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Date January 28, 2013

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on January 17, 2013, its members voted 10-1 in support of a motion to recommend **DENIAL** of a request from James Sarcone (purchaser) to remove the prohibition of vehicle display use for property located at 4506 Southwest 9th Street.

The subject properties are more specifically described as follows:

South 165 feet for the East 125 feet, Lot 20, Amend Place, an Official Plat and a triangular piece of Lot C, Amend Place East of and adjacent to said Lot 20, Amend Place 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 February 11, 2013, 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

(ZON2012-00218)

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

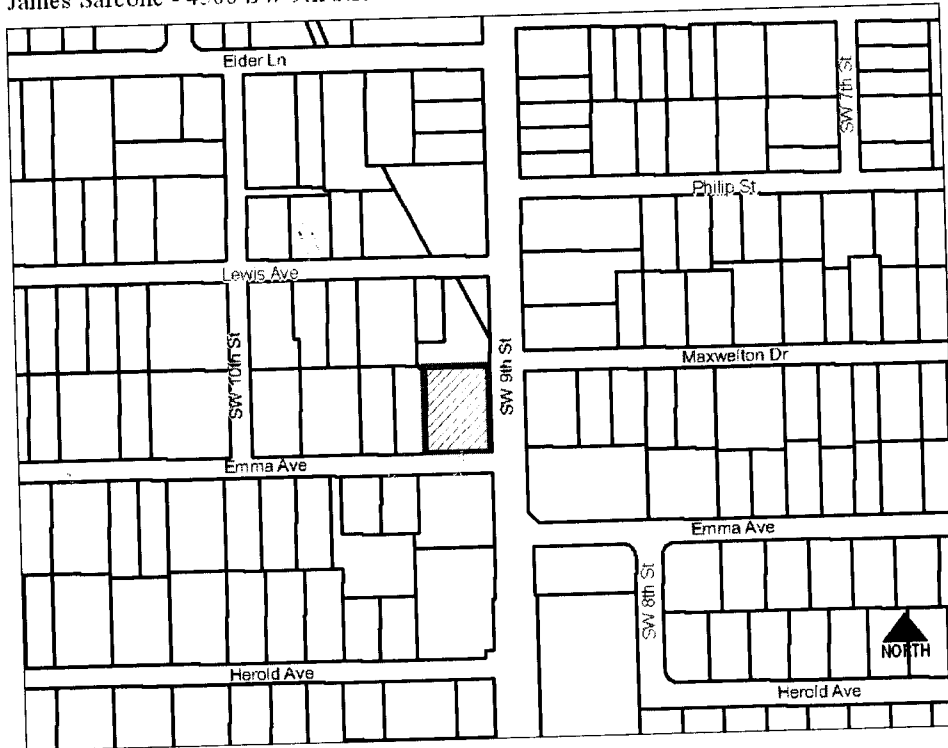
 City Clerk

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Request from James Sarcone (purchaser) to rezone property located at 4506 Southwest 9 th Street. The subject property is owned by David Holmes.		File # ZON2012-00218		
Description of Action	Denial of the request to rezone from Limited "C-2" General Retail and Highway Oriented Commercial District to Limited "C-2" General Retail and Highway Oriented Commercial District whereby the condition prohibiting the use of the property for automobile establishments for display, hire, rental or sales is removed, to allow reuse of the existing commercial building for a vehicle display lot.			
2020 Community Character Plan	Commercial: Auto-Oriented Small-Scale Strip Development			
Horizon 2035 Transportation Plan	SW 9 th Street from Raccoon river to Army Post Road to widen from 4 lanes undivided to 5 lanes undivided			
Current Zoning District	Limited "C-2" General Retail and Highway Oriented Commercial District (prohibit car lot)			
Proposed Zoning District	Limited "C-2" General Retail and Highway Oriented Commercial District (allow car lot)			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
	2	3		
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	
	Denial	10-1	Yes	X
			No	

James Sarcone - 4506 SW 9th Street

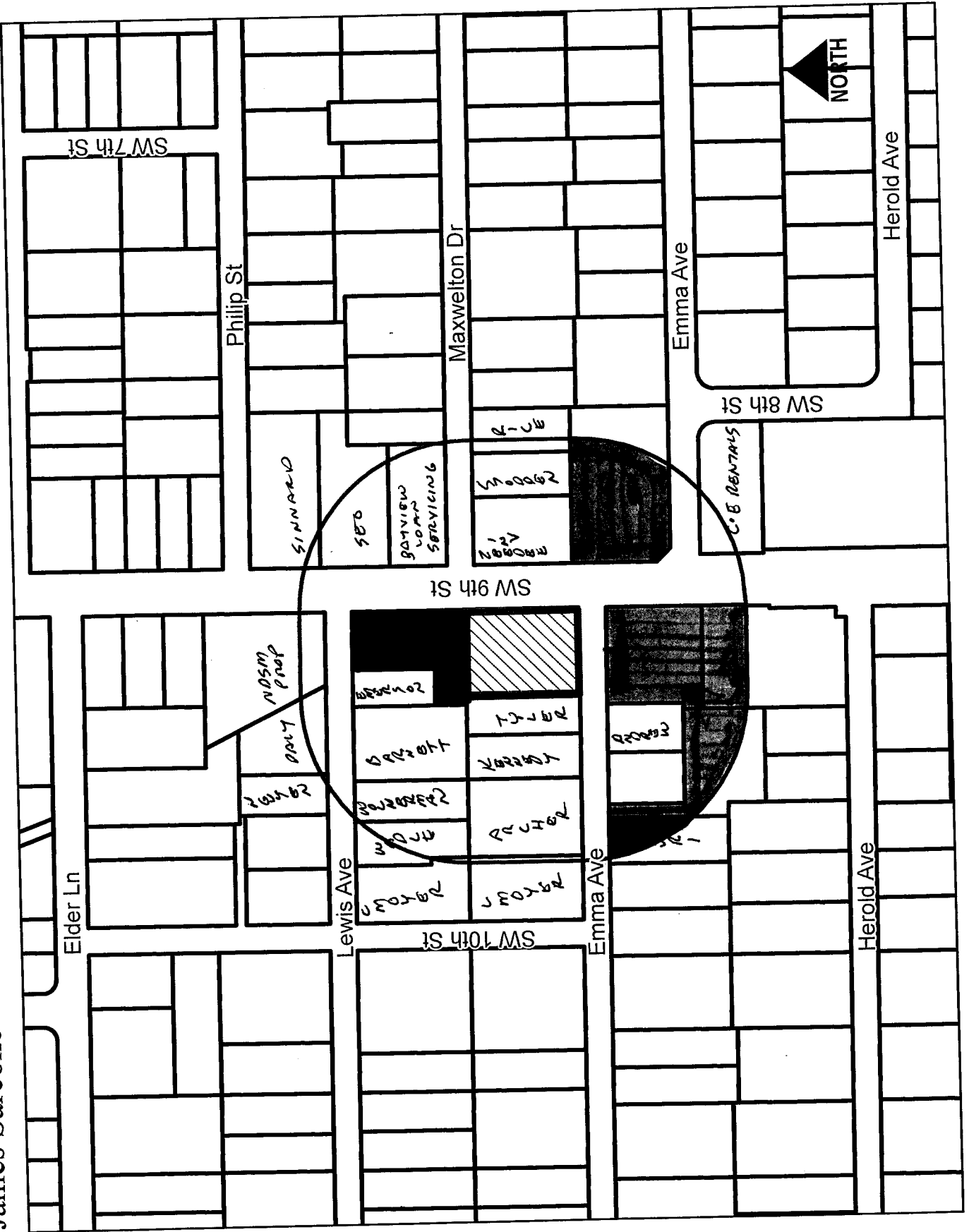
ZON2012-00218



ZON2012-00218

James Sarcone - 4506 SW 9th Street

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Item 2012 0218 Date 12-14-2012

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

Print Name LANA SCHIPPERS
Signature [Handwritten Signature]
Address 400 SW 9th

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

We need more business on
the street and less
vacant buildings

Item 2012 0218 Date 12-12-2012

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

Print Name WALTER BEIDBO
Signature [Handwritten Signature]
Address 5201 Mountain Drive
Dunwoody, GA 30315

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

This should bring more business to
SW 9th street.

Item 2012 0218

Date

20

I (am not) in favor of the request.

(Circle One)



Print Name

Sam A. Saluri

Signature

Sam A. Saluri

Address

920 Emma Ave

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

If The zoning dept during past year
did their job, stayed course on
their own policies DSM would be
a better place to live. S.W. 9th
needs improvement ONLY. Am Kgs

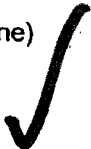
Item 2012 0218

Date

1-8-13

I (am not) in favor of the request.

(Circle One)



Print Name

Ed Corey Wholesale Auto Inc

Signature

Ed Corey Wholesale Auto Inc

Address

4400 S.W. 9th St

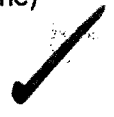
Reason for opposing or approving this request may be listed below:

I bought this property and city told me I was grandfathered
in, as the city was not going to have any more car lots
on S.W. 9th St. City lowered the zoning and should stay
firm on their decision. Why have any zoning if all we have
to do is appear before city council to change thing the city
has already made effective. By allowing another car dealer
next to my property, which is a dealership since 1991, will
only decrease the value of my property. We have way to
many car lots in this town as it is. One on Every corner is not
the answer

Item 2012 0218 Date 12-12-12

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

(Circle One)



Print Name South Des Moines Rental

Signature ?

Address _____

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

Too many car lots already
We don't want area to
turn into SE 14th ST

January 23, 2013

Date _____
Agenda Item 20

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 January 17, 2013, the following action was taken regarding a request from James Sarcone (purchaser) to rezone property located at 4506 Southwest 9th Street. The subject property is owned by David Holmes.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 10-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
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 Stogdill	X			
Greg Wattier		X		

DENIAL of Part A) to find the requested rezoning to remove the condition prohibiting vehicle display use be found **not** in conformance with the Des Moines' 2020 Community Character Plan's future land use designation of Commercial: Auto-Oriented, Small-Scale Strip Commercial; and Part B) to deny the request to remove the prohibition of vehicle display use.
(ZON2012-00218)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the requested rezoning to remove the condition prohibiting vehicle display use be found not in conformance with the Des Moines' 2020 Community Character Plan's future land use designation of Commercial: Auto-Oriented, Small-Scale Strip Commercial.

Part B) Staff recommends denial of the request to remove the prohibition of vehicle display use.



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

Written Responses

- 2 In Favor
- 3 In Opposition

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to convert the use of the property from a construction contractor business office to a vehicle display lot. The current zoning conditions prohibit vehicle display.
2. **Size of Site:** 20,556 square feet (0.47 acres).
3. **Existing Zoning (site):** Limited "C-2" General Retail and Highway Oriented Commercial District.
4. **Existing Land Use (site):** Vacant building that was originally developed for a full-service gas station, and most recently a contractor office with indoor equipment storage.
5. **Adjacent Land Use and Zoning:**
 - North* – "C-1", Use is a legal, non-conforming vehicle display lot (established as Southtown Motors in 1961).
 - South* – "C-1", Use is an office building.
 - East* – "C-1", Uses are a pizza carry-out/delivery restaurant; and a commercial center with an insurance office, pharmacy, and medical clinic.
 - West* – "R1-60", Use is a two-family dwelling.
6. **General Neighborhood/Area Land Uses:** The subject property is located along the Southwest 9th Street Commercial Corridor on the northwest corner of the intersection with Emma Avenue.
7. **Applicable Recognized Neighborhood(s):** The subject property is within the Watrous South Neighborhood. This neighborhood was notified of the meeting by mailing of the Preliminary Agenda to all recognized neighborhoods on November 30, 2012. Additionally, separate notifications of the hearing for this specific item were mailed on November 30, 2012 (20 days prior) and December 10, 2012 (10 days prior to the scheduled hearing) to Watrous South Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on December 14, 2012.

All agendas and notices are mailed to the primary contact person designated to the City of Des Moines Neighborhood Development Division by the recognized neighborhood association. The Watrous South Neighborhood Association mailings were sent to James Spiller at PO Box 35845, Des Moines, IA, 50315.

The applicant is required to schedule a neighborhood meeting prior to the hearing which includes invitation to Watrous South and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. The applicant will provide a summary of the meeting at the public hearing.

8. **Relevant Zoning History:** The City Council rezoned the property from "C-1" to "C-1A" on February 3, 1997. This included the approval of a reuse plan that restricted the use of the property to "C-1" permitted uses and auto glass repair use only.

