



Date August 28, 2017

RESOLUTION HOLDING HEARING ON REQUEST FROM CAPITOL CITY TOWING & RECOVERY, LLC TO REZONE PROPERTY AT 915 SOUTHEAST 14TH COURT

WHEREAS, on August 14, 2017, by Roll Call No. 17-1362, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on August 3, 2017, its members voted 10-1 in support of a motion to recommend **DENIAL** of a request from Capitol City Towing & Recovery, LLC (lessee), represented by Adam Malloy (officer), to rezone property at 915 Southeast 14th Court ("Property") from "C-2" General Retail and Highway-Oriented Commercial District to "M-2" Heavy Industrial District, to allow the Property to be used for a towing operation involving the outdoor storage of inoperable vehicles, rebuilding and recycling of vehicles, and vehicle sales lot, considered a junk and salvage yard; and

WHEREAS, on August 14, 2017, by Roll Call No. 17-1362, it was duly resolved by the City Council that the application of Capitol City Towing & Recovery, LLC to rezone the Property, legally described as follows, be set down for hearing on August 28, 2017 at 5:00 p.m. in the Council Chamber at the Municipal Service Center:

Lots 107-110, and the east ½ alley west of and adjoining Lots 107-110, Grays Subdivision, Blocks 50 & 62, Brooks and Cos. Addition, 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-2" Heavy Industrial District, to allow the Property to be used for a towing operation involving the outdoor storage of inoperable vehicles, rebuilding and recycling of vehicles, and vehicle sales lot, considered a junk and salvage yard, 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 10-1 to recommend denial of the requested rezoning of the Property to "M-2" Heavy Industrial District, to allow the Property to be used for a towing operation involving the outdoor storage of inoperable vehicles, rebuilding and recycling of vehicles, and vehicle sales lot, considered a junk and salvage yard.



Roll Call Number

Agenda Item Number

53B

Date August 28, 2017

-2-

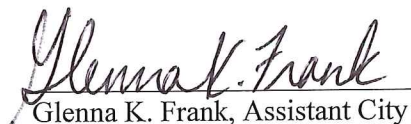
- b. The PlanDSM: Creating Our Tomorrow Plan future land use designation of the Property is Community Mixed Use, which is not in conformance with the proposed Industrial use of the Property as stated above.
- c. If the application of the existing zoning regulations has the effect of denying the owner all economic use of the Property, then the appropriate remedy is to seek relief from the Zoning Board of Adjustment.

Alternative B

MOVED by _____ to continue the public hearing until September 11, 2017, at 5:00 p.m. in the Council Chambers in the Municipal Service 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

(ZON2017-00109)

NOTE: Six affirmative votes are required to approve the proposed rezoning due to the Plan and Zoning 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

August 11, 2017

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from Plan and Zoning Commission regarding request from Capitol City Towing & Recovery, LLC (lessee) represented by Adam Malloy (officer) to rezone property at 915 Southeast 14th Court. The subject property is owned by Arlene Schall.

COMMISSION RECOMMENDATION:

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

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus		X		
Dory Briles	X			
JoAnne Corigliano	X			
David Courard-Hauri	X			
Jacqueline Easley	X			
Jann Freed	X			
John "Jack" Hilmes	X			
Lisa Howard				X
Carolyn Jenison	X			
Greg Jones	X			
William Page				X
Mike Simonson	X			
Rocky Sposato	X			
Steve Wallace	X			
Greg Wattier				X

APPROVAL of Part A) to find the proposed rezoning not in conformance with the existing PlanDSM Creating Our Tomorrow future land use designation; **DENIAL** of Part B) request to amend the existing PlanDSM: Creating Our Tomorrow future land use designation from Public/Semi-Public to Neighborhood Mixed Use; and **DENIAL** of Part C) request to rezone the subject property from "C-2" General Retail and Highway-Oriented Commercial District to "M-2" Heavy Industrial District. (21-2017-4.08 and ZON2017-00109)

Written Responses

2 in Favor

1 in Opposition

STAFF RECOMMENDATION

Part A) Staff recommends that the Commission find the proposed rezoning not in conformance with the existing PlanDSM Creating Our Tomorrow future land use designation.

