

Date..... September 26, 2011

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 15, 2011, its members voted 7-4 in support of a motion to recommend **DENIAL** of a request Arnold DeWitt (owner) to rezone property in the vicinity of 1241 East 38th Street from "R1-60" One-Family Low-Density Residential District to Limited "C-2" General Retail and Highway-Oriented Commercial District. Additional subject property is owned by EDSM, LLC.

The subject properties are more specifically described as follows:

Lots 100, 101, 102, and 103, Broadacre, 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 10, 2011, 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

(ZON2011-00110)

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.

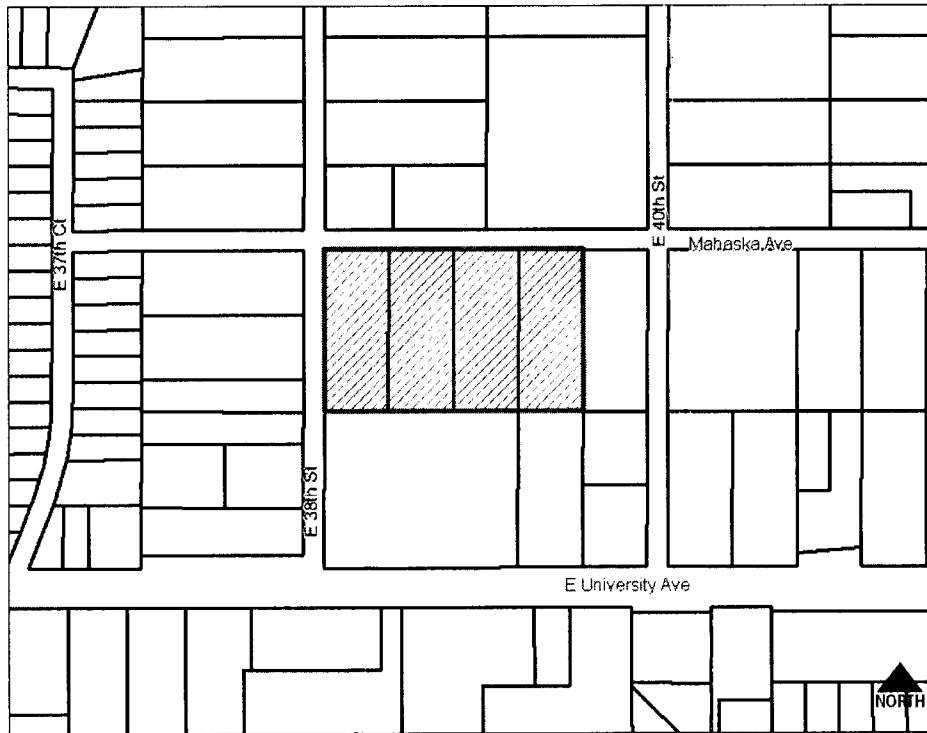
Mayor_____
City Clerk

Request from Arnold DeWitt (owner) to rezone property in the vicinity of 1241 East 38 th Street. Additional subject property is owned by EDSM, LLC:				File #	
				ZON2011-00110	
Description of Action	Review and approval to rezone the property from "R1-60" One-Family Low-Density Residential District to "C-2" General Retail and Highway-Oriented Commercial District, to allow for an expansion of the existing miniwarehouse complex.				
2020 Community Character Plan	Low-Density Residential				
Horizon 2035 Transportation Plan	No Planned Improvements				
Current Zoning District	"R1-60" One-Family Low-Density Residential District				
Proposed Zoning District	"C-2" General Retail and Highway-Oriented Commercial District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	7.5	3.5			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council		Yes
	Denial	7-4			No
					X

Arnold DeWitt - 1241 East 38th Street

09-15-2011

ZON2011-00110



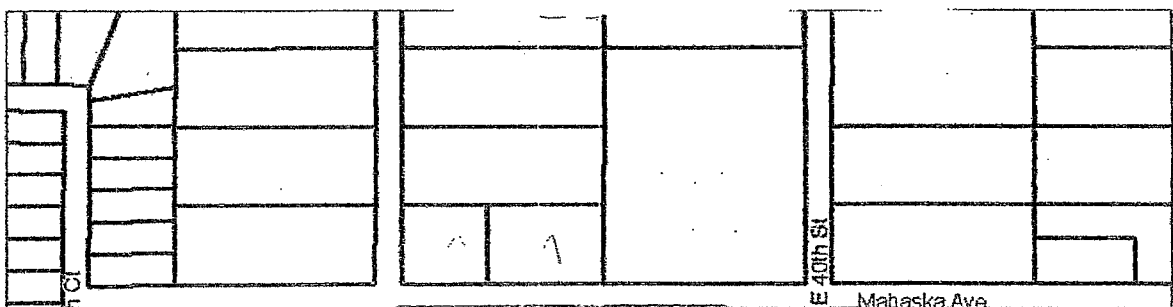
PETITION FOR REZONING From Arnold & Grace DeWitt

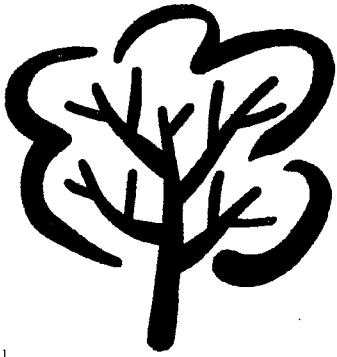
Location: 1241 East 38th St. (lots 100,101,102 103 Broadacre) Aprox. 3-1/2 acres.

Request to rezone property from "R1-60" One-family Low-density Residential District to **C-2 Commercial**, to allow for an expansion of existing mini-warehouse complex.

I fully support this request to rezone above property from "R1-60 to C-2 Commercial.

