

Date June 28, 2010

WHEREAS, on June 14, 2010 by Roll Call No. 10-902, it was duly resolved by the City Council that the application of 400 SE 6<sup>th</sup> Inc., contract purchaser, to rezone certain property located in the vicinity of 400 SE 6<sup>th</sup> Street, more fully described below, be set down for hearing on June 28, 2010, at 5:00 P.M., in the Council Chambers at City Hall; and,

WHEREAS, due notice of said hearing was published in the Des Moines Register on June 17, 2010, as provided by law, setting forth the time and place for hearing on said proposed amendment to the Zoning Ordinance; and,

WHEREAS, in accordance with said notice those interested in said proposed rezoning, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council; and,

WHEREAS, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone the following described property:

East 1/2 of the North 47 feet, Lot 10, Block 43, Town of De Moine, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk and Warren County, Iowa

from the M-1 Light Industrial to Limited C-3B Central Business Mixed Use District classification, subject to the following conditions which have been agreed to and accepted by execution of an Acceptance of Rezoning Ordinance in writing by all owners of said property and are binding upon the owners and their successors, heirs and assigns as follows:

- A. Prohibition of uses listed in Des Moines Municipal Code Section 134-1006[1][a]-[j].
- B. Prohibition of the following additional uses:
  - 1. Assembly and packaging of small components from previously prepared materials within a fully enclosed building.
  - 2. Auction businesses.
  - 3. Financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles.
  - 4. Lumberyards, retail and wholesale.
  - 5. Machine shops.
  - 6. Package goods stores for the sale of alcoholic beverages.
  - 7. Pawnshops.

★ Roll Call Number

Agenda Item Number

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- 8. Printing, publishing houses and lithographing shops.
- 9. Plumbing and heating shops.
- 10. Miniwarehouse uses.
- 11. Taverns and night clubs.
- 12. Warehousing.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that upon due consideration of the facts, statements of interested persons and arguments of counsel, the objections to the proposed rezoning of the Property to a Limited C-3B Central Business Mixed Use District are hereby overruled, and the hearing is closed.

MOVED by \_\_\_\_\_ to adopt and approve the rezoning, subject to final passage of the rezoning ordinance.

FORM APPROVED:

  
 Michael F. Kelley  
 Assistant City Attorney

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.

