

Date August 25, 2014

**RESOLUTION SETTING HEARING ON REQUEST FROM 3 STOOGES, LLC (PURCHASER), REPRESENTED BY CHRIS FISCHELS (OFFICER), TO REZONE PROPERTY LOCATED AT 3703, 3719, AND 3727 SOUTHEAST 14<sup>TH</sup> STREET FROM “R1-60” ONE-FAMILY LOW-DENSITY RESIDENTIAL DISTRICT TO LIMITED “C-2” GENERAL RETAIL AND HIGHWAY-ORIENTED COMMERCIAL DISTRICT, TO ALLOW THE SUBJECT PROPERTY TO BE REDEVELOPED FOR A RETAIL/OFFICE COMMERCIAL CENTER AND RESTAURANT**

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on August 7, 2014, its members voted 10-0 in support of a motion to recommend **APPROVAL** of a request from 3 Stooges, LLC (purchaser), represented by Chris Fischels (officer), to rezone property located at 3703, 3719, and 3727 Southeast 14th Street (“Property”) from “R1-60” One-Family Low-Density Residential District to Limited “C-2” General Retail and Highway-Oriented Commercial District, to allow the Property to be redeveloped for a retail/office commercial center and restaurant, subject to the owner agreeing to the following conditions:

1. The easternmost 120 feet of the Property shall remain “R1-60” One-Family Low-Density Residential District.
2. Provision of an access easement for the existing driveway to the property at 3801 SE 15th Street.
3. Any commercial development which includes the Property shall be subject to the following conditions and restrictions:
  - a. The primary exterior materials of any building placed to a commercial use shall consist of brick, textured block or tile or similar materials.
  - b. There shall be no vehicular access from the development through any residentially zoned property.
  - c. Vehicular access to the Property shall be provided by means of an extension of the frontage road from where it exists to the south of the Property, and such frontage road shall be extended to the north boundary of the Property. The owners of the Property shall provide a cross access easement to permit the land to the north of the Property to use the frontage road.
  - d. The Property shall not be used for the sale of used motor vehicles; and

WHEREAS, the Property is legally described as follows:

EXCEPT THE WEST 35.5 FEET, LOTS 5 AND THE SOUTH 22 FEET OF LOT 4 IN INDIANOLA ACRES, AN OFFICIAL PLAT; AND

EXCEPT THE WEST 35.5 FEET, LOT 8 IN INDIANOLA ACRES, AN OFFICIAL PLAT; AND

ALL OF PARCEL C AS RECORDED IN BOOK 8137 PAGE 593 IN THE RECORDER’S OFFICE OF POLK COUNTY, IOWA;

ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.



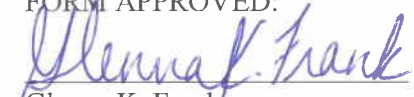
Date August 25, 2014

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

1. That the attached communication from the Plan and Zoning Commission is hereby received and filed.
2. 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 September 8, 2014, at which time the City Council will hear both those who oppose and those who favor the proposal.
3. 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

(ZON2014-00126)

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



August 13, 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 August 7, 2014, the following action was taken regarding a request from 3 Stooges, LLC (purchaser) represented by Chris Fischels (officer) to rezone property located at 3703, 3719, and 3727 Southeast 14<sup>th</sup> Street.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 10-0 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 that the proposed rezoning be found not in conformance with the existing Des Moines' 2020 Community Character Plan.

By separate motion Commissioners recommended 10-0 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 the proposed 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 excluding the easternmost 120 feet of the site; and approval of the rezoning request subject to the following conditions:  
(21-2014-4.08 & ZON2014-000126)

1. The easternmost 120 feet of the site shall remain "R1-60" District.
2. Provision of an access easement for the existing driveway to the property at 3801 SE 15<sup>th</sup> Street.
3. Any commercial development which includes the Property shall be subject to the following conditions and restrictions.
  - a. The primary exterior materials of any building placed to a commercial use shall consist of brick, textured block or tile or similar materials.
  - b. There shall be no vehicular access from the development through any residentially zoned property.
  - c. Vehicular access to the Property shall be provided by means of an extension of the frontage road from where it exists to the south of the Property, and such frontage road shall be extended to the north boundary of the Property. The owners of the Property shall provide a cross access easement to permit the land to the north of the Property to use the frontage road.
4. The property shall not be used for the sale of used motor vehicles.

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

Part A) Staff recommends the proposed rezoning be found not in conformance with the existing Des Moines' 2020 Community Character Plan.

Part B) Staff recommends approval of the proposed 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 excluding the easternmost 120 feet of the site.

Part C) Staff recommends approval of the rezoning request subject to the following conditions.

1. The easternmost 120 feet of the site shall remain "R1-60" District.
2. Provision of an access easement for the existing driveway to the property at 3801 SE 15<sup>th</sup> Street.
3. Any commercial development which includes the Property shall be subject to the following conditions and restrictions.
  - a. The primary exterior materials of any building placed to a commercial use shall consist of brick, textured block or tile or similar materials.
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  - c. Vehicular access to the Property shall be provided by means of an extension of the frontage road from where it exists to the south of the Property, and such frontage road shall be extended to the north boundary of the Property. The owners of the Property shall provide a cross access easement to permit the land to the north of the Property to use the frontage road.
4. The property shall not be used for the sale of used motor vehicles.

Written Responses

- 3 In Favor
- 1 In Opposition

**STAFF REPORT TO THE PLANNING COMMISSION**

**I. GENERAL INFORMATION**

1. **Purpose of Request:** The proposed rezoning would allow the applicant to develop a strip commercial center. The submitted site concept shows two buildings with a total of six tenant bays.
2. **Size of Site:** The entire site measures 150,399 square feet (3.45 acres). Approximately, one-third of the site is currently zoned Limited "C-2" District and is not a part of the rezoning request.
3. **Existing Zoning (site):** "R1-60" One-Family Low-Density District and Limited "C-2" District.
4. **Existing Land Use (site):** Vacant.
5. **Adjacent Land Use and Zoning:**

**North** – Limited "C-2"; Use is Dunkin Donuts

**South** – Limited "C-2" & "R1-60"; Uses are automotive repair and single-family residential.

**East** – “R1-60”; Uses are single-family and multiple-family residential.

**West** – “R-3” & Limited “C-1”; Use is multiple-family residential.

6. **General Neighborhood/Area Land Uses:** The subject site is located on the SE 14<sup>th</sup> Street commercial corridor. The corridor predominately consists of auto-oriented commercial and multiple-family residential uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Ewing Woods - Evergreen Neighborhood and within 250 feet of the South Park Neighborhood. This neighborhood associations were notified of the public hearing by mailing of the Preliminary Agenda on July 18, 2014 and a Final Agenda on August 1, 2014. Additionally, separate notifications of the hearing for this specific item were mailed on July 18, 2014 (20 days prior to the public hearing) and on July 28, 2014 (10 days prior to the public hearing) to the neighborhood associations and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

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 Ewing Woods - Evergreen Neighborhood Association notices were mailed to Lisa Treptow, 3600 SE 19<sup>th</sup> Street, Des Moines, IA 50320. The South Park Neighborhood Association notices were mailed to Andy Clark, 5800 SE 8<sup>th</sup> Street, Des Moines, IA 50315.

8. **Zoning History:** On January 8, 2001, the City Council approved Ordinance Number 13,902 rezoning the western portion of 3727 SE 14<sup>th</sup> Street from “R1-60” District to Limited “C-2” District subject to the limitations below.
  - a) Any commercial development which includes the Property shall be subject to the following conditions and restrictions.
    1. The primary exterior materials of any building placed to a commercial use shall consist of brick, textured block or tile or similar materials.
    2. There shall be no vehicular access from the development through any residentially zoned property.
    3. Vehicular access to the Property shall be provided by means of an extension of the frontage road from where it exists to the south of the Property, and such frontage road shall be extended to the north boundary of the Property. The owners of the Property shall provide a cross access easement to permit the land to the north of the Property to use the frontage road at such time as the land to the north is rezoned and developed for commercial use.
  - b) The property shall not be used for the sale of used motor vehicles.
9. **2020 Community Character Land Use Plan Designation:** Commercial: Auto-Oriented, Small-Scale Strip Development and Residential: Low-Density Residential.



