

Date August 17, 2020

**RESOLUTION SETTING HEARING ON REQUEST FROM McFADDEN HOLDINGS, LLC TO REZONE PROPERTY LOCATED AT 1537 ARMY POST ROAD**

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on August 6, 2020, its members voted 13-0 in support of a motion to recommend **APPROVAL** of a request from McFadden Holdings, LLC (owner), represented by Steven McFadden (officer), to rezone the real property locally known as 1537 Army Post Road (“Property”) from RX1 Mixed Use District to Limited MX3 Mixed Use District, to allow the existing building to be used for a vehicle cleaning and detailing business, subject to the following condition:

1. Any use of the Property shall be limited to Vehicle Sales and Service, Vehicle Maintenance/Repair, Minor, or any use permitted by right or by Conditional Use as allowed and regulated in the RX1 Mixed Use District; and

WHEREAS, the Property is legally described as follows:

That part of Lots 41 and 42 Geil Place Plat Three, an Official Plat, now included in and forming a part of the City of Des Moines, Iowa described as follows: The West 12.5 feet of the South 104.24 feet of lot 41 and the West 105.5 feet of Lot 42 (except the North 10 feet of the East 45 feet thereof) and except the South 10 feet of Lots 41 and 42 acquired by the State of Iowa for the widening of Army Post Road, Highway No. 29.

Also a perpetual easement in common with others for motor vehicle and foot travel, including the right to pave all or any part thereof, over a triangular parcel of land in said Lots 41 and 42, described as follows: Beginning at a point which is 10 feet north of the southeast corner of lot 41, thence West 25 feet, then North 40 feet, thence in a Southeasterly direction to the point of beginning.

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

1. That the attached communication from the Plan and Zoning Commission is hereby received and filed.
2. That the meeting of the City Council at which the proposed rezoning is to be considered shall be held on September 14, 2020, at 5:00 p.m., to be held 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, at which time the City Council will hear both those who oppose and those who favor the proposal.
3. 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. The City Clerk is instructed to provide this notice including information about participation in the electronic meeting as indicated above.

 **Roll Call Number**

**Agenda Item Number**

22

.....  
**Date** August 17, 2020

MOVED BY \_\_\_\_\_ TO ADOPT.

FORM APPROVED:

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

(ZON2020-00081)

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

\_\_\_\_\_  
Mayor

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



August 11, 2020

Date August 17, 2020

Agenda Item 22

Roll Call # \_\_\_\_\_

Honorable Mayor and City Council  
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their August 6, 2020 meeting, the following action was taken regarding a request from McFadden Holdings, LLC (owner) represented by Steven McFadden (officer) to rezone property located at 1537 Army Post Road from “RX1” Mixed Use District to “MX3” Mixed Use District, to allow the existing property and building to be used for a “Vehicle Maintenance and Repair, Minor” use.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 13-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
Dory Briles	X			
Abby Chungath	X			
Kayla Berkson	X			
Jann Freed	X			
Johnny Alcivar	X			
Lisa Howard				X
Carolyn Jenison	X			
Greg Jones	X			
William Page	X			
Rocky Sposato	X			
Steve Wallace	X			
Greg Wattier	X			
Emily Webb	X			

**APPROVAL** of Part A) the Commission find the requested **rezoning to be in conformance** with PlanDSM; Creating Our Tomorrow Plan, which designates the western portion of the property as “Community Mixed Use” and Part B) **APPROVAL** of the requested rezoning of the property from “RX1” District to “MX3” Mixed Use District, subject to the condition that any use of the property shall be limited to the following:

1. Vehicle Sales and Service: Vehicle Maintenance/Repair, Minor; or
2. Any use permitted by right or by Conditional Use, as allowed and regulated in the “RX1” Mixed Use District.

(ZON2020-00081)

#### Written Responses

1 in Favor

1 in opposition

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

Part A) Staff recommends that the Commission find the requested rezoning to be in conformance with PlanDSM; Creating Our Tomorrow Plan, which designates the western portion of the property as “Community Mixed Use”.

Part B) Staff recommends approval of the requested rezoning of the property from “RX1” District to “MX3” Mixed Use District, subject to the condition that any use of the property shall be limited to the following:

1. Vehicle Sales and Service: Vehicle Maintenance/Repair, Minor; or
2. Any use permitted by right or by Conditional Use, as allowed and regulated in the “RX1” Mixed Use District.

### **STAFF REPORT TO THE PLANNING COMMISSION**

#### **I. GENERAL INFORMATION**

1. **Purpose of Request:** The applicant is seeking to rezone the property so the existing building can be used for a vehicle cleaning and detailing business, which is classified as a “Vehicle Sales and Service, Vehicle Maintenance Repair, Minor” use.
2. **Size of Site:** 10,670 square feet or 1.25 acres.
3. **Existing Zoning (site):** “RX1” Mixed-Use District.
4. **Existing Land Use (site):** The site contains a vacant building that was previously occupied as a vehicle repair business.
5. **Adjacent Land Use and Zoning:**

**North** – “RX1”, Use is a mobile home community.

**South** - “RX1”, Uses are Army Post Road and retail (Car Quest).

**East** – “RX1”, Use is a restaurant (La Cabana Mexican Restaurant).

**West** – “RX1”, Use is a mobile home community

6. **General Neighborhood/Area Land Uses:** The subject property is located along the Army Post Road commercial corridor. Low density residential neighborhood areas are generally to the north and south of the corridor.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the Watrous South Neighborhood. All recognized neighborhoods were notified of the meeting by mailing of the Preliminary Agenda on July 17, 2020. Additionally, separate notification of the hearing for this specific item was mailed on July 17, 2020 (20 days prior to the public hearing) and on July 27, 2020 (10 days prior to the public hearing) to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the property. A final agenda was mailed on July 31, 2020.

All agendas are mailed to the primary contact person designated to the City of Des Moines Neighborhood Development Division by the recognized neighborhood association. The Watrous South Neighborhood mailings were sent to James Spiller, PO Box 35845, Des Moines, IA 50315.

During the Governor’s emergency declaration due to the COVID-19 pandemic, the applicant is responsible for reaching out to the surrounding property owner within 250 feet through a written communication soliciting questions and input and providing responses. The applicant shall provide a report on the outcomes of this process prior to the Plan and Zoning Commission meeting, and provide a summary at the hearing.

8. **Relevant Zoning History:** None.
9. **PlanDSM Future Land Use Plan Designation:** Community Mixed-Use.
10. **Applicable Regulations:** Taking into the consideration of the criteria set forth in Chapter 18B of the Iowa Code, the Commission reviews all proposals to amend zoning boundaries or regulations 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 make recommendations to the City Council on conditions to be made in addition to the existing regulations so long as the subject property owner agrees to them in writing. The recommendation of the Commission will be forwarded to the City Council.

## **II. ADDITIONAL APPLICABLE INFORMATION**

1. **PlanDSM Creating Our Tomorrow:** The PlanDSM future land use map designates the Army Post Road commercial corridor as “Community Mixed Use”. The proposed “MX3” Mixed Use District is compatible with this designation.

- 2. Permitted and Conditional Uses:** The proposed vehicle cleaning and detailing business would be an appropriate use of the premise. However, given the limited size of the property and the proximity of residential uses to the north, other uses allowed in the “MX3” District, such as vehicle sales or alcohol sales, would not be appropriate for the site. Therefore, Staff recommends that rezoning of the property to “MX3” Mixed Use District be with the condition that any use of the property be limited to “Vehicle Sales and Service, Vehicle Maintenance/Repair, Minor” or any other use permitted by right or by Conditional Use, as allowed and regulated in the “RX1” Mixed Use District.

## **SUMMARY OF DISCUSSION**

Bert Drost presented staff report and recommendation.

Abigail Chungath asked if vehicle sales would be allowed by the zoning conditions as recommended by Staff.

Bert Drost stated that allowing vehicle sales was not the intent of the Staff recommendation but that he would verify the wording of the drafted conditions while the applicant gives their presentation.

Dane Schumann, 2501 Grand Avenue, attorney representing McFadden Holdings, LLC, stated that the prior use of the property was an automotive repair business that has since moved out. Given the surrounding lots, this auto cleaning and detailing business would be a compatible use. If the property is rezoned, the applicant does have plans to invest heavily in the property, by paving the parking lot and adding vegetation. They are in favor the recommendation by City staff, as the applicant just wants the property to be used for his auto detailing business. He has purchased 2-3 cars from auction that have been resold from the lot in the past, and that is something that the business owner would like to have the rights to continue to do if possible, but they do not intend to use the property entirely for sales of used cars.

Bert Drost clarified Condition #1 contained in the Staff recommendation. “Vehicle Sales and Service” is the category in the use table of the Zoning Ordinance that the “Vehicle Maintenance/Repair: Minor” subcategory falls under. As such, vehicle sales would not be allowed by the recommended zoning conditions. He presented the definition of “Vehicle Maintenance and Repair, Minor” as contained in City Code Section 134-3.5.19.D in order to provide clarity of the types of uses that could occur.

Dane Schumann stated he thought everything listed would be allowed, but that his client would like the ability to sell a few vehicles from the property.

## **CHAIRPERSON OPENED THE PUBLIC HEARING**

Bill Phillips, 1602 Army Post Road, stated the notice he received indicated that the property is being rezoned to “MX3” District and that he is concerned of other types of businesses could be allowed in an “MX3” District, such as taverns.

Bert Drost stated the Staff Recommendation would limit the use of the property to the “Vehicle Maintenance/Repair: Minor” subcategory use as defined by City Code Section

134-3.5-19.D, or to a use allowed in an “RX1” District. This would prevent taverns but could allow a restaurant use that sells alcohol. If they wanted to put in a bar, they would need to file a new request to rezone the property, at which time new public notifications would be mailed.

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

### **COMMISSION ACTION:**

Dory Briles made a motion for approval of Part A) the Commission find the requested **rezoning to be in conformance** with PlanDSM; Creating Our Tomorrow Plan, which designates the western portion of the property as “Community Mixed Use” and Part B) **APPROVAL** of the requested rezoning of the property from “RX1” District to “MX3” Mixed Use District, subject to the condition that any use of the property shall be limited to the following:

1. Vehicle Sales and Service: Vehicle Maintenance/Repair, Minor; or
2. Any use permitted by right or by Conditional Use, as allowed and regulated in the “RX1” Mixed Use District.

Motion passed: 13-0

Respectfully submitted,



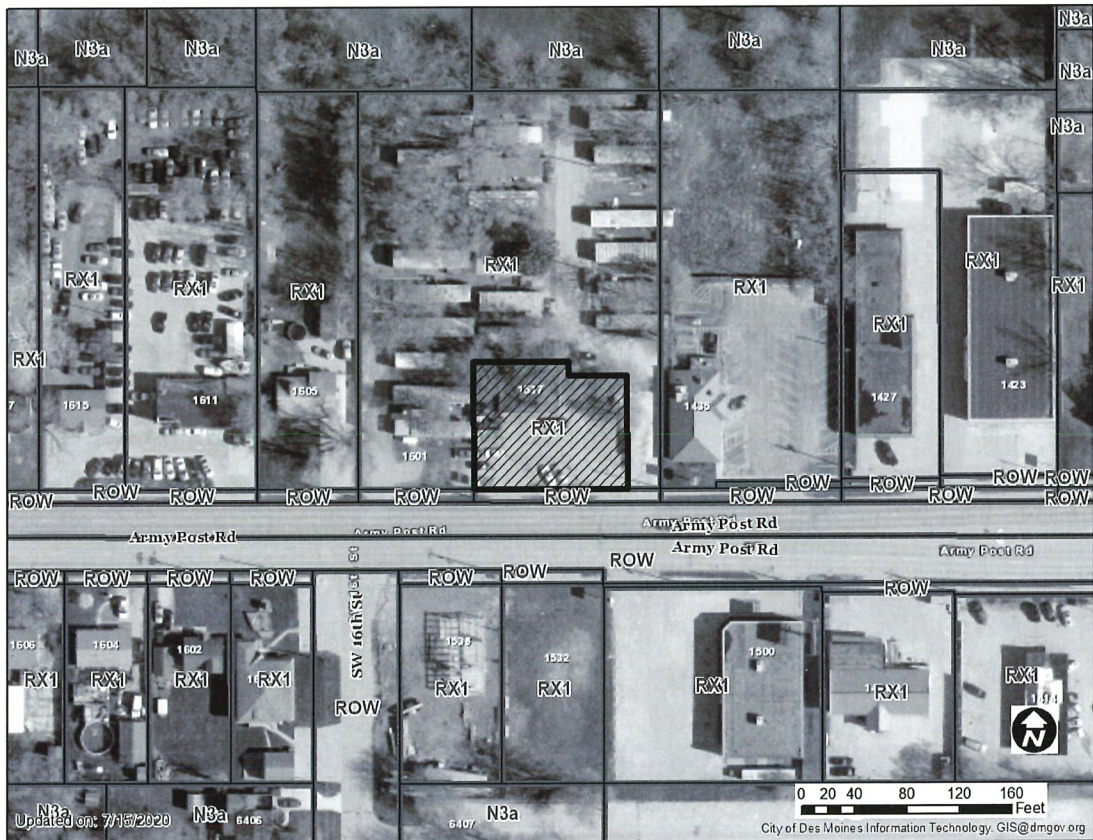
Jason Van Essen, AICP  
Senior City Planner

JVE:tjh

<b>Request from McFadden Holdings, LLC (owner) represented by Steven McFadden (officer) for property located at 1537 Army Post Road.</b>				<b>File #</b>	
				ZON2020-00081	
<b>Description of Action</b>	Rezone property from "RX1" Mixed Use District to "MX3" Mixed Use District, to allow the existing property and building to be used for a Vehicle Maintenance and Repair, Minor use.				
<b>PlanDSM Future Land Use</b>	Current: Community Mixed Use. Proposed: N/A.				
<b>Mobilizing Tomorrow Transportation Plan</b>	No planned improvements.				
<b>Current Zoning District</b>	"RX1" Mixed Use District				
<b>Proposed Zoning District</b>	"MX3" Mixed Use District				
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition	
<b>Outside Area (200 feet)</b>	1	1			
<b>Within Subject Property</b>					
<b>Plan and Zoning Commission Action</b>	Approval	X	<b>Required 6/7 Vote of the City Council</b>		Yes
	Denial				No X

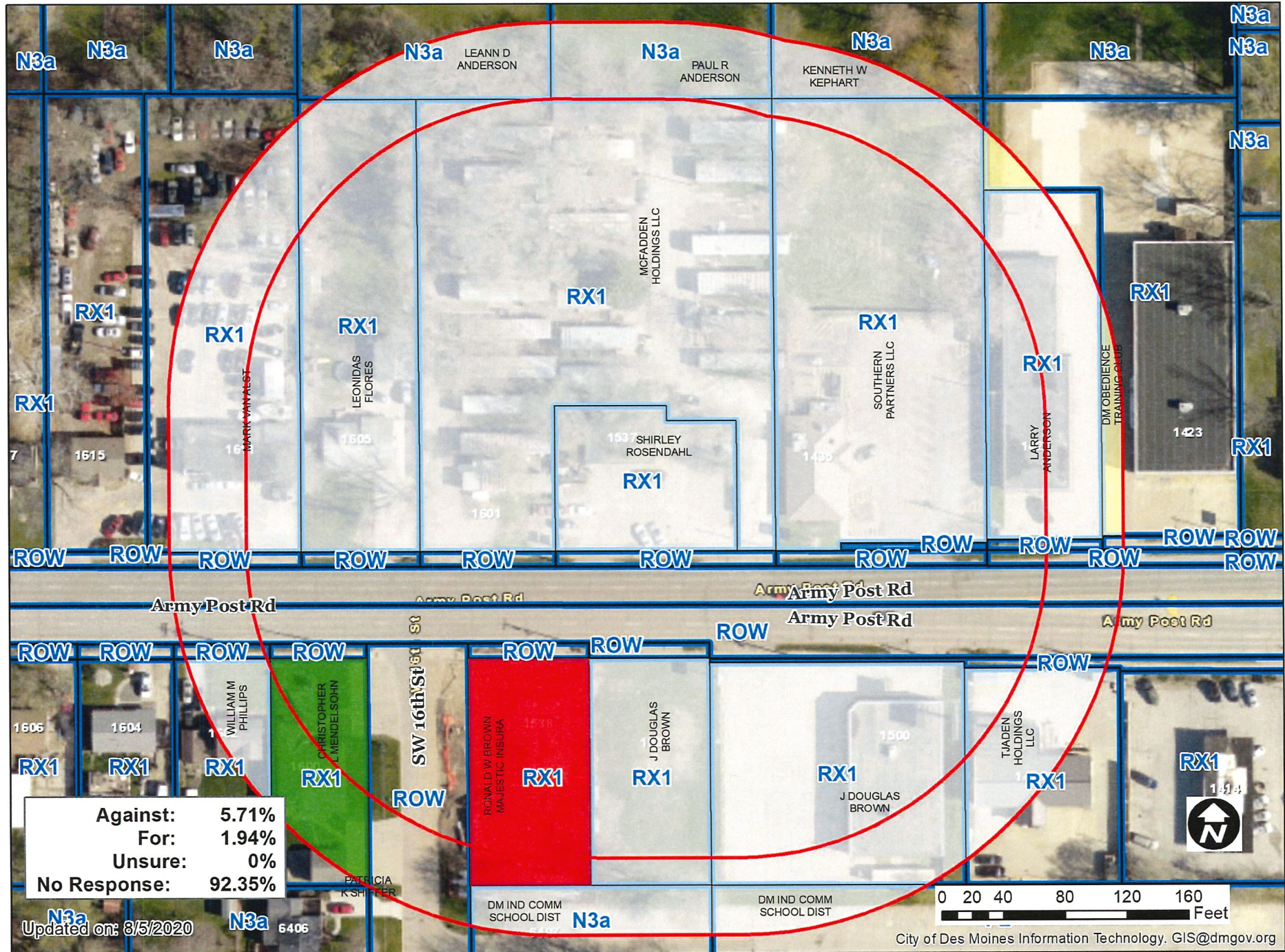
McFadden Holdings, LLC, 1537 Army Post Road

ZON2020-00081



1 inch = 83 feet





Item: ZON2020-00081

Date: 7-29-2020

I (am) (am not) in favor of the request:

(Circle One)

RECEIVED  
COMMUNITY DEVELOPMENT

AUG. 3 2020

Print Name: Ronald W. Brown

Signature: Ronald W Brown

Address: 495 S. 51st St. #42, West OkMoin  
La 50265

Reason for opposing or approving this request may be listed below:

I Am NOT in favor if This can be turned into  
another car lot

Item: ZON2020-00081

Date: 7/29/20

(am) (am not) in favor of the request:

RECEIVED  
COMMUNITY DEVELOPMENT

AUG 3 2020

Print Name: CHRIS Mendelsohn

Signature: *Chris Mendelsohn*

Address: 1600 Army Post Rd

Reason for opposing or approving this request may be listed below:

Four horizontal lines for providing reasons for opposing or approving the request.



## Drost, Bert A.

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**From:** Mitch Harris <watroussouth@gmail.com>  
**Sent:** Thursday, August 6, 2020 10:34 PM  
**To:** Planning  
**Subject:** FW: Request for support on re-zoning 1537 Army Post Road - Denied  
**Attachments:** 20200805\_065624.jpg; 20200805\_065626.jpg; 20200805\_065608.jpg

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

*Received an out of office from Erik's email so sending this to the Planning email.*

*Thanks!  
Mitch*

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**From:** WSNA Mail <watroussouth@gmail.com>  
**Date:** Wednesday, August 5, 2020 at 8:52 PM  
**To:** <dschumann@2501grand.com>  
**Cc:** "Larson Kyle N." <KNLarson@dmgov.org>, Erik Lundy <emlundy@dmgov.org>  
**Subject:** Request for support on re-zoning 1537 Army Post Road - Denied

Dear Mr. Schumann,

This e-mail is in reply to your letter dated 7/21/20 requesting support to re-zone 1537 Army Post Road.

Unfortunately, we are not in support of re-zoning this property.

I have attached 3 photo's which were taken this morning at 6:30AM, I also drove by at 4:30PM today and it was much worse.

The Watrous South Board of Directors discussed your request and here are our concerns. Your letter indicates what the current owner will and will not do, or probably will do, however, there are no protections for any future user. The details in your letter as to what is happening at this property compared to these pictures does not appear to reflect a car detailing business. There are vehicles there in stages of disrepair, parts missing, an old bus and more....honestly, the property resembles a junk yard. This is not the image we want for the neighborhood. Changing the underlying zoning would allow a higher density user if the current owner were to sell this parcel.

One of our missions as a Neighborhood Association is to assist in improving that arteries within our boundaries, this doesn't resemble an improvement.

We have copied our contacts at the City to advise our non-support on this issue.

I'm sorry the news is not better.

For the Board of Directors,

Mitch

*Mitch Harris, Vice President  
Board of Directors*



**Neighborhood Association**

PO Box 38545

Des Moines, Iowa 50315









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