

Date..... September 5, 2007

WHEREAS, on October 22, 2007, by Roll Call No. 07-2024, it was duly resolved by the City Council that the application of Mora, Inc, represented by Jaime Mora, Secretary, to rezone certain property it owns in the vicinity of 1434 Des Moines Street, from the “C-1” Neighborhood Retail Commercial District to the “C-2” General Retail and Highway Oriented Commercial District classification, be set down for hearing on November 5, 2007, 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 October __, 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 Plan and Zoning Commission voted 8 to 4 in support of a motion to recommend that the proposed rezoning be denied for the reasons set forth in the accompanying letter from Bert Drost, Senior City Planner.

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 uses allowed in the “C-1” District provide a more appropriate transition between the existing “C-2” District and the residential uses to the south.
 - b. The current “C-1” District zoning of the property is consistent with the classification of the property as Commercial: Auto-Oriented Small-Scale Strip Development under the 2020 Community Character Land Use Plan.

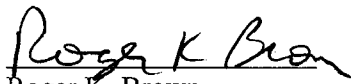
(continued)

Date..... November 5, 2007

3. The proposed rezoning of the property described above to the "C-2" General Retail and Highway Oriented Commercial District classification is hereby DENIED.

MOVED by _____ to adopt and deny the proposed rezoning.

FORM APPROVED:



Roger K. Brown

Assistant City Attorney

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NOTE: If the City Council desires to approve the rezoning, an appropriate motion would be to continue the public hearing until November 19, 2007, 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				
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.

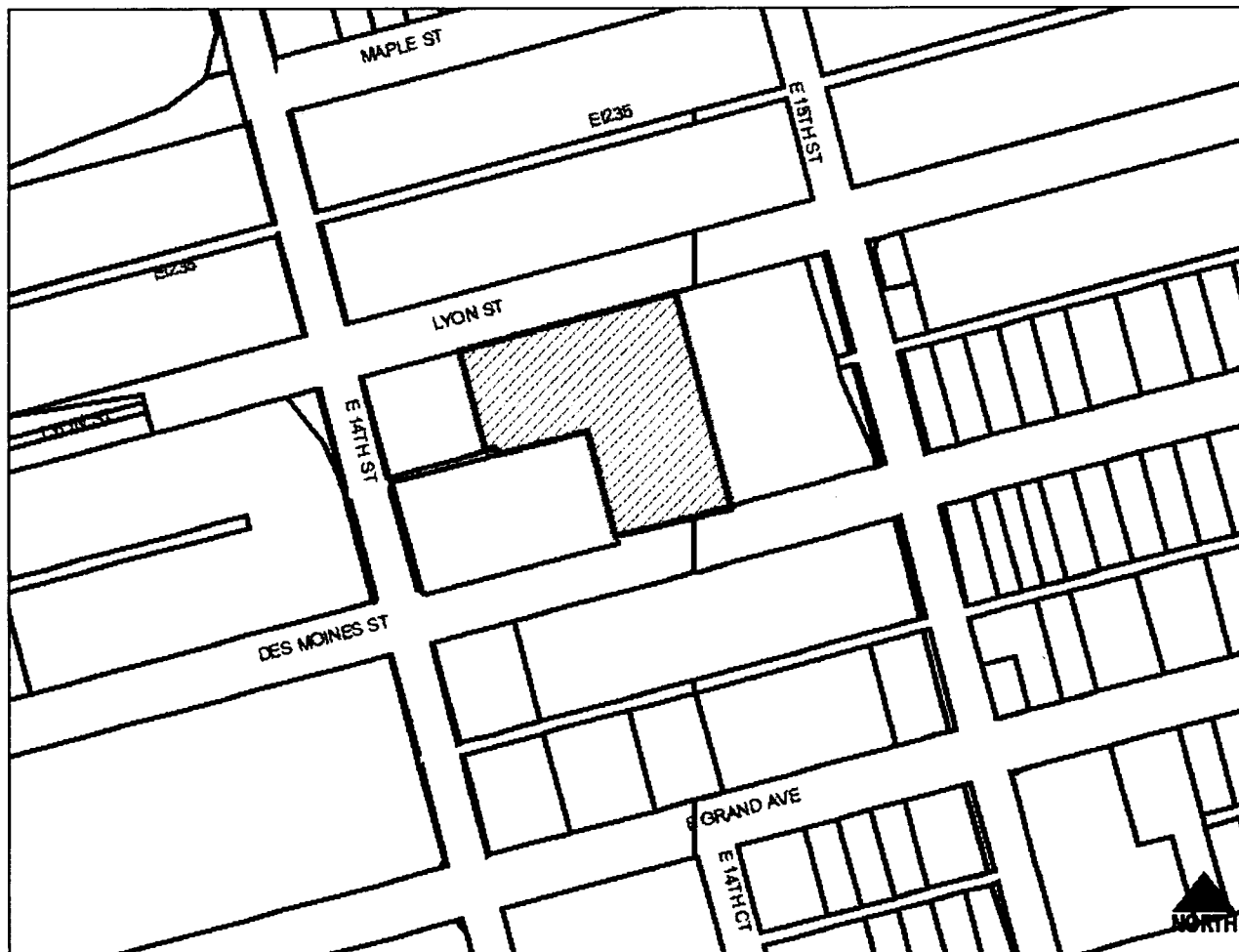
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