- 1 John Moehle [Signature] 8-23-11
- 2 Tamara Robbins [Signature] 8-23-11
- 3 Yvonne Mendoza [Signature] 8-27-11
- 4 Jeff Landers Jeff Landers 8-23-11
- 5 [Signature] Charles J. Reeves 8/31/11
- 6
- 7 [Signature] Nes Botts 8-23-11
- 8 [Signature] John McCann 8-30-11
- 9
- 10
- 11 John McPherson Jr. John McPherson Jr. 9-5-11
- 12 [Signature] Jason Reese 8-23-11
- 13
- 14 Charles Roads Charles Roads 8-28-11
- 15
- 16





GWNA

Gray's Woods Neighborhood Association
All American Neighborhood™

20

PETITION

September 13, 2011

We oppose the rezoning of property in the vicinity of
1241 E. 38th Street from R1-60 One-Family Low-Density Residential
to C-2 Commercial for expansion of the existing mini-warehouse
complex.

Name

Address

1. Robert Anderson 1232 E. 40th St Des Moines

2. Merle Ray Niman 1320 E. 40th St Des Moines Iowa

3. Marilyn Thomas 4000 E. University D.M. Ia.

4. Don Perry E 38th + Mahaska
Plat # 135 + 136

5. _____

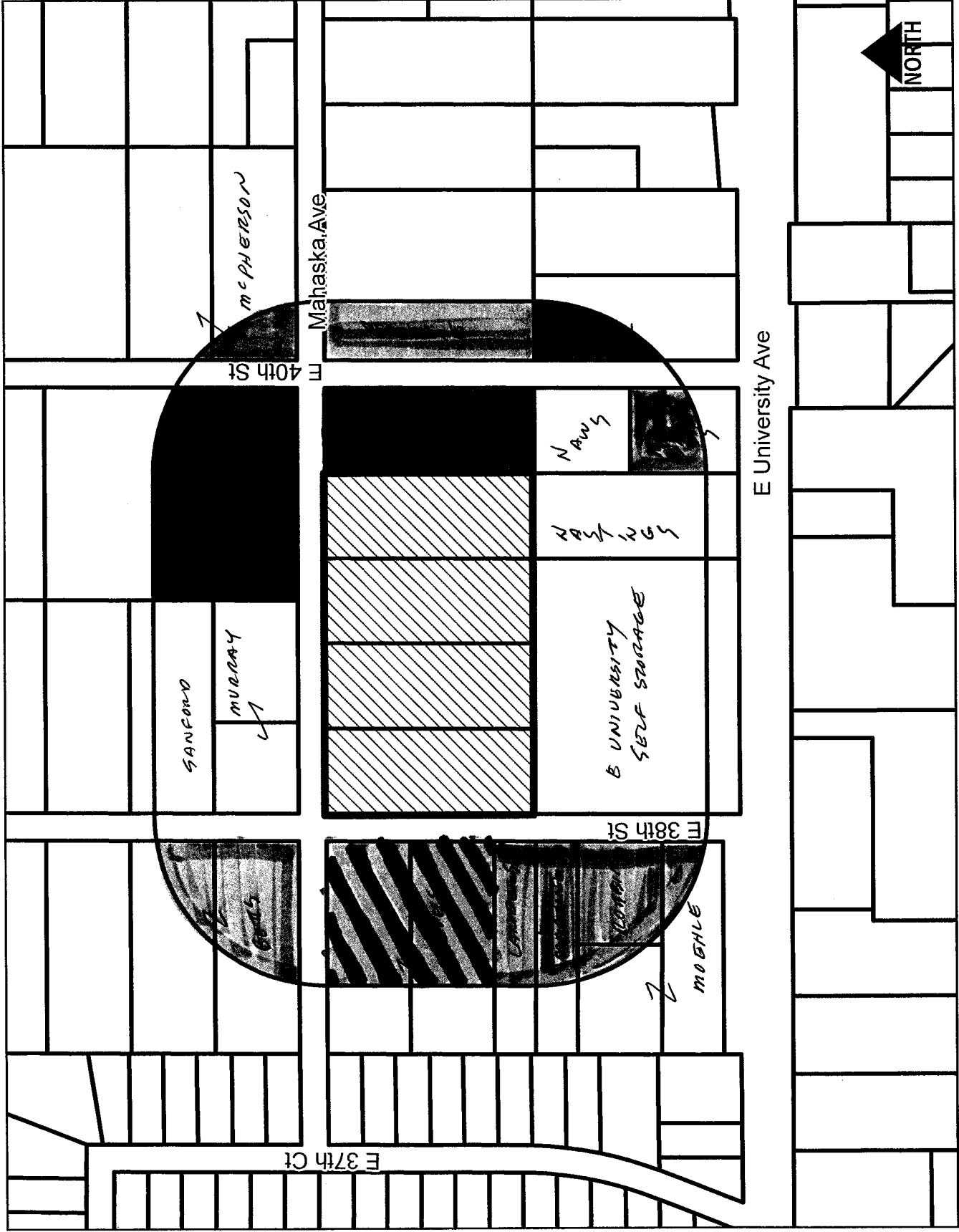
6. _____

7. _____

09-15-2011

Arnold DeWitt - 1241 East 38th Street

ZON2011-00110



8 09'40ZS E 125.61

N 06° 52' 16" E 123.0

—

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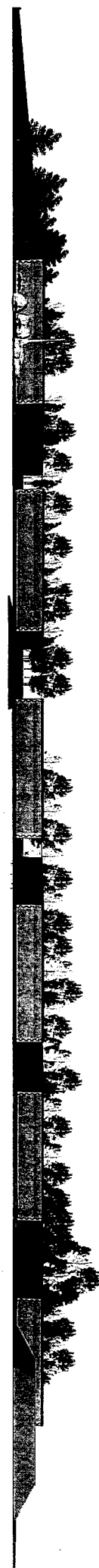
J213 Graham Street, Des Moines, IA 50316 • F.O. Box 6076, Des Moines, WA 98115 • F: (515) 281-1140 • F: (515) 284-2244

FOR ANY USE OF THESE DRAWINGS FOR ANY PART THEREOF, EXCEPT IN ACCORDANCE WITH THE TERMS OF SAID AGREEMENT.

