

Date June 4, 2007

WHEREAS, on May 21, 2007, by Roll Call No. 07-969, it was duly resolved by the City Council that the application of JDB Realty, LLC, represented by Russell Larson, Vice President, to rezone certain property it owns in the vicinity of 2426 SE 14th Street, more fully described below, be set down for hearing on June 4, 2007, at 5:00 P.M., in the Council Chambers at City Hall; and,

WHEREAS, due notice of said hearing was published in the Des Moines Register on May 24, 2007, as provided by law, setting forth the time and place for hearing on said proposed amendment to the Zoning Ordinance; and,

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

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

The West 63.00 Feet of the East 136.00 Feet of the South ½ of Lot 21, Tallmadge's Subdivision, 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").

from the "C-1" Neighborhood Retail Commercial District to a Limited "C-2" General Retail and Highway Oriented Commercial District classification, subject to the following conditions which are agreed to and accepted by execution of an Acceptance of Rezoning Ordinance in writing by all owners of said property and is binding upon the owners and their successors, heirs and assigns as follows:

- A. A 10 foot wide bufferyard shall be installed along the west boundary of any commercial development of the Property in accordance with the Des Moines Landscape Standards, within 90 days after such commercial use is commenced.
- B. A vehicular access easement shall be provided through the Property to serve any permitted commercial use of the adjoining property to the west. The location of the easement area shall be determined through the site plan approval process for any commercial use of the Property.
- C. The following uses of structures and land shall not be permitted upon the Property:
 - 1) All residential use, excepting single-family residential which shall be permitted;
 - 2) Package goods stores for the sale of alcoholic beverages;
 - 3) Pawn shops;

(continued)

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- 4) Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity;
- 5) Adult entertainment business;
- 6) Billiard parlors, pool halls, and game rooms;
- 7) Taverns and nightclubs; and
- 8) Freestanding garages for general motor vehicle repair and automobile washing establishments when not accessory to a primary vehicle display use.

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

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

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

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

FORM APPROVED:

Roger K. Brown

Roger K. Brown

Assistant City Attorney

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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.

