

Date June 8, 2009

WHEREAS, on May 4, 2009 by Roll Call No. 09-765 the City Council of the City of Des Moines gave final approval of an ordinance requested by Menard, Inc. to rezone property at 1201 East Diehl Avenue from R1-60 One-Family Low Density Residential District and C-2 General Retail and Highway Oriented Commercial to Limited C-2 General Retail and Highway Oriented Commercial District, as amended with the consent of the property owner to reduce the size of the area to be rezoned; and

WHEREAS, the ordinance approved by Roll Call No. 09-765 contained an incorrect legal description of the property; and

WHEREAS, Menard, Inc. is now the titleholder and sole property owner and has given its written consent to an Acceptance of Rezoning Ordinance which includes the correct legal description of the property to be rezoned, including the reduction in area to be rezoned; and

WHEREAS, the rezoning ordinance approved by Roll Call No. 09-765 is subject to the following conditions which will continue to be applied unchanged in the ordinance containing the corrected and amended legal description:

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.

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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.
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.

The subject property is more specifically described as follows:

The West 590.20 feet of the South 100.90 feet 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., all now included in and forming a part of the City of Des Moines, Polk County, Iowa

WHEREAS, the sole purpose of the hearing scheduled herein is to approve the rezoning ordinance as described above with the corrected legal description and reduction in the area of the property to be rezoned.

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

1. That the meeting of the City Council at which the rezoning is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. on June 22, 2009, at which time the City Council will hear both those who oppose and those who favor the proposal.
2. That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than

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seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

MOVED by Vlassis to adopt.

FORM APPROVED:

[Signature]

Michael F. Kelley
Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE | ✓ | | | |
| COLEMAN | ✓ | | | |
| HENSLEY | ✓ | | | |
| KIERNAN | ✓ | | | |
| MAHAFFEY | ✓ | | | |
| MEYER | ✓ | | | |
| VLASSIS | ✓ | | | |
| TOTAL | 7 | | | |

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.

[Signature]

City Clerk

[Signature]
Mayor