

Date April 12, 2010

WHEREAS, on March 22, 2010, by Roll Call No. 10-429, it was duly resolved by the City Council, that a public hearing to be held on April 12, 2010, at 5:00 p.m., in the Council Chambers at City Hall, to consider a proposal from Sean and Shawn Osborne, to amend the approved PUD Planned Unit Development District Conceptual Plan for Somerset PUD located in the vicinity of 223 East Burnham Avenue to allow for 100 square feet of the basement area for a pet grooming business as an accessory home occupation subject to the following conditions:

1. The premises at 223 East Burnham Avenue may be used for an accessory home business for a pet grooming salon within a 100 square foot area of the basement level.
2. The business may only be operated by one or more owners of the subject property as their primary residence.
3. The business may only be operated between the hours of 8:00 a.m. and 9:00 p.m.
4. No more than three adult dogs may be kept on the premises at one time.
5. No signage may be placed on premises for the business except that a maximum one square foot sign may be placed within a front window.
6. No dogs or pets related to the business shall be kept outside the premises and shall not be boarded overnight.
7. Should the Zoning Officer determine that the business presents a nuisance or adverse impact on the surrounding neighborhood, an amendment to the PUD Conceptual Plan may be initiated to remove the business use from the premises.

WHEREAS, due notice of said hearing was published in the Des Moines Register on April 1, 2010, as provided by law, setting forth the time and place for hearing on said proposed amendment to the approved PUD Conceptual Plan; and,

WHEREAS, the Plan and Zoning Commission has recommended that the proposed amendment to the approved PUD Conceptual Plan be approved, subject to the conceptual plan being first amended as set forth in the attached letter from the Planning Administrator; and,

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

56

Date April 12, 2010

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 said proposed amendments to the approved PUD Conceptual Plan for the property in the vicinity of 223 East Burnham Avenue, and more specifically described below, are hereby overruled and the hearing is closed.

Lot 33, Somerset, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk and Warren County, Iowa

2. The proposed amended PUD Conceptual Plan is hereby found to be in conformance with the Des Moines 2020 Community Character Land Use Plan, subject to the conditions identified above.

3. The amended PUD Conceptual Plan for the Property described above, which is on file in the Community Development Department, is hereby approved, subject to the plan being first amended to satisfy the conditions recommended by the Plan and Zoning Commission as set forth in the attached letter from the Planning Administrator, and subject to approval of such amendments by the Community Development Director.

FORM APPROVED: Moved by _____ to adopt.


 Michael F. Kelley
 Assistant City Attorney

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

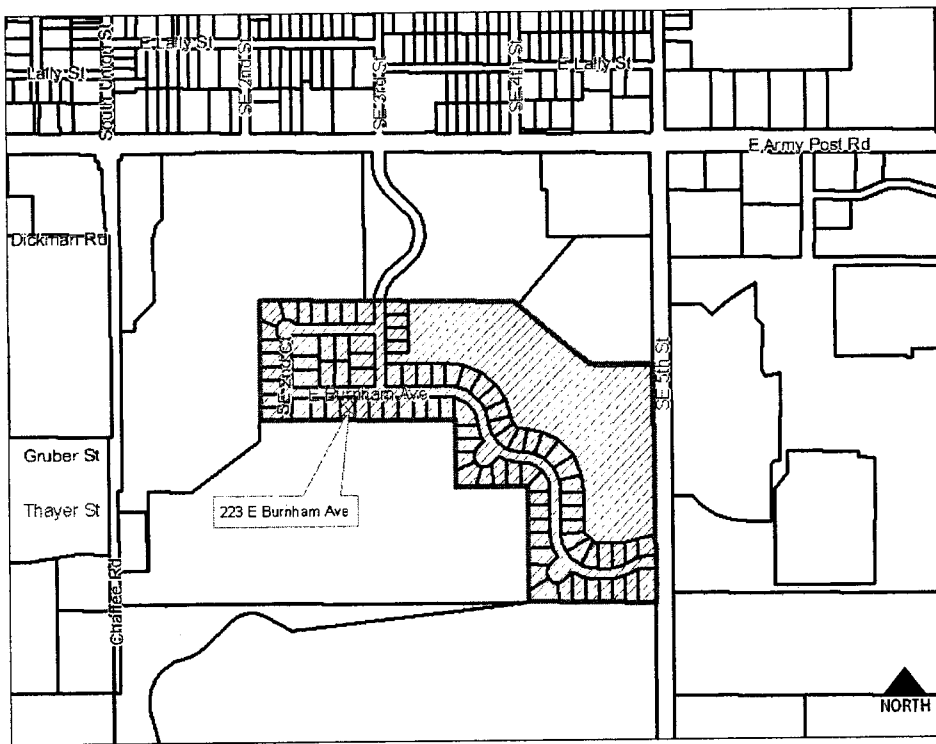
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

