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**Date** March 7, 2016

**RESOLUTION HOLDING HEARING ON REQUEST FROM GEORGE M. CLAYTON TO REZONE PROPERTY LOCATED AT 5311 SOUTHWEST 9<sup>TH</sup> STREET**

**WHEREAS**, on February 22, 2016, by Roll Call No. 16-0275, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on February 4, 2016, its members voted 11-1 in support of a motion to recommend **DENIAL** of a request from George M. Clayton (owner) to rezone the eastern portion of the real property locally known 5311 Southwest 9<sup>th</sup> Street ("Property") from "R1-60" One-Family Residential District to "C-2" General Retail and Highway-Oriented Commercial District to allow for retention and use of an existing accessory structure to be used in common with the commercial use on the western portion of the Property; and

**WHEREAS**, on February 22, 2016, by Roll Call No. 16-0275, it was duly resolved by the City Council that the application of George M. Clayton to rezone the Property, legally described as follows, be set down for hearing on March 7, 2016 at 5:00 p.m. in the Council Chamber at City Hall:

Lot 12 (except the North 75 feet thereof and except the East 400 feet thereof) in DU PONT PLACE, an Official Plat, all included in and forming a part of the City of Des Moines, Polk County, Iowa; 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 "C-2" General Retail and Highway-Oriented Commercial District to allow for use of the existing accessory structure in common with the commercial use on the western portion of the Property, are hereby received and filed, and the hearing is closed.

**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 11-1 to recommend denial of the requested rezoning of the Property to "C-2" General Retail and Highway-Oriented Commercial District to allow for use of the existing accessory structure for commercial purposes.
- b. Additional "C-2" District zoning requires greater separation from residential uses than available at the Property due to the anticipated higher levels of noise, traffic, and other impacts, and the limited ability to provide the minimum required off-street parking spaces.
- c. If the application of the existing zoning regulations has the effect of denying the owner all economic use of the Property, then the appropriate remedy is to seek relief from the Zoning Board of Adjustment.



Roll Call Number

Agenda Item Number

57B

Date March 7, 2016

-2-

Alternative B

MOVED by \_\_\_\_\_ to continue the public hearing until March 21, 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.

MOVED by \_\_\_\_\_ to adopt.

FORM APPROVED:

*Glenna K. Frank*  
Glenna K. Frank, Assistant City Attorney

(ZON2015-00226)

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.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
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.

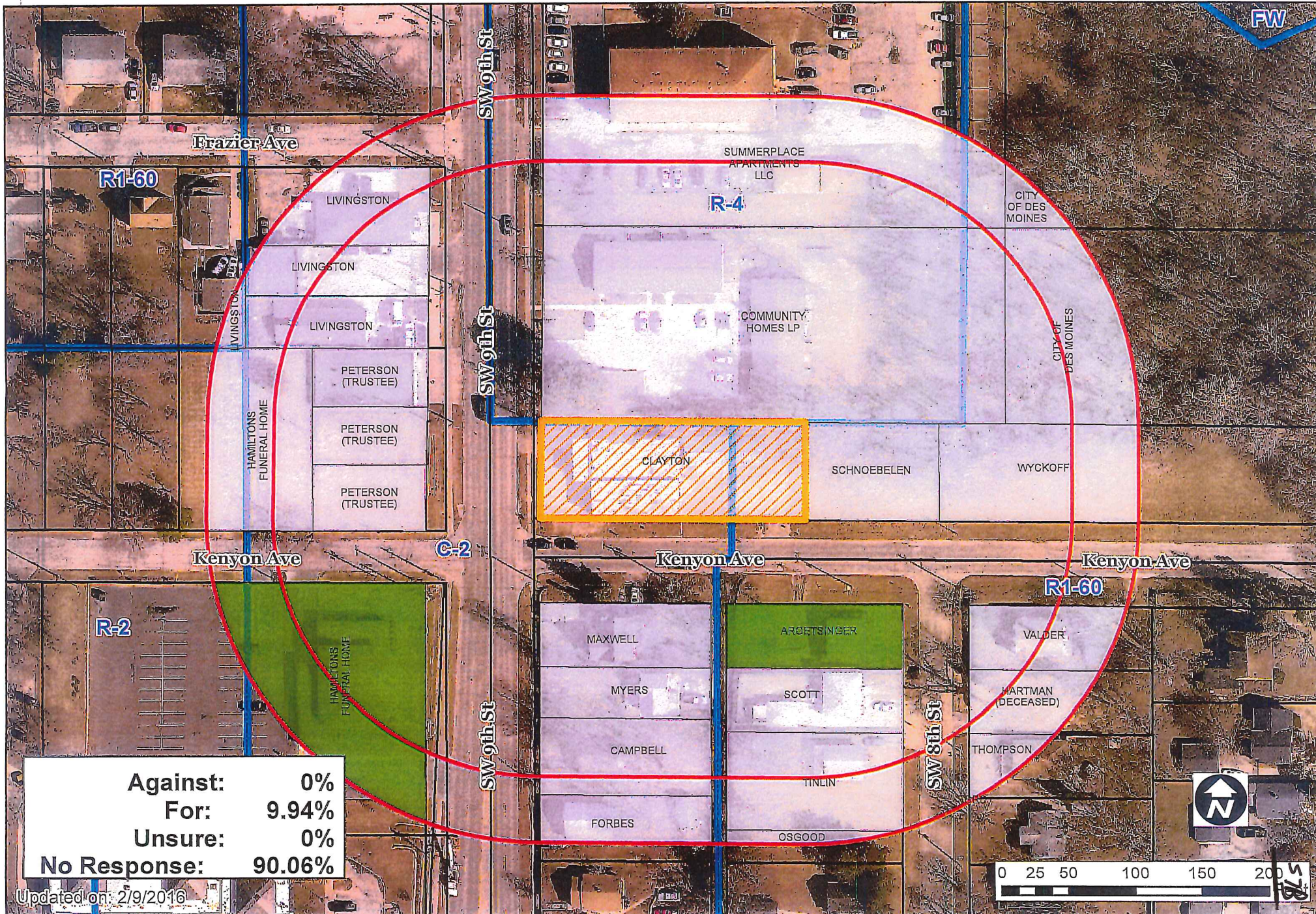
\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

