

★ **Roll Call Number**

Agenda Item Number

65A

Date April 10, 2006

WHEREAS, on August 7, 2000, by Roll Call No. 00-3381 the City Council adopted the Des Moines 2020 Community Character Land Use Plan; and


WHEREAS, the City Plan and Zoning Commission has advised in the attached letter that at a public hearing held March 2, 2006, the members voted 13-0 in support of a motion to recommend **APPROVAL** of a request from Dominic Formaro (owner) to amend the Des Moines 2020 Community Character Land Use Plan to revise the future land use designation from Low Density Residential to Commercial: Pedestrian-Oriented Neighborhood Node for property located at 3004 East 38th Street, as more specifically shown in the accompanying map.

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

1. That the proposed amendment to the Des Moines 2020 Community Character Land Use Plan described above, is hereby approved.
2. That all other parts of said Des Moines 2020 Community Character Land Use Plan are hereby deemed to remain in full force and effect and the Plan adopted by the City Council by Roll Call No. 00-3381 on August 7, 2000, and all subsequent amendments thereto including the amendment herein shall constitute the official comprehensive plan known as the Des Moines 2020 Community Character Land Use Plan.

MOVED by _____ to adopt and approve the proposed amendment.

FORM APPROVED:


 Roger K. Brown
 Assistant City Attorney

(21-2006-4.02)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BROOKS				
COLEMAN				
KIERNAN				
HENSLEY				
MAHAFFEY				
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

April 10, 2006

65A

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held March 2, 2006 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			

APPROVAL of a request from Dominic Formaro (owner) to amend the Des Moines 2020 Community Character Land Use Plan to revise the future land use designation from Low Density Residential to Commercial: Pedestrian-Oriented Neighborhood Node for property located at 3004 East 38th Street, as more specifically shown in the accompanying map. (21-2006-4.02)

By separate motion, members voted 11-2 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

CONDITIONAL APPROVAL of a request from Dominic Formaro (owner) to rezone property located at 3004 East 38th Street from the "R1-70" One-Family Low-Density Residential District to the "C-1" Neighborhood Retail Commercial District, subject to the following conditions: (ZON2006-00015)

1. The property shall not be converted from its current office use to any other commercial use until a site plan has been approved by the City's Permit and Development Center that conforms with all City regulations, including but not limited to storm water, landscaping, parking, and building code requirements.
2. If the property is converted from its current office use to any other commercial use allowed in the "C-1" District, the property shall be brought into substantial conformance with the approved site plan within six months after such other commercial use is commenced.
3. Prohibition of the following uses:
 - a. Gas stations.
 - b. Package goods stores for the sale of alcoholic beverages.
 - c. Small engine repair
 - d. Pawn shop
 - e. Title loan business
 - f. Theatre
 - g. Auto repair
 - h. Auto parts
4. Limitation of business hours to 6 a.m. to 11 p.m. Monday through Thursday, 6 a.m. to 1 a.m. Fridays & Saturdays, and no restaurant use on Sundays.

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Part A) Staff recommends that the requested rezoning does not conform with the current Des Moines' 2020 Community Character Plan's future land use designation of Low-Density Residential.

Part B) Staff recommends approval of an amendment to the Des Moines' 2020 Community Character Plan revising the future land use designation from Low-Density Residential to Commercial: Pedestrian-Oriented Neighborhood Node.

Part C) Staff recommends approval of the requested rezoning of the property at 3004 East 38th Street from the "R1-70" One-Family Low-Density Residential District to the "C-1" Neighborhood Retail Commercial District, subject to the following conditions:

1. The property shall not be converted from its current office use to any other commercial use until a site plan has been approved by the City's Permit and Development Center that conforms with all City regulations, including but not limited to storm water, landscaping, parking, and building code requirements.
2. If the property is converted from its current office use to any other commercial use allowed in the "C-1" District, the property shall be brought into substantial conformance with the approved site plan within six months after such other commercial use is commenced.
3. Prohibition of the following uses:
 - a. Gas stations.
 - b. Package goods stores for the sale of alcoholic beverages.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to rezone the property in order to allow conversion of the existing 4,944-square foot structure from an office use to a restaurant use.

Such a conversion is considered to be a “change-in-use” and, therefore, is not permitted by grandfather rights in the existing “R1-70” One-Family Residential District.

The proposed conversion would also be subject to review and approval of a site plan by the City’s Permit and Development Center. This site plan must be in conformance with all City regulations, including but not limited to storm water, landscaping, parking, and building code requirements.

2. **Size of Site:** 143’ x 159’ or 22,737 square feet (0.52 acre).
3. **Existing Zoning (site):** “R1-70” One-Family Residential District.
4. **Existing Land Use (site):** Unoccupied 1-story, 4,944 square foot structure with parking lot.
5. **Adjacent Land Use and Zoning:**
 - North* - “R1-70”, Use is New Testament Baptist Church.
 - South* - “R1-60”, Use is single-family residential.
 - East* - “R1-60”, Use is single-family residential.
 - West* – “R1-70”, Use is parking lot for New Testament Baptist Church.
6. **General Neighborhood/Area Land Uses:** The subject property is located in a predominantly low-density residential neighborhood at the northwest corner of the intersection of East 38th Street and Hull Avenue. A church is located adjacent to the north and a parking lot for the church is located adjacent to the west.
7. **Applicable Recognized Neighborhood(s):** N/A.
8. **Relevant Zoning History:** N/A.
9. **2020 Community Character Land Use Plan Designation:** Low-Density Residential.
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:** Future reuse of the site as any commercial use other than an office use would be subject to review and approval of a site plan by the City’s Permit and Development Center. This site plan must be in conformance with the City’s storm water management requirements under the City Site Plan policies.
2. **Landscaping & Buffering:** Future reuse of the site as any commercial use other than an office use would be subject to review and approval of a site plan by the City’s Permit and Development Center. This site plan must be in conformance with the City’s landscaping standards, which would include perimeter, buffer yard, and parking lot plantings. The landscaping standards would require removal of the paving in the required front yard area along both East 38th Street and Hull Avenue and require restoration of the curb and sidewalk.

3. **Access or Parking:** Future reuse of the site as any commercial use other than an office use would be subject to review and approval of a site plan by the City's Permit and Development Center. This site plan must be in conformance with the City's parking requirements. The Ordinance requires provision of 1 off-street parking space per 150 square feet of gross floor area for a restaurant use. 33 off-street parking spaces would be required if the entire existing 4,944 square foot structure were used for a restaurant use. If the site were unable to provide the minimum required off-street parking spaces, the applicant must obtain the necessary relief from the Zoning Board of Adjustment.
4. **Traffic/Street System:** Staff believes that the adjoining streets (East 38th Street and Hull Avenue) can adequately support the traffic generated by any future reuse of the site as allowed in the requested "C-1" District so long as the site provides the minimum required off-street parking.
5. **2020 Community Character Plan:** The requested "C-1" District is consistent with the proposed Des Moines' 2020 Community Character Plan's future land use designation of Commercial: Pedestrian-Oriented Neighborhood Node. The proposed future land use designation is appropriate given the isolated small amount of land carrying this future land use designation and its location at the intersection of East 38th Street and Hull Avenue, which both function as minor collector streets within a predominantly low-density residential neighborhood.

Written Responses

3 In Favor

1 In Opposition

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

SUMMARY OF DISCUSSION

Jason VanEssen: Presented staff report and recommendation. Identified the uses permitted in the "C-1" Neighborhood Retail Commercial District. Explained the difference between a bar or tavern and a restaurant that can have a liquor license. A restaurant derives 50% or more of their sales revenue from food.

Dominic Formaro, Sr., 2350 E. 40th Court: Also owns the property at 3004 E. 38th Street. Indicated he did not foresee any problems with parking requirements and noted they could adjust the square footage of the restaurant if necessary; added they plan to have consignment retail space, also. Would be amenable to considering hours of operation to fit into the neighborhood. The current proposal offers flexible hours that would be amenable to the neighbors. Indicated there was no problem with having no liquor store, and if required he would be amenable to a requirement that the entire building be a restaurant provided he could obtain relief from the Board of Adjustment for parking requirements. He did not anticipate any problems with patrons parking in the Church parking lot with the type of restaurant they are considering (carryout and dine in). Explained the site was a bakery at one time and was a good fit and believed the planned use would also be a good fit in the neighborhood and a tremendous asset.

Larry Hulse: Cautioned the Commission that if they had concerns regarding hours of operation or something else, they should attach conditions to the zoning since future owners may not be as willing to conform to the requests of the Commission. Also suggested the applicant attempt to work with the Church for shared parking. Recommended the Commissioners consider whether auto parts and theatre uses allowed in the zoning district should be prohibited on this property.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following individual spoke to the request:

Pastor of New Testament Baptist Church, 3020 E. 38th Street: Only opposed to the applicant's request for a liquor license; no other concerns with the request.

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

CHAIRPERSON CLOSED THE PUBLIC HEARING

Brian Millard: Moved staff recommendation with additional prohibition of the following uses:

- Small engine repair
- Pawn shop
- Title loan business
- Auto parts
- Theatre
- Auto repair

Bruce Heilman: Offered a friendly amendment regarding hours of operation as a result of the surrounding residential uses. Did not want to harm the restaurant but asked that hours of operation be Monday through Thursday 6 a.m. to 11:00 p.m., Fridays and Saturdays 6 a.m. to 1 a.m. and asked if Sundays would conflict with the Church services.

Dominic Formaro: Indicated the restaurant would be closed on Sundays.

Brian Millard: Accepted the friendly amendment.

Dominic Formaro: Asked about having a tenant that wanted to be open Sundays. Also indicated if there were the opportunity to utilize some of the parking from the Church the entire operation could be made to be restaurant and they could offer meeting room facilities.

Brian Millard: Noted it would be a restaurant that people would walk to and encouraged staff to work with the applicant to entice the full operation be restaurant use.

Motion passed 13-0 to amend the Des Moines' 2020 Community Character Plan.

Motion to rezone passed 11-2 (Jeffrey Johannsen and Brook Rosenberg were in opposition).

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:dfa

Attachment

65A

Dominick Formaro - 3004 E 38th Street

21-2006-4.02