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DIMENSION PLAN

1



Date_____

September 21, 2011

Agenda Item 20

Roll Call #_____

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 15, 2011, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley				X
Tim Fitzgerald	X			
Dann Flaherty	X			
John "Jack" Hilmes				X
Joel Huston				X
Ted Irvine	X			
Greg Jones	X			
William Page	X			
Christine Pardee	X			
Mike Simonson	X			
Kent Sovern	X			
CJ Stephens	X			

APPROVAL of a motion to find the property in the vicinity of 1241 East 38th Street not in conformance with the Des Moines' 2020 Community Character Plan. Additional subject property is owned by EDSM, LLC.

By separate motion Commissioners recommended 4-7 as follows:

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano		X		
Shirley Daniels	X			
Jacqueline Easley				X
Tim Fitzgerald	X			
Dann Flaherty		X		
John "Jack" Hilmes				X
Joel Huston				X
Ted Irvine	X			
Greg Jones		X		
William Page		X		
Christine Pardee	X			
Mike Simonson		X		
Kent Sovern		X		
CJ Stephens		X		



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

MOTION to approve the requested amendment to the Des Moines' 2020 Community Character Plan to revise the future land use designation from Low-Density Residential to Commercial: Auto-Oriented Small-Scale Strip Development. **(MOTION FAILED)** 21-2011-4.06

Mike Ludwig suggested that since the motion to approve Part B failed that the Commission follow up with a motion to deny. A 6/7 vote of the Council can overturn the Commission's recommendation. If the Commission has additional concerns they should note them for the record.

By separate motion Commissioners recommended 7-4 as follows:

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
JoAnne Corigliano	X			
Shirley Daniels		X		
Jacqueline Easley				X
Tim Fitzgerald		X		
Dann Flaherty	X			
John "Jack" Hilmes				X
Joel Huston				X
Ted Irvine		X		
Greg Jones	X			
William Page	X			
Christine Pardee		X		
Mike Simonson	X			
Kent Sovern	X			
CJ Stephens	X			

MOTION to **DENY** the requested amendment to the Des Moines' 2020 Community Character Plan to revise the future land use designation from Low-Density Residential to Commercial: Auto-Oriented Small-Scale Strip Development.

By separate motion Commissioners recommended 11-0 as follows:

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley				X
Tim Fitzgerald	X			
Dann Flaherty	X			
John "Jack" Hilmes				X
Joel Huston				X
Ted Irvine	X			
Greg Jones	X			
William Page	X			
Christine Pardee	X			
Mike Simonson	X			
Kent Sovern	X			
CJ Stephens	X			

MOTION that if the Council chooses to overturn the Commission's recommendation on Part B and to rezone the property to a Limited "C-2" District, they do so subject to the following conditions: ZON2011-00110

- A. Only the uses of structures or land listed below shall be permitted upon the Property:
 - 1. Any use allowed in the "R1-60" Commercial Residential District.
 - 2. Mini-warehouse self-storage complex.
- B. If the Property is developed for use as a mini-warehouse self-storage complex, then such development shall comply with the following additional requirements:
 - 1. The side of any building upon the Property facing East 38th Street shall be in earth tone colors.
 - 2. No storage units within the westernmost building on the site shall be constructed with doors facing East 38th Street.
 - 3. No storage units within the easternmost building on the site shall have doors facing the east property line.
 - 4. All exterior lighting fixtures shall be shielded so as not to illuminate into adjoining residential properties. No lights shall be installed on the east side of the east building.
 - 5. Any signage upon the Property shall comply with the "C-1" Neighborhood Retail Commercial District Regulations. No off-premises advertising signs shall be located upon the Property.
 - 6. The required gate and fencing along East 38th Street shall be of wrought iron or tubular steel construction painted earth tones or black to complement the buildings, with masonry pillars.
 - 7. A minimum 50-foot wide setback shall be maintained along the northern boundary of the property adjoining Mahaska Avenue. The setback area shall be landscaped in accordance with a plan approved by the Planning Administrator.
 - 8. A minimum 25-foot foot wide setback shall be maintained along the eastern and western boundaries of the Property. The setback area shall be landscaped in accordance with a plan approved by the Planning Administrator.
 - 9. ~~A sidewalk shall be installed and maintained along the East 38th Street frontage.~~
 - 10. The hours of operation shall be limited to 6:00 AM to 10:00 PM.
 - 11. No surface water detention shall be released onto any adjoining residential property.
 - 12. Prior to issuance of a Certificate of Occupancy, a design professional shall certify that the site has been developed in accordance with the approved site plan.

Written Responses

7.5 In Favor

3.5 In Opposition

A 6/7th vote of council is required to approve the zoning change based upon the plan and zoning commission recommendation and percentage of opposition.

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the requested rezoning be found not in conformance with the existing Des Moines' 2020 Community Character Plan's future land use designation of Low-Density.

Part B) Staff recommends approval of the requested amendment to the Des Moines' 2020 Community Character Plan to revise the future land use designation from Low-Density Residential to Commercial: Auto-Oriented Small-Scale Strip Development.

