

Date June 22, 2015

RESOLUTION HOLDING HEARING ON REQUEST FROM FIRST FEDERATED CHURCH TO REZONE PROPERTY LOCATED AT 4801 FRANKLIN AVENUE FROM "R1-60" ONE-FAMILY LOW-DENSITY RESIDENTIAL DISTRICT TO LIMITED "C-1" NEIGHBORHOOD RETAIL COMMERCIAL DISTRICT

WHEREAS, on June 8, 2015, by Roll Call No. 15-0913, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on May 21, 2015, its members voted 9-2 in support of a motion to recommend **APPROVAL** of a request from First Federated Church (owner), represented by Tom Clegg (officer), to rezone real property locally known as 4801 Franklin Avenue ("Property"), from "R1-60" One-Family Low-Density Residential District to Limited "C-1" Neighborhood Retail Commercial District to allow reuse of a portion of the previous parochial school building for a private daycare center and pre-school uses, subject to limiting the permitted uses to only those allowed in the "R1-60" District and to a daycare center with preschool, and further advising that the Commission voted 9-2 to find the proposed rezoning in conformance with the existing Des Moines' 2020 Community Character Plan designation of Public/Semi-Public; and

WHEREAS, on June 8, 2015, by Roll Call No. 15-0913, it was duly resolved by the City Council that the application of First Federated Church (owner) to rezone the Property, as legally described below, be set down for hearing on June 22, 2015 at 5:00 P.M. in the Council Chamber at City Hall; and

WHEREAS, due notice of said hearing was published in the Des Moines Register, as provided by law, setting forth the time and place for hearing on said proposed amendment to the Zoning Ordinance; and

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

WHEREAS, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone the Property locally known as 4801 Franklin Avenue, legally described as:

The South 685.6 feet of the East 608.3 feet and the North 220.8 feet of the East 500 feet of Lot 2 FRANKLIN PLAZA, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

from "R1-60" One-Family Low-Density Residential District to Limited "C-1" Neighborhood Retail Commercial District to allow reuse of a portion of the previous parochial school building for a private daycare center and pre-school uses, subject to the conditions stated above as agreed to and accepted by execution of an Acceptance of Rezoning Ordinance in writing by the owner of the Property, which is binding upon the owner and its successors, heirs and assigns.

Date June 22, 2015

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

1. Upon due consideration of the facts, and any and all statements of interested persons and arguments of counsel, any objections to the proposed rezoning of the Property to Limited "C-1" Neighborhood Retail Commercial District with conditions as set forth above are hereby overruled, and the hearing is closed.
2. The proposed rezoning of the Property to Limited "C-1" Neighborhood Retail Commercial District is hereby found to be in conformance with the Des Moines' 2020 Community Character Land Use Plan, and is hereby approved with conditions as set forth above, subject to final passage of an ordinance rezoning the Property as set forth herein.

MOVED BY _____ TO ADOPT.

FORM APPROVED:


 Glenna K. Frank, Assistant City Attorney

(ZON2015-00066)

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

MOTION CARRIED APPROVED

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.

 Mayor

 City Clerk

24
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June 1, 2015

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 May 21, 2015, the following action was taken regarding a request from First Federated Church (owner) represented by Tom Clegg (officer) to rezone property located at 4801 Franklin Avenue.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-2 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano	X			
Jacqueline Easley				X
Tim Fitzgerald	X			
Jann Freed	X			
John "Jack" Hilmes	X			
Greg Jones	X			
Sasha Kamper		X		
William Page	X			
Jonathan Rosenbloom	X			
Mike Simonson				X
CJ Stephens		X		
Vicki Stogdill	X			
Greg Wattier				X

APPROVAL of staff recommendation Part A) for approval of the rezoning to a Limited "C-1" District be found in conformance with the existing Des Moines' 2020 Community Character Plan designation of Public/Semi-Public; Part B) **DENIAL** of the requested amendment to the Des Moines' 2020 Community Character Plan future land use designation, as it is unnecessary to allow the recommended Limited "C-1" District and Part C) **APPROVAL** of a rezoning to a Limited "C-1" District subject to limiting the permitted uses to those as allowed in the "R1-60" District and to a daycare center with preschool:

(21-2015-4.10 & ZON2015-00066)



STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that rezoning to a Limited “C-1” District be found in conformance with the existing Des Moines’ 2020 Community Character Plan designation of Public/Semi-Public.

