

.....
Date May 10, 2021

**RESOLUTION HOLDING HEARING ON REQUEST FROM OSCAR AND ENRIQUE ZENTENO
TO AMEND PLANDSM FUTURE LAND USE CLASSIFICATION
AND TO REZONE 2354 EAST GRAND AVENUE**

WHEREAS, on April 19, 2021, by Roll Call No. 21-0615, the City Council received a communication from the Plan and Zoning Commission advising that at a public hearing held on April 1, 2021, its members voted 9-4 in support of a motion to recommend **DENIAL** of a request from Oscar and Enrique Zenteno (owners) to amend the PlanDSM: Creating Our Tomorrow comprehensive plan future land use classification for real property locally known as 2354 East Grand Avenue (“Property”) from Neighborhood Mixed Use to Community Mixed Use, and to rezone the Property from MX1 Mixed Use District to MX3 Mixed Use District, to allow the ongoing operation of a Minor Vehicle/Maintenance Repair use on the Property; and

WHEREAS, the Property is legally described as follows:

LOTS 74, 75 AND 76 OF CENTRAL PARK, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA; and

WHEREAS, on April 19, 2021, by Roll Call No. 21-0615, 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 May 10, 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 9-4 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 ongoing operation of a Minor Vehicle/Maintenance Repair use on the Property.

b. The current PlanDSM: Creating Our Tomorrow Plan future land use designation of the Property is Neighborhood Mixed Use, and current zoning designation is MX1 Mixed Use District, both of which are intended for “small-scale mixed-use development typically located at the intersections of collector and/or arterial streets and along transportation corridors”.

Date May 10, 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 contains certain other existing commercially zoned properties within a few blocks but which is predominantly designated Low Density Residential, and 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 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 Neighborhood Mixed Use.
- g. 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 May 24, 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:

MOVED BY _____ TO ADOPT.

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

(ZON2021-00021)

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

April 13, 2021

Date May 10, 2021
Agenda Item 49
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 April 1, 2021 meeting, the following action was taken regarding a request from Oscar and Enrique Zenteno (owners) to rezone the property located at 2354 East Grand Avenue from "MX1" Mixed Use District to "MX3" Mixed Use District, to allow use of the site for Vehicle Maintenance/Repair, Minor.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-4 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 is **not** in conformance with the existing PlanDSM future land use designation of Neighborhood Mixed Use, Part B) **DENIAL** of the requested amendment to the PlanDSM future land use designation from Neighborhood Mixed Use to Community Mixed Use, and Part C) **DENIAL** of rezoning the property to "MX3" Mixed Use District. (ZON2021-00020)

Written Responses

4 in Favor

2 in opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the proposed rezoning be found in **not** in conformance with the existing PlanDSM future land use designation of Neighborhood Mixed Use.

Part B) Staff recommends **denial** of the requested amendment to the PlanDSM future land use designation from Neighborhood Mixed Use to Community Mixed Use.

Part C) Staff recommends **denial** of rezoning the property to “MX3” Mixed Use District.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking the rezoning in order to allow the ongoing operation of a legal non-conforming Minor Vehicle Maintenance/Repair use (d/b/a EZ Auto Service). The property was previously rezoned in 2016 under the retired Zoning Ordinance to a Limited “C-2” General Retail and Highway-Oriented in order to gain conformance. However, the property owners never complied with the conditions of that rezoning. They also did not take the required measures to get a submitted Site Plan approved and make necessary improvements to the site at that time. On December 15, 2019, the property was zoned to “MX1” Mixed Use District which does not allow the use.
2. **Size of Site:** 12 feet by 130 feet (15,600 square feet).
3. **Existing Zoning (site):** “MX1” Mixed Use District.
4. **Existing Land Use (site):** The property includes a one-story 2,434-square foot repair garage and paved aprons. The western portion of property is unimproved but has been used for vehicular circulation and storage.
5. **Adjacent Land Use and Zoning:**
 - East** - “N3c”; Use is a commercial repair shop building that was fire damaged in 2015 with said damage repaired in 2020.
 - West** - “N3c”; Uses are One Household Living dwellings.
 - North** - “N3c”; Uses are One Household Living dwellings.
 - South** - “N3c”; Uses are One Household Living dwellings.

6. **General Neighborhood/Area Land Uses:** The subject property is located in an area that is developed primarily with One Household Living residential uses, with commercial structures scattered throughout.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the Fairground Neighborhood. The neighborhood association was notified of the hearing by mailing of the Preliminary Agenda on March 12, 2021 and by mailing of the Final Agenda on March 26, 2021. Additionally, separate notifications of the hearing for this specific item were mailed March 12, 2021 (20 days prior to the hearing) and March 22, 2021 (10 days prior to the hearing) to the Fairground 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 Fairground Neighborhood Association notices were mailed to Laura Mundy, PO Box 473, Pleasant Hill, IA 50327. The applicant was required to conduct a neighborhood outreach by written letter, with a summary to be available for the hearing.

The applicant can provide a summary of their required neighborhood outreach at the public hearing.

8. **Relevant Zoning History:** The property was rezoned by the City Council on October 23, 2016 by Ordinance No. 15,525 subject to the following conditions.

(1) The Property shall be brought into full conformance within one year of the approval of the rezoning, and kept, in accordance with an approved Site Plan under requirements as applicable to "C-2" Districts, including landscaping and paving requirements.

(2) Any buildings on the Property shall be brought into good repair within one year of the approval of the rezoning, and kept in good repair, all to the satisfaction of the Zoning Enforcement Officer and Neighborhood Inspections Division Administrator.

(3) There shall not be storage on the Property of more than two (2) unlicensed or inoperable vehicles outside of a building.

(4) No unlicensed or inoperable vehicles or vehicles awaiting repair associated with any business on the Property shall be parked or stored on the surrounding public street network.

(5) Only the following uses as in "C-2" District shall be permitted on the Property:

- a) Automobile washing and detailing establishments.
- b) Carpenter and Cabinetmaking shops for retail custom work
- c) Garage for general motor vehicle repair, but not including body and fender work and overall painting and steam cleaning.
- d) Plumbing and Heating shops
- e) Printing and Lithographing shops; and
- f) Sheetmetal shops

(6) In addition, uses as in the "C-1" District shall be permitted, except the following uses shall be prohibited on the Property:

- a) Assembly uses
- b) Bakeries
- c) Boarding houses and rooming houses
- d) Colleges and universities
- e) Correctional placement residences
- f) Dance studios
- g) Delicatessens
- h) Department stores with more than 30,000 square feet of gross floor area
- i) Gas stations/convenience stores
- j) Multiple-family residential dwellings
- k) Nursing, convalescent, and retirement homes
- l) Radio stations
- m) Restaurants
- n) Shelters for the homeless; and
- o) Theaters

The Commission had recommended denial of the rezoning at their September 1, 2016 meeting. Also, at the time of the rezoning, the property was designated with a Neighborhood Mixed Use future land use as part of a concurrent amendment to the PlanDSM Creating Our Tomorrow Plan. On December 15, 2019, the property was rezoned to "MX1" Mixed Use District with the update of the citywide Zoning Map.

9. PlanDSM Land Use Plan Designation: Neighborhood Mixed Use.

10. Applicable Regulations: 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, and taking into consideration the criteria set forth in Chapter 18B 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 existing Neighborhood Mixed Use designation is described 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.

In order to find the proposed rezoning in conformance with PlanDSM, staff believes that the requested amendment to designate the future land use to Community Mixed Use would also be necessary. Community Mixed Use is described as follows:

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.

