



Roll Call Number

23-1198

Agenda Item Number

35

Date August 21, 2023

RESOLUTION HOLDING HEARING ON APPEAL OF MIDWEST RADIO, INC. (OWNER), REPRESENTED BY RICH EYCHANER (OWNER), ON A DENIAL OF TYPE 2 DESIGN ALTERNATIVES FOR A PUBLIC HEARING SITE PLAN FOR PROPERTY LOCATED AT 3839 MERLE HAY ROAD

WHEREAS, at a public hearing held on July 20, 2023, the City Plan and Zoning Commission considered a request from Midwest Radio, Inc. (Owner), represented by Rich Eychaner (Officer), for approval of the Site Plan for Type 2 Design Alternative waiving the requirement for minimum distance between permitted driveway accesses set forth in Municipal Code Section 135-2.8.3.A.9, to allow for retention of the middle of three (3) existing access driveways along Merle Hay Road as shown in the Site Plan submitted for the property located at 3839 Merle Hay Road, where only two (2) access driveways are permitted; and

WHEREAS, pursuant to Section 135-2.8.3.A.9 of the Municipal Code, a commercial center is permitted driveway access one (1) per every three-hundred (300) ft of primary and non-primary frontage; and

WHEREAS, in its Site Plan, Midwest Radio, Inc. proposed for retention of the middle of three (3) existing access driveways along Merle Hay Road, where only two (2) access driveways are permitted; and

WHEREAS, the Plan and Zoning Commission voted 5-4 for **DENIAL** of the requested Type 2 Design Alternatives to waive or modify said ordinance requirements to allow for retention of the middle of three (3) existing access driveways along Merle Hay Road; and

WHEREAS, Midwest Radio, Inc. 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 retention of the middle of three (3) existing access driveways along Merle Hay Road as regulated under Municipal Code Section 135-2.8.3.A.9; and

WHEREAS, on August 7, 2023, by Roll Call No. 23-1084, it was duly resolved by the City Council that the appeal be set down for hearing on August 21, 2023 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.



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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 Midwest Radio, Inc. for property located at 3839 Merle Hay Road, as described above, are hereby received and filed.
2. The communications from the Plan and Zoning Commission and Midwest Radio, Inc., respectively, are hereby received and filed.

Alternative A

MOVED BY _____ to DENY the Type 2 Design Alternative in form requested by Midwest Radio, Inc. described above and to make the following findings of fact and objections regarding the Type 2 Design Alternative as proposed by Midwest Radio, Inc.:

- a. Under Municipal Code Section 135-2.8.3.A.9, a commercial center is permitted driveway access one (1) per every three-hundred (300) ft of primary and non-primary frontage.
- b. The subject site has approximately 400 feet of frontage along Merle Hay Road which would allow for two driveway accesses.
- c. The subject site also has access to 57th Street to the east and cross-access to Douglas Avenue through the property to the south. The northernmost of the three current driveways is a signalized intersection allowing vehicle traffic to move in all directions. A raised median limits the southern two driveways to a right-in, right-out configuration.
- d. In 2023, the city completed the Merle Hay Road Corridor Study. The purpose of the study was to determine how to improve transportation, for all users, along the corridor. The Study specifically notated for the portion of Merle Hay Road adjacent to this site has a crash history along this section indicative of high access density and recommended many of these accesses should be consolidated as development occurs.
- e. Because the middle driveway duplicates the turning movement of the southernmost driveway, its removal would not deter a driver from accessing the site. Removal of the middle driveway would improve safety for vehicles on Merle Hay Road and reduce conflict points for pedestrians.
- f. Midwest Radio, Inc.'s proposal for the Type 2 Design Alternative to the requirements of Section Code Section 135-9.3.9(B) are for full waiver, resulting in the retention of the middle of three (3) existing access driveways along Merle Hay Road, and it is based on preference, rather than need.
- g. City Planning staff recommended denial of said Type 2 design alternative for full waiver of Section Code Section 135-9.3.9(B) as requested by Midwest Radio, Inc.
- h. Midwest Radio, Inc. 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 alternative would equal or exceed the result of compliance with the Planning and Design Ordinance.



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- i. Midwest Radio, Inc. 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.
- j. Midwest Radio, Inc. 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.
- k. The Type 2 Design Alternatives as proposed by Midwest Radio, Inc. should not be approved for the reasons stated above.

Alternative B

MOVED BY Voss to **APPROVE** the proposed Type 2 Design Alternative in form requested by Midwest Radio, Inc. and described above, and to make the following findings of fact in support of approval of the proposed Type 2 Design Alternative:

- a. Under Municipal Code Section 135-2.8.3.A.9, a commercial center is permitted driveway access one (1) per every three-hundred (300) ft of primary and non-primary frontage.
- b. 3839 Merle Hay Road contains a commercial building that is used for various purposes including office, retail, restaurant, and bar uses.
- c. Midwest Radio, Inc. provides the reason for maintaining the three (3) existing access driveways is to prevent accessibility concerns to and from the building, but also assist patrons in locating the main entrance to access the offices on the elevated levels of the building.
- d. The above-stated facts specific to the site reduce the accessibility concerns from Midwest Radio, Inc. with no changes to the existing three (3) existing access driveways.
- e. Midwest Radio, Inc.'s proposal for the Type 2 Design Alternative to the requirements of Section 135-2.8.3.A.9 are for full waiver, resulting in the retention of the middle of three (3) existing access driveways along Merle Hay Road, based on preference to meet accessibility needs.
- f. Midwest Radio, Inc. 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 135-2.8.3.A.9 of the Planning and Design Ordinance.
- g. Midwest Radio, Inc. 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. Midwest Radio, Inc. 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 Midwest Radio, Inc., should be, and hereby, approved for the above-stated reasons and incorporated into the approved Site Plan for the Property.

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Second by Gatto

FORM APPROVED:

/s/ Chas M. Cahill

Chas M. Cahill, Assistant City Attorney

(SITE-2023-000047)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
SHEUMAKER				✓
MANDELBAUM	✓			
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.

J. M. Frankhu Cownie Mayor

Laura Baumgartner City Clerk