 City Clerk

Request from Sean and Shawn Osborne (owners) to amend the Somerset PUD Conceptual Plan for property located at 223 East Burnham Avenue, to allow use of 100 square feet of the basement area for a pet grooming business as an accessory home occupation.		File # ZON2010-00018		
Description of Action	Amend the Somerset PUD Conceptual Plan for property located at 223 East Burnham Avenue, to allow use of 100 square feet of the basement area for a pet grooming business as an accessory home occupation.			
2020 Community Character Plan	Low-Density Residential and Medium-Density Residential			
Horizon 2025 Transportation Plan	No Planned Improvements			
Current Zoning District	"PUD" Planned Unit Development.			
Proposed Zoning District	"PUD" Planned Unit Development.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area	9	4		
Outside Area				
Plan and Zoning Commission Action	Approval	12-0	Required 6/7 Vote of the City Council	Yes
	Denial			No

Somerset PUD Amendment - 223 E Burnham Avenue

ZON2010-00018



12510

March 15, 2010

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 March 4, 2010, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 12-0 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			
Joel Huston	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 Sean and Shawn Osborne (owners) to amend the Somerset PUD Conceptual Plan for property located at 223 East Burnham Avenue to allow use of 100 square feet of the basement area for a pet grooming business as an accessory home occupation. ZON2009-00018

Written Responses

- 9 In Favor
- 4 In Opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested amendment to the Sommerset PUD Conceptual Plan subject to including the following limitations:

1. The premises at 223 East Burnham Avenue may be used for an accessory home business for a pet grooming salon within a 100 square foot area of the basement level.
2. The business may only be operated by one or more owners of the subject property as their primary residence.

3. The business may only be operated between the hours of 8:00 a.m. and 9:00 p.m.
4. No more than three adult dogs may be kept on the premises at one time.
5. No signage may be placed on premises for the business except that a maximum one square foot sign may be placed within a front window.
6. No dogs or pets related to the business shall be kept outside the premises and shall not be boarded overnight.
7. Should the Zoning Officer determine that the business presents a nuisance or adverse impact on the surrounding neighborhood, an amendment to the PUD Conceptual Plan may be initiated to remove the business use from the premises.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is proposing to revise the Sommerset PUD Conceptual Plan for a fifth amendment allowing for a home occupation use within a specific residence.

The applicant proposes using a 10-foot by 10-foot area of the basement in the home to provide pet grooming services. The applicant indicates this activity would be limited within the hours between 8:00 a.m. and 9:00 p.m. Monday through Saturday. Clients would drop-off and pick-up their pets at the location. The applicant, Shawn Osborne, is a Certified Dog Groomer, and plans to only groom up to two dogs per day for a total of eight dogs per week.

