

Date July 13, 2009

WHEREAS, on March 23, 2009 by Roll Call No. 09-467 the City Council of the City of Des Moines resolved to hold a hearing on an application submitted by Florencio Estrada to rezone property located at 335 Forest Avenue from R1-60 One-Family Low Density Residential District to R-3 Multiple Family Residential District to allow construction of a detached garage as an accessory use to an existing 6-unit multiple-family residential dwelling for April 6, 2009 at 5:00 p.m. in Council Chamber at City Hall in Des Moines.

The subject property is more specifically described as follows:

(except the North 180 feet of the South 250 feet of the West 50 feet) and (except the East 5 feet of the South 148.5 feet) of the West 303.18 feet, Lot 53, Official Plat Government Lot 3 & Southeast ¼ Section 34, Township 79 North, Range 24 West of the Fifth P.M., all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on March 5, 2009 its members voted 6-5 in support of a motion recommending **DENIAL** of the proposed rezoning; and

WHEREAS, due notice of the April 6, 2009 hearing was published in the Des Moines Register on March 26, 2009 as provided by law, setting forth the time and place for hearing on the proposed application; and

WHEREAS, on April 6, 2009 by Roll Call no. 09-573 the City Council continued the hearing on this matter until 5:00 p.m. on July 13, 2009 in City Council Chambers to enable the applicant to meet with Community Development Department staff regarding a plan for development of the property; and

WHEREAS, Community Development Department staff have made repeated by unsuccessful attempts to elicit a plan from the applicant as described in the Council Communication concerning this agenda item but neither applicant nor his representative have submitted a plan or any other information regarding the proposed rezoning since the April 6, 2009 City Council meeting; and

WHEREAS, pursuant to the published notice and Roll Call No. 09-573 continuing the hearing, those interested in the proposed rezoning, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to City Council.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Des Moines that upon due consideration of the facts and statements of interested persons and arguments of

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counsel, the hearing is closed and the application to rezone the property to R-3 district classification is hereby:

(Six votes needed for approval)

APPROVED: _____

DENIED: _____

(Moved by _____ to _____)

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

Date _____

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Roll Call # _____

March 20, 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 March 5, 2009, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 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			
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 staff recommendation to find the proposed rezoning **not** in conformance with the existing Des Moines' 2020 Community Character Plan.

By separate motion Commissioners recommended 7-4 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 of the request to amend the Des Moines' 2020 Community Character Plan to a future land use designation of Low/Medium Density Residential. (21-2008-4.23)

By separate motion Commissioners recommended 6-5 as follows:

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
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 of a request from Florencio Estrada (owner) to rezone property located at 335 Forest Avenue from "R1-60" One-Family Low-Density Residential District to "R-3" Multiple-Family Residential District to allow construction of a detached garage as an accessory use to an existing 6-unit multiple-family residential dwelling. (ZON2008-00198)

Written Responses

- 8 In Favor
- 3 In Opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the requested rezoning be found not in conformance with the existing Des Moines' 2020 Community Character Plan.

Part B) Staff recommends denial of the requested amendment to the Des Moines' 2020 Community Character Plan to a future land use designation of Low/Medium Density Residential.

Part C) Staff recommends denial of the request rezoning to "R-3" Multiple Family Residential District.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to construct a 20-foot by 24-foot detached garage as part of an existing six-unit apartment complex. Staff has determined that this can be permitted as a private garage accessory to the existing units without any further Zoning action. However, the applicant has further indicated the intent to have zoning in place that would allow expansion of the existing apartment building or redevelopment which would increase the number of dwelling units on the property. The applicant has not provided any specific concepts for how an expansion of the number of dwelling units would be developed.
2. **Size of Site:** 1.843 acres (80,302 square feet).

