

Date June 14, 2010

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on June 3, 2010, its members voted 9-2 with one abstention in support of a motion to recommend **APPROVAL** of a request from David and Greg Ortale (owners), 2100 Wakonda View Drive and 4108 Fleur Drive to vacate a segment of the Wakonda View Drive right-of-way lying south of the paved portion of the street and adjoining the subject properties subject to:

1. Provision of easements for all existing utilities until such time they are relocated at the applicant's expense.
2. Provision of a 15-foot radius at the northeast corner of the requested right-of-way near the intersection of Fleur Drive and Wakonda View Drive.
3. Any use of the right-of-way in common with the adjoining property is subject to compliance with all requirements of the City's Permit & Development Center Staff.
4. Approval by the Traffic and Transportation Division.

MOVED by _____ to receive and file and refer to the Engineering Department, Real Estate Division.

FORM APPROVED:



 Michael F. Kelley
 Assistant City Attorney

(11-2010-1.04)

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.

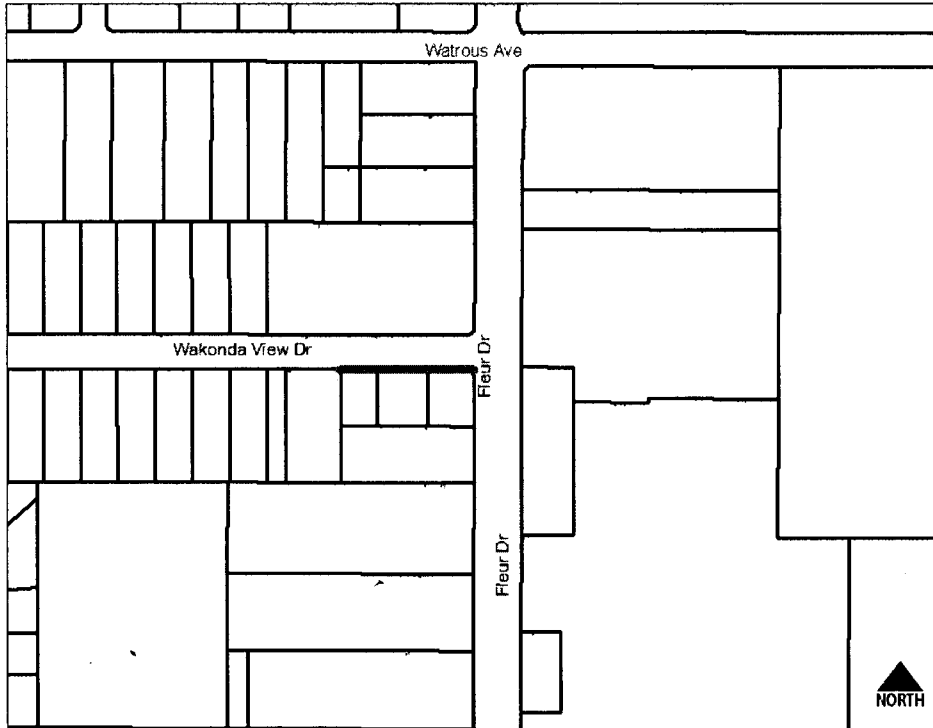
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

 Mayor

 City Clerk

Request from David and Greg Ortale (owners), 2100 Wakonda View Drive and 4108 Fleur Drive, for vacation of a segment of the Wakonda View Drive right-of-way lying south of the paved portion of the street and adjoining the subject properties.				File #	
				11-2010-1.04	
Description of Action	Vacation of a segment of the Wakonda View Drive right-of-way lying south of the paved portion of the street and adjoining the subject properties.				
2020 Community Character Plan	Commercial: Auto-Oriented Community Commercial				
Horizon 2035 Transportation Plan	No Planned Improvements				
Current Zoning District	"C-2" General Retail and Highway-Oriented Commercial District				
Proposed Zoning District	"C-2" General Retail and Highway-Oriented Commercial District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area					
Outside Area					
Plan and Zoning Commission Action	Approval	9-2-1	Required 6/7 Vote of the City Council	Yes	N/A
	Denial			No	N/A

David & Greg Ortale - 2100 Wakonda View Drive & 4108 Fleur Drive 11-2010-1.04



Date _____

Agenda Item 19

Roll Call # _____

June 11, 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 June 3, 2010, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-2-1 as follows:

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 the request from David and Greg Ortale (owners), 2100 Wakonda View Drive and 4108 Fleur Drive, for vacation of a segment of the Wakonda View Drive right-of-way lying south of the paved portion of the street and adjoining the subject properties subject to: 11-2010-1.04

1. Provision of easements for all existing utilities until such time they are relocated at the applicant's expense.
2. Provision of a 15-foot radius at the northeast corner of the requested right-of-way near the intersection of Fleur Drive and Wakonda View Drive.
3. Any use of the right-of-way in common with the adjoining property is subject to compliance with all requirements of the City's Permit & Development Center Staff.
4. Approval by the Traffic and Transportation Division.



