

Date September 26, 2011

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 15, 2011, its members voted 11-0 in support of a motion to recommend **APPROVAL** to amend the Zoning Ordinance Text in Chapter 134 and the Site Plan Ordinance Text in Chapter 82, establishing a Downtown Overlay District which provides Site Plan design guidelines for an area generally bounded by Interstate 235 on the north, the Raccoon River and Des Moines River on the south, East 14th Street on the east, and M.L. King Jr. Parkway on the west.

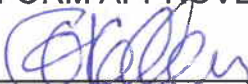
WHEREAS, the proposed text amendment is on file in the office of the City Clerk.

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 text amendment is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. on October 10, 2011, 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

(10-2011-5.01)

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

September 21, 2011

Date _____

Agenda Item 21

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 September 15, 2011, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley				X
Tim Fitzgerald	X			
Dann Flaherty	X			
John "Jack" Hilmes				X
Joel Huston				X
Ted Irvine	X			
Greg Jones	X			
William Page	X			
Christine Pardee	X			
Mike Simonson	X			
Kent Sovern	X			
CJ Stephens	X			

APPROVAL of the Zoning Ordinance Text in Chapter 134 and the Site Plan Ordinance Text in Chapter 82, establishing a Downtown Overlay District which provides Site Plan design guidelines for an area generally bounded by Interstate 235 on the north, the Raccoon River and Des Moines River on the south, East 14th Street on the east, and M.L. King, Jr. Parkway on the west.
(10-2011-5.01)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the proposed amendments to the Zoning Ordinance Text in Chapter 134 and the Site Plan Ordinance Text in Chapter 82, establishing a Downtown Overlay District which provides Site Plan design guidelines for an area generally bounded by Interstate 235 on the north, the Raccoon River and Des Moines River on the south, East 14th Street on the east, and M.L. King, Jr. Parkway on the west.



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 REPORT

I. GENERAL INFORMATION

On January 24, 2011 the City Council initiated amendments to the Zoning Ordinance Text to prohibit gas stations in the "C-3" Central Business District and "C-3A" Central Business Support Commercial District and established a temporary moratorium on new gas stations in those districts until April 12, 2011.

On February 17, 2011 the Plan and Zoning Commission voted 10-1 in support of a motion to recommend approval of Zoning Text Amendments to Chapter 134-982 ("C-3A" District) and Chapter 134-1017 ("C-3" District) to prohibit gas stations and fuel retail sales businesses as permitted uses in those districts.

On March 14, 2011 the City Council held a public hearing on said amendments. During the hearing convenience store representatives stated that they were unfairly being singled-out and that numerous other uses permitted in the "C-3" and "C-3A" zoning districts were equally or more objectionable than a convenience store with fuel sales. The City Council continued the hearing to April 11, 2011 and referred the issue to the City Manager to conduct a comprehensive review and to make a recommendation regarding the appropriate uses in "C-3" and "C-3A" districts. The hearing was subsequently continued until July 11, 2011.

After a comprehensive review of the "What's Next Downtown" plan, Staff recommended to the City Council on July 11, 2011 that convenience stores and other auto-dominant uses should be allowed in the downtown. However, the location of auto-dominant uses and design of all uses within the downtown should be regulated based upon the vision of the "What's Next Downtown Plan" that was adopted by the City Council on March 10, 2008. The City Council approved an extension of the moratorium until October 11, 2011 to accommodate code drafting, public information meetings, public hearing by P&Z, and public hearing and at least first reading by the City Council on a proposed Downtown Overlay District.

A public meeting for property owners within the proposed Downtown Overlay District was held on August 30, 2011.

On September 26, 2011 it is anticipated that the City Council will schedule a new public hearing for October 10, 2011 regarding on the proposed code amendments.

II. ADDITIONAL APPLICABLE INFORMATION

In summary, the proposed amendments to Chapter 134 of the City Code create a Downtown Overlay District as follows:

- The purpose of the Downtown Overlay District is:
 - to ensure that new uses and development within the district are compatible with the vision and principles of the "What's Next Downtown Plan"

- to provide minimum urban development design guidelines for the entire downtown
- to provide administrative design guidelines and review for projects not subject to P & Z site plan review
- to provide additional design guidelines for projects already subject to P & Z site plan review
- The Downtown Overlay District would be bounded by SE 14th Street on the east; the Des Moines and Raccoon Rivers on the south, MLK, Jr. Parkway on the west; and I-235 on the north.
- The Downtown Overlay District would prohibit the following uses:
 - Lumberyards and building material sales yards
 - Manufacturing, packaging or storage of dairy products
 - Off-premise advertising signs – except as allowed in the Entertainment Sign Overlay District (i.e. Court Avenue area).
 - Trailer, boat, and farm implement establishments for display, hire, rental and sales
 - Drive-in theaters
 - Monument sales yards
 - Motels, motor hotels and tourist courts
 - Auction businesses
 - Sign painting shops
 - Mobile home parks
 - Adult entertainment businesses
 - Salvage/junk yards
 - Contractor's equipment storage yards
- The design guidelines will supersede bulk regulations of the underlying district except within DR-HD and R-1 Districts.
- New construction and remodeling within the Downtown Overlay District shall be subject to the Downtown Overlay District design guidelines in the site plan regulations of Chapter 82, Article 5.

The proposed amendments to Chapter 82, Article 5 will establish design guidelines as follows:

- Projects should offer “place specific” architecture and design solutions that are consistent with the vision of the “What’s Next Downtown Plan” (i.e. corporate prototype architecture may not be acceptable).
- Low impact development techniques should be utilized and demonstrated.
- The minimum height for all uses should be lesser of 36 feet or 3 stories.
- All buildings with river frontage should orient towards the river and have building entrances that are oriented to the river and primary street(s).
- All buildings without river frontage should have entrances oriented toward primary street(s).
- All buildings should have frontage on principal street(s) of not less than 70% of the lot.
- For commercial and mixed-use buildings – at least 70% of the building frontage should be within 1 foot of property line.
- At least one building entrance for residential uses should directly access the street when residential is located above street-level retail or commercial uses.
- For residential buildings – a maximum setback of 15 feet from the public right-of-way is permitted unless superseded by bulk regulations of the underlying zoning district (i.e. “R-HD” Residential Historic District, “R1, Low Density Residential District, etc).
- Access doors for loading and unloading should not be located facing a public street without proper screening.
- Development on a site larger than two acres should rezone to the PUD, Planned Unit Development District.
- Parking ramps should include ground floor retail or commercial uses or be designed for future conversion of the ground floor to retail or commercial use or have significant architecture detail.
- Storage of all materials and equipment should be in a completely enclosed building.
- Refuse and garbage containers should be enclosed on all four sides with durable materials that are compatible with the principal structure and have steel gates.
- The number of existing curb cuts should be consolidated and new curb cuts should be minimized per review of the City Traffic Engineer.

- The site shall provide landscaping in accordance with the “C-3” landscape standards.
- Connectivity between adjacent properties should be provided / demonstrated for both vehicular and pedestrian circulation.
- Soft green spaces for pedestrians should be provided on-site.
- Outdoor spaces for pedestrians should be provided on-site.
- Connections to adjoining bike paths and on street bike facilities and bike racks should be provided on site within close proximity to the building entrances.
- Auto-dominant uses (convenience stores with fuel sales, fast-food restaurants with drive-through lanes, drive-through bank facilities, etc.) should be located in a mixed use commercial center with unified commercial design.
- Drive-through facilities, fuel canopies, vehicular access and parking should not front or have vehicular access oriented toward a pedestrian corridor or gateway corridor.
- Convenience stores should have no more than 6 pumps (allow no more than 12 vehicles to be fueled at one time).
- The guidelines will apply to the entire site for new construction and when the cumulative expansion of an existing building exceeds 50% of the gross floor area that existed on the date the overlay district is applied.
- The guidelines will only apply to the new portion of the building when the cumulative expansion of an existing building is less than 50% of gross floor area that existed on the date the overlay district is applied.
- In the absence of any required review by P & Z the community development director shall determine the applicability of design guidelines.
- Any appeal of a determination will be to P & Z and Council if necessary.

The ordinance text implementing the above provisions will be forwarded to the Commission prior to the public hearing.

SUMMARY OF DISCUSSION

Mike Ludwig presented the staff report and recommendation.

Mike Simonson asked what type of notification went out to all of the property owners informing them of the proposed amendments.

Mike Ludwig stated that a post card was mailed out to all property owners within the boundary. Staff received numerous calls and offered two presentations on August 30, 2011 at 5:00 p.m. and 6:30 p.m. About 25 people attended.

Tim Fitzgerald asked about mobile vending units and how will they fit in this overlay.

Mike Ludwig stated that mobile vending units are not specifically addressed by these guidelines. It is entirely addressed by the mobile vendor ordinance.

Will Page commented on the proposed amendments to Chapter 82, Article 5 where it states that the "projects should offer "place specific" architecture and design solutions that are consistent with the vision of the "What's Next Downtown Plan" (i.e. corporate prototype architecture may not be acceptable)." He is glad to see that it is the first bullet point in the list.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one to speak in favor of the applicant's request

The following spoke in opposition of the applicant's request

Mike O'Malley Lillis, O'Malley Law Firm 317 6th Avenue, Ste. 300 representing Aluminum Distributor, Inc. which is a corporation that operates a wholesale distributorship of home improvement products at 706 E. 2nd. The overlay would prevent Aluminum Distributor from expanding their building or using their property in the manner of which they are accustomed to. They suggest if the Commission approves this amendment that the wording includes retail, which would not include Aluminum Distributor because they are a wholesale business. They are also concerned about the building frontage having to be within 1-foot of the property line

Greg Jones asked how far east the overlay district extends.

Mike O'Malley stated that the plan goes East 14th Street and the Aluminum Distributor would like their property excluded from the overlay plan.

Dann Flaherty asked if the Aluminum Distributor is talking about expanding more than 50% of its current floor space.

Mike O'Malley stated that they could, they have enough room to do that.

Dann Flaherty stated when they talk about the problems that they are running into, would that be more than 50% expansion.

Mike O'Malley stated that they have enough room in the back that they could expand the building 50% if they wanted. However, that option is being taken away from them.

Dann Flaherty stated that if they are not expanding over 50% of their space they do not fall under the guidelines.

Mike O'Malley stated that he guess that takes the option away. He more concern about them being included and having to comply.

Mike Ludwig stated that the Aluminum Distributor's property is currently zoned "DR" District and at the time the property was rezoned, it was classified as a warehouse use and in the "DR" District warehouse is still a permitted use. None of the proposed changes in

the overlay district prohibits warehouses. There were specific exemptions that were written into the zoning ordinance of the "DR" District to address those existing warehouses. They were allowed to continue to operate.

The permitted use list includes "warehouses and warehousing which are conforming uses on December 31, 2003 and replacement thereof provides the construction of the replacement commence within six months and diligently pursued to completion." The guidelines about building placement and setback currently exist on the property. The "DR" District has the same design guidelines as what is proposed in the overlay district.

Mike Simonson asked staff to explain the process for obtaining relief.

Mike Ludwig stated that the "DR" District, which they are in, requires Plan and Zoning Commission review. The Plan and Zoning Commission would determine if the proposed plan complies with the design guidelines. It just requires a Site Plan. It would only have to go to Council if the applicant disagreed with the Commission's decision.

Mike O'Malley stated that yards and building material sales yards that could be interpreted to be warehouses in his opinion and definitely conflicts. He suggests that the guidelines include other than wholesale or warehouse uses.

Will Page stated that the use of the word yard precludes his problem, because yard is raw land.

Mike Ludwig stated that the "DR" District allows warehouse use specifically. There is nothing in the proposed overlay district that prohibits warehouse uses.

Rich Eychaner 300 Walnut stated he has two properties that appear to be problematic. One is a 39 foot wide property on Grand Avenue which means if he redevelops the property he would have to build a 3-story building on a 39 foot wide site. He does not think that is logical. Also part owner of 322 SW 3rd Street immediately south of the Science Center and according to the proposed overlay district it would have all kinds of issues. This is an enormous complex proposal which is affecting thousands of property owners who are not aware of what is being considered. He suggest that they do a lot more public education and research and talking to property owners.

Rebuttal

Mike Ludwig stated that a notice went out to all property owners downtown. The notice did refer to a downtown overlay district that would have design guidelines. The people who attended expressed limited concern about what was proposed. They are guidelines you don't have to go to the Zoning Board of Adjustment to get a variance. It is up to the Community Development Director if it is an administrative review or the Planning Commission if it complies with the guidelines or not. The staff or administrative reviews are appealable to the Commission, Council if the applicant disagrees with the Director's interpretation. The City Council directed staff to prepare an ordinance that was comprehensive and that is why that is in front of the Commission this evening.

CHAIRPERSON CLOSED THE PUBLIC HEARING

CJ Stephens stated that she wanted to make sure that these were only guidelines.

Dann Flaherty stated that he was on the designing of the 2020 Character Plan. A lot of time and effort was put in it but there was something missing. There were no design guidelines and no plan for the inner part of the City at all. What Council and staff are trying to do is at least put some guidelines in place so people will understand where we are going. This may not be what everyone is looking for but when the 2020 Character Plan was designed it was not what everyone was looking for. As the City is starting to be developed, there needs to be some direction.

CJ Stephens commented that she attended three sessions of first visits for people who were thinking of opening a business in the City of Des Moines, like the Council asked the Commission to do. She does think that the system needs a little work. She believes in the guidelines as long as they are flexible and people know where we are trying to go.

Mike Simonson stated that he thinks the word guideline is going to be the defining term. There could be some wonderful buildings built and wonder spaces created that do not meet these requirements.


Dann Flaherty stated that it gives the Commission an opportunity to look at it too.

COMMISSION ACTION:

CJ Stephens moved staff recommendation to approve the proposed amendments to the Zoning Ordinance Text in Chapter 134 and the Site Plan Ordinance Text in Chapter 82, establishing a Downtown Overlay District which provides Site Plan design guidelines for an area generally bounded by Interstate 235 on the north, the Raccoon River and Des Moines River on the south, East 14th Street on the east, and M.L. King, Jr. Parkway on the west.

Motion passed 11-0

Respectfully submitted,


Michael Ludwig, AICP
Planning Administrator

MGL:clw

cc: File

