

Date November 19, 2007

WHEREAS, on November 5, 2007, by Roll Call No. 07-2124, it was duly resolved by the City Council that the proposal by the Sherman Hill Association to amend Section 134-64(4)(g) of the Zoning Ordinance to allow the Zoning Board of Adjustment to grant exceptions to the residency requirement in Section 134-722(15) regarding commercial uses in the "R-HD" Residential Historic District as more fully described in Exhibit "A" attached hereto, be set down for hearing on November 19, 2007, at 5:00 p.m., in the Council Chambers at City Hall; and

WHEREAS, due notice of the hearing was published in the Des Moines Register as provided by law on November 8, 2007; and

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

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa:

That upon consideration of the facts, statements of interested persons and arguments of counsel, the objections to said proposed amendments to the Zoning Ordinance be and the same are hereby overruled, and the hearing closed.

MOVED by _____ to adopt and approve, subject to final passage of the enacting ordinance.

FORM APPROVED:

Roger K. Brown

Roger K. Brown

Assistant City Attorney

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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

SS

November 5, 2007

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 October 18, 2007, 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			
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

APPROVAL of a request from the Sherman Hill Association for a Zoning Ordinance text amendment to allow the Board of Adjustment to grant Exceptions to the residency requirement in Section 134-772(15) regarding commercial uses in the "R-HD" Residential Historic District, as more specifically described in the accompanying Exhibit "A". (10-2007-5.04)

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Staff recommends approval of the text amendments contained in Exhibit "A".

STAFF REPORT

I. GENERAL INFORMATION

On June 29, 2007 staff received a letter from the Sherman Hill Association requesting the Zoning Ordinance be amended to allow business owners to operate a business in a residential structure if they reside within the neighborhood.

The "R-HD" Residential Historic District is unique in that it allows a portion of a residential structure to be used for commercial activity if the business owner's primary residence is in that structure. Over time there have been cases where businesses that fit within the character of the neighborhood have had to seek a Variance from the residence requirement from the Zoning Board of Adjustment or have closed down when the business owner moved to another location within the neighborhood.

II. ADDITIONAL APPLICABLE INFORMATION

The R&O Subcommittee of the Plan and Zoning Commission met on August 22, 2007 and October 10, 2007 to review the request from the Sherman Hill Association. The zoning text recommended by the R&O Subcommittee is attached (see Exhibit "A").

The R&O Subcommittee and staff agree in principal with the Sherman Hill Association that if a business is operated in character with the neighborhood and the business operator lives in close proximity to the business that the impact on the neighborhood is no greater than if the business owner lived in the building. While the Variance criteria are too onerous, a formal review process should be maintained to ensure the neighborhood's welfare is protected.

The R&O Subcommittee recommends that the Zoning Ordinance be amended to allow the Zoning Board of Adjustment to issue Exceptions to the residency requirement if the business owner lives in the "R-HD" District or within a quarter-mile of the business.

SUMMARY OF DISCUSSION

Leisha Barcus: Asked under what zoning districts are bed and breakfasts allowed.

Erik Lundy: Explained they are allowed in lesser zoning districts such as the R-1 districts with conditional uses from the Board of Adjustment. It is categorized under residential districts.

Mike Ludwig: Explained it is a permitted use within the RH-D district and noted the list of permitted uses under the RH-D districts to be boarding house and rooming house including bed and breakfast facilities providing the total number of boarders and roomers does not exceed 8 per building.

Greg Jones: Moved for approval of the text amendments contained in Exhibit "A".

Motion passed 13-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:dfa

Attachment

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Exhibit "A"

Proposed amendments to the Zoning Ordinance to allow a commercial business to be operated in the R-HD District by a business owner who does not reside at the business.

Sec. 134-64. Powers and duties.

The board of adjustment shall have the power and duty to:

- (4) Permit the exceptions in this subsection to the district regulations set forth in this chapter, provided all exceptions shall by their design, construction and operation adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property; shall not impair an adequate supply of light and air to adjacent property; shall not unduly increase congestion in the public streets; shall not increase public danger of fire and safety; and shall not diminish or impair established property values in surrounding areas. However, nothing in this subsection shall be interpreted as authorizing the board to grant an exception to any separation requirement, or to grant an exception to permit a structure more than 75 feet in height in any CDO capitol dominance overlay district, such power being expressly denied the board. Any exception to a separation requirement granted for a structure for which a building permit has not been issued shall be null and void. In granting any exception, the board may prescribe appropriate conditions and safeguards in conformity with this chapter. The board of adjustment may permit:

g. Exceptions to the residency requirement in Section 134-772(15) regarding commercial uses in the R-HD District, where,

1. The business is operated by a person whose bona fide and primary residence is located within the R-HD District or within 1,320 feet of the business premises, and such person holds at least a 50% ownership interest in the business.
2. There is no outside operation, storage or display of materials or products.
3. No alteration of the residential appearance of the premises shall occur without a Certificate of Appropriateness from the Historic Preservation Commission.
4. All outside activity related to the business must cease between the hours of 10:00 p.m. to 7:00 a.m. Sunday through Thursday, and 11:00 p.m. to 7:00 a.m. on Friday and Saturday.
5. The business shall not cause the congregation of business employees at the site or congestion in the availability of on-street parking.
6. Only one such business may be operated within the R-HD District by the residents of any dwelling.
7. The exception, if granted, shall be in effect only for so long as the business premises are owned and operated by the applicant and the applicant continues to satisfy the residency requirements of subparagraph 1, above.
8. Any such exception, if granted, shall be subject to reconsideration by the board if at any time the zoning enforcement officer determines that the conduct of the business has become detrimental to the neighborhood.

R-HD Residential Historic District Regulations
(for reference only)

Sec. 134-772. Principal permitted uses.

Only the following uses of structures or land shall be permitted in the R-HD residential historic district:

- (15) Any residential building occupied by one or more of its owners as the bona fide and primary residence may be devoted, in part, to commercial use. The area devoted to commercial use shall not exceed the lesser of (i) 50 percent of the gross floor area of the building, or (ii) the gross floor area of the ground floor. The number of nonresident persons employed in the commercial use shall not exceed one such person for every 250 square feet of gross floor area devoted to such use. Only the following commercial uses shall be permitted under this subsection:
- a. Antique shops.
 - b. Artist and photographic studios.
 - c. Artist supply shops.
 - d. Bicycle shops.
 - e. Beauty shops and barbershops.
 - f. Catering service.
 - g. Day nurseries, day care centers and nursery schools, provided:
 - 1. There shall be no more than 12 unrelated children supervised;
 - 2. There shall be provided for each child a minimum of 35 square feet of usable floor space exclusive of bathrooms, kitchens and hallways; and
 - 3. There shall be provided for each child a minimum of 75 square feet of usable outdoor play space, which space shall be confined to the rear yard of the property and shall be completely enclosed by a fence.
 - h. Dry goods shops.
 - i. Florists (retail only).
 - j. Gift card shops.
 - k. Handicraft shops, such as jewelry, stained glass, woven rugs, candlemaking and ceramics.
 - l. Picture framing shops.
 - m. Printing shops (retail only).
 - n. Professional offices, including those of a physician, dentist, attorney, architect, engineer, teacher, accountant, or other member of a recognized profession.
 - o. Restaurants, including delicatessens, tearooms and eating places.
 - p. Small appliance repair shops.
 - q. Specialty clothing shops dealing with new items.
 - r. Stationery shops.