

Date..... September 24, 2007

WHEREAS, on September 10, 2007, by Roll Call No. 07- 1717 , it was duly resolved by the City Council that the application of Taco John's of Iowa, Inc., represented by Jeff Brands, Secretary, to rezone certain property it is purchasing from Hickory Park, Inc., and located in the vicinity of 2121 Hubbell Avenue, more fully described below, be set down for hearing on September 24, 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 September 13 , 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 88 feet of the South 10.0 feet of Lot 7; the East 88 feet of Lot 8; the East 88 feet, and the South 10.0 feet of the West 40.0 feet of Lot 9; and, the South 10 feet of Lot 20, all in Block 1, Easdale, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter referred to as the "Property").

from the "R1-60" One-Family Low-Density Residential 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. Any commercial use of the Property, or of land that includes the Property, shall be in conformance with an approved Site Plan, and the Site Plan shall conform with the Landscape Standards applicable within the "C-2" District.
- B. The following uses of structures and land shall be prohibited upon the Property:
 - a. Adult entertainment business.
 - b. Automobile display, hire, rental, and sales.
 - c. Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity.

(continued)

Date September 24, 2007

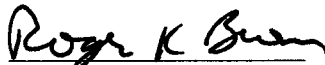
- d. Garage for general motor vehicle repair.
- e. Off-premises advertising signs.
- f. Package goods stores for the sale of alcoholic beverages.
- g. Pawn Brokerages.
- h. Taverns/nightclubs.

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

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

September 10, 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 August 16, 2007, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 12-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
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			
Mike Simonson	X			
Kent Sovern	X			
Tim Urban	X			
Marc Wallace	X			

APPROVAL of a request from Jeff Brands (purchaser) to rezone property located at 2121 Hubbell Avenue from the "R1-60" One-Family Low-Density Residential District to the "C-2" General Retail and Highway Oriented Commercial District, to allow overall site redevelopment for a drive-through restaurant, subject to the owner agreeing to the following: (ZON2007-00110)

1. Submittal of a Site Plan in compliance with the Des Moines' Landscape Standards as applicable to "C-2" zoned properties.
2. Prohibition the following uses of the property:
 - a. Adult entertainment business.
 - b. Automobile display, hire, rental, and sales.
 - c. Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity.
 - d. Garage for general motor vehicle repair.
 - e. Off-premises advertising signs.
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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

Written Responses

3 In Favor

1 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 proposed rezoning be found in conformance with the Des Moines' 2020 Community Character Plan.

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

1. Submittal of a Site Plan in compliance with the Des Moines' Landscape Standards as applicable to "C-2" zoned properties.
2. Prohibition the following uses of the property:
 - a. Adult entertainment business.
 - b. Automobile display, hire, rental, and sales.
 - c. Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity.
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STAFF REPORT

1. **Purpose of Request:** The applicant is proposing to develop a drive-up restaurant with dine-in seating.
2. **Size of Site:** The total site is 47,700 square feet (approximately 1.1 acres). The area proposed for rezoning is 11,360 square feet (approximately 0.24 acres).
3. **Existing Zoning (site):** "R1-60" One-Family Low Density District.
4. **Existing Land Use (site):** The site is currently vacant, but is semi-improved with approximately 30,000 square feet of asphalt paving.
5. **Adjacent Land Use and Zoning:**

North – "C-2", Use is vacant land.

South – "R1-60", Uses are single-family dwellings.

East – "R1-60" & "C-2", Use is Qwest Communications facility.

West – "C-2", Use is Des Moines Feed & Garden store.

- 6. **General Neighborhood/Area Land Uses:** The subject property is part of a larger commercial node where Hubbell Avenue corridor intersects with the East University Avenue major highway commercial corridor.
- 7. **Applicable Recognized Neighborhood(s):** Fairground Neighbors for Community Improvement.
- 8. **Relevant Zoning History:** N/A.
- 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, in addition to the existing regulations. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

- 1. **Drainage/Grading:** The proposed redevelopment of the property will require an administrative Site Plan submittal, to include a storm water management plan and a soil erosion/grading plan. If an acre or more is disturbed on the Site, the developer must also submit a Storm Water Pollution Prevention Plan (SWPPP) to the Iowa DNR.
- 2. **Landscaping & Buffering:** Any redevelopment of the subject site will be required to comply with the Des Moines' Landscape Standards as part of the Site Plan process. This primarily includes bufferyard setbacks from residential properties to the south with screen fencing and plantings; open space (minimum 20%) with required plantings; interior lot landscaping (5% minimum); and perimeter setbacks with plantings along the public streets.

A conceptual sketch submitted with the rezoning does not indicate the required perimeter plantings along Hubbell Avenue and East 21st Street. There are no evergreen plantings shown as required by the bufferyard and open space requirements. There is no screen fence shown along the south property boundary with the residential districts. The interior lot requirements would also require an additional interior island to divide a row of 22 parking spaces along the Hubbell Avenue perimeter. All of these deficiencies would need to be met with any Site Plan submittal.

