



Date June 13, 2022

**RESOLUTION SETTING HEARING ON REQUEST FROM JAIME VILLAFANA (OWNER) REGARDING PROPERTY LOCATED AT 3732 EASTON BOULEVARD TO AMEND PLANDSM TO REVISE THE FUTURE LAND USE DESIGNATION FROM PARKS AND OPEN SPACE TO COMMUNITY MIXED USE AND TO REZONE THE PROPERTY FROM “F” FLOOD DISTRICT AND “MX1” MIXED-USE DISTRICT TO “MX3” MIXED-USE DISTRICT**

**WHEREAS**, the City Plan and Zoning Commission has advised that at a public hearing held on May 19, 2022, its members voted 12-0 in support of a motion to recommend **DENIAL** of a request from Jaime Villafana (Owner), to amend the PlanDSM: Creating Our Tomorrow future land use designation for the Property located at 3732 Easton Boulevard from Parks and Open Space to Community Mixed Use; and

**WHEREAS**, the City Plan and Zoning Commission has advised that at a public hearing held on May 19, 2022, its members voted 12-0 in support of a motion to recommend **DENIAL** of a request from Jaime Villafana (Owner), to rezone the Property from “F” Flood District and “MX1” Mixed-Use District, to “MX3” Mixed Use District, to allow use of the existing building as an Industrial Service Light or Office Use; and

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

LOTS 736, 737, AND 738 IN FOUR MILE, 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:

1. That the attached communication from the Plan and Zoning Commission is hereby received and filed.
2. That the meeting of the City Council at which the proposed amendment to the comprehensive plan future land use designation is to be considered, and at which time the City Council will hear both those who oppose and those who favor the proposal, shall be held at 5:00 p.m. on June 27, 2022 in the Council Chambers, City Hall, 400 Robert D. Ray, Drive, Des Moines.
3. That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

Date June 13, 2022

Moved by \_\_\_\_\_ to adopt. Second by \_\_\_\_\_

APPROVED AS TO FORM:

/s/ Gary D. Goudelock Jr.  
 Gary D. Goudelock Jr.  
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
SHUEMAKER				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED APPROVED

\_\_\_\_\_  
 Mayor

**CERTIFICATE**

I, LAURA BAUMGARTNER, Acting 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.

\_\_\_\_\_  
 Acting City Clerk

Date June 13, 2022

Agenda Item 32

Roll Call # \_\_\_\_\_

May 24, 2022

Communication from the City Plan and Zoning Commission advising that at their May 19, 2022 meeting, the following action was taken regarding a request from Jaime Villafana (owner) to rezone property located at 3732 Easton Boulevard from “F” Flood District and “MX1” Mixed Use District, to “MX3” Mixed Use District, to allow use of the existing building as an Industrial Service Light or Office use.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 12-0 as follows

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
Dan Drendel	X			
Leah Rudolphi	X			
Dory Briles	X			
Abby Chungath	X			
Kayla Berkson	X			
Chris Draper	X			
Todd Garner				X
Johnny Alcivar	X			
Justyn Lewis				X
Carolyn Jenison	X			
William Page	X			
Andrew Lorentzen	X			
Emily Webb	X			

**APPROVAL** of Part A) The requested rezoning to “MX3” District be found not in conformance with the existing PlanDSM future land use designation of Parks and Open Space.

Part B) Denial of the requested amendment to the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification from Parks and Open Space to Community Mixed Use.

Part C) Denial of the requested rezoning from “F” Flood District to “MX3” Mixed Use District as the proposed design solution provides sufficient floodproofing to the building

within the subject property but does not raise part of the property currently in the floodplain above the Base Flood Elevation (floodplain).

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

Part A) Staff recommends that the requested rezoning to “MX3” District be found not in conformance with the existing PlanDSM future land use designation of Parks and Open Space.

Part B) Staff recommends denial of the requested amendment to the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification from Parks and Open Space to Community Mixed Use.

Part C) Staff recommends denial of the requested rezoning from “F” Flood District to “MX3” Mixed Use District as the proposed design solution provides sufficient floodproofing to the building within the subject property but does not raise part of the property currently in the floodplain above the Base Flood Elevation (floodplain).

Should the rezoning be denied, the applicant would have up to one (1) year following that denial to seek a Use Variance from the Zoning Board of Adjustment to allow use of the property for a specific commercial use. Such a Use Variance would not require an amendment to the PlanDSM Creating Our Tomorrow future land use plan.

### Written Responses

2 in Favor

0 in opposition

## **STAFF REPORT TO THE PLANNING COMMISSION**

### **I. GENERAL INFORMATION**

- 1. Purpose of Request:** The proposed rezoning would potentially allow the existing vacant building on the property to be used for an Office space for a pavement contractor, which falls under Industrial Service Light and Office uses and requires the “MX3 District zoning classification. Most of the property is currently zoned “F” Flood District since it within the FEMA-designated floodplain along Fourmile Creek.
- 2. Size of Site:** Approximately 21,820 square feet (0.5 acres).
- 3. Existing Zoning (site):** “F” Flood District and “MX1” Mixed Use District.
- 4. Existing Land Use (site):** Parks and Open Space.
- 5. Adjacent Land Use and Zoning:**

**North** – “N3a” and “F”; Use is low density residential and Fourmile Creek Open Space.

**South** – “P2” and “F”; Use is Fourmile Creek Recreation Center and Park.

**East** – “MX1”; Use is a car wash.

**West** – “F”; Use is Fourmile Creek Greenway and Open Space.

6. **General Neighborhood/Area Land Uses:** The subject property is located on the north side of Easton Boulevard, adjacent to the Fourmile Creek Greenway. Most of the subject property, as well as properties to the west and north, are within the FEMA-designated 100-Year Floodplain.
7. **Applicable Recognized Neighborhood(s):** All neighborhoods were notified of the public hearing by mailing of the Preliminary Agenda on December 30, 2021 for the January 20, 2022 Plan & Zoning Commission Meeting, and the Preliminary Agenda on February 11, 2022 for the March 3, 2022 Plan & Zoning Commission Meeting, and the Preliminary Agenda on April 29 for the May 19, 2022 Plan and Zoning Commission Meeting. Additionally, separate notifications of the hearing for this specific item were mailed on December 30, 2021 (20 days prior to the January 20, 2022 hearing), January 10, 2022 (10 days prior to the January 20, 2022 hearing), and February 21, 2022 (10 days prior to the hearing on March 03, 2022), April 29 (20 days prior to the May 19, 2022 hearing), and May 9 (10 days prior to the May 19, 2022 hearing) to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. A Final Agenda for the hearing on May 19, 2022 was mailed to all recognized neighborhoods on May 13, 2022.

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. The Sheridan Gardens Neighborhood notices were mailed to Kurt Lee, 3800 East Douglas Ave, Des Moines, IA 50317.

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

8. **Relevant Zoning History:** None
9. **PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Parks and Open Space and Neighborhood Mixed Use.
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 as “Parks and Open Space” and “Neighborhood Mixed Use” on the Future Land Use Map. PlanDSM describes this designation as follows:

### PARKS AND OPEN SPACE

*Land or water areas generally free from development. Primarily used for park and recreation purposes but may also indicate private or public open spaces reserved for natural resource conservation.*

### 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 proposed “MX3” District zoning for the entire subject property requires the “Community Mixed Use” designation on the Future Land Use Map in order to find it in conformance with PlanDSM.

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

The Easton Boulevard area in the general vicinity of this site is more suited for the Neighborhood Mixed Use future land use designation, which supports mixed-use, neighborhood-scale nodes and corridors, where daily uses are accessible by walking from surrounding residential neighborhoods. The proposed Community Mixed Use future land use designation is more appropriate along major commercial corridors, such as East University Avenue and Hubbell Avenue.

2. **Floodplain Regulations:** A significant portion of the subject property is zoned “F” Flood District since it is within the FEMA-designated floodplain.

In order for Staff to support a rezoning from “F” District, the applicant would need to raise the elevation of the land that would be rezoned so that it is above the FEMA-designated base flood elevation (BFE). The BFE at this property is approximately 814.5 feet and the adjacent ground elevation is approximately at 812 feet. Therefore, the land would need to be raised about 2.5 feet. Additionally, according to City Engineering Staff, to meet the 3 feet freeboard requirement, the floor elevation of the building would need to be elevated by approximately 5.5 feet. This would all require a Floodplain Permit and Letter of Map Amendment.

The applicant has come up with a design proposal to floodproof the office building. Conceptually, this floodproofing proposal meets the requirements of Chapter 50 and could be an acceptable solution for a building that is intended to be used either for commercial or office purposes.

Staff recommends denial of the requested rezoning from "F" Flood District to "MX3" Mixed Use District since the proposed design solution does not raise the property above the Base Flood Elevation (floodplain) but simply provides a floodproofing mechanism to address flooding when such an event occurs. While this provides an acceptable resolution for the Industrial Service Light and Office use proposed by the applicant, a rezoning from "F" district without raising the property above the floodplain could pose significant health and safety risks for future uses since an "MX3" district allows a mix of uses including residential and mixed use developments.

Should the rezoning be denied, the applicant would have up to one (1) year following that denial to seek a Use Variance from the Zoning Board of Adjustment to allow use of the property for a specific commercial use. Such a Use Variance would not require an amendment to the PlanDSM Creating Our Tomorrow future land use plan.

- 3. Planning and Design Ordinance:** Any development or building modifications must comply with all applicable site plan and design regulations of the Planning and Design Ordinance. Should the rezoning (or a subsequent Use Variance) be approved, the applicant would be required to prepare a Site Plan and building elevations for any proposed additions or modifications for review before the property can be occupied by the proposed use.

## SUMMARY OF DISCUSSION

Sreyoshi Chakraborty presented staff report and recommendation.

Andrew Lorentzen asked what the proposed use of the building would be.

Sreyoshi Chakraborty stated office space for a contractor business.

Andrews Lorentzen asked if that would be allowed without action from the commission.

Sreyoshi Chakraborty stated the site would need to be rezoned to MX3.

Jason Van Essen stated a rezoning or use variance from the Board of Adjustment would be their options to allow this type of use.

Emily Webb clarified they would need denial from the Plan and Zoning Commission before seeking a use variance.

Sreyoshi Chakraborty stated yes.

Johnny Alcivar asked if a use variance would be supported if the rezoning is denied tonight.

Sreyoshi Chakraborty stated staff would be supportive if their final design satisfies the requirements of the city's engineering staff.

Chris Draper asked if the design being proposed tonight meets the requirements of the engineering staff.

Sreyoshi Chakraborty stated the conceptual design they are proposing does but a detailed review would be required once the design is finalized.

Jim Tometich, Tometich Engineering, 10501 Buena Vista Court, Urbandale, IA stated a flood protection wall would be constructed down to the footings around the perimeter of the building. They would also provide removal gates at the window and door openings, these are easy to install and something they have used in Ames, IA. He's certain they would meet all requirements of the city's engineering staff.

Andrew Lorentzen asked what the cost is for this type of system.

Jim Tometich stated the cost will be established once the project is approved.

Emily Webb asked if the owner is willing to seek a use variance if the rezoning is denied.

Jim Tometich stated the owner is not present and he would not be able to speak for him in that regard.

Abby Chungath asked if the building constructed in Ames, IA has experienced a flood.

Jim Tometich stated not that he's aware of.

### **CHAIRPERSON OPENED THE PUBLIC HEARING**

Carol Maher, 701 Polk Boulevard stated why are we encouraging development when the city is spending millions of dollars to buy out homeowners due to the repeated flooding in this area. This seems to be the opposite of what the city is trying to do and doesn't want to see the commission go against that.

Abby Chungath asked why this property wasn't demolished along with all the others in the area.

Jason Van Essen stated he doesn't have an answer but speculates it's due to prioritization of resources.

Chris Draper asked if the rezoning is denied and a use variance was approved, could any future buyouts of the property be prohibited.

Jason Van Essen stated he wouldn't be able to answer without additional research. Noted that buyouts are typically conducted with federal funds.

Bert Drost stated the city only uses federal funds to buyout residential properties.

### **CHAIRPERSON CLOSED THE PUBLIC HEARING**



**COMMISSION ACTION:**

Francis Boggus made a motion for:

Part A) The requested rezoning to "MX3" District be found not in conformance with the existing PlanDSM future land use designation of Parks and Open Space.

Part B) Denial of the requested amendment to the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification from Parks and Open Space to Community Mixed Use.

Part C) Denial of the requested rezoning from "F" Flood District to "MX3" Mixed Use District as the proposed design solution provides sufficient floodproofing to the building within the subject property but does not raise part of the property currently in the floodplain above the Base Flood Elevation (floodplain).

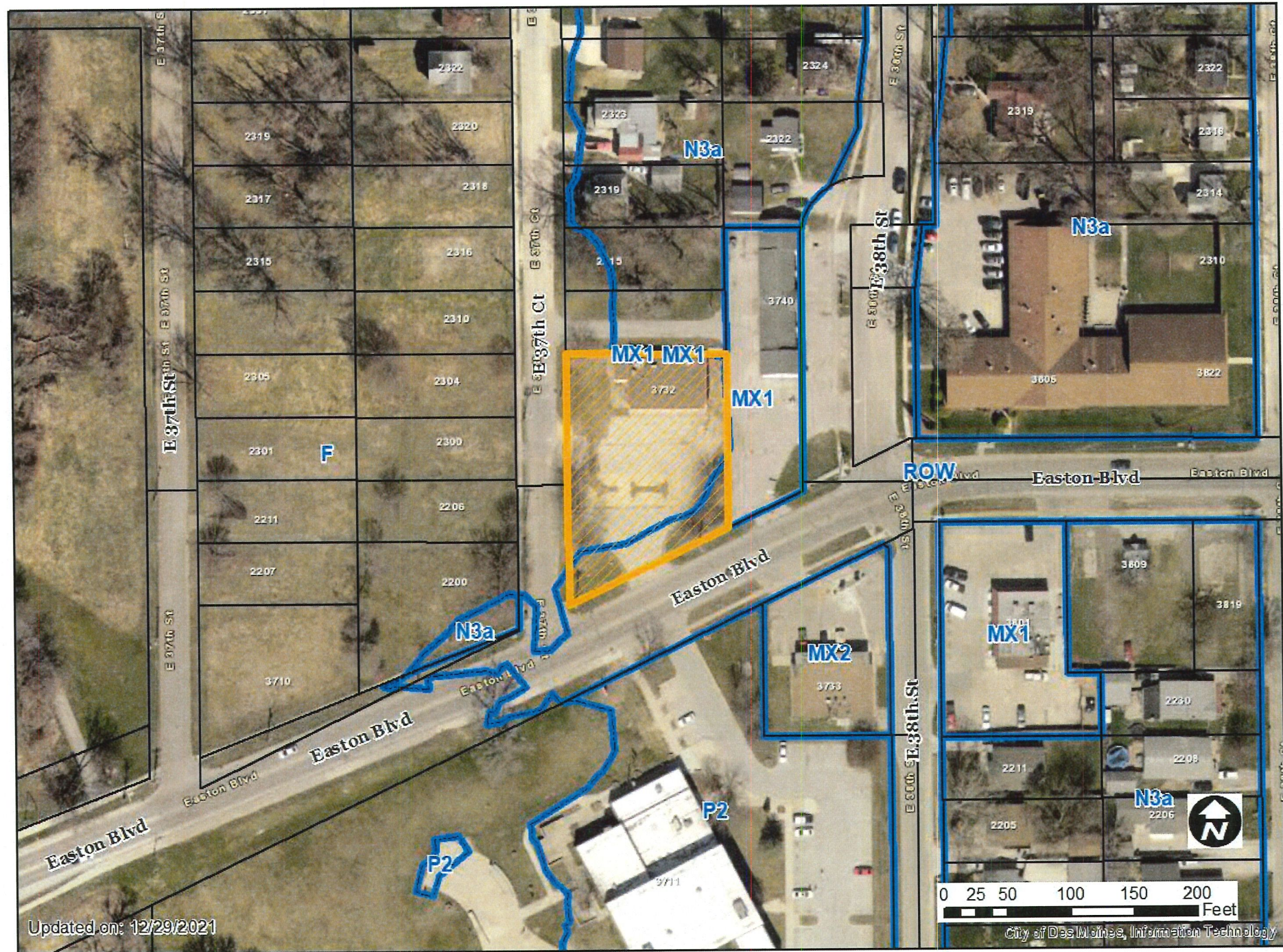
Motion passed: 12-0

Respectfully submitted,

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

Jason Van Essen, AICP  
Planning & Urban Design Administrator

JMV:tjh



Updated on: 12/29/2021

1 inch = 100 feet



E 38TH AVE  
BLVD

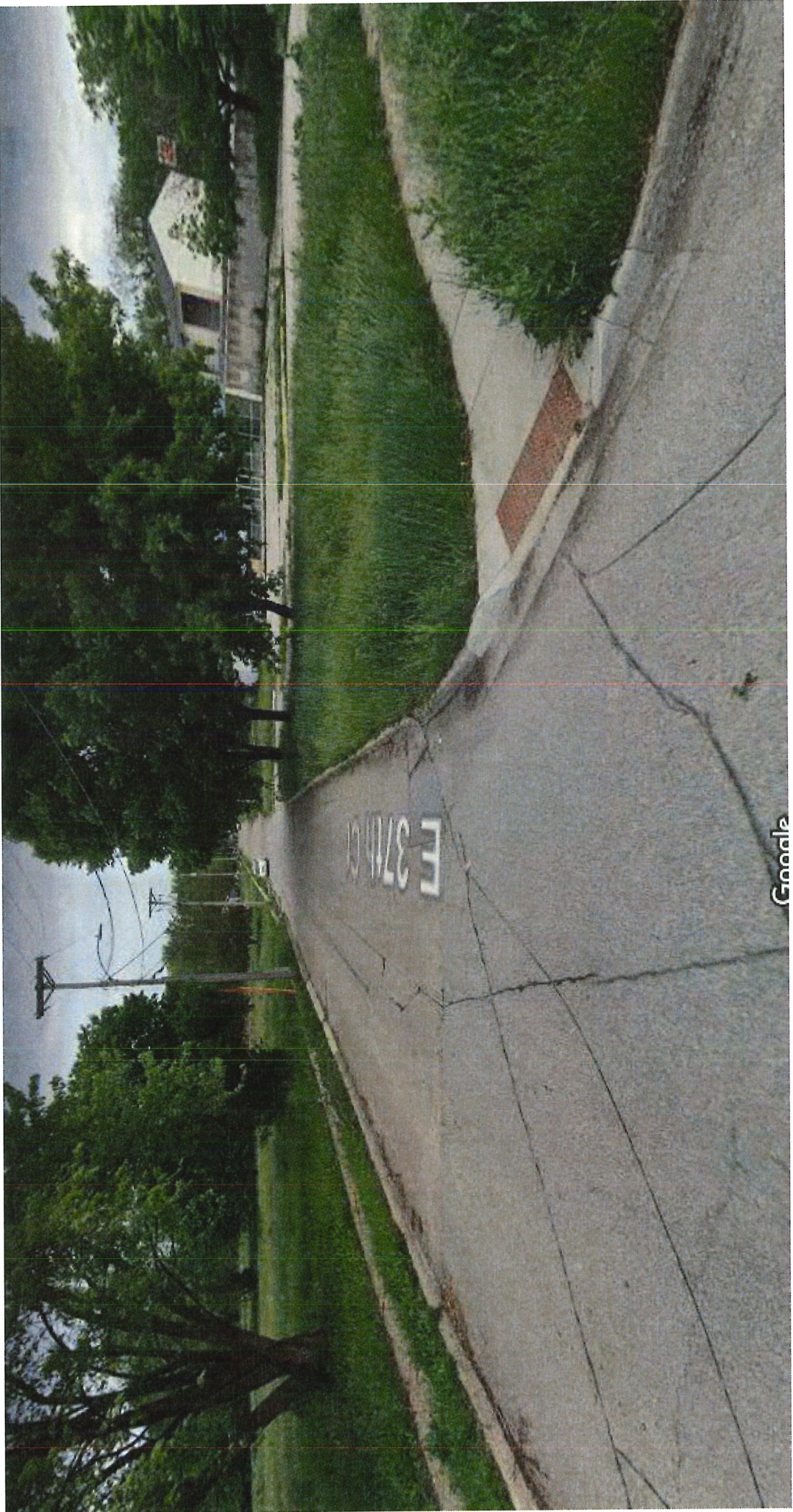
Easton Blvd

E 37th Ct

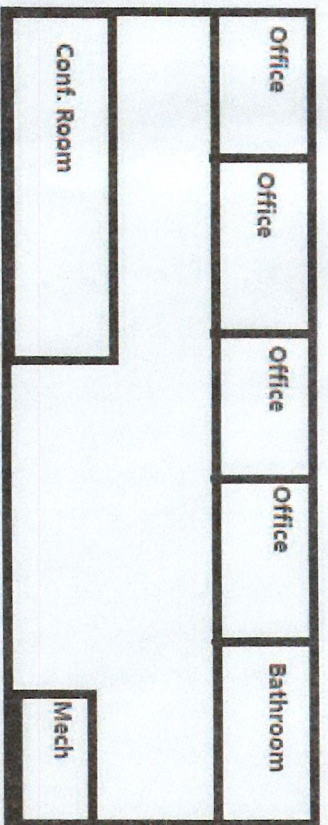


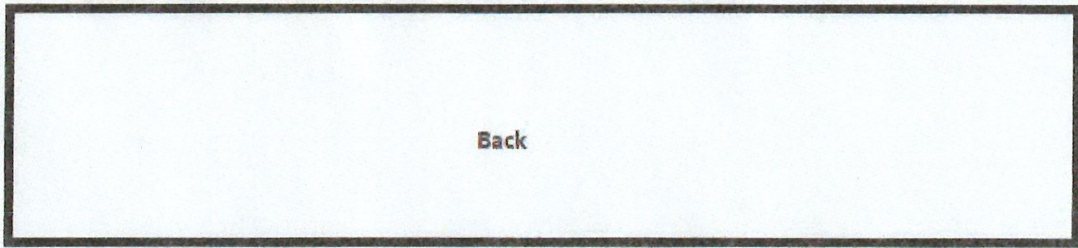
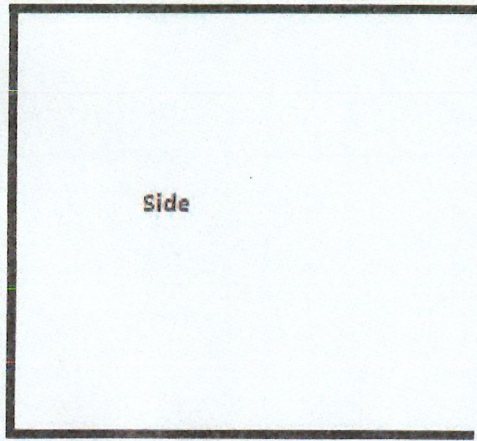
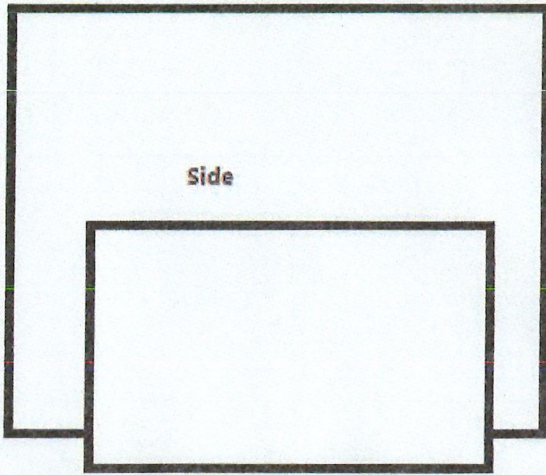
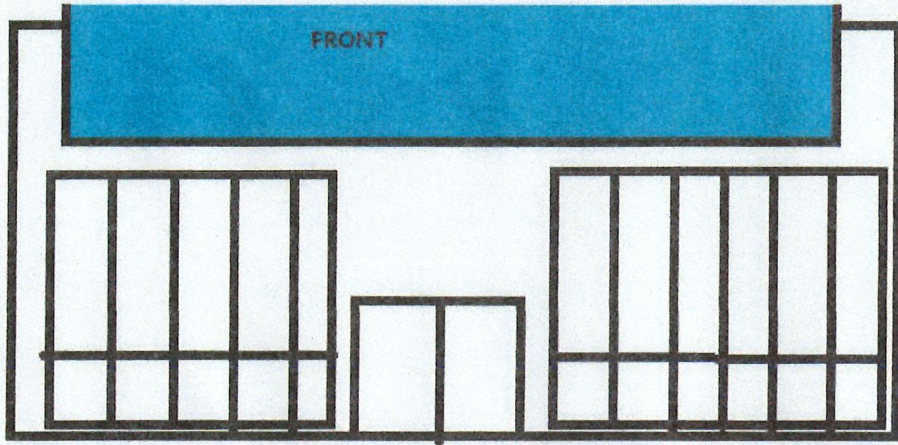
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Grade



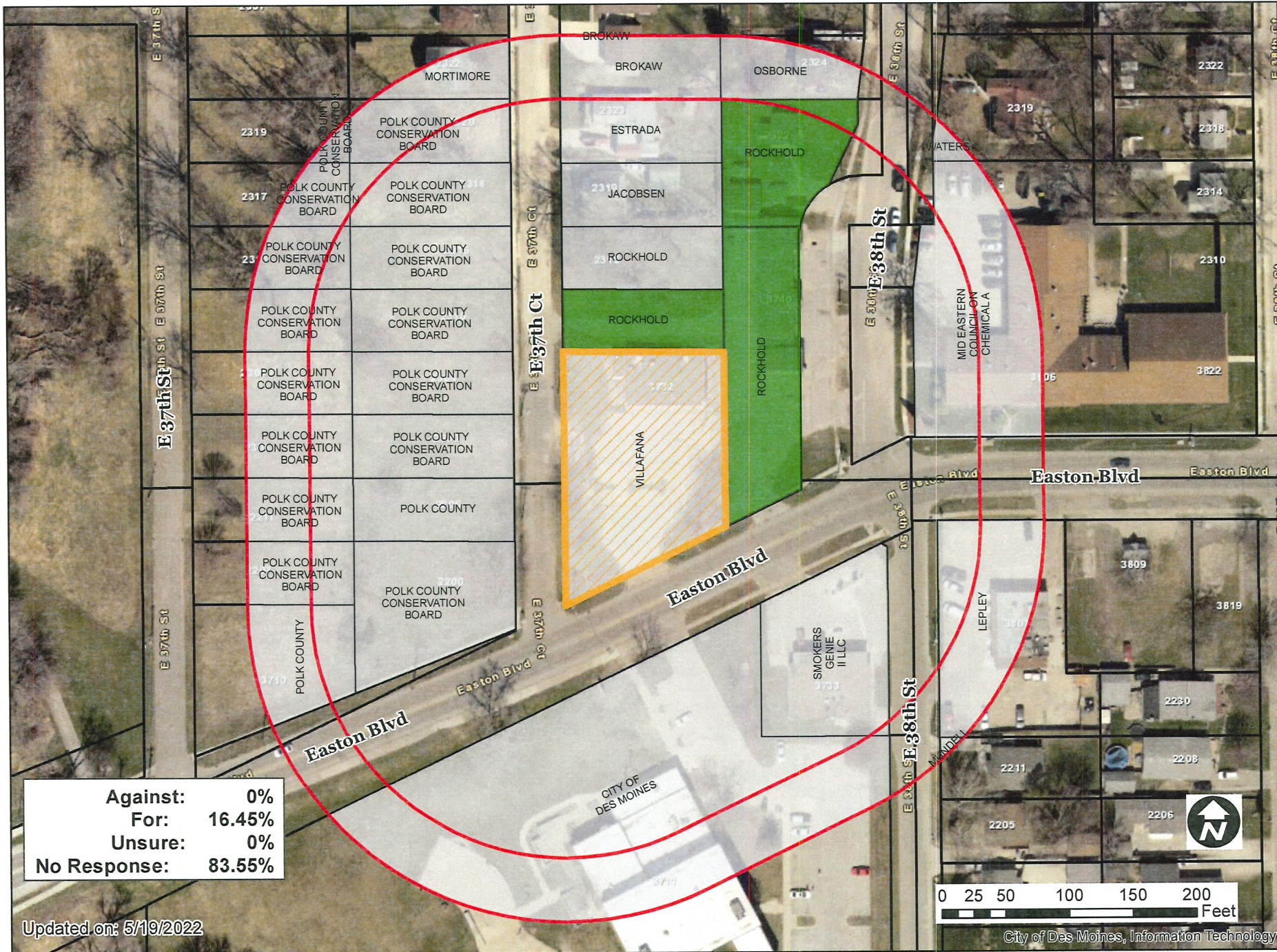






# Jamie Villafana, 3732 Easton Boulevard

ZONG-2021-000048



1 inch = 100 feet

ZONG-2021-000048

Date: 1/20/2022 <sup>32</sup>

Item:

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature:

Name:

Address:

*Judy A. Wilson*  
Judy A. Wilson  
17025 SE 29th Ave.

Staff Use Only

RECEIVED  
COMMUNITY DEVELOPMENT

JAN 27 2022

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

*Vaccant Buildings are Bad for neighbors*

ZONG-2021-000048

Date: 1-20-2022

Item:

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature:

Name:

Address:

*Alan Rockhold*  
Alan Rockhold  
7025 SE 29 Ave *Neasen + Hill*

Staff Use Only

RECEIVED  
COMMUNITY DEVELOPMENT

JAN 27 2022

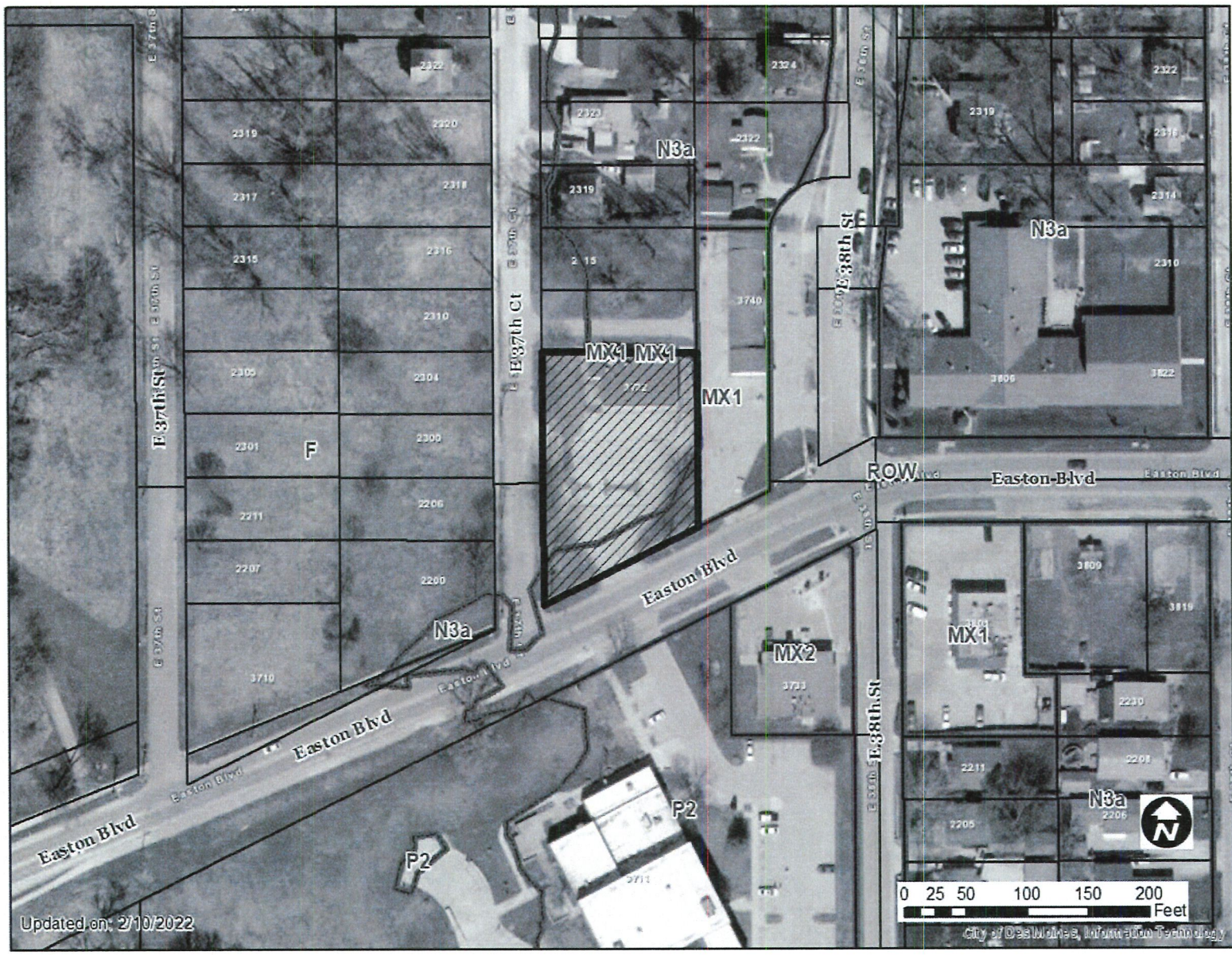
Reason for opposing or approving this request may be listed below:

\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

22

Jamie Villafana, 3732 Easton Boulevard

ZONG-2021-000048



1 inch = 100 feet