



**Date** March 22, 2021

**RESOLUTION HOLDING HEARING ON REQUEST FROM WOODSONIA ACQUISITIONS, LLC, TO REZONE PROPERTY LOCATED AT 2510 INGERSOLL AVENUE**

**WHEREAS**, on March 8, 2021, by Roll Call No. 21-0371, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on February 18, 2021, its members voted 14-0 support of a motion to recommend **APPROVAL** of a request from Woodsonia Acquisitions, LLC, (purchaser), represented by Jeff Elliot (officer), to rezone the real property locally known as 2510 Ingersoll Avenue (“Property”), which is owned by the Noah L. and Sara Ann Lacona Revocable Trust (owner), represented by Antoinette Lacona-Erickson (trustee), from ‘MX2’ Mixed Use District to Limited ‘MX3’ Mixed Use District, to allow use of the property for a Restaurant with a drive-through component, subject to the condition as follows:

1. That Permitted and Conditional Uses are limited to a restaurant with a drive-through component and to those in common with the ‘MX2’ Mixed Use District and as limited in the ‘MX2’ Mixed Use District; and

**WHEREAS**, on March 8, 2021, by Roll Call No. 21-0371, it was duly resolved by the City Council that that the request to rezone the Property be set down for hearing be set down for hearing on March 22, 2021 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 COVID 19 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 request to 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.

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

**LOT 4 OF J BAMPF PLACE, AN OFFICIAL PLAT, 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:



**Roll Call Number**

**Agenda Item Number**

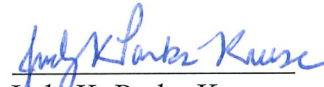
36

**Date** March 22, 2021

1. Upon due consideration of the facts, and any and all statements of interested persons and arguments of counsel, any objections to the rezoning of the Property to Limited 'MX3' Mixed Use District subject to the condition that Permitted and Conditional Uses are limited to a restaurant with a drive-through component and to those in common with the 'MX2' Mixed Use District and as limited in the 'MX2' Mixed Use District are hereby overruled, and the hearing is closed.
2. The proposed rezoning of the Property, as legally described above, to Limited 'MX3' Mixed Use District subject to the condition that Permitted and Conditional Uses are limited to a restaurant with a drive-through component and to those in common with the 'MX2' Mixed Use District and as limited in the 'MX2' Mixed Use 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:

  
 Judy K. Parks-Kruse  
 Assistant City Attorney

(ZON2020-00166)

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



March 2, 2021

Date March 22, 2021  
 Agenda Item 36  
 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 February 18, 2021 meeting, the following action was taken regarding a City initiated request from Woodsonia Acquisitions, LLC (purchaser) represented by Jeff Elliott (officer) to rezone property located at 2510 Ingersoll Avenue from "MX2" Mixed Use District to "MX3" Mixed Use District, to allow use of the property for a "Restaurant" use with a "Drive-Through" component as an accessory use. The subject property is owned by the Noah L & Sara Ann Lacona Revocable Trust (owner).

**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 "MX3" District be found in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of "Community Mixed Use" within a "Neighborhood Node.", **APPROVAL** of Part B) the subject property be rezoned from "MX2" Mixed Use District to "MX3" Mixed Use District,



subject to Permitted and Conditional Uses being limited to a restaurant with a drive-through component and those Permitted and Conditional Uses in common with the “MX2” Mixed Use District and as limited in the “MX2” Mixed Use District.

(ZON2020-00166)

Written Responses

5 in Favor

0 in opposition

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

Part A) Staff recommends that the proposed rezoning to “MX3” District be found in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of “Community Mixed Use” within a “Neighborhood Node.”

Part B) Staff recommends the subject property be rezoned from “MX2” Mixed Use District to “MX3” Mixed Use District, subject to Permitted and Conditional Uses being limited to a restaurant with a drive-through component and those Permitted and Conditional Uses in common with the “MX2” Mixed Use District and as limited in the “MX2” Mixed Use District.

**STAFF REPORT TO THE PLANNING COMMISSION**

**I. GENERAL INFORMATION**

1. **Purpose of Request:** The applicant is proposing to renovate the existing building and site. The value of the improvements that require building permits exceeds 50% of the assessed value of the building. As a result, the building and site must be brought into conformance with current standards. The Planning and Design Ordinance does not allow drive-through facilities on properties zoned “MX2” District. Therefore, the applicant is requesting to rezone the property to the “MX3” District to allow a drive-through. Parts A and B of the request are continued from the January 21, 2021 meeting. The applicant is also requested review and approval of the Site Plan, which would be contingent upon final approval of the rezoning by City Council.

