

Date..... March 26, 2012

WHEREAS, on March 12, 2012 by Roll Call No. 12-0386, it was duly resolved by the City Council that the application of Arnold DeWitt to rezone certain property located in the vicinity of 1241 East 38th Street from the R1-60 One-Family Low-Density Residential District to Limited C-2 General Retail and Highway-Oriented Commercial District classification, more fully described below, be set down for hearing on March 26, 2012, at 5:00 P.M., in the Council Chambers at City Hall; and,

WHEREAS, due notice of the hearing was published in the Des Moines Register on March 15, 2012, as provided by law, setting forth the time and place for hearing on the proposed amendment to the Zoning Ordinance; and,

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

WHEREAS, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone the following described property:

(Except North 100 feet) 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

from the R1-60 One-Family Low-Density Residential District to Limited C-2 General Retail and Highway-Oriented Commercial District classification, subject to the following conditions which have been agreed to and accepted by execution of an Acceptance of Rezoning Ordinance in writing by all owners of the property and are binding upon the owners and their successors, heirs and assigns as follows:

- A. Only the uses of structures or land listed below shall be permitted upon the Property:
 - 1. Any use allowed in the R1-60 One-Family Low-Density 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. Access shall be provided from an internal drive approach from the existing facility to the south and not from East 38th Street.
 - 2. The side of any building upon the Property facing East 38th Street shall be in earth tone colors.

Date..... March 26, 2012

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3. No storage units within the westernmost building on the site shall be constructed with doors facing East 38th Street.
4. No storage units within the easternmost building on the site shall have doors facing the east property line.
5. All exterior lighting fixtures shall be shielded so as not to illuminate into surrounding residentially-zoned properties.
6. 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.
7. Any 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.
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 minimum 10-foot wide setback shall be maintained along the northern boundary of any development. The setback area shall be landscaped in accordance with a plan approved by the Planning Administrator.
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. No permit for construction shall be issued until such time that all zoning violations for the existing mini-warehouse use at 3800 East University Avenue have been remedied.
13. No permit for construction shall be issued until such time that the entire site and the 100-foot wide area adjacent to the north have been graded to the satisfaction of the Engineering staff of the Permit and Development Center in accordance with a grading permit and soil erosion control plan.
14. Release the easement on Robert Anderson's property at 1232 E. 40th Street.
15. The four lots on Mahaska Avenue be 110 feet deep from north to south.
16. If there is a retaining wall between the storage units and the lots on Mahaska Avenue, it should not be more than four feet in elevation.
17. The four parcels on Mahaska Avenue be graded so they are buildable.
18. That all seven pages of the "Staff Report and Recommendation" be part of the record and be included as requirements for the approval of this zoning change.

Date March 26, 2012


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

1. Upon due consideration of the facts, statements of interested persons and arguments of counsel, the objections to the proposed rezoning of the Property to a Limited C-2 District are hereby overruled, and the hearing is closed.

2. The proposed rezoning is hereby found to be in conformance with the Des Moines 2020 Community Character Land Use Plan.

MOVED by _____ to adopt and approve the rezoning, subject to final passage of the rezoning ordinance.

FORM APPROVED:


 Michael F. Kelley
 Assistant City Attorney

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

CERTIFICATE

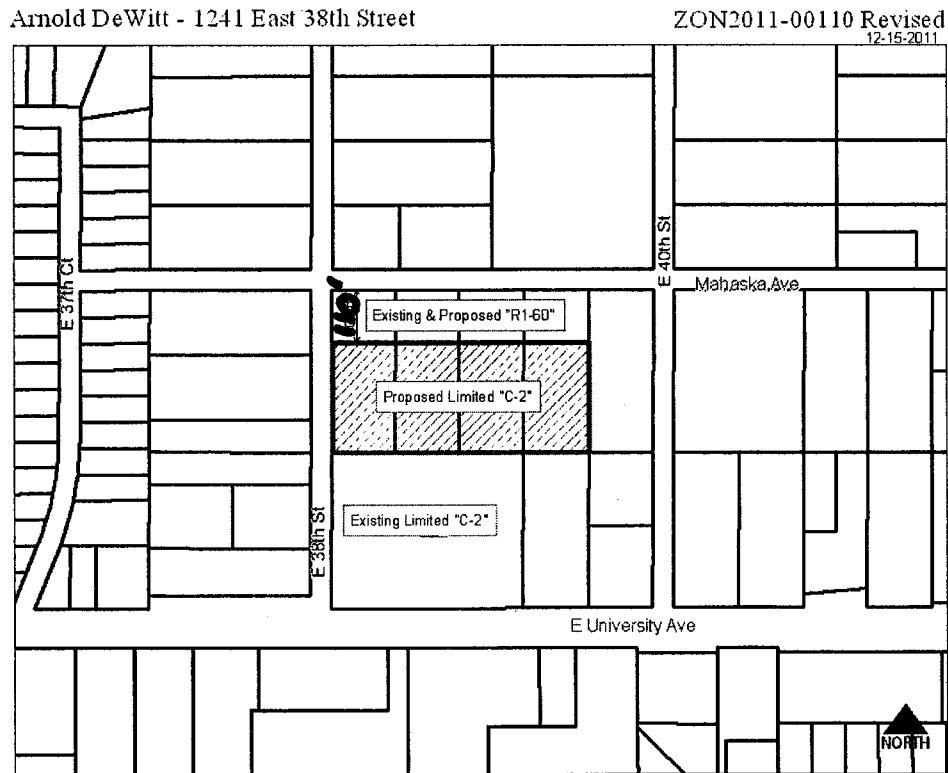
I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

