

Date January 11, 2021

RESOLUTION HOLDING HEARING ON REQUEST FROM ANTONIO DOMINGUEZ AND GABRIELLA HERRERA TO AMEND PLANDSM FUTURE LAND USE CLASSIFICATION AND TO REZONE 301 SOUTHEAST 28TH STREET

WHEREAS, on December 21, 2020, by Roll Call No. 20-2108, 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 9-3 in support of a motion to recommend DENIAL of a request from Antonio Dominguez and Gabriella Herrera (owners) to amend the PlanDSM: Creating Our Tomorrow comprehensive plan future land use classification for real property locally known as 301 Southeast 28th Street ("Property") from Industrial to Low Density Residential, and to rezone the Property from I1 Industrial District to N3c Neighborhood District, to allow the existing Household Living use to be extended with addition of a new accessory 2-story detached garage use; and

WHEREAS, the Property is legally described as follows:

THE NORTH 45 FEET OF LOT 8 AND THE NORTH 46 FEET OF LOTS 9 AND 10 IN LINCOLN PARK, TOGETHER WITH ALL THAT PART OF THE SOUTH 12 FEET OF THE VACATED 24 FEET OF EAST ELM STREET RIGHT-OF-WAY LYING NORTH OF AND ADJOINING LOTS 8,9 AND 10 IN LINCOLN PARK, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, IOWA a/k/a 301 SE 28th STREET, DES MOINES ,IOWA a/k/a PARCEL #050-02987-001-000; and

WHEREAS, on December 21, 2020, by Roll Call No. 20-2108, 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 Low Density Residential, or to the proposed rezoning of the Property to N3c Neighborhood 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 9-3 to recommend denial of the requested proposed amendment to the PlanDSM future land use designation to Low Density Residential and proposed rezoning of the Property to N3c Neighborhood District, to allow the existing Household Living use to be extended with addition of a new accessory two-story detached garage use.

Date January 11, 2021

- b. The current PlanDSM: Creating Our Tomorrow Plan future land use designation of the Property is Industrial, and current zoning designation is I1 District, both of which are intended for general industrial uses, warehousing and transportation terminals, and accommodate industrial development and limited supporting commercial uses.
- c. The Property is located in a neighborhood and area that contains a mix of industrial and single-household uses, generally bounded by a major railroad line to the north and East Martin Luther King, Jr. Parkway to the south, which is consistent with the character of the neighborhood at the adoption of PlanDSM in 2016.
- d. In accordance with the adoption of PlanDSM, the area in which the Property is located is intended to transition to industrial uses and away from residential uses over an extended period of time due to the magnitude of the industrial uses in the area and its proximity to the railroad and East Martin Luther King, Jr. Parkway.
- e. The existing single-household residential use on the Property has the legal non-conforming right to retain its use, but not to expand its use to a new accessory building which would constitute a two-story detached garage with a 27-foot by 30-foot footprint.
- f. The proposed amendment to the PlanDSM future land use designation of the Property and the proposed rezoning to allow for expansion of the residential use would not be consistent with the intent of the PlanDSM comprehensive plan for the subject neighborhood/area.
- g. If the proposed amendment to the PlanDSM future land use designation of the Property to Low Density Residential is not approved, then the proposed rezoning to N3c Neighborhood District is inapplicable due to non-conformance with the PlanDSM designation of Industrial.
- 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

(21-2020-4.26)
(ZON2020-00139)

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



December 15, 2020

Date January 11, 2021

Agenda Item 34

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 December 3, 2020 meeting, the following action was taken regarding a request from Antonio Dominguez and Gabriella Herrera (owners) to rezone property located at 301 Southeast 28th Street from "I1" Industrial District to "N3c" Neighborhood District to allow the existing Household Living use to be extended with addition of a new accessory 2-story detached garage use

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-3 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 "N3c" Neighborhood Mix Use District be found **not** in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of Industrial, Part B) **DENIAL** of amending the PlanDSM Creating Our Tomorrow Plan future land use designation from Industrial to Low Density Residential and Part C) **DENIAL** of rezoning the subject property from "I1" Industrial District to "N3c"

Neighborhood District so that the applicant can seek a use variance from the Zoning Board of Adjustment. (21-2020-4.26 & ZON2020-00139)

Written Responses

1 in Favor
0 in opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the proposed rezoning to “N3c” Neighborhood Mix Use District be found not in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of Industrial.

Part B) Staff recommends denial of amending the PlanDSM Creating Our Tomorrow Plan future land use designation from Industrial to Low Density Residential.

Part C) Staff recommends denial of rezoning the subject property from “I1” Industrial District to “N3c” Neighborhood District so that the applicant can seek a use variance from the Zoning Board of Adjustment.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The subject property is zoned “I1” District, which does not allow residential uses. The existing one household residential use has legal non-conforming rights to exist, but cannot be expanded. The applicant is proposing to construct a two-story detached garage. For this to occur, the property must be rezoned to a district that allows one household residential uses. If the rezoning is denied, the applicant can seek a Use Variance from the Zoning Board of Adjustment to allow a garage to be constructed.
2. **Size of Site:** 58 feet by 180 feet (10,440 square feet or 0.24 acres).
3. **Existing Zoning (site):** “I1” Industrial District.
4. **Existing Land Use (site):** The property contains a one household residential building and a 9-foot by 16-foot shed.
5. **Adjacent Land Use and Zoning:**
 - North** – “I1”; Uses are one household residential.
 - South** – “I1”; Uses are one household residential.
 - East** – “I1”; Use are one household residential.
 - West** – “EX”; Use are one household residential.
6. **General Neighborhood/Area Land Uses:** The subject property is in an area that contains a mix of one household residential and industrial uses.

7. **Applicable Recognized Neighborhood(s):** The subject property is not located within 250 feet of a recognized neighborhood association. All neighborhood associations were notified of the hearing by mailing of the Preliminary Agenda on November 13, 2020 and by mailing of the Final Agenda on November 25, 2020. Additionally, separate notifications of the hearing for this specific item were mailed November 13, 2020 (20 days prior to the hearing) and November 23, 2020 (10 days prior to the hearing) 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.
8. **Relevant Zoning History:** None.
9. **PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Industrial.
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 "Industrial" to "Low Density Residential." Plan DSM describes these designations as follows:

Industrial: Accommodates industrial development and limited supporting commercial uses. Development in this classification could have a large impact on adjoining properties and the environment which would need to be mitigated.

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

The subject property is currently zoned "I1" District. The Zoning Ordinance describes this district as "intended for general industrial uses, warehousing, and transportation terminals." Building types allowed in this district by Chapter 135 include the General Building, Workshop/Warehouse, Civic Building and Principal-Use Parking Structure.

The applicant is proposing to rezone the subject property to the "N3c" District. The Zoning Ordinance describes this district as "intended to preserve the scale and character of residential neighborhoods developed predominately in the cottage or worker cottage style pursuant House Type C is Section 135-2.15 of this Code." House Type C is the only building type allowed in this district by Chapter 135.

The existing one household residential use has legal non-conforming rights to exist, but cannot be expanded. The applicant is proposing to construct a two-story detached

garage with a 27-foot by 30-foot footprint. For this to occur, the property must be rezoned to a district that allows one household residential uses. The second floor of the proposed garage cannot be used as living space unless the property is zoned to a district that allows accessory household units.

The site is in an area that contains a mix of industrial and one household uses that is generally bound by a major railroad line to the north and East Martin Luther King, Jr. Parkway to the south. PlanDSM envisions this area transition to industrial uses over an extended period due to the magnitude of the industrial uses in the area and its proximity to the railroad and East Martin Luther King, Jr. Parkway. Circumstances have not changed since PlanDSM was adopted in 2016. If the rezoning is denied, the applicant can seek a Use Variance from the Zoning Board of Adjustment to allow a garage to be constructed.

- 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. If a rezoning or use variance are approved, any accessory building can be no taller than the principal structure on the property. A proposed 2 story accessory building that is taller than the principal structure will require a Type Design Alternative from the Plan and Zoning Commission.

SUMMARY OF DISCUSSION

Jason Van Essen presented staff report and recommendation.

Greg Wattier asked if the applicant is aware that a denial must be made for them to seek a Use Variance?

Jason Van Essen stated that information is shown in the mailed staff report but he has not had any direct communication with the applicant.

Valerie Cramer 1163 24th Street Representing Antonio Dominguez stated when Mr. Dominguez purchased the home, it was zoned residential and then the City decided to rezone the property as Industrial. They did send out notice to their neighbors on October 21st with no objection to the garage being built. She believes the property should be rezoned back to residential as it is unfair to Mr. Dominguez.

CHAIRPERSON OPENED THE PUBLIC HEARING

No one was present or requested to speak.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Greg Wattier stated this feels like (it should be) a Use Variance and shouldn't be rezoned back to residential after the years of progress.

Abby Chungath stated she would also agree with Greg Wattier's statement.

Johnny Alcivar asked what the Commission's action was on a similar item they had seen in the recent past?

Jason Van Essen stated that property was near Dixon Avenue where Interstate 235 turns to the North and South of Guthrie Avenue (2104 East 21st Street). The motion from the Commission was to recommend rezoning the property and in hope of City Council having a discussion on whether the whole area needed to be rezoned from Industrial.

Greg Jones stated we should leave the zoning alone and would recommend approving staff recommendation.

COMMISSION ACTION:

Greg Jones made a motion for approval of Part A) the proposed rezoning to “N3c” Neighborhood Mix Use District be found **not** in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of Industrial, Part B) **DENIAL** of amending the PlanDSM Creating Our Tomorrow Plan future land use designation from Industrial to Low Density Residential and Part C) **DENIAL** of rezoning the subject property from “I1” Industrial District to “N3c” Neighborhood District so that the applicant can seek a use variance from the Zoning Board of Adjustment.

Motion passed: 9-3

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:tjh

Antonio Dominguez and Gabriella Herrera (owners) for the property at 301 Southeast 28th Street.			File #	
			21-2020-4.26	
Description of Action	Amendment to the PlanDSM Creating Our Tomorrow Plan future land use classification from Industrial to Low Density Residential.			
PlanDSM Future Land Use	Current: Industrial. Proposed: Low Density Residential.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"I1" Industrial District.			
Proposed Zoning District	"N3c" Neighborhood 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

Antonio Dominguez and Gabriella Herrera, 301 Southeast 28th Street

21-2020-4.26



1 inch = 77 feet

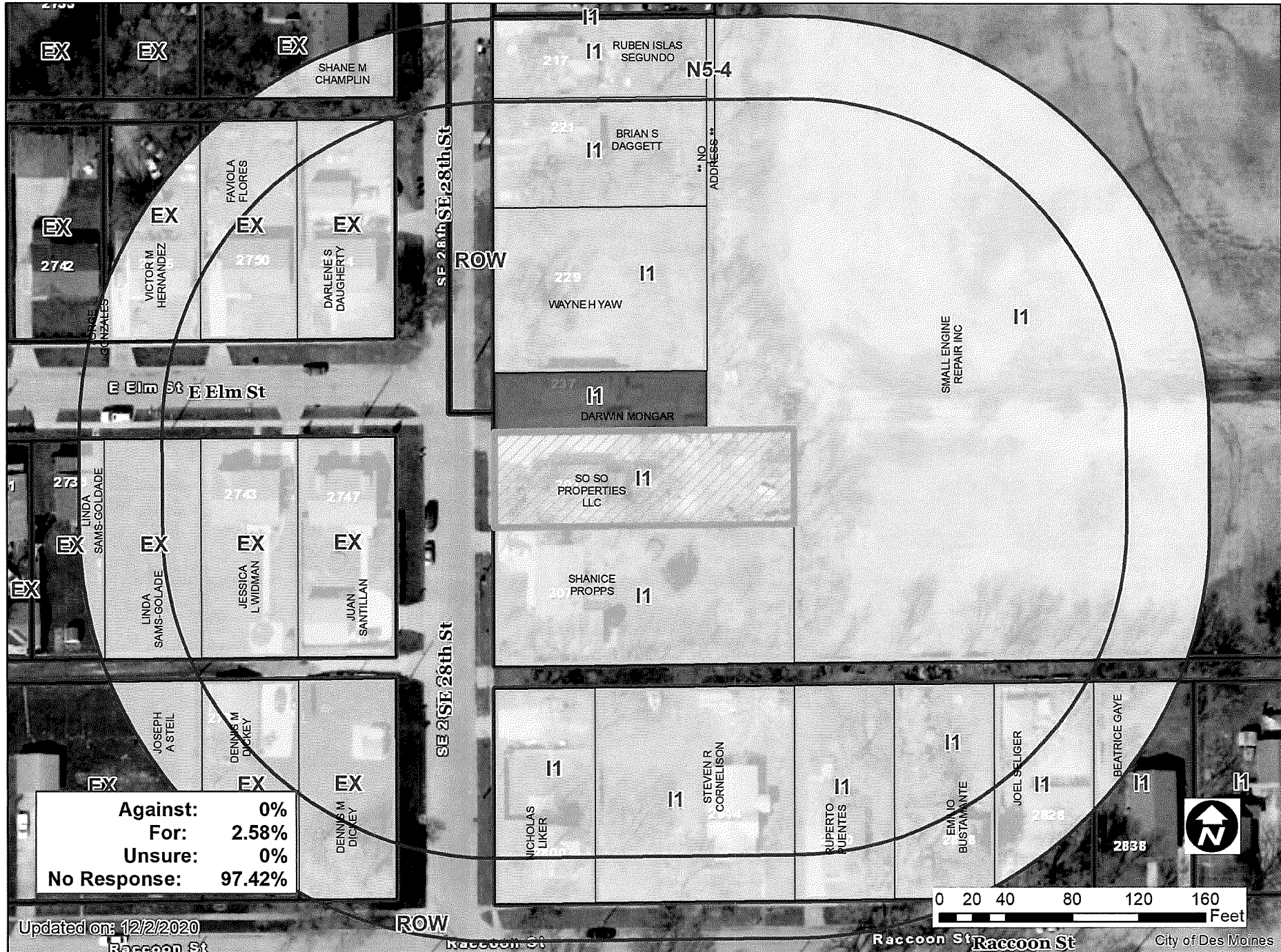
Antonio Dominguez and Gabriella Herrera (owners) for the property at 301 Southeast 28th Street.		File #		
		ZON2020-00139		
Description of Action	Rezone property from "I1" Industrial District to "N3c" Neighborhood District to allow the existing Household Living use to be extended with addition of a new accessory 2-story detached garage use.			
PlanDSM Future Land Use	Current: Industrial. Proposed: Low Density Residential.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"I1" Industrial District.			
Proposed Zoning District	"N3c" Neighborhood District.			
Consent Card Responses Outside Area (200 feet)	In Favor	Not In Favor	Undetermined	% Opposition
Within Subject Property	1	0		
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes
	Denial			No

Antonio Dominguez and Gabriella Herrera, 301 Southeast 28th Street

ZON2020-00139



1 inch = 77 feet



24

Item: ZON2020-00139 Date: _____

Please mark one of the following

- I am in favor of the request
- I am not in favor of the request

Signature: Thomas Morgan

Name: Thomas Morgan

Address: 2375E 28th St Des Moines

Staff Use Only

RECEIVED
COMMUNITY DEVELOPMENT

DEC 01 2020

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