Part B) Staff recommends denial the request to amend the existing PlanDSM: Creating Our Tomorrow future land use designation from Public/Semi-Public to Neighborhood Mixed Use.

Part C) Staff recommends denial of the requested rezoning the subject property from "C-2" General Retail and Highway-Oriented Commercial District to "M-2" Heavy Industrial District.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The subject property includes a 6,950-square foot commercial building that has been used for auto-repair and storage over the years. Staff understands that the subject towing business currently uses the building for storage and maintenance of their company vehicles. The proposed Land Use Plan amendment and rezoning would allow towed vehicles to be stored on site.
2. **Size of Site:** 160 feet by 132 feet (21,120 square feet or 0.485 acres).
3. **Existing Zoning (site):** "C-2" General Retail and Highway-Oriented Commercial District, "FSO" Freestanding Sign Overlay District and "GGP" Gambling Games Prohibition District.
4. **Existing Land Use (site):** Auto repair shop.
5. **Adjacent Land Use and Zoning:**
 - East** - "M-1"; Use is undeveloped land.
 - West** - "C-2"; Uses are an auto repair business, a used vehicle sales business and a lawn care/landscape contractor business.
 - North** - "C-2"; Use is a contractor business.
 - South** - "C-2"; Use is an auto repair business.
6. **General Neighborhood/Area Land Uses:** The subject property is located along the Southeast 14th Street corridor. Properties along Southeast 14th Street generally consist of commercial uses. The area to the east generally consists of a mix of industrial and commercial uses. The area to the west generally consists of residential uses.

7. Applicable Recognized Neighborhood(s): The subject property is not located in a recognized neighborhood. It is located within 250 feet of the Historic East Village Neighborhood. All neighborhood associations were notified of the meeting by mailing of the Preliminary Agenda on June 30, 2017. Additionally, separate notifications of the hearing for this specific item were mailed on June 30, 2017 (20 days prior to the hearing) and July 10, 2017 (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 and to the neighborhood contract. A Final Agenda for the meetings were mailed to all the recognized neighborhood associations on July 14, 2017. The Historic East Village Neighborhood mailings were sent to Chris LoRang, PO Box 93904, Des Moines, IA 50393.

8. Relevant Zoning History: None.

9. PlanDSM Land Use Plan Designation: The proposed project area is designated as "Community Mixed Use" on the Future Land Use Map.

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 proposed rezoning is not in conformance with the Future Land Use Map designation of "Community Mixed Use". The map must be amended to the "Industrial" designation.

The Plan describes the "Community Mixed Use" category as "small- to medium-scale mixed use development, located on high capacity transit corridors or at the intersection of transportation corridors. Community mixed use area include both a mix of medium density residential and a mix of retail and service establishments designed to attract customers from a large service area encompassing multiple neighborhoods and may include specialty retail that attracts regional customers."

The Plan describes the "Industrial" category as accommodating "industrial development and limited supporting commercial uses. Development in the classification could have a large impact on adjoining properties and the environment which would need to be mitigated.

2. Site Plan Requirements: The proposed change of use would require review and approval of a Site Plan to demonstrate that the site would be brought into conformance with current Site Plan requirements. This would include, but is not limited to, stormwater management, pavement, parking and landscaping.

3. **Traffic Analysis:** The anticipated trip generation by the proposed project is below the threshold for requiring a traffic study.

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation for denial.

Mike Simonson asked how much land to the east of the property is M1 and what is the difference between M-1 and M-2 zoning.

Erik Lundy stated that almost all of the land is zoned M-1. M-1 zoning does not allow for inoperable storage. It does allow for outside storage of contractor's equipment on a paved and dustless durable surface.

Mike Simonson what is triggering their desire for M-2 zoning.

Erik Lundy stated they wish to store more than two vehicles at a time and if they are inoperable, it becomes under the standards of a salvage yard which requires M-2 zoning and to go through the conditional use process. While he acknowledges that a towing business is different than a salvage yard, it currently falls under the same ordinance which would require M-2 zoning and a conditional use.