3. **Existing Zoning (Site):** "R1-60" One-Family Low-Density Residential District.
4. **Existing Land Use (Site):** Six-unit multiple-family residential complex.
5. **Adjacent Land Use and Zoning:**
 - North** – "R1-60", Uses are single-family dwelling and vacant land.
 - South** – "R1-60", Uses are single-family dwellings, a two-family dwelling and vacant land.
 - East** – "R1-60", Uses are single-family dwellings and vacant land.
 - West** – "R1-60", Uses are single-family dwellings.
6. **General/Neighborhood Area Land Uses:** The surrounding neighborhood area is primarily comprised of low to medium density residential development built between 1890 and 1920, with a scattering of infill development.
7. **Applicable Recognized Neighborhood(s):** River Bend Association.
8. **Relevant Zoning History:** On May 23, 1994 by Ordinance 13,040 the City Council rezoned the subject property from "R-3" Multiple Family Residential District to "R1-60" One-Family Low-Density Residential District.
9. **2020 Community Character Plan Designation:** Low Density Residential.
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, in addition to the existing regulations. The recommendation of the Commission will be forwarded to the City Council.

II. OTHER APPLICABLE INFORMATION

1. **Natural Site Features:** The subject property has significant vegetation. The proposed garage appears to be within an open space area. Any future expansion to develop additional units on the subject property will require a tree survey and mitigation plan based on trees identified to be removed, as part of the required Site Plan for consideration by the Commission.
2. **Drainage/Grading:** The amount of proposed development (a 20-foot by 24-foot garage) would not require designed storm water management or a grading plan review. The developer would be required to direct roof drainage away from adjoining private property.

Any future expansion to develop additional units on the subject property pursuant to this rezoning request would require a Site Plan submittal that is subject to all drainage and storm water management requirements. Because the Site is over an acre, it would be required to comply with special storm water quality requirements by managing more frequent rain events of lesser volumes.

3. **Landscaping & Buffering:** The proposed development does not require a Site Plan and would not require any additional landscaping. Any future expansion to develop additional units pursuant to this rezoning request would require compliance with the Des Moines Landscape Standards.

4. **Access or Parking:** The subject apartment complex has an unimproved access drive to Orchard Avenue on the north side of the subject property. Also existing off-street parking is not improved with paving. Any future expansion to develop additional units will require conformance with all Zoning and Site Plan requirements for off-street parking development including paving, marking, landscaping and storm water management.
5. **2020 Community Character Plan:** The applicant is requesting an amendment to the Des Moines' 2020 Community Character Plan to change the future land use designation to Low/Medium Density Residential from Low Density Residential. This will allow for a limited "R-3" Zoning with up to 12 units per acre to be in conformance with the Plan based on maximum unit densities permitted under those district regulations. The existing Low Density Residential designation is based on the River Bend Neighborhood Action Plan future land use which seeks to discourage increases in residential density for this area. A letter to the Commission from the River Bend Association has indicated opposition to the requested rezoning.
6. **Urban Design:** The proposed garage submitted by the applicant indicates a typical residential garage with a gabled roof and lap style siding. Any alterations to the existing apartment complex that would involve an increase in units will require consideration of a Site Plan by the Commission under multiple-family residential design guidelines.
7. **Staff Rationale:** The requested garage may be granted without the rezoning as a permitted private residential garage in the "R1-60" District. A limited "R-3" rezoning would allow for up to 15 residential units on the property based on maximum densities allowed and given the site area. This level of density would not reflect the existing surrounding low density residential character sought to be preserved in the River Bend Neighborhood Action Plan. Staff does not believe that the requested comprehensive plan amendment and rezoning are appropriate for the surrounding residential neighborhood area.

SUMMARY OF DISCUSSION

Jason Van Essen presented the staff report and recommendations.

Brian Millard asked will there be any requirement to pave if the garage is built.

Jason Van Essen stated that the applicant would not be required to pave if the garage is built, but any expansion of the apartments would require the site to be brought into conformance with current development standards.

Bruce Heilman asked if there are size restrictions on building the garage.

Jason Van Essen stated that there are limitations. However, what they are proposing is very similar to a typical single-family garage and does not exceed the limitations.

Florencio Estrada, 335 Forest Avenue, introduced Tim Waddell to speak on his behalf.

Tim Waddell gave an overview of the steps that lead Mr. Estrada to this request including meetings with City staff. Stated the Commission has supported other rezoning requests for multiple-family in the area and asked that the Commission be consistent and approve Mr. Estrada's request.

