

Date June 27, 2016

RESOLUTION HOLDING HEARING ON REQUEST FROM GREG WILSON (OWNER) TO REZONE PROPERTY LOCATED AT 801 SOUTHEAST 7TH STREET TO "M-1" LIGHT INDUSTRIAL DISTRICT

WHEREAS, on June 13, 2016, by Roll Call No. 16-0953, the City Council received and filed a communication from the City Plan and Zoning Commission advising that at a public hearing held on June 2, 2016, its members voted 10-0 in support of a motion to recommend **DENIAL** of a request from Greg Wilson (owner) to rezone property located at 801 Southeast 7th Street ("Property") from "R1-60" One-Family Low-Density Residential District to "M-1" Light Industrial District to allow for continued use of the property for outside storage of a semi-tractor/trailer used for independent trucking business operation; and

WHEREAS, on June 13, 2016, by Roll Call No. 16-0953, it was duly resolved by the City Council that the application of Greg Wheeler to rezone the Property, legally described as follows, be set down for hearing on June 27, 2016 at 5:00 p.m. in the Council Chamber at the Municipal Services Center:

Lot 5 in Block 64 in TOWN OF DE MOINE, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, 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-1" Light Industrial District, to allow for continued use of the Property for outside storage of a semi-tractor/trailer used for independent trucking business operation, 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 10-0 to recommend denial of the requested rezoning of the Property to "M-1" Light Industrial District.

(continued)

Date June 27, 2016

-2-

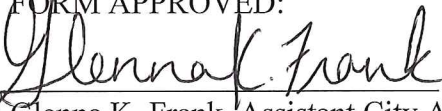
- b. The PlanDSM: Creating Our Tomorrow Land Use Plan designates the Property as Low/Medium Density Residential. The proposed rezoning is not in conformance with said Plan and would require amending the Property to an Industrial designation. The Plan does not contemplate addition additional industrial use or development in the area.
- c. The character of the surrounding area is best suited by residential uses, and thus the proposed rezoning is not consistent with the character of the surrounding area.
- d. 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.

Alternative B

MOVED by _____ to continue the public hearing until July 11, 2016, at 5:00 p.m. in the Council Chambers at the Municipal Services Center, 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, Assistant City Attorney

(ZON2016-00073)

