



Roll Call Number

Agenda Item Number

19


Date April 25, 2016

**RECEIVE AND FILE COMMUNICATION FROM THE
PLAN AND ZONING COMMISSION REGARDING REQUEST FROM
BRUCE DAVIDSON FOR VACATION OF THE
SOUTH 5 FEET OF ANKENY AVENUE ADJOINING 2001 HUBBELL AVENUE**

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on April 7, 2016, its members voted 12-0 to recommend **DENIAL** of a request from Bruce Davidson (owner) for vacation of the south five (5) feet of Ankeny Avenue adjoining 2001 Hubbell Avenue, to allow said right-of-way to be incorporated for provision of the minimum five (5) feet of setback required for paved vehicle display lots.

MOVED by _____ to receive and file the attached communication from the Plan and Zoning Commission, and refer to the Engineering Department, Real Estate Division.

FORM APPROVED:



Glenna K. Frank
Assistant City Attorney

(11-2016-1.06)

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

MOTION CARRIED

APPROVED

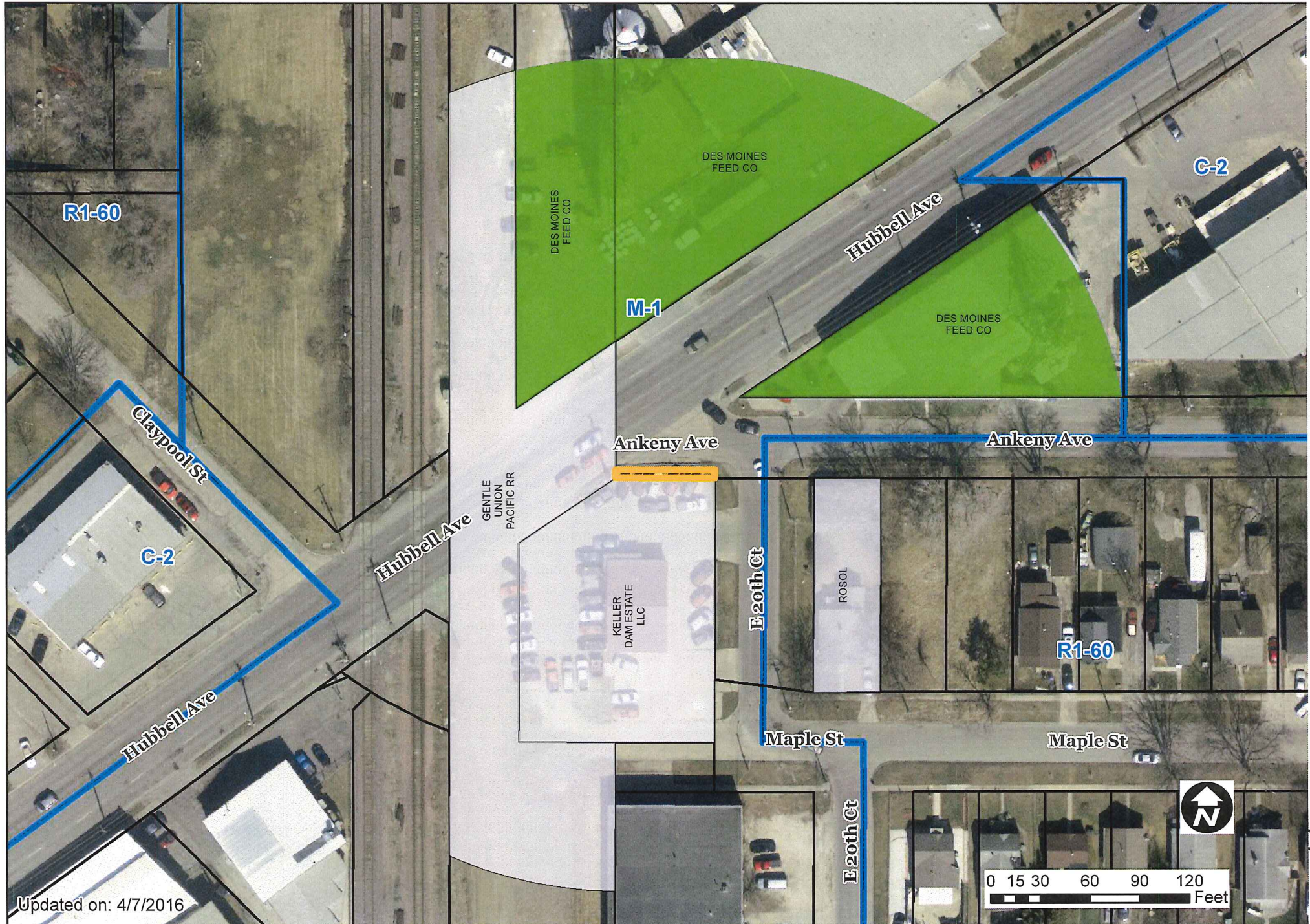
Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk





April 18, 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 April 7, 2016, the following action was taken regarding a request from Bruce Davidson (owner), 2001 Hubbell Avenue, for vacation of the south 5 feet of Ankeny Avenue adjoining the subject property to allow it to be incorporated for provision of the minimum 5 feet of setback required for paved vehicle display.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 12-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
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			

DENIAL of the requested vacation a portion of the Ankeny Avenue right-of-way.
(11-2016-1.06)

RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends denial of the request to vacate a portion of the Ankeny Avenue right-of-way.

Written Responses

1 In Favor

0 In Opposition

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

- 1. Purpose of Request:** The applicant illegally expanded the existing vehicle sales business to the west of the building. In doing so, they lost their legal non-conforming rights to zero pavement setback along Hubbell Avenue, Ankeny Avenue and SE 20th Court. The applicant submitted a request for a Variance of these setback requirements from the Zoning Board of Adjustment. On February 24, 2016, by Docket Number ZON2016-00026, the Board granted a Variance of 5 feet less than the minimum required 5 feet of landscaped, permeable setback for off-street parking from SE 20th Court. The Board did not grant relief of the setback requirements along Ankeny Avenue or Hubbell Avenue.

The applicant is proposing to combine the subject right-of-way with their property to reduce the amount of pavement that will have to be removed to provide the 5-foot pavement setback along the north property line. Once a decision has been reached on the proposed vacation the applicant will be required to submit a site plan for review and approval by the Plan and Zoning Commission in accordance with the City's Design Guidelines of Display, Hire, Rental or Sales of Motor Vehicles found in Section 82-213 of the City Code.

- 2. Size of Site:** 28,219 square feet or 0.648 acres.
- 3. Existing Zoning (site):** "M-1" Light Industrial District and "FSO" Freestanding Sign Overlay District.
- 4. Existing Land Use (site):** The applicant's property contains a vehicle display and sales lot with associated auto repair. The site includes a 1,836-square foot building. The subject right-of-way contains a portion of the applicant's vehicle display lot that has been illegally expanded into the right-of-way. All encroachments into the right-of-way must be removed regardless of any action taken by the Zoning Board of Adjustment to grant relief of zoning requirements or actions of the Plan and Zoning Commission in approving a site plan.

5. Adjacent Land Use and Zoning:

North – "M-1", Use is the Des Moines Feed Company.

East – "R1-60", Uses are single-family dwellings.

South – "M-1", Use is a warehouse building.

West – "M-1" & "C-2", Use is an auto repair shop.