- 3. **Access or Parking:** The submitted development sketch proposes three (3) two-way access drives entering from East 21st Street, Hubbell Avenue and East 21st Court.
- 4. **Des Moines' 2020 Community Character Plan:** The subject property is within the Commercial: Auto-Oriented Small-Scale Strip Development future land use designation in the Des Moines' 2020 Community Character Plan. The proposed use of the property for a drive-up restaurant is consistent with the intent of that designation. Therefore staff recommends that the rezoning be determined in conformance with the Plan. However, because the subject property adjoins residentially developed property, staff further recommends that the following uses of the property be prohibited:

- 1. Adult entertainment business.
- 2. Automobile display, hire, rental, and sales.

3. Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity.
4. Garage for general motor vehicle repair.
5. Off-premises advertising signs.
6. Package goods stores for the sale of alcoholic beverages.
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8. Taverns/nightclubs.

SUMMARY OF DISCUSSION

Mike Ludwig: Presented staff report and recommendation. Indicated the portion of the property they are seeking to rezone is primarily the parking lot and a portion of the drive-through lane on the southern portion of the property. Noted the plan must comply with the City landscape standards.

Brian Millard: Asked if the City would allow the curb cut to remain on Hubbell Avenue.

Mike Ludwig: Noted access would not be taken away from Hubbell Avenue. Explained the location of the access would be reviewed as part of the site plan review.

Doug Saltsgaver, Engineering Resource Group, 2413 Grand Avenue, Des Moines: Noted Mike Lee of Taco Johns was present to respond to questions, as well. Presented a more detailed concept plan showing proposed landscaping, and explained they met with one of the neighbors to coordinate some things with him. They are proposing a 6' screening fence entirely across the south side with the exception of the front yard setbacks where they will drop down to 3'. They are proposing to plant 22-24 evergreen trees as required by the landscape guidelines. There are numerous large trees in the fence line and slightly on the property that they intend to maintain. There are some trees that will need to come out but they will retain the majority of them. Indicated Traffic & Transportation indicated the access on Hubbell Avenue is far enough back from the intersection that they were okay with the access. Explained they had a neighborhood meeting with 8-10 people in attendance, and the President of the Fairgrounds Neighborhood Association attended. Indicated all storm water management would have to occur at the lowest point of the site where the storm sewer is and they would likely have to have a ground water recharge pit and put some water tolerant rain garden type trees or shrubs in. There will have to be some rock underneath it. Noted the number of curb cuts would be substantially reduced.

Mike Simonson: Suggested for future site plans, including an aerial so the Commission can see where the homes are adjacent to the property.

CHAIRPERSON OPENED THE PUBLIC HEARING

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

The following individual spoke in support of the item:

Fred Utter, 823 E. 21st Street: Indicated people dump trash and hang out on the lot and his grandkids play there. Thought the restaurant would be wonderful for the site. Believed the privacy fence should run on the lot line, otherwise there are trees there that he wanted them to save and indicated the applicant has agreed. Indicated there are also some lilac bushes and Honeysuckle bushes. The applicant did not have a problem with putting the privacy fence just north of the trees to save them.

Mike Ludwig: Noted staff would look at the access and the landscaping during the site plan stage.

CHAIRPERSON CLOSED THE PUBLIC HEARING

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Bruce Heilman: Asked if the applicant was in agreement with staff recommendation with the conditions.

Doug Saltsgaver: Affirmed.

Fran Koontz: Moved staff recommendation.

Motion passed 12-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:dfa

Attachment

58

Item 2007 00110

Date 8-6-07

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

AUG 15 2007

Print Name RONALD-RAY STANLEY

COMMUNITY DEVELOPMENT DEPARTMENT

Signature Ronald-Ray Stanley

Address 6590 NE 64TH ST CLAYTON 50009

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

I AM ADMINISTRATOR OF JULIAANN STANLEY ESTATE. ADDRESS 807 E 21. I WILL BE SELLING THIS PROPERTY IN THE FUTURE.

58

Item 2007 00110

Date 8-6-07

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

(Circle One)

RECEIVED

Print Name Des Moines Feed + Garden

AUG 14 2007

Signature Ralph A. Holt

COMMUNITY DEVELOPMENT DEPARTMENT

Address 2052 Ankeny Ave

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

Horizontal lines for text entry.

Item 2007 00110

Date 8-13-07

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

(Circle One)

RECEIVED

Print Name Raymond E McConkey

AUG 14 2007

Signature Raymond E McConkey

COMMUNITY DEVELOPMENT DEPARTMENT

Address 811 E 21st Ct.

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

Horizontal lines for text entry.

Item 2007 00110

Date 8-4-07

I (am) in favor of the request.
(Circle One)

RECEIVED
AUG 08 2007
COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name Donna Duelling
Signature Donna Duelling
Address 5707 Terrace Drive
Peoria, IL 61614

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

