

Date October 19, 2020

**RESOLUTION SETTING HEARING ON REQUEST FROM CASEY’S MARKETING COMPANY TO AMEND PLANDSM FUTURE LAND USE DESIGNATION AND TO REZONE PROPERTY LOCATED AT 3121 FOREST AVENUE**

**WHEREAS**, the City Plan and Zoning Commission has advised that at a public hearing held on October 1, 2020, its members voted 11-0 in support of a motion to recommend **APPROVAL** of a request from Casey’s Marketing Company (developer), represented by Erik Nikkel (agent), to amend the PlanDSM: Creating Our Tomorrow future land use designation for real property locally known as 3121 Forest Avenue (“Property”) from Neighborhood Mixed Use within a Neighborhood Node to Community Mixed Use within a Neighborhood Node, to allow rezoning to MX3 Mixed Use District and redevelopment of the Property with a 3,400 square foot store for retail sales, limited use with the ability to request Conditional Use approval from the Zoning Board of Adjustment for a business that sells alcoholic liquor; and

**WHEREAS**, the City Plan and Zoning Commission has further advised that at a public hearing held on October 1, 2020, its members voted 11-0 in support of a motion to recommend **APPROVAL** of a request from Casey’s Marketing Company to rezone the Property from MX1 Mixed Use District to MX3 Mixed Use District for the above-stated purpose, subject to the following conditions:

1. The only Permitted and Conditional Uses on the Property shall be sales of packaged alcoholic liquor following and subject to approval of a Conditional Use by the Zoning Board of Adjustment, and those Permitted and Conditional Uses in common with and as limited by the MX1 Mixed Use District.
2. Accessory structures located on the Property shall be limited to those permitted in the MX1 Mixed Use District in accordance with Des Moines Municipal Code Chapter 135, Table 135-2.22-1; and

**WHEREAS**, the Property is legally described as follows:

LOTS 13,14 AND 15 OF BLOCK 7 IN MERRITT & FISCHERS PARK, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

**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 amendment to the comprehensive plan future land use designation and proposed zoning are to be considered, and at which time the City Council will hear both those who oppose and those who favor the proposals, shall be held at 5:00 p.m. on November 9, 2020, by electronic means to encourage and maintain social distancing to curb the spread of COVID19 in the community, without public access to the

**Date** October 19, 2020

meeting location.

- 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.

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

FORM APPROVED:

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

(21-2020-4.20)  
(ZON2020-00109)

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



Date October 19, 2020  
 Agenda Item 19  
 Roll Call # \_\_\_\_\_

October 13, 2020

Honorable Mayor and City Council  
 City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their October 1, 2020 meeting, the following action was taken regarding a request from Casey's Marketing Company (developer) represented by Erik Nikkel (agent) to rezone property located at 3121 Forest Avenue from "MX1" Mixed Use District to "MX3" Mixed Use District to allow redevelopment of the site with a 3,400-square foot store for Retail Sales, Limited use with the ability to request a Conditional Use for a business that sells alcoholic liquor.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 11-0-1 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 proposed rezoning to "MX3" Mixed Use District be found not in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of Neighborhood Mixed Use, Part B) **APPROVAL** of amending the PlanDSM Creating Our Tomorrow Plan future land use designation from Neighborhood Mixed Use within a Neighborhood Node to Community Mixed Use within a Neighborhood Node and Part C)

**APPROVAL** of rezoning the subject property from “MX1” Mixed Use District to “MX3” Mixed-Use District subject to the following conditions:

1. The only Permitted and Conditional Uses shall be sales of packaged alcoholic liquor with approval of a Conditional Use and those Permitted and Conditional Uses in common with the “MX1” Mixed Use District and as limited in the “MX1” Mixed Use District.
2. Accessory structures shall be limited to those permitted in the “MX1” Mixed Use District per Table 135-2.22-1. (21-2020-4.20 & ZON2020-00109)

Written Responses

2 in Favor

0 in opposition

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

Part A) Staff recommends that the proposed rezoning to “MX3” Mixed Use District be found not in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of Neighborhood Mixed Use.

Part B) Staff recommends approval of amending the PlanDSM Creating Our Tomorrow Plan future land use designation from Neighborhood Mixed Use within a Neighborhood Node to Community Mixed Use within a Neighborhood Node.

Part C) Staff recommends approval of rezoning the subject property from “MX1” Mixed Use District to “MX3” Mixed-Use District subject to the following conditions:

1. The only Permitted and Conditional Uses shall be sales of packaged alcoholic liquor with approval of a Conditional Use and those Permitted and Conditional Uses in common with the “MX1” Mixed Use District and as limited in the “MX1” Mixed Use District.
2. Accessory structures shall be limited to those permitted in the “MX1” Mixed Use District per Table 135-2.22-1.

**STAFF REPORT TO THE PLANNING COMMISSION**

**I. GENERAL INFORMATION**

1. **Purpose of Request:** The applicant is seeking to develop a new 3,400-square foot convenience store without fuel sales.
2. **Size of Site:** 18,359 square feet.
3. **Existing Zoning (site):** “MX1” Mixed Use District.
4. **Existing Land Use (site):** Vehicle Repair Shop.
5. **Adjacent Land Use and Zoning:**

**North** – “N5”; Uses are one household dwellings.

**South** – “RX1” and “MX1”; Uses are parking lots and restaurant.

**East** – “MX1”; Uses are multiple household dwelling and vacant land.

**West** – “RX1”; Use is multiple household living development.

6. **General Neighborhood/Area Land Uses:** The subject property is in a mixed-use node on the Forest Avenue corridor west of Drake University that contains a mix of higher-density residential and commercial uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the Drake Neighborhood. The neighborhood association was notified of the hearing by mailing of the Preliminary Agenda on September 11, 2020 and by mailing of the Final Agenda on September 25, 2020. Additionally, separate notifications of the hearing for this specific item were mailed September 11, 2020 (20 days prior to the hearing) and September 21, 2020 (10 days prior to the hearing) to the Drake Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division on the date of the mailing. The Drake Neighborhood Association notices were mailed to Lori Calhoun, 2808 Cottage Grove Avenue, Des Moines, IA 50311.

8. **Relevant Zoning History:** N/A.
9. **PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Neighborhood Mixed Use within a Neighborhood Node.
10. **Applicable Regulations:** Taking into consideration 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 applicant is requesting that the future land use designation for the property be amended from “Neighborhood Mixed Use” to “Community Mixed Use”. Plan DSM describes these designations as follows:

*Neighborhood Mixed Use: Small scale mixed use development typically located at the intersections of collector and/or arterial streets and along transportation corridors. Non-residential development is designed to serve the immediate neighborhood and include small retail, offices, restaurants, and service oriented*

*development. Low-medium density residential may be included in mixed use development.*

Community Mixed Use

*Small- to medium-scale mixed use development, located on high capacity transit corridors or at the intersection of transportation corridors. Community mixed use areas include 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.*

In general, liquor sales would require a Conditional Use that could be approved in Zoning Districts that would be found consistent with “Community Mixed Use”. This amendment is necessary so that the proposed “MX3” District zoning may be found in conformance with the Comprehensive Plan. The Zoning Ordinance states that “MX3” is intended for mixed-use nodes and corridors within the city, where residents and visitors may access multiple uses by walking and automobile. This district accommodates higher intensity commercial uses at a smaller scale. Building types allowed in this district include the Storefront, Commercial Cottage, Commercial Center, Principal-Use Parking Structure, and Civic Building.

Staff believes the proposed amendment is appropriate given the location of the subject property on a high-volume transportation corridor and the site being located within a Neighborhood Node.

Because of the proximity of the project to one household living uses in the neighborhood to the north, Staff is concerned about the introduction of permitted uses and accessory structures with the proposed rezoning that would only be conducive to the highest volume traffic, mixed use corridors.

For example, hotel/motels, bars, general retail sales (larger than 12,000 square feet) and fuel stations are uses permitted in “MX3” District but not the “MX1” District. These uses, if permitted, would present adverse impacts to the residential area to the north. Furthermore, assembly uses would require more scrutiny of the Conditional Use review by the Zoning Board of Adjustment in the “MX1” District versus the “MX3” District. And, the “MX3” District would allow for accessory structures permitting drive-through and fuel station functions. These would also present adverse impact.

Staff recommends that any rezoning to the “MX3” District only allow the added ability to request a Conditional Use to allow sale of packaged alcoholic liquor plus the same Permitted and Conditional Uses in common with the “MX1” District as restricted by the “MX1” District. Also, Staff recommends that accessory structures should only be those allowed in the “MX1” District. By limiting the rezoning of the property to “MX3” as described, the use of the property would be able to remain compatible with the one household living uses adjoining to the north.

- 2. Planning and Design Ordinance:** Any development must comply with all applicable Site Plan and Design regulations of the Chapter 135 Planning and Design Ordinance. The applicant has provided a concept of the development using the Storefront Type with the building built-to the front property lines at the intersection. This would generally

be consistent with the intent of the Ordinance. However, Site Plan development would be subject to full review under the Code.

- 3. Grading & Storm Water Management:** Any grading is subject to an approved grading permit and soil erosion control plan. Tree removal and mitigation calculations must be submitted with any site plan in accordance with Section 42-550 of the Municipal Code.

## **SUMMARY OF DISCUSSION**

Jann Freed asked if any member of the public or the commission desired to speak on the item. No one requested to speak.

## **COMMISSION ACTION:**

Dory Briles made a motion for approval of Part A) the proposed rezoning to “MX3” Mixed Use District be found not in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of Neighborhood Mixed Use, Part B) **APPROVAL** of amending the PlanDSM Creating Our Tomorrow Plan future land use designation from Neighborhood Mixed Use within a Neighborhood Node to Community Mixed Use within a Neighborhood Node and Part C) **APPROVAL** of rezoning the subject property from “MX1” Mixed Use District to “MX3” Mixed-Use District subject to the following conditions:

1. The only Permitted and Conditional Uses shall be sales of packaged alcoholic liquor with approval of a Conditional Use and those Permitted and Conditional Uses in common with the “MX1” Mixed Use District and as limited in the “MX1” Mixed Use District.
2. Accessory structures shall be limited to those permitted in the “MX1” Mixed Use District per Table 135-2.22-1.

Motion passed: 11-0-1

Respectfully submitted,



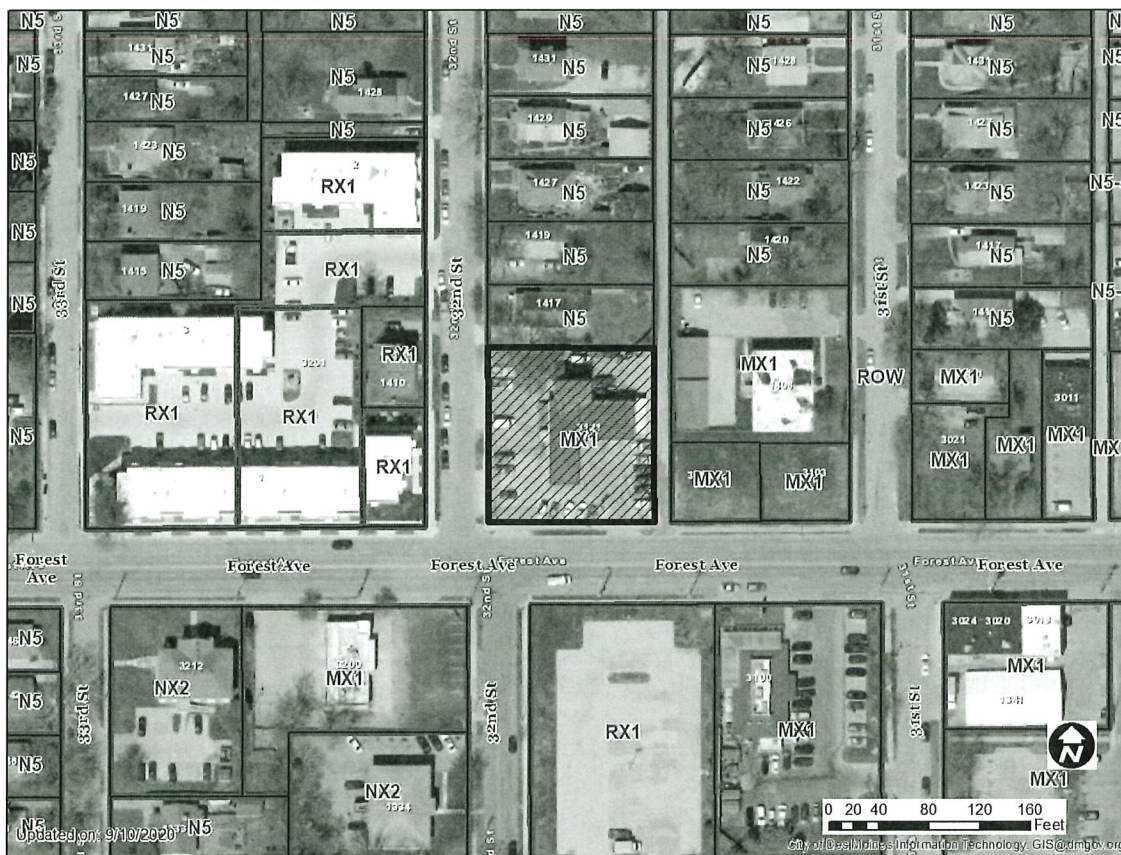
Michael Ludwig, AICP  
Planning Administrator

MGL:tjh

<b>Casey's Marketing Company (developer) represented by Erik Nikkel (agent) for property at 3121 Forest Avenue. The subject property is owned by Neighborhood Development Corporation.</b>				<b>File #</b>	
				21-2020-4.20	
<b>Description of Action</b>	Amend the PlanDSM Creating Our Tomorrow Comprehensive Plan to revise the future land use designation from Neighborhood Mixed within a Neighborhood Node to Community Mixed Use within a Neighborhood Node.				
<b>PlanDSM Future Land Use</b>	Current: Neighborhood Mixed Use within Neighborhood Node. Proposed: Community Mixed Use within Neighborhood Node.				
<b>Mobilizing Tomorrow Transportation Plan</b>	No planned improvements.				
<b>Current Zoning District</b>	"MX1" 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>	0	0			
<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

Casey's Marketing Company, 3121 Forest Avenue

21-2020-4.20



1 inch = 90 feet



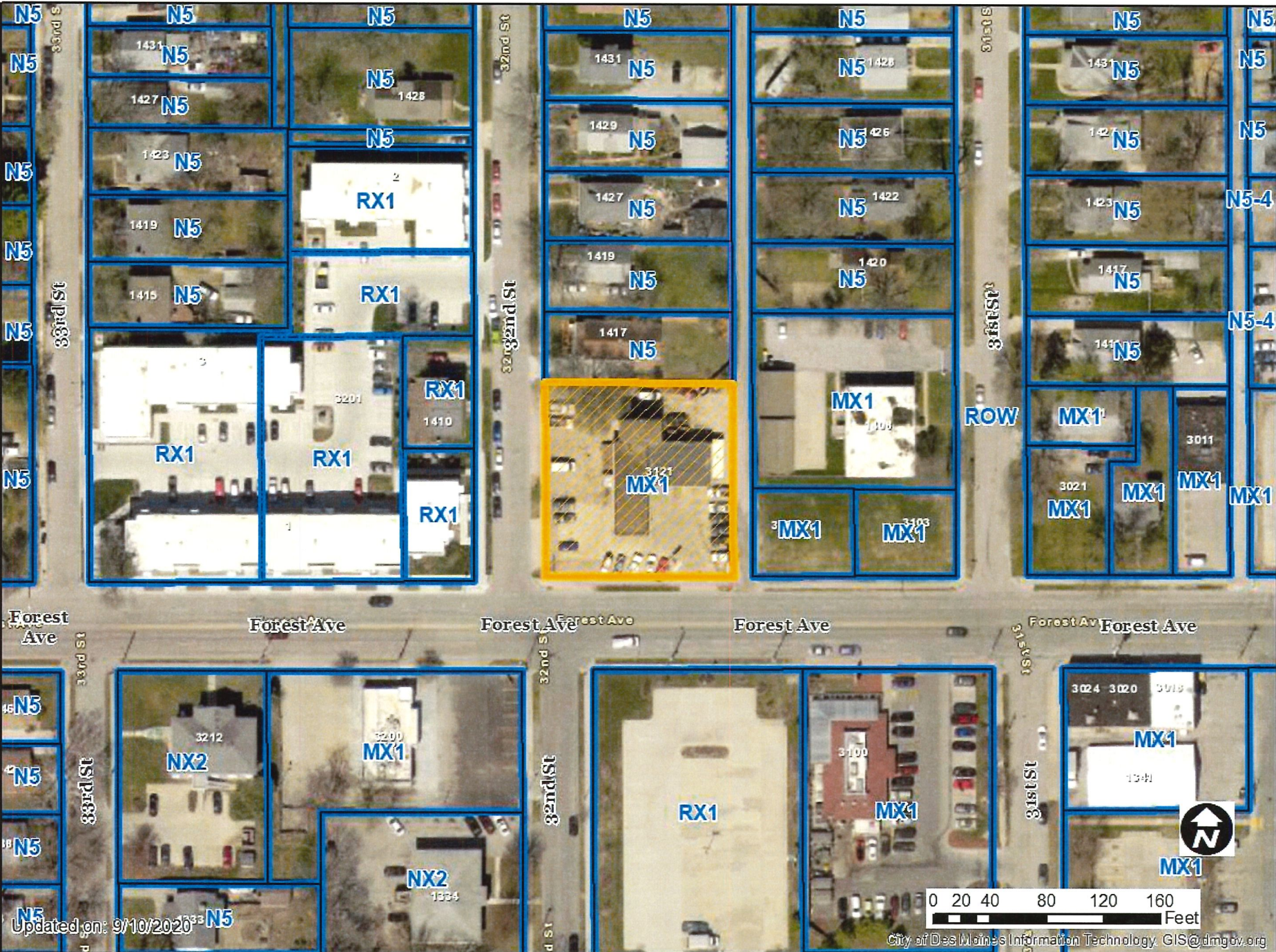
<b>Casey's Marketing Company (developer) represented by Erik Nikkel (agent) for property at 3121 Forest Avenue. The subject property is owned by Neighborhood Development Corporation.</b>				<b>File #</b>	
				<b>ZON2020-00109</b>	
<b>Description of Action</b>	Rezone property from "MX1" Mixed Use District to "MX3" Mixed Use District to allow redevelopment of the site with a 3,400-square foot store for Retail Sales, Limited use with the ability to request a Conditional Use for a business that sells alcoholic liquor.				
<b>PlanDSM Future Land Use</b>	Current: Neighborhood Mixed Use within Neighborhood Node. Proposed: Community Mixed Use within Neighborhood Node.				
<b>Mobilizing Tomorrow Transportation Plan</b>	No planned improvements.				
<b>Current Zoning District</b>	"MX1" 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>	2	0			
<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

Casey's Marketing Company, 3121 Forest Avenue

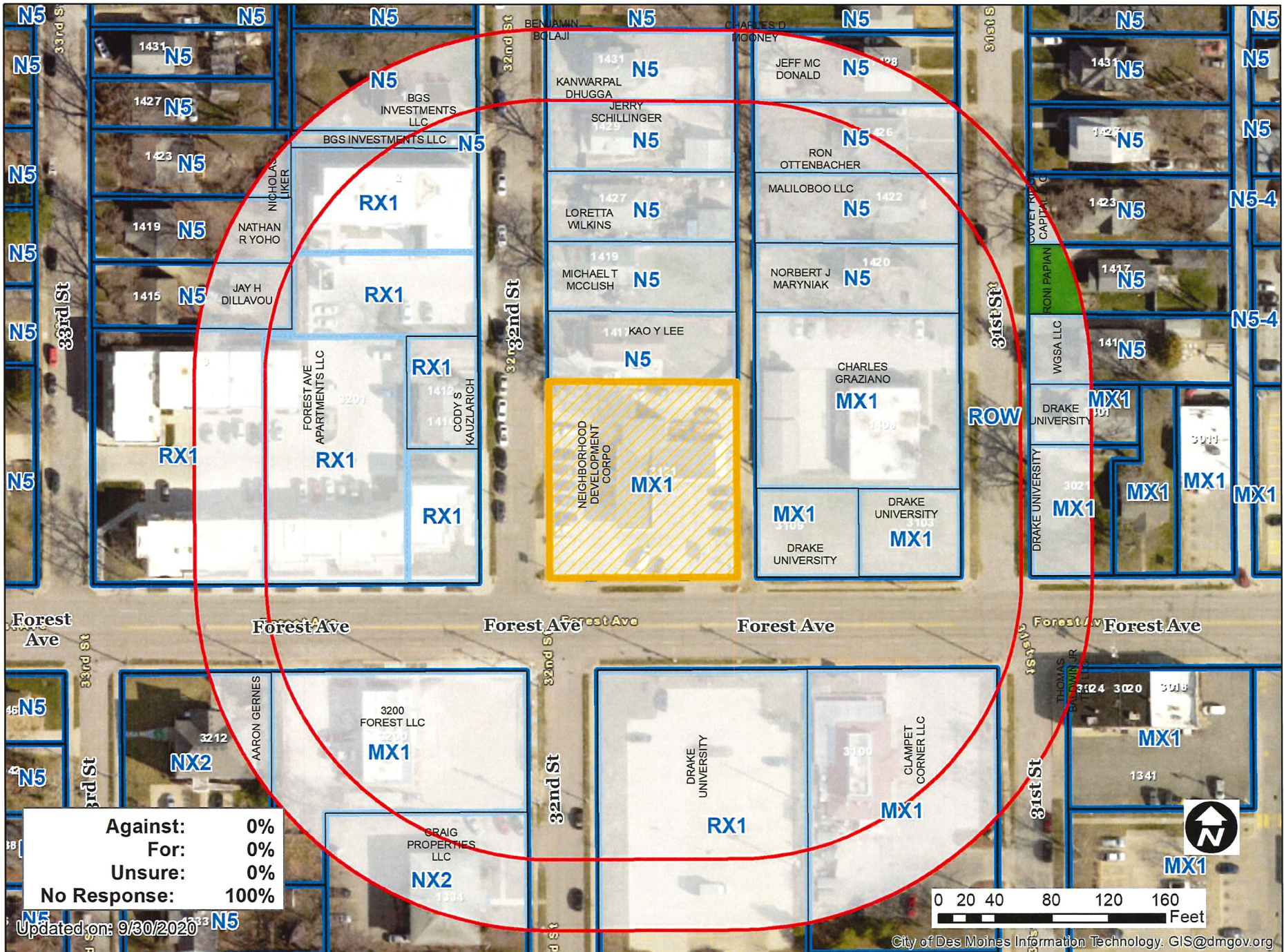
ZON2020-00109



1 inch = 90 feet



19



19

Item: ZON2020-00109 Date: 9/24/20

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

(Circle One)

RECEIVED  
COMMUNITY DEVELOPMENT

SEP 28 2020

Print Name: Tom Babin 19

Signature: [Handwritten Signature]

Address: 2939 Grand Ave

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

[Blank lines for reasoning]

Item: ZON2020-00109 Date: 9/25/2020

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

(Circle One)

RECEIVED  
COMMUNITY DEVELOPMENT

SEP 28 2020

Print Name: Boni Papian

Signature: [Handwritten Signature]

Address: 1417 31<sup>st</sup> St  
Des Moines, IA 50311

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

I am in favor of this project.  
Having this Casey's General Store  
will be a nice addition to the  
neighborhood.