Bruce Heilman asked how long Mr. Estrada has owned the property and asked if the two litter incidences referenced in the letter from the neighborhood were ongoing problems or isolated occurrences.

Florencio Estrada stated that he has owned the property for fourteen years and that they were isolated incidences.

Bruce Heilman asked Mr. Estrada to explain why the City had to clean up the property and levy a fine, and why the River Bend Neighborhood had to pick up litter on the property.

Florencio Estrada explained that he was out of the state when the City cleaned his property and received a bill from the City when he returned. Stated the second time was due to illegal dumping in the area.

Tom Waddell explained that there is a street behind Mr. Estrada's property that the City owns and there have been problems with illegal dumping.

Brian Millard stated that he went by the property today and it was full of litter.

Florencio Estrada stated that he has not been to the property today.

Ted Irvine asked if Mr. Estrada would be oppose to coming back to the Commission if and when he has a plan for the property since he can build the garage with the existing zoning.

Tom Waddell stated that even though that is true he does not want to go through this process all over again because of the time and money it takes, and because the process makes him feel uncomfortable.

Shirley Daniels asked if Mr. Estrada resides at this property.

Florencio Estrada stated that he does not.

Bruce Heilman asked where he lives.

Florencio Estrada stated he lives in Windsor Heights.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following spoke in opposition:

Jeanne Johnson, president of the River Bend Neighborhood Association, 811 Hickman Road, noted the letter she submitted voicing the Association's opposition to the rezoning. Stated the neighborhood is not opposed to the garage but believes the proposed rezoning would lead to more being done with the property than they are comfortable with. Reiterated the problems they have had with litter and the general upkeep of the property.

Bruce Heilman asked if the opposition from the neighborhood association comes down to management and lack of maintenance, or is it that they just do not want multi-family at this location.

Jeanne Johnson stated that she has no idea what the future holds for this lot but wants the property's zoning to remain as it is, and that they do not want multi-family to continue.

Brian Millard asked if the applicant came back with a plan would the neighborhood consider it.

Jeanne Johnson stated that she would not be opposed to considering a plan.

Applicant's Rebuttal

Tom Waddell addressed the maintenance issues. Stated that during the snow melt there is going to be debris around trees on any property and that Mr. Estrada should not be singled out. Stated

Mr. Estrada wants to improve his property. Expressed his belief that this properties future is multi-family given its characteristics regardless of who owns the property.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Leisha Barcus asked staff if any commercial uses would be allowed by the proposed rezoning.

Jason Van Essen stated no, the "R-3" District only allows residential use.

Jeffrey Johannsen asked if Mr. Estrada would be allowed to use the garage to work on his trucks or for other activities not really associated with the apartments.

Jason Van Essen stated that he could use the garage for purposes that support the multi-family use such as the storage of maintenance equipment and supplies. Use of the garage must be secondary to the primary use of the property. The garage could not be used to conduct a commercial business or to support a commercial business located elsewhere.

Bruce Heilman stated that this is exactly the type of parcel that draws the Commission's attention as to what to do with it and from the practical standpoint this property should be zoned "R-3". Indicated he is leaning in favor of the rezoning.

Ted Irvine stated that regardless of how this body votes today, Mr. Estrada can build his garage under the current zoning. Indicated he believed the Commission would like to see a plan before considering rezoning.

Greg Jones stated that this looks like a multi-family parcel and that he agrees with Bruce.

Larry Hulse stated that staff's recommendation was developed based on the City's Future Land Use Plan and the staff's belief that changes to the plan should not be made without knowing what is going to happen to the property. Recognized that the property is large but noted that it could be subdivided into lots for single-family or duplexes.

Dann Flaherty stated that he agrees with Ted and understands the neighborhood association's concerns. He expressed concern that the applicant has no development plan for the Commission to consider.

COMMISSION ACTION

Brian Millard moved staff recommendation Part A) That the requested rezoning be found not in conformance with the existing Des Moines' 2020 Community Character Plan.

