



Roll Call Number

Agenda Item Number

73A

Date December 20, 2021

An Ordinance entitled, "AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-1.10 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located at 4402 Douglas Avenue from 'MX1' Mixed Use District to Limited 'MX3' Mixed Use District classification",

presented.

Moved by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

Judy K. Parks-Kruse
Judy K. Parks-Kruse
Assistant City Attorney

(ZONG-2021-000039)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

_____ Mayor

CERTIFICATE

I, P. Kay Cmelik, 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

Prepared by: Judy K. Parks-Kruse, Assistant City Attorney, 400 Robert D. Ray Drive, Des Moines, IA
50309 Phone: 515/283-4533
Return Address: City Clerk - City Hall, 400 Robert D. Ray Drive, Des Moines, IA 50309
Title of Document: City of Des Moines, Ordinance No. _____
Grantor/Grantee: City of Des Moines, Iowa
Legal Description: See page 1, below.

ORDINANCE NO. _____

AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-1.10 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located at 4402 Douglas Avenue from 'MX1' Mixed Use District to Limited 'MX3' Mixed Use District classification.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-1.10 of the Municipal Code of the City of Des Moines, Iowa, 2000, be and the same is hereby amended by rezoning and changing the district classification of certain property located at 4402 Douglas Avenue from 'MX1' Mixed Use District to Limited 'MX3' Mixed Use District classification, more fully described as follows:

LOT 1, EXCEPT THE WEST 149.8 FEET AND THE NORTH 25 FEET OF LOT 2, EXCEPT THE WEST 149.8 FEET IN PHILPOTT ACRES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

Section 2. That this ordinance and the zoning granted by the terms hereof are subject to the following imposed additional conditions which have been agreed to and accepted by execution of an Acceptance of Rezoning Ordinance by all owners of said property and are binding upon the owners and their successors, heirs, and assigns as follows:

1. That Permitted and Conditional Uses are limited to a restaurant with a drive-through component; and
2. That Permitted and Conditional Uses are limited to those in common with the 'MX1' Mixed Use District and as limited in the 'MX1' Mixed Use District.

Section 3. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Section 4. That the City Clerk is hereby authorized and directed to cause certified copies of the Acceptance of Rezoning Ordinance, this ordinance, vicinity map and proof of publication of this ordinance to be properly filed in the office of the County Recorder of the county in which the subject property is located.

FORM APPROVED:



Judy K. Parks-Kruse
Assistant City Attorney

Prepared by: Judy K. Parks-Kruse, Assistant City Attorney, 400 Robert D. Ray Drive, Des Moines, IA 50309 Phone: 515/283-4533
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: Knapps Homes LLC (Titleholder)
Grantee's Name: City of Des Moines, Iowa
Legal Description: LOT 1, EXCEPT THE WEST 149.8 FEET AND THE NORTH 25 FEET OF LOT 2, EXCEPT THE WEST 149.8 FEET IN PHILPOTT ACRES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

ACCEPTANCE OF REZONING ORDINANCE

The undersigned hereby state, warrant and agree as follows:

1. That Knapp Homes LLC is the titleholder of the Properties locally known as 4402 Douglas Avenue and legally described above.
2. That in the event the City of Des Moines, Iowa, acts to rezone the properties located at 4402 Douglas Avenue from "MX1" Mixed Use District to Limited "MX3" Mixed Use District, 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 Properties:
 1. That Permitted and Conditional Uses are limited to a restaurant with a drive-through component; and
 2. That Permitted and Conditional Uses are limited to those in common with the "MX1" Mixed Use District and as limited in the "MX1" Mixed Use District.
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 Properties as identified above.
4. That in the event any portion of the Properties is hereafter rezoned to a district

classification different from Limited 'MX3' Mixed Use District, 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.

KNAPP HOMES LLC

J. Knapp Manager
By:

State of Iowa)
) ss:
County of Polk)

This instrument was acknowledged before me on Dec. 8, 2021, by John Knapp as Manager of Knapp Homes LLC.

Taylor J. Santi
Notary Public in and for the State of Iowa



Mayor and City Council
City of Des Moines
400 Robert D. Ray Drive
Des Moines, IA 50309

RE: Proposed rezoning of property located at 4402 Douglas Avenue

To the Mayor and City of Des Moines City Council:

Please accept this request to waive the three required readings of the ordinance to rezone the above referenced real property.

Thank you.

Sincerely,



Signature

By: John Knapp

Its: Managers