

Date October 26, 2009

WHEREAS, on October 12, 2009 by Roll Call No. 09-1846 the City Council of the City of Des Moines duly resolved that the request from George Clayton to rezone property at 2218 East Ninth Street from C-1 Neighborhood Retail Commercial District to Limited C-2 General Retail and Highway Oriented Commercial District and to amend the Des Moines 2020 Community Character Plan to allow for general motor vehicle repair be set for public hearing in Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. on October 26, 2009; and

WHEREAS, the City Plan and Zoning Commission recommended **DENIAL** of the proposed rezoning and amendment to the Des Moines 2020 Community Character Plan after a public hearing on October 1, 2009; and

WHEREAS, notice of the October 26, 2009 hearing was published according to law in the Des Moines Register on October 15, 2009, setting forth the time and place of hearing; and

WHEREAS, in accordance with the published notice those interested in the proposed rezoning, both for and against, have been given the opportunity to present their views to City Council; and


WHEREAS, the subject property is more specifically described as follows:

North 80 Feet, East 50 Feet, Lot 39, Park View, an Official Plat, all now included in an forming a part of the City of Des Moines, Polk and Warren County, Iowa.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that upon consideration of the facts and circumstances, statements of interested persons and arguments of counsel, the hearing is closed and the applications to rezone the above-described property from C-1 to a Limited C-2 district classification and to amend the City of Des Moines 2020 Community Character Plan future land use description from Low Density Residential to Auto-oriented small-scale Strip Development are here by **DENIED**.

Moved by \_\_\_\_\_ to **DENY**

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

09-1846  
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Request from George Clayton (owner) to rezone property located at 2218 East 9 <sup>th</sup> Street.				File # ZON2009-00138	
<b>Description of Action</b>	Rezone property from "C-1" Neighborhood Retail Commercial District to Limited "C-2" General Retail and Highway Oriented Commercial District, to allow the existing building and property to be used for a garage for general motor vehicle repair.				
<b>2020 Community Character Plan</b>	Low-Density Residential				
<b>Horizon 2025 Transportation Plan</b>	No Planned Improvements				
<b>Current Zoning District</b>	"C-1" Neighborhood Retail Commercial District				
<b>Proposed Zoning District</b>	Limited "C-2" General Retail and Highway Oriented Commercial District,				
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	4	5			
Outside Area					
<b>Plan and Zoning Commission Action</b>	Approval		<b>Required 6/7 Vote of the City Council</b>	Yes	X
	Denial	11-0		No	

Gerald Clayton- 2218 E 9th Street

ZON2009-00138



October 2, 2009

Date \_\_\_\_\_  
 Agenda Item 19  
 Roll Call # 09-1846  
 SS

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 1, 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			
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 George Clayton, (owner) to find the requested rezoning in conformance with the Des Moines' 2020 Community Character Plan.

By separate motion Commissioners recommended 11-0 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 Low Density Residential to Auto-Oriented Small-Scale Strip Development.  
(21-2009-4.06)

By separate motion Commissioners recommended 11-0 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 George Clayton, (owner) to rezone property located at 2218 East 9<sup>th</sup> Street from "C-1" Neighborhood Retail Commercial District to Limited "C-2" General Retail and Highway Oriented Commercial District, to allow the existing building and property to be used for a garage for general motor vehicle repair. (ZON2009-00138)

Staff further suggests that the applicant seek a Use Variance should the requested rezoning be denied by the City Council. The Board of Adjustment cannot consider a Use Variance request until the applicant has been denied the required zoning by the City Council. A Use Variance would give the City greater control than Limited "C-2" because the Variance would lapse after discontinuance of the use for a period over 6 months.

A Use Variance was granted for this property for the same use in 2005. This situation is also similar to another case from 2005 in which gas pumps were removed from the Lower Beaver Conoco and the associated auto repair shop became the primary use. In that case the applicant was denied zoning but the applicant obtained a Use Variance from the Zoning Board of Adjustment.

Written Responses

- 4 In Favor
- 5 In Opposition

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

Part A) Staff recommends that the Commission find the requested rezoning not in conformance with the 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 Auto-Oriented Small-Scale Strip Development.

Part C) Staff recommends denial of the requested rezoning.

