

Date October 12, 2009

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 17, 2009, its members voted 9-0 in support of a motion to recommend **DENIAL** of a request from Giuseppe Falbo (owner) to find the proposed rezoning not in conformance with the current Des Moines' 2020 Community Character Plan and to rezone property located at 1602 M. L. King Jr. Parkway, from R1-60 One-Family Low-Density Residential District to R-2 Two-Family Residential District, to allow the property to be converted to a two-family dwelling. The subject property is more specifically described as follows:

Lots 4, 5, 6 and East 42 Feet of Lots 7, 8 and 9, Block 2; and Lot A and East 42 Feet Lot C, Block 7, Shepherdsons Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk and Warren County, Iowa.

WHEREAS, on September 28, 2009, by Roll Call No. 09-1746, it was duly resolved by the City Council that the application of 1602 Martin Luther King Jr. Parkway to rezone certain property located in the vicinity of 1602 Martin Luther King Jr. Parkway, more fully described above, be set down for hearing on October 12, 2009, 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 3, 2009, 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.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa that 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 R-2 Two-Family Residential District are hereby upheld, the hearing is closed and the proposed rezoning and amendment to the current 2020 Community Character Plan is **DENIED**.

MOVED by _____ to DENY the proposed rezoning.

FORM APPROVED:


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

09A746 19
42

Request from Giuseppe Falbo (owner) to rezone property located at 1602 M. L. King Jr. Parkway.			File # ZON2009-00142		
Description of Action	Rezone property from "R1-60" One-Family Low-Density Residential District to "R-2" Two-Family Residential District, to allow the property to be converted to a two-family 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-2" Two-Family Residential District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	0	1			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	9-0		No	

Giuseppe Falbo - 1602 Martin Luther King Jr Parkway ZON2009-00142



Date 9-28-09
 Agenda Item 19
 Roll Call # 09-1746
 42

September 18, 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 September 17, 2009, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus				X
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Dann Flaherty	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 Giuseppe Falbo, (owner) to find the proposed rezoning for property located at 1602 M. L. King Jr. Parkway not in conformance with the current Des Moines' 2020 Community Character Plan. (ZON2008-00142)

By separate motion Commissioners recommended 9-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus				X
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Dann Flaherty	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



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

DENIAL of the request to amend the Des Moines' 2020 Community Character Plan future land use designation from Low Density Residential to Low/Medium Density Residential; and to deny that the property be rezoned from "R1-60" One-Family Low-Density Residential District to "R-2" Two-Family Residential District, to allow the property to be converted to a two-family dwelling. Furthermore, the Commission would encourage making application to the Board of Adjustment with the Commission's recommendation that it become a duplex under a Use Variance consideration.
(21-2009-4.05)

Written Responses

- 0 In Favor
- 1 In Opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the requested 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.

Part C) Staff recommends denial of the requested rezoning.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant purchased the subject property from HSCB Bank in January of 2009 after foreclosure. This was subsequent to the property losing non-conforming rights to a three unit multiple-family dwelling after a period of vacancy over one year. One of the units was occupied as recently as August 26, but was determined vacant upon inspection on September 2, 2009. The owner is seeking renewal of rental certificates and conversion of the property for two units.
2. **Size of Site:** 17,400 square feet.
3. **Existing Zoning (site):** "R1-60" One-Family Low-Density Residential District.
4. **Existing Land Use (site):** Vacant residential dwelling configured for three units.
5. **Adjacent Land Use and Zoning:**
 - North** – "R1-60", Uses are single-family dwellings.
 - South** – "R1-60", Uses are vacant property (two - 25'x132' parcels) and single-family dwelling.
 - East** – "R1-60", Uses are single-family dwellings.
 - West** – "R1-60", Uses are single-family dwellings.
6. **General Neighborhood/Area Land Uses:** The subject property is located on M.L. King Jr. Parkway where it intersects College Avenue.
7. **Applicable Recognized Neighborhood(s):** Drake Neighborhood Association and King-Irving Association.

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 make an appeal to the Board of Adjustment within one year 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.

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 southern front yard of the dwelling. There are existing mature trees within the front yard and south side yard area.
2. **Access/Parking:** Two-family family dwellings require a minimum of two spaces of off-street parking outside of the front yard setback. Two-family units are permitted to park on paved surfaces within the required front yard setback area. In this instance the parking and driveways are unpaved surfaces. The parcel is large enough to accommodate off-street parking for a two-family dwelling.
3. **2020 Community Character Plan:** The Des Moines' 2020 Community Character Plan projects the area west of M.L. King Jr. Parkway 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.

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 subject property neighborhood area back to original single-family density. Staff believes that an amendment from Low Density use and single-family zoning would not be appropriate for the subject property only given the remaining surrounding predominance of single-family dwellings. Staff believes that it is the intent of the Plan and the Zoning Ordinance.

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation.

Dann Flaherty asked about the size of the lot and whether they would have to come back to the Plan and Zoning Commission for rezoning if they wanted it on a 50 foot lot.

Erik Lundy stated in order to divide into two parcels they would have to go to the Board of Adjustment for minor relief of the minimum lot width.

Larry Hulse stated even though our zoning is "R1-60" the majority of the lots in this area is less than 60.

Erik Lundy agreed the character in this area is varied, there are some plats in the area that had as narrow as 33 foot lots, and some are combined to make larger lots.

Larry Hulse explained that was because the zoning did not exist or exist the way we have it today. Larry asked what happened that it was not continued use as a three-plex.

