

Date October 8, 2012

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 20, 2012, its members voted 10-1 in support of a motion to recommend **APPROVAL** of a request from Jeff Nicholson (owner) to rezone property located at 909 East 27th Street from R1-60 One-Family Low-Density Residential District to C-1 Neighborhood Retail Commercial District subject to screening of any outdoor storage that is permitted.

The subject properties are more specifically described as follows:

(Except beginning at the Northwest corner; thence East 5 feet; thence Southwesterly to Southwest corner; thence North to Point of Beginning) Lot 5, Block 3, Farwell 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 rezoning is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. on October 22, 2012, 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.

FORM APPROVED:

MOVED by _____ to adopt.


 Michael F. Kelley
 Assistant City Attorney

(ZON2012-00150)

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

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.

 Mayor

 City Clerk

Date 10-8-12

Agenda Item 21

Call # _____

October 2, 2012

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 September 20, 2012, the following action was taken regarding a request from Jeff Nicholson (owner) to rezone property located at 909 East 27th Street.

COMMISSION RECOMMENDATION:

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



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

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley				X
Tim Fitzgerald	X			
Dann Flaherty	X			
John "Jack" Hilmes	X			
Ted Irvine	X			
Greg Jones	X			
William Page	X			
Christine Pardee	X			
Mike Simonson				X
CJ Stephens	X			
Vicki Stogdil	X			

APPROVAL of Part A) to find the requested rezoning **not** in conformance with the Des Moines' 2020 Community Character Plan future land use designation.

By separate motion Commissioners recommended 10-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley				X
Tim Fitzgerald		X		
Dann Flaherty	X			
John "Jack" Hilmes	X			
Ted Irvine	X			
Greg Jones	X			
William Page	X			
Christine Pardee	X			
Mike Simonson				X
CJ Stephens	X			
Vicki Stogdil	X			

APPROVAL of Part B) to amend the Des Moines' 2020 Community Character Plan to revise the future land use designation from Low-Density Residential to Commercial: Auto-Oriented Small-Scale Strip Development; and Part C) to approve the request to rezone the site from "R1-60" One-Family Low-Density Residential District to "C-1" Neighborhood Retail Commercial District subject to screening of any outdoor storage that is permitted.
(ZON2012-00150 & 21-2012-4.09)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

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

Part B) Staff recommends denial of the request to amend the Des Moines' 2020 Community Character Plan to revise the future land use designation from Low-Density Residential to Commercial: Auto-Oriented Small-Scale Strip Development.

Part C) Staff recommends denial of the request to rezone the site from "R1-60" One-Family Low-Density Residential District to "C-1" Neighborhood Retail Commercial District.

Written Responses

- 6 In Favor
- 1 In Opposition

STAFF REPORT

I. GENERAL INFORMATION

1. Purpose of Request: The proposed rezoning would allow expansion of the existing lawn mower repair and outdoor power equipment business (P & P Small Engines). If the rezoning is approved, the proposed expansion could only include outdoor storage if the Zoning Board of Adjustment grants a Variance of the requirement in the "C-1" Zoning District (City Code Section 134-844(1)) that storage of any and all materials and equipment shall take place within completely enclosed buildings.

Should the rezoning be denied, the applicant could apply for a Use Variance for consideration by the City's Zoning Board of Adjustment. While staff is not prepared to make a recommendation on such at this time, potential benefits of a Use Variance instead of a rezoning include that a sunset date (time limit) could be established and that the Use Variance could be revoked by the Zoning Board of Adjustment if the use creates a nuisance for surrounding property owners.

2. Relevant Zoning History: On June 7, 2012, the City's Zoning Enforcement Division cited the property for containing a commercial use (outdoor storage on a non-dustless surface), which is not permitted in the "R1-60" One-Family Low-Density Residential District. The commercial use includes outdoor storage of materials and equipment. At that time, the Zoning Enforcement Division also cited the properties known as 913 East 27th Street and 2715 East University Avenue (zoned "C-1" District) for having outside storage of equipment and materials associated with a lawn mower repair shop use.

3. Size of Site: 50 feet by 132 feet (6,600 square feet).

4. **Existing Zoning (site):** "R1-60" One-Family Low-Density Residential District.
5. **Existing Land Use (site):** Single-family residential use with non-permitted outdoor storage in the rear yard.
6. **Adjacent Land Use and Zoning:**

North – "C-1", Uses are P & P Small Engines and a single-family dwelling.

South – "R1-60", Uses are a levee system and City owned floodway.

East – "R1-60", Use is a single-family dwelling.

West – "C-1", Use is the D.A.V. Thrift Store and parking lot.
7. **General Neighborhood/Area Land Uses:** The subject property is located on the fringe of the East University major commercial corridor, where uses transition to low-density residential.
8. **Applicable Recognized Neighborhood(s):** The subject property is located in the Fairground Neighborhood. This neighborhood was notified of the Commission meeting by mailing of the Preliminary Agenda on August 31, 2012. A Final Agenda was mailed to the neighborhood associations on September 14, 2012. All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Fairground Neighborhood Association notices were mailed to Sharon Cooper, PO Box 8057, Des Moines, IA 50301. Additionally, separate notifications of the hearing for this item were mailed to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site on September 10, 2012. On September 7, 2012, the applicant held their required neighborhood meeting (attended by approximately 14 residents).
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, prior to the City Council Hearing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **2020 Community Character Plan:** The requested rezoning to "C-1" District would require that the current Des Moines' 2020 Community Character Plan future land use designation be amended from Low-Density Residential to Commercial: Auto-Oriented Small-Scale Strip Development.
2. **Fairground Neighborhood Action Plan:** The proposed rezoning conflicts with specific goals contained in the neighborhood plan as adopted by the City Council in 1998. A goal listed on page 19 states the intent to "limit the impact of commercial development

along East University Avenue on residential property". Staff believes that the proposed rezoning to allow expansion of the existing business along East University Avenue would negatively impact adjoining residential uses. Furthermore, a goal listed on page 21 states the intent to "preserve existing character in areas of the neighborhood which are single-family residential in character while designating an appropriate amount of land for future commercial and industrial growth.

While it could be argued that the proposed rezoning is necessary in achieving the goal of "designating an appropriate amount of land for commercial growth", staff believes that the current 180-foot depth of "C-1" District zoning along the south side of East University Avenue is appropriate for commercial uses. Staff believes that extending the commercial zoning 50 further to the south to allow outdoor storage of materials and equipment would not preserve the residential character of the surrounding properties.

- 3. Site Plan Requirements:** Any expansion of the P & P Small Engines business would be subject to administrative review and approval of a Site Plan by the City's Permit & Development Center. The site plan must be in accordance with all requirements, including those pertaining to landscaping, stormwater managements, setbacks, screening, paving materials, etc., unless the Zoning Board of Adjustment grants waiver to certain requirements.

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation.

Greg Jones asked what will happen if the Commission agrees with staff.

Erik Lundy stated if the Commission approves the zoning. The applicant will still have to go to the Zoning Board of Adjustment to seek variance for outdoor storage. Without the expansion they could go to the Board of Adjustment and ask for a variance for the provision that prohibits outdoor storage. Staff recommended that the applicant seek to rezone the entire section for their expansion first.

Jeff Nicholson 2715 E. University stated he is seeking rezoning because he would like to operate as he has been operating. In the future they would like to add a building on the property to have adequate space for a showroom.

Christine Pardee asked if the applicant met with the neighborhood.

Jeff Nicholson stated at the neighborhood meeting most of the people were from the Fairground Neighborhood Association who sent a letter stating they support the applicant's request but they would like for the applicant to put a screen up possibly or a privacy fence to prevent any more complaints from neighbors.

Christine Pardee asked if the applicant is in agreement with the screening request.

Jeff Nicholson stated that he is in agreement with the screening request. The applicant also referred to the 2020 Community Character Plan sustainability goals which states decisions cannot be based on any one of the five goals in exclusion to the others. One of the big goals is to promote wide approach to the development, establishing the neighborhood as a unit of planning and he does have the neighborhood supporting him. He also stated that without more space his company will not be able to grow. He has tried

to buy the one property that is in opposition. However, the neighbor is not willing to sell. Therefore, the applicant does not see them getting that house.

Greg Jones asked would the applicant continue to use this property for his outdoor storage or would something else happen if the building is expanded.

Jeff Nicholson stated that the crates that they receive now used to be disposable. However, they are now returnable. The applicant's hope was to have the crates stacked up somewhere behind a fence where nobody could see them.

Tim Fitzgerald asked about the complaints from the neighbors.

Jeff Nicholson explained that there has only been one complaint and that is the one person that is in opposition.

Tim Fitzgerald stated he did not believe that leaving inventory out all night would preserve the residential character of the surrounding properties and do not recall of any businesses that keep their inventory out at all times.

Jeff Nicholson stated 2715 University has existed since 1976 and they could not get all of their inventory inside. They had outdoor storage for 36 years. If he is not allowed to have anything outside he cannot be there. His business is gone.

Will Page asked if the applicant is willing to agree with the neighborhood association to screen his inventory how does he envision that amenity and would that prevent the visual intrusion that the DAV store has.

Jeff Nicholson stated that currently he has a privacy fence along the proposed property. There is just a little piece that is not close to the opposing neighbor. Therefore, he would be willing to put up the privacy fence along the small section.

CJ Stephens asked if the Neighborhood Association plan had been updated.

Erik Lundy stated no the neighborhood process is just beginning to be revisited.

CJ Stephens suggested that if the plan has not been updated maybe the neighborhood vision has been changed.

Dann Flaherty stated the whole purpose behind a lot of the neighborhood plan was to upgrade University.

Mike Ludwig stated that if building was being proposed to be constructed staff would probably look at the request differently. On the storage units that Arnold DeWitt proposed Mr. DeWitt was told that outdoor storage was not an appropriate extension of his storage business into the residential neighborhood. Any storage of boats, RV's etc. would have to be in a building. Then he came in with a proposal that proposed all storage within buildings on the property which was supported.

CJ Stephens stated the difference between that and this is Mr. DeWitt was not in compliance on some other things.

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Mike Ludwig pointed out that this site is also a zoning enforcement issue. It is a very parallel discussion. If it were an enclosed building staff would probably look at it very similar to the way the Arnie DeWitt proposal application was processed. Given that this request is outdoor storage, staff did have a concern about it being compatible with the neighborhood.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one to speak in favor or in opposition of the applicant's request

COMMISSION ACTION:

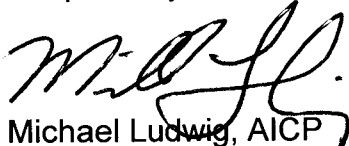
JoAnne Corigliano moved staff recommendation Part A) to find the requested rezoning not in conformance with the Des Moines' 2020 Community Character Plan future land use designation.

Motion passed 11-0.

JoAnne Corigliano moved to approve Part B) the request to amend the Des Moines' 2020 Community Character Plan to revise the future land use designation from Low-Density Residential to Commercial: Auto-Oriented Small-Scale Strip Development; and to approve Part C) the request to rezone the site from "R1-60" One-Family Low-Density Residential District to "C-1" Neighborhood Retail Commercial District subject to screening of any outdoor storage that is permitted.

Motion passed 10-1 (Tim Fitzgerald voted in opposition).

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

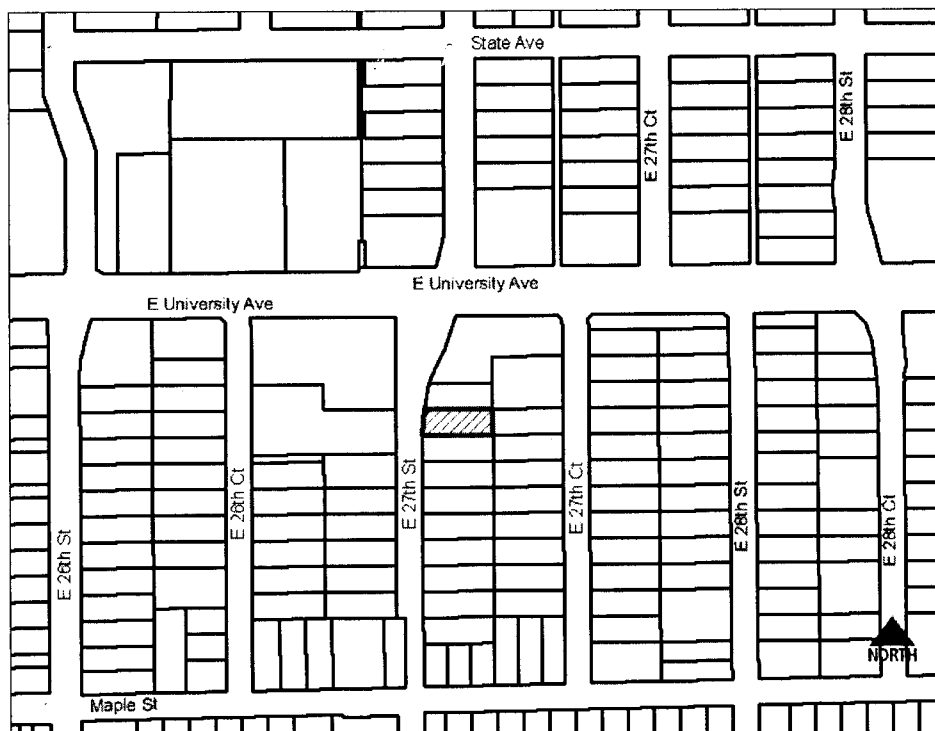
MGL:clw

Attachment

Request from Jeff Nicholson (owner) to rezone property located at 909 East 27 th Street.		File # ZON2012-00150			
Description of Action	Approval to rezone from "R1-60" One-Family Low-Density Residential District to "C-1" Neighborhood Retail Commercial District, to allow expansion of the existing outdoor power equipment business from the adjoining property to the north at 913 East 27 th Street and 2715 East University Avenue subject to screening of any outdoor storage that is permitted.				
2020 Community Character Plan	Low-Density Residential				
Horizon 2035 Transportation Plan	No Planned Improvements				
Current Zoning District	"R1-60" 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	6	1			
Outside Area					
Plan and Zoning Commission Action	Approval	10-1	Required 6/7 Vote of the City Council	Yes	N/A
	Denial			No	

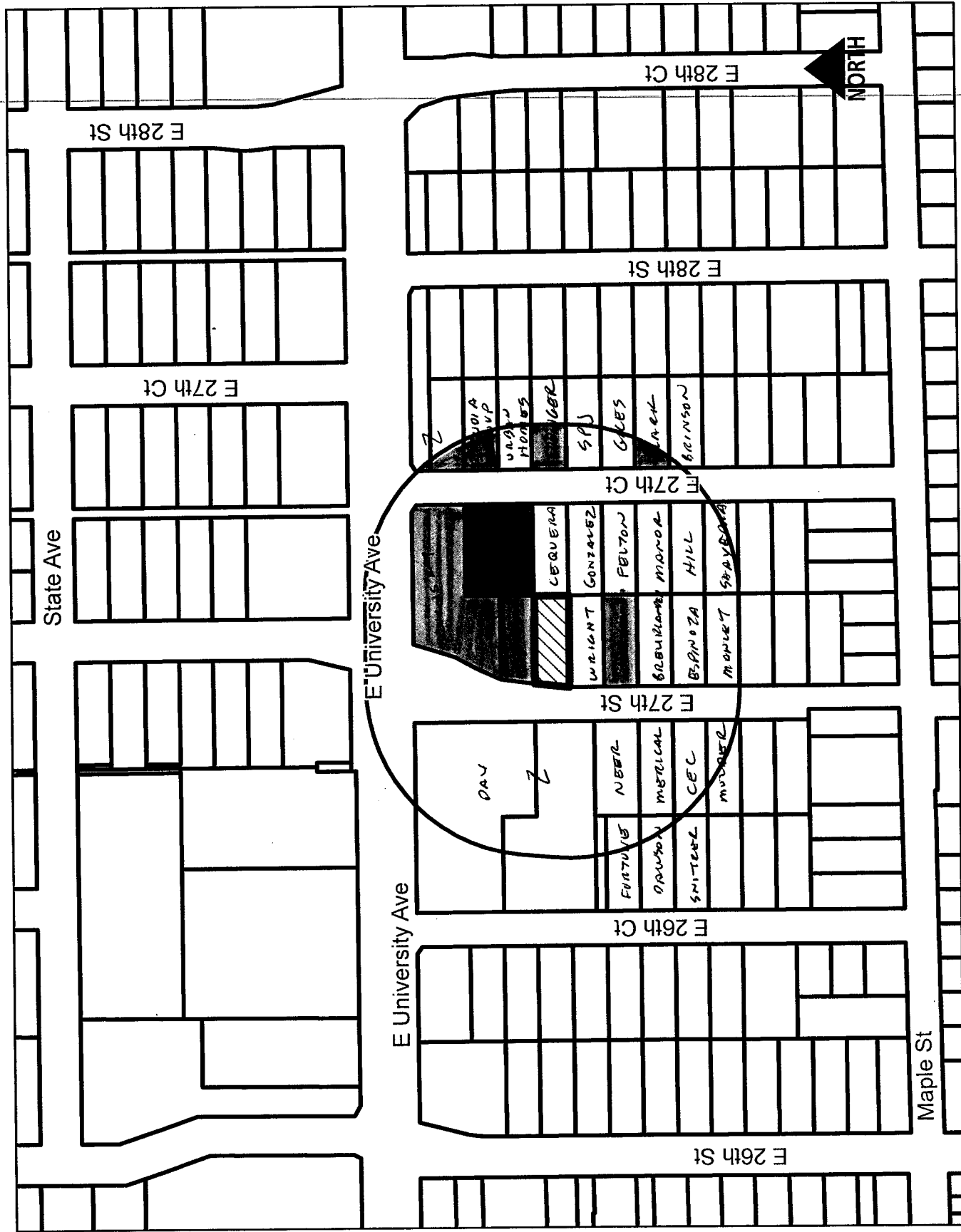
Jeff Nicholson - 909 E 27th Street

ZON2012-00150



ZON2012-00150

Jeff Nicholson - 909 E 27th Street



Item 20N 2012-000150

Date 9-17-12

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

(Circle One)

Print Name Aquino Group LLC

Signature [Signature] member

Address 700 22087 CLIVE IA 50325

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

~~_____

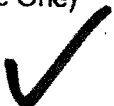
_____~~

Item 20N 2012-000150

Date 9-12-2012

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

(Circle One)



Print Name WILLIAM HIBBS

Signature William Hibbs

Address 916 E 27 St

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

Don't want spot zoning

Item ZON 2012-000150 Date 09/12/12 21

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

(Circle One)



Print Name RICK CLARK

Signature [Handwritten Signature]

Address 2509 NE 46TH AVE PROPERTY OWNER

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

GOOD FOR EASTSIDE - EXISTING BUSINESS
LETS KEEP THEM @ SAME LOCATION

Item ZON 2012-000150 Date 9-12-12

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

(Circle One)



Print Name JEFF NICHOLSON

Signature [Handwritten Signature]

Address 903 E 27TH

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

SUBJECT PROPERTY 1 OTHERS

Item ZON 2012-000150 Date 9-11-12 21

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

(Circle One)

Print Name Larry Eddinger

Signature [Signature]

Address 909 E 27th Ct.

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

Item ZON 2012-000150 Date SEPT 12 2012

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

(Circle One)

Print Name KEITH L. RUKHSIRY

Signature [Signature]

Address 2715 E. UNIV.

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



Fairground Neighborhood Association

9/16/12

Fairground Neighborhood is ok with improvements to 2715 University P&P small engine per city requirements. We would like him to put a screen up possibly, or a privacy fence, to protect his inventory from people who would try to steal it. And to also prevent any more complaints from neighbors.

Thank you
Sharon Cooper
President
Fairground Neighborhood Association