Request from Mora, Inc. (owner) represented by Jaime Mora (officer) to rezone property located at 1434 Des Moines Street.			File # ZON2007-00161		
Description of Action	Rezone Property from "C-1" Neighborhood Retail Commercial District to Limited "C-2" General Retail and Highway Oriented Commercial District to allow for conversion of retail space to a billiard parlor.				
2020 Community Character Plan	Commercial: Auto-Oriented Small-Scale Strip Development.				
Horizon 2025 Transportation Plan	No Planned Improvements.				
Current Zoning District	"C-1" Neighborhood Retail Commercial District.				
Proposed Zoning District	Limited "C-2" General Retail and Highway Oriented Commercial District.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area					
Outside Area	0	0	0	<20%	
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council to overturn the Commission's recommendation	Yes	X
	Denial	8-4		No	

Mora Inc. - 1434 Des Moines Street

ZON2007-00161



October 22, 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 October 4, 2007, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 8-4 as follows:

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

DENIAL of a request from Mora, Inc. (owner) represented by Jaime Mora (officer) to rezone property located at 1434 Des Moines Street from "C-1" Neighborhood Retail Commercial District to Limited "C-2" General Retail and Highway Oriented Commercial District to allow for conversion of retail space to a billiard parlor on the basis that the existing "C-1" zoning provides a more appropriate transition between existing "C-2" and residential uses, with the understanding the applicant can go before the Board of Adjustment for a use variance.
(ZON2007-00161)

Written Responses

0 In Favor
0 In Opposition

This item will not require a 6/7 vote of City Council.



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

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Part A) Staff recommends the proposed rezoning be found in conformance with the Des Moines' 2020 Community Character Plan Future Land Use designation of Commercial: Auto-Oriented Small-Scale Strip Development.

Part B) Staff recommends denial of the requested rezoning on the basis that the existing "C-1" zoning provides a more appropriate transition between existing "C-2" and residential uses.

Should the Plan and Zoning Commission consider approving the request, staff recommends that uses be limited to "C-1" District uses and billiard parlors and taverns contained within a commercial center. Staff would further recommend that the total square footage and hours of operation be limited for billiard parlor and tavern uses.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The subject property contains a strip commercial center with a total floor area of 17,700 square feet. The majority of the building is unoccupied. A laundry mat is located in the eastern most bay. The applicant wishes to lease a 50' x 70' (3,500 square feet) bay for use as a billiard parlor with a bar. The applicant is proposing that adult entertainment businesses, vehicle display lots, cell towers and billboards be prohibited as a condition of the rezoning.
2. **Size of Site:** 1.8 acres.
3. **Existing Land Use (site):** Strip commercial center consisting of a laundry mat and vacant commercial bays.
4. **Adjacent Land Use and Zoning:**
 - North* – "R1-60"; Use is Interstate 235.
 - South* – "R-4"; Use is multifamily residential.
 - East* – "C-1"; Use is grocery store.
 - West* – "C-2"; Use is McDonalds restaurant.
5. **General Neighborhood/Area Land Uses:** The subject site is located in the northwest corner of the Capitol East Neighborhood, which generally consists of single-family uses east of East 15th Street and multiple-family residential and commercial uses west of East 15th Street.
6. **Applicable Recognized Neighborhood(s):** Capitol East Neighborhood.
7. **Relevant Zoning History:** On June 19, 2000, by Ordinance Number 13,836 the City Council conditionally rezoned the subject property from "R1-60" One-Family Low-Density Residential District to "C-1" Neighborhood Retail Commercial District. This rezoning included the property to the east that now includes a grocery store. The rezoning was subject to the following conditions:
 - a. Access to the entire Property from the adjoining public rights-of-way shall be limited to two drive accesses onto Des Moines Street.

