

.....
Date April 7, 2008.....

WHEREAS, on March 24, 2008 by Roll Call. No. 08-484, it was duly resolved by the City Council that the application of Everett Kenoyer, to rezone certain property owned by Kenoyer & Associates and located in the vicinity of 1721 Keosauqua Way, more fully described below, be set down for hearing on April 7, 2008, at 5:00 p.m. in the Council Chambers at City Hall; and

WHEREAS, due notice of said hearing was published in the Des Moines Register on March 28, 2008, as provided by law, setting forth the time and place of hearing on said proposed amendment to the Zoning Ordinance; 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; and

WHEREAS, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone the following described property:

South 63 Feet of Lot 12 and vacated alley 8 Feet South of and adjoining Garden Addition; and West 40 Feet of Lot 168 Keosauqua Way Plat 5; and all of vacated 18th Street between Carpenter and Keosauqua Way, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa (herein the "Property")

from the R1-60 District to a Limited C-1 District classification, subject to the following conditions which are agreed to and accepted by execution of an Acceptance of Rezoning Ordinance in writing by all owners of said property and is binding upon the owners and their successors, heirs and assigns as follows:

- A. The following uses of structures and land shall be prohibited upon the Property:
 - (1) Package goods stores for the sale of alcoholic beverages.
 - (2) Pawn shops.
 - (3) Upholstery shops.
 - (4) Financial institutions which have as a principal component of their business the issuance of loans based on collateral of checks, future payroll or vehicles titles.

- B. There shall be no vehicular access to the Property and Carpenter Avenue.

.....
Date April 7, 2008

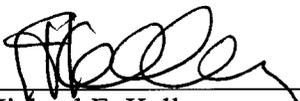
- C. Any retaining wall constructed on the Property over four feet in height shall be designed and approved by a professional engineer.

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, statements of interested persons and arguments of counsel, the objections to the proposed rezoning of the Property to a Limited C-1 District is hereby overruled, and the hearing is closed.
2. The proposed rezoning is hereby found to be in conformance with the Des Moines 2020 Community Character Land Use Plan.

Moved by _____ to adopt and approve the rezoning, subject to final passage of the rezoning ordinance

APPROVED AS TO FORM:



 Michael F. Kelley
 Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
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

March 24, 2008

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 March 6, 2008, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
David Cupp	X			
Shirley Daniels	X			
Dann Flaherty				X
Bruce Hellman				X
Jeffrey Johannsen	X			
Greg Jones	X			
Frances Koontz	X			
Kaye Lozier				X
Jo Anne Corigliano	X			
Brian Millard	X			
Mike Simonson	X			
Kent Sovern	X			
Tim Urban				X
Marc Wallace	X			

APPROVAL of a request from Kenoyer and Associates (owner) represented by Everett Kenoyer (officer) to vacate and convey 18th Street between Carpenter Avenue and Keosauqua Way subject to provision of easements for any existing utilities. (11-2008-1.02)

By same motion and vote members moved to rezone subject property from "R1-60" One-Family Low-Density Residential District to "C-1" Neighborhood Retail District to allow for development of the property for mixed office and residential use subject to the following:

- applicant accepts the condition prohibiting the use of packaged goods stores for the sale of alcoholic beverages, pawn shops, upholstery shops, and financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles;
- there be no access to Carpenter from the subject property or parking;
- retaining wall be properly designed and approved by a licensed civil engineer. (ZON2008-00019)

Written Rezoning Responses

3 In Favor

1 In Opposition

This item will not require a 6/7 vote of City Council.



CITY PLAN AND ZONING COMMISSION
ARMORY BUILDING
602 ROBERT D. RAY DRIVE
DES MOINES, IOWA 50309-1881
(515) 283-4182

ALL-AMERICA CITY
1948, 1976, 1981
2003

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Part A) Staff recommends approval of the requested vacation and conveyance subject to provision of easements for any existing utilities.

Part B) Staff recommends that the Commission find the staff recommended rezoning to the "C-1" District in conformance with the Des Moines' 2020 Community Character Plan.

Part C) Staff recommends approval of the requested rezoning to "C-1" Neighborhood Retail District subject to the applicant accepting the condition prohibiting the use of packaged goods stores for the sale of alcoholic beverages, pawn shops, upholstery shops, and financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to acquire the adjoining right-of-way and rezone the resulting parcel to "C-2" General Retail and Highway-Oriented Commercial District to allow reuse of the existing structure with 1,500 square feet of office use on the lower level and two dwelling units on the upper level. The proposed use of the property would be permitted in the "C-1" Neighborhood Retail Commercial District. Therefore, staff recommends that the property be rezoned to "C-1" District instead of the requested "C-2" District since there are uses permitted in the "C-2" District that staff would find not compatible with adjoining residential uses, such as adult entertainment businesses, vehicle display, taverns and nightclubs, off-premises advertising signs, and garages for general motor vehicle repair.

