

Date March 9, 2009

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on February 19, 2009, its members voted 7-5 in support of a motion to recommend **APPROVAL** of a request from Menard, Inc. (purchaser) represented by Thomas O'Neil (officer) to find the proposed rezoning in conformance with the Des Moines' 2020 Community Character Plan and to rezone property located at 1201 East Diehl Avenue, from "R1-60" One-Family Low-Density Residential District and "C-2" General Retail and Highway-Oriented Commercial District to "C-2" General Retail and Highway Oriented Commercial District, to allow an expansion of the existing outdoor merchandise area and 23,760 square-foot roofed garden center to the north side of the existing Menard's home improvement retail center, subject to the following conditions:

1. The westernmost 100 of the subject property shall remain zoned "R1-60" One-Family Low-Density Residential District. (Any commercial development must provide the minimum required 10-foot rear yard setback from this zoning boundary.)
2. The following uses of structures and land shall be prohibited upon the Property:
  - a. Vehicle display lots, including but not limited to used car sales lots;
  - b. Adult entertainment businesses;
  - c. Taverns and nightclubs;
  - d. Off-premises advertising signs; and
  - e. Package goods stores for the sale of alcoholic beverages.
3. Any commercial development on the site shall be setback at least 40 feet from the north side property line.
4. Any commercial development on the site shall be screened with a continuous 14-foot tall solid wall that is setback at least 40 feet from the north side property line. The bottom 4 feet shall be constructed of a masonry material the upper 10 feet may be constructed of 2-inch by 8-inch vertical treat lumber with not spacing between boards.
5. No outdoor storage of merchandise in the outdoor display area shall be stacked higher than the perimeter fencing.
6. Any external lighting on the site shall have a maximum height of 14 feet in height and shall be down-directed cut-off fixtures.
7. Any commercial use of the Property shall be in conformance with an approved site plan that shall:
  - a. Contain a landscape plan and building elevations demonstrating general conformance with the site sketch submitted by the applicant incident to this rezoning, to the satisfaction of the Community Development Director. (This includes providing 8 evergreen trees and 4 overstory trees per 100 lineal feet along the north property line.); and

Date March 9, 2009

- b. Provide landscaped bufferyards and open space in conformance with the City's adopted landscape standards.
- 8. Any commercial expansion onto the property shall be subject to the entire commercial development being brought into conformance with the current storm water management requirements.
- 9. All necessary permits shall be obtained for the construction of any building or wall upon the Property.
- 10. Prior to issuance of the Certificate of Occupancy for any commercial use of the Property, the professional who signed the site plan shall submit a letter to the Community Development Director certifying that the Property has been improved in substantial conformance with the approved site plan.

The subject property is more specifically described as follows:

A part of the North 1/2 of the Northeast 1/4 of the Southeast 1/4 of Section 27, Township 78 North, Range 24 West of the 5th P.M., and described as follows:

Commencing at the Southeast corner of Lot 26, Jordan Place Plat Two, an Official Plat; thence North 89° (degrees) 28' (minutes) 14" (seconds) West along the south line of Lots 26, 25, 24 and 23 of said Jordan Place Plat Two, a distance of 227.11 feet to the West line of the East 160.00 feet of the West 590.20 feet of the South 155.90 feet of said North 1/2 of the Northeast 1/4 of the Southeast 1/4 and the Point of Beginning; thence South 00° 08' 49" East along said West line, 155.67 feet to the South line of said North 1/2 of the Northeast 1/4 of the Southeast 1/4; thence North 89° (degrees) 29' (minutes) 10" (seconds) West along said South line, 430.23 feet to the East line of Lot 3, Jordan Place Plat Three, an Official Plat; thence North 00° (degrees) 12' (minutes) 03" (seconds) West along said East line of Lot 3 and along the East line of Lot 2 and Lot 1 of said Jordan Place Plat 3, a distance of 155.79 feet to the Northeast corner of said Lot 1 and the South line of Lot 16 of said Jordan Place Plat 2; thence South 89° (degrees) 28' (minutes) 14" (seconds) East along the South line of said Lot 16 and along the South line of Lots 17 through 23, a distance of 430.38 feet to the Point of Beginning, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

- 1. That the meeting of the City Council at which the proposed rezoning is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. on March 23, 2009, at which time the City Council will hear both those

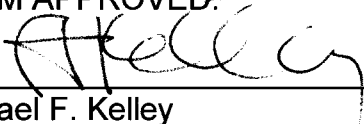
Date March 9, 2009

who oppose and those who favor the proposal.

