



**Roll Call Number**

23-0334

**Agenda Item Number**

54

**Date** March 6, 2023

**RESOLUTION HOLDING HEARING ON APPEAL OF GASSMANN REAL ESTATE, LLC  
ON A DENIAL OF TYPE 2 DESIGN ALTERNATIVES FOR A SITE PLAN FOR PROPERTY  
LOCATED AT 2822 6TH AVENUE**

**WHEREAS**, at a public hearing held on January 19, 2023, the City Plan and Zoning Commission considered a request from Gassmann Real Estate (owner), represented by Jason Gassmann (Owner), for approval of the Site Plan for Type 2 Design Alternatives waiving the requirement for maximum fence height in street-side yards set forth in Municipal Code Section 135-7.11.3(B)(2) and requirement that no fence shall be electrified set forth in Municipal Code Section 135-7.11.4(B), related to the proposed 10 foot electrified fence installation as shown in the Site Plan submitted for the property located at 2822 6<sup>th</sup> Avenue; and

**WHEREAS**, pursuant to Section 135-7.11.3(B)(2) of the Municipal Code, a fence in a street-side yard is restricted to a maximum of six (6) feet of height; and

**WHEREAS**, pursuant to Section 135-7.11.4(B) of the Municipal Code, no fence shall be electrified, unless all of the following requirements are met:

1. The fence is electrified by a device approved by a nationally recognized testing laboratory as meeting the standard for safety of electric fence controllers, and bears a certificate stated as such.
2. The fence is used in accordance with the manufacturer's suggested installation instructions.
3. The fence is used to confine agricultural animals lawfully kept in compliance with the requirements of chapter 18 of this code.; and

**WHEREAS**, in its Site Plan, Gassmann Real Estate, LLC proposed to construct a ten (10) foot tall electric security fence in the northern section of the property and the security fence would be constructed twelve (12) inches behind an existing eight (8) foot tall, galvanized chain link fence; and

**WHEREAS**, the Plan and Zoning Commission voted 12-2 for **DENIAL** of the requested Type 2 Design Alternatives to waive or modify said ordinance requirements to allow the installation of a 10 foot tall electrified fence; and

**WHEREAS**, Gassmann Real Estate, LLC 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 allowing the installation of a 10 foot tall electrified fence as regulated under Municipal Code Section 135-2.10.3(A)(8); and

**WHEREAS**, on February 20, 2023, by Roll Call No. 23-0227, it was duly resolved by the City Council that the appeal be set down for hearing on March 6, 2023 at 5:00 P.M. in the Council Chambers; and



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**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 Gassmann Real Estate, LLC for property located at 2822 6<sup>th</sup> Avenue, as described above, are hereby received and filed.
2. The communications from the Plan and Zoning Commission and Gassmann Real Estate, LLC, respectively, are hereby received and filed.

**Alternative A**

MOVED BY \_\_\_\_\_ to **DENY** the Type 2 Design Alternative in form requested by Gassmann Real Estate, LLC described above and to make the following findings of fact and objections regarding the Type 2 Design Alternatives as proposed by Gassmann Real Estate, LLC:

- a. Municipal Code Section 135-7.11.3(B)(2) requires a fence in a street-side yard is restricted to a maximum of six (6) feet of height.
- b. Municipal Code Section 135-7.11.4(B) states no fence shall be electrified, unless all of the following requirements are met:
  - i. The fence is electrified by a device approved by a nationally recognized testing laboratory as meeting the standard for safety of electric fence controllers, and bears a certificate stated as such.
  - ii. The fence is used in accordance with the manufacturer’s suggested installation instructions.
  - iii. The fence is used to confine agricultural animals lawfully kept in compliance with the requirements of chapter 18 of this code.
- c. The subject site is located on the west side of 6th Avenue between New York Avenue to the south and Corning Avenue to the north. This area contains a mix of single-and multi-story commercial, office, and warehouse buildings along with low-density residential housing to the north and east of the site.
- d. The subject property is highly visible along a primary north-south corridor (6th Avenue) on the north side of Des Moines. The 10-foot tall fence would add visual clutter by constructing a second



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- fence 12 inches behind an existing 8-foot galvanized chain link fence and the proposed electrified fence would be out of character for the area.
- e. Gassmann Real Estate, LLC's proposal for the Type 2 Design Alternative to the requirements of Sections 135-7.11.3(B)(2) and 135-7.11.4(B) are for full waiver, resulting in the construction of a 10-foot electric fence behind an existing 8-foot galvanized chain link fence, and it is based on preference, rather than need.
- f. City Planning staff recommended denial of said Type 2 design alternatives for full waiver of Section 135-7.11.3(B)(2) and 135-7.11.4(B) as requested by Gassmann Real Estate, LLC.
- g. Gassmann Real Estate, LLC 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. Gassmann Real Estate, LLC 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. Gassmann Real Estate, LLC has not shown that its requested design alternatives will not have a substantial or undue adverse effect on the public health, safety, and general welfare.
- j. The Type 2 Design Alternatives as proposed by Gassmann Real Estate, LLC should not be approved for the reasons stated above.

**Alternative B**

MOVED BY Westergaard to **APPROVE** the proposed Type 2 Design Alternatives in form requested by Gassmann Real Estate, LLC and described above, and to make the following findings of fact in support of approval of the proposed Type 2 Design Alternatives:

- a. Municipal Code Section 135-7.11.3(B)(2) requires a fence in a street-side yard is restricted to a maximum of six (6) feet of height, but the Design Code allows for applicants to seek a Type 2 Design Alternative.
- b. Municipal Code Section 135-7.11.4(B) states no fence shall be electrified, unless all of the following requirements are met, but the Design Code allows for applicants to seek a Type 2 Design Alternative:
  - i. The fence is electrified by a device approved by a nationally recognized testing laboratory as meeting the standard for safety of electric fence controllers, and bears a certificate stated as such.
  - ii. The fence is used in accordance with the manufacturer's suggested installation instructions.
  - iii. The fence is used to confine agricultural animals lawfully kept in compliance with the requirements of chapter 18 of this code.
- c. 2822 6<sup>th</sup> Avenue contains a general commercial building that is used for office and warehousing for a heating and cooling contractor use.
- d. Gassmann Real Estate, LLC provides the reason for the electrified security fence is to prevent trespassing and theft. Additional security/safety needs have been the supporting basis for proposing the electric fence.



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- e. The proposed security fence will be placed 1 foot behind the existing 8-foot-tall chain link fence and proper signage will be placed along the exterior to warn of the existence of the electric fence.
- f. The site is on the west side of 6<sup>th</sup> Avenue between New York Avenue to the south and Corning Avenue to the north. This area contains a mix of single-and multi-story commercial, office, and warehouse buildings. The construction of a 10-foot electric fence would not impact the character of this area and would not impact the aesthetic of the existing commercial area.
- g. The above-stated facts specific to the Property reduce the aesthetic and safety concerns to the public with no existing changes to the existing 8-foot galvanized fence and providing adequate safety signage and measures to make the public aware of the existence of an electric fence.
- h. Gassmann Real Estate, LLC's proposal for the Type 2 Design Alternatives to the requirements of Section 135-7.11.3(B)(2) and 135-7.11.4(B) are for full waiver, resulting in the construction of a 10 foot electric fence behind an existing 8 foot galvanized chain link fence, based on preference to security and safety needs.
- i. Gassmann Real Estate, LLC has met the burden required to demonstrate that the requested design alternative meets the criteria for approval and that the result of the design alternatives would equal or exceed the result of strict compliance with Section 135-7.11.3(B)(2) and 135-7.11.4(B) of the Planning and Design Ordinance.
- j. Gassmann Real Estate, LLC 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.
- k. Gassmann Real Estate, LLC has shown that the requested design alternative will not have a substantial or undue adverse effect on the public health, safety, and general welfare.
- l. Said Type 2 Design Alternatives, in form requested by Gassmann Real Estate, LLC, should be, and hereby, approved for the above-stated reasons and incorporated into the approved Site Plan for the Property.

SECOND BY Gatto

Motion by Gatto to receive and file two documents. Second by  
FORM APPROVED: Sheumaker. Motion Carried 7-0.

/s/ Chas M. Cahill

Chas M. Cahill,  
Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
SHEUMAKER		✓		
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	6	1		
MOTION CARRIED			APPROVED	

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.

Mayor

Laura Baumgartner

City Clerk