

Date July 14, 2008

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on May 15, 2008, its members voted 14-0 in support of a motion to recommend **DENIAL** of a request from FHL&R, LLC (owner) represented by Jennifer Eaton (officer) to rezone property located at 1930 SE 6<sup>th</sup> Street from "C-1" Neighborhood Retail Commercial District and "R1-60" One-Family Low-Density Residential District to "C-2" General Retail and Highway Oriented Commercial District, to allow for expansion of the existing legal non-conforming tavern use by providing an outdoor area for consumption of alcoholic beverages.

The subject property is more specifically described as follows:


Beginning at the Southeast corner thence Northwesterly 159.66 Feet, North 61.80 Feet, East 57 Feet, Northeasterly 142.28 Feet, East 50 Feet, South 234.05 Feet to the Point of Beginning, Lot 3, Sevastopol, 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 July 28, 2008, 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:

  
 Michael F. Kelley  
 Assistant City Attorney

(ZON2008-00072)

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

**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

MOTION CARRIED

APPROVED

\_\_\_\_\_  
 Mayor

Request from FHL&R, LLC (owner) represented by Jennifer Eaton (officer) to rezone property located at 1930 SE 6 <sup>th</sup> Street.				File #	
				ZON2008-00072	
<b>Description of Action</b>	Rezone property from "C-1" Neighborhood Retail Commercial District and "R1-60" One-Family Low-Density Residential District to "C-2" General Retail and Highway Oriented Commercial District, to allow for expansion of the existing legal non-conforming tavern use by providing an outdoor area for consumption of alcoholic beverages.				
<b>2020 Community Character Plan</b>	Commercial: Pedestrian-Oriented Neighborhood Node				
<b>Horizon 2025 Transportation Plan</b>	SE 6 <sup>th</sup> Street from Maury Street to Indianola Avenue to widen from 2 lane undivided to three lane undivided				
<b>Current Zoning District</b>	"C-1" Neighborhood Retail Commercial District and "R1-60" One-Family Low-Density Residential District				
<b>Proposed Zoning District</b>	"C-2" General Retail and Highway Oriented Commercial District				
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition	
	Inside Area	1	3		
	Outside Area				
<b>Plan and Zoning Commission Action</b>	Approval		<b>Required 6/7 Vote of the City Council to overturn P &amp; Z Recommendation</b>	Yes	X
	Denial	14-0		No	

Jennifer Eaton - 1930 SE 6th Street

ZON2008-00072



Date \_\_\_\_\_

July 9, 2008

Agenda Item 32

Roll Call # \_\_\_\_\_

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 June 5, 2008, the following action was taken:

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 14-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
JoAnne Corigliano	X			
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 Millard	X			
Mike Simonson	X			
Kent Sovern	X			
Tim Urban	X			
Marc Wallace	X			

**DENIAL** of a request from FHL&R, LLC (owner) represented by Jennifer Eaton (officer) to rezone property located at 1930 SE 6<sup>th</sup> Street as follows:

A) The proposed rezoning is not in conformance with the Des Moines' 2020 Community Character Plan.

B) Denial of a request to rezone property from "C-1" Neighborhood Retail Commercial District and "R1-60" One-Family Low-Density Residential District to "C-2" General Retail and Highway Oriented Commercial District, to allow for expansion of the existing legal non-conforming tavern use by providing an outdoor area for consumption of alcoholic beverages. (ZON2008-00072)

Written Responses

1 In Favor

2 In Opposition

*A 6/7 vote of City Council is required to overturn the Commission's recommendation for denial.*



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

## STAFF RECOMMENDATION AND BASIS FOR DENIAL

Staff recommends denial of the requested rezoning to “C-2” General Retail and Highway-Oriented Commercial District on the basis that the “C-2” District is intended for larger retail areas located on major streets. The subject property is located on a two-lane street in a small commercial node within a predominately low-density residential neighborhood. It adjoins a multiple-family residential development under construction and is within 150 feet of several single-family residences.

