



Date March 4, 2024

RESOLUTION SETTING PUBLIC HEARING REGARDING REQUEST FROM 3800-3804 INGERSOLL, LLC (OWNER), AND MGS, LLC (OWNER), REPRESENTED BY KIMBERLEY R. ROBERTSON (OFFICER), AND MICHAEL SIMPSON (OFFICER) FOR THE FOLLOWING REGARDING PROPERTY LOCATED AT 1205 EAST 33RD STREET AND 3304 EAST UNIVERSITY AVENUE, TO AMEND PLANDSM CREATING OUR TOMORROW PLAN TO REVISE THE FUTURE LAND USE CLASSIFICATION FROM LOW DENSITY RESIDENTIAL TO COMMUNITY MIXED USE, AND TO REZONE THE PROPERTY FROM “N3B” NEIGHBORHOOD DISTRICT TO LIMITED “CX” MIXED USE DISTRICT, TO ALLOW USE OF THE PROPERTY FOR WAREHOUSING AND OTHER COMMERCIAL USES

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on February 15, 2024, its members voted 11-0 in support of a motion to recommend **APPROVAL** of a request from 3800-3804 Ingersoll, LLC (owner), and MGS, LLC (owner), represented by Kimberley R Robertson (officer), and Michael Simpson (officer), for the proposed rezoning from “N3b” Neighborhood District to Limited “CX” Mixed Use District be found not in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of Low Density Residential; and

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on February 15, 2024, its members voted 11-0 in support of a motion to recommend **APPROVAL** of a request from 3800-3804 Ingersoll, LLC (owner), and MGS, LLC (owner), represented by Kimberley R Robertson (officer), and Michael Simpson (officer), to amend the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation for the subject property from Low Density Residential to Community Mixed Use; and

WHEREAS, the City Plan and Zoning Commission has further advised that at a public hearing held on February 15, 2024, its members voted 11-0 in support of a motion to recommend **APPROVAL** of a request from 3800-3804 Ingersoll, LLC (owner), and MGS, LLC (owner), represented by Kimberley R Robertson (officer), and Michael Simpson (officer), to rezone the Property from “N3b” Neighborhood District to Limited “CX” Mixed-Use District, to allow the use of the property for warehousing and other commercial uses, subject to the following conditions:

1. Prohibition of the outdoor storage of equipment and materials.
2. Prohibition of bar, liquor store and major vehicle maintenance/repair uses.
3. The retaining wall shall be inspected and repaired to the satisfaction of the City’s Planning and Urban Design Administrator with any site plan.; and



Roll Call Number

.....

Agenda Item Number

27

Date March 4, 2024

WHEREAS, the Property is legally described as follows:

THE NORTH 37 FEET OF LOTS 5 & 6 IN FAIRVIEW HEIGHTS, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK CO. IA; AND

THE SOUTH 82 FEET OF LOTS 5 & 6 IN FAIRVIEW HEIGHTS, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK CO. IA.

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 amendments to PlanDSM Creating Our Tomorrow comprehensive Plan 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 City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, at 5:00 p.m. on March 18, 2024, at which time the City Council will hear both those who oppose and those who favor the proposals.
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

27

Date March 4, 2024

MOVED BY _____ TO ADOPT. SECOND BY _____.

FORM APPROVED:

/s/ Chas M. Cahill
Chas M. Cahill
Assistant City Attorney

(ZONG-2024-000002) (COMP-2024-000004)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN				
COLEMAN				
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

Date March 4, 2024

Agenda Item 27

Roll Call # _____

February 23, 2024

Communication from the City Plan and Zoning Commission advising that at their February 15, 2024 meeting, the following action was taken for request from 3800-3804 Ingersoll, LLC (owner), and MGS, LLC (owner), represented by Kimberley R Robertson (officer), and Michael Simpson (officer), for the following regarding property located at 1205 East 33rd Street and 3304 East University Avenue:

- A) Determination as to whether the requested rezoning is in conformance with the PlanDSM Creating Our Tomorrow Comprehensive Plan.
- B) Amend the PlanDSM Creating Our Tomorrow Comprehensive Plan to revise the future land use classification of the property from Low Density Residential to Community Mixed Use.
- C) Rezone property from N3b” Neighborhood District to “CX” Mixed Use District, to allow use of the property for warehousing and other commercial uses

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0-0 as follows.

