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**Date**..... November 6, 2006  
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WHEREAS, on October 23, 2006, by Roll Call No. 06-2091, it was duly resolved by the City Council that the application of Paul Avalos, as developer, to rezone certain property owned by SRS, Inc., and Fernando and Gliselda Soltero and located in the vicinity of 2276 Hubbell Avenue, more fully described below, be set down for hearing on November 6, 2006, 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 October 26, 2006, as provided by law, setting forth the time and place for 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:

Lot 64, Hubbell Avenue Addition, an Official Plat; and, Lot 64, Allen Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter referred to as the "Property").

from the "C-1" Neighborhood Retail Commercial and "C-2" General Retail and Highway Oriented Commercial Districts to a Limited "C-2" General Retail and Highway Oriented Commercial District classification, subject to the following conditions which are agreed to and accepted by execution of an Acceptance of Rezoning Conditions in writing by all owners of said property and is binding upon the owners and their successors, heirs and assigns as follows:

- A. Only the following uses of structures or land shall be permitted upon the Property:
  - 1. Any use as permitted in and as limited in the "C-1" District.
  - 2. Garage for general vehicle repair, but not including body and fender work or overall painting and steam cleaning, but including upholstery, scratch and dent repair, and minor painting within a completely enclosed building.
  
- B. No vehicular access to the Property shall be permitted from Searle Street.
  
- C. All improvements made to the Property shall be in substantial compliance with a site plan approved by the City of Des Moines Permit and Development Center.

( continued )

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.....  
Date..... November 6, 2006

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- D. Hours of operation of any commercial activity upon the Property shall be limited to 9 a.m. to 6 p.m. Monday through Friday and 9 a.m. to 4 p.m. on Saturdays.
- E. Any site plan for the Property shall be presented for review and comment by the Plan and Zoning Commission prior to final approval.
- F. Use of the Property for general vehicle repair should be limited as follows:
  - 1. Display of vehicles for sale is prohibited.
  - 2. Outdoor repair and servicing of vehicles is prohibited.
  - 3. Outdoor display of automobile accessories and storage of materials or equipment such as barrels, tires and tools is prohibited.
  - 4. All refuse and trash disposal containers shall be contained within an enclosure that complies with the Site Plan regulations.
  - 5. Parking of all vehicles associated with the business such as tow trucks shall be located outside of the required 25' front yard setback.
  - 6. Landscaping and screening shall be provided in accordance with the adopted Landscape Standards for development in the "C-2" District.
  - 7. Automobiles shall only be parked in marked parking spaces in accordance with an approved site plan.
  - 8. Provision of a solid fence instead of an opaque fence in the required bufferyard to eliminate headlights intruding into the neighboring homes.

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-2" General Retail and Highway Oriented Commercial District are hereby overruled, and the hearing is closed.

( continued )

★ **Roll Call Number**

Agenda Item Number

  A  

Date   November 6, 2006  

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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.

FORM APPROVED:

*Roger K Brown*

Roger K. Brown

Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
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

## ACCEPTANCE OF CONDITIONAL REZONING

The undersigned hereby state, warrant and agree as follows:

(1) That SRS, Inc., as titleholder, and Fernando Soltero and Gliselda Soltero, as contract purchasers, are the sole owners of the Property in the vicinity of 2276 Hubbell Avenue, more specifically described as follows:

Lot 64, Hubbell Avenue Addition, an Official Plat; and, Lot 64, Allen Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter referred to as the "Property").

(2) That in the event the City of Des Moines, Iowa, acts to rezone the Property from the "C-1" Neighborhood Retail Commercial and "C-2" General Retail and Highway Oriented Commercial Districts to a Limited "C-2" General Retail and Highway Oriented Commercial District classification, we agree and accept on behalf of the owners to the imposition of the following conditions to run with the land and be binding upon all successors, heirs and assigns as part of the ordinance so rezoning the Property:

- A. Only the following uses of structures or land shall be permitted upon the Property:
  - 1. Any use as permitted in and as limited in the "C-1" District.
  - 2. Garage for general vehicle repair, but not including body and fender work or overall painting and steam cleaning, but including upholstery, scratch and dent repair, and minor painting within a completely enclosed building.
- B. No vehicular access to the Property shall be permitted from Searle Street.
- C. All improvements made to the Property shall be in substantial compliance with a site plan approved by the City of Des Moines Permit and Development Center.
- D. Hours of operation of any commercial activity upon the Property shall be limited to 9 a.m. to 6 p.m. Monday through Friday and 9 a.m. to 4 p.m. on Saturdays.
- E. Any site plan for the Property shall be presented for review and comment by the Plan and Zoning Commission prior to final approval.
- F. Use of the Property for general vehicle repair should be limited as follows:
  - 1. Display of vehicles for sale is prohibited.
  - 2. Outdoor repair and servicing of vehicles is prohibited.
  - 3. Outdoor display of automobile accessories and storage of materials or equipment such as barrels, tires and tools is prohibited.
  - 4. All refuse and trash disposal containers shall be contained within an enclosure that complies with the Site Plan regulations.
  - 5. Parking of all vehicles associated with the business such as tow trucks shall be located outside of the required 25' front yard setback.

- 6. Landscaping and screening shall be provided in accordance with the adopted Landscape Standards for development in the "C-2" District.
- 7. Automobiles shall only be parked in marked parking spaces in accordance with an approved site plan.
- 8. Provision of a solid fence instead of an opaque fence in the required bufferyard to eliminate headlights intruding into the neighboring homes.

(3) This Acceptance of Conditional Rezoning shall be recorded by the City in the land records of the County Recorder as an attachment to the rezoning ordinance.

(4) That in the event any portion of the Property is hereafter rezoned to a district classification different from Limited "C-2", then this Acceptance shall be immediately terminated as applied to the real estate so rezoned on the effective date of such rezoning, and the conditions agreed to herein shall be rendered null and void, provided, if there be any such rezoning to a more restricted zoning classification, any then legal actual use of such real estate shall become a legal non-conforming use.

The words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

*[Handwritten signature of Fernando Soltero]*

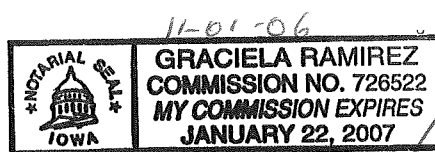
\_\_\_\_\_  
Fernando Soltero

*[Handwritten signature of Gliselda Soltero]*

\_\_\_\_\_  
Gliselda Soltero  
Contract Buyers

STATE OF IOWA    )  
                                  ) ss:  
COUNTY OF POLK )

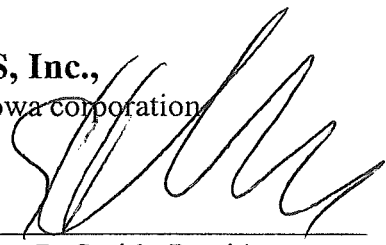
BE IT REMEMBERED that on this 1<sup>st</sup> day of November, 2006, before me, the undersigned a Notary Public in and for Polk County, Iowa, personally appeared Fernando Soltero and Gliselda Soltero, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.



*[Handwritten signature of Graciela Ramirez]*  
\_\_\_\_\_  
Notary Public

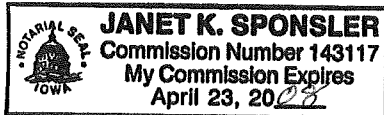
My commission expires: January 22, 07

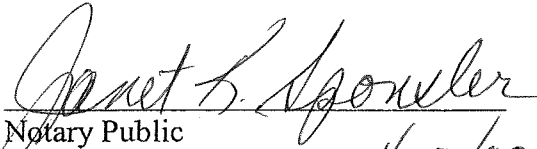
**SRS, Inc.,**  
an Iowa corporation

By:   
Steven R. Smith, President  
*Titleholder and Contract Seller*

STATE OF IOWA    )  
                                  ) ss:  
COUNTY OF POLK )

BE IT REMEMBERED, that on this 7 day of November, 2006, before me, the undersigned, a Notary Public in and for Polk County, Iowa, personally appeared Steven R. Smith, to me personally known, who, being by me duly sworn did say that he is the President of **SRS, Inc.**; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that he acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, and by it and by him voluntarily executed.



  
Notary Public  
My commission expires: 4/23/08

October 23, 2006

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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 October 5, 2006, the following action was taken:

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 8-3 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			



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 from Paula Avalos (developer) to rezone property located at 2276 Hubbell Avenue from a Limited "C-1" Neighborhood Retail Commercial District to a Limited "C-2" General Retail and Highway Oriented Commercial District, subject to the following conditions to be applied to the entire site, inclusive of the portion previously zoned "C-2", with particular attention paid to screening and development of the green space on the west or northwest portion of the lot:

(ZON2006-00128)

1. Only the following uses of structures or land shall be permitted upon the Property:
  - a. Any uses as permitted in the "C-1" District.
  - b. Garage for general vehicle repair, but not including body and fender work and overall painting and steam cleaning, but including upholstery, scratch and dent repair, and minor painting within a completely enclosed building.
2. No access to the property shall be permitted from Searle Street.
3. All improvements made to the site shall be in substantial compliance with a site plan approved by the Permit and Development Center.
4. Hours of operation shall be limited to 9 a.m. to 6 p.m. Monday through Friday and 9 a.m. to 4 p.m. on Saturdays.
5. Commission shall have courtesy review of the site plan.

6. Use of the property for general vehicle repair should be limited as follows:
  - a. Display of vehicles for sale is prohibited.
  - b. Outdoor repair and servicing of vehicles is prohibited.
  - c. Outdoor display of automobile accessories and storage of materials or equipment such as barrels, tires and tools is prohibited.
  - d. All refuse and trash disposal containers are contained within an enclosure that complies with the Site Plan regulations.
  - e. Parking of all vehicles associated with the business such as wrecking trucks shall be located outside of the required 25' front yard setback.
  - f. Provision of landscaping and screening in accordance with the Des Moines Landscape Standards for "C-2" District.
  - g. Automobiles shall only be parked in marked parking spaces in accordance with an approved site plan.
  - h. Provision of a solid fence instead of an opaque fence to eliminate headlights intruding into the neighboring homes.

Written Responses

0 In Favor

3 In Opposition

*This item would not require a 6/7 vote by City Council.*

**STAFF RECOMMENDATION AND BASIS FOR APPROVAL**

Part A) Staff recommends that the proposed rezoning be found in conformance with the Des Moines' 2020 Community Character Plan future land use designation of Commercial: Auto-Oriented Small-Scale Strip Development.

Part B) Staff recommends approval of Limited "C-2" District zoning for the entire property subject to the following conditions:

1. Permitted uses on the site are limited to the following:
  - a. Any used as permitted in the "C-1" District.
  - b. Garage for general vehicle repair, but not including body and fender work and overall painting and steam cleaning, but including upholstery, scratch and dent repair, and minor painting within a completely enclosed building.
2. No access to the property shall be permitted from Searle Street.
3. All improvements made to the site shall be in substantial compliance with a site plan as approved by the Permit and Development Center.
4. Use of the property for general vehicle repair should be limited as follows:
  - a. Display of vehicles for sale is prohibited.
  - b. Outdoor repair and servicing of vehicles is prohibited.
  - c. Outdoor display of automobile accessories and storage of materials or equipment such as barrels, tires and tools is prohibited.
  - d. All refuse and trash disposal containers are contained within an enclosure that complies with the Site Plan regulations.
  - e. Parking of all vehicles associated with the business such as wrecking trucks shall be located outside of the required 25' front yard setback.
  - f. Provision of landscaping and screening in accordance with the Des Moines Landscape Standards for "C-2" District.



- g. Automobiles shall only be parked in marked parking spaces in accordance with an approved site plan.

## STAFF REPORT

### I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to rezone the northern 6,000 square feet of a split-zoned parcel in order to construct off-street parking necessary for reuse of an existing structure on a portion of the same parcel already zoned "C-2" District. The applicant has indicated that they intend to renovate the former restaurant structure for use as a business for general vehicle repair.

Renovation and reuse of the existing 647-square foot structure would be subject to compliance with the building code and issuance of all necessary permits from the Permit and Development Center. In addition, any commercial reuse of the site would be subject to review and approval of a site plan by the Permit and Development Center staff.

2. **Size of Site:** 132' x 50' or 6,600 square feet (0.15 acre).
3. **Existing Zoning (site):** Limited "C-1" Neighborhood Retail Commercial District.
4. **Existing Land Use (site):** The area being considered for rezoning is an undeveloped portion of a split-zoned parcel that contains an unoccupied commercial structure oriented toward Hubbell Avenue.
5. **Adjacent Land Use and Zoning:**
  - North* - "R1-60", Use is single-family residential.
  - South* - "C-2", Use is Midwest Monuments, Inc.
  - East* - "C-2", Uses are a north/south alley, Estrellita's Fashions retail store, Hubbell Avenue, and Johnny Mac's tavern.
  - West* - "R1-60", Uses are Searle Street and single-family residential.
6. **General Neighborhood/Area Land Uses:** The subject property is located along the west side of the Hubbell Avenue commercial corridor. To the west, the area transitions to a single-family residential neighborhood.
7. **Applicable Recognized Neighborhood(s):** ACCENT Neighborhood.
8. **Relevant Zoning History:** The site was rezoned to Limited "C-1" District on December 9, 1991 by Ordinance 11,572. The sole condition states, "No access to the property shall be permitted from Searle Street".
9. **2020 Community Character Land Use Plan Designation:** Commercial: Auto-Oriented Small-Scale Strip Development.
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. 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. **Permit and Development Center Comments:** Renovation and reuse of the existing structure would be subject to compliance with the building code and issuance of all necessary permits from the Permit and Development Center. In addition, any commercial reuse of the site would be subject to review and approval of a site plan by the Permit and Development Center staff.
- 2. **Natural Site Features:** There are no significant natural features on the subject property as it has been cleared of its previous single-family residential use.
- 3. **Drainage/Grading:** Construction of any parking lot on the site would be subject to compliance with an approved site plan that satisfies the City's standards for storm water management.
- 4. **Landscaping & Buffering:** The applicant will be required to provide landscaping in conformance with the Des Moines Landscape Standards for any commercial development of the subject property. This will require bufferyard setbacks, plantings and screening from the residential properties to the north and west, as well as a minimum 20% open space and plantings. It is likely that a portion of the existing asphalt in the required front yard setback along Hubbell Avenue would have to be removed and replaced with landscaping.
- 5. **Traffic/Street System:** The subject property has frontage on Searle Street, although an existing zoning condition prohibits access to the property from Searle Street. Staff recommends that this remain a zoning condition. Therefore any off-street parking constructed on the site must be accessed from Hubbell Avenue.
- 6. **Access or Parking:** The applicant is seeking to rezone the northern 6,000 square feet of a split-zoned parcel in order to construct off-street parking required for reuse of an existing structure on a portion of the same parcel already zoned "C-2" District. Reuse of the 647-square foot structure for general vehicle repair would require a minimum 2 off-street parking stalls or 1 stall per 600 square feet of gross floor area. The applicant has indicated that they anticipate they will need approximately 10 off-street parking stalls to adequately serve a business for general vehicle repair.
- 7. **2020 Community Character Plan:** The proposed "C-2" District zoning classification is in conformance with the Des Moines' 2020 Community Character Plan future land use designation of Commercial: Auto-Oriented Small-Scale Strip Development.
- 8. **Additional Information:** Staff believes that any zoning limitations should be applied to the entire property.

Staff believes that any use of the property for general vehicle repair should be subject to the following limitations on the entire property:

- a. Display of vehicles for sale is prohibited.
- b. Outdoor repair and servicing of vehicles is prohibited.
- c. Outdoor display of automobile accessories and storage of materials or equipment such as barrels, tires and tools is prohibited.
- d. All refuse and trash disposal containers are contained within an enclosure that complies with the Site Plan regulations.
- e. Parking of all vehicles associated with the business such as wrecking trucks shall be located outside of the required 25' front yard setback.
- f. Provision of landscaping and screening in accordance with the Des Moines Landscape Standards for "C-2" District.
- g. Automobiles shall only be parked in marked parking spaces in accordance with an approved site plan.

## SUMMARY OF DISCUSSION

Mike Ludwig: Presented staff report and recommendation. Noted Traffic and Transportation had no objection to the request. Indicated it does expand the C-2 zoning to the northern portion, but staff felt the recommendation was improving the limitations on the overall property.

Fran Koontz: Explained Searle has been under a great deal of stress from commercial on Hubbell. Over the last few years, the people at that end of Searle have gone out of their way to fix up their homes. Asked staff not to recommend it due to the stress on the street

Tim Urban: Suggested adding parking for cars under repair to be on the lot being adjacent to other single-family homes was inappropriate.

Mike Ludwig: Noted the Commission could place additional restrictions on the zoning to limit vehicles to certain areas on the site.

*Brook Rosenberg left the meeting at 7:40 p.m.*

Paula Avalos, 3434 56<sup>th</sup> Street, Des Moines: Noted her intention was to establish a commercial establishment on the site, to provide the community a service. Requesting the rezoning to be able to provide parking adjacent to the property where the car repair business will be operated since the existing parking lot area is currently too small for the business. Indicated she plans to develop the property in accordance with all the City's regulations and codes. The intent is not to hurt the neighborhood, but offer a much-needed service.

Tim Urban: Asked about the 10 parking spaces; if the remainder of the lot to the northwest is to be used or remain as open space.

Paula Avalos: Noted the excess area will be maintained green and will be accessible for anyone wanting to enter that area. Her intent is to beautify it.

Tim Urban: Asked where fencing would be proposed and what type of fencing she would use.

Paula Avalos: Indicated she would follow the code requirements from the City in placing the fencing around the parking lot to minimize the noise and headlights and will remain consistent with the residential neighborhood.

Tim Urban: Asked if in all improvements on the property there would be new pavement and if it would include areas directly around the building off Hubbell.

Paula Avalos: Concrete surface would be provided directly surrounding Hubbell and where the parking will be.

Brian Millard: Asked if she would be amenable to placing the fencing so the cars would not be visible.

Mike Ludwig: Noted regardless of whether it is rezoned C-1 or C-2, zoning would require a buffer yard around the commercial use of the property. Since the lot is less than 15,000 square feet, the requirements are a continuous 6' tall 75% opaque fence or wall, and one over-story tree and three evergreen shrubs for 100 lineal feet to the property line and parking shall not extend into the required front yard of the property in question. There would be a front yard setback required along Searle Street. ...

Paula Avalos: Indicated agreement.

Marc Wallace: Asked what modification plans she has for the building.

Paula Avalos: Explained pending approval of the rezoning, she would hire a professional designer or architect to provide a design for the area.

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

*There was no one in the audience to speak in favor of the request.*

*The following spoke in opposition of the request:*

Francis Picray, Jr., 2246 Elizabeth: Expressed concerns as follows:

- area in the lower quadrant is incorrect; projection comes out to Hubbell to a point and there is no way to get around it without going to the other side of Searle;
- 8-10 years ago the Planning Commission decided not to approve the same request;
- headlights will be facing the house on the corner across the street on Searle;
- business hours – did not want operation 24 hours a day;
- highway-oriented – feared they would be working on truck tires at 1:30 a.m.;
- asked for deferral; wanted to offer some pictures of his own;
- no sidewalk from two properties north of the subject site all the way to Hubbell;
- no access to Searle from residential area;
- more points to cover but ran out of time.

Tim Urban: Asked if he was familiar with the staff report and the restrictions staff was recommending for the property. Suggested a number of the concerns Mr. Picray expressed are covered in the staff report in terms of placing restrictions on property owners so they cannot allow most of the things he was concerned about.

Francis Picray: Noted he received the letter but it was stolen at the City building department.

Greg Jones: Asked what Mr. Picray thinks should happen with the current building.

Francis Picray: Suggested nothing should be done with the building; they have built onto it several times without permits.

Paula Avalos: Thanked Mr. Picray for his comments and will take his concerns into consideration if her request is approved. Desires to keep the project in character with the neighborhood. Pointed out that the hours of operation would be daylight and there would be no nighttime operation.

Brian Millard: Asked if the applicant would be willing to bring the building up to code.

Paula Avalos: Explained she would follow every regulation and code required by the City.

Tim Urban: Asked how long she has owned the property.

Paula Avalos: Indicated she has owned the property for two months. Her family and brothers are auto technicians and they have experience in auto repair; it would be a family business.

Brian Millard: Asked if the applicant would agree to build a 100% solid fence instead of an opaque fence to eliminate headlights intruding into the neighboring homes.

Paula Avalos: Indicated she would.

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

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Fran Koontz: Moved to deny with the recommendation the request go before the Board of Adjustment. As the neighborhood president, she polled the board. They are not in favor of the request going forward because it is too close and intrusive to a street that has been struggling to bring itself back from stresses of commercial development and neglect by the City, which includes not enforcing conditional zoning. The neighborhood does not and will not support because it is not enforced. Within a quarter mile they have five car repair businesses already in the neighborhood and supporting the request would be supporting direct competition and an overload of car repair businesses.

Brian Millard: Asked for staff to speak to the appropriateness and procedure when it appears before the Board of Adjustment.

Mike Ludwig: Noted to use the parking on the C-1 portion they would need a use variance from the Board of Adjustment if the zoning is denied. The Planning Commission can make the recommendation and the zoning would have to be denied by the City Council and then the applicant could submit a request for a use variance from the Board of Adjustment. Suggested similar conditions could be placed on a use variance as what is recommended for the zoning. Under the use variance the argument in the past has been that there could be a limit on the time that it could be used for that type of use. There is no difference between the rezoning and the use variance from the Board of Adjustment from the staff's perspective.

Brian Millard: Referred to the Lower Beaver auto repair business that ended up being a win/win situation that turned out to be a beautiful site, but it preserved the zoning.

Mike Ludwig: Noted one of the reasons the use variance was recommended on the Lower Beaver site was that the rezoning required a land use map amendment. The subject request is consistent with the current land use designation of the 2020 Community Character Plan.

Tim Urban: Asked staff if the outcome of the restrictions that could be placed on the property under the Commission's action could be virtually the same that the Board of Adjustment could apply on a use variance.

Mike Ludwig: Noted the conditions are the same as would be applied on a use variance. The key difference between the Lower Beaver site and the subject request is that the Lower Beaver site was designated for residential land use and that rezoning was denied on the basis that it was not in conformance with the Comprehensive Plan. The subject property is designated for commercial land use. Staff recommendation is that the requested zoning for the subject property is in conformance with the 2020 Community Character Plan.

Tim Urban: Asked if the request went through the zoning approval with the same restrictions that the Board of Adjustment could put on it, there would then be a site plan that would have to be brought back and approved. Asked if that would occur either way and would be acted on either way under an administrative process, or what would happen if it went before the Board of Adjustment.

Mike Ludwig: Noted they would show a site plan at the Board of Adjustment, but there would also be an administrative review of the site plan that would come in. The review process is similar. If the Commission wanted to they could ask for a condition that the site plan return.

Bruce Heilman: Called the question for the motion.

Roger Brown: Noted that a substantial basis of the motion as articulated was on the basis that the business competes with existing businesses in the area, which is not a valid consideration for the Commission and he asked that if they vote in support of the motion they do so for reasons other than that.

Dann Flaherty: Noted that was not the only reason behind the motion; there were other concerns expressed relative to children safety and the neighborhood and enforcement

Roger Brown: Asked that the motion be to deny for other reasons.

Fran Koontz: Moved for denial because it is not good for the neighborhood, it is not good for the residents on Searle Street, it is not safe for children, and the neighborhood association has unanimously opposed it.

Motion for denial failed 4-8 (Greg Jones, Jeffrey Johannsen, Kaye Lozier, David Cupp, Bruce Heilman, Shirley Daniels, Marc Wallace, and Tim Urban were in opposition).

*Fran Koontz left the meeting at 8:22 p.m.*

Bruce Heilman: Made a motion to move staff recommendation with particular attention paid to screening and development of the green space on the west or northwest portion of the lot.

Tim Urban: Offered a friendly amendment that the Commission be granted the right to see the site plan.

Bruce Heilman: Accepted the friendly amendment.

Brian Millard: Reiterated the agreement by the applicant to the provision of a solid fence.

Bruce Heilman: Indicated that would be part of the fencing and screening requirement.

Dann Flaherty: Explained he opposed the request due to a concern for safety noting that corner is a blind one and he feared a big problem if traffic would be required to come in and off Hubbell.

Marc Wallace: Suggested having a site plan to be a good idea; noted the Commission has the opportunity to determine what will be done and ensure conformance. The applicant already has the right to do substantially what they are proposing. Access is already limited to Hubbell only.

Tim Urban: Explained the proposal is unique because they are not a typical C-1 or C-2 use. The number of vehicles turning in and out of the property will be minimal compared to other comparable uses. Did not know if the rezoning could be approved with a use-restriction placed on it that it be used for auto repair and not other C-1 or C-2 uses.

Roger Brown: Noted the Commission could recommend such conditions on it, suggested allowing some use of the property, possibly R1-80 uses plus auto repair or of auto repair and nothing else.

Brian Millard: Asked the applicant what the hours of operation would be.

Paula Avalos: Noted the hours of operation would be 9 a.m. to 6 p.m. Monday through Friday and 9 a.m. to 4 p.m. on Saturdays.

Bruce Heilman: Accepted the amendment to the motion to limit the hours of operation.

Mike Ludwig: Reiterated body repair is not allowed as a use; could do engine work, oil changes, tire work.

Motion passed 8-3 (Brian Millard, Brian Meyer, Dann Flaherty were in opposition).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Ludwig". The signature is written in a cursive, flowing style.

Michael Ludwig, AICP  
Planning Administrator

MGL:dfa

Attachment

Item 2005 00138

Date 9-26-06

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



Print Name Steven R. Smith

Signature [Handwritten Signature]

Address \_\_\_\_\_

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

SRS INC

**ALSO IS SUBJECT PROPERTY**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Item 2006 00138 Date 9-29-06

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

RECEIVED ✓

OCT 02 2006

COMMUNITY DEVELOPMENT DEPARTMENT

Print Name Joseph J. Bowlin Jr.  
Signature Joseph J. Bowlin Jr.  
Address 2245 Elizabeth Ave

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

I don't feel that the lot you're saying is on 2276 Hubbell Ave should be zoned for a C-2, when the lot is really a residential lot on Searle St not Hubbell Ave. Do not need a tire store in a residential area, it will create too much traffic and noise.

Item 2006 00138 Date Sept. 29 2006

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

✓

Print Name Mary K. Picray  
Signature Mary K. Picray  
Address 2920 Cleveland Ave.

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

An Auto repair & Tire shop in that area would be a hazard to the small children who live & play in this neighborhood. There is now, and for years, been an Auto Repair garage at Hubbell & Searle on the south side of Hubbell, and to the North.

Item 2006 00138 Date 9-28-06

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

This action is most unconsiciable to w<sup>r</sup> victims of excc

This property has been illegally manipulated to "c-1" in recent years by clever manipulation.

Print Name Francis Pichay Jr.

Signature Francis Pichay Jr.

Address 2246 Elizabeth Ave

Reason for opposing ~~requesting~~ this request may be listed below:

"Allowing Encroachment" into an old established "residential" neighborhood for commercial purposes, resulting in noise, traffic at all hours and days, thereby disrupting and disturbing the peace, quiet and safety of the abutting homes and Property Values, would be unconsiciable

Item 2006 00138

Date 10-3-06

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

RECEIVED

OCT 10 2006

COMMUNITY DEVELOPMENT DEPARTMENT

Print Name M. E. CORNWELL

Signature M. E. Cornwell

Address 2247 Hubbell 50317

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

WE HAVE ENOUGH SHOPS IN THE AREA FOR NOW NOT ENOUGH ROOM FOR WHAT THEY WANT TO HAVE THEIR