## STAFF REPORT

### I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is proposing to expand the outdoor alcohol service area for the existing tavern/bar. The tavern is a legal non-conforming use as the “C-1” and the “R1-60” Districts regulations do not allow for a tavern/bar use.

Should the property be rezoned to the requested “C-2” District, the applicant would be required to obtain a Conditional Use Permit from the Zoning Board of Adjustment in order for the outdoor service area to be expanded.

2. **Size of Site:** The subject site is irregularly shaped and contains approximately 22,460 square feet (0.52 acre).
3. **Existing Zoning (site):** “C-1” Neighborhood Retail Commercial District and “R1-60” One-Family Low-Density Residential District.
4. **Existing Land Use (site):** The site contains the Fire House Lounge tavern with a parking lot to the north of the structure.
5. **Adjacent Land Use and Zoning:**
  - North** – “R-3”; *Use is construction site for a proposed senior housing development.*
  - South** – “C-1A”; *Uses area Hillside Avenue a garage for vehicle service and repair.*
  - East** – “R1-60”; *Uses are SE 6<sup>th</sup> Street and the City of Des Moines’ Fire Station #6.*
  - West** – “R-3”; *Use is construction site for proposed senior housing development.*
6. **General Neighborhood/Area Land Uses:** The subject property is within the neighborhood-commercial node located at the intersection of Southeast 6<sup>th</sup> Street and East Hartford Avenue. The surrounding area consists primarily of single-family dwellings.
7. **Applicable Recognized Neighborhood(s):** McKinley School/Columbus Park Neighborhood Association.
8. **Relevant Zoning History:** N/A.
9. **2020 Community Character Land Use Plan Designation:** Commercial: Pedestrian-Oriented Neighborhood Node.

**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. Site Development:** The subject property contains a one-story commercial building containing 1,842 square feet. The building is located in the southeast corner of the lot up to the front property lines adjoining both SE 6<sup>th</sup> Street and Hillside Avenue. The site contains an asphalt parking lot directly north of the building. The northern portion of the site is gravel. The gravel area coincides with the portion of the property zoned "R1-60" District. The property is accessed by a driveway from SE 6<sup>th</sup> Street just north of the building. The property contains a minimal amount of landscaping and no screening materials. If the property is rezoned and the tavern use is expanded as proposed, the applicant would be required to provide landscaping and screening materials, a dumpster enclosure, and pave all areas used for parking.
- 2. 2020 Community Character Plan:** The subject property is within a designated Commercial: Pedestrian-Oriented Neighborhood Node by the Des Moines 2020 Community Character Plan. This designation is described as areas developed in a fashion that balances the needs of the pedestrian and the convenience of the motorist. These developments are compact and walkable, and connect to adjacent areas via public streets and sidewalks. Neighborhood Nodes are further described as small-scale commercial areas that primarily serve the needs of the adjacent neighborhood with a cumulative building area total of 25,000 to 50,000 square feet.
- 3. Conditional Use Permit Criteria:** The Section 134-954 of the Zoning Ordinance states the following with regard to businesses for the sale of liquor, wine and beer.

### **Sec. 134-954. Selling of liquor, wine and beer.**

*In the C-2 general retail and highway-oriented commercial district, the following shall apply to the sale of liquor, wine and beer:*

- (1) No business holding a liquor license or a beer or wine permit which is not operated as either (i) a grocery store or pharmacy at least half of whose gross income is derived from the sale of merchandise other than liquor, wine or beer; or (ii) a restaurant, at least half of whose gross income is derived from the sale of prepared food and food-related services, may be located upon any premises, unless such business shall first have received a conditional use permit from the board of adjustment after public hearing. Notice of such hearing shall be provided to all owners of record of property within 250 feet of the subject property.*
- (2) The board shall grant a conditional use permit to a business holding a liquor license or a beer or wine permit only where the business, when operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:*
  - a. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.*

- b. *The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.*
  - c. *The business will not unduly increase congestion on the streets in the adjoining residential area.*
  - d. *The operation of the business will not constitute a nuisance.*
- (3) *Any conditional use permit so granted by the board shall be subject to the following general conditions, together with such additional special conditions as may be reasonably required by the board to ensure that the criteria in subsection (2) of this section are satisfied:*
- a. *Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times.*
  - b. *The business shall comply with article IV of chapter 42 of this Code pertaining to noise control.*
  - c. *No sale of alcoholic beverages shall be made from a drive-through window.*
  - d. *Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.*
  - e. *The conditional use permit is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the conditional use permit.*
- (4) *If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions set forth in the conditional use permit, the zoning enforcement officer may apply to the board to reconsider the issuance of the conditional use permit for such business. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such business at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board finds that the operation of such business exhibits a pattern of violating the conditions set forth in the conditional use permit, the board shall have the authority to amend or revoke the conditional use permit.*

## **SUMMARY OF DISCUSSION**

Jason Van Essen: Presented staff report and recommendation.

Tim Urban: Asked if the applicant sought a conditional use permit, if they would have to meet the same standards for paving, landscaping, etc.

Jason Van Essen: Affirmed and noted to expand the use they would have to bring the site into conformance with the current regulations.

JoAnne Corigliano: Asked what kind of expansion they were wanting to do.

Jason Van Essen: Deferred to the applicant, but believed they were expanding their outdoor seating.

Jennifer Eaton, 437 E. Dunham: Noted they own the Firehouse Lounge. When they purchased the property it had a patio on the back with a rotten wooden fence. They don't want to expand the concrete and thought about putting a horseshoe pit back there. Their smokers would like to go outdoors and have a cigarette. She would like to take the wooden fence out and put up a black chain link fence. She is not opposed to the Senior Center going in next door. Noted she has

cleaned up the property and there are very few calls. She wants to improve it more, and wants to expand the fencing area to allow for the horseshoes and 4 tables for her customers.

JoAnne Corigliano: Noted there have been 14 police calls over the last six months.

Jennifer Eaton: Noted she was unaware of most of those.

Bruce Heilman: Asked what the hours would be.

Jennifer Eaton: Noted the business hours are 6 p.m. to 2 a.m. and the outdoor area would not be open during the weekends except to allow the patrons to smoke and noted she would have it open until 2 a.m.

Tim Urban: Asked if the patio area was allowed as part of the legal non-conforming use and questioned what the expansion was and why it had to be before the Commission if all the applicant wants to do is enclose it with a chain link fence instead of the wood fence.

Jennifer Eaton: Explained she was told in order to let people go outside to smoke while consuming alcohol, she'd have to file for an expansion of the bar.

Roger Brown: Noted the issue is an expansion of the licensed premises upon which alcohol can be sold. To expand the area they must obtain C-2 zoning and get a conditional use permit from the Zoning Board of Adjustment. When the zoning ordinance was amended to require Board of Adjustment review for bars and taverns, it was very explicit that any expansion or alteration that would increase the occupancy load would trigger the requirement to go back to the Board of Adjustment and the fact that they are seeking to expand the area requires C-2 zoning as the use would not be allowed in the existing "C-1" district.

Tim Urban: Asked if the applicant would be able to use the outdoor patio area, which was part of the legal non-conforming premise use, for liquor if she did not expand it.

Roger Brown: Noted the tavern building is the only premise licensed to sell alcohol. If the licensed premises include the existing patio, she could put a fence around it and would not require a change, but the discussion of expanding for a horseshoe area would require rezoning as it constitutes the expansion of a legal non-conforming use in the C-1 district. If the patio hasn't been used for more than a year, the owner has lost that use and rezoning is required to expand, as well as a conditional use permit from the Board of Adjustment.

JoAnne Corigliano: Asked if, since the applicant did not use the patio area for a year she lost the right. Noted the original intent for the patio was for people to go outside to eat, drink and smoke.

Roger Brown: Noted possibly the patio had never been part of the licensed premises upon which they were licensed to sell alcohol.

Jason Van Essen: Explained he did not have in the file a written out history of what grandfathered rights the property has. However, the zoning enforcement division determined that the right has expired so the owner needs to seek rezoning to do the expansion. The question before the Commission is if the zoning is appropriate.

JoAnne Corigliano: Asked if she has to have C-2 to expand.

Jason Van Essen: Confirmed that C-2 zoning is required to expand the existing use.

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

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

### **CHAIRPERSON CLOSED THE PUBLIC HEARING**

Fran Koontz: Asked if the applicant could go to the Board of Adjustment for permission to use her existing patio.

Jason Van Essen: Indicated she has to have C-2 to get a liquor license to expand. Asked legal counsel if the Board of Adjustment could grant relief to the C-2 requirement for the conditional use.

Roger Brown: Noted there are two ways it might occur: a use variance, which he would advise the Board to deny the request. There is also a provision for giving an exception to the time period for resumption of a non-conforming use. She would be much more likely to qualify under that lower exception standard. If the Commission chose not to rezone, she would be seeking an exception to the time period for the abandonment of the non-conforming use and a conditional use permit for the expansion of a licensed establishment.

Fran Koontz: Asked if the Commission votes for denial of the C-2 rezoning so the applicant can continue through the process, if staff would advise her of the applicable processes.

Larry Hulse: Noted staff would advise the applicant.

Bruce Heilman: Explained it is unwise to change a legal non-conforming use to a legal use situation. Moved staff recommendation for denial and noted if the request goes before the Board of Adjustment he would be interested to see how it develops.

JoAnne Corigliano: Noted before the applicant bought the property it had caught on fire and was rebuilt. Noted the patio was rebuilt as well and the prior owner had used the patio.

Marc Wallace: Called the question.

Motion passed 14-0 to find the rezoning **not** in conformance with the Des Moines' 2020 Community Character Plan.

Motion passed 14-0 to **deny** the rezoning of the property from "C-1" Neighborhood Retail Commercial District and "R1-60" One-Family Low-Density Residential District to "C-2" General Retail and Highway Oriented Commercial District, to allow for expansion of the existing legal non-conforming tavern use by providing an outdoor area for consumption of alcoholic beverages.

Motion passed 14-0.

Respectfully submitted,



Jason Van Essen  
Senior City Planner

JV:clw

.Attachment



Item ZON 2008-00072 Date \_\_\_\_\_

32

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

(Circle One)  
**RECEIVED**

Print Name Jennifer Eaton

MAY 29 2008

Signature Jennifer Eaton

**COMMUNITY DEVELOPMENT  
DEPARTMENT**

Address 437 E Dunham Ave

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

To continue with improvements

**ADVOCANT**

Item ZON 2008-00072

Date 5/29/08

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

(Circle One)  
**RECEIVED**

Print Name Thomas Roth

JUN 05 2008

Signature Thomas Roth

**COMMUNITY DEVELOPMENT  
DEPARTMENT**

Address 2005 SE 6TH ST.

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

Item ZON 2008-00072 Date 5-29-08

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

**RECEIVED**  
(Circle One)

JUN 02 2008

COMMUNITY DEVELOPMENT  
DEPARTMENT

Print Name MARGARET J. RAGAN

Signature Margaret J. Ragan

Address 591 E HARTFORD AVE

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

*this was tried before a few years back  
It was noisy and very disturbing  
to neighbors. Now we have more  
sunrise than before. This part of town is  
free of towers. It's about time  
we start turning around old style*

*It's already too noisy at home*  
Reason for opposing or approving this request may be listed below:

**RECEIVED**  
(Circle One)  
JUN 02 2008  
Print Name Quanta Clark  
Signature Quanta Clark  
Address 440 Madras

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

Item ZON 2008-00072 Date 5/29/08