Commission Action:	Yes	Nays	Pass	Abstain	Absent
Francis Boggus	X				
Leah Rudolphi	X				
Abby Chungath					X
Kayla Berkson	X				
Chris Draper					X
Laura Kessel	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) rezoning to CX” Mixed-Use District be found not in conformance with the PlanDSM: Creating Our Tomorrow Comprehensive Plan, which designates this property as Low Density Residential

Part B) Amend the PlanDSM: Creating Our Tomorrow Comprehensive Plan to revise the future land use classification for the property from Low Density Residential to Community Mixed Use.

Part C) Rezone the property from “N3b” Neighborhood District to Limited “CX” Mixed-Use District, subject to the following condition:

1. Prohibition of the outdoor storage of equipment and materials.
2. Prohibition of bar, liquor store and major vehicle maintenance/repair uses.
3. The retaining wall shall be inspected and repaired to the satisfaction of the City’s Planning and Urban Design Administrator with any site plan.

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the requested rezoning to “CX” Mixed-Use District be found not in conformance with the PlanDSM: Creating Our Tomorrow Comprehensive Plan, which designates this property as Low 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 classification for the property from Low Density Residential to Community Mixed Use.

Part C) Staff recommends approval of the request to rezone the property from “N3b” Neighborhood District to Limited “CX” Mixed-Use District, subject to the condition that there shall be no outdoor storage of equipment or materials on the property.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The requested rezoning would allow the applicant to re-establish a previously existing legal non-conforming warehousing and commercial retail business on the subject property. On November 27, 2023, the building on 1205 East 33rd Street was destroyed by fire, which subsequently eliminated the legal non-conforming status at 1205 East 33rd Street. The applicant intends to rebuild the structure and re-establish the previously existing use.

In order to accomplish this objective, the applicant is requesting to rezone the property at 1205 East 33rd Street from “N3b” Neighborhood District to “CX” Mixed Use District. While the property at 3304 East University Avenue retains its legal non-conforming status, the applicant has indicated that they would use the adjoining properties in

tandem. The applicant has indicated that the property at 1205 East 33rd Street has been and would be used as warehousing to store ice cream products to be sold at the Iowa State Fair.

Due to the fire damage, the City has designated the property at 1205 East 33rd Street as a Public Nuisance. The applicant has submitted a request for demolition of the structure.

2. **Size of Site:** 12,407 square feet (0.285 acres).
3. **Existing Zoning (site):** "N3b" Neighborhood District.
4. **Existing Land Use (site):** The subject properties consist of a fire-damaged site, which formerly contained two structures most currently used for warehousing and wholesaling, a paved parking area, and landscaping.
5. **Adjacent Land Use and Zoning:**
 - North* – "N3b"; Uses are predominantly one-household residential.
 - South* – "P2"; Use is the Iowa State Fairgrounds.
 - East* – "N3b"; Uses are predominantly one-household residential.
 - West* – "N3b"; Uses are predominantly one-household residential and retail.
6. **General Neighborhood/Area Land Uses:** The subject properties are located on the northeast corner of the intersection of East University Avenue and East 33rd Street. The surrounding area contains a mix of public, civic, and institutional; predominantly one-household residential, and retail uses.
7. **Applicable Recognized Neighborhood(s):** The subject properties are located in the Grays Woods Neighborhood Association and within 250 feet of the Valley High Manor and ACCENT Neighborhood Associations. All neighborhood associations were notified of the public hearing by emailing of the Preliminary Agenda on January 26, 2024, and of the Final Agenda on February 9, 2024. Additionally, separate notifications of the hearing for this specific item were mailed on January 26, 2024 (20 days prior to the public hearing) and February 5, 2024 (10 days prior to the public hearing) to the Neighborhood Associations and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All 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 Grays Woods Neighborhood Association mailings were sent to Steve Laws. The Valley High Manor Neighborhood Association mailings were sent to Harlan Donaldson. The ACCENT Neighborhood Association mailings were sent to Kevin Marken.