Any reuse of the structure for a commercial use would be subject to review and approval of a site plan by the Permit and Development Center. Construction of required off-street parking would likely require substantial excavation and construction of retaining walls due to the sloped terrain of the property.

2. **Size of Site:** 1721 Keosauqua Way – 0.09 acre. Alley vacation – Approximately 0.19 acre (generally measuring 55' x 153').
3. **Existing Land Use (site):** Undeveloped street right-of-way and an unoccupied two-story commercial structure that is constructed up to the front property line adjoining Keosauqua Way.

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

North – "R1-60"; Use is single-family residential.

South – "C-2"; Use is Keosauqua Way.

East – "C-2" & "R1-60"; Uses are Action Electric and single-family residential.

West – "C-2"; Use is an undeveloped parcel.

5. **General Neighborhood/Area Land Uses:** The subject property is located on the north side of Keosauqua Way between University Avenue and 19th Street. The immediate area includes commercial uses along Keosauqua Way with low-density residential to the north.

6. **Applicable Recognized Neighborhood(s):** King Irving Neighborhood.
7. **2020 Community Character Land Use Plan Designation:** Commercial: Pedestrian-Oriented Commercial Corridor.
8. **Applicable Regulations:** The Commission 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.

The Commission also reviews all proposals to amend zoning regulations or zoning district boundaries 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 recommend that certain conditions be applied to the subject property if the property owner agrees in writing, prior to the City Council Hearing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Site Plan Review:** Future reuse of the property would be subject to review and approval of a site plan by the Permit and Development Center. The site plan must demonstrate compliance with the City's storm water management, landscaping and buffering requirements. The City's Landscaping Standards generally require the following:
 - *20% open space with a minimum of 1 overstory deciduous tree, 1 evergreen tree and 1 shrub for every 2,500 square feet of required open space.*
 - *10'-wide bufferyards along property lines that adjoin a "R" District or residential use with a 6'-tall, 75% opaque fence or wall, and 2 overstory trees and 6 evergreen trees per 100 lineal feet of property line.*
 - *1 overstory tree and 3 shrubs must be provided along the perimeter of parking lots for every 50 lineal feet of frontage.*
2. **Natural Features:** The requested right-of-way slopes steeply to the west. Future construction of an off-street parking lot would require significant grading due to the topography of site. A few mature trees are scattered around the perimeter of the site.
3. **Utilities:** Easements must be provided for any existing utilities, including a 10-inch sanitary sewer line running north/south buried within the 18th Street right-of-way.
4. **Street System:** Elimination of the 150'-long segment of undeveloped 18th Street right-of-way would have no impact on the street network. It is highly unlikely that this segment of 18th Street would ever be constructed due to the change in topography and to the close proximity to the major intersection of Keosauqua Way and 19th Street.
5. **Access or Parking:** The proposed reuse of the site would require a total of 7 off-street parking spaces, as 1,500 square feet of office use would require 4 spaces (1 per 400 square feet) and two dwelling units would require 3 spaces (1.5 per unit). The submitted site sketch demonstrates an off-street parking lot with 7 spaces would fit on the subject property if the adjoining 50-wide 18th Street right-of-way is incorporated into the site. Future construction of an off-street parking lot would require significant grading due to the topography of site.
6. **2020 Community Character Plan:** The proposed zoning request for "C-2" is compatible with the Pedestrian-Oriented Commercial Corridor future land use designation. However, since the proposed use of the property would be permitted in the "C-1" Neighborhood Retail Commercial

District, staff recommends the property be rezoned to "C-1" rather than the requested "C-2" District since there are uses permitted in the "C-2" District that staff would find not compatible with adjoining residential uses, such as adult entertainment businesses, vehicle display, taverns and nightclubs, off-premises advertising signs, and garages for general motor vehicle repair.

Because of the need to protect surrounding residential property, certain uses permitted in the "C-1" District may not be appropriate. Staff recommends that a condition be accepted by the applicant prohibiting the use of packaged goods stores for the sale of alcoholic beverages, pawn shops, upholstery shops, and financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles.

SUMMARY OF DISCUSSION

Mike Ludwig: Presented staff report and recommendation. Noted the response received in opposition was concerned about the parking for the property and did not want the business if there was commercial use on the property that would use their parking. Explained the subject site could be reconfigured to accommodate parking. Noted staff would suggest an easement be retained for access to the subject parcel via an existing driveway on the property to the north.

