

October 25, 2010

Date

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on October 7, 2010, its members voted 10-0 in support of a motion to recommend **APPROVAL** of a request from Connie Ashby (owner) to rezone property located at 1521 East 40th Street from U-1 Floodplain District to Limited R1-60 One-Family Low-Density Residential District for the west **145 feet** of Lot 15 Broadacre, subject to the owner agreeing to the following conditions:

1. Any addition to the existing dwelling or construction of any other single-family dwelling shall have no openings, windows, or entrances at an elevation less than one foot above the proposed 1% annual chance flood elevation as enforced by Chapter 50 of the City Code.
2. No portion of any property requested to be rezoned to "R1-60" shall be within any area proposed for a 0.2% annual chance of flood hazard as demonstrated by a Land Surveyor licensed with the State of Iowa.

The subject property is more specifically described as follows:

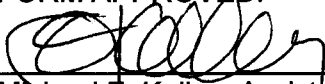
West 145 feet of Lot 15, Broadacre, an Official Plat, all know included in and forming a part of the City of Des Moines, Polk County, Iowa.

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 November 8, 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

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

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.

 Mayor

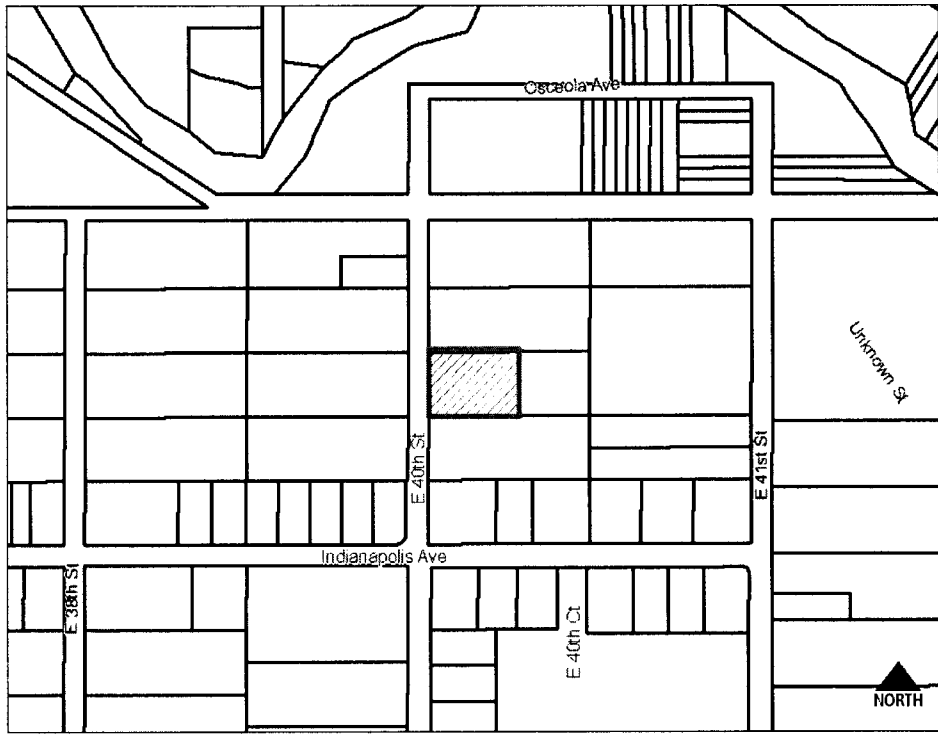
 City Clerk

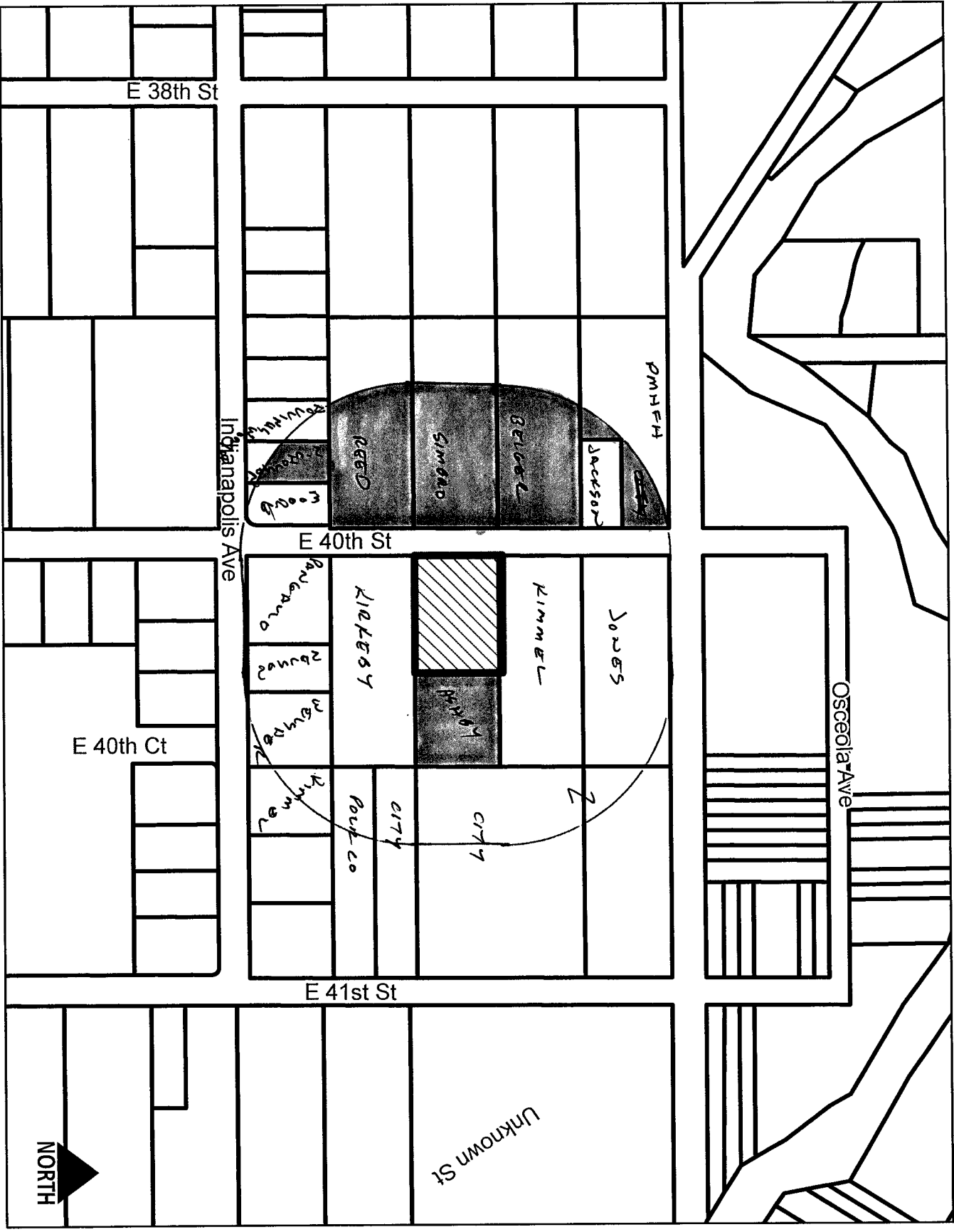
19

Request from Connie S. Ashby (owner) for rezoning of property located at 1521 East 40 th Street.				File # ZON2010-00170	
Description of Action	Rezone property on the westerly 170 feet of the existing parcel from "U-1" Floodplain District to "R1-60" One-Family Low-Density District, to allow for the existing single-family dwelling to be expanded or removed and rebuilt.				
2020 Community Character Plan	Clear Zone/Development Control Zone				
Horizon 2035 Transportation Plan	No Planned Improvements				
Current Zoning District	"U-1" Floodplain District				
Proposed Zoning District	"R1-60" One-Family Low-Density District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	6	0			
Outside Area					
Plan and Zoning Commission Action	Approval	10-0	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Connie Ashby - 1521 E 40th Street

ZON2010-00170





Unknown St



Date October 25, 2010

Agenda Item 19

Roll Call # _____

October 20, 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 October 7, 2010, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 10-0 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			
John "Jack" Hilmes	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 motion to find the requested rezoning **NOT** in conformance with the existing Des Moines' 2020 Community Character Plan.