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

8. **Relevant Zoning History:** None.

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 requesting that the future land use designation of the property 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 customer.

The subject properties are currently zoned “N3b” Neighborhood District, which the Zoning Ordinance describes as, “intended to preserve the scale and character of residential neighborhoods developed predominantly during the 1950s through 1970s typically in the ranch, split-level, or cottage style pursuant to House B building type in section 135-2.14 of this code and House C in section 135-2.15 of this code.”

The applicant is proposing to rezone the properties to “CX” Mixed-Use District, which the Zoning Ordinance describes as, “intended for nodes and corridors with larger-scale single-use commercial accommodating higher levels of vehicular traffic than MX districts and more intensive commercial uses, especially with outdoor sales and storage.”

The subject properties are located approximately 0.40 mile from a Neighborhood Node centered at East University Avenue and East 30th Street. East University Avenue is designated a Primary Street by PlanDSM: Creating Our Tomorrow and as a Regional Mixed Use Street Type by MoveDSM: Transportation for Everyone.

Staff believes that the subject site would be an appropriate location for a small warehouse and wholesale business given the site’s location along a high-capacity roadway (East University Avenue) and close proximity to a Neighborhood Node and

the Iowa State Fairgrounds. As a previously legal non-conforming use, the neighbors are accustomed to the small warehousing and commercial uses and the size of the structures match the character of the neighborhood.

The uses of Warehousing and Wholesaling in a "CX" District may allow Outdoor Equipment and Materials Storage. However, Staff does not believe outdoor storage is appropriate in this location given the predominantly low density residential character of the majority of adjoining and adjacent properties.

- 2. Planning and Design Ordinance:** Any development must comply with all applicable site plan and design regulations of the Planning and Design Ordinance. Should the rezoning be approved, the applicant would be required to prepare a Site Plan and building elevations for review and approval before the property can be occupied by the proposed use.

SUMMARY OF DISCUSSION

Kathryn Drahos presented the staff report and recommendation.

Justyn Lewis asked if outdoor storage was proposed and what was the purpose of adding it to the conditions.

Kathryn Drahos replied there are no plans for outdoor storage, but staff is being preemptive that it would not be appropriate here.

Will Page asked if there could be additional landscaping requirements.

Jason Van Essen replied that they will have to go through the site plan process.

CHAIRPERSON OPENED THE PUBLIC HEARING

Rick Baumhover with Bishop Engineering representing Mark Graziano for both of the properties. Stated the properties had been zoned C-1 prior to the citywide zoning changes in 2019. The building was damaged by arson in November. The applicant wishes to have the same use, same footprint and same building type for their ice cream storage for the Iowa State Fair. Neighbor concerns raised during their neighborhood meeting included better lighting and security. They wish to get the building going in the next few months, so they are ready for the next State Fair.

Johnny Alcivar asked about the comment regarding the retaining wall.

Rick Baumhover stated they will be making repairs to the retaining wall.

Kate Gillette asked if there were any plans for the front Donut King building.

Rick Baumhover stated that Donut King closed during Covid and there are no immediate plans for the building.

Martin Mormon at 3320 Kinsey Avenue, came to speak in support of the request. The Grays Woods Neighborhood met and believed the applicant is doing the right thing for improvements to the property and they are in support.

Helio Canas at 1211 E. 33rd Street, property adjacent to the building. Expressed support for the request, his main concern is that the retaining wall gets repaired. He also requested property illumination of the building for security. Hoped that the electrical lines to the building would be underground with proper tree trimming.

John Alcivar stated these items can be addressed on the site plan.

Susan Wickham, from 1216 E 33rd Street, came with questions. Was the zoning changed in error to residential in 2019 or was this done to make the area more neighborhood friendly? What kind of businesses will be permitted on the corner lot if changed to CX zoning? She stated concerns of the types of businesses allowed, such as bars and liquor stores. Are there code enforcement processes in place to not have neighborhood blight? Also concerned about repairing the retaining wall.

