

Date..... October 26, 2009

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on October 15, 2009, its members voted 8-0 in support of a motion to recommend **DENIAL** of a request from Josh Spencer (purchaser) to rezone property located at 1800 Euclid Avenue, from "C-1" Neighborhood Retail Commercial District, "C-2" General Retail and Highway Oriented Commercial District, and "U-1" Floodplain District to "M-2" Heavy Industrial District, to allow a tree contracting business and wood yard for display and sales of firewood.

The subject property is more specifically described as follows:

Beginning 25 feet South of Northwest corner Lot 5, thence South 690 feet, Southeasterly 615 feet to point 15 feet North of centerline of railroad, West 700 feet, Northeasterly 550 feet, North 365 feet, East 5 feet, North 360 feet, East 20 feet, to Point of Beginning, vacated railroad right-of-way through Lots 5 and 7 subject to Recreational Trail Easement, Flint Valley, an Official Plat

and

Beginning Southwest corner of Ovid Avenue and 16th Street, thence South 488.93 feet, thence West 264 feet, thence Northwesterly on curve 641.5 feet, thence North to North line Lot 7, thence East 656.6 feet along North Lot line to Point of Beginning, Lot 7, Flint Valley, an Official Plat

and

(Except beginning Southwest corner Lot 6, thence South 55 feet, West 15 feet, North 55 feet, East 15 feet, to Point of Beginning) part lying East of line beginning 306.5 feet East of Northwest corner, thence southerly to point 194.4 feet East of Southwest corner Lot 5, Flint Valley, an Official Plat

and

Part lying West of line beginning 306.5 feet East of Northwest corner Lot 5, thence Southerly to point 194.4 feet East of Southwest corner, and Part beginning Northwest corner Lot 5, thence Southerly and 10 feet East of centerline Des Moines and Central Iowa Railroad to North Line Lot 7, thence East 246.6 feet to Southwesterly line Lot 5, thence Northwesterly along Lot 5 to beginning, Lot 5, Flint Valley, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk and Warren County, Iowa

Date October 26, 2009

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. That the meeting of the City Council at which the proposed rezoning is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. on November 9, 2009, at which time the City Council will hear both those who oppose and those who favor the proposal.
2. That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

MOVED by _____ to adopt.

FORM APPROVED:



Michael F. Kelley
Assistant City Attorney

(ZON2009-00166)

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.

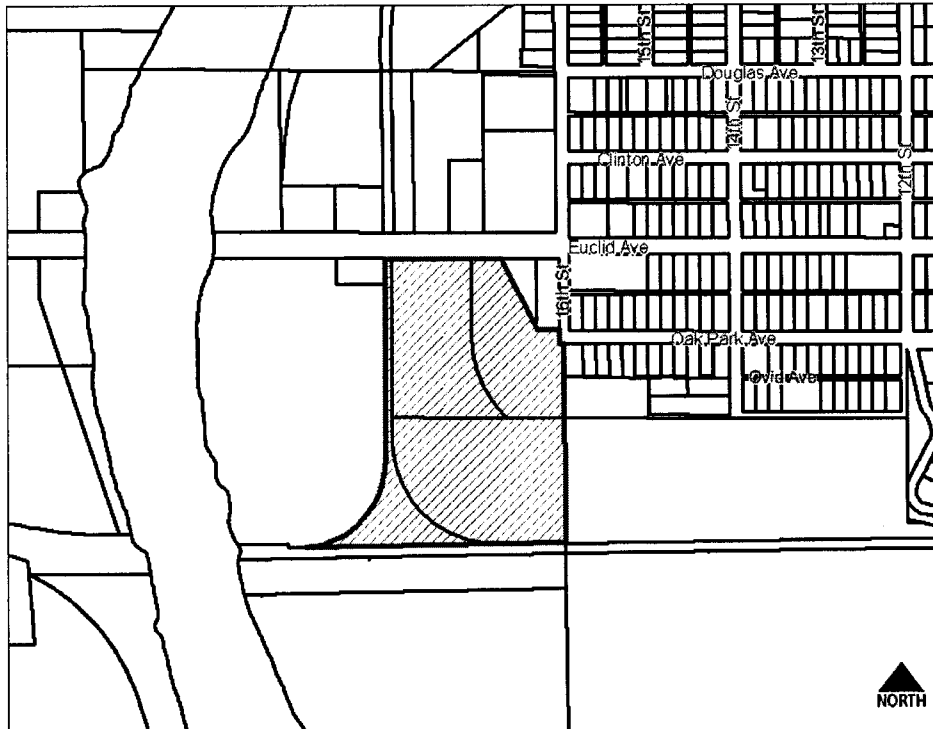
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