Erik Lundy stated in reviewing the history, the applicant bought the property under the current situation. A bank owned it previously and let it go vacant, so it had lost its grandfather rights. The owner did not understand that they could not just re-rent those units when they first purchased it, so there was some rental occupancy subsequent to this current owner buying it in January. A recent inspection indicates it is vacant at this time. The applicant is looking to do the right thing in order to comply with zoning.

JoAnne Corigliano asked about the condition of the building.

Erik Lundy stated it recently had certificates for compliance rental codes. There is no evidence that it has been under public nuisance in the last 6 or 7 years. There has been some code violation for inoperable vehicles and junk and debris on the property in the past, but the structure has had a valid rental certificate within the last 5 years.

JoAnne Corigliano stated if the building is in good shape and the alternative to using this building would be two probably closer than 50 to 60 foot wide lots, you would end up with something probably that look like a small infill house on it, and that may not be any better for the neighborhood than having this house as a duplex with certain requirements and upgrades. That lot is very large and sits back quite away and I don't see any problem with making it a duplex.

Larry Hulse reiterated staff's position to deny giving the character for the area and that is the basis for the determination. However, with the size of the lot and other considerations you could go to an "R-2" but it would be an unusual zoning. He also reminded the Commission that they have had these issues with some gas stations and repair stations where you did not want to make the zoning change or land use change and those cases went through the Board of Adjustment granting a Use Variance, where the zoning and plan stays intact, but the Board of Adjustment can do that step of changing the use and they can add some conditions.

Dann Flaherty asked could we recommend that the City allow for a duplex but require that the footprint not be increased.

Erik Lundy stated certainly they could recommend rezoning with those conditions, but the applicant would have to agree to those in writing. At the time of rezoning one of the compromises in creating the "R1-60" was that any legal duplex in existence at that time was brought in and considered a permitted use in a "R1-60".

Giesepe Falbo stated that he bought the property because he thought he could have a duplex, one up and one down with him living in one and renting out the other.

Jaqueline Easley asked if the property had adequate parking.

Giesepe Falbo stated that there is adequate parking.

Dann Flaherty asked if the parking would need to be paved.

Erik Lundy stated that one and two family dwellings do not require the same parking requirement. They are only required one space per unit. If he is going to provide more than four spaces, then he would need to pave those in accordance with our parking requirements and keep it out of the front yard setback.

Dann Flaherty asked if they should put that in the conditions if rezoning is recommended.

Erik Lundy stated yes, because a two unit dwelling won't require a site plan review.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one in the audience to speak in support.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Greg Jones stated he does not want to propose they rezone, but would like to see if they can figure out a way to send him to the Board of Adjustment in the right manner so that he could get allowance for a duplex.

Dann Flaherty stated that maybe we could deny the rezoning, send him to the Board of Adjustment with a recommendation that it be permitted for a duplex.

Larry Hulse suggested they could probably put in the motion to deny the rezoning for the reason that they don't think the land use plan should change and they think that it is a single-family area overall from a plan & zoning standpoint. But recognizing the uniqueness of this lot it certainly warrants the board's attention as a use variance with proper conditions upon that use because it does not lend itself to conversion to a single-family dwelling.

Erik Lundy stated from a staff standpoint the Board of Adjustment looks at the long-term liability of this property, and they might set a timeframe for how long they would say it was appropriate for a duplex.

Larry Hulse stated that if the Commission likes that idea, then the motion should give some indication to the Board why you think it should be considered for a use variance, and why you are not rezoning it for the greater part of the area. Also the applicant will need to get with staff and make sure he understands all of the procedures if that happen, because a use variance requires that the rezoning request be denied. Then the applicant would go to the other board with no promise of what that Board will do.

COMMISSION ACTION

Greg Jones moved staff recommendation that the requested rezoning be found not in conformance with the current Des Moines' 2020 Community Character Plan.

Motion passed 9-0

Greg Jones moved 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 that the property be rezoned from "R1-60" One-Family Low-Density Residential District to "R-2" Two-Family Residential District, to allow the property to be converted to a two-family dwelling. Furthermore, the Commission would encourage making application to the Board of Adjustment with the Commission's recommendation that it become a duplex under a Use Variance consideration.

JoAnne Corigliano stated with the age of the house it is going to need to be replaced sooner or later, so if the footprint or anything else should change on this house, then it should have to come back.

09-1946
42

Erik Lundy stated that in the past when someone has wanted to do an addition or expansion to something that had a use variance then it came back to the Board of Adjustment.

Larry Hulse stated that staff will write the letter to go to the Board of Adjustment with recommendation to grant the applicant a use variance for a duplex.

Motion passed 9-0.

Respectfully submitted,



Erik Lundy, AICP
Senior City Planner

EML:clw

Attachment

Item 2009-00142 Date 9-

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

(Circle One)

Don't care.
as long as they don't bother me.
Print Name Sharla Wright
Signature Sharla Wright
Address 1607 MLC Parkway 50314

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

As far as I see there is already (2-4) family's that are living there already. They own 6-8 cars & one truck (white) & parked there at any given time. There's 4 women & 4 men there all the time & children on weekends as long as they don't bother me I'm fine.

Item 2009-00142 Date 9-11-09

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

(Circle One)

RECEIVED
SEP 15 2009
COMMUNITY DEVELOPMENT
Print Name Terry Eaton
Signature Terry Eaton
Address 1607-20th Place

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

Opposed to selective zoning

09-1246
42