

**Date** March 19, 2018

**RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING COMMISSION  
REGARDING REQUEST FROM 5<sup>TH</sup> AND WALNUT PARKING, LLC FOR VACATION OF  
SUBSURFACE AND AIR RIGHTS IN 5<sup>TH</sup> STREET AND ALLEY RIGHT-OF-WAY  
ADJOINING 422 WALNUT STREET**

**WHEREAS**, the City Plan and Zoning Commission has advised that at a public hearing held on March 1, 2018, its members voted 9-0 to recommend **APPROVAL** of a request from 5<sup>th</sup> and Walnut Parking, LLC (purchaser), represented by Justin Mandelbaum (officer), for vacation of the following described interests in 5<sup>th</sup> Street and in north/south alley right-of-way adjoining 422 Walnut Street to allow for an entrance canopy and sun shade projections and building footings for an 11-story parking structure, subject to (1) the provision of easements for any existing utilities until such time that they are abandoned or relocated, and (2) so long as any proposed structure is constructed in compliance with an approved site plan:

- A. A 2.50-foot by 206.85-foot segment of subsurface rights within 5<sup>th</sup> Street west of and adjoining 422 Walnut Street, and a 2.50-foot by 10.00-foot segment of the subsurface rights in the north/south alley east of and adjoining 422 Walnut Street, to allow subsurface footing encroachments; and
- B. A 1.50-foot by 225.00-foot segment of air rights within 5<sup>th</sup> Street west of and adjoining 422 Walnut Street for an attached grade screen, and a 5.00-foot by 185.80-foot segment of air rights from 5<sup>th</sup> Street west of and adjoining 422 Walnut Street for an entrance canopy.

**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

(11-2018-1.02)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
WESTERGAARD				
TOTAL				

MOTION CARRIED APPROVED

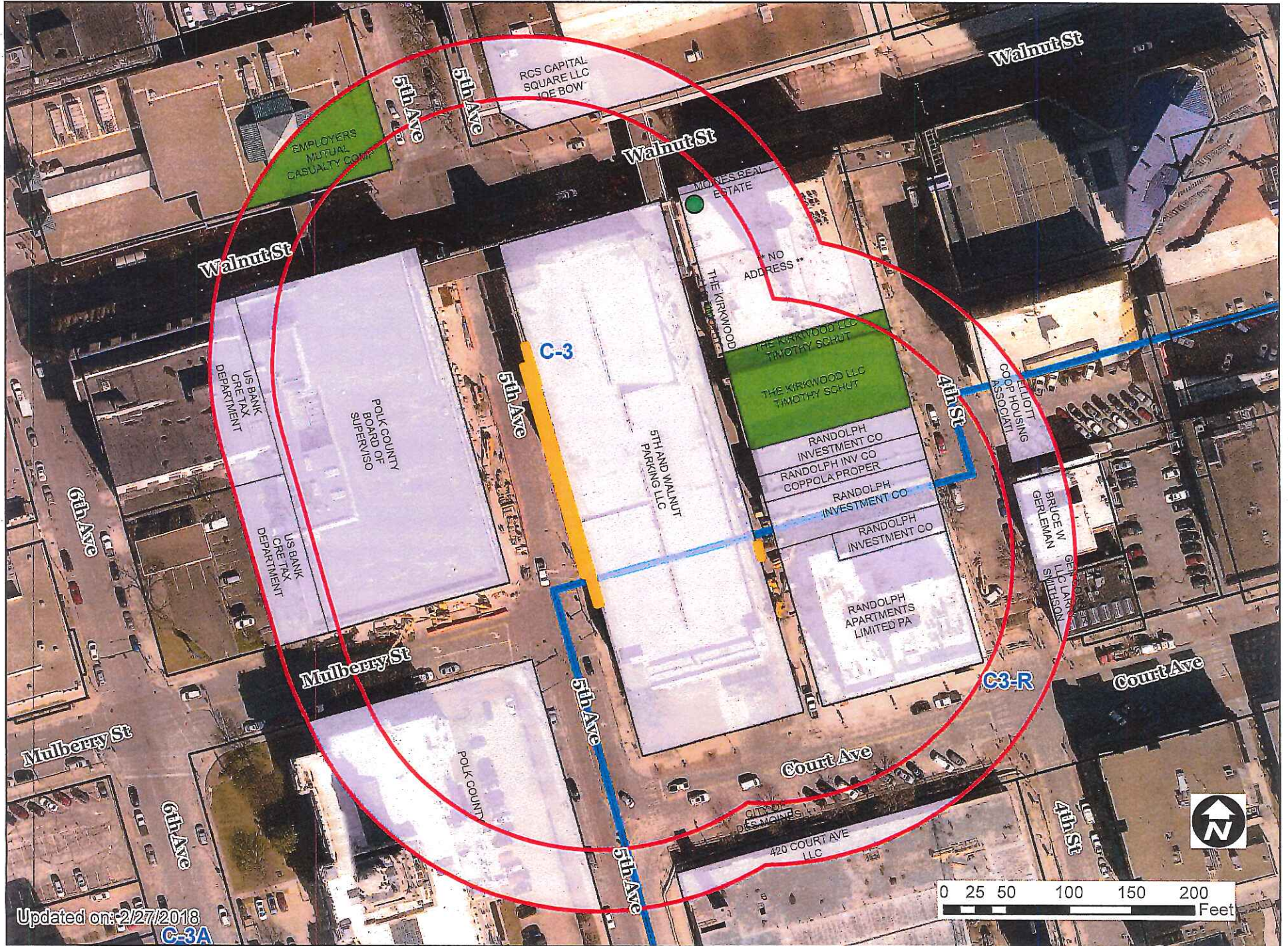
\_\_\_\_\_  
Mayor

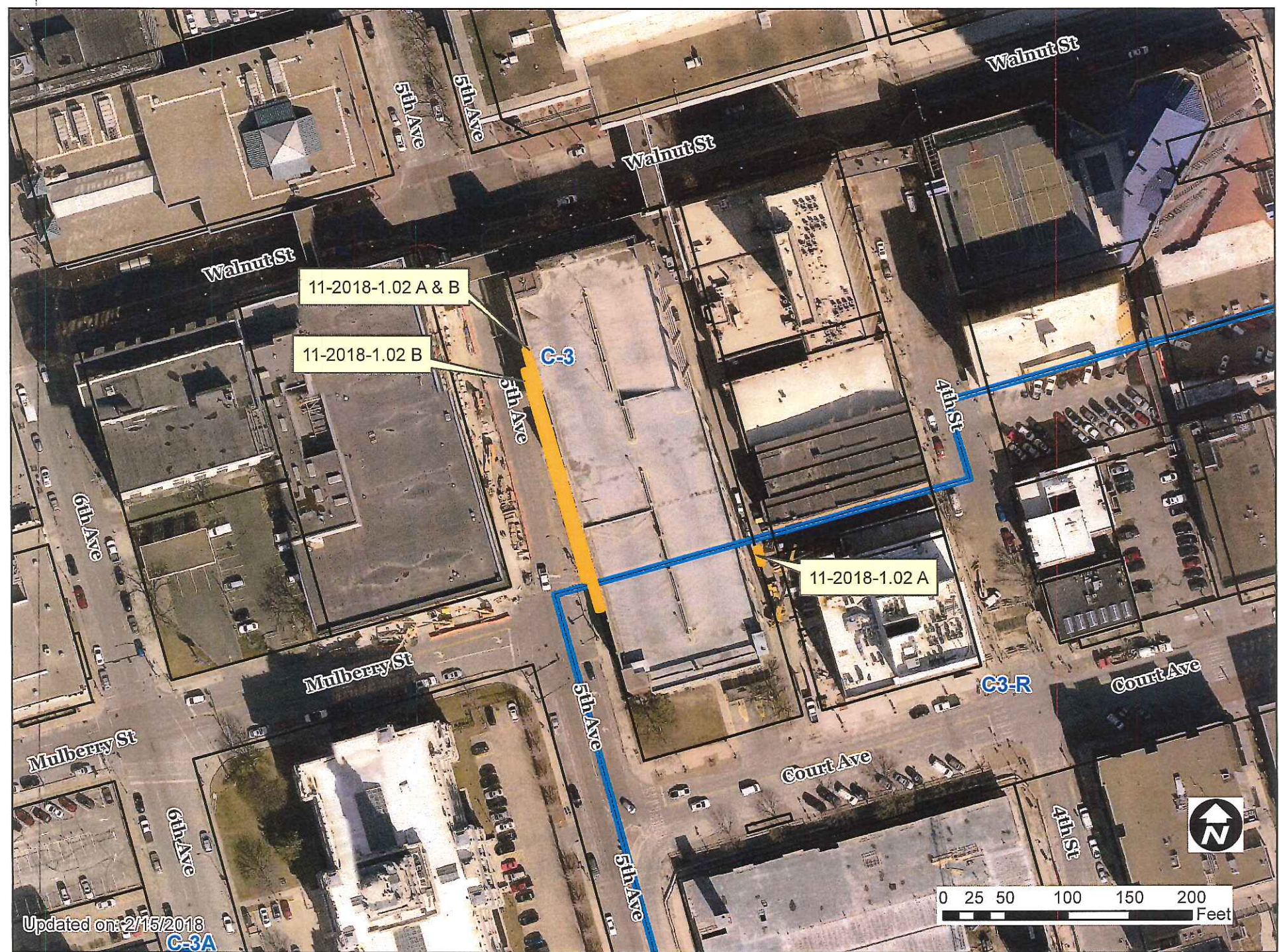
**CERTIFICATE**

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





Updated on: 2/15/2018  
G-3A



March 14, 2018

Honorable Mayor and City Council  
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their March 1, 2018 meeting, the following action was taken regarding a request from 5<sup>th</sup> and Walnut Parking, LLC (purchaser), 422 Walnut Street, represented by Justin Mandelbaum (officer) for vacation of the following for a proposed parking structure. The adjoining subject property is owned by the City of Des Moines.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 9-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus				X
Dory Briles	X			
Chris Cutler	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 the proposed air and subsurface rights vacations subject to the provision of easements for any existing utilities until such time that they are abandoned or relocated and so long as any proposed structure is constructed in compliance with an approved Site Plan. (11-2018-1.02)

Written Responses

4 in Favor

0 in opposition

## RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the proposed air and subsurface rights vacations subject to the provision of easements for any existing utilities until such time that they are abandoned or relocated and so long as any proposed structure is constructed in compliance with an approved Site Plan.

## STAFF REPORT TO THE PLANNING COMMISSION

### I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is proposing to construct an 11-story parking structure. The proposed building would have an entrance canopy and sun shade projections that would cantilever over the sidewalk along 5<sup>th</sup> Street. The footings for the building would encroach into the subsurface under the sidewalk along 5<sup>th</sup> Street, and a footing for an egress landing would encroach into the subsurface under the north/south alley to the east.
2. **Size of Site:** The area of the requested vacations are as follows:
  - 1) Subsurface easement on 5<sup>th</sup> Street for the footing – 2.50 feet by 206.85 feet (517 square feet)
  - 2) Subsurface easement in north/south alley for landing – 2.50 feet by 10.00 feet (25 square feet)
  - 3) Air rights easement on 5<sup>th</sup> Street for grade screen – 1.50 feet by 225.00 feet (338 square feet).
  - 4) Air rights easement on 5<sup>th</sup> Street for canopy – 5.00 feet by 185.80 feet (929 square feet)
3. **Existing Zoning (site):** “C-3” Central Business District Commercial, “C-3R” Central Business District Mixed-Residential, “GGP” Gambling Games Prohibition District, “D-O” Downtown Overlay District, and “FSO” Freestanding Sign Overlay District.
4. **Existing Land Use (site):** Street Right-Of-Way (ROW) in 5<sup>th</sup> Street and alley ROW.
5. **Adjacent Land Use and Zoning:**

North – “C-3”; Uses are Capitol Square office building.  
South – “C-3R”; Uses are Hy-Vee mixed-use building.  
East – “C-3R”; Use is Randolph mixed-use building.  
West – “C-3”; Uses are Polk County Justice Center and Polk County Court House.
6. **General Neighborhood/Area Land Uses:** The site is located on the block bounded by Walnut Street, 4<sup>th</sup> Street, Court Avenue, and 5<sup>th</sup> Street in the Downtown. The area contains a mix of civic, commercial, office and mixed-use development.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Downtown Des Moines Neighborhood. The neighborhood association was notified of

the public hearing by mailing of the Preliminary Agenda on February 9, 2018 and a Final Agenda on February 23, 2018. Additionally, separate notifications of the hearing for this specific item were mailed on February 16, 2018 (13 days prior to the public hearing) to the neighborhood association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of 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 Downtown Des Moines Neighborhood Association notices were mailed to Tony Filippini, 1719 Grand Avenue #210, Des Moines, IA 50309.

8. **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.”

## II. APPLICABLE REGULATIONS

The Commission, considering the criteria set forth in Chapter 18B of the Iowa Code, 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.

## III. ADDITIONAL APPLICABLE INFORMATION

1. **Air and Subsurface Rights:** The building entrance canopies and sun shade would cantilever into the 5<sup>th</sup> Street Right-Of-Way (ROW), requiring vacation of air rights. These would not extend over vehicular travelled portions of the adjoining street. The subsurface rights would be below grade in the sidewalk on 5<sup>th</sup> Street and in the north/south alley to provide a frost depth footing for an egress door landing.
2. **Utilities:** There are existing Des Moines Waterworks main, public sanitary sewer main, public storm sewer and buried traffic signal fiber optic lines within the adjoining 5<sup>th</sup> Street ROW. There are not any identified utilities within the north/south alley. The proposed building projections would not interfere with any existing aerial utilities, public street lighting, ROW signage or traffic control devices. The proposed subsurface footing encroachments would not interfere with any existing underground utilities or vaults.
3. **Urban Design Review Board:** The Urban Design Review Board made an initial review of the commercial building project on September 26, 2017. A final review of the project will be reviewed and approved by the Urban Design Review Board.

## SUMMARY OF DISCUSSION

Jacqueline Easley asked if anyone was present to speak on this item. None were present or requested to speak.

**COMMISSION ACTION:**

John "Jack" Hilmes made a motion to recommend approval of the proposed air and subsurface rights vacations subject to the provision of easements for any existing utilities until such time that they are abandoned or relocated and so long as any proposed structure is constructed in compliance with an approved Site Plan.

Motion passed: 9-0

Respectfully submitted,



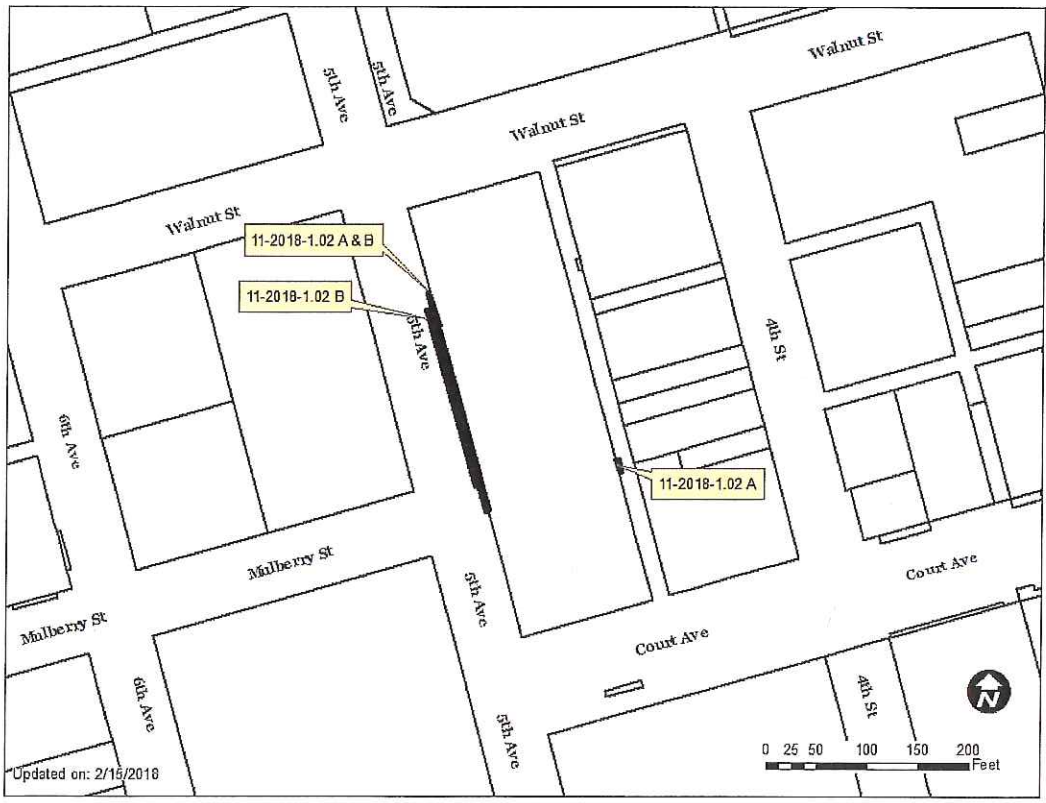
Michael Ludwig, AICP  
Planning Administrator

MGL:tjh  
Attachments

<b>5th and Walnut Parking, LLC (purchaser) represented by Justin Mandelbaum (officer) for property located at 422 Walnut Street. The adjoining subject property is owned by the City of Des Moines.</b>				<b>File #</b>
				11-2018-1.02
<b>Description of Action</b>	Vacation of the following for a proposed parking structure: A) A 2.50-foot by 206.85-foot segment of subsurface rights from 5th Street west of and adjoining the subject property and a 2.50-foot by 10.00-foot segment of the subsurface rights in the north/south alley east of and adjoining the subject property, to allow subsurface footing encroachments. B) A 1.50-foot by 225.00-foot segment of air rights 5th Street west of and adjoining the subject property for an attached grade screen and a 5.00-foot by 185.80-foot segment of air rights from 5th Street west of and adjoining the subject property for an entrance canopy.			
<b>PlanDSM Future Land Use</b>	Current: Downtown Mixed-Use District. Proposed: N/A.			
<b>Mobilizing Tomorrow Transportation Plan</b>	No planned improvements.			
<b>Current Zoning District</b>	"C-3" Central Business District Commercial District, "C-3R" Central Business District Mixed-Residential District, GGP" Gambling Games Prohibition Overlay District, "D-O" Downtown Overlay District and "FSO" Freestanding Signs Overlay District.			
<b>Proposed Zoning District</b>	N/A.			
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition
<b>Subject Property</b>	3	0		
<b>Outside Area (200 feet)</b>				
<b>Plan and Zoning Commission Action</b>	Approval	X	<b>Required 6/7 Vote of the City Council</b>	Yes
	Denial			No

5th and Walnut Parking, LLC, 422 Walnut Street

11-2018-1.02



1 inch = 103 feet



Item 11-2018-1.02 Date 2/22/18  
 (am) /  (am not) in favor of the request.  
 (Circle One)  
**RECEIVED** Print Name EMPLOYERS MOTORS CASUALTY COMPANY  
 COMMUNITY DEVELOPMENT Signature [Signature]  
 FEB 26 2018 Address 717 MULBERRY STREET

Reason for opposing or approving this request may be listed below.  
THIS REQUEST APPEARS TO BE  
APPROPRIATE TO GO AHEAD WITH  
THEIR NEW PROJECT.

Item 11-2018-1.02 Date 2-22-18  
 (am) /  (am not) in favor of the request.  
 (Circle One)  
**RECEIVED** Print Name Jacob Minkel  
 COMMUNITY DEVELOPMENT Signature [Signature]  
 FEB 26 2018 Address 4th & Walnut

Reason for opposing or approving this request may be listed below.  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Item 11-2018-1.02 Date 2-20-18  
 (am) /  (am not) in favor of the request.  
 (Circle One)  
**RECEIVED** Print Name Timothy Schutte  
 COMMUNITY DEVELOPMENT Signature [Signature]  
 FEB 26 2018 Address 400 Walnut / 218 4th

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

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_