Request from Josh Spencer (purchaser) to rezone property located at 1800 Euclid Avenue. The subject property is owned by Iowa Heartland R C & D and Urban Trees Project, LLC.			File # ZON2009-00166		
Description of Action	Rezone property from "C-1" Neighborhood Retail Commercial District, "C-2" General Retail and Highway Oriented Commercial District, and "U-1" Floodplain District to "M-1" Light Industrial District, to allow a tree contracting business and wood yard for display and sales of firewood.				
2020 Community Character Plan	Commercial: Auto-Oriented Small-Scale Strip Development and Park/Open Space				
Horizon 2025 Transportation Plan	No Planned Improvements				
Current Zoning District	"C-1" Neighborhood Retail Commercial District, "C-2" General Retail and Highway Oriented Commercial District, and "U-1" Floodplain District				
Proposed Zoning District	"M-1" Light Industrial District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	0	3			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	8-0		No	

Josh Spencer - 1800 Euclid Avenue

ZON2009-00166



Date _____

Agenda Item 18

Roll Call # _____

October 16, 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 October 15, 2009, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 8-0 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 Josh Spencer (purchaser) for property located at 1800 Euclid Avenue to find the requested rezoning in conformance with the Des Moines' 2020 Community Character Plan.

By separate motion Commissioners recommended 8-0 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 the request to amend the Des Moines' 2020 Community Character Plan future land use designation from Commercial: Auto-Oriented Small-Scale Strip



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

Development to General Industrial; and to deny the proposed rezoning given its close proximity to a single-family residential neighborhood to the east. ZON2009-00166 & 21-2009-4.07

Written Responses

0 In Favor

3 In Opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

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

Part B) Staff recommends denial of an amendment to the Des Moines' 2020 Community Character Plan future land use designation from Commercial: Auto-Oriented Small-Scale Strip Development to General Industrial.

Part C) Staff recommends denial of the proposed rezoning given its close proximity to a single-family residential neighborhood to the east.

STAFF REPORT

I. GENERAL INFORMATION

- 1. Purpose of Request:** The applicant wishes to convert the existing warehouse facility and open space to a tree contracting business and a wood yard for display and sales of firewood. The submitted site sketch shows that the proposed use would include outdoor areas for cutting wood, sorting wood, storing piles of firewood, and doing chainsaw carvings.

The City's Zoning Enforcement Officer has determined that that use as proposed requires the "M-2" Heavy Industrial zoning classification since it includes significant outdoor operations. Should the property be rezoned to "M-2" District, the applicant would then have to seek a Conditional Use Permit from the Zoning Board of Adjustment for the proposed use. Furthermore, any use of the site for a commercial business must comply with the City's site plan and landscaping requirements.

- 2. Size of Site:** 16.4 acres.
- 3. Existing Zoning (site):** The portions of the site within 600 feet of Euclid Avenue are zoned either "C-1" Neighborhood Retail Commercial District or "C-2" General Retail and Highway-Oriented Commercial District. The balance is zoned "U-1" Flood Plain District. The entire site is within the Gambling Games Prohibition Overlay District
- 4. Existing Land Use (site):** The subject property contains three vacant commercial/industrial buildings and a significant area covered with damaged pavement. There is a substantial amount of debris and cut timber piled around the site. The remaining portion of the property is open undeveloped land with scrub vegetation at the perimeter.
- 5. Adjacent Land Use and Zoning:**

North - "C-2" & "M-1", Uses are Garvis Honda motorcycles/ATV sales, vacant commercial buildings and property, an off-premises advertising sign, and vacant public land.