By separate motion Commissioners recommended 10-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus				X
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Dann Flaherty	X			
John "Jack" Hilmes	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 an **amended** request for modification to the Des Moines' 2020 Community Character Plan and the Gray's Woods Neighborhood Plan, revising the future land use designation from Clear Zone/Development Control Zone to Low-Density Residential, only for that portion of the property that is generally outside of the 0.2% annual chance flood hazard area; and to approve an **amended** request for rezoning to Limited "R1-60" One-Family Low-Density Residential District for the west **145 feet** of Lot 15 Broadacre, subject to the owner agreeing to the following conditions: ZON2010-00170

1. Any addition to the existing dwelling or construction of any other single-family dwelling shall have no openings, windows, or entrances at an elevation less than one foot above the proposed 1% annual chance flood elevation as enforced by Chapter 50 of the City Code.
2. No portion of any property requested to be rezoned to "R1-60" shall be within any area proposed for a 0.2% annual chance of flood hazard as demonstrated by a Land Surveyor licensed with the State of Iowa.

Written Responses

6 In Favor

0 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 existing Des Moines' 2020 Community Character Plan.

Part B) Staff recommends approval of an **amended** request for amendment to the Des Moines' 2020 Community Character Plan and the Gray's Woods Neighborhood Plan, revising the future land use designation from Clear Zone/Development Control Zone to Low-Density Residential, only for that portion of the property that is generally outside of the 0.2% annual chance flood hazard area.

Part C) Staff recommends approval of an **amended** request for rezoning to "R1-60" One-Family Low-Density Residential District for the west **145 feet** of Lot 15 Broadacre, subject to the owner agreeing to the following conditions:

1. Any addition to the existing dwelling or construction of any other single-family dwelling shall have no openings, windows, or entrances at an elevation less than one foot above the proposed 1% annual chance flood elevation as enforced by Chapter 50 of the City Code.
2. No portion of any property requested to be rezoned to "R1-60" shall be within any area proposed for a 0.2% annual chance of flood hazard as demonstrated by a Land Surveyor licensed with the State of Iowa.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to rezone the subject property to allow expansion of the existing single-family dwelling or removal of the dwelling and reconstruction of a new single-family dwelling.
2. **Size of Site:** The area requested for rezoning is 20,910 square feet (0.48 acres). The area of the owner's subject parcel is 38,130 square feet (0.875 acres).
3. **Existing Zoning (site):** "U-1" Floodplain District.
4. **Existing Land Use (site):** The property contains a single-family dwelling and a 28-foot by 30-foot detached garage.
5. **Adjacent Land Use and Zoning:**
 - North* – "U-1", Use is a single-family dwelling.
 - South* – "R1-60", Use is a single-family dwelling.
 - East* – "U-1", Use is vacant land owned by the City of Des Moines.
 - West* – "R1-60", Use is single-family dwelling.
6. **General Neighborhood/Area Land Uses:** The subject property is located within a predominantly large-lot, low-density residential area near the east boundary of the City, north of University Avenue and southwest of Fourmile Creek.
7. **Applicable Recognized Neighborhood(s):** Gray's Woods Neighborhood Association.
8. **Relevant Zoning History:** N/A
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.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Flood Hazards:** The eastern portion of the applicant's property is located within the projected 1% annual chance (formerly referred to as the 100 year frequency flood) and 0.2 % annual chance (formerly the 500 year frequency) flood hazard areas. The furthest west portion of the projected 0.2% annual chance flood hazard area is approximately 145 feet east of the west front property line along East 40th Street. The

furthest west that the projected 1% annual chance flood hazard area is approximately 200 feet from the front west property line. The applicant is requesting the rezoning of the west 170 feet of the parcel, which would put the zoning boundary between the two indicated flood hazard delineations. The rezoning was requested without providing the City a known, surveyed elevation on the property at the 170 foot depth to get an accurate determination of where it is relative to the proposed flood hazard areas.

The Floodplain Development Ordinance in Chapter 50 of the City Code requires that any habitable structures or their expansions be elevated over one foot above the "projected" 1% annual chance flood hazard area elevation delineation. This is reviewed by the Engineering staff for the City based on the best current flood data available, not necessarily the Federal Insurance Rate Map designations. The City Engineering staff further recommends, as a condition of any rezoning, that the base level of any opening (window or entrance) to a structure or addition to an existing structure should also meet this provision. This would include an at-grade entrance into a lower level walk-out, as an example.