51

Clayton, 5311 SW 9th Street

ZON2015-00226



Against:	0%
For:	9.94%
Unsure:	0%
No Response:	90.06%

Updated on: 2/9/2016



Date March 7, 2016

Agenda Item 57B

Roll Call # \_\_\_\_\_



February 16, 2016

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 February 4, 2016, the following action was taken regarding a request from George M. Clayton (owner) to rezone property located at 5311 Southwest 9th Street.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 11-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano		X		
David Courard-Hauri	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Jann Freed	X			
John "Jack" Hilmes	X			
Greg Jones				X
Sasha Kamper	X			
William Page	X			
Mike Simonson	X			
CJ Stephens	X			
Greg Wattier	X			

**APPROVAL** of staff recommendation Part A) to find the proposed rezoning not in conformance with the existing Des Moines' 2020 Community Character Plan, for **DENIAL** of Part B) the request to amend the Des Moines' 2020 Community Character Plan future land use designation from Low-Density Residential to Commercial: Auto-Oriented, Community Commercial and **DENIAL** of Part C) To rezone the property to a "C-2" General Retail and Highway-Oriented Commercial District. Additional "C-2" District zoning is not appropriate at this site since uses permitted in "C-2" District typically create higher levels of noise, traffic, and other impacts and, therefore, require greater separation from residential uses than this site would be able to provide. Furthermore, it would not be appropriate to

expand the existing auto repair use at this site given the limited ability to provide the minimum required off-street parking spaces: (21-2015-4.28 & ZON2015-00226)

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

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

Part B) Staff recommends denial of the request to amend the Des Moines' 2020 Community Character Plan future land use designation from Low-Density Residential to Commercial: Auto-Oriented, Community Commercial.

Part C) Staff recommends denial of rezoning the property to a "C-2" General Retail and Highway-Oriented Commercial District. Additional "C-2" District zoning is not appropriate at this site since uses permitted in "C-2" District typically create higher levels of noise, traffic, and other impacts and, therefore, require greater separation from residential uses than this site would be able to provide. Furthermore, it would not be appropriate to expand the existing auto repair use at this site given the limited ability to provide the minimum required off-street parking spaces.

#### Written Responses

2 In Favor

1 In Opposition

### **STAFF REPORT TO THE PLANNING COMMISSION**

#### **I. GENERAL INFORMATION**

- 1. Purpose of Request:** The proposed rezoning would allow for an existing 1,157-square foot accessory structure on the eastern portion of the property to be used in common with the commercial use on the western portion of the property. The Site Plan on file with the City (approved March 7, 2013) states that this accessory structure must be removed from the property unless the eastern portion of the property is rezoned to "C-2" District.