South - "U-1", Uses are abandoned railroad levy and timberland along the Des Moines River.

East - "C-2", "C-1", "R1-60" & "U-1", Uses are single-family residential, an off-premises advertising sign, Pizza Hut carryout and delivery store, and the Chicago Speakeasy restaurant.

West - "U-1", Uses include a vehicle display lot and timberland along the Des Moines River.

6. **General Neighborhood/Area Land Uses:** The subject property is located along the Euclid Avenue corridor in the low-lying lands east of the Des Moines River flood fringe.
7. **Applicable Recognized Neighborhood(s):** Oak Park Neighborhood.
8. **Relevant Zoning History:** On March 4, 2004 the Commission considered a request to rezone a majority of the subject property from "M-1" Light Industrial District to "M-2" District to allow use of the site as a salvage yard. The applicant withdrew their request after encountering opposition from the neighborhood.

Subsequently, on July 25, 2005, the City Council rezoned a portion of the subject property from "M-1" Light Industrial District to "C-1" Neighborhood Retail Commercial District. The rezoning was initiated by the City Council due to concerns over its close proximity to the residential neighborhood area to the east and because the adjoining segment of Euclid Avenue is designated as a Gateway Corridor in the Des Moines' 2020 Community Character Plan.

9. **2020 Community Character Land Use Plan Designation:** Auto-Oriented Small-Scale Strip Commercial along Euclid and Park/Open Space to the south.
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.

II. ADDITIONAL APPLICABLE INFORMATION

1. **2020 Community Character Plan:** The proposed industrial use and necessary "M-2" Heavy Industrial District would require an amendment to General Industrial from the existing Auto-Oriented Small-Scale Strip Commercial and Park/Open Space future land use designations.

Staff has a strong concern about amending the plan to allow industrial use given the proximity to a residential neighborhood to the east. Furthermore, allowing industrial use would not be in keeping with the intent of the Des Moines' 2020 Community Character Plan to preserve Gateway Corridors. The Plan identifies the portion of Euclid Avenue adjoining the subject property as a Gateway Corridor (p. 38, of Chapter 2, City Form). These corridors are intended to be welcoming and distinct, and should express neighborhood and community identity and display civic pride. Staff does not believe revising the future land use designation of the Plan to encourage industrial use adjoining this portion of the corridor would preserve its full intent.

2. **Natural Site Features:** The site is fairly flat with sparse fence line scrub at the perimeter. Most of the natural elements of the property have been destroyed by development of the paved storage lot and the storage of debris.
3. **Floodplain:** The portion of the site zoned "U-1" Flood Plain District is not with the regulatory floodplain. The subject property is separated from the regulatory floodplain on the south and southwest by an abandoned railroad levy.

Engineering staff has indicated that there are no unusual measures that would be required for development of the subject property to comply under local Floodplain Development Regulations.

4. **Drainage/Grading:** Any future development will be required to meet all storm water management policies under Site Plan review. This does not appear to be a challenge given the amount of available open space and the adjoining flood fringe for outlet.
5. **Access or Parking:** All developed access to the property is currently from Euclid Avenue (Iowa Highway 6), which is part of the Iowa DOT State Highway system. There is some limited potential for access by undeveloped streets to the east. This would likely encounter resistance from residents if the subject property were to be developed commercially.
6. **Site Plan Requirements:** Any improvements to the site must comply with the City's site plan and landscaping requirements. Improvements to the site would also be necessary to meet the Conditional Use Permit criteria depending on the finalized operations of the business. These improvements include but are not limited to the applicant providing screening of outdoor operations and preventing the operations from creating a nuisance to adjoining properties (i.e. containment of all wood materials and debris, and the appropriate stacking and screening of any outdoor storage areas).

Euclid Avenue from the Des Moines River to 16th Street is a Designated Landscape Enhancement Corridor, which requires the portion of any development within 250 feet of the corridor to be developed to the "C-2" District landscape standards.