The property is surrounded in the neighborhood by remaining Low Density Residential designation. While there are other existing commercially zoned properties within a few blocks, the PlanDSM designates the predominance of this area for Low Density Residential. While the Plan contemplates adding additional neighborhood level commercial use or development on the subject property, Staff does not believe that either the proposed amendment to the PlanDSM future land use designation or the proposed rezoning to an "MX3" Mixed Use District are appropriate given the intent of PlanDSM.

- 2. Additional Information:** The subject property has an enforcement history dating back to 2002 that includes violations, such as storage of inoperable vehicles, storage of junk/debris vehicle parking, and storage on unpaved surfaces or on adjoining Right-Of-Way. There have also been several impounds of vehicles from the property in that time. In 2015, the City initiated legal proceedings against the property. The enforcement process was suspended following the rezoning in 2016. However, the applicant did not perform on the zoning conditions approved in 2016. Legal action was again brought by Zoning Enforcement in 2020 and is pending. This has prompted the owners to pursue the rezoning process again.

Should the property be rezoned for allowance of the Minor Vehicle Maintenance/Repair use, the previous illegal expansion already triggered the subsequent need for Site Plan compliance for the entire site with the Permit and Development Center.

If the Commission should decide to recommend approval of the requested comprehensive plan amendment and rezoning, Staff recommends that it be made subject to the following:

- 1. Any Site shall be brought into full conformance and kept in accordance with an approved Site Plan under requirements as applicable to "MX3" Districts and Workshop/Warehouse Building Type, including landscaping and paving requirements, within one year of the approval of the rezoning.*
- 2. Any buildings on site shall be kept in good repair to the satisfaction of the Zoning Enforcement Officer and Neighborhood Inspections Division Administrator.*
- 3. There shall not be storage of more than two (2) unlicensed or inoperable vehicles outside of a building.*
- 4. No unlicensed or inoperable vehicles or vehicles awaiting repair associated with any business on the property shall be parked or stored on the surrounding public street network.*

The only use permitted in the proposed “MX3” Mixed Use District should be the Minor Vehicle Maintenance/Repair use and any use permitted in common with the current “MX1” Mixed Use District.

SUMMARY OF DISCUSSION

Erik Lundy presented staff report and recommendation.

Todd Von Stein stated the applicants are currently traveling and were not able to attend tonight. If the commission needs to hear from them, they are willing to continue the item. However, they are going to follow through with the direction from City Staff. They’ve had nothing but support from the surrounding neighbors and have relocated their access point to allow an adjoining neighbor access to their camper.

CHAIRPERSON OPENED THE PUBLIC HEARING

Lucinda Maxson, 2332 East Grand Avenue, stated Oscar keeps his place clean and there are houses around this property that are in terrible shape. It is nice to have this type of business close by and she is in full support of their proposal.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Carolyn Jenison asked what will happen to this property if the commission votes in opposition?

Erik Lundy stated if City Council were to deny the rezoning, they would have to seek a use variance from the Zoning Board of Adjustment for this use to be allowed.

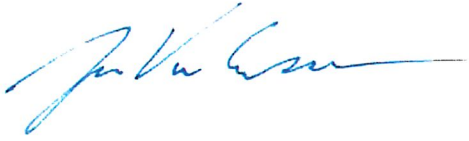
Jason Van Essen stated staff isn’t sure a land use amendment makes sense in this area. In 2016, the commission did recommend denial but a rezoning was approved by the City Council with conditions that included bring the site into compliance within a year. If the applicant wants to move forward and make site improvements, a use variance makes more sense.

COMMISSION ACTION:

Jann Freed made a motion for Part A) the proposed rezoning is **not** in conformance with the existing PlanDSM future land use designation of Neighborhood Mixed Use, Part B) **DENIAL** of the requested amendment to the PlanDSM future land use designation from Neighborhood Mixed Use to Community Mixed Use, and Part C) **DENIAL** of rezoning the property to “MX3” Mixed Use District.

Motion passed: 9-4

Respectfully submitted,



Jason Van Essen, AICP
Planning & Urban Design Administrator

JMV:tjh

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Request from Oscar and Enrique Zenteno (owners) for the property located at 2354 East Grand Avenue.		File #		
		21-2021-4.09		
Description of Action	Amendment to the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification from Neighborhood Mixed Use to Community Mixed Use.			
PlanDSM Future Land Use	Current: Neighborhood Mixed Use Proposed: Community Mixed Use.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"MX1" Mixed Use 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

Oscar and Enrique Zenteno, 2354 East Grand Avenue

21-2021-4.09



1 inch = 89 feet

Request from Oscar and Enrique Zenteno (owners) for the property located at 2354 East Grand Avenue.				File #	
				ZON2021-00020	
Description of Action	Rezone property from "MX1" Mixed Use District to "MX3" Mixed Use District, to allow use of the site for Vehicle Maintenance/Repair, Minor.				
PlanDSM Future Land Use	Current: Neighborhood Mixed Use Proposed: Community Mixed Use.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	"MX1" Mixed Use District				
Proposed Zoning District	"MX3" Mixed Use District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Outside Area (200 feet)	4	2			
Within Subject Property					
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Oscar and Enrique Zenteno, 2354 East Grand Avenue

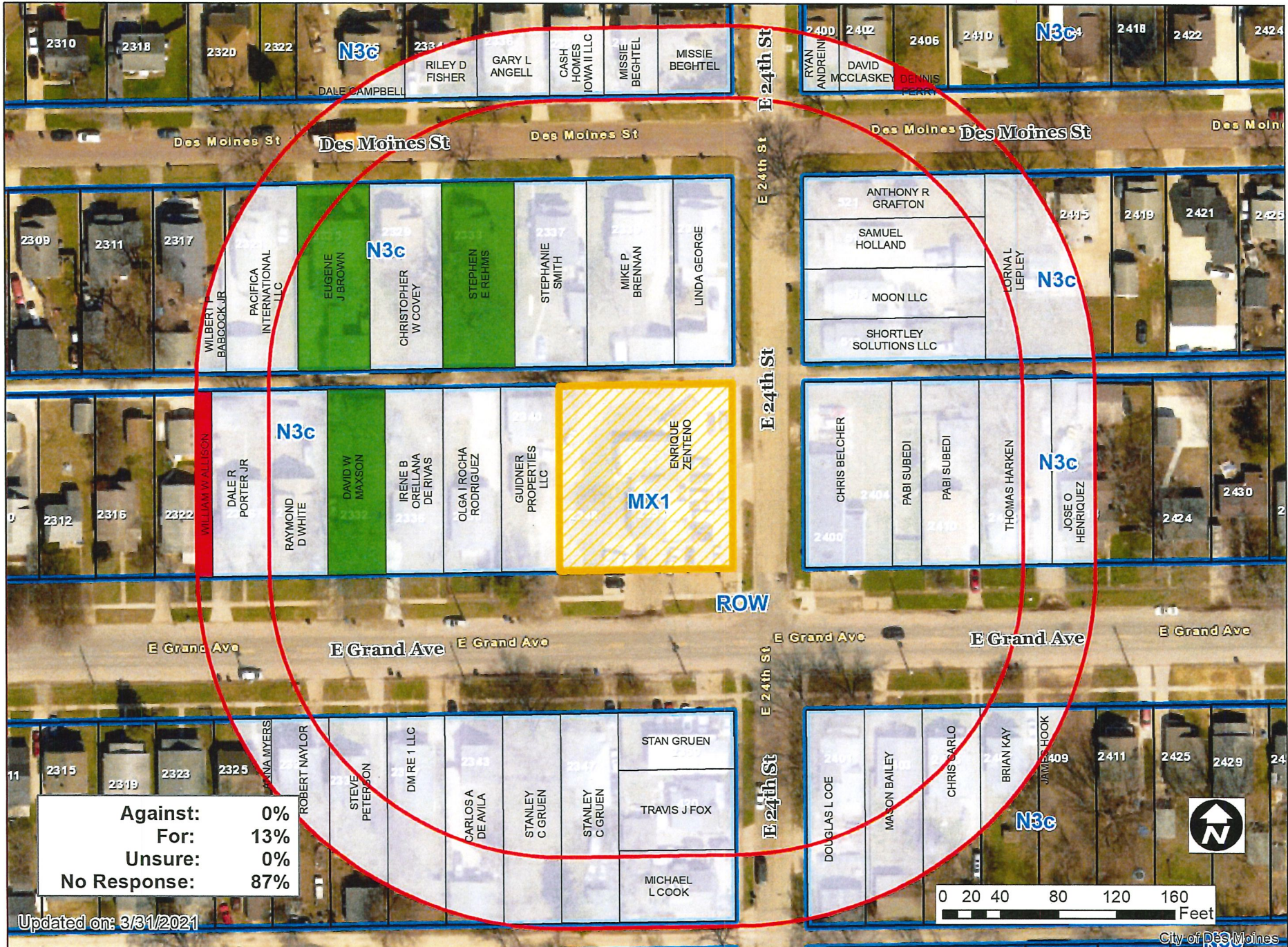
ZON2021-00020



1 inch = 89 feet

Oscar and Enrique Zenteno, 2354 East Grand Avenue

ZON2021-00020



1 inch = 88 feet

49

The development Services Department

Eugene Brown

RECEIVED
COMMUNITY DEVELOPMENT
MAR 29 2021

My address is 2325 Des Moines st.

Des Moines, Iowa 50317

I am writing this letter to support Oscar and Enrique Zenteno [owners] to rezone property located at 2354 East Grand Avenue from MX1 to MX3 class zoning

This Familys owned bussiness are good people and fair with customers and keep

the site in a clean and bussiness apperance and are good neighbors.

sincerly Eugene Brown

Eugene Brown

Item: ZON2021-00020 Date: _____

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

APR 02 2021

Signature: Bertha Zenteno

Name: BERTHA R ZENTENO

Address: 1820 des Moines ST
DSM, IA 50314

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

Great and Caring People. Very well
Family oriented Buisness.

Item: ZON2021-00020

Date: 03/26/2021

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature: Eugene Brown

Name: Eugene Brown

Address: 2325 Des Moines St

Staff Use Only

RECEIVED
COMMUNITY DEVELOPMENT
MAR 29 2021

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

This Family owned Business are
good People. They also are good
neighbors and keep The bussiness
clean

Item: ZON2021-00020

Date: 3-24-21

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature: David W. Maxson

Name: David Maxson

Address: 2332 E Grand Ave

Staff Use Only

RECEIVED
COMMUNITY DEVELOPMENT
MAR 29 2021

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

Oscar is a great person who tries to keep his property clean
and presentable. It's very nice to have a garage on the block.
There are houses in the area that are more trashy and
unkept than Oscar's business. I don't understand why this is an
issue at all !!

Item: ZON2021-00020

Date: 3/25/2021

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature: _____

Name: _____

Address: _____

Stephen F. Edmunds Jr
Stephen F. Edmunds Jr
2333 Des Moines St

Staff Use Only
RECEIVED
COMMUNITY DEVELOPMENT
MAR 29 2021

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

Great People

Item: ZON2021-00020

Date: March 24, 2021

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature: _____

Name: Dennis D. Perry

Address: 2410 Des Moines St, Des Moines, IA.

Dennis D. Perry

Staff Use Only
RECEIVED
COMMUNITY DEVELOPMENT
MAR 29 2021

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

Item: ZON2021-00020

Date: 3-24-21

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature: _____

Name: _____

Address: _____

Staff Use Only

RECEIVED
COMMUNITY DEVELOPMENT

MAR 29 2021

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

The location is not kept clean. Alleyway
affected by mud and rats.