2. **Size of Site:** The subject parcel measures 68' x 110' or 7,480 square feet.
3. **Existing Zoning (site):** "PUD" Planned Unit Development.
4. **Existing Land Use (site):** One-story single-family dwelling.
5. **Adjacent Land Use and Zoning:**
 - North* – "PUD", Uses are single-family residential dwellings.
 - South* – "R1-80", Use is the Blank Municipal Golf Course.
 - East* – "PUD", Uses are single-family residential dwellings.
 - West* – "PUD", Uses are single-family residential dwellings.
6. **General Neighborhood/Area Land Uses:** The subject property is located in a mixed density residential development with 91 single-family dwellings and 330 multiple-family apartments. The development is south of the Ft. Des Moines military post, the South Des Moines YMCA, and the Des Moines Law Enforcement Academy, which all front the East Army Post Road major commercial corridor.
7. **Applicable Recognized Neighborhood(s):** Sommerset Neighborhood.
8. **Relevant Zoning History:** The property was rezoned on November 5, 1990 by the City Council to "PUD" on along with the approval of the Sommerset I Conceptual Plan

for 90 single-family lots and 210 unit multiple family apartment complex with managers residence. Subsequent amendments related to revision of the approved development signage, revision of dimensions for multiple-family garages, reduction in lot area for one of the single-family lots, switching sidewalk from the west side of Southeast 3rd Street to the east side and adding a second access drive for the clubhouse. A second PUD Conceptual Plan was approved to the north for another 120 multiple-family apartments and the South Des Moines YMCA.

9. 2020 Community Character Land Use Plan Designation: High-Density Residential.

10. Applicable Regulations: The Commission reviews all proposals to amend PUD Conceptual Plans in accordance with Section 134-700 of the City Code. Any change in a conceptual plan proposed after the city council has approved the plan pursuant to this division shall be considered in the same manner as the original conceptual plan. However, any proposed change to the approved conceptual plan which (i) is disapproved by the plan and zoning commission or (ii) would increase the allowed number of dwelling units or the allowed square footage of commercial space and which is the subject of written protest filed with the city clerk duly signed by the owners of 20 percent or more of the property which is located within 200 feet of the exterior boundaries of the property proposed for change shall not become effective except by the favorable vote of at least four-fifths of all members of the council.

Section 134-704(a) of the City Code states "All uses proposed in a PUD planned unit development district plan shall be in harmony with the existing or anticipated uses of other properties in the surrounding neighborhood and shall generally be in conformance with the city's land use plan."

Section 134-707 of the City code states "Because the PUD planned unit development district is intended to provide relief from the rigid regulations of more conventional zoning districts pursuant to a carefully integrated overall development plan, the board of adjustment shall have no jurisdiction to grant any variation, exception or special permit relating to any property in the PUD district."

II. ADDITIONAL APPLICABLE INFORMATION

1. Review standards: Section 134-343(3) provides for accessory use of a single-family dwelling for the home office of a physician, dentist, artist, attorney, architect, engineer, teacher, or other member of a recognized profession, in that person's bona fide and primary residence, provided that not more than one assistant shall be regularly employed therein, and no colleagues or associates shall use such office; not more than one-half the area of one floor shall be used for such office; no advertising sign shall be permitted excepting a type A identification sign or a combination of such signs not to exceed one square foot in area. It is not the intention of this subsection to include dance studios, music studios, beauty parlors, or barbershops, or uses usually referred to as customary home occupations.

A customary home occupation for a single-family residence would typically be brought to the Board of Adjustment for review under a Special Permit consideration in a typical residential or commercial Zoning district. However, since the Board of Adjustment is precluded from reviewing matters for Zoning on properties in a PUD District, the

Planning Commission and City Council must consider it as a Conceptual Plan amendment.

The applicant did request administrative approval of the use by the Community Development Director as an insubstantial change to the PUD. After review the Community Development Director determined that in other residential districts it would be considered substantial enough to require a Special Permit from the Board of Adjustment including notification of surrounding property owners, therefore it could not be considered administratively.

Staff believes that the requirements applicable to a Special Permit should be used guidance or a baseline in considering the same request in a PUD District. The requirements applicable for Special Permits are found in Section 134-1326(10) of the City Code and are as follows:

- a. The occupation shall be clearly incidental to or secondary to the residential use of the premises.

