



Roll Call Number

21-1955

Agenda Item Number

68 (A)

Date December 20, 2021

RESOLUTION HOLDING HEARING ON APPEAL BY GENESIS HEALTH CLUB SPORTS COMPLEX SE, LLC OF DENIAL OF TYPE 2 DESIGN ALTERNATIVES FOR SITE PLAN FOR PROPERTY LOCATED AT 1111 EAST ARMY POST ROAD

WHEREAS, at a public hearing held on December 2, 2021, the City Plan and Zoning Commission considered a request from Genesis Health Club Sports Complex SE, LLC (purchaser/owner) (“Genesis”), represented by Rodney Steven II (officer), for approval of the Site Plan “Genesis Health Club Southridge Mall” and of Type 2 Design Alternatives fully or partially waiving minimum interior parking lot landscaping standards set forth in Municipal Code Section 135-7.9, berm frontage buffer requirements set forth in Municipal Code Section 135-7.7, and the tree canopy requirement set forth in Municipal Code Section 135-7.4, related to the proposed redevelopment of the vacant Sears site in the Southridge Mall complex as shown in said Site Plan on property located at 1111 East Army Post Road (“Property”); and

WHEREAS, the Planning and Design Ordinance requires Genesis to provide the following landscaping in the Site Plan and proposed redevelopment:

- Section 135-7.9 requires Genesis to provide 87 additional landscape islands and 94 additional shade trees within the existing off-street surface parking lots;
- Section 135-7.7 requires Genesis to provide a 12-foot deep berm frontage buffer with 17 new shade trees, 321 shrubs or ornamental grasses, and a 2.5-foot tall retaining wall and berm, to lessen the visual impact of off-street surface parking and maneuvering areas; and
- Section 135-7.4.B requires Genesis to provide a minimum fifteen percent (15%) mature tree canopy coverage within the lot area; and

WHEREAS, Genesis requested Type 2 Design Alternatives to waive or modify said Ordinance requirements and instead provide the following landscaping in the Site Plan and proposed redevelopment:

- Full waiver of Section 135-7.9, resulting in zero (0) additional landscape islands or shade trees, for a total of 6 existing islands and 3 existing trees within the off-street surface parking lots;
- Partial waiver of Section 135-7.7 to provide 12 additional shade trees within the existing landscaping buffer along the west side of the ring road, resulting in a total of 19 existing and new shade trees within the existing buffer along the ring road (rather than the 17 additional trees/24 total trees required by said Section), zero (0) shrubs or ornamental grasses (rather than the 321 shrubs or ornamental grasses required by said Section), and no retaining wall and berm; and
- Full waiver of Section 135-7.4.B, resulting in less than 15 percent (15%) mature tree canopy coverage within the lot area; and

WHEREAS, in review and recommendation to the City Plan and Zoning Commission, the City’s Planning Administrator recommended:

- Partial waiver of Section 135-7.9 to provide terminal end landscape islands within all rows within the south, east and north surface parking lots on the property to the satisfaction of the City’s Planning Administrator, and 1 landscape island with a shade tree for every 16 parking spaces, or approximately 52 landscape islands, within only the north parking lot to the satisfaction of the City’s Planning Administrator (rather than the 87 additional landscape islands and 94 additional shade trees required by said Section);
- Approval of the Type 2 Design Alternative requested by Genesis for partial waiver of Section 135-7.7 to provide 12 additional shade trees within the existing landscaping buffer along the west side of the ring road, resulting in a total of 19 existing and new shade trees within the existing buffer along the



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ring road (rather than the 17 additional trees /24 total trees required), zero (0) shrubs or ornamental grasses (rather than the 321 shrubs or ornamental grasses required by said Section), and no retaining wall and berm; and

- Denial of the Type 2 Design Alternative requested by Genesis for full waiver of Section 135-7.5.B, resulting in 15 percent (15%) mature tree canopy coverage within the lot area, as this requirement would be met if Genesis met the requirements for the partial waiver of Sections 135-7.9 and 135-7.7 as recommended by City staff; and

WHEREAS, in lieu of approving the Type 2 Design Alternatives requested by Genesis or the City staff recommendation, the Plan and Zoning Commission voted 8-2 to approve the Site Plan submitted by Genesis and to approve alternate Type 2 Design Alternatives as follows:

- Partial waiver of Sections 135-7.9, 135-7.7 and 135-7.5.B to provide a reasonable percentage of landscaping, in form, size, area and location to be determined by Genesis and the City's Planning Administrator and to the satisfaction of the City's Planning Administrator, which determination shall (1) include review of stormwater flows on the parking lots on the property and shall assist with mitigation of stormwater impacts thereon, (2) reflect, but not fully conform to, the landscape standards set forth in said Sections, and (3) contain a total landscaping area comparable to the combined area of the number of landscape islands recommended by City staff as described above; and

WHEREAS, Genesis has timely appealed to the City Council pursuant to Municipal Code Section 135-9.3.9.B seeking further review of the Plan and Zoning Commission decision and seeking approval of its proposed Type 2 Design Alternatives to the Site Plan, fully or partially waiving minimum interior parking lot landscaping standards set forth in Municipal Code Section 135-7.9, berm frontage buffer requirements set forth in Municipal Code Section 135-7.7, and the tree canopy requirement set forth in Municipal Code Section 135-7.4, in the above-described form requested by Genesis; and

WHEREAS, on December 6, 2021, by Roll Call No. 21-1825, it was duly resolved by the City Council that the appeal be set down for hearing on December 20, 2021 at 5:00 P.M. in the Council Chambers; and

WHEREAS, due notice of said hearing was published in the Des Moines Register, as provided by law, setting forth the time and place of hearing on said appeal; and

WHEREAS, in accordance with said notice, those interested in said appeal and the proposed Type 2 Design Alternatives, both for and against, have been given the 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 arguments and objections to the Plan and Zoning Commission denial of the Type 2 Design Alternatives in form requested by Genesis for property located at 1111 East Army Post Road, as described above, are hereby received and filed.
2. The communications from the Plan and Zoning Commission, Genesis Health Club Sports Complex SE, LLC, the Easter Lake Area Neighborhood Association, and the Somerset Neighborhood Association, respectively, are hereby received and filed.



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Alternative A

MOVED BY _____ to **DENY** the Type 2 Design Alternatives in form requested by Genesis and described above, to uphold and **APPROVE** the Type 2 Design Alternatives in form approved by the Plan and Zoning Commission, and to make the following findings of fact and objections regarding the Type 2 Design Alternatives as proposed by Genesis:

- a. Municipal Code Section 135-7.9 requires minimum interior parking lot landscape standards, including terminal end landscape islands and a minimum landscape island with every ninth (9th) parking space.
 - i. The Property currently contains 6 existing landscape islands within the parking lot, with 3 of said islands containing trees.
 - ii. Genesis' proposal for the Type 2 Design Alternative to the requirements of Section 135-7.9 is for full waiver of Section 135-7.9, resulting in in zero (0) additional landscape islands or shade trees, for a continued total of 6 existing islands and 3 existing trees within the off-street surface parking lots.
- b. Municipal Code Section 135-7.7 requires provision of a 12-foot deep berm frontage buffer with 17 new shade trees, 321 shrubs or ornamental grasses, and a 2.5-foot tall retaining wall and berm, to lessen the visual impact of off-street surface parking and maneuvering areas.
 - i. Approval of the Type 2 design alternative requested by Genesis for partial waiver of Section 135-7.7 would provide 12 additional shade trees within the existing landscaping buffer along the west side of the ring road, resulting in a total of 19 existing and new shade trees within the existing buffer along the ring road (rather than the 17 additional trees /24 total trees required), zero (0) shrubs or ornamental grasses (rather than the 321 shrubs or ornamental grasses required by said Section), and no retaining wall and berm.
 - ii. City Planning staff recommended approval of said Type 2 design alternative for partial waiver of Section 135-7.7 as requested by Genesis.
- c. Municipal Code Section 135-7.4.B requires Genesis to provide a minimum fifteen percent (15%) mature tree canopy coverage within the lot area.
 - i. Genesis' proposal for the Type 2 Design Alternative is for full waiver of Section 135-7.4.B, resulting in less than 15 percent (15%) mature tree canopy coverage within the lot area.
- d. The Plan and Zoning Commission approved Type 2 Design Alternatives representing a compromise option between full compliance with Des Moines Municipal Code Sections 135-8.9, 135-7.7 and 135-7.4.B and Genesis' proposals.
- e. The Type 2 Design Alternatives in form approved by the Plan and Zoning Commission would allow partial waiver of Municipal Code Sections 135-8.9, 135-7.7 and 135-7.4.B, and provide Genesis and the City Planning Administrator the ability to determine a reasonable percentage of landscaping, in form, size, area and location, for Genesis to provide on the Property, which amount of landscaping would be less than required by the Municipal Code but more than the full waiver proposed by Genesis.
- f. The Type 2 Design Alternatives in form approved by the Plan and Zoning Commission would consider and be subject to factors such as stormwater flow and impact on the parking lots on the Property and mitigation of stormwater impacts.
- g. The Type 2 Design Alternatives in form approved by the Plan and Zoning Commission require consideration of the City Planning staff recommendations regarding landscape islands, and provide the ability to shift the landscape area into placement and form that may not consist of individual landscape islands but that is better suited for the nature of the parking lots, reflective of the stormwater flows on the Property, and addresses the parking needs of Genesis' clients.



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- h. Genesis has not met the burden required to demonstrate that its requested design alternatives meet the criteria for approval or that the result of the design alternatives would equal or exceed the result of compliance with the above-stated alternate Type 2 Design Alternatives approved by the Plan and Zoning Commission, constituting a compromise position between full compliance with the Planning and Design Ordinance and Genesis' proposal.
- i. Genesis has not shown that its requested design alternatives are consistent with all relevant purpose and intent statements of the Planning and Design Ordinance and with the general purpose and intent of the comprehensive plan.
- j. Genesis has not shown that its requested design alternatives will not have a substantial or undue adverse effect on the public health, safety, and general welfare.
- k. The Type 2 Design Alternatives as proposed by Genesis should not be approved for the reasons stated above.
- l. The Type 2 Design Alternatives, in form approved by the Plan and Zoning Commission, should be upheld and approved for the reasons stated above.

Alternative B

MOVED BY Gatto to **APPROVE** the proposed Type 2 Design Alternatives in form requested by Genesis and described above, and to make the following findings of fact in support of approval of the proposed Type 2 Design Alternatives:

- a. Municipal Code Section 135-9.2.2.B.1 provides that design alternatives are intended to allow for relief from the Planning and Design Ordinance when "specific site features or characteristics of the subject property, including the presence of existing buildings, creates conditions that make strict compliance with applicable regulations impractical or undesirable."
- b. The existing building on the Property is set at a significant distance from the Southeast 14th Street and Army Post Road primary street frontages, and the existing parking lot is approximately 325 feet from Southeast 14th Street and 550 feet from Army Post Road.
- c. Existing buildings and lots that front Southeast 14th Street and Army Post Road provide buffers between the primary street frontage and the Property and its parking lot.
- d. The proposed Type 2 design alternative allows a continuation of existing landscaping elements, which will not increase or create new adverse impact on the adjacent properties.
- e. The above-stated facts specific to the Property reduce the aesthetic concerns and need to screen the existing parking lot from the Southeast 14th Street frontage which are typically addressed through landscaping requirements.
- f. Genesis, by amendment to its existing development agreement, is committing to provide additional subsidized sports memberships in the approximate value of the landscape improvements being waived through the Type 2 Design Alternatives.
- g. Genesis has met the burden required to demonstrate that the requested design alternatives meet the criteria for approval and that the result of the design alternatives would equal or exceed the result of strict compliance with Section 135-7.9.2 of the Planning and Design Ordinance.
- h. Genesis has shown that the requested design alternatives are consistent with all relevant purpose and intent statements of the Planning and Design Ordinance and with the general purpose and intent of the comprehensive plan.
- i. Genesis has shown that the requested design alternatives will not have a substantial or undue adverse effect on the public health, safety, and general welfare.
- j. Said Type 2 Design Alternatives, in form requested by Genesis, should be approved for the above-stated reasons and incorporated into the approved Site Plan for the Property.

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(Council Communication No. 21-562)

MOVED by Gatto to adopt.

FORM APPROVED:

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

(SITE-2021-000040)

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, GRAY, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL (YEAS: 4, NAYS: 3).

Handwritten signature of J. M. Frank in 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.

Handwritten signature of P. Kay Cmelik

City Clerk