

December 3, 2012

Date

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on November 1, 2012, its members voted 11-0 in support of a motion to recommend **DENIAL** of a request from Raymond Garneau (owner) to rezone property located at 2324 Southwest 9th Street from C-1 Neighborhood Retail Commercial District to the C-2 General Retail and Highway Oriented Commercial District, to allow conversion of the existing property to a plumbing and heating shop, on the basis that the C-2 District is intended for larger retail areas where adequate buffering can be provided for adjoining residential uses. The existing C-1 District classification is a more appropriate classification given the residential nature of the area and the shallow depth of the lots fronting SW 9th Street; and

WHEREAS, on November 19, 2012 by Roll Call No.12-1766, the City Council set a public hearing on the proposed rezoning for December 3, 2012 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 the West 77 feet) Lot 560, 1st Plat of Clifton Heights, 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 November 21, 2012, setting forth the time and place for 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.

December 3, 2012
Date

-2-

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-1 Neighborhood Retail Commercial District to C-2 General Retail and Highway Oriented 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 _____ 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 _____ 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

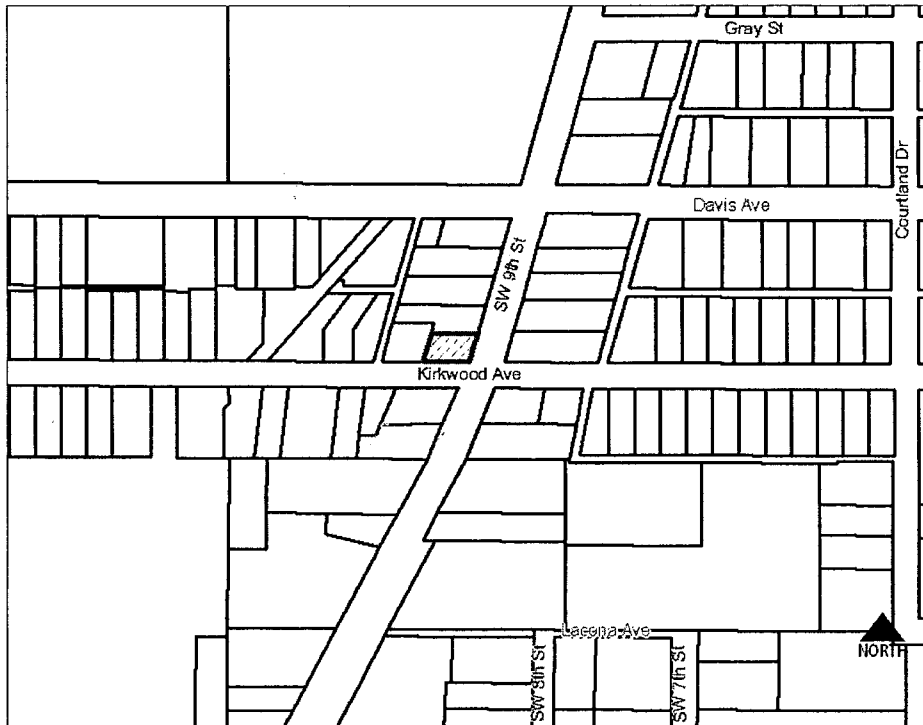
City Clerk

43

Request from Raymond Garneau (owner) to rezone property located at 2324 Southwest 9 th Street.		File # ZON2012-00181			
Description of Action	Denial to rezone from "C-1" Neighborhood Retail Commercial District to "C-2" General Retail and Highway Oriented Commercial District, to allow conversion of the existing property to a plumbing and heating shop.				
2020 Community Character Plan	Commercial: Auto-Oriented Small-Scale Strip Development				
Horizon 2035 Transportation Plan	SW 9 th Street from the Raccoon River to Army Post Road to widen from 4 lanes undivided to 5 lanes undivided				
Current Zoning District	"C-1" Neighborhood Retail Commercial 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	2	0			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	11-0		No	

