

Date..... July 9, 2007

WHEREAS, on June 18, 2007, by Roll Call No. 07-1162, it was duly resolved by the City Council that the application of Glen Mikel, as an officer of J Master, LLC., to rezone certain property it is purchasing from Terrance Judge and located in the vicinity of 4100 E. 16th Street, more fully described below, be set down for hearing on July 9, 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 June 28, 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 East 452.0 feet (except the East 20.0 feet for street), of the North 1/2 of the South 1/2 of the Northwest 1/4 of the Southwest 1/4 of Section 24, Township 79 North, Range 24 West of the 5th P.M., 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 "M-1" Light Industrial District to a Limited "M-2" Heavy Industrial 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:

The following uses of structures and land shall be prohibited upon the Property:

- a. Abattoirs, slaughter houses and stockyards;
- b. Cement, lime, gypsum, and plaster of Paris manufacture;
- c. Explosive storage;
- d. Garbage, offal or dead animal reduction or dumping;
- e. Junk yard and salvage yard, however, this shall not prohibit the use of the property as a towing and storage yard for motor vehicles and trailers provided there is no salvaging, stacking or crushing of vehicles on the property;
- f. Sand and gravel pits; and
- g. Solid waste transfer station.

(continued)

★ **Roll Call Number**

Agenda Item Number

64

Date July 9, 2007

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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 "M-2" Heavy Industrial 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

G:\SHARED\LEGAL\BROWN\WORK\REZONING\Mikel.doc

| 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

June 18, 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 June 7, 2007, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 10-0 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 | | | |



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

APPROVAL of a request from Glen Mikel to rezone property located at 4100 East 16th Street from "M-1" Light Industrial District to "M-2" Heavy Industrial District to allow use as a vehicle towing and storage yard subject to the following conditions:
 (ZON2007-00067)

1. Obtainment of a Conditional Use Permit from the Zoning Board of Adjustment.
2. Prohibition of the following uses:
 - a. Abattoirs and slaughter houses or stockyards;
 - b. Cement, lime, gypsum, or plaster of Paris manufacture;
 - c. Explosive storage;
 - d. Garbage, offal or dead animal reduction or dumping;
 - e. Junk yard or salvage yard, however, this shall not prohibit the use of the property as a towing and storage yard for motor vehicles and trailers provided there is no salvaging, stacking or crushing of vehicles on the property;
 - f. Sand or gravel pits; and
 - g. Solid waste transfer station.

Written Responses

0 In Favor

4 In Opposition

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

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

1. Obtainment of a Conditional Use Permit from the Zoning Board of Adjustment.
2. Prohibition of the following uses:
 - a. Abattoirs and slaughter houses or stockyards;
 - b. Cement, lime, gypsum, or plaster of Paris manufacture;
 - c. Explosive storage;
 - d. Garbage, offal or dead animal reduction or dumping;
 - e. Junk yard or salvage yard, however, this shall not prohibit the use of the property as a towing and storage yard for motor vehicles and trailers provided there is no salvaging, stacking or crushing of vehicles on the property;
 - f. Sand or gravel pits; and
 - g. Solid waste transfer station.

STAFF REPORT

1. **Purpose of Request:** The applicant previously operated a towing and storage yard business at 1700 East Aurora Avenue but lost his lease. The office, fleet vehicle and trailer storage portions of the business were recently moved to the subject site. Inoperable vehicles are currently being stored at a different site outside of the City of Des Moines. The applicant wishes to consolidate his business at this site.
2. **Size of Site:** 3.27 acres or 142,441.2 square feet.
3. **Existing Land Use (site):** Office, fleet vehicle and semi-trailer storage.
4. **Adjacent Land Use and Zoning:**
 - North* – "M-1", Use is warehousing/trucking terminal and truck leasing facility.
 - South* – "M-1", Use is single-family dwelling.
 - East* – "M-1", Use is warehousing and vehicle repair.
 - West* – "M-1", Use is warehousing/trucking terminal.
5. **General Neighborhood/Area Land Uses:** The subject site is located in the northeast quadrant of the City in an area that generally consists of industrial uses along the East Euclid Avenue corridor between East 14th Street to the west and Interstate 235 to the east.

6. **Applicable Recognized Neighborhood(s):** None.
7. **2020 Community Character Land Use Plan Designation:** General Industrial.
8. **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 City's Landscaping Standards for "M-2" Districts generally require the following:
 1. 20% open space with a minimum of 1 overstory deciduous tree, 1 evergreen tree and 1 shrub for every 5,000 square feet of required open space.
 2. Parking lots and display lots shall provide landscaping within the interior of the parking lot. All parking lots or display lots containing more than fifty stalls shall be required to landscape the interior of the parking lot with a minimum of 1 overstory tree and 3 shrubs for every forty spaces, at maturity shrubs shall be no taller than 36".
 3. Parking lots and display lots of any size shall be required to separate the paved lot from the property line and landscape this setback perimeter in conformance with Chapter 5, Section II of the Des Moines Landscape Standards.