2. **Drainage/Grading:** The property drains generally northeast into the Fourmile Creek basin. In order to ensure protection of flood hazard areas, Engineering staff would require review of any grading or excavation on this property, with a grading permit or grading permit waiver request, given that it contains area within the proposed 1% annual chance flood hazards. Engineering staff would need to ensure that grading, excavation or filling of the land will not impact the floodplain.
3. **Des Moines' 2020 Community Character Plan:** The future land use designation for the subject property is currently Clear/Zone Development Control Area and would therefore require amendment to a Low-Density Residential designation to allow for the proposed rezoning. The Gray's Woods Neighborhood plan was adopted as an element of the Des Moines Community Character Plan in 1999. The plan did not contemplate enhancing or expanding the areas with a Clear Zone/Development Control Zone designation based on flooding data available at the time. This was in an effort to meet goals to protect areas of the neighborhood impacted by flooding from future development. Additional flood data is available at this time, and it indicates that a developable portion of the subject property is not within the flood hazard areas.
4. **Staff Rationale:** Staff believes the subject area has a large enough portion of land outside of the proposed flood hazard areas to allow the applicant to either expand the existing single-family dwelling or rebuild on the property with new single-family dwellings. However, the proposed 170 foot depth appears to be too large to exclude portions of the property that would be impacted by the 0.2% annual chance flood hazard. Staff estimates that the western 145 feet of the property would be sufficient for the applicant's development intentions and keep out of projected flood hazards. Under one scenario, the equivalent of two 61.5-foot by 145-foot parcels (8917.5 square feet each) would potentially be available for two single-family dwellings.

Should the applicant be able to demonstrate, using a legally surveyed elevation, that the portion of the property outside of the proposed 0.2% annual chance flood hazard be of a further depth to the east than recommended by staff, then they could have a Licensed Land Surveyor prepare a legal description to better define that part of the property that meets such requirement prior to the hearing of the City Council on the rezoning matter.

SUMMARY OF DISCUSSION

Jason Van Essen presented staff report and recommendation.

JoAnne Corigliano asked if the applicant wants to rebuild on subject property and was there damage due to the flood.

Jason Van Essen stated the applicant is either going to add on to the existing house or rebuild, whichever makes more sense financially when she gets through this process. It was not damaged in the flood; the applicant can speak to what water has been on this property recently.

Dann Flaherty asked do staff have the overlay that shows the lots themselves. How does this flood map fit in with your parcel boundaries, and will the applicant have to carve this property out,

Jason Van Essen showed on the map where the parcel boundaries are. Staff is recommending that the western 145 feet of the property be sufficient for the applicant's development intentions and keep developable out of the projected flood hazards. Should the applicant be able to demonstrate using a legally surveyed elevation, that the portion of the property outside of the proposed 0.2% annual chance flood hazard is of further depth to the east than recommended by staff, then they could have a Licensed Land Surveyor prepare a legal description to better define that part of the property that meets such requirement prior to the hearing of the City Council on the rezoning matter.

Dann Flaherty asked if the flood plain maps come from the Army Corps and is that property description on the flood plain map.

Mike Ludwig stated these are the proposed FEMA floodway maps, the most accurate information available. The legal description would not be on the flood plain maps because it is not a survey boundary, it is an elevation.

Kent Sovern stated that he was confused about the foot above the 1% flood boundary area and reminded the Commission that in their CIP letter to the City Manager that they recommended that the duly annexed area that new construction be a foot above what would be the 2% flood boundary.

Connie Ashby 2760 Osceola Avenue stated that she has hired a surveyor that should start next week. She showed pictures of the property during this year's flood and how far away the water was. She also stated that she went door to door handing out the cards that introduced herself, talking to the neighbors along with attending the neighborhood association meeting asking for their support. She has a letter of support from the neighborhood association.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following spoke in favor of applicant's request:

Karen Shoopman 3804 Indianapolis Avenue, Chair of Grays Wood Neighborhood Association stated they had a board meeting on Thursday, September 30, 2010 and unanimously approved of the applicant's proposal to rezone the property and feel confident in her proposal.

