



Date August 24, 2015

RESOLUTION SETTING HEARING ON REQUEST FROM CHAD OGLE TO REZONE PROPERTY LOCATED AT 1157, 1185 AND 1187 15TH STREET

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on August 6, 2015, its members voted 7-4 in support of a motion to recommend DENIAL of a request from Chad Ogle (owner) to rezone real property locally known as 1157, 1185 and 1187 15th Street ("Property") from "C-2" General Retail and Highway-Oriented Commercial District and "R-3" Multiple-Family Residential District to "M-1" Light Industrial District to allow expansion of an existing auto-body repair operation; and

WHEREAS, the Property is legally described as follows:

Lots 30, 31, 32 and 33 in Block 2, NORTHWESTERN HEIGHTS, an Official Plat in Book E, Page 207, City of Des Moines, Polk County, Iowa. Property contains 0.6 acres.

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 14, 2015, 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.

FORM APPROVED:

Glenna K. Frank, Assistant City Attorney

MOVED by _____ to adopt.

(ZON2015-00131)

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GATTO, GRAY, HENSLEY, MAHAFFEY, MOORE, TOTAL, MOTION CARRIED, APPROVED.

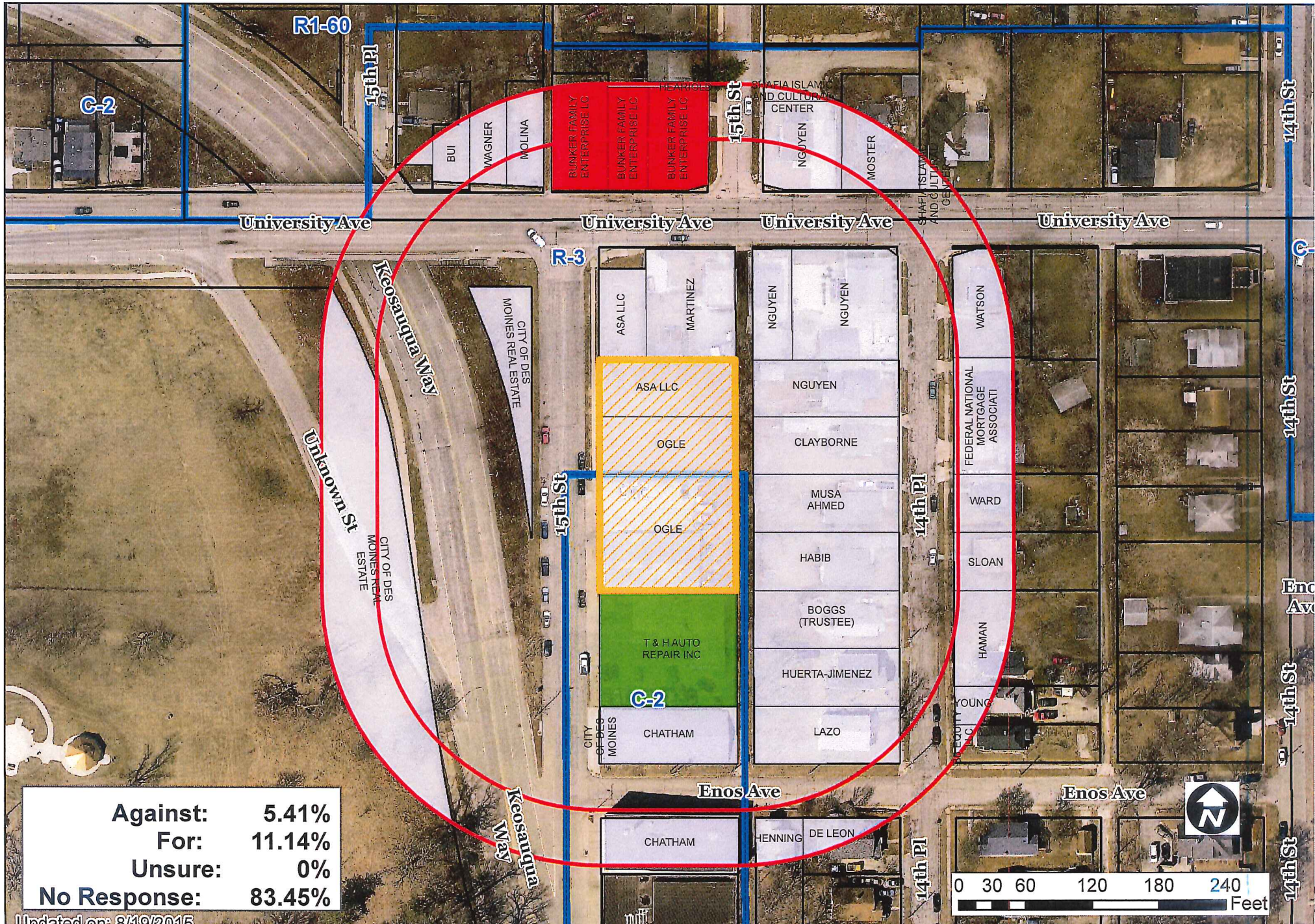
CERTIFICATE

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



Against:	5.41%
For:	11.14%
Unsure:	0%
No Response:	83.45%



August 18, 2015

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 6, 2015, the following action was taken regarding a request from Chad Ogle (owner) to rezone property located at 1157, 1185, and 1187 15th Street. Additional subject property is owned by ASA, LLC.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 7-4 as follows:

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
Dory Briles		X		
JoAnne Corigliano	X			
Jacqueline Easley		X		
Tim Fitzgerald	X			
Jann Freed				X
John "Jack" Hilmes				X
Greg Jones	X			
Sasha Kamper	X			
Brian Millard	X			
William Page	X			
Jonathan Rosenbloom		X		
Mike Simonson	X			
CJ Stephens				X
Greg Wattier		X		

APPROVAL of Part A) to find the proposed rezoning is not in conformance with the existing Des Moines' 2020 Community Character Plan; Part B) **DENIAL** of the proposed Land Use Map Amendment and Part C) **DENIAL** of request to rezone property from "C-2" General Retail and Highway-Oriented Commercial District and "R-3" Multiple-Family Residential District to "M-1" Light Industrial District to allow expansion of an existing auto-body repair

