

.....  
January 9, 2012

Date.....

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 1, 2011, its members voted 13-0 in support of a motion to recommend **DENIAL** of a request from Hue Nguyen (owner) to rezone property located at 1435 University Avenue from R-3 Multiple-Family Residential District to Limited C-1 Neighborhood Retail Commercial District, to allow for retail development; and

WHEREAS, on September 12, 2011 by Roll Call No. 11-1577, the City Council set a public hearing on the proposed rezoning for September 26, 2011 at 5:00 p.m. in Council Chambers, City Hall, Des Moines, Iowa;

The subject property is more specifically described as follows (the "Property"):

(Except Street) West 70 feet Lots 22, 23, & 24, Bertha Park, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

WHEREAS, notice of the public hearing was published in the Des Moines Register according to law on September 15, 2011, setting forth the time and place for hearing on the proposed rezoning; and

WHEREAS, on September 26, 2011 by Roll Call No. 11-1664, the City Council opened the public hearing on the proposed rezoning, and continued the hearing until October 10, 2011 at 5:00 p.m.; and

WHEREAS, on October 10, 2011 by Roll Call No. 11-1729, the City council opened the public hearing on the proposed rezoning, and continued the hearing until November 7, 2011 at 5:00 p.m.; and

WHEREAS, on November 7, 2011 by Roll Call No. 11-1914, the City Council opened the public hearing on the proposed rezoning and continued the public hearing until December 19, 2011 at 5:00 p.m. in order to address concerns with the rezoning raised by the Plan and Zoning Commission; and

WHEREAS, on December 19, 2011 by Roll Call No. 11-2145, the City Council opened the public hearing on the proposed rezoning and continued the hearing until January 9, 2012 at 5:00 p.m. so that negotiations between applicant and the property owner to the north could take place to reach an agreement that would allow satisfactory vehicular access and parking for 1435 University Avenue. To this date neither the applicant nor the property owner to its north have expressed any interest in reaching such an agreement; 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..... January 9, 2012

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 R-3 Multiple-Family Residential District to Limited C-1 Neighborhood Retail Commercial 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 \_\_\_\_\_, 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.