Section 134-1123 of the Zoning Ordinance states that in the "M-2" District, the following conditions are required:

1. The best practical means known for the disposal of refuse matter or water-carried waste and the abatement of obnoxious or offensive odor, dust, smoke, gas, noise, or similar nuisance shall be employed.
2. All development within the M-2 heavy industrial district is also subject to the adopted landscape standards under the site plan regulations in chapter 82.

These performance standards and the above mentioned landscaping requirements would be reviewed during the Conditional Use Permit and site plan review processes.

2. **Access & Parking:** Access to the subject site is provided from East 16th Street. The site is near the East 14th Street corridor. The proposed rezoning should have a negligible impact on the street system. The submitted site sketch shows 22 parking spaces. Parking will be evaluated during the Conditional Use Permit and site plan review processes. Staff believes there is adequate space on the site to provide the necessary parking.
3. **Applicable Conditional Use Criteria:** Section 134-1122 (5) states that any use not permitted in the "M-1" Light Industrial District, or which does not comply with the limitations on such use applicable in the "M-1" District is permitted in the "M-2" Heavy Industrial District only upon approval by the Board of Adjustment after public hearing. In its determination upon the particular uses at the location requested, the Board of Adjustment shall consider all of the following:
 - a. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing or working in adjoining or surrounding property;
 - b. Such use shall not impair an adequate supply of light and air to surrounding property;

- c. Such use shall not unduly increase congestion in the streets, or public danger of fire and safety;
- d. Such use shall not diminish or impair established property values in adjoining or surrounding property;
- e. Such use shall be in accord with the intent, purpose and spirit of this chapter and the comprehensive plan;
- f. All driveways, parking lots and areas used for temporary storage of vehicles shall be surfaced with an asphaltic or Portland cement binder pavement or such other surfaces as shall be approved by the city engineer so as to provide a durable and dustless surface, and shall be so graded and drained as to dispose of all surface water accumulation within the area.
- g. All areas outside a completely enclosed building used for the storage of inoperable or unsafe vehicles, junk or salvage materials shall be enclosed on all sides by a solid opaque fence and gates at least eight feet in height and of uniform design and color, and should be effectively screened from public view. If such area abuts an area upon the adjoining property which is also used for the storage of inoperable or unsafe vehicles, junk or salvage materials, no fence or setback is required along the common property line while such adjoining use continues. All fences shall be maintained in good repair.
 - h. Junk and salvage materials shall not be stacked higher than the perimeter fence within 75 feet of the fence and shall not be stacked higher than 25 feet.*
- i. The dismantling or repair of vehicles shall occur only upon a impermeable surface with adequate provision for the collection and disposal of fluids and wastes.
- j. Any junk or salvage yard shall provide a paved area for the receipt and temporary storage of material which is screened from the adjoining public right-of-way.
- k. The best practical control technology shall be employed to minimize any obnoxious or offensive odor, dust, smoke, gas, noise, or similar nuisance generated by the proposed use, and the best practical means known shall be employed for the disposal of refuse matter.

SUMMARY OF DISCUSSION

Jason Van Essen: Presented staff report and recommendation and a site sketch provided by the applicant.

Dann Flaherty: Asked if their zoning was being limited only to what the applicant is asking for and if they would be required to surface the gravel areas.

Jason Van Essen: Indicated the zoning was only for what the applicant was asking for and explained the criteria for the conditional use. Storage of inoperable vehicles on gravel is prohibited to have better control over spillage and storm water management. Permeable surfaces could be part of the motion but it hasn't been discussed as of yet.

Glen Mikel, 4243 NW 11th Court: Indicated they do own the property and presented the purchase contract. Asked about the gravel parking, noting they are storing inoperable vehicles that have been involved in collisions so the fluid is already gone and they have no desire to stack vehicles. He would be willing to look at permeable surfaces, but explained there is a warehouse to the north and all the water runs onto the subject property.

Brian Millard: Asked why permeable surfaces in a junkyard; he would be hesitant to recommend anything other than concrete. Explained there would be the same amount of leakage form vehicles.

Mike Ludwig: Suggested during the time of the conditional use permit staff could look at the paving areas and designate where operable vehicles were parked at versus inoperable vehicles.

The applicant is looking at the subject site because of the amount of paved surface. The site makes economic sense to have this type of use on it versus paving another site.

Fran Koontz: Asked what would be done with inoperable vehicles.