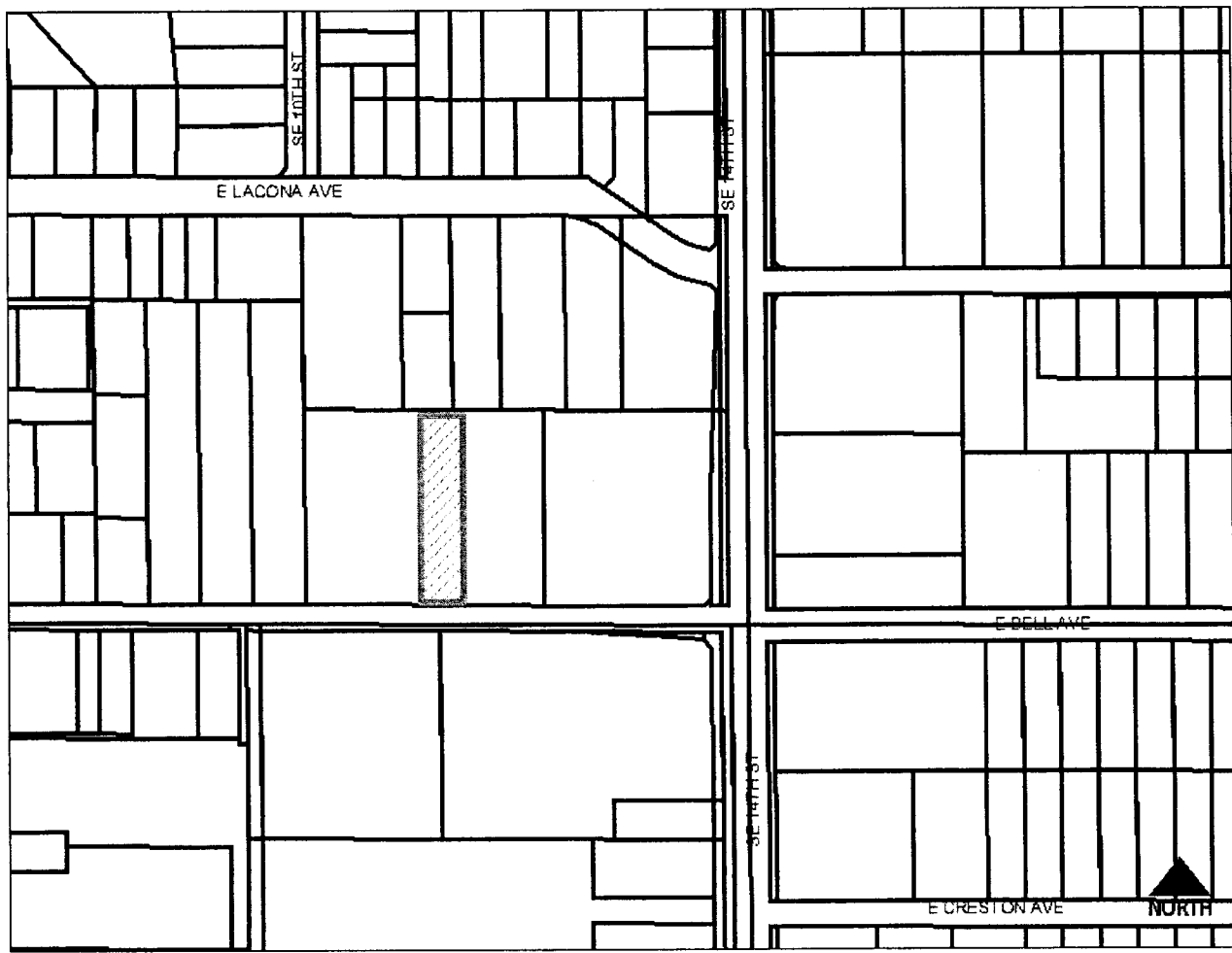
City Clerk

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Request from J.D. Byrider (developer) represented by Russell Larson (officer) to rezone property located at 2426 SE 14 th Street. Subject property is owned by JDB Realty, LLC.			File # ZON2007-00053	
Description of Action	Rezone property from Limited "C-1" Neighborhood Retail Commercial District to Limited "C-2" General Retail and Highway Oriented Commercial District, to allow development of the property for a vehicle display lot.			
2020 Community Character Plan	Commercial: Auto-Oriented Small-Scale Strip Development			
Horizon 2025 Transportation Plan	No Planned Improvements			
Current Zoning District	Limited "C-1" Neighborhood Retail Commercial 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				
Outside Area	3	0	0	<20%
Plan and Zoning Commission Action	Approval	11-0	Required 6/7 Vote of the City Council	Yes
	Denial			No

JD Byrider - 2426 SE 14th Street

ZON2007-00053



Date _____

Agenda Item 5A

Roll Call # _____

May 21, 2007

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 May 3, 2007, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
David Cupp				X
Shirley Daniels	X			
Dann Flaherty				X
Bruce Heilman	X			
Jeffrey Johannsen	X			
Greg Jones	X			
Frances Koontz				X
Kaye Lozier	X			
Jim Martin	X			
Brian Millard	X			
Brook Rosenberg				X
Mike Simonson	X			
Kent Sovern	X			
Tim Urban	X			
Marc Wallace	X			

APPROVAL of a request from J.D. Byrider (developer) represented by Russell Larson (officer) to rezone property located at 2426 SE 14th Street from a Limited "C-1" Neighborhood Retail Commercial District to a Limited "C-2" General Retail and Highway Oriented Commercial District classification, to allow development of the property for a vehicle display lot subject to the owner agreeing to the following conditions: (ZON2007-00053)

1. Installation of a 10'-wide bufferyard along the west boundary of any commercial development of the subject property in accordance with the Des Moines Landscape Standards.
2. Provision of a vehicular access easement through the subject property serving any permitted commercial use of the adjoining property to the west.



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

3. Prohibit the following uses of the property:
 - a. All residential use, excepting single-family residential which shall be permitted;
 - b. Packaged goods liquor stores;
 - c. Pawn shops;
 - d. Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity;
 - e. Adult Entertainment business;
 - f. Billiard parlors, pool halls, and game rooms;
 - g. Taverns and nightclubs; and
 - h. Freestanding garages for general motor vehicle repair and automobile washing establishments when not accessory to a primary vehicle display use.

