

Date..... January 14, 2013

WHEREAS, on December 17, 2012 by Roll Call No. 12-1930 it was duly resolved by the City Council that the application of Smith Home Restorations, LLC to rezone certain property located in the vicinity of 2040 East Walnut 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 January 14, 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 January 3, 2013, 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:

Lot 124, Timmons Place, 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:

to allow reuse of the existing commercial building for building contractors office, small engine repair shop, carpenter shop, and hobby/craft shop uses.

Date January 14, 2013

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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 Limited C-2 General Retail and Highway Oriented Commercial District classification 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				

**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

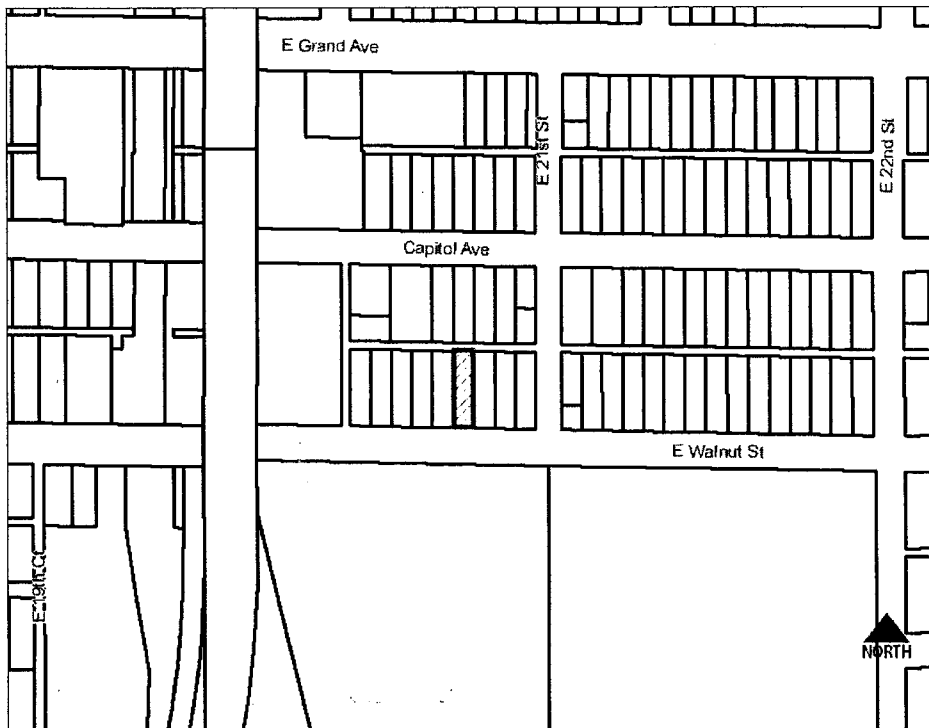
\_\_\_\_\_  
 Mayor

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

Request from Smith Home Restorations, LLC (owner) represented by Troy Smith (officer) to rezone property located at 2040 East Walnut Street.			File # <b>ZON2012-00182</b>		
<b>Description of Action</b>	Approval of a request to rezone from "R1-60" One-Family Low-Density Residential District to Limited "C-2" General Retail and Highway Oriented Commercial District, to allow reuse of the existing commercial building for building contractors office, small engine repair shop, carpenter shop, and hobby/craft shop uses.				
<b>2020 Community Character Plan</b>	Low-Density Residential. Proposed change to Commercial: Auto Oriented Small-Scale Strip Development				
<b>Horizon 2035 Transportation Plan</b>	No Planned Improvements				
<b>Current Zoning District</b>	"R1-60" One-Family Low-Density Residential District				
<b>Proposed Zoning District</b>	Limited "C-2" General Retail and Highway Oriented Commercial District				
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	6				
Outside Area					
<b>Plan and Zoning Commission Action</b>	Approval	9-3	<b>Required 6/7 Vote of the City Council</b>	Yes	N/A
	Denial			No	

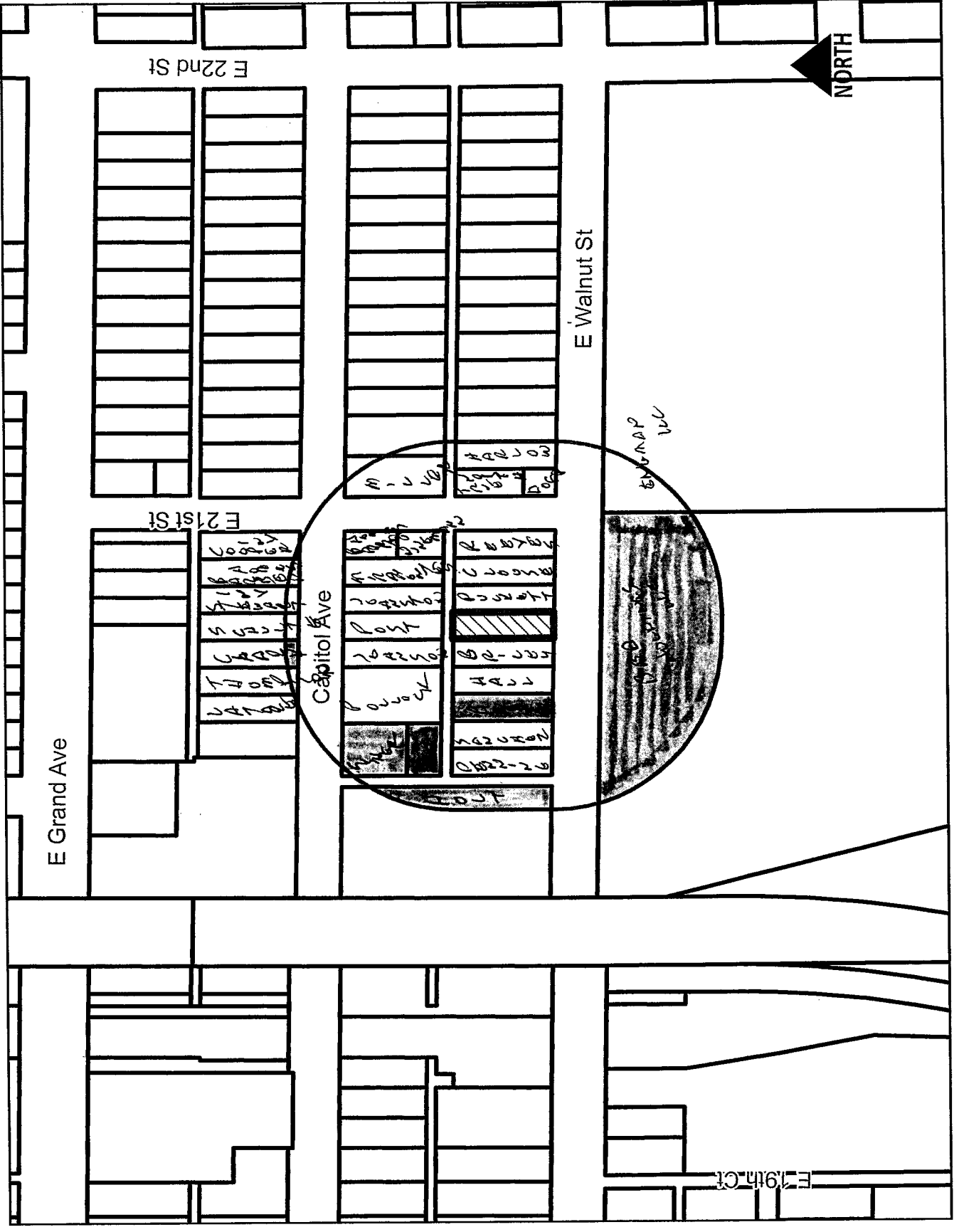
Smith Home Restoration LLC - 2040 E Walnut Street

ZON2012-00182



ZON2012-00182

Smith Home Restoration LLC - 2040 E Walnut Street



December 12, 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 December 6, 2012, the following action was taken regarding a request from Smith Home Restorations, LLC (owner) represented by Troy Smith (officer) to rezone property located at 2040 East Walnut Street.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 12-0 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			
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 requested rezoning **not** in conformance with the Des Moines' 2020 Community Character Plan future land use designation of Low Density Residential.

By separate motion, the members voted 9-3 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			
Ted Irvine	X			
Greg Jones	X			
William Page		X		
Christine Pardee				X
Mike Simonson		X		



CITY PLAN AND ZONING COMMISSION  
 ARMORY BUILDING  
 602 ROBERT D. RAY DRIVE  
 DES MOINES, IOWA 50309 -1881  
 (515) 283-4182

ALL-AMERICA CITY  
 1949, 1976, 1981  
 2003

CJ Stephens X  
Vicki Stogdill X

**APPROVAL** of Part B) to approve 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 and Part C) to approve the rezoning from "R1-60" One-Family Low-Density Residential District to a Limited "C-2" General Retail and Highway-Oriented Commercial District. (ZON2012-00182 & 21-2012-4.14)

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

Part A) Staff recommends that the Commission find the proposed rezoning not in conformance with the Des Moines' 2020 Community Character Plan future land use designation of Low Density Residential.

Part B & C) Staff recommends denial of the requested Land Use Plan amendment and rezoning to a Limited "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 subject property is limited in size and is adjoined by single-family dwellings on small lots.

### Written Responses

6 In Favor  
0 In Opposition

## **STAFF REPORT**

### **I. GENERAL INFORMATION**

- 1. Purpose of Request:** The applicant wishes to operate a commercial use within the existing building. The property contains a 968-square foot garage building. The building has been vacant for an extended period of time and lost any legal non-conforming rights it may have had. The last known legal non-conforming use of the property was for a television repair business in the 1980's. The applicant has indicated that a plumbing shop occupied the property before he purchased it on February 17, 2012. Staff has found no evidence of the property being occupied by a business recently and no evidence has been provided by the applicant.

On November 1, 2012, the Commission continued the item and asked the applicant to develop a limited list of commercial uses that he would agree to for their consideration. Staff met with the applicant on November 28, 2012 and obtained the following list of uses.

- Auto detailing
- Bicycle shop
- Carpenters shop
- Contractors office
- Electricians shop
- Hobby workshop
- Plumbing shop
- Printing shop
- Office
- Sheet metal shop
- Small engine repair
- Tire shop
- Uses allowed in the "R1-60" District

At the November 1<sup>st</sup> meeting the applicant's representative, Matthew Smith expressed his belief that the property needed to be rezoned for the applicant to be able to obtain financing for future improvements. He stated it would be difficult to obtain a rebuild

letter without the commercial zoning and therefore believed rezoning was necessary as opposed to a Use Variance from the Zoning Board of Adjustment. A “60%” rebuild letter could be issued if a Use Variance was granted by the Board so long as the use had not discontinued for more than twelve months (Sec. 134-1297(b)). This means that if the building suffers damage that is the equivalent to no than 60% of its replacement cost that it could be rebuilt (Sec.134-1297(c)). The Zoning Enforcement Office issues “60%” rebuild letters on a regular basis for owners seeking financing.

2. **Size of Site:** 40 feet by 147 feet (5,880 square feet).
3. **Existing Zoning (site):** “R1-60” One-Family Low-Density Residential District.
4. **Existing Land Use (site):** Vacant garage building and parking area.
5. **Adjacent Land Use and Zoning:**
  - North** – “R1-60”, Use is a single-family dwelling.
  - South** – “M-1”, Use is warehousing.
  - East** - “R1-60”, Use is a single-family dwelling.
  - West** – “R1-60”, Use is a single-family dwelling.
6. **Applicable Recognized Neighborhood(s):** The subject property is located within the Fairground Neighborhood. The 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 Fairground 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 Fairground Neighborhood Association mailings were sent to Sharon Cooper, P.O. Box 8057, Des Moines, IA 50301.
7. **Relevant Zoning History:** N/A.
8. **2020 Community Character Land Use Plan Designation:** Low Density Residential.
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 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 prepare a site plan that addresses these standards and to 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.

The "C-2" District requires a 10-foot wide residential protection buffer (Sec. 134-952) along all property lines that adjoin a residential district. The properties to the east, north and west are zoned "R1-60" District. If the subject property is rezoned to "C-2" the applicant will be required to obtain relief of this requirement from the Zoning Board of Adjustment as the building and driveway are minimally setback from the side property lines.