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

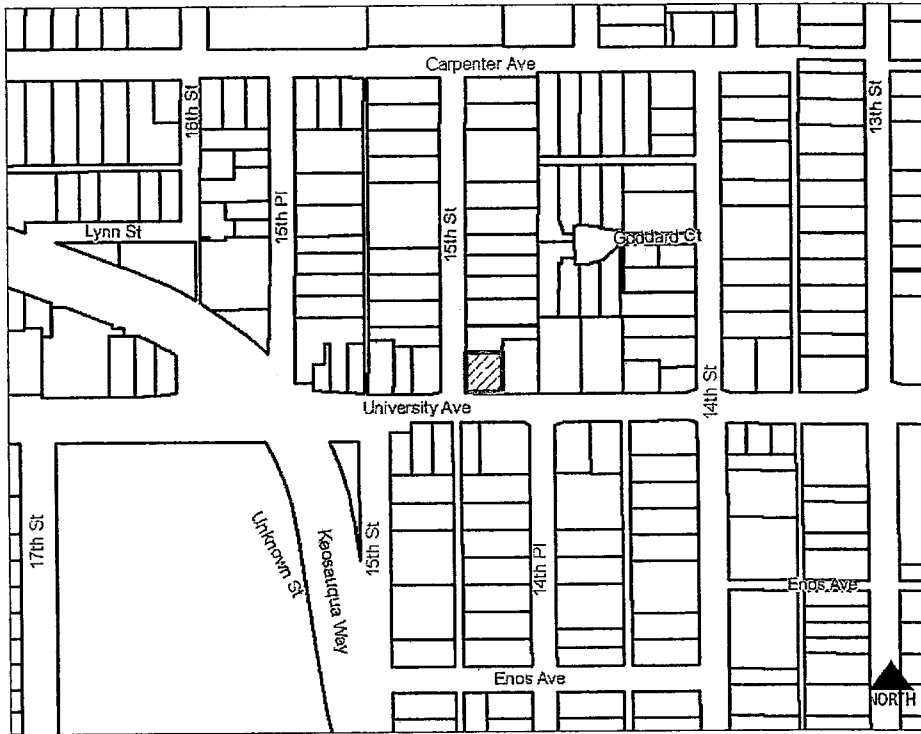
\_\_\_\_\_  
City Clerk

11-2-15  
42

Request from Hue Nguyen (owner) to rezone property located at 1435 University Avenue.				File # ZON2011-00146	
<b>Description of Action</b>		Review and approval to rezone the property from "R-3" Multiple-Family Residential District to "C-1" Neighborhood Retail Commercial District, to allow for retail development.			
<b>2020 Community Character Plan</b>		Commercial: Pedestrian-Oriented Commercial Corridor			
<b>Horizon 2035 Transportation Plan</b>		No Planned Improvements			
<b>Current Zoning District</b>		"R-3" Multiple-Family Residential District			
<b>Proposed Zoning District</b>		"C-1" Neighborhood Retail Commercial District			
<b>Consent Card Responses</b>		In Favor	Not In Favor	Undetermined	% Opposition
Inside Area		1	1		
Outside Area					
<b>Plan and Zoning Commission Action</b>		Approval		<b>Required 6/7 Vote of the City Council</b>	
		Denial	13-0	Yes	X
				No	

Hue Nguyen - 1435 University Avenue

ZON2011-00146



Date \_\_\_\_\_  
 Agenda Item \_\_\_\_\_  
 Roll Call # 11-2145  
 42

September 7, 2011

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 1, 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			

**DENIAL** of a request from Hue Nguyen (owner) to rezone property located at 1435 University Avenue from "R-3" Multiple-Family Residential District to Limited "C-1" Neighborhood Retail Commercial District, to allow for retail development based on a finding that the subject property is not large enough by itself to develop for the intended commercial use without negatively impacting the residential neighborhood to the north. If the request is approved the applicant will likely need to seek relief from the Zoning Board of Adjustment to be able to develop the site. (ZON2011-00146)

Written Responses

- 1 In Favor
- 1 In Opposition

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

Staff recommends denial of the requested rezoning to Limited "C-1" Neighborhood Retail Commercial District based on a finding that the subject property is not large enough by itself to develop for the intended commercial use without negatively impacting the residential neighborhood to the north. If the request is approved the applicant will likely need to seek relief from the Zoning Board of Adjustment to be able to develop the site.

## STAFF REPORT

### I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant wishes to construct a commercial building to for a nail salon and gift shop business. The applicant is proposing a Limited "C-1" District that would prohibit gas stations, communication towers and small engine repair uses.
2. **Size of Site:** 70 feet by 78.4 feet (5,490 square feet).
3. **Existing Zoning (site):** "R-3" Multiple-Family Residential District.
4. **Existing Land Use (site):** Vacant.
5. **Adjacent Land Use and Zoning:**
  - North* – "R-3"; Use is undeveloped land.
  - South* – "R-3"; Uses area single-family dwellings including an accessory in-home beauty salon.
  - East* – "R-3"; Use is a single-family dwelling.
  - West* – "R-3"; Use is a multi-family building with 4 dwelling units.
6. **General Neighborhood/Area Land Uses:** The subject property is located in the King Irving Neighborhood, which consists primarily of single-family dwellings. It is located in an area that contains a mix of single-family dwellings, multiple-family dwellings and churches along the University Avenue corridor.
7. **Applicable Recognized Neighborhood(s):** King Irving Neighborhood Association.
8. **Relevant Zoning History:** N/A.
9. **2020 Community Character Land Use Plan Designation:** Commercial: Pedestrian-Oriented Commercial Corridor.
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, prior to the City Council Hearing. The recommendation of the Commission will be forwarded to the City Council.

### II. ADDITIONAL APPLICABLE INFORMATION

1. **Drainage/Grading:** Any 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.

