



Date September 23, 2019

RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING COMMISSION REGARDING REQUEST FROM NELSON DEVELOPMENT, LLC FOR VACATION OF A SEGMENT OF AIR RIGHTS AND SUBSURFACE RIGHTS IN EAST GRAND AVENUE AND EAST 4TH STREET ADJOINING 418 EAST GRAND AVENUE

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 5, 2019, its members voted 11-0 to recommend APPROVAL of a request from Nelson Development, LLC, represented by Alexander Grgurich (officer), to vacate the following segments of right-of-way, subject to (1) reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at the applicant's expense; and (2) any development that incorporates the subject right-of-way shall comply with all site plan requirements:

- 1. Subsurface rights in the north 4.00 feet of East Grand Avenue and the east 3.00 feet of East 4th Street adjoining 418 East Grand Avenue to allow for footing encroachments; and
2. Air rights in the north 3.00 feet of East Grand Avenue and east 3.00 feet of East 4th Street adjoining 418 East Grand Avenue to allow for balcony encroachments.

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
Glenna K. Frank, Assistant City Attorney

(11-2019-1.19)

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, and 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

September 17, 2019

Honorable Mayor and City Council  
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their September 5, 2019 meeting, the following action was taken regarding a request from Nelson Development, LLC (developer), 418 East Grand Avenue, represented by Alexander Grgurich (officer) for vacation of the following related to a proposed mixed-use project.

- A) Subsurface rights in the north 4.00 feet of East Grand Avenue and the east 3.00 feet of East 4<sup>th</sup> Street adjoining the subject property to allow for footing encroachments.
- B) Air rights in the north 3.00 feet of East Grand Avenue and east 3.00 feet of East 4<sup>th</sup> Street to allow for balcony encroachments.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 11-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus				X
Dory Briles				X
Abby Chungath	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			
Rocky Sposato	X			
Steve Wallace	X			
Greg Wattier	X			
Emily Webb	X			



**RECOMMEND APPROVAL** of the requested vacation of Right-of-Way, subject to the following conditions:

1. Reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at the applicant's expense.
2. Any development that incorporates the subject Right-of-Way shall comply with all Site Plan requirements. (11-2019-1.19)

Written Responses

1 in Favor

0 in opposition

**RECOMMENDATION TO THE P&Z COMMISSION**

Staff recommends approval of the requested vacation of Right-of-Way, subject to the following conditions:

1. Reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at the applicant's expense.
2. Any development that incorporates the subject Right-of-Way shall comply with all Site Plan requirements.

**STAFF REPORT TO THE PLANNING COMMISSION**

**I. GENERAL INFORMATION**

1. **Purpose of Request:** The requested vacation of Right-of-Way (ROW) would accommodate footings and balconies for a 5-story building that would be constructed on the adjacent parcel. The proposed building would include commercial space on the first and second floors and a total of 105 dwelling units on the third, fourth, and fifth floors.
2. **Size of Site:** Grand Avenue: Approximately 4 feet by 160 feet (640 square feet).  
East 4<sup>th</sup> Street: Approximately 3 feet by 180 feet (540 square feet).
3. **Existing Zoning (site):** "C-3B" Central Business Mixed-Use District, "CDO" Capitol Dominance Overlay District, "D-O" Downtown Overlay District, "GGP" Gambling Games Prohibition Overlay District, "PSO" Pedestrian-Oriented Sign Overlay District and "FSO" Freestanding Sign Overlay District.
4. **Existing Land Use (site):** Right-of-Way for East Grand Avenue and East 4<sup>th</sup> Street adjacent to a parcel that contains a parking lot.
5. **Adjacent Land Use and Zoning:**  
  
**North** – "C-3B"; Use is a 3-level parking garage that is under construction.

**South** – “C-3B”; Uses are East Grand Avenue and a 6-story hotel (AC Hotel).

**East** – “C-3B”; Use is a 3-story commercial office building.

**West** – “D-R”; Uses are East 4<sup>th</sup> Street and a 6-story mixed-use building (E300).

6. **General Neighborhood/Area Land Uses:** The site is in an area of downtown known as the Historic East Village. The surrounding area contains a mix of multiple-family residential, office, retail, restaurant, and hotel uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the Historic East Village Neighborhood. This neighborhood was notified of the Commission meeting by mailing of Preliminary Agenda on August 16, 2019, and by mailing of Final Agendas on August 30, 2019. Additionally, separate notifications of the hearing for this specific item were mailed on August 26, 2019 (10 days prior to the hearing) to the Historic East Village Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property adjacent or directly across the street 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. The Historic East Village Neighborhood Association notices were mailed to Taylor Frame, PO Box 93904, Des Moines, IA 50393.

8. **Zoning History:** On September 27, 2010, the City Council adopted Ordinance number 14,960, which amended the zoning of property from “C-3” Central Business District to “C-3B” Central Business Mixed Use District classification. The following Overlay Districts are applicable to the subject property: Capitol Dominance Overlay District (Ordinance 14,098; June 3, 2002); Gambling Games Prohibition Overlay (Ordinance 14,361; July 26, 2004); Pedestrian Sign Overlay District (Ordinance 14,363; July 26, 2004); Downtown Overlay District (Ordinance 15,060; November 7, 2011); and Freestanding Sign Overlay District (Ordinance 15,290; June 23, 2014).

On August 15, 2019, the Plan & Zoning Commission conditionally approved a Site Plan for “418 East Grand” (10-2020-7.06) under design guidelines in “C-3B” Districts and under design guidelines for multiple-family dwellings, to allow development of a 5-story building with 14,885 square feet of first floor retail area, 19,074 square feet of second floor office area and 105 multiple-family dwelling units.

The Site Plan was approved with the condition of that any encroachments within the adjoining Right-of-Way is subject to future vacation of the necessary Right-of-Way.

9. **PlanDSM Land Use Plan Designation:** Downtown Mixed Use, which allows mixed-use, high density residential uses, and compact combinations of pedestrian-oriented retail, office, residential, and parking in downtown. Development should include active uses (e.g. retail) on ground floor, particularly at key intersections.



**10. Applicable Regulations:** The Plan and Zoning 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.

## **II. ADDITIONAL APPLICABLE INFORMATION**

- 1. Utilities:** While Staff is not aware of any existing utilities within the requested ROW, easements must be reserved for any existing utilities until such time that they are abandoned or relocated at the applicant's expense.
- 2. Site Plan Requirements:** The requested ROW would be developed in common with the adjoining parcel, for which the Plan & Zoning Commission conditionally approved a Site Plan on August 15, 2019 (10-2020-7.06). Any development that incorporates the subject ROW must comply with all Site Plan requirements.

## **SUMMARY OF DISCUSSION**

Jacqueline Easley asked if any member of the audience or the commission desired to speak regarding the item. None were present or requested to speak.

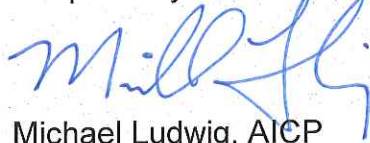
## **COMMISSION ACTION:**

Will Page made a motion for approval of the requested vacation of Right-of-Way, subject to the following conditions:

1. Reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at the applicant's expense.
2. Any development that incorporates the subject Right-of-Way shall comply with all Site Plan requirements.

Motion passed: 11-0

Respectfully submitted,



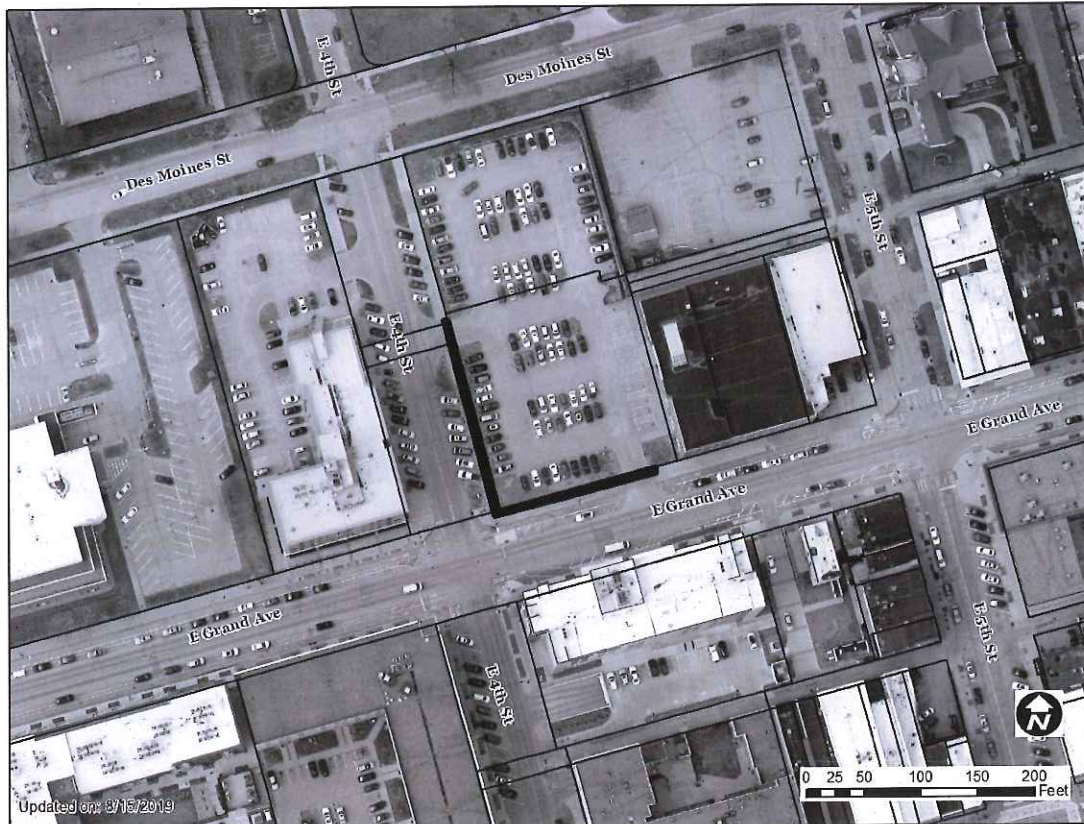
Michael Ludwig, AICP  
Planning Administrator

MGL:tjh  
Attachments

Nelson Development, LLC (developer) represented by Alexander Grgurich (officer) for property located at 418 East Grand Avenue.				File #	
				11-2019-1.19	
<b>Description of Action</b>	Vacation of the following related to a proposed mixed-use project: Part A) Subsurface rights in the north 4.00 feet of East Grand Avenue and the east 3.00 feet of East 4th Street adjoining the subject property to allow for footing encroachments. Part B) Air rights in the north 3.00 feet of East Grand Avenue and east 3.00 feet of East 4th Street to allow for balcony encroachments.				
<b>PlanDSM Future Land Use</b>	Current: Downtown Mixed Use. Proposed: N/A.				
<b>Mobilizing Tomorrow Transportation Plan</b>	No planned improvements.				
<b>Current Zoning District</b>	Limited "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.				
<b>Proposed Zoning District</b>	N/A.				
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition	
<b>Outside Area (200 feet)</b>	1	0			
<b>Within Subject Property</b>					
<b>Plan and Zoning Commission Action</b>	Approval	X	<b>Required 6/7 Vote of the City Council</b>	Yes	
	Denial			No	X

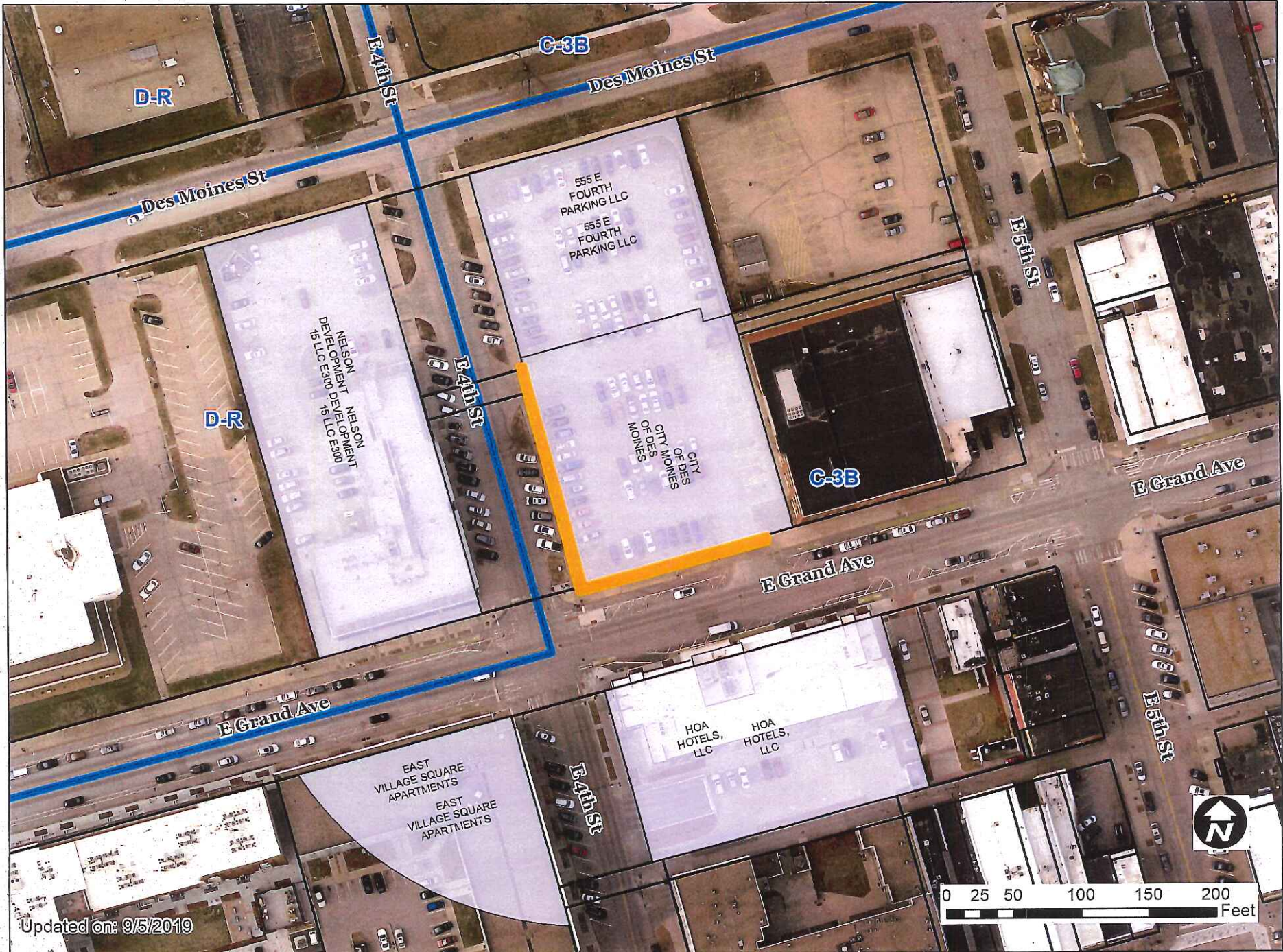
Nelson Development, LLC, 418 East Grand Avenue

11-2019-1.19



1 inch = 95 feet





19A



19A

Item 11-2019-1.19 Date 08/29/19

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

(Circle One)

Print Name ALEXANDER GRIGORIK

RECEIVED  
COMMUNITY DEVELOPMENT

Signature 

SEP 03 2019

Address 555 EAST FOURTH ST

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

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