6. **General Neighborhood/Area Land Uses:** The subject property is on the Hubbell Avenue commercial corridor with mixed commercial and industrial uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Fairground Neighborhood. The neighborhood association was notified of the public hearing with the mailing of the Preliminary Agenda on March 22, 2016 and the Final Agenda on April 1, 2016. Separate notifications of the hearing for this specific item were mailed on March 28, 2016 (10 day notice) to the neighborhood association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. The Fairground Neighborhood Association mailings were sent to Sharon Cooper, 2838 Logan Avenue, Des Moines, IA 50317.
8. **Relevant Zoning History:** On November 3, 2014 a violation notice was issued to the applicant for the illegal expansion of their legal non-conforming auto display and sales business. On February 24, 2016, by Docket Number ZON2016-00026, the Zoning Board of Adjustment granted the applicant a Variance of 5 feet less than the minimum required 5 feet of landscaped, permeable setback for off-street parking from East 20th Court.
9. **2020 Community Character Land Use Plan Designation:** General Industrial.
10. **Applicable Regulations:** The Commission, considering the criteria set forth in Chapter 18B of the Iowa Code, reviews all proposals to vacate land dedicated for a specific public purpose, such as for streets and parks, to determine whether the land is still needed for such purpose or may be released (vacated) for other use. The recommendation of the Commission is forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Utilities:** Easements must be reserved for any existing utilities until such time that they are abandoned or relocated.
2. **Street System/Access:** There is 10 feet of separation from the applicant's north property line to the Ankeny Avenue curb line. The proposed vacation would reduce that distance to 5 feet. The desired distance from the back of the curb to the property line for a street of this nature is 12 feet. Adequate space must be provided in the right-of-way to facilitate future utility needs and street maintenance. The proposal would not leave adequate space.

SUMMARY OF DISCUSSION

Jason Van Essen presented the staff report and presentation.

Steve Wandro, Wandro & Associates 2501 Grand Avenue representing the landowner stated this project has been in existence for years. Nine years ago Mr. Davidson paved three aspects of the project with no problem. Three years ago he paved another aspect. Now the City is saying he is not in compliance with the code and they are confronted with

having to move the encroachment. Mr. Davidson will have to cut out the concrete. He proposes for the City to vacate that property and as an accommodation to the City the applicant will put in parking buffers and devote the green space to shrubbery as a solution. Noting that the back of this business has been operating for years without any problem and the paving was done years ago. Somehow the City determined the applicant was out of compliance. He believes the solution they are offering is simple and fair. He asked the Commission to allow their proposal.

Mike Ludwig asked did the applicant seek permission from the City to pave into the City property on the backside.

Steve Wandro stated he did not. He had Grimes Paving do the initial stages nine years ago and they are not sure if any permitting done. He believes it wasn't. The applicant was only trying to improve the look of the property.

Francis Boggus asked if there was any foot traffic at all.

Steve Wandro stated no.

Mike Ludwig commented earlier tonight Commissioner Page was raising the issue about enforcement issues in the codes and noted one of the reasons why the applicant received notice and was cited is because the Council directed staff to enhance enforcement on vehicle display lots in the City. On a previous request there was a resident that lives in this area who's in a wheel chair and she has expressed numerous concerns about having to travel down the street in this area and she has put in a request for sidewalk installation in this area. If this is vacated that limits the City's ability to potentially provide sidewalk that would provide access in the future. He is not sure when the sidewalk will be going in but he knows that person was notified of this hearing.

Steve Wandro stated that is a good concern and they will agree to it. They won't mess with utilities that are going under it and if the City needs to put that sidewalk in they will agree to it.

Mike Ludwig stated but it would not have a green strip between the sidewalk and the parking lot.

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 asked if the 5 feet of paving projects into the street.

Greg Jones stated it projects into the right-of-way not into the street.

Mike Simonson asked if the applicant applied for a permit to pave an unpaved surface, what would that have prompted.

Mike Ludwig stated in this instance it would have prompted a site plan review for the vehicle display lot requirements.

COMMISSION ACTION:

Tim Fitzgerald moved staff recommendation to deny the request to vacate a portion of the Ankeny Avenue right-of-way.

Motion passed 12-0.