- That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

MOVED by \_\_\_\_\_ to adopt.

FORM APPROVED:



Michael F. Kelley  
Assistant City Attorney

(ZON2008-00194)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
<b>TOTAL</b>				
MOTION CARRIED			APPROVED	
_____ Mayor				

**CERTIFICATE**

I, DIANE RAUH, 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.

\_\_\_\_\_ City Clerk

REGISTER ORDER NO. \_\_\_\_\_ ROLL CALL LEGAL BULLETIN BOARD FOLLOW UP

NOTICE OF HEARING

TO WHOM IT MAY CONCERN

Notice is hereby given that on March 23, 2009, at 5:00 p.m., in the Council Chambers at City Hall at 400 Robert D. Ray Drive, Des Moines, Iowa, a hearing will be held by the City Council concerning a request from Menard, Inc. (purchaser) represented by Thomas O'Neil (officer) to rezone property at 1201 East Diehl Avenue from R1-60 One-Family Low-Density Residential District and C-2 General Retail and Highway Oriented Commercial District to "C-2" General Retail and Highway Oriented Commercial District, to allow an expansion of the existing outdoor merchandise area and 23,760 square-foot roofed garden center to the north side of the existing Menard's home improvement retail center.

The subject property is more specifically described as follows:

A part of the North 1/2 of the Northeast 1/4 of the Southeast 1/4 of Section 27, Township 78 North, Range 24 West of the 5th P.M., and described as follows:

Commencing at the Southeast corner of Lot 26, Jordan Place Plat Two, an Official Plat; thence North 89° (degrees) 28' (minutes) 14" (seconds) West along the south line of Lots 26, 25, 24 and 23 of said Jordan Place Plat Two, a distance of 227.11 feet to the West line of the East 160.00 feet of the West 590.20 feet of the South 155.90 feet of said North 1/2 of the Northeast 1/4 of the Southeast 1/4 and the Point of Beginning; thence South 00° 08' 49" East along said West line, 155.67 feet to the South line of said North 1/2 of the Northeast 1/4 of the Southeast 1/4; thence North 89° (degrees) 29' (minutes) 10" (seconds) West along said South line, 430.23 feet to the East line of Lot 3, Jordan Place Plat Three, an Official Plat; thence North 00° (degrees) 12' (minutes) 03" (seconds) West along said East line of Lot 3 and along the East line of Lot 2 and Lot 1 of said Jordan Place Plat 3, a distance of 155.79 feet to the Northeast corner of said Lot 1 and the South line of Lot 16 of said Jordan Place Plat 2; thence South 89° (degrees) 28' (minutes) 14" (seconds) East along the South line of said Lot 16 and along the South line of Lots 17 through 23, a distance of 430.38 feet to the Point of Beginning, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

At the above designated time and place, opportunity to be heard will be given to proponents and opponents of the proposed rezoning.

CITY OF DES MOINES, IOWA

By: \_\_\_\_\_  
T. M. Franklin Cownie, Mayor

ATTEST:

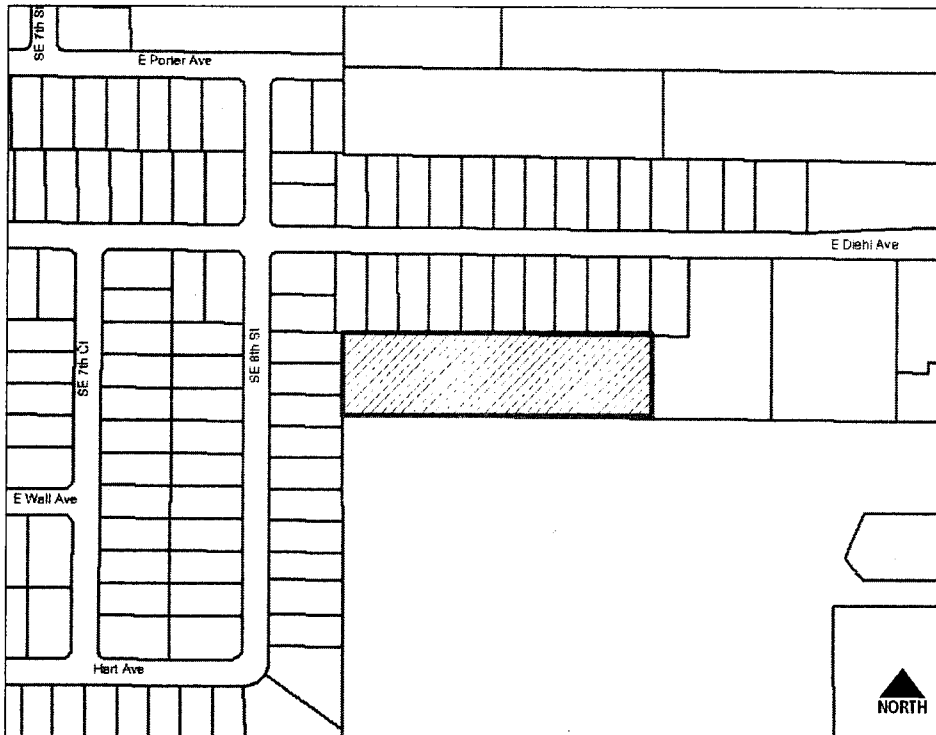
\_\_\_\_\_  
Diane Rauh, City Clerk

Published in the Des Moines Register on \_\_\_\_\_.

Request from Menard, Inc. (purchaser) represented by Thomas O'Neil (officer) to rezone property located at 1201 East Diehl Avenue. The subject property is owned by Don Wyckoff Heating, Inc.			File # ZON2008-00194		
<b>Description of Action</b>	Rezone property from "R1-60" One-Family Low-Density Residential District to "C-2" General Retail and Highway Oriented Commercial District, to allow an expansion of the existing outdoor merchandise area and 23,760 square-foot roofed garden center to the north side of the existing Menard's home improvement retail center.				
<b>2020 Community Character Plan</b>	Low-Density Residential				
<b>Horizon 2025 Transportation Plan</b>	No Planned Improvements				
<b>Current Zoning District</b>	"R1-60" One-Family Low-Density Residential District				
<b>Proposed Zoning District</b>	"C-2" General Retail and Highway Oriented Commercial District				
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	3	12		>20	
Outside Area					
<b>Plan and Zoning Commission Action</b>	Approval	7-5	<b>Required 6/7 Vote of the City Council</b>	Yes	X
	Denial			No	

Menards - 6000 SE 14th Street

ZON2008-00194



February 25, 2009

Honorable Mayor and City Council  
 City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held February 19, 2009, the following action was taken:

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 7-5 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley		X		
Dann Flaherty		X		
Bruce Heilman		X		
Ted Irvine	X			
Jeffrey Johannsen	X			
Greg Jones	X			
Frances Koontz				X
Jim Martin		X		
Brian Millard		X		
Mike Simonson	X			
Kent Sovern				X

**APPROVAL** of staff recommendation Part A) To find the proposed "C-2" General Retail and Highway-Oriented Commercial District not in conformance with the existing Des Moines' 2020 Community Character Plan's current land use designation of Low-Density Residential.

Part B) To recommend the Des Moines' 2020 Community Character Plan future land use designation be amended from Low Density Residential to Community Commercial.

Part C) To rezone the site to a Limited "C-2" General Retail and Highway-Oriented Commercial District subject to the owner agreeing to the following conditions:

1. The westernmost 100 of the subject property shall remain zoned "R1-60" One-Family Low-Density Residential District. (Any commercial development must provide the minimum required 10-foot rear yard setback from this zoning boundary.)
2. The following uses of structures and land shall be prohibited upon the Property:
  - a. Vehicle display lots, including but not limited to used car sales lots;
  - b. Adult entertainment businesses;
  - c. Taverns and nightclubs;
  - d. Off-premises advertising signs; and



CITY PLAN AND ZONING COMMISSION  
 ARMORY BUILDING  
 602 ROBERT D. RAY DRIVE  
 DES MOINES, IOWA 50309 -1881  
 (515) 283-4182

ALL-AMERICA CITY  
 1949, 1976, 1981  
 2003

- e. Package goods stores for the sale of alcoholic beverages.
- 3. Any commercial development on the site shall be setback at least 40 feet from the north side property line.
- 4. Any commercial development on the site shall be screened with a continuous 14-foot tall solid wall that is setback at least 40 feet from the north side property line. The bottom 4 feet shall be constructed of a masonry material the upper 10 feet may be constructed of 2-inch by 8-inch vertical treat lumber with not spacing between boards.
- 5. No outdoor storage of merchandise in the outdoor display area shall be stacked higher than the perimeter fencing.
- 6. Any external lighting on the site shall have a maximum height of 14 feet in height and shall be down-directed cut-off fixtures.
- 7. Any commercial use of the Property shall be in conformance with an approved site plan that shall:
  - a. Contain a landscape plan and building elevations demonstrating general conformance with the site sketch submitted by the applicant incident to this rezoning, to the satisfaction of the Community Development Director. (This includes providing 8 evergreen trees and 4 overstory trees per 100 lineal feet along the north property line.); and
  - b. Provide landscaped bufferyards and open space in conformance with the City's adopted landscape standards.
- 8. Any commercial expansion onto the property shall be subject to the entire commercial development being brought into conformance with the current storm water management requirements.
- 9. All necessary permits shall be obtained for the construction of any building or wall upon the Property.
- 10. Prior to issuance of the Certificate of Occupancy for any commercial use of the Property, the professional who signed the site plan shall submit a letter to the Community Development Director certifying that the Property has been improved in substantial conformance with the approved site plan.