Part C) Staff recommends approval of rezoning to a Limited "C-2" District, subject to the following conditions:

- A. Only the uses of structures or land listed below shall be permitted upon the Property:
 - 1. Any use allowed in the "R1-60" Commercial Residential District.
 - 2. Mini-warehouse self-storage complex.
- B. If the Property is developed for use as a mini-warehouse self-storage complex, then such development shall comply with the following additional requirements:
 - 1. The side of any building upon the Property facing East 38th Street shall be in earth tone colors.
 - 2. No storage units within the westernmost building on the site shall be constructed with doors facing East 38th Street.
 - 3. No storage units within the easternmost building on the site shall have doors facing the east property line.
 - 4. All exterior lighting fixtures shall be shielded so as not to illuminate into adjoining residential properties.
 - 5. Any signage upon the Property shall comply with the "C-1" Neighborhood Retail Commercial District Regulations. No off-premises advertising signs shall be located upon the Property.
 - 6. The required gate and fencing along East 38th Street shall be of wrought iron or tubular steel construction painted earth tones or black to complement the buildings, with masonry pillars.
 - 7. A minimum 50-foot wide setback shall be maintained along the northern boundary of the property adjoining Mahaska Avenue. The setback area shall be landscaped in accordance with a plan approved by the Planning Administrator.
 - 8. A minimum 25-foot wide setback shall be maintained along the eastern and western boundaries of the Property. The setback area shall be landscaped in accordance with a plan approved by the Planning Administrator.
 - 9. ~~A sidewalk shall be installed and maintained along the East 38th Street frontage.~~
 - 10. The hours of operation shall be limited to 6:00 AM to 10:00 PM.
 - 11. No surface water detention shall be released onto any adjoining residential property.

STAFF REPORT

I. GENERAL INFORMATION

- 1. **Purpose of Request:** The applicant is seeking to expand the East University Self Storage mini-warehouse complex onto the undeveloped land to the north. The proposed expansion would include six buildings with storage units. The proposed expansion area would be accessed by an internal driveway from the existing facility. The submitted site sketch demonstrates that the north 87 feet of the site would remain as open space in order to provide a landscaped buffer between the proposed miniwarehouse complex and Mahaska Avenue.

Any commercial development on the site would be subject to administrative approval of a Site Plan by the City's Permit & Development Center.

- 2. **Size of Site:** 496 feet by 308 feet or 152,768 square feet (3.51 acres).

3. **Existing Zoning (site):** "R1-60" One-Family Low-Density Residential District.
4. **Existing Land Use (site):** The site is comprised of four undeveloped lots that include significant natural vegetation along the north site boundary.
5. **Adjacent Land Use and Zoning:**

North - "R1-60", Uses are Mahaska Avenue and low-density residential development.

South - "Limited C-2", Use is the East University Self Storage mini-warehouse complex.

East - "R1-60", Use is a single-family residential dwelling.

West - "R1-60", Uses are East 38th Street and low-density residential development.
6. **General Neighborhood/Area Land Uses:** The subject property is within an area that transitions from a commercial corridor along East University Avenue to a low-density residential area.
7. **Applicable Recognized Neighborhood(s):** Gray's Woods Neighborhood.
8. **Relevant Zoning History:** On April 6, 1998, the property adjacent to the south was rezoned by Ordinance #13,597 to Limited "C-2" General Retail and Highway-Oriented Commercial District from "C-1" District, subject to the following conditions:
 - A. Only the uses of structures or land listed below shall be permitted upon the Property:
 1. Any use allowed in the "C-1" Commercial Residential District.
 2. Mini-warehouse self-storage complex.
 - B. If the Property is developed for use as a mini-warehouse self-storage complex, then such development shall comply with the following additional requirements:
 1. The side facing University Avenue of any building upon the Property shall be of masonry material in earth tone colors. The balance of the building, including doors, shall be of an earth tone color.
 2. No storage units shall be placed with doors facing University Avenue.
 3. All lights shall be shielded so as not to illuminate into adjoining residential properties.
 4. Any signage upon the Property shall comply with the "C-1" Neighborhood Retail Commercial District Regulations. No off-premises advertising signs shall be located upon the Property.
 5. The gate and fencing along University Avenue and E. 38th street shall be of wrought iron or tubular steel construction painted earth tones or black to complement the buildings, with masonry pillars.
 6. A 25 foot wide setback shall be maintained along the eastern, southern and western boundaries of the Property. The setback area shall be landscaped in accordance with a plan approved by the Director of the Community Development Department.
 7. A sidewalk shall be installed and maintained along the E. University Avenue and E. 38th Street frontages. The installation of the sidewalk north of the entrance on E. 38th Street shall be subject to feasibility with respect to grades.
 8. The hours of operation shall be limited to 6:00 am. to 10:00 p.m.

9. **2020 Community Character Land Use Plan Designation: Low-Density Residential.**
10. **Applicable Regulations:** The Commission reviews all proposals to amend zoning boundaries or regulations 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 make recommendations to the City Council on conditions to be made in addition to the existing regulations so long as the subject property owner agrees to them in writing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Gray's Woods Neighborhood Action Plan:** The Gray's Woods Neighborhood Plan was adopted by City Council in March of 1999. A goal of the plan is to "restrict expansion of existing commercial development into existing residential development within the neighborhood". The plan calls for "preventing commercial rezoning of residential property adjacent to existing commercial uses" while "encouraging flexibility in regulations to allow future expansion or improvement of existing conforming commercial uses within their current site".

However, the plan also states that "establishing the future land use is important in the implementation of the Action Plan in that a guideline is provided for future development and redevelopment. It should be considered as a guideline and not as a strict determinant so that it can be flexible enough to allow for changing environments in acceptable development practices and other land use needs which cannot be foreseen at the current time." Staff believes that, in this instance, the site can acceptably be developed for a commercial use so long as the development occurs in accordance with conditional zoning requirements, such as limiting access, requiring adequate buffering and landscaping, and the use of quality building materials.

2. **2020 Community Character Plan:** The requested rezoning to "C-2" General Retail and Highway-Oriented Commercial District would require that the current Des Moines' 2020 Community Character Plan future land use designation be amended from Low-Density Residential to Commercial: Auto-Oriented Small-Scale Strip Development.
3. **Natural Site Features:** The northern portion of the site slopes downward toward Mahaska Avenue, with as much as 30 feet change of grade change. The portion of the site that is steeply slopes contains significant vegetation.