**10. Applicable Regulations:** The Commission also 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. **Site Plan Review:** The applicant must demonstrate compliance with the City's storm water management, tree mitigation, landscaping and buffering requirements during the site plan review process. The City's Landscaping Standards for "C-2" Districts generally require the following:
  - 20% open space with a minimum of 1 overstory deciduous tree, 1 evergreen tree and 1 shrub for every 2,500 square feet of required open space.
  - 10-foot wide bufferyards along property lines that adjoin a "R" District or residential use with a 6-foot tall, 75% opaque fence or wall, and 2 overstory trees and 6 evergreen trees per 100 lineal feet of property line.
  - 1 overstory tree and 3 shrubs must be proved along the perimeter of parking lots for every 50 lineal feet of frontage.
2. **Streets & Access:** All vehicular access to the site must come from the existing SE 14<sup>th</sup> Street drive approaches via cross access easements with the properties to the north and south. The easternmost portion of the site fronts the dead-end segment of SE 15<sup>th</sup> Street. This portion of the site contains a driveway for the adjoining property at 3801 SE 15<sup>th</sup> Street. This property has no street frontage and this driveway is the only realistic means of access to the attached garage for the existing single-family dwelling. Staff believes that an access easement should be granted.
3. **Des Moines 2020 Community Character Plan:** The western portion of the site is designated "Commercial, Auto-Oriented, Small-Scale Strip Development" on the Future Land Use Map. The eastern portion of the site is designated as "Low Density Residential". The portion of the Future Land Use Map designated as "Low Density Residential" must be amended to "Commercial, Auto-Oriented, Small-Scale Strip Development" for the rezoning to be found in conformance with the Des Moines 2020 Community Character Plan.

The Des Moines 2020 Community Character Plan describes auto-oriented commercial as where "site orientation 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. Small-scale strip development is described as "small-to-moderate commercial in a linear pattern that serves the passing motorist. Individual buildings may be over 35,000 square feet with individual modules from 2,000 to 20,000 square feet."

In general, the proposed Future Land Use Plan amendment is appropriate as additional lot depth is necessary to support commercial development along the SE 14<sup>th</sup> Street

corridor. However, staff believes the easternmost 120 feet of the site should remain designated as "Low Density Residential" and zoned "R1-60" District as this portion of the site extends into existing residential development. The applicant would be able to utilize this portion of the site to comply with the landscaping standard's open space requirements and for surface storm water detention.

## **SUMMARY OF DISCUSSION**

Jason Van Essen presented the staff report and recommendation.

JoAnne Corigliano asked if there is currently fencing or some type of buffering between this property and the adjoining residential uses.

Jason Van Essen stated he did not believe so. However, during the site plan review phase the applicant would be required to comply with the buffering requirements which would require 6 foot tall privacy fence and screen plantings.

Tim Fitzgerald asked was it preferred when Car-X was built to no longer follow the frontage road anymore on 14<sup>th</sup> Street.

Jason Van Essen stated the frontage road is accommodated through the proposed parking and cross access agreements will be provided. Staff will evaluate closely. The site plan shown tonight is just their concept.

Dan Levy with Levy Architecture located at 1009 Technology Parkway in Cedar Falls, Iowa stated he is representing the applicant. This is just a concept working with staff and the applicant will continue with the process. The applicant is aware of the requirements for the site plan regarding screening and vegetation. The applicant has had a meet and greet with some of the adjacent property owners and has every intention to provide a 6 foot high fence with vegetation. They are also in agreement with staff recommendation to leave 120 feet at the southeast corner of the property zoned residential and to provide an easement for the adjacent property owner.

## **CHAIRPERSON OPENED THE PUBLIC HEARING**

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

## **CHAIRPERSON CLOSED THE PUBLIC HEARING**

### **COMMISSION ACTION:**

JoAnne Corigliano moved staff recommendation that the proposed rezoning be found not in conformance with the existing Des Moines' 2020 Community Character Plan.

Motion passed 10-0.

JoAnne Corigliano moved staff recommendation for approval of the proposed 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 excluding the easternmost 120 feet of the site; and approval of the rezoning request subject to the following conditions.

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4. The property shall not be used for the sale of used motor vehicles.

Motion passed 10-0.

Respectfully submitted,



Michael G. Ludwig, AICP  
Planning Administrator

MGL:clw

Attachment