The "C-2" District Landscaping Standards generally require the following to be provided:

- Open space equal to at least 20% of the site with 1 overstory tree, 1 evergreen tree and 1 shrub planted for every 2,500 square feet of required open space.
- Interior parking lot plantings of 1 overstory tree and 3 shrubs for every 20 spaces.
- Parking lot perimeter plantings along public right-of-way frontage of 1 overstory tree and 3 shrubs per 50 lineal feet.

The remainder of the site (beyond 250 feet from Euclid Avenue) would be subject to the "M-2" District Landscaping Standards which generally require the following to be provided:

- Open space equal to at least 20% of the site with 1 overstory tree, 1 evergreen tree and 1 shrub planted for every 5,000 square feet of required open space.
- Interior parking lot plantings of 1 overstory tree and 3 shrubs for every 40 spaces.
- Parking lot perimeter plantings along public right-of-way frontage of 1 overstory tree and 3 shrubs per 100 lineal feet.

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation. The applicant's original request was for "M-1" zoning. However, staff determined that "M-2" zoning was required. A revised notice was mailed to the applicant and surrounding property owners.

Josh Spencer 940 SE Bluegrass Circle, Waukee, IA stated that he was not aware the rezoning had to be "M-2" zoning until a week before the Plan & Zoning meeting. He explained that the main business at that location will be the Red Oaks Tree Recycling LLC to introduce a form of recycling that can be beneficial to everyone. Other operating businesses will be Superior Contractors LLC which is a residential and commercial remodeling company and Chainsaw Carvers have expressed interest in using part of the facility where they will carve and distribute their art pieces. He described what the property looks like at this time and what it can look like if granted the rezoning along with the future plans and uses. He addressed the concerns of the neighborhood which is noise, what happens if the business fails, what can happen if someone else bought the property and chose to do something other than what he proposes, and the community's future visions for the property. The noise will be very minimal with limited hours of operation. They have no intention of failing, but the worst case scenario the property will be in compliance with the 2020 Community Character Plan and it will look better than it currently does. If it is zoned "M-2" he is willing to strike most of the permitted uses in the zoning and prohibit those uses indefinitely unless they file to rezone again in the future. Currently the City does not own the property nor do they have the money to buy it. He is not aware of any funds that would be available to construct sports fields on this site.

Mr. Spencer then listed a number of items he wanted to strike or remove from the different zonings "M-1" Sec. 134-1087; "M-3" Sec. 134-1157; "C-3A" Sec. 134-982; and "C-3" Sec. 134-1017. He then stated which items he was open to, the purpose of the zoning ordinance in comparison to what he proposes, and the benefits of rezoning to fit the business needs he is asking for.

Brian Millard asked staff about the clean up and whether or not this property is in compliance.

Mike Ludwig stated that he is not aware of any violation issues but will refer the issue to the zoning code officer.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following spoke in favor

Gary Keenan 5307 Douglas, professional chainsaw sculptor stated that he intends to lease space and thinks that the applicant's idea is viable and will create jobs.

Ken Tynan 4041 12th Street, professional chainsaw sculptor stated that the applicant and tenants will be good stewards and will improve this property and is in favor of some kind of variance instead of rezoning.

Brian Millard asked if the chainsaws to be used are gas or electric.

Ken Tynan stated that both gas and electric chainsaws would be used.

The following spoke in opposition

Alberta Finley 1215 Oak Park Avenue, Oak Park Neighborhood co-chair, stated that in a discussion with Mr. Spencer they offered a use of it that he could do this business with no rezoning, he declined and insisted on the rezoning. She also stated that Mr. Spencer was informed that there were multiple neighborhoods concerned about the use of this site and everyone in those neighborhoods were not informed of the meeting, Oak Park Neighborhood Association will not have a meeting until December 2, 2009 so they would not be informed about this. There was no actual neighborhood association meeting.

Ted Irvine asked if her objection is more to the rezoning and not the business.

Alberta Finley stated she is not opposed to the business but is opposed to the rezoning.

Brian Millard asked if she would be opposed to the noise of the chainsaw.

Alberta Finley stated that they live too far back and would not hear them.

John Morrissey 2913 Oxford Street, Highland Park Neighborhood Association president stated that he sent his own personal letter letting the Commission know that he is opposed to the rezoning request. He informed the Commission that the first neighborhood meeting was scheduled in Mr. Spencer's lawyer office in West Des Moines. It was not well attended because the meeting was not held in the neighborhood, so a second meeting was scheduled. However, the applicant's intentions for the property were still unclear. His manner strongly indicates he does not appreciate or welcome any participation of the neighbors in this matter.

Ed Linebach 4137 11th Place stated that he is opposed to the rezoning because he believes the best use of the property is for recreational fields and there may be interested party that may purchase this for recreational purposes. He opposes the rezoning and the business.

Wendee Bristowbarrett 1514 Clinton Avenue stated that she thinks the new business is great. They were promised that this would be a green space, which the neighborhood embraced. She opposes the rezoning and the business.

Nancy Suby-Bohn 312 Corning Avenue asked why staff thinks that it should be zoned "M-2" if there is no heavy equipment use.

Mike Ludwig stated that the "M-1" district use requires that all industrial use be within the building and the "M-2" district allows significant outdoor operations. Should the property be zoned "M-2" the applicant would then have to seek a Conditional Use Permit from the Zoning Board of adjustment for the proposed use.

Nancy Suby-Bohn asked staff what is the difference between a Conditional Use Permit if it is "M-1" versus leaving it as "C-2" or "C-1" and getting a Conditional Use Permit.

Mike Ludwig stated that a Conditional Use Permit for this use would specifically require "M-2" zoning. If the applicant's zoning request is denied, they can apply for a use variance.

Tom Culver 4100 11th Street stated that he is against the business and the rezoning. He prefers green space and recreation and asks that the Commission deny the applicant's request.

Rebuttal

Josh Spencer reiterated that the "M-2" was a surprise to him. When he filed his application he was told to pursue "M-1" zoning. It is apparent what he wants to do. Not much difference in going for a Conditional Use Permit or a Use Variance. He sees no other plans before them only the plans that he has. He read a survey that was taken in the neighborhood regarding recreational uses. He noted that the site plan was submitted with the application. He also feels that it is not fair to compare him to other business and felt that the meeting with the neighborhood was one-sided.

Ted Irvine asked the applicant if he was able to get a Conditional Use with the current zoning would he be happy with that.

Josh Spencer stated he only wants to operate his proposed business.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Brian Millard recalled when this property was rezoned to "C-1" in 2005 and to support this rezoning would be going backward, therefore he supports the motion to deny the rezoning.

COMMISSION ACTION

Greg Jones moved staff recommendation to find the proposed rezoning not in conformance with the Des Moines' 2020 Community Character Plan.

Motion passed 8-0.

Greg Jones moved staff recommendation to deny an amendment to the Des Moines' 2020 Community Character Plan future land use designation from Commercial: Auto-Oriented Small-Scale Strip Development to General Industrial; and to deny the proposed rezoning given its close proximity to a single-family residential neighborhood to the east.

Motion passed 8-0.

Respectfully submitted,


Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment

Item 2009 00166 R Date 10-8-09

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

(Circle One)

RECEIVED

Print Name Oak Park Neighbors
Signature Alberta Imley-PRES
Address 12150 Oak Park Ave

OCT 14 2009

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

Not wanting this rezoned -
Varage request. Business type
has failed before. Highland Park, Union
Park are against this also

NEIGHBORHOOD ASSOCIATION

Item 2009 00166 R Date 10/9/09

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

(Circle One)

RECEIVED

Print Name MEYER STURMAN
Signature Jacob Sturman
Address 1920-73RD WINDSOR HEIGHTS

OCT 14 2009

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

50324

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

there has got to be a better use
for this property

Address COMMUNITY DEVELOPMENT

Signature OCT 09 2009

Print Name RECEIVED

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

Item 2009 00166 R

ITEM # 4 18
CASE # ZON2009-0016

John M Morrissey
2913 Oxford St
Des Moines, IA 50313

Dann Flaherty, Chairman
Des Moines Plan & Zoning Commission
400 Robert D Ray Drive
Des Moines, IA 50309

October 13, 2009

Re: 1800 Euclid Avenue

HAND DELIVERED

Dear Chairman Flaherty:

I am writing oppose the rezoning request filed by Red Oak Tree Recycling LLC for the property locally known as 1800 Euclid Avenue.

