

Date February 6, 2017

**RESOLUTION SETTING HEARING ON REQUEST FROM
COMMERCIAL BAG & TEXTILE, INC. TO REZONE PROPERTY
LOCATED AT 1244 2ND AVENUE**

WHEREAS, on July 27, 2015, by Roll Call No. 15-1301, the City Council approved Ordinance No. 15,392 rezoning a portion of the real property located at 1244 2nd Avenue ("Property") to Limited "M-1" Light Industrial District with conditions including the requirement that newly proposed buildings on the Property be constructed primarily of masonry block material; and

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on January 19, 2017, its members voted 12-0 in support of a motion to recommend **APPROVAL** of a request from Commercial Bag & Textile, Inc. (owner), represented by Julie Bassman (officer), to rezone the Property to eliminate the above-stated rezoning condition to allow the owner to retain buildings constructed on the Property after passage of Ordinance No. 15,392 inadvertently without masonry block material, and to revise the zoning conditions of the existing Limited "M-1" Light Industrial District as follows:

1. The following uses shall be prohibited on the Property:
 - a) Adult entertainment establishments;
 - 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;
 - h) Liquor stores where gross revenues of tobacco and alcohol products exceed 40%;
 - i) Taverns and nightclubs;
 - j) Contractors equipment storage yard;
 - k) Outdoor storage;
 - l) Vehicle display for sale or rental;
 - m) Circus, carnival, or similar enterprise;
 - n) Coalyard, cokeyard, or woodyard;
 - o) Concrete mixing or concrete products manufacture;
 - p) Bulk storage of flammable liquids;
 - q) Communication towers and antennas; and
 - r) Livery stable or riding academy.
2. The building height of any structure on the Property shall be limited to a maximum of 35 feet.
3. Any further expansion of existing buildings or construction of new buildings on the Property shall be constructed primarily of masonry block material compatible with the buildings existing as of the effective date of this ordinance. Storefronts oriented toward 2nd Avenue may have brick or lap siding material; and

WHEREAS, the Property to be rezoned is legally described as follows:

LOTS 143 THROUGH 147 AND A PART OF LOTS 141, 142 AND 148 AND A PART OF THE ALLEYS LYING ADJACENT TO THE PREVIOUSLY STATED LOTS IN RUTHERFURD HEIGHTS, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE



Roll Call Number

Agenda Item Number

21

Date February 6, 2017

CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 145; THENCE SOUTH 00°26'23" EAST ALONG THE EAST LINE OF SAID LOTS 145, 146, 147 AND 148, A DISTANCE OF 162.99 FEET; THENCE SOUTH 89°49'21" WEST, 72.32 FEET; THENCE SOUTH 00°00'25" EAST, 28.40 FEET; THENCE SOUTH 89°49'21" WEST, 203.04 FEET TO THE EAST LINE OF LOT 139, RUTHERFURD HEIGHTS; THENCE NORTH 00°36'35" WEST ALONG THE EAST LINE OF LOTS 139 AND 138, RUTHERFORD HEIGHTS, 58.47 FEET TO THE NORTHEAST CORNER OF LOT 138, RUTHERFURD HEIGHTS; THENCE NORTH 00°13'59" EAST ALONG THE EAST LINE OF LOTS 137, 136 AND 135, RUTHERFURD HEIGHTS, 134.31 FEET TO THE NORTHEAST CORNER OF LOT 135, RUTHERFURD HEIGHTS; THENCE SOUTH 89°53'17" EAST ALONG THE NORTH LINE OF ALLEY AND LOTS 143, 144 AND 145, RUTHERFURD HEIGHTS, 274.19 FEET TO THE POINT OF BEGINNING AND CONTAINING 50,801 SQUARE FEET.

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 at the Richard A. Clark Municipal Service Center (MSC), located at 1551 E. Martin Luther King, Jr. Parkway, Des Moines, Iowa, at 5:00 p.m. on February 20, 2017, 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.

FORM APPROVED:

MOVED BY _____ TO ADOPT.

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

(ZON2016-00219)

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

MOTION CARRIED

APPROVED

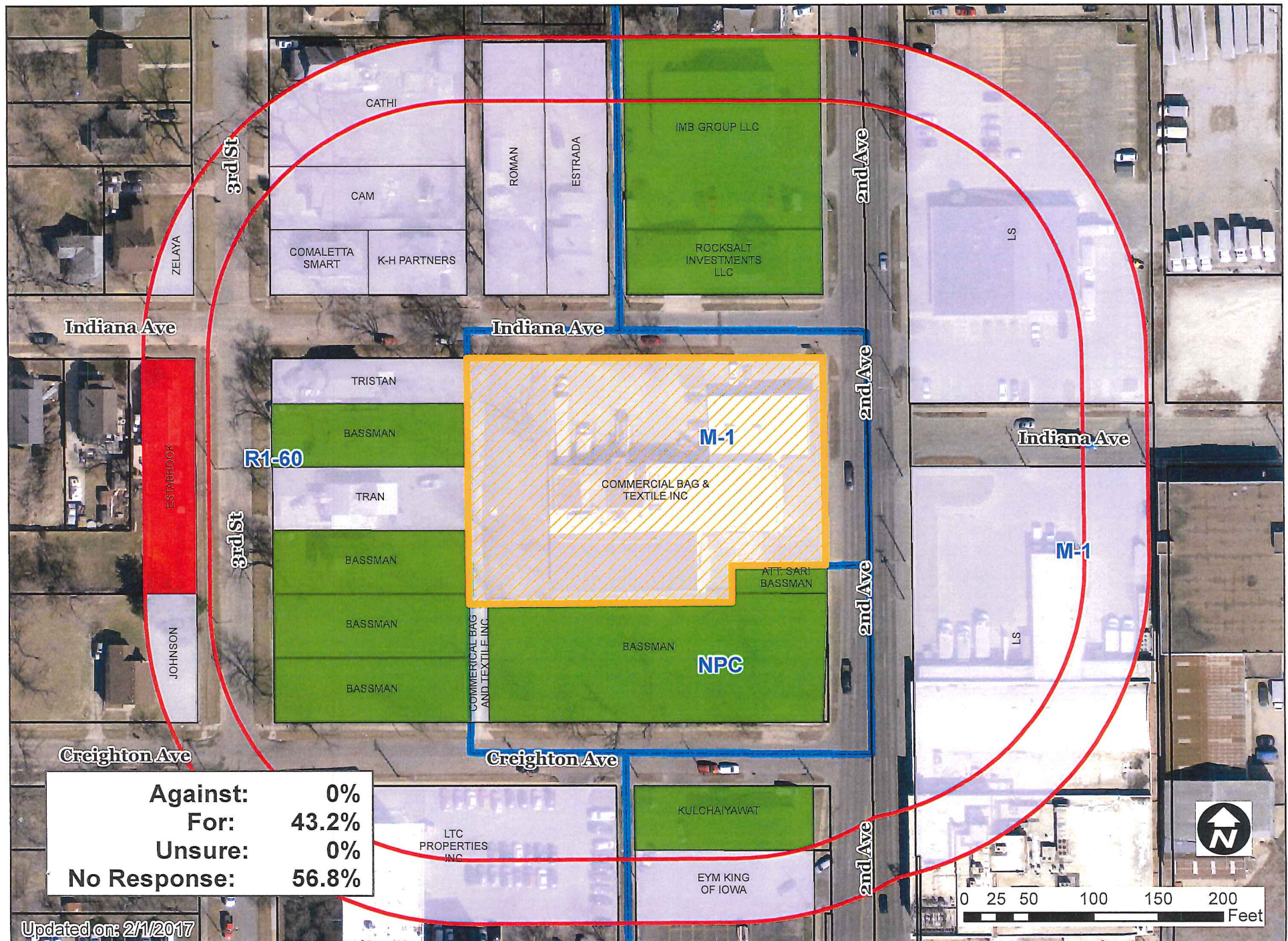
Mayor

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





January 31, 2017

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning regarding request from Commercial Bag & Textile, Inc. (owner) represented by Julie Bassman (officer) to rezone property located at 1244 2nd Avenue in order to revise the zoning conditions of the existing Limited "M-1" Light Industrial District.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0-2 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			
Lisa Howard			X	
Carolyn Jenison	X			
Greg Jones	X			
William Page	X			
Mike Simonson			X	
Rocky Sposato	X			
Steve Wallace	X			
Greg Wattier	X			

APPROVAL of Part A) the proposed rezoning be found in conformance with the existing PlanDSM Creating Our Tomorrow Plan existing future land use designation of Industrial subject to conditions and approval of Part B) subject to revision of existing zoning condition #3 to state:

- “3. Any further expansion of existing buildings or construction of new buildings shall be constructed of primarily of masonry block material compatible with the existing buildings. Storefronts oriented toward 2nd Avenue may have brick or lap siding material.”

Written Responses

4 in Favor

1 in Opposition

STAFF RECOMMENDATION

Part A) Staff recommends that the proposed rezoning be found in conformance with the existing PlanDSM Creating Our Tomorrow Plan.

Part B) Staff recommends that the existing condition #3 of the Limited “M-1” Light Industrial District be deleted and replaced with the following condition: “The western metal addition to the building shall have a minimum 5-foot masonry or stone wainscot of a color matching the east masonry block wall added to base of both the north and south facades, wrapping around the west facade to the edge of the first pedestrian or overhead door. Any further expansion of existing buildings or construction of new buildings shall be constructed of primarily of masonry block material compatible with the existing buildings. Storefronts oriented toward 2nd Avenue may have brick or lap siding material.”

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to provide remedy a zoning violation created by a recently constructed 5,580-square foot addition to the previously existing buildings which was built with metal siding on three sides. The approved zoning condition required additions to be constructed primarily with masonry materials.
2. **Size of Site:** 1.17 acres.
3. **Existing Zoning (site):** Limited “M-1” Light Industrial District, “GGP” Gambling Games Prohibition Overlay District, and “FSO” Freestanding Sign Overlay District.
4. **Existing Land Use (site):** The northern portion of the site contains 24,092 square feet of existing light industrial and commercial buildings. The subject addition is for 6 warehouse storage units.
5. **Adjacent Land Use and Zoning:**

North – “M-1”, “R1-60”, “GGP”, & “FSO”; Uses are a contractors office and single-family dwellings.

South – Limited “NPC”, “GGP” & “FSO”; Use is vacant land.

East – “M-1”, “GGP”, & “FSO”; Uses are the Des Moines Public Schools Central Kitchen and Des Moines Public Schools Welcome Center.

West – “R1-60”, “GGP” & “FSO”; Uses are vacant land and single-family dwellings.

- 6. General Neighborhood/Area Land Uses:** The subject property is located along the 2nd Avenue corridor where the industrial uses in Central Place transition to the River Bend residential neighborhood. The subject property is a block north of the University Avenue commercial corridor.
- 7. Applicable Recognized Neighborhood(s):** The subject property is located in the River Bend Neighborhood. This neighborhood association was notified of the meeting by mailing of the Preliminary Agenda to all recognized neighborhood associations on December 30, 2016. Additionally, separate notifications of the hearing for this specific item were mailed on December 30, 2016 (20 days prior to the hearing) and January 9, 2017 (10 days prior to the hearing) to the River Bend Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the requested rezoning. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on January 13, 2017.

All agendas and notices are mailed to the primary contact person designated to the City of Des Moines Neighborhood Development Division by the recognized neighborhood association. The River Bend Neighborhood Association notices were mailed to Breanne Barnum, 1510 9th Street, Des Moines, IA 50314.

The applicant is required to conduct a neighborhood meeting and will be able to provide a summary of the meeting at the hearing.

- 8. Relevant Zoning History:** On July 27, 2015, the City Council rezoned the subject property to Limited “M-1” with the following conditions under Ordinance No. 15,392:

For Property Area A, Limited “M-1” District:

1. *Prohibition of the following uses:*
 - a) *Adult entertainment establishments;*
 - 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;*
 - h) *Liquor stores where gross revenues of tobacco and alcohol products exceed 40%;*
 - i) *Taverns and nightclubs;*
 - j) *Contractors equipment storage yard;*
 - k) *Outdoor storage;*
 - l) *Vehicle display for sale or rental;*

- m) Circus, carnival, or similar enterprise;
- n) Coalyard, cokeyard, or woodyard;
- o) Concrete mixing or concrete products manufacture;
- p) Bulk storage of flammable liquids;
- q) Communication towers and antennas; and
- r) Livery stable or riding academy.

2. The building height of any structure on Property Area A shall be limited to a maximum of 35 feet.

3. Any expansion of existing buildings or construction of new buildings shall be constructed primarily of masonry block material compatible with the buildings existing as of the effective date of this ordinance. Storefronts oriented toward 2nd Avenue may have brick or lap siding material.

On December 21, 2016 the Zoning Board of Adjustment granted a Variance of 10 feet less than the minimum 10-foot paving setback required from an "R" Residential District. This allowed for future construction of an off-street parking and/or loading area that would be within 0 feet of the west property line adjoining an "R" Residential District. This appeal came after a Site Plan was approved administratively with the realization that the access drive aisle would not meet the appellant's needs for maneuvering to warehouse overhead doors.

9. 2020 Community Character Land Use Plan Designation: Industrial.

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. **Urban Design:** The conglomeration of structures that existed at the time of the adoption of the current Limited "M-1" zoning was generally built with masonry block and flat roof design with the store front portions along 2nd Avenue having a mansard type roof and lap siding exterior with glass store front. At the time of previous review, the Commission wanted to ensure as a condition of any rezoning that additions or expansions to the light industrial development remain compatible with the existing materials and not be of a scale that was detrimental to the neighborhood. Therefore the recommended conditions required masonry as the predominant material for any additions and also limiting the height of any further addition to no more than 35 feet.
2. **Permit and Development Center Comments:** On May 19, 2016 the Permit and Development Center approved a site plan for the addition project that included notes requiring compliance with the approved zoning conditions. On July 27, 2016 the Permit and Development issued a permit for the addition based on approved commercial

building plans which provided a masonry wall on the east and metal sided walls on the remaining three facades. This was issued in error based on the approved zoning conditions requiring all walls to be masonry block. In order for the City to issue a Certificate of Occupancy the developer would have to resubmit for a modification of the exterior materials or the zoning conditions would have to be modified to allow the metal material. The applicant has chosen first to seek the remedy to amend the zoning conditions.

3. **Staff Rationale:** In this instance, both the City and the applicant erred giving the outcome of the existing building addition with metal skin. Staff does not believe that it is reasonable from a cost perspective to demolish the addition and reconstruct it with masonry given that the permit was issued for metal. However, staff believes that the applicant also has some obligation to meet the intent of the zoning conditions adopted by the City Council, which they agreed to in writing, to fit the character and protect the nearby residential neighborhood. As an alternate solution staff would recommend that a 5-foot masonry or stone wainscot of a color matching the east masonry wall be added to base of both the north and south facades, wrapping around the west to the edge of the first overhead door. This is approximately a third of the height of the building addition to its peak. This may require some additional structural engineering, but would be more cost effective than meeting the original zoning condition while still working towards the original intent.

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation.

Greg Jones asked if staff had met with the applicant on the new suggested compromise.

Erik Lundy stated that they had met with the applicant and also had discussion with their attorney. They are not in agreement with staff recommendation.

Greg Jones asked if we could just make them meet the original conditions.

Erik Lundy explained the range of three options:

- 1) Leave the building as it is currently constructed.
- 2) Comply with original zoning conditions.
- 3) Approve a modification to the original conditions.

Mike Simonson asked when the original zoning conditions were approved and how we have come to this point now. Did the Building Department review the elevations?

Erik Lundy stated that the Building Department had reviewed the elevations but had indicated that there had been a disconnection between departments and the permit had been issued without stipulating the conditions of the zoning. It was originally approved and agreed to by the owner based on Council's approval on July 27, 2015.

Pat Burk, attorney with Brick Gentry Law Firm, stated he was representing his client Julie Bassman of Commercial Bag and Supply at 1244 2nd Ave. He asked Commissioner Mike Simonson to recuse himself from the conversation as his firm had been involved with this

project. He stated that they do understand the importance of continuity in city development, but in this instance, the requested added wainscoting to the building would only be a significant cost to the applicant. Other than that it was not going to make a difference. He provided three letters from neighbors in support of the current look of the building. He noted they had done the formal process to notify neighbors in a 250' radius and no one showed up to their meeting. He further showed pictures of surrounding properties in disrepair trying to establish the character of the neighborhood and stating the aesthetic of this building does not diminish the condition of the adjoining properties. He requested that the proposed condition to add five feet of wainscoting around the building be removed.

CHAIRPERSON OPENED THE PUBLIC HEARING

No one was present to speak in favor of or in opposition of the applicant's request.

COMMISSION ACTION:

Will Page moved approval of Part A) the proposed rezoning be found in conformance with the existing PlanDSM Creating Our Tomorrow Plan existing future land use designation of Industrial subject to conditions and approval of Part B) subject to revision of existing zoning condition #3 to state:

- "3. Any further expansion of existing buildings or construction of new buildings shall be constructed of primarily of masonry block material compatible with the existing buildings. Storefronts oriented toward 2nd Avenue may have brick or lap siding material."

Motion carried 11-0-1. Lisa Howard abstained and Mike Simonson recused himself from the hearing.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:mrw

Attachment

Commercial Bag & Textile, Inc. (owner) represented by Julie Bassman (officer) for property located at 1244 2nd Avenue.			File # ZON2016-00219	
Description of Action	Rezone the property in order to revise the zoning conditions of the existing Limited "M-1" Light Industrial District. The rezoning would eliminate the zoning condition that states the following: "Any expansion of existing buildings or construction of new buildings shall be constructed primarily of masonry block material compatible with the existing buildings as of the effective date of this ordinance. Storefronts oriented toward 2nd Avenue may have brick or lap siding material."			
PlanDSM Future Land Use	Current: Industrial. Proposed: N/A.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	Limited "M-1" Light Industrial District and "FSO" Freestanding Signs Overlay District.			
Proposed Zoning District	Limited "M-1" Light Industrial District (with revised conditions) and "FSO" Freestanding Signs Overlay District.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area	0	0	0	0%
Outside Area	4	1	0	0%
Plan and Zoning Commission Action	Approval	11-0-2	Required 6/7 Vote of the City Council	Yes
	Denial			No
				X

Commercial Bag and Textile, Inc., 1244 2nd Avenue

ZON2016-00219



Updated on: 12/28/2016

1 inch = 99 feet

ZON2016-00219

Item Date 1-17-17

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

(Circle One)

Print Name Sari Bassman

Signature Sari Bassman

Address 1244 2nd Ave

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

ZON2016-00219

Item Date 1-17-17

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

(Circle One)

Print Name Sari Bassman

Signature Sari Bassman

Address 1244 2nd Avenue

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

ZON2016-00219

Item

Date 1/10/17

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

(Circle One)

Print Name Rever Estabrook

Signature Rever Estabrook

Address 302 Indiana Ave

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

zoning shouldn't change due to a
existing building

ZON2016-00219

Item

Date

1-17-17

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

(Circle One)

Print Name SARL BASSMAN

Signature SARL BASSMAN

Address 1244 2nd Ave

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

ZON2016-00219

Item

Date

1-17-17

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

(Circle One)

Print Name SARL BASSMAN

Signature SARL BASSMAN

Address 1244 2nd Ave

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

ZON2016-00219

Date 1-17-17

Item

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

(Circle One)

Print Name SARL BASSMAN

Signature SARL BASSMAN

Address 1244 2nd Ave

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

ZON2016-00219

Date

1/15/17

Item

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

(Circle One)

Print Name

KAMTHORN KULEHAIRAWAT

Signature

Kamthorn Kulchayawat

Address

112 HIGHLAND AVE
LEHIGH ACRES, FL 33936

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

**ROCKSALT INVESTMENTS, LLC
1300 SECOND AVENUE
DES MOINES, IA 50314**

Wednesday, January 4th, 2017

City of Des Moines
Community Development Department
c/o Zoning Board of Adjustment
1551 East Martin Luther King Jr. Parkway
Des Moines, IA 50317

Subject: Commercial Bag & Supply Co. Rezoning Request.

To Whom It May Concern:

We are the property owners of 1300 2nd Avenue which is across Indiana Avenue to the north of 1244 2nd Avenue. Every time we exit or enter our property we see the building in question. In fact, we are the ones who see this building more than anyone else due to our location directly across from it.

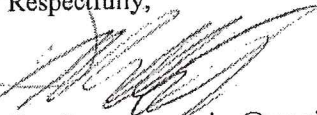
Commercial Bag and Supply Co. run an honorable business and keep a very clean property, they always have. We believe the addition they have built recently is attractive and tasteful, and truly helps and fits in well with the original structure and the general area.

There is absolutely no reason to require them to change the (already attractive) metal siding to masonry. It is perfect the way it is now. If anyone could complain about its look it would be us because of the view we have of their property and there is truly nothing complain about – all we can do is give them praises.

Please allow Commercial Bag and Supply Co. to keep the building as it stands today and to provide them with a Certificate of Occupancy.

Thank you!

Respectfully,



Email: mpcompanies@ymail.com

IOWA
MUFFLERS & BRAKE
COMPLETE UNDERCAR SPECIALISTS

1308 2nd Avenue.
Des Moines, Iowa 50314
515(243-5186)

To whom it may concern:

We at Iowa Mufflers & Brake look at the north side of Commercial Bags building and we think it looks perfectly fine. We don't think it needs any massonry. please contact either one of us if yu have any questions. Thank You Jenifer and Pete Kellis owners of Iowa Mufflers 515-243-5186

Thanks again
[Signature]

Lundy, Erik M.

From: Patrick Burk <Patrick.Burk@brickgentrylaw.com>
Sent: Tuesday, January 17, 2017 1:08 PM
To: Lundy, Erik M.
Subject: Fwd: Support for Masonry Work (Commercial Bag)
Attachments: PastedGraphic-3.tiff

See below. Further support for the re-zoning.

Begin forwarded message:

From: Julie Bassman <jbassman@commercialbagsupply.com>
Subject: FW: Support for Masonry Work
Date: January 17, 2017 at 11:36:27 AM CST
To: 'Patrick Burk' <Patrick.Burk@brickgentrylaw.com>
Reply-To: <jbassman@commercialbagsupply.com>

From: Terry Cooper - 8129 [<mailto:terry.cooper@pcitexas.net>]
Sent: Tuesday, January 17, 2017 11:05 AM
To: 'jbassman@commercialbagsupply.com'
Subject: Support for Masonry Work

To whom it may concern:

We are in support of Commercial Bag Supply and their addition. We are also in support of not needing any additional masonry work to this addition.

If you have any questions feel free to contact me.

Thank you,

Terry Cooper
Administrator
University Park and Rehab
515-284-1280

This email message, including any attachments, is for sole use of the intended recipient and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

Patrick T. Burk
Shareholder