



**Roll Call Number**

**Agenda Item Number**

45

**Date** December 21, 2009

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on November 19, 2009, its members voted 8-0 in support of a motion to recommend **DENIAL** of a request from Andy Lee (owner) to rezone property located at 614 37<sup>th</sup> Street, from R1-60 One-Family Low-Density Residential District to NPC Neighborhood Pedestrian Commercial District.

The subject property is more specifically described as follows:

Lot 32, Rhoads Heights, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk and Warren County, Iowa.

WHEREAS, on December 7, 2009 by Roll Call No. 09-2182 the City Council duly resolved to hold a public hearing on the proposed rezoning in Council Chambers, City Hall, Des Moines, Iowa, at 5:00 p.m. on December 21, 2009; and

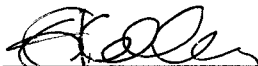
WHEREAS, notice of the hearing was published according to law in the Des Moines Register on December 10, 2009, setting forth the time and place for the proposed amendment to the Zoning Ordinance; and

WHEREAS, pursuant to the notice, those interested in the proposed rezoning, for and against, have been given opportunity to be heard and have presented their views to 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 hearing is closed, the objections to the proposed rezoning of the property located at 614 37<sup>th</sup> Street to NPC Neighborhood Pedestrian Commercial District are hereby sustained, and the proposed rezoning is hereby **DENIED**.

Moved by \_\_\_\_\_ to deny.

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael F. Kelley  
Assistant City Attorney

RDLampki\RENAE\ORDINANCES\MFK\Rezoning\Lee - CLOSING HEARING RC.doc

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
<b>TOTAL</b>				

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.

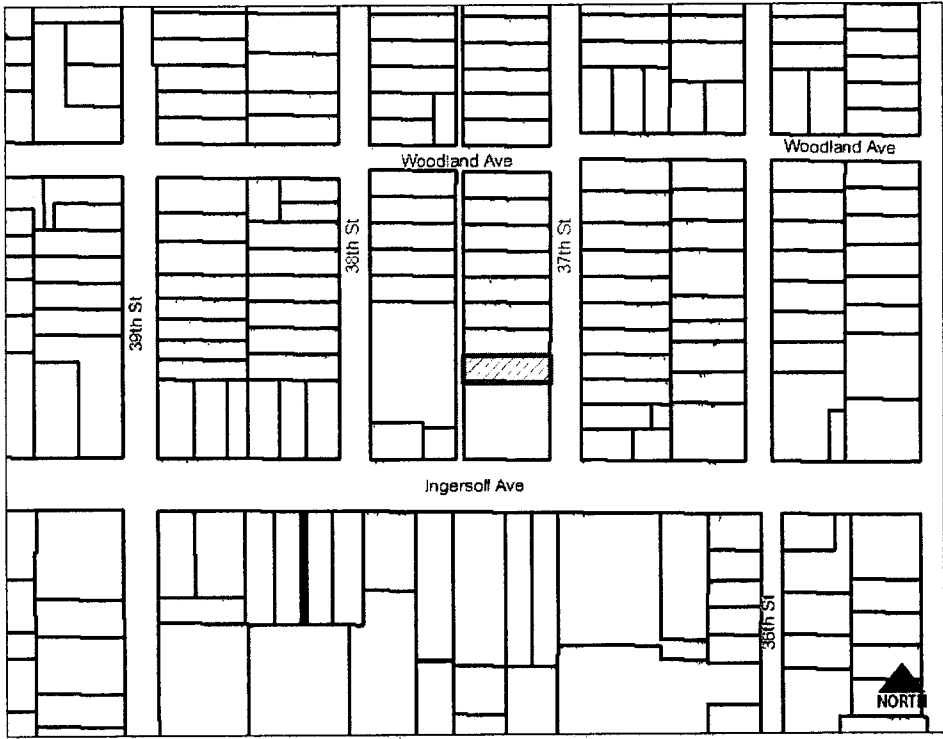
\_\_\_\_\_  
City Clerk

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Request from Andy Lee to rezone property located at 614 37 <sup>th</sup> Street.				File #	
				ZON2009-00165	
<b>Description of Action</b>	Rezone property from "R1-60" One-Family Low-Density Residential District to "NPC" Neighborhood Pedestrian Commercial District.				
<b>2020 Community Character Plan</b>	Commercial: Pedestrian-Oriented Commercial Corridor				
<b>Horizon 2025 Transportation Plan</b>	No Planned Improvements				
<b>Current Zoning District</b>	"R1-60" One-Family Low-Density Residential District				
<b>Proposed Zoning District</b>	"NPC" Neighborhood Pedestrian Commercial District				
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	1	4			
Outside Area					
<b>Plan and Zoning Commission Action</b>	Approval		<b>Required 6/7 Vote of the City Council</b>	Yes	X
	Denial	8-0		No	

