



.....
Date December 21, 2015

**RESOLUTION HOLDING HEARING ON REQUEST FROM
STEVEN SHADE D/B/A HEAVENLY HAULING (LESSEE)
TO REZONE PROPERTY LOCATED AT 1812 2ND AVENUE**

WHEREAS, on December 7, 2015, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on November 19, 2015, its members voted 8-0 in support of a motion to recommend **DENIAL** of a request from Steven Shade d/b/a Heavenly Hauling (lessee) to rezone property located at 1812 2nd Avenue (“Property”) from “M-1” Light Industrial District to “M-2” Heavy Industrial District to allow outside storage of junk and debris related to a solid waste hauling business; and

WHEREAS, on December 7, 2015, by Roll Call No. 15-2056, it was duly resolved by the City Council that the application of Steven Shade d/b/a Heavenly Hauling to rezone the Property, legally described as follows, be set down for hearing on December 21, 2015 at 5:00 p.m. in the Council Chamber at City Hall:

Lots 13 and 14, FRANKLIN PLACE, an Official Plat, now included in and forming a part of the City of Des Moines, Iowa; and

WHEREAS, due notice of said hearing was published in the Des Moines Register, as provided by law, setting forth the time and place for hearing on said proposed rezoning; 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.

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 and any statements of interested persons and arguments of counsel, any and all comments for and against the proposed rezoning of the Property to “M-2” Heavy Industrial District, to allow outside storage of junk and debris related to a solid waste hauling business, are hereby received and filed, and the hearing is closed.



Date December 21, 2015

Alternative A

MOVED by _____ to adopt and DENY the proposed rezoning, and to make the following findings of fact regarding the proposed rezoning:

- a. The City Plan and Zoning Commission voted 8-0 to recommend denial of the requested rezoning of the Property to "M-2" Heavy Industrial District, to allow outside storage of junk and debris related to a solid waste hauling business.
b. The "M-2" Heavy Industrial District is not appropriate at this site since heavy industrial uses typically create higher levels of noise, traffic, and other impacts and, therefore, require greater separation from residential uses.

Alternative B

MOVED by _____ to continue the public hearing until January 11, 2016, 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 owner.

FORM APPROVED:

Signature of Lawrence R. McDowell
Lawrence R. McDowell
Deputy City Attorney

(ZON2015-00210)

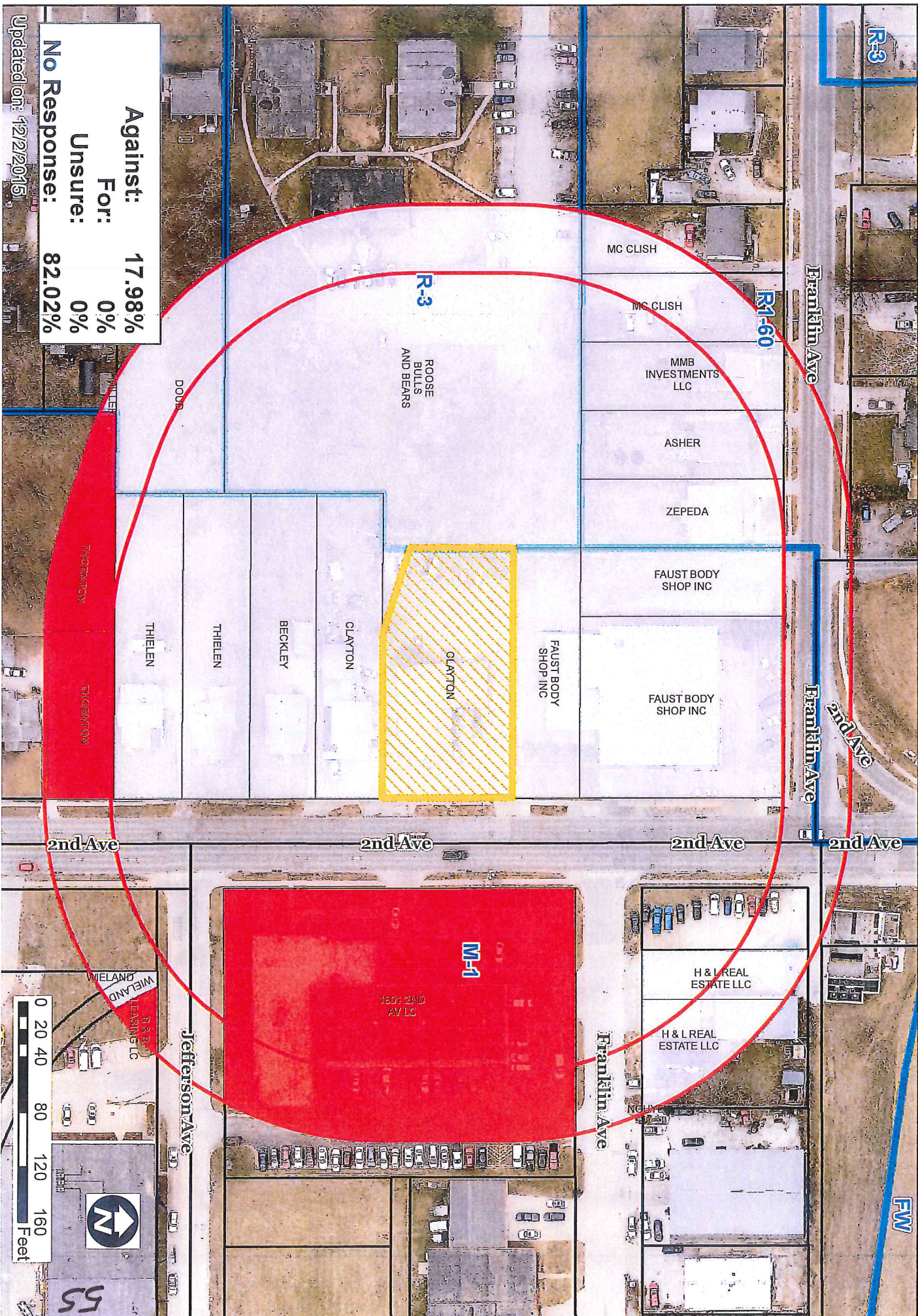
NOTE: Six affirmative votes are required to approve the proposed rezoning due to the Commission's recommendation for denial. Des Moines City Code §134-4.

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

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

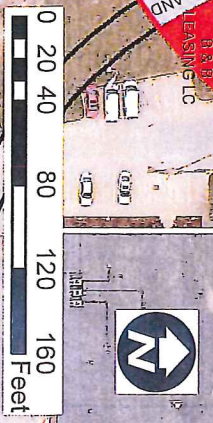
Heavenly Hauling, 1812 2nd Avenue

ZON2015-00210



Against:	17.98%
For:	0%
Unsure:	0%
No Response:	82.02%

Updated on: 12/22/2015



55



December 2, 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 November 19, 2015, the following action was taken regarding a request from Steven Shade d/b/a Heavenly Hauling (lessee) to rezone property located at 1812 2nd Avenue.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 8-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
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 staff recommendation regarding Part A) that the proposed rezoning is not in conformance with the existing Des Moines 2020 Community Character Plan existing future land use designation of General Industrial and denial of Part B) rezoning the property to an "M-2" Heavy Industrial District. The "M-2" Heavy Industrial District is not appropriate at this site since heavy industrial uses typically create higher levels of noise, traffic, and other impacts and, therefore, require greater separation from residential uses. (ZON2015-00210)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the proposed rezoning be found in conformance with the existing Des Moines' 2020 Community Character Plan existing future land use designation of General Industrial.

Part B) Staff recommends denial of rezoning the property to an "M-2" Heavy Industrial District. The "M-2" Heavy Industrial District is not appropriate at this site since heavy industrial uses typically create higher levels of noise, traffic, and other impacts and, therefore, require greater separation from residential uses.

Written Responses

0 In Favor

3 In Opposition

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to rezone the subject property to "M-2" Heavy Industrial District to allow continued use of the property for outdoor storage of junk and debris related to a solid waste hauling business (Heavenly Hauling). The business collects junk and debris on trucks and trailers, which is brought to the site for sorting and/or storage until it is transferred off site. This use requires both an "M-2" Heavy Industrial designation and a Conditional Use Permit. Therefore, if the rezoning to "M-2" District is approved by City Council, the applicant must then obtain a Conditional Use Permit from the Zoning Board of Adjustment in order to continue having outdoor storage of junk and debris at this location.

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:** Approximately 17,104 square feet. (0.39 square feet).

3. **Existing Zoning (site):** "M-1" Light Industrial District, "FSO" Freestanding Sign Overlay District, & "GGP" Gambling Games Prohibition Overlay District.

4. **Existing Land Use (site):** The subject property includes a 4,637-square foot commercial structure. Off-street parking areas are located both to the east and west of the building.

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

North – "M-1"; Use is an auto body repair shop.

East – "M-1"; Uses are 2nd Avenue and an office and warehouse use.

South – "M-1"; Use is a mixed-use structure that includes office space and a dwelling unit.

West – “R-3”; Use is a multiple-family residential complex containing 36 dwelling units within three (3) structures.

6. **General Neighborhood/Area Land Uses:** The subject property is located along the west side of 2nd Avenue in the River Bend Neighborhood. The 2nd Avenue corridor contains a mix of commercial and industrial use that adjoin residential uses to the west.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the River Bend Neighborhood. This neighborhood association was notified of the meeting by mailing of the Preliminary Agenda to all recognized neighborhood associations on October 30, 2015. Additionally, separate notifications of the hearing for this specific item were mailed on October 30, 2015 (20 days prior to the hearing) and November 9, 2015 (10 days prior to the hearing) to the River Bend Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the requested rezoning. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on November 13, 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 River Bend Neighborhood Association notices were mailed to Breanne Barnum, 1510 9th Street, Des Moines, IA 50314.

The applicant held their neighborhood meeting on November 11, 2015. They will be available to provide a summary at the public hearing.

8. **Relevant Zoning History:** NA.
9. **2020 Community Character Land Use Plan Designation:** General Industrial.
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-2” Heavy Industrial District is compatible with the General Industrial future land use designation. However, staff does not believe that the “M-2” Heavy Industrial District is appropriate for this site given the close proximity of residential uses to the south and west. Heavy industrial uses typically create higher levels of noise, traffic, and other impacts for adjoining areas and, therefore, require greater separation from residential uses. Heavy industrial uses should be located in the areas the City has already designated for those types of uses.

- 2. Conditional Use Permit Review Criteria:** Should the rezoning be granted by City Council, the applicant would be eligible to seek a Conditional Use Permit from the Zoning Board of Adjustment for a use in an “M-2” District that is not otherwise allowed in the “M-1” District. If the applicant were to apply for such in the future, the following regulations contained in City Code Section 134-1122(5) would apply:

Any other use not permitted in the M-1 light industrial district, or which does not comply with the limitations on such use applicable in the M-1 district, is permitted in the M-2 heavy industrial district only upon approval by the board of adjustment after public hearing. In its determination upon the particular uses at the location requested, the board of adjustment shall consider all of the following:

- a. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing or working in adjoining or surrounding property;*
- b. Such use shall not impair an adequate supply of light and air to surrounding property;*
- c. Such use shall not unduly increase congestion in the streets, or public danger of fire and safety;*
- d. Such use shall not diminish or impair established property values in adjoining or surrounding property;*
- e. Such use shall be in accord with the intent, purpose and spirit of this chapter and the comprehensive plan;*
- f. All driveways, parking lots and areas used for temporary storage of vehicles shall be surfaced with an asphaltic or Portland cement binder pavement or such other surfaces as shall be approved by the city engineer so as to provide a durable and dustless surface, and shall be so graded and drained as to dispose of all surface water accumulation within the area.*
- g. All areas outside a completely enclosed building used for the storage of inoperable or unsafe vehicles, junk or salvage materials shall be enclosed on all sides by a solid opaque fence and gates at least eight feet in height and of uniform design and color, and should be effectively screened from public view. If such area abuts an area upon the adjoining property which is also used for the storage of inoperable or unsafe vehicles, junk or salvage materials, no fence or setback is required along the common property line while such adjoining use continues. All fences shall be maintained in good repair.*
- h. Junk and salvage materials shall not be stacked higher than the perimeter fence within 75 feet of the fence and shall not be stacked higher than 25 feet.*
- i. The dismantling or repair of vehicles shall occur only upon an impermeable surface with adequate provision for the collection and disposal of fluids and wastes.*
- j. Any junk or salvage yard shall provide a paved area for the receipt and temporary storage of material which is screened from the adjoining public right-of-way.*
- k. The best practical control technology shall be employed to minimize any obnoxious or offensive odor, dust, smoke, gas, noise, or similar nuisance generated by the proposed use, and the best practical means known shall be employed for the disposal of refuse matter.*

- 3. Additional Information:** Should the rezoning be denied by the City Council, the applicant would be eligible to request a Use Variance from the Zoning Board of

Adjustment. If a Use Variance is requested, it is likely that Staff would recommend that the Board use the Conditional Use Permit criteria (contained in the previous section of this report) as baseline for their review, in addition to the criteria necessary for granting a Use Variance.

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation.

Steve Shade 1812 2nd Avenue stated everything has been cleaned up and he has repainted his trucks. He has been in this location for about seven years and the previous zoning enforcement officer told him to be sure to keep the trailers covered and everything off the ground. He would like to have the option to store some stuff outside if needed because they could not get to the dump in time that he is granted a 24 hour turn around while continuing to keep his property clean and clear.

Greg Jones asked if this property is cleaned and kept up does that require rezoning.

Erik Lundy stated being allowed to have any storage of junk and debris at any time is not allowed. If the applicant wants to have a contractors business there that's okay under the zoning but any junk and debris should be transferred directly to the landfill or wherever it is taken.

Brian Millard asked if it is in the back of a vehicle with a tarp is that considered storage onsite.

Erik Lundy stated that is the current interpretation.

Mike Ludwig stated the challenge is the site shots are not showing the previous outdoor storage. The purpose of the enforcement photos is to show past practice of what was being stored outside. It is hard to figure out if a truck filled with junk and debris has been sitting onsite for 24 hours or more without sending someone out daily. The adjoining zoning behind this site is residential. Staff's concern is what is being proposed is an "M-2" zoning with outdoor storage allowed abutting residential zoning.

Erik Lundy stated there are other reasons to disallow junk and debris stored in a residential area and that is harboring of rodents. Even if it is out of site it still presenting issues.

Mike Ludwig stated even a contractor's vehicle storage has to have fencing up, the equipment cannot not visible. At this point the applicant is asking for outdoor storage for a salvage operation in an "M-2" zoning district directly adjoining residential zoning.

Steve Shade stated since this has occurred he has been keeping everything clear in the back, there is no garbage or anything in the back. He is willing to be in compliance and do whatever is needed to continue to operate. His concern is being out of compliance if he cannot make it to the dump before it closes because the job ran late or circumstances not in his control and for this reason he was told he would need to ask for an "M-2" zoning with outdoor storage.

Jonathan Rosenbloom asked about a previous zoning case along Army Post Road where staff was trying to define how much enclosure would be required to comply with M-1 zoning.

Mike Ludwig stated on the previous rezoning case where an applicant was asking for “M-1” zoning with outdoor storage, the request ended up being withdrawn by the applicant because there was nothing that could be worked out in defining what outdoor storage would be allowed. For residential properties people likely fill up their vehicle to go to the dump may have it parked overnight until they take it the next morning and leave it covered. He believes the question would be if it is truly hauling stuff then maybe a contractor storage yard, “M-1” is a more appropriate zoning for the request than “M-2” which would allow outdoor storage on the property. Under “M-1” zoning the applicant would have to comply with the limits of a contractor storage yard, put up fencing and haul the materials and operate it in accordance with a contractor storage yard. They could have a vehicle there if they are hauling stuff to landfill and as long as they are not stacking stuff outside and leaving it outside they should be in compliance with “M-1” zoning.

Greg Jones commended the applicant for cleaning up his property and would like the applicant and business to remain. He also would like for the Commission to figure a way to allow the operation through the existing “M-1” zoning district with a screened fence or whatever it is rather than jumping to “M-2” zoning district.

Jonathan Rosenbloom asked is this a separate designation of “M-1”. Or did the Commission need to amend anything?

Mike Ludwig stated the applicant would need to submit a site plan that is in conformance with a contractor storage yard, which includes a screened fence. It would also need to be operated in compliance with those standards. If there is anything on the vehicles and equipment it would need to be covered, closed hauled away and not have stuff sitting outside.

Steve Shade asked how he would know the requirements of contractor storage yard.

Mike Simonson stated when the applicant submits a site plan staff will sit down with him inform him of the requirements.

Brian Millard asked is the applicant’s options are to go forward, withdraw or defer.

Larry McDowell stated his concern is if the applicant withdraws, he may be relinquishing some of his rights. If the applicant decides to just work with staff, he may not pursue those other remedies. He wanted to make sure the applicant was aware of that.

Jonathan Rosenbloom asked could the applicant do a parallel track where he continues forward with the process for his rezoning request but meets with staff on alternatives.

Larry McDowell stated absolutely, since the code precludes the applicant going to the Zoning Board of Adjustment unless he is first denied rezoning.

CHAIRPERSON OPENED THE PUBLIC HEARING

Greg Jones asked if anyone was present to speak on this item. None were present or requested to speak.

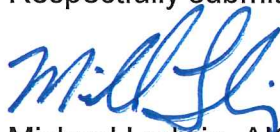
CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION:

Mike Simonson moved staff recommendation Part A) the proposed rezoning be found in conformance with the existing Des Moines' 2020 Community Character Plan existing future land use designation of General Industrial and denial of Part B) rezoning the property to an "M-2" Heavy Industrial District. The "M-2" Heavy Industrial District is not appropriate at this site since heavy industrial uses typically create higher levels of noise, traffic, and other impacts and, therefore, require greater separation from residential uses.

Motion passed 8-0.

Respectfully submitted,



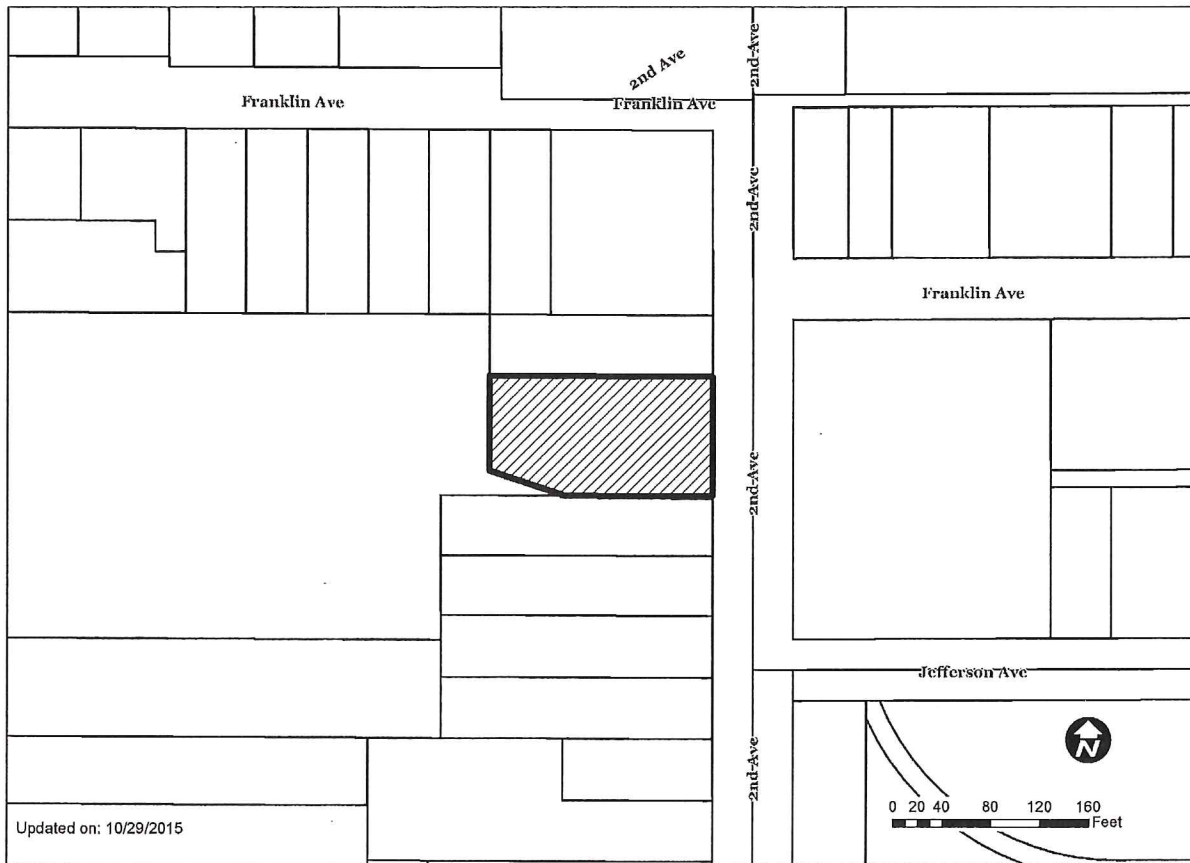
Michael Ludwig, AICP
Planning Administrator

MGL:clw
Attachment

Steven Shade d/b/a Heavenly Hauling (lessee) for property located at 1812 2nd Avenue. The subject property is owned by George M. Clayton.		File #			
		ZON2015-00210			
Description of Action	Denial of request to rezone property from "M-1" Light Industrial District to "M-2" Heavy Industrial District to allow outside storage of junk and debris related to a solid waste hauling business.				
2020 Community Character Plan	Current: General Industrial. Proposed: N/A/				
Mobilizing Tomorrow Transportation Plan	N/A				
Current Zoning District	"M-1" Light Industrial District, "GGP" Gambling Games Prohibition Overlay District, and "FSO" Freestanding Signs Overlay District.				
Proposed Zoning District	"M-2" Heavy Industrial District, "GGP" Gambling Games Prohibition Overlay District, and "FSO" Freestanding Signs Overlay District.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area		3			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	8-0		No	

Heavenly Hauling, 1812 2nd Avenue

ZON2015-00210



1 inch = 92 feet

Item ZON2015-00210

Date 11-14-2015

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

Received after 122

COMMUNITY DEVELOPMENT

(Circle One)

Print Name

Richard Thornton

Signature

Richard Thornton

Address

We own 1718 + 1222 - 2nd

Received on 11/20

NOV 03 2015

DEPARTMENT

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

We are not in favor of downgrading the neighborhood.

ZON2015-00210

Item

Date 11-11-15

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

Hammer Medical Supply

COMMUNITY DEVELOPMENT

(Circle One)

Print Name

Richard Johnson

Signature

[Signature]

Address

1801-2nd AVE Hammer Medical

NOV 16 2015

DEPARTMENT

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

Junk + Debris will be very unsightly - greatly depreciate surrounding property values. They have no parking - their customers will be inclined to use ours - which is limited. They need to rent a bigger storage Bld - or move.

SS

Item ZON2015-00210

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

COMMUNITY DEVELOPMENT

RECEIVED

Print Name

Mark Thornton

NOV 16 2015

Signature [Signature]

DEPARTMENT

Address

138 Jefferson Ave

NOV 16 2015 11-12-15

BEARING

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

Reduced property value due to junk + debris storage.
Safety + health hazard, we rent two houses
and 4th houses to south of this property.