

Date December 3, 2012

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 3201, 3211, and 3221 Forest Avenue and 1414 32nd Street from the C-1 Neighborhood Retail Commercial District, R1-60 One-Family Low-Density Residential District, and R-3 Multiple-Family Residential District to Limited NPC Neighborhood Pedestrian Commercial District classification",

which was considered and voted upon for the first time under Roll Call No. 12- 1726 of November 5, 2012, and considered and voted upon for the second time under Roll Call No. 12- 1783 of November 19, 2012, 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				

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

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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 3201, 3211, and 3221 Forest Avenue and 1414 32nd Street from the C-1 Neighborhood Retail Commercial District, R1-60 One-Family Low-Density Residential District, and R-3 Multiple-Family Residential District to Limited NPC Neighborhood Pedestrian Commercial 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 3201, 3211, and 3221 Forest Avenue and 1414 32nd Street, more fully described as follows, from the C-1 Neighborhood Retail Commercial District, R1-60 One-Family Low-Density Residential District, and R-3 Multiple-Family Residential District to Limited NPC Neighborhood Pedestrian Commercial District classification:

South 60 feet of Lot 1, (except the North 80 feet) Lot 2, all Lot 3, (except the North 142 feet) Lot 4, Rutledge Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

Section 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 the property and are binding upon the owners and their successors, heirs, and assigns as follows:

- (1) The following uses shall be prohibited:
 - a) taverns and nightclubs,
 - b) billiard parlor/game room,
 - c) communication tower/antenna (unless as an extension of 20 feet or less from the structure),
 - d) delayed deposit services,
 - e) pawn brokers,
 - f) gas stations/convenience stores,
 - g) off-premises advertising signs, and
 - h) liquor stores where gross revenues of tobacco and alcohol products exceed 40% of sales.

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- (2) The density of any future residential development shall be dependent upon Site Plan review and upon the traffic study required to be submitted with the Site Plan. However, the density of any development shall not exceed 40 dwelling units per acre (48 dwelling units on a 1.20-acre site).
- (3) Any development shall be in accordance with a Site Plan under the Design Guidelines for the NPC District.
- (4) Any development of a multiple-family residential use shall be in accordance with a Site Plan under the Design Guidelines for Multiple-Family Residential.
- (5) Any multiple-family residential structure shall have at least one primary entrance oriented toward Forest Avenue.
- (6) The entire ground floor of any structure shall be sided with brick or masonry materials, with the balance sided with brick, masonry, and/or cement board materials.
- (7) Any shingles shall be architectural style.
- (8) Any off-street parking shall be landscaped and screened in accordance with the City's Landscape Standards as applicable to the C-2 District.
- (9) Any development shall include a landscaped streetscape within adjoining Forest Avenue right-of-way in accordance with the City's Landscape Standards as applicable to the C-3 District.
- (10) Any trash enclosure on site shall conform to the standards of the Zoning Ordinance and be comprised of durable materials that compliment the principal building with steel gates.

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

Section 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

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
Grantor's Name:	ND 19 32 nd Street Shops LLC
Grantee's Name:	City of Des Moines, Iowa
Legal Description:	South 60 feet of Lot 1, (except the North 80 feet) Lot 2, all Lot 3, (except the North 142 feet) Lot 4, Rutledge Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

ACCEPTANCE OF REZONING ORDINANCE

The undersigned hereby states, warrants and agrees as follows:

1. That ND 19 32nd Street Shops LLC, an Iowa limited liability company, is the sole owner of the Property in the vicinity of 3201, 3211 and 3221 Forest Avenue and 1414 32nd Street, more specifically described above.

2. That in the event the City of Des Moines, Iowa, acts to rezone the Property from the C-1 Neighborhood Retail Commercial District, R1-60 One-Family Low-Density Residential District, and R-3 Multiple-Family Residential District to Limited NPC Neighborhood Pedestrian Commercial District classification, I agree and accept on behalf of the owner 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:

(1) The following uses shall be prohibited:

- a) taverns and nightclubs,
- b) billiard parlor/game room,
- c) communication tower/antenna (unless as an extension of 20 feet or less from the structure),
- d) delayed deposit services,
- e) pawn brokers,
- f) gas stations/convenience stores,
- g) off-premises advertising signs, and
- h) liquor stores where gross revenues of tobacco and alcohol products exceed 40% of sales.

- (2) The density of any future residential development shall be dependent upon Site Plan review and upon the traffic study required to be submitted with the Site Plan. However, the density of any development shall not exceed 40 dwelling units per acre (48 dwelling units on a 1.20-acre site).
- (3) Any development shall be in accordance with a Site Plan under the Design Guidelines for the NPC District.
- (4) Any development of a multiple-family residential use shall be in accordance with a Site Plan under the Design Guidelines for Multiple-Family Residential.
- (5) Any multiple-family residential structure shall have at least one primary entrance oriented toward Forest Avenue.
- (6) The entire ground floor of any structure shall be sided with brick or masonry materials, with the balance sided with brick, masonry, and/or cement board materials.
- (7) Any shingles shall be architectural style.
- (8) Any off-street parking shall be landscaped and screened in accordance with the City's Landscape Standards as applicable to the C-2 District.
- (9) Any development shall include a landscaped streetscape within adjoining Forest Avenue right-of-way in accordance with the City's Landscape Standards as applicable to the C-3 District.
- (10) Any trash enclosure on site shall conform to the standards of the Zoning Ordinance and be comprised of durable materials that compliment the principal building with steel gates.

