



Roll Call Number

17-0257

Agenda Item Number

9

Date February 20, 2017

**RESOLUTION GRANTING AN EXCEPTION FOR FLOODPLAIN DEVELOPMENT  
TO LESS THAN TRINITY LLC (D/B/A CAPTAIN ROY'S) FOR THE CONCESSION  
AREA AT BIRDLAND MARINA PURSUANT TO DES MOINES  
MUNICIPAL CODE SECTION 50-35(c).**

**WHEREAS**, Less Than Trinity LLC doing business as Captain Roy's ("Applicant") has applied for a certificate of compliance to allow construction in the Concession Area at Birdland Marina pursuant to Des Moines Municipal Code section 50-35; and,

**WHEREAS**, the application was denied by the City Engineer because the application does not meet the performance standards required by Des Moines Municipal Code section 50-34 (the "Performance Standards"); and,

**WHEREAS**, the Applicant has appealed the denial to the Council pursuant to Des Moines Municipal Code section 50-35(c) solely to seek that exceptions be made to the full application of the Performance Standards; and,

**WHEREAS**, pursuant to section 50-35(c), The City Council has the authority to make exceptions to the Performance Standards upon certain findings; and,

**WHEREAS**, the City Engineer does not object to the application if the findings necessary to grant an exception in section 50-35(c) are made and other conditions are met.

**NOW THEREFORE BE IT RESOLVED** by the City Council for the City of Des Moines, Iowa that:

1. Applicant has requested an exception, pursuant to section 50-35(c), to the performance requirements for floodplain development in Des Moines Municipal Code section 50-34.

2. Based on review of the application and information provided to Council in the accompanying Council Communication, Council hereby makes the following findings:

a. The Applicant has made a showing of good and sufficient cause for the exception, based on the City's effort to add amenities to public parks and encourage the use of City parks;

b. Council determines that a failure to grant the exception or modification would be contrary to the public interest because the project is situated in a unique location that provides to users of the Neal Smith Multi-Use Trail, Birdland Marina, Union Park and the public in general will have direct access to the



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amenity and is centrally located for all Des Moines citizens to experience; in addition, the project is deemed to be in the public interest and a part of a continued revitalization of the area and is supported by the surrounding neighborhoods.

- c. Granting the exception will not result in increased flood heights as demonstrated on the no-rise certification submitted to the DNR and determined to be correct pursuant to DNR check modelling; it will not result in additional threats to public safety, extraordinary public expense, creation of nuisances, or victimization of the public because the structure is being reinforced to withstand the forces of flood waters and a detailed flood contingency plan has been developed to minimize interior flood damage and stress human safety, the project is an amenity rather than a nuisance, and the improvements are privately funded to benefit the City; and,
- d. The exception or modification is the minimum necessary, considering the flood hazard, to afford relief because without wet flood proofing the project could not proceed safely.

3. Council finds that the City has applied for approval of this resolution to the Iowa Department Of Natural Resources ("DNR"), which has not yet granted or denied the approval or concurrence. Granting this exception is expressly conditioned on obtaining that approval or concurrence.

4. Applicant's request for an exception is hereby granted subject to the approval of the DNR any any reasonable conditions imposed by the City Engineer.

5. The exception will be effective on the date of approval by the DNR.



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6. Council authorizes and directs the City Manager, the Community Development Director, and the City Engineer to monitor the development of this project and the implementation and maintenance of the flood protection plan to insure compliance with all building, zoning, floodplain, and any other relevant City regulations.

(Council Communication No. 17-093)

MOVED BY Hensley to adopt.

FORM APPROVED:

Thomas G. Fisher Jr.

Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
HENSLEY	✓			
MOORE	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

T. M. Franklin Council Mayor

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