 Mayor

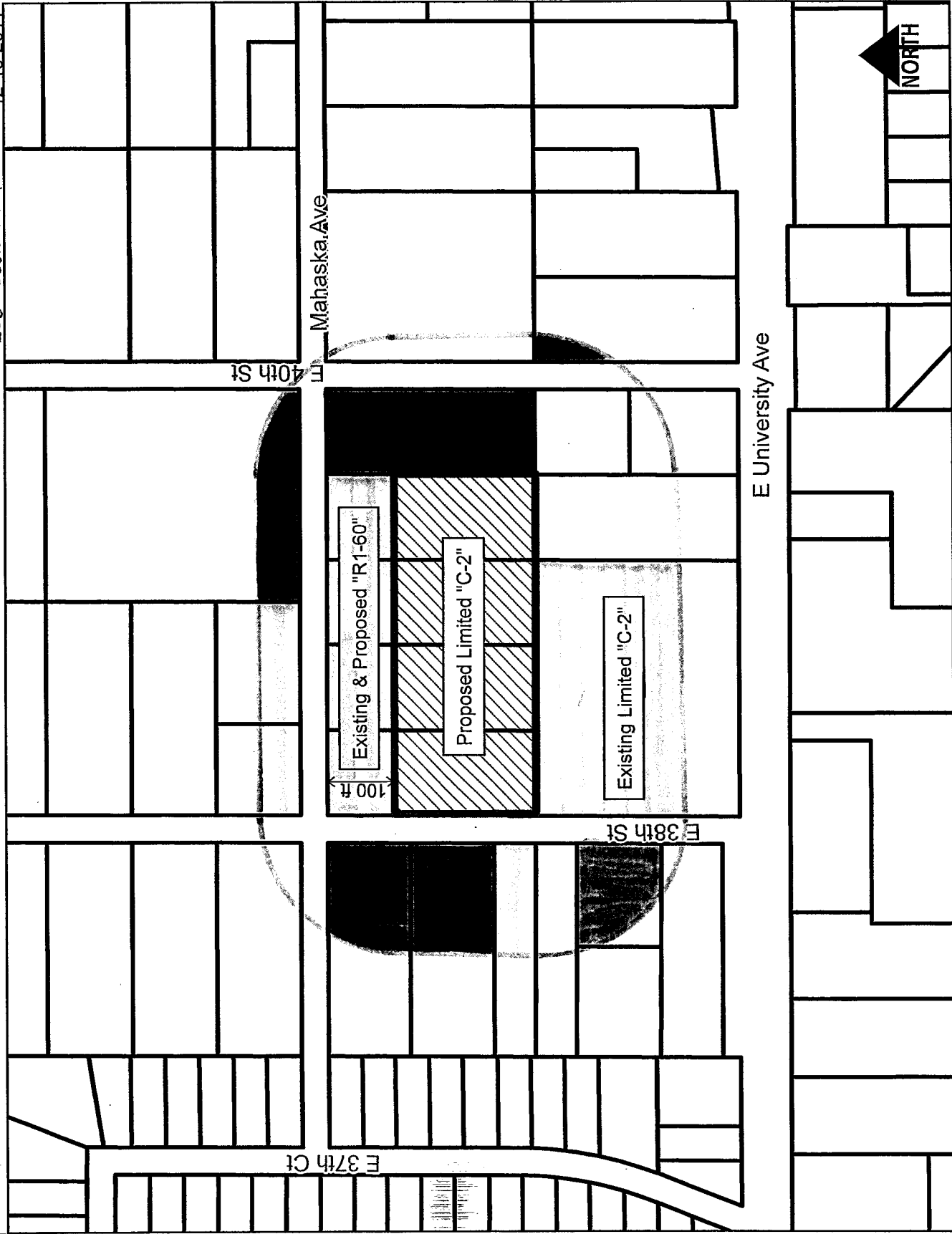
 City Clerk

City Council initiated request to consider a modified request from Arnold DeWitt (owner) to rezone property in the vicinity of 1241 East 38th Street. P&Z recommends that the requested area for rezoning be modified to exclude the north 110 feet of the property south of Mahaska Avenue. 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 Limited "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	5	4			
Outside Area					
Plan and Zoning Commission Action	Approval	11-0	Required 6/7 Vote of the City Council	Yes	X
	Denial			No	



Arnold DeWitt - 1241 East 38th Street

ZON2011-00110 Revised
200' BOUNDARY 12-15-2011



March 6, 2012

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 March 1, 2012, the following action was taken regarding City Council initiated request to consider a modified request from Arnold DeWitt (owner) to rezone property in the vicinity of 1241 East 38th Street:

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
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			
CJ Stephens	X			

APPROVAL of Part A) to find the proposed rezoning not in conformance with the existing Des Moines' 2020 Community Character Plan's future land use designation of Low-Density.