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

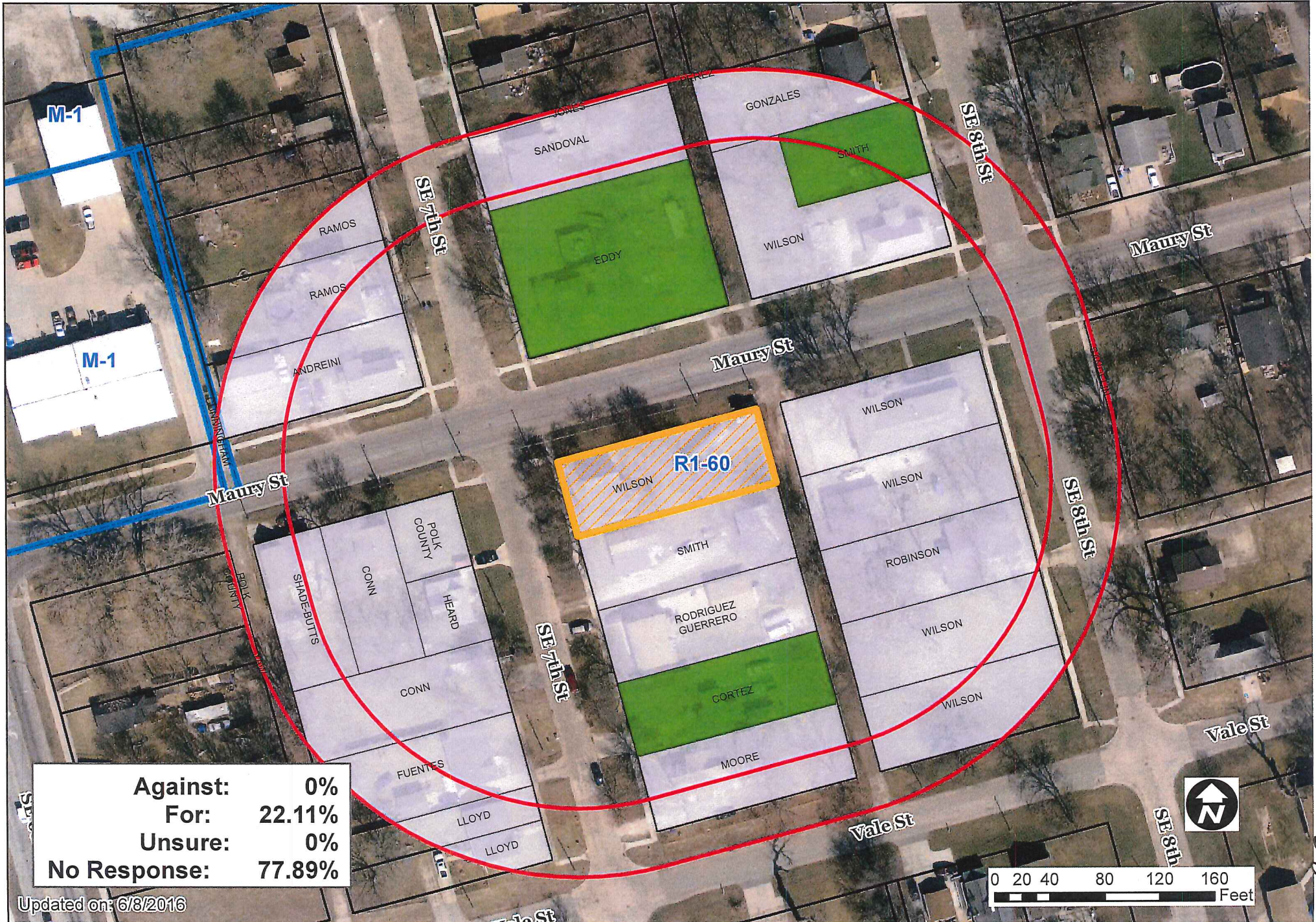
Mayor

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



Against:	0%
For:	22.11%
Unsure:	0%
No Response:	77.89%

Updated on: 6/8/2016

58

Greg Wilson (owner) for property located at 801 Southeast 7th Street.		File #		
		ZON2016-00073		
Description of Action	Denial of request to rezone property from "R1-60" One-Family Low-Density Residential District to "M-1" Light Industrial District to allow for outside storage related to an independent trucking business operation.			
PlanDSM Future Land Use	Current: Low/Medium Density Residential. Proposed: Industrial.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"R1-60" One-Family Low-Density Residential District, "GGP" Gambling Games Prohibition Overlay District, "D-O" Downtown Overlay District and "FSO" Freestanding Signs Overlay District.			
Proposed Zoning District	Current: Low/Medium Density Residential. Proposed: Industrial.			
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
	Denial	11-0		No

Wilson, 801 SE 7th Street

ZON2016-00073



1 inch = 81 feet



June 8, 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 June 2, 2016, the following action was taken regarding a request from Greg Wilson (owner) to rezone property located at 801 Southeast 7th Street.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 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

APPROVAL of staff recommendation Part A) that the proposed rezoning be found **NOT** in conformance with the existing PlanDSM future land use designation of Low/Density Residential, **DENIAL** of Part B) the requested amendment to the PlanDSM future land use designation from Low/Medium Density Residential to Industrial and **DENIAL** of Part C) rezoning the property to an "M-1" Light Industrial District. (ZON2016-00073)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the proposed rezoning be found in not in conformance with the existing PlanDSM future land use designation of Low/Density Residential.

Part B) Staff recommends denial of the requested amendment to the PlanDSM future land use designation from Low/Medium Density Residential to Industrial.