- 2. Parking:** The Zoning Ordinance requires a minimum of 3 off-street parking spaces, plus 1 space per 2 employees for contractor's office/industrial supply uses. If the rezoning is approved, the applicant will be required to prepare a site plan that addresses the parking requirements of the Zoning Ordinance and to develop the site in accordance with that site plan. The applicant may be required to obtain relief from the Zoning Board of Adjustment for parking setbacks, minimum number of spaces, and/or minimum stall dimensions given the limited size of the property.
- 3. 2020 Community Character Plan:** The Des Moines 2020 Community Character Plan and the Fairground Neighborhood Action Plan future land use designation for the subject property is Low Density Residential. The requested rezoning to a Limited "C-2" District is not in conformance with this designation. The applicant is requesting the Land Use Plan be amended to Commercial: Auto-Oriented Small Scale Strip Development. This amendment is necessary for the requested rezoning to be found in conformance. 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 proposed from the adjoining residential uses. This is contrary to the 2020 Community Character Plan's goals for proper land use transition. There are industrial uses to the south of East Walnut Street and approximately 160 feet to the west of the site. However, the majority of the block that contains the property consists of single-family dwellings on small lots. The blocks to the north and east also consist predominately of single-family dwellings on small lots.

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. If the property is rezoned the applicant will be required to obtain relief from the Zoning Board of Adjustment for setback and parking requirements given the limited size of the property and the placement of the existing building and driveway.

## **SUMMARY OF DISCUSSION**

*Vicki Stogdill joined the meeting @ 6:05 p.m.*

Jason Van Essen presented the staff report and recommendation.

Will Page asked if the back portion of the lot was subject to rezoning as well as the front parcel.

Jason Van Essen stated yes, the applicant is proposing to rezone the entire property.

Will Page asked if a tire repair shop could take place on the north portion of the lot.

Jason Van Essen stated that it would have to go through a site plan process and be paved or an addition done.

Mike Ludwig explained that a use variance can limit the area of use also.

Dann Flaherty noted that the applicant will still have to go to the Board of Adjustment for relief to setbacks no matter what happens with this zoning request.

Troy Smith owner of 2040 E Walnut Street stated the building is located on the west lot line. The privacy fence behind the building is setback 5 feet from the west lot line. There is about 6 to 8 feet between the house and the privacy fence. The privacy fence has no setback from the east lot line because the neighbor next door has a dog and they asked that the applicant put the fence against their property line. The 7 x 33 feet piece of concrete is there because the neighbor had been parking her vehicle on the street for 15 to 16 years and had her car towed during the winter. The applicant poured the neighbor a 7 x 33 feet piece of concrete so she no longer has to park on the street and will not have a problem with the snow ordinance. This property has been used for many years as a commercial building. They will more or less be working on vehicle repair and he has a contract business restoring houses. He is requesting the rezoning so that he can get some of his money back because he has put a great deal of money into this property. The more money he has in his pocket on a piece of property like this the more properties that he buys to restore.

Matthew Smith sold the property to the applicant and stated the applicant has put in a lot of time and energy into the betterment of this property in addition to the pouring concrete for the neighbor to provide parking off the street. The applicant has put a lot of capital improvements into the property. The Commission should consider whether to grant the rezoning efforts or to send it to the Board of Adjustment. The biggest challenge with sending this to the Board of Adjustment (with the understanding that either way this project will have to go to the Board of Adjustment) is the capital improvements that the applicant has made on the property are a sunk cost that cannot be recaptured. The banks will not lend money on the property to get the operating capital back. The applicant cannot sell the property to someone else who would buy it for the use because a buyer's bank will not lend on the property without a rebuild letter. A 60% rebuild letter will not be sufficient. For conventional financing, lenders want a 100% rebuild letter or greater than a 60% rebuild letter. Therefore it is impossible to market the property or to get a loan with a 60% rebuild letter. The applicant's willingness to restrict the usage of the property is an attempt to conform with the long term plan of the neighborhood. The neighborhood is behind the applicant's efforts. The neighborhood supported the zoning request at the previous meeting. The applicant has hosted barbeques and has participated in the neighborhood meetings. The neighborhood is in favor of the applicant being there and the restricted usage of the property.

John "Jack" Hilmes asked when Mr. Smith sold the property to the applicant.

Matthew Smith stated it was sold about 13 months ago. The property has been used for storage of siding, brick, and plumbing supplies. If the Commission approves the applicant's request they are ready to go to the Board of Adjustment to seek relief for the setbacks. The applicant is willing to provide a buffer zone for the neighbors and have plans to install shrubbery. They will supply additional parking in the back as directed. They will do whatever is necessary to implement the Board's decision.

#### **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**

Ted Irvine asked if there have been similar situations previously and what was the outcome.

Mike Ludwig stated that about a month ago the Commission had a request from a gentleman that wanted to utilize a property on SW 9<sup>th</sup> Street for a plumbing shop. Staff recommendation and the Commission recommendation was for denial of rezoning. The applicant was advised to seek a use variance on that property. In summary, the property was too small and had no setbacks to protect the surrounding residential uses from the intensity of commercial that could be allowed under "C-2" zoning. Rezoning of that property was considered by Council this past Monday night and the Council concurred with staff and Commission's recommendation to deny the zoning request.

Ted Irvine stated the difference between the previous situation and this one is the property on SW 9<sup>th</sup> Street is currently zoned "C-1" and the applicant tonight is currently zoned "R1-60".

Mike Ludwig pointed out that both are asking to be rezoned to a "C-2" district.

Ted Irvine summarized that the reason staff is recommending denial of the rezoning is because the lot is too small and it is in the middle of the neighborhood. Even though this neighborhood seems to want it. Is there any other remedy that will allow the applicant's request.

Dann Flaherty stated he believes the reason the Commission does not want to grant the applicant's request is because it has to go to the Board of Adjustment no matter what and that a use variance would be more appropriate.

Ted Irvine reiterated that the applicant cannot solve this financing problem and they want a mortgage on the property because they want to be able to sell it someday.

JoAnne Corigliano stated that she believes another difference in the previous applicant who was denied and this applicant is that this area has a lot of commercial. Across the street is a very large warehouse and down the street is a large commercial use. The SW 9th Street property is completely surrounded by residential. She believes that the Commission should grant the rezoning.

**COMMISSION ACTION:**

Greg Jones moved staff recommendation Part A) to find the requested rezoning **not** in conformance with the Des Moines' 2020 Community Character Plan designation of Low Density Residential.

Motion passed 12-0.

Greg Jones moved Part B) to approve the requested Land Use Plan amendment and Part C) to approve the requested rezoning from "R1-60" One-Family Low-Density Residential District to Limited "C-2" General Retail and Highway Oriented Commercial District, to allow reuse of the existing commercial building for building contractors office, small engine repair shop, carpenter shop, and hobby/craft shop uses.

Motion passed 9-3 (Mike Simonson, Dann Flaherty and Will Page voted in opposition)

Mike Simonson explained his reason for voting in opposition is a concern with longevity. The zoning runs with the land. It is a tiny property and he believes that things will be stored outside. He does believe the applicant does a nice job of taking care of the property.

Dann Flaherty explained that he agrees with Mr. Simonson and looking at the map of the area there is a lot of residential around along with the commercial across the street. There are also railroad tracks nearby. For years and years this Commission has kept projects from encroaching into the neighborhood and that is a concern with this request.

Will Page concurred with both Mr. Simonson and Mr. Flaherty and stated he would not want to live next to a tire shop.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Ludwig". The signature is stylized and cursive.

Michael Ludwig, AICP  
Planning Administrator

MGL:clw

Attachment

Item 2012 00182

Date 10-27-2012

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

(Circle One)

Print Name Beverly M. Clark

Signature Beverly M. Clark

Address 2032 CAPITOL AVE.

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

Is a good Idea

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Item 2012 00182

Date 10-23-2012

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

(Circle One)

Print Name Samuel Holt

Signature S. Holt

Address 200 E Walnut

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

We need more business in this area

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Item 2012 00182

Date Oct - 24 - 2012 <sup>49</sup>

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

(Circle One)

Print Name Aleen Boese

Signature Aleen Boese *(Signature)*

Address 9026 E Walnut  
DM50317

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

This Bldg has been next couple  
houses down the street for over 50 yrs  
never caused any problems & had an  
activity of different things. Nice to  
have had Ros t.v. 40 yrs ago. Deceased  
Now -

Item 2012 00182

Date 10-28-2012

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

(Circle One)

Print Name William Fischer

Signature William Fischer *(Signature)*

Address 2017 Capitol Ave

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

I feel it could help the overall economics  
of the area.

Item 2012 00182 Date 10-25-12

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

(Circle One)

Print Name TIM BERARDI (CFI TIRE)

Signature *Tim Berardi*

Address 2041 E WALNUT

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

NEED MORE BUSINESS IN THE AREA.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Item 2012 00182 Date 10-28-2012

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

(Circle One)

Print Name MARY POLLOCK

Signature *Mary Pollock*

Address 2025 Capital Ave

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_