

Date September 27, 2010

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 16, 2010, its members voted 6-3 in support of a motion to recommend **APPROVAL** of a request from Kathy Harrison (owner), to rezone property located at 2713 Martin Luther King, Jr. Parkway, from "M-3" Limited Industrial District to Limited "C-2" General Retail and Highway Oriented Commercial District, to allow vehicle repair and vehicle sales and display businesses.

The subject property is more specifically described as follows:

(Conditional "C-2" to [a new] Conditional "C-2")  
 (Except the West 7 feet) the West 107 feet of Lot 3, Lambert Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.  
 ("M-3" to Conditional "C-2")  
 (Except the West 107 feet) Lot 3, Lambert Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

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 October 11, 2010, 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.

FORM APPROVED:

MOVED by \_\_\_\_\_ to adopt.



Michael F. Kelley, Assistant City Attorney

(ZON2010-00160)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

**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.

MOTION CARRIED APPROVED

\_\_\_\_\_  
Mayor

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



September 21, 2010

Honorable Mayor and City Council  
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held September 16, 2010, the following action was taken:

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 6-3 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		
Joel Huston	X			
Ted Irvine	X			
Greg Jones	X			
Jim Martin				X
Brian Millard		X		
William Page	X			
Mike Simonson				X
Kent Sovern	X			

**APPROVAL** of a recommendation that the requested rezoning be found in conformance with the Des Moines' 2020 Community Character Plan; and to **approve** the requested rezoning to Limited "C-2" General Retail and Highway-Oriented District subject to the owner of the property agreeing to accept the following conditions for the entire parcel known as 2713 Martin Luther King, Jr. Parkway (legal description: Lot 3 of Lambert Place, excluding west 7 feet):

1. Prohibit the use of the property for adult entertainment business, package goods liquor stores, pawn shops, financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles, off-premises advertising signs, taverns and night clubs.
2. Any change of use, alteration, or improvement to the existing buildings or use of the property (including legitimizing current non-conforming uses) shall cause the entire site to have to come into conformance with all applicable building codes with issuance of a Certificate of Occupancy.

3. Any change of use, alteration, or improvement to the existing buildings or use of the property (including legitimizing current non-conforming uses) shall cause the entire site to conform with a Site Plan in accordance with all current site plan requirements.
4. Any use of the property for a vehicle display lot shall cause the entire vehicle display lot shall conform with a Site Plan reviewed by the Plan and Zoning Commission under the design guidelines for vehicle display lots.
5. Removal of the billboard based upon the terms of the lease.
6. A copy of the billboard lease must be supplied to staff upon rezoning.
7. Storm water design to meet current standards for sites over an acre. (Including water quantity and water quality)

#### Written Responses

2 In Favor

3 In Opposition

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

Part A) Staff recommends that the requested rezoning be found in conformance with the Des Moines' 2020 Community Character Plan.

Part B) Staff recommends approval of the requested rezoning to "C-2" General Retail and Highway-Oriented District subject to the owner of the property agreeing to accept the following conditions for the entire parcel known as 2713 Martin Luther King, Jr. Parkway (legal description: Lot 3 of Lambert Place, excluding west 7 feet):

1. Prohibit the use of the property for adult entertainment business, package goods liquor stores, pawn shops, financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles, off-premises advertising signs, taverns and night clubs.
2. Any change of use, alteration, or improvement to the existing buildings or use of the property (including legitimizing current non-conforming uses) shall cause the entire site to have to come into conformance with all applicable building codes with issuance of a Certificate of Occupancy.
3. Any change of use, alteration, or improvement to the existing buildings or use of the property (including legitimizing current non-conforming uses) shall cause the entire site to conform with a Site Plan in accordance with all current site plan requirements.
4. Any use of the property for a vehicle display lot shall cause the entire vehicle display lot shall conform with a Site Plan reviewed by the Plan and Zoning Commission under the design guidelines for vehicle display lots.
5. Removal of the billboard based upon the terms of the lease.