On May 4, 2009 the City Council rezoned the property to a Limited "C-2" District subject to the following conditions:

- A. Prohibit the use of the property for adult entertainment business, automobile establishments for display, hire, rental or sales, package goods liquor stores, pawn shops, financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles, off-premises advertising signs, and taverns and night clubs.
- B. Conformance with current Site Plan requirements, including landscaping standards and paving of all off-street parking; the property shall be brought into conformance with an approved Site Plan to the extent it does not eliminate minimum required parking and maneuvering.
- C. Enclose and gate all outdoor trash receptacles with an enclosure built of block, stone, masonry or other material compatible with the primary building, and with 100% opaque metal gates.
- D. Prohibit storage of materials or equipment outside of a building.
- E. That the City Council will initiate rezoning a C-1 district classification in the event the property is not brought into compliance with current Site Plan regulations and all other zoning conditions on or before October 31, 2009.

Based on non-compliance with the approved Site Plan, on May 6, 2010, the Plan and Zoning Commission recommended rezoning of the property to a "C-1" District. The Commission recommendation was forwarded to the City Council and a hearing was set for the June 28, 2010 meeting of the City Council. This gave the applicant 45 days to come into compliance before a final decision on rezoning. The Site was determined to be in compliance and the item was withdrawn before the June 14, 2010 meeting.

9. **2020 Community Character Land Use Plan Designation:** Commercial: Auto-Oriented, Small-Scale Strip Commercial.

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. **Landscaping & Buffering:** The site is developed based on the original site development of a gas station which was modified when converted to a contractor office to meet current landscaping standards to the extent it did not compromise necessary maneuvering. The Site complied with an approved Site Plan under the standards applicable to "C-2" approved in 2009. Perimeter lot requirements were waived in the area between the two east driveways to allow necessary maneuvering through the site and preserve minimum off-street parking, so there is legal non-conforming zero paving setback condition. The previous user installed a six-foot high wood privacy fence along the west property line as part of the bufferyard requirement to protect the residential property to the west. Much of the required plant material for the Site was not maintained and is no longer in place. Any vehicle display lot would require a new Site Plan for consideration by the Plan and Zoning Commission.

- 2. **Access or Parking:** There is existing access to the site from two drive entrances off Southwest 9th Street and one drive entrance off Emma Avenue. The proposed use will require a minimum of four off-street parking spaces based on the size of the existing structure.

- 3. **2020 Community Character Plan:** Staff believes that the scale of the developed site is within the neighborhood scale intended by the Commercial: Auto-Oriented, Small-Scale Strip Commercial designation. Staff previously found that the adjoining surrounding residential neighborhood would be protected by prohibiting several uses that would present a negative impact including: adult entertainment business, automobile establishments for display, hire, rental, or sales; financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles; off-premises advertising signs; outdoor storage, package goods stores for the sale of alcoholic beverages; pawn brokerages; and taverns and nightclubs. While the 2020 Community Character Plan calls for Auto-Oriented, Small-Scale Strip Development along this segment of the corridor, the property depths are not conducive to protection of adjoining residential uses.

In May 2009, the City Council found prohibiting the requested vehicle display use necessary for the rezoning to remain in conformance with the Des Moines 2020 Community Character Plan. Staff does not believe conditions have changed significantly that would warrant reversing that determination. Placing additional vehicle display in this vicinity would present an adverse impact on the directly adjoining neighborhood area. The zoning as currently approved allows for a diversity of uses, including general motor vehicle repair for which the existing building was originally designed.

SUMMARY OF DISCUSSION

Erik Lundy presented the report and staff recommendation.

Mike Simonson asked what is the minimum lot size for auto display and how large is this property.

Erik Lundy stated the design guidelines for vehicle display lots in the site plan ordinance would require 0.50 acre. This property is 0.47 acre.

Dann Flaherty stated that in the past they have had concerns with respect to canopies/awnings, and this property has one. Is there a problem with that in this particular matter.

Erik Lundy stated as a structure it can remain. It is legal non-conforming. If it were to be expanded then it would need some type of Board of Adjustment relief for setbacks. Awnings are generally allowed for financial institutions and gas sales.

Mike Ludwig stated that if the zoning were approved and if a site plan came in for a vehicle display lot this Commission can ask that the awning be removed as part of that consideration.

Erik Lundy pointed out that in this case the awning is an architectural element of the original building to the existing building.

Will Page stated that this building might be eligible for the National Historic Register.

Erik Lundy stated there are other uses that could go here and the building code would still recognize this as a repair function. Therefore, under the current zoning an auto repair could be there.

Greg Wattier asked that if this property was over a half acre then the applicant could do an auto display lot?

Erik Lundy stated in the absence of a zoning condition prohibiting use for a vehicle display lot, a site under 0.5 an acre could be developed for a vehicle display lot but the Commission would need to waive that as part of the site plan design guidelines review.

James Sarcone 803 33rd Street soon moving to 1415 Park Avenue stated he did not realize how difficult it would be to become a small auto dealer in Des Moines and especially in what he calls his neighborhood. He did speak to the Watrous South Neighborhood Association and they were very supportive of his request. The general feeling was if he could take a vacant building and make it something nicer that won't go in disrepair then they support this project. He is only one person trying to improve this site and does not have the budget like bigger companies who are able to invest their money in SE 14th Street. This building has remained vacant for over a year and there have been no offers on it. He would like the opportunity to run a clean, nice, small business in the neighborhood where he lives and asked for the Commissioners approval.

JoAnne Corigliano asked if the applicant has any plans for the space behind the building.

James Sarcone stated there is an existing privacy fence behind the property. His only plan is to move the dumpsters to the back.

Greg Wattier asked if the applicant would be planning some revisions to the exterior of the building.

James Sarcone stated the only thing he has considered is reducing the size of the awning. The reason is because of some comments made by a few Commissioners that do not find it attractive. Besides that just sprucing it up would be his only plan and if it does have a chance of being a historical building he would be interested in pursuing that.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following spoke in opposition of the applicant's request:

Ed Corey Wholesale Auto Inc. 4400 SW 9th Street is a legal non-conforming display lot. He stated the City told him there would be no more car lots until you get south towards Army Post Road. He believes that it takes a half acre before the DOT will give a dealer's license and this property falls short. The building could be used for a lot of other things than another car lot. If the provision is lifted here then the City may as well lift it all over so that the entire area can become a car lot. There are too many car lots in the City and business is terrible for used car lots. He opposes the applicants request and believes that the zoning should remain the same.

Rebuttal

James Sarcone stated if another restaurant opened there would be no opposition. The same with the car lot. He believes that he can be successful at this property as a small used car lot dealer.

Tim Fitzgerald asked if he had an endorsement from the neighborhood association showing their support.

James Sarcone stated the neighbors spoke in favor of it but he did not have a written endorsement. He is certain that he could get a written endorsement from them. One thing he forgot to mention is that banks do not want to lend on old gas stations. This property is unique in that way. If someone wanted to put a restaurant in this building they would have a really hard time financing it. He was lucky enough to find financing and would like to move forward.

Shirley Daniels asked to hear from Mr. Corey of his interpretation about what happened at the neighborhood meeting.

Ed Corey stated he was at the neighborhood meeting and his perspective was there was no one in favor of it. The president of the neighborhood association and one other shared with him that they were not in favor of it. After the meeting they shared with him that their recommendation would be not in favor of it.

CHAIRPERSON CLOSED THE PUBLIC HEARING

JoAnne Corigliano stated this building could be very easily put on the National Historic Register if it is maintained. She still believes that a car lot would not work in this location.

Tim Fitzgerald voiced his concern about the encroachment to the road.

Greg Wattier stated that he would like to see a site plan design with some specific plans for the the building and how this property would be improved. He likes the idea of putting lights back on in vacant buildings and cleaning them up.

Mike Simonson stated that his concern with the applicant's request is what happens if this operator is no longer there. He believes the applicant would do a nice job but the zoning runs with the land not with the tenant or ownership.

COMMISSION ACTION:

Tim Fitzgerald moved staff recommendation Part A) that the request to remove the condition prohibiting vehicle display use be found not in conformance with the Des Moines' 2020 Community Character Plan's future land use designation of Commercial: Auto-Oriented, Small-Scale Strip Commercial, and Part B) to deny the request to remove the prohibition of vehicle display use.

Motion passed 10-1 Denial (Greg Wattier voted in opposition)

Respectfully submitted,


Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment