



Date October 2, 2023

RESOLUTION SETTING HEARING ON REQUEST FROM BREW OIL, LLC (OWNER), REPRESENTED BY RUPINDER KAUR (OFFICER) TO AMEND PLANDSM TO REVISE THE FUTURE LAND USE DESIGNATION AND TO REZONE THE PROPERTY LOCATED AT 4140 PARK AVENUE

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 21, 2023, its members voted 8-0 in support of a motion to recommend DENIAL of a request from Brew Oil, LLC (owner), represented by Rupinder Kaur (officer), the requested rezoning for Property located at 4140 Park Avenue is not in conformance with the existing PlanDSM future land use designation of Neighborhood Mixed Use; to amend the PlanDSM: Creating Our Tomorrow future land use designation for Property located at 4140 Park Avenue from Neighborhood Mixed Use to Community Mixed Use; to rezone the Property from "RX1" Mixed Use District to "MX3" Mixed Use District, to allow the redevelopment of an existing building as a convenience store with liquor sales, and determined the requested rezoning is in conformance with the PlanDSM Creating Our Tomorrow Comprehensive Plan:

WHEREAS, the Property is legally described as follows:

THE NORTH 200 FEET OF THE WEST 173 FEET OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 19, TOWNSHIP 78 NORTH, RANGE 24, WEST OF THE 5TH P.M., NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, EXCEPT LEGALLY ESTABLISHED HIGHWAYS.

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 and proposed rezoning are to be considered, and at which time the City Council will hear both those who oppose and those who favor the proposals, shall be held at 5:00 p.m. on October 23, 2023 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 proposals 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

3a

Date October 2, 2023

MOVED BY _____ TO ADOPT.

SECOND BY _____.

FORM APPROVED:

/s/ Chas M. Cahill

Chas M. Cahill
Assistant City Attorney

(ZONG-2023-000052) (COMP-2023-000029)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
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

September 26, 2023

Communication from the City Plan and Zoning Commission advising that at their September 21, 2023 meeting, the following action was taken regarding a request from Brew Oil, LLC (owner), represented by Rupinder Kaur (officer) to rezone the property located at 4140 Park Avenue from “RX1” Mixed Use District to “MX3” Mixed Use District, to allow the redevelopment of an existing building as a convenience store with liquor sales.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 8-0 as follows.

Commission Action:	Yes	Nays	Pass	Abstain	Absent
Francis Boggus	X				
Leah Rudolphi					X
Carol Maher	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
Rick Trower	X				

APPROVAL of Part A) The proposed rezoning be found **not** in conformance with the PlanDSM: Creating Our Tomorrow Comprehensive Plan, which designates the property as Neighborhood Mixed Use.

Part B) **Denial** of the request to amend the PlanDSM future land use designation from Neighborhood Mixed Use to Community Mixed Use.

Part C) **Denial** of the rezoning of the property from “RX1” Mixed Use District to “MX3” Mixed Use District.

STAFF RECOMMENDATION TO THE P&Z COMMISSION

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Part A) Staff recommends that the proposed rezoning be found not in conformance with the PlanDSM: Creating Our Tomorrow Comprehensive Plan, which designates the property as Neighborhood Mixed Use.

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

Part C) Staff recommends denial of the rezoning of the property from "RX1" Mixed Use District to "MX3" Mixed Use District.

STAFF REPORT TO THE PLANNING COMMISSION

- 1. Purpose of Request:** The applicant is proposing to remodel the existing building for conversion to a "Limited Retail Sales" use. This use is permitted in the current "RX1" Mixed Use District and is eligible to seek a Conditional Use for wine and beer sales. The applicant has requested the rezoning to "MX3" District so that they are eligible to seek a Conditional Use for alcoholic liquor sales in addition to wine and beer sales. The submitted request indicates alcohol sales are not expected to account for more than 40 percent of the business' projected revenues.

The submitted site sketch demonstrates that the existing parking lot and driveways are proposed to be replaced with new pavement generally matching the current parking lot layout and provide a new sidewalk along Southwest 42nd Street. The sketch also demonstrates that the building would have a drive-up window for pickup of sales items on its west facade. Staff notes that City Code Section 134-3.9.9.C.3.d prohibits any dispensing of alcoholic beverages through a drive-through window.

- 2. Size of Site:** 0.51 Acres (22,341.4 square feet).
- 3. Existing Zoning (site):** "RX1" Mixed Use District.
- 4. Existing Land Use (site):** The subject property includes an existing vacant 2,646 square feet building with a surface parking lot which was previously a convenience store/gas station.
- 5. Adjacent Land Use and Zoning:**
 - North** – "NX2"; Uses are multiple-household residential buildings.
 - South** – "RX1"; Uses are a small retail business.
 - East** – "RX1"; Uses are a small retail business.
 - West** – "NX2"; Uses are multiple-household residential buildings.
- 6. General Neighborhood/Area Land Uses:** The subject property is located southeast of the intersection of Park Avenue and Southwest 42nd Street. The area includes a mix of residential uses and small-scale commercial uses in the immediate vicinity along Park Avenue.



7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Southwestern Hills Neighborhood Association. All neighborhood associations were notified of the September 21, 2023, public hearing by mailing of the Preliminary Agenda on September 1, 2023, and by mailing of the Final Agenda on September 15, 2023. Additionally, separate notifications of the hearing for this specific item were mailed on September 1, 2023 (20 days prior to the public hearing) and September 7, 2023 (10 days prior to the public hearing) to the Southwestern Hills Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

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All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Services Department on the date of the mailing. The Southwestern Hills Neighborhood mailings were sent to George Davis, 3124 SW 29th St, Des Moines, IA 50321.

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

8. **Relevant Zoning History:** NA.

9. **PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** 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 applicant has requested the property be rezoned to "MX3" Mixed Use District to allow the existing building to be used as a "Limited Retail Sales" use that could potentially sell alcoholic liquor, wine, and beer.

PlanDSM designates the subject property as "Neighborhood Mixed Use". The proposed "MX3" Mixed Use District is not consistent with this land use designation, which PlanDSM describes 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 amended to “Community Mixed Use”. PlanDSM describes this designation 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 Zoning Ordinance states that the “MX3” District 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 the Storefront, Commercial Cottage, General Building, Commercial Center, Civic Building, and Principal-Use Parking Structure.

Staff believes that higher intensity commercial uses within the “MX3” District should be focused along major corridors and nodes within the City where there are similar established uses. A “Limited Retail Sales” use with wine and beer sales is allowed a Conditional Use within the current “RX1” zoning district so long as the revenues from wine, beer, and/or tobacco products don’t exceed 40 percent of total sales. Such a “Limited Retail Sales” use is appropriate for this location. However, rezoning to the requested “MX3” District to allow alcoholic liquor sales would not be appropriate at this location, as it is incompatible with surrounding uses in this general area.

2. **Planning and Design Ordinance:** Any construction or change in use must comply with all applicable site plan and design regulations of the Planning and Design Ordinance (City Code Chapter 135). Furthermore, a Site Plan and building elevations would be required for any future development before the property can be legally occupied by the proposed use.
3. **Conditional Use:** A Conditional Use Approval from the Zoning Board of Adjustment is required for any “Limited Retail Sales” use selling alcoholic liquor, wine, and/or beer, in accordance with City Code Section 134-6.4.

SUMMARY OF DISCUSSION

Sreyoshi Chakraborty presented staff report and recommendation.

Jason Van Essen emphasized the amendment to the PlanDSM future land use plan designation as Community Mixed Use belongs on high-capacity corridors.

Carol Maher asked if the Traffic and Transportation Department recommended closing the curb cut off Park Avenue.

Sreyoshi Chakraborty stated access would be reviewed during the site plan process.

Carol Maher asked if their focus would be on coffee.



Sreyoshi Chakraborty stated they intend to provide a variety of food and beverage options.

Carol Maher asked if they could be open 24 hours a day.

Sreyoshi Chakraborty stated that would be allowed but the hours for alcohol sales would be determined with their conditional use.

Carol Maher asked if a conditional use is required for the sale of beer.

Sreyoshi Chakraborty stated any type of alcohol would require conditional use.

Abby Chungath asked if the sale of alcohol is allowed at other nearby establishments within the RX1 zoning.

Jason Van Essen stated restaurants such as Jethro's are treated differently than convenient stores.

Carol Maher noted that Casey's General store on Park Avenue does not sale liquor.

Richard McCollum, Representing Brew Oil, LLC, Sanborn, IA stated with several locations in Northwest, Iowa, they are looking to expand into Des Moines. Within their existing fuel sites, they have developed their own coffee brand, which is how Brew Oil got its name. Their focus is specialty coffee drinks but also provide products you would see at other convenience stores.

Carolyn Jension asked if their business model would collapse if they didn't sale liquor.

Richard McCollum stated no.

Abby Chungath asked if they have other locations not selling liquor.

Richard McCollum stated many of their locations do not sale liquor.

Rick Trower asked if gasoline will be sold at this location.

Richard McCollum stated no.

CHAIRPERSON OPENED THE PUBLIC HEARING

No one was present or requested to speak.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Carolyn Jension asked if the applicant would be able to seek a conditional use for beer and wine if the commission approves staff recommendation.

Jason Van Essen stated yes, the current zoning allows beer and wine sales.



COMMISSION ACTION:

Carolyn Jenison made a motion for:

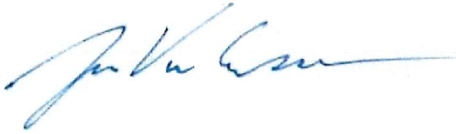
Part A) The proposed rezoning be found not in conformance with the PlanDSM: Creating Our Tomorrow Comprehensive Plan, which designates the property as Neighborhood Mixed Use.

Part B) Denial of the request to amend the PlanDSM future land use designation from Neighborhood Mixed Use to Community Mixed Use.

Part C) Denial of the rezoning of the property from "RX1" Mixed Use District to "MX3" Mixed Use District.

THE VOTE: 8-0

Respectfully submitted,



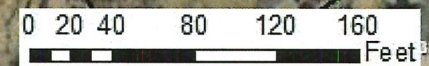
Jason Van Essen, AICP
Planning & Urban Design Administrator

JMV:tjh

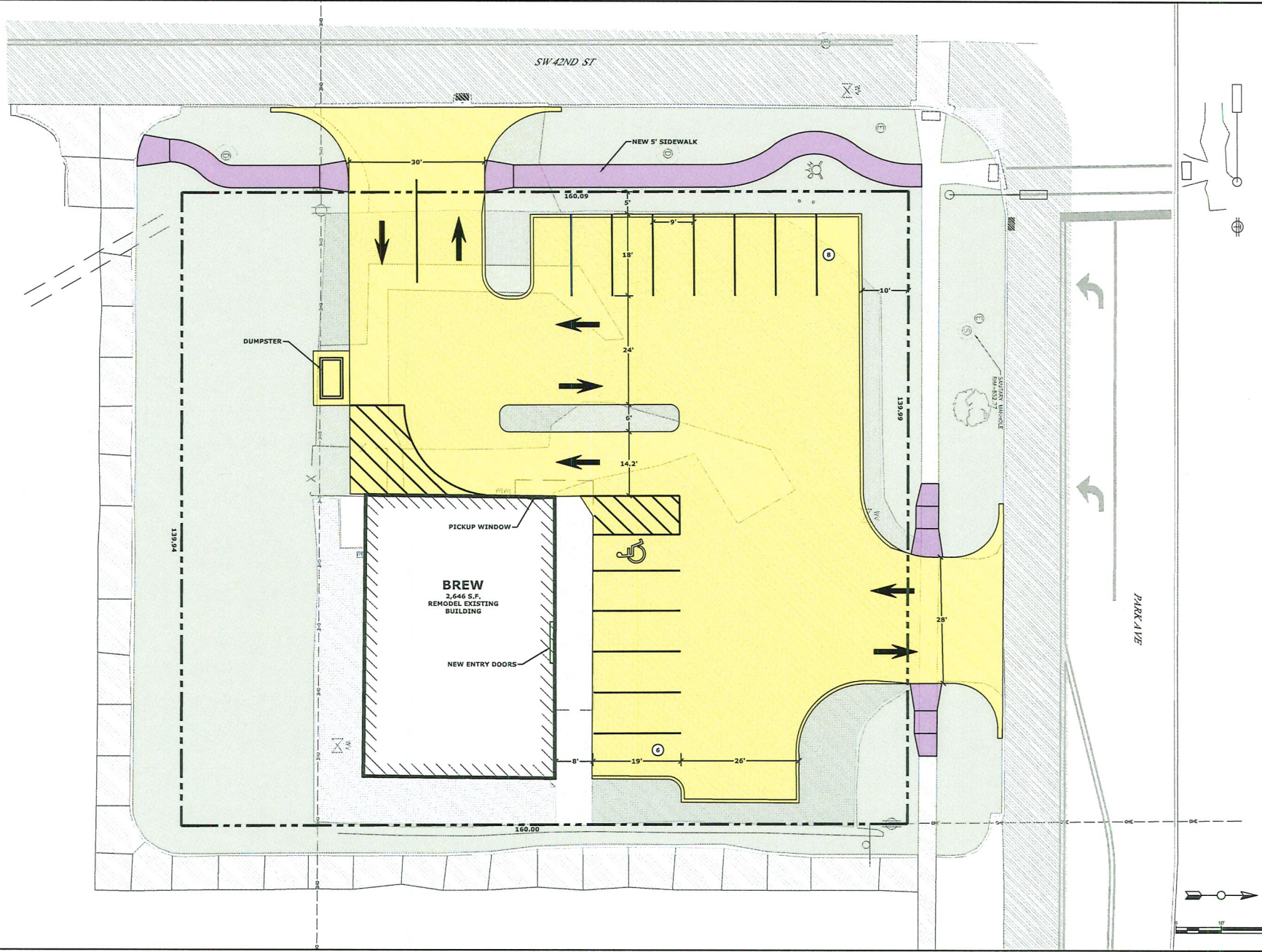




Updated on: 8/30/2023



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 PLOT STYLE TABLE LAYER NAME LAYOUT NAME
 ENVPLOT.SHEET.CB A



DATE		DIVISION		PROJECT NO.	
BY	DATE	DESIGNED	DRAWN	CHECKED	LAST UPDATE
JMG	06/23	RES	RES	RES	06/23/20
FOX STRAND 414 South 17th Street, Suite 107 Ames, Iowa 50010 Phone: (515) 233-0100 FAX: (515) 233-0103					
CONCEPTUAL SITE PLAN BREW 4140 PARK AVENUE DES MOINES, IOWA					
PROJECT NO. 7140.051					
SHEET A					

RS
RY
RS O.













Planning Staff

E-mailed to: nhmeeting@dmgov.org

RE: Summary of Neighborhood Meeting (4140 Park Ave, Des Moines rezoning to MX3)

Dear Planning Staff,

This Summary Letter is being sent on behalf of Brew Oil, LLC (Brew), an Iowa Limited Liability company. At noon, on 9/18/2023, Brew Oil, LLC, conducted a Neighborhood meeting regarding the requested zoning change to allow for liquor sales on site. The neighbors on the attached list\ (exhibit A) were each sent the attached letter (exhibit B) on September 11, 2023, via USPS, first class mail. Each was invited to participate in the Zoom meeting or call in with the provided number. Brew's general manager, Inder Singh, fielded all of the neighbors' questions and listened to comments, concerns and requests.

Ultimately, 2 neighbors, David and John, did participate. Overall, the discussion was very positive. These neighbors had questions about food options, beverage options, the focus of business for the site and renovations. Some suggestions were made about specific products, which Brew will try to stock – assuming these items are available. They both were very nice and appeared to be excited about the new operations.

Besides potentially inventory, there were really no concerns that needed to be addressed.

Sincerely,

/s/ Ryan A. Mohr

Ryan A. Mohr
Attorney for Brew Oil, L.L.C.

Exhibit B



EXAMPLE(Trustee)
4301 Park Ave Unit EXAMPLE
Des Moines, IA 50321

RE: 4140 Park Ave, Des Moines, IA 50321 - rezoning to MX3 – Neighborhood Meeting

Dear neighbor,

This letter is being sent on behalf of Brew Oil, LLC (Brew), an Iowa Limited Liability company, that is 100% family owned. Brew proudly serves Iowa residents with over 40 convenience destinations. Each site is engaged in the sale of premium coffee, wine, spirits, as well as other convenience items. Some sites also sell fuel. Brew prides itself on creating an experience for the community that showcases the very best modern convenience store experience.

Recently, Brew became a part of your community by purchasing 4140 Park Ave., Des Moines, IA 50321. Brew is in the process of rehabbing and branding the site to the standards that Brew expects, and its customers have come to enjoy – something that this community can be proud of. With that in mind, Brew is investing over a million dollars to turn this old convenience store into a destination site that offers all the regular convenience items plus, fried chicken, ice cream, specialty coffees, beer, wine, spirits and much more. However, due to the current zoning, Brew is required to request permission to sell certain alcoholic beverages. NOTE: Brew only sells such beverages for off-site consumption.

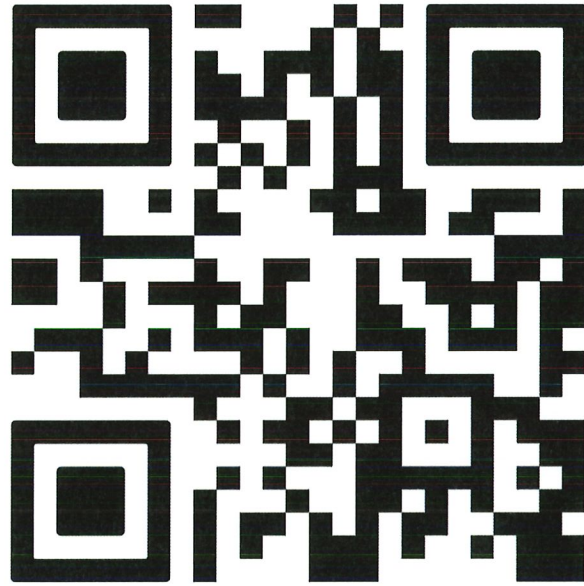
The purpose of this correspondence is you inform you that Brew will be holding a meeting to discuss the rezoning of the site via zoom conference on Monday the 18th day of September, 2023, at 12:00 p.m. (noon). If they would like to join by phone, you can call in at (305)224-1968,, and by using the meeting id: 84065605896#.

Please use the link at <https://us02web.zoom.us/j/84065605896> or use the attached QR code (attached) to participate. We look forward to visiting with you and fielding any questions regarding the requested zoning change.

Sincerely,

/s/ Inder Singh

Inder Singh
General Manager for Brew Oil, L.L.C.



Above is the QR code for the Neighborhood Meeting.

NOTE: This is a neighborhood meeting, the actual public hearing will be on Thursday, September 21, 2023, at the Richard A. Clark Municipal Service Center, 2nd floor, MSC Board room, 1551 East Martin Luther King, Jr., Parkway.

Item: ZONG-2023-000052 Date: 32

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only
RECEIVED
 COMMUNITY DEVELOPMENT
 SEP 20 2023

Titleholder Signature: Marian Riggs / Marian Riggs

Name/Business: _____

Impacted Address: 4310 Park Ave, #640

Comments: _____

Item: ZONG-2023-000052 Date: Sept. 14, 2023

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only
RECEIVED
 COMMUNITY DEVELOPMENT
 SEP 18 2023

Titleholder Signature: Marylee Kelly

Name/Business: Marylee Kelly

Impacted Address: 4301 Park Ave #410 DM Ia 50321

Comments: _____

Item: ZONG-2023-000052

Date: 9-16-23

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Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only
RECEIVED
 COMMUNITY DEVELOPMENT
 SEP 21 2023

Titleholder Signature: [Signature]

Name/Business: SUHWIT

Impacted Address: Neighborhood Association

Comments: we ~~are~~ are very much in favor
of Brew on opening. We do not want a
Victory. would like more info
George Davis
Southwest Hill neighborhood ASSOC
515-989-9291

Item: ZONG-2023-000052

Date: 9-13-2023

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only
RECEIVED
 COMMUNITY DEVELOPMENT
 SEP 18 2023

Titleholder Signature: [Signature]

Name/Business: _____

Impacted Address: 4301 Park Ave DM IA 50321

Comments: I am against rezoning 4140 Park Ave

Item: ZONG-2023-000052

Date: 9-15-2023 32

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only
RECEIVED
 COMMUNITY DEVELOPMENT
 SEP 18 2023

Titleholder Signature: Daryl Lewis

Name/Business: _____

Impacted Address: 4307 Park Ave., Unit 520

Comments: I'm concerned that the sale of liquor at this site will draw crime, like robberies, and potential gun violence to our quiet neighborhood. I am adamantly against this.

Item: ZONG-2023-000052

Date: 9/14/2023

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only
RECEIVED
 COMMUNITY DEVELOPMENT
 SEP 18 2023

Titleholder Signature: Richard M. Boerig & Cindy Jo Boerig

Name/Business: Richard M. Boerig

Impacted Address: 3210 Southern Woods Drive

Comments: My wife and I are very opposed to rezoning. We do not want a liquor store in the neighborhood that will bring down property value!

Item: ZONG-2023-000052 Date: 9/16/23 32

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only
RECEIVED
 COMMUNITY DEVELOPMENT
 SEP 20 2023

Titleholder Signature: Susan Fu

Name/Business: Susan Fager

Impacted Address: 4301 Park Ave, Unit 110

Comments: The area doesn't need another
convenience store
with liquor sales.

Item: ZONG-2023-000052 Date: 9-18-23

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

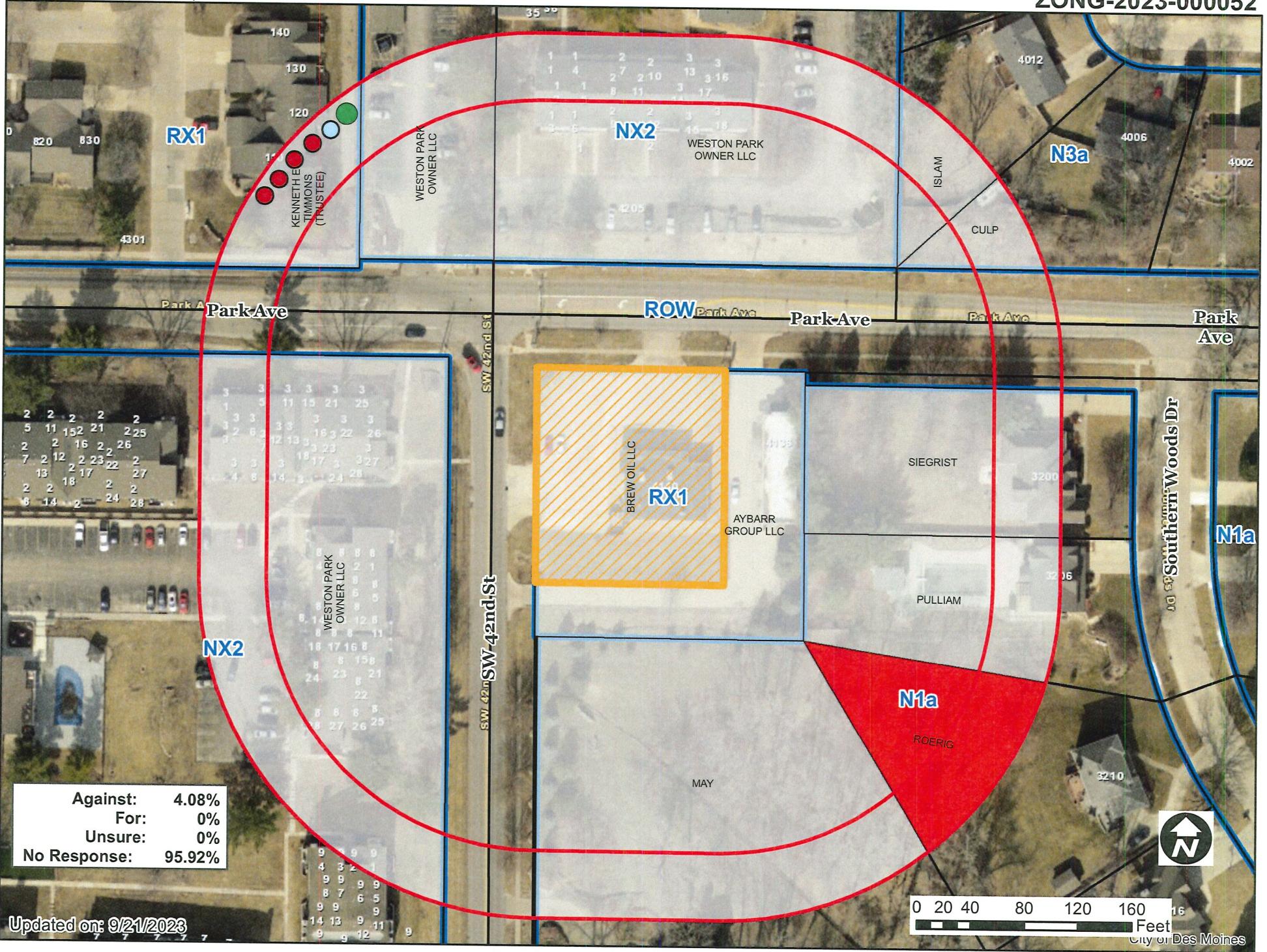
Staff Use Only
RECEIVED
 COMMUNITY DEVELOPMENT
 SEP 20 2023

Titleholder Signature: Maria DeKitt

Name/Business: _____

Impacted Address: 4301 Park Ave - Unit 310

Comments: I oppose 24x7 liquor sales
that are routine operations of this
company at other locations within
the state.

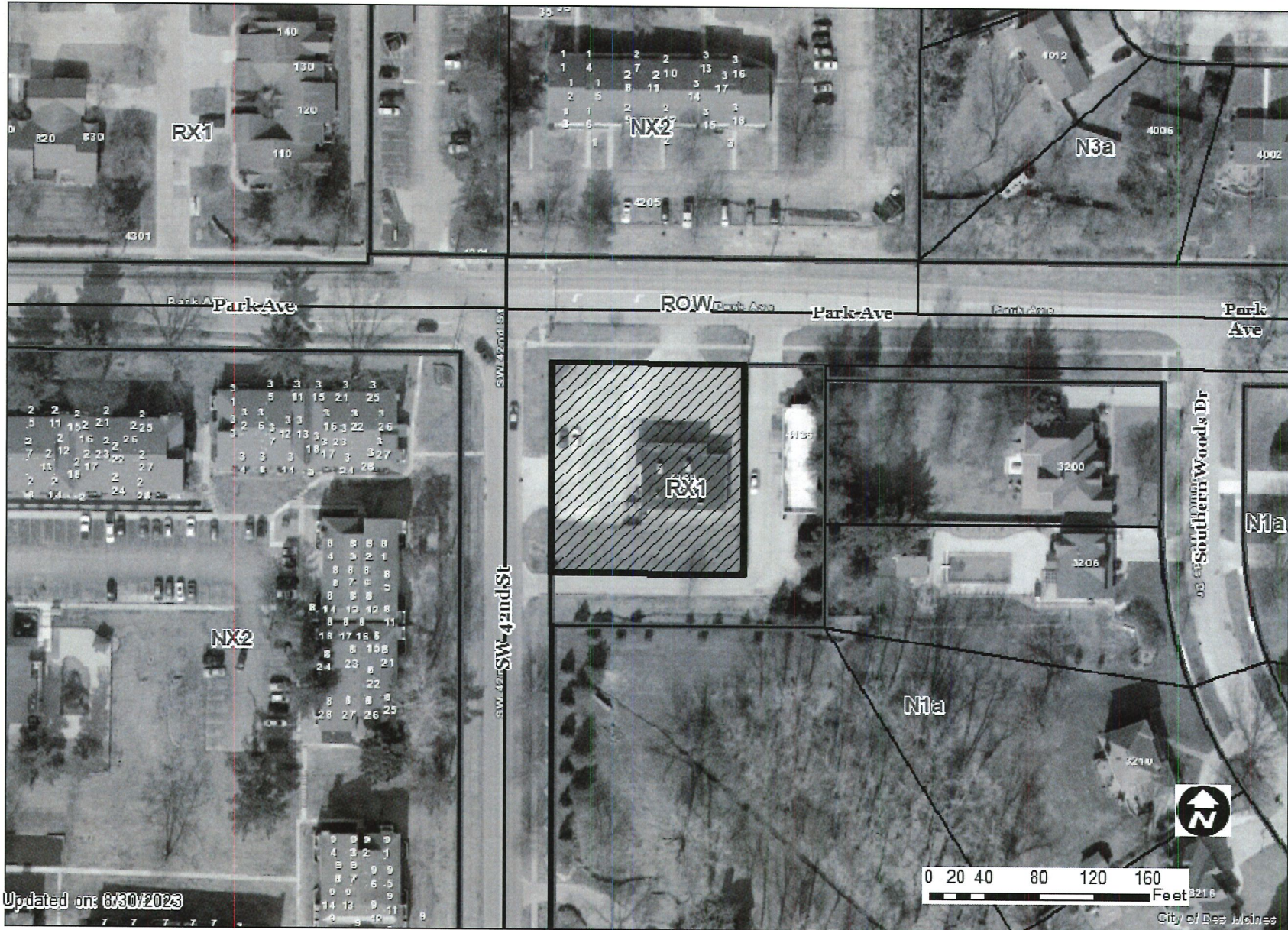


Against:	4.08%
For:	0%
Unsure:	0%
No Response:	95.92%

Updated on: 9/21/2023

Brew Oil, LLC, 4140 Park Avenue

ZONG-2023-000052



Updated on: 6/30/2023

1 inch = 93 feet