By separate motion Commissioners recommended 10-0 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			

APPROVAL of Part B) 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 10-0 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			
CJ Stephens	X			

APPROVAL of Part C) to rezone the property from "R1-60" One-Family Low-Density Residential District to Limited "C-2" General Retail and Highway-Oriented Commercial District, to allow for an expansion of the existing miniwarehouse complex 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" One-Family Low-Density 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. Access shall be provided from an internal drive approach from the existing facility to the south and not from East 38th Street.
 2. The side of any building upon the Property facing East 38th Street shall be in earth tone colors.
 3. No storage units within the westernmost building on the site shall be constructed with doors facing East 38th Street.
 4. No storage units within the easternmost building on the site shall have doors facing the east property line.
 5. All exterior lighting fixtures shall be shielded so as not to illuminate into surrounding residentially-zoned properties.
 6. 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.
 7. Any 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.

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 minimum 10-foot wide setback shall be maintained along the northern boundary of any development. The setback area shall be landscaped in accordance with a plan approved by the Planning Administrator.
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. No permit for construction shall be issued until such time that all zoning violations for the existing miniwarehouse use at 3800 East University Avenue have been remedied.
13. No permit for construction shall be issued until such time that the entire site and the 100-foot wide area adjacent to the north have been graded to the satisfaction of the Engineering staff of the Permit and Development Center in accordance with a grading permit and soil erosion control plan.
14. Release the easement on Robert Anderson's property at 1232 E. 40th Street.
15. The four lots on Mahaska Avenue shall be 110 feet deep from north to south.
16. If there is a retaining wall between the storage units and the residential lots on Mahaska Avenue, it should not be more than four feet in elevation.
17. The four parcels on Mahaska Avenue shall be graded so they are buildable.
18. That all seven pages of the "Staff Report and Recommendation" be part of the record.

Written Responses

5 In Favor

4 In Opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the requested rezoning be found not in conformance with the 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" One-Family Low-Density 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. Access shall be provided from an internal drive approach from the existing facility to the south and not from East 38th Street.
 2. The side of any building upon the Property facing East 38th Street shall be in earth tone colors.

3. No storage units within the westernmost building on the site shall be constructed with doors facing East 38th Street.
4. No storage units within the easternmost building on the site shall have doors facing the east property line.
5. All exterior lighting fixtures shall be shielded so as not to illuminate into surrounding residentially-zoned properties.
6. 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.
7. Any 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.
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 minimum 10-foot wide setback shall be maintained along the northern boundary of any development. The setback area shall be landscaped in accordance with a plan approved by the Planning Administrator.
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. No permit for construction shall be issued until such time that all zoning violations for the existing miniwarehouse use at 3800 East University Avenue have been remedied.
13. No permit for construction shall be issued until such time that the entire site and the 100-foot wide area adjacent to the north have been graded to the satisfaction of the Engineering staff of the Permit and Development Center in accordance with a grading permit and soil erosion control plan.

STAFF REPORT

I. GENERAL INFORMATION

- On September 15, 2011, the Plan & Zoning Commission recommended denial of a request to rezone the entire site (3.51 acre) to "C-2" District.
 - On November 21, 2011, the City Council referred a modified proposal back to the Plan & Zoning Commission for consideration that excludes the north 100 feet of the site to allow for future single-family dwellings along the south side of Mahaska Avenue.
 - On December 15, 2011, the Plan & Zoning Commission reopened the public hearing. At that time, the request was continued to February 16, 2012 to allow the applicant to meet with the Gray's Woods Neighborhood Association to discuss leaving up to 120 feet along Mahaska Avenue zoned "R1-60" District.
 - The meeting between the applicant and the Gray's Woods Neighborhood Association was held on Wednesday, February 15, 2012. Therefore, the Plan and Zoning Commission continued the public hearing to the March 1, 2012 Commission meeting.
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 modified

proposal excludes the north 100 feet of the property to allow for future residential development along the south side of Mahaska Avenue. The proposed expansion of the miniwarehouse complex would include up to six buildings with storage units and be accessed by an internal driveway from the existing facility.

Any commercial development on the site would be subject to administrative approval of a Site Plan by the City's Permit & Development Center. The development would be required to provide a 10-foot wide landscaped buffer along the north property line and a 25-foot wide landscaped setback along East 38th Street.

