

December 19, 2011

Date

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on November 17, 2011, its members voted 13-0 in support of a motion to recommend **DENIAL** of a request from Imperial Properties, Inc. represented by William J. Moyer (officer) to rezone the property located at 4141 East 14th Street from C-2 General Retail and Highway Oriented Commercial District to M-1 Light Industrial District, to allow use of the property for a chrome plating operation based on a finding that it is the intent of the Des Moines' 2020 Community Character Plan to preserve the East 14th Street corridor for commercial use and not industrial purposed over time:

The subject properties are more specifically described as follows:

(Except Road beginning 24.71 Feet South & 33 Feet East of West 1/4 Corner of Section 24, Township 79 North, Range 24 West of the 5th P.M., thence East 249.44 Feet, thence Southwest 107.1 Feet, thence West 75.29 Feet, thence Southwesterly 56.69 Feet, thence South 148.73 Feet, thence West 18 Feet, thence North 180.07 Feet to Point of Beginning)

and

(Except the East 49.2 Feet)

East 249.2 Feet of the West 282.2 Feet of the South 180 Feet of the North 205 Feet of the Northwest 1/4, Southwest 1/4, Section 24, Township 79 North, Range 24 West of the 5th P.M., in the City of Des Moines, Polk County, Iowa

WHEREAS, on December 5, 2011 by Roll Call No. 11-2050, the City Council set a public hearing on the proposed rezoning for December 19, 2011 at 5:00 p.m. in Council Chambers, City Hall, Des Moines, Iowa; and

WHEREAS, notice of the public hearing was published in the Des Moines Register according to law on December 8, 2011, setting forth the time and place for the hearing on the proposed rezoning; and

WHEREAS, in accordance with the notice those interested in the proposed rezoning, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to City Council.

Date..... December 19, 2011

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, as follows:

Alternative A

_____ Upon due consideration of the facts, statements of interested persons and arguments of counsel, the objections to the proposed rezoning of the property from C-2 General Retail and Highway Oriented Commercial District to M-1 Light Industrial District are accepted, the hearing is closed and the proposed rezoning is hereby DENIED.


Moved by _____ to adopt and to DENY the proposed rezoning.

Alternative B

_____ Moved by _____ to continue the public hearing until the January 9, 2012 Council meeting at 5:00 p.m. and to direct the City Manager and Legal Department to prepare the necessary legislation to approve the rezoning subject to the conditions acceptable to the City and the applicant.

Moved by _____ to adopt and to continue the public hearing to January 9, 2012 at 5:00 p.m.

FORM APPROVED:



 Michael F. Kelley
 Assistant City Attorney

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

November 22, 2011

Date _____

Agenda Item 47

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 November 17, 2011, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 13-0 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
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 request from Imperial Properties, Inc. represented by William J. Moyer (officer) Part A) to find the property located at 4141 East 14th Street **not** in conformance with the existing Des Moines' 2020 Community Character Plan.

By separate motion Commissioners recommended 13-0 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

DENIAL of Part B) to amend the Des Moines' 2020 Community Character Plan to revise the existing future land use designation from Commercial, Auto-Oriented, Small-Scale Strip Development to General Industrial; and **denial** of Part C) to rezone the property located at 4141 East 14th Street from "C-2" General Retail and Highway Oriented Commercial District to "M-1" Light Industrial District, to allow use of the property for a chrome plating operation based on a finding that it is the intent of the Des Moines' 2020 Community Character Plan to preserve the East 14th Street corridor for commercial use and not industrial purposed over time. 21-2011-4.14 & ZON2011-00193

Written Responses

- 0 In Favor
- 1 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 Des Moines' 2020 Community Character Plan.

Part B) Staff recommends denial of the requested future land use amendment to General Industrial.

Part C) Staff recommends denial of the requested rezoning to an "M-1" District based on a finding that it is the intent of the Des Moines' 2020 Community Character Plan to preserve the East 14th Street corridor for commercial use and not industrial purposed over time.

STAFF REPORT

I. GENERAL INFORMATION

- 1. Purpose of Request:** The applicant is seeking the rezoning in order to retain the existing chrome plating operation, which is not a permitted use in the "C-2" District.
- 2. Size of Site:** 31,222 square feet.
- 3. Existing Zoning (site):** "C-2" General Retail and Highway-Oriented Commercial District and the "VDL" Vehicle Display Lot Overlay District.
- 4. Existing Land Use (site):** The property currently contains a 5,708 square-foot building used for warehousing and a chrome plating business operation. The chrome plating operation is currently in violation of the Zoning Ordinance and does not have a certificate of occupancy.