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

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation subject to:

1. Provision of easements for all existing utilities until such time they are relocated at the applicant's expense.
2. Provision of a 15-foot radius at the northeast corner of the requested right-of-way near the intersection of Fleur Drive and Wakonda View Drive.
3. Any use of the right-of-way in common with the adjoining property is subject to compliance with all requirements of the City's Permit & Development Center Staff.
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STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed vacation would allow retention of a portion of the vehicle display lot at 4108 Fleur Drive and a portion of the parking lot at 2100 Wakonda View Drive. The paved areas on these properties currently extend to the south curb along Wakonda View Drive. In accordance with recent zoning enforcement applied to these properties, they are required to provide 5-foot paving setbacks that were to have been provided when the paving was originally installed and remove all paving encroaching into the public right-of-way. The requested vacation of right-of-way would allow the appellant to retain 7 additional feet of paving, but not relieve the property owner from providing a 5-foot setback or from removing the paving within the remaining right-of-way.
2. **Size of Site:** 1,872 square feet (0.04 acre).
3. **Existing Zoning (site):** "C-2" General Retail and Highway-Oriented Commercial District.
4. **Existing Land Use (site):** Wakonda View Drive right-of-way.
5. **Adjacent Land Use and Zoning:**

North – "C-2"; Uses are Wakonda View Drive and a Quik Trip convenience store.

South – "C-2"; Uses are Downing Auto Sales and Francie's (restaurant).
6. **General Neighborhood/Area Land Uses:** The subject right-of-way is located at the southwest corner of the intersection of Fleur Drive and Wakonda View Drive along the Fleur Drive major commercial corridor.
7. **Applicable Recognized Neighborhood(s):** Southwestern Hills Neighborhood.
8. **Relevant Zoning History:** The requested vacation of right-of-way would allow the appellant to retain 7 additional feet of paving, but would not relieve the property owner

from providing a 5-foot setback or from removing the paving within the remaining right-of-way. However, on July 28, 2010, the Zoning Board of Adjustment will be considering a request for a Variance of 5 feet less than the minimum required 5 feet of landscaped, permeable setback for off-street parking in a Commercial zoning district.

9. **2020 Community Character Land Use Plan Designation:** Commercial: Auto-Oriented Community Commercial.
10. **Applicable Regulations:** The Commission reviews all proposals to vacate land dedicated for a specific public purpose, such as for streets and parks, to determine whether the land is still needed for such purpose or may be released (vacated) for other use. The recommendation of the Commission is forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Zoning Enforcement History:** The vehicle display lot at 4108 Fleur Drive (Downing Auto Sales) was inspected by a Zoning Enforcement Inspector on May 17, 2008. At that time it was determined that that the paved display area encroached into the right-of-way along both the north and east property lines. In addition to the encroachment, the site is also required to provide a 5-foot setback from the right-of-way and provide curb barriers to prevent encroachment into this right-of-way. The appellant was directed to cease display within the encroachment and setback areas.

During the inspection, the zoning inspector determined the parking areas on the adjacent property at 2100 Wakonda View Drive also encroached into the right-of-way and did not provide the minimum required 5-foot front yard setback.

2. **Utilities:** Mid-American Energy has utility poles and overhead cables along the south side of Wakonda View Drive. Staff recommends reservation of necessary easements for all utilities in place with any vacation.
3. **Traffic/Street System:** The Traffic and Transportation Department does not anticipate that removal of the requested 7-foot wide right-of-way segment will negatively impact traffic or design of the surrounding public street facilities so long as a 15-foot radius is provided at the intersection of Fleur Drive and Wakonda View Drive.
4. **Access or Parking:** The existing vehicle display lot at 4108 Fleur Drive is not subject to the current Site Plan requirements for vehicle display as applicable under the current Zoning Ordinance since the property was converted from a gas station use to vehicle display lot use in 1994. However, the site is required to comply with the off-street parking requirements that were in effect in 1994, which required provision of a 5-foot paving setback. Furthermore, the parking areas on the adjacent property at 2100 Wakonda View Drive also encroach into the right-of-way and did not provide the minimum required 5-foot front yard setback.

SUMMARY OF DISCUSSION

Mike Ludwig presented staff report. He noted that the applicant is requesting vacation of up to 11' along Wakonda View Drive. Staff only recommends vacation of 7' unless the Traffic and Transportation Division authorizes more.

Brian Millard asked if the applicant owned Francie's restaurant and the lot.

Mike Ludwig stated he would let the applicant address the question.

Greg Jones asked about the right-of-way.

Mike Ludwig stated Traffic and Engineer department went out and measured 19.75 from the curb to the property line. The applicant is requesting vacation of up to 11 feet.

Adam Gregg, 5433 NW 91st Street, attorney for Brown Winick Law Firm at 666 Grand Avenue representing the property owners which includes both lot 32 and 33.

Brian Millard removed himself from this discussion due to conflict of interest.

Adam Greg stated they are requesting to vacate up to 11 feet on that portion of lot 33 subject to Traffic and Transportation approval.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one to speak in opposition to the applicant's request.

CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION

Shirley Daniels moved staff recommendation to approve the requested vacation subject to:

1. Provision of easements for all existing utilities until such time they are relocated at the applicant's expense.
2. Provision of a 15-foot radius at the northeast corner of the requested right-of-way near the intersection of Fleur Drive and Wakonda View Drive.
3. Any use of the right-of-way in common with the adjoining property is subject to compliance with all requirements of the City's Permit & Development Center Staff.
4. Approval by the Traffic and Transportation Division.

Motion passed 9-2-1 (Kent Sovern and Dann Flaherty were in opposition; Brian Millard abstained)

Respectfully submitted,


Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment