

Date June 25, 2012

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on June 21, 2012, its members voted 7-3 in support of a motion to recommend **APPROVAL** of a request from Iowa CVS Pharmacy, LLC and FEPH Acquisitions Fund II, LLC (purchaser), 209 Euclid Avenue, represented by Thomas Lowe (registered agent) to vacate the north/south alley between 2<sup>nd</sup> Avenue and 3<sup>rd</sup> Street from Euclid Avenue to a point 250 feet north subject to the following conditions:

1. Provision of necessary easements for any existing utilities that are in place or accommodate their relocation as part of site redevelopment.
2. Provision of a traffic outlet from the remaining segment of alley to an adjoining public street through a public easement, or construction of a proper turnaround which is designed to accommodate any public maintenance equipment.
3. Any conveyance of the property be made subject to:
  - a. All buildings being constructed of durable masonry, brick, and stone materials.
  - b. Conformance with an approved site plan concept by the City Council which:
    - 1) Demonstrates adequate pedestrian routes from the primary retail building entrances to the adjoining public sidewalk system.
    - 2) Adheres to all landscaping setbacks, open space, and plant material minimum standards.
    - 3) Provides an enhanced urban edge within the setback areas along 2nd Avenue (Highway 415) and Euclid Avenue (Highway 6) to include decorative site walls and fencing at a pedestrian scale.

MOVED by \_\_\_\_\_ to receive and file and refer to the Engineering Department, Real Estate Division.

FORM APPROVED:

  
 Michael F. Kelley  
 Assistant City Attorney

(11-2012-1.09)

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

June 22, 2012

Date \_\_\_\_\_

Agenda Item 59

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 21, 2012, the following action was taken:

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 7-3 as follows:

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano	X			
Shirley Daniels	X			X
Jacqueline Easley				
Tim Fitzgerald	X			
Dann Flaherty		X		
John "Jack" Hilmes	X			X
Ted Irvine				
Greg Jones		X		
William Page		X		
Christine Pardee	X			X
Mike Simonson				
CJ Stephens	X			
Vicki Stogdill	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 Iowa CVS Pharmacy, LLC and FEPH Acquisitions Fund II, LLC (purchaser), 209 Euclid Avenue, represented by Thomas Lowe (registered agent) for vacation of the north/south alley between 2<sup>nd</sup> Avenue and 3<sup>rd</sup> Street from Euclid Avenue to a point 250 feet north, subject to the following conditions: (11-2012-1.09)

1. Provision of necessary easements for any existing utilities that are in place or accommodate their relocation as part of site redevelopment.
2. Provision of a traffic outlet from the remaining segment of alley to an adjoining public street through a public easement, or construction of a proper turnaround which is designed to accommodate any public maintenance equipment.
3. Any conveyance of the property be made subject to:
  - a. All buildings being constructed of durable masonry, brick, and stone materials.

b. Conformance with an approved site plan concept by the City Council which:

- 1) Demonstrates adequate pedestrian routes from the primary retail building entrances to the adjoining public sidewalk system.
- 2) Adheres to all landscaping setbacks, open space, and plant material minimum standards.
- 3) Provides an enhanced urban edge within the setback areas along 2nd Avenue (Highway 415) and Euclid Avenue (Highway 6) to include decorative site walls and fencing at a pedestrian scale.

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

Staff recommends approval of the requested vacation subject to the following conditions:

1. Provision of necessary easements for any existing utilities that are in place or accommodate their relocation as part of site redevelopment.
2. Provision of a traffic outlet from the remaining segment of alley to an adjoining public street through a public easement, or construction of a proper turnaround which is designed to accommodate any public maintenance equipment.
3. Any conveyance of the property be made subject to:
  - a. All buildings being constructed of durable masonry, brick, and stone materials.
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    - 1) Demonstrates adequate pedestrian routes from the primary retail building entrances to the adjoining public sidewalk system.
    - 2) Adheres to all landscaping setbacks, open space, and plant material minimum standards.
    - 3) Provides an enhanced urban edge within the setback areas along 2nd Avenue (Highway 415) and Euclid Avenue (Highway 6) to include decorative site walls and fencing at a pedestrian scale.

### Written Responses

3 In Favor

0 In Opposition

## **STAFF REPORT**

### **I. GENERAL INFORMATION**

1. **Purpose of Request:** The applicant is seeking to assemble land to provide a redevelopment site for a pharmacy store.
2. **Size of Site:** 4,800 square feet of right-of way (16 feet by 300 feet)
3. **Existing Zoning (site):** "C-2" General Retail and Highway Oriented Commercial District and Limited "C-2" General Retail and Highway Oriented Commercial District.

4. **Existing Land Use (site):** Developed public alley.
5. **Adjacent Land Use and Zoning:**  
**East** – “C-2”, Uses are retail buildings and a drive-through restaurant parking lot.  
**West** – Limited “C-2”; Uses are off-street parking lots, a Municipal Housing Agency single-family residence, and retail buildings.
6. **General Neighborhood/Area Land Uses:** The subject right-of-way is immediately north of the Highway 6/ Euclid Avenue commercial corridor.
7. **Applicable Recognized Neighborhood(s):** Highland Park Neighborhood.
8. **Relevant Zoning History:** On April 18, 1988 the City Council rezoned the adjoining property located at 3617 and 3621 3<sup>rd</sup> Street from a “C-0” Commercial Residential District classification to a “C-2” General Retail and Highway Oriented Commercial District classification subject to the following conditions:
  - a. Any use permitted in the “C-0” district.
  - b. Parking garages and parking lots.
9. **2020 Community Character Land Use Plan Designation:** Commercial: Auto-Oriented, Small-Scale Strip Development, Commercial: Pedestrian-Oriented, Commercial Corridor, and Low Density Residential.
10. **Applicable Regulations:** The Commission reviews all proposals to vacate land dedicated for a specific public purpose, such as for streets and parks, to determine whether the land is still needed for such purpose or may be released (vacated) for other use. The recommendation of the Commission is forwarded to the City Council.

## II. ADDITIONAL APPLICABLE INFORMATION

1. **Utilities:** At this time aerial electrical utility lines have been identified within the requested rights-of way. Easements must be provided for any existing public utilities as part of any conveyance or their relocation must be provided for appropriately at the expense of the developer as part of any redevelopment. Otherwise no other utilities have been identified within the affected right-of-way.
2. **Street System/ Access:** The segment of right-of-way comprises approximately the south half of the alley within the city block. The remainder segment will still be necessary for a public access purpose and therefore it must be designed to allow a traffic outlet to an adjoining public street or a proper turnaround which is designed to accommodate any public maintenance equipment.
3. **Development Requirements:** Future development of any vacated right-of-way must be in compliance with a Site Plan approved by the City’s Permit & Development Center. This includes such standards as paved access and maneuvering; dustless surfaces and street setbacks for storage areas; and landscaping requirements.

In this instance, staff is concerned about the removal of the existing pedestrian scale commercial development. Adjoining areas reflect a similar traditional pattern of commercial development.

Because of the adjoining Highways 6 and 415 prohibiting the on-street street parking within Euclid Avenue and 2<sup>nd</sup> Avenue is prohibited, and it would be a challenge to provide pedestrian-oriented redevelopment along these high volume vehicular traffic corridors. At the same time, redevelopment must be sensitive to the existing commercial pattern that is to remain surrounding the project. This pattern is planned to be pedestrian scale in nature and include improvements to the pedestrian streetscape on the Euclid Avenue side under the Highland Park Streetscape Project.

Staff recommends that any vacation be subject to approval of a site plan concept by the City Council at the time of conveyance that demonstrates adequate pedestrian routes from the primary retail building entrances to the adjoining public sidewalk system. The plan should also adhere to all landscaping setback and plant material minimum standards while providing and enhanced urban edge within the setback areas along 2<sup>nd</sup> Avenue (Highway 415) and Euclid Avenue (Highway 6). This would include decorative site walls and fencing at a pedestrian scale within the perimeter lot setback areas to help tie in from an urban design perspective to surrounding commercial properties with a zero setback building character. This is similar to solutions that were derived for the Dahl's grocery store development on Ingersoll Avenue where the store could not be developed with a zero setback but needed to be compatible with surrounding commercial development that was built toward the street. Any building should be comprised of durable masonry, stone, and brick materials.

## **SUMMARY OF DISCUSSION**

Bert Drost presented the staff report and recommendation.

Will Page asked if the property is located in the Highland Park Commercial National Historic District.

Bert Drost stated that the Highland Park Commercial National Historic District is over on Sixth Avenue which is about 3 ½ blocks to the west of this project.

Will Page asked how far the historic district extends along Euclid Avenue to the east.

Bert Drost stated that he is not sure.

Will Page stated that he is concerned that the parcel they are looking at tonight is within a national historic district, and if that is the case what if any action does the Des Moines Historic Preservation Commission need to do in connection with this project.

Mike Ludwig stated the national historic district is not reviewed by our local historic commission. The district would limit use of federal dollars and require consultation with SHPO. If there are no federal dollars associated with the project there is no review that he is aware of.

Will Page stated that he would direct staff to explore the status of this in terms of its potential national register listing just for clarification.

Dann Flaherty asked did Commissioner Page want to continue this item.

Will Page stated that he would like to continue it. He is also concerned that the proposed site plan is not similar to the existing commercial properties with a zero setback. Instead of having a zero setback on this plan there will be parking there and along Sixth Avenue.

Mike Ludwig stated the site is currently zoned "C-2" and the "C-2" has a required setback of 25 feet for the building. If they are in compliance with the existing zoning there is limited ability to require or force them to move a building out to the street. Staff is trying to get an urban edge along the parking. The pedestrian access to the building is very critical and the Council is requesting final review of the site plan. The Neighborhood Association supports the request in the existing zoning. They would have to go to the Board of Adjustment to get relief to the required setback.

Will Page asked staff what difference in the zoning on this property and the property in Beavertdale where the Ace Hardware went in.

Mike Ludwig stated that the Beavertdale Ace Hardware is zoned "C-2" and the zoning was at that time and whether they went to the Board of Adjustment. There is nothing required that the applicant for this project go to the Board of Adjustment to seek relief.

Will Page disappointment with this is they are trying to make the City of Des Moines something distinctive from the suburbs. One of the things that make the City distinctive is that we have buildings that are built up to the right-of-way which gives the metropolitan urban feeling to the environment. It helps calm traffic and much more attractive in a city situation. Then something like this flies in the face of what we are trying to do.

Dann Flaherty expressed concern if the alley will be cut off to the north.

Bert Drost stated that there will be access easement that will allow the traffic to exit out to Second Avenue or to Third Street.

Chris Pose 317 6<sup>th</sup> Avenue showed a letter of support from the Highland Park Neighborhood Association. The applicant agrees with the staff recommendation and comments. The neighborhood meeting was well attended. One gentleman at the meeting raised the issue that Commissioner Page raised about moving the building, making it more in compliance with the "NPC" District regulations. With all the people in the room no one applauded that idea. At the end of the meeting one gentleman stood up and stated that he was in support of the plan as submitted, liked what they were doing and that generated applause in the room.

The applicant indicated that if this site was zoned in such a way where they would have to put the building near the street CVS would not enter into the market at this particular location. The applicant agrees with staff to have something other than a prototype building elevation at this location and they submitted elevation to the neighborhood association. They will be in discussions with staff regarding those elevations and the site plan is a work

in progress. The alley will not be a dead end into the building there will be access out to Second Avenue.

Dann Flaherty asked what is the situation with respect to potential for any National Historic District overlay being in this particular piece of property.

Chris Pose stated if located in a National Historic District the applicant would have to deal with it. So far their investigation they have done on the site, going through the pre-application process with the City, discussion with the City staff, private discussions that the applicant has done that has not been revealed as an item that they would have to deal with. His understanding of the National Historic District is along the lines of what Mr. Ludwig has said and if there is no federal dollars involved that creates a different circumstance. There has been no local historic designation on the site. All of the contingencies have to be established on the surrounding properties. There are three property owners – Dr. John Campbell, Fred Spuzello, and Denny Elwell, and each are dependent on the other. FEPH entity will assemble the site and then turn it over to CVS after all the due diligence is complete. The action tonight is only part of the whole process there is still more work to be done. They will continue to investigate the historic issue.

Dann Flaherty expressed concern that there will be a vacated alley with an abandoned project.

