

Date July 28, 2014

RESOLUTION SETTING HEARING ON REQUEST FROM DENNIS MODDE (OWNER) TO REZONE PROPERTY LOCATED AT 727 SOUTHEAST 28TH STREET FROM “R1-60” ONE-FAMILY LOW-DENSITY RESIDENTIAL DISTRICT TO LIMITED “M-1” LIGHT INDUSTRIAL DISTRICT, TO ALLOW EXPANSION OF THE EXISTING TREE SERVICE CONTRACTOR EQUIPMENT STORAGE YARD AND WOODYARD OUTDOOR STORAGE

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on July 17, 2014, its members voted 10-1 in support of a motion to recommend **APPROVAL** of a request from Dennis Modde (owner) to rezone property located at 727 Southeast 28th Street (“Property”) from “R1-60” One-Family Low-Density Residential District to Limited “M-1” Light Industrial District, to allow the subject property to be used for expansion of the existing tree service contractor equipment storage yard and woodyard outdoor storage for on-site business John’s Tree Service, subject to the owner agreeing to the following conditions:

1. The only Industrial or Commercial use of the Property shall be for use by a tree service business.
2. Any expansion of the tree service business shall be in accordance with a Site Plan as approved by the City’s Permit & Development Center.
3. All drive aisles and maneuvering areas within the expansion area shall be paved and all storage areas shall have a durable and dust-free surface.
4. Any outdoor storage within the expansion area shall be screened from view from public Right-of-Way.
5. At such time as the Southeast Connector roadway is dedicated adjacent to the Property, a row of trees spaced every 10 feet, of a species selected by the owner in consultation with the Municipal Arborist, or a 6-foot tall fence shall be provided and maintained by the owner along the north edge of the Property between the existing office building and the point where the retaining wall for the Southeast Connector roadway begins; and

WHEREAS, the Property is legally described as follows:

Except parcel of land conveyed to the City of Des Moines, Iowa by Warranty Deed recorded in Book 14659, Page 960 in the Recorder’s Office of Polk County, Iowa; and

Except the north 25 feet measured on the west line of the 10 foot vacated north/south alley lying east of and adjoining Lots 1 and 2 of Block 20, LARISON PLACE, an Official Plat; and

Lot 4 of FREDREGILL, an Official Plat; and Lots 1 through 11 of Block 20, LARISON PLACE; and the vacated north/south alley lying east of and adjoining Lots 1 through 11 of Block 20, LARISON PLACE, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.



Date July 28, 2014

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

1. That the meeting of the City Council at which the proposed rezoning is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa, at 5:00 p.m. on August 11, 2014, at which time the City Council will hear both those who oppose and those who favor the proposal.
2. That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

MOVED by _____ to adopt.

FORM APPROVED:

Glenna K. Frank
Assistant City Attorney

(ZON2014-00106)

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



July 23, 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 July 17, 2014, the following action was taken regarding a request from Dennis Modde (owner) to rezone property located at 727 Southeast 28th Street.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 10-1 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 requested rezoning not in conformance with the existing Des Moines' 2020 Community Character Plan; approval of the requested amendment to the Des Moines' 2020 Community Character Plan, revising the future land use designation from Low Density Residential to General Industrial and approval of the requested rezoning from "R1-60" One-Family Low-Density Residential District to a Limited "M-1" Light Industrial District subject to the owner agreeing to the following conditions:
(21-2014-4.05 & ZON2014-00106)

1. The only Industrial or Commercial use of the Property shall be for use by a tree service business.
2. Any expansion of the tree service business shall be in accordance with a Site Plan as approved by the City's Permit & Development Center.
3. All drive aisles and maneuvering areas within the expansion area shall be paved and all storage areas shall have a durable and dust-free surface.
4. Any outdoor storage within the expansion area shall be screened from view from public Right-of-Way.
5. At such time as the Southeast Connector roadway is dedicated adjacent to the Property, a row of trees spaced every 10 feet, of a species selected by the owner in consultation with the Municipal Arborist, or a 6-foot tall fence shall be provided and maintained by the owner along the north edge of the Property between the existing office building and the point where the retaining wall for the Southeast Connector roadway begins.

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the Commission find the requested rezoning not in conformance with the existing Des Moines' 2020 Community Character Plan.

Part B) Staff recommends approval of the requested amendment to the Des Moines' 2020 Community Character Plan, revising the future land use designation from Low Density Residential to General Industrial.

Part C) Staff recommends approval of the requested rezoning from "R1-60" One-Family Low-Density Residential District to a Limited "M-1" Light Industrial District subject to the owner agreeing to the following conditions:

1. The only Industrial or Commercial use of the Property shall be for use by a tree service business.
2. Any expansion of the tree service business shall be in accordance with a Site Plan as approved by the City's Permit & Development Center.
3. All drive aisles and maneuvering areas within the expansion area shall be paved and all storage areas shall have a durable and dust-free surface.
4. Any outdoor storage within the expansion area shall be screened from view from public Right-of-Way.
5. A row of evergreen trees spaced every 10 feet or a 6-foot tall solid wood fence shall be provided and maintained along the north edge of the existing outdoor storage area at such time that the Southeast Connector (East Martin Luther King, Jr. Parkway) roadway is dedicated adjacent to the property.

Written Responses

3 In Favor

0 In Opposition

STAFF REPORT TO THE PLANNING COMMISSION**I. GENERAL INFORMATION**

1. **Purpose of Request:** The rezoning would allow the existing tree service business to have outdoor storage on the portion (13,200 square feet) of their property that is currently zoned "R1-60" One-Family Low-Density Residential District. The appellant proposes to use this area for outdoor storage since a portion (29,188 square feet) of the previously existing storage yard was acquired by the City and dedicated as right-of-way for the future Southeast Connector (East Martin Luther King, Jr. Parkway) roadway.
2. **Size of Site:** The portion of the subject property proposed for rezoning measures 100 feet by 132 feet (13,200 square feet).
3. **Existing Zoning (site):** "R1-60" One Family Low-Density Residential District.
4. **Existing Land Use (site):** The portion of the subject property that is proposed for rezoning is undeveloped land. The balance of the 2.32-acre parcel is zoned "M-1" Light Industrial District and used for a tree service contractor storage yard.
5. **Adjacent Land Use and Zoning:**
 - North** – "M-1", Use is John's Tree Service (a tree service contractor equipment storage yard with outdoor storage of wood).
 - East** – "M-1", Use is John's Tree Service (a tree service contractor equipment storage yard with outdoor storage of wood).
 - South** – "R1-60", Use is an undeveloped parcel.
 - West** – "R1-60", Use is an undeveloped parcel.
6. **General Neighborhood/Area Land Uses:** The subject property is in an area that transitions from industrial uses along Southeast 30th Street to low-density residential uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is not within a recognized neighborhood or within 250 feet of a recognized neighborhood. All recognized neighborhoods were notified of the meeting by mailing of the Preliminary Agenda on Jul 7 1, 2014. Additionally, separate notifications of the hearing for this specific item were mailed on June 27, 2014 (20 days prior) and July 7, 2014 (10 days prior to the scheduled hearing) 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 July 11, 2014.

The applicant is responsible for conducting a neighborhood meeting, inviting surrounding property owners within 250 feet. The applicant will provide a summary of the meeting at the public hearing.

- 8. Relevant Zoning History:** On June 23, 1997, the City Council adopted Ordinance 13,499 to rezone the portion of the subject property that currently contains the tree service business to “M-1” Light Industrial District, subject to the following conditions:
- A. The only Industrial or Commercial use of the Property shall be for use by a tree service business.
 - B. The only vehicle access to any building upon Lots 1 through 7 of Block 20, Larison Place, shall be from the East, and there shall be no direct vehicular access from any such building to Southeast 28th Street.
 - C. No outside storage of any equipment, wood or other materials shall occur on Lots 1 through 7 of Block 20 of Larison Place.
 - D. Any driveways and exterior parking area upon Lots 1 through 7 of Block 20 of Larison Place shall be paved.

On July 15, 1997, the City Administratively approved a Site Plan (10-1998-7.09) that allowed construction of a 2,400-square foot addition to a previously existing 700-square foot building.

- 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 INFORMATION

- 1. 2020 Community Character Plan:** The proposed “M-1” District requires the future land use designation to be revised to General Industrial. Staff believes this designation is appropriate so long as any industrial use of the property is limited to a tree service business and given that the balance of the block is already designated as General Industrial.
- 2. Site Plan Requirements:** Any expansion of the use on the subject property must be in accordance with a Site Plan as approved by the City’s Permit & Development Center. All drive aisles and maneuvering areas within the expansion area shall be paved and all storage areas shall have a durable and dust-free surface. Any outdoor storage within the expansion area shall be screened from view from public Right-of-Way.

3. **Setback Requirements:** Should the site be rezoned to “M-1” Light Industrial District, any outdoor storage in the expansion area must be located outside of the minimum 25-foot front yard setbacks required along both Maury Street and East 28th Street, unless the City’s Zoning Board of Adjustment grants an appeal of this requirement.
4. **Southeast Connector:** The subject property has approximately 720 lineal feet of frontage along the future Southeast Connector roadway. In 2013, the City purchased 29,188 square feet of their site for the Southeast Connector roadway project. The City also purchased an easement on the north 10 feet of the remaining parcel to allow construction of a 4-foot tall retaining wall along the Southeast Connector, as the roadway will be elevated 4 feet above the adjoining property.

As a trade-off for the requested rezoning to allow expansion of the outdoor storage area, Staff recommends that the applicant either plant a row of evergreen trees spaced every 10 feet or construct a 6-foot tall solid wood fence along the north edge of the existing storage yard in order to screen the outdoor storage from the future roadway. While the existing storage yard is considered legal nonconforming with regards to the minimum required 25-foot front yard setback along the future roadway, any new fence constructed would be required to maintain a 25-foot setback unless the City’s Zoning Board of Adjustment grants a Variance to this requirement.

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation.

Will Page asked how well defined is tree service business by the City of Des Moines because a lot of issues will arise.

Erik Lundy stated currently tree service business is self-defining. “M-1” allows about any type of contractor, storage yard. Staff is trying to narrow it down to say it has to be a tree service type contractor. It would be up to the zoning officer to determine if at some point it starts migrating away from what the general understanding of tree services. That is not defined in the ordinances.

Will Page suggested that R&O discuss this matter. He can see a lot of problems arising in terms of disposing of these trees.

Erik Lundy pointed out the language comes from the previous conditional zoning of “M-1” before it was amended.

JoAnne Corigliano asked if the owner has any objections to staff conditions.

Erik Lundy stated he believes the owner has expressed to one of the staff that he is not very agreeable to installing the planting or the fencing along the north side.

John "Jack" Hilmes asked what the timeframe for the Southeast Connector to abut this property.

Erik Lundy stated the design is in process. The budget would reflect it would be in this area within the next two construction years.

JoAnne Corigliano asked then would the owner be given that much time to do the work that is being required of him to do.

Erik Lundy stated that it is contingent upon the expansion. Therefore, whatever point the owner would decide to expand into the area staff would want him to comply with site plan regulations and those conditions with regard to the trees along the north staff would want to see those go in commencing with the Southeast Connector project completion.

Greg Wattier questioned if the condition #5 was a condition on the previous property or is it new now.

Erik Lundy stated condition #5 was not a condition on the previous property.

Greg Wattier asked the reason condition #5 is a condition now.

Erik Lundy stated there is modification to the overall site. Staff believes this is an opportunity to get some compliance for overall site and get an edge along the corridor.

Greg Wattier asked if the City of Des Moines took some property to accommodate the Southeast Connector already as step 1.

Erik Lundy stated yes.

Greg Wattier stated then the City of Des Moines modified the applicant's parcel and at that time did not inform the applicant that he was going to be required to plant a row of trees.

Erik Lundy stated no because the City of Des Moines would not have contemplated it and would not have known about the request to rezone or the fact that the applicant would acquire additional property.

Greg Wattier asked if there is a need for the trees. Is the existing property unsightly or there is an issue or problem.

Erik Lundy stated it is outdoor storage and along that corridor staff is trying to look at opportunities to visually break up areas that would be outdoor storage.

CJ Stephens stated currently, Metro Waste Authority and the State have some regulations on movement of all hardwood and storage and she noticed there is wording that says it would allow wood storage. Has that been checked out with the Municipal Arborist?

Erik Lundy stated the Municipal Arborist would have received this item and staff has not received any comments. Until a Site Plan is done there is no assumption that the applicant would be moving wood into this area.

JoAnne Corigliano stated that she has been by that place a lot of times and does not find this property offensive to the point that the applicant is going to have to make a tree barrier. Also, has the fact that the plan on Martin Luther King so far has planted trees on both sides been considered when this applicant is told he has to plant a tree every 10 feet?

Erik Lundy stated this would be in addition to any enhancement for the corridor along the edges of the project.

JoAnne Corigliano stated she would like some consideration on what the applicant is going to have to plant or maybe even a greater timeframe.

Greg Wattier asked staff to show a drawing to show the relationship of the applicant's property and where the Southeast Connector will go through.

Dennis Modde 727 SE 28th Street stated when he purchased this property he had room for storage. However because the City of Des Moines bought 25 to 30 feet of his property on the north side he does not have enough storage space. He has had to store some things offsite but it gets expensive. He needs this extra space for storage. He is in agreement with conditions 1 through 4 and is willing to build a 6 ft. privacy fence around it. He does not want to conceal too much of his property for safety reason. If he has to comply with condition #5 he will lose more space.

CJ Stephens asked how many pieces of equipment does he have and how many employees?

Dennis Modde stated he has approximately 15 to 16 pieces of equipment and 10 employees.

CJ Stephens asked if the applicant is aware of the changed rules and regulations are in regards to storing wood.

Dennis Modde stated yes he is aware and no one has come to him with any restriction on the type of wood he can store. He stated that a couple of years ago there was limitation on transporting the ash in state. Anyone who buys wood from him has had to give them a written statement saying where the wood came from.

CJ Stephens stated there is a full quarantine by the Department of Agriculture in the State of Iowa. She asked how long has the applicant been in business.

Dennis Modde stated his father started the business in 1972 he took it over in 1984 and his two boys work for him will keep it going. He has been in business for approximately 30 years.

CJ Stephens asked if he and/or his employees certified arborist.

Dennis Modde stated no. He just removes and trims.

CJ Stephens asked will the wood increase.

Dennis Modde stated yes and no because he only does so much work. He does not advertise and he can only do so much work every year.

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

John "Jack" Hilmes asked for clarification on why staff is asking the applicant to plant 71 trees. He is concerned that the applicant would not have needed to plant 71 trees had the City of Des Moines not bought any of his property.

CJ Stephens offered a friendly amendment to add that the species selection of trees be in consultation with the Municipal Arborist.

Greg Wattier accepted the friendly amendment.

Will Page stated the purpose of all of this is not to screen the applicant's property but to break up the sense of a flat space.

COMMISSION ACTION:

Greg Wattier moved staff recommendation to find the requested rezoning not in conformance with the existing Des Moines' 2020 Community Character Plan; approval of the requested amendment to the Des Moines' 2020 Community Character Plan, revising the future land use designation from Low Density Residential to General Industrial and approval of the requested rezoning from "R1-60" One-Family Low-Density Residential District to a Limited "M-1" Light Industrial District subject to the owner agreeing to the following conditions:

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Motion passed 10-1 (CJ Stephens voted in opposition).