2. **Size of Site:** 496 feet by 208 feet or 103,168 square feet (2.37 acres). This represents a reduction of 49,600 square feet (1.14 acre) from the original request.
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. The modified proposal excludes the north 100 feet of the property to allow for future residential development along the south side of Mahaska Avenue.
5. **Adjacent Land Use and Zoning:**
 - North** - "R1-60", Use is undeveloped land.
 - 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 September 15, 2011, the Plan & Zoning Commission recommended denial of a request to rezone the entire site to "C-2" District. On November 21, 2011, the City Council referred a modified proposal back to the Plan & Zoning Commission for consideration that would exclude the north 100 feet of the property to allow for future single-family dwellings along the south side of Mahaska Avenue.

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. 38 the 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 pm.

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. Furthermore, excluding the north 100 feet of the site from the rezoning minimizes the impact of a development and maintains the ability for future residential development along Mahaska Avenue.

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:** Any site plan submitted for commercial development of the property 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 to date, 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. **Grading:** Given the terrain of site, any future development on the site will require grading work in accordance with an approved grading permit and soil erosion control plan. Staff recommends that any rezoning be subject to a zoning condition that any grading of the site shall include grading of the 100-foot wide area immediately to the north that would remain zoned for single-family residential use. Such over lot grading of these four parcels would disturb approximately 18,000 square feet of tree canopy. In accordance with City’s Tree Removal and Mitigation Ordinance, these trees could be mitigated based on either the area of canopy being removed or the number of trees 12 inches in caliper or greater being removed.
5. **Drainage:** 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. 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. **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.

Staff recommends that any rezoning be subject to a zoning condition that requires a minimum 25-foot wide setback along both the western and eastern boundaries of the property and a 10-foot wide setback along the northern boundary of the property. The submitted site sketch demonstrates a 30-foot setback along the west front property line and a 10-foot setback along the north property line, but only a 20-foot setback along the east property line.

- 7. **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.
- 8. **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 not proposing an additional 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 Permit & Development Center's engineering staff has since determined that it is not feasible to construct the sidewalk along East 38th Street due to the topography and the placement of existing utility poles.

- 9. **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.
- 10. **Zoning Enforcement:** The existing miniwarehouse facility at 3800 East University Avenue is in the process of bringing the landscaping on the site into compliance with an approved site plan. Staff recommends that any rezoning be subject to a condition that no permit for construction shall be issued until such time that all zoning violations for the existing miniwarehouse use at 3800 East University Avenue have been remedied.

SUMMARY OF DISCUSSION

Erik Lundy presented staff report and recommendation.

Wally Pelds with Pelds Engineering 2323 Dixon Street stated that they met with the neighborhood. The neighborhood presented their concern about the north 100 feet and it would still be an issue. The applicant suggested a condition to build four lots on those northern lots. He showed a plan of their grading and stated that they have no issues with any of the conditions except for condition #13. He suggest that the wording was subjective where it states satisfaction to staff leaves is pretty arbitrary. Therefore, he proposes that #13 state "no permit for construction shall be issued until such time that the project area, described as Lots 100, 101, 102, and 103 of Broadacre, an original plat. in the City of Des Moines, has been graded to the designed site plan, grading permit and soil erosion control plans approved by the City's Engineering staff of the Permit and Development Center."

Mike Ludwig confirmed that lots 100, 101, 102, and 103 include the area proposed to be zoned "C-2" as well as the north 100 feet which will remain "R1-60".

Wally Pelds affirmed.

Mike Ludwig stated that no permits can be issued for the construction of the storage units until the grading for that entire boundary was completed.

Wally Pelds stated that is correct.

Mike Ludwig stated that staff has no objection to the use of Mr. Pelds wording.

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:

Karen Shoopman 3804 Indianapolis Avenue, Chair of Grays Woods Neighborhood Association submitted a copy of her concerns and recommendation to receive and file. (See Attached)

Will Page asked about the easement referred in Ms. Shoopman's comments.

Mike Ludwig stated that at a previous meeting there was a testimony that there is a driveway easement through the property to the east and there were allegations made at that meeting that the applicant had told the adjoining property owner that he would use that access easement if his zoning was not approved.

JoAnne Corigliano asked what is the need for the extra 10 feet of single-family lot depth.

Karen Shoopman stated that they believe that 100 feet is not a sufficient amount of space for the homes.

Linda Adamson 1330 E. 41st Street, past president and current member of Gray's Woods and Revitalization Chair submitted her written comment to receive and file. (See attached)

Don Reeves 3838 E. 38th Street stated that the applicant's request will not enhance his property. He is concerned with the noise all hours of the night. If the City of Des Moines would lower East 38th Street like they proposed several years ago what is in this plan for the west part of the applicant's property where it joins East 38th. Would there be ugly looking railroad timbers, concrete, what would we have?

Mike Ludwig stated that he is not aware of any current plans to lower 38th Street. Like any public improvement project if it was lowered there would have to be some type of retaining wall or some sort of grading to transition from the roadway to adjoining properties.

Mike Simonson stated that a response card that was passed around expressed concern about possible need for curbs and who would pay for them.

Mike Ludwig stated the Council would have to take action on paving of streets and ultimately all improvements are paid by taxpayers. Whether or not adjoining properties are assessed would be subject to a future Council.