operation and encourage the applicant to seek a use variance from the Zoning Board of Adjustment. (ZON2015-00131)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the Commission find the requested “M-1” zoning not in conformance with the Des Moines’ 2020 Community Character Plan.

Part B & C) Staff recommends denial of the requested land use amendment and rezoning. The General Industrial designation is not appropriate for this site given the close proximity of residential uses to the north and east. Light industrial uses typically create higher levels of noise, traffic, and other impacts for adjoining areas than commercial development and, therefore, require greater separation from residential uses. Industrial development should be focused in the areas the City has already designated for those types of uses. If the zoning request is denied by City Council, the applicant can seek a Use Variance from the Zoning Board of Adjustment

Written Responses

- 1 In Favor
- 3 In Opposition

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

- 1. **Purpose of Request:** The rezoning would allow the existing auto body repair operation to expand. The existing auto-body repair business is considered to be a legal non-conforming use in the “C-2” District, as major auto-body repair requires an “M-1” Light Industrial District zoning classification. The proposed business expansion would include a new 80-foot by 78-foot (6,240 square feet) building constructed within the open space to the north of the existing parking lot.

According to the application, the proposed building would be used for “refinish procedures” related to auto body work. The application states the building and equipment would be “state of the art” and allow the business to “go green with nearly a zero carbon footprint and to recycle all exhaust fumes through carbon filters and using waterborne refinish products”. It also states that their hours of operation would be limited to between 7:00 AM and 5:00 PM, Monday through Friday.

Should the rezoning be denied by the City Council, the applicant would be eligible to apply for a Use Variance from the City’s Zoning Board of Adjustment.

- 2. **Size of Site:** 122 feet by 208 feet (25,376 square feet or 0.58 acres).
- 3. **Existing Zoning (site):** “C-2” General Retail and Highway-Oriented Commercial District, “R-3” Multiple-Family Residential District, “FSO” Freestanding Signs Overlay District, and “GGP” Gambling Games Prohibition Overlay District.