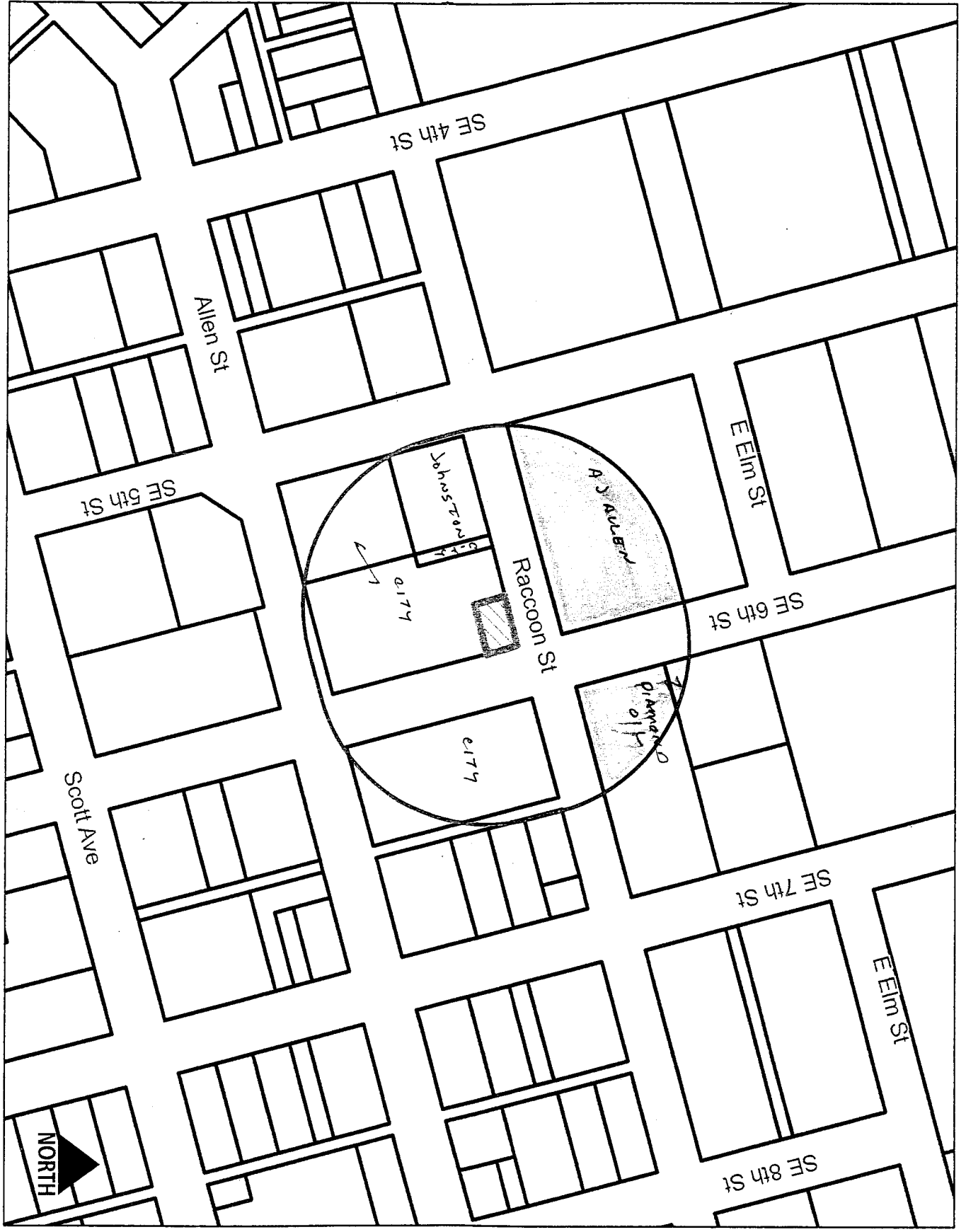
\_\_\_\_\_  
 Mayor

\_\_\_\_\_  
 City Clerk

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400 SE 6th Inc. - 400 SE 6th Street

ZON2010-00082





Commission Action:	Yes	Nays	Pass	Absent
Brian Millard	X			
William Page	X			
Mike Simonson				X
Kent Sovern	X			

**APPROVAL** to rezone subject property from “M-1” Light Industrial District to a Limited “C-3B” District subject to the existing prohibition of uses listed in Section 134- Section 134-1006[1][a]-[j] and prohibition of the following uses: ZON2010-00082

1. Assembly and packaging of small components from previously prepared materials within a fully enclosed building.
2. Auction businesses.
3. Financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles.
4. Lumberyards, retail and wholesale.
5. Machine shops.
6. Package goods stores for the sale of alcoholic beverages.
7. Pawnshops.
8. Printing, publishing houses and lithographing shops.
9. Plumbing and heating shops.
10. Miniwarehouse uses.
11. Taverns and night clubs.
12. Warehousing.

**STAFF RECOMMENDATION TO THE P&Z COMMISSION**

Part A) Staff recommends that an amended request for Limited C-3B zoning be found in conformance with the Des Moines’ 2020 Community Character Plan.

Part B) Staff recommends the subject property be rezoned to a Limited “C-3B” District subject to the existing prohibition uses listed in Section 134-1006[1][a]-[j] and prohibition of the following uses:

1. Assembly and packaging of small components from previously prepared materials within a fully enclosed building.
2. Auction businesses.
3. Financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles.
4. Lumberyards, retail and wholesale.
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## Written Responses

2 In Favor

0 In Opposition

## **STAFF REPORT**

### **I. GENERAL INFORMATION**

- 1. Purpose of Request:** The applicant is proposing to convert a circa 1885 single-family dwelling to a restaurant use. Restaurants are an allowed use in the “M-1” District. However, the site does not contain the space necessary to meet the “M-1” District off-street parking requirements. The subject property is located in an area between the East Village and the Martin Luther King, Jr. Parkway expansion (Southeast Connector) and is commonly referred to as the Market District.

The site is located in an area that currently contains a mix of industrial and commercial uses. However, it is expected that this area will convert to a mix of office, retail and residential uses in the future pursuant to the proposed Market District Urban Design Plan and the Des Moines’s 2020 Community Character Plan Future Land Use Map which currently designates this area as Downtown Support Commercial.

- 2. Size of Site:** 47 feet by 75 feet (3,525 sq. ft.)
- 3. Existing Zoning (site):** “M-1” Light Industrial District.
- 4. Existing Land Use (site):** Vacant single-family dwelling.

