

21 A

Date October 24, 2016

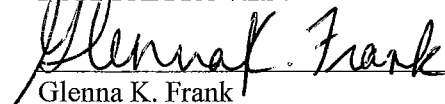
**RECEIVE AND FILE COMMUNICATION FROM THE
PLAN AND ZONING COMMISSION REGARDING REQUEST FROM
220 SE 6TH STREET PROPERTIES, LLC FOR VACATION OF SUBSURFACE AND
AIR RIGHTS IN EAST ELM STREET, EAST 5TH STREET AND EAST 6TH STREET**

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on October 6, 2016, its members voted 12-0 to recommend **APPROVAL** of a request from 220 SE 6th Street Properties, LLC (owner), 220 Southeast 6th Street, represented by Adam Peterson (officer), for vacation of the following, all subject to reservation of easements for any existing utilities until such time as they are abandoned or relocated:

- A) Subsurface rights in the north 1 foot of East Elm Street running from Southeast 6th Street to a point 206.02 feet to the west, to allow for the encroachment of the foundation system of a proposed building on the adjoining subject property;
- B) Subsurface rights in the east 1 foot of East 5th Street running from East Elm Street to a point 13.5 feet to the north, to allow for the encroachment of the foundation system of the proposed building;
- C) Air rights in the north 4 feet of East Elm Street running from a point 167.36 feet west of East 6th Street to a point 193.36 west of East 6th Street, to allow for the encroachment of a canopy over a parking structure entrance on the proposed building;
- D) Air rights in the west 2 feet of East 6th Street running from a point 53.45 feet north of East Elm Street to a point 64.55 feet north of East Elm Street, to allow for the encroachment of a canopy over a proposed front entrance on the proposed building; and
- E) Air rights in the west 1 foot of East 6th Street running from a point 50.58 feet north of East Elm Street to a point 120.58 feet north of East Elm Street, to allow for the encroachment of a roof overhang from the proposed building.

MOVED by _____ to receive and file the attached communication from the Plan and Zoning Commission, and refer to the Engineering Department, Real Estate Division.

FORM APPROVED:



 Glenna K. Frank
 Assistant City Attorney

(11-2016-1.19)

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.

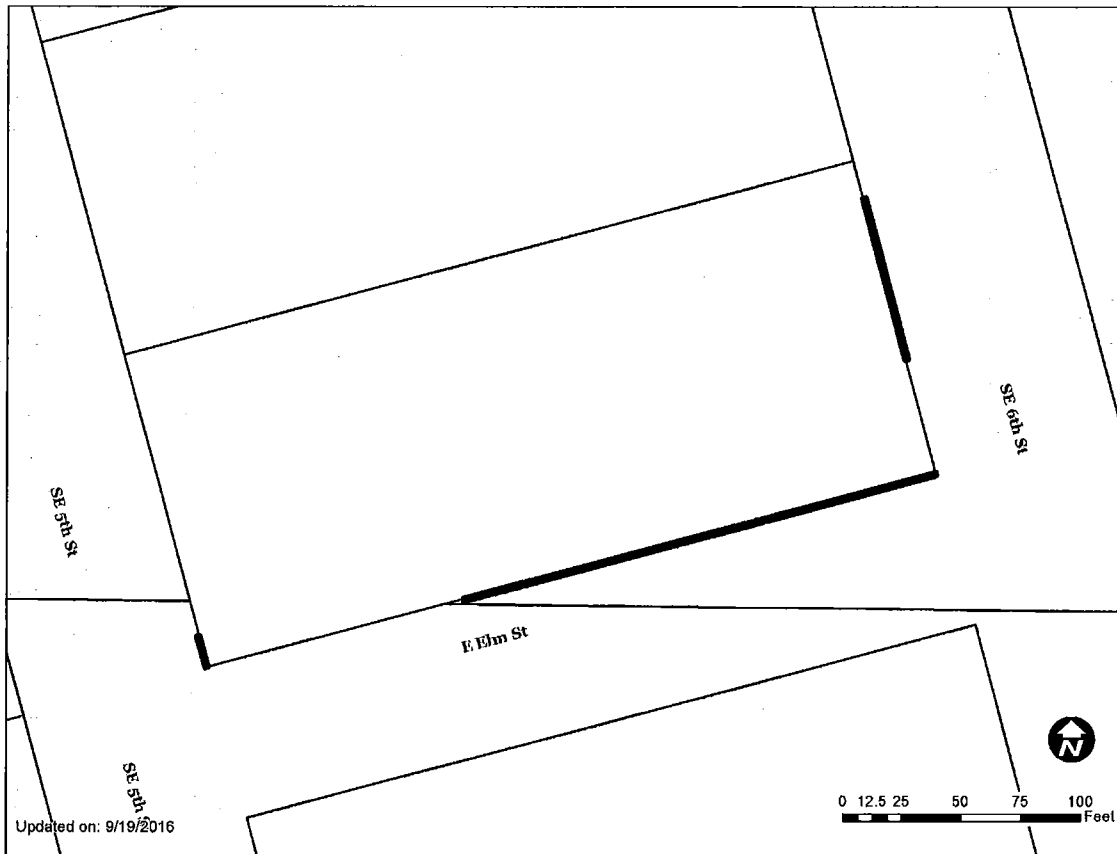
_____ City Clerk

21A

220 SE 6th Street Properties, LLC (owner) 220 Southeast 6th Street, represented by Adam Peterson (officer).		File #		
		11-2016-1.19		
Description of Action	Approval of request for vacation of various segments of ROW to accommodate lease of air rights and subsurface rights for proposed footing, canopy, and roof overhang encroachments, subject to reservation of any necessary easements for any existing utilities until such time that they are abandoned or are relocated.			
PlanDSM Future Land Use	Current: Downtown Mixed Use. Proposed: N/A.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	Limited "C-3B" Central Business Mixed Use District, "CDO" Capitol Dominance Overlay District, "GGP" Gambling Games Prohibition 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				
Outside Area				
Plan and Zoning Commission Action	Approval	12-0	Required 6/7 Vote of the City Council	Yes
	Denial			No X

220 SE 6th Street Properties, LLC, 220 Southeast 6th Street

11-2016-1.19



1 Inch = 48 feet

October 12, 2016

Agenda Item 21A

Roll Call # _____

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held October 6, 2016, the following action was taken regarding a request from 220 SE 6th Street Properties, LLC (owner) 220 Southeast 6th Street, represented by Adam Peterson (officer), for vacation of the following:

- A) Subsurface rights in the north 1 foot of East Elm Street running from Southeast 6th Street to a point 206.02 feet to the west, to allow for the encroachment of the foundation system of a proposed building on the adjoining subject property.
- B) Subsurface rights in the east 1 foot of East 5th Street running from East Elm Street to a point 13.5 feet to the north, to allow for the encroachment of the foundation system of the proposed building.
- C) Air rights in the north 4 feet of East Elm Street running from a point 167.36 feet west of East 6th Street to a point 193.36 west of East 6th Street, to allow for the encroachment of a canopy over a parking structure entrance on the proposed building.
- D) Air rights in the west 2 feet of East 6th Street running from a point 53.45 feet north of East Elm Street to a point 64.55 feet north of East Elm Street, to allow for the encroachment of a canopy over a proposed front entrance on the proposed building.
- E) Air rights in the west 1 foot of East 6th Street running from a point 50.58 feet north of East Elm Street to a point 120.58 feet north of East Elm Street, to allow for the encroachment of a roof overhang from the proposed building.

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
Jann Freed	X			
John "Jack" Hilmes	X			

Carolyn Jenison	X	
Greg Jones	X	
William Page	X	
Mike Simonson	X	
CJ Stephens		X
Steve Wallace	X	
Greg Wattier		X

APPROVAL of the requested vacation subject to reservation of any necessary easements for any existing utilities until such time that they are abandoned or are relocated.
(11-2016-1.19)

RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation subject to reservation of any necessary easements for any existing utilities until such time that they are abandoned or are relocated.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

- 1. Purpose of Request:** The applicant is proposing to construct a three (3) story, 50,000-square foot office building, with a 3-level parking structure. The foundation design would encroach 1 foot into the subsurface area of East Elm Street running from Southeast 6th Street to a point 206.02 feet to the west, and 1 foot into the subsurface area of East 5th Street running from East Elm Street to a point 13.5 feet to the north. The building canopy and roof overhang will cantilever into the East Elm Street and East 6th Street Right-Of-Ways, requiring vacation of air rights.

The Site Plan drawings submitted for Plan and Zoning Commission review placed the proposed building within the vision clearance triangle at the East Elm Street and Southeast 6th Street intersection. On August 4, 2016, the Commission conditionally approved the Site Plan for the proposed development, where condition number 2 stated – “any proposed building must be placed outside of the vision clearance triangle”. The City has since negotiated with the applicant to move the building outside of the vision triangle. The redesign has identified need for subsurface footing encroachment into East Elm Street and Southeast 5th Street.

- 2. Size of Site:** The total area of the requested vacation is 416.02 square feet.

- Part A) Subsurface rights on East Elm Street - 1 foot by 206.02 feet (206.02 square feet).
- Part B) Subsurface rights on Southeast 5th Street - 1 foot by 13.50 feet (14 square feet).
- Part C) Air rights for parking entrance canopy on East Elm Street - 4 feet by 26 feet (104 square feet).
- Part D) Air rights for building entrance canopy on Southeast 6th Street - 2 feet by 11.10 feet (22 square feet).
- Part E) Air rights for roof overhang on Southeast 6th Street - 1 foot by 70.04 feet (70 square feet).

The total site area is 43,566 square feet (1.0 acre).

3. **Existing Zoning (site):** "Limited C-3B" Central Business Mixed Use District, "D-O" Downtown Overlay District, "CDO" Capitol Dominance Overlay District, "GGP" Gambling Games Prohibition District, and "FSO" Freestanding Sign Overlay District.

4. **Existing Land Use (site):** Vacant land.

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

North – "C-3", Use is office (Enterprise Rent-A-Car) on east half of the lot.

South – "M-1", Use is East Elm Street Right-Of-Way and light industrial (AJ Allen Mechanical Contractors).

East – "M-2", Use is Southeast 6th Street Right-Of-Way and a recycling company (Recycling Inc.).

West – "M-1", Use is Southeast 5th Street Right-Of-Way and City of Des Moines Public Works offices.

6. **General Neighborhood/Area Land Uses:** The site is located at the eastern edge of the Market District in the portion of downtown known as the Historic East Village. It is bound by Southeast 5th Street, Southeast 6th Street and East Elm Street. The area contains a mix of commercial and light industrial uses. In 2010, a plan for the surrounding area (east of Des Moines River to Southeast 7th Street and East Court Avenue to East Martin Luther King Jr. Parkway) was prepared. The Market District of East Village Urban Study envisions this predominately light-industrial area redeveloping as a mixed-use urban neighborhood.

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 September 20, 2016. A Final Agenda was mailed to the neighborhood association on September 30, 2016. Additionally, separate notifications of the hearing for the Site Plan were mailed on September 26, 2016 (10 days prior to the hearing) to the neighborhood association and to the primary titleholder on file with the Polk County Assessor for every owner of property adjoining or directly across from the public street from the site.

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 Historic East Village Neighborhood Association notices were mailed to Chris LoRanz, PO Box 93904, Des Moines, IA 50393.

8. **Zoning History:** On February 11, 2013, the City Council adopted Ordinance number 15,166, which amended the zoning of property located at 200 and 220 Southeast 6th Street, from "M-1" Light Industrial District and "M-2" Heavy Industrial District to "Limited C-3B" Central Business Mixed Use District classification, subject to the following imposed additional conditions:

(1) The following uses shall be prohibited:

- a. Assembly and packaging of small components from previously prepared materials within a fully enclosed building.
 - b. Auction businesses.
 - c. Financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles.
 - d. Lumberyards, retail and wholesale.
 - e. Machine shops.
 - f. Freestanding package goods stores for the sale of alcoholic beverages.
 - g. Pawnshops.
 - h. Printing, publishing houses and lithographing shops.
 - i. Plumbing and heating shops.
 - j. Miniwarehouse uses.
 - k. Freestanding taverns and night clubs.
 - l. Warehousing.
- (2) The site layout of any development shall be in accordance with the Market District of East Village Urban Design Study.
 - (3) The density of any residential development shall be dependent upon Site Plan review.
 - (4) Any residential development shall utilize measures to minimize impacts on the health, safety, and welfare of future residents from the nearby industrial uses. Such measures may include additional soundproofing, landscaping, and/or screening.
 - (5) Any development shall be in accordance with a Site Plan that satisfies the design guidelines for the C-3B and Downtown Overlay Districts.
 - (6) Any development of a multiple-family residential use shall be in accordance with a Site Plan that satisfies the Design Guidelines for Multiple-Family Residential use.
 - (7) The developer shall be responsible for the costs associated with improvements within the adjoining public right-of-ways.

9. PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation: "Downtown Mixed Use". The Plan describes this category as an "area that allows mixed-use, high-density residential uses, and compact combinations of pedestrian-oriented retail, office, residential, and parking in downtown. Should include active uses (e.g. retail) on ground floor, particularly at key intersections."

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. Right-of-Way Vacation Request:** The appellant has requested vacation of portions of the adjoining rights-of-ways in order to accommodate the proposed parking garage foundation system. The foundation of the structure would extend underground approximately 1 foot into East Elm Street and Southeast 5th Street ROWs. The surface portions of the ROW would still be available for public use.
- 2. Air Rights:** The parking entrance canopy would cantilever into the East Elm Street Right-Of-Way. The building entrance canopy and roof overhang will cantilever into the

Southeast 6th Street Right-Of-Way. All building projections require vacation of air rights. These would not extend over vehicular travelled portions of the adjoining streets.

- 3. Utilities:** The proposed building projections would not interfere with any aerial utilities, public street lighting, Right-of-Way signage or traffic control devices. Any existing utilities impacted by the proposed extensions must be relocated in coordination with the impacted utility.

SUMMARY OF DISCUSSION

Greg Jones asked if anyone was present to speak on this item. None were present or requested to speak.

COMMISSION ACTION:

Jann Freed moved staff recommendation for approval of the requested vacation subject to reservation of any necessary easements for any existing utilities until such time that they are abandoned or are relocated.

Motion passed 12-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:cwl
Attachment