4. **Existing Land Use (site):** The property contains the Action Auto body business, which includes a 4,558-square foot building and a surface parking lot.

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

North – “R-3”, Uses are an undeveloped parcel and a single-family dwelling.

South - “R-3”, Use is “T & H Auto Repair” business.

East – “R-3”, Uses are single-family dwellings.

West – “R-3”, Uses are 15th Street and open space along Keosauqua Way.

6. **General Neighborhood/Area Land Uses:** The subject property is located along the east side of 15th Street in between Keosauqua Way and University Avenue. The property is located at north end of a commercial node that includes two auto repair businesses and a hardware store.

7. **Applicable Recognized Neighborhood(s):** The subject property is located within the Cheatom Park Neighborhood and is within 250 feet of the King Irving Neighborhood. The neighborhoods were notified of the meeting by mailing of the Preliminary Agenda to all recognized neighborhood on July 17, 2015. Additionally, separate notifications of the hearing for this specific item were mailed on July 17, 2015 (20 days prior) and July 27, 2015 (10 days prior to the scheduled 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. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on July 31, 2015.

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 Cheatom Park Neighborhood Association mailings were sent to Susan Wells, 1157 14th Place, Des Moines, IA 50314. The King Irving Neighborhood Association mailings were sent to Joann Muldoon, 1338 18th Street, Des Moines, IA 50314.

The applicant was advised to conduct a neighborhood meeting and will be available to provide a summary at the public hearing.

8. **Relevant Zoning History:** None.

9. **2020 Community Character Land Use Plan Designation:** Low-Density Residential.

10. **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 414.3 of the Iowa Code, and taking into consideration the criteria set forth in Chapter 18B 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. 2020 Community Character Plan:** The proposed rezoning to the “M-1” District is not compatible with the Low-Density Residential future land use designation. Therefore, the applicant has requested the land use designation be amended to General Industrial. Staff does not believe that the General Industrial designation is appropriate given the close proximity of residential uses to the north and east. Light industrial uses typically create higher levels of noise, traffic, and other impacts for adjoining areas than commercial development and, therefore, require greater separation from residential uses. Industrial development should be focused in the areas the City has already designated for those types of uses.

Should the rezoning be denied by the City Council, the applicant has the ability to request a Use Variance from the Zoning Board of Adjustment. A Use Variance cannot be considered by the Board until after a rezoning has been denied. A Use Variance would not require the Land Use Plan to be amended.

- 2, Site Plan Requirements:** Any future development of the site must conform to the City’s Site Plan regulations, including those regarding storm water management; off-street parking grading and soil erosion protection; tree removal and mitigation; landscaping and buffering, pavement design; and traffic and fire access.

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation.

Chad Ogle Co-owner of Action Auto Body started his business 14 years and 7 months ago on 1413 Grand Avenue. Through condemnation by the City they had to relocate 4 years ago to their current location. They started out with 2 people and now have grown into a staff of 9. The growth has been through the customers, downtown growth and referrals of good quality work. The land they are asking to expand to was originally purchased for maintenance purposes and not for expansion. They would like to construct a 80 x 80 building within the open space to the north of the existing parking lot staying in compliance of all the setbacks realizing it needs to be zoned “M-1”. They are open to some conditions or variance that locks it into doing exactly what they do today. He pointed out how they are currently utilizing the space. They are asking to separate their paint shop to create a positive flow and to give each department their own area. New office space with bathrooms and the old office space would be designated for parts. They are looking to purchase a new painting system made for water borne paint that is non-flammable which would reduce the flammable material in their shop 70 to 75%. It also recycles 80% of its air through carbon filters that are set on a timer to be replaced as needed. Expanding their shop would afford them to increase their revenue, and hire additional staff to handle their workload. The existing parking lot would become less congested and with a new building they are attempting to look at some recyclable building materials for it. They are also aware there are requirement for the use of masonry material and 20% landscaping. He is in agreement with any use restrictions in order to be approved.