Glen Mikel: Indicated the City has an auction process and he only stores inoperable vehicles temporarily.

Mike Ludwig: Noted the conditions recommended by staff are for towing and storage only.

Dann Flaherty: Suggested if the gravel surfaces aren't going to be used, eliminate them and put permeable surfaces in to eliminate the dust.

Glen Mikel: Asked if gravel is permeable.

Dann Flaherty: Indicated it is, but it creates dust.

CHAIRPERSON OPENED THE PUBLIC HEARING

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

The following individual spoke in opposition:

John Morrissey, 2913 Oxford Street: President of the Highland Park Community Action Association and the neighborhood association where the property is located. Was not opposed to the applicant occupying the subject property as long as he meets the City's conditions. He questioned what would become of the use of the Ford plant and expressed concern that the zoning was changed and now the owner is moving from that property. He requested that each application be evaluated on their merits when they are submitted and not have a lessee get a bunch of properties rezoned for the subject type of use and not have any recourse when people come in to use the property for that use. Explained there was a change in the zoning at 1700 Aurora with the same operator so there would now be two properties in the same industrial zone with for the same type of use caused by the same operator and asked what would become of the zoning on the property at 1700 Aurora.

Larry Hulse: Explained unless the owner made an application to change the zoning or the City changed the zoning back, it would remain as it is currently zoned.

John Morrissey: Asked that the City change it back and then entertain the next application for this type of use on its own merits; on a case-by-case basis.

Dann Flaherty: Noted he is welcome to speak to the City Council on that matter, as well.

Jason Van Essen: Noted the previous property had a conditional use that allowed the applicant to operate there and anyone that wanted to use the facility for the same exact operation would need to meet all the conditions of the conditional use or they would be in violation of it.

Mike Ludwig: Noted the existing zoning on the other property is extremely restrictive so rezoning it back to straight M-1 would allow more uses than what is currently allowed on the property.

Larry Hulse: Suggested the Commission could make a motion that staff bring the conditions back to the next meeting so the Commission can decide whether it should be rezoned or not.

Mike Ludwig: Indicated staff could provide a report of actions that might be appropriate and the Commission could forward it on to the City Council.

Sandra Jordan, 1546 E. Madison: Indicated the property has had chemical runoff onto the street and asked if the problem had ever been fixed and indicated the sewer systems do not work well and there are flooding issues. Indicated she was told by a police officer that from the corner of 16th & E. Madison to 14th is not a truck route, but they drive their trucks down there.

Dann Flaherty: Suggested they speak with staff and Traffic and Transportation and talk with staff before leaving the meeting.

Sandra Jordan: Asked what would happen to their property value if the subject property is rezoned as requested.

Larry Hulse: Noted the question is impossible to answer and depends on the Assessor.

Marc Wallace: Asked what kinds of uses are allowed in the area currently without a zoning change.

Mike Ludwig: Explained the M-1 district has a number of allowable uses and noted the proposed limitations are more restrictive than the current zoning.

Glen Mikel: Indicated they want to be good neighbors and don't want to create any problems. Explained they have cleaned the area up dramatically.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Brook Rosenberg: Moved staff recommendation.

Motion passed 10-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:dfa

Attachment

64

Item 2007 00067

Date MAY 29 - 2007

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

(Circle One)

RECEIVED

JUN 06 2007

COMMUNITY DEVELOPMENT
DEPARTMENT

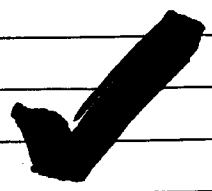
Print Name Martin V. Thornton

Signature Martin V. Thornton

Address 1452 EAST MADISON

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

To much traffic we dont need any more



Item 2007 00067

Date JUNE-1-2007

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

(Circle One)

RECEIVED

JUN 06 2007

COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name FRANK PONTISSO

Signature Frank Pontisso

Address 3819 MARIANNA TR

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



64

Item 2007 00067

Date May 28 07

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

(Circle One)

RECEIVED
MAY 30 2007
COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name Clifford E Thornton

Signature *Clifford E Thornton*

Address 1504 E Madison Ave

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

Too many Semi's already & not suppa.
to be. Also too much traffic
as it is.

Item 2007 00067

Date 5-28-07

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

(Circle One)

RECEIVED
MAY 30 2007
COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name William Russell Hartkopf

Signature *William R Hartkopf*

Address 1526 East Madison Ave

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

Increase in traffic, lot of small children, including
mine a 5 year old & 15 months. The crime rate will
go up. I own a double lot, & zoned Residential
Light Industrial, if they Re-Zone this block to Heavy
Industrial I can never Re-Sell my House as
no bank will Mortgage Residence in Heavy Industrial
What about Taxes.