David Cupp: Asked if there were any utilities running through the area. Questioned what the plan is for the area of 18th Street currently being used for parking.

Mike Ludwig: Explained they would have to relocate the utilities or the utilities would be abandoned at the time of the redevelopment.

Tim Urban: Asked if the right-of-way being vacated is a continuous grade right-of-way. Questioned whether the existing right-of-way could be used for a parking area where they could have ingress only off Keo and egress out of Carpenter.

Mike Ludwig: Noted there is a hill in the middle of the right-of-way so it would be difficult to use the existing grade to provide parking for the use. To provide accessible parking they must provide an acceptable route to the building.

Tim Urban: Asked if the grade level would be up one level so it would access the second floor of the building. Excavating all the way down to the first floor would leave an exposed foundation wall along the north side of the building. Suggested if a driveway was being proposed on the far west edge of the parking lot it would be conceivable for them to traverse up a grade and put the parking level with the 2nd story with stairs down into the first level without having to make a severe cut into the property.

Mike Ludwig: Noted the drawing is conceptual and whether they excavate or keep it up at grade they have to comply with the building code when they come in with the renovation and will have to go through the site plan review process. There are plenty of opportunities for review to ensure the wall is secure. Noted they would have to hire an engineer to design the site plan for them. Indicated a site plan would be administrative only and would not return to the Commission for review.

Everett Kenoyer, 1183 Warren Avenue, Cumming, Iowa: Noted he had no intention of cutting the back way down, just needed access to come off the existing alley for parking. Explained with the water lines that are there, they can go down about 2 ½ to 3 feet. Also explained they ruled out having any adult book stores, car lots or anything of that nature so a C-1 is fine if that would work. Currently part of the building is commercial and part is residential. He has done a lot of work on the inside and put the new e.i.f.s. on the outside and was going to do it as residential with the front

commercial but was told the front would have to have a sprinkler system which would require a 4" main water line. His sole purpose is that the man he was named after built the building and when he found out it was for sale he decided he'd liked to renovate it. Whatever he can do he just wants to get it done and he has a July 1st deadline. He will get an engineer working on it when he knows what the zoning is.

Tim Urban: Asked if the second floor has been renovated for apartments.

Everett Kenoyer: Noted it was set up for five units and he converted it for two residential units and the proposal for the first floor was for his office space but would want his son to be able to rent it out and was going to try to incorporate the corner as a little park or something.

David Cupp: Asked if they would dig out the back where the retaining wall is or where the parking would be.

Everett Kenoyer: Just wants to tear out the wall and put a better wall in and it would take part of the alley easement to put the parking in.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one in the audience to speak in favor of this item.

The following individuals spoke in opposition:

Don Mayberry, 1512 Carpenter, member of King Irving Neighborhood Association: Originally concerned that it was going to change everything to a C-2 but he could live with the C-1 after hearing the applicant's plans. Noted 18th is not an alley it is the continuation of 18th Street and all it needs is blacktop. The neighborhood action plan mentioned that but the City forgot to blacktop it. It is a successful way to Keo since they fixed Carpenter and put the median in. The 18th Street extension blacktopped would make access for southbound on Keo better. Need improvement in the area but wanted the zoning to be C-1 not C-2 because they don't want bars or gas stations or anything that would be disruptive to the neighborhood.

Joanne Muldoon, 1338 18th Street: Expressed concern for the unimproved portion of 18th Street being completely vacated because it is utilized by people to get onto Keo. Also concerned that if there would be egress onto Carpenter traffic would be increased. The area has been down-zoned to R-1 and they don't want more traffic since they are trying to move toward less density and keep the single family homes as they are.

David Cupp: Suggested the City never paved the unimproved portion of 18th Street because it is practically impossible to use it in the winter. There are a lot of kids in the neighborhood that run across the street because they don't recognize it as a city street.

Tim Urban: Noted the schematic plan shows the parking lot would not have any access to the north, but the means of getting to Keo would be to go west on Carpenter and down from the north and asked if that would be a problem.

Joann Muldoon: Noted to go west on Carpenter requires going the wrong way on Keo because of the median. They would have to go up to MLK to University back down to get to Keo. Indicated there is an entrance onto Keo going down 16th to Linn and there is a very steep road that offers access down to Keo. There is access to go either way.

Mike Ludwig: Noted there is right-of-way but there is not a street. The drive that is shown goes on private property and there is a ridge in the middle of the right-of-way. The access people have been using to get to Keo Way is on private property.

Joann Muldoon: Would be opposed to vacating the right-of-way to the extent that they could put egress onto Carpenter.

Mike Ludwig: Noted the applicant is not proposing egress onto Carpenter and explained the Commission could place a condition on the motion that there not be commercial access to Carpenter.

Tim Urban left the meeting at 7:14 p.m.

Lori Mease, 5847 NE 6th Street: Noted she owns the property to the east of the subject property and owns Action Electric, which occupies the building at 1717 Keo. Noted she and her husband do not want to see C-2 on the subject property and they are concerned about the parking. Explained while the applicant is working on the subject building they use their parking. Noted they also have a retaining wall on their building and all of their building is under ground. Indicated if the applicant was going to do anything to affect the retaining wall she would be concerned that it would affect theirs. Also expressed concern for prostitution outcall and alcohol and would want to be sure there were good tenants next door. They are more comfortable since the applicant is planning on C-1 zoning and 7 parking spaces.

Fran Koontz: Believed the applicant would choose suitable tenants.

Mary Bowman, 1720 Carpenter: Lives right next to the subject property. Noted the 18th street alley is used a lot even though the city does not maintain it. Explained she uses that access to get to Keo Way downtown. Did not have a problem with the applicant improving his property as long as the retaining wall would be sturdy and would not change her property in any way. She feared erosion if the retaining wall is not sturdy enough. Her concerns were relieved with the Commission's reassurances.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Fran Koontz: Moved staff recommendation.

Larry Hulse: Suggested two additional things for consideration: no access to Carpenter and have the retaining wall properly engineered.

Fran Koontz: Agreed.

Mike Ludwig: Noted to prevent access from the commercial to Carpenter it should be assumed the access south to Keo would no longer be available.

Fran Koontz: Agreed.

Leisha Barcus: Questioned if the access was a necessary condition; did not think the parking would increase traffic onto Carpenter.

Larry Hulse: Did not think it would, particularly when the little section is vacated and not used again. Explained the building would be oriented to Keosauqua and the access to their parking will be from Keosauqua so the proposal is in line with some of the concerns that were mentioned. Explained the need for the comment in the motion was because when someone else buys the

property and redevelops it under the zoning, the building is removed and something else goes on the drive could be run that way.

Motion passed 11-0.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael G. Ludwig". The signature is stylized and cursive.

Michael G. Ludwig, AICP
Planning Administrator

MGL:dfa

cc: File

Request from Kenoyer and Associates (owner) represented by Everett Kenoyer (officer) to rezone property located at 1721 Keosauqua Wa.		File # ZON2008-00019			
Description of Action	Rezone property from "R1-60" One-Family Low-Density Residential District to Limited "C-2" General Retail and Highway Oriented Commercial District to allow for development of the property for mixed office and residential use.				
2020 Community Character Plan	Commercial: Pedestrian-Oriented Commercial Corridor				
Horizon 2025 Transportation Plan	No Planned Improvements				
Current Zoning District	"R1-60" One-Family Low-Density Residential District and "C-2" General Retail and Highway-Oriented Commercial District				
Proposed Zoning District	Limited "C-2" General Retail and Highway-Oriented Commercial District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area					
Outside Area	3	1	0	<20%	
Plan and Zoning Commission Action	Approval	11-0	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Kenoyer and Associates - 1721 Keosauqua Way

ZON2008-00019



Item 2008 00019

Date 2/27/08

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

RECEIVED
(Circle One)

FEB 29 2008

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Print Name GREATER DSM HABITAT F

Signature Jason Elstern

Address 1611 CARPENTER AVE.

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

Item 2008 00019

Date 2-27-08

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

RECEIVED
(Circle One)

FEB 27 2008

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Print Name JEFFREY C. BRANTLEY

Signature Jeffrey C. Brantley

Address 1700 KOSKONGUA

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

GOOD WITH IN THE NEIGHBORHOOD !!

Item 2008 00019 Date 2-27-08

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

RECEIVED

FEB 27 2008

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Print Name PATRICIA MAYBERRY

Signature Patricia Mayberry

Address 1714 CARPENTER 50314

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

The building will no longer be Empty
and will make the ^{Neighborhood} ~~Street~~ look
better.

Item 2008 00019

Date 2.27.08

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

(Circle One)

RECEIVED

Print Name RANDY + LORI MEASE

Signature Randy Mease

FEB 29 2008

Address 1717 KEO WAY

COMMUNITY DEVELOPMENT
DEPARTMENT

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

THERE IS NOT ADEQUATE PKG FOR ANY
TYPE OF COMMERCIAL ZONING AT
1721 KESAVUA WAY. I DO NOT WANT
THEM PARKING IN OUR LOT. THERE'S NO
PARKING ON THE STREET.