5. Adjacent Land Use and Zoning:

North – “HI” Heavy Industrial (Polk County), Use is Ruan Truck Sales.

South - “C-2”, Use is a vehicle display lot.

East – “M-1”, Use is vehicle body and repair shop.

West – “C-2”, Use is Seneca companies, a petroleum equipment contractor.

6. General Neighborhood/Area Land Uses: The subject property is located along the East 14th Street commercial corridor at the northern corporate limit of the City. The highway commercial corridor transitions into industrial development to the east.

7. Applicable Recognized Neighborhood(s): Highland Park Neighborhood.

8. Relevant Zoning History: The applicant made a previous request for “M-1” zoning on the property which was withdrawn before the Plan & Zoning Commission consideration on April 3, 2008.

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 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. Drainage/Grading: Any additional development of the site must comply with the City’s Stormwater Management requirements to the satisfaction of the City’s Permit and Development Center. All grading is subject to an approved grading permit and soil erosion control plan. It is anticipated that if the rezoning is approved there will be a Site Plan required for the property to be brought into conformance for a change of use. This will involve the need to stormwater management if over 10,000 square feet of impervious surface is replaced.

2. Landscaping & Buffering: The applicant has submitted a site sketch that identifies parking areas and proposed open space and landscape areas. The sketch does not identify types of landscaping.

The City’s Landscaping Standards for the “M-1” District on the East 14th Street corridor require the following.

- *Open Space* equal to 20% of the site with 1 overstory tree, 1 evergreen tree and 1 shrub per 2,500 square feet of required open space. In this instance the total site would require 8,015 square feet of open space and 4 overstory trees, 4 evergreens, and 4 shrubs.

- *Perimeter Lot Planting Area* with a minimum width of 10 feet with 1 overstory tree and 3 shrubs per 50 lineal feet. In this instance 3 overstory trees and 9 shrubs would be required along the perimeter of the parking lot from East 14th Street and East Aurora Avenue at the northwest corner of the site.

A submitted site sketch indicates the intent to provide a 10-foot wide perimeter lot landscape strip on the west and northwest with additional open space south of the existing building and along the eastern boundary of the property.

The applicant would be required to submit a site plan to the City's Permit and Development Center for review following any approval of the rezoning process. Plant material would be fully evaluated through that process.

3. **Access or Parking:** The site has two access drives; one from East 14th Street and one from East Aurora Avenue. The applicant has submitted a scaled site sketch that indicates existing drive entrances would be retained along with cross access to the vehicle display lot property owned by the applicant to the south.

There is sufficient area on the property to meet off-street parking minimums which are one space per 600 square feet of the building for the current non-conforming chrome plating use.

4. **2020 Community Character Plan:** The proposed rezoning to the "M-1" District with no limitations is not compatible with the Commercial: Auto-Oriented Small-Scale Strip Development future land use designation. There is a General Industrial designation adjoining to the east. However, staff believes that industrial development should be focused in the areas away from the East 14th Street commercial corridor. Therefore it should not spread past its existing limit to the east of the subject property.
5. **Enforcement Comments:** There is a history of zoning violations since 2006 on the subject property. This includes the current violation of the presence of the chrome plating use within a district that does not permit that use. There are also past violations for outdoor storage of inoperable, unlicensed, and junk vehicles as well as display of vehicles for sale without an approved Site Plan under the vehicle display design guidelines.

In addition to zoning concerns, there are also inquiries by the City with regard to violations of compliance with Building Code occupancy and compliance with Fire Codes. The largest concern is with regard to storage and handling of large amounts of hazardous chemicals used with the chrome plating operation. It has not been demonstrated by the property owner and the operator that the building and operation meets the proper occupancy requirements to allow a use classification involving use and storage of those hazardous substances.

SUMMARY OF DISCUSSION

Bert Drost presented staff report and recommendation.

John "Jack" Hilmes asked staff is the present use of this property a non conforming legal use.

Bert Drost stated the way the property is zoned it cannot be used as a chrome plating shop. Therefore, if the zoning was improved the applicant would have to make some modification to the building to comply with building code such as ventilation, sprinkling and other modifications.

Tim Fitzgerald asked if the building been operating illegally since 2009 and is just now coming before the Commission.

