

Date December 7, 2020

**RESOLUTION HOLDING HEARING ON REQUEST FROM LAVERNE AND MAXINE ANDERSON TO REZONE PROPERTY LOCATED AT 1100 EAST MARION STREET**

**WHEREAS**, on November 23, 2020, by Roll Call No. 20-1865, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on November 5, 2020, its members voted 14-0 in support of a motion to recommend **APPROVAL** of a request from Laverne and Maxine Anderson (owners) to rezone the real property locally known as 1100 East Marion Street (“Property”) from N3a Neighborhood District to Limited NX2 Neighborhood Mix District, to allow the existing residential dwelling to continue to be used for a group living use, including requiring conditional use approval from the Zoning Board of Adjustment if applicable, subject to the following condition:

1. Any group living use of the Property shall be limited to the Freedom House group living use, in form as described in the rezoning application; and

**WHEREAS**, on November 23, 2020, by Roll Call No. 20-1865, it was duly resolved by the City Council that the request to rezone the Property be set down for hearing on December 7, 2020 at 5:00 P.M., by electronic means in accordance with the Governor’s and Mayor’s Proclamations and to encourage and maintain social distancing to curb the spread of COVID19 in the community, without public access to the meeting location; 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 rezoning; and

**WHEREAS**, in accordance with said notice, those interested in said proposed rezoning, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council; and

**WHEREAS**, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone the Property locally known as 1100 East Marion Street, legally described as:

**LOT 39, ROSE HILL MANOR PLAT 1, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA**

from N3a Neighborhood District to Limited NX2 Neighborhood Mix District, to allow the existing residential dwelling to continue to be used for a group living use, including requiring conditional use approval from the Zoning Board of Adjustment if applicable.

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

**Date** December 7, 2020

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 or rezoning of the Property to Limited NX2 Neighborhood Mix District are hereby overruled, and the hearing is closed.
2. The proposed rezoning of the Property, as legally described above, to Limited NX2 Neighborhood Mix District, is hereby found to be in conformance with the PlanDSM: Creating Our Tomorrow Land Use Plan and is approved, subject to final passage of an ordinance rezoning the Property as set forth herein.

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

FORM APPROVED:

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

(ZON2020-00128)

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 December 7, 2020  
 Agenda Item 40  
 Roll Call # \_\_\_\_\_

November 17, 2020

Honorable Mayor and City Council  
 City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their November 5, 2020 meeting, the following action was taken regarding a request from Laverne and Maxine Anderson (owners) to rezone property located at 1100 East Marion Street from “N3a” Neighborhood District to a Limited “NX2” Neighborhood Mix District to allow the existing Household Living dwelling to be used for a Correctional Placement Residence use.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 14-0 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 proposed rezoning to a limited “NX2” District be found in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of “Low Density Residential and Part B) **APPROVAL** of the request to rezone the property from “N3a” Neighborhood District to a Limited “NX2” Neighborhood District limited to one

household dwelling or correctional placement residence for up to 4 individuals.

(ZON2020-00128)

Written Responses

1 in Favor

0 in opposition

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

Part A) Staff recommends that the proposed rezoning to a limited “NX2” District be found in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of “Low Density Residential.”

Part B) Staff recommends denial of the request to rezone the property from “N3a” Neighborhood District to a Limited “NX2” Neighborhood District.

**STAFF REPORT TO THE PLANNING COMMISSION**

**I. GENERAL INFORMATION**

**1. Purpose of Request:** The proposed rezoning to a limited ‘NX2” District would potentially allow the existing house to be used as a “Correctional Placement Residence” use. If the rezoning is approved, the proposed Correctional Placement Residence use would be subject to approval of a Conditional Use by the Zoning Board of Adjustment.

Should the rezoning be denied, the applicant would have up to one (1) year following that denial to seek a Use Variance from the Zoning Board of Adjustment to allow use of the property for a specific use, such as a Correctional Placement Residence.

**2. Size of Site:** 70 feet by 125 feet (8,750 square feet).

**3. Existing Zoning (site):** “N3a” Neighborhood District.

**4. Existing Land Use (site):** The subject property contains a one-household dwelling.

**5. Adjacent Land Use and Zoning:**

**North** – “N3a”; Use is a one household dwelling.

**South** – “N3a”; Uses are East Marion Street and a one household dwelling.

**East** – “N3a”; Use is a one household dwelling.

**West** – “N3a”; Use is a one household dwelling.

**6. General Neighborhood/Area Land Uses:** The subject property is located within a low-density residential area located to the west of Southeast 14<sup>th</sup> Street and to the south of East Watrous Avenue.

**7. Applicable Recognized Neighborhood(s):** The subject property is in the South Park Neighborhood. The neighborhood association was notified of the public hearing by

mailing of the Preliminary Agenda on October 16, 2020 and by mailing of the Final Agenda on October 30, 2020. Additionally, separate notifications of the hearing for this specific item were mailed on October 16, 2020 (20 days prior to the public hearing) and on October 26, 2020 (10 days prior to the public hearing) to the neighborhood association and to the primary titleholder on file with the Polk County Assessor for each property adjoining the requested public Right-of-Way.

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 South Park Neighborhood Association mailings were sent to Jan Goode, 4501 Southeast 6<sup>th</sup> Street, Des Moines, IA 50315.

Due to the COVID-19 pandemic, the applicant was unable to hold a neighborhood meeting. However, the applicant mailed a letter to the neighboring property owners to explain their proposal and to provide contact information in case they had any questions or comments. The applicant will provide a summary of any communications with neighboring property owners prior to the public hearing.

**8. Relevant Zoning History:** None.

**9. PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Low Density Residential.

**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. Zoning Enforcement History:** On February 10, 2020, the City's Zoning Enforcement Staff sent a notice of zoning violation to applicant after it was discovered that the existing dwelling was being used for a Correctional Placement Residence use.

The applicant has since filed the rezoning application to remedy the zoning violation. The application states, "The Freedom House is a women's house for those on parole and for those who desire to live a clean and sober life". The application indicates that it has operated at this location since 2002 and has up to four (4) women residing in the dwelling at any given time.

**2. PlanDSM Creating Our Tomorrow:** The subject property is designated as "Low-Density Residential" on the Future Land Use Map. Plan DSM describes this designation as follows:

Low-Density Residential: Areas developed with primarily single family and two family residential units with up to 6 dwelling units per net acre.

The applicant is proposing to rezone the property from “N3a” Neighborhood District to Limited “NX2” Neighborhood District with a condition that use of the property be limited to either a one-household dwelling or a correctional placement residence. Such a limited zoning could be found to be in accordance with the Low-Density Residential future land use designation.

If no zoning conditions limiting use were placed on the request, the “NX2” District would allow for one-household dwelling, two-household dwelling, multiple-household dwelling, assisted living, correctional placement, family home, home and community-based services waiver dwellings, and temporary shelter uses. Any new or expanded use would be required to be in accordance with the “Flat”, “Row Building”, or “House D” or “House C” building types.

- 3. Rationale:** Staff does not believe that the proposed “NX2” District would be appropriate for this property, given its location within a predominantly one-household residential neighborhood and given its location away from a transit corridor.

Should the rezoning be denied, the applicant would have up to one (1) year following that denial to seek a Use Variance from the Zoning Board of Adjustment to allow use of the property for a specific use, such as a Correctional Placement Residence.

## SUMMARY OF DISCUSSION

Bert Drost presented the staff report and recommendation.

Deb Theeler 2919 Beaver Avenue stated after 15 years as a recovery nurse she realized these ladies needed somewhere to live once they moved out of the Residential Treatment Center. This house is not a correctional facility and has no ties to the DOC. She had no idea about this zoning issue and running the Freedom house on Marion Street for 18+ years has never had one complaint. This house consists of 4 women that are sober and currently on parole. Any women looking for a way out of a bad situation can live in this house, they don't need to be on parole to live there.

Will Page asked how she would answer staffs concern around public transit?

Deb Theeler stated that is not the case, they only open houses that are in walking distance of a bus stop. The bus stop in this area is located on the corner of East Watrous and Southeast 13<sup>th</sup> Street.

Stephanie Becker 1100 East Marion Street stated regarding the bus stop, it's located on the corner of East Watrous and SE 12<sup>th</sup> Street and she has no problems accessing that bus stop. This place for her is home, she works 60 hours a week and doesn't know where she would be without this place. There are 4 women that live in this house trying to do the best they can, they don't bother anyone, keep the place clean and rezoning this property would do good for so many more women in the future.

Rocky Sposato asked how long they can live in the house?

Stephanie Becker stated there are no limitations, as long as it takes for them to get back on their feet.

**CHAIRPERSON OPENED THE PUBLIC HEARING**

No one was present or requested to speak.

**CHAIRPERSON CLOSED THE PUBLIC HEARING**

Greg Wattier asked if the rezoning was approved, would potential new uses be a concern to staff?

Bert Drost stated they need to rezone to NX2, which is one of the City's more intense Multi-Family Residential Districts. If the commission is inclined to approve the rezoning, you should make it conditional upon any use be limited to a one household dwelling or correctional placement facility up to 4 nonrelated individuals. They will need a Conditional use from the Zoning Board of Adjustment if granted or if denied they would need to seek a use variance through the Zoning Board of Adjustment. It would be easier for them to be approved for a conditional use rather than the use variance.

Johnny Alcivar asked if the neighborhood notices included the correctional placement language?

Bert Drost stated yes, they did. It would reflect how it is worded on tonight's agenda.

Johnny Alcivar stated it is very telling when the notices with that language were sent out and no complaints or opposition to the request came back.

**COMMISSION ACTION:**

Jonny Alcivar made a motion for approval of Part A) the proposed rezoning to a limited "NX2" District be found in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of "Low Density Residential and Part B) **APPROVAL** of the request to rezone the property from "N3a" Neighborhood District to a Limited "NX2" Neighborhood District limited to one household dwelling or correctional placement residence for up to 4 individuals.

Motion passed: 14-0

Respectfully submitted,



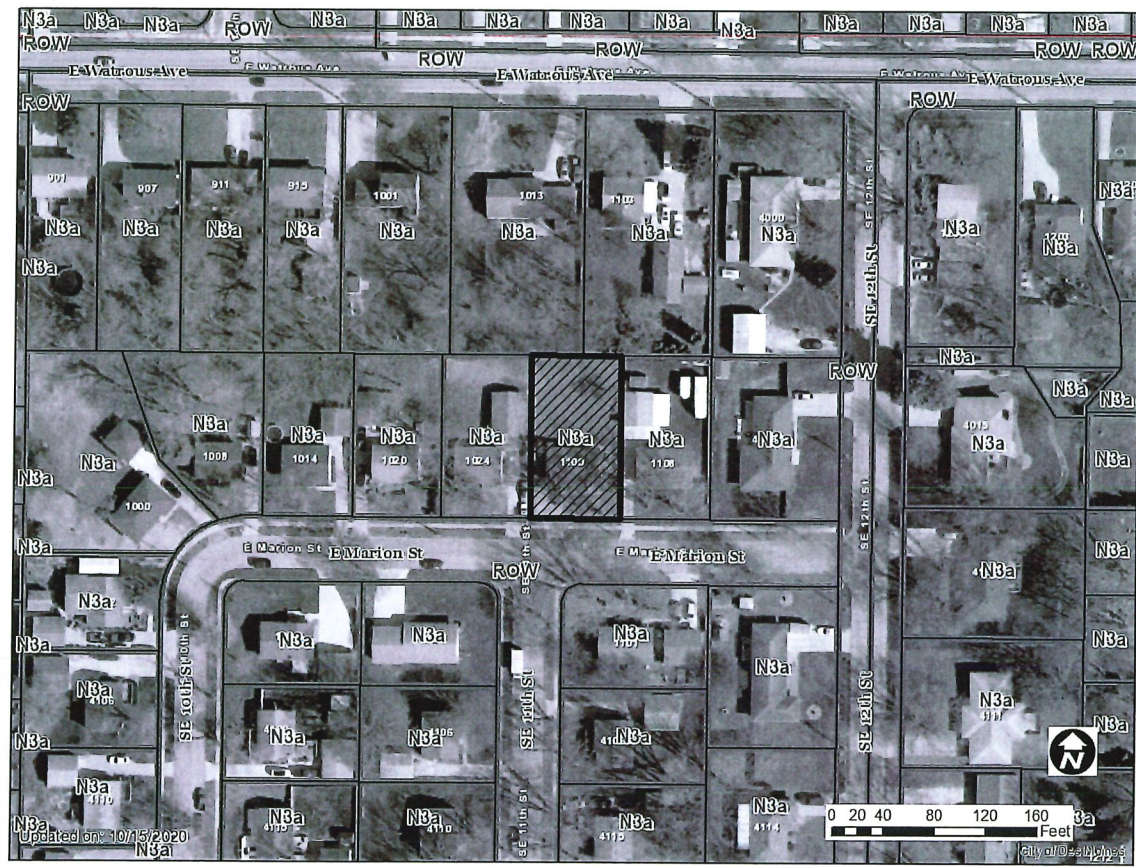
Michael Ludwig, AICP  
Planning Administrator

MGL:tjh

Laverne and Maxine Anderson (owners) for property at 1100 East Marion Street.			File #	
			ZON2020-00128	
Description of Action	Rezone property from "N3a" Neighborhood District to a Limited "NX2" Neighborhood Mix District to allow the existing Household Living dwelling to be used for a Correctional Placement Residence use.			
PlanDSM Future Land Use	Current: Low Density Residential. Proposed: N/A.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"N3a" Neighborhood District.			
Proposed Zoning District	"NX2" Neighborhood Mix District..			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Outside Area (200 feet)	1	0		
Within Subject Property				
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes
	Denial			No

Laverne and Maxine Anderson, 1100 East Marion Street

ZON2020-00128



1 inch = 88 feet



ZON2020-000128

Item:

Date: 10/29/2020

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

(Circle One)

Print Name: WILLIAM HARBERTS

RECEIVED  
COMMUNITY DEVELOPMENT

Signature: [Handwritten Signature]

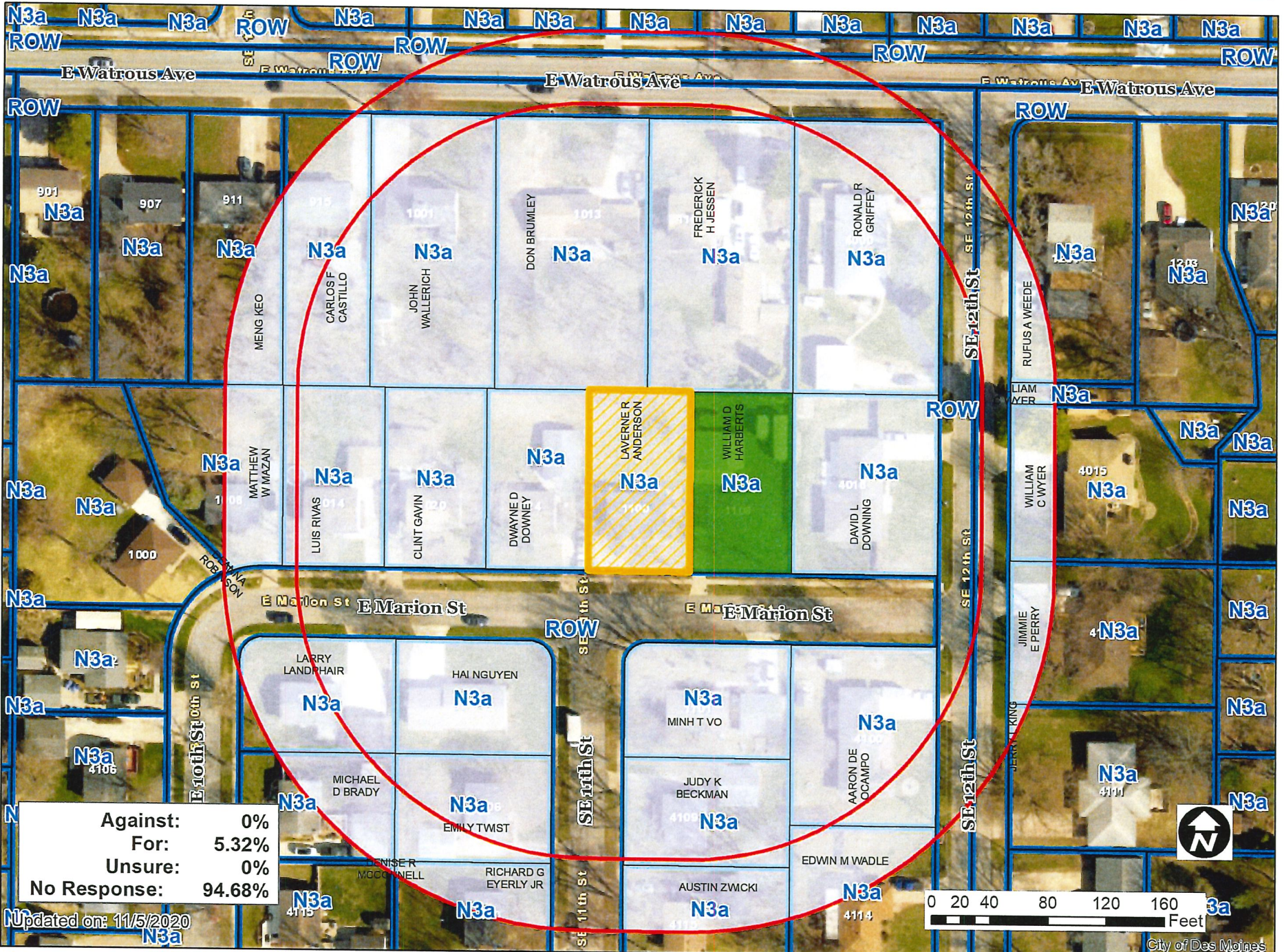
NOV 04 2020

Address: 1108 E MARION ST

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

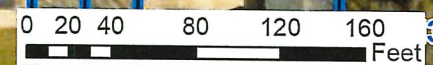
I HAVE ACTUALLY HAD LESS PROBLEMS WITH THIS RESIDENCE BECAUSE IT IS SUPERVISED, THAN PREVIOUS RENTERS BEFORE IT WAS FREEDOM HOUSE.

40



Against:	0%
For:	5.32%
Unsure:	0%
No Response:	94.68%

Updated on: 11/5/2020



1 inch = 88 feet

City of Des Moines