

Date May 23, 2016

**HOLD HEARING FOR VACATION OF AIR SPACE AND SUBSURFACE RIGHTS IN
A PORTION OF CITY RIGHT-OF-WAY ADJOINING 215 EAST 3RD STREET AND
CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING
ENCROACHMENT AND A PERMANENT EASEMENT FOR AIR SPACE ABOVE
CITY-OWNED PROPERTY TO 215 EAST 3RD STREET, LLC FOR \$683.00**

WHEREAS, on April 25, 2016, by Roll Call No. 16-0667, the City Council of the City of Des Moines, Iowa, received and filed a communication from the City Plan and Zoning Commission recommending approval of a request from 215 East 3rd Street, LLC for the vacation of a 9-foot by 10-foot segment of East 3rd Street adjoining 215 East 3rd Street (hereinafter "City Right-of-Way") to allow for encroachment of an entrance canopy feature with support beams and grain silo element, subject to the following conditions:

1. Review and approval of the finalized canopy design and elevations by the City's Planning Administrator.
2. Review and approval of an amended Site Plan by the City's Permit and Development Center for any modified parkway planting scheme along East 3rd Street to accommodate the proposed canopy structure ensuring provision of a minimum 6 feet of public pedestrian way clearance.
3. Compliance with all conditions of the existing Non-exclusive Easement for Encroachment onto City-owned Property allowing door swings.
4. Reservation by the City of easements for all existing utilities in place until such time that they are abandoned or are relocated.
5. Compliance with all administrative review comments of the City's Permit and Development Center; and

WHEREAS, 215 East 3rd Street, LLC, owner of the adjoining property at 215 East 3rd Street, has offered to the City the purchase price of \$683.00 for the purchase of a Permanent Easement For Building Encroachment and a Permanent Easement for Air Space Above City-Owned Property in said City Right-of-Way, hereinafter more fully described, to allow for encroachment into the right-of-way of an entrance canopy feature with support beams and grain silo element, which price reflects the fair market value of the City Right-of-Way as currently estimated by the City's Real Estate Division; and

WHEREAS, there is no public need or benefit for the right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of air space and subsurface rights in a portion of East 3rd Street right-of-way adjoining 215 East 3rd Street; and

WHEREAS, on May 9, 2016, by Roll Call No. 16-0759, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of such easement interests be set down for hearing on May 23, 2016, at 5:00 p.m., in the Council Chamber; and

Date May 23, 2016

WHEREAS, due notice of said proposal to vacate air space and subsurface rights in a portion of said City Right-of-Way and convey a Permanent Easement For Building Encroachment and a Permanent Easement for Air Space Above City-Owned Property was given as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with said notice, those interested in said proposed vacation and conveyance, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council of the City of Des Moines, Iowa.

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 statements of interested persons, any and all objections to said proposed vacation and conveyance of the Permanent Easement For Building Encroachment and the Permanent Easement for Air Space Above City-Owned Property as described below are hereby overruled, and the hearing is closed.
2. There is no public need or benefit for the right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of air space and subsurface rights in a portion of East 3rd Street right-of-way adjoining 215 East 3rd Street, more specifically described as follows:

BUILDING ENCROACHMENT

Two 2.00-foot x 3.50-foot easements in the right-of-way of East 3rd Street as it is presently established adjoining Parcel B of that Plat of Survey filed in Book 15437 at Page 978 in the Office of the Recorder for Polk County, Iowa, of Lots 3 and 4 in Block 2 of Scott and Dean's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa. Said easements being more particularly described as follows:

Easement #1

Commencing as a point of reference at the Southwest corner of said Parcel B on the East right-of-way line of East 3rd Street; thence North 15°(degrees) 26'(minutes) 52"(seconds) West, 99.08 feet along the East right-of-way line of said East 3rd Street to the Point of Beginning; thence South 74°33'08" West, 3.50 feet; thence North 15°26'52" West, 2.00 feet; thence North 74°33'08" East, 3.50 feet to the East right-of-way line of said East 3rd Street; thence South 15°26'52" East, 2.00 feet along the East right-of-way line of said East 3rd Street to the point of beginning. Containing 7.00 square feet;

Easement #2

Commencing as a point of reference at the Southwest corner of said Parcel B on the East right-of-way line of East 3rd Street; thence North 15°(degrees) 26'(minutes) 52"(seconds) West, 107.08 feet along the East right-of-way line of said East 3rd Street to the Point of Beginning; thence South 74°33'08" West, 3.50 feet; thence North 15°26'52" West, 2.00 feet; thence North 74°33'08" East, 3.50 feet to the East right-of-way line of

.....
Date May 23, 2016

said East 3rd Street; thence South 15°26'52" East, 2.00 feet along the East right-of-way line of said East 3rd Street to the point of beginning. Containing 7.00 square feet;

AIR SPACE

A 9.00-foot x 10.00-foot easement in the right-of-way of East 3rd Street as it is presently established adjoining Parcel B of that Plat of Survey filed in Book 15437 at Page 978 in the Office of the Recorder for Polk County, Iowa, of Lots 3 and 4 in Block 2 of Scott and Dean's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa. Said easement being more particularly described as follows:

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Lying between elevations 31.70 feet and 45.75 feet, City of Des Moines Vertical Datum (reference ground elevation of 21.95 feet at NW corner of easement).

3. That the sale and conveyance of a Permanent Easement For Building Encroachment and a Permanent Easement for Air Space Above City-Owned Property within such vacated East 3rd Street right-of-way, as described below, to 215 East 3rd Street, LLC for \$683.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved:

BUILDING ENCROACHMENT

Two 2.00-foot x 3.50-foot easements in the vacated right-of-way of East 3rd Street as it is presently established adjoining Parcel B of that Plat of Survey filed in Book 15437 at Page 978 in the Office of the Recorder for Polk County, Iowa, of Lots 3 and 4 in Block 2 of Scott and Dean's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa. Said easements being more particularly described as follows:

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Easement #2

.....
Date May 23, 2016

Commencing as a point of reference at the Southwest corner of said Parcel B on the East right-of-way line of East 3rd Street; thence North 15°(degrees) 26'(minutes) 52"(seconds) West, 107.08 feet along the East right-of-way line of said East 3rd Street to the Point of Beginning; thence South 74°33'08" West, 3.50 feet; thence North 15°26'52" West, 2.00 feet; thence North 74°33'08" East, 3.50 feet to the East right-of-way line of said East 3rd Street; thence South 15°26'52" East, 2.00 feet along the East right-of-way line of said East 3rd Street to the point of beginning. Containing 7.00 square feet;

AIR SPACE

A 9.00-foot x 10.00-foot easement in the vacated right-of-way of East 3rd Street as it is presently established adjoining Parcel B of that Plat of Survey filed in Book 15437 at Page 978 in the Office of the Recorder for Polk County, Iowa, of Lots 3 and 4 in Block 2 of Scott and Dean's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa. Said easement being more particularly described as follows:

Commencing as a point of reference at the Southwest corner of said Parcel B on the East right-of-way line of East 3rd Street; thence North 15°(degrees) 26'(minutes) 52"(seconds) West, 99.08 feet along the East right-of-way line of said East 3rd Street to the Point of Beginning; thence South 74°33'08" West, 9.00 feet; thence North 15°26'52" West, 10.00 feet; thence North 74°33'08" East, 9.00 feet to the East right-of-way line of said East 3rd Street; thence South 15°26'52" East, 10.00 feet along the East right-of-way line of said East 3rd Street to the point of beginning. Containing 90.00 square feet.

Lying between elevations 31.70 feet and 45.75 feet, City of Des Moines Vertical Datum (reference ground elevation of 21.95 feet at NW corner of easement).

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Permanent Easement for Building Encroachment and the Permanent Easement for Air Space Above City-Owned Property for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. Upon final passage of an ordinance vacating said air space and subsurface rights in the portion of said right-of-way and upon proof of payment of the consideration plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the Permanent Easement for Building Encroachment and the Permanent Easement for Air Space Above City-Owned Property, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.
6. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Building Encroachment and the Permanent Easement for Air Space Above City-Owned Property, together with a certified copy of this resolution and of the affidavit of publication of notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.

Date May 23, 2016

7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Permanent Easement for Building Encroachment and the Permanent Easement for Air Space Above City-Owned Property and copies of the other documents to the grantee.

8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

(Council Communication No. 16- 278)

Moved by _____ to adopt.

APPROVED AS TO FORM:


 Lisa A. Wieland, Assistant City Attorney

Rauh

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

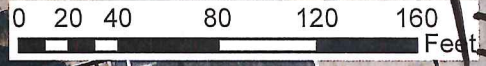
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215 East 3rd Street, LLC, 215 East 3rd Street

11-2016-1.08



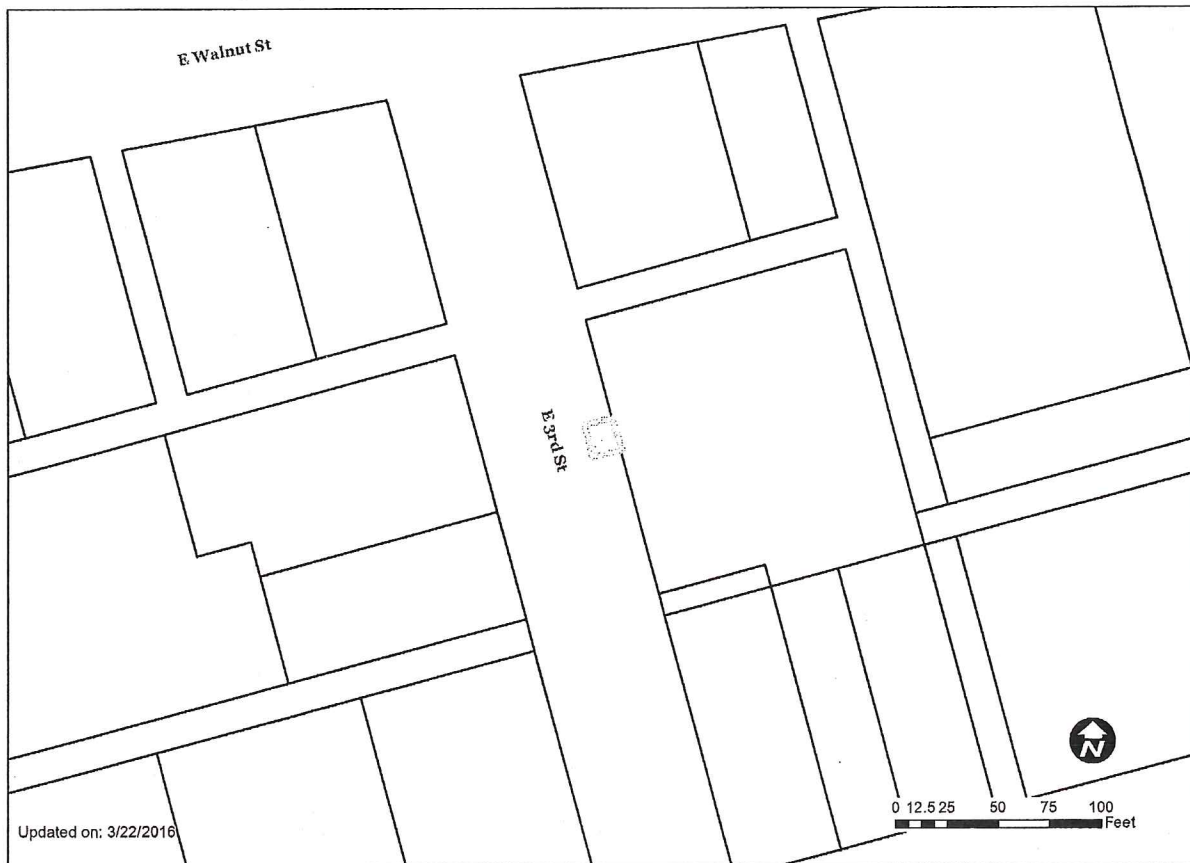
Updated on: 4/7/2016



215 East 3rd Street, LLC (owner) represented by Jake Christensen (officer) for property 215 East 3rd Street.				File # 11-2016-1.08	
Description of Action		Approval vacation of a 9-foot by 10-foot segment of 3rd Street around the main entrance of the north building to allow for encroachment of an entrance canopy feature with support beams and grain silo element subject to conditions.			
2020 Community Character Plan		Current: Downtown Retail/Office Core/Core Fringe. Proposed: N/A.			
Mobilizing Tomorrow Transportation Plan		No planned improvements.			
Current Zoning District		"C-3B" Central Business Mixed-Use District, "CDO" Capitol Dominance Overlay District, "GGP" Gambling Games Prohibition Overlay District, "PSO" Pedestrian Sign Overlay District, "D-O" Downtown Overlay District, and "FSO" Freestanding Signs Overlay District.			
Proposed Zoning District		N/A.			
Consent Card Responses		In Favor	Not In Favor	Undetermined	% Opposition
Inside Area		1			
Outside Area					
Plan and Zoning Commission Action		Approval	12-0	Required 6/7 Vote of the City Council	
		Denial		Yes	
				No	X

215 East 3rd Street, LLC, 215 East 3rd Street

11-2016-1.08





April 18, 2016

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 April 7, 2016, the following action was taken regarding a request from 215 East 3rd Street, LLC (owner), 215 East 3rd Street, represented by Jake Christensen (officer) for vacation of a 9-foot by 10-foot segment of 3rd Street around the main entrance of the north building to allow for encroachment of an entrance canopy feature with support beams and grain silo element.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 12-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
Dory Briles	X			
JoAnne Corigliano	X			
David Courard-Hauri	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Jann Freed	X			
John "Jack" Hilmes	X			
Greg Jones	X			
Sasha Kamper				X
William Page	X			
Mike Simonson	X			
CJ Stephens				X
Greg Wattier	X			

APPROVAL of the requested vacation, subject to the following conditions: (11-2016-1.08)

1. Review and approval of the finalized canopy design and elevations by the Planning Administrator.
2. Review and approval of an amended Site Plan by the City's Permit and Development Center for any modified parkway planting scheme along East 3rd Street to accommodate the proposed canopy structure ensuring provision of a minimum 6 feet of public pedestrian way clearance.

3. Compliance with all conditions of the surface easement agreement for door swings.
4. Reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or are relocated.
5. Compliance with all administrative review comments of the City's Permit and Development Center.

RECOMMENDATION TO THE P&Z COMMISSION

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

1. Modification of the design of the canopy structure requiring placement of the proposed support columns to be flush with the building façade.
2. Review and approval of the finalized canopy design and elevations by the Planning Administrator.
3. Review and approval of an amended Site Plan by the City's Permit and Development Center for any modified parkway planting scheme along East 3rd Street to accommodate the proposed canopy structure ensuring provision of a minimum 6 feet of public pedestrian way clearance.
4. Compliance with all conditions of the surface easement agreement for door swings.
5. Reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or are relocated.
6. Compliance with all administrative review comments of the City's Permit and Development Center.

Written Responses

- 1 In Favor
- 0 In Opposition

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is requesting vacation of a 9-foot by 10-foot segment of right-of-way around the west main entrance of the recently opened 'Iowa Taproom'. The vacation would allow construction of an entryway canopy on the front entrance that would be supported by two columns, placed 2-feet from the building façade. The proposed canopy would be 8 foot 8 inches wide, extend 8 foot 8 inches into the City right-of-way and have a clearance of 11 feet to the bottom of the deck. The proposed canopy deck would host a grain silo that is currently placed on the roof of the building.
2. **Size of Site:** 9-foot by 10-foot (90 square feet) segment of East 3rd Street right-of-way.

3. **Existing Zoning (site):** “C-3B” Central Business Mixed Use District, “D-O” Downtown Overlay District, “CDO” Capitol Dominance Overlay District, “GGP” Gambling Games Prohibition Overlay District, and “FSO” Freestanding Sign Overlay District, and PSO” Pedestrian Oriented Sign Overlay District.
4. **Existing Land Use (site):** The site contains a recently renovated one-story bar/tavern use building (Iowa Taproom) and two-story office building located along East 3rd Street which is a designated pedestrian corridor.
5. **Adjacent Land Use and Zoning:**
 - North - “C-3B”;** Uses are a one-story mixed-use office/residential building and a two-story building with retail (Ichi Bike and Subject skate shop).
 - South - “C-3B”;** Use is a one-story warehouse building.
 - East - “C-3B”;** Uses are paved off-street parking lot and Kryger glass shop.
 - West - “C-3B”;** Use is a two-story warehouse building and a one-story auto-service repair shop.
6. **General Neighborhood/Area Land Uses:** The site is located in the eastern portion of downtown on East 3rd Street between East Walnut Street and East Court Avenue. The surrounding area generally consists of a mix of commercial, residential and light industrial uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Historic East Village Neighborhood. The neighborhood was notified of the Commission meeting by mailing of the Preliminary Agenda on March 22, 2016. A Final Agenda was mailed to the neighborhood association on April 1, 2016. Additionally, separate notifications of the hearing for the site plan were mailed on March 28, 2016 (10 days prior to the hearing) to the neighborhood association and to the primary titleholder on file with the Polk County Assessor for each property adjoining and directly across from the requested right-of-way.

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 on the date of the mailing. The Historic East Village Neighborhood Association notices were mailed to Colleen MacRae, PO Box 93904, Des Moines, IA 50393.
8. **Relevant Zoning History:** NA
9. **2020 Community Character Land Use Plan Designation:** Downtown Retail/Office Core/Core Fringe.
10. **Applicable Regulations:** In consideration of the criteria set forth in Chapter 18B of the Iowa Code, 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. **Street System & Access:** The requested vacation would not impact the existing street network, but would impact pedestrian movement along East 3rd Street, which is a designated pedestrian corridor. The request would allow encroachment of roof overhang and columns over the East 3rd Street sidewalk. The columns of the proposed canopy structure would be placed 2-feet from the building façade. The submitted drawings indicate that an existing planter bed located near the main entrance would be relocated south of the current location to provide a clearance of 6 feet 4 & 9/16 inch from the base of the column. The applicant is required to provide planters or other barrier along the door swing area in accordance with previously granted 3-foot surface easement to ensure safe pedestrian movement along the street.
- 2. **Landscaping & Buffering:** The applicant has provided for landscape plantings in with the “C-3B” District Landscaping Standards. The submitted drawings indicate that an existing planter bed will be relocated to ensure provision of a minimum 6 feet of public pedestrian way clearance. Any modified parkway planting scheme along East 3rd Street must be in compliance with review and approval of a Site Plan amendment by the City’s Permit and Development Center.
- 3. **Utilities:** The site has access to all necessary utilities. Easements must be provided for any existing utilities in place until such time that they may be abandoned or are relocated. Any change to the existing water service would need to be submitted to the Des Moines Water Works.

SUMMARY OF DISCUSSION

CJ Stephens left the meeting @ 8:05 pm.

Jason Van Essen presented the staff report and recommendation.

Mike Simonson asked the dimension of the right-of-way.

Jason Van Essen stated the vacation area is 9’ by 10’.

Mike Simonson asked the total of the sidewalk width.

Jason Van Essen stated 8.5 feet from curb back to the 2 foot line and then another 2. It’s a little over 10.5.

Jake Christensen 215 E. 3rd Street stated they agree to all of staff recommendations except condition #1 that states: “Modification of the design of the canopy structure requiring placement of the proposed support columns to be flush with the building façade”. Because they have a 100 year old building that they are attempting to affix this signature element to the building and has some real challenges. He asked the designer to explain the challenges with the columns abutting the building. He also pointed out that they also agree to relocate the planter beds so they maintain pedestrian access and they have been able to get the area that they are asking for that 2 feet to be consistent with the door swing they have already been granted for the property.

Phillip Leaker stated the applicant believed that they could do something to celebrate the building a bit more which would work for the current and possibly future tenants. They looked at this as something that could be attached or detached to the building without affecting it. They did look at things that did not touch the ground and because of the building itself and structure it was a little more difficult because of the eccentric load they would be creating. Since there was a previous easement that included the areaway for the door swing that if they could stay within that they would be doing no further encroachment. The columns project out two-foot from the building, they help resist the eccentric load that is being created, they are substantial architecturally that adds to the fabric of the City as well as the building itself and he ask that the Commission approves the applicant's request. He showed a drawing of what their intentions are and also pointed out that there are no ADA issues.

Greg Wattier asked if the material for the column all steel or wood.

Phillip Leaker stated it is all steel. Twelve-inch i-sections and the width of the sidewalk is actually 11 by 8.

Greg Wattier asked if the columns were outside of the door swing.

Phillip Leaker stated the doors would rest against the columns, they don't encroach upon the sidewalk further to the street.

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

Tim Fitzgerald asked if the signage will remain clean or will the signage be graphic.

Jason Van Essen stated that any signage will require a sign permit.

Motion passed 12-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw
Attachment

11-2016-1.08

Item

Date

3-30-16

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

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

Print Name

Jake Christensen

Signature

[Handwritten Signature]

Address

215 East 3rd Street 302

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

APR 01 2016

DEPARTMENT

Five horizontal lines for providing reasons for opposing or approving the request.