

Date October 20, 2014

RESOLUTION SETTING DATE OF HEARING ON REQUEST FROM 304 15TH STREET, LLC (OWNER), REPRESENTED BY JAKE CHRISTENSEN (OFFICER), TO REZONE PROPERTY LOCATED AT 304 15TH STREET TO REMOVE THE "D-O" DOWNTOWN OVERLAY DISTRICT DESIGNATION AND REMOVE THE PROHIBITION OF OFF-PREMISES ADVERTISING SIGNS

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on October 2, 2014, its members voted 7-2-1 to recommend **DENIAL** of a request from 304 15th Street, LLC (owner), represented by Jake Christensen (officer), to rezone property located at 304 15th Street ("Property") to remove the "D-O" Downtown Overlay District and remove the prohibition of off-premises advertising signs, to allow Board of Adjustment consideration of a 30-foot by 30-foot (900 square feet) painted wall sign on the north side of the building located on the Property to advertise for off-premise business Exile Brewing Company, which is located at 1514 Walnut Street; and

WHEREAS, the Property is legally described as follows:

The South 10 feet of Lot 5 and all of Lot 8 of Block 43, LYON'S ADDITION, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. That the attached communication from the Plan and Zoning Commission is hereby received and filed.
2. That the meeting of the City Council at which the proposed rezoning is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa, at 5:00 p.m. on November 3, 2014, at which time the City Council will hear both those who oppose and those who favor the proposal.
3. 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:

Glenna K. Frank
 Glenna K. Frank, Assistant City Attorney

(ZON2014-00174)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
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



October 10, 2014

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 2, 2014, the following action was taken regarding a request from 304 15th Street, LLC (owner) represented by Jake Christensen (officer) to rezone property located at 304 15th Street to remove the "D-O" Downtown Overlay District designation and prohibition of off-premises advertising signs, to allow Board of Adjustment consideration of a 30 foot by 30 foot (900 square feet) painted wall sign on the north side of the premises advertising Exile Brewing Company.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 7-2-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano				X
Jacqueline Easley	X			
Tim Fitzgerald	X			
Dann Flaherty				X
Jann Freed	X			
John "Jack" Hilmes	X			
Ted Irvine				X
Greg Jones	X			
William Page				X
Christine Pardee	X			
CJ Stephens		X		
Vicki Stogdill		X		
Greg Wattier			X	

APPROVAL of staff recommendation that the requested rezoning be found not in conformance with the existing Des Moines' 2020 Community Character Plan and **DENIAL** of the request to remove the "D-O" Downtown Overlay District designation and remove the prohibition of off-premises advertising signs.

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the proposed rezoning be found not in conformance with the existing Des Moines' 2020 Community Character Plan.

Part B) Staff recommends denial of the request to rezone to lift the "D-O" Downtown Overlay District, to remove the prohibition of off-premises advertising signs.

Should the rezoning be denied by the City Council, the applicant would have up to one (1) year to request a Use Variance from the Zoning Board of Adjustment. City Staff would likely recommend denial of a Use Variance, as well.

Written Responses

1 In Favor

1 In Opposition

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

- Purpose of Request:** The applicant would like to install a 30-foot by 30-foot (900 square feet) painted wall sign on the north side of the building to advertise an off-premise business (Exile Brewing Company), which is located at 1514 Walnut Street. The subject property is within the "D-O" Downtown Overlay District, which prohibits off-premise advertising.

If the "D-O" District is lifted for this property, any installation of an off-premise advertising sign would be contingent upon the City's Zoning Board of Adjustment granting Variances in accordance with the following:

- City Code Section 134-1276(q)(5) requires any off-premise advertising sign to be at least 500 feet from any public park. *The subject property is within 265 feet of the John and Mary Pappajohn Sculpture in Western Gateway Park.*
- City Code Section 134-1276(q)(5) requires any off-premise advertising sign to be at least 500 feet from any National Register Historic District. *The subject property is within the "Fitch, F.W., Company Historic District", listed with the National Park Service on April 9, 2013.*
- City Code Section 134-1276(q)(6) requires any off-premise advertising sign over 300 square feet in area to be at least 1,000 feet from any other sign. *The proposed sign is 900 square feet in area and the location is within 814 feet of the existing billboard at 1500 Ingersoll Avenue.*
- City Code Section 134-1276(q)(9)(a) limits any off-premise advertising sign within the "C-3A" District to 300 square feet in area. *The proposed sign is 900 square feet in area.*

- City Code Section 134-1276(j) prohibits painted wall signs in all zoning districts. *The proposed sign would be painted onto the side of the building.*

Should the rezoning be denied by the City Council, the applicant would have up to one (1) year to request a Use Variance from the Zoning Board of Adjustment.

