



Roll Call Number

17-2017

Agenda Item Number

64B ✓

Date November 20, 2017

**RESOLUTION HOLDING HEARING ON REQUEST FROM
HY-VEE, INC. TO REZONE PROPERTY AT 2412 MERLE HAY ROAD,
2416 MERLE HAY ROAD, AND 2325 59TH STREET**

WHEREAS, on October 23, 2017, by Roll Call No. 17-1823, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on October 5, 2017, its members voted 9-0-1 in support of a motion to recommend **APPROVAL** of a request from Hy-Vee, Inc. (purchaser), represented by Rob Wadle (officer), to rezone property locally known as 2412 Merle Hay Road, 2416 Merle Hay Road, and 2325 59th Street (collectively "Property") from "R1-60" One-Family Low-Density Residential District to Limited "C-2" General Retail and Highway-Oriented Commercial District, to allow for anticipated redevelopment with a 10,500 square foot gas station/convenience store with sixteen (16) fueling locations and a coffee shop with drive-through window, subject to the following rezoning conditions:

1. Any commercial use of the Property must be conducted in conjunction with the parcels to the south that have frontage on Merle Hay Road and Hickman Road. The Property shall not be developed separately with independent commercial uses. Communication towers/antennas uses are exempt from this provision.
2. Any accessory buildings, including but not limited to, a communication tower equipment building on the Property shall be sided with durable materials that are compatible with the primary building on the Property.
3. Any communication tower on the Property shall consist of a stealth tower design.
4. The following uses are prohibited:
 - a. Adult entertainment businesses,
 - b. Any business that derives more than 50% of its gross sales from the sale of tobacco products,
 - c. Billiard parlors/game rooms,
 - d. Delayed deposit services,
 - e. Liquor stores,
 - f. Off-premises advertising signs,
 - g. Pawn brokers,
 - h. Taverns or nightclubs, and
 - i. Vehicle display lots; and

WHEREAS, on October 23, 2017, by Roll Call No. 17-1823, it was duly resolved by the City Council that the application of Hy-Vee, Inc. to rezone the Property, as legally described below, be set down for hearing on November 6, 2017 at 5:00 p.m. in the Council Chambers at the Municipal Service Center; 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 amendment to the Zoning Ordinance; and

WHEREAS, on November 6, 2017, by Roll Call No. 17-1922, the public hearing on the proposed rezoning of the Property was continued to November 20, 2017, in order to obtain the Acceptance of Rezoning Ordinance from the applicant and resolve questions related thereto; and

WHEREAS, City Community Development staff and the applicant have agreed that condition #3 above should be revised as follows:

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- Any communication tower on the Property shall consist of a stealth tower design, including a maximum height of 120 feet and a monopole design with flush-mounted antenna arrays for up to a total of three carriers; and

WHEREAS, in accordance with said notice and continuance, 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; and

WHEREAS, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone the Property locally known as 2412 Merle Hay Road, 2416 Merle Hay Road, and 2325 59th Street, legally described as:

The North 1/2 of Lot 2 (Except the West 125 feet and that portion conveyed to City of Des Moines for ROW acquisition along Merle Hay Road recorded in Book 6528, Page 438), BISHOP PLACE, an Official Plat; and the East 1/2 of the South 1/2 of Lot 2 (Except that portion conveyed to City of Des Moines for ROW acquisition along Merle Hay Road recorded in Book 6571, Page 827), BISHOP PLACE, an Official Plat; and Lot 7 BISHOP PLACE, an Official Replat; all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

from "R1-60" One-Family Low-Density Residential District to Limited "C-2" General Retail and Highway-Oriented Commercial District, to allow for anticipated redevelopment with a 10,500 square foot gas station/convenience store with sixteen (16) fueling locations and a coffee shop with drive-through window, subject to the conditions stated above as agreed to and accepted by execution of an Acceptance of Rezoning Ordinance in writing by the owner(s) of the Property, which is binding upon the owner(s) and their successors, heirs and assigns.

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

- Upon due consideration of the facts, and any and all statements of interested persons and arguments of counsel, any objections to the proposed rezoning of the Property to Limited "C-2" General Retail and Highway-Oriented Commercial District with conditions as set forth above, are hereby overruled, and the hearing is closed.
- The proposed rezoning of the Property to Limited "C-2" General Retail and Highway-Oriented Commercial District with conditions as set forth above, including revision to condition #3 as stated above, is hereby found to be in conformance with the PlanDSM: Creating Our Tomorrow Land Use Plan and is approved, subject to final passage of an ordinance rezoning the Property as set forth herein.

FORM APPROVED:

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

MOVED BY *Shay* TO ADOPT.

(ZON2017-00163)

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

MOTION CARRIED

APPROVED

T. M. Franklin
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