Kyle Beasley 915 SE 14th Court, stated that he along with his partner, are owners of Capitol City Towing. They started three years ago with each of them owning a truck and they have now built up to six trucks and have nine employees. They did not have a location for their business and are looking to find a location they can call their home. They tow for 74 different companies in the Des Moines area. The problem they have with things is the definition. They are not a salvage yard and there will be no disassembling of vehicles at this location. They do not keep vehicles long term, but rather as a short-term solution when cars have been in an accident until they are moved for repair. He does not believe it changes the fabric of the neighborhood. He gave examples on each side of them is an auto sales and repair with parked cars and then a landscaping company that stores equipment in their parking area. The street is not really maintained and is basically a dead-end street. No one really uses it, but they believe they can improve the look of the area by adding things like landscaping, improving the look of the building, a 20-foot roll gate fence, security lighting and cameras. When they leased this building they were given incorrect information from the owner and now are looking to do things right. The building is perfect for their location and they wish to stay in the Des Moines area to have the ability to bid on Des Moines contracts. They are not a salvage yard and would not keep cars for more than 30 days at most.

Mike Simonson asked why they would keep cars for 30 days.

Kyle Beasley explained the process of obtaining titles for abandoned and impounded vehicles which could take up to 30 days at times.

CHAIRPERSON OPENED THE PUBLIC HEARING

Brandon Long 911 SE 14th Street spoke in opposition to the proposed changes as a neighboring property to the west. Brandon stated his concerns of security risks of housing

repossessed cars and people who would attempt to break into them also coming through their property. He stated concerns with wrecked cars leaking fluids into the ground which would go to the retention pond next to their property and contaminate his area. His main concern though is security and he feels that if the board was to change zoning, others will follow and they don't want this in their area.

Rebuttal

Kyle Beasley responded that they do not repossess cars and no one will be breaking into the area to take their cars. If they are granted the zoning, they plan to install cameras and have it monitored by PerMar security to notify the police if there are security breaches to the property. He also noted that Mr. Long had been using his property for access as well as storing lawn equipment and that is no longer available to him.

Jann Freed asked for clarification of why cars that were impounded could be there for up to 30 days.

Kyle Beasley stated that if they had a car that had been impounded and not picked up in ten days, they would start the process by contacting the Des Moines Police Department, who would then send out a certified letter to the last known owner of the vehicle. Once they have no response from the letter, they send a salvage or junking certificate that allows them to get rid of it to a salvage yard. This process can take up to 30 days.

Jann Freed asked if there was property available on the other side of the street where the zoning is M1 and this type of business would be allowed.

Kyle Beasley stated he had been contacted by another land owner on the other side, but he was only willing to lease and not sell. They have an agreement with the current owner to buy the property if it can be rezoned.

CHAIRPERSON CLOSED THE PUBLIC HEARING

David Courard-Hauri expressed his worry about using permanent rezoning as a remedy for things such as this. Changing from C-2 zoning to M-2 zoning does not conform with the long-term goals of this area.

Mike Simonson asked staff if the applicant had the ability to go to Zoning Board of Adjustment.

Mike Ludwig stated they would go to City Council first. If the zoning is denied they can go to Zoning Board of Adjustment to ask for use variance in a C-2 district. This recommendation tonight will go to the City Council and can take the recommendation and choose to deny the zoning change or if they decided to approve, it would take a 6/7 vote to approve due to the recommendation for denial.

Greg Jones stated that he would hope they would find a way to work this out and encouraged them to keep going through the process. It seems that their use is not heavy and although they do not offer a light M-1, it seems that something could be worked out as they are literally just on the wrong side of the street and this would not change the fabric of area.

Mike Simonson recalled a similar situation many years ago that used a remedy of parking some of the inoperable vehicles inside. It just seems like there should be some way to mitigate needing the M-2 zoning. He reiterated the recommendation that the zoning should stay with the land and not the person, but he encouraged staff to work with the applicant to find a way to make this work without having to change the zoning.