*Staff further suggests that the applicant seek a Use Variance should the requested rezoning be denied by the City Council. The Board of Adjustment cannot consider a Use Variance request until the applicant has been denied the required zoning by the City Council. A Use Variance would give the City greater control than Limited "C-2" because the Variance would lapse after discontinuance of the use for a period over a year [Section 134-1297(b)].*

*A Use Variance was granted for this property for the same use in 2005. This situation is also similar to another case from 2005 in which gas pumps were removed from the Lower Beaver Conoco and the associated auto repair shop became the primary use. In that case the applicant was denied zoning but obtained a Use Variance from the Zoning Board of Adjustment.*

## **STAFF REPORT**

### **I. GENERAL INFORMATION**

- 1. Purpose of Request:** The subject property historically was used as a gas station with vehicle repair as an accessory use. In July 2002 the gas tanks were removed and as a result the primary use is no longer a gas station, which is a permitted use in the "C-1" District. The applicant wishes to use the property as a garage for general motor vehicle repair which requires the "C-2" District zoning designation.

In 2005 a previous owner's request to rezone the property to the "C-2" District to allow the property to be used for vehicle repair was denied. Later that year the Zoning Board of Adjustment granted the previous owner a Use Variance to allow a garage for general motor vehicle repair. This Variance was rescinded by the Board in 2007 as the previous owner did not follow through with the project and, therefore, did not comply with the conditions of approval.

The Board cannot consider a Use Variance request until the applicant has been denied the required zoning by the City Council in accordance with Section 134-64(c) of the Zoning Ordinance. The application for a Use Variance must be made within one year of the City Council's action to deny the rezoning. It has been over four years since the previous rezoning request was denied. As a result the applicant must seek to rezone the property again.

- 2. Size of Site:** 80' x 50'.
- 3. Existing Zoning (site):** "C-1" Neighborhood Retail Commercial District.
- 4. Existing Land Use (site):** Garage for general motor vehicle repair.
- 5. Adjacent Land Use and Zoning:**
  - North* – "R1-60" Single-family residential dwellings.
  - South* – "C-1" Glenn's Reel and Rod Repair Shop.
  - East* – "R1-60" Single-family residential dwellings.
  - West* – "C-1" Single-family residential dwellings.
- 6. General Neighborhood/Area Land Uses:** The subject property is located near Union Park in an area that predominately consists of single-family dwellings.
- 7. Applicable Recognized Neighborhood(s):** Union Park Neighborhood Association.
- 8. Relevant Zoning History:** On April 7, 2005 the Plan and Zoning Commission heard a request from a previous owner to rezone the subject property to the "C-2" District. The Commission forwarded a recommendation of denial to the City Council. On May 9, 2005, by Roll Call Number 05-1201, the City Council denied the request.

On August 24, 2005, by Docket Number ZON2005-00085, the Zoning Board of Adjustment conditionally approved a Use Variance allowing a garage for general motor vehicle repair. This Use Variance was rescinded by the Board on January 24, 2006, by Docket Number ZON2006-00196 as the applicant failed to comply with the conditions of approval as listed below.

USE VARIANCE – CONDITIONS – ZON2005-00085

1. Any display of vehicles for sale shall be prohibited;
2. Any outdoor repair and servicing of vehicles shall be prohibited;
3. Any outdoor display of automobile accessories and storage of materials or equipment such as barrels, tires and tools shall be prohibited;
4. Any refuse and trash disposal containers shall be contained within the building or an outdoor enclosure that shall comply with the Zoning Ordinance;
6. Submittal and review of a Site Plan in accordance with Site Plan regulations by October 31, 2005;
5. Install landscaping in accordance with standards in the Site Plan policies for “C-1” Districts as approved by the Community Development Director;
7. Substantial conformance with the approved Site Plan by January 31, 2006.
8. No more than five (5) automobiles may be parked on the subject property at any given time, and shall only be parked in marked parking spaces in accordance with an approved Site Plan;
9. Any use of on-street parking spaces for customer or business vehicles shall be prohibited;
10. This Use Variance shall expire 10 years from the effective date;
11. A signed copy of the Board’s decision and order shall be recorded at the appellant’s expense as assurance that future property owners become aware of these conditions;
12. All vehicles parked on the property to be locked at all times;
13. Hours of operation from 7:00 AM to 6:00 PM on a daily basis; and
14. The Board shall reconsider the Use Variance if it is found by the Zoning Officer that the appellant or their successors have not complied with all conditions of approval.

**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, in addition to the existing regulations. The recommendation of the Commission will be forwarded to the City Council.

