



Roll Call Number

22-0456

Agenda Item Number

61 ✓

Date March 21, 2022

RESOLUTION HOLDING HEARING ON REQUESTS FROM THE OAKS ON FLEUR, LLC TO AMEND THE EXISTING PLAN DSM: CREATING OUR TOMORROW PLAN FUTURE LAND USE DESIGNATION AND REZONE PROPERTY LOCATED AT 3010 FLEUR DRIVE AND 3020 FLEUR DRIVE

WHEREAS, on February 7, 2022, by Roll Call No. 22-0174, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on January 20, 2022, the City Plan and Zoning Commission voted 14-0 in support of a motion finding that the proposed zoning was not consistent with PlandDSM future land use map; and

WHEREAS, on February 7, 2002, Roll Call No 22-0174, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on January 20, 2022, its members voted 9-5 in support of a motion to recommend **DENIAL** of a request by The Oaks on Fleur, LLC (owner), represented by Adam Sieren (officer), to amend the existing PlanDSM: Creating Our Tomorrow Comprehensive Future Land Use Plan designation for real property locally known as 3010 Fleur Drive and 3020 Fleur Drive (collectively "Property") from Low Density Residential to Medium Density Residential; and

WHEREAS, on February 7, 2022, by Roll Call No. 22-0174, the City Council received a communication from the City Plan and Zoning Commission further advising that at a public hearing held on January 20, 2022, its members voted 9-5 in support of a motion to recommend **DENIAL** of a request by The Oaks on Fleur, LLC (owner), represented by Adam Sieren (officer), to rezone 2 parcels comprising the Property from 'N3a' Neighborhood District to Limited 'NX1' Neighborhood District for the above-stated purpose, subject to the following conditions:

1. Drive approaches to the site from Fleur Drive are prohibited;
 2. No more than 15 household units shall be developed;
 3. All primary buildings shall front a public street; and
 4. Any building that fronts Willowmere Drive shall not exceed 2 stories or 24 feet above grade in total height;
- and

WHEREAS, on February 7, 2022, by Roll Call No. 22-0174, it was duly resolved by the City Council that the request for approval of the proposed PlanDSM Comprehensive Future Land Use Plan amendment and rezoning of the Property, legally described as follows, be set down for hearing on February 21, 2022 at 5:00 P.M., in the Council Chamber at City Hall:

"LOT 2 (EXCEPT THE EAST 4 FEET) AND THE SOUTH 3 FEET OF THE WEST 193 FEET OF THE EAST 200 FEET OF LOT 1 (EXCEPT THE WEST 4 FEET OF THE EAST 11 FEET OF THE SOUTH 3 FEET) IN WILLOWMERE, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

LOT THREE (3) EXCEPT THE EAST 4.00 FEET THEREOF (AS MEASURED PERPENDICULAR TO THE EAST LINE OF LOT 3) IN WILLOWMERE, AN OFFICIAL PLAT,



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NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA."

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 PlanDSM Comprehensive Future Land Use Plan amendment; and

WHEREAS, on February 21, 2022, by Roll Call No. 22-0263, the City Council opened and continued said hearing to 5:00 p.m. on March 21, 2022, upon request by the applicants' representative for additional time for review and evaluation of the proposed rezoning conditions and to address neighborhood questions; and

WHEREAS, in accordance with said notice, those interested in said proposed Comprehensive Future Land Use Plan amendment and rezoning and, 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:

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: Creating Our Tomorrow Comprehensive Future Land Use Plan designation for 3010 Fleur Drive and 3020 Fleur Drive, or the proposed rezoning of the Property to Limited 'NX1' Neighborhood District, subject to the conditions stated above, are hereby received and filed, and the hearing is closed.

Alternative A

MOVED by Mandelbaum and Seconded by Gatto to adopt and DENY the proposed amendment to the PlanDSM: Creating Our Tomorrow Comprehensive Future Land Use Plan designation and rezoning, and to make the following findings of fact regarding the proposed land use plan amendment and rezoning:

- a. That the Plan and Zoning Commission voted 9-5 to DENY the proposed comprehensive plan amendment and the Plan and Zoning Commission voted 9-5 to DENY the proposed rezoning of the Property.
b. If the proposed amendment to the PlanDSM future land use designation of the Property to Medium Density is not approved, then the proposed rezoning to is inapplicable due to nonconformance of Limited 'NX1' with the PlanDSM designation of Low Density Residential.
c. That the City Clerk received and filed a signed protest from owners of 20% or more of the property located within 200 feet of the exterior boundaries of the area included in the proposed zoning map amendment area, at or before the City Council hearing on the proposed zoning map amendment.
d. The PlanDSM: Creating Our Tomorrow Comprehensive Future Land Use Plan designation of the Property is Low Density Residential, which is not in conformance with the proposed Medium Density Residential designation or proposed use of the Property as stated above as the higher density use does not fit with the Low Density designation nor with existing zoning and development in the vicinity.

If the application of the existing zoning regulations has the effect of denying the owner all economic use of the

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Property, then the appropriate remedy is to seek relief from the Zoning Board of Adjustment.

Recommend that this go to the Zoning Board of Adjustment for review, there were no objections from the neighbors or neighborhood association.

~~Alternative B~~

~~MOVED by _____ and Seconded by _____ to continue the public hearing until April 4, 2022, at 5:00 p.m. in the Council Chambers at City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, and to direct the City Manager and Legal Department to prepare the necessary legislation to APPROVE the proposed PlanDSM Comprehensive Future Land Use Plan amendment from Low Density Residential to Medium Density Residential and APPROVE the proposed rezoning from 'N3a' Neighborhood District to Limited 'NX1' Neighborhood District, subject to conditions acceptable to the City and the owner(s).~~

NOTE: Affirmative votes of three-fourths of the council members who are not disqualified by reason of a conflict of interest are required to approve the proposed rezoning due to the Protest filed by 20% or more of the Property Owners located within 200 feet of the exterior boundaries of the area included within the proposed zoning map amendment area. Des Moines City Code §134-6.3.10 & Iowa Code §362.6 .

Original motion by Mandelbaum to adopt alternative A. SEcond by Boesen. Motion Carried 7 yes.
 Motion by Sheumaker to reconsider item 61. Second by Mandelbaum.
 APPROVED AS TO FORM: Motion Carried 7 yes.

Judy K. Parks-Kruse

Judy K. Parks-Kruse
 Assistant City Attorney

(ZONG2021-000051)
 (ZONG2021-000052)

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

J. 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