

Date December 2, 2019

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF THE EAST/WEST ALLEY RIGHT-OF-WAY LOCATED SOUTH OF AND ADJOINING 3104 UNIVERSITY AVENUE AND CONVEYANCE TO KUM & GO, L.C. FOR \$22,660.00

WHEREAS, on October 14, 2019, by Roll Call No. 19-1597, the City Council of the City of Des Moines voted to receive and file a communication from the Plan and Zoning Commission regarding a request to vacate the dead-end east/west alley segment between University Avenue and Cottage Grove Avenue from 31st Street to a point that is 209 feet to the west, adjoining 3104 University Avenue, to allow for assemblage with the adjoining properties, subject to the reservation of easements for all public utilities in place until such time they are abandoned or relocated; and

WHEREAS, Kum & Go, L.C., owner of 3104 University Avenue, has offered to the City of Des Moines ("City") the purchase price of \$22,660.00 for the purchase of the vacated east/west alley right-of-way located south of and adjoining 3104 University Avenue, Des Moines, Iowa (hereinafter "Property"), to allow for assemblage with their adjoining property for commercial redevelopment, which price reflects the fair market value of the Property as determined by the City's Real Estate Division; and

WHEREAS, the City has no known current or anticipated public need for the Property proposed to be sold, subject to reservation of easements therein, and the City will not be inconvenienced by the vacation and sale of said Property; and

WHEREAS, on November 18, 2019, by Roll Call No. 19-1821, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the Property be set for hearing on December 2, 2019, at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

WHEREAS, due notice of said proposal to vacate and convey the east/west alley right-of-way located south of and adjoining 3104 University Avenue, Des Moines, Iowa, was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with City Council direction, those interested in the 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.

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 the proposed vacation and conveyance of the east/west alley right-of-way located south of and adjoining 3104 University Avenue, as described herein, are hereby overruled and the hearing is closed.

Date December 2, 2019

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 said right-of-way, legally described as follows, and said vacation is hereby approved:

ALL OF THE 14-FOOT WIDE ALLEY OF JAMES H. LOPER'S FIRST ADDITION, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 8, SAID JAMES H. LOPER'S FIRST ADDITION; THENCE SOUTH 89°43'50" WEST ALONG THE NORTH LINE OF SAID LOT 8 AND THE NORTH LINE OF LOTS 7 THROUGH 5 OF SAID JAMES H. LOPER'S FIRST ADDITION, 208.88 FEET TO THE NORTHWEST CORNER OF SAID LOT 5; THENCE NORTH 00°04'57" WEST ALONG THE WEST LINE OF SAID JAMES H. LOPER'S FIRST ADDITION, 14.00 FEET TO THE SOUTHWEST CORNER OF LOT 4 OF SAID JAMES H. LOPER'S FIRST ADDITION; THENCE NORTH 89°43'50" EAST ALONG THE SOUTH LINE OF SAID LOT 4 AND THE SOUTH LINE OF LOTS 1 THROUGH 3 OF SAID JAMES H. LOPER'S FIRST ADDITION, 208.90 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 00°02'05" EAST ALONG THE EAST LINE OF SAID JAMES H. LOPER'S FIRST ADDITION, 14.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.07 ACRES (2,924 SQUARE FEET).

3. The proposed sale of such vacated right-of-way, as legally described below and to the grantees and for the consideration identified below, subject to reservation of easements for utilities therein, is hereby approved:

Grantee: Kum & Go, L.C.

Consideration: \$22,660.00

Legal Description: ALL OF THE VACATED 14-FOOT WIDE ALLEY OF JAMES H. LOPER'S FIRST ADDITION, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 8, SAID JAMES H. LOPER'S FIRST ADDITION; THENCE SOUTH 89°43'50" WEST ALONG THE NORTH LINE OF SAID LOT 8 AND THE NORTH LINE OF LOTS 7 THROUGH 5 OF SAID JAMES H. LOPER'S FIRST ADDITION, 208.88 FEET TO THE NORTHWEST CORNER OF SAID LOT 5; THENCE NORTH 00°04'57" WEST ALONG THE WEST LINE OF SAID JAMES H. LOPER'S FIRST ADDITION, 14.00 FEET TO THE SOUTHWEST CORNER OF LOT 4 OF SAID JAMES H. LOPER'S FIRST ADDITION; THENCE NORTH 89°43'50" EAST ALONG THE SOUTH LINE OF SAID LOT 4 AND THE SOUTH LINE OF LOTS 1 THROUGH 3 OF SAID JAMES H. LOPER'S FIRST ADDITION, 208.90 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 00°02'05" EAST ALONG THE EAST LINE OF SAID JAMES H. LOPER'S FIRST ADDITION, 14.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.07 ACRES (2,924 SQUARE FEET).

