

★ **Roll Call Number**

Agenda Item Number

46

Date June 11, 2012

An Ordinance entitled, "AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 1241 East 38th Street from the R1-60 One-Family Low-Density Residential District, to a Limited C-2 General Retail and Highway-Oriented Commercial District classification",

which was considered and voted upon for the first time under Roll Call No. 12-486 of March 26, 2012, and considered and voted upon for the second time under Roll Call No. 12- 0811 of May 21, 2012, again presented.

Moved by _____ that this ordinance do now pass.

ORDINANCE NO. _____

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
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

ORDINANCE NO. _____

AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 1241 East 38th Street from the R1-60 One-Family Low-Density Residential District to Limited C-2 General Retail and Highway-Oriented Commercial District classification.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, be and the same is hereby amended by rezoning and changing the district classification of certain property located in the vicinity of 1241 East 38th Street, more fully described as follows, from the R1-60 One-Family Low-Density Residential District to Limited C-2 General Retail and Highway-Oriented Commercial District classification:

(Except North 110 feet) Lots 100, 101, 102, and 103, Broadacre, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

Section 2. That this ordinance and the zoning granted by the terms hereof are subject to the following imposed additional conditions which have been agreed to and accepted by execution of an Acceptance of Rezoning Ordinance by all owners of said property and are binding upon the owners and their successors, heirs, and assigns as follows:


- A. Only the uses of structures or land listed below shall be permitted upon the Property:
 - 1. Any use allowed in the R1-60 One-Family Low-Density Residential District.
 - 2. Mini-warehouse self-storage complex.
- B. If the Property is developed for use as a mini-warehouse self-storage complex, then such development shall comply with the following additional requirements:
 - 1. Access shall be provided from an internal drive approach from the existing facility to the south and not from East 38th Street.

2. The side of any building upon the Property facing East 38th Street shall be in earth tone colors.
3. No storage units within the westernmost building on the site shall be constructed with doors facing East 38th Street.
4. No storage units within the easternmost building on the site shall have doors facing the east property line.
5. All exterior lighting fixtures shall be shielded so as not to illuminate into surrounding residentially-zoned properties.
6. Any signage upon the Property shall comply with the C-1 Neighborhood Retail Commercial District Regulations. No off-premises advertising signs shall be located upon the Property.
7. Any fencing along East 38th Street shall be of wrought iron or tubular steel construction painted earth tones or black to complement the buildings, with masonry pillars.
8. A minimum 25-foot wide setback shall be maintained along the eastern and western boundaries of the Property. The setback area shall be landscaped in accordance with a plan approved by the Planning Administrator.
9. A minimum 10-foot wide setback shall be maintained along the northern boundary of any development. The setback area shall be landscaped in accordance with a plan approved by the Planning Administrator.
10. The hours of operation shall be limited to 6:00 AM to 10:00 PM.
11. No surface water detention shall be released onto any adjoining residential property.
12. No permit for construction shall be issued until such time that all zoning violations for the existing mini-warehouse use at 3800 East University Avenue have been remedied.
13. No permit for construction shall be issued until such time that the entire site and the 100-foot wide area adjacent to the north have been graded to the satisfaction of the Engineering staff of the Permit and Development Center in accordance with a grading permit and soil erosion control plan.
14. Release the easement on Robert Anderson's property at 1232 E. 40th Street.
15. The four lots on Mahaska Avenue be 110 feet deep from north to south.
16. If there is a retaining wall between the storage units and the lots on Mahaska Avenue, it should not be more than four feet in elevation.
17. The four parcels on Mahaska Avenue be graded so they are buildable.
18. That all seven pages of the "Staff Report and Recommendation" be part of the record and be included as requirements for the approval of this zoning change.

Section 3. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Section 4. The City Clerk is hereby authorized and directed to cause a certified copy of the Acceptance of Rezoning Ordinance, this ordinance, a vicinity map, and proof of publication of this ordinance, to be properly filed in the office of the Polk County Recorder.

FORM APPROVED:



Michael F. Kelley
Assistant City Attorney

Prepared by: Michael F. Kelley, Assistant City Attorney, 400 Robert Ray Dr., Des Moines, IA 50309 515/283-4124
 Return Address: City Clerk - City Hall, 400 Robert Ray Dr., Des Moines, IA 50309
 Taxpayer: No change
 Title of Document: Acceptance of Rezoning Ordinance
 Grantor's Name: Arnold E. DeWitt and Grace E. DeWitt
 Grantee's Name: City of Des Moines, Iowa
 Legal Description: (Except North 110 feet) Lots 100, 101, 102, and 103, Broadacre, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

ACCEPTANCE OF REZONING ORDINANCE

The undersigned hereby state, warrant and agree as follows:

1. That Arnold E. DeWitt and Grace E. DeWitt, as titleholders, are the sole owners of the Property in the vicinity of 1241 East 38th Street, more specifically described above.

2. That in the event the City of Des Moines, Iowa, acts to rezone the Property from the R1-60 One-Family Low-Density Residential District to 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 uses of structures or land listed below shall be permitted upon the Property:
 - 1. Any use allowed in the R1-60 One-Family Low-Density Residential District.
 - 2. Mini-warehouse self-storage complex.
- B. If the Property is developed for use as a mini-warehouse self-storage complex, then such development shall comply with the following additional requirements:
 - 1. Access shall be provided from an internal drive approach from the existing facility to the south and not from East 38th Street.
 - 2. The side of any building upon the Property facing East 38th Street shall be in earth tone colors.
 - 3. No storage units within the westernmost building on the site shall be constructed with doors facing East 38th Street.

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5. All exterior lighting fixtures shall be shielded so as not to illuminate into surrounding residentially-zoned properties.
6. Any signage upon the Property shall comply with the C-1 Neighborhood Retail Commercial District Regulations. No off-premises advertising signs shall be located upon the Property.
7. Any fencing along East 38th Street shall be of wrought iron or tubular steel construction painted earth tones or black to complement the buildings, with masonry pillars.
8. A minimum 25-foot wide setback shall be maintained along the eastern and western boundaries of the Property. The setback area shall be landscaped in accordance with a plan approved by the Planning Administrator.
9. A minimum 10-foot wide setback shall be maintained along the northern boundary of any development. The setback area shall be landscaped in accordance with a plan approved by the Planning Administrator.
10. The hours of operation shall be limited to 6:00 AM to 10:00 PM.
11. No surface water detention shall be released onto any adjoining residential property.
12. No permit for construction shall be issued until such time that all zoning violations for the existing mini-warehouse use at 3800 East University Avenue have been remedied.
13. No permit for construction shall be issued until such time that the entire site and the 100-foot wide area adjacent to the north have been graded to the satisfaction of the Engineering staff of the Permit and Development Center in accordance with a grading permit and soil erosion control plan.
14. Release the easement on Robert Anderson's property at 1232 E. 40th Street.
15. The four lots on Mahaska Avenue be 110 feet deep from north to south.
16. If there is a retaining wall between the storage units and the lots on Mahaska Avenue, it should not be more than four feet in elevation.
17. The four parcels on Mahaska Avenue be graded so they are buildable.
18. That all seven pages of the "Staff Report and Recommendation" be part of the record and be included as requirements for the approval of this zoning change.

3. A certified copy of the rezoning ordinance shall be attached hereto, and a certified copy of this document and the rezoning ordinance shall be recorded by the City in the land records of the County Recorder to memorialize the rezoning of the Property as identified above.

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.

Titleholders

Arnold E. DeWitt
Arnold E. DeWitt

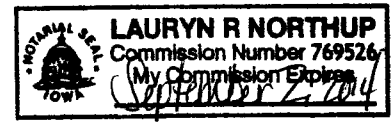
Grace E. DeWitt
Grace E. DeWitt

State of Iowa)
) ss:
County of Polk)

This instrument was acknowledged before me on March 22, 2012, by Arnold E. DeWitt, who is personally known to me or who has provided identification pursuant to and sufficient under Iowa law.

Laury R. Northup
Notary Public in the State of Iowa

State of Iowa)
) ss:
County of Polk)



This instrument was acknowledged before me on March 22, 2012, by Grace E. DeWitt, who is personally known to me or who has provided identification pursuant to and sufficient under Iowa law.

Laury R. Northup
Notary Public in the State of Iowa