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 to allow a commercial use of the property. A Use Variance would not require the 2020 Community Character Plan's future land use designation to be amended.

- 2. Size of Site:** The eastern portion of the property known as 5311 Southwest 9<sup>th</sup> Street that is zoned "R1-60" One-Family Low-Density Residential District generally measures 50 feet by 75 feet (3,750 square feet).
- 3. Existing Zoning (site):** "R1-60" One-Family Low-Density Residential District. (The balance of the property known as 5311 Southwest 9<sup>th</sup> Street is zoned "C-2" General Retail and Highway Oriented Commercial District.)

4. **Existing Land Use (site):** The property is developed with a 5,188-square foot one-story building that was built for commercial purposes on the “C-2” portion of the property. There is also a 1,157-square foot detached storage building that extends into the “R1-60” portion of the property.

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

*North* – “R-4”, Uses are multiple-family residential dwellings.

*South* – “C-2”, Uses are single-family dwellings.

*East* – “R1-60”, Use is vacant land.

*West* – “C-2”, Uses are vacant land and a warehouse.

6. **General Neighborhood/Area Land Uses:** The subject property is located on the east side of Southwest 9<sup>th</sup> Street at the northeast corner of the intersection with Kenyon Avenue. The site is located along a portion of the corridor that contains predominantly multiple-family residential uses to the north of the site and single-family residential uses to the south of the site.

7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Fort Des Moines Neighborhood and within 250 feet of the Watrous South Neighborhood. All neighborhood associations recognized by the City were notified of the Commission meeting by mailing of the Preliminary Agenda on January 4, 2016. Additionally, separate notifications for this specific item were mailed on December 30, 2015 (20 days prior to the hearing) and January 11, 2016 (10 days prior to the hearing) to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

The Fort Des Moines Neighborhood Association notices were mailed to Scott Durham, 301 East Kenyon Avenue, Des Moines, IA 50315, and the Watrous South Neighborhood Association notices were mailed to James Spiller, PO Box 35845, Des Moines, IA 50315.

The applicant is required to hold a neighborhood meeting. They will be available to provide a summary at the public hearing.

8. **Relevant Zoning History:** On March 7, 2013, the Plan & Zoning Commission approved a Site Plan for extension of parking into a residential district, to allow a 3,365-square foot expansion of a paved parking lot for an auto repair shop use on a split-zoned parcel into the adjoining “R1-60” District, subject to the following conditions:

Removal of the detached storage building that encroaches into the residential district, unless the property is rezoned to an appropriate district.

Compliance with all administrative review comments

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

**10. Applicable Regulations:** Taking into consideration the criteria set forth in Chapter 18B of the Iowa Code, 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. 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 “C-2” General Retail and Highway-Oriented District is not compatible with the Low Density Residential future land use designation. Therefore, the applicant has requested the future land use designation be revised to Commercial: Auto-Oriented Small-Scale Strip Development.

Staff does not believe that the “C-2” General Retail and Highway-Oriented District is appropriate for this site given the close proximity of residential uses to the north, east, and south. Commercial uses permitted in “C-2” Districts typically create higher levels of noise, traffic, and other impacts for adjoining areas and, therefore, require greater separation from residential uses. Given the size of the site, there would be limited opportunity for buffering from nearby residential uses and little opportunity to provide the minimum number of required off-street parking spaces. Furthermore, the “C-2” District without limitations allows for a number of intense commercial uses that would not be appropriate for this site, such as adult entertainment businesses, communications towers, delayed deposit services, garage for general motor vehicle repair, liquor stores, off-premises advertising signs, pawnbrokers, and taverns and nightclubs.

- 2. Off-Street Parking:** The existing Site Plan on file for the subject property provides eight (8) off-street parking spaces, which is the minimum number of spaces required for the existing 4,278-square foot commercial structure (1 space per 600 square feet of auto repair use). If the existing 1,157-square foot accessory structure were to be used in common with the auto repair use, such would necessitate an additional two (2) off-street parking spaces. Since there is very limited area on the property for any additional paving, the applicant would likely need to successfully seek an Exception to the off-street parking requirement from the Zoning Board of Adjustment.
- 3. Code Enforcement:** There is ongoing zoning code enforcement regarding the existing business operating on the subject property (file COD2015-03571). The property has been cited for being occupied with an auto repair use without bringing the site into compliance with the approved Site Plan.
- 4. Additional Staff Comments:** 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 to allow a commercial use of the property. A Use Variance would not require the 2020 Community Character Plan's future land use designation to be amended.

