



Roll Call Number

21-0731

Agenda Item Number

50

Date May 10, 2021

RESOLUTION HOLDING HEARING ON REQUEST FROM FAREWAY STORES, INC. TO AMEND PLANDSM FUTURE LAND USE CLASSIFICATION AND TO REZONE 2723 41ST PLACE

WHEREAS, on April 19, 2021, by Roll Call No. 21-0614, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on April 1, 2021, its members voted 11-2 in support of a motion to recommend **DENIAL** of a request from Fareway Stores, Inc. (purchaser), represented by Matt Heath (officer), to amend the PlanDSM: Creating Our Tomorrow comprehensive plan future land use classification for real property locally known as 2723 41st Place ("Property") from Low Density Residential within a Neighborhood Node to Community Mixed Use within a Neighborhood Node, and to rezone the Property from N4 Neighborhood District to Limited MX3 Mixed-Use District, to accommodate an ingress/egress drive from 41st Place to route traffic from Urbandale Avenue to the adjoining lot, at 2716 Beaver Avenue, being redeveloped for a Limited Retail Sales use including a new 7,759-square foot retail store with a specialty meat counter and other neighborhood grocery needs; and

WHEREAS, the Property is legally described as follows:

LOT B OF GRASSMERE NO. 2, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA; and

WHEREAS, on April 19, 2021, by Roll Call No. 21-0614, it was duly resolved by the City Council that the request to amend the land use designation and to rezone the Property be set down for hearing on May 10, 2021, at 5:00 p.m., by electronic means to encourage and maintain social distancing to curb the spread of COVID19 in the community, without public access to the meeting location; 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 land use amendment and rezoning; and

WHEREAS, in accordance with said notice, those interested in said proposed land use amendment and 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 and all statements of interested persons and arguments of counsel, any objections to the proposed amendment to the PlanDSM future land use designation to Community Mixed Use within a Neighborhood Node, or to the proposed rezoning of the Property to Limited MX3 Mixed Use District, are received and the hearing is closed.

Alternative A

MOVED by _____ to adopt and **DENY** the proposed amendment to the PlanDSM future land use designation and the proposed rezoning, and to make the following findings of fact regarding said proposals:

a. The City Plan and Zoning Commission voted 11-2 to recommend denial of the requested proposed amendment to the PlanDSM future land use designation to Community Mixed Use and proposed rezoning of the Property to Limited MX3 Mixed Use District, to allow an ingress/egress drive from 41st Place to route traffic from Urbandale Avenue to the adjoining lot, at 2716 Beaver Avenue, being redeveloped for a Limited Retail Sales use including a new 7,759-square foot retail store with a specialty meat counter and other neighborhood grocery needs.

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- b. The current PlanDSM: Creating Our Tomorrow Plan future land use designation of the Property is Low Density Residential within a Neighborhood Node, and current zoning designation is N4 Neighborhood District, both of which are intended for residential uses and specifically “areas developed with primarily single-family and two-family residential units with up to six dwelling units per net acre”
- c. The proposed land use designation of Community Mixed Use is described as “small- to medium-scale mixed use development, located on high capacity transit corridors or at the intersection of transportation corridors...includ[ing] both a mix of medium density residential and a mix of retail and service establishments designed to attract customers from a large service area encompassing multiple neighborhoods and may include specialty retail that attracts regional customers.”
- d. The Property is located in a neighborhood and area that contains existing single-household residential uses, which is consistent with the character of the neighborhood at the adoption of PlanDSM in 2016.
- e. The proposed amendment to the PlanDSM future land use designation of the Property and the proposed rezoning to allow for ingress/egress vehicular access to the adjoining development would not be consistent with the intent of the PlanDSM comprehensive plan for the subject neighborhood/area.
- f. If the proposed amendment to the PlanDSM future land use designation of the Property to Community Mixed Use is not approved, then the proposed rezoning to Limited MX3 Mixed Use District is inapplicable due to non-conformance with the PlanDSM designation of Low Density Residential.
- g. 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 Yuan to continue the public hearing until 5:00 p.m. on May 24, 2021, by electronic means to encourage and maintain social distancing to curb the spread of COVID19 in the community, without public access to the meeting location, and to direct the City Manager and Legal Department to prepare the necessary legislation to **APPROVE** the proposed amendment to the PlanDSM future land use designation and the proposed rezoning subject to conditions acceptable to the City and the owner(s).

FORM APPROVED:

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

(21-2021-4.08)
(ZON2021-00118)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED APPROVED
T. M. Franklin Cownie
Mayor

CERTIFICATE

I, P. KAY CMELIK, 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.

P. Kay Cmelik

City Clerk