Greg Wattier asked if they have met with their neighborhood association.

Chad Ogle stated they met with Cheatom Park and believe their comments were favorable.

CHAIRPERSON OPENED THE PUBLIC HEARING

Pat Shepherd Civil Engineer Consultants 2400 86th Street briefly described some of the site characteristics. They did a topographic and boundary survey. There is a significant hill to the north and towards the alley to the east as well. The northeast corner of the building would be about 10-12 feet into the existing grade. It would require a couple of retaining walls along the north and east side and with the required 3 to 6 foot fence for the buffering, the building would be barely visible from the east or north side. The roof line would be about 2 feet above the existing grade at the northeast corner of the site. There is no storm sewer available.

Susan Wells 1157 14th Place representing Cheatom Park Neighborhood Association. They did have a productive meeting about the project. While the neighborhood is trying to regroup and regrow they are in support of the growth and development in their neighborhood of which the applicant would be in line with. She has spoken to several of her neighbors, the ones she could catch and most of them are in support. Even though there may be some mixed feelings about an industrial designation to their area they welcome the growth. They are in full support of the applicant's request.

Sasha Kamper asked how many people attended the neighborhood meeting and what percentage of them were in favor.

Susan Wells stated there was approximately 6 in attendance. She reiterated that she also went to other neighbors and neighbors who would be directly affected including herself. A few neighbors directly across the street from her and to her north and south. She estimated about an 80/20% split. Half the 20% did not have an opinion one way or the other.

Jacqueline Easley asked if she had a sense that some of her neighbors are struggling with some issues of growing and revamping.

Susan Wells stated all neighborhood associations have their ebs and flows. Their neighborhood currently is in a lower period they have more transient people in their neighborhood than they thought they initially had so they are regrouping and re-growing their neighborhood.

Terry Wells 1157 14th Place stated that the applicant is a great neighbor. He has participated in the neighborhood association for years and takes care of his property. He believes this area needs economic development that will help the community. The property the applicant purchased has been empty or vacant probably 20+ years. If the zoning is kept as residential no one will probably move there. Looking at the consent map of those who have not sent in a card or is in opposition live in a different neighborhood. He understands that they are still within their rights to vote and are in the 250 feet area. He believes that the applicant did not know to attend the King Irving Neighborhood to explain his plan. If he had he believes they probably would not be in opposition. He ask that the Commission approve the applicant's request.

Will Page asked if the neighborhood is okay with the grinding noise.

Terry Wells stated the people who were at the meeting and the ones his wife spoke to had no negative opinion about noise.

Michele Ogle-Riccelli 1157 15th Street stated only one response card is in opposition. She believes that owner actually lives in Windsor Heights or Winterset and the property is a rental. She believes that her concern was it is University Avenue and it should not be there. In regards to King-Irving Neighborhood she did reach out to the person in charge of the neighborhood association via email asking if they could attend their next meeting and she received no reply. She then sent a letter along with all the rest of the neighbors and they did not attend.

Tim Fitzgerald asked if this is not approved would they go somewhere else.

Michele Ogle-Riccelli stated possibly, but they want to stay there because they have history with this property. It goes back to great, great grandparents that once had a grocery store. They like the neighborhood and they have prestige clients and their clientele loves the area. She also pointed out other body shops that have residents one block away and one body shop that has a house right next to the building. She realizes how the Commission feels about "M-1" Industrial Light District but the expansion would be an improvement and they have no room to grow in their current building.

Sasha Kamper asked if they were denied would they be willing to pursue the use variance process.

Michele Ogle-Riccelli stated yes they would.

Greg Wattier asked if they were open to use restrictions on the zoning.

Michele Ogle-Riccelli stated yes.

Jesus Jimenez 1148 14th Place stated he wanted to know what would happen to his house if the applicant was approved.

Mike Ludwig explained nothing would happen to Mr. Jimenez's house.

Jesus Jimenez stated then he had no opposition.

