

★ Roll Call Number

15-1299

Agenda Item Number

SS B

Date July 27, 2015

**RESOLUTION HOLDING HEARING ON REQUEST FROM  
JEROME T. BASSMAN AND SARI D. BASSMAN IRREVOCABLE TRUST TO  
REZONE PROPERTY LOCATED AT 1240 AND 1244 2ND AVENUE**

**WHEREAS**, on June 22, 2015, by Roll Call No. 15-1018, the City Council received and filed a communication from the City Plan and Zoning Commission advising that at a public hearing held on June 4, 2015, its members voted 9-0 in support of a motion to recommend **APPROVAL** of a request from Jerome T. Bassman and Sari D. Bassman, Trustees of the Jerome T. Bassman and Sari D. Bassman Irrevocable Trust dated August 21, 2012 (owner), represented by Sari Bassman (Co-Trustee), to rezone a portion of the property located at 1240 and 1244 2nd Avenue ("Property Area A") from "R1-60" One-Family Low-Density Residential District, Limited "NPC" Neighborhood Pedestrian Commercial District, and "M-1" Light Industrial District to Limited "M-1" Light Industrial District to allow for expansion of the existing Commercial Bag & Supply retail, warehousing and distribution business at 1244 2nd Avenue, and to rezone the remaining portion of the property located at 1240 and 1244 2nd Avenue ("Property Area B") from "M-1" Light Industrial District, "R1-60" One-Family Low Density Residential District, and Limited "NPC" Neighborhood Pedestrian Commercial District to Limited "NPC" Neighborhood Pedestrian Commercial District to allow for development of a restaurant with pedestrian-oriented placement toward 2nd Avenue on the southern portion of the block face, subject to the following conditions:

For Property Area A, proposed for the 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 existing buildings. Storefronts oriented toward 2nd Avenue may have brick or lap siding material.

For Property Area B, proposed for the Limited "NPC" District:

1. Prohibition of the following uses:

( continued )

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- a) Billiard parlor/game room;
  - b) Communication tower/antenna (unless as an extension of 20 feet or less from the structure);
  - c) Delayed deposit services;
  - d) Pawn brokers;
  - e) Gas stations/convenience stores;
  - f) Off-premises advertising signs;
  - g) Liquor stores where gross revenues of tobacco and alcohol products exceed 40%;
  - h) Taverns and nightclubs; and
  - i) Adult entertainment establishments.
2. Any submitted Site Plan shall adhere to the "NPC" Design Guideline that requires the maximum number of off-street parking spaces provided to be limited to a number that is no greater than what is typically required as a minimum number of spaces in a standard commercial zoning district.
  3. Any trash enclosure on site shall conform to the standards of the Zoning Ordinance and be comprised of durable materials that complement the principal building with steel gates.

**WHEREAS**, on June 22, 2015, by Roll Call No. 15-1018, it was duly resolved by the City Council that the application of Jerome T. Bassman and Sari D. Bassman, Trustees of the Jerome T. Bassman and Sari D. Bassman Irrevocable Trust dated August 21, 2012 (owner) to rezone the Property, as legally described below, be set down for hearing on July 13, 2015 at 5:00 p.m. in the Council Chambers at City Hall; and

**WHEREAS**, due notice of said hearing was published in the Des Moines Register, as provided by law, setting forth the time and place for hearing on said proposed amendment to the Zoning Ordinance; and

**WHEREAS**, on July 13, 2015, by Roll Call No. 15-1193, the City Council opened and continued the public hearing on the proposed rezoning to the City Council meeting on July 27, 2015 at 5:00 p.m. in the City Council Chambers; and

**WHEREAS**, in accordance with said notice, those interested in said proposed rezoning, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council; and

**WHEREAS**, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone a portion of the Property locally known as 1240 and 1244 2<sup>nd</sup> Avenue, legally described as:

Property Area A (From R1-60, NPC, and M-1 to Limited M-1):

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 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

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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, RUTHERFURD 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

from "R1-60" One-Family Low-Density Residential District, Limited "NPC" Neighborhood Pedestrian Commercial District, and "M-1" Light Industrial District to Limited "M-1" Light Industrial District to allow for expansion of the existing Commercial Bag & Supply retail, warehousing and distribution business at 1244 2<sup>nd</sup> Avenue, subject to the conditions stated above as agreed to and accepted by execution of an Acceptance of Rezoning Ordinance in writing by the owner of the Property, which is binding upon the owner and its successors, heirs and assigns; and

**WHEREAS**, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone the remaining portion of the Property locally known as 1240 and 1244 2<sup>nd</sup> Avenue, legally described as:

Property Area B (From Limited NPC, M-1, and R1-60 to Limited NPC):

LOTS 150 AND A PART OF LOTS 141, 142, 148 AND 149 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 CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 140, RUTHERFURD HEIGHTS; THENCE NORTH 00°36'35" WEST ALONG THE EAST LINE OF LOTS 140 AND 139, RUTHERFURD HEIGHTS, 91.84 FEET; THENCE NORTH 89°49'21" EAST, 203.04 FEET; THENCE NORTH 00°00'25" WEST, 28.40 FEET; THENCE NORTH 89°49'21" EAST, 72.32 FEET TO THE EAST LINE OF LOT 148, RUTHERFURD HEIGHTS; THENCE SOUTH 00°26'23" EAST ALONG THE EAST LINE OF LOTS 148 AND 149, RUTHERFURD HEIGHTS, 32.04 FEET TO THE NORTH CORNER OF THE ACQUISITION PLAT RECORDED IN BOOK 6705 PAGE 48; THENCE SOUTH 02°26'34" WEST ALONG THE WEST LINE OF SAID ACQUISITION PLAT, 89.87 FEET TO THE SOUTH LINE OF SAID LOT 150 AND THE SOUTHWEST CORNER OF SAID ACQUISITION PLAT; THENCE NORTH 89°50'38" WEST ALONG THE SOUTH LINE OF SAID LOT 150, 142, 141 AND THE ADJACENT ALLEYS, 270.80 FEET TO THE POINT OF BEGINNING AND CONTAINING 27,372 SQUARE FEET.

from "M-1" Light Industrial District, "R1-60" One-Family Low Density Residential District, and Limited "NPC" Neighborhood Pedestrian Commercial District to Limited "NPC" Neighborhood Pedestrian Commercial District to allow for development of a restaurant with pedestrian-oriented placement toward 2nd Avenue on the southern portion of the block face, subject to the conditions stated above as agreed to

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and accepted by execution of an Acceptance of Rezoning Ordinance in writing by the owner of the Property, which is binding upon the owner and its successors, heirs and assigns.

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 any and all statements of interested persons and arguments of counsel, any objections to the proposed rezoning of Property Area A to Limited "M-1" Light Industrial District with conditions as set forth above, and any objections to the proposed rezoning of Property Area B to Limited "NPC" Neighborhood Pedestrian Commercial District with conditions as set forth above, are hereby overruled, and the hearing is closed.
2. The proposed rezoning of Property Area A to Limited "M-1" Light Industrial District with conditions as set forth above, and of Property Area B to Limited "NPC" Neighborhood Pedestrian Commercial District with conditions as set forth above, is hereby approved, subject to final passage of an ordinance rezoning the Property as set forth herein.

MOVED by Gray to adopt.

FORM APPROVED:

Glenna K. Frank, Assistant City Attorney

(ZON2015-00069)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MOORE	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

T. M. Franklin Council 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.

Diane Rauh

City Clerk