Marlon Mormann 3320 Kinsey stated that he is a board member of Gray's Woods Neighborhood Association (GWNA) and Vice President of Northeast Neighbors Inc. and he

opposes the applicant's request. On behalf of Gray's Woods they are bidding against themselves today. They are coming up with different propositions which they think are acceptable. He pointed out Lonnie Schroeder 4038 E. University, Susan Birch 1229 E. 35th Street, and Bob Anderson 1232 E. 40th Street who are all in the audience and support the Gray's Woods Neighborhood decision. They are willing to support a 110 feet single-family lot depth. They hope to get four buildable lots that are sufficient for a multiple styles of homes and not just a ranch home. GWNA is making concessions and hope that the Commission accepts their amendments.

John "Jack" Hilmes asked about the retaining wall.

Marlon Mormann stated that the applicant told neighbors at the last meeting they were going to excavate 10 or 15 feet for the new storage buildings. When GWNA met with Mr. DeWitt and the engineer they said they are going to try to keep it about 4 feet difference between the elevation of the storage units and the residential lots. So they are concerned about the big difference between a 15 feet hole and a 4 foot drop.

John "Jack" Hilmes asked is there a belief that it is going to be a 15 feet deep hold.

Marlon Mormann stated that they do not have it in writing. They do not know what it is going to be. The last time they were here it is their understanding that it is going to be 10 to 15 feet deep hole. When they met with Mr. DeWitt it was reading more like a 4 foot difference in elevation. Four foot elevation is fine, the 15 feet deep is a very big difference.

Marty Mauk 2701 Arthur stated that he does not live in Gray's Woods. Gray's Woods came to Northeast Neighbors and asked for help. They were concerned about their neighborhood plan and the results of their neighborhood plan and how this Commission and City Council reacts will affect other neighborhoods as they consider their neighborhood plans. He passed out his comments. (See Attached)

Mike Simonson asked that Mr. Pelds show the grading plan again.

Rebuttal

Wally Pelds stated if they provide 110 feet deep lots they will need a 4 foot wall, but if they leave it at 100 feet then there will be no need for a retaining wall. He believes in that 100 feet is a buildable lot. They will grade to make it look right. They are not buildable now because they do not have access to sanitary sewer.

Dann Flaherty asked where is the closest sewer to those lots.

Wally Pelds stated that the sanitary can come from a couple of directions but most likely come up Mahaska and he thinks E. 40th Street.

Dann Flaherty asked if there was any sewer in University Avenue.

Wally Pelds stated there is but the grade is an issue.

CHAIRPERSON CLOSED THE PUBLIC HEARING

John "Jack" Hilmes reiterated what Mr. Pelds said that if the residential lots go 110 feet deep they will need a 4 feet retaining wall, which sounds like they did consider providing 110 feet deep lots.

Wally Pelds stated he told Mr. DeWitt to stay at a 100 feet because then he can just deal with the grading and he won't have a retaining wall issue which is very expensive.

John "Jack" Hilmes stated he believes the neighborhood association is doing a good job and he has given the Commission an opening to enable their compromise proposal at some expense to the applicant with a 4 foot high retaining wall and a 110 foot deep residential lot. If that is true then that takes care of 3 of the 4 major concerns with exception of placing the staff recommendation seven pages in. That leaves us with the question of the easement going across the property to the east. It is hard to pass on the easement without reading the easement.

Wally Pelds stated that he agrees with him, but do not know if the applicant can accept the conditions without consulting with Mr. DeWitt. He believes the applicant could propose more than 4 lots. However, they do not want to do that and think that their solution of 100 feet deep lots is palible.

Mike Ludwig asked where would they put the retaining wall. Are they shifting their entire lot south?

Wally Pelds stated that it is a moving puzzle. The biggest fight would be fire service.

Mike Ludwig asked if the additional 10 foot of lot depth would be obtained just by shifting the storage units to the south and construction a 4 foot retaining wall at the north edge of the storage unit property.

Wally Pelds stated that a retaining wall would not be required along the entire north boundary but partially puts them into the trees.

Mike Ludwig asked if they would still meet their required stormwater calculation.

Wally Pelds yes they would. They are using underground absorption and surface detention then it drains out the other detention pond in the existing facility.

Mike Ludwig clarified comments that were made about the setbacks on the property. It is zoned "R1-60", the "R1-60" zoning district requires a 30 foot front yard and a 30 foot rear yard. That would leave 40 feet of building depth for a 100 foot deep lot and 50 feet for a 110 feet deep lot. The existing lots are all about 123 feet wide. The corner lot on E. 38th would have required a 30 foot setback from E. 38th so 7 foot side yard, 37 of the 120 feet would be taken up by setbacks that it would still leave roughly 70 or 80 feet of width for a house.

Dann Flaherty asked about the grade change from Mahaska to the development.

Wally Pelds stated that it varies.

Will Page asked if the retaining wall would add more stability to that land.

Wally Pelds stated from his perspective yes, some. However, because it is a sandy soil and unstable which would mean he would have to go much deeper with footings.

Mike Simonson asked if the applicant willing to release the easement.

