundy stated that according to discussion with the applicant, they have been working to comply but he is not sure if they are a 100% in compliance.

Brian Millard asked would it be appropriate for the Commission, if the request is approved, to set a date where they would have to finish the improvements by.

Erik Lundy stated that they would be under initial enforcement if they did not proceed with working towards the site plan.

Larry Hulse affirmed a date could be given as to the time the project should be in conformance.

Erik Lundy addressed the tire question. If they are displayed for sale they have to be kept out of the front yard setback but can be put outdoors. If they are storage for waste material they are not to be outdoors which is a constant enforcement issue city-wide.

JoAnne Corigliano stated that there is no reason for tires to be there in the first place. Since that business has been there, they have made a mess out of it and she cannot support the request.

Bruce Heilman asked for clarification under the requested action part B. Are over the road vehicles considered equipment?

Erik Lundy stated the sweeper, the trailer that is not hooked up to something is equipment, but the vehicles are not equipment.

Dann Flaherty asked if this project is in conformance today.

Erik Lundy stated that this project is not in conformance without this rezoning.

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Dann Flaherty then asked if it was rezoned would they be in conformance with the new zoning.

Erik Lundy stated he needed to look at the canopy issue and they would also have to develop in conformance with a site plan. They would need to do the types of things we would expect under a site plan.

Dann Flaherty asked if they would need that under a "C-1" use.

Erik Lundy stated with the change of use staff would ask for the site plan requirement. These recommended conditions under the rezoning are reinforcing things that we would impose if it was just a change of use that didn't require rezoning.

Nate Barber, 2829 Forest Drive, attorney and friend of the Brenizer family. Stated that Mr. Brenizer was not aware of the particular zoning this property had when they purchased it on contract. They understood that they would be able to operate their Gutter Plus and maid service business. Since the pictures of the property in July they have made an effort to clean up the property, but have not spent a lot of money on the site, they are waiting to see what the Commission decides.

Dan Flaherty asked if he had any current photographs of the property.

Nate Barber stated that he did not have any current photographs with him. He stated that the applicant is acceptant to the conditions staff has recommended. He also wanted to point out that this is a family business that is employing a lot of people. His clients understand that they need to do certain things and have intent on complying with the conditions that the staff recommends.

Brian Millard asked if there were any environmental issues ongoing in this site.

Nate Barber stated that he did not think there were any environmental issues ongoing at this site, that it is a clean site.

Brian Millard asked should staff make a determination that the canopy grandfathering has ended, or the use is not proper, and it needs to come down, will the applicant comply.

Nate Barber stated that he thinks to remove the canopy would be cost prohibitive, and he is not sure if his client will do it. If the property is not in compliance, something will have to be done or they won't continue to operate at this location.

Joanne Corigliano asked if he needs to have all of that stuff that he uses for his business directly on premises.

Nate Barber stated that the applicant has other property outside of the City where trailers and other equipment can be moved.

JoAnne Corigliano asked if the applicant was purchasing or leasing.

Nate Barber stated that they are buying it on contract.

JoAnne Corigliano asked if the huge mound of dirt stored on the premises was meant to be temporary.

Nate Barber stated that it was intended to be temporary, but now knows that it does not comply and will not continue.

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Bruce Heilman asked how long had client been on the site prior to the photos taken in July.

Nate Barber stated they had operated at the property since 2001.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one in the audience to speak in favor or in opposition of this item.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Brian Millard asked if there is an active CO on this site.

Erik Lundy stated that the last CO that is valid was for the Auto Glass Repair business.

COMMISSION ACTION

JoAnne Corigliano moved to find that the requested rezoning is not in conformance with the Des Moines 2020 Community Character Plan.

Bruce Heilman stated that he agrees with his motion because the applicant has been there for 6 or 7 years and has done nothing. Past performance is the best indicator of future behavior. I have nothing against small business and people offering employment, this just seems to be the wrong spot.

Brian Millard stated that he wants to make sure that staff follows-up with enforcement.

Motion passed 7-3 (Ted Irvine, Leisha Barcus, and Mike Simonson opposed).

JoAnne Corigliano moved to deny the requested rezoning.

Motion passed 7-3 (Ted Irvine, Leisha Barcus, and Mike Simonson opposed).

Respectfully submitted,

Bert Drost

Bert Drost, AICP
Senior Planner

BAD:clw

Attachment

Item ZON2008-00179 Date 11-12-08

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

RECEIVED

NOV 14 2008
COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name John Reed
Signature Randa L. Seward
Address 4401 SW 9th St

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

We are losing merchants as it is
we dont need the area trashed out
to drive away mere business they
should be in an industrial area

Item ZON2008-00179 Date _____

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

RECEIVED

NOV 14 2008
COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name SAM A. SALUKI
Signature Sam a. Saluki
Address 918. 920 SW EMMA AVE

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

this property has NOT complied with
zoning laws for years. They belong in
A Light Industrial Area. A B66
negative to the B-1 STREET OF EMMA

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Item ZON2008-00179 Date 11-13-08

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

(Circle One)

RECEIVED

Print Name Michael Wolnyman
Signature Pbx Goodfellow
Address 912 Leids Avenue

NOV 18 2008

COMMUNITY DEVELOPMENT DEPARTMENT

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

Good provides a level of security to the area. It is hoped the business maintains professional standards and a fine image.

Item ZON2008-00179

Date 11/13/08

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

(Circle One)

RECEIVED

Print Name NASM Properties
Signature JAS-PH MARINO
Address 4317 SW 9th ST

NOV 14 2008

COMMUNITY DEVELOPMENT DEPARTMENT

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

THIS WILL NOT ENHANCE THE AREA. IT IS MY BELIEVE THAT THE CURRENT ZONING STAY IN EFFECT.

Item ZON2008-00179 Date 11-18-08
Reason for opposing or approving this request may be listed below:
Over The Road Vehicle Park Would Severely Distract From The Business Located on S.W. 9th St. S.W. 9th is a main thoroughfare and should be limited to the current uses. I was born on the south side and lived here from 1933 through 1956 and maintained our property there for many years.

Print Name Joseph F. Lee
Signature Joseph F. Lee
Address 4401 S.W. 9th

NOV 20 2008
COMMUNITY DEVELOPMENT DEPARTMENT

RECEIVED (Circle One)

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

622-60 414-60

BLB
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