Any site plan submitted for commercial development of the site would be required to comply with the City's Tree Removal and Mitigation Ordinance (Section 42-550 of the City Code). This Ordinance requires mitigation for any tree or tree canopy removed after May 1, 2009. During any future site plan review, a licensed engineer would be required to calculate the area of tree canopy that has been removed since May 1, 2009 to determine the number of trees that need to be planted as mitigation. Staff estimates that as much as 30,000 square feet of canopy has been removed, which would require 15 replacement trees (1 per 2,000 square feet of removed tree canopy). The applicant has indicated that the replacement trees would be planted along the north and east site boundaries in order to provide additional buffering of the development.

4. **Landscaping & Buffering:** Any site plan submitted for commercial development of the site would be required to comply with the City's Landscape Standards, including provision of perimeter plantings and at least 20% of the site being open space.

The submitted site sketch demonstrates that the north 87 feet of the site would remain as open space in order to provide a landscaped buffer between the proposed miniwarehouse complex and Mahaska Avenue. Since the site sketch is only conceptual, staff recommends that any rezoning be subject to a zoning condition that requires a minimum 50-foot wide setback along the northern boundary of the property adjoining Mahaska Avenue and a 25-foot wide setback be maintained along both the eastern and western boundaries of the Property. These setback areas should be landscaped in accordance with a plan approved by the Planning Administrator.

5. **Drainage/Grading:** Any site plan submitted for commercial development of the site would be required to comply with the City's stormwater management requirements to the satisfaction of the Permit & Development Center. All grading would be subject to an approved grading permit and soil erosion control plan. The submitted site sketch indicates that stormwater management would be provided within a basin that would be constructed just south of the expansion area on the parcel already containing the miniwarehouse facility. There is no storm sewer available in close proximity. Therefore, the detention of any stormwater will infiltrate into the ground and no surface water detention would be released onto any adjoining residential property.
6. **Utilities:** There is an existing water main and a sanitary sewer along the west perimeter of the site within the East 38th Street right-of-way. Given the change in grade, it is unlikely that any development on the eastern portion of the site could feasibly connect to this sanitary sewer. The most likely connection to serve this area would be to the sanitary sewer within East 42nd Street right-of-way that is 1,400 feet to the east of the site.
7. **Traffic/Street System:** The existing miniwarehouse facility is accessed by a drive approach from East 38th Street. The submitted site sketch demonstrates that the expansion area would be accessed by an internal drive approach from the existing facility. The applicant is no longer proposing an access drive from East 38th Street.

The existing miniwarehouse facility at 3800 East University Avenue includes the following zoning condition: "A sidewalk shall be installed and maintained along the East University Avenue and East 38th Street frontages. The installation of the sidewalk north of the entrance on East 38th Street shall be subject to feasibility with respect to grades." The site is currently in violation of this zoning requirement since there is no sidewalk along East 38th Street. Staff recommends that any rezoning to allow expansion of the miniwarehouse shall require provision of a sidewalk along the entire East 38th Street frontage from East University Avenue at the south to Mahaska Avenue at the north.

8. **Miniwarehouse Requirements:** The Zoning Ordinance limits the length of any miniwarehouse structure to 150 feet in length and requires that structures be at least 10 feet from any other structure. The submitted site sketch demonstrates that none of the six (6) buildings would be greater than 150 feet in length.

SUMMARY OF DISCUSSION

Bert Drost presented staff report and recommendation.

Kent Sovern joined the meeting.

CJ Stephens asked staff why an engineer has to determine the tree canopy and the extent of trees that were removed while there is a very qualified municipal arborist.

Bert Drost stated the applicant would have to hire a consultant to design their project. The municipal arborist would have a chance to review that plan.

CJ Stephens asked about the non conformance of the sidewalk.

Bert Drost stated that separate from this rezoning request there is going to be some zoning enforcement process began on this site to make sure that the current site complies with the landscape standards and to make sure they comply with the previous zoning requirements that requires a sidewalk.

CJ Stephens stated that she is still concerned with an engineer doing that evaluation. She asked what kind of training an engineer has in order to perform that type of work.

Bert Drost stated a design professional would have to certify that is the tree canopy being disturbed and identify would needs to be mitigated.

CJ Stephens asked that can it just state that it takes a qualified person to evaluate that?

Mike Ludwig stated that the canopy is just pure area calculation it is not an identification of individual trees.

CJ Stephens stated that she knows that. She wants somebody that is qualified. She does not know of an engineer that has that qualification, but arborist does.

Mike Ludwig stated that the City code allows the applicant to submit aerial photography and measure the area that was or is it to be removed and staff would normally accept a site plan with an aerial photo over it from an engineer as calculating an area. Staff does not ask them to identify a specific species under that method.

Mike Ludwig asked staff to clarify the concern the applicant had about the fence.

Bert Drost stated that the applicant wanted it further back, so they would have somewhere to push snow in the winter.

Dann Flaherty asked if the Army Corps of Engineer permits are required.

Bert Drost stated he is not aware.

Dann Flaherty asked how that impact drainage off of the site onto the surrounding sites would be affected.

Bert Drost stated that the applicant would be required to provide stormwater detention on this site and not be allowed to direct any stormwater onto any adjoining properties. He showed on the map where they are proposing to put a stormwater detention basin. They have had a preliminary analysis that shows that the soil is sandy enough that the water would be able to percolate down through the soil without going onto any adjoining properties. As part of any site plan they would have to have to be designed by a licensed engineer and reviewed by the City.

Dann Flaherty stated that the Commission is not deciding on any site plan at this time, but he does not see anything in front of them that would indicate anything about a detention basin or retention basin.

Bert Drost stated that the applicant's site sketch does not show that, but during discussions with the applicant they have indicated that they would be constructing the detention basin.

Dann Flaherty stated which means the applicant would be dumping it on their other property but they are not retaining it on the site itself.

Bert Drost stated that is correct. The applicant would need to submit the site plan. The site plan would have to include a portion of the existing site at least if not the entire site.