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 NPC Neighborhood Pedestrian Commercial District, 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.

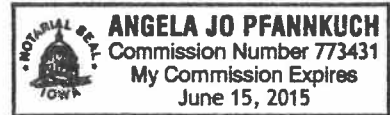
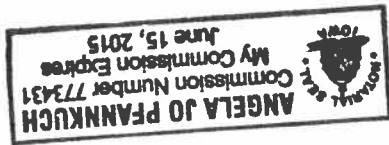
ND 19 32nd Street Shops LLC
an Iowa limited liability company

By: 
Mike Nelson

State of Iowa)
) ss:
County of Polk)

This instrument was acknowledged before me on October 29, 2012, by Mike Nelson, a Member of **ND 19 32nd Street Shops LLC**, an Iowa limited liability company, on behalf of whom the instrument was executed.


Notary Public in the State of Iowa



CITY ATTORNEY

Jeffrey D. Lester

DEPUTY CITY ATTORNEYS

Mark Godwin
Lawrence R. McDowell
Kathleen Vanderpool

ASSISTANT CITY ATTORNEYS

Angela T. Althoff
Roger K. Brown
Ann M. DiDonato
David A. Ferree
Glenna K. Frank
Gary D. Goudelock, Jr.

Michael F. Kelley
Vicky L. Long Hill
Steven C. Lussier
Katharine J. Massier
Carol J. Moser
Douglas P. Philip



October 23, 2012

Mr. Mike Nelson
ND 19 32nd Street Shops LLC
1045 76th Street, Suite 2000
West Des Moines, IA 50266-5886

Re: Application for rezoning of property in the vicinity of 3201, 3211 and 3221 Forest Avenue,
and 1414 32nd Street, Des Moines, Iowa

Dear Mr. Nelson:

The City Plan and Zoning Commission has recommended conditional approval of the request to rezone the above referenced property. The Commission recommended that the rezoning be subject to the conditions identified in the accompanying Acceptance of Rezoning Ordinance. To receive the benefit of that recommendation, the owner must agree to the imposition of those conditions by signing the Acceptance.

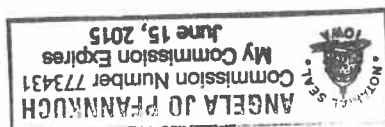
I have been advised that the properties are solely owned by ND 19 32nd Street Shops LLC. If that is incorrect, please call me immediately. If ND 19 32nd Street Shops LLC is the sole owner of the property, then please sign the appropriate signature page of the Acceptance before a notary and return the document to me at your earliest convenience.

This rezoning is presently scheduled to be considered by the City Council at a public hearing on November 5, 2012 at 5:00 p.m. in the Council Chambers at City Hall. To hold to that schedule I need the original signed Acceptance returned to me by Thursday, November 1, 2012. If you need additional time to consider the matter, the next City Council meeting to which the hearing could be deferred is on November 19, 2012.

Please call me if you have any questions about this matter.

Sincerely,

Michael F. Kelley
Assistant City Attorney
City Legal Department
400 Robert D. Ray Drive
Des Moines, IA 50309
515/283-4124
mfkelley@dmgov.org



cc: Mike Ludwig

HOGAN LAW OFFICE
3101 INGERSOLL AVENUE, SUITE 103
DES MOINES, IOWA 50312
(515) 279-9059
FAX (515) 277-5836

TIMOTHY C. HOGAN
LAWRENCE I. JAMES, JR.

Mayor Frank Cownie
Des Moines City Council
City of Des Moines
400 Robert D. Ray Drive
Des Moines, IA 50309

November 12, 2012

Re: Rezoning of 3201, 3211, and 3221 Forest Avenue and 1414 32nd Street

Dear Mayor Cownie,

I represent 3201 Forest, LLC, the developer of the properties located at 3201, 3211, and 3221 Forest Avenue and 1414 32nd Street (the "Property"). The developer seeks to rezone the Property from C-1, R-3 and R-1-60 to Neighborhood Pedestrian Commercial ("NPC") in order to pursue construction of an apartment building. My client could build a commercial or multifamily building on the site without a zoning change. However, NPC zoning is necessary to allow for a more pedestrian-friendly design pursuant to goals set forth in the 2011 Drake Neighborhood Plan (below). In addition, the use restrictions agreed to by my client as a condition of rezoning would actually limit the uses of the Property more than the current zoning.

The request to rezone to NPC is only the first step my client needs to undertake before any work could begin. After rezoning, the developer will return to the DNA, City staff, and Drake University with a site plan, which will be the product of neighborhood input. Pursuant to NPC and multifamily design guidelines, any site plan would need to be reviewed and approved by the Plan and Zoning Commission.

