



.....
Date June 28, 2021

**RESOLUTION HOLDING HEARING ON REQUEST FROM GORKHA BROTHERS, INC.
TO AMEND PLANDSM FUTURE LAND USE CLASSIFICATION
AND TO REZONE 2829 EASTON BOULEVARD**

WHEREAS, on June 14, 2021, by Roll Call No. 21-0857, the City Council received a communication from the Plan and Zoning Commission advising that at a public hearing held on May 20, 2021, its members voted 11-0 in support of a motion to recommend **DENIAL** of a request from Gorkha Brothers, Inc. (Lessee) represented by Sushii Gaimer (officer) to amend the PlanDSM: Creating Our Tomorrow comprehensive plan future land use classification for real property locally known as 2829 Easton Boulevard (“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 existing building to be considered for a Conditional Use Approval by the Zoning Board of Adjustment for a business selling alcoholic liquor. The subject property is owned by ARSHI, LLC (contract buyer of record) and Sandhu Minimart, LLC; and

WHEREAS, the Property is legally described as follows:

LOTS 1, 2, 3, 4 AND 5 AND THE NORTHERLY 1/2 OF THE VACATED NORTHEAST/SOUTHWESTERLY ALLEY LYING SOUTH OF AND ADJOINING SAID LOTS 1, 2, 3, AND THE EASTERLY 36 FEET OF LOT 4 (EXCEPT THE EASTERLY 17 FEET OF SAID ALLEY LYING SOUTH OF AND ADJOINING SAID LOT 1), ALL IN BOULEVARD ADDITION, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA; and

WHEREAS, on June 14, 2021, by Roll Call No. 21-0857, 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 June 28, 2021, at 5:00 p.m., to be held in the Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; 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



Date June 28, 2021

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 11-0 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 building to be considered for a Conditional Use approval by the Zoning Board of Adjustment for a business selling alcoholic liquor.
- 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 intended to be located along high capacity transit corridors and not along neighborhood collector streets, such as Easton Boulevard.
- 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 a small cluster of existing commercially zoned properties 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.



Roll Call Number

Agenda Item Number

63

Date June 28, 2021

Alternative B

MOVED by _____ to continue the public hearing until 5:00 p.m. on July 26, 2021, to be held in the Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, 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).

MOVED BY _____ TO ADOPT.

FORM APPROVED: Judy K. Parks-Kruse
Judy K. Parks-Kruse
Assistant City Attorney

(21-2021-4.13)
(ZON2021-00042)

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, GRAY, MANDELBAUM, VOSS, WESTERGAARD, and 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 June 28, 2021
 Agenda Item 63
 Roll Call # _____

June 8, 2021

Honorable Mayor and City Council
 City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their May 20, 2021 meeting, the following action was taken regarding a request from Gorkha Brothers, Inc. (lessee) represented by Sushil Gajmer (officer) to rezone property located at 2829 Easton Boulevard from “MX1” Mixed Use District to “MX3” Mixed Use District, to allow the existing building to be considered for a Conditional Use approval by the Zoning Board of Adjustment for a business selling alcoholic liquor.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 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 be found in 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 since the Community Mixed Use

designation is intended to be located along high capacity transit corridors, such as University Avenue or Hubbell Avenue, and not along neighborhood collector streets, such as Easton Boulevard.

Part C) **Denial** of rezoning the property to “MX3” Mixed Use District since the requested “MX3” District is not in conformance with the existing PlanDSM future land use designation of Neighborhood Mixed Use. (ZON2021-00042)

Written Responses

1 in Favor

5 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 since the Community Mixed Use designation is intended to be located along high capacity transit corridors, such as University Avenue or Hubbell Avenue, and not along neighborhood collector streets, such as Easton Boulevard.

Part C) Staff recommends **denial** of rezoning the property to “MX3” Mixed Use District since the requested “MX3” District is not in conformance with the existing PlanDSM future land use designation of Neighborhood Mixed Use.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The requested rezoning to “MX3” Mixed Use District would allow the existing fuel station convenience store use to be eligible to request a Conditional Use from the Board of Adjustment for sale of alcoholic liquor. They currently sell wine and beer. As a fuel station use, no more than 40% of gross receipts from sales could be derived from the sale of alcoholic liquor, wine, beer, and/or tobacco products.
2. **Size of Site:** 30,717 square feet or 0.71-acre.
3. **Existing Zoning (site):** “MX1” Mixed Use District.
4. **Existing Land Use (site):** The property includes a 4,800-square foot commercial building that is divided into two (2) tenant spaces. The eastern space is occupied by a fuel station convenience store and the western space is vacant. The property also includes a fuel canopy with two (2) pumps (4 fueling stations).
5. **Adjacent Land Use and Zoning:**
 - East** - “N3a”; Uses are One Household Living dwellings.
 - West** - “N3b”; Uses are One Household Living dwellings.

North - "MX1" & "N3c"; Uses are a restaurant and One Household Living dwellings.

South - "N3b"; Uses are One Household Living dwellings.

6. General Neighborhood/Area Land Uses: The subject property is located in a small cluster of commercial uses located at the intersection of Easton Boulevard and East 29th Street. The surrounding area is developed primarily with One Household Living residential uses.

7. Applicable Recognized Neighborhood(s): The subject property is in the ACCENT Neighborhood. The neighborhood association was notified of the hearing by mailing of the Preliminary Agenda on April 30, 2021 and by mailing of the Final Agenda on May 14, 2021. Additionally, separate notifications of the hearing for this specific item were mailed April 1, 2021 (20 days prior to the hearing) and May 10, 2021 (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(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division on the date of the mailing. The ACCENT Neighborhood Association notices were mailed to Kevin Marken, 2109 E 28th Street, Des Moines, IA 50317.

The applicant was required to conduct a neighborhood outreach by written letter, with a summary to be available for the hearing.

8. Relevant Zoning History: None.

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 for the proposed rezoning to "MX3" District to be in conformance with PlanDSM, the future land use designation must be revised to Community Mixed Use.

The Community Mixed Use designation 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.

Staff does not believe that the Community Mixed Use designation would be appropriate for this site. The Community Mixed Use designation is intended to be located along high capacity transit corridors, such as University Avenue or Hubbell Avenue, and not along neighborhood collector streets, such as Easton Boulevard. Furthermore, the property is surrounded predominantly by areas designated as Low Density Residential on the Future Land Use Map.

- 2. Additional Information:** Should the property be rezoned to "MX3" Mixed Use District, the existing fuel station use would be eligible to seek a Conditional Use from the Board of Adjustment that would allow for the sale of alcoholic liquor, in addition to the existing sales of wine beer. As a fuel station use, no more than 40% of gross receipts from sales could be derived from the sale wine, beer, and/or tobacco products.

SUMMARY OF DISCUSSION

Jason Van Essen presented staff report and recommendation.

Sushil Gajmer 2829 Easton Boulevard stated his lawyer could not attend the meeting tonight but understands the staff is recommending denial of the rezoning. Most of the houses around this property are single family but there are some rental units. He is not sure why this rezoning request is recommended for denial.

CHAIRPERSON OPENED THE PUBLIC HEARING

No one was present or requested to speak.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Carolyn Jension asked staff for their reasoning on the recommendation of denial.

Jason Van Essen stated of the three MX districts (MX1, MX2 and MX3), MX1 is the least intense with MX3 being the most intense and auto-dominate in character. If you look at the area, this is a small lot surrounded by single-family houses. This rezoning would require a Future Land Use Map amendment from the Neighborhood Mixed Use designation to the Community Mixed Use designation. The Community Mixed Use designation is intended for our most intense corridors such as University Avenue, Hubbell Avenue, Southeast 14th

Street, Fleur Drive and Army Post Road. Staff believes this does not match the character of Easton Boulevard, which is the basis of staff's recommendation.

Carolyn Jension stated what she understands is they don't want to change anything externally but just want to add the sale of liquor.

Jason Van Essen stated they want to add liquor but they cannot do that in the MX1 district.

Carolyn Jension stated its not changing anything on the exterior character.

Jason Van Essen indicated that no changes to the building are proposed but the request is to rezone the property to MX3, which allows different uses.

COMMISSION ACTION:

Emily Webb made a motion for:

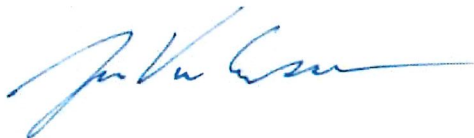
Part A) the proposed rezoning be found in not in conformance with the existing PlanDSM future land use designation of Neighborhood Mixed Use.

Part B) **Denial** of the requested amendment to the PlanDSM future land use designation from Neighborhood Mixed Use to Community Mixed Use since the Community Mixed Use designation is intended to be located along high capacity transit corridors, such as University Avenue or Hubbell Avenue, and not along neighborhood collector streets, such as Easton Boulevard.

Part C) **Denial** of rezoning the property to "MX3" Mixed Use District since the requested "MX3" District is not in conformance with the existing PlanDSM future land use designation of Neighborhood Mixed Use.

Motion passed: 11-0

Respectfully submitted,



Jason Van Essen, AICP
Planning & Urban Design Administrator

JMV:tjh

Request from Gorkha Brothers, Inc. (lessee) represented by Sushil Gajmer (officer) for property located at 2829 Easton Boulevard. The subject property is owned by ARSHI, LLC (contract buyer of record) and Sandhu Minimart, LLC (titleholder).				File # 21-2021-4.13	
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 Outside Area (200 feet)	In Favor	Not In Favor	Undetermined	% Opposition	
Within Subject Property	0	0			
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Gorkha Brothers, Inc., 2829 Easton Boulevard

21-2021-4.13



1 inch = 106 feet

Request from Gorkha Brothers, Inc. (leasee) represented by Sushil Gajmer (officer) for property located at 2829 Easton Boulevard. The subject property is owned by ARSHI, LLC (contract buyer of record) and Sandhu Minimart, LLC (titleholder).				File # ZON2021-00042	
Description of Action	Rezone property from "MX1" Mixed Use District to "MX3" Mixed Use District, to allow the existing building to be considered for a Conditional Use approval by the Zoning Board of Adjustment for a businesses selling alcoholic liquor.				
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)	1	5			
Within Subject Property					
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Gorkha Brothers, Inc., 2829 Easton Boulevard

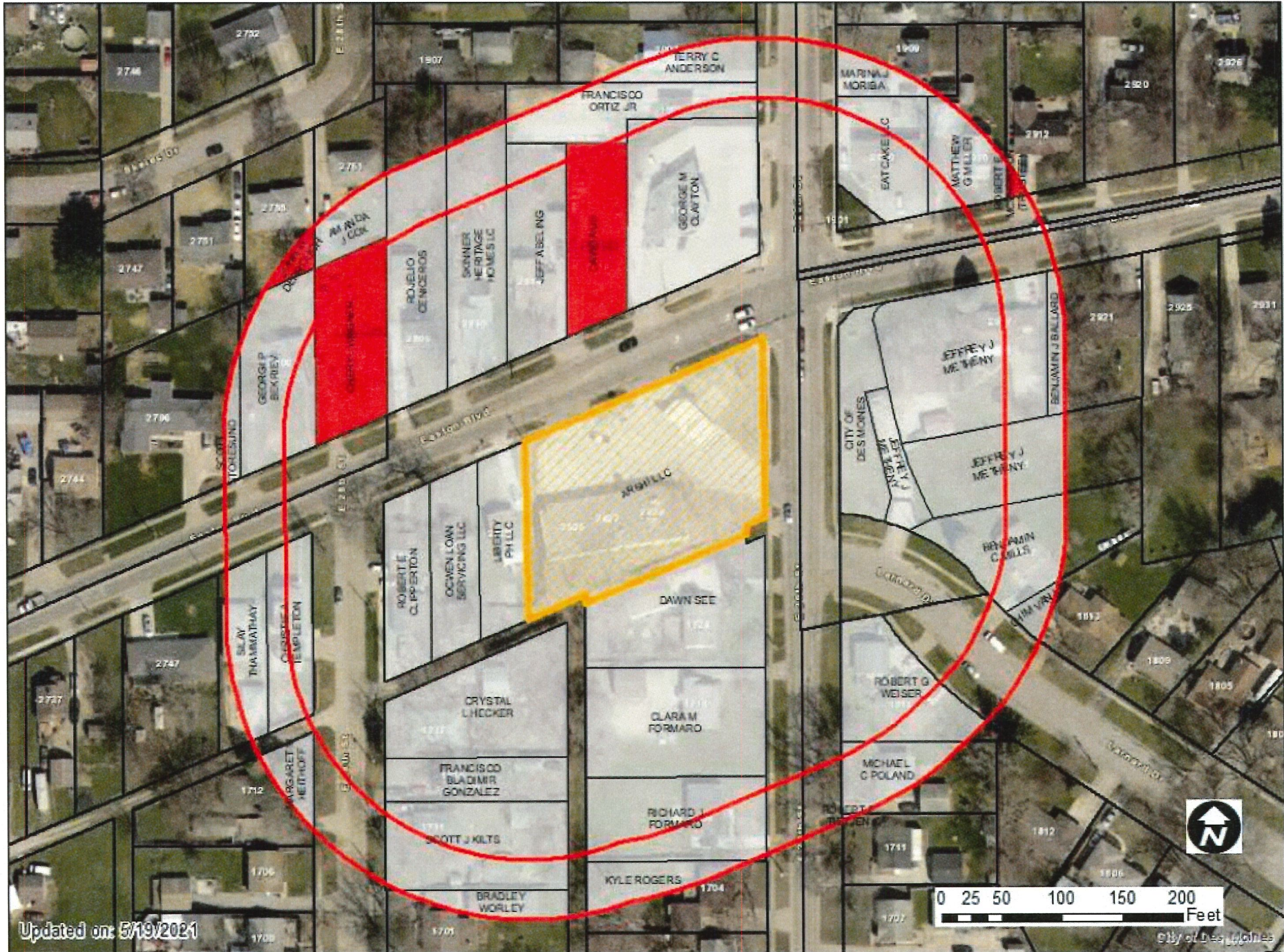
ZON2021-00042



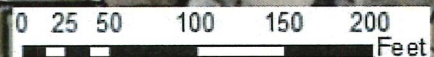
1 inch = 106 feet

Gorkha Brothers, Inc., 2829 Easton Boulevard

ZON2021-00042



Updated on: 5/19/2021



1 inch = 106 feet

Item: ZON2021-00042 Date: 5-13-21

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: _____

Address: 3934 Easton

Staff Use Only

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

Item: ZON2021-00042 Date: May 11-21

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature: John W. Derrough

Name: 2755 Lakes Dr

Address: Deer mores town

Staff Use Only

RECEIVED
COMMUNITY DEVELOPMENT
MAY 14 2021

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

Traffic - too much Booz
any Grocery store
not needed
why waste your time on this

Item: ZON2021-00042

Date: 5/11/2021

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature: Robert McPherson

Name: Robert McPherson

Address: 2912 Easton Blvd.

Staff Use Only

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

There is Last Stop and Hy-Vee liquor less than 1 mile from this location. Easton is a very high traffic street with speeding cars. Don't want more traffic congestion. Like a race track on our section at times. Don't want an alcohol pit stop here for them.

Item: ZON2021-00042

Date: 5-12-2021

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature: Kevin Marken Accent Neighborhood

Name: Kevin Marken

Address: 209 E 28th St

Staff Use Only

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

The neighborhood of Accent can not support the addition of the sale of hard liquor at this location. There are up to 4 locations within 1 mile of the store and approx 8 locations in the neighborhood to buy hard liquor. Across the street is a restaurant for mixed drinks. - Accent Neighborhood Board

Item: ZON2021-00042

Date: 5-11-21

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Staff Use Only

Signature: Cheryl Wagner

Name: Cheryl Wagner

Address: 2802 Easton Blvd.

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

This is a family area and there is no
need to have alcohol bottles thrown here
and there. Besides they can get liquor
anywhere else.

Item: ZON2021-00042 Date: May 14 2021

Please mark one of the following

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

Staff Use Only

Signature: David Rus
Name: David Rus
Address: 2818 Easton Blvd

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

Wine is a mocker, strong drink a
brawler. Whoever is led astray by it is
not wise.