



Date October 4, 2021

RESOLUTION HOLDING HEARING ON REQUEST FROM DOUGLAS AND SARAH WELLS TO AMEND PLANDSM FUTURE LAND USE DESIGNATION AND TO REZONE PROPERTY LOCATED AT 520 AND 530 42ND STREET

WHEREAS, on September 13, 2021, by Roll Call No. 21-1409, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on September 2, 2021, its members voted 10-0 in support of a motion to recommend **APPROVAL** of a request from Douglas and Sarah Wells (owners) to amend the PlanDSM: Creating Our Tomorrow future land use designation for real property locally known as 520 and 530 42nd Street (“Property”) from Low-Medium Density Residential to Neighborhood Mixed Use to allow rezoning to RX1 Mixed Use District in order for the existing legal nonconforming Professional Office uses on the Property to conform with the City’s Zoning Ordinance; and

WHEREAS, by said communication, the City Plan and Zoning Commission further advised that at a public hearing held on September 2, 2021, its members voted 10-0 in support of a motion to recommend **APPROVAL** of a request from Douglas and Sarah Wells (owners) to rezone the Property from NX1 Neighborhood Mix District to RX1 Mixed Use District for the above-stated purpose; and

WHEREAS, on September 13, 2021, by Roll Call No. 21-1409, it was duly resolved by the City Council that the request to amend PlanDSM and to rezone the Property be set down for hearing on October 4, 2021 at 5:00 P.M., in the Council Chambers; 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 amendment to PlanDSM and proposed rezoning; and

WHEREAS, in accordance with said notice, those interested in said proposed amendment to PlanDSM and 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; and

WHEREAS, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone the Property locally known as 520 and 530 42nd Street, legally described as:

520 42nd Street [Parcels 09008230 and 09008205]

The North 57 feet (except the West 53 feet thereof) of lot One (1); The South 13 feet of the North 70 of the East 143 feet of Lot 1; And beginning at the Southwest corner of Lot Twelve (12), thence North 83 feet, thence East 37 ½ feet, thence South 36 feet, thence West 3 feet, thence South 47 feet, thence West 34 ½ feet to beginning, all in the Official Plat of the South ½ of the Southeast ¼ of the Southeast ¼ of Section 1, Township 78, North, Range 25, West of the 5th P.M., now included in and forming a part of the City of Des Moines, Iowa.

AND

530 42nd Street [Parcel 09008231]

The South 83 feet of Lot 12 of Official Plat of South ½ of Southeast Quarter of Southeast Quarter of Section 1, Township 78, Range 25, West of the 5th P.M., now in and forming a part of the City of Des Moines, Iowa, (except beginning at the Southwest Corner of Said Lot 12, thence North 83 feet, thence East 37 ½, thence South 36 feet, thence West 3 feet, thence South 47 feet, thence West 34 ½ feet to beginning)



Date October 4, 2021

from NX1 Neighborhood Mix District to RX1 Mixed Use District for the above-stated purpose.

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 PlanDSM and proposed rezoning of the Property to RX1 Mixed Use District are hereby overruled, and the hearing is closed.
2. The proposed amendment to PlanDSM: Creating Our Tomorrow Plan to revise the future land use classification for the Property from Low-Medium Density Residential to Neighborhood Mixed Use is hereby approved.
3. The proposed rezoning of the Property, as legally described above, from NX1 Neighborhood Mix District to RX1 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:

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

(ZON2021-000008; ZON2021-000009)

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

Date 10-4-21

Agenda Item 48

Roll Call # _____

September 3, 2021

Communication from the City Plan and Zoning Commission advising that at their September 2, 2021 meeting, the following action was taken regarding a request from Douglas & Sarah Wells (owner) to rezone property located at 520 and 530 42nd Street from “NX1” Neighborhood Mix District to “RX1” Mixed Use District to bring the existing legal nonconforming Professional Office uses within the existing buildings into conformance with Zoning Code.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 10-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus				X
Dory Briles				X
Abby Chungath	X			
Kayla Berkson	X			
Chris Draper	X			
Jann Freed	X			
Todd Garner	X			
Johnny Alcivar	X			
Lisa Howard				X
Carolyn Jenison	X			
William Page	X			
Rocky Sposato	X			
Steve Wallace				X
Greg Wattier				X
Emily Webb	X			

APPROVAL of Part A) the requested rezoning be found not in conformance with the existing PlanDSM future land use designation of Low-Medium Density Residential.

Part B) **approval** of the request to amend the PlanDSM Creating Our Tomorrow Comprehensive Plan to revise the future land use designation from Low-Medium Density Residential to Neighborhood Mixed Use.

Part C) **approval** of the request to rezone the properties from “NX1” Neighborhood Mix District to “RX1” Mixed Use District. (ZONG-2021-000008)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the requested rezoning be found not in conformance with the existing PlanDSM future land use designation of Low-Medium Density Residential.

Part B) Staff recommends approval of the request to amend the PlanDSM Creating Our Tomorrow Comprehensive Plan to revise the future land use designation from Low-Medium Density Residential to Neighborhood Mixed Use.

Part C) Staff recommends approval of the request to rezone the properties from "NX1" Neighborhood Mix District to "RX1" Mixed Use District.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is proposing to rezone the subject properties in order to facilitate continued use of the current legal non-conforming use (Professional Office.) The subject properties were zoned "NX1" Neighborhood Mix District on December 16, 2021, with the adoption of the Zoning and Planning & Design Ordinances. These properties were designated as "NX1" Neighborhood Mix District to be in conformance with the Land Use Designation of Low-Medium Density Residential future land use designation that was established in 2016 by adoption of PlanDSM: Creating Our Tomorrow Comprehensive Plan.
2. **Size of Site:** The site is comprised of three (3) parcels with a cumulative area of 28,501 square feet (0.654 acres).
3. **Existing Zoning (site):** "NX1" Neighborhood Mix District.
4. **Existing Land Use (site):** The site consists of three (3) parcels containing a 2,187-square foot, two-story multiple-tenant office building; a 528-square foot, one-story office building; a 528-square foot, one-story garage; a 4,098-square foot, two-story multiple-tenant office building; a 1,132-square foot, two-story multiple-tenant office building; a 625 square-foot, one-story office building; and a surface parking lot.
5. **Adjacent Land Use and Zoning:**
 - North** – "NX1"; Uses are multiple-household residential.
 - South** – "N1b"; Uses are multiple-household residential and commercial/philanthropic.
 - East** – "P2"; Uses are religious assembly.
 - West** – "N1b"; Uses are single-household residential.
6. **General Neighborhood/Area Land Uses:** The subject property is located along the west side of 42nd Street between Ingersoll Avenue and Grand Avenue. The area consists of a mix of commercial, multiple-household residential, single-household residential, and religious assembly uses.

7. **Applicable Recognized Neighborhood(s):** The subject property is in the Ingersoll Park Neighborhood and within 250 feet of the North of Grand Neighborhood. The neighborhood associations were notified of the public hearing by mailing of the Preliminary Agenda on August 13, 2021 and by mailing of the Final Agenda on August 26, 2021. Additionally, separate notifications of the hearing for this specific item were mailed on August 13, 2021 (20 days prior to the public hearing) and August 23, 2021 (10 days prior to the public 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. The Ingersoll Park Neighborhood mailings were sent to Ann Schmid, 4244 Harwood Drive, Des Moines, IA 50312. The North of Grand Neighborhood mailings were sent to Jason Norris, 647 34th Street, Des Moines, IA 50312.

The applicant has conducted neighborhood outreach and provided a summary of that to Staff. They will be available to provide additional information during the public hearing, if necessary.

8. **Relevant Zoning History:** On May 23, 2012, by Docket No. ZON2012-00069, the Zoning Board of Adjustment conditionally approved a Variance of up to 38.17 feet less than the minimum required 40-foot rear yard setback and a Variance of the zoning provision that requires all construction to be residential in character, to allow construction of a 1,038-square foot addition within 1.83 feet of the west (rear) property line that would connect two existing structures at the rear of the property, and construction of a 263-square foot addition within 4.88 feet of the west (rear) property line and within 10 feet of the south (side) property line.
9. **PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Low-Medium Density Residential.
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 subject property is designated "Low-Medium Density Residential". Plan DSM describes this designation as follows:

Low-Medium Density Residential

Areas developed with a mix of single family, duplex and small multi-family units up to 12 units per net acre.