- 2. Size of Site:** 93.5 feet by 132 feet (12,342 square feet).
- 3. Existing Zoning (site):** "C-3A" Central Business Support District, "D-O" Downtown Overlay District and the "GGP" Gambling Games Prohibition District.
- 4. Existing Land Use (site):** The property contains a 4-story building known as the Fitch Building with a 1-story annex on its north side. The building is occupied as the Fitch Studios, which provides studio space for artists.
- 5. Adjacent Land Use and Zoning:**
 - North** – "C-3A"; Use is the American Dream Machines classic cars showroom.
 - South** – "C-3A"; Uses include Walnut Street and Exile Brewing Company (restaurant and brewery).
 - East** – "C-3A"; Uses include 15th Street and an unoccupied 1-story commercial building.
 - West** – "C-3A"; Use is a warehouse owned by Meredith Corporation.
- 6. General Neighborhood/Area Land Uses:** The subject property is located in an area of downtown known as the Western Gateway, which includes a mix of commercial and residential uses on the blocks surrounding Western Gateway Park and the Pappajohn Sculpture Park.
- 7. Applicable Recognized Neighborhood(s):** The subject property is within the Downtown Des Moines Neighborhood. All recognized neighborhoods were notified of the meeting by mailing of the Preliminary Agenda on September 12, 2014. Additionally, separate notifications of the hearing for this specific item were mailed on September 12, 2014 (20 days prior) and September 22, 2014 (10 days prior to the scheduled hearing) to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on September 26, 2014.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Downtown Des Moines Neighborhood Association notices were mailed to Larry Bradshaw, 418 6th Avenue, Suite 902, Des Moines, IA 50309.

The applicant is required to hold a neighborhood meeting. They will be available to provide a summary of the neighborhood meeting at the Plan & Zoning Commission hearing.

- 8. Relevant Zoning History:** There is a lengthy history of City Council actions to reduce and prohibit off-premise advertising signs within the vicinity of this proposed sign.

In 1998, the City Council adopted Ordinance 13,627, which created a 500-foot separation distance requirement for placement of off-premise advertising signs from churches, schools, parks, libraries, cemeteries, City landmarks, Local Historic Districts, and National Historic Districts.

In 2000, the City Council adopted Ordinance 13,863, which increased the separation distance between off-premise advertising signs to 1,000 feet.

In 2008, the City Council adopted Ordinance 14,761 to establish regulations of conversion of non-conforming off-premising advertising signs from static to electronic. Also in 2008, the City reached an agreement with a billboard company to remove two (2) existing billboards from the Western Gateway area in proximity to the subject property.

In 2011, the City Council adopted Ordinance 15,060 to establish the "D-O" Downtown Overlay District regulations and to establish its boundaries as East 14th Street on the east, the Des Moines and Raccoon Rivers on the south, Martin Luther King, Jr. Parkway on the west, and I-235 on the north. The "D-O" prohibits off-premise advertising except within the "ESO" Entertainment Signs Overlay District and the "PSO" Pedestrian Sign Overlay District.

- 9. 2020 Community Character Land Use Plan Designation:** The Des Moines' 2020 Community Character Plan currently designates the property as Commercial: Downtown Support Commercial, which is described as an area for "general businesses, retail and service establishments, limited high density residential, mixed use developments, and work centers that support the downtown core providing their own off-street parking".

- 10. Applicable Regulations:** The Commission reviews all proposals to amend zoning regulations or zoning district boundaries within the City of Des Moines. Such amendments must be in conformance with the comprehensive plan for the City and designed to meet the criteria in §414.3 of the Iowa Code. The Commission may recommend that certain conditions be applied to the subject property if the property owner agrees in writing, prior to the City Council Hearing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

- 1. Downtown-Overlay District:** The Downtown Overlay District was established to ensure that new uses and development within the district are compatible with the vision for the downtown area set forth in the "What's Next Downtown Plan", adopted by the City Council on March 10, 2008 by Roll Call 08-432. The Downtown Overlay District is intended to provide minimum urban development guidelines for the entire downtown. It also prohibits various uses that are not compatible with the downtown area, including off-premises advertising.