- b. At the site plan approval stage for any commercial development upon the Property, a cross access easement shall be provided to allow the entire Property to share the two allowed drive approaches onto Des Moines Street.
- c. At the site plan approval stage for any commercial development upon the Property, a pedestrian access and landscaping plan with building elevation shall be submitted for review and approval by the Planning Director. The Planning Director shall review the pedestrian access and landscaping plan and building elevation for compatibility with the design and appearance of the other property and buildings in the vicinity.

8. 2020 Community Character Land Use Plan Designation: Commercial: Auto-Oriented Small-Scale Strip Development.

9. 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. **Landscaping & Buffering:** The subject site was recently developed in accordance with the current City Landscaping Standards.
- 2. **Parking & Traffic:** The subject property is part of a recently developed commercial center. The proposed zoning would allow more intense uses, which may generate more traffic than the currently allowed uses would.
- 3. **Conditional Use Permit:** The operator of the proposed pool hall would be required to obtain a Conditional Use Permit from the Zoning Board of Adjustment to allow the selling of alcoholic beverages. The following criteria must be met for the Board to grant a Conditional Use Permit in accordance with Section 134-954 of the City Code.

The Board shall grant a conditional use permit to a business holding a liquor license or a beer or wine permit only where the business, when operated in conformance with such reasonable conditions as may be imposed by the Board, satisfies the following criteria:

- 1. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.
- 2. The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.
- 3. The business will not unduly increase congestion on the streets in the adjoining residential area.
- 4. The operation of the business will not constitute a nuisance.

4. 2020 Community Character Plan: The City's Land Use Plan identifies the subject property as "Commercial: Auto-Oriented Small-Scale Strip Development," which is described as "small-to-

moderate commercial in a linear patter that serves the passing motorist. Individual buildings may be over 35,000 square feet with individual modules from 2,000 to 20,000 square feet." This classification is generally associated the "C-1" Neighborhood Retail Commercial District and the "C-2" General Retail and Highway-Oriented Commercial District. The existing "C-1" zoning of the property provides a transition between higher intensity "C-2" zoning along SE 14th Street and the residential uses to the east and south. Staff believes that the "C-1" District is the most appropriate for this site given its proximity to residential uses.

SUMMARY OF DISCUSSION

Jason VanEssen: Presented staff report and recommendation. Noted a letter was received from the neighborhood association with concerns outlined, although it did not specifically support or oppose the request.

Tim Urban: Asked why the applicant could not go straight to the Board of Adjustment for a use variance.

Jason VanEssen: Explained to apply for a use variance, the zoning has to be denied by the Plan and Zoning Commission and the City Council first. Noted they would also have to go to the Zoning Board of Adjustment to get a conditional use permit to operate the business as proposed.

Roger Brown: Noted there are two different standards for the Board of Adjustment to apply: if the request is allowed by zoning and a conditional use permit issued by the Board if they meet the criteria they are entitled to be approved. If it comes forward as a use variance, the presumption is that it is to be denied unless they can prove that they had no economic use of the property, which would be extremely difficult to show if there is a billiard parlor with a liquor license.

Jaime Mora, Mora, Inc., 1605 Edgewater Drive, Des Moines: Explained the reason for the request to be for a billiard parlor not a bar. Noted they would eventually need a liquor license.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following individual spoke on this item:

Nadine Hogate, 1732 E. Walnut, Capitol East Neighborhood Association: Noted the neighborhood association does not see a billiard parlor to be a good fit as a result of all the children in the area, as well as McDonald's, which fills up with East High students. There needs to be entertainment in the neighborhood, but if they can restrict it to billiard parlor only they would have to watch it closely.

Tim Urban: Asked about retailers building in older neighborhoods. Asked if there has been enough change with other projects in the area that would offer them hope that they could avoid having to have liquor establishments or if there was too much vacancy.

Nadine Hogate: Indicated they are optimistic.

Jaime Mora: Noted there are 10 rental spaces on the strip mall they did but they have only had 2 spaces rented. Explained monitoring minors would be done with a security company.

Dann Flaherty: Asked what the hours would be.

Jaime Mora: Noted the hours would be 12 p.m. to 1 a.m. on the weekends and 2:00 p.m. to 1:00 or 2:00 a.m. during the week.

Fran Koontz: Suggested actively recruiting retailers to sell to the high school kids, particularly restaurants.

Kent Sovern: Asked if it would be owner-run or leased and if there would be food service.

Jaime Mora: Indicated it would be owner-run but there would be no food service.

Tim Urban: Expressed concern that they would be establishing a use that the kids in the area could not use and suggested they do something to have liquor in part of the establishment and prohibit liquor in part of it.

Jaime Mora: Noted they would have someone monitoring to ensure minors did not get in if that's what the Commission required. Indicated he didn't think it would work without liquor or beer because he needs to make money.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Kent Sovern: Moved part A to find the zoning to be in conformance with the 2020 plan.

Motion passed 11-1 (Dann Flaherty was in opposition).

Kent Sovern: Moved for approval of the applicant's request for the limited C-1 to be for the exclusive use of a billiard parlor and tavern, per staff's alternate recommendation.

Jason VanEssen: Noted there is nothing specific mentioned in the staff report regarding hours of the operation or maximum area allowed for the proposed use that Mr. Sovern was referring to. Asked Mr. Sovern if he had hours of operation or maximum square footages in mind.

Kent Sovern: Noted he did not have any hours in mind, he preferred to let the market determine the hours. He was, however concerned that there would be no food service and he did not think there would be a way to make an appropriate motion to direct for food service.

Dann Flaherty: Asked Legal counsel if the Commission could direct that at least 50% of the sales in the establishment be food-based.

Roger Brown: Noted if 50% of the sales would be from food it would by definition be a restaurant, which is currently a permitted use. Approving it for C-1 uses plus tavern he could have a restaurant, serve alcohol and have billiard tables.

Kent Sovern: Modified his motion to move approval as outlined to approve the request for C-1 uses, which would allow the restaurant, and a billiard parlor.

Tim Urban: Asked if the applicant can move ahead only if he uses it as a restaurant that meets 50% food sales requirement and if he doesn't meet that requirement he would lose his license.

Roger Brown: Clarified there would be no restriction on the presence of minors.

Brian Millard: Indicated businesses want to open a tavern and they call themselves a restaurant and the City has a difficult time gaining enforcement. They are allowed to be open for a year, someone has to complain and an audit is done by the Police Department.

Larry Hulse: Indicated the City would do the audit, but has to prove that the sale of food was 50% or greater or not.

Brian Millard: Indicated the applicant is being allowed to open up as a bar with billiard sales masquerading as a restaurant, which he could not support.

David Cupp: Indicated under the existing zoning the applicant can open a restaurant, but cannot have billiards.

Kent Sovern: Reiterated that the motion is for an allowed C-1 use plus billiards then called the question.

Motion failed 5-7 (Leisha Barcus, Dann Flaherty, David Cupp, Shirley Daniels, Marc Wallace, Brian Millard and Fran Koontz were in opposition).

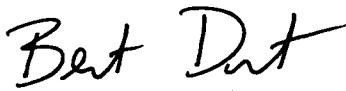
Brian Millard: Moved staff for denial of part B with the understanding the applicant can go to the Board of Adjustment.

Tim Urban: Noted if they go to the BOA and get their permit they will have the operation that excludes food and only has a tavern and a billiards operation. Approving the prior motion would have given them the only option of having the food service and they wouldn't have gone to the Board of Adjustment.

Brian Millard: Indicated the BOA can limit the use to that owner, a specific use and a certain amount of time.

Motion passed 8-4 (Kent Sovern, Jeffrey Johannsen, Tim Urban and Greg Jones were in opposition).

Respectfully submitted,



Bert Drost, AICP
Senior City Planner

BAD:dfa

Attachments

RECEIVED
OCT 01 2007
COMMUNITY DEVELOPMENT
DEPARTMENT

September 29, 2007.

Chair, City of Des Moines Planning and Zoning Commission
602 Robert D. Ray Drive
Des Moines, Ia. 50309

Re: Proposal for Billiard Parlor

The work of the Moya Group for Economic Development in the Capitol East Neighborhood has been very gratifying and a sign that we have accomplished a safe and optimistic quality of life in our very old and tired piece of Des Moines.

The proposed place of recreation for adults will be located in the immediate area of a large multiple family housing unit of which low income renters are a key ingredient and of a 'McDonalds' who serve youthful consumers.

Our neighborhood is very diverse and we have worked to keep it open and welcoming. We are very interested in how the Billiard Parlor (Tavern) performs and how the diversity of generation and background are served. Because students from East High School choose the area for a leisure time hangout we will be forced to monitor activity closely.

Thanks to you all for your work on behalf of the residents of Des Moines.



Nadine Hogate, Contact
1742 E. Walnut St.
Des Moines, Ia. 50316