Motion passed 11-0

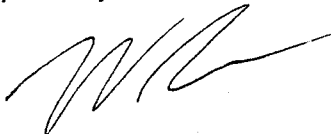
Brian Millard moved staff recommendation Part B) Denial of the requested amendment to the Des Moines' 2020 Community Character Plan to a future land use designation of Low/Medium Density Residential.

Motion passed 7-4 (Leisha Barcus, Bruce Heilman, Jacqueline Easley, and Greg Jones voted in opposition)

Brian Millard moved staff recommendation Part C) Denial of the request rezoning to "R-3" Multiple Family Residential District.

Motion passed 6-5 (Leisha Barcus, Shirley Daniels, Jacqueline Easley, Bruce Heilman, and Greg Jones voted in opposition)

Respectfully submitted,



Jason M. Van Essen, AICP
Senior Planner

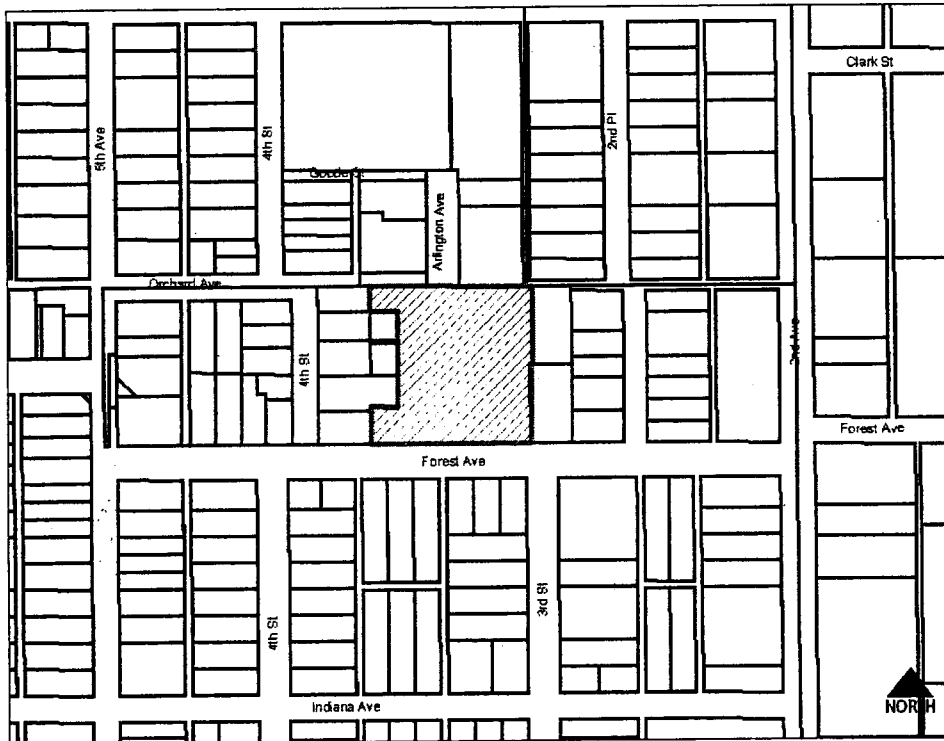
JMV:clw

Attachment

Request from Florencio Estrada (owner) to rezone property located at 335 Forest Avenue.				File #	
				ZON2008-00198	
Description of Action		Rezone property from "R1-60" One-Family Low-Density Residential District to "R-3" Multiple-Family Residential District to allow construction of a detached garage as an accessory use to an existing 6-unit multiple-family residential dwelling.			
2020 Community Character Plan		Low-Density Residential			
Horizon 2025 Transportation Plan		No Planned Improvements			
Current Zoning District		"R1-60" One-Family Low-Density Residential District			
Proposed Zoning District		"R-3" Multiple-Family Residential District			
Consent Card Responses		In Favor	Not In Favor	Undetermined	% Opposition
Inside Area		8	3		<20%
Outside Area					
Plan and Zoning Commission Action		Approval		Required 6/7 Vote of the City Council	
		Denial			
		6-5		Yes	X
				No	

Florencio Estrada - 335 Forest Avenue

ZON2008-00198



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January 26, 2009

Planning and Zoning Commission
City of Des Moines Community Development
602 Robert D. Ray Drive
Des Moines, Iowa 50309

Re: Rezoning request for 335 Forest Avenue

Dear Commission Members:

On behalf of the River Bend Neighborhood Association I am writing to oppose the request by the owner of 335 Forest Avenue to rezone that property from R1-60 One-Family Low-Density Residential District to R-3 Multiple-Family Residential District for the purpose of building a detached garage.