## **SUMMARY OF DISCUSSION**

Jason Van Essen presented the staff report and recommendation.

Tim Fitzgerald asked if the building is currently being used.

Jason Van Essen stated he believes so.

Greg Wattier asked if the intent to rezone is so they can keep the building the way it is.

Jason Van Essen stated yes that is his understanding but he will let the applicant answer.

Sasha Kamper asked if it is commercial or residential next to the subject property.

Jason Van Essen stated these are houses across the street and some are zoned commercial.

George Clayton 14455 University, Waukee stated there are different tenants in the building now. It was a printing company and now it is an auto repair shop. The infraction has been remedied and improved. The addition he is asking for is only included in the property. He has put a new roof on half the property and it is in very good condition. Everything in the rear has been concreted and a fence has been put up. He has made vast improvements on the property. They have also rehabilitated the front of the building. They have worked with the City on the front and the back. They are asking to rezone a small portion of the ground that is concurrent with the existing property. The warehouses to the rear will remain as they have been in years past. Nothing has been added as it applies to buildings.

Mike Simonson asked if they had a neighborhood meeting.

George Clayton stated yes.

Mike Simonson asked the result of the neighborhood meeting.

George Clayton stated he does not know. His tenant attended the meeting and can answer that question.

Mike Simonson asked are there any outstanding zoning code enforcement items.

George Clayton stated not to his knowledge.

Sasha Kamper asked if he had a picture of what the property looks like now.

George Clayton stated no.



JoAnne Corigliano asked if the rear, the roof and everything needed to be completed.

George Clayton stated yes, but in the picture shown tonight you cannot see the improvement in the rear. They will also be painting again once the weather allows. The portion being addressed tonight is a small portion that involves an access to the parking.

Joe Frazier (tenant) 3704 37<sup>th</sup> Street stated notice was sent to both of Watrous South and Ft. Des Moines Neighborhood. Watrous South and one neighbor met with them, they were not opposed to the applicant's request. The original owner of the building also attended the meeting and there was no opposition from anyone at the meeting.

CJ Stephens stated the response card she is looking at from the Ft. Des Moines Neighborhood is not in favor of the applicant's request.

Joe Frazier stated he talked to both the president of Ft. Des Moines Neighborhood and his wife and they did not say anything to him then. They are waiting to get the result of the request before they do any improvement to the rear building. The roof would be repainted, new soffit and fascia put across the front, a fence that goes all the way down the backside of the property, new overhead doors, windows and new plumbing. The building is not currently in use, they have just been renovating trying to bring it up to code in the interior. They have invested approximately \$60,000 to \$80,000 already not including the roof that Mr. Clayton put on.

Sasha Kamper asked how do they currently use or want to use this back building that is split zoned.

Joe Frazier stated just for storage.

JoAnne Corigliano asked would a variance work for the applicant. She would hate to see this property not be used. She believes if it is not used it will go to seed.

Mike Ludwig stated the staff report identifies as an option that 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.

Joe Frazier stated the biggest problem with mechanic shops is the amount of things that get stored outside. With the storage building in the rear the property, any storage problem would be eliminated.

Sasha Kamper pointed out that assuming they do go in front of the Zoning Board of Adjustment asking for a Use Variance it would be very helpful to have some before and after pictures showing what has been done already and clearly delineate what is intended for the rear building.

Will Page asked if the applicant would be willing to go to the Zoning Board of Adjustment, if denied.

George Clayton stated the City encouraged him to get this lot rezoned. He reiterated his case that the lot is very small. No one would build on it, it's incorporated already in the driveway and the building.

### **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**

JoAnne Corigliano stated Mr. Clayton is right that this property is only 50 feet wide, it's been in the present condition for a very long time. The previous owners did not maintain it very well towards the end of their business. She does not see the problem with letting the applicant approve what he's got. She is not in agreement with staff.

