



Roll Call Number

22-0108

Agenda Item Number

26

Date January 24, 2022

**RESOLUTION HOLDING HEARING ON APPEAL BY SHELDEN HOLDINGS, LLC
OF DENIAL OF TYPE 2 DESIGN ALTERNATIVE FOR SITE PLAN FOR PROPERTY
LOCATED AT 2551 DOUGLAS AVENUE**

WHEREAS, at a public hearing held on November 4, 2021, the City Plan and Zoning Commission considered a request from Shelden Holdings, LLC (owner), represented by Dennis and Shelley Kay (officers), for approval of the Site Plan “2551 Douglas Avenue Vehicle Sales and Service” and of Type 2 design alternatives waiving requirements for vehicle display lot size set forth in Municipal Code Section 135-8.2.3.A and undergrounding of transmission systems set forth in Municipal Code Section 135-9.2.1.E, related to proposed site improvements for a new tenant to continue the existing auto repair use and to add a vehicle sales use as shown in said Site Plan on property located at 2551 Douglas Avenue (“Property”); and

WHEREAS, Municipal Code Section 135-8.2.3.A requires that any portion of a property to be used for outside storage, display or parking of vehicles or equipment for vehicle sales, vehicle rental, and trucking and transportation terminal uses contain at least one-half (0.5) acre of land; and

WHEREAS, the Property is 0.425 acres in size and therefore is not compliant with said Section 135-8.2.3.A, and Shelden Holdings, LLC submitted a Site Plan for Property proposing to reserve 6 spaces for vehicle display within the existing 12-stall parking lot; and

WHEREAS, in review and recommendation to the City Plan and Zoning Commission, the City’s Planning Administrator recommended the following to which Shelden Holdings, LLC agreed:

- Conditional approval of the Type 2 design alternative waiving Section 135-8.2.3.A to waive the 0.5-acre lot-size requirement, subject to the site plan condition that only the 3 parking spaces closest to Douglas Avenue be utilized for vehicle display purposes rather than the 6 parking spaces originally requested by Shelden Holdings, LLC; and
- Approval of the Type 2 design alternative waiving Section 135-9.2.1.E to waive the requirement to place all overhead utility systems underground on the Property, as it would not be reasonably practicable at said location; and

WHEREAS, the Plan and Zoning Commission voted 9-4 to approve the Site Plan submitted by Shelden Holdings, LLC and the Type 2 design alternative waiving undergrounding of utilities required by Section 135-9.2.1.E, and to deny the Type 2 design alternative for Section 135-8.2.3.A rather than approving it as requested by Shelden Holdings, LLC or conditionally approving it as recommended by the City’s Planning Administrator and agreed to by Shelden Holdings, LLC; and

WHEREAS, Shelden Holdings, LLC 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’s denial of the Type 2 design alternative to the Site Plan to waive the 0.5-acre lot-size requirement set forth in Municipal Code Section 135-8.2.3.A, and requesting that the Council approve said Type 2 design alternative and further approve the use of 6 parking spaces on the Property for vehicle display as originally proposed by Shelden Holdings, LLC; and

WHEREAS, on January 10, 2022, by Roll Call No. 22-0042, it was duly resolved by the City Council that the appeal be set down for hearing on January 24, 2022 at 5:00 P.M. in the Council Chambers; and



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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 Alternative, 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 Alternative in form requested by Shelden Holdings, LLC for property located at 2551 Douglas Avenue, as described above, are hereby received and filed.
2. The communications from the Plan and Zoning Commission, Shelden Holdings, LLC, and the Lower Beaver Neighborhood Association, respectively, are hereby received and filed.

Alternative A

MOVED BY _____ to **DENY** the Type 2 Design Alternative in form requested by Shelden Holdings, LLC and described above, and thus uphold the denial by the Plan and Zoning Commission, and to make the following findings of fact and objections regarding the Type 2 Design Alternative as proposed by Shelden Holdings, LLC:

- a. Municipal Code Section 135-8.2.3.A requires that any portion of a property to be used for outside storage, display or parking of vehicles or equipment for vehicle sales, vehicle rental, and trucking and transportation terminal uses contain at least one-half (0.5) acre of land.
- b. The Property is 0.425 acres in size and therefore is not compliant with said Section 135-8.2.3.A.
- c. Shelden Holdings, LLC is proposing multiple uses competing for space and parking within a small site, with the Property not containing enough area to provide sufficient space to reduce the potential for parking conflicts and vehicle overcrowding within the Property.
- d. Allowing vehicle sales use on the Property could further cause double parking and blocking of vehicles thereon to the detriment of the neighboring properties.
- e. Allowing outdoor storage of vehicles for sale on the Property could result in the Property being primarily used for vehicles sales, which would not be consistent with the future Douglas Avenue Corridor Plan.
- f. Shelden Holdings, LLC has not met the burden required to demonstrate that its requested design alternative meets the criteria for approval or that the result of the design alternative would equal or exceed the result of compliance with Municipal Code Section 135-8.2.3.A.
- g. Shelden Holdings, LLC has not shown that its requested design alternative is 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.
- h. Shelden Holdings, LLC has not shown that its requested design alternative will not have a substantial or undue adverse effect on the public health, safety, and general welfare.
- i. The Type 2 Design Alternative as proposed by Shelden Holdings, LLC should not be approved for the reasons stated above.

Alternative B

MOVED BY Sheumaker to **APPROVE** the Type 2 Design Alternative in form recommended by the City's Planning Administrator and described above, and to make the following findings of fact and objections regarding the Type 2 Design Alternative as recommended by the City's Planning Administrator:



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- a. Municipal Code Section 135-8.2.3.A requires that any portion of a property to be used for outside storage, display or parking of vehicles or equipment for vehicle sales, vehicle rental, and trucking and transportation terminal uses contain at least one-half (0.5) acre of land.
 - b. The Property is 0.425 acres in size, and thus only 0.075 acres less than the minimum size required to comply with said Section 135-8.2.3.A.
 - c. The proposed vehicle sales use is appropriate and complementary as a use secondary to the vehicle repair activities that have previously operated on the Property insofar as parking for the vehicle sales use is limited and subordinate to parking related to the vehicle repair activities.
 - d. Any more than three (3) parking spaces on the Property devoted to the proposed vehicles sales use would not be appropriate given the Property’s size (0.425 acres) and physical constraints (cell tower and accompanying easement).
 - e. The Type 2 Design Alternative as recommended by the City’s Planning Administrator providing for a smaller vehicle display area on the Property, limited to the three (3) parking spaces closest to Douglas Avenue, would reduce the potential for parking conflicts between the multiple uses competing for parking within a small site and for vehicle overcrowding within the Property, and would allow the Property to meet the intent of Section 135-8.2.3.A to require vehicle display uses on sufficiently-sized lots.
 - f. The Type 2 Design Alternative as recommended by the City’s Planning Administrator had been agreed to as acceptable by Shelden Holdings, LLC, prior to the November 4, 2021 denial of its Type 2 Design Alternative request by the Plan and Zoning Commission.
 - g. Shelden Holdings, LLC has not met the burden required to demonstrate that its requested design alternative meets the criteria for approval or that the result of the design alternative would equal or exceed the result of compliance with the above-stated alternate Type 2 Design Alternative recommended by the City’s Planning Administrator, constituting a compromise position between full compliance with the Planning and Design Ordinance and Shelden Holdings, LLC’s proposal.
 - h. Shelden Holdings, LLC has not shown that its requested design alternative is 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. Shelden Holdings, LLC has not shown that its requested design alternative will not have a substantial or undue adverse effect on the public health, safety, and general welfare.
 - j. The Type 2 Design Alternative as proposed by Shelden Holdings, LLC should not be approved for the reasons stated above.
 - k. The Type 2 Design Alternative, in form recommended by the City’s Planning Administrator, to allow waiver of Section 135-8.2.3.A and secondary use of the Property for vehicle display purposes subject to limitation of the vehicle display area to the three (3) parking spaces closest to Douglas Avenue, should be upheld and approved for the reasons stated above.
 - l. Said Type 2 Design Alternative, in form recommended by the City’s Planning Administrator, is approved subject to submission by Shelden Holdings, LLC depicting that only the three (3) parking spaces closest to Douglas Avenue be utilized for vehicle display.
- Second by Boesen.

Alternative C

MOVED BY _____ to **APPROVE** the proposed Type 2 Design Alternative in form requested by Shelden Holdings, LLC and described above, and to make the following findings of fact in support of approval of the proposed Type 2 Design Alternative:

- 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,



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including the presence of existing buildings, creates conditions that make strict compliance with applicable regulations impractical or undesirable.”

- b. Municipal Code Section 135-8.2.3.A requires that any portion of a property to be used for outside storage, display or parking of vehicles or equipment for vehicle sales, vehicle rental, and trucking and transportation terminal uses contain at least one-half (0.5) acre of land.
- c. The Property is 0.425 acres in size, and thus only 0.075 acres less than the minimum size required to comply with said Section 135-8.2.3.A.
- d. The proposed vehicle sales use is appropriate and complementary as a use secondary to the vehicle repair activities that have previously operated on the Property, and Sheldon Holdings, LLC and its tenant intend to limit and subordinate the proposed vehicle sales use and related parking to the vehicle repair activities.
- e. Allowing six (6) parking spaces on the Property, of the twelve (12) parking spaces thereon, to be used for the proposed vehicles sales use is acceptable given that the Property is approximately the minimum size required by Section 135-8.2.3.A.
- f. Sheldon Holdings, LLC has met the burden required to demonstrate that the requested design alternative meets the criteria for approval and that the result of the design alternative would equal or exceed the result of strict compliance with Section 135-8.2.3.A of the Planning and Design Ordinance.
- g. Sheldon Holdings, LLC has shown that the requested design alternative is 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.
- h. Sheldon Holdings, LLC has shown that the requested design alternative will not have a substantial or undue adverse effect on the public health, safety, and general welfare.
- i. Said Type 2 Design Alternative, in form requested by Sheldon Holdings, LLC, should be approved for the above-stated reasons and incorporated into the approved Site Plan for the Property.

FORM APPROVED:

/s/ Glenna K. Frank

Glenna K. Frank, Assistant City Attorney

(SITE-2021-000047)

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

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.

MOTION CARRIED

APPROVED

J. M. Franklin Cownie Mayor

P. Kay Cmelik

City Clerk