## STAFF REPORT

### I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant requests the rezoning in order to allow the rear portion of the property to be used in common with a commercial use on the front portion of the property. The previously existing vehicle display lot on the front portion of the property has ceased for more than 6 months. Therefore, any future use of the property for a vehicle display lot is subject to review and approval by the Plan and Zoning Commission of a Site Plan under the design guidelines for vehicle display lots.
2. **Size of Site:** 0.85 acres (37,026 square feet).
3. **Existing Zoning (site):** "C-2" General Retail and Highway-Oriented Commercial District and "M-3" Limited Industrial District.
4. **Existing Land Use (site):** The front (west) portion of the subject property is used for automobile sales office and repair, and the rear (east) portion of the subject property is used for warehousing. There is a billboard on the southern edge of the parcel and a communications tower on the eastern edge of the parcel.
5. **Adjacent Land Use and Zoning:**
  - North* – "M-3", Uses are Gus Farms wholesale food distribution with accessory offices and accessory retail grocery.
  - South* – "M-3", Uses are open space and Rainsoft home water treatment systems sales office and distribution warehouse.
  - East* – "U-1", Uses are off-street parking for Des Moines Public Schools bus drivers and Prospect Park.
  - West* – "C-2", Use is vacant land.
6. **General Neighborhood/Area Land Uses:** The subject property is along the Martin Luther King, Jr. Parkway commercial corridor between Euclid Avenue and Hickman Road. The area includes a mix of light industrial, commercial, and office uses.
7. **Applicable Recognized Neighborhood(s):** Prospect Park Neighborhood.
8. **Relevant Zoning History:** In 2008, the applicant sought to rezone the site to "M-1" Light Industrial District but withdrew the request prior to the City Council's public hearing on the matter. On May 1, 2008, the Plan & Zoning Commission voted to approve the rezoning to "M-1" District subject to the following conditions:
  - A. Prohibit the use of the property for adult entertainment business, package goods liquor stores, pawn shops, financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles, off-premises advertising signs, taverns and night clubs, any "M-1" District permitted use that is not conducted completely within the confines of a building.

- B. Any change of use, alteration, or improvement to the existing buildings or use of the property (including legitimizing current non-conforming uses) shall cause it to come into conformance with all applicable building codes with issuance of Certificate of Occupancy and shall cause it to come into conformance with the Des Moines' Landscape Standards as they are applied to "C-2" Districts in accordance with an approved Site Plan.
- C. Any expansion, alteration, or improvement to the existing vehicle display lot use of the property shall cause it to conform to a Site Plan reviewed by the Plan and Zoning Commission under the prevailing design guidelines for vehicle display lots.
- D. Conformance to the current C-2 standards for auto lot use on the front portion of the property.
- E. Removal of the billboard based upon the terms of the lease.
- F. Provision of perimeter striping to indicate where the vehicles can be parked.
- G. Provision of a significant barrier on the south such as chains and bollards or other barriers as approved by the Community Development Director that would prevent parking in the grass.

The western 100 feet of the subject property was rezoned to "C-2" for a vehicle display lot use on September 27, 1999 subject to the following conditions:

- A) The entire area upon the Property used for parking, loading and vehicle storage shall be paved.
- B) Any use of the Property for motor vehicle display or sales shall comply with the requirements applicable to the creation of a new automobile display or sales operation under the "C-2" District regulations, including landscape setbacks and wheel barriers where necessary. *(Note: this was prior to 2001 adoption of design guidelines for Site Plan review of vehicle display lots.)*

9. **2020 Community Character Land Use Plan Designation:** Commercial: Auto-Oriented, Small-Scale Strip Development.

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.

## II. ADDITIONAL APPLICABLE INFORMATION

- 1. **2020 Community Character Plan:** The proposed "C-2" General Retail and Highway-Oriented Commercial District is in conformance with the existing Des Moines' 2020 Community Character Plan designation of Commercial: Auto-Oriented, Small-Scale Strip Development. Staff believes that it is appropriate to designate the entire property for commercial use so long as there are limitations with any rezoning of the property that are applicable for the entire parcel known as 2713 Martin Luther King, Jr. Parkway.