2. **Utilities:** There are sanitary sewer, storm sewer and water lines in the adjoining rights-of-way.
3. **Landscaping & Buffering:** Any development of the site will require landscaping in accordance with the Des Moines Landscape Standards. These standards generally include open space, bufferyard and parking lot plantings. Development of the site would also be subject to the City's Tree Removal and Mitigation Ordinance (Section 42-550 of the City Code).
4. **Access or Parking:** The applicant has submitted a site sketch that shows a 1,088-square foot building set back 25 feet from the south front property line and 25 feet from the west front property line. The sketch shows parking to the south and west of the building with approximately 19 feet of green space to the north and approximately 13 feet of green space to the east.

The Zoning Ordinance requires parking lots to be set back a minimum of 5 feet from any front property line. The ordinance also sets minimum drive aisle and parking stall dimensions. The dimensions vary depending on the angle of the parking stalls. Head in, 90-degree parking stalls must be a minimum of 9 feet wide by 17 feet deep with a 24-foot wide drive aisle. The option with the narrowest dimensions is 0-degree or parallel stalls. These stalls must measure a minimum of 9 feet by 20 feet and be served by a minimum 12-foot wide one-way drive aisle.

The applicant wishes to occupy the proposed building with a nail salon and gift shop business. The Zoning Ordinance requires 1 off-street parking space per 400 square feet of gross floor area for the first 4,000 square feet of area. The Ordinance requires 2 parking spaces per operator at a beauty shop or nail salon.

The application does not indicate the number of operators or chairs that would be dedicated to the nail salon portion of the business. Three parking spaces would be required if the entire building was dedicated to retail sales. Staff believes that it would be difficult to construct more than two parking spaces that comply with the Zoning Ordinance requirements. Staff's analysis indicates that if a building with approximately half the floor area was proposed, it would still be difficult to construct more than two spaces without relief from the Zoning Board of Adjustment.

5. **2020 Community Character Plan:** The subject property is within an area designated Commercial: Pedestrian-Oriented Commercial Corridor by the Des Moines 2020 Community Character Plan and the King Irving Neighborhood Plan. This designation is described as areas developed in a fashion that balances the needs of the pedestrian and the convenience of the motorist. The development is compact and walkable connections to adjacent areas exist via public streets and sidewalks. These developments are small-to-moderate scale commercial in a linear pattern that serves adjacent neighborhood and passing motorist. Building sizes range from 2,000 to 35,000 square feet.

The 2020 Community Character Plan also states the following with regard to land use transition (Chapter 4, Page 74).

*"New commercial development and expansion of existing commercial along major corridors should front upon and have primary access from the major corridor and not from an adjacent residential side street. It is inappropriate to introduce commercial traffic into or through a residential area. The impacts of such commercial expansion upon the adjacent residential neighborhood should be a primary consideration in determining the appropriateness of the development request."*

Staff believes that the subject property is too small to be developed for commercial use. The Future Land Use Plan designates this portion of the corridor for commercial use. However, this is with the thought that when commercial redevelopment occurs that enough land would be assembled to provide adequate off-street parking, screening and setbacks from residential uses and landscaping could be provided. The development as proposed would likely rely on 15<sup>th</sup> Street for parking and access, which is contrary to the 2020 Community Character Plans goals for proper land use transition.

## **SUMMARY OF DISCUSSION**

Jason Van Essen presented the staff report and recommendation.

John "Jack" Hilmes asked if the applicant had more land could would they be able to develop this project.

Jason Van Essen stated yes.

Hue Nguyen 1168 14<sup>th</sup> Place stated that she is requesting to rezone this property from "R-3" to "C-1".

Jacqueline Easley asked if the applicant understands why staff is recommending denial.

Hue Nguyen stated that she does not want the business to be too big, she wants it to be small.

CJ Stephens asked if the applicant plans to do manicure and pedicure.

Hue Nguyen stated yes she is going to do nails.

CJ Stphens asked how many nail stations.

Hue Nguyen stated three nail stations.

## **CHAIRPERSON OPENED THE PUBLIC HEARING**

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

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

Nancy Bunker 1911 69<sup>th</sup> Street, Windsor Heights. Her LLC owns the two properties west across 15<sup>th</sup> Street and the single family dwelling west of that since about 1976. She tries

to be a good neighbor but she believes that the lot is too small. There is very little parking, which is a problem already. She believes that this development would not work.

*Rebuttal*

Hue Nguyen stated that she could build smaller so that there is left over parking.

Kent Sovern asked if the applicant has already purchased the property.

Hue Nguyen stated that she has. She asked if they could make it a gift shop.

Kent Sovern explained that Plan and Zoning Commission can only act on staff recommendation tonight. There is another process that is different than this Commission. He requested that staff advise the applicant of next steps if the Commission says no.

Mike Ludwig stated that if the City Council denies the rezoning the applicant could request a use variance from the Zoning Board of Adjustment. If the City Council approves the rezoning the applicant will still need variances from the Zoning Board of Adjustment to number of parking spaces, maneuvering space, dimension setback and various things to only occupy the parcel that they currently own.


**CHAIRPERSON CLOSED THE PUBLIC HEARING**

**COMMISSION ACTION:**

Shirley Daniels moved staff recommendation deny the requested rezoning to Limited "C-1" Neighborhood Retail Commercial District based on a finding that the subject property is not large enough by itself to develop for the intended commercial use without negatively impacting the residential neighborhood to the north. If the request is approved the applicant will likely need to seek relief from the Zoning Board of Adjustment to be able to develop the site.

Motion passed 13-0.

Respectfully submitted,

  
Michael Ludwig, AICP  
Planning Administrator

MGL:clw

Attachment



Item Case 2011-00146

Date 8/24/2011

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

(Circle one)

**RECEIVED**  
**COMMUNITY DEVELOPMENT**

Bunker Family Ent. LC.

Print Name Nancy J. Bunker member  
Signature Nancy Bunker manager

AUG 29 2011

DEPARTMENT Address 1911 - 06 9th Street

Windsor Hts. IA 50324

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

Bunker Fam. Ent. owns next two structures to the west. One is a fourplex @ 1501 Univ. and a single-family dwelling @ 1505 Univ. (19.4) Residences line the east + west sides of 15th Street. There is already a shortage of parking and little commercial development.

August 15, 2011

Jason Van Essen; Bert Drost, Erik Lundy  
Community Development Department  
Argonne Armory Building  
602 Robert Ray Drive  
Des Moines, IA. 50309

RECEIVED  
AUG 24 REC'D  
COMMUNITY DEVELOPMENT  
DEPARTMENT

IN RE: Requested Rezoning, 1435 University Ave.

Dear Sir:

I wish to register my disapproval of the above-mentioned request for rezoning.

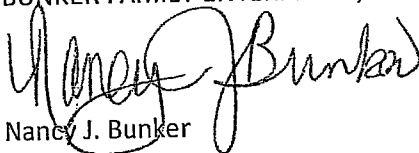
Bunker Family Enterprises, L.C. owns the next two properties west of 1435 University Ave. They are a fourplex and a single-family dwelling directly across 15<sup>th</sup> Street, @ 1501 W. University Ave and 1505 W. University Ave. This is an entirely residential area, with very limited parking available already along 15<sup>th</sup> Street, and none, of course, on University Avenue.

I feel the increased traffic and noise generated by a commercial establishment would be detrimental to my tenants, and the area in general.

Please deny this request for changing the zoning for 1435 University Ave. from R-3 to C-1.

Very truly yours,

BUNKER FAMILY ENTERPRISES, L. C.

  
Nancy J. Bunker

Member/Manager

Community Development Department

AUG 24 2011

RECEIVED

11-7145  
42

Item ZIN 2011-00146 Date 9/28/11

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

**RECEIVED**  
(One Use)  
**COMMUNITY DEVELOPMENT**

Print Name Don L. Curry

AUG 29 2011

Signature [Signature]

DEPARTMENT

Address 1189 Tenth St. Des Moines

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

It will be good for the  
neighborhood

Hue Nguyen - 1435 University Avenue

ZON2011-00146

