

**★ Roll Call Number**

**Agenda Item Number**

**63**

**Date** July 14, 2008

WHEREAS, on August 7, 2000, by Roll Call No. 00-3381 the City Council adopted the Des Moines 2020 Community Character Land Use Plan; and

WHEREAS, the City Plan and Zoning Commission has advised in the attached letter that at a public hearing held May 15, 2008, the members voted 9-2 in support of a motion to recommend **APPROVAL** of a request from Imperial Properties, Inc. (owner) represented by Bill Moyer (officer) to amend the Des Moines' 2020 Community Character Land Use Plan future land use designation from Low Density Residential to Small-Scale Strip Development for property located at 605 East 15<sup>th</sup> Street, as more specifically shown by the accompanying map.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that the proposed amendment to the Des Moines 2020 Community Character Land Use Plan described above, is hereby approved and adopted.

MOVED by \_\_\_\_\_ to adopt, and approve the proposed amendment.

FORM APPROVED:

  
\_\_\_\_\_  
Mike Kelley  
Assistant City Attorney

(21-2008-4.01)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLISSIS				
<b>TOTAL</b>				

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.**

**City Clerk**

**Mayor**

Date \_\_\_\_\_

Agenda Item \_\_\_\_\_

63

Roll Call # \_\_\_\_\_

June 23, 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 May 15, 2008, the following action was taken:

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 9-2 as follows:

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
Leisha Barcus				X
JoAnne Corigliano	X			
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 Millard		X		
Mike Simonson	X			
Kent Sovorn	X			
Tim Urban	X			
Marc Wallace		X		

**APPROVAL** of a request from Imperial Properties, Inc. (owner) represented by Bill Moyer (officer) to amend the Des Moines' 2020 Community Character Land Use Plan future land use designation from Low Density Residential to Small-Scale Strip Development for property located at 605 East 15<sup>th</sup> Street. (21-2008-4.01)

By separate motion Commissioners recommended 8-3 as follows:

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
Leisha Barcus				X
JoAnne Corigliano	X			
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 Millard		X		
Mike Simonson	X			
Kent Sovorn	X			
Tim Urban	X			
Marc Wallace		X		



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

**APPROVAL** of a request to rezone subject property from "R1-60" One-Family Low-Density Residential District to Limited "C-1" Neighborhood Retail Commercial District to allow for development of the property for a drive-through restaurant, subject to the property owner agreeing to the following conditions: (ZON2008-00002)

1. Prohibit the use of the property for any packaged goods stores for the sale of alcoholic beverages, lawn mower or small engine repair shops, pawn shops, upholstery shops, and financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles.
2. Any commercial structures shall be constructed of an architectural design with at least 40% of the façade covered in a durable material such as brick, stone, or masonry block with no use of metal below the roof, and no use of EIFS, or other stucco type material in lower four feet of any exterior building wall.
3. Any commercial site development shall only have direct drive access to Des Moines Street, with no drive connection to the alley until such time as the property to the north may be developed for commercial purposes at which time cross access to the north may be approved. This is also subject to any other restrictions which may require approval by City Traffic and Transportation and Iowa DOT.
4. A six-foot high solid wood fence with masonry pillars shall be used to meet required bufferyard screening from residential property to the east in general compliance with the submitted design schematic.
5. Bufferyard landscaping to the east shall exceed the minimum plantings required by the Des Moines Landscape Standards, but shall maintain an appropriate density as to ensure the survivability of the plant material.
6. A three-foot high masonry site wall shall be used to meet the parking requirement from Des Moines Street in general compliance with the submitted design schematic.
7. Required trash enclosures shall be constructed of materials compatible with the principal commercial structure and have opaque metal gates.
8. All non-building mounted signs be monument type only;
9. Site plan return to the Commission for review and approval if the submitted site plan is not in substantial compliance with the concept plan presented at the rezoning hearing;
10. Applicant work with staff on the elimination of the fence on Des Moines Street west of the entry drive and along the north property line, west of the dumpsters.

**Written Responses**

1 In Favor

1 In Opposition

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

**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.

Part B) Staff recommends approval of the requested amendment to the Des Moines' 2020 Community Character future land used designation from Low Density Residential to Small-Scale Strip Development.

Part C) Staff recommends approval of the requested rezoning subject to the property owner agreeing to the following conditions:

1. Prohibit the use of the property for any packaged goods stores for the sale of alcoholic beverages, lawn mower or small engine repair shops, pawn shops, upholstery shops, and financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles.
2. Any commercial structures shall be constructed of an architectural design with at least 40% of the façade covered in a durable material such as brick, stone, or masonry block with no use of metal below the roof, and no use of EIFS, or other stucco type material in lower four feet of any exterior building wall.
3. Any commercial site development shall only have direct drive access to Des Moines Street, with no drive connection to the alley until such time as the property to the north may be developed for commercial purposes at which time cross access to the north may be approved. This is also subject to any other restrictions which may require approval by City Traffic and Transportation and Iowa DOT.
4. A six-foot high solid wood fence with masonry pillars shall be used to meet required bufferyard screening from residential property to the east in general compliance with the submitted design schematic.
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7. Required trash enclosures shall be constructed of materials compatible with the principal commercial structure and have opaque metal gates.

## STAFF REPORT

### I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to rezone the property for development of a 3,350 square foot drive-through restaurant.
2. **Size of Site:** 150' x 200" (30,000 square feet)
3. **Existing Zoning (site):** "R1-60" One-Family Low-Density Residential District & "GGP" Gambling Games Prohibition Overlay District.
4. **Existing Land Use (site):** Vacant land.
5. **Adjacent Land Use and Zoning:**

**North** – "R1-60", Uses are public alley and vacant land.

**South** – “R1-60”, Uses are vacant land and single-family dwellings.

**East** – “R1-60” Uses are single-family dwellings.

**West** – “C-1”, Uses are a grocery store and commercial center.

6. **General Neighborhood/Area Land Uses:** The subject property is located south of Interstate 235 along the east side of the East 14<sup>th</sup>/15<sup>th</sup> Street two-way pair major commercial traffic corridor.
7. **Applicable Recognized Neighborhood(s):** Capitol East Neighborhood.
8. **Relevant Zoning History:** N/A.
9. **2020 Community Character Land Use Plan Designation:** Low Density Residential.
10. **Applicable Regulations:** The Commission 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, in addition to the existing regulations. The recommendation of the Commission will be forwarded to the City Council.

## **II. ADDITIONAL APPLICABLE INFORMATION**

1. **Drainage/Grading:** The proposed restaurant site must provide storm water management and soil erosion protection in accordance with Site Plan policies. Public storm sewer is available in East 15<sup>th</sup> Street.
2. **Landscaping & Buffering:** Any proposed restaurant site will be required to comply with the minimum landscaping provisions for open space, parking lot perimeter, and buffer yards. Because there is residentially zoned property to the north, south, and east a three foot screen is required in addition to the minimum plantings within the minimum setback from adjoining right-of-way. A six foot screen and plantings are required to protect the single-family dwelling to the east.

The applicant has submitted a schematic that provided for a six-foot high solid wood fence with stone capped brick masonry pillars between fencing panels. The schematic also provides detail for a three-foot high brick masonry site wall with stone capped brick masonry pillars between wall sections, to be placed along the Des Moines Street landscaped perimeter. The fence is shown abutting the parking lot with landscaping planted toward the adjoining residence. Staff would evaluate this with any submitted Site Plan to determine if the fence is better placed at the property line for reasons of maintenance of the landscaped area and to accommodate snow removal.

The minimum required buffer yard to protect residential property to the east would require three overstory and nine evergreen plantings along with a six foot solid screen fence. This would be required within a minimum 10 foot setback from any off-street parking. The submitted schematic shows eight overstory trees and 10 evergreen trees in the buffer yard which would exceed this requirement. Any Site Plan developed for the proposed restaurant site would also require overstory and tree plantings along the Des Moines Street and 15<sup>th</sup> Street sides at a rate of one tree and three shrubs per 50 lineal feet. The submitted schematic only shows the shrubs along the Des Moines Street side at this time.

- 3. Traffic/Street System:** With the conclusion of the Interstate 235 project, there are no anticipated modifications to the street network adjoining the subject property. The applicant has indicated that excess land purchased from him to the north of the subject property would be offered back to him for purchase. He has indicated that this is currently in process with the Iowa DOT to re-acquire the property. At this time staff does not have evidence to any right for the applicant to purchase any of the adjoining land owned by the Iowa DOT.
- 4. Access or Parking:** Because of proximity of the subject property to the I-235 interchange to the north, no direct access to the subject property from East 15<sup>th</sup> Street or improvement to the existing alley access will be permitted. Currently there is an 18 foot wide public east/west alley that could provide indirect access from the subject property to East 15<sup>th</sup> Street. A new site schematic has been submitted showing a single drive entrance to the subject property from Des Moines Street with a one-way drive connection to the alley. However, Traffic and Transportation Engineering staff has now indicated that the alley should not be used for access to the subject commercial site.

The applicant has also provided a schematic of how the entire East 15<sup>th</sup> Street commercial frontage and the entire block could develop in the future. Both of these sketches show a drive access from Des Moines Street to serve the IDOT property in the event it is ever disposed of as excess property, as well as a drive connection to East 15<sup>th</sup> Street in the location of the existing alley entrance. It is conceivable that the alley access could be widened to accommodate a 20' two-way drive aisle in the event the alley would become vacated for private use in the future. This would require approval both by the Iowa DOT and City Traffic Engineering. The drive access from Des Moines Street to the northern portion of the block in the schematic should be shifted further east at least to the mid-point of the block. These projected access points would both require in-depth evaluation at the time of any development proposal on property to the north.

Traffic and Transportation Engineering staff has indicated that any Site Plan for a restaurant will require an entrance from Des Moines Street to be placed a minimum of 20' east of the intersection curve radius with East 15<sup>th</sup> Street. This will allow for some stacking at the intersection for westbound traffic while allowing eastbound vehicles to enter the subject property without stacking into the intersection. The newly submitted site schematic shows that the driveway is approximately 80 feet from East 15<sup>th</sup> Street providing for even more stacking distance on Des Moines Street. The most recent submitted schematic also demonstrates that semi tractor trailers can circulate through the site with a single drive access provision.

- 5. 2020 Community Character Plan:** In order to find the requested rezoning in conformance with the comprehensive plan, the future land use designation must be amended from Low Density Residential to Small-Scale Strip Development. This would be the same designation as the commercial center to the west.

Due to impacts from the freeway interchange and the major East 15<sup>th</sup> Street corridor, the residential character surrounding the subject property has changed. The block faces east of East 15<sup>th</sup> Street have become transitional with many vacant properties. Staff believes it would now be difficult to redevelop the property fronting East 15<sup>th</sup> Street for single-family use. Therefore it could be appropriate to amend the future land use designation for the subject property.

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.

At the request of the Commission, the applicant has submitted a schematic demonstrating how the entire block may be developed for commercial purposes. While staff has not evaluated this schematic extensively, there is concern that there would be a need to perhaps transition to a less intense multiple family residential uses on the eastern portion of the block. This would not affect the subject of the rezoning in either scenario.

6. **Urban Design:** With recent commercial development west and south of the subject property, a higher quality of architectural design has come to be expected for the area. While many franchise drive-through restaurants have standard or trademark architecture, staff believes that this may need to be adapted to meet the surrounding commercial character. Staff recommends that any commercial structure built on the subject property have at least 40% of the façade covered in a durable material such as brick, stone, or masonry block with no use of metal below the roof, and no use of EIFS, or other stucco type material in lower four feet of any exterior building wall.

## SUMMARY OF DISCUSSION

Erik Lundy: Presented staff report and recommendation. Noted revised drawings of the proposal were submitted by the applicant, to respond to the Commission's concerns from previous hearings. Comments were received from Traffic & Transportation that indicated the alley access may not be desirable for a self-contained site, but that would be reevaluated if the site to the north develops in the future. DOT is not willing to say if they would or would not allow improvement of the access point, without a proposal. Explained they do not want any additional access points along E. 15<sup>th</sup> Street between Des Moines Street and I-235. Noted the alley has not been condemned; it is still a public alley and the City is responsible for the maintenance. Along the entire stretch of the project, the City has agreements which allow them the right of use during construction for those alleys and right-of-way that intervene with the project. Noted discussion with Traffic & Transportation Engineering staff is that DOT does not look to package sale of property with provision of access. Whoever buys it would have to assemble it or determine how to provide access for it to develop. DOT will make the property to the north available for sale at fair market value. The value should reflect whether it has access or not, but whoever buys it will need to come up with a way to meet the City's standards if they want to develop it.

Mike Ludwig: Noted there would not be any access from the north due to the I-235 east bound onramp. There may be the potential of widening the alley access and making it a more improved access.

Erik Lundy: They have looked at a scenario for access from Des Moines Street and looked at a concept for the entire block to show how it could lay out.

Tim Urban: Asked if the applicant owns all the other homes with the exception of the one directly east of the subject property at 1516 Des Moines Street. Asked if all the houses across the street are currently zoned residential.

Erik Lundy: Affirmed.

Tim Urban: Asked if, based on the concept plan, for access to serve commercial use fronting on the freeway, the street will have to be converted from a residential to a commercial street and there will have to be a comprehensive plan amendment and zoning changes to make it all a commercial development area.

Mike Ludwig: Noted all issues related to the concept plan for the remainder of the block could be addressed during the zoning stage for that property and the impact on the adjoining properties to the south. Commercial Development on adjoining properties would be subject to Land Use Plan and zoning amendments.

Tim Urban: Asked if the applicant had worked with staff on the concept plan for the area. Expressed concern for the access point mid-block and suggested an alternative would be to access through the easterly portion of their parking lot with a vertical access drive.

Mike Ludwig: Noted staff did not review the concept plan for the remainder of the block for code compliance. A problem with asking for the proposed drive to be shifted east would be putting the entrance right next to the existing residence.

Brian Millard: Asked about staff recommendation regarding the drive connection at the alley, if the opaque metal gate on the trash enclosure would be 70% or 100% opaque, if a monument sign would be required and if the site plan would return to the Commission automatically or if they would have to ask for it to.

Erik Lundy: Noted there needs to be some air ventilation on the trash enclosure so the opaque buffer would be at least 70%. Noted a monument sign would not be required and the site plan would not return to the Commission without a condition being placed requiring it to.

Marc Wallace: Expressed concern that the Comprehensive Plan shows the area as residential and commercial is being planned in the middle of it with the thought that eventually it might be commercial.

Erik Lundy: Suggested the concept plan is offering an example of how a master plan for the block could be done. Noted if the remainder of the block came in as a development proposal, staff would have to have a strategy for how to protect the residential area because currently it is trapped between two significant commercial areas. The subject site would feed off the arterial and is close enough to the remaining commercial development so it could be considered a minimal expansion of that commercial area currently in the plan.

Bruce Heilman: Asked if there would be a better place for the dumpster further to the west.

Erik Lundy: Noted putting the dumpster too far away from where the refuse comes out of the building could create a problem. Noted currently it is approximately 20-35 feet from the east property line. Noted the Commission has the ability to add the condition.

David Churchill, 20701 Kirkwood Street, Milo, Iowa: Noted the dumpster could be moved further away from the adjoining property and be downsized to one dumpster. Noted the access to the alley could be eliminated, but if a project comes in on the property to the north it will probably return. Noted the access along Des Moines Street is probably all there needs to be. There is not a possibility to access the site off Lyon Street. Requested approval of staff recommendations.

Brian Millard: Asked if the applicant would be amenable to the restriction of monument sign only and that the site plan would be in substantial compliance or would return to the Commission.

David Churchill: Did not have a problem with a monument sign rather than a pole sign and would not have a problem with the plan returning for the Commission's review. Noted they have no intention to get the rezoning and then change the use or site plan, although the restaurant could change size a bit but it would pretty much stay the same. He offered a rough sketch of where the dumpster could be moved and maintain access.

Tim Urban: Noted much of the angled parking has bumper curbs on them. Asked that they create a straight curb, as the bumper curbs tend to trap trash.

David Churchill: Noted he could change it to straight curbing.

Larry Hulse: Explained to the Commission how the fencing would work with landscaping placed on the residential side and a smaller wall detail to buffer the parking from the street.

David Churchill: Noted the fence drops down to 3' closer to the street. Noted staff had a comment about placing the landscaping on the restaurant side and moving the fence back closer to the property, but he thought his concept would look nicer.

Tim Urban: Asked if the fence was proposed to continue west of the main entry drive and asked why it was necessary.

David Churchill: Noted he had to buffer from the R1-60 to the south.

Larry Hulse: Suggested combining the fencing and the monument sign.

Bruce Heilman: Asked if the 6' opaque fence would be extended down the north side.

David Churchill: Did not know what zoning that would be. Noted he would like to eliminate the fence entirely.

Bruce Heilman: Suggested there needs to be a special consideration as to whether there is a need for a fence on the north property line.

Dann Flaherty: Expressed concern that an opportunity could be missed and suggested there could be a town centre type of development on this property.

David Churchill: Suggested he was trying to do that by showing how there could be three separate buildings on adjoining property rather than a strip "L" or a long, straight strip to be used inwardly and look nice outwardly.

Erik Lundy: Noted the site wall to the south would be required unless a 3' fence or berm was installed because the zoning to the south is R1-60. Also, a six foot wood fence would be required along the north property line. The applicant could go to the Board of Adjustment to request a waiver of those requirements.

### **CHAIRPERSON OPENED THE PUBLIC HEARING**

*The following individual spoke in opposition:*

Vicki Ramirez, 1516 Des Moines Street: Expressed concern that the property line is so close that the fence will block her windows. She likes to look out her window and does not want to look at a fence. Also expressed concern for the access, noting it is too close to her property. Explained there has not been much commercial traffic on Des Moines Street, but was concerned it would increase with a restaurant there.

### **CHAIRPERSON CLOSED THE PUBLIC HEARING**

Mike Simonson: Moved staff with the following conditions:

- All non-building mounted signs be monument type only;
- Site plan return to the Commission for review and approval if the submitted site plan is not in substantial compliance with the concept plan presented at the rezoning hearing;
- Applicant work with staff on the elimination of the fence on Des Moines Street west of the entry drive and along the north property line, west of the dumpsters.

Tim Urban: Asked if the applicant would have to go to the Board of Adjustment for variances.

Mike Simonson: Affirmed.

Marc Wallace: Urged the City Council to ask staff to look at the entire area comprehensively to determine what to do with the neighborhood. How the area develops will impact the remaining residence.

Motion to find the zoning not in conformance with the existing Des Moines' 2020 Community Character Plan passed 11-0.

Motion to amend the Des Moines' 2020 Community Character future land used designation from Low Density Residential to Small-Scale Strip Development passed 9-2 (Brian Millard & Marc Wallace were opposed).

Motion to rezone the subject property, subject to the property owner agreeing to conditions passed 8-3 (Dann Flaherty, Brian Millard & Marc Wallace were in opposition).

Tim Urban: Expressed concern for the continued viability of the area and suggested someone needs to assess the homes remaining in the area or determine whether there is still a possibility for a mix of uses.

JoAnne Corigliano: Suggested commercial directly behind residential on SW 9<sup>th</sup> is denser and works well. She did not see a problem with a mix for the subject area.

Tim Urban: Asked if she meant one conceivable development scheme would be to allow commercial to the north of Des Moines Street eventually while retaining the single-family homes sandwiched on the south side of Des Moines Street with more commercial south of them.

JoAnne Corigliano: Suggested there would be more commercial along the 15<sup>th</sup> Street corridor with residential to the east.

Larry Hulse: Suggested looking at the area could go on staff's to-do list, but noted there are currently several large projects that are consuming staff time.

Tim Urban: Suggested consulting with Traffic & Transportation and find out what the parameters are for generating commercial traffic from the entire development area onto 15<sup>th</sup> Street, noting there may be some constraints due to the limitation with points of access.

Mike Simonson: Suggested it would be helpful for the developer to hear the comments being made and suggested that it is not a foregone conclusion that the Commission would support further commercial development. He felt obligated to approve the request because the developer has returned numerous times and done what the Commission asked each time. Suggested in the future, if the Commission has concerns over the type of development that is occurring they should address that at the first or second meeting. Believed the balance of the project needed to be reviewed at a future time, and it may not be commercial.

Dann Flaherty: Suggested the area needs to be closely evaluated. The property has changed and if it is going to move into commercial there needs to be a good, firm plan in place, which he didn't feel exists at this point.

Respectfully submitted,

  
Michael Ludwig, AICP  
Planning Administrator

MGL:dfa

Attachment

Imperial Properties Inc. (Wendy's Restaurant)- 605 E 15th Street

21-2008-4.01