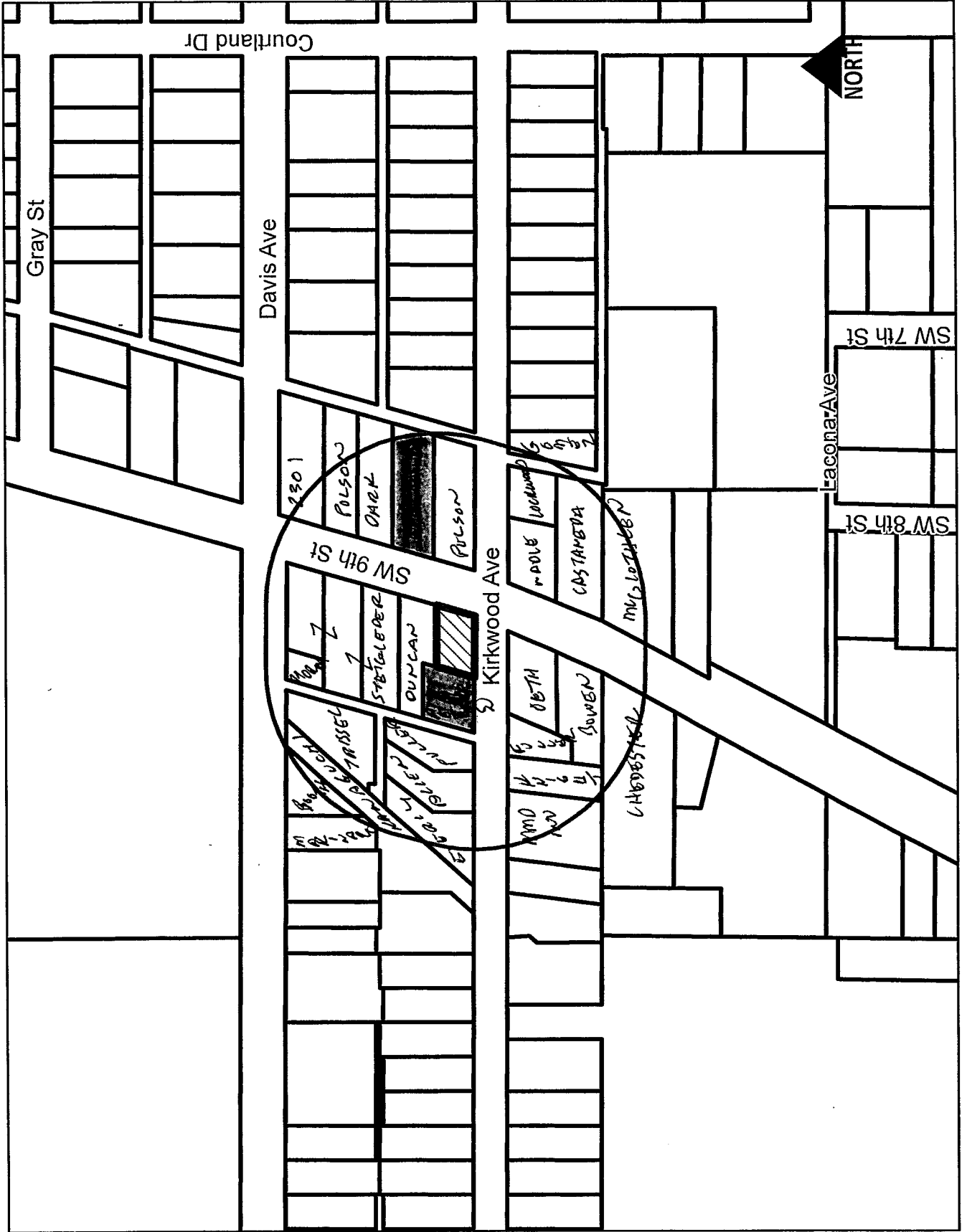
Alegiant LLC (Raymond Garneau) - 2324 SW 9th Street

ZON2012-00181



ZON2012-00181

Alegiant LLC (Raymond Garneau) - 2324 SW 9th Street



November 7, 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 November 1, 2012, the following action was taken regarding a request from Raymond Garneau (owner) to rezone property located at 2324 Southwest 9th Street.

