

.....
Date April 10, 2006
.....

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on March 16, 2006, its members voted 12-0-1 in support of a motion to recommend **DENIAL** of a request from Jeff and Julie Ries (owners) to rezone property located at 334 East Park Avenue from "R1-70" One-Family Low-Density Residential District to "C-1" Neighborhood Retail Commercial District to allow for use of an existing accessory structure as a retail shop for youth all-terrain vehicle (ATVs) and motorcycles.

Subject property is more specifically described as follows:

Lots 448, 449 & the West 5 feet of Lot 450, Crawford Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. That the meeting of the City Council at which the proposed amendment is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. on April 24, 2006, at which time the City Council will hear both those who oppose and those who favor the proposal.
2. That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

MOVED by _____ to adopt.

(Continued)

★ **Roll Call Number**

Agenda Item Number
25

Date April 10, 2006

-2-

FORM APPROVED:

Roger K. Brown
Roger K. Brown
Assistant City Attorney

(ZON2006-00021)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BROOKS				
COLEMAN				
KIERNAN				
HENSLEY				
MAHAFFEY				
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

April 10, 2006

Date _____

Agenda Item 25

Roll Call # _____

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 16, 2006, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 12-0-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
David Cupp			X	
Shirley Daniels	X			
Dann Flaherty				X
Bruce Heilman				X
Jeffrey Johannsen	X			
Greg Jones	X			
Frances Koontz	X			
Kaye Lozier	X			
Brian Meyer	X			
Brian Millard	X			
Brook Rosenberg	X			
Mike Simonson	X			
Kent Sovern	X			
Tim Urban	X			
Marc Wallace	X			

DENIAL of a request from Jeff and Julie Ries (owners) to rezone property located at 334 East Park Avenue from "R1-70" One-Family Low-Density Residential District to "C-1" Neighborhood Retail Commercial District to allow for use of an existing accessory structure as a retail shop for youth all-terrain vehicle (ATVs) and motorcycles. (ZON2006-00021)

By same motion and vote, members recommended **DENIAL** of a request to amend the Des Moines 2020 Community Character Land Use Plan future land use designation from Low Density Residential to Commercial: Pedestrian-Oriented, Commercial Node for property located at 334 East Park Avenue, as more specifically shown in the accompanying map. (21-2006-4.04)

Written Responses

2 In Favor
4 In Opposition

This item would not require a 6/7 vote by City Council due to opposition.



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

ALL-AMERICA CITY
1949, 1976, 1981
2003

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Part A) Staff recommends that the Commission find the requested rezoning not in conformance with the Des Moines' 2020 Community Character Plan future land use designation.

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

Part C) Staff recommends denial of the requested rezoning to "C1" Neighborhood Retail Commercial District.

STAFF REPORT

I. GENERAL INFORMATION

- 1. Purpose of Request:** The applicant is seeking to convert an existing accessory structure on the property to a retail business operation for the sale of ATVs, motorcycles and related accessories. While there is provision where a Special Permit may be requested from the Board of Adjustment for limited home occupation use, the Zoning Ordinance does not allow for retail sales as part of any home business. Therefore the applicant is requesting a change to a commercial zoning designation.
- 2. Size of Site:** 1.1 acres (47,897 square feet)
- 3. Existing Zoning (site):** "R1-70" One-Family Low-Density Residential District with "GGP" Gambling Games Prohibition Overlay District.
- 4. Existing Land Use (site):** Single-family dwelling with a 13' x 22' (286 square foot) accessory garage and an 30' x 40' (1200 square foot) accessory utility building.
- 5. Adjacent Land Use and Zoning:**
 - North** – "R1-70" with "GGP" Overlay, Uses are single-family dwellings.
 - South** – "R1-70", Uses are single-family dwellings.
 - East** - "R1-70" with "GGP" Overlay, Uses are single-family dwellings.
 - West** - "R1-70" with "GGP" Overlay, Uses are single-family dwellings.
- 6. General Neighborhood/Area Land Uses:** The surrounding neighborhood consists primarily of one and two-family dwellings, with smaller lots south of East Park Avenue compared to the larger lot sizes on the north side.
- 7. Applicable Recognized Neighborhood(s):** Indianola Hills Neighborhood Association.
- 8. Relevant Zoning History:** On March 18, 1986, the Zoning Board of Adjustment granted an Exception to the building height limitation for the 30' x 40' accessory structure. The applicant mentioned in discussion with staff that there may be some previous commercial use rights granted to the property. However staff was not able to find any evidence of such in research of occupancy and zoning records.
- 9. 2020 Community Character Land Use Plan Designation:** Low Density Residential.