Respectfully submitted,



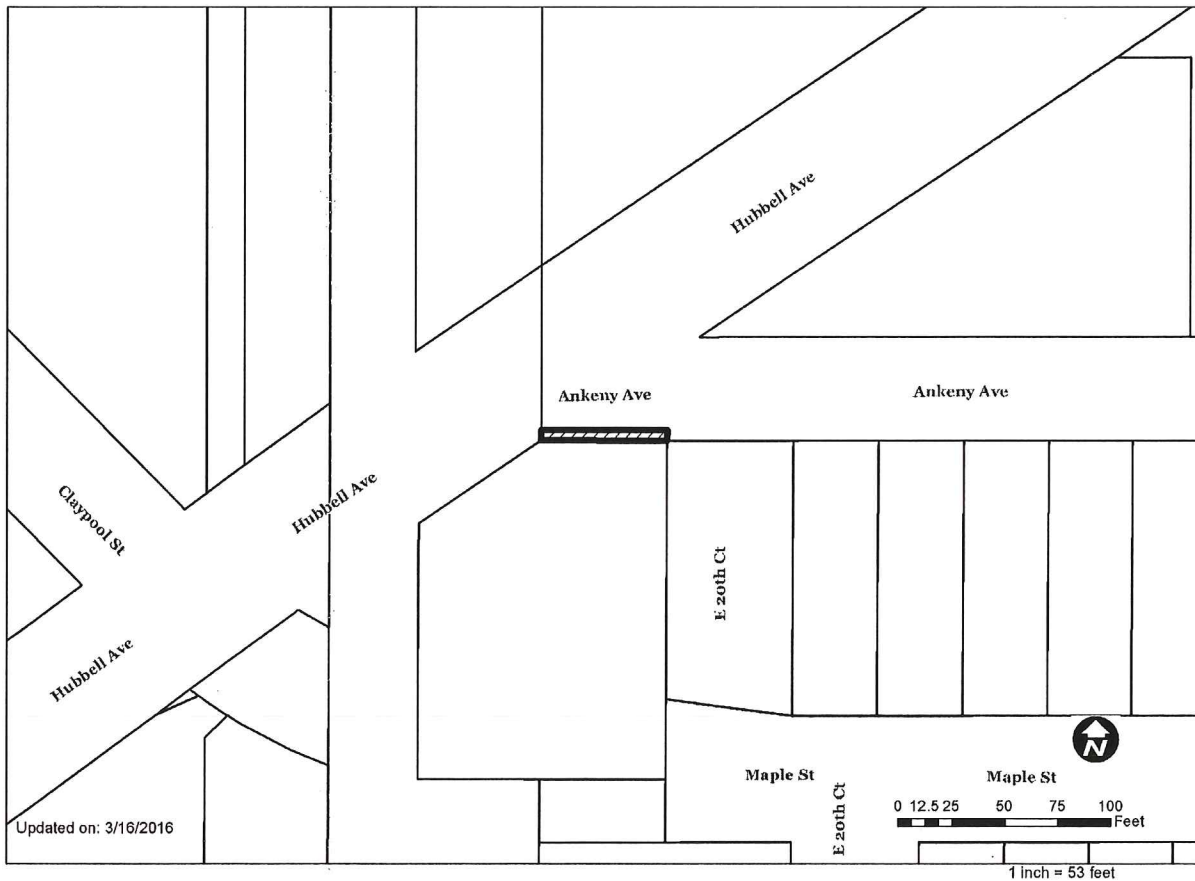
Michael Ludwig, AICP
Planning Administrator

MGL:clw
Attachment

Bruce Davidson (owner) for property at 2001 Hubbell Avenue.		File #		
		11-2016-1.06		
Description of Action	Denial of request to vacate the south 5 feet of Ankeny Avenue adjoining the subject property to allow it to be incorporated for provision of the minimum 5 feet of setback required for paved vehicle display.			
2020 Community Character Plan	Current: General Industrial. Proposed: N/A.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"M-1" Light Industrial District and "FSO" Freestanding Signs Overlay District.			
Proposed Zoning District	N/A.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area	1			
Outside Area				
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes
	Denial	12-0		No
				X

Davidson, 2001 Hubbell Avenue

11-2016-1.06



11-2016-1.06

Item _____ Date 3-31-16

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

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT
APR 03 2016
DEPARTMENT

Print Name Des Moines Feed Co

Signature [Signature]

Address 2010 Hubbell Ave

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