Bert Drost stated there have been inspections and re-inspections since October 5, 2009.

Will Page asked has there been compliance.

Bert Drost stated that this property has not been in compliance.

Bill Moyer 106 SW 36th Lane, Ankeny representing Imperial Properties stated that the tenants have been at the property for awhile and they have been in business in Des Moines for about 30 years and would like to continue. They have a unique business and have done a lot of modifications to stay in business. In order to do what is required it takes a lot of money to do it, which is a problem for them. If the tenants cannot get the rezoning they will have to move and the type of business they have there are some toxic chemicals that is very expensive to move. He is asking that the Commission take a closer look at this request.

Joel Huston asked the applicant what is the length of the lease.

Bill Moyer stated that they have another year.

Tim Fitzgerald asked if the owner knew what the tenants intentions were for the building.

Bill Moyer stated that he did not realize when he entered into the lease with them that the zoning would not allow the intended use.

CJ Stephens asked the applicant if he is aware if his tenants are in compliance with the disposal of hazardous chemicals that they are using right now.

Bill Moyer stated that the tenant would have to answer that question. He said he does not know what is required but he believes the tenant has tried to do what is required of them.

Will Page asked if Imperial Properties own other properties on E. 14th Street.

Bill Moyer stated yes they do.

Will Page asked how many properties is owned by Imperial Properties on E. 14th Street.

Bill Moyer stated approximately half a dozen.

Will Page asked how many properties has Imperial Properties owned on E. 14th Street in the past.

Bill Moyer stated quite a few.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following spoke in favor of the applicant's request.

Tammy Jacobs 2404 E. 11th Street stated that she is with Chrome Reflections and they have not been using their chemical processes. They were barely started up and were shut down shortly after they moved to the property. When they heard of the situation their first thought was they need to move out, but it would be an extremely expensive labor consuming job to move. With the portion of the business being shut down they are subcontracting out part of the plating, trying to do just metal finishing. It is not paying the bills to where they can afford to move out. They need to get a variance so they can begin to do plating. They have maintained the front of the building in a good manner and they know they have to clean the back of the building also. They are willing to have stipulations put on them. Originally when they moved to the property they thought they were in the correct zone because the back portion said "M-1" so they thought the front half had to be kept as a commercial and the back half could be kept as light industrial. They just did not know.

Tim Fitzgerald asked how long they have been in the chrome plating business.

Tammy Jacobs stated since October 1982.

Tim Fitzgerald asked if they were aware of concerns regarding ventilation, sprinkler systems, EPA Standards rules and regulations.

Tammy Jacobs stated that they have complied all 30 years with EPA rules and regulations and the sprinkler was the one thing they thought they did not have to have.

Tim Fitzgerald asked if it was accurate to say that staff was wrong when they state that you do not have a ventilation system in your building.

Tammy Jacobs stated that they do have an exhaust fan and is not aware of any other ventilation system they need. They do have an air quality permit with Polk County.

Jacqueline Easley asked where the business was previously located.

Tammy Jacobs stated they were originally located at E. 17th & Grand, then in 1993 they moved to 1930 Easton Blvd., until moving to the present location. The industry changed over the years and new manufacturing parts were a big business, but with decline in demand for new manufactured parts they had to downsize.

Jacqueline Easley asked if they own any other businesses.

Tammy Jacobs stated no they do not.

Ted Irvine asked if they were told or if it was implied that the zoning for this property was appropriate for their business.

Tammy Jacobs stated that their lease was up at the previous place and it was a quick decision to move. They looked at the Assessor's page and saw "C-3" and "M-1" thinking that the back half of the building was "M-1" and they thought that would suffice.

Steve Walter 3114 E. 24th Street stated that he is in support of this small business. There are not a lot of chrome plating places left and asked that the Commission consider the need for small business and approve their request to rezone the property as "M-1".

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

CHAIRPERSON CLOSED THE PUBLIC HEARING

Greg Jones stated that the tenants observation about the back part being zoned "M-1" was incorrect as no portion of the building is zoned "M-1", just the far eastern portion of the site.

Bert Drost stated that only the parking lot east of the building is zoned "M-1".

CJ Stephens asked if they met with the neighborhood or if the City received any feedback from the neighborhood.

Bert Drost stated that he believes they had a neighborhood meeting but did not know if the neighborhood association was involved. Staff has not heard from Highland Park.

John "Jack" Hilmes asked if there is a variance that would enable this request.