COMMISSION RECOMMENDATION:

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

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

APPROVAL of Part A) to find the proposed rezoning is in conformance with the Des Moines' 2020 Community Character Plan future land use designation of Commercial: Auto-Oriented Small-Scale Strip Development; and Part B) to **deny** the requested rezoning to "C-2" General Retail and Highway-Oriented Commercial District on the basis that the "C-2" District is intended for larger retail areas where adequate buffering can be provided for adjoining residential uses. The existing "C-1" District is a more appropriate classification given the residential nature of the area and the shallow depth of the lots fronting SW 9th Street and a use variance should be pursued.

(ZON2012-00181)



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

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the Commission find the proposed rezoning is in conformance with the Des Moines’ 2020 Community Character Plan future land use designation of Commercial: Auto-Oriented Small-Scale Strip Development.

Part B) Staff recommends denial of the requested rezoning to “C-2” General Retail and Highway-Oriented Commercial District on the basis that the “C-2” District is intended for larger retail areas where adequate buffering can be provided for adjoining residential uses. The existing “C-1” District is a more appropriate classification given the residential nature of the area and the shallow depth of the lots fronting SW 9th Street.

Written Responses

2 In Favor
0 In Opposition

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant wishes to operate a plumbing and heating shop business within the existing building. The property contains a one-story commercial building with 1,014 square feet of gross floor area. The building is generally located in the center of the site with pavement to the east and south of the building. Most of the area to the west of the building consists of a driveway for the adjoining single-family dwelling. The property is accessed by a drive approach to SW 9th Street to the east and a drive approach to Kirkwood Avenue to the south.

2. **Size of Site:** 5,112 square feet (0.117 acres).

3. **Existing Zoning (site):** “C-1” Neighborhood Retail Commercial District and “GGP” Gambling Games Prohibition Overlay District

4. **Existing Land Use (site):** Vacant commercial building with 1,014 square of gross floor area and surface parking.

5. **Adjacent Land Use and Zoning:**

North – “C-1”, Use is a single-family dwelling.

South – “C-1”, Uses are single-family residential.

East - “C-0”, Uses are single-family residential.

West – “C-1”, Use is a single-family dwelling.

6. **Applicable Recognized Neighborhood(s):** The subject property is located within the Gray's Lake Neighborhood and within 250 feet of the Indianola Hills Neighborhood. These neighborhood was notified of the meeting by mailing of the Preliminary Agenda to all recognized neighborhood on October 12, 2012. Additionally, separate notifications of the hearing for this specific item were mailed on October 12, 2012 (20 days prior) and October 22, 2012 (10 days prior to the scheduled hearing) to the Gray's Lake Neighborhood Association, Indianola Hills Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on October 26, 2012.

All agendas and notices are mailed to the primary contact person designated to the City of Des Moines Neighborhood Development Division by the recognized neighborhood association. The Gray's Lake Neighborhood Association mailings were sent to Evan Shaw, 2615 Druid Hill Drive, Des Moines, IA 50315. The Indianola Hills Neighborhood Association mailings were sent to Nancy Watson, 326 East Broad Street, Des Moines, IA 50315.

7. **Relevant Zoning History:** N/A.
8. **2020 Community Character Land Use Plan Designation:** Commercial: Auto-Oriented Small-Scale Strip Development.
9. **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 Chapter 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. **Landscaping & Buffering:** The City's Landscaping Standards for the "C-2" District that would apply to this site consists of 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.
 - *Bufferyard* with a minimum width of 10 feet with a 6-foot tall opaque fence/screen, and 2 overstory trees and 6 evergreen trees per 100 lineal feet.
 - *Parking & Maneuvering Perimeter Planting Area* with a minimum width of 7 feet with 1 overstory tree and 3 shrub per 50 lineal feet.

If the rezoning is approved the applicant will be required to submit a site plan that addresses these standards and develop the site in accordance with that site plan. Some accommodation can be made for site constraints but the intent of the requirements must be addressed.

- 2. **Parking:** The Zoning Ordinance requires a minimum of 3 off-street parking spaces plus 1 space per employee for plumbing shop uses. The applicant has submitted a site sketch that shows 4 off-street parking spaces within the existing parking lot. Information on the number of employees has not been provided. The lot is paved to the sidewalks along SW 9th Street and Kirkwood Avenue. The site sketch shows this condition remaining. Any pavement within the right-of-way must be removed. The Zoning Ordinance requires parking lots to be set back a minimum of 5 feet from any front property line. The pavement within the 5-foot setbacks must be removed unless relief to the requirement is granted by the Zoning Board of Adjustment. If the rezoning is approved the applicant will be required to submit a site plan where the number, size and setback of the parking will be fully evaluated.

- 3. **2020 Community Character Plan:** The subject property is within an area designated Commercial: Auto-Oriented Small-Scale Strip Development by the Des Moines 2020 Community Character Plan. This designation is described as areas developed in a fashion that is “primarily focused on the needs and convenience of the motorist. In the future, developments will have a strong orientation to motorists with necessary accommodations on site for pedestrians.” These developments are “small-to-moderate scale commercial in a linear pattern that services the passing motorist. Individual buildings may be over 35,000 square feet with individual modules from 2,000 to 20,000 square feet.”

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

“The co-existence of dissimilar land uses directly adjacent to each other has the potential to create nuisances. There are currently many situations in Des Moines where a lack of careful site planning for infill commercial development and institutions adjacent to, or within a neighborhood has resulted in serious nuisance issues for residences. The consequence of these conflicts may be a disinvestment in the residential property.

This plan promotes a healthy mix of commercial and residential land uses for Des Moines and recognizes the importance of institutions, such as churches and schools, as important components of a neighborhood. However, there is an accepted level of privacy associated with the immediate environment of one’s home. The yard area of residence is private, not public space, and interventions to it such as light, noise, or people is an infringement of one’s privacy. On the other hand, undesirable views of parking lots, and service areas, from a residential property is also an infringement.

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 provide adequate separation for the intensity of uses allowed in the "C-2" District including the proposed use from the adjoining residential uses. This is contrary to the 2020 Community Character Plan's goals for proper land use transition.

The applicant has the ability to request a Use Variance from the Zoning Board of Adjustment if the rezoning is denied by the City Council. Use Variance requests cannot be considered by the Board until after a rezoning has been attempted.

SUMMARY OF DISCUSSION

Jason Van Essen presented staff report and recommendation.

Dann Flaherty asked if the applicant can operate a plumbing business under the existing "C-1" zoning.

Jason Van Essen stated no according to the ordinance a plumbing business is classified as a "C-2" use.

Mike Ludwig stated with contractor offices in general, there is a concern about outdoor storage. That is the reason it is a "C-2" use.

Raymond Garneau 1315 Johnson Street, also the owner of Ray's Plumbing and Heating Air Conditioning stated this property was originally built as a gas station with a service bay but it has been vacant for over approximately three years. He believes the previous tenants operated a consignment shop. When he purchased the property his intention was to have an office and use the bay area for his equipment truck because of the expensive equipment he normally has on site. The only storage he believes he will have is parts. The property is zoned for office and retail. In the plumbing business there are water heaters, sump pumps, pipes and fittings that someone might come in and ask for. He would also like to do some small repair on that property such as fixing faucets or taking a pump apart on the work bench. He would like to put up a privacy fence so he could park a trailer in the back. There would not be a lot of storage on this property. His hours would be very limited, therefore, he believes there would not be a great deal of traffic created. He has the neighborhood association and the surrounding neighbors support because they believe that the applicant's type of business will benefit the neighborhood and put this property to use, back on the tax role and make it presentable.

JoAnne Corigliano asked if the applicant had any employees.

Raymond Garneau stated he does not have employees, he works with subcontractors.

