

Date April 9, 2007

RESOLUTION DENYING PROPOSED AMENDMENT TO THE DES MOINES 2020 COMMUNITY CHARACTER LAND USE PLAN

WHEREAS, on August 7, 2000, by Roll Call No. 00-3381 the City Council adopted the Des Moines 2020 Community Character Land Use Plan; and

WHEREAS, the City Plan and Zoning Commission has advised in the attached letter that at a public hearing held March 15, 2007, the members voted 9-1 in support of a motion to recommend DENIAL of a request from Phui Lovan (Proprietor) to amend the Des Moines 2020 Community Character Plan designation from Low Density Residential to Pedestrian-Oriented Neighborhood Node for property located at 1020 East 12th Street as more specifically shown on the accompanying map. The applicant is purchasing the subject property from Pacific One, LLC represented by Sam Baccam (officer).

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. The City Council hereby makes the following findings of fact regarding the proposed amendment to the Des Moines 2020 Community Character Land Use Plan:
 - a) The entire property proposed to be designated as a Pedestrian-Oriented Commercial Node is covered by the existing building and there is no available off-street parking.
 - b) The proposed amendment creates a new isolated commercial district that is too small to be used for any use in conformance with the requirements of the Zoning Ordinance.
 - c) If the application of the existing zoning regulations has the effect of denying the owner any economic use of the property, then the appropriate remedy is to seek relief from the Zoning Board of Adjustment.
2. That the proposed amendment to the Des Moines 2020 Community Character Land Use Plan described above, is hereby DENIED.

MOVED by _____ to adopt.

(continued)

★ Roll Call Number

Agenda Item Number

50A

Date April 9, 2007

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FORM APPROVED:

Roger K Brown

Roger K. Brown
Assistant City Attorney

(21-2005-4.08)

NOTE: If the City Council desires to approve the rezoning, an appropriate motion would be to continue the public hearing until April 23, 2007, and to direct the Legal Department to prepare the appropriate legislation to approve the proposed rezoning subject to appropriate conditions.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
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



April 9, 2007

50A

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 15, 2007, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-1 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
Jim Martin	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

DENIAL of a request from Phui Lovan (Proprietor) to amend the Des Moines 2020 Community Character Plan designation from Low Density Residential to Pedestrian-Oriented Neighborhood Node for property located at 1020 East 12th Street. Subject property is owned by Pacific One, LLC represented by Sam Baccam (officer).
 (21-2005-4.08)

By the same motion and vote members moved for **DENIAL** of the request to rezone the subject property from "R1-60" One-Family Low-Density Residential District to "NPC" Neighborhood Pedestrian Commercial District to allow the existing commercial building to be used for a catering business and second floor apartments. The intent of the Commission is for the Zoning Board of Adjustment to consider the request for a Use Variance as an appropriate solution for the applicant. The Board of Adjustment cannot consider a Use Variance request until the applicant has been denied the required zoning by the City Council. Use Variances give the City greater control than limited zoning, primarily because the Variance could lapse after discontinuance of the use for a period over one year.
 (ZON2005-00063)

Written Responses

- 1 In Favor
- 10 In Opposition

This item would require a 6/7 vote of City Council to overturn the recommendation for denial by the Plan and Zoning Commission.

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Part A) Staff recommends the proposed rezoning be found not in conformance with the Des Moines' 2020 Community Character Plan.

Part B & C) Staff recommends denial of the requested Land Use Plan amendment and rezoning.

The applicant has revised his proposed use from a restaurant to a catering business as a compromise that would have less of an impact on the neighborhood, while allowing him to utilize the existing commercial space on the ground floor. This may be an appropriate solution for the Zoning Board of Adjustment to consider as part of a request of a Use Variance. The Board of Adjustment cannot consider a Use Variance request until the applicant has been denied the required zoning by the City Council. Use Variances give the City greater control than limited zoning, primarily because the Variance could lapse after discontinuance of the use for a period over one year.