The business proposes to only use 100 square feet of the basement area for such a use. Comments from the Permit and Development Administrator indicate that this is less than 10% of the total floor area of 1,227 square feet on the premises and would therefore not require building modifications under the Building Codes applicable to commercial occupancy.

- b. No more than two non-resident individuals shall be engaged or employed in the business upon the premises.

The application indicates that one of the owners is the sole operator of the business.

- c. One sign advertising the business is allowed, attached to the residence. Such sign not to exceed one square foot in total area. Free-standing signs are not permitted.

No signs are proposed.

- d. The occupation shall not cause or produce noise, vibration, smoke, dust, odor, or heat or any other impact of a type or quantity not in keeping with the residential character of the neighborhood.

There is some potential for noise and odors associated with dogs and their waste, dependent on the number on premises at any given time. The applicant has indicated that no more than two dogs would be kept on premises for the business at any one time.

- e. No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive, or other restricted material of a type or quantity not ordinarily used for household purposes shall be used or stored on the premises, and the applicant must identify the proper disposition of any hazardous waste. No activity will be allowed which is hazardous to the public health, safety or welfare.

There is no reported use of such materials with this application. The applicant did not indicate plans for disposal of pet waste. Staff assumes that the household solid waste pickup is adequate. The owner should consult the Public Works Department if additional containers become necessary.

- f. There are no outside operation, storage or display of materials or products.

The applicant has not indicated any outside activities related to the operation. The submitted floor plan indicates that dogs will be kenneled in the grooming room. It can be assumed that dogs may periodically need to be exercised outside if they are on premises for durations lasting more than a few hours.

- g. Not more than one-half of the area of one floor level of the dwelling or accessory building shall be used for such business, including the storage of materials or products.

The applicant proposes using 100 square feet of the basement area which is a total of 1,166 square feet. This is less than 10% of the area of one floor.

- h. No alteration of the residential appearance of the premises shall occur.
- i. Hours of operation must not infringe on the residential atmosphere of the neighborhood. All outside activity related to the business must cease between the hours of 9:30 p.m. and 7:00 a.m.

The applicant is proposing to keep activity for the business within the hours of 8:00 a.m. and 9:00 p.m. This does not overlap into the timeframe in the requirement.

- j. The home occupation, including any business storage, shall not displace or impede use of parking spaces required by this chapter. The home occupation shall not displace, interfere with or impede access to public parking.

There is nothing proposed that would impede use of required parking or access to public parking.

- k. The home occupation shall not cause the congregation of business employees at the site or congestion in the availability of on-street parking.

Staff has some concern that drop-off and pick-up traffic may present congestion to use of on-street parking along East Burnham Avenue. This is relative to the neighbor's current experience of residential traffic and on-street parking patterns. If numbers of clients are kept to a reasonable level, then the impact of this would not be more adverse than an in-home daycare. Staff would suggest that no more than three adult dogs be kept on the premises at one time, to avoid generating traffic problems.

- l. The business must be of a type that would be permitted anywhere in the C-2 general retail and highway oriented commercial district without approval from the board of adjustment.

Such a business would be permitted within a building for commercial occupancy in a "C-2" District provided that any exercising runway shall be at least 200 feet from any

“R” District or “C-0” District boundary. It would be treated as a use equivalent to an animal hospital, a veterinary clinic, or a kennel.

- m. Any special permit for a home occupation shall be in effect only for so long as the premises are owned and occupied by the applicant.

While a condition can be imposed that the business may only be operated by an owner occupant, a PUD Conceptual Plan amendment differs from a Special Permit in that it runs with the land. It is suggested that the applicant be put on notice that selling the property may trigger the City to amend the Conceptual Plan to remove the use by the same process as the current request.

- n. Any special permit for a home occupation shall be subject to reconsideration by the board if at any time the zoning enforcement officer determines that the conduct of the occupation has become detrimental to the neighborhood.

This would not be applicable. However, the Zoning Officer would be able to initiate an amendment at any time to remove any approved use should the use present a nuisance or other adverse impact on the surrounding neighborhood. The removal would follow the same process as the current requested amendment.