We oppose the expansion of a non-conforming use by construction on this property. In addition, this property has been a problem with respect to litter and garbage strewn on the driveway into the property. On one recent occasion the members of the Association picked up litter and garbage, and the City on another occasion has picked up the litter and fined the owner. The owner shows little regard for the responsibilities of maintenance of the lot.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne K. Johnson".

Jeanne K. Johnson
President

RECEIVED
COMMUNITY DEVELOPMENT
JAN 27 2009
DEPARTMENT

Item ZON 2008-00198 Date 1-28-09

I (am) in favor of the request.

(Circle One)

Print Name Jeanne K Johnson

Signature Jeanne K Johnson

Address 811 Hickman Rd, DM

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

Do not want additional structures, building on lot which is nonconforming use. Owner does not pick up better garbage - poor upkeep of current structure.

RIVERBAND NEIGHBORHOOD ASSOCIATION

Item ZON 2008-00198 Date January 27, 2009

I (am) in favor of the request.

RECEIVED

Print Name Andrea Lewis

Signature Andrea Lewis

Address 329 3rd St NW

COMMUNITY DEVELOPMENT DEPARTMENT

FEB 03 2009

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

This is the second request. Not interested.

Item 2008 00198

Date 2-25-09

I (am) in favor of the request.

(Circle One)

RECEIVED

Print Name Jeanne K Johnson

Signature Jeanne K Johnson

COMMUNITY DEVELOPMENT DEPARTMENT

Address 811 HICKMAN RD
FOR RIVERBAND ASSOC

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

Do not want parcel to develop property commercially in future

Item 2008 00198

Date Jan-25-09

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

RECEIVED

Print Name SHERY BODDEN

FEB 28 2009

Signature [Signature]

COMMUNITY DEVELOPMENT DEPARTMENT

Address 1141 Eubank Ave.

Des Moines, Iowa

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

Item ZDN2008-00198

Date 2/15/09

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

RECEIVED

Print Name Dana Weikum

FEB 09 2009

Signature [Signature]

COMMUNITY DEVELOPMENT DEPARTMENT

Address 1403 2nd A

DSM 50314

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

Item ZON 2008-00198 Date 2/8/09

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

RECEIVED

FEB 11 2009

Print Name Paul Steome Stribel's

Signature [Signature]

Address 1430 2nd Ave

COMMUNITY DEVELOPMENT DEPARTMENT

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

Item ZON 2008-00198 Date 01/28/09

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

(Circle One)

Print Name CARROLL S BAACEWELL

Signature [Signature]

Address 1321 4th St

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

Item 2008 00198 -

Date 2-26-09

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

(Circle One)

Print Name Fred Noon

Signature [Signature]

Address 349 Forest Ave

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

Item ZON 2008-00198 Date 1/28/09

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

(Circle One)

Print Name Das Hien

Signature Hien Van Dao

Address 348 Forest Ave.

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

Approve | No comment.

Item 2008 00198 Date 3/2/09

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

RECEIVED

Print Name KIM J THOMAS

Signature 4564-NE-34th Ct

MAR 04 2009

COMMUNITY DEVELOPMENT DEPARTMENT

Address [Signature]

Reason for opposing or approving this request may be listed below:
improvement of the neighborhood

Item ZON 2008-00198 Date _____

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

RECEIVED
(Circle One)

FEB 06 2009

Print Name Koinonia Investment Corp

COMMUNITY DEVELOPMENT DEPARTMENT

Signature [Signature]

Address 330 Forest

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