Wally Pelds stated that he has no knowledge of an easement.

CJ Stephens asked would there be some removal of trees if a retaining wall is built.

Wally Pelds stated yes they are recommending 8 feet cut which would further impact the trees at the NE corner of the storage unit site.

CJ Stephens asked if they could just eliminate that one lot and leave a wooded lot at the corner.

Wally Pelds stated that they could.

CJ Stephens stated that land was mined and not in compliance with City code. If that soil was returned would they have the same problem?

Wally Pelds stated that he believes he would have more of a problem at this point. He was not involved with the previous grading. The best scenario is to get it as flat as they can. It is conducive to ground water recharge.

Ted Irvine asked the opposing group if a smaller retaining wall desired then is no retaining wall even better.

Marty Mauk stated no.

Mike Ludwig stated the tree removal would not come back to Plan and Zoning Commission if they stick with the existing four lots that are platted. It would just be reviewed as part of their building permit application by staff and tree over 12 inches in diameter and are on the approved tree list would be mitigated. The other mitigation method is based on the square feet of canopy removed.

Mike Simonson asked staff what is required between the edge of the pavement and the residential lots.

Mike Ludwig stated a 10 foot setback is required.

Mike Simonson asked what is to be planted in the 10 foot setback.

Erik Lundy stated two overstories and four evergreens per 100 lineal feet.

Greg Jones asked if the applicant would agree to the neighborhood's conditions.

Wally Pelds stated that he has not been authorized by the owner.

Mike Ludwig stated that the Commission can make a recommendation. It is up to the applicant to decide whether they want to sign the conditions of the rezoning prior to the Council hearing.

COMMISSION ACTION:

Will Page moved staff recommendation Part A) 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.

Motion passed 10-0.

Will Page 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 passed 10-0.

Will Page moved staff recommendation Part C) to approve the 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" One-Family Low-Density 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. Access shall be provided from an internal drive approach from the existing facility to the south and not from East 38th Street.
 2. The side of any building upon the Property facing East 38th Street shall be in earth tone colors.
 3. No storage units within the westernmost building on the site shall be constructed with doors facing East 38th Street.
 4. No storage units within the easternmost building on the site shall have doors facing the east property line.
 5. All exterior lighting fixtures shall be shielded so as not to illuminate into surrounding residentially-zoned properties.
 6. 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.
 7. Any 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.
 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 minimum 10-foot wide setback shall be maintained along the northern boundary of any development. The setback area shall be landscaped in accordance with a plan approved by the Planning Administrator.
 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. No permit for construction shall be issued until such time that all zoning violations for the existing miniwarehouse use at 3800 East University Avenue have been remedied.
- 13. No permit for construction shall be issued until such time that the entire site and the 100-foot wide area adjacent to the north have been graded to the satisfaction of the Engineering staff of the Permit and Development Center in accordance with a grading permit and soil erosion control plan.
- 14. Release the easement on Robert Anderson's property at 1232 E. 40th Street.
- 15. The four lots on Mahaska Avenue shall be 110 feet deep from north to south.
- 16. If there is a retaining wall between the storage units and the residential lots on Mahaska Avenue, it should not be more than four feet in elevation.
- 17. The four parcels on Mahaska Avenue shall be graded so they are buildable.
- 18. That all seven pages of the "Staff Report and Recommendation" be part of the record.

Motion passed 10-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment

Remarks by
Karen Shoopman
before the
Plan and Zoning Commission
Thursday, March 1, 2012 at 6:00 p.m.

Good evening Chairman Flaherty and Commission members.

My name is Karen Shoopman, 3804 Indianapolis Avenue, Des Moines, Iowa. I am Chair of the Gray's Woods Neighborhood Association (GWNA). I have been involved with the association for 12 years.

I live approximately two blocks from East University Self-Storage. Our Board of Directors all live in Gray's Woods. Mr. DeWitt lives in the Copper Creek section of Pleasant Hill. When I drive past the site on E. 38th Street, I am shocked at how, for so many years, the property behind the existing storage units, is allowed to remain in its stripped condition, left as a wasteland.

In April 1998, the Des Moines City Staff began a planning process with Gray's Woods neighbors to develop our neighborhood plan. In March 1999, our plan went before the Neighborhood Revitalization Board, the Plan and Zoning Commission, the Des Moines City Council and the Polk County Board of Supervisors all of who approved our plan.

The plan specifically calls for development of businesses along East University Avenue. The neighborhood plan **does not** call for expansion of a business on Mahaska Avenue or E. 38th Street.

I would like to refer to Page 17 of our neighborhood plan under "ISSUES". The "ISSUE" is interior businesses in the neighborhood. The "GOALS" number four, is to **restrict expansion** of existing commercial development into existing residential development within the neighborhood.

The "PLAN OF ACTION" for the "GOALS" is to **prevent** commercial rezoning of residential property adjacent to existing commercial uses.

Who are the 'RESOURCES' to accomplish the goals? They are GWNA, the Plan and Zoning Commission, and the City Community Development Department.