- 2. **Staff Rationale:** Staff believes that the use of the property for a commercial pet grooming operation is appropriate within the character of the neighborhood if it is limited in its operation. Single-family residences are not permitted to keep more than three adult dogs on the premises. Staff believes a requirement of no more than three adult dogs on the premises would keep the impact at a similar level as any single-family dwelling might present. It is also appropriate to limit the operation to the hours and the area within the home that the applicant has proposed.

SUMMARY OF DISCUSSION

There was no discussion.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one to speak in opposition.

CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION

Kent Sovern moved staff recommendation to approve the requested amendment to the Sommerset PUD Conceptual Plan subject to including the following limitations:

1. The premises at 223 East Burnham Avenue may be used for an accessory home business for a pet grooming salon within a 100 square foot area of the basement level.
2. The business may only be operated by one or more owners of the subject property as their primary residence.
3. The business may only be operated between the hours of 8:00 a.m. and 9:00 p.m.
4. No more than three adult dogs may be kept on the premises at one time.

5. No signage may be placed on premises for the business except that a maximum one square foot sign may be placed within a front window.
6. No dogs or pets related to the business shall be kept outside the premises and shall not be boarded overnight.
7. Should the Zoning Officer determine that the business presents a nuisance or adverse impact on the surrounding neighborhood, an amendment to the PUD Conceptual Plan may be initiated to remove the business use from the premises.

Motion passed 12-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment

Item 2010 00018 Date 3/1/2010

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

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

Print Name Sean Osborne

Signature [Signature]

Address 223 E. Burnham Ave

MAR 03 2010

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

The business will have no affect on any of my access to my home. Nor will it in anyway impfeed my parking.

SEAN OSBORNE

Item 2010 00018

Date 2-25-2010

56

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

36

(Circle One)

RECEIVED

Print Name Corey Null

COMMUNITY DEVELOPMENT

Signature Corey J. Null

MAR 01 2010

Address 306 E Burnham Ave
Om Ia 50315

DEPARTMENT

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

America was founded on Cottage Industry
I am all for capitalism in the US

Item 2010 00018

Date 2-23-2010

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

37

(Circle One)

Print Name Terry Thomas

Signature Terry Thomas

RECEIVED

Address 404 E. Burnham

COMMUNITY DEVELOPMENT

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

FEB 26 2010

DEPARTMENT

2010 00018

Date 2/23/10

Item _____

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

57

(Circle One)

RECEIVED

Print Name Charles Hendricks

COMMUNITY DEVELOPMENT

Signature *Ch Hendricks*

MAR 01 2010

Address 457 E. Burnham

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

2010 00018

Date 2/3/10

Item _____

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

(Circle One) RECEIVED

COMMUNITY DEVELOPMENT

Print Name Derrick Huff

MAR 03 2010

Signature *Derrick Huff*

DEPARTMENT

Address 6621 SE 3rd

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

Item 2010 00018 Date 2-25-10

56

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

90

RECEIVED
COMMUNITY DEVELOPMENT

Print Name FRED PICKERING JR

Signature [Handwritten Signature]

Address 215 E BURNHAM AVE

MAR 01 2010

DEPARTMENT

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

Item 2010 00018 Date _____

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

37

RECEIVED
COMMUNITY DEVELOPMENT

Print Name Carrie Shambler (Scott)

Signature Carrie Shambler

Address 300 E. Burnham

MAR 01 2010

DEPARTMENT

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

Item 2010 00016 Date 2-24-10

56

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

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name Duane Anderson

Signature Duane J. Anderson

FEB 26 2010

Address 227 East Burnham Ave

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

This is a nice young couple with a young child. They need the second income and dog grooming will allow the wife to stay home with the child & still earn some money to help them get by financially. As long as they don't start breeding pets, I see no problem in having a dog grooming business in her basement -

Item 2010 00018 Date 2-24-2010

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

RECEIVED
COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name Christal Cataldo

Signature Christal Cataldo

FEB 26 2010

DEPARTMENT

Address 420 E. Burnham Ave, DM IA

503/5

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

WE DON'T THINK IT WOULD BE A PROBLEM IN THE NEIGHBORHOOD.

Item 2010 00018 Date 2/26/2010

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

10

RECEIVED
(Circle One)
COMMUNITY DEVELOPMENT
MAR 01 2010
DEPARTMENT

Print Name Julie I. Mullenberg
Signature Julie Mullenberg
Address 431 E. Burnham

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

There is not enough parking in some
areas of our street for residents.
Where are these customers going
to park?

Item 2010 00018 Date 2/23/2010

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

76

RECEIVED
(Circle One)
COMMUNITY DEVELOPMENT
FEB 26 2010
DEPARTMENT

Print Name Scott + Michele Donnelly
Signature Michele Donnelly
Address 405 E Burnham Ave

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

Item 2010 00018 Date 2/27/10

56

I (am) in favor of the request.

93

(Circle One)

Print Name Michelle Steffen

Signature Michelle Steffen

RECEIVED
COMMUNITY DEVELOPMENT

Address 324 E. Burnham
DM, IA

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

MAR 02 2010

DEPARTMENT

Item 2010 00018-14 Date 2-26-10

I (am) in favor of the request.

73

(Circle One)

Print Name LEANG MONGTIN

Signature [Signature]

RECEIVED
COMMUNITY DEVELOPMENT

Address 424 E-BURNHAM AVE

MAR 01 2010

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

DEPARTMENT



SOMERSET NEIGHBORHOOD ASSOCIATION

President – Mel Pins – 210 E. Bundy Ave – Des Moines, Iowa 50315
Tel. 515-577-2341 (cell) email: melpins69@msn.com

March 3, 2010

Mr. Michael Ludwig
Planning Administrator
City of Des Moines
602 Robert D Ray Dr.
Des Moines, IA 50309

RE: Amendment to Somerset PUD for Accessory Home Occupation

Dear Mike:

The Somerset Neighborhood Association has discussed the proposed amendment to the Somerset PUD for a rezoning at 223 E Burnham Ave., to allow the use of up to 100 sq. ft. of the property owners' basement for a pet grooming business. After discussion by the Association membership, we decided to not take a formal position on this rezoning; however, we encouraged individual property owners within the Somerset PUD to submit their own comments within the notification and comment period process.

The primary reason for this letter is to express our larger concern with the principle that within single-family residential PUDs, any requested home occupation is looked at as a rezoning that, if approved, would 'run with a property', even after the original party related to the rezoning no longer owns the home.

A customary home occupation for a single-family residence would normally be brought to the Board of Adjustment for review under a Special Permit consideration in a typical residential or commercial Zoning district. However, since the Board of Adjustment is precluded from reviewing matters for Zoning on properties in a PUD District, the Planning Commission and City Council must consider it as a Conceptual Plan amendment. As such, if a rezoning is approved, it in essence becomes a permanent part of the PUD, even after the home owners that originally requested the home occupation may have long ago sold a property and the use is discontinued.

We would like to ask the City to consider amending Municipal Code Section 134-707 and related sections, in order to provide single-family residential PUDs with relief from the rigid regulations of PUD rezoning for relatively insubstantial changes to the PUD, by allowing the zoning board of adjustment to be able to consider variances, exceptions or special permits within single-family residential PUDs, and subject to terms associated with the owner requesting the use, and an expiration of the variance once the requesting party no longer owns the property, as opposed to the strict rezoning approach currently in Code.

56

We believe that this change in the Municipal Code would provide for better long-term planning and use for home occupations and other requested variances within single-family residential PUDs, without permanently affixing a rezoning class to an individual property within a residential PUD.

Sincerely,

A handwritten signature in black ink, appearing to read "Mel Pins". The signature is fluid and cursive, with a large initial "M" and "P".

Mel Pins
President
Somerset Neighborhood Association

Cc: Erik Lundy, Senior City Planner
Brian J. Meyer, Ward 4, Des Moines City Council