



Roll Call Number

21-1040

Agenda Item Number

63

Date June 28, 2021

**RESOLUTION HOLDING HEARING ON REQUEST FROM GORKHA BROTHERS, INC.
TO AMEND PLANDSM FUTURE LAND USE CLASSIFICATION
AND TO REZONE 2829 EASTON BOULEVARD**

WHEREAS, on June 14, 2021, by Roll Call No. 21-0857, the City Council received a communication from the Plan and Zoning Commission advising that at a public hearing held on May 20, 2021, its members voted 11-0 in support of a motion to recommend **DENIAL** of a request from Gorkha Brothers, Inc. (Lessee) represented by Sushii Gaimer (officer) to amend the PlanDSM: Creating Our Tomorrow comprehensive plan future land use classification for real property locally known as 2829 Easton Boulevard (“Property”) from Neighborhood Mixed Use to Community Mixed Use, and to rezone the Property from MX1 Mixed Use District to MX3 Mixed Use District, to allow the existing building to be considered for a Conditional Use Approval by the Zoning Board of Adjustment for a business selling alcoholic liquor. The subject property is owned by ARSHI, LLC (contract buyer of record) and Sandhu Minimart, LLC; and

WHEREAS, the Property is legally described as follows:

LOTS 1, 2, 3, 4 AND 5 AND THE NORTHERLY 1/2 OF THE VACATED NORTHEAST/SOUTHWESTERLY ALLEY LYING SOUTH OF AND ADJOINING SAID LOTS 1, 2, 3, AND THE EASTERLY 36 FEET OF LOT 4 (EXCEPT THE EASTERLY 17 FEET OF SAID ALLEY LYING SOUTH OF AND ADJOINING SAID LOT 1), ALL IN BOULEVARD ADDITION, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA; and

WHEREAS, on June 14, 2021, by Roll Call No. 21-0857, 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 June 28, 2021, at 5:00 p.m., to be held in the Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; 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



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Community Mixed Use, or to the proposed rezoning of the Property to MX3 Mixed Use District, are received and the hearing is closed.

Alternative A

MOVED by Westergaard 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 11-0 to recommend denial of the requested proposed amendment to the PlanDSM future land use designation to Community Mixed Use and proposed rezoning of the Property to MX3 Mixed Use District, to allow the existing building to be considered for a Conditional Use approval by the Zoning Board of Adjustment for a business selling alcoholic liquor.
- b. The current PlanDSM: Creating Our Tomorrow Plan future land use designation of the Property is Neighborhood Mixed Use, and current zoning designation is MX1 Mixed Use District, both of which are intended for intended to be located along high capacity transit corridors and not along neighborhood collector streets, such as Easton Boulevard.
- c. The proposed land use designation of Community Mixed Use is described as “small- to medium-scale mixed use development, located on high capacity transit corridors or at the intersection of transportation corridors....includ[ing] both a mix of medium density residential and a mix of retail and service establishments designed to attract customers from a large service area encompassing multiple neighborhoods and may include specialty retail that attracts regional customers.”
- d. The Property is located in a neighborhood and area that contains a small cluster of existing commercially zoned properties but which is predominantly designated Low Density Residential, and contains existing single-household residential uses, which is consistent with the character of the neighborhood at the adoption of PlanDSM in 2016.
- e. The proposed amendment to the PlanDSM future land use designation of the Property and the proposed rezoning would not be consistent with the intent of the PlanDSM comprehensive plan for the subject neighborhood/area.
- f. If the proposed amendment to the PlanDSM future land use designation of the Property to Community Mixed Use is not approved, then the proposed rezoning to MX3 Mixed Use District is inapplicable due to non-conformance with the PlanDSM designation of Neighborhood Mixed Use.
- g. 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.



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Alternative B

MOVED by _____ to continue the public hearing until 5:00 p.m. on July 26, 2021, to be held in the Council Chambers, 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 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:

Judy K. Parks-Kruse
Judy K. Parks-Kruse
Assistant City Attorney

(21-2021-4.13)
(ZON2021-00042)

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

MOTION CARRIED

APPROVED

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.

J. M. Franklin Cownie
Mayor

P. Kay Cmelik

City Clerk