

.....
Date November 7, 2022

RESOLUTION SETTING HEARING ON REQUEST FROM SHELDON RONEY (OWNER) FOR PROPERTY LOCATED AT 1626 EAST PARK AVENUE TO AMEND PLANDSM TO REVISE THE FUTURE LAND USE DESIGNATION FROM LOW DENSITY RESIDENTIAL USE TO COMMUNITY MIXED USE AND TO REZONE THE PROPERTY FROM “N3A” NEIGHBORHOOD DISTRICT TO “MX3” MIXED USE DISTRICT TO ALLOW THE USE OF AN ACCESSORY STRUCTURE FOR A MOTOR VEHICLE REPAIR BUSINESS

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on October 20, 2022, its members voted 12-0 in support of a motion to recommend **DENIAL** of a request from Sheldon Roney (Owner), to determine the requested rezoning is not in conformance with the PlanDSM Creating Our Tomorrow Comprehensive Plan, to amend the PlanDSM: Creating Our Tomorrow future land use designation for Property at 1626 East Park Avenue from Low Density Residential Use to Community Mixed Use; to rezone the Property from “N3a” Neighborhood District to “MX3” Mixed Use District to allow the use of an accessory structure for a motor vehicle repair business:

WHEREAS, the Property is legally described as follows:

Lot 3 in SPOSETO HEIGHTS NO. 4 an Official Plat, except that portion of Lot 3 conveyed in Book 5122, Page 318 to the City of Des Moines, all 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 November 21, 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.



Roll Call Number

Agenda Item Number

22

Date November 7, 2022

MOVED BY _____ TO ADOPT. SECOND BY _____.

FORM APPROVED:

/s/ Lisa A. Wieland
Lisa A. Wieland
Assistant City Attorney

(ZONG-2022-000084 & 2022-000058)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
SHEUMAKER				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED	APPROVED			

CERTIFICATE

I, LAURA BAUMGARTNER, 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 11/7/22

Agenda Item 22

Roll Call # _____

November 1, 2022

Communication from the City Plan and Zoning Commission advising that at their October 20, 2022 meeting, the following action was taken regarding a request from Sheldon Roney (owner) to rezone property located at 1626 East Park Avenue from “N3a” Neighborhood District to “MX3” Mixed Use District to allow the use of the property for a “Vehicle Sales and Service - Vehicle Maintenance/Repair, Minor” 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			
Katie Gillette	X			

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

Part B) Denial of the request to amend the PlanDSM Creating Our Tomorrow Plan Future Land Use designation for the subject property from Low Density Residential to Community Mixed.

Part C) Denial of the proposed rezoning from “N3a” Neighborhood District to “MX3” Mixed Use District.

Written Responses

2 in Favor

0 in opposition

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 Density Residential.

Part B) Staff recommends denial of the request to amend the PlanDSM Creating Our Tomorrow Plan Future Land Use designation for the subject property from Low Density Residential to Community Mixed.

Part C) Staff recommends denial of the proposed rezoning from "N3a" Neighborhood District to "MX3" Mixed Use District.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

- 1. Purpose of Request:** The applicant is proposing to rezone the subject property to allow continued use of the 32-foot by 48-foot (1,536 square feet) accessory structure for a general motor vehicle repair business. This business was previously allowed to temporarily operate until August 31, 2021, in accordance with a temporary Special Permit for a Home Occupation that was granted by the Zoning Board of Adjustment on August 22, 2018.

In 2019, the City adopted a new zoning ordinance (City Code Chapter 134). In accordance with City Code Section 134-3.9.4, a use that falls into the "Vehicle Sales and Service - Vehicle Maintenance/Repair, Minor" category is not eligible to be considered as a Home Occupation. Therefore, in order for a general motor vehicle repair business to operate on the property, it needs to be rezoned to a district that allows the "Vehicle Sales and Service - Vehicle Maintenance/Repair, Minor" category. Therefore, the applicant has requested that the property be rezoned to "MX3" Mixed Use District.

- 2. Size of Site:** The site is approximately 63,917 square feet (1.47 acres) in area.
- 3. Existing Zoning (site):** "N3a" Neighborhood District.
- 4. Existing Land Use (site):** The site consists of a one-story one household dwelling and detached garage. The principal dwelling and detached garage sit back from East Park Avenue toward the northern portion of the lot. There is a long driveway accessing from East Park Avenue and an apron to the west of the driveway from the existing house up to the west property line. There is a solid fence screening the apron area used for vehicle storage from East Park Avenue. There is a chain link fence separating the area from residential property to the west

5. Adjacent Land Use and Zoning:

North – “N3a”; Uses are one-household residential.

South – “N3a”; Uses are one-household residential.

East – “N3a”; Uses are one-household residential.

West – “N3a”; Uses are one-household residential.

6. General Neighborhood/Area Land Uses: The subject property is located along the north side of East Park Avenue at the northwest corner of the intersection with Southeast 17th Street. The surrounding area consists of residential uses.

7. Applicable Recognized Neighborhood(s): The subject property is within Pioneer Park Neighborhood. All neighborhood associations were notified of the public hearing by mailing of the Preliminary Agenda on September 30, 2022, and by mailing of the Final Agenda on October 10, 2022. Additionally, separate notifications of the hearing for this specific item were mailed on October 30, 2022 (20 days prior to the public hearing) and October 14, 2022 (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. The Pioneer Park Neighborhood mailings were sent to Chantelle Stotts, 1900 East Lacona Avenue, Des Moines, IA 50320.

The applicant is responsible for conducting a neighborhood outreach meeting. The applicant will provide a summary of the meeting at the public hearing.

8. Relevant Zoning History: On August 22, 2018, the Zoning Board of Adjustment temporarily granted a Special Permit for a Home Occupation to allow the 32-foot by 48-foot (1,536 square feet) accessory structure on the property to be used for a general motor vehicle repair business. The temporary Special Permit was granted subject to the following conditions:

1. The Special Permit shall expire in three (3) years on August 31, 2021, at which time the business must cease operating in this location unless the Zoning Board of Adjustment has granted a subsequent Special Permit for a Home Occupation.
2. There shall be no more than four (4) vehicles associated with the business that are parked outside on the premise at any given time. Any vehicle parked outside shall be located behind a privacy fence.
3. The business shall comply with the following guidelines required for any Special Permit for a Home Occupation:
 - a. The occupation shall be clearly incidental to or secondary to the residential use of the premises.
 - b. No more than two non-resident individuals shall be engaged or employed in the business upon the premises.
 - c. One sign advertising the business is allowed, attached to the residence. Such sign not to exceed one square foot in total area. Freestanding signs are not permitted.

- d. The occupation shall not cause or produce noise, vibration, smoke, dust, odor, or heat or any other impact of a type or quantity not in keeping with the residential character of the neighborhood.
- e. No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive, or other restricted material of a type or quantity not ordinarily used for household purposes shall be used or stored on the premises, and the applicant must identify the proper disposition of any hazardous waste. No activity will be allowed which is hazardous to the public health, safety or welfare.
- f. There are no outside operation, storage or display of materials or products.
- g. Not more than one-half of the area of one floor level of the dwelling or accessory building shall be used for such business, including the storage of materials or products.
- h. No alteration of the residential appearance of the premises shall occur.
- i. Hours of operation must not infringe on the residential atmosphere of the neighborhood. All outside activity related to the business must cease between the hours of 9:30 p.m. and 7:00 a.m.
- j. The home occupation, including any business storage, shall not displace or impede use of parking spaces required by this chapter. The home occupation shall not displace, interfere with or impede access to public parking.
- k. The home occupation shall not cause the congregation of business employees at the site or congestion in the availability of on-street parking.
- l. The business must be of a type that would be permitted anywhere in the C-2 general retail and highway oriented commercial district without approval from the board of adjustment.
- m. Any special permit for a home occupation shall be in effect only for so long as the premises are owned and occupied by the applicant.
- n. Any special permit for a home occupation shall be subject to reconsideration by the board if at any time the zoning enforcement officer determines that the conduct of the occupation has become detrimental to the neighborhood.

In 2019, the City adopted a new zoning ordinance (City Code Chapter 134). In accordance with City Code Section 134-3.9.4, a use that falls into the “Vehicle Sales and Service - Vehicle Maintenance/Repair, Minor” category is not eligible to be considered as a Home Occupation. Therefore, in order for a motor vehicle repair business to be permitted, the property needs to be rezoned to a district that allows the “Vehicle Sales and Service - Vehicle Maintenance/Repair, Minor” use category, such as the “MX3” Mixed Use District.

9. PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation: Low 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 applicant is proposing to rezone the property from “N3a” District to “MX3” District in order to allow a “Vehicle Sales and Service - Vehicle Maintenance/Repair, Minor” use on the property.

The Zoning Ordinance states that “‘N3a’ is intended to preserve the scale and character of residential neighborhoods developed predominantly during the 1950s, 1960s, and 1970s, typically in the ranch or split-level style pursuant to House B building type in section 135-2.14 of this code.

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 automobile. This district accommodates higher intensity commercial uses at a smaller scale.

The requested “MX3” Mixed Use District requires that the land use designation on the Future Land Use Map be amended from Low-Density Residential to Community Mixed Use.

PlanDSM describes these designations as follows:

Low Density Residential: Areas developed with primarily single family and two-family residential units with up to 6 dwelling units per net acre.

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 is appropriate for this property. As stated in its definition, the Community Mixed Use designation should be located along high-capacity transit corridors, such as Southeast 14th Street and/or East Army Post Road, or at the intersection of transportation corridors, such as at the intersection of Southeast 14th Street and East Park Avenue. The subject property is located along East Park Avenue in an area that primarily contains low-density residential uses. Accommodating a use that requires the “Vehicle Sales and Service - Vehicle Maintenance/Repair, Minor” use could have a significant negative impact on adjoining properties.

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.

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

3. **Staff Rationale:** Given the location of the property primarily within a neighborhood, staff does not believe that rezoning the subject property to “MX3” Mixed Use District would be appropriate. This district would allow higher intensity commercial uses bringing increased traffic, congestion, and the potential for uses not typically found or desirable within a residential neighborhood.

SUMMARY OF DISCUSSION

Frank Dunn-Young presented staff report and recommendation.

Sheldon Roney, 1626 E. Park Avenue stated a special use permit for a home-based, auto repair business was approved by the Zoning Board of Adjustment in 2018. He is now seeking a rezoning because there is no option for him to continue with the special use permit. He doesn't agree with the property being rezoned and would rather seek a use variance through the Zoning Board of Adjustment.

Emily Webb asked Mr. Roney to clarify if he's against the rezoning.

Sheldon Roney stated he would like the ability to seek a use variance through the Zoning Board of Adjustment.

Jason Van Essen stated he would not be able to seek a use variance until being denied a rezoning. Under the previous ordinance, auto repair was eligible for home occupation. Given the investment that has been made by the applicant, he likely could demonstrate a hardship in his case for a use variance.

CHAIRPERSON OPENED THE PUBLIC HEARING

Kelly Mills, 1610 E. Park Avenue stated she has never had an issue with Sheldon's home business. She doesn't want the property rezoned to commercial due to the potential for a new owner should he sell the property.

Will Page asked how long the use variance would be valid if approved by the Zoning Board of Adjustment.

Jason Van Essen stated it would be valid as long as he continues to operate unless the Zoning Board of Adjustment chooses a certain timeframe.

Johnny Alcivar asked if these types of cases could be considered under the consent agenda if city staff knows the applicant doesn't want the property rezoned and would rather seek a use variance.

Jason Van Essen stated if staff has a sense that the applicant understands and is favorable, that could be a potential for future cases like this.

CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION:

Emily Webb made a motion for:

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

Part B) Denial of the request to amend the PlanDSM Creating Our Tomorrow Plan Future Land Use designation for the subject property from Low Density Residential to Community Mixed.

Part C) Denial of the proposed rezoning from "N3a" Neighborhood District to "MX3" Mixed Use District.

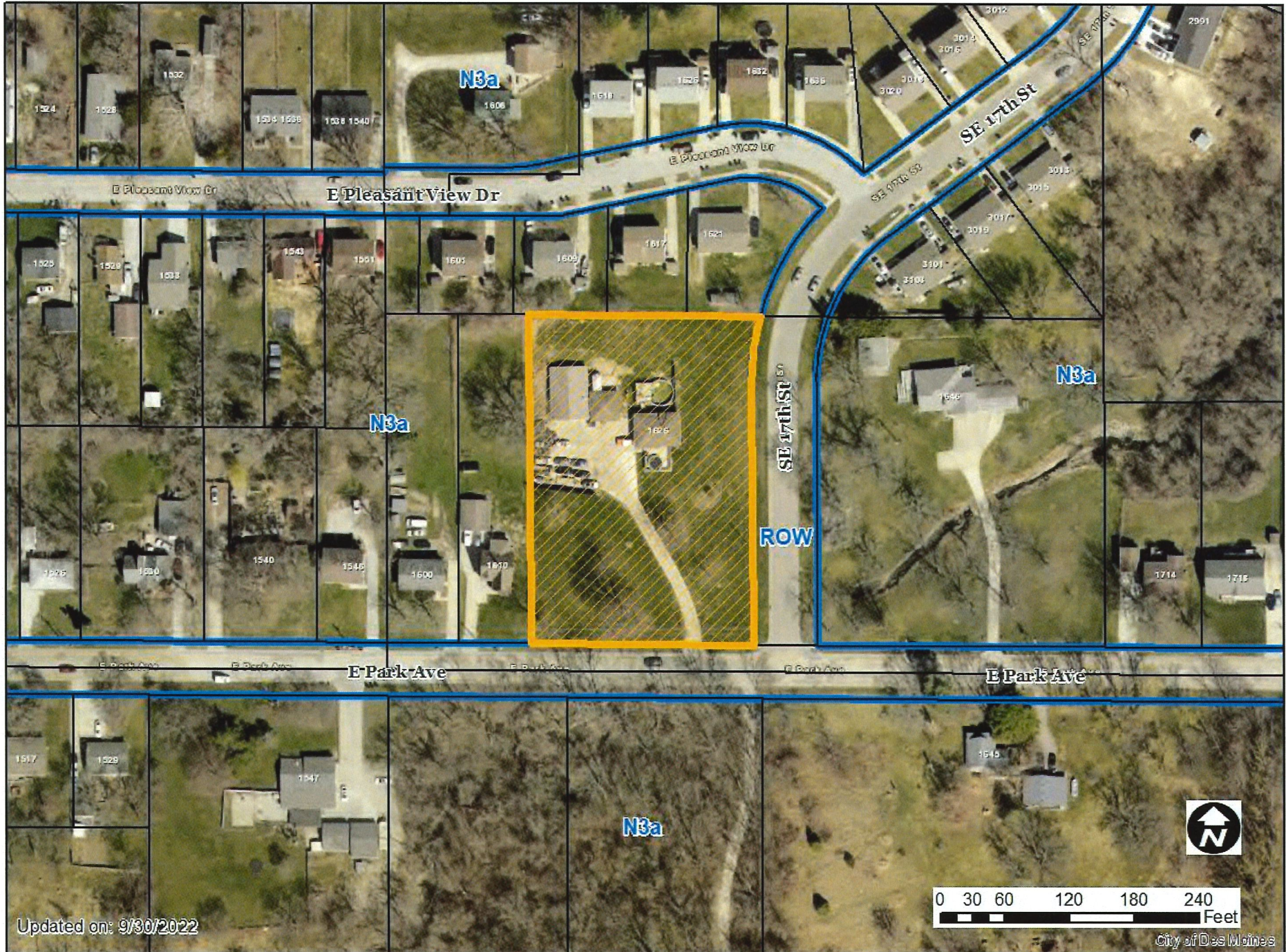
Motion passed: 12-0

Respectfully submitted,

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

Jason Van Essen, AICP
Planning & Urban Design Administrator

JMV:tjh



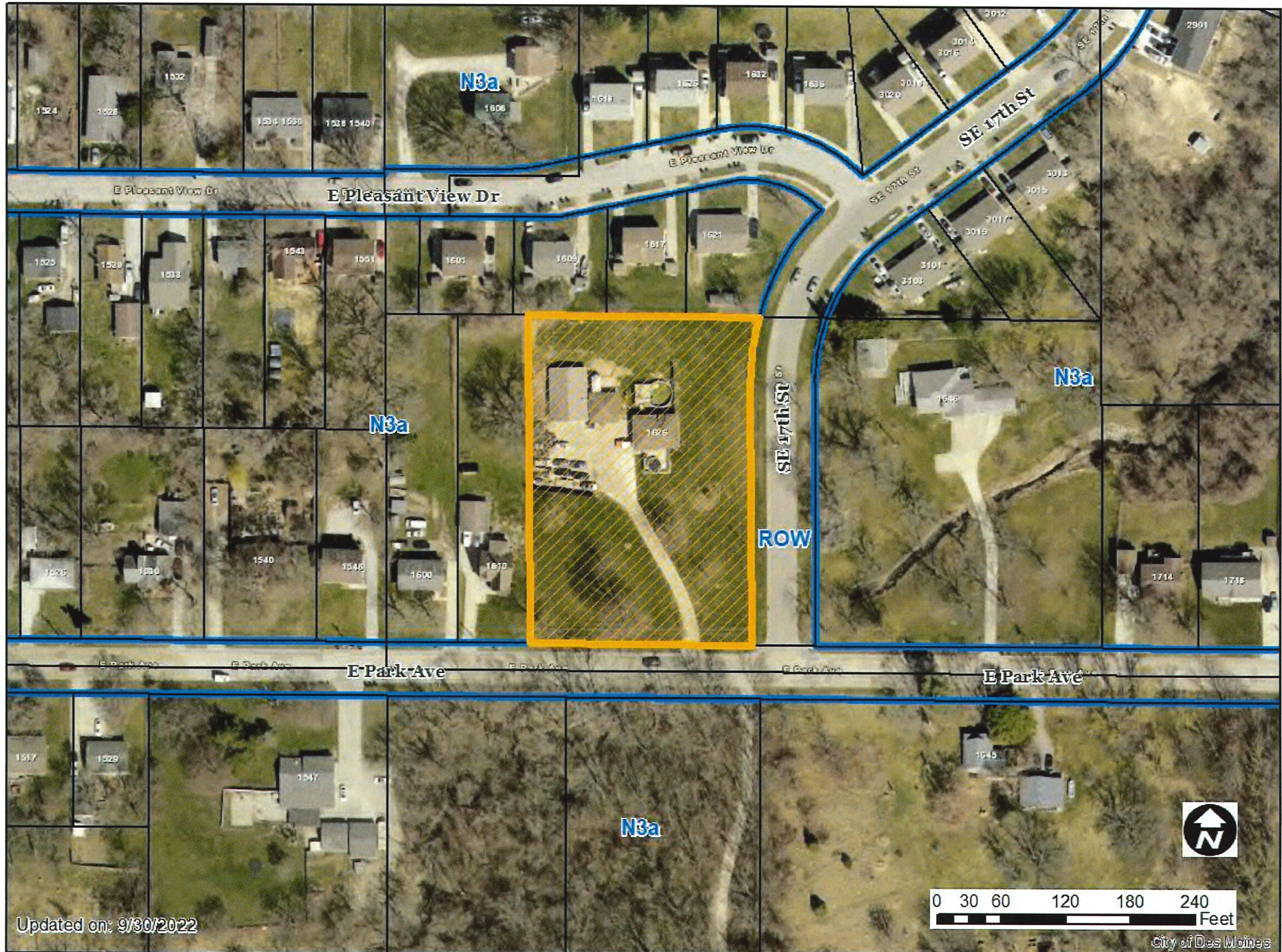
Updated on: 9/30/2022

City of Des Moines

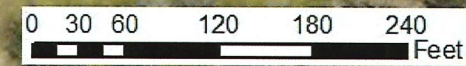
1 inch = 118 feet

Sheldon Roney, 1626 East Park Avenue

ZONG-2022-000084



Updated on: 9/30/2022



City of Des Moines

1 inch = 118 feet

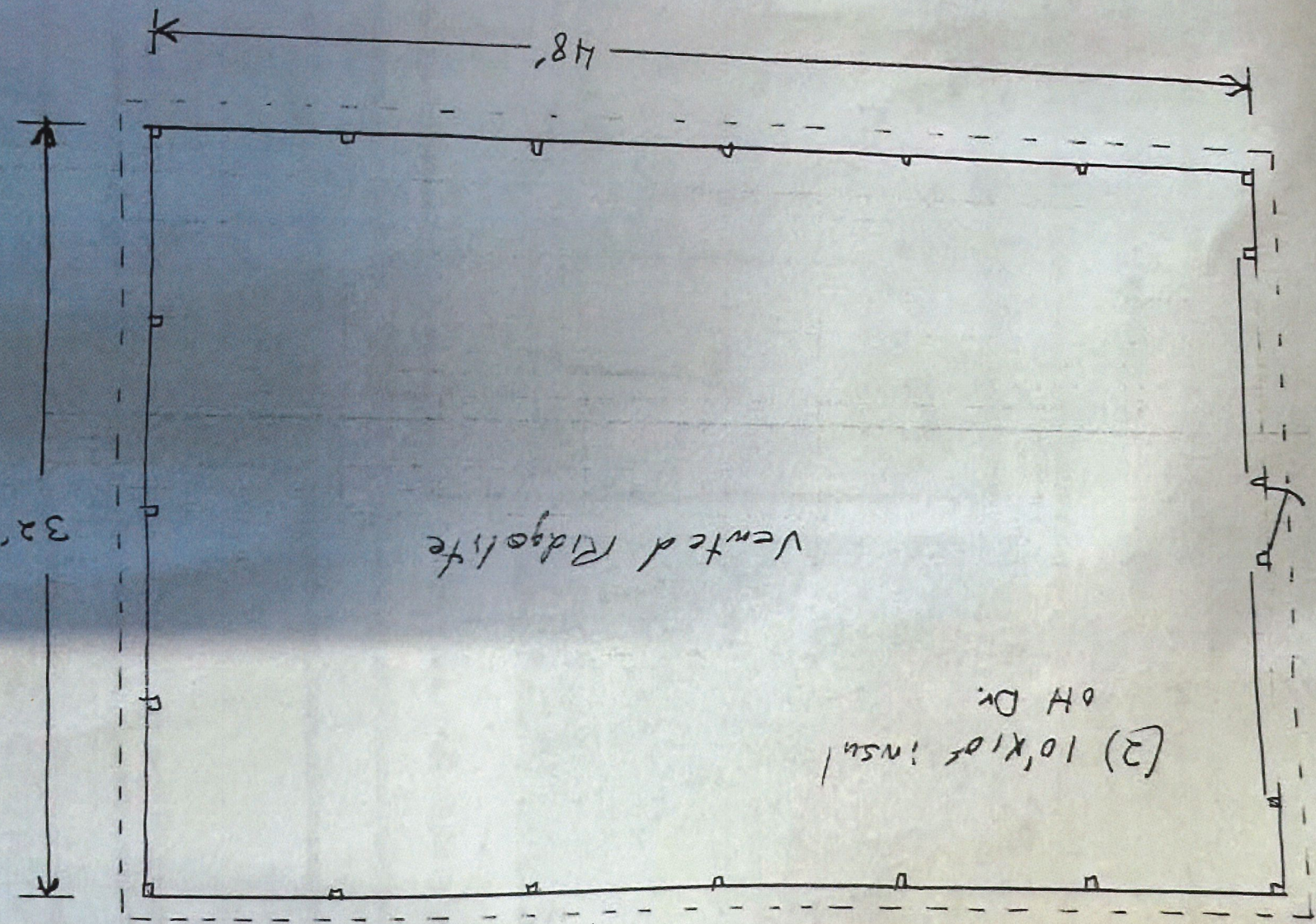


SE 17th St

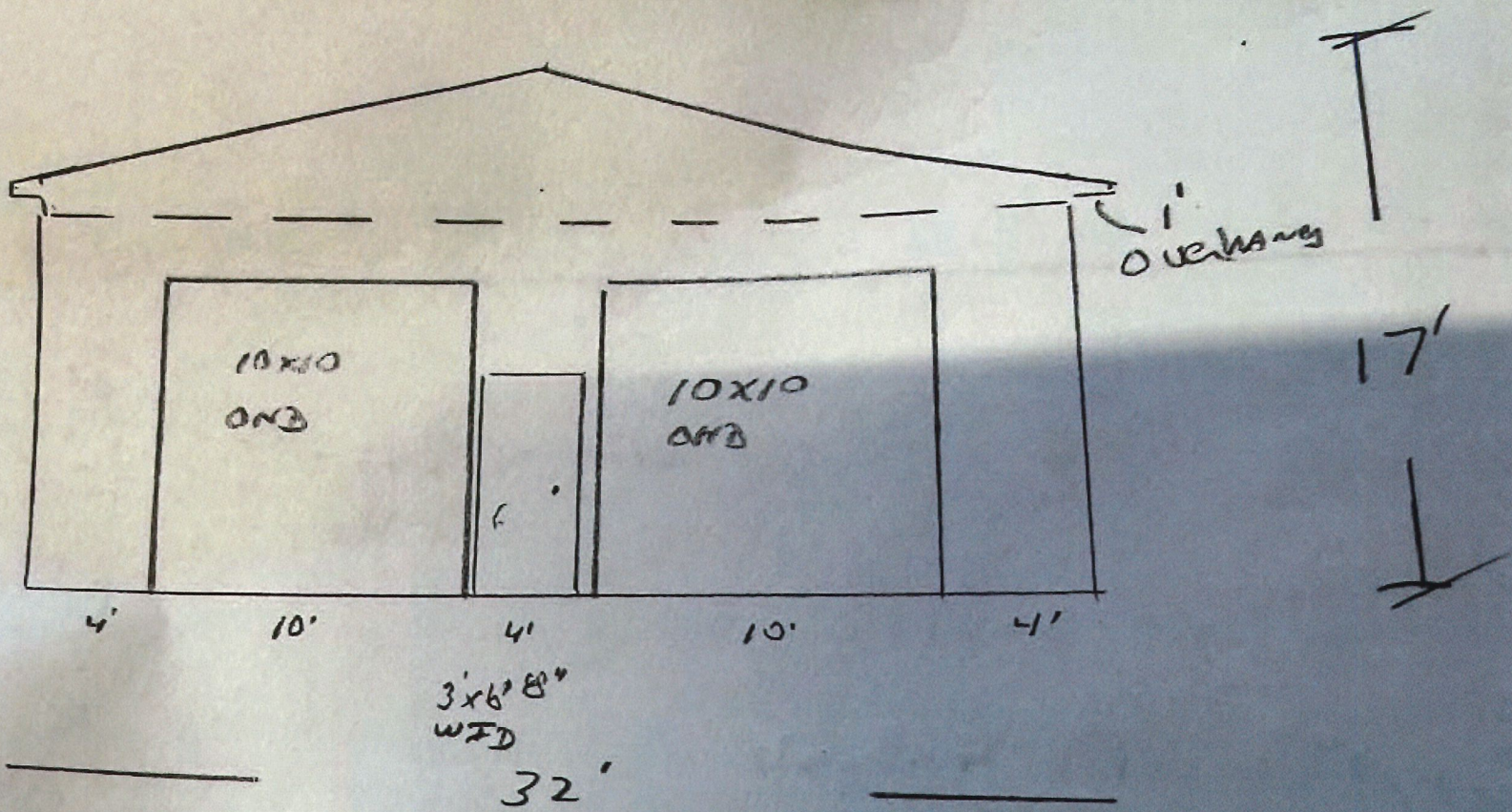




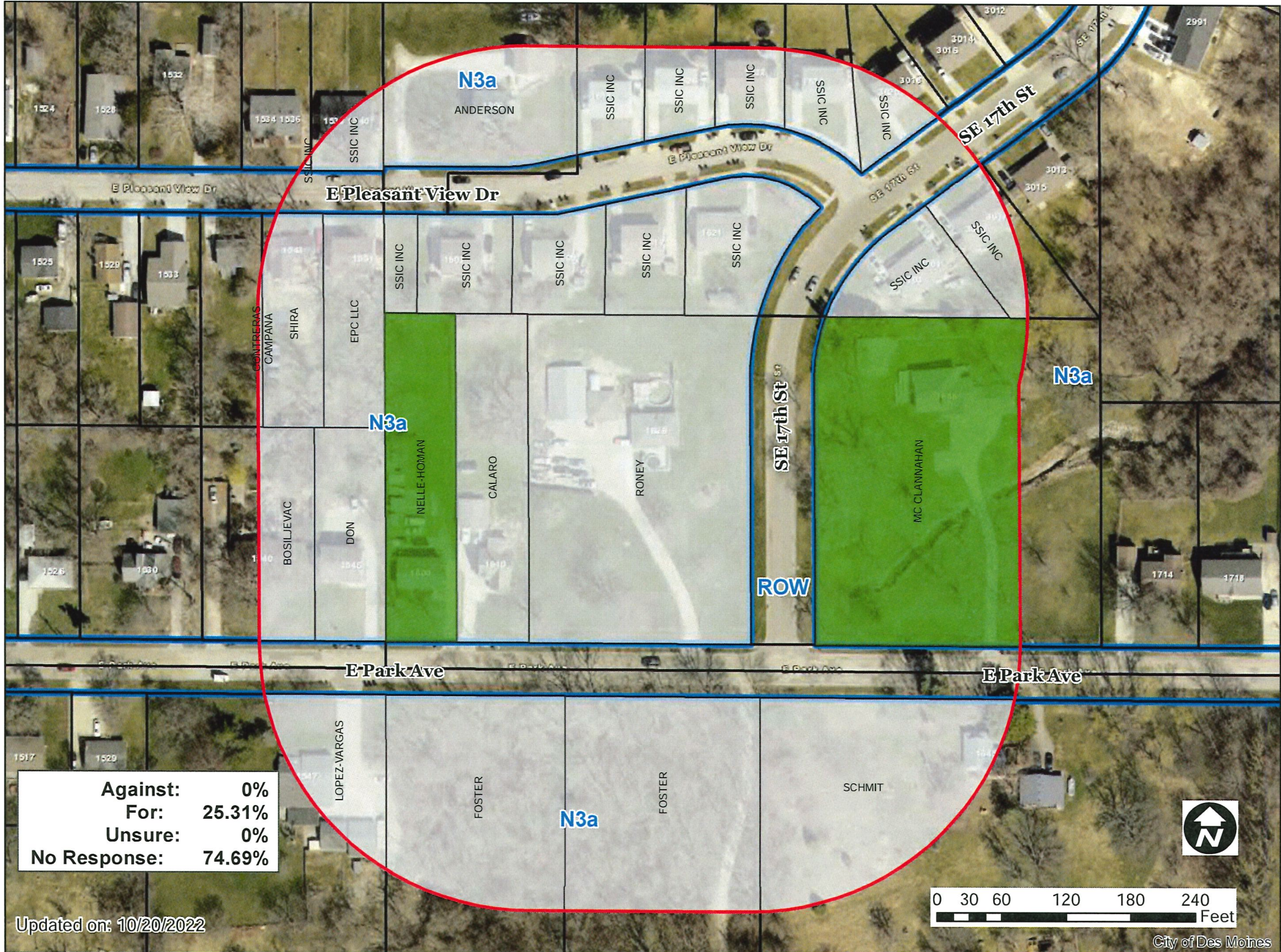
*Option: 2" PSK on roof

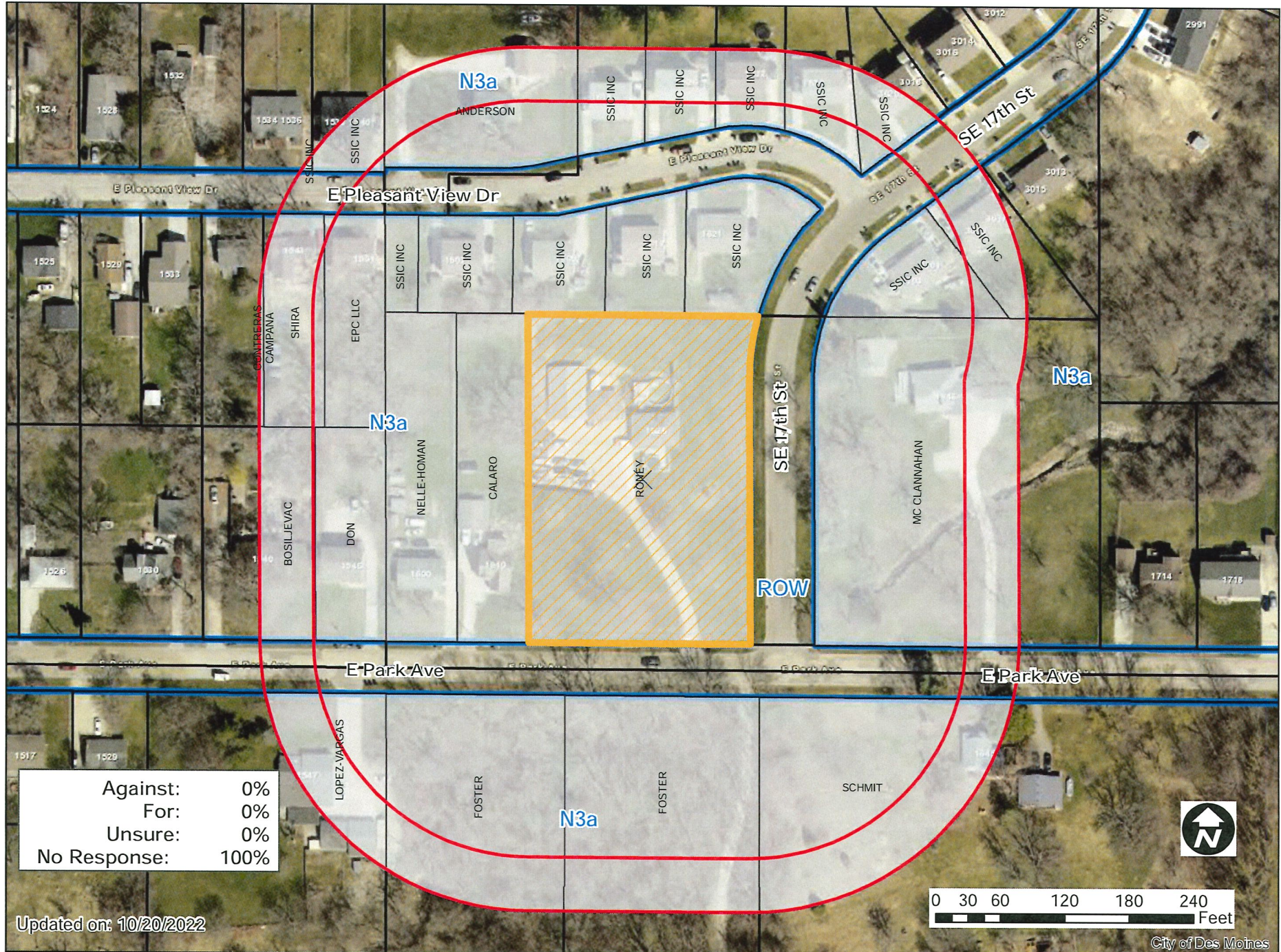


12'
to ceiling



3x6" WFD
32'





Item: ZONG-2022-000056

Date: 10/13/2022 22

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

OCT 17 2022

Signature: Linda McClannahan

Name: Linda McClannahan

Address: 1646 E. Park Avenue

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

Item: ZONG-2022-000055

Date: 10-13-2022

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

OCT 17 2022

Signature: Linda Homan

Name: Linda Homan

Address: 1600 E Park

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

Sheldon Roney is a good

neighbor who bothers no one

From: [Chakraborty, Sreyoshi](#)
To: [Dunn-Young, Frank A.](#)
Subject: Fwd: ZONG-2022-000056
Date: Thursday, October 20, 2022 9:10:48 AM

Get [Outlook for iOS](#)

From: Pioneer Park NA <pioneerparkna@gmail.com>
Sent: Wednesday, October 19, 2022 8:05 PM
To: Chakraborty, Sreyoshi <SChakraborty@dmgov.org>
Cc: Chantelle Stotts <chantelleburrell@gmail.com>; Dave Loffredo <ponderer2@mchsi.com>
Subject: ZONG-2022-000056

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good evening,

My name is Scott Jimmerson and I am the President of Pioneer Park Neighborhood Association. I received a letter concerning the property at 1626 East Park Ave. The owner, Sheldon Roney, was wanting to rezone his property to a MX3. I never did receive a follow card indicating support or opposition. We had our public meeting tonight and he did attend it. He explained his thoughts on the matter and as an association we are opposing his request to rezone to a MX3. We currently have no issues with the way he has been using the property and would like it to stay this way. We fear that if the property gets rezoned to a MX3 it will move the neighborhood in a direction we do not support. Please contact me if you have any questions about this matter.

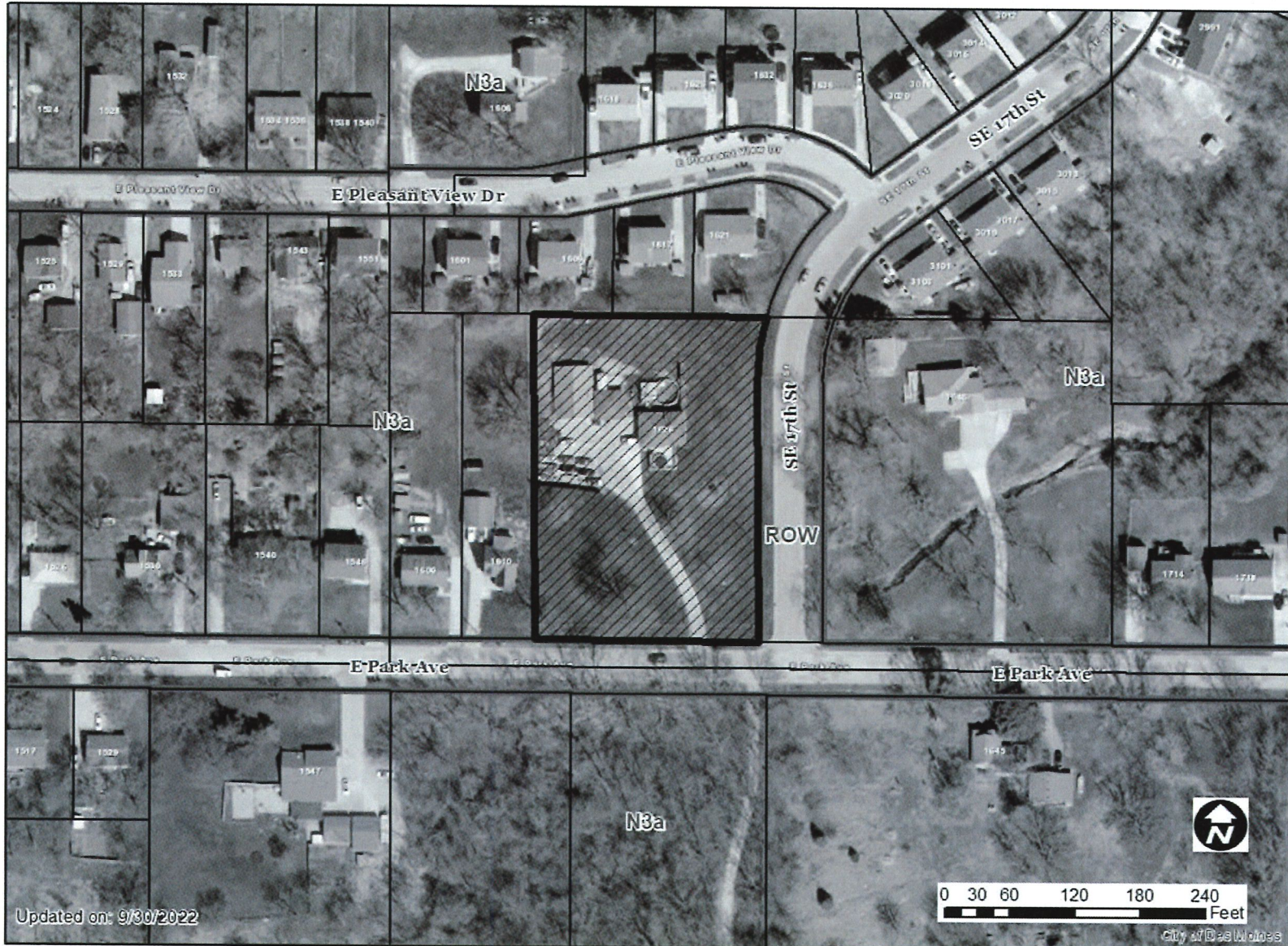
Thank you!

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Scott H Jimmerson
Pioneer Park NA
515-360-5016
www.PioneerParkNA.com

Sheldon Roney, 1626 East Park Avenue

ZONG-2022-000056



1 inch = 118 feet