Mike Ludwig stated that it would be an administrative review of the site plan and would be reviewed by the City's Engineering Department at the time of proposal.

Tim Fitzgerald asked how long has this business been functioning without conforming to the Site Plan that was originally proposed.

Bert Drost stated there is no evidence of full conformance with this site plan. Staff stated that back in 2003 there was some form of administrative waiver. However, staff was unable to locate documentation of that decision. The zoning enforcement officer will have to look and decide if it was ever in conformance and if not was it ever justified.

Christine Pardee asked if there has been a precedence set for a situation like this where there are some non compliance going on currently and despite that fact they have been allowed to go ahead and continue to develop.

Bert Drost stated staff was considering the expansion independent of the zoning violations.

Mike Ludwig asked staff to clarify the site plan was an administrative review to begin with so the landscape standards do have a waiver process. There is no written documentation of that waiver being granted. Staff is still in the process of reviewing and it will be up to the zoning enforcement officer to determine whether there were appropriate waivers granted. Regardless of when a site plan is approved a site plan can be out of conformance at any given time. It is an ongoing zoning enforcement issue that the City has to resolve independent of a zoning hearing.

Kent Sovern stated that it is still a commitment to the Commission that the applicant is going to do what they say.

Dann Flaherty asked about the grading on the current property.

Bert Drost stated yes, grading occurred previously.

Arnold DeWitt East University Self Storage stated that if they have a fence along the drive way they will have no room to push the snow. They have no problem with putting the fence along the southside of any tree or vegetation. His engineer has designed a retention pond that when this site is developed the retention pond will take a 7" rain in an hour and it will flow into the retention pond and dissipates into the ground. Between the front of the proposed buildings and the back of the existing buildings has about 60 to 80 feet of sand, an excellent source to handle all the water flow that comes off of the property. He showed a photograph of what the

property looked like before they developed Phase 1 and pictures of what the property looks like today. He asks that the Commission approve the rezoning of this property. He thinks that it is an excellent plan and believes that it will have a nice economic impact on the City.

CJ Stephens stated that the staff recommendation states that additional subject property is owned by EDSM, LLC. Who is EDSM, LLC?

Arnold DeWitt stated that is he and his wife's new corporation that they would have for the new facility.

Dann Flaherty asked where the water will be retained.

Arnold DeWitt stated yes, they have 35 feet between the lot lines and it is an excellent location for water retention. It has already been engineered and designed. The change was made very quickly so it is not before the Commission tonight.

Dann Flaherty concern is if the applicant decided in the future to sell the property, the water will then be getting dumped on someone else property. Is there any proposal to keep and retain on this property itself.

Arnold DeWitt stated that the retention on the property itself has not been addressed. He and his wife have no plan to sell.

Dann Flaherty asked when the applicant cut down the trees on this property.

Arnold DeWitt stated that they think it was before the tree ordinance. That is debatable, but they are not contesting that. They are willing and able to comply with any of the restrictions that the City puts on them for replacing that canopy. Whatever is not in compliance they will work with the City of Des Moines to work it out.

Mike Ludwig addressed the Chair's concern about the stormwater or access. If the concern is about the southern half being sold, the Commission can recommend a condition that all the parcels be combined as a single parcel.

Arnold DeWitt stated that he and his wife own the property. Last year his competitor went bankrupt, the reason they are doing two LLC is because they are going to have mortgage on each portion and they are taking a huge risk on this expansion. They want to protect themselves if they cannot make it Phase 2 they will still have Phase 1.

Dann Flaherty explained that the zoning runs with the land. Whatever the applicant develops it as may be fine but the Commission has to be concerned about is what somebody else may develop this property as if it does not work out for them.

Mike Ludwig stated that the other option is when the site plan comes in the applicant has to demonstrate they have proper easements for access and the storm water. They would be granting the easement from their own entity to another one of their entities. Those easements would carry with those properties.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following spoke in favor of the applicant's request

John McPherson 5625 New York Avenue stated that he is in support of the applicant's request. Mr. Dewitt is ready to show business growth.

Dann Flaherty asked which side of the property he lived on.

John McPherson stated that he owns property on the northeast side of the applicant's request.

Dann Flaherty asked was he concerned about the stormwater drainage over his property.

John McPherson stated that he was not concerned about the retention or detention.

The following is in opposition of the applicant's request

Karen Shoopman 3804 Indianapolis Avenue, Chair of Grays Woods Neighborhood Organization passed out the Grays Woods Neighborhood Action Plan to the Commission. She stated that she is very familiar with the neighborhood. She was born and raised there. The neighborhood association is opposed to the rezoning of the applicant's property in the vicinity of East 38th Street and Mahaska from "R1-60" Residential to "C-2" Commercial. The expansion to a larger scale commercial development is not compatible with and sensitive to the surrounding area of the neighborhood. On June 14, 2011 and August 3, 2011 the neighborhood association met with the applicant. June 14, 2011 was the first time the neighborhood association had met with the applicant and heard of this plans. Since then the applicant has tried to acquire additional property in that block. Prior to June 14 the applicant has not attended any of the neighborhood association meetings over the years nor has he tried to communicate any of his plans for the expansion into the neighborhood. The goal of the Grays Woods Neighborhood Association is to update and install infrastructure primarily in the southeast quadrant of the neighborhood. This goal has not been accomplished. The lack of infrastructure inhibits development in this area. Another goal is for low density single family homes built on larger lots that are compatible with and sensitive to the surrounding area. The applicant has kept his property up on East University and E. 38th Street up to the driveway in good shape. The neighborhood association does monitor the property regularly because of the volume of complaints that they had against it. For years weeds have grown up north of the driveway on E. 38th Street and north of the storage units on the property itself. She receives the complaints for years in which she has called the Polk County weed commissioner. Grading without permit, truck loads of sand hauled off this site, the weight of the trucks have damaged Mahaska Avenue & E. 40th Street, the trucks were originally suppose to exit south on E. 38th Street to E. University. She has also received many complaints about a large red piece of equipment on the east side of the property. This is supposed to be enclosed storage. It seems to be a disregard for ordinances, permits, and codes by Mr. DeWitt. She asked that the Commission receive and file the petition of opposition for the applicant's request.

Dann Flaherty asked what the neighborhood association wants to see done with this property if not rezoned.

Karen Shoopman stated that they have not addressed that question.

Dann Flaherty asked if residential housing was possible.

Karen Shoopman stated that she thought it could be.

Tim Fitzgerald asked if Ms. Shoopman had communicated any of the complaints that she has received to Mr. DeWitt.

Karen Shoopman stated that at the June 14 meeting she did. But have not had any communication with him other than that.

Christine Pardee asked about the consent map that was shown tonight and if the majority of the complaints from the surrounding property owners that are in favor of the applicant's request.

Karen Shoopman stated that some of them were opposed and then they received the second letter asking to rezone to "C2" instead of "M1" in which she believes that just confused a lot of people.

Bert Drost clarified that the consent map that was shown tonight is only of those who signed Mr. DeWitt's petition. Staff did not receive any response cards to the second notice.

Mike Ludwig asked if there is 20% opposition level, which will constitute a 6/7 vote by City Council.

Bert Drost confirmed there is more than 20% opposition from landowners within 200 feet of the parcel.

Shirley Daniels asked how many times the neighborhood association meet.

Karen Shoopman stated that they meet four times a year, they have board meetings and they can hold a special meeting whenever necessary.

Shirley Daniels asked if people who have just moved into the neighborhood receive a copy of the neighborhood plan; and did Mr. DeWitt receive a copy.

Karen Shoopman stated yes people who move into the neighborhood and attend a meeting receive a copy of the neighborhood plan. Mr. DeWitt has never attended a regular neighborhood meeting.

Donald Reeves 3838 E. 38th Street stated that he believes the DeWitt's are good people it just that he is in opposition of this property's zoning change. The vision has always been residential and he would like for it to remain residential.

Dann Flaherty asked if any attempt been made to create residential in this area.

Donald Reeves stated that there is a great deal of residential since he has moved in, but as of late last year he is not knowledgeable of what has been built or proposed. He knows that there is potential though.

Robert Anderson 1232 E. 40th Street showed pictures of trees that were there when they purchased their lot. He showed pictures of the same area when the trees were gone and a big mound appeared and what it looks like now. The applicant called him and asked him what type of trees he would like. He answered he did not want any trees. However, three trees were left in his yard later. The applicant talked him into keeping the trees because he said he would end up replacing them anyway. The applicant stated that if he does not get the

rezoning he will have to build a house and the easement that is on Mr. Anderson's property will have to be the applicant's driveway. He also wanted Mr. Anderson to sign his petition.

Linda Adamson 1330 E. 41st Street stated that she was on the East University Beautification Planning Committee, which the City drafted into the Character Plan before the Grays Woods Action plan was ever made. The applicant's ministorage was part of that and he was well aware of the greater plan. She does not want to see the commercial pulled off of East University. It should be residential. Their goals and achievements on July 1, 2008 were drafted and handed in to the City's departments. They are asking that their Neighborhood plans for revitalization, uphold residential "R-1" low density zoning, any conversion to commercial zoning, enforce the implementation of the their charter neighborhood plan by the various City of Des Moines departments. Infrastructure has to be addressed. Community Development Department must invest the dollars necessary to get the total infrastructure called for in the plan.

Tim Fitzgerald asked if Mr. DeWitt has been given a copy of the neighborhood plan.

Linda Adamson stated that Mr. DeWitt is mentioned on several pages in the plan and he does have a copy of the plan. He was given a copy when the plan was made in 1999.

Marlon Mormann 3320 Kinsey gave a brief history on Grays Woods stating that in the early 90's the neighborhood was poster child for urban blight. It has been a huge transformation. The neighborhood association got rid of most of the vacant houses, streets were paved, and sidewalks created. It has changed over the years. New houses were built from 1990 to 1999 and infill housing doubled from 2000 to 2010. They not only doubled in numbers but increased in size and value as building went on. He quoted a paragraph from the Gray's Woods Action Plan on page 31 that says "Any amendment approved by the Plan and Zoning Commission and City Council should be based on review and recommendation of the Gray's Woods Neighborhood Association." He pointed out that most storage units are along the interstate, a busy highway, or behind Walmart or Target. They should not be in the middle of a residential neighborhood. The Gray's Woods Neighborhood Association opposes this plan and believes that this land can be used for residential purposes.

Christine Pardee referred to the Gray's Woods Action Plan on page 31, bullet point 3 that says "Future commercial development proposals should be allowed flexibility for amendment of the future land use in cases where they are determined compatible with the neighborhood." She asked, if it is the perception of the Gray's Woods Neighborhood Association that this is solely to be for residential development.

Marlon Mormann stated that if it is compatible with the neighborhood such as the little coffee shop on E. 33rd. Putting a storage area in the middle of single-family residential dwellings is not compatible.

Marty Mauk 2701 Arthur, stated that he is here on behalf of Northeast Neighbors. Gray's Woods asked Northeast Neighbors for support in this situation. He stated there are two issues at hand. The first is the merits for the problems of this particular application and secondly the issues of the integrity of the neighborhood plan itself. After doing some research it concerns him that the applicant has said at both the hearing last time and tonight that he is in compliance and wants to be in compliance. He is constantly out of compliance with the property that he has. In 2010 the applicant received a violation of code from the City Engineer, Ross Stafford that his grading permit had expired in 2004 while he was grading on his property for a six year period of time. He has graded on a property without permission because he did not own the property. The applicant claims that the owner approved of him grading that

property and yet a court case established that he was finally granted that property because the owner was never found. There are violations outstanding on this property. There is no history of the applicant maintaining the integrity of what is being done. He refers to page 31 of the Gray's Woods Neighborhood Action Plan and states that implies a contract. There is no recommendation from the neighborhood association.