STAFF REPORT

I. GENERAL INFORMATION

- 1. Purpose of Request:** The subject property contains a Victorian two-story, mixed-use building that has historically contained commercial uses on the main level and apartments above. In 2002 the applicant opened a restaurant at this site and obtained a liquor license from the City. In response to a complaint in 2004, the City's Zoning Enforcement Officer determined that the subject property had lost its legal non-conforming rights to "C-1" Neighborhood Retail District uses due to an extended vacancy from 1999 to 2002 and that the liquor license had been issued in error. The applicant appealed the Zoning Officer's decision to the Board of Adjustment on March 23, 2005. The Board upheld the Zoning Officer's determination that the property had lost its legal non-conforming rights. On June 2, 2005, the Plan and Zoning Commission considered the applicant's request that the property be rezoned to "NPC" to allow for the reopening of the restaurant on the first floor and for the continue operation of apartments on the second floor. The request was continued indefinitely to allow the applicant time to develop a revised site plan that addresses the site's existing deficiencies with regard to the NPC Design Guidelines and time to approach the adjoining property owner to the south to explore developing a combined site plan for both properties that could include the rezoning of each site to a Limited "NPC".

The subject property has legal non-conforming rights for the four apartment units on the second floor. The requested rezoning would allow these units to exist as conforming. The property to the south consists of a vacant single-story commercial building that has lost its legal non-conforming rights for commercial uses. The rezoning of both of these properties would allow for the development of a joint site plan that could provide space for paved off-street parking, dumpster enclosures, and landscaping on the south end of the adjoining property, greatly enhancing the appearance of both properties.

On April 7, 2006, the applicant submitted a site sketch and building elevations for the subject property and the property to the south as requested. However, he has not been able to negotiate an agreement with the adjoining property owner. The applicant wishes to move forward with his rezoning request and has revised the proposed use from a restaurant to a catering business.

- 2. Size of Site:** 44' x 55' or 0.05 acres.
- 3. Existing Zoning (site):** "R1-60" One-Family Low-Density Residential District and Gambling Games Prohibition Overlay District.

4. **Existing Land Use (site):** Vacant commercial space and four apartment dwelling units.

5. **Adjacent Land Use and Zoning:**

North – “R1-60”; Uses include single-family residential dwellings.

South – “R1-60”; Use is a vacant single-story commercial building.

East – “R1-60” Uses include single-family residential dwellings and a duplex residential dwelling.

West – “R1-60”; Use is a single-family residential dwelling.

6. **General Neighborhood/Area Land Uses:** Predominately single-family residential with a mix of small-scale multi-family dwellings and commercial uses along the University Avenue and East 14th Street corridors.

7. **Applicable Recognized Neighborhood(s):** Capitol Park Neighborhood Association.

8. **Relevant Zoning History:** Large portions on the Captiol Park Neighborhood, including the subject property, were rezoned from "R-3" to “R1-60” in May of 2000 as part of the implementation of the Capitol Park Neighborhood Plan.

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, in addition to the existing regulations. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Landscaping & Buffering:** The existing building covers the entire site. The site sketch submitted by the application in 2006 shows street trees along East 12th Street but no other landscaping or buffering. Staff believes that if the rezoning is approved, the applicant should be required to submit a revised site plan addressing landscaping to the maximum extent possible.

2. **Traffic/Street System:** This section of East 12th Street functions as a collector street given that it crosses Interstate 235 to the south and intersects with University Avenue to the north, providing access to East High School, Mercy Capitol Hospital and the State Capitol Complex.

3. **Access or Parking:** The existing building’s footprint covers the entire property leaving no space for off-street parking. The site currently has inset 90-degree angle parking within the adjoining Fremont Street right-of-way. This parking is graveled and appears to have space for four vehicles. Staff also estimates there is space for one on-street parallel parking space along East 12th Street. The “NPC” District parking guidelines would require four parking spaces for the apartments and one space for every two employees of the catering business during the largest shift of employees.

4. **NPC Design Guidelines:** These design guidelines are applicable to any development within an “NPC” district. The following comments are based on the revised drawings submitted by the applicant in 2006.

SOA

A) Buildings should frame the street and maintain a minimal setback from the street.

The existing structure is built to the street side property lines.

B) The front facade of the first floor of the building on the primary commercial street should have a ratio of at least 40 percent window and window display area to total street facade.

The revised elevations show the first floor of the front facade consisting of 13.8% windows. Staff believes that meeting this guideline should be a condition of approval.