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## II. ADDITIONAL APPLICABLE INFORMATION

1. **Landscaping & Buffering:** The "C-2" landscaping standards generally require a 7-foot wide perimeter landscape strip along street frontages as well as a 7-foot wide buffer yard adjoining properties that are zoned or used for residential purposes with a 6-foot tall opaque screen fencing. These areas also require the planting of overstory trees, evergreens and shrubs. The subject property is not large enough to satisfy these standards while maintaining adequate space for parking and maneuvering. If the rezoning is approved or a Use Variance is granted, staff will work with the applicant to ensure that landscaping and buffering are provided to the fullest extent possible.
2. **Parking:** The proposed use would require a minimum of 3 off-street parking spaces based on the existing 1,504 square foot building (one per 600 square feet of gross floor area). Staff believes that there is enough space on the property for the parking requirement to be met.
3. **Traffic/Street System:** East 9<sup>th</sup> Street is a major collector that divides the Union Park Neighborhood into east and west halves. Staff believes that the proposed rezoning would have minimal impact on traffic in the area.
4. **2020 Community Character Plan:** The requested rezoning to "C-2" is not in conformance with the *Low Density Residential* future land use designation. An amendment to *Auto-Oriented Small-Scale Strip Development* was requested by the applicant. This amendment is necessary for the requested rezoning to be found in conformance with the 2020 Community Character Plan.

Staff believes that a highway commercial designation is not appropriate given the limited size of the site and its location in the middle of a residential neighborhood on a neighborhood collector street. Typically, the auto-oriented commercial land use designations are found on arterial streets and not within residential neighborhoods. Therefore, staff does not recommend approval of the requested amendment to the Des Moines 2020 Community Character Plan.

## SUMMARY OF DISCUSSION

Jason Van Essen presented the staff report and recommendation.

Brian Millard asked if they are trying again to go to the Board of Adjustment, but they are going for "C-2".

Jason Van Essen stated in order for them to use the site for tire and vehicle repair, it has to be zoned "C-2". If denied "C-2" zoning they can seek a use variance from the Board of Adjustment.

George M. Clayton 14455 University Avenue, Waukee, IA stated that he is limited to what he can do with this site. He assures the Commission that the building premises will be kept clean and orderly.

Dann Flaherty stated that the "C-2" use in the neighborhood would run with the land.

Brian Millard asked if this would be a tire repair and where will the store the old tires.

George Clayton stated it would be tire sales and repair with light mechanical such as brake jobs – nothing heavy there will never be parts laying all over the premises. We are very cognizant of the neighborhood. The tires will be stored in the service truck that is completely covered and the truck is taken off premise daily.

## **CHAIRPERSON OPENED THE PUBLIC HEARING**

*The following spoke in opposition*

Mike Holzworth 5835 Grand Avenue represents Wes Hayward 2305 E 9<sup>th</sup> Street showed pictures of a number of cars and trucks parked around there and how the tires are being housed. He also showed a picture of a door that was damaged. He showed other properties he says that Mr. Clayton owns that are zoned "C-2" that are very poorly kept. He states that there will be no control if allowed to go to "C-2", unlike if it was a use variance it would have a limited time. Mr. Hayward asks that the staff recommendations be followed to deny Mr. Clayton's request to zone this site "C-2".

*Rebuttal*

George Clayton stated that some of the properties he pointed out were not his. The issues in the photograph have been corrected with the tenants and will not happen again. They have been instructed that the tires cannot be out on the parking lot. The door was sealed off for security purposes and it has been painted to match the roof. There will not be that many cars on the parking lot, the tenant has been instructed of that as well.

## **CHAIRPERSON CLOSED THE PUBLIC HEARING**

### **COMMISSION ACTION**

Brian Millard moved staff recommendation to find the requested rezoning not in conformance with the Des Moines' 2020 Community Character Plan.

Motion passed 11-0.

Brian Millard moved staff recommendation to deny the requested amendment to the Des Moines' 2020 Community Character Plan future land use designation from Low Density Residential to Auto-Oriented Small-Scale Strip Development.

Motion passed 11-0.

Brian Millard would like for everyone to consider that auto repair is even less intrusive than what they are offering. We do not have the zoning enforcement staff do go around every tire repair and shut them down for doing tire repair outside which is illegal.

Brian Millard moved staff recommendation to deny the requested rezoning.

Staff further suggests that the applicant seek a Use Variance should the requested rezoning be denied by the City Council. The Board of Adjustment cannot consider a Use Variance request until the applicant has been denied the required zoning by the City Council. A Use Variance would give the City greater control than Limited "C-2" because the Variance would lapse after discontinuance of the use for a period over 6 months.

A Use Variance was granted for this property for the same use in 2005. This situation is also similar to another case from 2005 in which gas pumps were removed from the Lower Beaver Conoco and the



09-1846 SS

associated auto repair shop became the primary use. In that case the applicant was denied zoning but the applicant obtained a Use Variance from the Zoning Board of Adjustment.

Motion passed 11-0.