The subject property is owned by JDB Realty, LLC.

Written Responses

2 In Favor

0 In Opposition

This item would not require a 6/7 vote of City Council.

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Part A) Staff recommends that the Commission find the requested rezoning in conformance with the Des Moines' 2020 Community Character Plan future land use designation.

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

1. Installation of a 10'-wide bufferyard along the west boundary of any commercial development of the subject property in accordance with the Des Moines Landscape Standards.
2. Provision of a vehicular access easement through the subject property serving any permitted commercial use of the adjoining property to the west.
3. Prohibit the following uses of the property:
 - a. All residential use, excepting single-family residential which shall be permitted;
 - b. Packaged goods liquor stores;
 - c. Pawn shops;
 - d. Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity;
 - e. Adult Entertainment business;
 - f. Billiard parlors, pool halls, and game rooms;
 - g. Taverns and nightclubs; and
 - h. Freestanding garages for general motor vehicle repair and automobile washing establishments when not accessory to a primary vehicle display use.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to rezone a 63'-wide strip of land adjoining property to the east already zoned "C-2" for the development of a vehicle display lot. Any development of the site with a vehicle display lot would be subject to review and approval of a site plan under the Design Guidelines for Vehicle Display Lots by the Plan and Zoning Commission.
2. **Size of Site:** 63' x 300' (18,900 square feet) or 0.43 acre. The site would be used in common with an adjoining 2.57 acres already zoned "C-2" District and Limited "C-2" District.
3. **Existing Zoning (site):** Limited "C-1" Neighborhood Retail Commercial District with the following conditions:
 - A. The following uses of land and structures shall not be permitted on the Property:
 1. All residential use, excepting single-family residential which shall be permitted.
 2. Packaged goods liquor stores.
 3. Pawn shops
 4. Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity.
 - B. The following uses of land and structures otherwise permitted in the "C-1" District shall be permitted on the Property only if the Property is developed in combination with the adjoining property fronting SE. 14th Street:
 1. Drug stores
 2. Gas stations / convenience stores
 3. Grocery stores
 4. Department stores
 - C. Primary access to the property must be provided by shared access with adjoining property fronting SE. 14th Street, with the primary access drive being no further than 325 feet west of SE. 14th Street. Secondary commercial access is permitted directly from the Property. Exclusive access to the property from East Bell Avenue is permitted only for single-family residential uses.
4. **Existing Land Use (site):** Vacant land.
5. **Adjacent Land Use and Zoning:**

North – "R1-60", Uses are single-family residential.

South – "C-2", Use is Budget Storage mini-warehousing.

East – "C-2", Use is vacant land with an off-premises advertising sign.

West – Limited "C-1", Use is vacant land.
6. **General Neighborhood/Area Land Uses:** The subject property is within a transition area for land use between the SE 14th Street commercial corridor to the east and a neighborhood with mixed densities of residential to the west.
7. **Applicable Recognized Neighborhood(s):** Indianola Hills Neighborhood.