C) The front entrance should be oriented to the street. On a corner lot, the building should have a well-defined entrance on the primary commercial street.

The existing building meets this guideline.

D) Materials should be brick, stone, tile, stucco, or horizontal wood clapboard with a maximum width of six inches. Two-story buildings are encouraged.

The existing building is brick with diagonal wood siding over the first floor facade. Staff does not believe the diagonal siding meets this guideline and believes that approval should be subject to the replacement of the side with an appropriate material.

E) Commercial buildings with over 50 feet of building frontage should have the appearance of being broken into separate bays of between 20 to 35 lineal feet using structural elements, fenestration patterns, protruding or recessed bays, or architectural details.

The existing building's front facade is less than 50 feet wide.

F) Building frontage should occupy at least 50 percent of the primary street frontage.

The existing building exceeds this guideline.

G) The following bulk regulations should be observed:

1. Minimum Lot Area for a multiple dwelling structure: Minimum of 10,000 square feet and 2,000 square feet per dwelling unit.

The subject property is 2,200 square feet in size and does not meet this guideline.

2. Front yard: minimum of zero feet.

The existing building meets this guideline.

3. Side yards: minimum of zero feet.

The existing building meets this guideline.

4. Rear yard: None required, except when adjoining any R or C-0 district or portion of a PUD designated for residential use, in which case ten feet.

The adjoining property is zoned "R1-60." The existing building is built to the rear yard property line and does not meet this guideline.

5. Height: minimum of 15 feet, maximum of 45 feet.

The existing building meets this guideline.

6. Number of stories:

- Residential uses, a maximum of four stories.
- All other permitted uses, a maximum of two stories.

The existing building meets this guideline.

H) Signs, which are attached or projecting from the building and designed for the character of the building, are preferred. Monument signs are allowed.

The revised elevations include a wall sign for the originally proposed restaurant. The applicant has not submitted revised drawings reflecting the proposed catering business. Staff believes signage should be restricted to wall-mounted signs that conform to "C-1" District regulations.

5. Other Information: The submitted site sketch does not provide any provision for the enclosed storage of garbage cans or dumpsters. Since the existing building covers the entire site staff recommends that the storage of garbage be restricted to within the building except for the day of pick up.

6. 2020 Community Character Plan: The requested rezoning to "NPC" is not in conformance with the Low Density Residential future land use designation. The applicant is requesting the Land Use Plan be amended to Pedestrian-Oriented Neighborhood Node. This amendment is necessary for the requested rezoning to be found in conformance. Staff does not believe a commercial land use designation is appropriate given the limited size of the site and the residential pattern of the surrounding neighborhood.

SUMMARY OF DISCUSSION

Jason Van Essen: Presented staff report and recommendation.

Bruce Heilman: Asked what was in the building when it was commercial.

Jason Van Essen: Indicated there had been restaurant and bar uses, but the property has lost grandfathering rights to commercial uses. That was the most recent use, however, it was not a legally established one.

Bruce Heilman: Asked what the opportunities were to have the building occupied and redeveloped down the road.

Jason Van Essen: Noted the property currently has non-conforming rights to the four residential units above so that use can continue to operate whether the four units are all upstairs or some were transferred downstairs. Explained the applicant could go to the Board of Adjustment to seek relief and suggested one route could be to expand the residential use by adding some apartments to the main level. Indicated the applicant is now proposing to operate a catering business as a compromise since it would generate less traffic and parking demand than a restaurant. The applicant could also apply for a Use Variance from the Board of Adjustment for the catering business if the rezoning is denied. Noted the lower portion of the building is abandoned and has not been used since 2004.

Larry Hulse: Noted the neighborhood has had concerns regarding the storage of garbage, as well as how the type of businesses fit with the neighborhood.

Jason Van Essen: Noted the apartments above are active.

David Cupp: Asked if there was any potential compromise between staff and the applicant.

Jason Van Essen: Noted the logical progression would be for the issue to go before the Board of Adjustment for a potential Use Variance due to the circumstances.

Larry Hulse: Explained in some cases the buildings can be reused for residential uses. Indicated the subject building has not been kept up; there has been a lot of damage to the building. It needs work and may not be viable for commercial use. It has parking problems and negative history with the neighborhood and it has not blended well with the neighborhood.

