



Roll Call Number

14-1963

Agenda Item Number

40

Date December 22, 2014

RESOLUTION HOLDING HEARING ON REQUEST FROM WAYNE RUSSELL, LLC (OWNER), REPRESENTED BY LARRY BARRY (OFFICER), TO REZONE PROPERTY LOCATED AT 2301 SOUTHWEST 9TH STREET TO ALLOW CONVERSION OF THE EXISTING RESTAURANT USE OF THE BUILDING TO A TAVERN USE

WHEREAS, on December 8, 2014, by Roll Call No. 14-1849, the City Council received and filed the recommendation from the City Plan and Zoning Commission, by a vote of its members of 9-0, to **DENY** a request from Wayne Russell, LLC (owner), represented by Larry Barry (officer), to rezone real property locally known as at 2301 Southwest 9th Street ("Property") from "C-0" Commercial-Residential District to "C-2" General Retail and Highway-Oriented Commercial District, to allow conversion of the existing restaurant use of the building to a tavern use; and

WHEREAS, on December 8, 2014, by Roll Call No. 14-1849, it was duly resolved by the City Council that the application of Wayne Russell, LLC to rezone the Property, legally described as follows, be set down for hearing on December 22, 2014 at 5:00 p.m. in the Council Chamber at City Hall:

The vacated South 11 feet of Davis Avenue Right-Of-Way lying north of and adjoining Lot 302 and all of Lot 302 in FIRST PLAT OF CLIFTON HEIGHTS, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa; 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 rezoning; 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.

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 statements of interested persons and arguments of counsel, any and all comments for and against the proposed rezoning of the Property to "C-2" General Retail and Highway-Oriented Commercial District, to allow conversion of the existing restaurant use of the building to a tavern use, are hereby received and filed, and the hearing is closed.

Alternative A

MOVED by *Wesley* to adopt and **DENY** the proposed rezoning, and to make the following findings of fact regarding the proposed rezoning:

- a. The City Plan and Zoning Commission voted 9-0 to recommend denial of the requested rezoning of the Property to "C-2" General Retail and Highway-Oriented Commercial District, to allow conversion of the existing restaurant use of the building to a tavern use.
- b. The Property is within 75 feet of MacRae Park, and the proposed rezoning to allow a tavern use would be contrary to the intent of the Zoning Ordinance as it would not meet the minimum separation distance requirements established by the Des Moines Zoning Ordinance (Section 134-954), which requires a distance of 150 feet between a tavern use and any church, school, public park or licensed child care facility.
- c. The character of the surrounding Southwest 9th Street commercial corridor is made up primarily of "C-0" District and "C-1" District properties, with the nearest "C-2" District

(continued)

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properties being located 650 feet and over one-half mile to the south, respectively, and thus the proposed rezoning is not consistent with the character of the surrounding commercial corridor.

- d. The Property adjoins a residential neighborhood, and thus the proposed rezoning is not consistent with the character of the adjoining neighborhood.
- e. If the application of the existing zoning regulations has the effect of denying the owner all economic use of the Property, then the appropriate remedy is to seek relief from the Zoning Board of Adjustment.

Alternative B

MOVED by _____ to continue the public hearing until January 12, 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.

MOVED by Hensley to adopt.

FORM APPROVED:

Glenna K. Frank
Glenna K. Frank, Assistant City Attorney

(ZON2014-00205)

NOTE: Six affirmative votes are required to approve the proposed rezoning due to the Commission's recommendation for denial. Des Moines City Code §134-4.

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.

Diane Rauh City Clerk

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE | ✓ | | | |
| COLEMAN | ✓ | | | |
| GATO | ✓ | | | |
| GRAY | ✓ | | | |
| HENSLEY | ✓ | | | |
| MAHAFFEY | ✓ | | | |
| MOORE | ✓ | | | |
| TOTAL | 7 | | | |

MOTION CARRIED APPROVED
T. McFranklin Mayor