JoAnne Corigliano asked if the applicant will store anything outside.

Raymond Garneau stated that it would only be the trailer that he uses when he does outside work. When he goes to a job site he hauls the trailer and leaves it on the job site until the work is completed. He does have a dump box that he hauls some stuff with and occasionally he might want to park it outside between jobs. This would all be behind a privacy fence that he wants to build.

Will Page stated that if the property was rezoned what type of alterations to the interior and exterior would be needed for his business.

Raymond Garneau stated that currently the inside is gutted and he is rewiring and re-plumbing with new furnace and air conditioning. On the exterior he proposes to put the service door and a new entrance door along with replacing the side door. Eventually, he would repave the half of the lot that is not paved. A flowerbed around the sign and planting of evergreen trees to the north of the lot giving it a green area.

Will Page suggested that if the property is rezoned and the applicant puts his business there that he look at the building and its original design very carefully and try to be as sympathetic as possible to the building architecture because for the applicant's a building is good looking and will be a good advertisement for the kind of service that is offered.

Dann Flaherty concern is that this property is going to a "C-2" not because the applicant would use it any other way than what he says. If the rezoning was granted that would mean that all those general retail uses are going to be allowed.

Raymond Garneau asked then is there some way to go to "C-2" with some restrictions.

Dann Flaherty stated that if the applicant goes before the Zoning Board of Adjustment he would get that relief that he is looking for.

Greg Jones stated that he is also concerned with rezoning this property to "C-2". He believes from the applicant's description of his intentions it is a good thing to do. He proposes to turn the applicant's request down and let him request a use variance from the Zoning Board of Adjustment and encourages the Board to find a way to make it happen.

Raymond Garneau stated that his understanding of the request to rezone to "C-2" is that it will allow him to do repairs inside the building. He will not be doing a lot of repairs, he has not done that for years so it is not a big issue for him. However, it is to accommodate the neighborhood who has requested that repairs be available to them.

Mike Ludwig explained that neither "C-2" or "C-1" would allow for outdoor storage. "M-1" would be outdoor storage for equipment. Regardless of whether the Commission approves this zoning or not it will require some sort of relief from the Zoning Board of Adjustment for outdoor storage.

CHAIRPERSON OPENED THE PUBLIC HEARING

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

CHAIRPERSON CLOSED THE PUBLIC HEARING

Vicki Stogdill asked what is the applicant's remedy if the Commission turns him down and he goes before the Zoning Board of Adjustment and they turn him down.

Mike Ludwig stated that under the code if the applicant is denied a zoning request there would have to be some modified proposal or wait a year and come in for a new zoning application.

Mike Simonson stated that he would be supportive of the applicant if he were to go to the Zoning Board of Adjustment and wish that he could convey his support.

Mike Ludwig stated by denying the applicant's request on the basis that it is more appropriate as a use variance would be suffice.

COMMISSION ACTION:

Mike Simonson moved staff recommendation Part A) to find the proposed rezoning is in conformance with the Des Moines' 2020 Community Character Plan future land use designation of Commercial: Auto-Oriented Small-Scale Strip Development; and Part B) to **deny** the requested rezoning to "C-2" General Retail and Highway-Oriented Commercial District on the basis that the "C-2" District is intended for larger retail areas where adequate buffering can be provided for adjoining residential uses. The existing "C-1" District is a more appropriate classification given the residential nature of the area and the shallow depth of the lots fronting SW 9th Street and a use variance should be pursued.

Motion passed 11-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment

Item 2012 00181

Date 10-24-12

43

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

(Circle One)

Print Name Harold Petersen

Signature [Handwritten Signature]

Address 8370 Beardstey, Norwalk IA

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

The building has been vacant & a eye-sore. I think the building would make a great place for a plumbing business & help improve our neighborhood.

Item 2012 00181

Date 10/23/12

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

(Circle One)

Print Name Kristie Ashley

Signature [Handwritten Signature]

Address 901 Thomas Beck Des Moines IA 50315

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

[Faint, illegible text]