Roger Brown: Explained a property becomes a legal non-conforming use when the property and its use conforms to regulations that existed at the time it was built, but become non-conforming because regulations change. It is then considered to be legal non-conforming because it is of no fault of the property owner. A legal non-conforming use is allowed to continue but can lose that right if the building remains vacant for a period of time. If the building is converted to a more conforming use it can not be converted back.

Phui Louie Lovan, 812 18th Avenue, SW., Cedar Rapids, Iowa: Explained his background, past experience and noted he currently works in Cedar Rapids. Explained when he first purchased the building the ground floor had been used for commercial uses. He purchased the building with good intentions and has invested \$20,000 to \$30,000 in the building. Noted the neighborhood association claims the property was rezoned to residential in 2000. Stated he bought the building in 1999 and did not recall receiving any notice of rezoning. Stated he is now proposing a catering business, which would allow him to take advantage of the existing commercial kitchen in the building.

Tim Urban: Asked the applicant if he was aware of the design standards that are associated with the "NPC" District and if he understood that if the rezoning was approved he would have to make improvements to the building to meet those requirements. This would likely include installing a substantial amount of windows on the first floor, replacing the wood siding and addressing the substandard parking. Asked the applicant if he was willing to conform to the design standards.

Phui Louie Lovan: Indicated he was willing to meet the design standards.

Tim Urban: Asked staff if the parking was sufficient for the request.

Jason Van Essen: Noted parking requirements for catering businesses are based on the number of employees. Stated there may not be a parking deficiency if the property is zoned "NPC" since they would be able to count the adjoining on-street parking spaces in front of the building. Further stated there would be a substantial parking deficiency if the property were used for a restaurant.

Tim Urban: Asked if the Commission could approve the rezoning but restrict the use to only catering.

Jason Van Essen: Stated the Commission could restrict the use specifically to catering if the applicant agrees to the condition.

Jeffrey Johannsen: Asked the applicant how many employees he would have, how many parking spaces he would need, and what his business hours would be.

Phui Louie Lovan: Noted initially there would be two employees and the hours of the operation would be 10 a.m. to 9 p.m. Indicated he has a lease agreement allowing him to use the parking on the property to the south.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one in the audience to speak in favor of this item.

The following individual spoke in opposition:

Marilyn Bruce, 833 Walker Street, President of Capital Park Neighborhood Association: noted there are no businesses between the Capitol Building and East University Avenue on East 12th Street. Stated the apartment building encompasses the entire property and is very close to the house to the west. This leaves no place for garbage cans. When much of the neighborhood was rezoned in 2000 the neighborhood association sent fliers to allow property owners noting the repercussion of the rezoning and did not receive any responses. The neighborhood association has concerns regarding the property's operation and condition, and continues to receive complaints from the residents in the vicinity of the building. The catering business was apparently illegal, they had no license for operation, and the building sat vacant for two years. Stressed the best indicator of future behavior, is past behavior which has not been good.

Brian Millard: Asked what the neighborhood's vision was for the subject location.

Marilyn Bruce: Indicated they do not have any plans, but would like the bar to be gone and if both buildings were gone they could make a plan. Suggested the lower portion could also be residential; stated the catering business may not be a problem, but what has been there in the past has been a problem.

Fran Koontz: Asked if the subject property has been and continues to be a nuisance to the neighborhood.

Marilyn Bruce: Stated based on what she has heard from the people in the area, the answer would be yes.

Fran Koontz: Noted she is very familiar with the neighborhood and the subject property. Stated it has and continues to be a nuisance to the neighborhood and that she was hopefully the Commission would consider the concerns raised by the residents. Suggested zoning was not appropriate because it would run with the land, but that the Board of Adjustment could grant a Use Variance that could expire if he leaves the business. Further stated that if the property is rezoned the commercial zoning will be there forever. Suggested any other use for the building should be residential.

Fran Koontz left the meeting at 6:35 p.m.

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

Phui Louie Lovan: Noted the building was built for commercial use and it has been inspected every two years. Stated business uses generate more property taxes for the City and stressed the need for the City to support small businesses.