### **COMMISSION ACTION:**

Tim Fitzgerald moved staff recommendation and Sasha Kamper seconded for approval of Part A) to find the proposed rezoning not in conformance with the existing Des Moines' 2020 Community Character Plan, for denial of Part B) the request to amend the Des Moines' 2020 Community Character Plan future land use designation from Low-Density Residential to Commercial: Auto-Oriented, Community Commercial and denial of Part C) To rezone the property to a "C-2" General Retail and Highway-Oriented Commercial District. Additional "C-2" District zoning is not appropriate at this site since uses permitted in "C-2" District typically create higher levels of noise, traffic, and other impacts and, therefore, require greater separation from residential uses than this site would be able to provide. Furthermore, it would not be appropriate to expand the existing auto repair use at this site given the limited ability to provide the minimum required off-street parking spaces.

Motion passed 11-1 (JoAnne Corigliano voted in opposition).

Respectfully submitted,

  
Michael Ludwig, AICP  
Planning Administrator

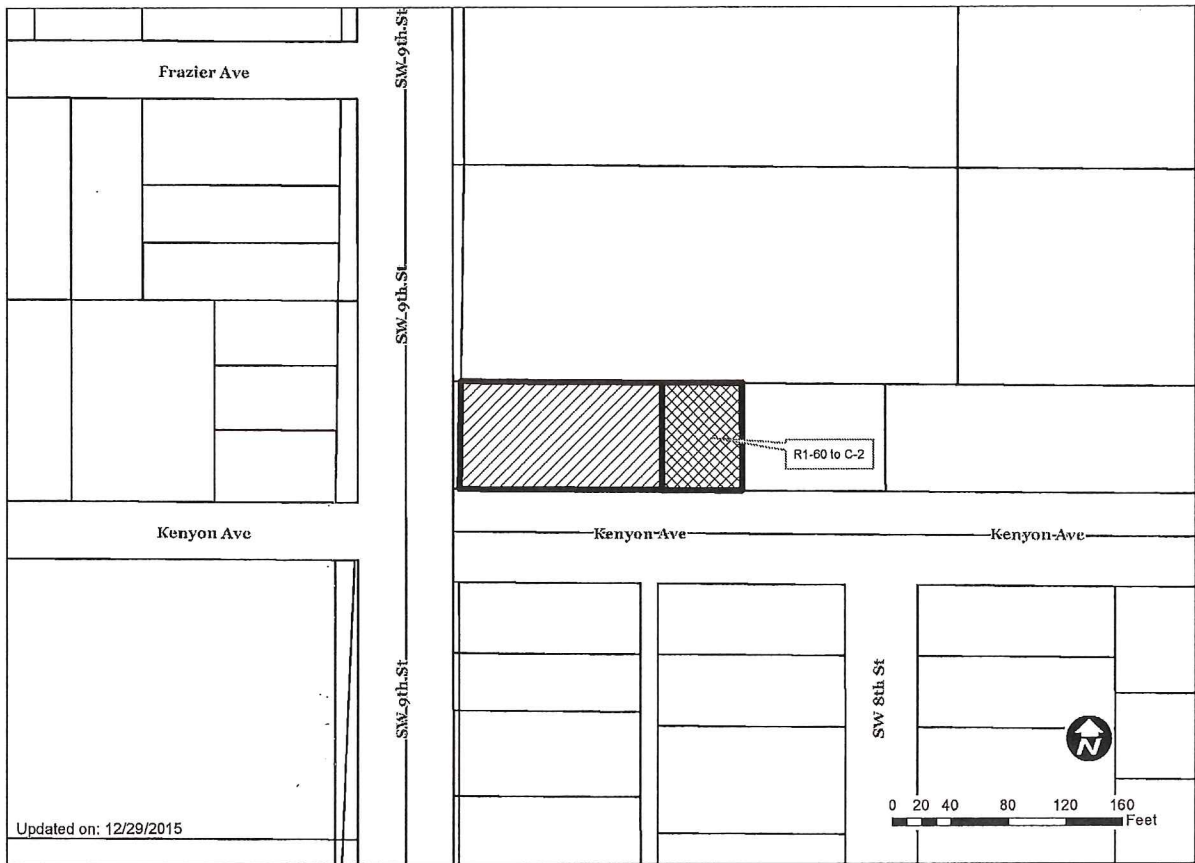
MGL:clw

Attachment

George M. Clayton (owner) for property located at 5311 Southwest 9th Street.		File #	
		ZON2015-00226	
<b>Description of Action</b>	Denial of request to rezone eastern portion of the property from "R1-60" One-Family Low-Density Residential District to "C-2" General Retail and Highway-Oriented Commercial District, to allow for an existing accessory structure on the eastern portion of the property to be used in common with the commercial use on the western portion of the property.		
<b>2020 Community Character Plan</b>	Current: Low-Density Residential. Proposed: Commercial: Auto-Oriented Small-Scale Strip Development.		
<b>Mobilizing Tomorrow Transportation Plan</b>	2035-2050: SW 9 <sup>th</sup> Street widening from 4 lanes to 5 lanes.		
<b>Current Zoning District</b>	"R1-60" One-Family Low-Density Residential District and "FSO" Freestanding Signs Overlay District.		
<b>Proposed Zoning District</b>	"C-2" General Retail and Highway-Oriented Commercial District and "FSO" Freestanding Signs Overlay District.		
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined
Inside Area	2	1	
Outside Area			
<b>Plan and Zoning Commission Action</b>	Approval		Required 6/7 Vote of the City Council
	Denial	11-1	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

Clayton, 5311 SW 9th Street

ZON2015-00226



1 inch = 78 feet

George M. Clayton (owner) for property located at 5311 Southwest 9th Street.			File #		
			21-2015-4.28		
Description of Action	Denial of request to amend the Des Moines' 2020 Community Character Plan current future land use designation from Low-Density Residential to Commercial: Auto-Oriented Small-Scale Strip Development.				
2020 Community Character Plan	Current: Low-Density Residential. Proposed: Commercial: Auto-Oriented Small-Scale Strip Development.				
