

★ **Roll Call Number**

Agenda Item Number

39

Date August 9, 2010

An Ordinance entitled, "AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 400 SE 6<sup>th</sup> Street from the M-1 Light Industrial to a Limited C-3B Central Business Mixed Use District classification",

which was considered and voted upon for the first time under Roll Call No. 10-1065 of June 28, 2010, and considered and voted upon for the second time under Roll Call No. 10-1234 of July 26, 2010, again presented.

Moved by \_\_\_\_\_ that this ordinance do now pass.

ORDINANCE NO. \_\_\_\_\_

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
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.

MOTION CARRIED APPROVED

\_\_\_\_\_  
Mayor

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

Request from 400 SE 5 <sup>th</sup> , Inc. (contract buyer) represented by Nicholas Ritz (officer) to rezone property located at 400 Southeast 5 <sup>th</sup> Street. The subject property title holder is Anthony Schubert.				File # ZON2010-00082	
<b>Description of Action</b>		Rezone property from "M-1" Light Industrial District to "C-3" Central Business District Commercial in order to remove requirements for minimum off-street parking and minimum building setbacks.			
<b>2020 Community Character Plan</b>		Downtown: Support Commercial			
<b>Horizon 2035 Transportation Plan</b>		No Planned improvements			
<b>Current Zoning District</b>		"M-1" Light Industrial District			
<b>Proposed Zoning District</b>		"C-3" Central Business District Commercial			
<b>Consent Card Responses</b>		In Favor	Not In Favor	Undetermined	% Opposition
Inside Area		2	0		
Outside Area					
<b>Plan and Zoning Commission Action</b>	Approval	12-0	<b>Required 6/7 Vote of the City Council</b>	Yes	
	Denial			No	X

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

ZON2010-00082



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 400 SE 6<sup>th</sup> Street from the M-1 Light Industrial to a Limited C-3B Central Business Mixed Use District classification.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, be and the same is hereby amended by rezoning and changing the district classification of certain property located in the vicinity of 400 SE 6<sup>th</sup> Street, more fully described as follows, from the M-1 Light Industrial to a Limited C-3B Central Business Mixed Use District classification:

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

Sec. 2. That this ordinance and the zoning granted by the terms hereof are subject to the following imposed additional conditions which have been agreed to and accepted by execution of an Acceptance of Rezoning Ordinance 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.
8. Printing, publishing houses and lithographing shops.
9. Plumbing and heating shops.
10. Miniwarehouse uses.
11. Taverns and night clubs.
12. Warehousing.
13. Adult Entertainment Businesses as defined in Municipal Code Section 134-3.

Sec. 3. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Sec. 4. The City Clerk is hereby authorized and directed to cause a certified copy of the Acceptance of Rezoning Ordinance, this ordinance, a vicinity map, and proof of publication of this ordinance, to be properly filed in the office of the Polk County Recorder.

FORM APPROVED:

  
\_\_\_\_\_  
Michael F. Kelley  
Assistant City Attorney

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Prepared by: Michael F. Kelley, Assistant City Attorney, 400 Robert Ray Dr., Des Moines, IA 50309 515/283-4124  
 Return Address: City Clerk - City Hall, 400 Robert Ray Dr., Des Moines, IA 50309  
 Taxpayer: No change  
 Title of Document: Acceptance of Rezoning Ordinance  
 Grantors' Names: Guaranty Bank & Trust Company, as Trustee for Anthony E. Schubert, IRA; 400 S.E. 6<sup>th</sup>, Inc.  
 Grantee's Name: City of Des Moines, Iowa  
 Legal Description:

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 County, Iowa.

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## ACCEPTANCE OF REZONING ORDINANCE

The undersigned hereby states, warrants and agrees as follows:

1. That Guaranty Bank & Trust Company, as Trustee for Anthony E. Schubert, IRA, as titleholder, and 400 S.E. 6<sup>th</sup>, Inc., as contract purchaser, are the sole owners of the Property in the vicinity of 400 S.E. 6<sup>th</sup> Street, more specifically described above.

2. That in the event the City of Des Moines, Iowa, acts to rezone the Property from M-1 Light Industrial to Limited C-3B Central Business Mixed Use District classification, we agree and accept, on behalf of the owners to the imposition of the following conditions to run with the land and be binding upon all successors, heirs and assigns as part of the ordinance so rezoning the Property:

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.
- 8. Printing, publishing houses and lithographing shops.
- 9. Plumbing and heating shops.
- 10. Miniwarehouse uses.
- 11. Taverns and night clubs.
- 12. Warehousing.
- 13. Adult Entertainment Businesses as defined in Municipal Code Section 134-3.

3. A certified copy of the rezoning ordinance shall be attached hereto, and a certified copy of this document and the rezoning ordinance shall be recorded by the City in the land records of the County Recorder to memorialize the rezoning of the Property as identified above.

4. That in the event any portion of the Property is hereafter rezoned to a district classification different from Limited C-3B, then this Acceptance shall be immediately terminated as applied to the real estate so rezoned on the effective date of such rezoning, and the conditions agreed to herein shall be rendered null and void, provided, if there be any such rezoning to a more restricted zoning classification, any then legal actual use of such real estate shall become a legal non-conforming use.

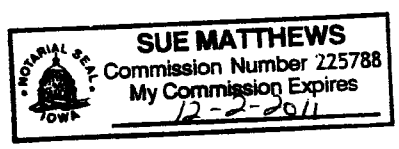
The words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

**Guaranty Bank & Trust Company,  
as Trustee for Anthony E. Schubert, IRA**

By: *Dennis Egel*, SVP+Sr. T.O.  
Dennis Egel, Trustee

State of Iowa            )  
                                  ) ss:  
County of Polk         )

This instrument was acknowledged before me on August 3rd, 2010, by **Dennis Egel** who is a Trustee of Guaranty Bank & Trust Company, as Trustee for Anthony E. Schubert, IRA, who is personally known to me and has been authorized by the Board of Directors and applicable trust instruments to execute this document on behalf of Guaranty Bank & Trust Company, as Trustee for Anthony E. Schubert, IRA.



*Sue Matthews*  
Notary Public in the State of Iowa

400 S.E. 6<sup>th</sup>, Inc.

By: *NCR*  
Nicholas C. Ritz, President  
Contract Buyer

State of Iowa            )  
                                  ) ss:  
County of Polk         )

This instrument was acknowledged before me on August 4, 2010, by Nicholas C. Ritz, President of 400 S.E. 6<sup>th</sup>, Inc., who is personally known to me and has been authorized by the Board of Directors to execute this document on behalf of 400 S.E. 6<sup>th</sup>, Inc. or who has provided identification pursuant to and sufficient under Iowa law.

*Renae Lampkin*  
Notary Public in the State of Iowa





**Council  
Communication**  
Office of the City Manager

Date:	July 26, 2010
Agenda Item No.	42
Roll Call No.	10-1234
Communication No.	10-471
Submitted by:	Phil Delafield, Acting Community Development Director

**AGENDA HEADING:**

Second reading regarding a request from 400 SE 6th , Inc. to rezone 400 SE 6th Street from "M-1" (Light Industrial) to Ltd. "C-3B" (Central Business Mixed Use), subject to conditions.

**SYNOPSIS:**

In accordance with the first reading of an ordinance approved by the City Council on June 28, 2010, staff recommends approval of second and third consideration of the rezoning ordinance 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.
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.

The subject property is currently under contract for purchase by a private entity. Community Development Department staff recommends that the City pursue acquisition of the property should it become available in the future.

**FISCAL IMPACT: NONE**

Amount: N/A

Funding Source: N/A



**ADDITIONAL INFORMATION:**

The subject property is located at the southwest corner of Southeast 6<sup>th</sup> Street and Raccoon Street. The property is currently designated for Support Commercial use on the 2020 Community Character Plan Land Use Map. The Lower East Village Urban Design Study suggests that a mixed use building for shopping, business or trade be developed in the future on the subject property and adjoining properties (currently owned by the City). In the interim, the owner of 400 SE 6<sup>th</sup> Street proposes to convert the existing single-family dwelling to a restaurant use. Such a use is currently permitted in the M-1, Light Industrial district but the applicant is unable to provide off-street parking on their property as required by the M-1 district.

The applicant requested to buy or lease adjoining property from the City for an off-street parking lot for the proposed restaurant. However, staff was concerned that such a lease for a surface parking lot would not be consistent with the long-term vision of the Market District and the applicant was told that the adjoining City land was not available for such a purpose at this time.

The applicant subsequently requested zoning to the C-3B district as it is the zoning district currently proposed for the existing C-3, Central Business District portions of East Village and is one of the districts that staff is considering for future rezoning of the Market District south of the East Village.

The intent of the Market District is to complement and foster the existing districts in the area and make connections to adjacent areas and neighborhoods, including the Historic East Village. The C-3B district does not require provision of off-street parking which is consistent with the existing and proposed zoning of the East Village and downtown Des Moines. In exchange for the benefit of the parking provision, the C-3B district requires site plan review and approval by the Plan and Zoning Commission. In addition, the applicant has voluntarily agreed to prohibit uses of the property as noted in the Executive Summary.

Staff believes that the proposed Limited C-3B zoning adequately protects the City's interests to achieve the long term vision of the Lower East Village Urban Design Study. The property is currently under contract for purchase by a private entity. Community Development Department staff recommends that the City pursue acquisition of the subject property if it becomes available in the future.

**PREVIOUS COUNCIL ACTION(S):**

Date: July 12, 2010

Roll Call Number: 10-1151

Action: Second reading on a request from 400 SE 6<sup>th</sup>, Inc. to rezone 400 SE 6<sup>th</sup> Street from "M-1" (Light Industrial) to "Ltd. C-3B" (Central Business Mixed Use), subject to conditions. Moved by Meyer to refer to the Plan and Zoning Commission and the City Manager to explore the possibility of the City buying the building or help in finding an alternate location. Motion Carried 7-0.

Date: June 28, 2010

Roll Call Number: 10-1064 and 10-1065

Action: Public Hearing and first reading on a request from 400 SE 6<sup>th</sup>, Inc. to rezone 400 SE 6<sup>th</sup> Street from "M-1" (Light Industrial) to "Ltd. C-3B" (Central Business Mixed Use), subject to conditions. Moved by Meyer to adopt and approve the rezoning, subject to final passage of the rezoning ordinance; refer to the City Manager to provide information regarding appropriateness of the rezoning. Motion Carried 7-0.

Date: June 14, 2010

Roll Call Number: 10-902

Action: Setting date of Hearing for consideration of a request from 400 SE 6<sup>th</sup>, Inc. to rezone 400 SE 6<sup>th</sup> Street from "M-1" (Light Industrial) to "Ltd. C-3B" (Central Business Mixed Use), subject to conditions. Moved by Hensley to adopt. Motion Carried 7-0.

### **BOARD/COMMISSION ACTION(S):**

Date: June 3, 2010

Roll Call Number: ZON2010-00082.

Action: The Plan and Zoning Commission voted 12-0 to recommend that the request for Limited C-3B zoning for property located at 400 SE 6<sup>th</sup> Street is in conformance with the Des Moines' 2020 Community Character Plan (12-0) and voted 12-0 to recommend approval of the request 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:

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.

### **ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:**

Third reading of the ordinance unless waived by the City Council (requires a 6/7<sup>th</sup> vote).