

Date January 11, 2021

RESOLUTION HOLDING HEARING ON REQUEST FROM ANGEL GROFF TO AMEND PLANDSM FUTURE LAND USE CLASSIFICATION AND TO REZONE 2200 EASTON BOULEVARD

WHEREAS, on December 21, 2020, by Roll Call No. 20-2109, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on December 3, 2020, its members voted 12-0 in support of a motion to recommend **DENIAL** of a request from Angel Groff (owner) to amend the PlanDSM: Creating Our Tomorrow comprehensive plan future land use classification for real property locally known as 2200 Easton Boulevard (“Property”) from Low Density Residential to Community Mixed Use, and to rezone the Property from N3a Neighborhood District to MX3 Mixed Use District, to allow the existing vacant commercial building and site to be reused for a Vehicle Maintenance/Repair, Minor use and a Vehicle Sales use; and

WHEREAS, the Property is legally described as follows:

LOTS 16 AND 17 IN BLOCK 16 EASTON PLACE, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, IOWA; and

WHEREAS, on December 21, 2020, by Roll Call No. 20-2109, it was duly resolved by the City Council that the request to amend the land use designation and to rezone the Property be set down for hearing on January 11, 2021, at 5:00 p.m., 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; 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 land use amendment and rezoning; and

WHEREAS, in accordance with said notice, those interested in said proposed land use amendment and rezoning, both for and against, have been given 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 and all statements of interested persons and arguments of counsel, any objections to the proposed amendment to the PlanDSM future land use designation to Community Mixed Use, or to the proposed rezoning of the Property to MX3 Mixed Use District, are received and the hearing is closed.

Alternative A

MOVED by _____ to adopt and **DENY** the proposed amendment to the PlanDSM future land use designation and the proposed rezoning, and to make the following findings of fact regarding said proposals:

- a. The City Plan and Zoning Commission voted 12-0 to recommend denial of the requested proposed amendment to the PlanDSM future land use designation to Community Mixed Use and proposed rezoning of the Property to MX3 Mixed Use District, to allow the existing vacant commercial building and site to be reused for a Vehicle Maintenance/Repair, Minor use and a Vehicle Sales use.
- b. The current PlanDSM: Creating Our Tomorrow Plan future land use designation of the Property is Low Density Residential, and current zoning designation is N3a Neighborhood District, both of which are intended for residential uses and specifically “areas developed with primarily single-family and two-family residential units with up to six dwelling units per net acre”.

Date January 11, 2021

- c. The proposed land use designation of Community Mixed Use is described as “small- to medium-scale mixed use development, located on high capacity transit corridors or at the intersection of transportation corridors....includ[ing] 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.”
- d. The Property is located in a neighborhood and area that does not constitute a high capacity transit corridor and which contains existing single-household residential uses, which is consistent with the character of the neighborhood at the adoption of PlanDSM in 2016.
- e. The proposed amendment to the PlanDSM future land use designation of the Property and the proposed rezoning to allow for vehicle maintenance and sales uses would not be consistent with the intent of the PlanDSM comprehensive plan for the subject neighborhood/area.
- f. If the proposed amendment to the PlanDSM future land use designation of the Property to Community Mixed Use is not approved, then the proposed rezoning to MX3 Mixed Use District is inapplicable due to non-conformance with the PlanDSM designation of Low Density Residential.
- g. The Property can continue to operate as an office use, retail use, or tire repair shop business in accordance with the requirements of a Variance granted by the Zoning Board of Adjustment on July 25, 2018, by Docket ZON2018-00073.
- h. If the application of the existing zoning regulations has the effect of denying the owner all economic use of the Property, then the appropriate remedy is to seek relief from the Zoning Board of Adjustment.

Alternative B

MOVED by _____ to continue the public hearing until 5:00 p.m. on January 25, 2021, 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, and to direct the City Manager and Legal Department to prepare the necessary legislation to **APPROVE** the proposed amendment to the PlanDSM future land use designation and the proposed rezoning subject to conditions acceptable to the City and the owner(s).

FORM APPROVED:

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

(21-2020-4.27)
(ZON2020-00140)

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

MOTION CARRIED APPROVED

Mayor

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.

City Clerk



Date January 11, 2021
 Agenda Item 33
 Roll Call # _____

December 15, 2020

Honorable Mayor and City Council
 City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their December 3, 2020 meeting, the following action was taken regarding a request from Angel Groff (owner) to rezone property located at 2200 Easton Boulevard from "N3a" Neighborhood District to "MX3" Mixed Use District to allow the existing vacant commercial building and site to be reused for a Vehicle Maintenance/Repair, Minor use and a Vehicle Sales use.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 12-0 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 is **not** in conformance with PlanDSM; Creating Our Tomorrow Plan, which designates the property as "Low Density Residential"., Part B) **DENIAL** of an amendment to the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification for the subject property from "Low Density Residential" to "Community Mixed Use". And Part C) **DENIAL** of the

requested rezoning of the property from “N3a” Neighborhood District to “MX3” Mixed Use District. (21-2020-4.27 & ZON2020-00140)

Written Responses

0 in Favor

2 in opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the Commission find the requested rezoning is not in conformance with PlanDSM; Creating Our Tomorrow Plan, which designates the property as “Low Density Residential”.

Part B) Staff recommends denial of an amendment to the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification for the subject property from “Low Density Residential” to “Community Mixed Use”.

Part C) Staff recommends denial of the requested rezoning of the property from “N3a” Neighborhood District to “MX3” Mixed Use District.

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 Vehicle Maintenance/Repair, Minor use or a Vehicle Sales use

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. Purpose of Request: The requested rezoning would allow use of the property for either a Vehicle Maintenance/Repair, Minor use or a Vehicle Sales use. Use of the property is currently limited to an office use, a retail use, or a tire repair shop business in accordance with a Use Variance of permitted uses in the “R1-60” District, as granted by the Board of Adjustment on July 25, 2019.

Should the rezoning be denied, the applicant would have up to one (1) year following that denial to seek a new Use Variance of permitted uses in the “N3a” District from the Board of Adjustment to allow use of the property for a specific use, such as a Vehicle Maintenance/Repair, Minor use or a Vehicle Sales use.

2. Size of Site: 10,500 square feet (0.24 acre).

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

4. Existing Land Use (site): The subject property contains a 28-foot by 56-foot (1,568 square feet) building, a 24-foot by 30-foot (720 square feet) building, and a parking lot.

5. Adjacent Land Use and Zoning:

North – “N3a”; Uses are an undeveloped lot and single- household residential.

South – “NX1”; Uses are Easton Boulevard and single-household residential.

East – “N3a”; Use is single- household residential.

West – “P2”; Uses are East 22nd Street and a church.

6. **General Neighborhood/Area Land Uses:** The subject property is located along the north side of Easton Boulevard, just to the east of the I-235. The area primarily consists of single-family residential uses, with low-intensity commercial uses scattered along Easton Boulevard.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the Fairmont Park Neighborhood. All neighborhoods were notified of the Commission meeting by mailing of the Preliminary Agenda on November 13, 2020. A Final Agenda was mailed to the neighborhood associations on November 25, 2020. Additionally, separate notifications of the hearing for this specific item were mailed on November 13, 2020 (20 days prior to the hearing) and on November 23, 2020 (10 days prior to the hearing) to the 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 designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Fairmont Park Neighborhood Association notices were mailed to Jeff Witte, 2501 Morton Avenue, Des Moines, IA 50317.

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:** The property previously contained a vehicle display lot that had legal non-conforming rights to operate in the “R1-60” One-Family Low-Density Residential District. On June 27, 2012, the Zoning Board of Adjustment considered appeals that would have allowed for the expansion of the vehicle display lot on that property. At that time, the Board denied a Variance to allow expansion of a legal non-conforming use in the “R1-60” One-Family Low-Density Residential District and a Variance of 10 feet less than the minimum required ten (10) feet of setback for off-street parking and loading from a property line adjoining a residential district. However, the Board did grant an amended appeal for a Variance of 27.5 feet less than the minimum required 30 feet of setback for off-street parking and loading from street right-of-way property lines in a Residential district, that allowed them to retain paving within 2.5 feet of the front property lines, subject to the following conditions:
 1. Provision of a 2.5-foot paving setback along both Easton Boulevard and East 22nd Street, which shall be landscaped with ornamental trees and shrubs in accordance with a landscaping plan as approved by the Permit & Development Center.

2. All barbed or razor wire on the site shall be removed.
3. All paving encroaching into the public right-of-way, except that necessary for any drive approach or sidewalk, shall be removed, with restoration of the area with sod and curbing.
4. If the preceding conditions are not satisfied prior to November 1, 2012, the site shall be required to provide the otherwise required 30-foot paving setbacks along both Easton Boulevard and East 22nd Street.

On November 3, 2017, the Zoning Enforcement Officer sent a letter to the appellant letting them know that the legal non-conforming rights for a vehicle display lot use on the property have ceased since it was determined that the property had been vacant since March 1, 2015. On December 22, 2017, the appellant appealed that determination, but on January 24, 2018, the Zoning Board of Adjustment upheld the determination (ZON2017-00219) that the legal non-conforming rights had ceased.

On April 5, 2018, the City Council denied a request to rezone the property to "C-2" General Retail and Highway-Oriented Commercial District (Roll Call 18-0621).

On May 23, 2018, the Zoning Board of Adjustment, by Docket ZON2018-00073, granted a Variance of the permitted uses in an "R1-60" One-Family Low-Density Residential District (Use Variance) and a Variance of 27.5 feet less than the minimum 30 feet of setback required for off-street parking and loading from a front property line in a Residential District Use of the property for tire repair shop and retention of an off-street parking lot that is within 2.5 feet of the front property lines along Easton Boulevard and East 22nd Street. The approval was subject to the following conditions:

1. Any commercial use of the property shall be limited to a tire repair shop business and shall not occur until a Certificate of Occupancy has been issued for such.
2. Any use of the property for a tire repair shop business shall be in accordance with a Site Plan as approved by the Permit and Development Center.
3. Any use of the existing buildings shall be in accordance with all Building Codes and Fire Codes, with issuance of all necessary permits by the City's Permit and Development Center.
4. There shall be no outdoor storage of any equipment or materials, including but not limited to new or used tires, barrels, or tools.
5. No vehicle shall be kept on the premise for more than 48 consecutive hours.
6. Display of vehicles for sale is prohibited.
7. Outdoor repair and servicing of vehicles is prohibited.
8. Outdoor display of automobile accessories or tires is prohibited.
9. All refuse and trash disposal containers are contained within an enclosure that complies with all Zoning and Site Plan regulations.
10. Automobiles shall only be parked in marked parking spaces in accordance with the approved Site Plan.
11. All landscaping required on the approved Site Plan shall be continuously maintained for the life of the Certificate of Occupancy.
12. Any signage for the business shall be limited to a wall-mounted sign that complies with the sign regulations applicable in a "C-1" District.
13. A copy of the Board's Decision and Order shall be recorded at the appellant's expense to ensure that any future property owners are aware of these conditions.

14. The Zoning Enforcement Officer shall bring the Use Variance back to the Zoning Board of Adjustment for reconsideration at any time that the use becomes a nuisance to surrounding properties or violates the conditions of approval.

After the May 23, 2018 approval, the potential tire repair business decided to locate elsewhere so the appellant filed a new application requesting that Docket ZON2018-00073 be amended to allow for additional commercial uses to market the property for more than just a tire repair business use.

On July 25, 2018, the Zoning Board of Adjustment, by Docket ZON2018-00120, granted an amendment to the Variance of the permitted uses in an "R1-60" One-Family Low-Density Residential District and an amendment to the Variance of 27.5 feet less than the minimum 30 feet of setback required for off-street parking and loading from a front property line in a Residential District, subject to the following conditions:

1. Any commercial use of the property shall be limited to an office use, retail use, or tire repair shop business and shall not occur until a Certificate of Occupancy has been issued for such.
2. Any use of the property for an office use, retail use, or tire repair shop business shall be in accordance with a Site Plan as approved by the Permit and Development Center.
3. Any use of the existing buildings shall be in accordance with all Building Codes and Fire Codes, with issuance of all necessary permits by the City's Permit and Development Center.
4. There shall be no outdoor storage of any equipment or materials, including but not limited to new or used tires, barrels, or tools.
5. No vehicle shall be kept on the premise for more than 48 consecutive hours.
6. Display of vehicles for sale is prohibited.
7. Outdoor repair and servicing of vehicles is prohibited.
8. Outdoor display of automobile accessories or tires is prohibited.
9. All refuse and trash disposal containers are contained within an enclosure that complies with all Zoning and Site Plan regulations.
10. Automobiles shall only be parked in marked parking spaces in accordance with the approved Site Plan.
11. All landscaping required on the approved Site Plan shall be continuously maintained for the life of the Certificate of Occupancy.
12. Any signage for the business shall be limited to a wall-mounted sign that complies with the sign regulations applicable in a "C-1" District.
13. A copy of the Board's Decision and Order shall be recorded at the appellant's expense to ensure that any future property owners are aware of these conditions.
14. The Zoning Enforcement Officer shall bring the Use Variance back to the Zoning Board of Adjustment for reconsideration at any time that the use becomes a nuisance to surrounding properties or violates the conditions approval.

After the July 25, 2018 approval, the appellant identified a potential tenant that would use the property for the repair of vehicles that would be sold at a different location. Therefore, the appellant filed another application seeking to revise the conditions that currently prohibit such a use.

On September 26, 2018, the Zoning Board of Adjustment, by Docket ZON2018-00177, denied an amendment to the Variance of the permitted uses in an "R1-60" One-Family Low-Density Residential District and an amendment to the Variance of 27.5 feet less than the minimum 30 feet of setback required for off-street parking and loading from a front property line in a Residential District, to allow use of the property for the repair of vehicles that would be sold at a different location and retention of an off-street parking lot that is within 2.5 feet of the front property lines along Easton Boulevard and East 22nd Street.

On October 23, 2019, the applicant filed an appeal to amend the Variance of the permitted uses in an "R1-60" One-Family Low-Density Residential District to allow use of the property for the repair of vehicles that would be sold at a different location. The Board found that the conditions, facts, and/or circumstances present at the time of the Board's previous decision within the past 2 years had not changed. Therefore, the appeal was not considered by the Board.

On December 16, 2019, the subject property was rezoned from "R1-60" One-Family Low-Density Residential District to "N3a" Neighborhood District, as part of the Citywide rezoning established by Ordinance 15,818.

9. **PlanDSM Future Land Use Plan Designation:** Low-Density Residential.
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 Future Land Use Plan Designation:** The subject property is designated as Low Density Residential, which is described as "areas developed with primarily single-family and two-family residential units with up to 6 dwelling units per net acre". The proposed "MX3" Mixed Use District would require the land use designation to be amended to Community Mixed Use, which is described as "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 customer."

Staff does not believe that this is an appropriate location for the Community Mixed Use designation. Easton Boulevard is not a high capacity transit corridor. This land use designation is typically located along corridors and/or transit routes, such as East University Avenue, Hubbell Avenue, and East Euclid Avenue. Therefore, Staff recommends denial of both the land use plan amendment and the rezoning.

- 2. Site Plan Requirements:** Should the property be rezoned, any change in the commercial use of the property must be in compliance with a Site Plan. This Site Plan must comply with all regulations, including those pertaining to landscaping and stormwater management. Furthermore, any Site Plan to allow vehicle display would also be subject to the design guidelines for vehicle display. These guidelines require that any site used for vehicle display should be at least 0.50 acre in area, which this 0.24-acre site would not satisfy

SUMMARY OF DISCUSSION

Bert Drost presented staff report and recommendation.

Angel Groff 2200 Easton Blvd stated she would like to have vehicle repair and sales on this property. She has lost her previous renter and needs to make money to pay for property taxes.

CHAIRPERSON OPENED THE PUBLIC HEARING

Carol Maher 1510 Center Street, stated she drove past this property today and cars were scattered through the parking lot, along with the buildings being in disrepair. She hopes the applicant will take this feedback and make necessary improvements to the site.

Angel Groff stated she is willing to do any repairs to make it look nice so people are willing to rent.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Will Page stated the existing zoning shown on nearby University Avenue and Hubbell Avenue were quite persuasive, along with the area being residential. He believes the rezoning should be denied and the applicant then seek relief from the Zoning Board of Adjustment.

Greg Wattier stated he would support staff recommendation.

Lisa Howard stated she is also in support of staff recommendation.

COMMISSION ACTION:

Will Page made a motion for approval of Part A) the Commission find the requested rezoning is **not** in conformance with PlanDSM; Creating Our Tomorrow Plan, which designates the property as "Low Density Residential"., Part B) **DENIAL** of an amendment to the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification for the subject property from "Low Density Residential" to "Community Mixed Use". And Part C) **DENIAL** of the requested rezoning of the property from "N3a" Neighborhood District to "MX3" Mixed Use District.

Motion passed: 12-0

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Ludwig". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Ludwig".

Michael Ludwig, AICP
Planning Administrator

MGL:tjh

Angel Groff (owner) for the property at 2200 Easton Boulevard.			File #	
			21-2020-4.27	
Description of Action	Amendment to the PlanDSM Creating Our Tomorrow Plan future land use classification from Low Density Residential to Community Mixed-Use.			
PlanDSM Future Land Use	Current: Low Density Residential. Proposed: Community Mixed Use.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"N3a" Neighborhood District.			
Proposed Zoning District	"MX3" Mixed Use District.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Outside Area (200 feet)	0	0		
Within Subject Property				
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes
	Denial			No

Angel Groff, 2200 Easton Boulevard

21-2020-4.27



1 inch = 84 feet

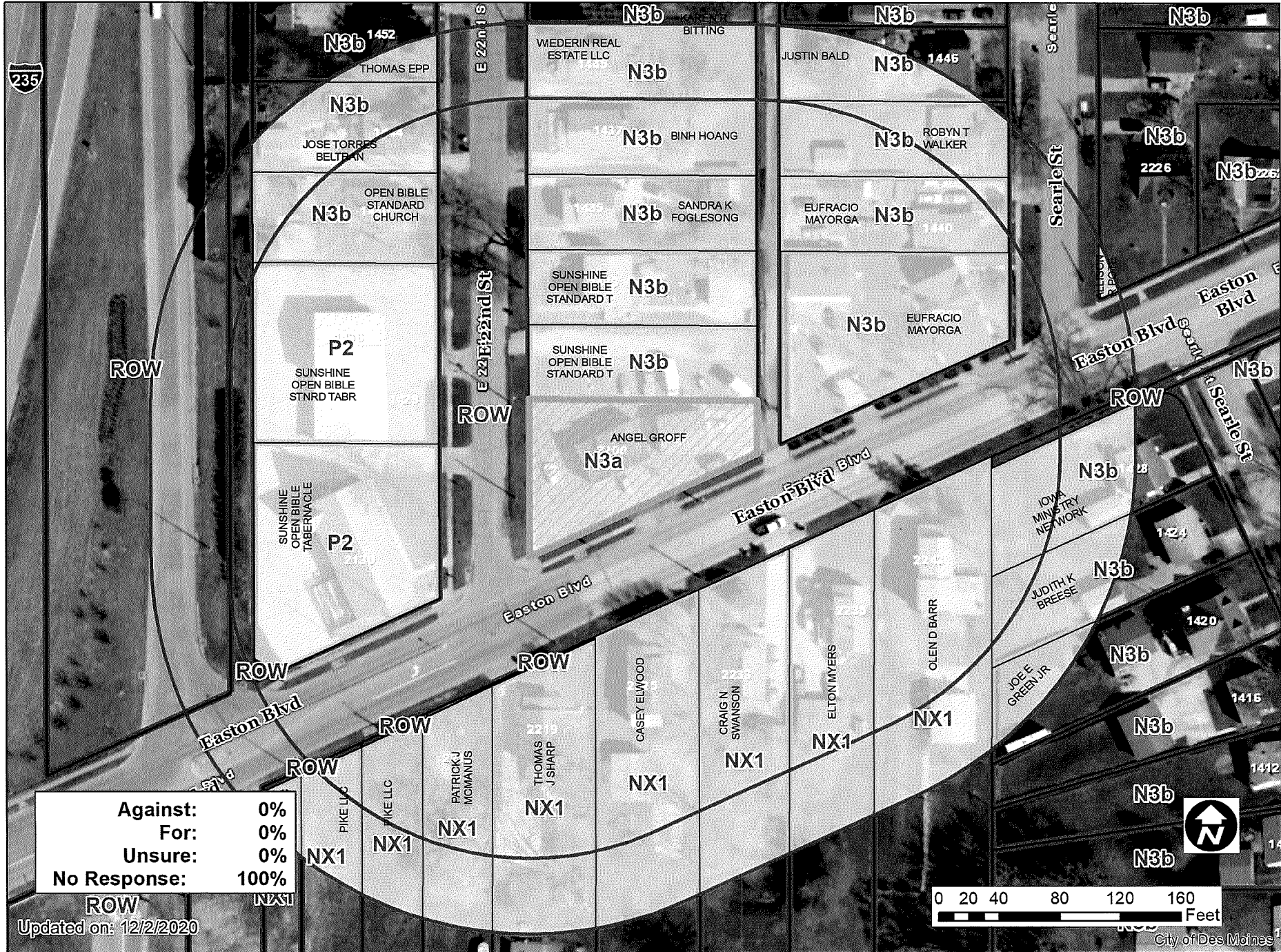
Angel Groff (owner) for the property at 2200 Easton Boulevard.				File #	
				ZON2020-00140	
Description of Action	Rezone property from "N3a" Neighborhood District to "MX3" Mixed Use District to allow the existing vacant commercial building and site to be reused for a Vehicle Maintenance/Repair, Minor use and a Vehicle Sales use.				
PlanDSM Future Land Use	Current: Low Density Residential. Proposed: Community Mixed Use.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	"N3a" Neighborhood District.				
Proposed Zoning District	"MX3" Mixed Use District.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Outside Area (200 feet)	0	2			
Within Subject Property					
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Angel Groff, 2200 Easton Boulevard

ZON2020-00140



1 inch = 84 feet



33

Item: ZON2020-00140

Date: 11-26-2020

33

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Staff Use Only
RECEIVED
COMMUNITY DEVELOPMENT
DEC 01 2020

Signature: [Handwritten Signature] Accent neighborhood

Name: Kevin Marken Accent Neighborhood

Address: 2109 E 28th St 50317

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

A few years back on this issue I walked the area on the Accent side asking opinions of residents. The repair ask was favorable, the auto sales was not. Accent would not be in favor of auto sales on the small lot. But please weigh the opinion of neighbors. Thank You, Kevin

Item: ZON2020-00140

Date: 11/28/2020

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Staff Use Only
RECEIVED
COMMUNITY DEVELOPMENT
DEC 01 2020

Signature: [Handwritten Signature]

Name: JEFF Witte FPNA chair

Address: 2501 Maston Ave

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

FPNA will stand with the residence decision RE: this issue.
FPNA [Handwritten Signature] chair