Mike Ludwig stated that if the applicant was denied the rezoning their recourse would be to request a use variance from the Zoning Board of Adjustment but they have to be denied zoning first. There is no guarantee that they would get a use variance but that is the process under the code.

Ted Irvine stated that if there are issues about the cost to move to another building he wonders if there are issues with the cost to bring the facility into compliance with codes to operate the chrome business.

COMMISSION ACTION:

Will Page moved staff recommendation Part A) to find the requested rezoning not in conformance with the Des Moines' 2020 Community Character Plan.

Motion passed 13-0.

Mike Simonson moved staff recommendation Part B) to deny the requested future land use amendment to General Industrial; and Part C) to deny the requested rezoning to an "M-1" District based on a finding that it is the intent of the Des Moines' 2020 Community

Character Plan to preserve the East 14th Street corridor for commercial use and not industrial purposed over time.

Motion passed 13-0.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Ludwig', written over the typed name.

Michael Ludwig, AICP
Planning Administrator

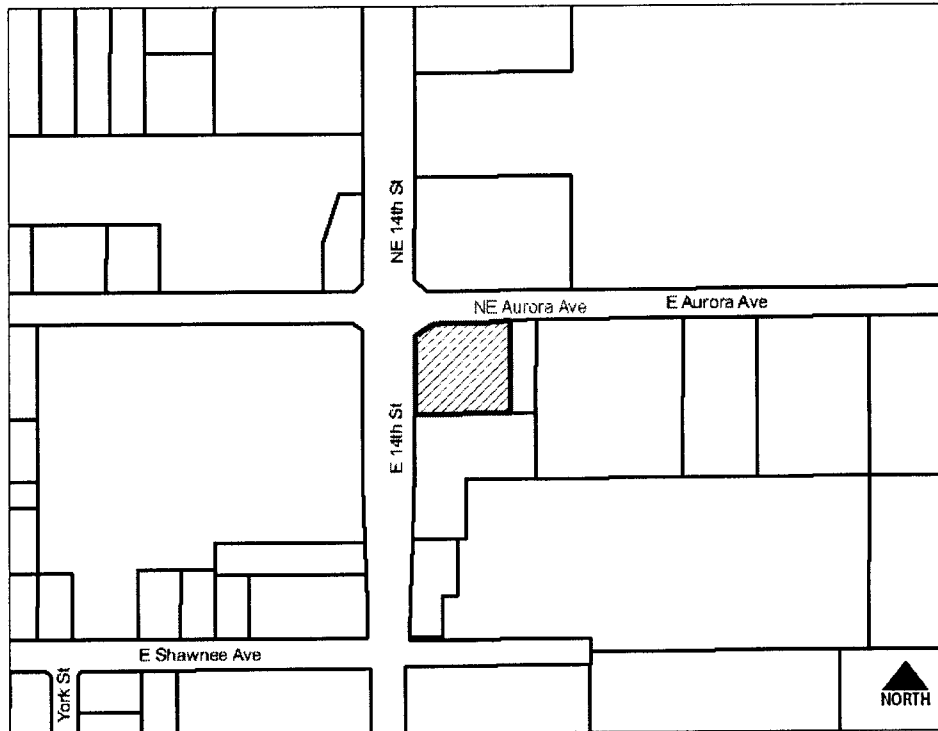
MGL:clw

Attachment

Request from Imperial Properties, Inc. represented by William J. Moyer (officer) to rezone property located at 4141 East 14 th Street.			File #		
			ZON2011-00193		
Description of Action	Review and approval to rezone the property from "C-2" General Retail and Highway Oriented Commercial District to "M-1" Light Industrial District, to allow use of the property for a chrome plating operation.				
2020 Community Character Plan	Commercial: Auto-Oriented Small-Scale Strip Development				
Horizon 2035 Transportation Plan	No Planned Improvements				
Current Zoning District	"C-2" General Retail and Highway Oriented Commercial District				
Proposed Zoning District	"M-1" Light Industrial District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area		1			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	13-0		No	

Imperial Properties Inc. - 4141 East 14th Street

ZON2011- 00193



Item 2001-00193 Date 10-26-11

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

RECEIVED
(Circle One)
COMMUNITY DEVELOPMENT

OCT 31 2011

Print Name CALIBER Cav Mel THOMAS

Signature Mel Thomas

DEPARTMENT Address 4200 E 14th St DSM 50313

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

