

Date November 9, 2020

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A SEGMENT OF UNIVERSITY AVENUE RIGHT-OF-WAY ADJOINING 2650 UNIVERSITY AVENUE AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT – DOOR SWING TO HOTEL FRANCIS, LLC FOR \$100.00**

**WHEREAS**, on September 14, 2020, by Roll Call No. 20-1437, the City Council of the City of Des Moines, Iowa, voted to receive and file a recommendation from the City Plan and Zoning Commission to approve a request to vacate a 4-foot by 4-foot segment of the south edge of University Avenue right-of-way adjoining 2650 University Avenue, subject to the reservation of easements for all existing utilities in place until such time as they are abandoned or relocated; and further subject to the provision of bollards or planters on both sides of the 4-foot by 4-foot proposed vacation into the public right-of-way on University Avenue as approved by the Planning Administrator; and

**WHEREAS**, following the above referenced Plan and Zoning Commission meeting, the vacation area was surveyed and reduced to a 4-foot by 2.8-foot segment of University Avenue right-of-way; and

**WHEREAS**, Hotel Francis, LLC, the owner of 2650 University Avenue, has offered to the City of Des Moines, Iowa (“City”) the purchase price of \$100.00 for the purchase of a Permanent Easement for Building Encroachment – Door Swing in the 4-foot by 2.8-foot segment of the south edge of University Avenue right-of-way adjoining 2650 University Avenue to allow for a door swing and landing for emergency egress only from a restaurant tenant space within the hotel building, which price reflects the fair market value of the easement interest as determined by the City’s Real Estate Division; and

**WHEREAS**, there is no known current or future public need for the street right-of-way proposed to be vacated, subject to the reservation of easements for all existing utilities in place until such time as they are abandoned or relocated; and further subject to the provision of bollards or planters on both sides of the 4-foot by 2.8-foot proposed vacation into the public right-of-way on University Avenue as approved by the Planning Administrator, and the City will not be inconvenienced by the vacation and conveyance of a Permanent Easement for Building Encroachment – Door Swing within said Property.

**WHEREAS**, on October 19, 2020, by Roll Call No. 20-1656, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation of the street right-of-way and conveyance of the permanent easement be set for hearing on November 9, 2020, at 5:00 p.m., in the City Council Chambers, Richard A. Clark Municipal Service Center, 1551 E. Martin Luther King Jr. Parkway, Des Moines, Iowa; and

**WHEREAS**, due notice of said proposal to vacate a 4-foot by 2.8-foot segment of the south edge of University Avenue right-of-way adjoining 2650 University Avenue was given 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

Date November 9, 2020

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 of the 4-foot by 2.8-foot segment of the south edge of University Avenue right-of-way adjoining 2650 University Avenue, as described herein, are hereby overruled and the hearing is closed.

2. There is no public need or benefit for the street right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of said street right-of-way, legally described as follows, and said vacation is hereby approved:

A PART OF UNIVERSITY AVENUE RIGHT-OF-WAY LYING NORTHERLY OF THE SOUTH LINE OF THE NORTH 7.00 FEET OF LOTS 1, 36 AND THE NORTH/SOUTH ALLEY LYING ADJACENT TO SAID LOTS 1 AND 36, ALL BEING A PART OF DRAKE UNIVERSITY'S ADDITION TO THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST OF CORNER OF THE NORTH 7.00 FEET OF SAID LOT 36; THENCE NORTH 89°12'10" EAST ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID UNIVERSITY AVENUE, 122.19 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°47'45" WEST, 2.80 FEET; THENCE NORTH 89°12'10" EAST, 4.00 FEET; THENCE SOUTH 00°47'45" EAST, 2.80 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF UNIVERSITY AVENUE; THENCE SOUTH 89°12'10" WEST ALONG SAID SOUTH RIGHT-OF-WAY LINE, 4.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 11 SQUARE FEET.

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

3. The proposed conveyance of a Permanent Easement for Building Encroachment – Door Swing in such vacated street right-of-way, as legally described below and to the grantee and for the consideration identified below, subject to reservation of easements therein, and further subject to the provision of bollards or planters on both sides of the 4-foot by 2.8-foot proposed vacation into the public right-of-way on University Avenue as approved by the Planning Administrator, and said conveyance is hereby approved:

Grantee: Hotel Francis, LLC

Consideration: \$100.00

Legal Description:

A PART OF VACATED UNIVERSITY AVENUE RIGHT-OF-WAY LYING NORTHERLY OF THE SOUTH LINE OF THE NORTH 7.00 FEET OF LOTS 1, 36 AND THE NORTH/SOUTH ALLEY LYING ADJACENT TO SAID LOTS 1 AND 36, ALL BEING A PART OF DRAKE UNIVERSITY'S ADDITION TO THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**Date** ..... November 9, 2020 .....

COMMENCING AT THE SOUTHWEST OF CORNER OF THE NORTH 7.00 FEET OF SAID LOT 36; THENCE NORTH 89°12'10" EAST ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID UNIVERSITY AVENUE, 122.19 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°47'45" WEST, 2.80 FEET; THENCE NORTH 89°12'10" EAST, 4.00 FEET; THENCE SOUTH 00°47'45" EAST, 2.80 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF UNIVERSITY AVENUE; THENCE SOUTH 89°12'10" WEST ALONG SAID SOUTH RIGHT-OF-WAY LINE, 4.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 11 SQUARE FEET.  
PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

4. The Mayor is authorized and directed to sign the Offer to Purchase and Permanent Easement for Building Encroachment – Door Swing for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. The City Manager is authorized to sign any minor and non-substantial amendments to the purchase agreement is further authorized to grant any temporary rights of entry for construction-related activities prior to closing.
6. 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 Permanent Easement for Building Encroachment – Door Swing, 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.
7. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Building Encroachment – Door Swing, 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.
8. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Permanent Easement for Building Encroachment – Door Swing and a copy of the other documents to the grantee.
9. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

Date November 9, 2020

Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland  
 Lisa A. Wieland, Assistant City Attorney

*PSW*

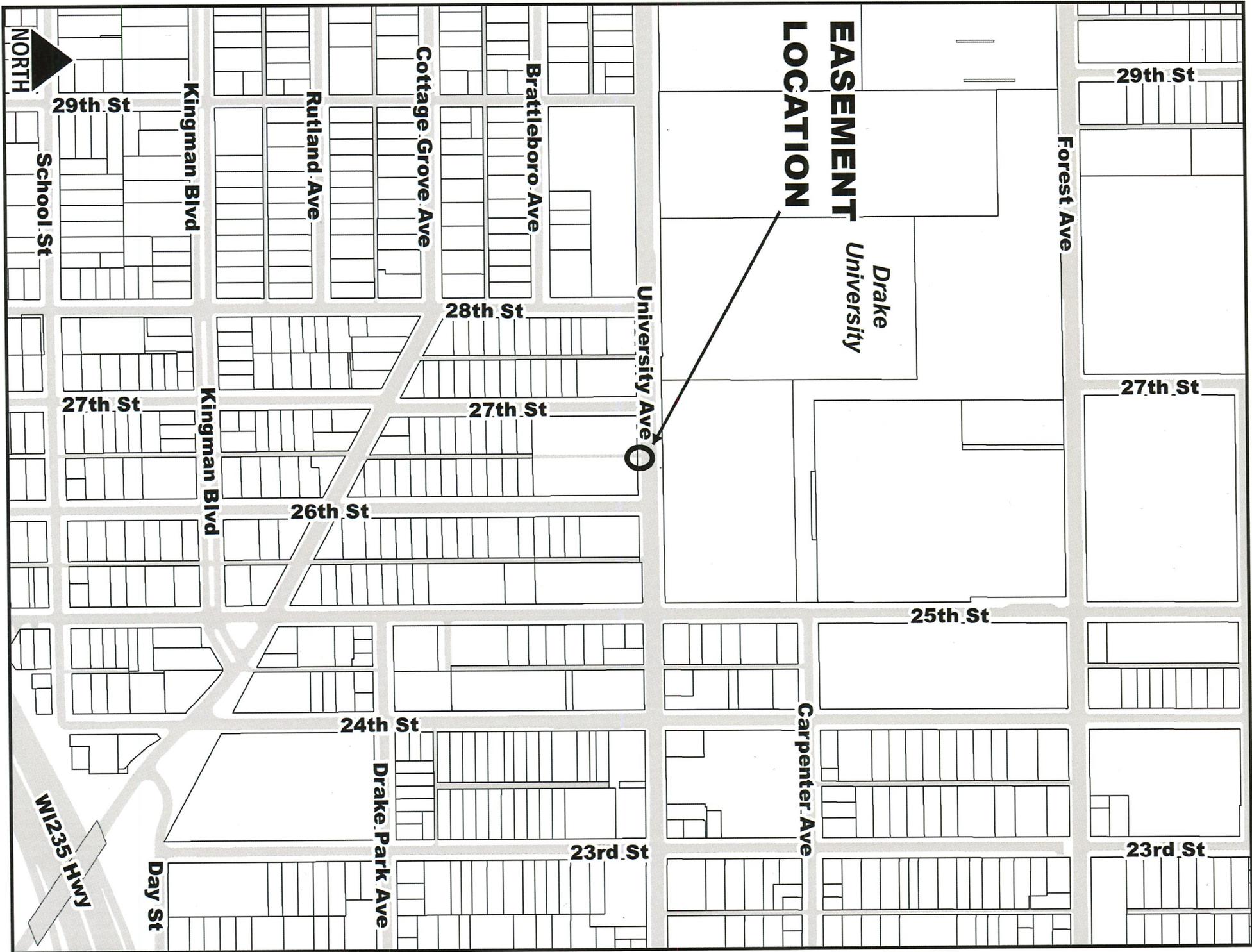
COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

**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



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September 8, 2020

Date September 14, 2020  
Agenda Item 29  
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 August 20, 2020 meeting, the following action was taken regarding a request from Hotel Francis, LLC (owner), represented by Michael Nelson (officer), for vacation of a 4-foot by 4-foot segment of the south edge of University Avenue adjoining property at 2650 University Avenue, to allow for a door swing and landing for emergency egress only from a restaurant tenant space within the hotel building.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 11-0-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
Dory Briles	X			
Abby Chungath	X			
Kayla Berkson			X	
Jann Freed	X			
Johnny Alcivar	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 the following conditions:

1. Reservation of any existing utilities until such time that they are abandoned or relocated at the applicant's expense.
2. Provision of bollards or planters to both sides of the 4-foot by 4-foot proposed vacation into the public right-of-way on University Avenue as approved by the Planning Administrator. (11-2020-1.08)

## Written Responses

2 in Favor

0 in opposition

## **RECOMMENDATION TO THE P&Z COMMISSION**

Staff recommends approval of the requested vacation subject to the following conditions:

1. Reservation of any existing utilities until such time that they are abandoned or relocated at the applicant's expense.
2. Provision of bollards or planters to both sides of the 4-foot by 4-foot proposed vacation into the public right-of-way on University Avenue as approved by the Planning Administrator.

## **STAFF REPORT TO THE PLANNING COMMISSION**

### **I. GENERAL INFORMATION**

1. **Purpose of Request:** The proposed vacation would allow use of the addressed property as a restaurant space within mixed use building.
2. **Size of Site:** 16 square feet) for the addressed property.
3. **Existing Zoning (site):** "MX2" Mixed Use District. The "MX2" District is "intended for mixed-use, regional-scale nodes and corridors within the city, where residents and visitors may access multiple uses by walking."
4. **Existing Land Use (site):** The affected area consists of sidewalk within the public Right-Of-Way (ROW) of University Avenue between 26<sup>th</sup> Street and 27<sup>th</sup> Street.
5. **Adjacent Land Use and Zoning:**  
  
**North** – "P2"; Use is Drake University's campus.  
  
**South** – "N5", Use is a recently constructed hotel development.  
  
**East** – "MX2"; Use is a mixed-use building under construction.  
  
**West** – "MX1"; Uses are Drake University's Alumni House and undeveloped lots.
6. **General Neighborhood/Area Land Uses:** The subject property is located along the south side of the University Avenue mixed-use corridor, directly across from Drake University's campus.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the Drake Neighborhood. The neighborhood association was notified of the public hearing by mailing of the Preliminary Agenda on July 31, 2020 and by mailing of the Final Agenda on August 14, 2020. Additionally, separate notifications of the hearing for this specific

item were mailed on August 10, 2020 (10 days prior to public hearing) to the Neighborhood Associations and to the primary titleholder on file with the Polk County Assessor for each property adjacent or directly across the street from the requested ROW.

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 on the date of the mailing. The Drake Neighborhood Association notices were mailed to Lori Calhoun, 2808 Cottage Grove Avenue, Des Moines, IA 50311.

**8. Relevant Zoning History:** None.

**9. PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Neighborhood Mixed Use.

**10. Applicable Regulations:** Taking into consideration 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. Utilities:** While no utilities have been identified 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. Streets/Sidewalk:** The 4-foot by 4-foot proposed vacation to allow for an exterior door swing would be onto the sidewalk in the public ROW on University Avenue. Staff feels that bollards or planters as approved by the Planning Administrator and Traffic Engineering would ensure public safety of pedestrians utilizing the subject sidewalk.

## **SUMMARY OF DISCUSSION**

Jann Freed asked if any member of the public or the commission desired to speak regarding the item. None requested to speak.

## **COMMISSION ACTION:**

Emily Webb made a motion for approval of the requested vacation subject to the following conditions:

1. Reservation of any existing utilities until such time that they are abandoned or relocated at the applicant's expense.
2. Provision of bollards or planters to both sides of the 4-foot by 4-foot proposed vacation into the public right-of-way on University Avenue as approved by the Planning Administrator.

Motion passed: 11-0-1

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

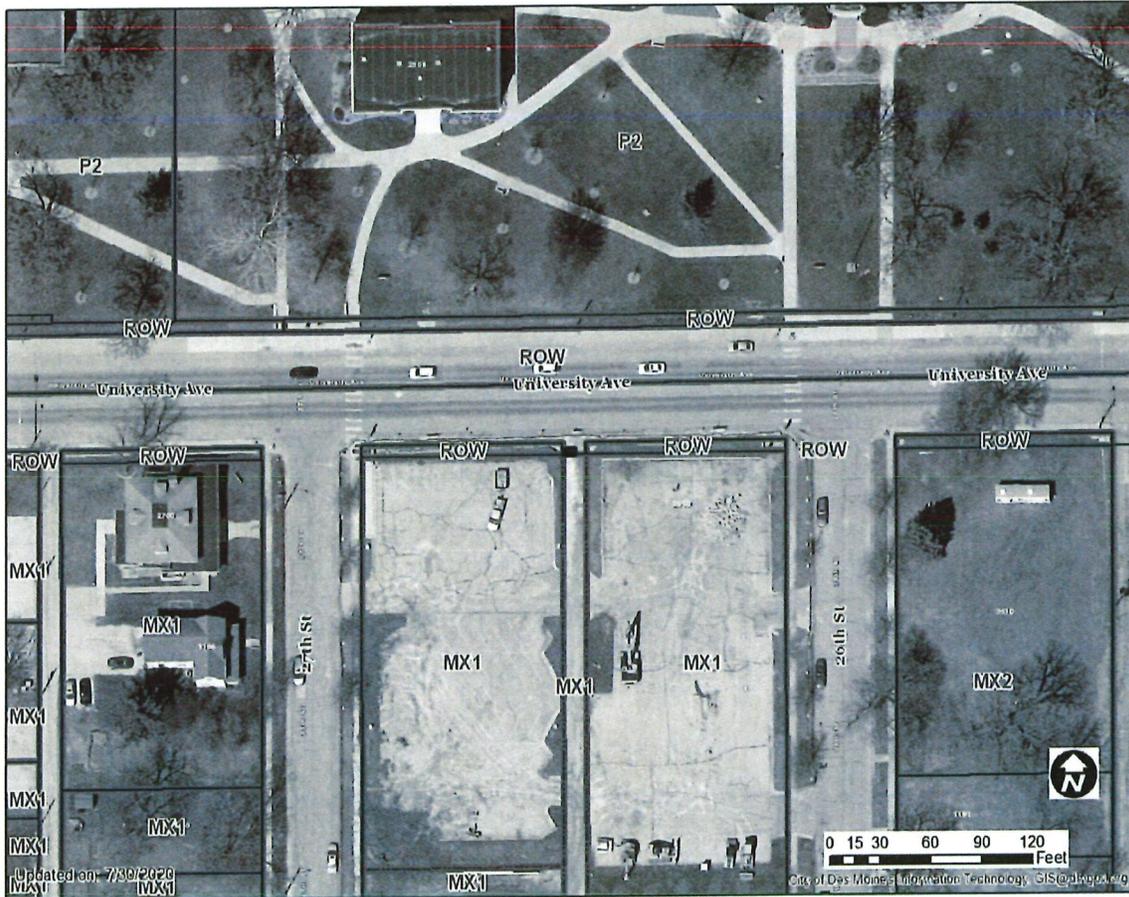
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Attachments

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29

Request from Hotel Francis, LLC (owner), represented by Michael Nelson (officer) for property located at 2650 University Avenue.				File #	
				11-2020-1.08	
Description of Action	Vacation of a 4-foot by 4-foot segment of the south edge of University Avenue adjoining property at 2650 University Avenue, to allow for a door swing and landing for emergency egress only from a restaurant tenant space within the hotel building.				
PlanDSM Future Land Use	Current: Neighborhood Mixed Use. Proposed: N/A.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	"MX1" Mixed Use District.				
Proposed Zoning District	N/A				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Outside Area (200 feet)	2	0			
Within Subject Property					
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Hotel Francis, LLC, 2650 University Avenue

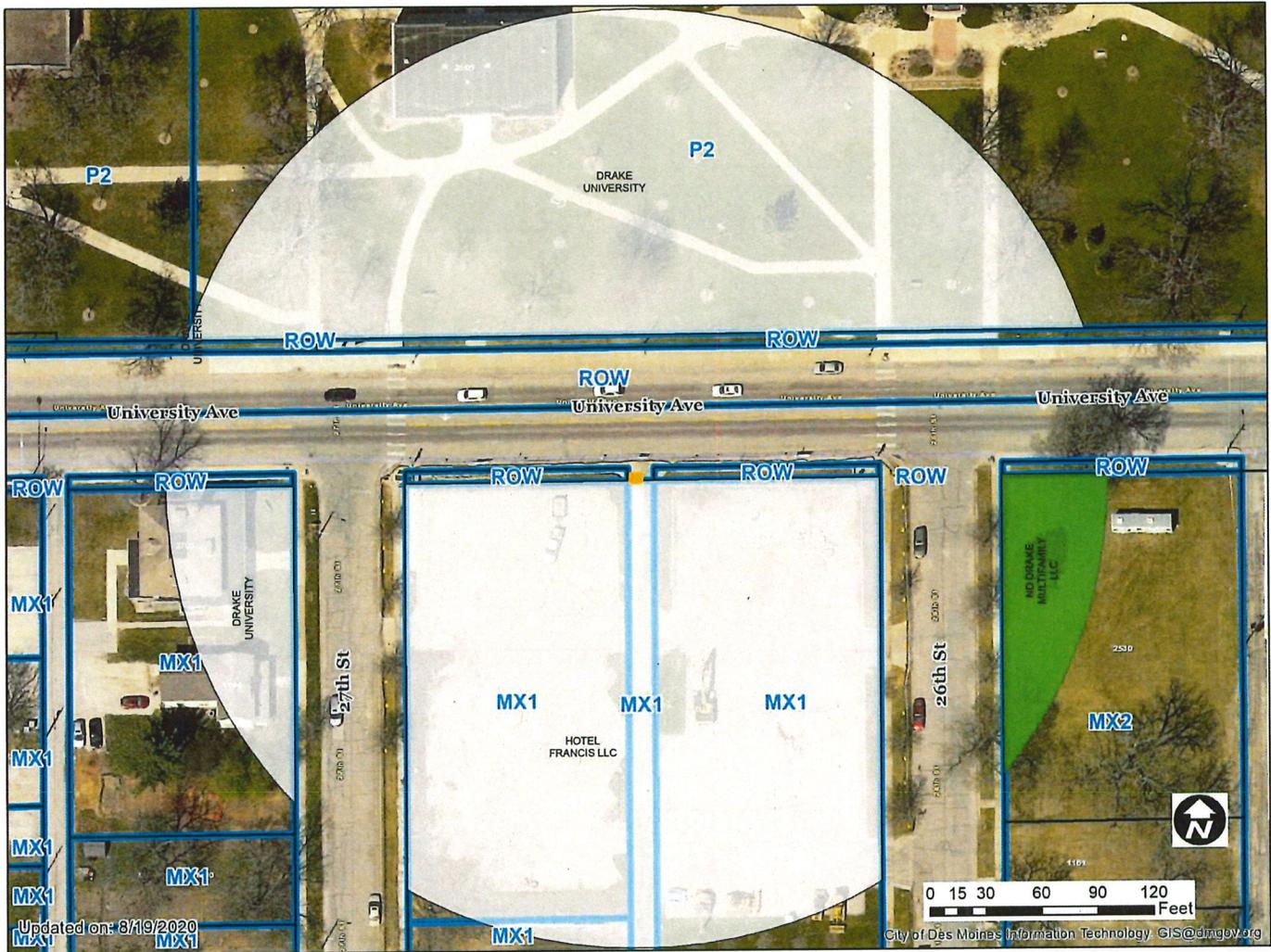
11-2020-1.08



1 inch = 68 feet

Hotel Francis, LLC, 2650 University Avenue

11-2020-1.08



1 inch = 68 feet

68

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27

11-2020-1.08

Item: \_\_\_\_\_ Date: 08/13/20

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

(Circle One)

RECEIVED Print Name: ALEXANDER GRBURICH  
COMMUNITY DEVELOPMENT

AUG 19 2020 Signature: [Signature]

Address: 2530 UNIVERSITY

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

NICE, VALUE-ADDING PROJECT THAT WILL  
BE GREAT FOR THE CITY

11-2020-1.08

Item: \_\_\_\_\_ Date: 08/13/20

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

(Circle One)  
RECEIVED  
COMMUNITY DEVELOPMENT

Print Name: ALEXANDER GRBURICH

AUG 19 2020 Signature: [Signature]

Address: 2650 UNIVERSITY

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

GREAT NEW RETAIL SPACE FOR THIS AREA

Aug 19, 2020 14:11



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