

Date April 6, 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 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:
  - 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.



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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

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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 is hereby:

(Six votes needed for approval)

Moved by Meyer to continue to the April 20 Council meeting at 5:00 P.M.

APPROVED AS TO FORM:

Michael F. Kelley Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, HENSLEY, KIERNAN, MAHAFFEY, MEYER, VLASSIS, and TOTAL (7 yeas).

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.

T. M. Franklin Cownie Mayor

Diane Rauh City Clerk