Jason Van Essen stated that all changes to the property will go through the site plan process and the retaining wall through engineering. The property owner will have to make improvements. The zoning changes over time were identified and changed along the way. The warehouse use was already a non-conforming use under the old code. The donut shop and gas station were permitted uses under the previous C-1 zoning. CX zoning does allow a lot of uses.

Bert Drost noted that a lot of East University Avenue is zoned MX3, which already allows many of the intense commercial uses. CX is similar to MX3. CX allows for warehouse and wholesale, which they need, but also allows for autobody repair. Staff did not feel that it was reasonable to think this location would likely be used for autobody repair, but it could be added on as a condition. Uses such a bar or liquor store would need conditional use approval by the Board of Adjustment and would have to have a public hearing.

Mark Graziano stated they had to close down Donut King due to declining sales during Covid. They have continued to use the building to make doughnuts for Bauders Pharmacy. The warehouse building is used to store ice cream for the Iowa State Fair. The uses for the Donut King building are very restrictive. The warehouse will be very nice.

Will Page asked if he would be agreeable to restrict liquor stores, bars and autobody repair.

Mark Graziano stated he would be agreeable, but he also understood that it could not be done.

Andrew Lorentzen asked if he would be agreeable to providing engineering analysis of the retaining wall.

Mark Graziano stated there is a plan in place.

Carolyn Jennison asked for clarification on liquor sales at a donut shop rather than a liquor store.

Jason Van Essen stated there is a difference between the two.

CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION:

Justyn Lewis made a motion for the following:

Part A) Approval of requested rezoning to CX” Mixed-Use District be found not in conformance with the PlanDSM: Creating Our Tomorrow Comprehensive Plan, which designates this property as Low Density Residential.

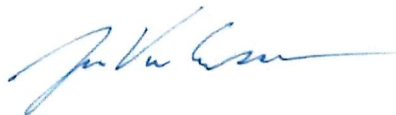
Part B) Approval of the request to amend the PlanDSM: Creating Our Tomorrow Comprehensive Plan to revise the future land use classification for the property from Low Density Residential to Community Mixed Use.

Part C) Approval of the request to rezone the property from “N3b” Neighborhood District to Limited “CX” Mixed-Use District, subject to the following condition:

1. Prohibition of the outdoor storage of equipment and materials.
2. Prohibition of bar, liquor store and major vehicle maintenance/repair uses.
3. The retaining wall shall be inspected and repaired to the satisfaction of the City’s Planning and Urban Design Administrator with any site plan.

THE VOTE 11-0-0 (Chris Draper and Rick Trower had left the meeting)