Staff does not believe that off-premise advertising would be appropriate in this location, given its proximity and its visibility from the Pappajohn Sculpture Park. Therefore, Staff does not support the rezoning request to lift the "D-O" District for this property.

- 2. Off-Premise Advertising Regulations:** Section 134-1276(q) within the City's Zoning Ordinance regulates the placement of off-premise advertising signs for the zoning districts in which it is a permitted use. As noted in Section 1, Subsection 1 of this report, the proposed placement of the sign does not meet separation distance requirements from a public park, from a historic district, or from an existing off-premise advertising use, and the proposed sign exceeds the signage area that would be allowed. Therefore, if the "D-O" District is lifted for this property, any installation of an off-premise advertising sign would be contingent upon the City's Zoning Board of Adjustment granting multiple Variances.

In accordance with City Code Section 134-64(2), the Board shall ensure that granting of a Variance will not be contrary to the public interest, where owing to special conditions a literal enforcement of the regulations will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done. To establish unnecessary hardship a property owner must show all of the following elements:

1. The land in question cannot yield a reasonable return from any use permitted by the regulations of the district in which the land is located. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the land in question. It is not sufficient merely to show that the value of the land has been depreciated by the regulations or that a variance would permit the owner to maintain a more profitable use.
2. The plight of the owner is due to unique circumstances not of the owner's own making, which unique circumstances must relate specifically to the land in question and not to general conditions in the neighborhood.
3. The use to be authorized by the variance will not alter the essential character of the locality of the land in question.

Staff does not believe the proposed off-premise advertising use would satisfy these criteria necessary for granting Variances to zoning regulations. Therefore, Staff does not support the rezoning request to lift the "D-O" District for this property.

- 3. Rationale:** While the proposed new off-premise advertising sign would be painted on the wall of a building versus a freestanding static or electronic billboard, the location and size of the sign violates four (4) longstanding regulations on off-premise advertising signs, in addition to the prohibition of new off-premise advertising signs in the Downtown-Overlay District and the prohibition of painted wall signs in all zoning districts.

Staff desires continued success for the Exile Brewing Company. However, Staff is concerned that approving this request, which requires zoning change and Zoning Board of Adjustment relief, may open the door for additional off-premise advertising sign requests. Sign regulation, for this sign and future similar signs, must remain content-neutral and not based upon the business or cause advertised in the sign in order to remain constitutional.

SUMMARY OF DISCUSSION

Will Page left the meeting @ 7:58 p.m.

Greg Wattier recused himself from any discussion because he worked on the project.

Erik Lundy presented the staff report and recommendation.

John "Jack" Hilmes asked if Meredith Corporation sent a letter of support or opposition.

Erik Lundy stated there has been no communication from the Meredith Corporation.

Mike Ludwig stated if this rezoning is approved there would have to be a minimum of five variances to the existing code to allow this sign. If the zoning is not approved the applicant can go to the Zoning Board of Adjustment seek a use variance and five variances to the code for the sign. The content of the sign is what is being presented as the benefit and we do not regulate content of signs. This is a question about whether or not an off premise sign should be allowed in the area. The sign code has been revised the most of anything in the zoning code and this request would be in opposition of the sign code.

CJ Stephens asked if the overlay regulations were in place when the Exile Restaurant was opened.

Erik Lundy stated yes and they adhered to the regulations.

CJ Stephens stated it is a good looking sign but it would open requests about anything downtown which would be a concern.

Tim Fitzgerald asked if the Commission moved staff recommendation to deny the applicant's request would they ultimately go to the Zoning Board of Adjustment.

Erik Lundy stated the Commission's recommendation would go to Council. If the Council denied the zoning request the applicant would have the ability to make an appeal to the Zoning Board of Adjustment for a use variance in addition to the other variances.

Tim Fitzgerald asked if the Zoning Board of Adjustment could put a condition on a use variance saying this is where the sign will be and that would be the end of it.

Mike Ludwig stated at the risk of regulating the content of the sign, staff would not recommend that Zoning Board of Adjustment grant them a use variance.

John "Jack" Hilmes stated he agrees it is a good looking sign and understand staff's position. If the property is rezoned and the applicant is allowed to put this sign on the Fitch Building this would free it up for anybody to put whatever they want until the overlay is re-imposed. However, if this goes to the Zoning Board of Adjustment it's unique to the owner and to the sign.