Part C) Staff recommends denial of rezoning the property to an "M-1" Light Industrial District.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to allow continued use of the property for outdoor storage of a semi-tractor/trailer used for his trucking occupation.
2. **Size of Site:** 56-foot by 150-foot (8,400 square feet).
3. **Existing Zoning (site):** "R1-60" One-Family Low-Density Residential District and "FSO" Freestanding Sign Overlay District.
4. **Existing Land Use (site):** The subject property includes a one-story single-family dwelling built circa 1885. The applicant currently uses the rear yard area for outside storage of a semi-truck tractor and trailer.
5. **Adjacent Land Use and Zoning:**
 - East** - "R1-60"; Uses are single-family dwellings.
 - West** - "R1-60"; Uses are single-family dwellings.
 - North** - "R1-60"; Uses are single-family dwellings.
 - South** - "R1-60"; Uses are single-family dwellings.
6. **General Neighborhood/Area Land Uses:** The subject property is located in an area that is developed primarily with single-family residential use. There are light industrial uses to the west and northwest in proximity to the site, concentrated along Southeast 6th Street and Scott Avenue.
7. **Applicable Recognized Neighborhood(s):** The subject property is located within the Historic East Village Neighborhood. All neighborhood associations were notified of the meeting by mailing of the Preliminary Agenda on May 13, 2016. Additionally, separate notifications of the hearing for this specific item were mailed on May 13, 2016 (20 days prior to the hearing) and May 23, 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 requested rezoning. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on May 27, 2015.

The applicant is required to hold a neighborhood meeting. They have indicated that this was held on April 30, 2016.

8. Relevant Zoning History: N/A.

9. PlanDSM Land Use Plan Designation: Low/Medium 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. PlanDSM Creating Our Tomorrow: The future land use designation for the property is currently Low/Medium Density Residential, which is defined as areas developed with a mix of single-family, duplex, and small multi-family units up to 12 units per net acre. The proposed rezoning would require an amendment to the Industrial designation. This designation accommodates industrial development and limited supporting commercial uses. Development in this classification could have a large impact on adjoining properties and the environment which would need to be mitigated.

The proposed amendment to the Industrial designation would be surrounded by remaining Low/Density Residential designation. While there are other existing industrially zoned properties within a couple of blocks, the PlanDSM now designates this area for Downtown Mixed Use. The Plan does not contemplate adding additional industrial use or development in the area. Therefore, staff does not believe that either the proposed amendment to the PlanDSM future land use designation or the proposed rezoning to an "M-1" Light Industrial District are appropriate at this time given the recent adoption of PlanDSM.

2. Additional Information: On March 22, 2016, the Development Zoning Inspection staff inspected the property and determined that there was illegal outdoor storage occurring on the subject property. A semi-tractor with a tanker trailer was being stored on a paved drive with access off the north/south alley. The company of the truck is Slay Transportation Company, Inc., which is a logistics company specializing in HAZMAT transport. A notice of violation was sent to the applicant on March 29, 2016.

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation.

David Courard-Hauri asked if this request will go to the Zoning Board of Adjustment whether the rezoning is granted or not.

Erik Lundy stated if zoning is denied the applicant could seek "Use Variance". If the rezoning is approved the applicant will still need variances for setbacks, screening, "R" District protection, etc. Either situation will require remedies for development standards to leave the site as it is.

JoAnne Corigliano stated the applicant has lived in the neighborhood for a long time. The truck has been sitting there awhile and doesn't seem to bother anybody so she believes the "Use Variance" might be a good idea.

Erik Lundy stated the use variance would be considered by the Zoning Board of Adjustment.

Greg Wilson 801 SE 7th Street stated he has lived at this property for 48 years. For the past 42 years he has owned his own trucking business and parked his truck. Maury has been a truck route for approximately 60 to 70 years. He only parks his truck on weekends and occasionally through the week. He used to park on SE 8th Street for 17 years when the City of Des Moines made pay \$25,000 to pave the street and then the City of Des Moines posted a "No Parking" sign. He just wants to continue until he retires. As things developed the property behind him became available where he has been parking for the last 25 years. Archie Brooks was a Councilman at that time and the question came up about the parking. The Council decided that if he paved his drive pad, he could park his truck on site.

John "Jack" Hilmes asked Mr. Wilson if he worked out that deal with City Council to pave his drive pad.

Greg Wilson stated 1991, he asked SuAnn Donovan if it should be grandfathered in. He was told there was no records of Council request due to the 1992 floods. He contacted Archie Brooks today and he remembered the agreement.

Sasha Kamper stated that Mr. Wilson appears to have corroboration to his story.

Will Page stated he believes a "Use Variance" could end when he retires.

Greg Wilson stated that he is willing to work with the City.

CHAIRPERSON OPENED THE PUBLIC HEARING

Griselda Rodriguez 815 SE 7th Street is in favor of the applicant to continue parking his truck where it has been parked for the last 25 years. It is not bothering anyone including the neighbors.

Jennifer Shade-Butts 617 Maury stated that she is not in favor of the rezoning. Her concerns are:

- The rezoning will bring her property value down
- Increased traffic flow
- Safety
- A new use could be worse and they don't need another business.

John "Jack" Hilmes asked if Mrs. Shade-Butts was okay with the truck being parked there until he retires.

Jennifer Shade-Butts stated yes.

Calvin Smith 809 SE 7th stated he lives next to property and he has no problem with the truck being there.

Rebuttal

Greg Wilson stated he would like to go to the Zoning Board of Adjustment for a "Use Variance".

Sasha Kamper asked the process if the applicant is turned down.

Erik Lundy explained that the rezoning has to be denied zoning by Council first, and then the applicant can go to the Zoning Board of Adjustment to seek remedies. However, there is no guarantee of being granted any remedies including a "Use Variance".

Glenna Frank stated staff also represent the Zoning Board of Adjustment, at the last meeting she was asked to make it clear that the Zoning Board of Adjustment does not always approve those requests.

CHAIRPERSON CLOSED THE PUBLIC HEARING

John "Jack" Hilmes moved staff recommendation with a comment. He believes that Mr. Wilson understands the process in order to seek a "Use Variance". He believes the applicant's situation may be analogous to the principle of adverse possession. There may be equitable principals that might work favorably for him.

Sasha Kamper encouraged the applicant to get a written statement from Archie Brooks to corroborate the decision by Council to allow him to park his truck on the drive pad.

COMMISSION ACTION:

John "Jack" Hilmes moved staff recommendation Part A) that the proposed rezoning be found **NOT** in conformance with the existing PlanDSM future land use designation of Low/Density Residential, **DENIAL** of Part B) the requested amendment to the PlanDSM future land use designation from Low/Medium Density Residential to Industrial and **DENIAL** of Part C) rezoning the property to an "M-1" Light Industrial District.
Motion carried 11-0.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "M. Ludwig".

Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment

ZON2016-00073

Item 801 SE 7th St Date 5/28/16

I (am) in favor of the request.
COMMUNITY DEVELOPMENT
(Circle One)

JUN 02 2016

DEPARTMENT

Print Name Melissa Eddy

Signature Melissa Eddy

Address 719 SE 7th St
DSM IA 50309

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

ZON2016-00073

Item

Date 5-27-16

I (am) in favor of the request.

COMMUNITY DEVELOPMENT
(Circle One)

JUN 02 2016

DEPARTMENT

Print Name Terry Smith

Signature Terry Smith

Address 715 SE 8th St

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

The SEMI doesn't bug me
one bit

Reason for opposing or approving this request may be listed below:
I am in favor of rezoning property
owned by Greg Nelson from R1-60 to M1
to allow for outside storage related
to Greg's ironing trucking business
operations

DEPARTMENT
JUN 03 2016
Print Name Margorie Cortez
Signature Margorie Cortez
Address 817 SE 7th

Item Rezoning Date May 25, 2016
I (am) in favor of the request.
COMMUNITY DEVELOPMENT
Reasoned after 6/2 P82

ZON2016-00073

58