8. **Relevant Zoning History:** On June 18, 2001, the City Council approved Ordinance 13,959 to rezone the subject property to a limited "C-1". On December 18, 2006, the City Council approved Ordinance 14,618 to rezone an adjoining 57'-wide strip of land to Limited "C-2" District.
9. **2020 Community Character Land Use Plan Designation:** Commercial: Auto-Oriented Small-Scale Strip Development.
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. **Drainage/Grading:** The subject property drains generally to the west and north into an open drainage way. All site development is subject to compliance with all storm water management and soil erosion protection requirements as part of any site plan and/or grading permit approval.
2. **Landscaping & Buffering:** The submitted rezoning sketch demonstrates general compliance with the Des Moines landscaping standards for bufferyards, perimeter, and interior lot landscaping. In addition, the sketch proposes a bufferyard planting and screening scheme along the western edge next to the remaining vacant Limited "C-1" property. While this is not typically a minimum requirement, the applicant is proposing this to better protect residential property further to the west. Staff recommends that the applicant agree to provide this west bufferyard as a condition of the rezoning.
3. **Access or Parking:** A zoning condition of the remaining Limited "C-1" property to the west requires that any commercial use of that property be subject to primary access being provided through commercially developed property along SE 14th Street, with only secondary access permitted directly to the property from East Bell Avenue. Exclusive access to this remaining property to west from East Bell Avenue can only occur if it is developed for single-family residential purposes. In order to ensure that the remaining property to the west has future access for commercial development, staff recommends that the applicant agree to provide a cross access easement through the subject property as a condition of the rezoning.
4. **2020 Community Character Plan:** The requested "C-2" General Retail & Highway Oriented Commercial District allows for uses that are in conformance with the existing Commercial: Auto-Oriented, Small-Scale Strip Development future land use designation. However, due to the proximity to existing residential development, staff recommends that the applicant agree to prohibit the following uses, which are all normally permitted in the "C-1" District, as a condition of the rezoning: all residential uses, excepting single-family residential which shall be permitted; packaged goods liquor stores; pawn shops; financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity. In addition staff recommends that the following uses, normally permitted in "C-2" Districts, also be prohibited as a condition of the rezoning: Adult Entertainment business; automobile washing establishments; Billiard parlors, pool halls, and game rooms; taverns and nightclubs; and freestanding garages for general motor vehicle repair when not accessory to a vehicle display use.

5. **Urban Design:** The subject property is within the SE 14th Street Urban Revitalization Area that provides a tax abatement incentive for use of quality building materials.

Any future development of the subject property as proposed for vehicle display is subject to a review of a site plan by the Plan and Zoning Commission under design guidelines for vehicle display contained in the Site Plan Ordinance.

SUMMARY OF DISCUSSION

Erik Lundy: Presented staff report and recommendation and noted the zoning was returning to the Commission to rectify a situation that arose during the original zoning to allow for C-2 with the intent for a vehicle display lot. Noted the portion being rezoned was intended to expand the site to accommodate the size site the applicant was originally seeking to develop. Rather than disrupt the notification, the applicant was returning with a separate request to add onto the area that was previously zoned. Explained the property has been commercially zoned for a number of years. Indicated the provision of access directly from East 14th Street instead of in front of the residential portion of the neighborhood has remained an important aspect.

Bruce Heilman: Asked if the remaining limited C-1 heading west was under the same ownership.

Erik Lundy: Noted it is under the same ownership and the conditions would remain on that property. There is still another layer underneath to the west that will remain in place. Explained there is some difficulty to developing it from a commercial standpoint based on the drainage way and the topography changes. To do the project the applicant is proposing, they will be looking at filling the western portion to provide that. Noted the site plan will return if it is to go forward as a vehicle display. Ensured the Commission that they will see more detail of the site plan portion when the applicant is ready to develop.

Brian Millard: Asked why the prohibitive uses are shorter and asked if it was an old list.

Erik Lundy: Noted it was comparable to what was placed on the remaining portion that was already C-2, so it would be the same.

Brian Millard: Asked if they need the extra piece of property to run their business.

Erik Lundy: Suggested there was plenty of developable land within what is currently C-2, but he did not know the intentions for their development.

Rick Baumhover, Bishop Engineering: Represented the applicant. Noted they are returning for more because enough was not requested the previous time. Through the process of meeting with the neighborhood and residents in the area, they found a warm reception and support for the project; they were against more density. The request is for another 63'. The original intent was to have display vehicles in the front, employee parking, and customer parking on the side with the building being a showroom as well as some cleaning and care facilities in the rear. However the west portion will be for vehicle storage and the original idea was for single aisle. They are asking to rezone for another aisle to eliminate the need to double stack. One of the requirements was to have a 10' landscape buffer, which they agreed to, however with the idea of putting the landscape buffer in and if they decide to move it out the trees will just be getting established so he added another 10' of green space in the event of future expansion. There is a 42" culvert with an open drainage way to the northwest and there is a sanitary sewer easement that runs through the western portion. There is not a likelihood of advancing much more.

Tim Urban: Asked if there would be any parked cars within the 60' area.