Erik Lundy stated the City did receive a communication from JoAnn Muldoon with the King-Irving Neighborhood Association to the Action Center in opposition to the rezoning. He will make sure it is put in the record and forwarded to Council.

CHAIRPERSON CLOSED THE PUBLIC HEARING

JoAnne Corigliano stated the improvement in auto body repair processes is phenomenal. She is surprised and pleased that the applicant wants to stay and improve and do a really good job in that area that wants his services in it. So she encourages them to go to the Zoning Board of Adjustment if the zoning is denied.

Jonathan Rosenbloom stated he believes the job they are doing is fantastic which is why he would be more inclined to go the route to approve it here with a restriction on uses.

Looking at a use variance there are two things. One the applicant has to make a showing and sufficient cause. He does not want to throw them into that pool. Also, they also have to make a showing that the variance would result in exceptional hardship. Again, he does not want to put them in a position where they possibly cannot show both of those. He believes it would be better to approve the applicant's request with use restriction.

Sasha Kamper stated when she first read the staff report and proposal she was against it and it wasn't until the applicant presented his request and the neighbors stated what a good neighbor he has been her mind was changed. She applauds the applicant for trying to go green and wanting to make all these improvements and moving the business forward. Her concern is that they have done what they need to do to be a good neighbor and trying to be a responsible property owner, but if they permanently rezone then there are no restrictions that the zoning goes away if they should decide to leave. Then it is industrial for the next person who owns that property. It is sitting in a semi residential area, whereas if they go the use variance route and they share the same story they did tonight, they should be able to win over the Zoning Board of Adjustment. Then the assurance that the zoning will only last as long as they are there and need it.

Glenna Frank stated when a variance is approved by the Zoning Board of Adjustment that a variance would then run with the land. There are specific use variance that have been approved for a time period by the Zoning Board of Adjustment but those are rare.

Sasha Kamper asked if there are any restrictions that can put on the change that they are talking about that is tied to the property owners.

Glenna Frank stated no. The Board can tie it to the specific use of the property.

Jonathan Rosenbloom stated he had a good conversation with Glenna and the City Attorney about this. The City has taken a position that is not something they can do under the code and state statute.

Jacqueline Easley clarified what is meant by "they". It means we as governing bodies, not just Plan & Zoning Commission, but also Zoning Board of Adjustment. People are frustrated with government as they don't understand the bureaucracy. She believes the Commission should just be straight and offer the best solution for this applicant and his business so he understands what is being discussed.

Brian Millard stated a zoning to "M-1" even with the tightest of restrictions, what often happens is when that use ends "M-1" remains and it is very easy to change what the uses will be. With a use variance it could be very tight. He alluded to a couple of use variances in his neighborhood that came before the Plan and Zoning Commission requesting rezoning of their property. One use variance had a time limit and had to go back to the Zoning Board of Adjustment and the convenience store was granted "M-1" Zoning by the Plan and Zoning Commission, but luckily they got it stopped at the Council meeting and now has a use variance with a lot of conditions, a sunset and a six month check-up. Spot zoning is not good in his opinion. There are a lot of "M-1" properties in the City that are available and empty. This is an awesome individual and a business. But if the zoning is changed to "M-1" it could be sold tomorrow and we would have "M-1" in an area that is a residential neighborhood.

Jonathan Rosenbloom stated he agrees with Commissioner Millard on the differences between a use variance and rezoning. However, one of the differences that was not in his discussion, and he is concerned with is that the use variance requires additional proof and he is not willing to send this applicant into that.

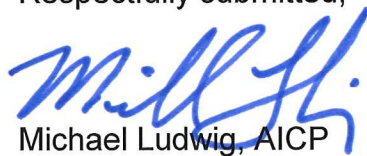
Will Page stated he recalls the convenience store that Commissioner Millard alluded to and in that instance the Plan and Zoning Commission's recommendation to Council was to rezone to "M-1" because the deciding factor was that many people spoke in favor of that particular retail business quite passionately.

COMMISSION ACTION:

Brian Millard moved to deny the applicant's request and encourage the applicant to apply for use variance with the Zoning Board of Adjustment.