There was no one to speak in opposition of applicant's request.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Dann Flaherty stated his concern has to do when people are put in flood plain areas and allowed to build, the next person that comes in does not know that, so how do we protect them. He came here tonight in opposition to the applicant's request. The presentation made a difference and looking at all of the information he thinks that staff's recommendation is adequate to protect the applicant from those flood damages, and he will be voting in favor of the applicant's request.

JoAnne Corigliano commented that they are still working on Four-Mile, so there should be some additional help for the neighbors there.

COMMISSION ACTION:

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

Motion passed 10-0.

Mike Simonson moved staff recommendation for approval of an **amended** request for modification to the Des Moines' 2020 Community Character Plan and the Gray's Woods Neighborhood Plan, revising the future land use designation from Clear Zone/Development Control Zone to Low-Density Residential, only for that portion of the property that is generally outside of the 0.2% annual chance flood hazard area; and to approve an **amended** request for rezoning to Limited "R1-60" One-Family Low-Density Residential District for the west **145 feet** of Lot 15 Broadacre, subject to the owner agreeing to the following conditions:

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2. No portion of any property requested to be rezoned to "R1-60" shall be within any area proposed for a 0.2% annual chance of flood hazard as demonstrated by a Land Surveyor licensed with the State of Iowa.

Motion passed 10-0

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment

Item 2010 00170

Date 10-1-10

19

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

RECEIVED

OCT 8 2010

MUNITY DEVELOPMENT

Print Name Jamie + James

Signature Jamie Nicholson

Address 3922 Indianapolis Ave

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

I don't understand... One why was this property sold to Connie if in a flood zone + yes I think it would be better for Connie + for me if she could fix her property and keep it up when needed. This is crazy. Change the zone line!

Item 2010 00170

Date 10-2-2010

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

RECEIVED

OCT 8 2010

MUNITY DEVELOPMENT

Print Name Geneva Belger

Signature Geneva Belger

Address 1536 E 40th Ave Morris Ave

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

Blank lines for providing a reason for opposing or approving the request.

Item _____ Date October 4, 2010

19

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

RECEIVED
COMMUNITY DEVELOPMENT

Print Name Connie Ashby

OCT 04 2010 Signature Connie Ashby

DEPARTMENT Address 1521 E 40th St

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

EXPAND or remove and rebuild existing
single family dwelling.
without rezoning I cant even think about
the above two options.

~~SUBJECT PROPERTY~~

Item 2010 00170 Date _____

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

RECEIVED
COMMUNITY DEVELOPMENT

Print Name Tina Reed

Signature Tina Reed

OCT 04 2010 Address 1512 E 40th St.

Reason ~~DEPARTMENT~~ approving this request may be listed below:

Because I think it would
be nice to see a
nice home across the
street.
~~_____~~
~~_____~~

Item 2010 00170 Date 9-30-10

19

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

(Circle One)

RECEIVED Print Name GDMHFH
COMMUNITY DEVELOPMENT Signature [Signature]

OCT 04 2010 Address - EX S 60F E 130F- LOT 4

Broadacre

Reason for **DEPARTMENT** approving this request may be listed below:

Item 2010 00170 Date 9-28-2010

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

(Circle One)

RECEIVED Print Name George Simboru
COMMUNITY DEVELOPMENT Signature [Signature]

OCT 04 2010 Address 1520 E 40th St D.M. IA

30317

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

To improve the Area



GWNA

Gray's Woods Neighborhood Association

October 6, 2010

Mr. Erik Lundy
AICP, Senior City Planner
City of Des Moines Community Development
602 Robert D. Ray Drive
Des Moines, IA 50309-9603

Dear Erik,

At a meeting held on Thursday, September 30, 2010 the Gray's Woods Board of Directors voted unanimously to support Connie Ashby's request to rezone property on the westerly 170 feet of the existing parcel located at 1521 E. 40th Street from "U-1" Floodplain District to "R1-60 one-Family Low-Density Residential. This will allow for expansion or removal and rebuild.

At our general meeting on Tuesday, October 12, we will present Ms. Ashby's rezoning request to the Gray's Woods general membership for their vote.

If you have any additional questions, please contact me at 266-1350.

Regards,

Karen A. Shoopman
Chair

cc Connie Ashby

RECEIVED

OCT 7 2010

COMMUNITY DEVELOPMENT
DEPARTMENT