4. The Mayor is authorized and directed to sign the Offer to Purchase and Quit Claim Deed for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

Date December 2, 2019

5. 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 Quit Claim Deed, 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 Quit Claim Deed, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.
7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Quit Claim Deed and a copy of the other documents to the grantee.
8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

Moved by _____ to adopt.

APPROVED AS TO FORM:



Lisa A. Wieland, Assistant City Attorney

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

MOTION CARRIED APPROVED

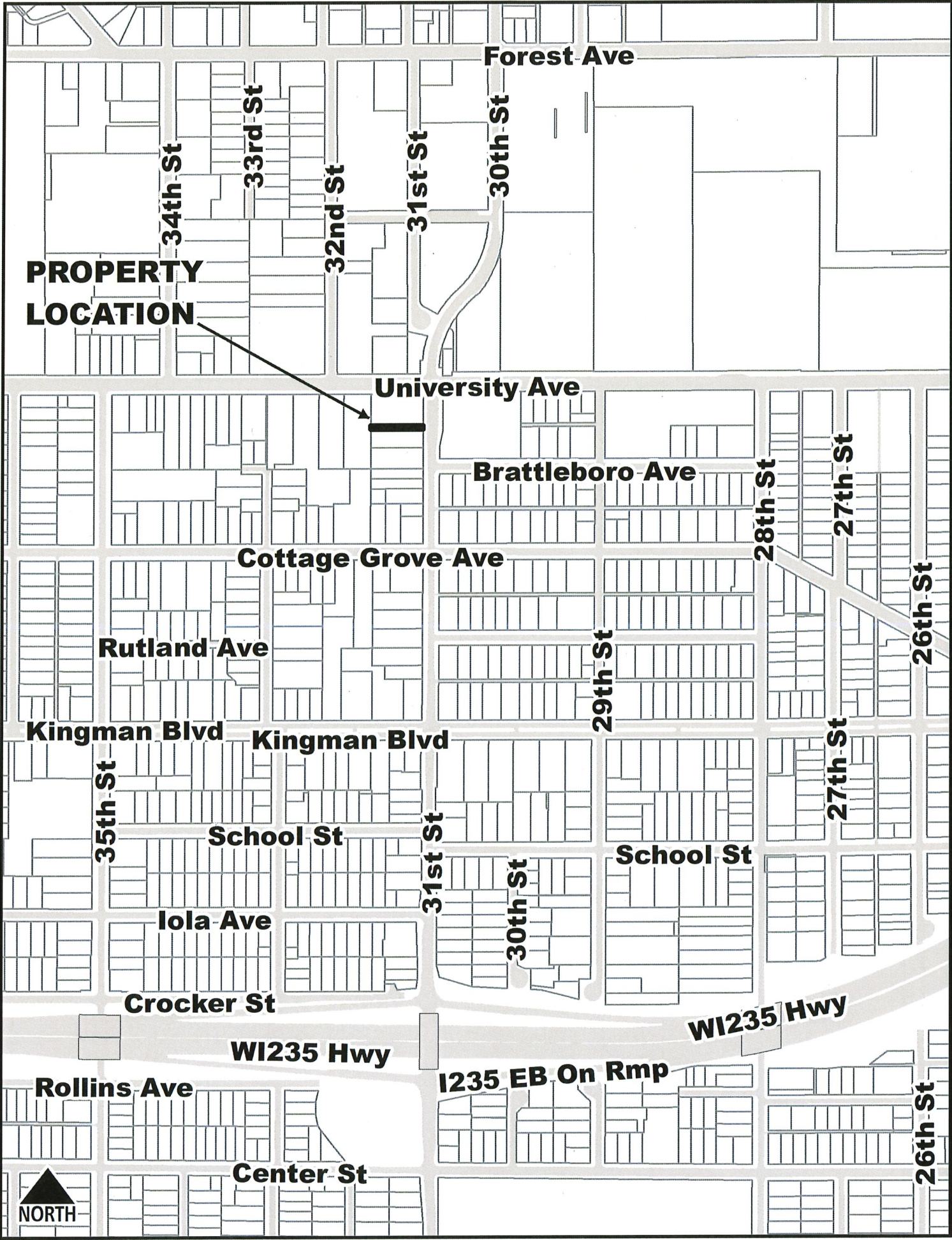
Mayor

CERTIFICATE

I, P. KAY CMELIK, 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



★ Roll Call Number
19-1597

Agenda Item Number
25 (A)

Date October 14, 2019

RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING
COMMISSION REGARDING REQUEST FROM KUM & GO, LC FOR VACATION OF A
SEGMENT OF EAST/WEST ALLEY ADJOINING
3104 UNIVERSITY AVENUE AND 1134 31ST STREET

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 19, 2019, its members voted 11-0 to recommend APPROVAL of a request from Kum & Go, LC (owner), represented by Dan Garneau (officer), to vacate a dead-end segment of east/west alley right-of-way between University Avenue and Cottage Grove Avenue from 31st Street on the east to a point that is 209 feet to the west, adjoining 3104 University Avenue and 1134 31st Street, to allow for assemblage for redevelopment of the property with a new 5,661-square foot fueling station with retail sales of convenience items and with eight fueling locations.

MOVED by Mandelbaum 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

(11-2019-1.22)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED APPROVED

J. M. Franken Mayor

CERTIFICATE

I, Laura Baumgartner, Acting 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.

Laura Baumgartner Acting City Clerk



October 1, 2019

Date October 1, 2019
Agenda Item 25A
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 September 19, 2019 meeting, the following action was taken regarding a request from Kum & Go, LC (owner) represented by Dan Garneau (officer) for vacation of the dead-end east/west alley segment between University Avenue and Cottage Grove Avenue from 31st Street to a point that is 209 feet to the west. Subject property located at 3104 University Avenue and 1134 31st Street.