Motion passed 7-4 (Dory Briles, Jacqueline Easley, Jonathan Rosenbloom and Greg Wattier voted in opposition)

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

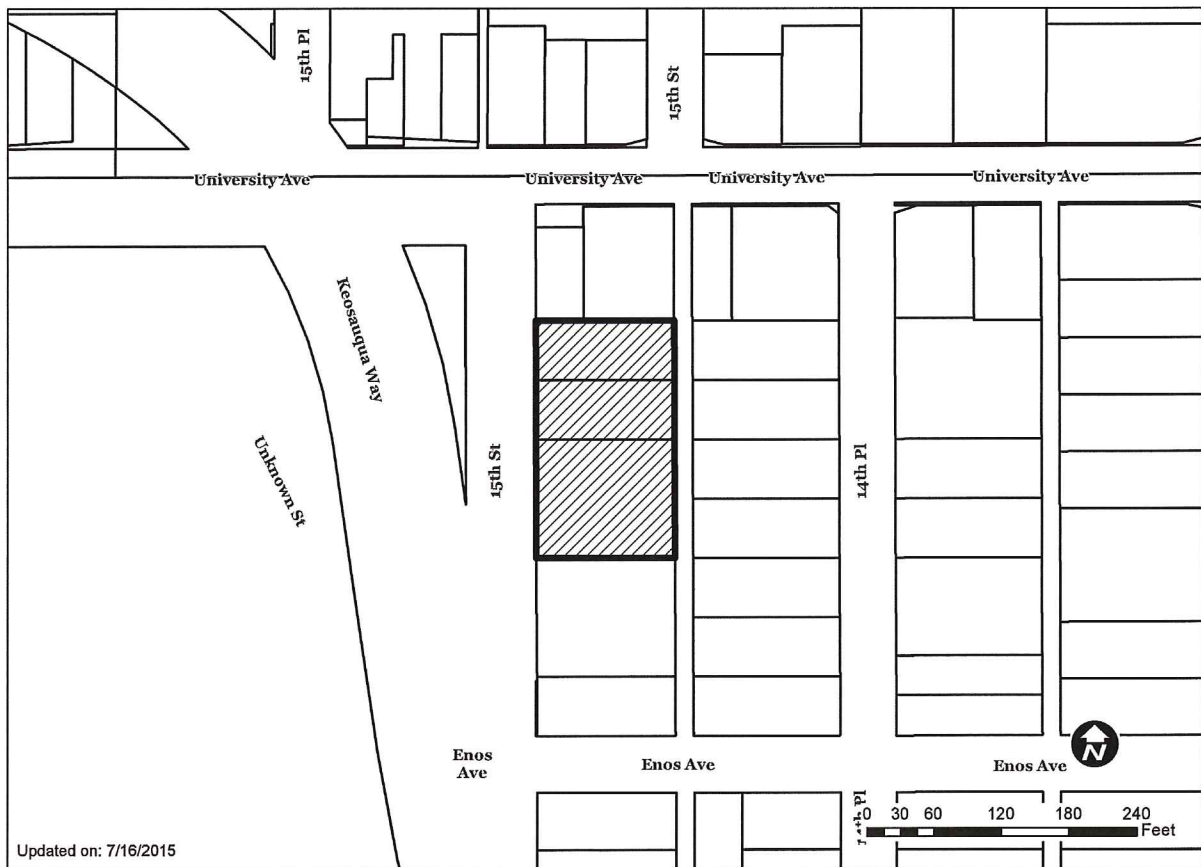
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Attachment

Chad Ogle (owner) for property located at 1157, 1185, and 1187 15th Street. Additional subject property is owned by ASA, LLC.			File #		
			21-2015-4.16		
Description of Action	Denial of request to amend the Des Moines 2020 Community Character Plan existing future land use designation from Low-Density Residential to General Industrial.				
2020 Community Character Plan	Current: Low-Density Residential. Proposed: General Industrial.				
Mobilizing Tomorrow Transportation Plan	University Avenue Bridge over Keosauqua Way.				
Current Zoning District	"C-2" General Retail & Highway-Oriented Commercial District, "R-3" Multiple-Family Residential District, "GGP" Gambling Games Prohibition Overlay District, and "FSO" Freestanding Sign Overlay District.				
Proposed Zoning District	"M-1" Light Industrial District, "GGP" Gambling Games Prohibition Overlay District and "FSO" Freestanding Sign Overlay District.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	1	3			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	7-4		No	

