



Date April 6, 2015

**RESOLUTION HOLDING HEARING ON REQUEST FROM AZHAR IQBAL AND DOMINIC MATHEW (OWNERS) TO REZONE PROPERTY LOCATED AT 4538 LOWER BEAVER ROAD FROM "R-4" MULTIPLE-FAMILY RESIDENTIAL DISTRICT TO "C-2" GENERAL RETAIL AND HIGHWAY-ORIENTED COMMERCIAL DISTRICT**

**WHEREAS**, on March 9, 2015, by Roll Call No. 15-0388, the City Council received and filed a communication from the City Plan and Zoning Commission advising that at a public hearing held on February 19, 2015, its members voted 7-2 in support of a motion to recommend **APPROVAL** of a request from Azhar Iqbal and Dominic Mathew (owners) to rezone real property locally known as 4538 Lower Beaver Road ("Property") from "R-4" Multiple-Family Residential District to "C-2" General Retail and Highway-Oriented Commercial District, to allow the right to request a necessary Conditional Use Permit to continue selling alcoholic liquor, wine, and beer as part of either a limited food/retail sales establishment or as a liquor store; and

**WHEREAS**, on March 9, 2015, by Roll Call No. 15-0388, it was duly resolved by the City Council that the application of Azhar Iqbal and Dominic Mathew (owners) to rezone the Property, as legally described below, be set down for hearing on April 6, 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**, 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 Property locally known as 4538 Lower Beaver Road, legally described as:

A tract of land situated in the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 20, Township 79 North, Range 24 west of the 5th Prime Meridian, now included in and forming a part of the City of Des Moines, Polk County, Iowa, which is described as: Commencing at the Northwest corner of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 20, thence East 654.3 feet to the Westerly line of Lower Beaver Road, as presently established, thence South  $1^{\circ}51'$  East along said Westerly line of said Lower Beaver Road and 33.0 feet West of and parallel to the center line of said Lower Beaver Road as presently established, 1034.6 feet to the Northeast corner of Lot 1 Monterey Park Plat No. 7, thence North  $1^{\circ}51'$  West along the Westerly line of said Lower Beaver Road 310.5 feet to the point of beginning, thence continuing North  $1^{\circ}51'$  West along said Westerly line 120.0 feet to the Southeast corner of the D.X. Oil Company property, thence North  $90^{\circ}00'$  West 120 feet to the Southwest corner of the D.X. Oil Company property, thence South  $1^{\circ}51'$  East parallel to and 120.0 feet West of the West line of said Lower Beaver Road, 120.0 feet, thence North  $90^{\circ}00'$  East 120.0 feet to the point of beginning



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from "R-4" Multiple-Family Residential District to "C-2" General Retail and Highway-Oriented Commercial District, to allow the right to request a necessary Conditional Use Permit to continue selling alcoholic liquor, wine, and beer as part of either a limited food/retail sales establishment or as a liquor store.

**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 the Property to "C-2" General Retail and Highway-Oriented Commercial District are hereby overruled, and the hearing is closed.

Alternative A

MOVED by \_\_\_\_\_ to adopt and approve the proposed rezoning of the Property to "C-2" General Retail and Highway-Oriented Commercial District, subject to final passage of an ordinance rezoning the Property as set forth herein, and to make the following findings of fact regarding the proposed rezoning:

- a. The City Plan and Zoning Commission voted 7-2 to recommend approval of the requested rezoning of the Property to "C-2" General Retail and Highway-Oriented Commercial District, to allow the right to request a Conditional Use Permit for the existing business to continue to sell alcoholic liquor, wine, and beer as either a limited food/retail sales establishment or a liquor store.
- b. The proposed rezoning is in conformance with the Des Moines' 2020 Community Character Plan future land use map, as amended, and amendment thereto was supported by a vote of 8-1 by the Plan and Zoning Commission.
- c. The proposed rezoning is in conformance with the character of the adjoining neighborhood, due to the stated usage and support of the store by local residents and benefit to said residents, the limited public transportation options in the area allowing local residents to conveniently access other stores, and the lack of stated safety concerns.
- d. As currently zoned, the owner is unable to request a Conditional Use Permit to continue any sales of wine and beer, or any sales of alcoholic liquor, on the Property as a limited food/retail sales establishment.

Alternative B

MOVED by \_\_\_\_\_ to continue the public hearing until April 20, 2015, at 5:00 p.m. in the Council Chambers, and to direct the City Manager and Legal Department to prepare the necessary legislation to APPROVE the rezoning subject to conditions acceptable to the City and the owner.



Roll Call Number

Agenda Item Number

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MOVED BY \_\_\_\_\_ TO ADOPT.

FORM APPROVED:

*Glenna K. Frank*

Glenna K. Frank, Assistant City Attorney

(ZON2015-00009)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	

#### 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.

\_\_\_\_\_  
Mayor

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