



Date May 5, 2014

APPLICATION OF DENISE CODY TO REZONE PROPERTY SHE OWNS IN THE VICINITY OF 912 43RD STREET, FROM THE "R1-60" ONE-FAMILY LOW-DENSITY RESIDENTIAL DISTRICT TO THE "R-2" ONE AND TWO-FAMILY RESIDENTIAL DISTRICT, TO ALLOW THE PROPERTY TO CONTINUE TO BE OCCUPIED AS A TWO-FAMILY DWELLING

WHEREAS, on April 21, 2014, by Roll Call No. 14-0616, it was duly resolved by the City Council that the application of Denise Cody (owner), represented by Curtis White (Power of Attorney), to rezone property she owns in the vicinity of 912 43rd Street, more fully described as follows:

Lot 35, Chamberlain Heights, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa (herein referred to as the "Property").

from the "R1-60" One-Family Low-Density Residential District to the "R-2" One and Two-Family Residential District, to allow the subject property to continue to be occupied as a two-family dwelling, be set down for hearing on May 5, 2014, at 5:00 P.M., in the Council Chambers of the City Hall; and,

WHEREAS, due notice of said hearing was published in the Des Moines Register on April 25, 2014, as provided by law, setting forth the time and place for hearing on said proposed amendment to the Zoning Ordinance; and,

WHEREAS, in accordance with said notice those interested in said 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 Plan and Zoning Commission voted 9 - 0 in support of a motion to recommend that the proposed rezoning and the corresponding amendment to the comprehensive plan be denied.

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 are hereby sustained, and the hearing is closed.
2. The City Council hereby makes the following findings of fact regarding the proposed rezoning:



Roll Call Number

Agenda Item Number

41

Date May 5, 2014

- a. The Des Moines 2020 Community Character Land Use Plan designates the area in which the Property is located as Low Density Residential.
- b. The designation of the Property and surrounding area as Low Density Residential is appropriate and consistent with the predominate character of the surrounding area.
- c. Rezoning the Property to the One and Two-Family Residential District is not in conformance with the Des Moines 2020 Community Character Land Use Plan.
- d. If the application of the existing zoning regulations has the effect of denying the owner all economic use of the property, then the appropriate remedy is to seek relief from the Zoning Board of Adjustment.

Alternative A

MOVED by _____ to adopt and **DENY** the proposed rezoning.

Alternative B

MOVED by _____ to continue the public hearing until May 19, 2013, at 5:00 p.m., in the Council Chambers, and to direct the City Manager and Legal Department to prepare the necessary legislation to **APPROVE** the rezoning subject to conditions acceptable to the City and the applicant.

FORM APPROVED:

Roger K. Brown, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

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.

City Clerk



April 15, 2014

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 April 3, 2014, the following action was taken regarding a request from Denise Cody (owner) represented by Curtis White (power of attorney) to amend the Des Moines' 2020 Community Character Plan to revise the future land use designation from Low Density Residential to Low/Medium Density Residential and to rezone property located at 912 43rd Street.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-0-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano	X			
Jacqueline Easley			X	
Tim Fitzgerald	X			
Dann Flaherty				X
Jann Freed	X			
John "Jack" Hilmes	X			
Ted Irvine	X			
Greg Jones				X
William Page	X			
Christine Pardee	X			
CJ Stephens				X
Vicki Stogdill				X
Greg Wattier	X			

APPROVAL of staff recommendation to find the proposed rezoning not in conformance with the existing Des Moines' 2020 Community Character Plan; **DENIAL** of a request to amend the Des Moines' 2020 Community Character future land use designation from Low Density Residential to Low/Medium Density Residential and **DENIAL** of the rezoning from

“R1-60” One-Family Low-Density Residential District to “R-2” Two-Family District to allow the subject property to be occupied as a two-family dwelling.

(21-2014-4.03 & ZON2014-00037)

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.

Part B) Staff recommends denial of the requested amendment to the Des Moines’ 2020 Community Character future land use designation from Low Density Residential to Low/Medium Density Residential.

Part C) Staff recommends denial of the requested rezoning from “R1-60” to “R-2” based on a finding that it would not be compatible with the surrounding predominant “R1-60” zoning of surrounding neighborhood properties.

Written Responses

0 In Favor

7 In Opposition

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The owner is seeking to lease the residential property as a two-family dwelling.
2. **Size of Site:** 64 feet by 130 feet irregular shaped (7,680 square feet).
3. **Existing Zoning (site):** “R1-60” One-Family, Low-Density Residential District.
4. **Existing Land Use (site):** The property contains a 2,095-square foot two-story single-family dwelling. This is also consistent with the Polk County Assessor’s tax classification for the property.
5. **Adjacent Land Use and Zoning:**
 - North** – “R1-60”; Uses are single-family dwellings.
 - South** – “R1-60”; Uses are single-family dwellings.
 - East** – “R1-60 & R-4”; Uses are single-family and multiple-family dwellings.
 - West** – “R1-60”; Uses are single-family dwellings. There is a two-family dwelling at 4401/4403 Chamberlain Drive on the same block to the west.
6. **General Neighborhood/Area Land Uses:** The subject property is located within a predominantly single-family residential neighborhood area north of Roosevelt High School and west of the Roosevelt Shopping district on 42nd Street.

7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Waveland Park Neighborhood. This neighborhood association was notified of the public hearing by mailing of the Preliminary Agenda on March 14, 2014. Additionally, separate notifications of the hearing for this specific item were mailed on March 14, 2014 (20 days prior to public hearing) and March 24, 2014 (10 days prior to the public hearing) to the Waveland Park 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 March 28, 2014.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Waveland Park Neighborhood Association notices were mailed to Eric Burmeister, 1517 42nd Street, Des Moines, IA 50311.

The applicant will report a summary of their neighborhood engagement at the hearing.

8. **Relevant Zoning History:** On November 20, 2013, the owner appealed a decision of the Zoning Enforcement Officer that the property did not have legal non-conforming rights to a two-family dwelling use. The Board upheld the Zoning Enforcement Officer's decision.
9. **2020 Community Character Land Use Plan Designation:** Low Density Residential.
10. **Applicable Regulations:** The Commission reviews all proposals to amend zoning regulations or zoning district boundaries within the City of Des Moines. Such amendments must be in conformance with the comprehensive plan for the City and designed to meet the criteria in §414.3 of the Iowa Code. The Commission may recommend that certain conditions be applied to the subject property if the property owner agrees in writing, prior to the City Council Hearing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Parking & Access:** The property has a two car detached garage in the rear yard with access coming from an internal public alley system within the block. There is no other off-street parking provided on the premises. The parking requirement is two spaces for a two-family dwelling.
2. **Zoning Enforcement Comments:** Based on zoning enforcement research, the first known use of the premises for a two-family dwelling was in 2005, when notice of violation was issued for not having a rental inspection certificate. The City Neighborhood Inspection Division issued a rental inspection certificate for a second unit on the subject property, with one unit being owner-occupied and not requiring a certificate. This was done in error without review of the Zoning Ordinance provisions at that time prohibiting two-family use of the property. The most recent rental inspection certificate for the property expired on August 10, 2013. Since that time, complaint was received regarding illegal rental occurring on the property. Inspection of the premises determined that the dwelling was occupied by two families, neither of which was the owner of the property. This included one unit that did not require a certificate as it was previously owner occupied.

3. **Des Moines 2020 Community Character Plan:** In order to recommend rezoning of the property to “R-2”, the Commission would need to recommend amendment to the future land use plan designation from Low Density Residential to Low/Medium Density Residential. While there are examples of dwellings with more than one unit in the surrounding neighborhood area, the character of the immediate block is predominantly single-family dwellings. Staff does not believe that rezoning the property individually and amending the future land use designation would be appropriate.

Additionally, if the property were zoned to “R-2”, a two-family dwelling would require a minimum of 10,000 square feet of lot area and a minimum 75 feet of lot width, thereby necessitating appeals of these standards to the Zoning Board of Adjustment.

III. STAFF RECOMMENDATION TO THE PLAN AND ZONING COMMISSION AND BASIS FOR APPROVAL

Part A) Staff recommends that the requested rezoning be found not in conformance with the Des Moines’ 2020 Community Character Plan.

Part B) Staff recommends denial of the requested amendment to the Des Moines’ 2020 Community Character future land use designation from Low Density Residential to Low/Medium Density Residential.

Part C) Staff recommends denial of the requested rezoning from “R1-60” to “R-2” based on a finding that it would not be compatible with the surrounding predominant “R1-60” zoning of surrounding neighborhood properties.

SUMMARY OF DISCUSSION

Jason Van Essen presented the staff report and recommendation.

Tim Fitzgerald asked if this building been cut in half or if it was just an extra room.

Jason Van Essen stated he understands that at one time there was an owner that had a professional office i.e. dentist or something and that office was converted.

Mike Ludwig stated he believes at the time of the conversion, the property owner was living in the dwelling and the second dwelling was the rental.

Jason Van Essen stated that when the rental certificate was issued it was technically just one certificate for the rental unit. The rental certificate was still issued in error.

Kenneth Wieland Attorney at Law 1502 30th Street stated the applicant purchased this house with the idea that she was buying a duplex. He stated that attached to the application copies of the listing, rental certificate and a statement from the real estate agent that sold the applicant the house indicating that the primary intention was having two rental units. The applicant lived there for a period of time before moving out and renting out the main house as well. At that time a rental certificate was issued although it may have been issued in error. The applicant along with her fiancé Mr. White looked at this property and researched and saw that it had a rental certificate and the zoning code for this particular area indicated there was a grandfather clause in 1996 that anything that was being used as

