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**Date** July 26, 2010

WHEREAS, on July 12, 2010, by Roll Call No. 10-1127, it was duly resolved by the City Council that the application of Irma Lopez to rezone certain property she owns in the vicinity of 1120 East 8th Street, more fully described as follows:

East ½ of Lot 1, Block B, Deans 2nd Subdivision of Outlot, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

from the "R1-60" One-Family Low-Density Residential District to the "R-2" Two-Family Residential District classification, to allow the existing two-story residential building to be used for two dwelling units, be set down for hearing on July 26, 2010, at 5:00 P.M., in the Council Chambers of the City Hall; and,

WHEREAS, due notice of said hearing was published in the Des Moines Register on July 15, 2010, 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 Plan and Zoning Commission voted 13-0 in support of a motion to recommend that the proposed rezoning and the corresponding amendment to the comprehensive plan be denied.

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 are hereby sustained, and the hearing is closed.
2. The City Council hereby makes the following findings of fact regarding the proposed rezoning:
  - a. The proposed rezoning is not in conformance with the Des Moines 2020 Community Character Land Use Plan. Approval of the rezoning would require an amendment to the Plan.
  - b. The property is only 3,658 square feet in size and does not meet the minimum area requirement of 10,000 square feet for a two-family dwelling in the "R-2" District.

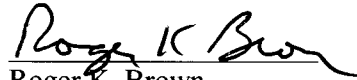
Date July 26, 2010

- c. Rezoning the property to a two-family dwelling is not in conformance with the predominant character of the area in which the property is located.
- d. If the application of the existing zoning regulations has the effect of denying the owner any economic use of the property, then the appropriate remedy is to seek relief from the Zoning Board of Adjustment.

3. The proposed rezoning of the property described above to the "R-2" Two-Family Residential District classification is hereby DENIED.

MOVED by \_\_\_\_\_ to adopt and deny the proposed rezoning..

FORM APPROVED:

  
 Roger K. Brown  
 Assistant City Attorney

NOTE: If the City Council desires to approve the rezoning, an appropriate motion would be to continue the public hearing until August 8, 2010, and to direct the Legal Department to prepare the appropriate legislation to approve the proposed rezoning subject to appropriate conditions.

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

July 6, 2010

Date	July 26, 2010
Agenda Item	45
Referred to	

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 July 1, 2010, the following action was taken:

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 13-0 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			

**DENIAL** of a request from Irma Lopez (owner) to rezone property located at 1120 East 8<sup>th</sup> Street from "R1-60" to "R-2" Part A) The proposed rezoning is **not** in conformance with the current Des Moines' 2020 Community Character Plan, Part B) the requested amendment to the Des Moines' 2020 Community Character Plan future land use designation from Low Density Residential to Low/Medium Density Residential should be denied; and Part C) the rezoning of subject property from "R1-60" One-Family Low-Density Residential District to "R-2" Two-Family Residential District should be denied. ZON2010-00098

**STAFF RECOMMENDATION TO THE P&Z COMMISSION**

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

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



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

Part C) Staff recommends denial of the requested rezoning.

Written Responses

- 1 In Favor
- 1 In Opposition

**STAFF REPORT**

**I. GENERAL INFORMATION**

1. **Purpose of Request:** On March 3, 2010, the Neighborhood Inspection Division (NID) issued a code violation case against the appellant for illegally operating a single-family dwelling as a duplex within an “R1-60” One-Family Low-Density Residential District. The subject property has no record of having any legal non-conforming rights allowing the duplex use. The appellant is seeking a re-zoning to obtain a rental certificate for the duplex use.
2. **Size of Site:** 3,658 square feet.
3. **Existing Zoning (site):** “R1-60” One-Family Low-Density Residential District.
4. **Existing Land Use (site):** Single-family dwelling configured for two units.
5. **Adjacent Land Use and Zoning:**
  - North* – “R1-60”, Uses include Filmore Street right-of-way and single-family dwellings.
  - South* – “R1-60”, Use a single-family dwelling.
  - East* – “R1-60”, Uses include East 8th Street right-of-way and single-family dwellings.
  - West* – “R1-60”, Use a single-family dwelling.
6. **General Neighborhood/Area Land Uses:** The subject property is located at the southwest corner of the intersection of Filmore Street and East 8th Street in a predominantly low-density residential neighborhood.
7. **Applicable Recognized Neighborhood(s):** Capital Park Neighborhood.
8. **Relevant Zoning History:** N/A.
9. **2020 Community Character Land Use 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, prior to the City Council Hearing. The recommendation of the Commission will be forwarded to the City Council.