Mike Ludwig stated the Zoning Board of Adjustment could not put a condition on the sign to say it would only be this design or this advertisement. Staff would argue that would be regulating sign content which is constitutionally an issue. The issue in front of the

Commission is the type of sign. It is an off-premise advertising sign. Exile Brewing does not own this property, they own the building south of it.

John "Jack" Hilmes asked why can't the property owner lease that sign space to whomever they want to and have every subsequent lease require a Zoning Board of Adjustment permit.

Larry McDowell stated that lifting the downtown overlay zoning to remove the restriction of off premise signs on a single property can call into question the entire downtown overlay.

RJ Tursi 1514 Walnut Street one of the founders and owner of Exile Brewing Company. He showed what the sign could potentially look like on the Fitch Building if their request is granted. He stated the sign can be made smaller than the 30' x 30'. They figured that is roughly the size of the existing white stucco type material on the building. He then addressed the reasons that was given as to why they could having this sign would go against code:

- Distance from any other signs. They came in about 850 feet and the regulation is 1000 feet.
- The historic district. No signs are allowed within 500 feet. The historic district that the sign would be within is the FW Fitch Company historic district which is personally ironic since it was Exile Brewing that listed on the national park service website so they could take advantage of the tax credit to do their project.

He then showed what the area looked like before they moved into it. They followed all of the rules that the City and the National Park Service wanted them to do. One of those rules was the amount of signage they were allowed to put on their own building. The National Park Service allowed a much smaller sign than they originally wanted to put on their building. If they were not under this condition they would be able to put their sign on their building. When Jake Christensen purchased the building north of them they thought maybe they could work with him. They know that Mr. Christensen is not planning to use any historic tax credits on the building to the north of the Fitch Cosmetic Building. Mr. Christensen expressed that he is 100% in favor of putting an Exile Brewing sign on the Fitch building. They sent out letters to everyone in the neighborhood and one person attended their information meeting. They told him what their plans were. They also explained their plans to the other property owner to the north (American Dream Machines) because the sign would require getting on top of his building to take pictures. The owners of American Dream Machine was also in favor. He has heard no one having any objections to this request. The proximity to the park is another reason they were given. It is in close proximity to the park even though once you get further into the park you cannot see that building anymore.

The sign that was put up for the art festival is painted on another building near the sculpture park. It looks great and adds to the culture of the area. He believes that this should at the least open up a conversation for them. When visiting other cities like Kansas City, Chicago and other great places you are going to see paintings directly on buildings. It does add to the fiber of the community.

CHAIRPERSON OPENED THE PUBLIC HEARING

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

CHAIRPERSON CLOSED THE PUBLIC HEARING

John "Jack" Hilmes asked what would happen if the Plan and Zoning Commission moved staff recommendation.

Mike Ludwig explained the recommendation will be forwarded to the City Council and the Council will hold a hearing. If the Council approves the zoning the applicant could go to the Zoning Board of Adjustment and seek relief to the code provisions. If they get denied zoning they could go to the Zoning Board of Adjustment to seek a use variance and relief to five code provisions.

Tim Fitzgerald wanted to let the Tursi family know the Commission knows what kind of rich business history they have in the City of Des Moines.

John "Jack" Hilmes stated he likes the sign. He likes the art and thought what a nice place to put your logos. It would be great if it could be like the Meredith Corporation and they can do their seasonal display up there.

COMMISSION ACTION:

John "Jack" Hilmes moved staff recommendation that the proposed rezoning be found not in conformance with the existing Des Moines' 2020 Community Character Plan, and denial of the request to remove the "D-O" Downtown Overlay District designation and remove the prohibition of off-premises advertising signs.

Motion passed 7-2-1. (CJ Stephens, Vicki Stogdill voted in opposition and Greg Wattier abstained)