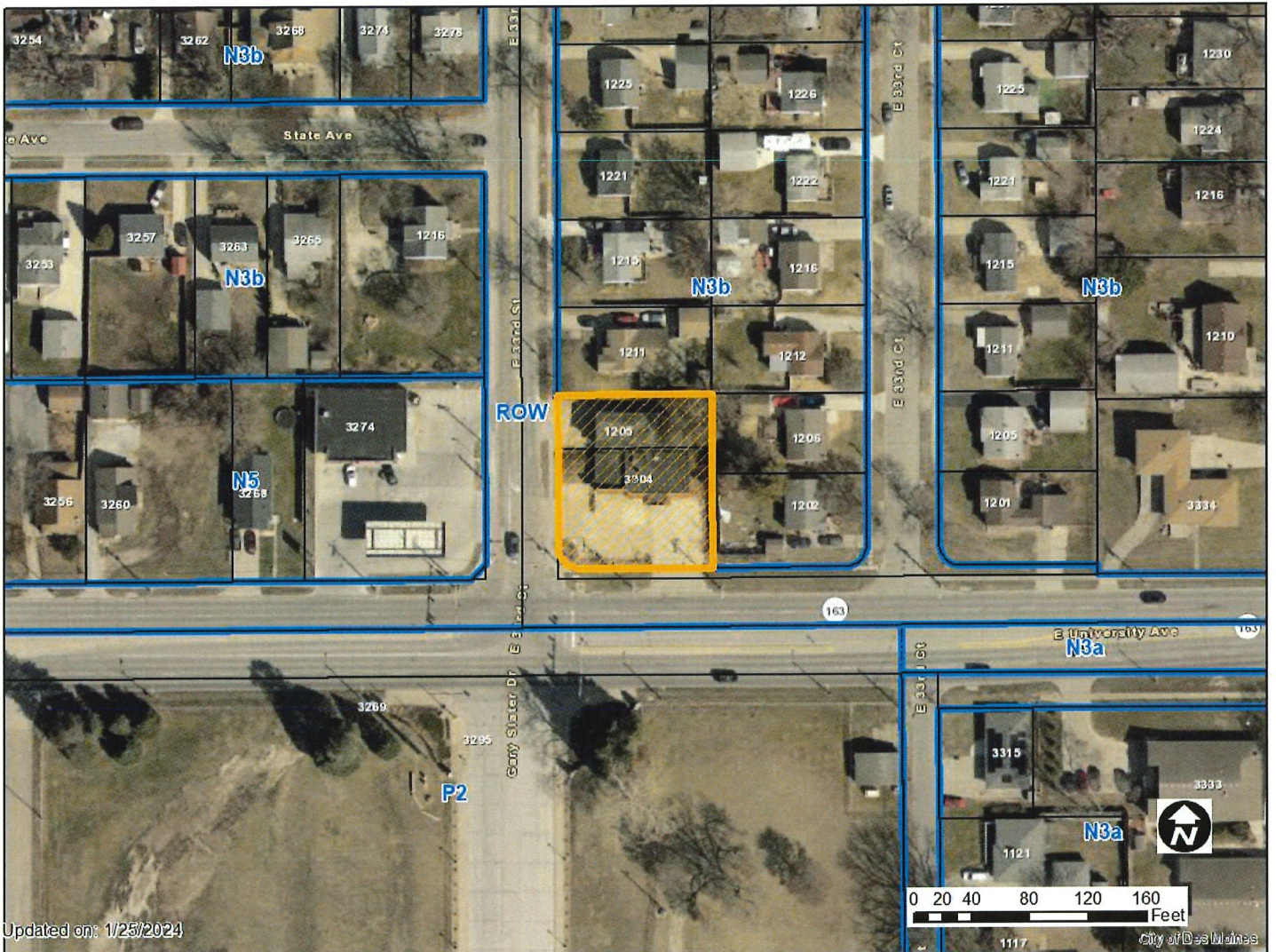
Respectfully submitted,



Jason Van Essen, AICP
Planning & Urban Design Administrator

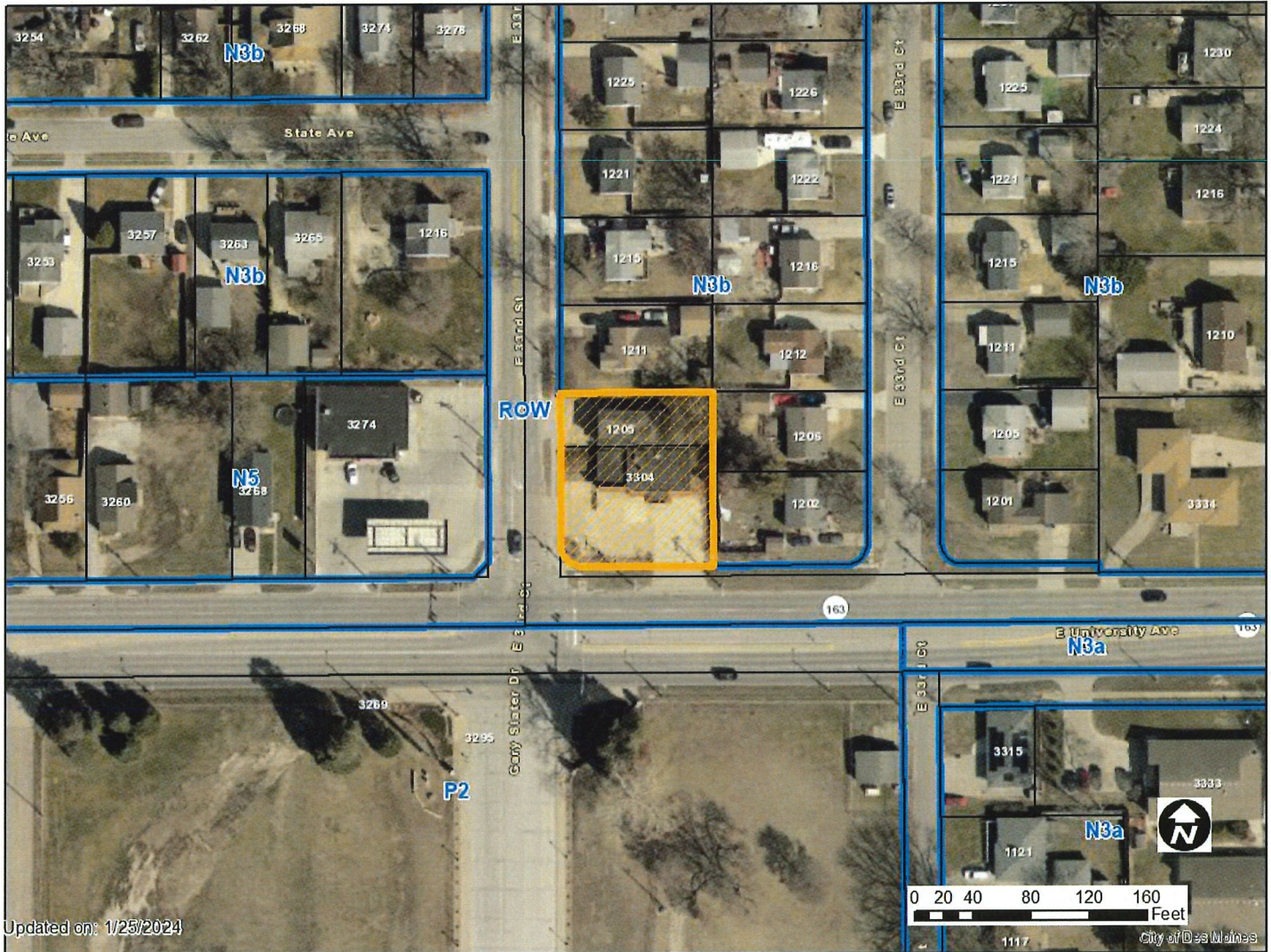
JMV:mrw

3800-3804 Ingersoll, LLC & MGS, LLC, 1205 East 33rd St & 3304 East University Ave COMP-2024-000004



1 inch = 87 feet

3800-8804 Ingersoll, LLC & MGS, LLC, 1205 East 33rd St & 3304 East University Ave ZONG-2024-000002



Updated on: 1/25/2024

1 inch = 87 feet



Network: Jan 18, 2024 at 9:40:33 AM CST
Local: Jan 18, 2024 at 9:40:33 AM CST
Des Moines

01-18-2024 09:40 AM



Feb 15, 2024 10:24:39 AM
1205 East 33rd Street
Des Moines
Polk County
Iowa



Feb 15, 2024 10:24:58 AM
Des Moines
Polk County
Iowa



Feb 15, 2024 10:23:07 AM
3295 East University Avenue
Des Moines
Polk County
Iowa

Project Narrative

Current uses are warehouse (1205 E 3rd St) and commercial retail (3304 E University), and were zoned C-1 prior to the city-wide rezoning in 2019. As a result, the properties are now existing non-conforming uses.