Andy Lee - 614 37th Street

ZON2009-00165



November 20, 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 November 19, 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			
Jim Martin	X			
Brian Millard	X			
William Page				X
Mike Simonson	X			
Kent Sovern	X			

**DENIAL** of a request from Andy Lee for property located at 614 37<sup>th</sup> Street that the proposed rezoning does not conform to the Land Use Transition goals of the 2020 Community Character Plan (Chapter 4, Page 74).; and recommended denial to rezone property from "R1-60" One-Family Low-Density Residential District to "NPC" Neighborhood Pedestrian Commercial District. ZON2009-00165

Written Responses

- 1 In Favor
- 4 In Opposition

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

Staff believes that the proposed rezoning does not conform to the Land Use Transition goals of the 2020 Community Character Plan (Chapter 4, Page 74).

Staff recommends denial of the requested rezoning.



## STAFF REPORT TO THE PLANNING COMMISSION

### I. GENERAL INFORMATION

1. **Purpose of Request:** The submitted application does not identify any specific plans for the property. The applicant has verbally indicated that he wishes to develop parking in the rear yard of the property to support his commercial properties to the south including the Ingersoll Dinner Theater building. The applicant has also expressed a desire to convert the existing single-family dwelling to an office use.
2. **Size of Site:** 50 feet by 166 feet (8,300 square feet).
3. **Existing Zoning (site):** "R1-60" One Family Low Density Residential District.
4. **Existing Land Use (site):** The subject property contains a single-family dwelling.
5. **Adjacent Land Use and Zoning:**
  - North* – "R1-60", Uses are single-family dwellings.
  - South* – "NPC", Use is a multi-tenant commercial property fronting Ingersoll Ave.
  - East* – "R1-60", Uses are single-family dwellings.
  - West* – "NPC", Use is the EDCO Credit Union.
6. **Applicable Recognized Neighborhood(s):** North of Grand Neighborhood.
7. **Relevant Zoning History:** In 1997 the applicant proposed rezoning the subject property to the "C-O" Commercial Residential District to allow the existing single-family dwelling to be converted to a beauty salon. On December 18, 1997 the Commission, by a vote of 9-2-1, forwarded a recommendation of denial to the City Council. The applicant withdrew the request before a public hearing was held by the City Council.
8. **2020 Community Character Land Use Plan Designation:** Commercial: Pedestrian-Oriented, Commercial Corridor.
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. **NPC Design Guidelines:** The following design guidelines would apply to any future development of the subject property if it is rezoned to the "NPC" District.
  - (1) Buildings should frame the street and maintain a minimal setback from the street.
  - (2) The front facade of the first floor of the building on the primary commercial street should have a ratio of at least 40 percent window and window display area to total street facade.

- (3) The front entrance should be oriented to the street. On a corner lot, the building should have a well-defined entrance on the primary commercial street.
- (4) Materials should be brick, stone, tile, stucco, or horizontal wood clapboard with a maximum width of six inches. Two-story buildings are encouraged.
- (5) Commercial buildings with over 50 feet of building frontage should have the appearance of being broken into separate bays of between 20 to 35 lineal feet using structural elements, fenestration patterns, protruding or recessed bays, or architectural details.
- (6) Building frontage should occupy at least 50 percent of the primary street frontage.
- (7) Off-street loading and parking spaces should be provided in compliance with sections 134-1376 and 134-1377 of the zoning chapter, subject to the following modifications:
  - a. The minimum number of off-street parking spaces is 60 percent of the number of spaces otherwise required by subsection 134-1377(a).
  - b. Parking should not exceed the amount otherwise required by section 134-1377 of this Code.
  - c. Parking should not use the front yard but should be concentrated along the side and in back of the building in the predominant pattern of character defining buildings.
  - d. Shared parking among businesses or between business and residential projects will be allowed, provided a shared parking plan is presented at the time of application, signed by the property owners, ensuring nonduplication of parking. The shared parking must be within 300 feet of the business or dwelling.
  - e. On-street parking directly adjacent to the occupant frontage shall count toward the minimum off-street parking requirement. Elimination of such on-street parking by the city shall have no effect on an approved site plan.
  - f. Tandem parking spaces shall count toward the minimum off-street parking requirement if a parking plan demonstrates that the parking will be for employees and will be occupied for over four hours between changes.
  - g. An emphasis of trees, shrubs and other plantings should be placed around the perimeter of any parking area and within large parking lots to create a more attractive area. The landscape plan should generally enhance the visual appearance of the building, parking area and any pedestrian areas.
- (8) The following bulk regulations should be observed:
  - a. Minimum lot area:
    1. Single-family detached dwelling, 5,000 square feet.
    2. Single-family semidetached dwelling, 3,000 square feet.
    3. Two-family dwelling, 6,000 square feet.
    4. Multiple dwelling, 10,000 square feet.
    5. Mixed-use project, 10,000 square feet.
    6. Shelter for the homeless, 8,000 square feet.
    7. No minimum requirement for permitted nonresidential uses.
  - b. Minimum lot area per dwelling unit:
    1. Row and multiple dwellings, 2,000 square feet.
    2. Shelter for the homeless, 300 square feet of lot size for each resident.
  - c. Front yard: minimum of zero feet.
  - d. Side yards: minimum of zero feet.
  - e. Rear yard: None required, except when adjoining any R or C-0 district or portion of a PUD designated for residential use, in which case ten feet.
  - f. Height: minimum of 15 feet, maximum of 45 feet.
  - g. Number of stories:

1. Residential uses, a maximum of four stories.
  2. All other permitted uses, a maximum of two stories.
- (9) Signs which are attached or projecting from the building and designed for the character of the building are preferred. Monument signs are allowed.
- (10) Any extension of parking into an adjoining residential district shall support the intent of the NPC neighborhood pedestrian commercial district and conform with the guidelines in this section.
2. **Site Plan Requirements:** Any future development of the site must conform to the City's site plan requirements including storm water management, landscaping, and screening. Site plans for property within the "NPC" District must be approved by the Plan and Zoning Commission.
  3. **Traffic/ Access:** The property is currently accessed by a residential driveway from 37<sup>th</sup> Street. The applicant has not submitted any development plans showing how the site would be accessed if redeveloped. Commercial development of the site would push commercial traffic further into the surrounding residential neighborhood unless the property was developed in conjunction with the commercial property to the south and had no driveway access of its own.
  4. **2020 Community Character Plan:** The subject property is currently designated as *Commercial: Pedestrian-Oriented Commercial Corridor* on the Future Land Use Map. This is the future land use designation for most of the Ingersoll Avenue Corridor and generally supports the "NPC" District. However, the 2020 Community Character Plan also identifies providing a transition between commercial and residential uses to protect residential uses from the impact of commercial activity as a goal. The 2020 Community Character Plan specifically states that "*new commercial development and expansion of existing commercial along major corridors should front upon and have primary access from the major corridor and not from an adjacent residential street.*" The subject property fronts a residential street. The property is also narrow for a commercial lot, which would make it challenging to provide adequate buffering for the single-family dwelling to the north.

## SUMMARY OF DISCUSSION

Erik Lundy presented staff report and recommendation.

A copy of the site sketch is enclosed in the Commission's information packet. As of Thursday, November 12, 2009, a meeting with the neighborhood association has not been held.

Brian Millard asked what kind of buffering would be required if they did use that north driveway.

Erik Lundy stated that in either case staff would require 10 feet or the applicant can seek relief from the Board of Adjustment.

Dann Flaherty asked if the applicant understands that even if the Commission grants the rezoning, he would still have to go to the Board of Adjustment in order to put a drive in.

Andy Lee stated he is aware that he would still have to go to the Board of Adjustment in order to put a drive in. He also restated his request to have the Commission grant the rezoning of subject property and noted the additional stalls would be used to support his commercial property to the South.

## CHAIRPERSON OPENED THE PUBLIC HEARING

*The following spoke in opposition.*

Kimberly Hansen 4015 Woodland Avenue, President of the North of Grand Neighborhood Association stated that they want to keep the area residential. She stated that the applicant called last Friday to schedule a meeting with the neighborhood association. They did meet with him on Wednesday night at their neighborhood board meeting, also included in the meeting were the renters of the Ingersoll Dinner Theater. We think that we have come up with a solution for this dilemma and that is to access the parking from the south and not ruin the structure as a single-family dwelling. They are asking that the Commission deny the rezoning and to have time to do an appropriate site plan review. She also noted their second preference would be the applicant's empty gas station lot that is an eye sore and suggest that the applicant take care of their property.

Mike Simonson asked staff is one allowed to park in back of residential lot without having it rezoned.

Erik Lundy stated yes there is a provision in the zoning which allows for an extension of parking through the site planning process, and then it has to come to the P&Z Commission.