Tim Urban: Noted if the zoning request is approved it would require some exterior improvements to the building and to the parking lot. Stated to bring the property to code would cost the applicant a substantial amount of money, which the applicant previously stated he does not have a lot of.

Phui Louie Lovan: Noted he has talked to a small business lender that said they would support him if the request goes through.

Jeffrey Johannsen: Noted the applicant has had the property since 1999 and it appears little has been done to maintain the property. The applicant also does not have a good working relationship with the neighborhood. Stated the applicant has operated without a license and he was not convinced the applicant would follow through if the rezoning was approved.

Phui Louie Lovan: Noted renovations to the interior are complete and he has too much to lose to not improve the exterior.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Jason Van Essen: Noted there are ongoing rental code inspections relative to the apartments on the second floor of the building.

Larry Hulse: Noted the neighborhood plan calls for single family residential in this area. Explained the Commission's options, which includes denying the request with the understanding that the applicant can seek relief from the Board of Adjustment. Stated this option would not require a change to the City's land use plan.

Tim Urban: Noted there are a number of negative responses from the surrounding property owners. Asked if a super majority vote would be required by the City Council to approve the rezoning. Also asked if the Board of Adjustment could require improvements to the exterior of the building, the paving of the parking and the provision of adequate parking for the applicant's intended uses as conditions of approval.

Larry Hulse: Stated the Board of Adjustment could approve a Use Variance with conditions. Stated if the Commission was inclined to approve the request, staff would request the Commission continue the item so staff can work with the applicant to clarify hours of operation and other details.

Brian Millard: Moved the staff recommendation with the understanding that the applicant will have the opportunity to request a Use Variance from the Board of Adjustment after the rezoning is denied. State this is the best option for all parties involved.

David Cupp: Suggested tabling the item to allow time for the applicant to work with the staff and the neighborhood to develop an appropriate reuse for the building before the Commission takes action.

Kent Sovern: State he did not think that would be a good idea. Thought the Board of Adjustment was the best route for the applicant. Suggested they needed to reach a decision because the applicant lives in Cedar Rapids and we need to be respectful of his time.

Jeffrey Johannsen: Noted he would vote for the staff recommendation and suggested the applicant apply for a Use Variance from the Board of Adjustment and meet with the neighborhood association.

Kent Sovern: Remembered when the applicant was before the Commission a year and a half ago there had been a number of cases where applicants from other cultures did not understand the rules and had invested personal life savings in a property that they would have not if they understood the rules. Noted some business organizations are reaching out to individuals in situations like these to introduce them to the business community. Agreed it would be best to proceed. Stated this would expedite the request to the City Council and then to the Board of Adjustment so the issue is resolved as quickly as possible.

Erik Lundy: Expressed confidence that the opposition was not over 20%, however, explained a recommendation for denial would require a 6/7 vote of City Council as well.

Motion passed 10-0 to find the rezoning not in conformance with the Des Moines' 2020 Community Character Plan.

Motion passed 9-1 for denial of the requested Land Use Plan amendment and rezoning (Bruce Heilman was in opposition). The intent of the Commission is for the Zoning Board of Adjustment to consider the request for a Use Variance as an appropriate solution for the applicant. The Board of Adjustment cannot consider a Use Variance request until the applicant has been denied the required zoning by the City Council. Use Variances give the City greater control than limited

zoning, primarily because the Variance could lapse after discontinuance of the use for a period over one year. SOA

David Cupp: Noted the applicant should get with the neighborhood association and staff to work on opportunities for the building.

Bruce Heilman: Explained he voted against the motion because he would have liked to see the Commission work with the applicant and the neighborhood association to rectify the problem. He was hopeful it could be worked out through the Board of Adjustment.

Tim Urban: Stated if relief from the Board of Adjustment is pursued he would like staff to verify if the applicant has a cross-access easement or lease allowing him to use the parking on the property to the south. He also suggested that relief from the Board of Adjustment allow either the proposed commercial use or additional apartments. This way if the business is not successful the applicant knows he will not have to go back to the Board of Adjustment to convert the ground floor to apartments.

Respectfully submitted,



Jason Van Essen, AICP
Senior City Planner

JMV:dfa

Attachments