East University Self-Storage began development in 1998. Plans to expand the business along Mahaska Avenue began in approximately 2004. At that time, City Staff **did not** seek the review and recommendation of the Gray's Woods Neighborhood Association. In fact, GWNA **did not** find out about expansion plans at 3917 Mahaska Avenue until seven years later.

The last sentence of our Neighborhood Plan, page 31 under **"IMPLEMENTATION"** says "Any amendment approved by the Plan and Zoning Commission and Des Moines City Council should be based on **review and recommendation of GWNA.**"

On Wednesday February 15, 2012, the GWNA Board of Directors met with Mr. DeWitt and Wally Pelds to review his latest plan. We received a site plan but nothing in writing. After the opportunity to review this plan, the GWNA Board voted not to recommend it.

The real issue is how the Community Development Department handled the process. For approximately seven years (2004 – 2011), Community Development was aware Mr. DeWitt was planning on encroaching in the neighborhood. GWNA met with Mr. DeWitt in June 2011, per the recommendation of City Staff. We find it strange City Staff recommended the project before the neighborhood had a chance to review it.

GWNA supports City Staff recommendations with the following amendments:

1. Release the easement on Robert Anderson's property at 1232 E. 40th Street.
2. The four lots on Mahaska Avenue be 110 feet deep from north to south.
3. If there is a retaining wall between the storage units and the lots on Mahaska Avenue, it should not be more than four feet in elevation.
4. The four parcels on Mahaska Avenue be graded so they are buildable.

In conclusion, the GWNA has established a position that offers a compromise that is least disruptive to the residential neighborhood.

Thank you for your time.



Karen Shoopman,
Chair

Gray's Woods Neighborhood Association

Plan and Zoning Commission
City Hall
Thursday, March 1, 2012

Chairman Flaherty and Commission members:

My name is Linda Adamson, 1330 E. 41st Street, Des Moines Iowa. I was the Planning Committee Revitalization Chair for the Gray's Woods Neighborhood Plan. I am past President (11years) and current Board Member of Gray's Woods Neighborhood Association. I have been involved with Gray's Woods since 1996 (16 years).

I have lived in Gray's Woods for 33 years. I have intimate knowledge of the Gray's Woods area. I live about 2 ½ blocks from East University Self-Storage. Mr. DeWitt lives in Pleasant Hill. The land area behind the current storage buildings has been neglected and left barren for years ever since Mr. DeWitt bought the property, not to mention the removal of trees especially mature oak and basswood trees.

There has been talk the four lots on Mahaska Avenue are not buildable. However, there was a house on the southeast corner of E. 38th Street and Mahaska Avenue (1241 E. 38th St.) that burned down several years ago.

As you know, East University Self-Storage began construction in 1998. In 1999, I personally gave Arnold DeWitt a copy of our Neighborhood Plan. He had every opportunity to read about **COMMERCIAL GOALS** and **FUTURE LAND USE** for the Gray's Woods neighborhood.

The Neighborhood Plan states the following:

1. Business development along East University;
2. Restrict encroachment of existing commercial development into existing residential development within the neighborhood; and
3. Prevent commercial rezoning of residential property next to existing commercial uses.

Since June 2011, our Board has met with Arnold DeWitt four times. We have attended four Plan and Zoning hearings and one City Council meeting.

<u>GWNA Board</u>	<u>Plan & Zoning</u>	<u>City Council</u>
June 14, 2011	July 7, 2011	November 21, 2011
August 3, 2011	September 15, 2011	
October 5, 2011	December 15, 2011	
February 15, 2012	March 1, 2012	

Mr. DeWitt's plans have changed numerous times. Although we receive site plans, we have asked for but never received written plans.

With hesitation, we agreed to a compromise plan by Councilman Moore. Mr. DeWitt did not accept this compromise. He has not been agreeable to any compromise.

In summary, the Neighborhood Plan is our Neighborhood Plan. We helped develop it. We live in the neighborhood and we are willing to compromise.

Thank you.

Linda Adamson
Gray's Woods Neighborhood Association
Current Board Member and Revitalization Chair

Plan & Zoning Commission

Re: Zoning Items #2A-#2C, 21-2011-4.06 & Zon 2011-00110

March 1, 2012

Chairman Flaherty and Commission Members,

It should be stated that from the beginning of this series of zoning requests that Gray's Wood Neighborhood Association has been against the changing of this property to commercial zoning. It is simply an encroachment of commercial into a residential neighborhood and against the action plan as approved by the City Council, Board of Supervisors, Neighborhood Revitalization Board and this Plan and Zoning Commission. The major reason why the neighborhood association has been willing to reconsider their position was out of respect for a couple of City Council members desire to see if a compromise was at all possible.

The biggest area that is particularly problematic is the inability of the applicant to commit to details and follow through with mitigation of problems. Every time the neighborhood association has met with Mr. DeWitt his plans have changed and he refuses to commit to a written agreement. Given his history of non-compliance with his existing property and his excuse that he had verbal approval that negated approved written plans you can imagine why the neighborhood association has concerns for future.