2. **Size of Site:** 33,964 square feet or 0.78 acres.

3. **Existing Zoning (site):** “MX2” Mixed Use District.

4. **Existing Land Use (site):** The site contains a one story commercial building with 3,873 square feet of gross floor area.

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

**North** – “MX2”; Uses are commercial in nature.

**South** – “RX2”; Uses are commercial in nature.

**East** – “MX2”; Uses are commercial in nature.

**West** – “MX2”; Uses are commercial in nature.



- 6. General Neighborhood/Area Land Uses:** The subject property is located on the Ingersoll Avenue corridor, which contains a mix of commercial and multiple-family residential uses.
- 7. Applicable Recognized Neighborhood(s):** The subject property is in the Woodland Heights Organization Neighborhood. The neighborhood association was notified of the January 21, 2021 public hearing by mailing of the Preliminary Agenda on January 7, 2021 and by mailing of the Final Agenda on January 15, 2021. Additionally, separate notifications of the hearing for this specific item were mailed on December 30, 2020 (20 days prior to the January 21, 2021 public hearing) and January 11, 2020 (10 days prior to the January 21, 2021 public hearing) to the Woodland Heights Organization and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

The neighborhood association was notified of the February 18, 2021 public hearing by mailing of the Preliminary Agenda on January 29, 2021 and by mailing of the Final Agenda on February 12, 2021. Additionally, separate notifications of the hearing for this specific item were mailed on January 29, 2021 (20 days prior to the February 18, 2021 public hearing) and on February 8, 2021 (10 days prior to the February 18, 2021 public hearing) to the Woodland Heights Organization 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 Woodland Heights Organization notices were mailed to Phil Kreznor, 808 25<sup>th</sup> Street, Des Moines, IA 50312.

- 8. Relevant Zoning History:** N/A.
- 9. PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Community 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.

Pursuant to Section 135-9.1.1.B of the Planning and Design Ordinance, the site plan review requirements of Chapter 135 are designed to ensure the orderly and harmonious development of property in a manner that shall:

- Promote the most beneficial relation between present and proposed future uses of land and the present and proposed future circulation of traffic throughout the city;

- Permit present development of property commensurate with fair and orderly planning for future development of other properties in the various areas of the city with respect to the availability and capacity, present and foreseeable, of public facilities and services. The factors to be considered in arriving at a conclusion concerning proposed present development of property shall include the following:
  - The maximum population density for the proposed development, the proposed density of use, and consideration of the effect the proposal will have on the capacity of existing water and sanitary sewer lines to the end that existing systems will not become overloaded or capacity so substantially decreased that site use will inhibit or preclude planned future development;
  - Zoning restrictions at the time of the proposal;
- The city's comprehensive plan;
- The city's plans for future construction and provision for public facilities and services; and
- The facilities and services already available to the area which will be affected by the proposed site use;
- Encourage adequate provision for surface and subsurface drainage, in order to ensure that future development and other properties in various areas of the city will not be adversely affected;
- Provide suitable screening of parking, truck loading, refuse and recycling disposal, and outdoor storage areas from adjacent residential districts;
- Encourage the preservation of canopied areas and mature trees and require mitigation for the removal of trees; and
- Consider the smart planning principles set forth in Iowa Code Chapter 18B.

Based on Chapter Section 135-9.2.4 and 135-9.3.1.B of the Planning and Design Ordinance, Type 2 Design Alternatives are to be considered by the Plan and Zoning Commission after a public hearing whereby the following criteria are considered:

- The design alternative provisions of Section 135-9.2.4 are intended to authorize the granting of relief from strict compliance with the regulations of this chapter as part of the site plan or alternate design documentation review process when specific site features or characteristics of the subject property, including the presence of existing buildings, creates conditions that make strict compliance with applicable regulations impractical or undesirable. The design alternative provisions are also intended to recognize that alternative design solutions may result in equal or better implementation of the regulation's intended purpose and greater consistency with the comprehensive plan.