Mike Ludwig stated that staff can look at options.

COMMISSION ACTION:

David Courard-Hauri moved staff recommendation of the following: Part A) The Commission finds the proposed rezoning not in conformance with the existing PlanDSM Creating Our Tomorrow future land use designation. Part B) The Commission recommends denial the request to amend the existing PlanDSM: Creating Our Tomorrow future land use designation from Public/Semi-Public to Neighborhood Mixed Use. Part C) The Commission recommends denial of the requested rezoning the subject property from "C-2" General Retail and Highway-Oriented Commercial District to "M-2" Heavy Industrial District.

THE VOTE: 11-1 (Francis Boggus voted in opposition)

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:ked
Attachments

53B

ITEM 4B

Capitol City Towing & Recovery, LLC (lessee) represented by Adam Malloy (officer) for property at 915 Southeast 14th Court. The subject property is owned by Arlene Schall.0				File # 21-2017-4.08	
Description of Action	Amend the existing PlanDSM Creating Our Tomorrow future land use designation from Community Mixed Use to Industrial.				
PlanDSM Future Land Use	Current: Community Mixed Use. Proposed: Industrial.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	"C-2" General Retail and Highway-Oriented Commercial District and "FSO" Freestanding Signs Overlay District.				
Proposed Zoning District	"M-2" Heavy Industrial District and "FSO" Freestanding Signs Overlay District..				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Subject Property	2	1			
Outside Area (200 feet)					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	X		No	

Capitol City Towing & Recovery, LLC, 915 Southeast 14th Court

21-2017-4.08



1 inch = 93 feet

Item C

Capitol City Towing & Recovery, LLC (lessee) represented by Adam Malloy (officer) for property at 915 Southeast 14th Court. The subject property is owned by Arlene Schall.			File # ZON2017-00109	
Description of Action	Rezoning of property from "C-2" General Retail and Highway-Oriented Commercial District to "M-2" Heavy Industrial District, to allow the property to be used for a towing operation involving the outdoor storage of inoperable vehicles, rebuilding/recycling of vehicles, and vehicle sales lot, considered a junk and salvage yard.			
PlanDSM Future Land Use	Current: Community Mixed Use. Proposed: Industrial.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"C-2" General Retail and Highway-Oriented Commercial District and "FSO" Freestanding Signs Overlay District.			
Proposed Zoning District	"M-2" Heavy Industrial District and "FSO" Freestanding Signs Overlay District..			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Subject Property	2	1		
Outside Area (200 feet)				
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes
	Denial	X		No

Capitol City Towing & Recovery, LLC, 915 Southeast 14th Court

ZON2017-00109



Item ZKON2017-00109 Date 7-13-17

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

(Circle One)
RECEIVED
 COMMUNITY DEVELOPMENT

Print Name ARLENE SCHALL
 Signature arlene m. schall
 Address 2321 S-E 8th St.

JUL 18 2017

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

Item ZKON2017-00109 Date 7-12-17

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

(Circle One)
RECEIVED
 COMMUNITY DEVELOPMENT

Print Name JAMES KOENIG-KOENIG ENG.
 Signature Jim Koenig
 Address 1425 Madison St.

JUL 18 2017

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

Lundy, Erik M.

From: Drost, Bert A.
Sent: Wednesday, July 05, 2017 2:44 PM
To: Lundy, Erik M.
Subject: FW: 915 SE 14th Court Zoning Request

From: SCOTT S DURHAM [mailto:SCOTTD1012@msn.com]
Sent: Wednesday, July 05, 2017 9:29 AM
To: Drost, Bert A.
Subject: 915 SE 14th Court Zoning Request