Ogle, 1157, 1185 & 1187 15th Street

21-2015-4.16



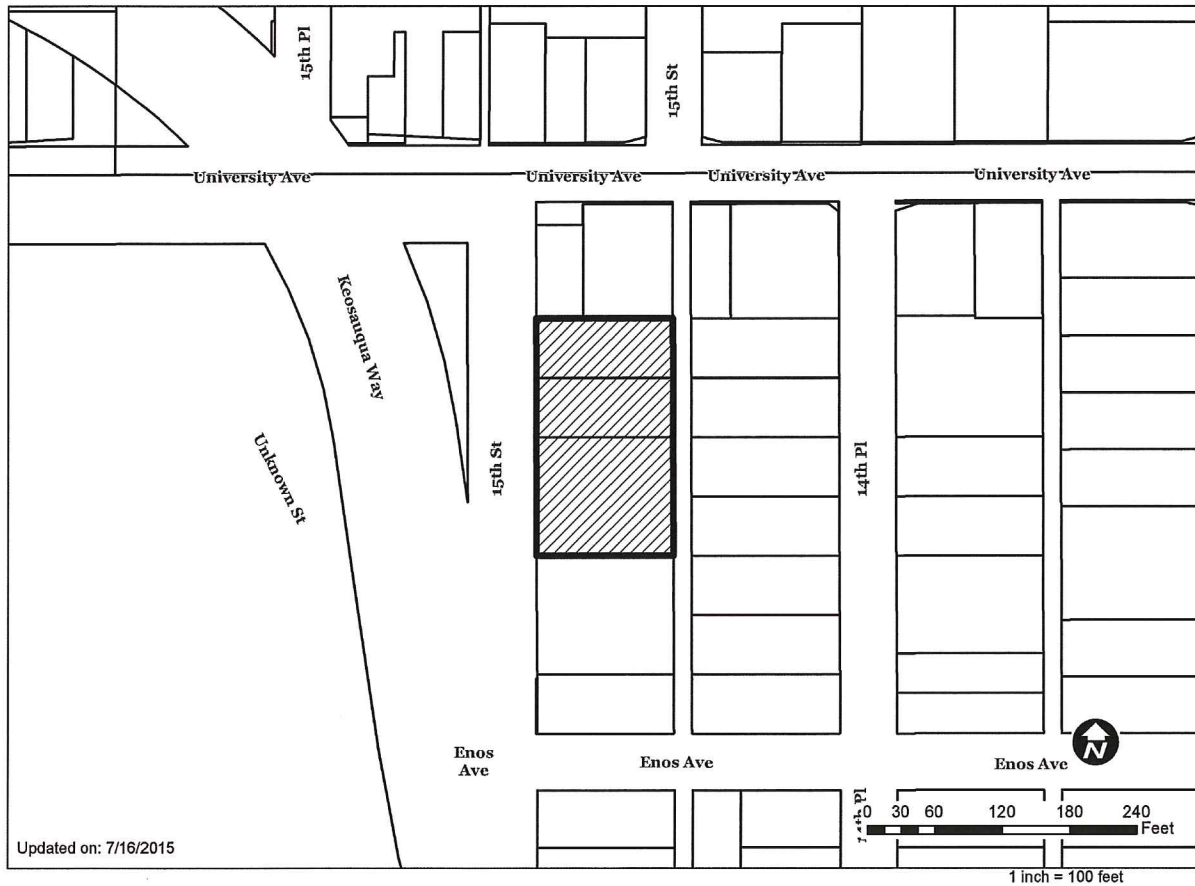
Updated on: 7/16/2015

1 inch = 100 feet

Chad Ogle (owner) for property located at 1157, 1185, and 1187 15th Street. Additional subject property is owned by ASA, LLC.				File #	
				ZON2015-00131	
Description of Action	Denial of request to rezone property from "C-2" General Retail and Highway-Oriented Commercial District and "R-3" Multiple-Family Residential District to "M-1" Light Industrial District to allow expansion of an existing auto-body repair operation.				
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Current Zoning District	"C-2" General Retail & Highway-Oriented Commercial District, "R-3" Multiple-Family Residential District, "GGP" Gambling Games Prohibition Overlay District, and "FSO" Freestanding Sign Overlay District.				
Proposed Zoning District	"M-1" Light Industrial District, "GGP" Gambling Games Prohibition Overlay District, and "FSO" Freestanding Sign Overlay District.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	1	3			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	7-4		No	

Ogle, 1157, 1185 & 1187 15th Street

ZON2015-00131



Item ZON2015-00131

Date 8/4/2015

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

applicant

RECEIVED

COMMUNITY DEVELOPMENT

Print Name Chad + Michele Oge

AUG 10 2015

Signature [Signature]

DEPARTMENT

Address 1151 15th St

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

We believe it will be an improvement to the area. We believe it is also a benefit of giving "Green" air quality.

Item ZON2015-00131

Date 8-6-15

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

RECEIVED

COMMUNITY DEVELOPMENT

Print Name Hai Q. Vo

AUG 10 2015

Signature [Signature]

DEPARTMENT

Address 1151 15th St

Reason for opposing or approving this request may be listed below: DSM IA 50714

It is nice to have a new structure in the neighborhood. New Employment opportunities.

Item ZON2015-00131

Date 7-30-15

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

RECEIVED

COMMUNITY DEVELOPMENT

Print Name Nancy J Bunker, Manager

AUG 04 2015

Signature [Signature]

Address 1911 - 06th St. Windsor Heights, IA 50324

DEPARTMENT

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

