

.....
Date..... February 26, 2007

WHEREAS, on February 12, 2007, by Roll Call No. 07-234, it was duly resolved by the City Council that the application of Donald Walsmith, to rezone certain property he owns in the vicinity of 121 - 12th Street more fully described below, be set down for hearing on February 26, 2007, 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 on February 15, 2007, as provided by law, setting forth the time and place for hearing on said proposed amendment to the Zoning Ordinance; 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 the following described property:

Lots 3 and 4, Bock 23, Keene and Poindexter's Addition to Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter referred to as the "Property").

from the "C-3A" Central Business District Support Commercial District to a Limited "C-3" Central Business District Commercial District classification, subject to the following conditions which are agreed to and accepted by execution of an Acceptance of Rezoning Ordinance in writing by all owners of said property and is binding upon the owners and their successors, heirs and assigns as follows:

- A. No activity shall be permitted on the Property that emits sound at a volume that when measured at the property line of any nearby residential use, exceeds the maximum permitted sound levels applicable at the receiving property line in a "R1" single-family residential district. The benefit of this limitation is not intended to applied to a residential use on the Property.
- B. No portion of the Property shall be used as an Adult Entertainment Business, as that term is now defined in the Zoning Ordinance of the City of Des Moines.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

(continued)

★ **Roll Call Number**

Agenda Item Number

55

Date..... February 26, 2007

1. Upon due consideration of the facts, statements of interested persons and arguments of counsel, the objections to the proposed rezoning of the Property to a Limited "C-3" Central Business District Commercial District are hereby overruled, and the hearing is closed.

2. The proposed rezoning is hereby found to be in conformance with the Des Moines 2020 Community Character Land Use Plan.

MOVED by _____ to adopt and approve the rezoning, subject to final passage of the rezoning ordinance.

FORM APPROVED:

Roger K. Brown

Roger K. Brown

Assistant City Attorney

G:\SHARED\LEGAL\BROWN\WORK\REZONING\Walsmith.doc

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
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

February 12, 2007

Date _____

Honorable Mayor and City Council
City of Des Moines, Iowa

Agenda Item SS

Roll Call # _____

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held February 1, 2007, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 13-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
David Cupp	X			
Shirley Daniels	X			
Dann Flaherty				X
Bruce Heilman	X			
Jeffrey Johannsen	X			
Greg Jones	X			
Frances Koontz	X			
Kaye Lozier	X			
Brian Meyer	X			
Brian Millard	X			
Brook Rosenberg	X			
Mike Simonson				X
Kent Sovern	X			
Tim Urban	X			
Marc Wallace	X			



CITY PLAN AND ZONING COMMISSION
 ARMORY BUILDING
 602 ROBERT D. RAY DRIVE
 DES MOINES, IOWA 50309 -1881
 (515) 283-4182

ALL-AMERICA CITY
 1949, 1976, 1981
 2003

APPROVAL of a request from Donald Walsmith (owner) to rezone property located at 121 12th Street from "C-3A" Central Business District Support Commercial District to "C-3" Central Business District Commercial District, to allow conversion of a portion of the building to a live performance venue, subject to the owner agreeing to comply with sound level standards to protect surrounding residential uses in the same manner as applied to "R" Districts in Chapter 42, Article IV of the City Code, and with the prohibition of adult entertainment businesses.

(ZON2006-00199)

Written Responses

5 In Favor
1 In Opposition

This item would not require a 6/7 vote at City Council.

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Part A) Staff recommends that the commission find the requested rezoning in conformance with the Des Moines' 2020 Community Character Plan.

Part B) Staff recommends approval of the requested rezoning to the "C-3" Central Business District Commercial District subject to the owner agreeing to comply with sound level standards to protect surrounding residential uses in the same manner as they are applied to "R" Districts in Chapter 42, Article IV of the City Code.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is proposing to convert portions of the existing Lovejoy Building for public assembly, a live music venue with alcoholic beverage sales, a restaurant, and office space.
2. **Size of Site:** 17,424 square feet.
3. **Existing Zoning (site):** "C-3A" Central Business District Support Commercial District.
4. **Existing Land Use (site):** The Polk County Assessor's information indicates some office use, light manufacturing, and warehousing use of the existing two-story brick building. The building was formerly used for printing and warehousing and was constructed around 1924.
5. **Adjacent Land Use and Zoning:**
 - North* - "C-3", Use is an off-street parking structure for Allied/Nationwide Insurance.
 - South* - "C-3A", Use is Stitzell Electric Supply.
 - East* - "C-3", Use is Mulberry Lofts Condominiums.
 - West* - "C-3A", Use is Iowa Health Systems Intrust Home Medical and AmerUs Graphic Services.
6. **General Neighborhood/Area Land Uses:** The subject property is located at the edge of the downtown core. It is two blocks south of the Western Gateway Park and two blocks north of West M.L. King Jr. Parkway.
7. **Applicable Recognized Neighborhood(s):** Downtown Neighborhood Association.
8. **Relevant Zoning History:** N/A.
9. **2020 Community Character Land Use Plan Designation:** High Amenity Office/Institutional.
10. **Applicable Regulations:** The Commission reviews all proposals to amend zoning regulations or zoning district boundaries 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 recommend that certain conditions be applied to the subject property if the property owner agrees in writing, prior to the City Council Hearing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Drainage/Grading:** No alterations are proposed to the existing building. The footprint of the building covers the entire subject property. A grading permit or grading permit waiver will be required with any site work for the streetscape landscaping.
2. **Neighborhood Environment:** The property is within a mixed use area of the Downtown with a concentration of residential lofts (Mulberry Lofts, 10th Street Lofts, 111 Lofts, and 10th & Cherry) directly to the east and southeast and a hotel/restaurant to the northeast. The Allied campus has plans to expand to the northwest and west of the subject property with the existing parking structure immediately to the north of the subject property across Mulberry Street and a planned parking structure immediately to west across 12th Street.

As part of any live music venue, the owner will be obligated to comply at a minimum with the Chapter 42 Noise Pollution standards in the City Code as applicable for Commercial Districts. It is possible that acoustical measures will have to be taken in the rehabilitation of the building to protect residential properties as part of any conversion for live music and entertainment use. There is not a design standard in the Building Code to review as part of construction. Rather, the standard that will be enforced by the Community Development Department is a 65 db sound level limit measured from the exterior of the building.

Given it's proximity to nearby residential condominiums, staff believes that it would be reasonable and appropriate to impose the standard applicable to residential districts in the Noise Pollution Ordinance when measuring from a property with a residential use. This standard would be a 60 db sound level limit between the hours of 7:00 a.m. and 10:00 p.m. and a 50 db sound level limit at all other times when measured from a surrounding residential use to the subject property. The staff in the Permit and Development Center has recommended to the owner that a sound engineer be consulted in the process of preparing rehabilitation plans for the building. This will help identify construction methods that can be used to ensure compliance with the Noise Pollution Ordinance.

3. **Landscaping & Buffering:** Since the applicant is converting the use of a major portion of the building, staff will require compliance with the Des Moines' Landscaping Standards. Because the building footprint covers the entire property, the landscaping will involve parkway plantings on 12th Street and Mulberry Street.
4. **Access or Parking:** The subject property does not currently provide any off-street parking on site, as the footprint of the building covers the entire subject property. The applicant has not indicated the intent to provide any off-street parking in the vicinity of the subject property. The proposed use of a live entertainment venue with alcohol sales in the current "C-3A" District would require a standard of one (1) space per 150 square feet or one (1) space per four fixed seats under the off-street parking regulations. No off-street parking is required under the proposed "C-3" District. Staff is not concerned about parking demand to be generated by a live music and entertainment venue at this location, as the City has an agreement with Allied/Nationwide for use of the parking structure on the north side of Mulberry Street during off-business hours. A similar agreement is being sought with a parking structure proposed to the west of the subject property.
5. **2020 Community Character Plan:** The High Amenity Office/Institutional Land Use Designation is intended to strengthen and compliment facilities in the retail and office core and to provide buildings for office, institutional, cultural, and recreational uses and hotels. Staff believes that the use of the building for an entertainment and dining venue supports this intent. The rezoning will exempt the subject property from providing off-street parking. The property cannot support any adult entertainment business because of the proximity to the Western Gateway Park. The Board of Adjustment must grant a Conditional Use for any live music and entertainment venue that is to sell alcoholic beverages and for any tavern or nightclub to be permitted on the premises.

SUMMARY OF DISCUSSION

Jason Van Essen: Presented staff report and recommendation and explained the noise from the proposed music venue was the concern of the opposition. Explained staff is recommending a condition to lower maximum decibels to that of a residential area. Explained other concerns expressed regarded the potential future use of the property. Noted a condition could be placed to limit the use.

Tim Urban joined the meeting at 6:11 p.m.

Brook Rosenberg: Asked if a requirement for a 100' separation from a residential area for an entertainment venue would apply to the subject property.

Mike Ludwig: Noted that requirement is only applicable to sidewalk cafes.

Roger Brown: Explained the City of Des Moines' sound ordinance.

Donald Walsmith, 1220 River Vista Drive, Des Moines: Available to answer questions. Noted the proposed change is for something beyond what is currently available in town. Understood the concern regarding noise and noted RDG has engaged an audio engineer from Minnesota that has assured them they would be very good neighbors and would be well within the sound ordinance and limitations recommended by staff. Explained the building would be multiple use within the building; on the west the Flying Mango would be an anchor. There are three entities on the main floor and the third anchor tenant they are working with is Iowa Public Radio where the synergy will be enhanced with the venue. Noted he is in agreement with staff recommendations. Explained they held a neighborhood meeting and several individuals from the Mulberry Lodge next door attended. Everyone in attendance was in favor of the request, albeit concerned about potential noise issues. He explained noise would not be an issues; stressed they want to be a good neighbor.

Jeffrey Johannsen: Noted no neighborhood association meeting was held with the applicant.

Donald Walsmith: Explained the meeting was held at his office and invitations were sent to the neighbors within the area.

Larry Hulse: Explained with a rezoning request, the notification often goes to those who will be most affected.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one in the audience to speak on this item.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Kent Sovern: Moved for approval of the staff recommendation with the condition that the subject property cannot be used for adult entertainment businesses.

Mike Ludwig: Noted if there were a bar use it would require a conditional use permit from the Board of Adjustment before they could get a liquor license.

Motion passed 13-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:dfa

Attachment

Item 2006 00199 Date 1/25/07

I (am (am not) in favor of the request.
(Circle One)

RECEIVED
JAN 29 2007
COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name Sabeth N. Barnett

Signature Sabeth N. Barnett

Address 112 11th Street, Unit 301
Des Moines, IA 50309

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

See attached

ATTN Steve Klinkefus
Des Moines Community Development
602 East 1st Street
Des Moines, IA 50309-9603



RECEIVED
JAN 29 2007
COMMUNITY DEVELOPMENT
DEPARTMENT

Re: Item 2006 00199 re 121 12th Street
P&Z Agenda February 1, 2007, 6:00 p.m.

I purchased a Mulberry Loft (112 11th Street) in 2006 after 5 years renting an apartment across from the Civic Center. I love downtown Des Moines – that’s why I chose to buy here, but given what I know from past experience I do not believe I would have chosen to buy a loft adjacent to a live music venue. The Mulberry Loft Project is a success story for downtown Des Moines and I do not believe the rezoning of 121 12th Street to allow conversion of a portion of the building to a live performance venue is in the best interests of the resident owners of the Mulberry Lofts.

112 11th # 301

Item 2006 00199 Date 1-30-07

I (am) (am not) in favor of the request.
(Circle One)

RECEIVED

JAN 31 2007

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Print Name Allan J Hintzsche

Signature *Allan J Hintzsche*

Address 112 11th St #103

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

Item 2006 00199 Date JANUARY 28, 2007

I (am) (am not) in favor of the request.
(Circle One)

RECEIVED

JAN 30 2007

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Print Name Richard Leperowitz

Signature *Richard Leperowitz*

Address 213 13th Street

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

Item 2006 00199 Date 1/29/07

I (am) (am not) in favor of the request.
(Circle One)

RECEIVED

Print Name Laura Burkhalter

JAN 30 2007

Signature Laura Burkhalter

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Address 112 11th St #108, DM, 50305

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

Neighborhood needs improvement

Item 2006 00199 Date 1-25-07

I (am) (am not) in favor of the request.
(Circle One)

RECEIVED

Print Name Anthony W. Stronig

JAN 29 2007

Signature Anthony W. Stronig

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Address 107 12th

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

Adds value to older structures in
neighborhood - however owner must
"police" neighborhood for trash, illegal
parking, etc to the detriment
affected directly.

Item 2006 00199

Date 1-23-07

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

(Circle One)

RECEIVED ✓

JAN 30 2007

**COMMUNITY DEVELOPMENT
DEPARTMENT**

112 11th #208

Print Name

Phenix Properties

Signature

[Handwritten Signature]

Address

208 11th St D.M.

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

Proof for Community Development

Item 2006 00199

Date 31-JAN-07

(am) (am not) in favor of the request.

(Circle One) **RECEIVED**

FEB 05 2007

Print Name

RYAN DOTY

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Signature

[Handwritten Signature]

Address

112 1146 ST #205

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

55

Item 2006 00199

Date 2/2/07

I (am) in favor of the request.
(Circle One)

RECEIVED

FEB 06 2007

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Print Name Nabeel Nimry

Signature [Handwritten Signature]

Address 112 11th St #101

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

Noise level too high / Live
Performance venue / not enough
parking in the Street