Chris Pose stated the City is protected in that regard because the applicant has indicated that they will not accept conveyance of the alley until such time that Iowa CVS is willing to do it. CVS will not go forward on this site unless they have all of those contingencies.

Mike Ludwig explained that this is a recommendation of the City Council. Condition #3 references there will be no conveyance unless those conditions are met. The site plan will have to be approved by Council before any conveyance would take place.

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

*There was no one to speak in favor or in opposition of the applicant's request.*

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

Will Page would like to know what enhanced urban edge means.

Greg Jones explained that it is like at Dahl's. They put a black fence or something around the edge and landscaping to make it seem like an edge when it really is not.

Mike Ludwig stated staff has also talked to the applicant about installing or working to get the Highland Park Streetscape extended in front of this property along Euclid Avenue. It is very similar to what was done on the Dahl's where staff asked that the Ingersoll Streetscape be installed in front of the building.

Greg Jones believes it is very sad that this property was left at "C-2" zoning by the neighborhood when it could have been changed to "NPC" and it would have been protected. There has been proof that pharmacies can come in have a frontage on the street like they should and survive. He agrees with Commissioner Page that the City is losing what they are everyday and pretty soon the City will start looking like a suburb.


**COMMISSION ACTION:**

Christine Pardee moved staff recommendation to approve the requested vacation subject to the following conditions:

1. Provision of necessary easements for any existing utilities that are in place or accommodate their relocation as part of site redevelopment.
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  - a. All buildings being constructed of durable masonry, brick, and stone materials.
  - b. Conformance with an approved site plan concept by the City Council which:
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Motion passed 7-3 (Greg Jones, Dann Flannery and Will Page voted in opposition)