The portion of the property that is zoned "M-3" District can be used for warehousing but cannot be used for vehicle repair. of the narrow use limitations of the "M-3" District, which were originally crafted for industrial development near the airport. The subject property and surrounding properties are within the only "M-3" District area in the City that is not in the vicinity of the Des Moines International Airport. Rezoning the entire property to "C-2" will allow for the entire site to be used for vehicle sales and auto repair.

While staff finds that the surrounding area has a land use character of commercial and light industrial uses such as warehousing, storage, and school bus storage/maintenance facilities, there are other uses in the "C-2" District that are not appropriate along a corridor with high visibility, including adult entertainment businesses, package goods liquor stores, pawn shops, financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles, off-premises advertising signs, taverns, and night clubs. By prohibiting off-premise advertising, the existing billboard would be considered a legal non-conforming use. A new billboard would not be permitted if the existing billboard is removed or destroyed by more than 60%.

2. **Drainage/Grading:** The eastern portion of the property sits at a lower grade than the western portion that drains toward Martin Luther King, Jr. Parkway. The eastern portion of the property drains to the east towards the park.
3. **Landscaping & Buffering:** Any future use of the site must be in compliance with a Site Plan that conforms with the City's Landscape Standards.

The western portion of the site previously contained a vehicle display lot that has ceased operation for more than 6 months. Therefore, any future use of the property for a vehicle display lot is subject to review and approval by the Plan and Zoning Commission of a Site Plan under the design guidelines for vehicle display lots. The property does not appear to conform to the current adopted Des Moines Landscape Standards in terms of setbacks and overall open space and landscaping requirements.

4. **Permit and Development Comments:** Any conversion of the building for new uses will require a review under the Building Codes for a change in occupancy. This may result in necessary modifications to the property to bring it into conformance with current codes and could require issuance of necessary permits. Expansion of use that would require conformance with Des Moines Landscaping Standards will require a Site Plan review by the Permit and Development Center. Staff recommends that any expansion, alteration, or improvement of the existing vehicle display lot shall require a Site Plan review by the Plan and Zoning Commission under the design guidelines for vehicle display.

## **SUMMARY OF DISCUSSION**

Erik Lundy presented staff report and recommendation.

Mike Ludwig pointed out that a couple of years ago when this came forward there were zoning violations on the property. They were parking on required setbacks, and also parking in the gravel area behind the building. Staff did an enforcement action on the property. The applicant did end up putting in some wheel stops along the front of the property and through the enforcement process they agreed not to park vehicles on the

gravel area. They also installed minimal landscaping along the MLK frontage. They complied with the standards that were in effect at the time the car lot was established. The applicant would like to expand a portion of their car lot use onto the gravel area. Staff recommendation is saying the entire site, the existing car lot as well as, their expansion would have to conform with the current vehicle display lot standards. Staff sees this as an opportunity to get an improvement for the existing lot to bring it up to current standards and any change to the buildings would have to comply with the building code.

Will Page asked if the rezoning took place as requested, how many more vehicles would be allowed on the property.

Erik Lundy stated it has not been determined yet but they would have to provide 20% open space.

Mike Ludwig stated the site plan would come to the Plan & Zoning Commission for review. The applicant would show on a plan how many vehicles would be parked and then require those to be marked in the field.

Brian Millard asked is this an active car lot with a license or are they just storing cars there.

Erik Lundy suggested the applicant answer this question.

JoAnne Corigliano asked if a site plan will be coming to the Commission.

Erik Lundy stated if the Commission approves these conditions and the applicant agrees to this and the Council rezones the property with those conditions then any changes would bring a site plan to the Commission.

JoAnne Corigliano stated she would like to see a site plan for this property since there have been zoning violations already on this property.

Erik Lundy stated if the Commission would want to review something beyond vehicle display then the Commission would have to make it an additional condition to what staff is recommending. Otherwise some uses would be subject to administrative review.

JoAnne Corigliano stated that she would be inclined to ask that the applicant come back to the Commission with a site plan for any use because there has been infraction on this property before and it is the same owner.