Mobilizing Tomorrow Transportation Plan	2035-2050: SW 9 <sup>th</sup> Street widening from 4 lanes to 5 lanes.				
Current Zoning District	"R1-60" One-Family Low-Density Residential District and "FSO" Freestanding Signs Overlay District.				
Proposed Zoning District	"C-2" General Retail and Highway-Oriented Commercial District and "FSO" Freestanding Signs Overlay District.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	2	1			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	11-1		No	

Clayton, 5311 SW 9th Street

21-2015-4.28



1 inch = 78 feet

ZON2015-00226

Item

Date

2/1/16

Received after P12

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

RECEIVED  
COMMUNITY DEVELOPMENT  
(Circle One)

Print Name Hamilton's Southtown Funeral Home

FEB 05 2016

Signature Sasha Mullaly

DEPARTMENT

Address 5400 SW 9th St. Des Moines 50309

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

No conflicts

ZON2015-00226

Item

Date

JAN 29, 2016

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

RECEIVED  
COMMUNITY DEVELOPMENT  
(Circle One)

Print Name Charles Argetsinger

FEB 01 2016

Signature Charles Argetsinger

DEPARTMENT

Address 5400 SW 8th

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

ZON2015-00226

Item

Date

1-30-2016

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

RECEIVED  
COMMUNITY DEVELOPMENT  
(Circle One)

Print Name FORT DES MOINES NEIGHBORHOOD ASSOCIATION

FEB 04 2016

Signature Scott Durham

DEPARTMENT

Address 301 E. KENYON AVE

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

STREET PARKING ASSOCIATED W/THIS BUSINESS CAUSES DANGER, SITE DOES NOT ALLOW FOR ADEQUATE SEPARATION FROM COMMERCIAL / RESIDENTIAL USE. NOT ENOUGH OFF STREET PARKING FOR AN AUTO REPAIR FACILITY.

**Drost, Bert A.**

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**From:** Scott Durham <Scott@ralphsmithinc.com>  
**Sent:** Wednesday, January 20, 2016 4:01 PM  
**To:** Drost, Bert A.  
**Subject:** 5311 SW 9th Meeting Letter  
**Attachments:** 20160120\_151117 (2).jpg

Bert,

Please open the attachment for a photo of the Meeting Letter sent out for 5311 SW 9th. When we spoke earlier, I thought the meeting was for tomorrow evening, but it is for this evening. I plan on attending, and will inform you if our opinion changes after gathering more information.

As far as the Fort Des Moines Neighborhood Association opinion, if any change in zoning is being considered, we would hope that additional Street Parking Restrictions would be put in place. There are several vehicles parked in the street that appear to be related to this address. I thought they may be employee vehicles parked there during the business day, but they were still there after 9:00 pm Monday evening. They don't all appear to have license plates on them either. This is stretching way beyond the area in question for Zoning Adjustment .

We would not be in favor of the request for Zoning Adjustment.

Respectfully,

Scott Durham  
President, Fort Des Moines Neighborhood Association.  
515-238-6552