Mr. DeWitt is a businessman. He had stated on a number of occasions that he has to do what is right for him to have a viable business. The Gray's Woods Neighborhood Association is a group of citizens who have been elected to look to the needs of all the residents within their neighborhood. They have worked countless hours on the development and implementation of a neighborhood plan that seeks to benefit the whole, not just one individual. It should be incumbent upon Mr. DeWitt to agree to a compromise that will least affect the integrity of the of the neighborhood plan and buffer his encroachment into the residential property.

It is my understanding that the neighborhood association would be willing to accept the staff recommendations with the following clarifications or amendments:

1. That the north "residential strip" be set at 110 feet instead of the 100 feet requested by the applicant. This additional 10 feet will give the 4 residential lots enough space to allow for the building of a garage which will make those lots more saleable and will provide a better buffering from the commercial property.
2. That the easement presently on the adjacent Anderson property be removed. This has been problematic and is not necessary under the present plan.
3. That the "over-lot" grading of the four "residential lots" (as mentioned in the staff report) be done in such a way as to make those lots as ready for sale as possible.
4. That a retaining wall, if necessary, at the north end of the commercial development, be no higher than 4 feet where it meets the 110 feet of residential property. This would involve "stair-stepping" or elevating that commercial

property as it goes north. We understand that Mr. DeWitt had recommended this as a possibility.

5. That all seven pages of the “Staff Report and Recommendation” be part of the record and be included as requirements for the approval of this zoning change. (Not just the last two pages of staff recommendations) Staff has done a good job in giving more detail and reasoning throughout the report than in the summary of the staff recommendations. This is especially important in that it relates to “no permit for construction shall be issued until...” and the addition of “no permit for occupancy shall be granted until the entire plan is completed.”

While the Gray’s Woods Neighborhood Association still does not believe that this development is within the best interests of the neighborhood action plan they are willing to go along with the zoning change under the entire (7-page) plan submitted by the staff with the addition of the 5 items above (as “clarifications or amendments”). If, the applicant cannot agree to all aspects of the above, then Gray’s Woods Neighborhood Association asks the Plan and Zoning Commission to reject the zoning request for commercial designation.

Respectfully submitted,

Marty Mauk
2701 Arthur, Des Moines IA

Item 2011 00110

Date 12-9-11

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

RECEIVED
COMMUNITY DEVELOPMENT
DEC 21 2011
DEPARTMENT

Print Name Tanner Robbins

Signature [Handwritten Signature]

Address 1708 E. 38th

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

Something NEEDS to BE
DONE with selected
AREA.

Item 2011 00110

Date 12-7-11 41

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

RECEIVED
COMMUNITY DEVELOPMENT
DEC 13 2011
DEPARTMENT

Print Name Arnold E DeWitt

Signature Arnold E. DeWitt

Address 1647 Lakeview Dr. Pleasant Hill

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

Item 2011 00110

Date _____

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

RECEIVED
COMMUNITY DEVELOPMENT
DEC 13 2011
DEPARTMENT

Print Name FDSM LLC

Signature [Signature]

Address 874-7200 St 20
DM, Green

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

Item 2011 00110 Date 12-14-11 41

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

rock

RECEIVED
COMMUNITY DEVELOPMENT
DEC 15 2011
DEPARTMENT

Print Name Marilyn L. Thomas

Signature Marilyn L. Thomas

Address 4000 E. University

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

I wish to go with the
Tray's Woods plan.

Item 2011 00110 Date 12-9-11

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

RECEIVED
COMMUNITY DEVELOPMENT
DEC 12 2011
DEPARTMENT

Print Name Jeffrey & Bridget Landers

Signature Jeff Landers & B. Landers

Address 1224 East 38th St

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

We are not against progress & improvement

Item 2011 00110 Date 12-10-11

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

RECEIVED
COMMUNITY DEVELOPMENT
DEC 13 2011
DEPARTMENT

Print Name MARK P MURRAY

Signature Mark Murray

Address 1601 E 35th St OSMIA

50319

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

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

RECEIVED
COMMUNITY DEVELOPMENT
DEC 13 2011
DEPARTMENT

Print Name Donald J. Reeves

Signature Donald J. Reeves

Address PO Box 17067 Des Moines Ia
~~50317~~ 50317

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

Eqst 38th st. is 12' above manhole @
Mahaska. What happens if street is
lowered to where it was expected to be?
Will this cause us to have to pay for
curbs + storm drains in the future?
Why not?

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

RECEIVED
COMMUNITY DEVELOPMENT
DEC 15 2011
DEPARTMENT

Print Name Robert Anderson

Signature Robert Anderson

Address 1232 E. 40th St
Des Moines Ia 50317

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

I believe the properties should
remain zoned residential or that
120 feet of buffer zone from
Mahaska

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

RECEIVED
COMMUNITY DEVELOPMENT
DEC 15 2011
DEPARTMENT

Print Name Merkle Miner

Signature Merkle Ray Miner

Address 1320 E. 40th St Des Moines Iowa
50317

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