Christine Pardee referred to page 26 of the Gray's Woods Action Plan under the issues of zoning violations where it states that the plan of action is to "Develop a system where the neighborhood association and the city have the opportunity to educate property owners and residents about the Zoning Code and work with violators one-on-one to develop solutions to the problem while preventing a future violation." She asked if this system has been developed to work with property owners one-on-one.

Marty Mauk stated that maybe more could be done in that but citizens should not be put in a position of having to confront those that are in violation of code. That is what the City staff is for. That should not be the determining factor.

Dann Flaherty asked Counsel if the Council can bind a future Council by delegating the approval authority to a neighborhood association.

Mike Kelley stated that the neighborhood plan does not bind the Council.

Susan Anderson 1232 40th stated that she is afraid of the public jumping over their fence and she is concerned of the loss of deer and fox if the applicant is granted the rezoning.

Rebuttal

Arnold DeWitt stated that he appreciated the comments given by those in opposition. He stated that he is not a perfect person and has not done everything that was required of him to do but he attempted. The red box that was seen that sits on the side of the property belongs to a renter that rents from them and it goes on the back of his semi-trailer. It is a sleeper cab. They have asked him to keep it shut up but did not think they were in any violations by having it sitting there. He had a person come to him and let him know that his sprinklers were shooting in the street and her car got saturated. He thanked her for letting him know so that he could do something about it. He was glad that someone had enough concern to come to him as a property owner and say this is an issue and is there a way you can address that. They try to be good neighbors. The property is unsightly they are trying to change that. With Mr. Anderson, it was his attempt to reconcile their differences because there were some trees that were right behind his property, he was not there at the time when the trees were taken out. He did buy the property from EDSM and have a written note on file where he can show that the previous owner allowed him to do the grading. The reason the grading was done is so he could build the last two buildings G&H. He told of how the lady came to own the property, everything that happened before she could sell it and how he came to buy it. He stated that he is in some violation with the final grade of that permit and he and the City have been talking. He addressed the property that Ms. Shoopman stated she had gotten complaints about. He stated that it was not his property at the time so the complaint was not against him. This property is going to be very difficult to develop as residential. He thinks this is a great plan.

CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION:

Christine Pardee moved staff recommendation Part A) to find the requested rezoning not in conformance with the existing Des Moines' 2020 Community Character Plan's future land use designation of Low-Density.

Motion passed 11-0

Christine Pardee moved staff recommendation Part B) to approve the requested amendment to the Des Moines' 2020 Community Character Plan to revise the future land use designation from Low-Density Residential to Commercial: Auto-Oriented Small-Scale Strip Development.

Motion failed 4-7 (Christine Pardee, Shirley Daniels, Tim Fitzgerald, Ted Irvine voted in favor and Greg Jones, Mike Simonson, CJ Stephens, JoAnne Corigliano, Kent Sovern, Dann Flaherty, and Will Page voted in opposition).

Mike Ludwig suggested that since the motion to approve Part B failed that the Commission follow up with a motion to deny. A 6/7 vote of the Council can overturn the Commission's recommendation. If the Commission has additional concerns they should note them for the record.

Christine Pardee moved to **deny** Part B) to approve the requested amendment to the Des Moines' 2020 Community Character Plan to revise the future land use designation from Low-Density Residential to Commercial: Auto-Oriented Small-Scale Strip Development.

Motion passed 7-4 (Greg Jones, Mike Simonson, CJ Stephens, JoAnne Corigliano, Kent Sovern, Dann Flaherty, and Will Page voted in favor. Christine Pardee, Shirley Daniels, Tim Fitzgerald, and Ted Irvine voted in opposition).

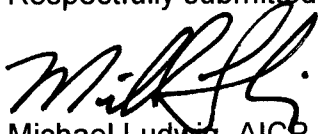
Mike Simonson suggested forwarding the comments that if the Council chooses to overturn the Commission's recommendation and approve Part C) rezoning to a Limited "C-2" District, they do so subject to the following conditions:

- A. Only the uses of structures or land listed below shall be permitted upon the Property:
 1. Any use allowed in the "R1-60" Commercial Residential District.
 2. Mini-warehouse self-storage complex.
- B. If the Property is developed for use as a mini-warehouse self-storage complex, then such development shall comply with the following additional requirements:
 1. The side of any building upon the Property facing East 38th Street shall be in earth tone colors.
 2. No storage units within the westernmost building on the site shall be constructed with doors facing East 38th Street.
 3. No storage units within the easternmost building on the site shall have doors facing the east property line.
 4. All exterior lighting fixtures shall be shielded so as not to illuminate into adjoining residential properties. No lights shall be installed on the east side of the east building.
 5. Any signage upon the Property shall comply with the "C-1" Neighborhood Retail Commercial District Regulations. No off-premises advertising signs shall be located upon the Property.
 6. The required gate and fencing along East 38th Street shall be of wrought iron or tubular steel construction painted earth tones or black to complement the buildings, with masonry pillars.

7. A minimum 50-foot wide setback shall be maintained along the northern boundary of the property adjoining Mahaska Avenue. The setback area shall be landscaped in accordance with a plan approved by the Planning Administrator.
8. A minimum 25-foot foot wide setback shall be maintained along the eastern and western boundaries of the Property. The setback area shall be landscaped in accordance with a plan approved by the Planning Administrator.
9. ~~A sidewalk shall be installed and maintained along the East 38th Street frontage.~~
10. The hours of operation shall be limited to 6:00 AM to 10:00 PM.
11. No surface water detention shall be released onto any adjoining residential property.
12. Prior to issuance of a Certificate of Occupancy, a design professional shall certify that the site has been developed in accordance with the approved site plan.

Motion passed 11-0

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment