

.....
Date
March 20, 2006

WHEREAS, the City Plan and Zoning Commission has advised in the attached letter that at a public hearing held March 2, 2006, the members recommended by a vote of 11-2 for **CONDITIONAL APPROVAL** of a request from Dominic Formaro (owner) to rezone property located at 3004 East 38th Street from the "R1-70" One-Family Low-Density Residential District to the "C-1" Neighborhood Retail Commercial District, subject to the following conditions:

1. The property shall not be converted from its current office use to any other commercial use until a site plan has been approved by the City's Permit and Development Center that conforms with all City regulations, including but not limited to storm water, landscaping, parking, and building code requirements.
2. If the property is converted from its current office use to any other commercial use allowed in the "C-1" District, the property shall be brought into substantial conformance with the approved site plan within six months after such other commercial use is commenced.
3. Prohibition of the following uses:
 - a. Gas stations.
 - b. Package goods stores for the sale of alcoholic beverages.
 - c. Small engine repair
 - d. Pawn shop
 - e. Title loan business
 - f. Theatre
 - g. Auto repair
 - h. Auto parts
4. Limitation of business hours to 6 a.m. to 11 p.m. Monday through Thursday, 6 a.m. to 1 a.m. Fridays & Saturdays, and no restaurant use on Sundays.

The subject property is more specifically described as follows:

Except the West 100 feet and except the East 13 feet Lots 102 and 103, Grand View Acres, an Official Plat, all now included in and forming a part of the city of Des Moines, Polk County, Iowa.

(Continued)

.....
Date March 20, 2006


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 April 10, 2006, 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.

MOVED by _____ to adopt.

FORM APPROVED:


 Roger K. Brown
 Assistant City Attorney

(ZON2006-00015)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BROOKS				
COLEMAN				
KIERNAN				
HENSLEY				
MAHAFFEY				
VLASSIS				
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

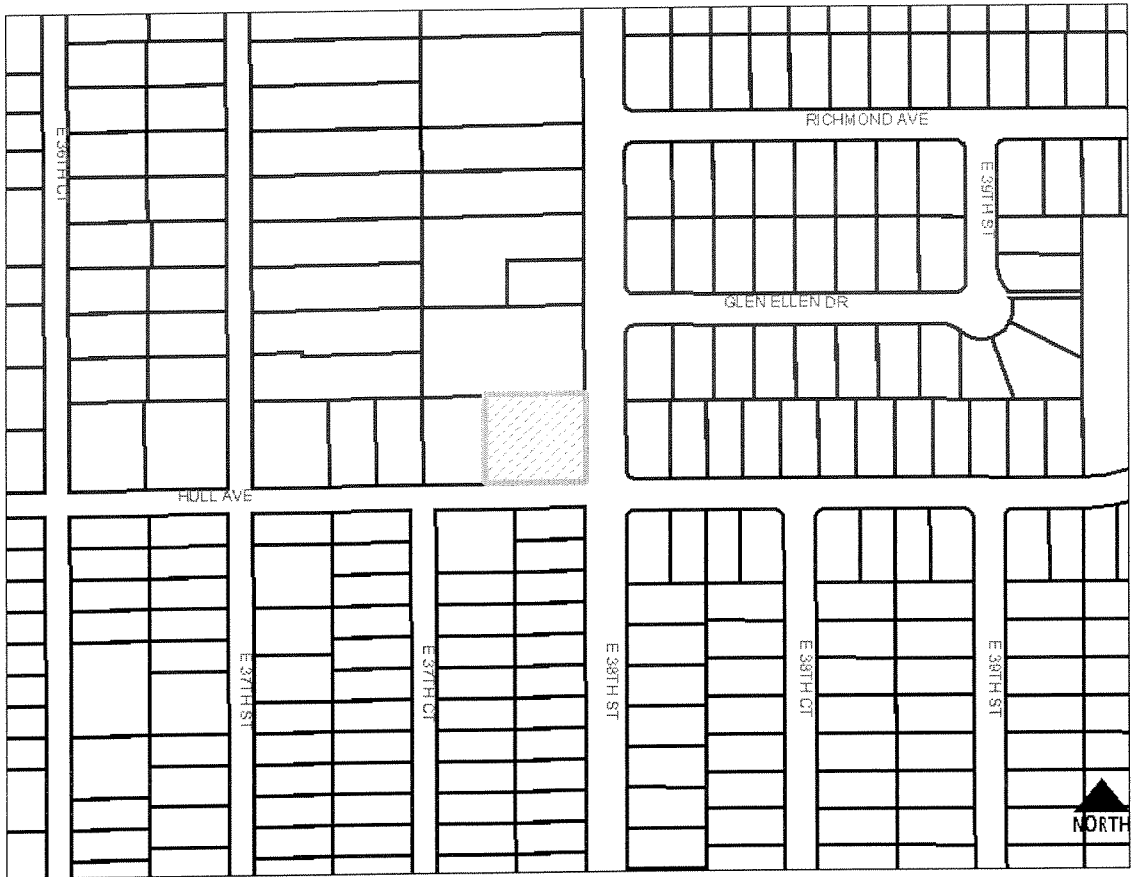
 City Clerk

32

Request from Dominic Formaro (owner) to rezone property located at 3004 East 38 th Street.			File # ZON2006-00015		
Description of Action	Rezone property from "R1-70" One-Family Low-Density Residential District to "C-1" Neighborhood Retail Commercial District to allow conversion of the property for restaurant use.				
2020 Community Character Plan	Low-Density Residential				
Horizon 2025 Transportation Plan	No Planned Improvements				
Current Zoning District	"R1-70" 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					
Outside Area	6	2	0	<20%	
Plan and Zoning Commission Action	Approval	11-2	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Dominick Formaro - 3004 E 38th Street

ZON2006-00015



March 20, 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 March 2, 2006 the following action was taken:

COMMISSION RECOMMENDATION:

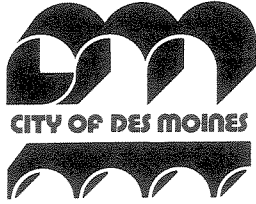
After public hearing, the members voted 13-0 as follows:

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			

APPROVAL of a request from Dominic Formaro (owner) to amend the Des Moines 2020 Community Character Land Use Plan to revise the future land use designation from Low Density Residential to Commercial: Pedestrian-Oriented Neighborhood Node for property located at 3004 East 38th Street, as more specifically shown in the accompanying map. (21-2006-4.02)

By separate motion, members voted 11-2 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

CONDITIONAL APPROVAL of a request from Dominic Formaro (owner) to rezone property located at 3004 East 38th Street from the "R1-70" One-Family Low-Density Residential District to the "C-1" Neighborhood Retail Commercial District, subject to the following conditions:
(ZON2006-00015)

1. The property shall not be converted from its current office use to any other commercial use until a site plan has been approved by the City's Permit and Development Center that conforms with all City regulations, including but not limited to storm water, landscaping, parking, and building code requirements.
2. If the property is converted from its current office use to any other commercial use allowed in the "C-1" District, the property shall be brought into substantial conformance with the approved site plan within six months after such other commercial use is commenced.
3. Prohibition of the following uses:
 - a. Gas stations.
 - b. Package goods stores for the sale of alcoholic beverages.
 - c. Small engine repair
 - d. Pawn shop
 - e. Title loan business
 - f. Theatre
 - g. Auto repair
 - h. Auto parts
4. Limitation of business hours to 6 a.m. to 11 p.m. Monday through Thursday, 6 a.m. to 1 a.m. Fridays & Saturdays, and no restaurant use on Sundays.

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Part A) Staff recommends that the requested rezoning does not conform with the current Des Moines' 2020 Community Character Plan's future land use designation of Low-Density Residential.

Part B) Staff recommends approval of an amendment to the Des Moines' 2020 Community Character Plan revising the future land use designation from Low-Density Residential to Commercial: Pedestrian-Oriented Neighborhood Node.

Part C) Staff recommends approval of the requested rezoning of the property at 3004 East 38th Street from the "R1-70" One-Family Low-Density Residential District to the "C-1" Neighborhood Retail Commercial District, subject to the following conditions:

1. The property shall not be converted from its current office use to any other commercial use until a site plan has been approved by the City's Permit and Development Center that conforms with all City regulations, including but not limited to storm water, landscaping, parking, and building code requirements.
2. If the property is converted from its current office use to any other commercial use allowed in the "C-1" District, the property shall be brought into substantial conformance with the approved site plan within six months after such other commercial use is commenced.
3. Prohibition of the following uses:
 - a. Gas stations.
 - b. Package goods stores for the sale of alcoholic beverages.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to rezone the property in order to allow conversion of the existing 4,944-square foot structure from an office use to a restaurant use.

Such a conversion is considered to be a “change-in-use” and, therefore, is not permitted by grandfather rights in the existing “R1-70” One-Family Residential District.

The proposed conversion would also be subject to review and approval of a site plan by the City’s Permit and Development Center. This site plan must be in conformance with all City regulations, including but not limited to storm water, landscaping, parking, and building code requirements.

2. **Size of Site:** 143’ x 159’ or 22,737 square feet (0.52 acre).
3. **Existing Zoning (site):** “R1-70” One-Family Residential District.
4. **Existing Land Use (site):** Unoccupied 1-story, 4,944 square foot structure with parking lot.
5. **Adjacent Land Use and Zoning:**
 - North* - “R1-70”, Use is New Testament Baptist Church.
 - South* - “R1-60”, Use is single-family residential.
 - East* - “R1-60”, Use is single-family residential.
 - West* – “R1-70”, Use is parking lot for New Testament Baptist Church.
6. **General Neighborhood/Area Land Uses:** The subject property is located in a predominantly low-density residential neighborhood at the northwest corner of the intersection of East 38th Street and Hull Avenue. A church is located adjacent to the north and a parking lot for the church is located adjacent to the west.
7. **Applicable Recognized Neighborhood(s):** N/A.
8. **Relevant Zoning History:** N/A.
9. **2020 Community Character Land Use Plan Designation:** Low-Density Residential.
10. **Applicable Regulations:** The Commission reviews all proposals to amend zoning regulations or zoning district boundaries within the City of Des Moines. Such amendments must be in conformance with the comprehensive plan for the City and designed to meet the criteria in §414.3 of the Iowa Code. The Commission may recommend that certain conditions be applied to the subject property if the property owner agrees in writing, prior to the City Council Hearing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Drainage/Grading:** Future reuse of the site as any commercial use other than an office use would be subject to review and approval of a site plan by the City’s Permit and Development Center. This site plan must be in conformance with the City’s storm water management requirements under the City Site Plan policies.
2. **Landscaping & Buffering:** Future reuse of the site as any commercial use other than an office use would be subject to review and approval of a site plan by the City’s Permit and Development Center. This site plan must be in conformance with the City’s landscaping standards, which would include perimeter, buffer yard, and parking lot plantings. The landscaping standards would require removal of the paving in the required front yard area along both East 38th Street and Hull Avenue and require restoration of the curb and sidewalk.

3. **Access or Parking:** Future reuse of the site as any commercial use other than an office use would be subject to review and approval of a site plan by the City's Permit and Development Center. This site plan must be in conformance with the City's parking requirements. The Ordinance requires provision of 1 off-street parking space per 150 square feet of gross floor area for a restaurant use. 33 off-street parking spaces would be required if the entire existing 4,944 square foot structure were used for a restaurant use. If the site were unable to provide the minimum required off-street parking spaces, the applicant must obtain the necessary relief from the Zoning Board of Adjustment.
4. **Traffic/Street System:** Staff believes that the adjoining streets (East 38th Street and Hull Avenue) can adequately support the traffic generated by any future reuse of the site as allowed in the requested "C-1" District so long as the site provides the minimum required off-street parking.
5. **2020 Community Character Plan:** The requested "C-1" District is consistent with the proposed Des Moines' 2020 Community Character Plan's future land use designation of Commercial: Pedestrian-Oriented Neighborhood Node. The proposed future land use designation is appropriate given the isolated small amount of land carrying this future land use designation and its location at the intersection of East 38th Street and Hull Avenue, which both function as minor collector streets within a predominantly low-density residential neighborhood.

Written Responses

3 In Favor

1 In Opposition

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

SUMMARY OF DISCUSSION

Jason VanEssen: Presented staff report and recommendation. Identified the uses permitted in the "C-1" Neighborhood Retail Commercial District. Explained the difference between a bar or tavern and a restaurant that can have a liquor license. A restaurant derives 50% or more of their sales revenue from food.

Dominic Formaro, Sr., 2350 E. 40th Court: Also owns the property at 3004 E. 38th Street. Indicated he did not foresee any problems with parking requirements and noted they could adjust the square footage of the restaurant if necessary; added they plan to have consignment retail space, also. Would be amenable to considering hours of operation to fit into the neighborhood. The current proposal offers flexible hours that would be amenable to the neighbors. Indicated there was no problem with having no liquor store, and if required he would be amenable to a requirement that the entire building be a restaurant provided he could obtain relief from the Board of Adjustment for parking requirements. He did not anticipate any problems with patrons parking in the Church parking lot with the type of restaurant they are considering (carryout and dine in). Explained the site was a bakery at one time and was a good fit and believed the planned use would also be a good fit in the neighborhood and a tremendous asset.

Larry Hulse: Cautioned the Commission that if they had concerns regarding hours of operation or something else, they should attach conditions to the zoning since future owners may not be as willing to conform to the requests of the Commission. Also suggested the applicant attempt to work with the Church for shared parking. Recommended the Commissioners consider whether auto parts and theatre uses allowed in the zoning district should be prohibited on this property.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following individual spoke to the request:

Pastor of New Testament Baptist Church, 3020 E. 38th Street: Only opposed to the applicant's request for a liquor license; no other concerns with the request.

There was no one else in the audience to speak on this item.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Brian Millard: Moved staff recommendation with additional prohibition of the following uses:

- Small engine repair
- Pawn shop
- Title loan business
- Auto parts
- Theatre
- Auto repair

Bruce Heilman: Offered a friendly amendment regarding hours of operation as a result of the surrounding residential uses. Did not want to harm the restaurant but asked that hours of operation be Monday through Thursday 6 a.m. to 11:00 p.m., Fridays and Saturdays 6 a.m. to 1 a.m. and asked if Sundays would conflict with the Church services.

Dominic Formaro: Indicated the restaurant would be closed on Sundays.

Brian Millard: Accepted the friendly amendment.

Dominic Formaro: Asked about having a tenant that wanted to be open Sundays. Also indicated if there were the opportunity to utilize some of the parking from the Church the entire operation could be made to be restaurant and they could offer meeting room facilities.

Brian Millard: Noted it would be a restaurant that people would walk to and encouraged staff to work with the applicant to entice the full operation be restaurant use.

Motion passed 13-0 to amend the Des Moines' 2020 Community Character Plan.

Motion to rezone passed 11-2 (Jeffrey Johannsen and Brook Rosenberg were in opposition).

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:dfa

Attachment

Item ZON 2006-000015

Date 2-22-06 32

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

(Circle One)

RECEIVED

MAR 02 2006

COMMUNITY DEVELOPMENT DEPARTMENT

Print Name Dennis Mefferd

Signature Dennis Mefferd

Address 3810 HULL AVE. 50317

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

Item ZON 2006-000015

Date 2-22-06

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

(Circle One)

We ARE

RECEIVED

MAR 02 2006

COMMUNITY DEVELOPMENT DEPARTMENT

① Print Name CLARICE M. SLATER

Signature Clarice M. Slater

Address 3716 HULL AVE. DES MOINES IA

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

INCREASE DINING OPPORTUNITIES ON

N.E. SIDE ② ROBERT E. SLATER

Robert E Slater

Item ZON2006-000015

Date 2-22-06

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

RECEIVED
FEB 24 2006

Print Name Don + Nancy Winget

Signature Nancy Winget

Address 3807 Hull

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

Item ZON2006-000015

Date 2-26-06

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



Print Name George T Taylor Sr

Signature George T Taylor Sr

Address 2912 E 37th St Court

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

MAR 01 2006
COMMUNITY DEVELOPMENT DEPARTMENT

Item ZON 2006-000015 Date 3-2-06

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

RECEIVED

MAR 10 2006
COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name Ohnemus, Joseph & Judith

Signature J Ohnemus

Address 3813 Glen Ellen Dr

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

Other small restaurant ^{only} would be fine - but
by changing the zoning to retail & commercial
& allow other businesses in our area - I would
have to vote NO.

RECEIVED AFTER P&Z meeting

Item ZON 2006-000015 Date 3-3-06

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

RECEIVED

MAR 08 2006

COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name Antonino Mendoza

Signature Antonino Mendoza

Address 3109 E 37th St

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

RECEIVED AFTER P&Z meeting

Item ZON2006-000015

Date 3-6-06

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

32

RECEIVED
MAR 10 2006
COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name Donald+JoAnn Prock

Signature JoAnn Prock

Address 3108 E. 38th St, D.M.

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

Since Grandview Market closed, the place has been an eyesore. We look forward to a well run family dining place with good food, especially on the east side.

RECEIVED AFTER P/2 meeting (this is late)

Item ZON2006-000015

Date 2/24/2006

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

RECEIVED
FEB 28 2006
COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name Dominic A. Formaro, Sr.

Signature Dominic A Formaro, Sr

Address 5491 SE 6th Av. DM It 50327-191

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

This project will provide additional services to the neighborhood.

SUBJECT PROPERTY

Item ZON 2006 000015

Date 2-22-06

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

RECEIVED

FEB 24 2006

COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name Mrs Hermal Alexander

Signature Mrs Hermal Alexander

Address 3710 Hull Des Moines Ia.
50317

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

Please no liquor be served
would oppose only if liquor
was served. as you know the building
is close to a church and there
is many children in the neighbor
hood. Mrs Ruth Alexander (wife)