Should the applicant be denied rezoning by the City Council, they may submit an appeal to the Board of Adjustment for a Use Variance to allow the proposed use under provisions in Sec. 134-64(2). This would require the owner to demonstrate unique circumstances have created an unnecessary hardship by not allowing the property to be used for other than uses permitted in the "R1-60" District. Staff does not support such a request.

## II. ADDITIONAL APPLICABLE INFORMATION

1. **Natural Site Features:** The subject property is a built site with a large portion of open space area in the eastern front yard of the dwelling. There is an existing mature tree within the front (east) yard.
2. **Access/Parking:** Two-family dwellings are required to provide a minimum of two off-street parking spaces located outside of the front yard setback. In this instance, an existing paved drive approach is located off of East 8th Street.
3. **2020 Community Character Plan:** The Des Moines' 2020 Community Character Plan projects the area west of East 8th Street for Low Density residential including two-family units in existence before 1997. The requested rezoning would require amendment to the Plan to give the property a Low/Medium Density Residential designation.
4. While there are scattered examples of two-family and multiple-family dwelling conversions within the surrounding area, it was the intent of the Plan to transition the neighborhood area back to original single-family density. Staff believes that an amendment from Low Density land use description and single-family zoning would not be appropriate for the subject property given the remaining surrounding predominance of single-family dwellings in the immediate area.

## SUMMARY OF DISCUSSION

Jason Van Essen presented staff report and recommendation.

Mike Ludwig stated that when the neighborhood was rezoned to "R1-60" in the 1990's, there was provision made in the zoning ordinance where legally conforming duplex structures received "permitted use" status in the "R1-60" zoning district. There were never any permits taken out for conversion of the subject property and it has never had a rental certificate. Therefore, the subject property is not a permitted use in the "R1-60" zoning district. It does not have grandfather rights either.

Dann Flaherty asked if the applicant met with their neighbors.

Jason Van Essen stated the applicant picked up their list from staff. Staff is not sure if the held a meeting but will defer the question to the applicant.

Irma Lopez 13002 Hammontree, Urbandale stated that she thought the property was already a duplex when she purchased it and never asked the City about zoning.

Brian Millard asked did the seller represent the property as a legal duplex.

Irma Lopez stated no, her family lived there so she did not know it was not legally a duplex.

**CHAIRPERSON OPENED THE PUBLIC HEARING**

*There was no one to speak in favor of the applicant's request.*

*The following spoke in opposition of the applicant's request.*

Marilyn Bruce 833 Walker Street stressed the importance of not rezoning the applicant's property because the lot is too small. She noted how the neighborhood association fought to get the neighborhood all zoned low density residential (R1-60) because the lot sizes are small and parking is a problem. She stated she was sympathetic to the applicant's request but she would like for that property to remain single-family.

**CHAIRPERSON CLOSED THE PUBLIC HEARING**

Jacqueline Easley asked staff to be sure to clearly communicate to the applicant through interpretation of the Commission's decision and why.

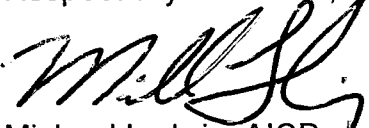
Mike Ludwig stated all of staff's communications will be in writing to the applicant and staff can have the communication translated when they send it out or offer that opportunity to the applicant. Tonight is just a recommendation to the City Council and the City Council will be holding a public hearing on the rezoning.

**COMMISSION ACTION**

Brian Millard moved staff recommendation to find the proposed rezoning not in conformance with the current Des Moines' 2020 Community Character Plan; and to deny the requested amendment to the Des Moines' 2020 Community Character Plan future land use designation from Low Density Residential to Low/Medium Density Residential; and to deny the rezoning from "R1-60" One-Family Low-Density Residential District to "R-2" Two-Family Residential District, to allow the existing two-story residential building to be used for two dwelling units.

Motion passed 13-0.

Respectfully submitted,



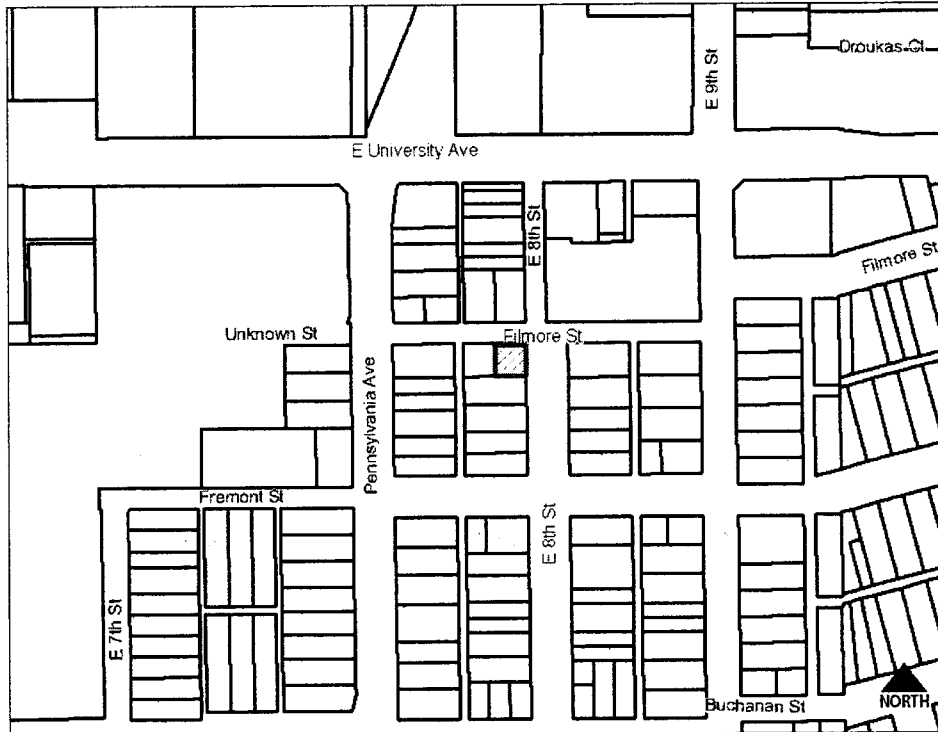
Michael Ludwig, AICP  
Planning Administrator

MGL:clw

Request from Irma Lopez (owner) to rezone property located at 1120 East 8 <sup>th</sup> Street		File #			
		ZON2010-00098			
<b>Description of Action</b>	Rezone property from "R1-60" One-Family Low-Density Residential District to "R-2" Two-Family Residential District, to allow the existing two-story residential building to be used for two dwelling units.				
<b>2020 Community Character Plan</b>	Low-Density Residential				
<b>Horizon 2035 Transportation Plan</b>	No Planned Improvements				
<b>Current Zoning District</b>	"R1-60" One-Family Low-Density Residential District				
<b>Proposed Zoning District</b>	"R-2" Two-Family Residential District				
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	1	1			
Outside Area					
<b>Plan and Zoning Commission Action</b>	Approval		<b>Required 6/7 Vote of the City Council</b>	Yes	<b>(To approve Comp Plan &amp; Rezoning)</b>
	Denial	13-0		No	

Irma Lopez - 1120 E 8th Street

ZON2010-00098



Item 2010-00098 Date \_\_\_\_\_

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

(Circle One)

RECEIVED  
COMMUNITY DEVELOPMENT  
JUN 23 2010  
DEPARTMENT

Print Name: GRACEN BEDFORD  
Signature: Gracen Bedford  
Address: 1139 Pawnee St NW  
50316

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

I don't mind her rezoning  
her property to a 2 family home  
It will not bother me  
in one for enough and  
even if they would let her  
me

Item 2010-00098 Date 6/22/10

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

RECEIVED  
COMMUNITY DEVELOPMENT  
JUN 25 2010  
DEPARTMENT

Print Name: STANLEY C OSBORNE  
Signature: Stanley Osborne  
Address: 1108 E. 9th

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

I wish to ~~maintain~~ retain single  
family dwellings in the neighborhood  
in order to improve property values and  
attract residents interested in home ownership.  
Thank you