Written Responses

3 In Favor

12 In Opposition

**STAFF RECOMMENDATION TO THE P&Z COMMISSION**

Part A) Staff recommends the Commission find the proposed "C-2" General Retail and Highway-Oriented Commercial District not in conformance with the Des Moines' 2020 Community Character Plan's current land use designation of Low-Density Residential.

Part B) Staff recommends that the Des Moines' 2020 Community Character Plan future land use designation be amended from Low Density Residential to Community Commercial.

Part C) Staff recommends rezoning the site to a Limited "C-2" General Retail and Highway-Oriented Commercial District subject to the owner agreeing to the following conditions:



1. The westernmost 100 of the subject property shall remain zoned "R1-60" One-Family Low-Density Residential District. (Any commercial development must provide the minimum required 10-foot rear yard setback from this zoning boundary.)
2. The following uses of structures and land shall be prohibited upon the Property:
  - a. Vehicle display lots, including but not limited to used car sales lots;
  - b. Adult entertainment businesses;
  - c. Taverns and nightclubs;
  - d. Off-premises advertising signs; and
  - e. Package goods stores for the sale of alcoholic beverages.
3. Any commercial development on the site shall be setback at least 40 feet from the north side property line.
4. Any commercial development on the site shall be screened with a continuous 14-foot tall solid wall that is setback at least 40 feet from the north side property line. The bottom 4 feet shall be constructed of a masonry material the upper 10 feet may be constructed of 2-inch by 8-inch vertical treat lumber with not spacing between boards.
5. No outdoor storage of merchandise in the outdoor display area shall be stacked higher than the perimeter fencing.
6. Any external lighting on the site shall have a maximum height of 14 feet in height and shall be down-directed cut-off fixtures.
7. Any commercial use of the Property shall be in conformance with an approved site plan that shall:
  - a. Contain a landscape plan and building elevations demonstrating general conformance with the site sketch submitted by the applicant incident to this rezoning, to the satisfaction of the Community Development Director. (This includes providing 8 evergreen trees and 4 overstory trees per 100 lineal feet along the north property line.); and
  - b. Provide landscaped bufferyards and open space in conformance with the City's adopted landscape standards.
8. Any commercial expansion onto the property shall be subject to the entire commercial development being brought into conformance with the current storm water management requirements.
9. All necessary permits shall be obtained for the construction of any building or wall upon the Property.
10. Prior to issuance of the Certificate of Occupancy for any commercial use of the Property, the professional who signed the site plan shall submit a letter to the Community Development Director certifying that the Property has been improved in substantial conformance with the approved site plan.

## **STAFF REPORT**

### **I. GENERAL INFORMATION**

1. **Purpose of Request:** The applicant is seeking to expand the Menard's home improvement store onto a 150-foot-wide parcel of land adjoining the north side of the site that would be vacated by Wyckoff Industries. The proposed expansion of Menard's would include a 72-foot-wide by 330-foot (23,760 square feet) enclosed garden center addition to the north side of the

existing Menard's store and an approximate 145-foot by 490-foot outdoor display area.

The submitted site sketch demonstrates that the outdoor display area would be screened by a 14-foot-tall solid wall constructed entirely with vertical 2-inch by 8-inch treated lumber with no spacing between boards. The applicant has proposed a 25-foot setback from the north side property line and a 100-foot setback from the west rear property line. Staff believes that a 40-foot setback from the north property line is more appropriate in order to minimize its impact on the adjoining residential properties.

If rezoned to the "C-2" District, future development of the site (and any modifications to the existing Menard's site) would be subject to administrative review and approval of a site plan. The site plan must comply with all requirements, including those regarding stormwater management, landscaping, and off-street parking.

2. **Size of Site:** 150 feet by 614 feet or 92,250 square feet (2.12 acres).
3. **Existing Zoning (site):** The easternmost 180 feet is zoned Limited "C-2" General Retail and Highway-Oriented Commercial District (conditions are noted in the "Relevant Zoning History" subsection), while the balance of the site is zoned "R1-60 One-Family Low-Density Residential District.
4. **Existing Land Use (site):** The subject property currently contains a contractor storage yard used by Wyckoff Industries and an undeveloped area.
5. **Adjacent Land Use and Zoning:**
  - North – "R1-60", Uses are single-family residential.*
  - South – "C-2", Use is the Menard's home improvement store.*
  - East – "C-2"; Use is a commercial building currently occupied by Wyckoff Industries and the Bowlerama bowling alley.*
  - West – "R1-60", Uses are single-family residential.*
6. **General Neighborhood/Area Land Uses:** The subject property is located along the SE 14<sup>th</sup> Street major commercial corridor in an area that transitions from the Menard's retail business to a low-density residential area to the north.
7. **Applicable Recognized Neighborhood(s):** South Park Neighborhood Association.
8. **Relevant Zoning History:** On February 20, 2006, the City Council adopted Ordinance 14,547 to rezone a portion of the subject property from "R1-60" One-Family Low-Density Residential District to a Limited "C-2" General Retail and Highway-Oriented Commercial District with the following limitations:
  - 1) The following uses of structures and land shall be prohibited upon the Property:
    - a) Vehicle display lots, including but not limited to used car sales lots;
    - b) Adult entertainment businesses;
    - c) Taverns and nightclubs;
    - d) Off-premises advertising signs; and
    - e) Package goods stores for the sale of alcoholic beverages.
  - 2) Any commercial use of the Property shall be in conformance with an approved site plan. In the site plan approval process, the submitted site plan shall:

- a) Contain a landscape plan and building elevations demonstrating general conformance with the site sketches and sample photographs submitted by the applicant incident to this rezoning, to the satisfaction of the Community Development Director.
  - b) Provide landscaped bufferyards and open space in conformance with the City's adopted landscape standards.
  - c) Provide for the enclosure of any outdoor dumpsters in conformance with the Zoning Ordinance.
- 3) Any building constructed upon the property shall have a maximum building height at the peak of 21 feet.
  - 4) All necessary permits shall be obtained for the construction of any building upon the Property.
  - 5) Prior to issuance of the Certificate of Occupancy for any commercial use of the Property, the professional who signed the site plan shall submit a letter to the Community Development Director certifying that the Property has been improved in substantial conformance with the approved site plan.

**9. 2020 Community Character Land Use Plan Designation: Low-Density Residential and Community Commercial.**

**10. Applicable Regulations:** The Commission reviews all proposals to amend zoning regulations or zoning district boundaries within the City of Des Moines. Such amendments must be in conformance with the comprehensive plan for the City and designed to meet the criteria in §414.3 of the Iowa Code. The Commission may recommend that certain conditions be applied to the subject property if the property owner agrees in writing, prior to the City Council Hearing. The recommendation of the Commission will be forwarded to the City Council.

**II. ADDITIONAL APPLICABLE INFORMATION**

- 1. 2020 Community Character Plan:** Staff recommends that the westernmost 100 feet of the subject property be excluded from both the rezoning and the land use plan amendment in order to be consistent with the existing Menard's property. Future construction on the subject property is required to provide a 10-foot rear yard setback measured the zoning line, not from the property line.

The proposed "C-2" General Retail and Highway-Oriented Commercial District would be in conformance with the proposed Community Commercial future land use designation, which allows for large-scale commercial development with over 150,000 square feet of building coverage.

Due to the proximity to single-family residential properties, staff recommends the following uses of structures and land shall be prohibited upon the property: vehicle display lots, including but not limited to used car sales lots; adult entertainment businesses; taverns and nightclubs; off-premises advertising signs; and package goods stores for the sale of alcoholic beverages.

Staff also recommends that any external lighting shall have a maximum height of 14 feet in height and be down-directed cut-off fixtures and that no outdoor storage of merchandise in the outdoor display area shall be stacked higher than the perimeter fencing.

- 2. Landscaping/Screening:** Future redevelopment of the site would be subject to administrative review and approval of a site plan. Any such site plan would be required to adhere to the landscape standards applicable to the "C-2" District.

The submitted site sketch demonstrates that the outdoor display area would be screened by a 14-foot-tall solid wall constructed with 2-inch by 8-inch vertical treated lumber. The site sketch

demonstrates that this wall would be setback 100 feet from the west rear property line and 25 feet from the north side property line. In order to buffer the commercial operations appropriately, staff recommends that the wall be setback at least 40 feet from the north side property line rather than the proposed 25 feet. In order to minimize the visual impact and improve the durability of the wall, staff recommends that at least the bottom 4 feet of any wall be constructed with masonry materials.

The site sketch demonstrates that the buffer yard along the north property line would include 8 evergreen trees and 4 overstory trees per 100 lineal feet of property line. The plantings include a total of 48 evergreen trees and 24 overstory trees. The site sketch demonstrates that the 100-foot-wide buffer from the west property line would include 9 evergreen trees and 7 overstory trees. Staff recommends that any future site plan be required to comply with the planting scheme demonstrated on this site sketch submitted with the rezoning application.

3. **Traffic/Street System:** The proposed expansion of Menard's would not impact access to the site. The site is currently accessed by an entrance from SE 14<sup>th</sup> Street and by an entrance from East Diehl Avenue through Bowlerama's parking lot. The City's Traffic and Transportation staff has determined that adjoining streets can adequately handle the traffic generated by any future development of the site.
4. **Access & Parking:** The number of required off-street parking spaces would be determined during the review of any future site plan for an expansion of Menard's. Any expansion of the building's footprint would require additional off-street parking. Based on the submitted site sketch, the opportunity for additional on-site parking is limited so any expansion would likely require an Exception to the parking requirement from the City's Zoning Board of Adjustment.

The proposed expansion of Menard's would eliminate much of the off-street parking for the building to be vacated by Wyckoff Industries. Future reuse of this building would be subject to satisfying the off-street parking requirement.

5. **Drainage/Grading:** Future redevelopment of the site would be subject to administrative review and approval of a site plan. Drainage and grading shall be evaluated during the site plan review process before the site can be graded or developed. Any site plan must conform to the storm water management requirements in the site plan policies. In addition, the applicant would be required to comply with Iowa DNR requirements for a Storm Water Pollution Prevention Plan (SWPPP).

Due to storm water concerns in the area, staff recommends a zoning condition that any commercial expansion of Menard's onto the proposed area shall be subject to the entire Menard's site being brought into conformance with the current storm water management requirements. The original Menard's site was developed prior to the adoption of more stringent storm water management requirements adopted in 2007.

## SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendations.

Tom O'Neil 4777 Menard Drive, Eau Claire WI, representing Menard, Inc. Stated that Menards looked at the concerns addressed on the response cards, and have met with residents of the immediate notice area as well as, the South Park Neighborhood Association (SPNA) since the last P&Z meeting. They have modified plans to comply with staff recommendation of a 40 feet setback and plan to adjust some existing lights. They have also tried to address the perception that Menards is a bad neighbor by communicating better with the neighbors.

Menards engineering company has addressed the drainage issue by designing the entire site to comply with the City of Des Moines current stormwater standards including some corrections and some additional capacity to the existing pond. This includes the removal of the Wyckoff building for an additional detention basin for increased stormwater capacity. The engineering company has confirmed that the flooding into basements would not be an issue and the basin will not hold water all of the time.

Menards is proposing to put up signs to be respectful to our neighbors – no vulgarity, and watch the noise level. The City of Des Moines came out to gage some of the noise level in and around the area and found that there were areas around the apartment complexes and other retail areas in the corridor that were in violation of the noise ordinance while Menards was within the ordinance.

Gary Fox was also at the neighborhood meeting and stated that Menards will need to continue to use Diehl Avenue. Tom asked that the P&Z commission recommend the rezoning to the Council.

*Jeffrey Johannsen arrived @ 6:10 p.m.*

Bruce Heilman expressed his concern regarding the foul language and Menard's solution of putting up signs to combat this problem, stating that just putting up signs are not enough; the correct answer should be Menards will do everything in their power to control the language in the yard.

Tom O'Neil stated he agreed and they will do everything in their power to control the language in the yard.

#### **CHAIRPERSON OPENED THE PUBLIC HEARING**

*The following spoke in favor*

Jan Goode, 4501 SE 6<sup>th</sup> Street, President of the South Park Neighborhood Association (SPNA) stated that this project has brought Menards and the SPNA together. Menards has agreed to be responsive, open minded and considerate of the families affected by the proximity of this commercial operation and SPNA has agreed to consider and present issues and concerns to Menards management in a timely and respectful manner, with proposed options and workable solutions.

It has since been learned that Menards noise level was found to be within the ordinance parameters, and all the noise that was in violation of the noise ordinance is coming from somewhere else. SPNA has also learned that Diehl is designated by the City of Des Moines Traffic and Transportation department as a residential collector street which means the heavy traffic flow of the area is due to the convenience of the stop light access at SE 14<sup>th</sup> Street.

Menards should only be held accountable for the things that they are responsible for and can change. SPNA is in support of the rezoning and expansion at this point because they believe that Menards will follow through with their commitment of being better neighbors and respecting the neighbors. Menards is going to become an active member of the SPNA. An active group of neighbors will be working with Menards management; they are going to be called the Menards Action Plan committee. SPNA ask for the P&Z support if for any reason the agreement between Menards and SPNA become unmanageable or challenged to move forward successfully.

Mike Simonson asked about the attendance of the meetings held between the neighborhood and Menards.

Jan Goode stated that she took the initiative to send out post cards to immediately adjoining property owners and surrounding areas. At the last meeting 13 people were in favor of working with Menards and 8 people opposed working with Menards.

Andy Wyckoff co-owner of Wyckoff Heating stated that they used to be a bad neighbor which may be the cause of why the opponents feel the way they do and they apologize for that but in the past three years they have changed and are now good neighbors. Wyckoff also has a good relation with Menards, they have purchased from Menards and Menards have referred some business to them. They were happy when Menards came to Wyckoff offering to buy the Wyckoff building. Due to the downturn of economy Wyckoff no longer uses this building to full capacity. Wyckoff asked that the P&Z Commission approve Menards request for rezoning.

*The following spoke in opposition and represent the Jordan Place Task Force and not represented by the South Park Neighborhood Association.*

Ed Bartelt, 1011 E. Diehl Avenue, stated that meetings were held as suggested by the Plan & Zoning Commission but the neighbors most impacted by these issues were neither informed or invited to the private meeting and therefore, had no input. The only meeting the neighbors most impacted by these issues were informed of and invited to was the open meeting on February 11, 2009. He still has concerns about the existing lights.

Michelle Ogle-Riccelli, 920 SE Diehl Avenue stated the SPNA failed to represent the neighbors most impacted by the issues of the sound, traffic, access way, water runoff, lighting and property value. She also ask that Jan Goode recuse herself from these issues because of the appearance of conflict of interest based on her relationship to the Wyckoff's noted at the first meeting and ask that the Jordan Place Task Force be more involved.

Vicky Luna, 817 E. Diehl Avenue, concerned about her property value because of the lights, traffic, and noise. She is concerned about the wall and trees taking away the sun that she needs for her garden, losing her yard and the runoff and the soil that will be taken away.

Amy Siemer, 921 E. Diehl, stated that she is concerned about the noise and the vulgar language.

Scott Siemer, 921 E. Diehl, stated that he is concerned with the noise and that the lumber storage will be too close which will cause concern for fire issues.

Chad Ogle, 920 E Diehl Avenue is concerned with the traffic and the thought that Menards is just not listening.

Jim Martin asked if the right turn only median was discussed.

Chad Ogle stated the right turn median was not 100% discussed and the problem would be parking lots would have to be separated which would obscure other business parking lots.

Mike Hurst, 811 E Diehl stated that he is a star gazer and Menards existing lights interfere with his gazing and moving the lights closer to his property will make it more difficult. He also is concerned with the noise, traffic, the safety of the children in the neighborhood, and that legitimate concerns of being overlooked.

Brian Millard suggested that the lighting should be less intrusive to the adjoining properties according to the requirements of the current lighting ordinance.

Larry Hulse suggested the applicant address how they are going to handle the lighting on their property.

### *Applicant's Rebuttal*

Tom O'Neil addressed the question of rectifying the lighting issue – he answered the question if Menards would address the existing lighting issue if the rezoning did not go forward, the answer was no if they did not have a construction project and if it was not an overall project.

Brian Millard asked if the City put a right turn only median at Diehl and a light at the entrance on SE 14<sup>th</sup>, would Menards support it.

Tom O'Neil stated Menards would support the light and help pay for it, however it was rejected when the store was originally constructed. As to the median – if the westbound traffic on Diehl doesn't have the capability of making a left turn they will continue to go through the neighborhood.

Brian Millard asked Jim Jillian the store manager about the foul language in the yard and how he proposed to manage it.

Jim Jillian stated he will be walking the yard more and the people that work out in the yard have been talked to, so he will make sure the foul language is under control.

JoAnne Corigliano asked if there was a fence between Menards and Bowlerama, and if not, would a fence possibly help the traffic through unwanted areas.

Tom O'Neil stated there is no fence between Menards and Bowlerama. However, there is a fence between Wyckoff and Menards. A fence would not add much traffic relief.

Jeffrey Johannsen asked if Menards could make the basin safer for children in the neighborhood and noted there been a big garbage problem. He also wanted to know if Menards would clean it up regularly.

Jim Jillian stated there would be no problem putting grates on the pipe to make it safer for children in the neighborhood.

Tom O'Neil stated the store has been notified, to clean the stormwater detention pond. However they have noticed some "fly dumping", which is people driving by and tossing their garbage in the air.

### **CHAIRPERSON CLOSED THE PUBLIC HEARING**

Mike Ludwig explained that a 40 feet setback is recommended and that the 10 feet to 15 feet tall wall would not cast a shadow onto the garden. However, there are pine and honey locust trees that might cast shadow on the yard and staff can work with Menards and the property owner to amend the landscaping plan.

Leisha Barcus asked if the new storm water standards are going to be applied to this project.

Mike Ludwig noted that condition number 8 states that any commercial expansion onto the property shall be subject to the entire commercial development being brought into conformance with the current storm water management requirements.

Leisha Barcus asked about condition number 4 – the bottom 4 feet of the fence shall be constructed of a masonry material.

Mike Ludwig stated that it is staff's recommendation to go keep the condition as is because the requirement helps to bring the scale of the fence down.

Greg Jones asked applicant if they were okay with condition number 4.

Tom O'Neil stated he plans to get with his engineers to come up with a plan to eliminate the necessity for a 4 feet high masonry material fence before they go to council to try and change staff's mind.

Mike Simonson stated Menards has addressed every issue except the traffic on Diehl and asked if a traffic common island could be installed on Diehl or just on the west side of the vehicular entrance to prevent semis from exiting onto Diehl and turning west.

Larry Hulse stated that was the island median idea and maybe it can be suggested to the traffic department but there needs to be a budget and enough room to do it.

Bruce Heilman stated that he is going to vote against this project because of the noise issue.

Brian Millard stated that he likes Mike Simonson idea but the streets are not wide enough.

### **COMMISSION ACTION**

Leisha Barcus moved staff recommendation Part A) To find the proposed "C-2" General Retail and Highway-Oriented Commercial District not in conformance with the existing Des Moines' 2020 Community Character Plan's current land use designation of Low-Density Residential.

Part B) To recommend the Des Moines' 2020 Community Character Plan future land use designation be amended from Low Density Residential to Community Commercial.

Part C) To rezone the site to a Limited "C-2" General Retail and Highway-Oriented Commercial District subject to the owner agreeing to the following conditions:


11. The westernmost 100 of the subject property shall remain zoned "R1-60" One-Family Low-Density Residential District. (Any commercial development must provide the minimum required 10-foot rear yard setback from this zoning boundary.)
12. The following uses of structures and land shall be prohibited upon the Property:
  - a. Vehicle display lots, including but not limited to used car sales lots;
  - b. Adult entertainment businesses;
  - c. Taverns and nightclubs;
  - d. Off-premises advertising signs; and
  - e. Package goods stores for the sale of alcoholic beverages.
13. Any commercial development on the site shall be setback at least 40 feet from the north side property line.
14. Any commercial development on the site shall be screened with a continuous 14-foot tall solid wall that is setback at least 40 feet from the north side property line. The bottom 4 feet shall be constructed of a masonry material the upper 10 feet may be constructed of 2-inch by 8-inch vertical treat lumber with not spacing between boards.
15. No outdoor storage of merchandise in the outdoor display area shall be stacked higher than the perimeter fencing.
16. Any external lighting on the site shall have a maximum height of 14 feet in height and shall be down-directed cut-off fixtures.



17. Any commercial use of the Property shall be in conformance with an approved site plan that shall:
  - a. Contain a landscape plan and building elevations demonstrating general conformance with the site sketch submitted by the applicant incident to this rezoning, to the satisfaction of the Community Development Director. (This includes providing 8 evergreen trees and 4 overstory trees per 100 lineal feet along the north property line.); and
  - b. Provide landscaped bufferyards and open space in conformance with the City's adopted landscape standards.
18. Any commercial expansion onto the property shall be subject to the entire commercial development being brought into conformance with the current storm water management requirements.
19. All necessary permits shall be obtained for the construction of any building or wall upon the Property.
20. Prior to issuance of the Certificate of Occupancy for any commercial use of the Property, the professional who signed the site plan shall submit a letter to the Community Development Director certifying that the Property has been improved in substantial conformance with the approved site plan.

Motion passed 7-5 (Bruce Heilman, Jacqueline Easley, Dann Flaherty, Jim Martin, Brian Millard voted in opposition)

Respectfully submitted,

  
Michael Ludwig, AICP  
Planning Administrator

MGL:clw

Attachment