Mike Ludwig pointed out that the site plan gives staff enforcement leverage but it does not prevent future violation of the ordinance. We would have a concrete plan of what to enforce whether it was staff or the Commission review of the site plan. Suggested relying on the existing ordinance to say whether or not it has to go the Commission or an administratively reviewed by staff.

Dann Flaherty asked what is the zoning behind the property of the applicant's request.

Erik Lundy stated it is zoned "U-1" Flood-plain district.

Dann Flaherty voiced concern about putting an automobile repair shop in the area where the water is going through. Therefore, heavy metals from oil and whatever else comes off



those vehicles. In a heavy rain event those heavy metals etc will wind up in our water supply. What zoning provisions do we have that restricts how the applicant can carry on business on this property so we don't have to concern ourselves with heavy metals into the water source.

Erik Lundy stated activities must be conducted within the building so if any runoff of the vehicles inside the building would need to go to the sanitary sewer, which would be a treated condition. Any runoff that would be developed outside of the building where surface water drain would be subject to stormwater runoff control.

Mike Ludwig stated the Commission could recommend that the water quality standards apply to the property as a condition of zoning. The zoning district does not allow salvaging or dismantling of vehicles for parts, etc.

*Jacqueline Easley left meeting @ 6:40 p.m.*

Kenneth Wylan, attorney 107 E. Maine, Knoxville, IA on behalf of the applicant. Noted that the billboard has a lease. The applicant is in agreement with the rest of the conditions.

Dann Flaherty asked what problem is the applicant having with removal of the billboard.

Kenneth Wylan stated there is a long term lease on the billboard and the applicant would be happy to present the lease to staff. However, the lease should not be an issue tonight because it comes more to the long term conformity of rezoning that is requested here. If it gets conformed to "C-2" then the billboard would then be nonconformity and the lease would have to be presented. The actual intention for this property is not to use as a vehicle display lot, but for storage and some maintenance, but under the current zoning it would not be allowed. Disposal methods would have to be taken under consideration as not to get into the water.

Brian Millard stated the lease was an issue the last time the applicant came before the Commission. Therefore, it is not a surprise the Commission wants to see the lease.

Kenneth Wylan pointed out that he was only saying that the purpose before was for a different designation. Now the zoning in this case would actually put it in the Commission's purview to review the lease and see if the billboard would be allowed to be remaining.

Brian Millard stated that the factor is the Commission has never been able to find out how long the long term lease is.

Kenneth Wylan stated that his understanding from his client is it is a 10-year lease.

Brian Millard asked if Mr. Wylan and his client is in agreement that if this rezoning occurs that the lease would be produced without a fresh signature on it pushing it back further.

Kenneth Wylan stated he understands there was an amendment to the lease but the length of the term was not adjusted. Therefore, it has been recently amended to address some other issues but the length of the term has not. There would be no problem presenting the lease once it has been rezoned.

Brian Millard asked if there is a current DOT license on the site.

Kenneth Wylan stated that he did not think so. That was one of the reasons for the applicant's request to rezone the property in order to conform to get the DOT license so they have the appropriate maintenance facility.

Mike Ludwig clarified that the staff recommendation intention of the billboard would become legal nonconforming, so it would either be removed should it go vacant for six months pursuant to our nonconforming regulations or upon completion of the current lease.

### **CHAIRPERSON OPENED THE PUBLIC HEARING**

*The following spoke in opposition of the applicant's request.*

Audrene Hansen 6001 Creston Avenue, Unit 4 stated she owns the car wash on the corner and is not really opposed to the rezoning. As a car wash owner and having to make sure she has grease traps to prevent grease from going down the drain and getting into the storm sewer, she wants to make sure the applicant will be using the building for maintenance and not a car wash.

#### *Rebuttal*

Kenneth Wylan stated the opposition in this matter goes to the regulations that are already in place and not the zoning issue. The applicant would have to comply with the regulations and install traps if they wash cars.

### **CHAIRPERSON CLOSED THE PUBLIC HEARING**

Ted Irvine moved approval of the staff recommendation.

Brian Millard offered a friendly amendment that upon completion of rezoning a copy of the billboard lease is supplied to staff.

Ted Irvine accepted the friendly amendment.

Mike Ludwig asked if the Commission was interested in additional conditions relating to the water quality provisions on the site, or additional prohibitions on use of the property.

Dann Flaherty stated he is concerned when car repair shops and car maintenance shops are located in floodways and floodplains. Regulations and DNR involvement is not adequate. We are still having problems. Therefore, he does not want to set up a situation where there is a potential for failure, so he will be voting in opposition.

Brian Millard added two more friendly amendments:

1. No car dismantling or alterations occur on site, just basic repairs to sell the cars.
2. Storm water to meet current standards with sand/grease interceptors.

Mike Ludwig stated that staff pointed out their uncertainty about it whether the water quality standards would apply for the storm water control on the property.

Erik Lundy stated that the site is under the one acre in size does not trigger recently adopted standards for water quality detention. Any new development that requires storm water management would not necessarily require additional measures for water quality on the storm water runoffs.

Mike Ludwig stated that based on Dann Flaherty's concerns about the proximity of the floodplains, the Commission may want to recommend that as an additional condition.

Erik Lundy stated sand and grit will be part of their occupancy if they put a floor drain in the building. If they are servicing vehicles, that is part of the building code requirements.

Ted Irvine asked if that would be with the site plan verses the zoning.

Erik Lundy stated they would need to get a certificate of occupancy, which was one of the conditions if they are going to convert the use of the building.

Brian Millard stated since they would be required to have a standard oil trap if they wash cars then he would withdraw that part of his friendly amendment.

Brian Millard restated his friendly amendments which are:

1. A copy of the billboard lease must be supplied to staff upon rezoning.
2. Uses shall not include car dismantling or alterations (painting, etc.). Only basic car repairs to sell cars would be allowed.
3. Storm water to meet current standards for sites over an acre. (Including water quantity and water quality)

Kent Sovern asked if his interpretation of Brian's second friendly amendment means they omit operate a collision center at this location.

Brian Millard stated that is correct.

Kent Sovern asked if a collision center is even a permissible use under the zoning.

Erik Lundy stated that "C-2" only allows incidental repair to the body of the vehicle.

Kent Sovern asked if the zoning itself prohibits the dismantling as a primary activity.

Erik Lundy stated that is correct, the zoning would prohibit the dismantling as a primary activity.

Kent Sovern stated therefore, number 2 of the friendly amendment would be redundant.

Brian Millard stated if the Commission feels number 2 of the friendly amendment is not appropriate, that is fine.

Ted Irvine stated that he agrees with friendly amendments 1 and 3.

Brian Millard condition number 2 was withdrawn.

## COMMISSION ACTION

Ted Irvine moved that the requested rezoning be found in conformance with the Des Moines' 2020 Community Character Plan; and to approve the requested rezoning to Limited "C-2" General Retail and Highway-Oriented District subject to the owner of the property agreeing to accept the following conditions for the entire parcel known as 2713 Martin Luther King, Jr. Parkway (legal description: Lot 3 of Lambert Place, excluding west 7 feet):

1. Prohibit the use of the property for adult entertainment business, package goods liquor stores, pawn shops, financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles, off-premises advertising signs, taverns and night clubs.
2. Any change of use, alteration, or improvement to the existing buildings or use of the property (including legitimizing current non-conforming uses) shall cause the entire site to have to come into conformance with all applicable building codes with issuance of a Certificate of Occupancy.
3. Any change of use, alteration, or improvement to the existing buildings or use of the property (including legitimizing current non-conforming uses) shall cause the entire site to conform with a Site Plan in accordance with all current site plan requirements.
4. Any use of the property for a vehicle display lot shall cause the entire vehicle display lot shall conform with a Site Plan reviewed by the Plan and Zoning Commission under the design guidelines for vehicle display lots.
5. Removal of the billboard based upon the terms of the lease.
6. A copy of the billboard lease must be supplied to staff upon rezoning.
7. Storm water design to meet current standards for sites over an acre. (Including water quantity and water quality)

Motion passed 6-3 (Dann Flaherty, Brian Millard, and JoAnne Corigliano were in opposition)

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

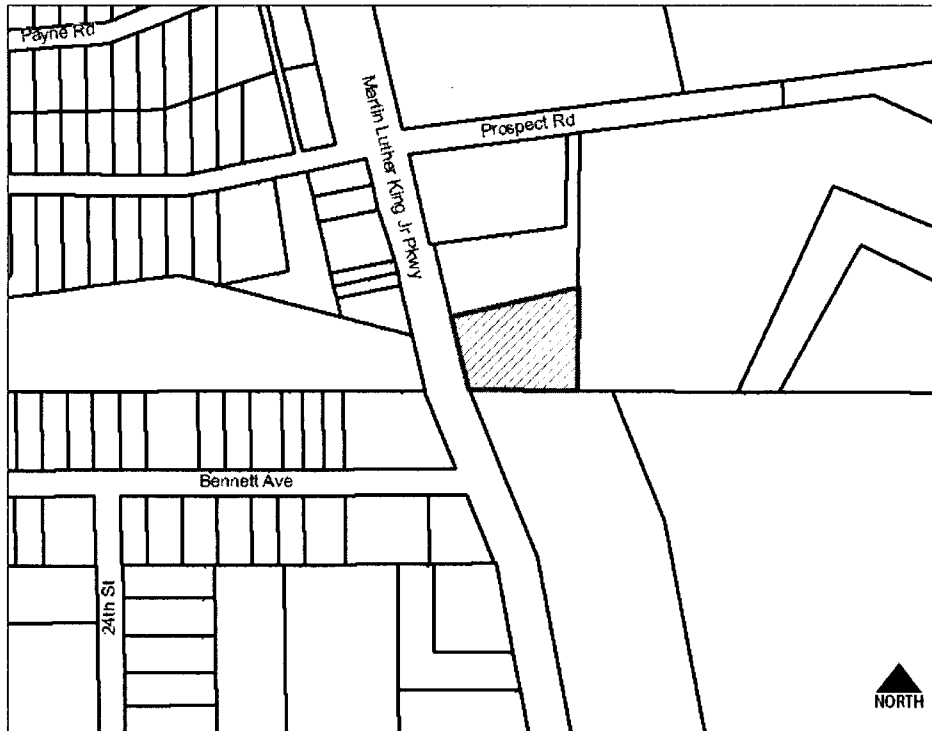
MGL:clw

Attachment

Request from Kathy Harrison (owner) to rezone property located at 2713 Martin Luther King, Jr. Parkway.			<b>File #</b>		
			ZON2010-00160		
<b>Description of Action</b>	Rezone property from "M-3" Limited Industrial District to "C-2" General Retail and Highway Oriented Commercial District, to allow vehicle repair and vehicle sales and display businesses.				
<b>2020 Community Character Plan</b>	Commercial: Auto-Oriented Small-Scale Strip Development				
<b>Horizon 2035 Transportation Plan</b>	M.L.King Jr Parkway from Euclid Avenue to 19 <sup>th</sup> Street to widen from 4 lane undivided to 4 lane divided				
<b>Current Zoning District</b>	"M-3" Limited Industrial 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	2	1			
Outside Area		2			
<b>Plan and Zoning Commission Action</b>	Approval	6-3	<b>Required 6/7 Vote of the City Council</b>	Yes	X
	Denial			No	

Kathy Harrison - 2713 M.L.King Jr Parkway

ZON2010-00160



Item 2010 00160

Date 9/13/2010

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

(Circle One)

RECEIVED  
COMMUNITY DEVELOPMENT

SEP 17 2010

DEPARTMENT

Print Name

J. DAVID LONG

Signature

*David Long*

Address

8975 NW Park City Dr.

Atlanta, GA 30623

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

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15



September 22, 2010

To Whom It May Concern:

Response regarding 2713 Martin Luther King Jr. Parkway:

**In favor of applicant's request:**

AE Farms, Inc., 2420 E. University Avenue

**In opposition of applicant's request:**

Leslie Brewer, 2224 Prospect Road

Wilma J. Bradley, 2319 Bennett Avenue

Jeffrey Ohrtman, 2414 Prospect Road

Sincerely,

  
Erik Lundy, AICP  
Senior Planner