



.....  
**Date** ..... April 20, 2009 .....

WHEREAS, on March 9, 2009 by Roll Call No. 09-380, the City Council of the City of Des Moines set the date of hearing on a request from Menard, Inc. to rezone property located at 1201 East Diehl Avenue from R1-60 One-Family Low-Density Residential District and C-2 General Retail and Highway Oriented Commercial District to Limited C-2 General Retail and Highway Oriented Commercial District to allow an expansion of the existing outdoor merchandise area and a 23,760 square foot roofed garden center to the north side of the existing Menard's home improvement retail center, for 5:00 p.m. on March 23, 2009 in Council Chambers, City Hall, Des Moines, Iowa. The proposed rezoning is subject to the following conditions:

1. The westernmost 90 feet of the subject property shall remain zoned "R1-60" One-Family Low-Density Residential District. (Any commercial development must provide the minimum required 10-foot rear yard setback from this zoning boundary.)
2. The following uses of structures and land shall be prohibited upon the Property:
  - a. Vehicle display lots, including but not limited to used car sales lots;
  - b. Adult entertainment businesses;
  - c. Taverns and nightclubs;
  - d. Off-premises advertising signs; and
  - e. Package goods stores for the sale of alcoholic beverages.
3. Any commercial development on the Property shall be setback at least 55 feet from the north side property line.
4. Any commercial development on the Property shall be screened with a continuous 14-foot tall solid wall that is setback at least 55 feet from the north side property line. The bottom 4 feet shall be constructed of a masonry material the upper 10 feet may be constructed of 2-inch by 8-inch vertical treat lumber with no spacing between boards.
5. No outdoor storage of merchandise in the outdoor display area of the Property shall be stacked higher than the perimeter fencing.
6. Any external lighting on the Property shall have a maximum height of 14 feet in height and shall be down-directed cut-off fixtures.
7. Any commercial use of the Property shall be in conformance with an approved site plan that shall:
  - a. Contain a landscape plan and building elevations demonstrating general conformance with the site sketch submitted by the applicant incident to this rezoning, to the satisfaction of the Community Development Director. (This includes providing 8 evergreen trees and 4 overstory trees per 100 lineal feet along the north property line.); and
  - b. Provide landscaped bufferyards and open space in conformance with the City's adopted landscape standards.
8. Any commercial expansion onto the Property shall be subject to the entire commercial development being brought into conformance with the current storm water management requirements.



.....  
**Date** ..... April 20, 2009 .....

9. All necessary permits shall be obtained for the construction of any building or wall upon the Property.
10. Prior to issuance of the Certificate of Occupancy for any commercial use of the Property, the professional who signed the site plan shall submit a letter to the Community Development Director certifying that the Property has been improved in substantial conformance with the approved site plan.

WHEREAS, the subject property is legally described as follows:

A part of the North 1/2 of the Northeast 1/4 of the Southeast 1/4 of Section 27, Township 78 North, Range 24 West of the 5th P.M., and described as follows:

Commencing at the Southeast corner of Lot 26, Jordan Place Plat Two, an Official Plat; thence North 89° (degrees) 28' (minutes) 14" (seconds) West along the south line of Lots 26, 25, 24 and 23 of said Jordan Place Plat Two, a distance of 227.11 feet to the West line of the East 160.00 feet of the West 590.20 feet of the South 155.90 feet of said North 1/2 of the Northeast 1/4 of the Southeast 1/4 and the Point of Beginning; thence South 00° 08' 49" East along said West line, 155.67 feet to the South line of said North 1/2 of the Northeast 1/4 of the Southeast 1/4; thence North 89° (degrees) 29' (minutes) 10" (seconds) West along said South line, 430.23 feet to the East line of Lot 3, Jordan Place Plat Three, an Official Plat; thence North 00° (degrees) 12' (minutes) 03" (seconds) West along said East line of Lot 3 and along the East line of Lot 2 and Lot 1 of said Jordan Place Plat 3, a distance of 155.79 feet to the Northeast corner of said Lot 1 and the South line of Lot 16 of said Jordan Place Plat 2; thence South 89° (degrees) 28' (minutes) 14" (seconds) East along the South line of said Lot 16 and along the South line of Lots 17 through 23, a distance of 430.38 feet to the Point of Beginning, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

WHEREAS, due notice of the March 23<sup>rd</sup> hearing was published in the Des Moines Register on March 14, 2009 as provided by law, setting forth the time and place for hearing on the proposed application; and

WHEREAS, on March 23, 2009 by Roll Call No. 09-495 the City Council continued the hearing to the April 6, 2009 Council meeting at 5:00 p.m. in City Council Chambers, City Hall to allow Community Development Department staff to meet with Jordan Task Force, South Park Neighborhood Association and Menard, Inc. prior to the public meeting. These parties met regarding the proposed rezoning on March 31, 2009; and

**Date** April 20, 2009

WHEREAS, on April 6, 2009 by Roll Call No. 09-584 the City Council continued the hearing to the April 20, 2009 Council meeting at 5:00 p.m. in Council Chambers, City Hall to allow further opportunity for Menard, Inc., City staff and concerned neighbors to resolve certain issues, including the width of setback from the north property line. Conditions No. 3 and 4 state the agreement reached concerning the north setback; and


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

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Des Moines that upon due consideration of the facts and statements of interested persons and arguments of counsel, the hearing is closed and the application to rezone the above described property to a Limited C-2 district classification.

(Six votes needed for approval)

Moved by \_\_\_\_\_ to \_\_\_\_\_

APPROVED AS TO FORM:

  
 \_\_\_\_\_  
 Michael F. Kelley  
 Assistant City Attorney

(Council Communication No. 09-236)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
<b>TOTAL</b>				

**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.

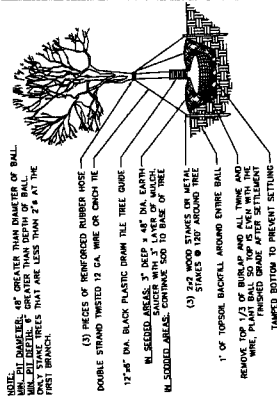
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED

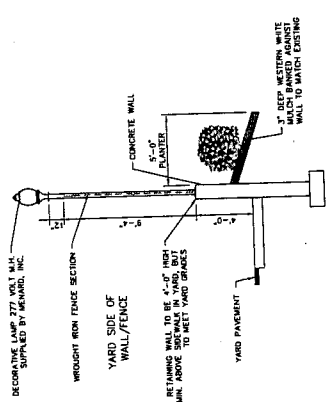
\_\_\_\_\_  
 Mayor

\_\_\_\_\_  
 City Clerk

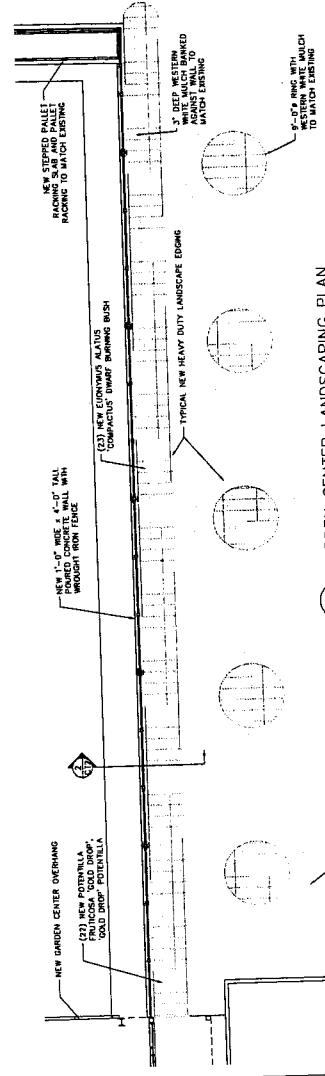




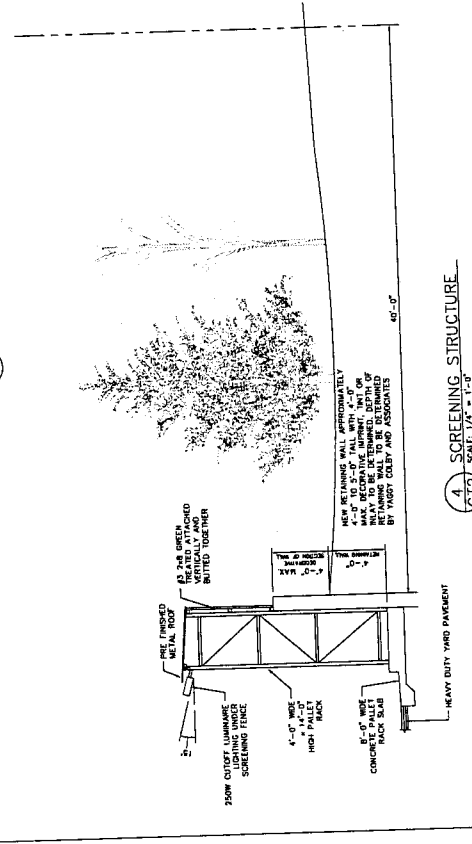
3 TREE PLANTING AND STAKING DETAIL  
FOR NEW AND RELOCATED TREES  
SCALE: NONE



2 FENCE POST SECTION  
SCALE: 1/4\"/>



1 GARDEN CENTER LANDSCAPING PLAN  
SCALE: 1/8\"/>




4 SCREENING STRUCTURE  
SCALE: 1/4\"/>

PROJECT TITLE		DES Moines, IOWA	
SHEET TITLE		REVISED SITE DETAILS	
SCALE		AS SHOWN	
DATE		10-24-08	
BY		J. CLARK	
CHECKED		J. CLARK	
DATE		10-24-08	
DESCRIPTION		CLARIFY NOTES AND PLANS PER CITY RECORDS	
DATE		10-24-08	
SCALE		AS SHOWN	
DATE		10-24-08	
DESCRIPTION		REUSE PALLET READING LISTING	
DATE		10-24-08	

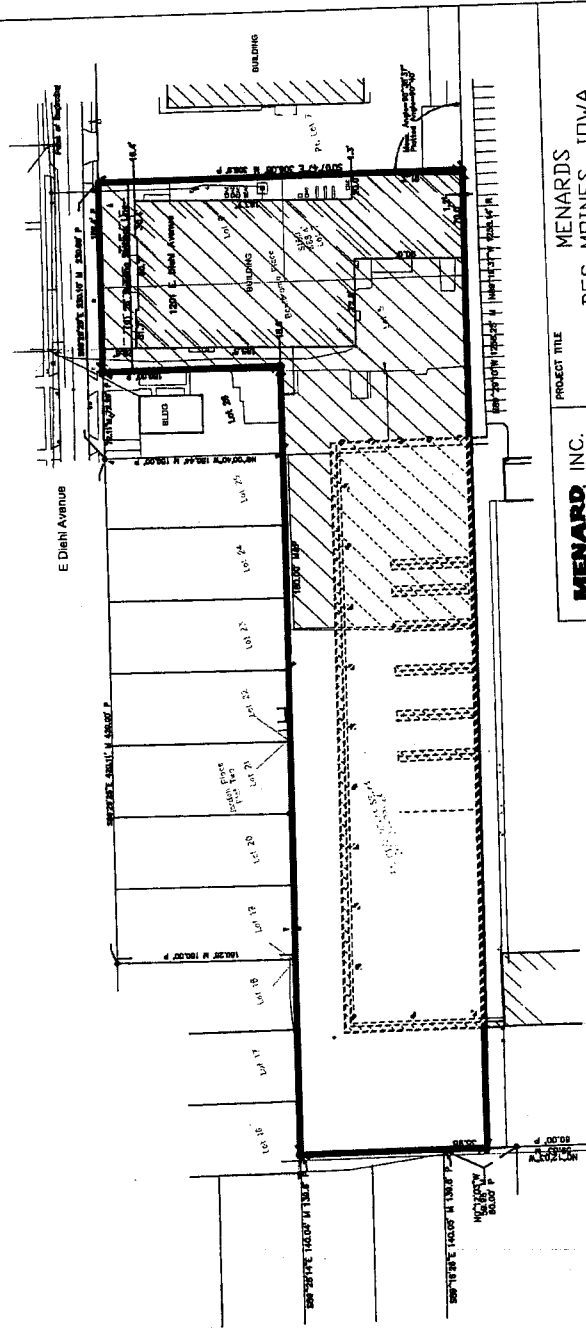
SITE PLAN		MENARD INC.	
APPENDIX		STORE DESIGN DEPARTMENT	
DATE		10-24-08	
DESCRIPTION		CLARIFY NOTES AND PLANS PER CITY RECORDS	
DATE		10-24-08	
SCALE		AS SHOWN	
DATE		10-24-08	
DESCRIPTION		REUSE PALLET READING LISTING	
DATE		10-24-08	



WYCKOFF PROPERTY = 150,695± SQ. FT./3.46± ACRES


 -IMPERVIOUS SURFACE AREA PERCENTAGE FOLLOWING COMPLETION OF THE PROPOSED MENARDS GARDEN CENTER/YARD EXPANSION IMPROVEMENTS =56.925± SQ. FT./150,695± SQ. FT. = 37.77% IMPERVIOUS


 -IMPERVIOUS SURFACE AREA PERCENTAGE AT PRESENT BASED ON THE EXISTING WYCKOFF INDUSTRIES IMPROVEMENTS =78.472± SQ. FT./150,695± SQ. FT. = 52.07% IMPERVIOUS



<b>MENARDS, INC.</b>		PROJECT TITLE		MENARDS DES MOINES, IOWA	
PLANNING & DEVELOPMENT DEPARTMENT EAU CLAIRE, WISCONSIN		SHEET TITLE		WYCKOFF PROPERTY IMPERVIOUS PERCENTAGES	
REVISIONS		SCALE		1" = 50'	
NO.	DATE	DESCRIPTION	BY	DATE	SHEET NO.
1					
2					
3					

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Prepared by: Michael F. Kelley, Assistant City Attorney, 400 Robert Ray Dr., Des Moines, IA 50309 515/283-4124  
Return Address: City Clerk - City Hall, 400 Robert Ray Dr., Des Moines, IA 50309  
Taxpayer: No change  
Title of Document: Acceptance of Rezoning Ordinance  
Grantor's Name: Don Wyckoff Heating, Inc. and Menard, Inc.  
Grantee's Name: City of Des Moines, Iowa  
Legal Description:

A part of the North 1/2 of the Northeast 1/4 of the Southeast 1/4 of Section 27, Township 78 North, Range 24 West of the 5th P.M., and described as follows:

Commencing at the Southeast corner of Lot 26, Jordan Place Plat Two, an Official Plat; thence North 89° (degrees) 28' (minutes) 14" (seconds) West along the south line of Lots 26, 25, 24 and 23 of said Jordan Place Plat Two, a distance of 227.11 feet to the West line of the East 160.00 feet of the West 590.20 feet of the South 155.90 feet of said North 1/2 of the Northeast 1/4 of the Southeast 1/4 and the Point of Beginning; thence South 00° 08' 49" East along said West line, 155.67 feet to the South line of said North 1/2 of the Northeast 1/4 of the Southeast 1/4; thence North 89° (degrees) 29' (minutes) 10" (seconds) West along said South line, 430.23 feet to the East line of Lot 3, Jordan Place Plat Three, an Official Plat; thence North 00° (degrees) 12' (minutes) 03" (seconds) West along said East line of Lot 3 and along the East line of Lot 2 and Lot 1 of said Jordan Place Plat 3, a distance of 155.79 feet to the Northeast corner of said Lot 1 and the South line of Lot 16 of said Jordan Place Plat 2; thence South 89° (degrees) 28' (minutes) 14" (seconds) East along the South line of said Lot 16 and along the South line of Lots 17 through 23, a distance of 430.38 feet to the Point of Beginning, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

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## ACCEPTANCE OF REZONING ORDINANCE

The undersigned hereby states, warrants and agrees as follows:

1. That Don Wyckoff, as titleholder and Menard, Inc. as contract purchaser are the sole owners of the Property in the vicinity of 1201 East Diehl Avenue, more specifically described above.
2. That in the event the City of Des Moines, Iowa, acts to rezone the Property from the R1-60 One-Family Low-Density Residential District and C-2 General Retail and Highway Oriented Commercial District to C-2 General Retail and Highway Oriented Commercial District



to allow an expansion of the existing outdoor merchandise area and 23,760 square-foot roofed garden center to the north side of the existing Menard's home improvement retail center, we agree and accept on behalf of the owners to the imposition of the following conditions to run with the land and be binding upon all successors, heirs and assigns as part of the ordinance so rezoning the Property:

1. The westernmost <sup>90 Feet</sup> 100 of the subject property shall remain zoned "R1-60" One-Family Low-Density Residential District. (Any commercial development must provide the minimum required 10-foot rear yard setback from this zoning boundary.)
2. The following uses of structures and land shall be prohibited upon the Property:
  - a. Vehicle display lots, including but not limited to used car sales lots;
  - b. Adult entertainment businesses;
  - c. Taverns and nightclubs;
  - d. Off-premises advertising signs; and
  - e. Package goods stores for the sale of alcoholic beverages.
3. Any commercial development on the ~~site~~ shall be setback at least 40 feet from the north side property line.
4. Any commercial development on the ~~site~~ <sup>Property</sup> shall be screened with a continuous 14-foot tall solid wall that is setback at least 40 feet from the north side property line. The bottom 4 feet shall be constructed of a masonry material the upper 10 feet may be constructed of 2-inch by 8-inch vertical treat lumber with no ~~X~~ spacing between boards.
5. No outdoor storage of merchandise in the outdoor display area shall be stacked higher than the perimeter fencing.
6. Any external lighting on the ~~site~~ <sup>Property</sup> shall have a maximum height of 14 feet in height and shall be down-directed cut-off fixtures.
7. Any commercial use of the Property shall be in conformance with an approved site plan that shall:
  - a. Contain a landscape plan and building elevations demonstrating general conformance with the site sketch submitted by the applicant incident to this rezoning, to the satisfaction of the Community Development Director. (This includes providing 8 evergreen trees and 4 overstory trees per 100 lineal feet along the north property line.); and
  - b. Provide landscaped bufferyards and open space in conformance with the City's adopted landscape standards.
8. Any commercial expansion onto the ~~Property~~ <sup>Property</sup> shall be subject to the entire commercial development being brought into conformance with the current storm water management requirements.
9. All necessary permits shall be obtained for the construction of any building or wall upon the Property.
10. Prior to issuance of the Certificate of Occupancy for any commercial use of the Property, the professional who signed the site plan shall submit a letter to the Community Development Director certifying that the Property has been improved in substantial conformance with the approved site plan.

**NOTE**  
90+10  
= 100'  
total  
Setback

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3. A certified copy of the rezoning ordinance shall be attached hereto, and a certified copy of this document and the rezoning ordinance shall be recorded by the City in the land records of the County Recorder to memorialize the rezoning of the Property as identified above.

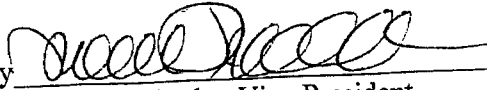
4. That in the event any portion of the Property is hereafter rezoned to a district classification different from Limited C-2, then this Acceptance shall be immediately terminated as applied to the real estate so rezoned on the effective date of such rezoning, and the conditions agreed to herein shall be rendered null and void, provided, if there be any such rezoning to a more restricted zoning classification, any then legal actual use of such real estate shall become a legal non-conforming use.

The words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

(Signature pages to follow)

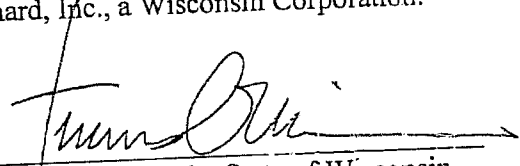
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**MENARD, INC.**

By   
Marv. Prochaska, Vice President  
Menard, Inc., a Wisconsin Corporation

STATE OF WISCONSIN            )  
  ) ss:  
COUNTY OF EAU CLAIRE        )

This instrument was acknowledged before me on March 20<sup>th</sup>, 2009, by **Marv Prochaska**, Vice President who is personally known to me and has been authorized by the Board of Directors to execute this document on behalf of Menard, Inc., a Wisconsin Corporation.

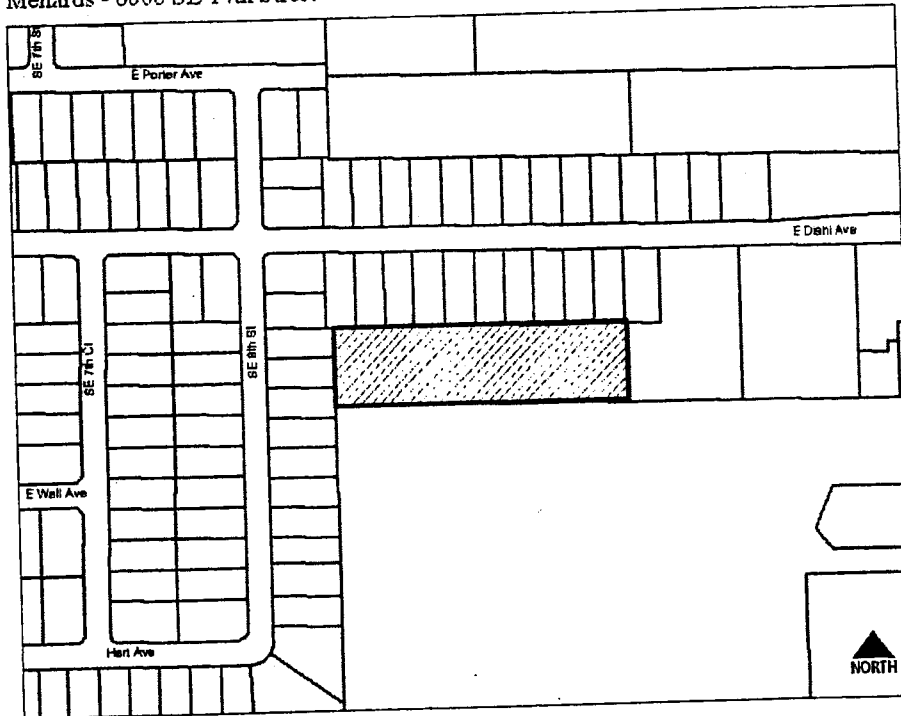
  
Notary Public in the State of Wisconsin  
My commission ~~expires~~: is permanent

18  
57B  
62

Request from Menard, Inc. (purchaser) represented by Thomas O'Neil (officer) to rezone property located at 1201 East Diehl Avenue. The subject property is owned by Don Wyckoff Heating, Inc.		File # ZON2008-00194			
<b>Description of Action</b>	Rezone property from "R1-60" One-Family Low-Density Residential District to "C-2" General Retail and Highway Oriented Commercial District, to allow an expansion of the existing outdoor merchandise area and 23,760 square-foot roofed garden center to the north side of the existing Menard's home improvement retail center.				
<b>2020 Community Character Plan</b>	Low-Density Residential				
<b>Horizon 2025 Transportation Plan</b>	No Planned Improvements				
<b>Current Zoning District</b>	"R1-60" One-Family Low-Density Residential District				
<b>Proposed Zoning District</b>	"C-2" General Retail and Highway Oriented Commercial District				
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition	
	3	12		>20	
<b>Plan and Zoning Commission Action</b>	Approval	7-5	<b>Required 6/7 Vote of the City Council</b>	Yes	X
	Denial			No	

Menards - 6000 SE 14th Street

ZON2008-00194



Date \_\_\_\_\_  
 Agenda Item 290 <sup>18</sup> 62  
 Roll Call # \_\_\_\_\_

February 25, 2009

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 February 19, 2009, the following action was taken:

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 7-5 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley		X		
Dann Flaherty		X		
Bruce Heilman		X		
Ted Irvine	X			
Jeffrey Johannsen	X			
Greg Jones	X			
Frances Koontz				X
Jim Martin		X		
Brian Millard		X		
Mike Simonson	X			
Kent Sovern				X



CITY PLAN AND ZONING COMMISSION  
 ARMORY BUILDING  
 602 ROBERT D. RAY DRIVE  
 DES MOINES, IOWA 50309 -1881  
 (515) 263-4182

ALL-AMERICA CITY  
 1949, 1976, 1981  
 2003

**APPROVAL** of staff recommendation Part A) To find the proposed "C-2" General Retail and Highway-Oriented Commercial District not in conformance with the existing Des Moines' 2020 Community Character Plan's current land use designation of Low-Density Residential.

Part B) To recommend the Des Moines' 2020 Community Character Plan future land use designation be amended from Low Density Residential to Community Commercial.

Part C) To rezone the site to a Limited "C-2" General Retail and Highway-Oriented Commercial District subject to the owner agreeing to the following conditions:

1. The westernmost 100 of the subject property shall remain zoned "R1-60" One-Family Low-Density Residential District. (Any commercial development must provide the minimum required 10-foot rear yard setback from this zoning boundary.)
2. The following uses of structures and land shall be prohibited upon the Property:
  - a. Vehicle display lots, including but not limited to used car sales lots;
  - b. Adult entertainment businesses;
  - c. Taverns and nightclubs;
  - d. Off-premises advertising signs; and

- e. Package goods stores for the sale of alcoholic beverages.
3. Any commercial development on the site shall be setback at least 40 feet from the north side property line.
  4. Any commercial development on the site shall be screened with a continuous 14-foot tall solid wall that is setback at least 40 feet from the north side property line. The bottom 4 feet shall be constructed of a masonry material the upper 10 feet may be constructed of 2-inch by 8-inch vertical treat lumber with not spacing between boards.
  5. No outdoor storage of merchandise in the outdoor display area shall be stacked higher than the perimeter fencing.
  6. Any external lighting on the site shall have a maximum height of 14 feet in height and shall be down-directed cut-off fixtures.
  7. Any commercial use of the Property shall be in conformance with an approved site plan that shall:
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  8. Any commercial expansion onto the property shall be subject to the entire commercial development being brought into conformance with the current storm water management requirements.
  9. All necessary permits shall be obtained for the construction of any building or wall upon the Property.
  10. Prior to issuance of the Certificate of Occupancy for any commercial use of the Property, the professional who signed the site plan shall submit a letter to the Community Development Director certifying that the Property has been improved in substantial conformance with the approved site plan.

Written Responses

3 In Favor

12 In Opposition

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

Part A) Staff recommends the Commission find the proposed "C-2" General Retail and Highway-Oriented Commercial District not in conformance with the Des Moines' 2020 Community Character Plan's current land use designation of Low-Density Residential.

Part B) Staff recommends that the Des Moines' 2020 Community Character Plan future land use designation be amended from Low Density Residential to Community Commercial.

Part C) Staff recommends rezoning the site to a Limited "C-2" General Retail and Highway-Oriented Commercial District subject to the owner agreeing to the following conditions:

1. The westernmost 100 of the subject property shall remain zoned "R1-60" One-Family Low-Density Residential District. (Any commercial development must provide the minimum required 10-foot rear yard setback from this zoning boundary.)
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## **STAFF REPORT**

### **I. GENERAL INFORMATION**

1. **Purpose of Request:** The applicant is seeking to expand the Menard's home improvement store onto a 150-foot-wide parcel of land adjoining the north side of the site that would be vacated by Wyckoff Industries. The proposed expansion of Menard's would include a 72-foot-wide by 330-foot (23,760 square feet) enclosed garden center addition to the north side of the

existing Menard's store and an approximate 145-foot by 490-foot outdoor display area.

The submitted site sketch demonstrates that the outdoor display area would be screened by a 14-foot-tall solid wall constructed entirely with vertical 2-inch by 8-inch treated lumber with no spacing between boards. The applicant has proposed a 25-foot setback from the north side property line and a 100-foot setback from the west rear property line. Staff believes that a 40-foot setback from the north property line is more appropriate in order to minimize its impact on the adjoining residential properties.

If rezoned to the "C-2" District, future development of the site (and any modifications to the existing Menard's site) would be subject to administrative review and approval of a site plan. The site plan must comply with all requirements, including those regarding stormwater management, landscaping, and off-street parking.

2. **Size of Site:** 150 feet by 614 feet or 92,250 square feet (2.12 acres).
3. **Existing Zoning (site):** The easternmost 180 feet is zoned Limited "C-2" General Retail and Highway-Oriented Commercial District (conditions are noted in the "Relevant Zoning History" subsection), while the balance of the site is zoned "R1-60 One-Family Low-Density Residential District.
4. **Existing Land Use (site):** The subject property currently contains a contractor storage yard used by Wyckoff Industries and an undeveloped area.

**5. Adjacent Land Use and Zoning:**

*North – "R1-60", Uses are single-family residential.*

*South – "C-2", Use is the Menard's home improvement store.*

*East – "C-2"; Use is a commercial building currently occupied by Wyckoff Industries and the Bowlerama bowling alley.*

*West – "R1-60", Uses are single-family residential.*

6. **General Neighborhood/Area Land Uses:** The subject property is located along the SE 14<sup>th</sup> Street major commercial corridor in an area that transitions from the Menard's retail business to a low-density residential area to the north.
7. **Applicable Recognized Neighborhood(s):** South Park Neighborhood Association.
8. **Relevant Zoning History:** On February 20, 2006, the City Council adopted Ordinance 14,547 to rezone a portion of the subject property from "R1-60" One-Family Low-Density Residential District to a Limited "C-2" General Retail and Highway-Oriented Commercial District with the following limitations:

- 1) The following uses of structures and land shall be prohibited upon the Property:
  - a) Vehicle display lots, including but not limited to used car sales lots;
  - b) Adult entertainment businesses;
  - c) Taverns and nightclubs;
  - d) Off-premises advertising signs; and
  - e) Package goods stores for the sale of alcoholic beverages.
- 2) Any commercial use of the Property shall be in conformance with an approved site plan. In the site plan approval process, the submitted site plan shall:



