

★ Roll Call Number

21-0043

Agenda Item Number

34

Date January 11, 2021

RESOLUTION HOLDING HEARING ON REQUEST FROM ANTONIO DOMINGUEZ AND GABRIELLA HERRERA TO AMEND PLANDSM FUTURE LAND USE CLASSIFICATION AND TO REZONE 301 SOUTHEAST 28TH STREET

WHEREAS, on December 21, 2020, by Roll Call No. 20-2108, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on December 3, 2020, its members voted 9-3 in support of a motion to recommend **DENIAL** of a request from Antonio Dominguez and Gabriella Herrera (owners) to amend the PlanDSM: Creating Our Tomorrow comprehensive plan future land use classification for real property locally known as 301 Southeast 28th Street ("Property") from Industrial to Low Density Residential, and to rezone the Property from I1 Industrial District to N3c Neighborhood District, to allow the existing Household Living use to be extended with addition of a new accessory 2-story detached garage use; and

WHEREAS, the Property is legally described as follows:

THE NORTH 45 FEET OF LOT 8 AND THE NORTH 46 FEET OF LOTS 9 AND 10 IN LINCOLN PARK, TOGETHER WITH ALL THAT PART OF THE SOUTH 12 FEET OF THE VACATED 24 FEET OF EAST ELM STREET RIGHT-OF-WAY LYING NORTH OF AND ADJOINING LOTS 8,9 AND 10 IN LINCOLN PARK, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, IOWA a/k/a 301 SE 28th STREET, DES MOINES, IOWA a/k/a PARCEL #050-02987-001-000; and

WHEREAS, on December 21, 2020, by Roll Call No. 20-2108, it was duly resolved by the City Council that the request to amend the land use designation and to rezone the Property be set down for hearing on January 11, 2021, at 5:00 p.m., by electronic means to encourage and maintain social distancing to curb the spread of COVID19 in the community, without public access to the meeting location; and

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 land use amendment and rezoning; and

WHEREAS, in accordance with said notice, those interested in said proposed land use amendment and rezoning, 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:

1. 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 future land use designation to Low Density Residential, or to the proposed rezoning of the Property to N3c Neighborhood District, are received and the hearing is closed.

Alternative A

MOVED by Gatto to adopt and **DENY** the proposed amendment to the PlanDSM future land use designation and the proposed rezoning, and to make the following findings of fact regarding said proposals:

a. The City Plan and Zoning Commission voted 9-3 to recommend denial of the requested proposed amendment to the PlanDSM future land use designation to Low Density Residential and proposed rezoning of the Property to N3c Neighborhood District, to allow the existing Household Living use to be extended with addition of a new accessory two-story detached garage use.

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- b. The current PlanDSM: Creating Our Tomorrow Plan future land use designation of the Property is Industrial, and current zoning designation is I1 District, both of which are intended for general industrial uses, warehousing and transportation terminals, and accommodate industrial development and limited supporting commercial uses.
- c. The Property is located in a neighborhood and area that contains a mix of industrial and single-household uses, generally bounded by a major railroad line to the north and East Martin Luther King, Jr. Parkway to the south, which is consistent with the character of the neighborhood at the adoption of PlanDSM in 2016.
- d. In accordance with the adoption of PlanDSM, the area in which the Property is located is intended to transition to industrial uses and away from residential uses over an extended period of time due to the magnitude of the industrial uses in the area and its proximity to the railroad and East Martin Luther King, Jr. Parkway.
- e. The existing single-household residential use on the Property has the legal non-conforming right to retain its use, but not to expand its use to a new accessory building which would constitute a two-story detached garage with a 27-foot by 30-foot footprint.
- f. The proposed amendment to the PlanDSM future land use designation of the Property and the proposed rezoning to allow for expansion of the residential use would not be consistent with the intent of the PlanDSM comprehensive plan for the subject neighborhood/area.
- g. If the proposed amendment to the PlanDSM future land use designation of the Property to Low Density Residential is not approved, then the proposed rezoning to N3c Neighborhood District is inapplicable due to non-conformance with the PlanDSM designation of Industrial.
- h. If the application of the existing zoning regulations has the effect of denying the owner all economic use of the Property, then the appropriate remedy is to seek relief from the Zoning Board of Adjustment.

Alternative B

~~MOVED by _____ to continue the public hearing until 5:00 p.m. on January 25, 2021, by electronic means to encourage and maintain social distancing to curb the spread of COVID19 in the community, without public access to the meeting location, and to direct the City Manager and Legal Department to prepare the necessary legislation to APPROVE the proposed amendment to the PlanDSM future land use designation and the proposed rezoning subject to conditions acceptable to the City and the owner(s).~~

FORM APPROVED:

/s/ Glenna K. Frank
 Glenna K. Frank, Assistant City Attorney

(21-2020-4.26)
 (ZON2020-00139)

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

MOTION CARRIED APPROVED

J. M. Frank
 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