Larry Hulse stated that it used to be allowed "by-right" but now it has to go to the P&Z for Site Plan review.

Kent Sovern stated that he thought the applicant was trying to say that this property needed to be rezoned so he could get proper insurance; and he has never heard of that before.

Mike Ludwig explained that the financial issues are probably the desire to use the house as a commercial property rather than having it remain as a residential use.

Mr. Samara one of the owners of the Ingersoll Dinner Theater stated that their concern is more parking spaces, so whatever can be accomplished for the future so there is no problem in the future would be beneficial.

Brian Millard asked if the gas station location would be convenient for them also.

Mr. Samara stated whatever solution would give them more parking spaces is acceptable.

Ted Irvine asked if the neighborhood association's parking suggestion would be acceptable.

Mr. Samara stated that if the fence behind the Dinner Theater can be pushed back then they would be able to utilize the space for more parking.

Ken Logan 607 37<sup>th</sup> Street concurs with the North of Grand Neighborhood Association because staff says it does not need to be rezoned, and the availability of the parking. The applicant has also stated that he could not use the southern corner because the environmental cleanup issues had not been completely satisfied yet. Those are in the process of being satisfied, the monitoring wells are scheduled to be taken out of the neighborhood, next week because the DNR has found that the soil contamination has not traveled outside the boundary of the applicant's property and the cleanup was completed last year.

Dann Flaherty asked that the copy of the DNR report be received and filed.

*Rebuttal*

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Andy Lee stated that in order to use the parking at his gas station property they must have the letter from the State of Iowa saying the soil is clean and they do not have it.

**CHAIRPERSON CLOSED THE PUBLIC HEARING**

JoAnne Corigliano stated that the plan that the applicant has given them is unnecessary, it does not make sense to go around that building unless there is some future use that he has in mind.

Ted Irvine stated that he does not think the insurance is any concern for the Commission. The applicant has been given several opportunities to submit site plans and he has not, this particular plan does not make sense for the neighborhood or the commercial use for the property and there are other opportunities that would achieve what they need.

**COMMISSION ACTION**

Mike Simonson moved staff recommendation that the proposed zoning does not conform to the Land Use Transition goals of the 2020 Community Character Plan (Chapter 4, Page 74); and denial of the requested zoning.

Motion passed 8-0

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

MGL:clw

Attachment



Item 2009 00165 Date 10/07/09

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

(Circle One) RECEIVED

Print Name JOE & PAT KNIGHT  
Signature Joe Knight  
Address 625-37th DM 50312

OCT 14 2009

UNITY DEVELOPMENT

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

*This could represent the residential property in the neighborhood. What is Mr. Lee's intention? Is he planning to build another family unit or is he going to make a parking lot? We want to see the*

Item 2009 00165 Date Wed 05 Oct 2009

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

(Circle One) RECEIVED

OCT 14 2009

UNITY DEVELOPMENT

Print Name Ken Logan Wayne Enterprises LLC  
Signature Ken Logan  
Address 607 37<sup>th</sup> St 50512

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

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

45 27  
(am) (am not) in favor of the request.  
(Circle One) RECEIVED  
OCT 14 2009  
UNITY DEVELOPMENT  
Reason for opposing or approving this request may be listed below:  
Print Name Vincent Cople  
Signature Vincent Cople  
Address 3725 Ingleson Ave

Item 2009 00165 Date 10/14/09

Item 2009 00165 Date 10-7-09

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

(Circle One)  
**RECEIVED**

Print Name Rachelle H. Saltzman

OCT 14 2009

Signature Rachelle H. Saltzman

UNITY DEVELOP

Address 631 37<sup>th</sup> St DSM 50312

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

Mr. Lee already owns several commercial properties on 37<sup>th</sup> St/Ingersoll that he does not keep up, there was an illegal commercial t-shirt business being run out of the property in question last year. I've lived here (631 37<sup>th</sup>) for 13 years, & we certainly do not need more businesses encroaching on 37<sup>th</sup> St.

Item 2009 00165 Date 10-6-09

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

(Circle One)

**RECEIVED**

Print Name Tanya Finestead-Harrington

OCT 14 2009

Signature Tanya Finestead-Harrington

UNITY DEVELOP

Address 619 37<sup>th</sup> St.

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

- ① Already 2 businesses on 37<sup>th</sup> - These 2 alone create a lot of traffic & parking issues.
- ② If we allow another business will it continue to creep up my street?
- ③ Mr Lee doesn't have a good rep. of keeping up his properties. Three properties in less than a block sit empty - 1 2 are boarded up - looks Terrible