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

MGL:clw

Attachment



09-1846  
Rev  
9-28-09  
EMD  
SS

September 27, 2009

City of Des Moines,  
Plan and Zoning Commission  
400 Robert D Ray Drive  
Des Moines, Iowa 50309

Dear Chairman Dann Flaherty,

The Union Park Neighborhood Association Steering Committee opposes the request to rezone the property at 2218 East 9<sup>th</sup> Street from C-1 to C-2. It is our consensus that the property is presently appropriately zoned for the area, which is residential in character and definitely is not a "general retail and highway-oriented commercial district". A change to C-2 would not only be inconsistent with the character of the surrounding neighborhood but a C-2 designation would open the possibility for unwanted future businesses to move into the location such as adult entertainment or a used car lot.

The Steering Committee is not aware of any complaints with the current use of the property as a tire store and the business appears to be good neighbors. The property is not a visual eyesore and is free from clutter and debris; customers are not noisy and are respectful of the neighboring residents. The Steering Committee would support creative efforts to keep the current business in place without changing the zoning. If the Planning and Zoning Commission feels that the current business is not consistent with the C-1 zoning designation, the Union Park Neighborhood Association Steering Committee would support a different approach to allow the business to continue with a variance or license or permit rather than a zoning change.

Sincerely,

A handwritten signature in cursive script that reads "Paul Sadler".

Paul Sadler, Recording Secretary  
For the Union Park Neighborhood Association Steering Committee  
P.O. Box 16113  
Des Moines, IA 50316  
Phone: 515-265-5372  
E-Mail: [pvsadler@att.net](mailto:pvsadler@att.net)  
See our website at: [www.unionparkdsm.com](http://www.unionparkdsm.com)

Item ZON2004-00138 Date \_\_\_\_\_

I  (am)  (am not) in favor of the request. 55

(Circle One)  
**RECEIVED**  
SEP 29 2009  
COMMUNITY DEVELOPMENT

Print Name Deb Gomez  
Signature Debra L. Gomez  
Address 506 Alphaside

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

I believe in free  
enterprise; saying  
people create their  
own business as what  
built this country.

Item ZON2009-00138 Date Sept 24-2009

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

(Circle One)  
**RECEIVED**  
SEP 28 2009  
COMMUNITY DEVELOPMENT

Print Name Beverly J Walsh  
Signature Beverly J Walsh  
Address 2215 E 9th St

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Item ZON2009-00138

Date \_\_\_\_\_

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

(Circle One)

Print Name Gm Clayton

Signature [Signature]

Address 14455 Unit Ave Waukegan  
Suite 3

55

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
SUBJECT: [unclear]  
\_\_\_\_\_

Item ZON2009-00138

Date 9-26-09

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

(Circle One)

Print Name MARLENE J POLLARD-BALL

Signature Marlene J Ball

Address 2221. E 9th St

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

It is better to have a business in the  
neighborhood that is helpful than to have an  
empty building that vandals break glass and  
spray paint with graffiti. So far they have  
been good neighbors. Thank you.

Item ZON2004-00138

Date 9/25/09

55

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

**GLENNY RD. RPTL**

RECEIVED

SEP 28 2009

UNITY DEVELOPMENT

Print Name Mark Hollingsworth

Signature [Signature]

Address 2210 E. 9th St.

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Item ZON2009-00138

Date 9-24-09

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

(Circle One)

RECEIVED

SEP 28 2009

UNITY DEVELOPMENT

Print Name Kimberly Porter

Signature Kimberly R Porter

Address 812 Alpha Ave, DSM IA

50316

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Item ZON2009-00138 Date 9-22-09

I (am)  in favor of the request.

(Circle One)

Print Name Lynn M. Laws  
Signature Lynn M. Laws  
Address 2205 E 9th St.

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

I vehemently oppose this rezoning proposal, which I believe would harm this neighborhood & reduce home values. Thank you for sending this postcard & notice.

Item ZON2009-00138 Date 9-23-09

I (am)  in favor of the request.

(Circle One)

Print Name Megan + Ben Erickson  
Signature BE  
Address 809 Guthrie Ave.

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

Hours of operation. We have witnessed the shop as it is now, open at 9:00pm. Along with this, their location promotes bad driving habits on the 4 way stop. This, along with the limited parking, would only get worse.

09-18-09 55

I (am)  in favor of the request.

(Circle One)

Print Name MICHAEL BRISCOLL  
Signature Michael Briscoll  
Address 902 Huthue apt 3

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

not adequate parking for a business, to small, at the time a lot of activity, young kids playing in front areas, lot of noise, cars in and out (I don't want a grocery store)