The site in question is strategically located along in the Des Moines river valley on the south side of a vista that runs from Oak Park on the east bluff of the river to the veterans Administration hospital on the west. The site offers an opportunity to do something really special to enhance the neighborhoods and out city. A wood yard will not do that.

I have attended two meetings with the applicant's lawyer, one of which the applicant was also able to attend. The applicant's intended use of the property remains unclear. While it is clear that a portion of the property would be used for the wood recycling business, residents have not been able to discern what if any use the applicant intends for the remainder of the property.

I have suggested that the applicant seek a conditional use permit to use the property for his tree recycling business and leave the zoning as it stands. The applicant says city officials told him to go for M-1 zoning in order to accommodate all of the potential uses his wood recycling business may pursue on the future. But those future uses remain unspoken.

As I understand the proposal, the applicant will use generally the west half of the property. The east half, which also would be rezoned M-1 would remain in its current state for some undefined period of time. He would not commit to whether he planned to sell this property, develop it other users or leave it vacant. He will not consider a covenant restriction on his deed which would forbid access to his property from 16th Street. There is currently no direct access, so the covenant would only apply if the applicant purchased lots along 16th that would provide frontage on that street.

The applicant told the neighbors he does not plan to pave the property to accommodate his operation. He has not contacted the Corps of Engineers about whether a change of the existing U-1 floodplain zoning classification would have any affect on the floodplain designations in the area. He said the property's actually low spot is generally in the middle back of the site and he may build a levee to protect the property and screen the use from adjoining landowners. He was informed that the neighborhood would oppose any flood control improvements on this property without study by the Corps of Engineers so as to avoid compromising flood protection efforts downstream. He expressed puzzlement at why the neighborhoods would do that.

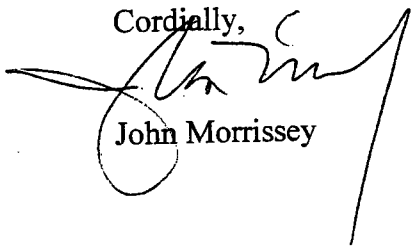
During both discussions with the developer and his legal representative, questions were raised about why he needed M-1 zoning, and whether a conditional use permit would suffice and what his future plans would be for this property. The applicant would not describe what might happen to the property in the event his enterprise fails or he outgrows the site and moves elsewhere. The M-1 zoning issue has become quite contentious. The applicant asked the neighbors to provide a list of permitted uses in an M-1 zoning district that they would find objectionable and he would review and approve those he could agree with. His lawyer passed out copies of the zoning ordinance that generally describe permitted uses in M-1 zones. At one point, when this issue was being discussed again, the lawyer asked whether the neighborhoods would pay the legal fees the applicant would incur by creating a list of uses the applicant would agree would not be allowed on this site.

I told the applicant that neighbors are not experts on zoning matters and not really able to do this work. After further discussion the following uses were mentioned as possibly being ruled out by the applicant: Billboards, cell towers, salvage yards, auto auctions, adult entertainment, and concrete ready mix plants. The applicant may offer additional restrictions at your Thursday night meeting, or he may withdraw any concessions. There was no agreement that I am aware of as a result of meeting with the residents.

In my opinion, the applicant has not made a good faith effort to inform the neighbors about what his plans are for this site. The applicant, and especially the applicant's lawyer, have conducted themselves in a manner that strongly indicates they do not appreciate or welcome any participation by the neighbors in this matter. And the applicant has failed to provide a convincing argument about why this particular site must be zoned industrial.

For these reasons I ask the Plan and Zoning Commission to turn down this rezoning request.

Cordially,



John Morrissey