- 10. Applicable Regulations:** The Commission reviews all proposals to amend the City comprehensive plan. Such amendments must be made pursuant to Section 82-77 & Section 82-78 of the City Code. After at least one public hearing, the Commission shall make a recommendation that will be forwarded to the City Council.

The Commission reviews all proposals to amend zoning boundaries or regulations within the City of Des Moines. Such amendments are made pursuant to Section 134-4 of the City Code and 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. Drainage/Grading:** Any commercial use of the property is subject to compliance with the storm water management requirements contained in the site plan policies. However, the proposed use is not likely to create enough new impervious surface to trigger any improvements under those policies. Any site improvements would still be required to demonstrate that any generated storm water volumes are directed away from adjoining private property.
- 2. Neighborhood Environment:** The surrounding neighborhood of the subject property is a homogenous community of low-density residential use. Staff believes that allowing a specialized destination type retail use in this location will negatively disrupt the existing character of the neighborhood. There is particular concern regarding the noise impacts that might be associated with a business involving ATVs and motorcycles.
- 3. Landscaping & Buffering:** As part of a required site plan for any business conducted on the subject property, the applicant will be required to comply with landscaping for all off-street parking areas as well as open space and buffer yard requirements that are applicable to "C-1" Districts. These will likely involve a buffer yard consisting of screen fencing and plantings surrounding the commercial area where it adjoins residential properties.
- 4. Traffic/Street System:** The subject property is located on a street that serves as a collector within the surrounding street network. Collectors normally carry a higher volume of traffic than a local residential street. Traffic and Transportation staff has not expressed any concern about the ability of East Park Avenue to accommodate expected traffic volumes from the proposed business. However, staff believes that the expected traffic increase will have some level of negative impact on the existing character of traffic in the immediate surrounding neighborhood.
- 5. Access or Parking:** Any business will be required to meet a minimum number of spaces and minimum development standards for off-street parking as part of any Site Plan. The proposed retail use would require a minimum of one space per 400 square feet of structures devoted to that commercial use. Based on the existing 1200 square foot building a minimum of four spaces would be required for the business. Under the proposed scenario, expansion of the paved area on the property may be required to accommodate necessary maneuvering and two-way access.
- 6. 2020 Community Character Plan:** In order to allow for rezoning to a commercial designation, the applicant has requested amendment to the future land use designation in the Des Moines' 2020 Community Character Plan to a Commercial: Pedestrian-Oriented, Commercial Node. This is the smallest scale of future commercial designation that can be applied to the subject property.

While rezoning to "C-1" will allow for uses that could generally serve the immediate surrounding neighborhood, the proposed use is of a nature that will serve primarily destination clientele. Staff believes that there is a sufficient amount of commercial property within a reasonable distance to adequately serve the surrounding neighborhood's retail needs. Furthermore staff does not find evidence that justifies demand for additional property to be designated for future commercial use in support of the surrounding neighborhood.

The Des Moines' 2020 Community Character Plan addresses land use transitions on pages 74 - 77 and calls for new commercial and institutional uses to be located along major corridors in order to avoid impacts and potential nuisances that may be imposed on adjacent residential areas. It further states that it is inappropriate to introduce commercial traffic into or through a residential area. Based on this section of the Plan, staff believes that injecting commercial use amongst a primarily low density residential use will unduly impact the general welfare of the surrounding residential neighborhood.

SUMMARY OF DISCUSSION

David Cupp abstained from discussion and voting on this item.

Erik Lundy: Presented staff report and recommendation. Explained since there is a land use amendment for consideration, 2/3 of the Commissioners present would have to be in favor of the request in order for the Comprehensive Plan to be amended.

Brian Millard: Asked if the request did not pass, if they would have relief before the Zoning Board of Adjustment.

Erik Lundy: Noted they could go before the BOA with a request for a use variance. Noted the current rezoning request would require site plan approval, which would have to return to the Commission.

Jeffrey Ries, 334 E. Park Avenue: Would like to use the existing facility they have to get their business up and running. Have upgraded their home and five others in the neighborhood. Held neighborhood meeting and the President and Second Vice President of Indianola Hills Neighborhood Association were in attendance and expressed concern for flow of traffic and increased noise. After a demonstration of the products they would sell, the neighborhood representatives were surprised by how quiet the ATVs are.

Mike Simonson: Expressed concern that zoning applies to the land, not with the current owner and would therefore not be able to support the request.

Jeffrey Ries: Explained they would not be moving and would be amenable to a temporary rezoning that would drop off if they sold the property, if there were such a thing.

Mike Ludwig: Noted a temporary zoning option does not exist.

CHAIRPERSON OPENED THE PUBLIC HEARING

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

CHAIRPERSON CLOSED THE PUBLIC HEARING

Brian Millard: Moved staff for denial and commented the applicant could go to the Board of Adjustment with an application for a use variance. The Board's approval could include a sunset clause that the use would go away in a number of years or when transferred to someone else.

Marc Wallace: Noted the request would create a spot-zoning and rezoning it would allow future owners to do whatever they wanted to.

Motion passed 12-0-1 for denial of the request (David Cupp abstained).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mike L.", written in a cursive style.

Michael Ludwig, AICP
Planning Administrator

MGL:dfa

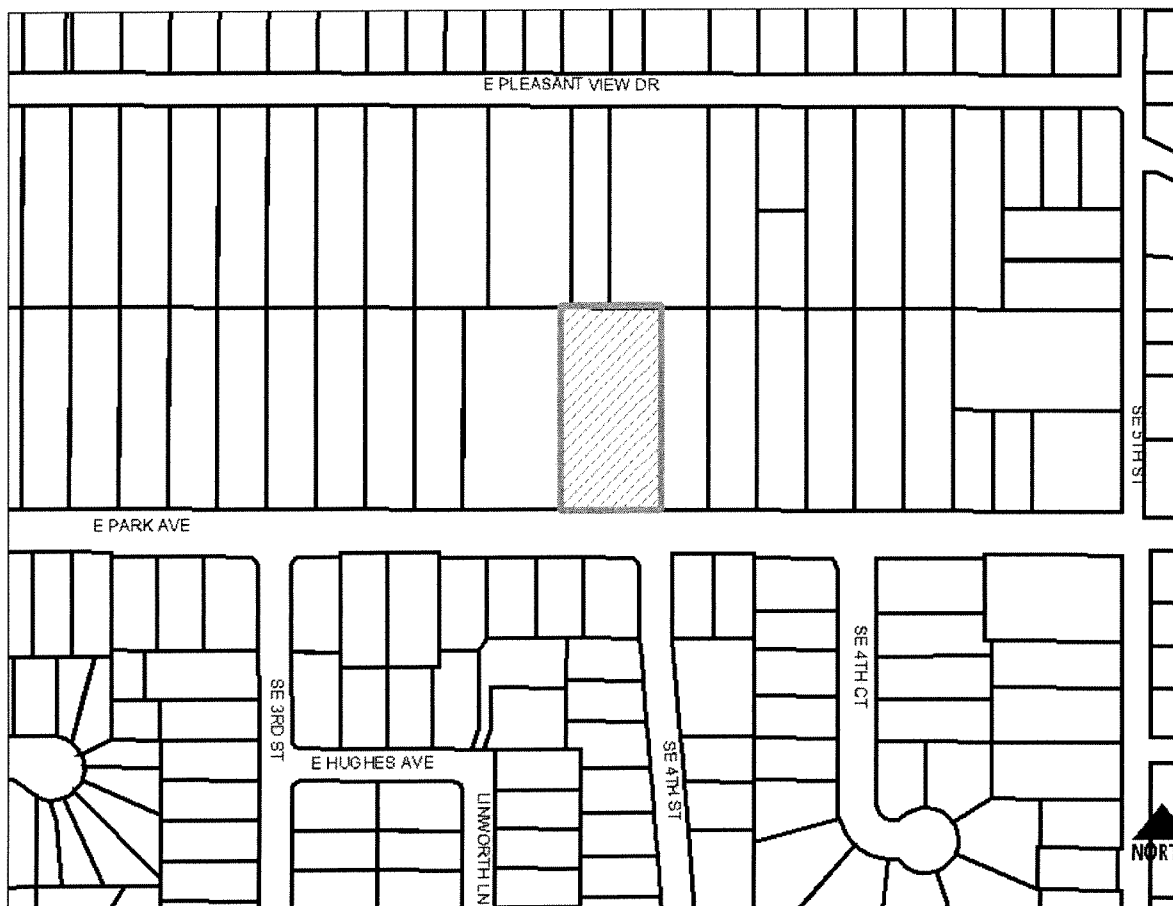
Attachment

25

Request from Jeff and Julie Ries (owners) to rezone property located at 334 East Park Avenue:		File #			
		ZON2006-00021			
Description of Action	Rezone property from "R1-70" One-Family Low-Density Residential District to "C-1" Neighborhood Retail Commercial District to allow for use of an existing accessory structure as a retail shop for youth all-terrain vehicle (ATVs) and motorcycles.				
2020 Community Character Plan	Low-Density Residential				
Horizon 2025 Transportation Plan	Park Avenue from Valley Drive to SE 14 th Street widen from 2 lane undivided to 3 lane undivided				
Current Zoning District	"R1-70" One-Family Low-Density Residential District				
Proposed Zoning District	"C-1" Neighborhood Retail Commercial District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area					
Outside Area	2	7	0	<20%	
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	12-0-1		No	

Jeff Ries - 334 E Park Avenue

ZON2006-00021



Item ZON2006-00021

Date 03/08/06

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

(Circle One)

RECEIVED

MAR 13 2006

COMMUNITY DEVELOPMENT DEPARTMENT

Print Name Timothy Mulcahy

Signature T Mulcahy

Address 626 35th St DSN (Property at 3201 SE 4th)

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

The tenants in my property were in approval of the plan.

Item ZON2006-00021

Date 3-10-06

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

(Circle One)

RECEIVED

MAR 14 2006

COMMUNITY DEVELOPMENT DEPARTMENT

Print Name Barbara J. Brebke

Signature Barbara J. Brebke

Address 675 71st St.

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

My mother's Property at 400 SE Park Ave. is also in my name.

Item ZON 2006-00021 Date 3-7-06.

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

RECEIVED
MAR 10 2006
COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name Karen Vonnahme

Signature Karen Vonnahme

Address 320 East Park Ave
Des Moines IA 50315

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

Park Ave is already a busy street. This
would create even more traffic. Also, I
already hear ATVs running in that yard &
I'm assuming w/ the business this will
only increase. I feel they've already done
this w/out notice as some ATVs were on the
front lawn for sale when I drove by one day.

Item ZON 2006-00021 Date 3-7-06

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

RECEIVED
MAR 10 2006
COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name Wendell Beck Barbara Beck

Signature Wendell Beck Barbara Beck

Address 339 E. Park Ave.

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

Want to remain a neighborhood of families - not businesses
Creating extra traffic and noise.

Item ZON2006-00021

Date 030906 25

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

RECEIVED

MAR 14 2006

COMMUNITY DEVELOPMENT DEPARTMENT

Print Name SARAH L. SEXTON

Signature Sarah Sexton

Address 403 E. PARK AVE.

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

Item ZON2006-00021

Date 3/11/06

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

RECEIVED

MAR 14 2006

COMMUNITY DEVELOPMENT DEPARTMENT

Print Name ANTHONY J. CALARO

Signature Anthony J. Calaro

Address 3225 SE 14th STREET

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

MR. & MRS. RIES HAVE BEEN SELLING USED CARS & TRUCKS, USED MOTORCYCLES & ATV'S, OUT OF THEIR FRONT YARD, ILLEGALLY, FOR SEVERAL YEARS, AND GETTING AWAY WITH IT. (MAYBE EVEN A BOAT OR TWO) IF THEIR REQUEST IS APPROVED, THEY WILL PROBABLY START SELLING TRACTOR TRAILORS OUT OF THEIR FRONT YARD.

Item ZON2006-00021 Date 3-19-06
DES MOINES IA 503

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

(Circle One)



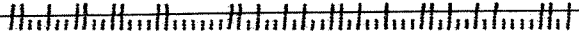
Print Name Bob L. Cook

Signature Bob L. Cook

Address 321-SE-PARK AVE

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

RECEIVED
APR 03 2006
COMMUNITY DEVELOPMENT
DEPARTMENT



Item ZON2006-00021 Date 03-22-06

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

(Circle One)

RECEIVED

MAR 24 2006

COMMUNITY DEVELOPMENT
DEPARTMENT



Print Name Karolce Beenken

Signature Karolce Beenken

Address 3220 S.E. 4th St.

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

Opposing rezoning

Item ZON2006-00021 Date 3/22/06

25

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

(Circle One)

RECEIVED

MAR 30 2006

COMMUNITY DEVELOPMENT DEPARTMENT



Print Name Bethany Brittin

Signature Beth Brittin

Address 324 E Park Ave

DM.

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

Please Do Not Allow this. These people make horrible noise with those Machines Day and Night. They have no respect for their neighbors.
Beth Brittin