NOT IN IMPACTED AREA

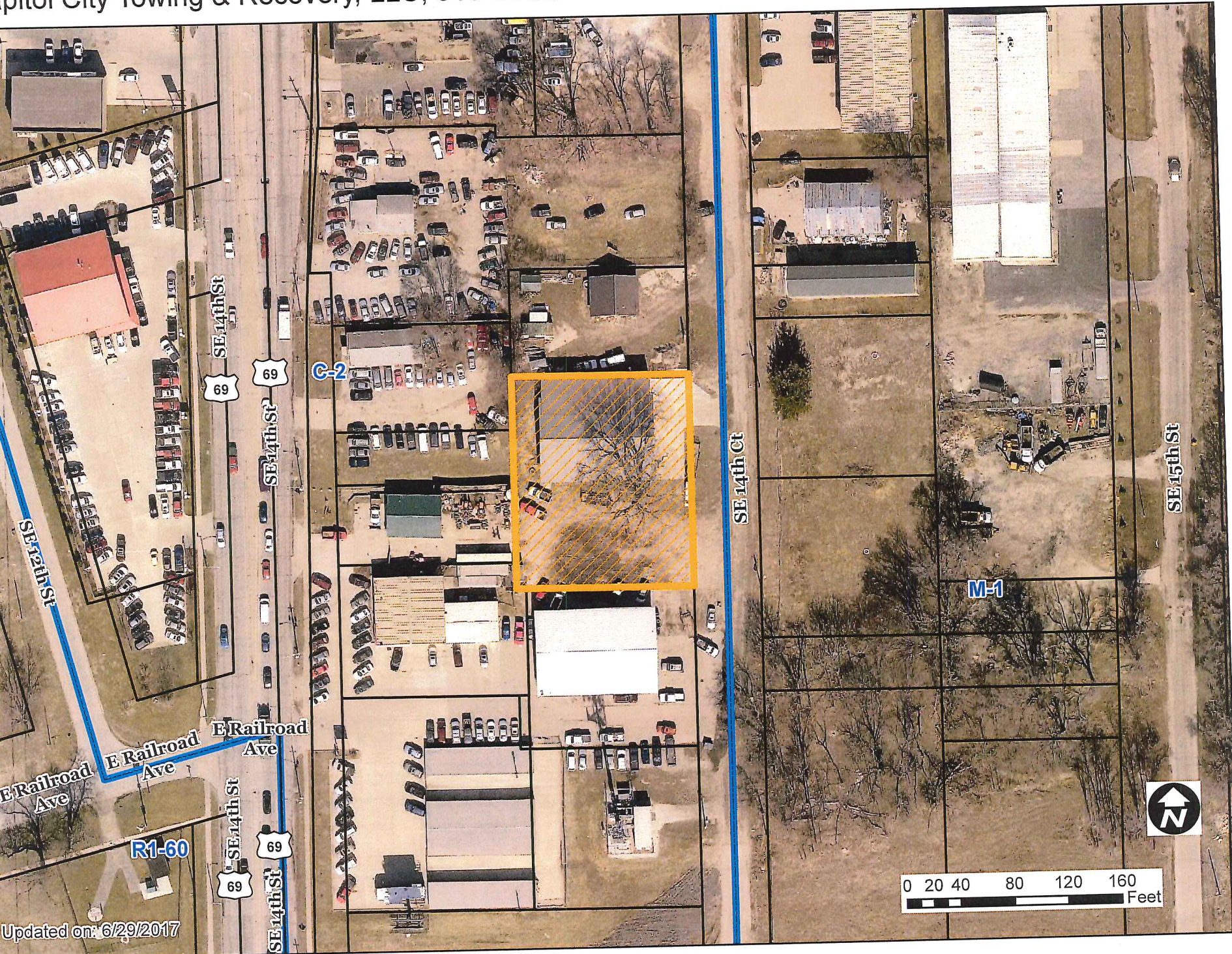
Bert,

As a Co-Owner of Ralph N. Smith, Inc., located at 714 SE 15th Street, I would like to express our strong opposition to the Change in Zoning Request for the property located at 915 SE 14th Court to allow Salvage Yard type of operations. With all of the recent positive changes in the area, we feel that this would be a major set back.

Please take our opposition of this request into consideration.

Scott

Scott Durham
Ralph N. Smith, Inc.
714 SE 15th Street
Des Moines, Iowa 50317
515-288-6741 X 13
515-238-6552 Cell





53B