



Roll Call Number

23-1791

Agenda Item Number

53

Date December 18, 2023

RESOLUTION HOLDING HEARING ON APPEAL OF BRADLEY & BELINDA MC ANINCH (OWNER), REPRESENTED BY BRADLEY MC ANINCH (OFFICER), ON A DENIAL OF TYPE 2 DESIGN ALTERNATIVES FOR A PUBLIC HEARING SITE PLAN FOR PROPERTY LOCATED AT 4700 SOUTHEAST 14TH STREET

WHEREAS, public hearing held on November 16, 2023, the City Plan and Zoning Commission considered a request from Bradley & Belinda Mc Aninch (owner), represented by Bradley Mc Aninch (officer), for approval of the Site Plan for Type 2 Design Alternatives waiving the requirements for installation of a Priority 1 Sidewalk along East Herold Avenue set forth in Municipal Code Section 135-8.5.2 and requirements of building transparency set forth in Municipal Code Section 135-2.5-D.18 as shown in the Site Plan submitted for the property located at 4700 Southeast 14th Street; and

WHEREAS, pursuant to Section 135-8.5.2 of the Municipal Code, sidewalks are required as identified in the City's Transportation Master Plan; and

WHEREAS, in its Site Plan, Bradley & Belinda Mc Aninch proposed for no sidewalk installation along East Herold Avenue, where sidewalk installation is required with a Priority 1 Sidewalk designation under the City's Transportation Master Plan; and

WHEREAS, pursuant to Section 135-2.5-D.18 of the Municipal Code, requires a minimum of 60% transparency of a primary frontage ground story measured between 2 feet and 8 feet above grade on the primary façade; and

WHEREAS, in its Site Plan, Bradley & Belinda Mc Aninch proposed for waiver of the requirement of 60% transparency between 2 and 8 feet above grade on the primary façade; and

WHEREAS, the Plan and Zoning Commission voted 9-0-1 for **DENIAL** of the requested Type 2 Design Alternatives A and B and **APPROVAL** of the requested Type 2 Design Alternatives C through F, in which the Commission denied the request to waive or modify said ordinance requirements to allow for no sidewalk installation along East Herold Avenue and the requirement of 60% transparency between 2 and 8 feet above grade on the primary façade; and

WHEREAS, Bradley Mc Aninch has timely appealed to the City Council pursuant to Municipal Code Section 135-9.3.9(B), and is seeking further review of the Plan and Zoning Commission decision and denial of the above-described Type 2 design alternatives to the Site Plan including requirements for installation of a Priority 1 Sidewalk along East Herold Avenue set forth in Municipal Code Section 135-8.5.2 and requirements of building transparency set forth in Municipal Code Section 135-2.5-D.18 as shown in the Site Plan submitted for the property located at 4700 Southeast 14th Street; and



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WHEREAS, on December 4, 2023, by Roll Call No. 23-1687, it was duly resolved by the City Council that the appeal be set down for hearing on December 18, 2023 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 Bradley & Belinda Mc Aninch for property located at 4700 Southeast 14th Street, as described above, are hereby received and filed.
2. The communications from the Plan and Zoning Commission and Bradley & Belinda Mc Aninch, respectively, are hereby received and filed.

TYPE 2 DESIGN ALTERNATIVE #1 – SIDEWALK INSTALLATION

Alternative A1

MOVED BY Gatto to **DENY** the Type 2 Design Alternative concerning sidewalk installation in form requested by Bradley & Belinda Mc Aninch described above and to make the following findings of fact and objections regarding the Type 2 Design Alternative as proposed by Bradley & Belinda Mc Aninch:

- a. Under Municipal Code Section 135-8.5.2, sidewalks are required as identified in the City’s Transportation Master Plan.
- b. The subject property is located along Southeast 14th Street directly south of East Herold Avenue and north of East McKinley Avenue.
- c. East Herold Avenue is a priority one sidewalk gap within the City’s Transportation Plan, MoveDSM; and Bradley & Belinda Mc Aninch would be able to provide the missing sidewalk connection on East Herold Avenue to Southeast 14th Street.
- d. Such sidewalk installation would provide connectivity and walkability for residential properties west of the subject property with access to Southeast 14th Street.



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- e. Bradley & Belinda Mc Aninch’s proposal for the Type 2 Design Alternative to the requirements of Section Code Section 135-8.5.2 are for full waiver, resulting in no sidewalk installation being required along East Herold Avenue, and it is based on preference, rather than need.
- f. City Planning staff recommended denial of said Type 2 design alternative for full waiver of Section Code Section 135-8.5.2 as requested by Bradley & Belinda Mc Aninch.
- g. Bradley & Belinda Mc Aninch have not met the burden required to demonstrate that their requested design alternative met the criteria for approval or that the result of the design alternative would equal or exceed the result of compliance with the Planning and Design Ordinance.
- h. Bradley & Belinda Mc Aninch have not shown that their 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. Bradley & Belinda Mc Aninch have not shown that their 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 Bradley & Belinda Mc Aninch should not be approved for the reasons stated above.

Alternative A2

MOVED BY _____ to **APPROVE** the Type 2 Design Alternative concerning sidewalk installation in form requested by Bradley & Belinda Mc Aninch described above and to make the following findings of fact in support of approval of the proposed Type 2 Design Alternative:

- a. Under Municipal Code Section 135-8.5.2, sidewalks are required as identified in the City’s Transportation Master Plan.
- b. The subject property is located along Southeast 14th Street directly south of East Herold Avenue and north of East McKinley Avenue.
- c. There is no sidewalk connection on East Herold Avenue to Southeast 14th Street through the subject property and the adjoining properties further west from the adjoining property.
- d. Any sidewalk installation would have no existing connection to the west since the neighboring property currently lacks a sidewalk.
- e. There are existing utilities within the subject property near the required sidewalk installation area, and any associated maneuvering or additional steps during installation of the sidewalk with utilities near such installation carry additional financial and administrative burdens for Bradley & Belinda Mc Aninch.
- f. Bradley & Belinda Mc Aninch’s proposal for the Type 2 Design Alternative to the requirements of Section Code Section 135-8.5.2 are for full waiver, resulting in no sidewalk installation being required along East Herold Avenue, and it is based on the lack of necessity for the sidewalk at this location with no existing connection and the additional burden such installation would create.
- g. Bradley & Belinda Mc Aninch have met the burden required to demonstrate that the requested design alternative meet the criteria for approval and that the result of the design alternative would equal or exceed the result of strict compliance with Sections 135-8.5.2 of the Planning and Design Ordinance.



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- h. Bradley & Belinda Mc Aninch have 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.
- i. Bradley & Belinda Mc Aninch have shown that the requested design alternative will not have a substantial or undue adverse effect on the public health, safety, and general welfare.
- j. Said Type 2 Design Alternative, in form requested by Bradley & Belinda Mc Aninch, should be, and hereby, approved for the above-stated reasons and incorporated into the approved Site Plan for the Property.

Second by Voss

TYPE 2 DESIGN ALTERNATIVE #2 – PRIMARY FAÇADE TRANSPARENCY

Alternative B1

MOVED BY _____ to DENY the Type 2 Design Alternative concerning primary façade transparency in form requested by Bradley & Belinda Mc Aninch described above and to make the following findings of fact and objections regarding the Type 2 Design Alternative as proposed by Bradley & Belinda Mc Aninch:

- a. Under Municipal Code Section 135-2.5-D.18, requires a minimum of 60% transparency of a primary frontage ground story measured between 2 feet and 8 feet above grade on the primary façade.
- b. The subject property is located along Southeast 14th Street with the primary façade facing that primary street, which is an established, commercial corridor.
- c. The required Storefront building type is a low-to-midrise building type used along commercial corridors to promote interaction with the public, and activate public interaction by providing transparency on the primary street facing façade.
- d. Bradley & Belinda Mc Aninch’s Site Plan includes no transparency proposed within the required 2 feet and 8 feet along the primary façade and the proposed design would not meet the intended commercial character for the corridor.
- e. Bradley & Belinda Mc Aninch’s proposal for the Type 2 Design Alternative to the requirements of Section Code Section 135-2.5-D.18 are for full waiver, resulting in primary frontage ground story measured between 2 feet and 8 feet above grade with transparency less than 60% on the primary façade, and it is based on preference, rather than need.
- f. City Planning staff recommended denial of said Type 2 design alternative for full waiver of Section Code Section 135-2.5-D.18 as requested by Bradley & Belinda Mc Aninch.
- g. Bradley & Belinda Mc Aninch have not met the burden required to demonstrate that their requested design alternative met the criteria for approval or that the result of the design alternative would equal or exceed the result of compliance with the Planning and Design Ordinance.



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- h. Bradley & Belinda Mc Aninch have not shown that their 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. Bradley & Belinda Mc Aninch have not shown that their 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 Bradley & Belinda Mc Aninch should not be approved for the reasons stated above.

Alternative B2

MOVED BY Gatto to **APPROVE** the proposed Type 2 Design Alternative concerning primary façade transparency in form requested by Bradley & Belinda Mc Aninch and described above, and to make the following findings of fact in support of approval of the proposed Type 2 Design Alternative:

- a. Under Municipal Code Section 135-2.5-D.18, requires a minimum of 60% transparency of a primary frontage ground story measured between 2 feet and 8 feet above grade on the primary façade.
- b. The subject property is located along Southeast 14th Street with the primary façade facing that primary street.
- c. The required Storefront building type is a low-to-midrise building type used along commercial corridors to promote interaction with the public, and activate public interaction by providing transparency on the primary street facing façade.
- d. Bradley & Belinda Mc Aninch's provides the no transparency proposed between 2 feet and 8 feet along the primary façade was to address security and safety concerns, but the Site Plan does include additional transparency at higher levels to address such transparency concerns.
- e. Bradley & Belinda Mc Aninch's proposal for the Type 2 Design Alternative to the requirements of Section Code Section 135-2.5-D.18 are for full waiver, resulting in primary frontage ground story measured between 2 feet and 8 feet above grade with transparency less than 60% on the primary façade, and it is based on security and safety needs.
- f. Bradley & Belinda Mc Aninch have met the burden required to demonstrate that the requested design alternative met the criteria for approval and that the result of the design alternative would equal or exceed the result of strict compliance with Sections 135-2.5-D.18 of the Planning and Design Ordinance.
- g. Bradley & Belinda Mc Aninch have 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. Bradley & Belinda Mc Aninch have 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 Bradley & Belinda Mc Aninch, should be, and hereby, approved for the above-stated reasons and incorporated into the approved Site Plan for the Property.



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Second by Boesen

Motion carried 6-1. Nays: Mandelbaum

FORM APPROVED:

/s/ Chas M. Cahill

Chas M. Cahill
Assistant City Attorney

(SITE-2023-000047)

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, COLEMAN, GATTO, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL (7 yeas).

CERTIFICATE

I, LAURA BAUMGARTNER, 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. Frankhu Cownie Mayor

Laura Baumgartner City Clerk