Part B) Staff recommends denial of the requested amendment to the Des Moines’ 2020 Community Character Plan future land use designation, as it is unnecessary to allow the recommended Limited “C-1” District.

Part C) Staff recommends approval of a rezoning to a Limited “C-1” District subject to limiting the permitted uses to those as allowed in the “R1-60” District and to a daycare center with preschool.

Written Responses

1 In Favor

0 In Opposition

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant proposes to lease a portion of the church and school building for use as a daycare center and pre-school to be operated by a separate entity (Angeli Cristiani Childcare). This business would occupy an area of the building that had previously been used for Des Moines Christian School since 1980. This portion of the building was originally built as Benjamin Franklin Junior High School by the Des Moines Independent School District.

2. **Size of Site:** 12.1 acres.

3. **Existing Zoning (site):** “R1-60” One-Family Low-Density Residential and “FSO” Free Standing Sign Overlay District.

4. **Existing Land Use (site):** Church and school building. The school portion has not been occupied by Des Moines Christian School since fall of 2005.

5. **Adjacent Land Use and Zoning:**

North – “R1-60”; Uses are Des Moines Water Works water tower and Tower Park.

South – “C-0”; Uses are vacant Mercy Franklin Center (formerly Mercy Westside Hospital) and Mercy Clinic.

East – “R1-60”; Uses are single-family dwellings.

West – “R-3”; Uses are Franklin Court multiple-family dwellings and Tower Park.

6. **General Neighborhood/Area Land Uses:** The church and school building is located along Franklin Avenue corridor where there is neighborhood retail commercial development mixed with medium density residential and civic uses such as a public library and community center.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Merle Hay Neighborhood and is within 250 feet of the Beaverdale Neighborhood and Waveland Park Neighborhood. The neighborhood was notified of the Commission meeting by mailing of the Preliminary Agenda on May 1, 2015. A Final Agenda was mailed to the neighborhood association on May 15, 2015. Additionally, separate notifications of the hearing were mailed on May 1, 2015 (20 days prior to the hearing) and on May 11, 2015 (10 days prior to the hearing) to the neighborhood association and to the primary titleholder on file with the Polk County Assessor for each condominium owner within the property and every owner of property or condominium within 250 feet of the subject property.

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 Merle Hay Neighborhood Association notices were mailed to Jason Pulliam, 2113 52nd Street, Des Moines, IA 50310. The Beaverdale Neighborhood Association notices were mailed to Sean Bagniewski, 4005 Forest Avenue, Des Moines, IA 50311. The Waveland Park Neighborhood Association notices were mailed to Leslie Berckes, 4334 Franklin Avenue, Des Moines, IA 50311.

The applicant is required to conduct a neighborhood meeting with the surrounding property owners and neighborhood representatives and will be available to provide a summary of the events at the public hearing.

8. **Relevant Zoning History:** N/A.
9. **2020 Community Character Land Use Plan Designation:** Public/Semi-Public.
10. **Applicable Regulations:** The Commission reviews all proposals to amend zoning boundaries or regulations 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, and taking into consideration the criteria set forth in Chapter 18B of the Iowa Code. The Commission may make recommendations to the City Council on conditions to be made in addition to the existing regulations so long as the subject property owner agrees to them in writing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Parking & Access:** There are two existing access drives each from Franklin Avenue and 48th Street. There is also a drive access from 49th Street. It is anticipated that clients of the daycare business would primarily use the Franklin Avenue drive entrances. The applicant is not proposing to modify the existing site and would not change access locations. The proposed occupancy of the existing building would not generate additional required parking spaces.

2. **Permit & Development Center Comments:** Any re-occupancy of the school portions of the building must be reviewed under the applicable Building and Fire Codes, with issuance of any necessary permits for required modifications by the Permit and Development Center.
3. **Des Moines' 2020 Community Character Plan:** The existing church and school building are currently within a designated Public/Semi-Public future land use designation. Because the proposed daycare center and preschool are to be operated by a separate entity, the Zoning Enforcement Officer has determined that the proposed use would not be considered accessory to the church use and therefore requires a commercial zoning designation. Such a designation typically requires a future land use designation that is compatible with the proposed commercial zoning.

In this instance, the "C-1" District zoning is necessary to allow the independent daycare and preschool business. Staff believes that this zoning district would allow uses that would not be compatible with the nearby residential areas given the scale of the existing building. Therefore, staff recommends that the proposed rezoning be limited to allow uses as permitted in the "R1-60" District and the daycare center with pre-school use. Staff believes that the impacts of the proposed use would not change the pattern which existed with the previous school use, which was a permitted use in the residential zoning district. Staff further believes that by limiting the rezoning in that manner, the proposed amendment to the future land use designation would not be necessary to find the rezoning in conformance. This is based on the church remaining the primary use of the property.

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation.

Sasha Kamper asked could the same end goal be accomplished through a use variance that would limit the approval for daycare to as long as First Federated Church owns the property.

Erik Lundy stated yes if the zoning change is denied they would have standing to request a variance for the use.

Sasha Kamper asked how long it would take to go through that process relative to getting permission to zone.

Erik Lundy stated the current process for zoning is about a 90 day period and if denied it would add another 30 days to get a determination from the Zoning Board of Adjustment. He understands that the applicant is on a timeline to get this tenant in within the summer and that is why they chose this path.

Mike Ludwig clarified that if they wanted to expand commercial use beyond what staff is recommending in the conditions they would have to come back to the City to request another rezoning of the property to amend or remove that condition.

Erik Lundy stated that expanded commercial use would also require additional commercial use a comp plan amendment. When adding more commercial activities it becomes the predominant use of the property and it has to be viewed in terms of a long range plan.

CHAIRPERSON OPENED THE PUBLIC HEARING

Charlie Chedester 1238 46th Street on the Waveland Park Board stated they deferred to the Merle Hay Neighborhood Association communicating with them getting the letter drafted. Their concern is even though they would not be opposed to a daycare they would not want see a loop hole happen down the road allowing for something in the neighborhood they do not want.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Sasha Kamper stated she has no problem with First Federated leasing out this space knowing that they will be there monitoring the situation and doing what they need to do to be a good landlord. She shared the concern that was raised by Waveland Park and Merle Hay that were First Federated ever not to be the landlord on this property by changing the zoning you lose some control over how it is run and maintained going forward. She believes the appropriate route is to pursue a use variance and didn't think another 30 days would be onerous. She is going to vote against this not because she is against it in principal but she believes they are going about it the wrong way.

Vicki Stogdill asked if ownership changed could it remain a daycare.

Mike Ludwig stated yes as the zoning runs with the land.

CJ Stephens clarified the motion that her understanding is the rezoning is going from "R1-80" to "C-1 Limited? She believes this sets a precedence to neighborhoods that they have been trying to avoid for a long time, but she believes the right process for the applicant is to obtain a use variance. The Commission has been working very hard to protect the neighborhoods from this encroachment.

Will Page asked in terms of methodology or concept how difficult would this be to be brought before the Zoning Board of Adjustment.

Erik Lundy stated it would be similar in terms of the notification period and same type of hearing process. What changes is the burden of the criteria they would have to meet in order to allow a use that's not permitted in the zoning district that it sits in. Also, once the Zoning Board of Adjustment makes its decision there is a period of time that it needs to get to the Council and the Council can remand that for consideration by the board.

Will Page asked would the concept be difficult.

Mike Ludwig stated if the zoning is supported then theoretically staff would probably support the use variance request. One of the differences in process is that a use variance goes to the Zoning Board of Adjustment there is no ability to contact that board outside of the hearing so if there is a desire to lobby, that cannot be done. If a party disagrees with the Zoning Board of Adjustment decision, then they have to go to District Court to get that decision changed.

Jonathan Rosenbloom asked can this matter be continued or held depending on what happens at the Zoning Board of Adjustment.

Mike Ludwig stated the rezoning has to be denied to seek use variance from the Zoning Board of Adjustment.

Jonathan Rosenbloom asked if the Commission can put conditions on zoning, then why can't conditions be put on ownership.

Glenna Frank stated the Council has to approve a change in zoning via an ordinance, not by a condition in the ordinance itself.

Jonathan Rosenbloom asked if an ordinance itself can be drafted in a way that states that the zoning is going to be changed to a "C1" Limitation with the condition that these folks remain owners and as soon as there is a transfer of ownership it reverts back to a "R1-60"

Glenna Frank stated it cannot revert back without an actual ordinance to change the zoning. She also read the conditions by which the applicant would have to prove the burden of requesting a use variance.

Will Page asked is their anyway to make a "C-1" more limited.

John "Jack" Hilmes stated he understands that as a Limited "C-1" it is defacto still going to be a "R1-60" with one additional use allowed and that is a day care center.

Mike Ludwig stated any change would go back through the Planning Commission and back through the Council for any expansion.

Vicki Stogdill asked if it went the route to the Zoning Board of Adjustment would the Commission still be able to recommend a variance for limited "C1" and would it be limited to the current property owner.

Mike Ludwig stated the Zoning Board of Adjustment recommendation would just be for the one additional use of the property. It could be tied to an owner. However, it is the Zoning Board of Adjustment decision to make.

Vicki Stogdill stated one of the variance standards explained by legal staff was that it cannot produce a return and that's exactly what they want to do. She believes that the Commission has accomplished what can be done by laser beaming focus of a limitation that is so strict there is nothing else that could be used there. In a very unlikely occasion that it would change hands. Zoning goes with the land so whoever would potentially buy it someday, could run a day care there, but anything else would have to come back to the Commission or some other avenue. The standard that would have to be met if denied, the Commission is sending the applicant through a process that is already known they will be denied because they are going to receive a return by renting out this space as a daycare. She believes running a day care in the residential neighborhood is acceptable. There is a shortage of daycare and she believes this neighborhood would benefit from that. She believes the Commission would be doing a service to the neighborhood by granting the rezoning not causing a future problem.

Sasha Kamper stated she is not concerned with the daycare but she is concerned if the next owner will be as careful as the current owner to make sure that it is the right kind of daycare and the building is adequately maintained.

COMMISSION ACTION:

Vicki Stogdill moved staff recommendation Part A) for approval of the rezoning to a Limited "C-1" District be found in conformance with the existing Des Moines' 2020 Community Character Plan designation of Public/Semi-Public; Part B) denial of the requested amendment to the Des Moines' 2020 Community Character Plan future land use designation, as it is unnecessary to allow the recommended Limited "C-1" District and Part C) approval of a rezoning to a Limited "C-1" District subject to limiting the permitted uses to those as allowed in the "R1-60" District and to a daycare center with preschool.

Motion passed 9-2 (CJ Stephens and Sasha Kamper voted in opposition).

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment



**MERLE HAY NEIGHBORHOOD
ASSOCIATION**

P.O. Box 31036 · Des Moines, IA 50310

Working Together to Make a Difference

May 21, 2015

City of Des Moines Plan and Zoning Commission
400 Robert D. Ray Drive
Des Moines, Iowa 50309

Subject: First Federated Church Rezoning Request

Dear Plan and Zoning Commission Members:

The Merle Hay Neighborhood Association (MHNA) Board of Directors is agreeable to First Federated Church's rezoning request to facilitate a daycare operation at the property, subject to the following restriction outlined in the City staff recommendation:

Staff recommends approval of a rezoning to a Limited "C-1" District subject to limiting the permitted uses to those as allowed in the "R1-60" District and to a daycare center with preschool.

We also agree with staff's position that, in general terms, C-1 zoning "would allow uses that would not be compatible with the nearby residential areas given the scale of the existing building." Thus, we believe the limited approach outlined in the staff report is reasonable for the applicant, and adjoining neighborhoods.

If possible, we also would ask commission members and staff to consider imposing a condition that the property revert to its original R1-60, single-family, low-density residential zoning if the daycare ceases to operate at the site, or the property is sold.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jason Pulliam". The signature is written in a cursive, flowing style.

Jason Pulliam
President, Merle Hay Neighborhood Association

Request from First Federated Church (owner) represented by Tom Clegg (officer) on property located at 4801 Franklin Avenue.				File #	
				21-2015-4.10	
Description of Action	Denial to amend the Des Moines' 2020 Community Character Plan existing future land use designation from Public/Semi-Public to Commercial: Pedestrian-Oriented, Commercial Corridor.				
2020 Community Character Plan	Current: Public/Semi-Public. Proposed: Commercial: Pedestrian-Oriented, Commercial Corridor.				
Mobilizing Tomorrow Transportation Plan	No Planned Improvements.				
Current Zoning District	"R1-60" One-Family Low-Density Residential District.				
Proposed Zoning District	"C-1" Neighborhood Retail Commercial District.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area					
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	
	Denial	9-2		No	

First Federated Church of Des Moines, 4801 Franklin Avenue

21-2015-4.10