While I don't object to the current usage, I don't think expansion is in the best interests of the neighborhood (N+E is residential nearby) of or City of DSM in terms of improving University Ave. area.

26

Drost, Bert A.

From: Febjtm <febjtm@aol.com>
Sent: Wednesday, August 05, 2015 5:18 PM
To: Drost, Bert A.
Subject: Rezoning of 1157,1185 and 1187 -15th St to M-1

To: City Plan and Zoning Commission

The King Irving Neighborhood Association Board reviewed the above named rezoning request at our meeting last week.

We oppose the rezoning for the following reasons:

Fumes from auto re-painting operations are toxic to humans and plant life. I routinely bike by Scotty's autobody shop at University and about 1st St. and find myself inhaling heavy toxic paint fumes whenever painting is underway at the shop. I would not wish anyone whose homes adjoin an autobody shop to have to inhale day-in and day-out such toxic fumes. I understand that residents living near the current autobody shops located on 15th have told the Cheatom Park Neighborhood Association of being able to smell paint fumes from the current shops' operations. Expanding the car re-painting operations would be unhealthy for our neighborhood and for residents living nearby. --Rezoning an area to M-1 to allow for expanded metal cleaning and painting operations when homes are located just across the alley makes little sense.

As a public health professional who has worked up cancer cluster investigations, including one near an appliance manufacturing/painting operation, I have seen the damage to the health of nearby residents and their property (homeowner car finishes, house siding) that can come with the exhausting of toxic fumes from metal cleaning and painting operations.

In addition, the City of Des Moines is developing a revitalization plan for Keo and I hope at some point, University between MLK and 6th Avenue. Rezoning to M-1 property so close to Univeristy and Keo when they are on cusp of retail and residential redevelopment does not make sense.

To summarize, for the reasons stated above, King Irving opposes the rezoning of the three lots at 1157, 1185 and 1187 - 15th Street to M-1.

I wish we had more time to talk with nearby residents who may not feel empowered to speak up, but time always is too short.

Joann Muldoon, M.S., M.A., Chairperson
King Irving Neighborhood Association