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.

The applicant is proposing to rezone the subject properties from “NX1” District to “RX1” District. The Zoning Ordinance states that “NX1” District is intended for a mix of single- and smaller-scaled multiple-household uses and building forms to preserve the scale and character of the existing neighborhood while allowing for new infill housing. It also states that the “RX1” District is intended for transitional areas between “MX” districts and “N” districts, providing for residential and office buildings at a scale and intensity appropriate for corridors adjacent to low scale neighborhoods.

Based on these designations, the proposed “RX1” Mixed Use District zoning would not be found in conformance with the Comprehensive Plan designation of Low-Medium Density Residential but would be found in conformance with the requested designation of Neighborhood Mixed Use.

Given the location of the property along the west side of 42nd Street in between the Grand Avenue and Ingersoll Avenue corridors, Staff believes that the proposed Neighborhood Mixed Use future land use designation and the proposed “RX1” Mixed Use District are appropriate.

- 2. **Planning and Design Ordinance:** Any future construction or redevelopment of the site must comply with all applicable site plan and design regulations of the Planning and Design Ordinance (Chapter 135 of City Code).

SUMMARY OF DISCUSSION

Emily Webb asked if any member of the public or the commission desired to speak on the item. No one requested to speak.

COMMISSION ACTION:

Todd Garner made a motion for:

Part A) the requested rezoning be found not in conformance with the existing PlanDSM future land use designation of Low-Medium Density Residential.

Part B) **approval** of the request to amend the PlanDSM Creating Our Tomorrow Comprehensive Plan to revise the future land use designation from Low-Medium Density Residential to Neighborhood Mixed Use.

Part C) **approval** of the request to rezone the properties from “NX1” Neighborhood Mix District to “RX1” Mixed Use District.

Motion passed: 10-0

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jason Van Essen".

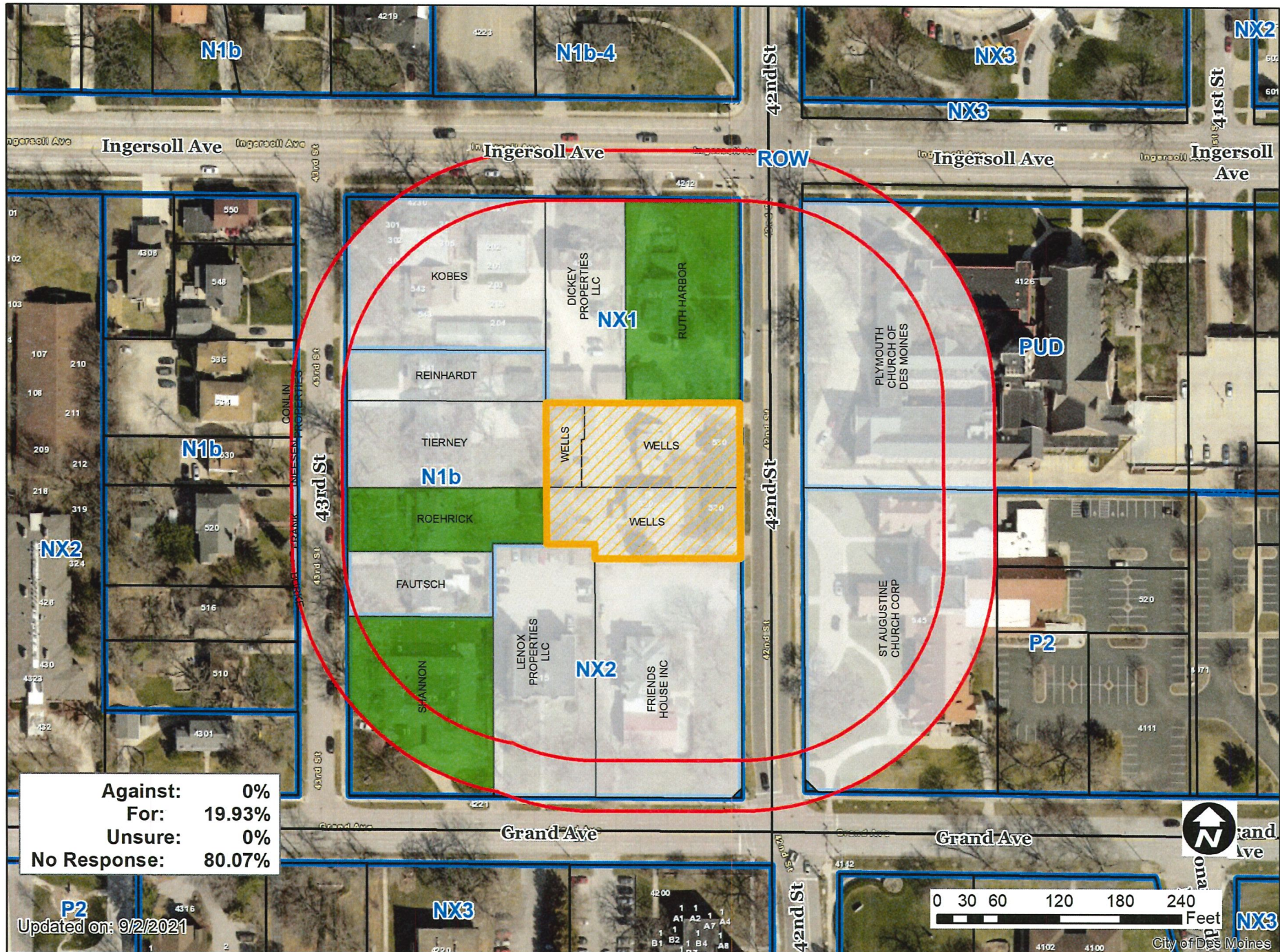
Jason Van Essen, AICP
Planning & Urban Design Administrator

JMV:tjh

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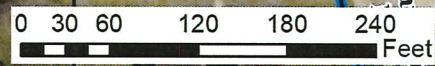
Douglas & Sarah Wells, 520 and 530 42nd Street

ZONG-2021-000008



Against:	0%
For:	19.93%
Unsure:	0%
No Response:	80.07%

P2
Updated on: 9/2/2021



City of Des Moines

1 inch = 125 feet

Item: ZONG-2021-000008 Date: 8-27-21

Please mark one of the following

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

Signature: Mardene Burg Minsar
 Name: Mardene Minsar
 Address: 543 43rd DM, Ia

Staff Use Only
RECEIVED
 COMMUNITY DEVELOPMENT
 AUG 30 2021

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

Item: ZONG-2021-000008 Date: 8/25/21

Please mark one of the following

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

Signature: [Signature]
 Name: JB Conlin, Board Chair
 Address: 536+534-43rd Ave, Irving, TX

Staff Use Only
RECEIVED
 COMMUNITY DEVELOPMENT
 AUG 30 2021

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

Item: ZONG-2021-000008

Date: 8-25-21

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature: Mark McDougal *Executive Director*

Name: Mark McDougal for Ruth Harbor Ministries

Address: 534/532 42nd Street

Staff Use Only
RECEIVED
COMMUNITY DEVELOPMENT
AUG 30 2021

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

Item: ZONG-2021-000008

Date: _____

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature: Joan Shannon

Name: Joan Shannon

Address: 4225 Grand Ave #1
Des Moines, Ia. 50312

Staff Use Only
RECEIVED
COMMUNITY DEVELOPMENT
AUG 31 2021

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

Item: ZONG-2021-000908 Date: _____

Please mark one of the following

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

Signature: 

Name: John Koehn

Address: 529 43rd St

Staff Use Only
RECEIVED
COMMUNITY DEVELOPMENT
SEP 02 2021

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