- 5. Adjacent Land Use and Zoning:**

**North** – “M-1”; Use is warehouse.

**South** – “M-1”; Use is Martin Luther King, Jr. Parkway (Southeast Connector).

**East** – “M-1”; Undeveloped land.

**West** – “M-1”; Use is a warehouse.

- 6. General Neighborhood/Area Land Uses:** The surrounding area generally contains a mix of commercial and light industrial uses.
- 7. Applicable Recognized Neighborhood(s):** None.
- 8. Relevant Zoning History:** The applicant obtained a building permit to repair the front and rear porches on the single-family dwelling including new foundations for the porches. The Permit and Development Center has issued stop work orders on two occasions due to the applicant for undertaking work beyond the scope of the permit including the construction of an external stairway, grading for a planned addition, and interior and exterior renovations that are consistent with commercial occupancy of the property. The applicant previously submitted an application to the Zoning Board of Adjustment for a Conditional Use Permit to allow a tavern use, a Variance of 13 parking spaces less than the minimum required 13 off-street parking spaces and an Exception

of 13 feet less than the minimum required 25-foot setback from the north property line (Raccoon Street). This application was withdrawn prior to the Board's consideration and the applicant is now seeking to rezone the property.

Staff has advised the applicant regarding the City's general aversion to new zoning that allows free-standing taverns or nightclubs. The applicant has indicated that they propose to operate a restaurant with a liquor license on the property but not as a tavern or nightclub. As of May 27, 2010 the applicant has verbally agreed to conditional zoning that would prohibit use of the property for a tavern or nightclub. Without such a condition, the applicant could submit a new application to the Board of Adjustment for a conditional use for a tavern in the future if they find that revenue from sale of alcoholic beverages exceeds 50% of total revenue.

**9. 2020 Community Character Land Use Plan Designation: Downtown Support 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, in addition to the existing regulations. The recommendation of the Commission will be forwarded to the City Council.

**II. ADDITIONAL APPLICABLE INFORMATION**

- 1. 2020 Community Character Plan:** The Des Moines 2020 Community Character Plan Future Land Use Map designates the subject property and the surrounding area as "Downtown Support Commercial."

*Downtown Support Commercial: General businesses, retail and service establishments, limited high density residential, mixed use developments, and work centers that support the downtown core providing their own off-street parking.*

The initially proposed "C-3" District generally conforms to the intent of this future land use designation. However, additional land use and redevelopment studies have recently been conducted for the East Village and the Market District. The East Village study has resulted in a recommendation to rezone the existing "C-3" areas in the East Village to the "C-3B" Central Business Mixed Use District as the allowed uses and the design guidelines better match the character of the area. The Market District Urban Design Plan indicates that the area should consist of mix of commercial and residential uses that are similar to the East Village and that development should have an urban street presence. The "C-3B" District design guidelines require development to have a street presence and it is anticipated that the C-3B district will be one of the primary districts utilized in the Market District.

The following is the list of the "C-3B" District Permitted uses.

**Sec. 134-1006. Principal permitted uses.**

*Only the uses of structures or land similar to those that follow shall be permitted in the C-3B Central Business Mixed Use District:*

- (1) *Any use permitted in and as limited in the C-2 district except the following uses which are prohibited:*
  - a. *Automobile, trailer, motorcycle, boat, and farm implement establishments for display, rental, and sales (including sales lots).*
  - b. *Mobile home parks.*
  - c. *Vehicle display lots.*
  - d. *Garage for general motor vehicle that includes major body and fender work or overall painting.*
  - e. *Automobile washing establishments unless all bays are normally enclosed and an attendant is on duty during all hours of operation.*
  - f. *Adult entertainment business.*
  - g. *Monument sales yards.*
  - h. *Sheet metal shops.*
  - i. *Sign painting shops.*
  - j. *Off-premises advertising signs.*
- (2) *Assembly and packaging of small components from previously prepared materials within a fully enclosed building.*
- (3) *Manufacture or treatment of products within a fully enclosed building incidental to the conduct of a retail business carried out on the premises.*
- (4) *Printing and publishing houses.*
- (5) *Warehousing.*
- (6) *Machine shops.*
- (7) *Retail lumberyards.*
- (8) *Electrical substations and gas regulator facilities upon land held by the utility for that purpose on the date the land was placed within the C-3B District. Any new electrical substation or gas regulator facility, or expansion thereof, upon land not held by the utility for that purpose when the land was placed within the C-3B District, may be allowed only by special permit under the provisions of section 134-1326.*
- (9) *Combinations of the uses in subsections (1) through (8) of this section.*

However, staff believes that some of the uses allowed in the "C-3B" District are not appropriate for this specific location due to the small size of the property and the planned development pattern for the properties along the Martin Luther King Jr. Parkway and the Market District (i.e. free-standing bars or taverns, pay day loan, pawn shops and uses allowed by Section 134-1006[2]-[7]). Therefore, Staff believes that the property should be rezoned to a limited "C-3B" District instead of the proposed "C-3" District

- 2. Landscaping & Site Development:** The applicant will be required to submit a site plan and obtain approval before the building can be occupied by a restaurant use. If the property is rezoned to the "C-3B" District then the site plan will be subject to review and approval by the Plan and Zoning Commission in accordance with the "C-3B" District Design Guidelines (Section 82-214.7 of the City Code).
- 3. Parking:** Most of the site is covered by the existing building and proposed addition, which significantly limits the ability to provide off-street parking. The "M-1" District would require a minimum of 13 off-street parking spaces for the proposed restaurant. Neither the "C-3" nor "C-3B" Districts require the provision of off-street parking.
- 4. Other:** A Certificate of Occupancy (C.O.) must be obtained before the existing building can be used for anything other than a single-family dwelling.

## SUMMARY OF DISCUSSION



Jason Van Essen presented staff report and recommendation.

Jeffrey Johannsen asked if this was only going to be a carryout with no outdoor seating.

Jason Van Essen stated that staff is not aware. The applicant proposes to convert the residential dwelling to a commercial structure that would comply with building code for commercial uses.

Will Page asked about the hole in the ground on the west side of the structure.

Jason Van Essen stated that the applicant had done some work beyond the scope of permit and they stopped. They plan to construct an addition to the west side of the building.

JoAnne Corigliano stated that she applauds the applicant but does not see where the applicant will provide off-street parking.

Jason Van Essen explained that the "C-3" District does not have any off-street parking requirements and neither does the "C-3B" District. This is similar to property about three blocks away.

Nick Ritz representing 400 SE 6<sup>th</sup> Inc. stated he is present to answer any questions the Commission may have.

JoAnne Corigliano asked the applicant about the parking.

Steve Oberbroeckling, 205 Terrace Road, Oberbroeckling & Associates PC stated the parking would be off-street similar to the Drake and Sherman Hill Neighborhood, El Patio on Ingersoll. They are looking at seating for less than 50 people at one time.

Brian Millard asked about the hole on the west side and the size of the addition.

Steve Oberbroeckling stated the hole was before his time when the applicant was not aware they would be required to have an architect. The addition would be less than 1900 square feet.

Shirley Daniels asked what the occupancy was.

Steve Oberbroeckling stated the occupancy would be 49 or less.

Will Page suggested that the applicant respect the Victorian features of the single-family dwelling.

Steve Oberbroeckling stated that they have recently become aware of the historic value of the house and want to preserve that.

#### **CHAIRPERSON OPENED THE PUBLIC HEARING**

*The following spoke in favor of the application*

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Gary Johnson, 2105 Cherry Street, Granger, IA owner of property directly west. His only concern is how the zoning issue will affect his property.

Larry Hulse stated that this rezoning is only for this particular property. It will not affect Mr. Johnson's property. There may be rezoning in the future. However, if the City were to rezone Mr. Johnson's property he would be notified of the public hearing for such consideration. Mr. Johnson can talk with staff if he has additional questions.

*There was no one to speak in opposition of applicant's request*

**CHAIRPERSON CLOSED THE PUBLIC HEARING**

**COMMISSION ACTION**

Jacqueline Easley moved staff recommendation that an amended request for Limited C-3B zoning be found in conformance with the Des Moines' 2020 Community Character Plan.


Motion passed 12-0.

Jacqueline Easley moved staff recommendation to rezone subject property to a Limited "C-3B" District subject to the existing prohibition of uses listed in Section 134-1006[1][a]-[j] and prohibition of the following uses:

1. Assembly and packaging of small components from previously prepared materials within a fully enclosed building.
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6. Package goods stores for the sale of alcoholic beverages.
7. Pawnshops.
8. Printing, publishing houses and lithographing shops.
9. Plumbing and heating shops.
10. Miniwarehouse uses.
11. Taverns and night clubs.
12. Warehousing.

Motion passed 12-0.

Respectfully submitted,



Michael Ludwig, AIQP  
Planning Administrator

MGL:clw

Item 2010-00082 Date 6/2/10

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

(Circle One)

Print Name JASON CHANCE / PIAZZA OIL CO.

Signature [Signature]

Address 600 SE. RACCOON ST.

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

D.M. # 50309

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Item 2010-00082 Date 5/27/10

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

(Circle One)

A. J. ALLEN MECHANICAL CONTRACTORS, INC.

Print Name % MARK ALLEN

Signature [Signature]

Address 320 S.E. 6th STREET

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RECEIVED  
COMMUNITY DEVELOPMENT  
MAY 01 2010  
DEPARTMENT