Respectfully submitted,



Michael G. Ludwig, AICP
Planning Administrator

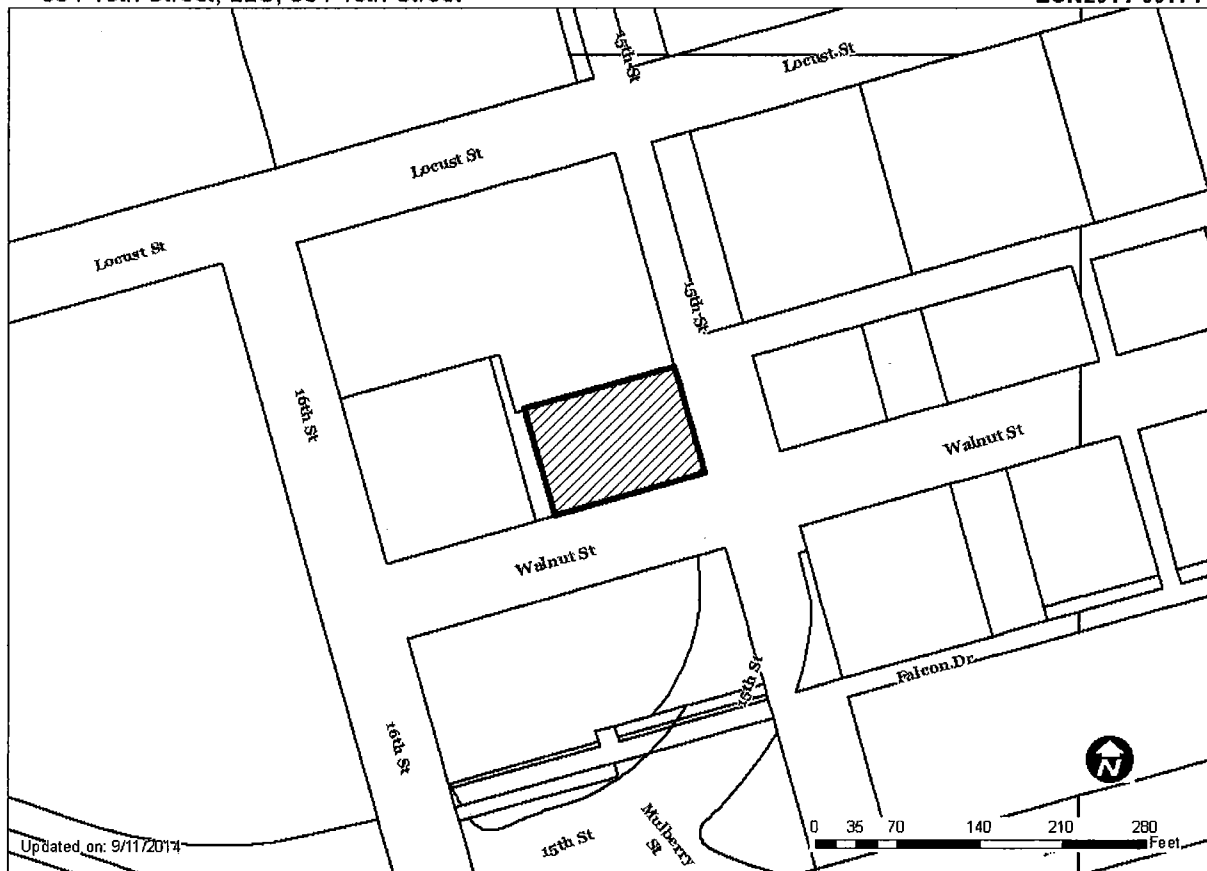
MGL:clw

Attachment

304 15th Street, LLC (owner) represented by Jake Christensen (officer) on property located at 304 15th Street.		File # ZON2014-00174			
Description of Action	Denial of request to rezone property to remove the "D-O" Downtown Overlay District designation and prohibition of off-premises advertising signs, to allow Board of Adjustment consideration of a 30 foot by 30 foot (900 square feet) painted wall sign on the north side of the premises advertising Exile Brewing Company.				
2020 Community Character Plan	Current: Downtown Support Commercial. Proposed: N/A.				
Horizon 2035 Transportation Plan	No planned improvements.				
Current Zoning District	"C-3A" Downtown Support Commercial District with the "D-O" Downtown Overlay District.				
Proposed Zoning District	"C-3A" Downtown Support Commercial District lifting the "D-O" Downtown Overlay District.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	1	1			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	10-0-1		No	

304 15th Street, LLC, 304 15th Street

ZON2014-00174



1 inch = 97 feet

ZON2014-00174

19

Item _____

Date

9/22/14

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

COMMUNITY DEVELOPMENT

SEP 24 2014

DEPARTMENT

Print Name

Robert J. Tunisi

Signature

Robert J. Tunisi

Address

2200 Hubbell

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

ZON2014-00174

Item _____

Date

9/23/2014

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

COMMUNITY DEVELOPMENT

SEP 26 2014

DEPARTMENT

Print Name

Downtown Neighborhood Assoc.

Signature

Ray Braden, President

Address

416 6th AVE STE 902 50309

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