Russ Larson, 4913 Coventry, Davenport, Iowa: Indicated there would be. Explained there are four rows of cars in the storage area. Indicated there is plenty of room that they would not need to have the extra 60'. The main reason they want the 60' is because they don't want any unnecessary cars outside the fence. They want it in the buffered area for the sake of the neighborhood. There was not enough in the original proposal to guarantee there would be no cars sitting outside the fence.

Tim Urban: Explained his question was relative to a response card that was received expressing concern that the applicant promised the land would not be used to store cars and that they would maintain proper upkeep. He indicated the site plan does not show the double loading, only the circulation lane without the extra cars.

Brian Millard: Asked about the fencing enclosure for the storage area. Also asked if the developer is the same company that had a vehicle display lot on Hubbell Avenue

Rick Baumhover: Noted they are required to have buffer yard because of the residential uses and the requirements of staff was to provide a buffer area along the west edge, as well. The enclosure will be fenced for security reasons.

Russ Larson: Explained they will landscape all the way around it, and they would be amenable to colored chain link, he was not fond of wood. Noted JD Byrider on Hubbell Avenue was a franchise a long time ago, but their franchise has been pulled. Indicated they have operated for twelve years in the Bettendorf area and have not had a single complaint.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following individual spoke in favor:

Frank Tangari, 1105 E. Lacona: Explained he did not want cars directly behind his property. The area to the west is grassy and has underground coal mine shafts so he didn't think they could develop it. Would like to have a clear view all the way to Bell Street, but he would be happy with it being enclosed as shown. There have been break-ins at the storage facilities there. He asked what the security would be; if there would be cameras and if it would be well lit.

Mel Keul, 1009 E. Lacona: Explained the new zoning would be behind his property and when they first heard the site would be a used car lot they did not like it, but when they saw the building and the plan they changed their minds. They are hoping it is a step up. Noted if they had come in with the zoning in the beginning they would not have had a problem, but since they have requested change after change people have become suspicious. He was fine with it and he called the neighborhood association and indicated he was happy with it. The only concern he has is that it is limited C1 and C2. Understood it to mean that all the conditions the neighbors had with the old owner, they agree to go to C-1 with restrictions. He assumed those restrictions would follow whoever buys it.

Kaye Lozier: Affirmed that the restrictions follow the zoning.

Brian Millard: Noted there is a lot of trouble with vehicle display lots honoring the zoning ordinance and asked if they would follow the ordinance.

Russ Larson: Noted they did not put the grassy area in because they had already told the City they have grassy islands in the middle and plenty of display areas so they do not have to overload and they have the expanded area in the back so there will not be stuff sitting around. They want it to look good. They have trees in the middle of the parking lot, nice landscaping, they stay within the boundaries and would hold the operator/manager accountable for following the vehicle display zoning ordinance.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Larry Hulse: Reminded the Commission the subject request was just a rezoning; the applicant would have to return with a site plan.

Russ Larson: Noted it would be Monday.

Bruce Heilman: Moved staff recommendation.

Motion passed 11-0.

Respectfully submitted,


Erik Lundy, AICP
Senior Planner

EML:dfa

Attachment

Item 2007 00053

Date 4-30-07

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

(Circle One)

RECEIVED

MAY 03 2007

COMMUNITY DEVELOPMENT DEPARTMENT

Print Name J Melvin Keul

Signature J Melvin Keul

Address 1003 E Laconna
1009 E Laconna

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

I expect that the restrictions that were placed on that property are and will continue to be in place. This is very important to me and the other neighbors.

Item 2007 00053

Date 4-26-07

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

(Circle One)

RECEIVED

APR 27 2007

COMMUNITY DEVELOPMENT DEPARTMENT

Print Name FRANCO A. TANGARI

Signature Franco A Tangari

Address 1105 E Laconna

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

On the promise that JD Byrider stated at our neighborhood meeting that the land directly behind my property would not be used to store cars, and that they would keep proper up keep, the land directly behind my property must stay limited C-2-

Item 2007 00053

Date 4/25/07 **DES MOINES IA 503**

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

01 MAY 2007 PM 2 L

RECEIVED

Print Name Marva Huizar

MAY 14

Signature [Signature]

**COMMUNITY
DEP**

Address 1101 E Lacona

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

Good for neighborhood

RECEIVED AFTER P.2 meeting