Respectfully submitted,


Erik Lundy, AICP
Senior City Planner

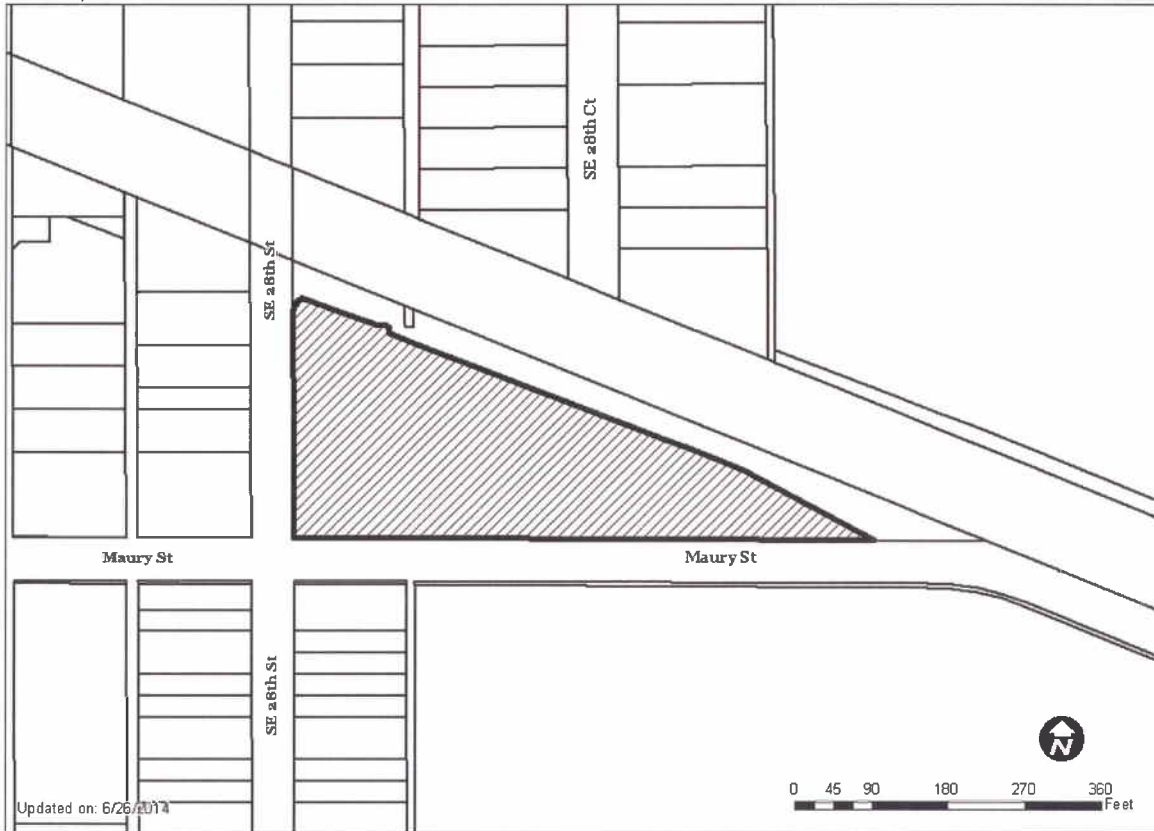
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Attachment

Dennis Modde (owner) for property at 727 Southeast 28th Street.		File #		
		ZON2014-00106		
Description of Action	Approval to Rezone from "R1-60" One-Family Low-Density District to "M-1" Light Industrial District, to allow the subject property to be used for an expansion of the existing tree service contractor equipment storage yard and woodyard outdoor storage subject to conditions.			
2020 Community Character Plan	Low Density Residential (current).			
Horizon 2035 Transportation Plan	General Industrial (proposed).			
Current Zoning District	2010-2015: Southeast Connector Project: 4-lane			
Proposed Zoning District	"R1-60" One-Family Low-Density Residential District.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area	3	0		
Outside Area				
Plan and Zoning Commission Action	Approval	10-1	Required 6/7 Vote of the City Council	Yes
	Denial			No

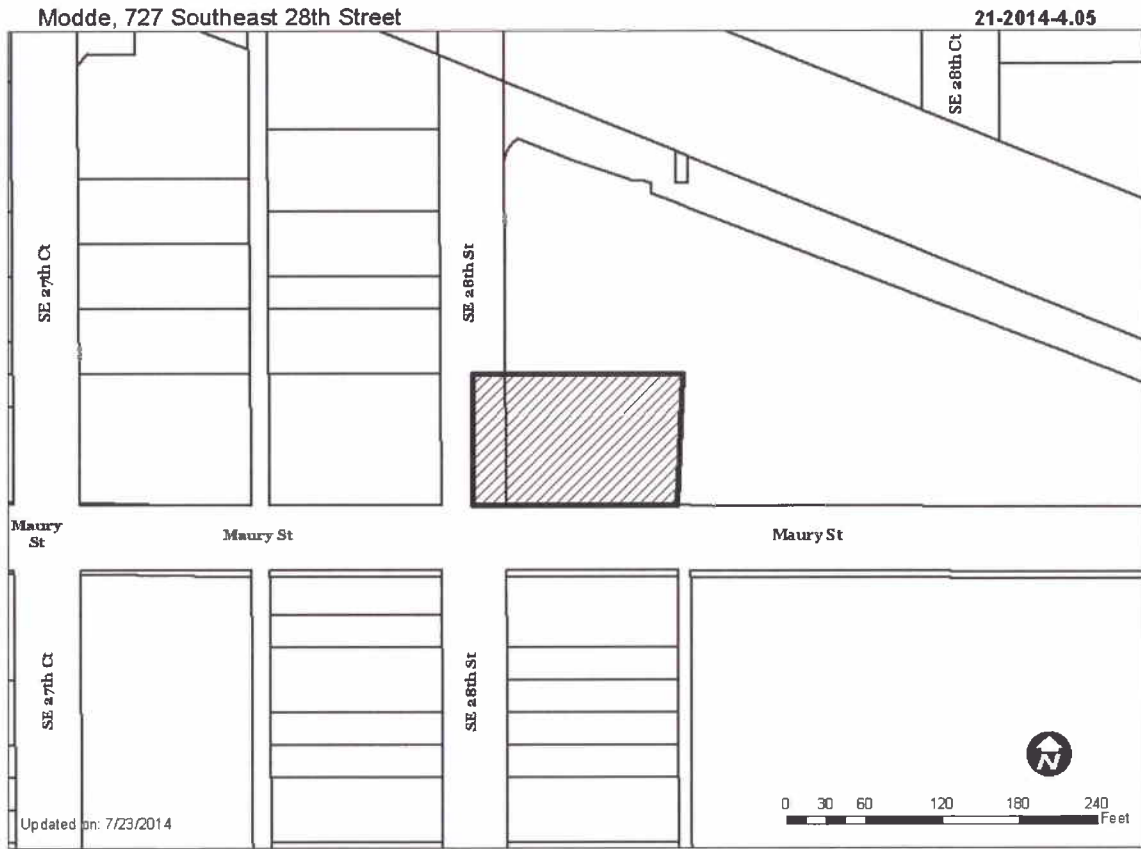
Modde, 727 Southeast 28th Street

ZON2014-00106



1 inch = 128 feet

Dennis Modde (owner) for property at 727 Southeast 28th Street.		File #	
		21-2014-4.05	
Description of Action	Approval to Amend the Des Moines' 2020 Community Character Plan to revise the future land use designation from Low Density Residential to General Industrial.		
2020 Community Character Plan	Low Density Residential (current). General Industrial (proposed).		
Horizon 2035 Transportation Plan	2010-2015: Southeast Connector Project: 4-lane		
Current Zoning District	"R1-60" One-Family Low-Density Residential District.		
Proposed Zoning District	"M-1" Light Industrial District..		
Consent Card Responses	In Favor	Not In Favor	Undetermined
Inside Area	3	0	
Outside Area			
Plan and Zoning Commission Action	Approval	10-1	Required 6/7 Vote of the City Council
	Denial		Yes
			No
			X



1 inch = 83 feet

Item ZON2014-00106 Date 7/10/14

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

RECEIVED
(Circle One)
COMMUNITY DEVELOPMENT

JUL 14 2014

DEPARTMENT

Print Name CIM, Ltd

Signature [Signature]

Address 1709 S. 92nd St., WDM, IA

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

Use is appropriate to the area and transportation facilities, and
is consistent with past practice and land use.

Steve Gillott

Item ZON2014-00106 Date _____

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

RECEIVED
(Circle One)
COMMUNITY DEVELOPMENT

JUL 14 2014

DEPARTMENT

Print Name _____

Signature _____

Address _____

no address

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

That is not an attractive looking site. We don't
want more of the same. Either the business
should be moved to a location that is not next
to a neighborhood or 20' tall privacy fencing
should be installed. with MLK coming through that area
soon we need improvements.

Item ZON2014-00106

Date July 9, 2014

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

RECEIVED
(Circle One)

COMMUNITY DEVELOPMENT

Print Name Ruthetta Hartzer

JUL 14 2014

Signature Ruthetta Hartzer

DEPARTMENT

Address 732 SE 28th street

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

Help him. Being a Good Neighbor.

Item ZON2014-00106

Date 7-11-14

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

RECEIVED
(Circle One)

COMMUNITY DEVELOPMENT

Print Name Christopher R. Robst

JUL 16 2014

Signature

DEPARTMENT

Address 727 SE 27 ct

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

Modde, 727 Southeast 28th Street

ZON2014-00106