Mike Nelson is one of the principals of 3201 Forest, LLC. As owner of Nelson Development, Mr. Nelson is one of the leading developers of high-quality multifamily housing in Des Moines. A sample of Nelson Development's recent multifamily projects include:

- **Liberty Building** (Hyatt Place Hotel, office and retail space, and condominiums).
- **e300 Grand** (Zombie Burger, retail, and 79 energy-efficient apartments).
- **AP Transfer Lofts** (70 loft apartments).
- **Fleming Building** (80 apartments).
- **The Des Moines Building** After a competitive process, the City of Des Moines chose Nelson Development and Foutch Brothers to renovate the historic Des Moines Building at 6th and Locust Avenue. Work has begun on a mix of 136 apartments, retail, office, and restaurant space, which will be completed in 2014.

In the Drake Neighborhood, the developer seeks to build a three-story, 48-unit apartment

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City of Des Moines
PLANNING DEPARTMENT
3201 Forest, LLC
1414 32nd Street
Des Moines, IA 50312
Mike Nelson
copy

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building with 68 parking spaces (the "Project"). I have attached a conceptual site plan and perspectives for your review. The building hugs the corner of 32nd Street and Forest Avenue, but is set back further from the corner than the existing building to allow for greater traffic visibility. The conceptual site plan includes parking tucked along the side and behind the building and a new 12-foot sidewalk and street trees along Forest Avenue.

As noted above, prior to creating this plan, the developer considered the goals, policies, and objectives set forth in the 2011 Drake Neighborhood Plan:

(http://drakeneighborhood.org/neighborhood_plan/drake_neighborhood_plan.pdf).

The Drake Neighborhood Plan was created during a two-year process from 2009 to 2011 and included input from the DNA, Drake University, neighborhood residents and businesses, and City staff. I have attached several pages from the Drake Neighborhood Plan for your review. Each goal or policy that concerns this Project is addressed below.

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Goal/Outcome 1.4: Provide a range of quality housing opportunities in the Drake Neighborhood

Action Step 1.4.1b: Encourage new, **affordable** multifamily developments to be located along neighborhood corridors such as University Avenue, **Forest Avenue**, MLK Jr. Parkway, etc.

The Project meets the goal to locate new, mixed-income affordable multifamily housing on a neighborhood corridor, Forest Avenue. Under Iowa Finance Authority guidelines, a portion of the apartments shall be reserved for households at or below 60% of median income (60 % median income = \$31,740 (single), \$36,240 (two people) in 2012). Rents are estimated at \$600 for a one-bedroom apartment and \$725 for a two-bedroom apartment. The remaining apartments will be offered at market rate.

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Goal/Outcome 5.4: Develop the area along Forest Avenue between 30th Street and 33rd Street as a pedestrian-friendly "campustown" district.

Action Step 5.4.1a: The DNA and DABA will support the rezoning of property from C-1 to NPC on a case-by-case basis.

Strategy 5.4.2 Encourage redevelopment that provides **additional housing density** to support the area businesses.

Action Step 5.4.2a The DNA and DABA will support this type of development as it occurs.

The Project meets the goal to help develop a pedestrian-friendly, "campustown"

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district on Forest Avenue between 30th and 33rd Street. This Project is located within the section of Forest Avenue described in the Drake Neighborhood Plan. Rezoning the Property to NPC will allow the addition of housing density to the area, which is necessary to support additional retail development on Forest Avenue.

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In the introduction to the Land Use & Zoning section of the Drake Neighborhood Plan, “[t]he following policies are included in the future land use plan for the Drake neighborhood:

The Drake neighborhood recognizes the value of residential density, and the need for multiple family properties to house the University’s student population as well as to serve a broad range of resident needs. **Higher residential densities should be encouraged along the major corridors in order to support commercial districts and utilize mass transit routes. The Drake neighborhood supports the construction of high quality, multi-family development projects, particularly along University Avenue, Forest Avenue, and Martin Luther King, Jr. Parkway,** as well as land adjacent to Drake University. The Neighborhood Association would like to participate in site plan review for multi-family development proposals, to ensure they are of a scale and character that blends well with the neighborhood.” (emphasis added)

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Goal/Outcome 6.3 Promote compact, pedestrian-friendly neighborhood commercial districts in the Drake neighborhood.

Action Step 6.3.1d Support rezoning requests along both sides of Forest Avenue between 30th and 33rd Streets from “C-1” Neighborhood Retail Commercial District to “NPC” Neighborhood Pedestrian Commercial District on a case- by-case basis as development is proposed.

The Project meets the goal to promote compact, pedestrian-friendly neighborhood commercial districts in the Drake Neighborhood. This Project is located within the section of Forest Avenue described in the Drake Neighborhood Plan. Rezoning the Property to NPC will allow the addition of housing density to the area, which is necessary to support additional retail development along Forest Avenue.

After you have had the opportunity to review the attached documents, please feel free to contact me at 279-9059, 205-2158 or larry@hoganlawoffice.net with any questions or concerns. I look forward to working with the City, Drake University, and the Drake Neighborhood on this exciting opportunity to revitalize a block of Forest Avenue