- Consideration of requested design alternatives through the administrative and public hearing review processes will be evaluated on the merits of the applicable request and independently of prior requests from the same applicant, and may include the following criteria:
  - An evaluation of the character of the surrounding neighborhood, such as:
    - Whether at least 50% of the developed lots within 250 feet of the subject property are designed and constructed consistently with the requested design alternative(s); and
    - Whether the directly adjoining developed lots are designed and constructed consistently with the requested design alternative(s);
- For purposes of this subsection, if the lots that exist within 250 feet of the subject property are undeveloped, then the neighborhood character determination will be based upon the assumption that such lots, as if developed, comply with the applicable requirements of this chapter for which a design alternative(s) has been requested;
  - The totality of the number and extent of design alternatives requested compared to the requirements of this chapter for each site plan or alternate design documentation reviewed;
  - Whether the requested design alternative(s) is consistent with all relevant purpose and intent statements of this design ordinance and with the general purpose and intent of the comprehensive plan;
  - Whether the requested design alternative(s) will have a substantial or undue adverse effect upon adjacent: property, the character of the surrounding area or the public health, safety and general welfare;
  - Whether any adverse impacts resulting from the requested design alternative(s) will be mitigated to the maximum extent feasible; and
  - Other factors determined relevant by the community development director, plan and zoning commission, or city council as applicable.

## II. ADDITIONAL APPLICABLE INFORMATION

1. **PlanDSM Creating Our Tomorrow:** The subject property is designated as “Community Mixed Use” and located in a “Neighborhood Node” on the Future Land Use Map. Plan DSM describes these designations as follows:

Community Mixed Use: Small scale mixed use development, located on high capacity transit corridors or at the intersections 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.



Neighborhood Node: These nodes are the smallest in size and offer services that provide for basic daily needs of the local population in the surrounding neighborhood. May include restaurants, shops and smaller scale businesses. Residential development including low-medium and medium densities may occur.

The applicant is proposing to rezone the property from “MX2” District to the “MX3” District. The Zoning Ordinance states that the “MX2 is intended for mixed-use, regional-scale nodes and corridors within the city, where residents and visitors may access multiple uses by walking.” Building types allowed in this district include Storefront, Civic Building and Principal Use Parking Structure.

The Zoning Ordinance states that the “MX3 is intended for mixed-use nodes and corridors within the city, where residents and visitors may access multiple uses by walking and automobiles. This district accommodates higher intensity commercial uses at a smaller scale.” Building types allowed in this district include Storefront, Commercial Cottage, Commercial Center, Civic Building and Principal Use Parking Structure.

The Ingersoll Avenue corridor is generally zoned “MX2” District, including the properties around the subject property. Staff believes that the proposed use is appropriate for the character of the area, but believes other uses that are allowed in “MX3” Districts but not in “MX2” Districts should be prohibited.

- 2. Drive-Through Facility:** Section 135-2.22.3.D of the Planning and Design Ordinance requires drive-through facilities to be located on the side and rear facades of the building. The proposed development consists of the reuse of a restaurant building that was constructed with a drive-through window on the north side of the building facing Ingersoll Avenue. Relocating the drive-through to the east façade is not practical, as the floor of the building is elevated in this area due to grade changes on the site. Placing the drive-through window on the rear façade is not practical either, as it would significantly reduce the amount of space available for vehicle stacking and negatively impact the functionality of the parking lot. The applicant is proposing to enclose the drive-through window area with a roof and glass wall that complement the proposed building renovations. Landscaping and a patio space are proposed between the public sidewalk and the drive-through lane to provide a buffer. The requested design alternative would not have a substantial or undue adverse effect upon adjacent property, the character of the surrounding area or the public health, safety and general welfare. Staff supports this Type 2 Design Alternative request.
- 3. Parking:** Section 135-2.5.3.A.8 of the Planning and Design Ordinance does not allow parking to extend into the front yard. The bulk of the parking would be located in the rear and east side yards. However, one stall would be located north of the building in the required front yard. The stall is substantially setback from the property line and separated by a large utility easement and heavy landscaping. This parking stall would set further back from the front property line than the drive-through lane. The requested design alternative would not have a substantial or undue adverse effect upon adjacent property, the character of the surrounding area or the public health, safety and general welfare. Staff supports this Type 2 Design Alternative request.



4. **Primary Building Entrance:** Section 135-2.5.3.D.20 of the Planning and Design Ordinance requires a Storefront Building to have a primary entrance that faces the street. The primary entrance to the building would be located on the west side façade. The building currently has a door that faces the street. However, it is located near the drive-through and is not positioned well to function as a logical access point from the Ingersoll Avenue sidewalk due to grade changes and drive-through traffic. A patio space has been provided at the front property line that would act as a pedestrian entrance to the site with a visual connection to the front door created by a crosswalk. Signage and a roof overhang would be positioned in close proximity to the main entrance door to draw attention to it from the public sidewalk. The requested design alternative would not have a substantial or undue adverse effect upon adjacent property, the character of the surrounding area, or the public health, safety and general welfare. Staff supports this Type 2 Design Alternative request.
  
5. **Vehicular Access:** The site would have two driveways along Ingersoll Avenue. The City's Traffic and Transportation Division has indicated the eastern driveway needs to be narrowed to the minimum width necessary for a one-way drive. Staff recommends that doing so be a condition of approval.

## **SUMMARY OF DISCUSSION**

Jason Van Essen presented the staff report and recommendation.

Clark Snyder 1717 Ingersoll Avenue, representing Simonson and Associates, stated they are in full support of staff recommendation and would be happy to answer any questions the commission might have.

## **CHAIRPERSON OPENED THE PUBLIC HEARING**

Carol Maher 701 Polk Boulevard, stated this is a very car centric design and is concerned about the promotion of bike lanes on Ingersoll being compromised by the drive-through. It would be nice for bike lanes to be shown in the renderings, the amount of car traffic is a big risk to bicyclist. She is also curious if the owner of the property will be responsible for shoveling the split sidewalk shown in the rendering.

Clark Snyder stated the row of trees and the double sidewalk shown in the renderings are a part of the City's Ingersoll Streetscape project. There will be a bike rack placed on the east side of the patio. They understand there will be peak times of business but they have done everything they can to maximize stacking within the site.

## **CHAIRPERSON CLOSED THE PUBLIC HEARING**

Valerie Findley 2102 44<sup>th</sup> Street, asked where the handicap parking would be in relation to access into the building.

Jason Van Essen stated they would need to provide a stall within the site as shown on their site plan. They meet the intent of the code and the City's Engineering department didn't raise any concerns with the proposed layout.

Valerie Findley stated the access would be through the line of cars, is that accurate?

Jason Van Essen stated yes.

Valerie Findley stated that would be problematic. Where would be the closest access for someone using a wheelchair?

Jason Van Essen stated there is an entrance that faces the parking lot.

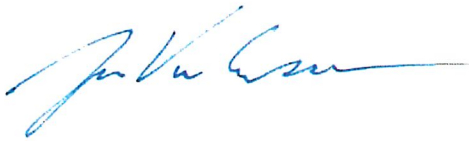
Valerie Findley stated for a person that assist people in wheelchairs, this is very problematic from a safety standpoint.

**COMMISSION ACTION:**

Rocky Sposato made a motion for **APPROVAL** of Part A) the proposed rezoning to "MX3" District be found in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of "Community Mixed Use" within a "Neighborhood Node.", **APPROVAL** of Part B) the subject property be rezoned from "MX2" Mixed Use District to "MX3" Mixed Use District, subject to Permitted and Conditional Uses being limited to a restaurant with a drive-through component and those Permitted and Conditional Uses in common with the "MX2" Mixed Use District and as limited in the "MX2" Mixed Use District.

Motion passed: 14-0

Respectfully submitted,



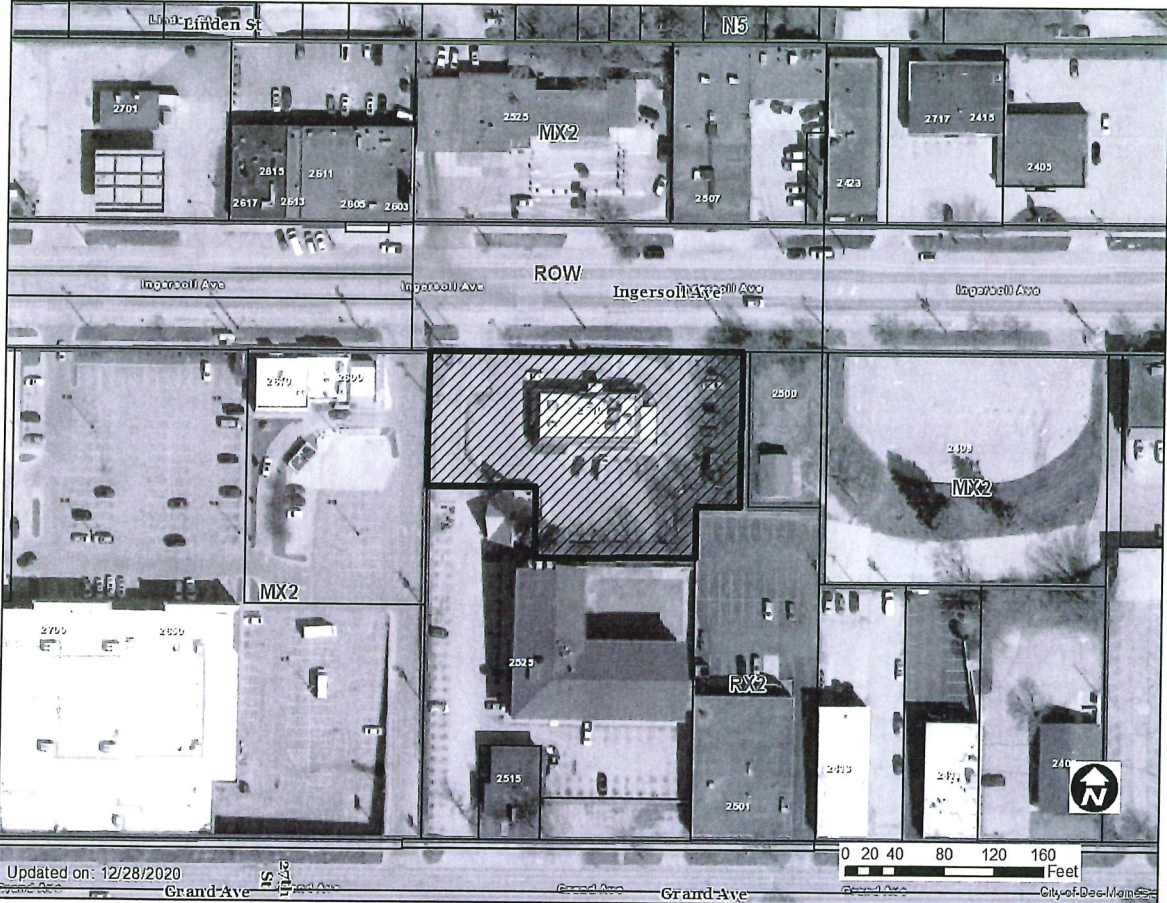
Jason Van Essen, AICP  
Planning & Urban Design Administrator

JMV:tjh



Request from Woodsonia Acquisitions, LLC (purchaser) represented by Jeff Elliott (officer) for property located at 2510 Ingersoll Avenue. The titleholder is Noah & Sara Ann Lacona Revocable Trust.				File # ZON2020-00166	
Description of Action	Rezone property from "MX2" Mixed Use District to "MX3" Mixed Use District, to allow use of the property for a "Restaurant" use with a "Drive-Through" component as an accessory use.				
PlanDSM Future Land Use	Current: Community Mixed Use within Neighborhood Node. Proposed: N/A.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	"MX2" Mixed Use District.				
Proposed Zoning District	"MX3" Mixed Use District.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Outside Area (200 feet)	5	0			
Within Subject Property					
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Noah L & Sara Ann Lacona Rev. Trust and Woodsonia Acquisitions, LLC, 2510 Ingersoll Ave. ZON2020-00166



1 inch = 93 feet







Item: ZON2020-00166 Date: 2-10-21

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature: Chris Spaulding

Name: Chris Spaulding

Address: 2473 Ingersoll Ave

Staff Use Only  
**RECEIVED**  
COMMUNITY DEVELOPMENT  
FEB 15 2021

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

Item: ZON2020-00166 Date: 2-15-2021

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature: Ling Wong

Name: \_\_\_\_\_

Address: 2011 Ingersoll

Staff Use Only  
**RECEIVED**  
COMMUNITY DEVELOPMENT  
FEB 17 2021

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



Item: ZON2020-00166 Date: 02/12/21

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature: [Handwritten Signature]

Name: Yang Saltzgauser

Address: 2413 Grand

Staff Use Only

**RECEIVED**  
COMMUNITY DEVELOPMENT

**FEB 12 2021**

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

Now is the time to get this small building/site improved by the developer seeking rezoning as it will be nearly impossible to re-develop until the current zoning ordinance. This site will be an eyesore for decades if not improved now.