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 subject to reservation of easements for all public utilities in place until such time they are relocated or abandoned.

(11-2019-1.22)

Written Responses

1 in Favor

0 in opposition

RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation subject to reservation of easements for all public utilities in place until such time they are relocated or abandoned.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant has acquired the property to the south of their existing convenience store site under a separate entity. These two parcels are divided by alley right-of-way. The proposed action would allow the existing convenience store site to be cleared and combined with the alley and the southern parcel. The multi-family residential building on the southern lot would be demolished. The submitted site sketch indicates a new convenience store building would be constructed in the northeast corner at the intersection of University Avenue and 31st Street. The fuel pumps and canopy would be constructed to the west of the building.
2. **Size of Site:** 209 feet by 216 feet (45,144 square feet or 1.04 acres)
3. **Existing Zoning (site):** "C-1" Neighborhood Retail Commercial District, "R-3" Multiple-Family Residential District, "C-0" Commercial-Residential District and "FSO" Freestanding Sign Overlay District.
4. **Existing Land Use (site):** Convenience store with fuel sales and a multi-family residential building with 8 dwelling units.
5. **Adjacent Land Use and Zoning:**
 - North** – "R-3", Uses are multiple-family residential.
 - South** - "R1-60", Use is a single-family dwelling.
 - East** – "C-1", Use is a Walgreens pharmacy.
 - West** – "R1-60", Use is an office building.
6. **General Neighborhood/Area Land Uses:** The subject property is located on University Avenue commercial corridor west of the Drake University campus at the southwest corner of the intersection with 31st Street.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Drake Neighborhood. The neighborhood association was notified of the public hearing by mailing of the Preliminary Agenda on August 30, 2019 and the Final Agendas on September 13, 2019. Additionally, separate notifications of the hearing for this specific item were mailed on August 29, 2019 (20 days prior to the public hearing) and September 9, 2019 (10 days prior to the public hearing) to the Drake 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 Drake Neighborhood Association notices were mailed to Jennifer Sayers, 1129 28th Street, Des Moines, IA 50311.

8. **Relevant Zoning History:** The applicant withdrew a rezoning request in June of 2006 that would have amended the subject property to a "C-2" District allowing for a substantial expansion of the site and reconstruction of the existing store and pump island.

On October 27, 2010, the Zoning Board of Adjustment granted a Variance to allow off-street parking within the front yard setback area of the "C-0" District within five feet of the front property line along University Avenue.

On November 18, 2010, the Plan and Zoning Commission conditionally approved a Site Plan under design guidelines for extension of parking and design guidelines for gas stations/convenience stores to allow for a 12-stall expansion of the existing paved parking area into the adjoining "C-0" zoned property to the west.

9. **PlanDSM Future Land Use Plan Designation:** Neighborhood Mixed Use and Low-Medium Density Residential.

10. **Applicable Regulations:** Taking into the 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. Taking into the consideration of the criteria set forth in Chapter 18B of the Iowa Code, 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. 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. **PlanDSM Creating Our Tomorrow:** The applicant is requesting that the future land use designation for the subject property be amended from "Low-Medium Density Residential" and "Neighborhood Mixed Use" to "Community Mixed Use". Plan DSM describes these designations as follows:

Low-Medium Density Residential: Areas developed with a mix of single family, duplex and small multi-family units up to 12 units per net acre.

Neighborhood Mixed Use: Small scale mixed use development typically located at the intersection of collector and/or arterial streets and along transportation corridors.

Non-residential development is designed to serve the immediate neighborhood and include small retail, offices, restaurants, and service oriented development. Low-medium density residential may be included in mixed use development.

Community Mixed Use: Small- to medium-scale mixed-use development, located on high capacity transit corridor or at intersection of transportation corridors. Community mixed use areas include both a mix of medium density residential and a mix of retail and service establishments designed to attract customers from a large service area encompassing multiple neighborhoods and may include specialty retail that attracts regional customers.

- 2. NPC Design Guidelines:** Should the rezoning be approved, any site plan and building elevations submitted prior to the effective date of the proposed Zoning Ordinance would be subject to review and approval by the Plan and Zoning Commission in accordance with the following NPC District Design Guidelines:
1. *Buildings should frame the street and maintain a minimal setback from the street.*
 2. *The front facade of the first floor of the building on the primary commercial street should have a ratio of at least 40 percent window and window display area to total street facade.*
 3. *The front entrance should be oriented to the street. On a corner lot, the building should have a well-defined entrance on the primary commercial street.*
 4. *Materials should be brick, stone, tile, stucco, or horizontal wood clapboard with a maximum width of six inches. Two-story buildings are encouraged.*
 5. *Commercial buildings with over 50 feet of building frontage should have the appearance of being broken into separate bays of between 20 to 35 lineal feet using structural elements, fenestration patterns, protruding or recessed bays, or architectural details.*
 6. *Building frontage should occupy at least 50 percent of the primary street frontage.*
 7. *Off-street loading and parking spaces should be provided in compliance with sections 134-1376 and 134-1377 of the zoning chapter, subject to the following modifications:*
 - a. *The minimum number of off-street parking spaces is 60 percent of the number of spaces otherwise required by subsection 134-1377(a).*
 - b. *Parking should not exceed the amount otherwise required by section 134-1377 of this Code.*
 - c. *Parking should not use the front yard but should be concentrated along the side and in back of the building in the predominant pattern of character defining buildings.*
 - d. *Shared parking among businesses or between business and residential projects will be allowed, provided a shared parking plan is presented at the time of application, signed by the property owners, ensuring non-duplication of parking. The shared parking must be within 300 feet of the business or dwelling.*
 - e. *On-street parking directly adjacent to the occupant frontage shall count toward the minimum off-street parking requirement. Elimination of such on-street parking by the city shall have no effect on an approved Site Plan.*
 - f. *Tandem parking spaces shall count toward the minimum off-street parking requirement if a parking plan demonstrates that the parking will be for employees and will be occupied for over four hours between changes.*

- g. An emphasis of trees, shrubs and other plantings should be placed around the perimeter of any parking area and within large parking lots to create a more attractive area. The landscape plan should generally enhance the visual appearance of the building, parking area and any pedestrian areas.*
8. *The following bulk regulations should be observed:*
- a. Minimum lot area Mixed-use project, 10,000 square feet, No minimum requirement for permitted nonresidential uses.*
 - b. Minimum lot area per dwelling unit multiple dwellings, 2,000 square feet.*
 - c. Front yard: minimum of zero feet.*
 - d. Side yards: minimum of zero feet.*
 - e. Rear yard: None required, except when adjoining any R or C-0 district or portion of a PUD designated for residential use, in which case ten feet.*
 - f. Height: minimum of 15 feet, maximum of 45 feet.*
 - g. Number of stories:*
 - Residential uses, a maximum of four stories.*
 - All other permitted uses, a maximum of two stories.*
 - h. Signs, which are attached or projecting from the building and designed for the character of the building, are preferred. Monument signs are allowed.*
 - i. Any extension of parking into an adjoining residential district shall support the intent of the NPC neighborhood pedestrian commercial district and conform with the guidelines in this section.*
3. **Site Plan Requirements:** Any development would require compliance with all applicable site plan requirements. Applicable requirements include stormwater management, landscaping, and screening of adjoining residential properties. Any grading is subject to an approved grading permit and soil erosion control plan, as well as a Stormwater Pollution Protection Plan (SWPPP) approved by the Iowa DNR. Tree removal and mitigation calculations must be submitted with any site plan in accordance with Section 42-550 of the Municipal Code.
4. **Utilities:** No utilities have been identified that would be impacted by the proposed vacation. The applicant would be required to relocate any existing utilities as part of any development of the site.
5. **Alley System:** The subject east/west alley is a dead-end segment of right-of-way that provides access to a parking lot that serves the multiple-family building on the subject site. The proposed vacation would not impact the ability to provide adequate access to any adjoining properties.
6. **Historic Preservation Ordinance:** The proposed project includes the demolition of a brick apartment building (Mirell Flats) that was constructed in 1912. Demolition of this building is subject to review in accordance with Article IV of the Historic Preservation Ordinance.

The applicant has submitted a report summarizing the findings of their preservation consultant (Bear Creek Archeology, Inc) on the significance of the building and their effort to explore moving the building. The Mirell Flats building was identified as a Contributing Structure in a potential historic district eligible for the National Register of Historic Place in a 2011 survey (Architectural and Historical Survey of the Drake University Neighborhood). This report was prepared by James Jacobsen, History Pays

on behalf of the Drake Neighborhood Association and the City of Des Moines. The report prepared by Bear Creek Archeology supports the finding of the 2011 survey.

The City's Landmark Review Board (LRB) must be notified as part of the process of reviewing the proposed demolition of historic structures that are not located in a Local Historic District. A copy of this staff report and the support documentation will be provided to the LRB. The applicant has provided information on their efforts to identify a building mover and to get a sense of the cost to move the building. If no other alternatives are brought forward during the review process that staff deems as reasonable, the applicant will be required to prepare a salvage plan to be approved by the Community Development Director or designee before a demolition permit can be issued. The information prepared by Bear Creek Archeology, Inc. satisfies the documentation requirement of the demolition review process.

- 7. Liquor Sales:** The sale of beer, wine and liquor must be conducted in conformance with Section 134-954 of the Zoning Ordinance. Gas station/convenience stores are allowed to sell beer and wine without a Conditional Use Permit so long as they are not within 150 feet of a church, school, public park or licensed child care facility. The sale of liquor at a gas station/convenience store requires a Conditional Use Permit from the Zoning Board of Adjustment (BOA) and has a separation requirement of 500 feet.

SUMMARY OF DISCUSSION

Jacqueline Easley noted that the applicant for item #5 has agreed to the staff recommendations. She asked if any members of the audience or the Commission requested to speak regarding moving the item to the consent agenda. None were present or requested to speak.

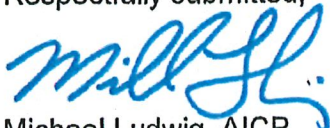
Dory Briles made a motion to move item #5 to the consent agenda.
Motion Carried 10-0.

COMMISSION ACTION:

Emily Webb made a motion for approval of the requested vacation subject to reservation of easements for all public utilities in place until such time they are relocated or abandoned

Motion passed: 11-0

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:tjh
Attachments

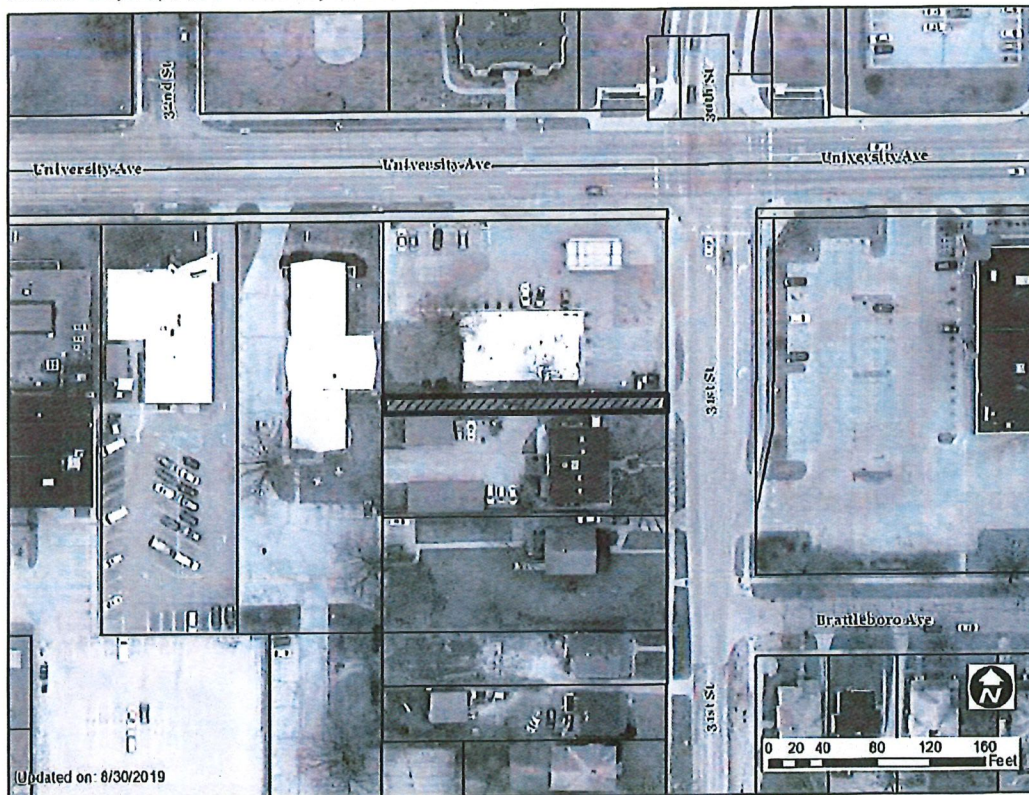
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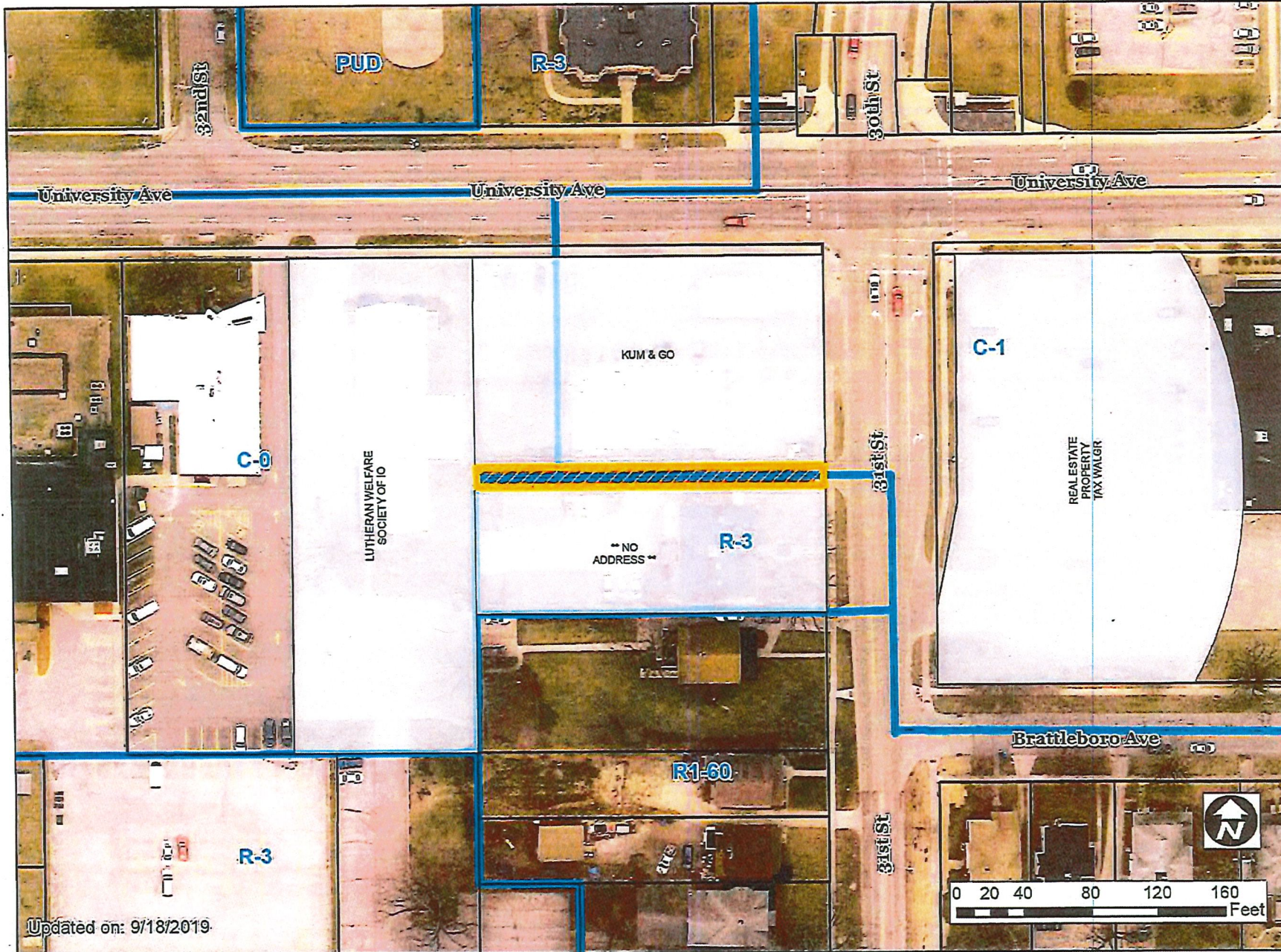
25A

Kum & Go, LC (owner) represented by Dan Garneau (officer) for the property located at 3104 University Avenue and 1134 31st Street. Additional property owned by Mirrel Property Investors, LLC.				File #	
				11-2019-1.22	
Description of Action	Vacation of the dead-end east/west alley segment between University Avenue and Cottage Grove Avenue from 31st Street to a point that is 209 feet to the west.				
PlanDSM Future Land Use	Current: Neighborhood Mixed Use and Low-Medium Density Residential. Proposed: Community Mixed Use.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	"C-1" Neighborhood Retail Commercial District, "R-3" Multiple Family Residential District, "C-0" Commercial-Residential District and "FSO" Freestanding Signs Overlay District.				
Proposed Zoning District	"NPC" Neighborhood Pedestrian Commercial District and "FSO" Freestanding Signs Overlay District.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Outside Area (200 feet)	1	0			
Within Subject Property					
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Kum & Go, LC, 3104 University Avenue and 1134 31st Street

11-2019-1.22





Updated on: 9/18/2019

0 20 40 80 120 160 Feet

1 inch = 77 feet

Handwritten signature
40

11-2019-1.22
I (am) (am not) in favor of the request.

Date 9-13-19
DRAKE NEIGHBORHOOD ASSOCIATION

(Circle One)
RECEIVED
COMMUNITY DEVELOPMENT
SEP 16 2019

Print Name Jennifer Sayes
Signature Jennifer Sayes
Address 1129 28th St. 50311

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

The Drake Neighborhood Association board
is in support of this project.