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

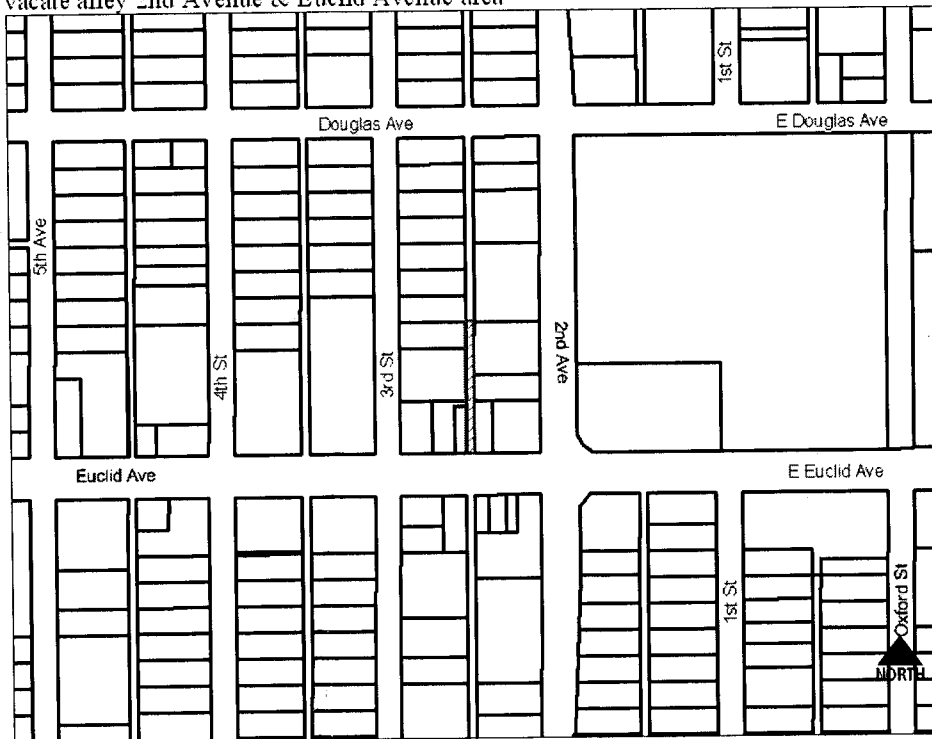
MGL:clw

Attachment



Request from Iowa CVS Pharmacy, LLC and FEPH Acquisitions Fund II, LLC (purchaser), 209 Euclid Avenue, represented by Thomas Lowe (registered agent) to vacate the north/south alley between 2 <sup>nd</sup> Avenue and 3 <sup>rd</sup> Street from Euclid Avenue to a point 250 feet north. Adjoining property is owned by Denny Elwell Family, LC; Fred Spuzello; John Campbell; and the City of Des Moines.				<b>File #</b> 11-2012-1.09	
<b>Description of Action</b>	Review and approval to vacate the north/south alley between 2 <sup>nd</sup> Avenue and 3 <sup>rd</sup> Street from Euclid Avenue to a point 250 feet north.				
<b>2020 Community Character Plan</b>	Commercial: Pedestrian-Oriented Commercial Corridor and Commercial: Auto-Oriented Small-Scale Strip Development				
<b>Horizon 2035 Transportation Plan</b>	No Planned Improvements				
<b>Current Zoning District</b>	"C-2" General Retail and Highway-Oriented Commercial 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	3	0			
Outside Area					
<b>Plan and Zoning Commission Action</b>	Approval	7-3	<b>Required 6/7 Vote of the City Council</b>	Yes	
	Denial			No	X

Iowa CVS Pharmacy LLC and FEPH Acquisitions Fund II LLC - 11-2012-1.09  
vacate alley 2nd Avenue & Euclid Avenue area



Item 11-2012-1.09 Date 6-13-12

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

RECEIVED  
COMMUNITY DEVELOPMENT  
DEPARTMENT  
JUN 15 2012

Print Name John Campbell

Signature [Handwritten Signature]

Address 215 Euclid D.M. 50313

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

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Item 11-2012-1.09

Date 6-14-12

59

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

(Circle One)

RECEIVED  
COMMUNITY DEVELOPMENT  
JUN 13 2012  
DEPARTMENT

Print Name NPM Investment Inc

Signature [Signature]

Address P.O. Box 1877  
Ankeny, IA 50021

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

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

Item 11-2012-1.09

Date 6-14-12

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

(Circle One)

RECEIVED  
COMMUNITY DEVELOPMENT  
JUN 13 2012  
DEPARTMENT

Print Name Fred D. Spuzello

Signature [Signature]

Address Home 816 58th St Owlin IA  
Bldg 3612 2nd Ave Desm IA

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

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

Iowa CVS Pharmacy LLC and FEPH Acquisitions Fund II LLC - vacate alley 2nd Avenue & Euclid Avenue area 11-2012-1.09



Dear Members of the City Plan and Zoning Commission of Des Moines:

This letter is written in regard to Item 4 of the June 21, 2012<sup>th</sup> agenda.

After a meeting with those representing CVS Pharmacy and others on Tuesday evening, June 12<sup>th</sup>; the Board (officers and steering committee members) of Highland Park Community Action Association met in regard to this venture.

We are in unanimous agreement of how important this endeavor is to our neighborhood. Our neighborhood association supports the request (for vacation and conveyance of the north/south alley between 2<sup>nd</sup> Avenue and 3<sup>rd</sup> Street from Euclid Avenue to a point 250 feet north) being presented to the commission this evening.

Should you have any questions, feel free to contact me at 264-0440 (home) or 249-2417 (cell). I am recovering from total knee replacement surgery and am regrettably unable to attend the meeting.

Sincerely,



Trudy McCormick, President of the Highland Park Community Action Association

Dear Members of the City of Des Moines' Zoning Board of Adjustment:

This letter is written in regard to Item 11 on the consent portion of the June 27, 2012<sup>th</sup> agenda.

After a meeting with those representing CVS Pharmacy and others on Tuesday June 12<sup>th</sup>; the Board (officers and steering committee members) of Highland Park Community Action Association met in regard to this venture.

We are in unanimous agreement of how important this venture is to our neighborhood. Our neighborhood association supports the proposal (construction of a dumpster enclosure at the southeast corner of the existing building that would be within 19 feet of the south (front) property line along Madison Avenue)being presented to the board this afternoon.

Should you have any questions, feel free to contact me at 264-0440 (home) or 249-2417 (cell). I am recovering from total knee replacement surgery and am regrettably unable to attend the meeting.

Sincerely,



Trudy McCormick, President of the Highland Park Community Action Association