



Roll Call Number

24-1528

Agenda Item Number

39

Date November 4, 2024

**RESOLUTION HOLDING HEARING ON APPEAL FROM IOWA MOTOR CARRIERS FOUNDATION (OWNER), REPRESENTED BY BRENDA NEVILLE (OFFICER), ON A DENIAL OF A TYPE 2 DESIGN ALTERNATIVE FOR A PUBLIC HEARING SITE PLAN FOR PROPERTY LOCATED AT 717 EAST COURT AVENUE**

**WHEREAS**, at a public hearing held on July 18, 2024, the City Plan and Zoning Commission considered a request from Iowa Motor Carriers Foundation (Owner), represented by Brenda Neville (Officer), for approval of the Site Plan for Type 2 Design Alternative waiving the requirement for undergrounding of overhead electrical lines where it is required in an underground district designated by resolution of the City Council, as shown in the Site Plan submitted for the property located at 717 East Court Avenue; and

**WHEREAS**, pursuant to Section 135-9.2.3.B.16.A of the Municipal Code, undergrounding of overhead electrical lines is required in an underground district designated by resolution of the City Council; and

**WHEREAS**, pursuant to Section 1-2 of the Municipal Code, the underground district designated by resolution of the City Council encompasses the area bounded by: the territory on the west side of the Des Moines River beginning at the point of intersection of the west bank of the Des Moines River with the easterly extension of the south line of the first east/west alley south of Court Avenue; thence westerly along the westerly extension of the south line of such alley to the east right-of-way line of Fifth Avenue; thence southerly along the east right-of-way line of Fifth Avenue to the southeast corner of the intersection of Fifth Avenue and Cherry Street; thence westerly along the south right-of-way line of Cherry Street to the southwest corner of the intersection of Cherry Street and Ninth Street; thence northerly along the west right-of-way line of Ninth Street to the northwest corner of the intersection of Ninth Street and Grand Avenue; thence easterly along the north right-of-way line of Grand Avenue to the west bank of the Des Moines River; thence southerly along the west bank of the Des Moines River to the point of beginning; and the territory on the east side of the Des Moines River beginning at the point of intersection of the east bank of the Des Moines River with the north right-of-way line of East Grand Avenue; thence easterly along the north right-of-way line of East Grand Avenue to the northeast corner of the intersection of East Grand Avenue and vacated East Ninth Street; thence southerly along the east right-of-way line of vacated East Ninth Street to the intersection of the east right-of-way line of vacated East Ninth Street and the easterly extension of the south line of the first vacated east/west alley lying south of East Court Avenue; thence westerly along the westerly extension of the south line of such alley to the east bank of the Des Moines River; thence northerly along the east bank of the Des Moines River to the point of beginning.; and

**WHEREAS**, in its Site Plan, the Iowa Motor Carriers Foundation proposed waiving the requirements for undergrounding of overhead electrical lines where it is required in an underground district designated by resolution of the City Council since the property located at 717 East Court Avenue is located within the above defined underground district; and



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**WHEREAS**, the Plan and Zoning Commission voted 13-0 for **DENIAL** of the requested Type 2 Design Alternative, in which the Commission denied the request to waive or modify said ordinance requirements to allow for no undergrounding of the current overhead electrical lines where it is required in an underground district designated by resolution of the City Council; and

**WHEREAS**, the Iowa Motor Carriers Foundation 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 alternative to the Site Plan waiving the requirements for undergrounding of overhead electrical lines where it is required in an underground district designated by resolution of the City Council set forth in Municipal Code Section 135-9.2.3.B.16.A; and

**WHEREAS**, on October 21, 2024, by Roll Call No. 24-1446, it was duly resolved by the City Council that the appeal be set down for hearing on November 4, 2024 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 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 the Iowa Motor Carriers Foundation for property located at 717 East Court Avenue, as described above, are hereby received and filed.
2. The communications from the Plan and Zoning Commission and the Iowa Motor Carriers Foundation, respectively, are hereby received and filed.

**Alternative A**

MOVED BY Marsdelbaum to **DENY** the Type 2 Design Alternative in form requested by the Iowa Motor Carriers Foundation described above and to make the following findings of fact and objections regarding the Type 2 Design Alternative as proposed by the Iowa Motor Carriers Foundation:



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- a. Municipal Code Section 135-9.2.3.B.16.A requires undergrounding of overhead electrical lines in an underground district designated by resolution of the City Council.
- b. Municipal Code Section 1-2 defines the underground district designated by resolution of the City Council, as fully defined above.
- c. The subject site is located at 717 East Court Avenue which is located within the above defined underground district.
- d. The eastern portion of the district is bound by East 9<sup>th</sup> Street to the east, the Des Moines River to the west, East Grand Avenue to the north and East Court Avenue to the south. Within this portion of the underground district, only two (2) properties have not yet undergrounded their overhead lines, Iowa Motor Carriers Foundation at 717 East Court Avenue and Associated General Contractors of Iowa office at 701 East Court Avenue. The remaining surrounding properties have undergrounded lines.
- e. The Iowa Motor Carriers Foundation's proposal for the Type 2 Design Alternative to the requirement of Section 135-9.2.3.B.16.A is for full waiver, resulting in the overhead lines remaining and the lines not being buried underground within the Council designated underground district, 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 135-9.2.3.B.16.A as requested by the Iowa Motor Carriers Foundation.
- g. The Iowa Motor Carriers Foundation 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 alternatives would equal or exceed the result of compliance with the Planning and Design Ordinance.
- h. The Iowa Motor Carriers Foundation 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. The Iowa Motor Carriers Foundation 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 the Iowa Motor Carriers Foundation should not be approved for the reasons stated above.

Direct staff to work with the applicant to provide an appropriate timeline to comply, not to Alternative B exceed three years.

MOVED BY \_\_\_\_\_ to **APPROVE** the proposed Type 2 Design Alternative in form requested by the Iowa Motor Carriers Foundation 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 135-9.2.3.B.16.A requires undergrounding of overhead electrical lines in an underground district designated by resolution of the City Council.
- b. The Iowa Motor Carriers Foundation provides the reason for the waiver is the cost and financial burden associated with the undergrounding of the overhead lines.

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- c. Additionally, the Iowa Motor Carriers Foundation provides that the overhead lines have been in place for decades, prior to the establishment of the underground district, and the removal of the overhead lines is an unnecessary expense.
- d. The site is on the south side of East Court Avenue, with general office and surface parking lot uses prevalent to the west of the subject property with governmental entities to the north and east, along with an abandoned railway adjacent to the south. The overhead lines remaining would not impact the character of this area and would not impact the aesthetic of the existing area.
- e. The Iowa Motor Carriers Foundation's proposal for the Type 2 Design Alternative to the requirements of Section 135-9.2.3.B.16.A are for full waiver, resulting in the overhead lines remaining and the lines not being buried underground within the Council designated underground district, based on preference to cost and financial needs.
- f. The Iowa Motor Carriers Foundation 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 the result of strict compliance with Section 135-9.2.3.B.16.A of the Planning and Design Ordinance.
- g. The Iowa Motor Carriers Foundation 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. The Iowa Motor Carriers Foundation 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 the Iowa Motor Carriers Foundation, should be, and hereby, approved for the above-stated reasons and incorporated into the approved Site Plan for the Property.

Second by Coleman

FORM APPROVED:

/s/ Chas M. Cahill

Chas M. Cahill  
 Assistant City Attorney

(SITE-2023-000141)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN	✓			
COLEMAN	✓			
GATTO	✓			
MANDELBAUM	✓			
SIMONSON				✓
VOSS	✓			
WESTERGAARD	✓			
TOTAL	6			1

**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.

Connie Boesen Mayor

Laura Baumgartner City Clerk