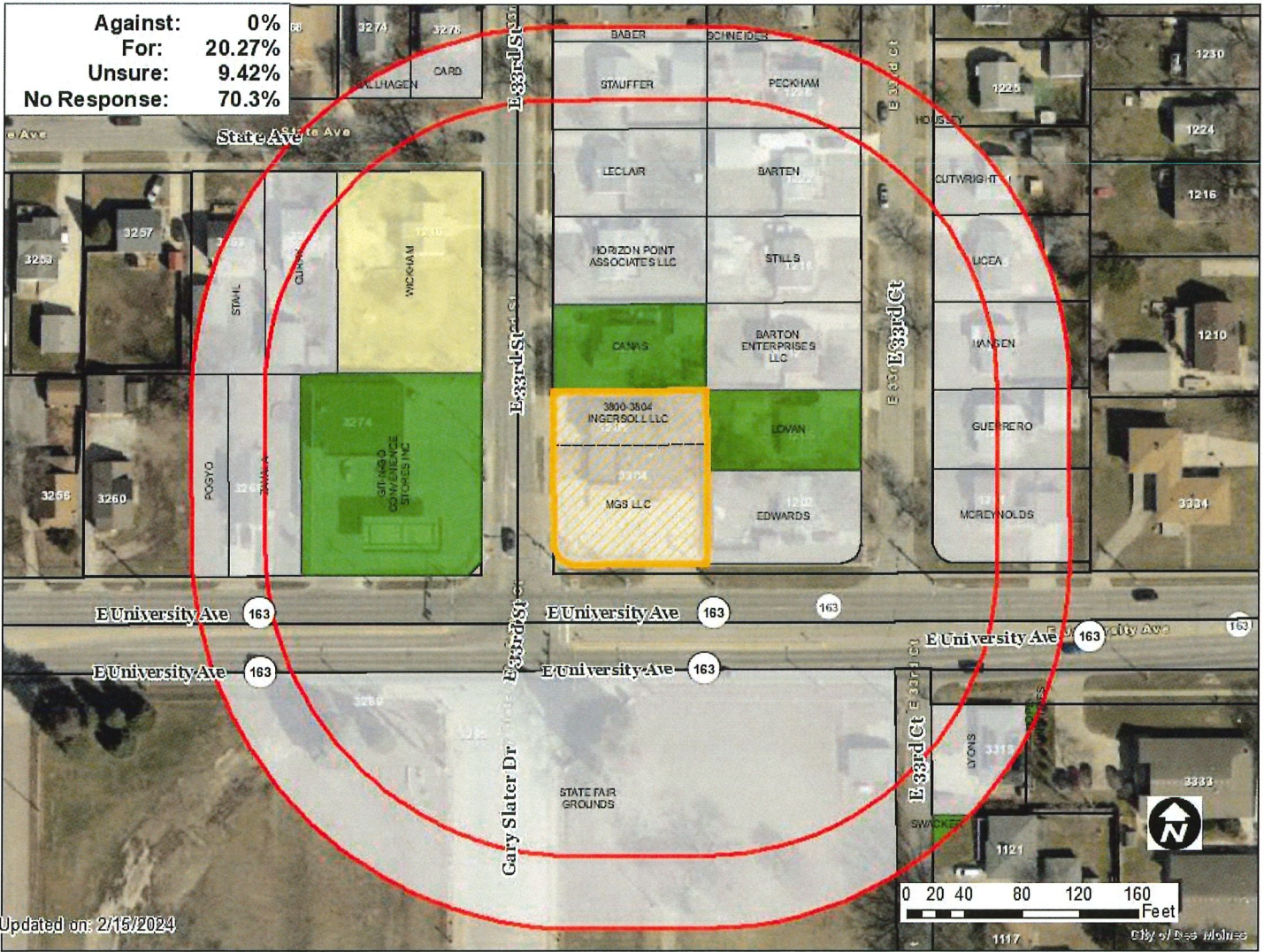
This request is to change zoning back to fit existing, current uses. We are requesting CX zoning.

The need to rezone came up in order to get Site Plan approval to rebuild the fire damaged building at 1205 E. 33rd Street.

The fire damaged building is used by the Owner (doing business as Bauders Ice Cream) to store prepared ice cream to be sold at the Iowa State Fair located nearby, and to store other goods and supplies needed to maintain the food stands.

The storage of ice cream needs begins the first week of July.

3800-8804 Ingersoll, LLC & MGS, LLC, 1205 East 33rd St & 3304 East University Ave ZONG-2024-000002

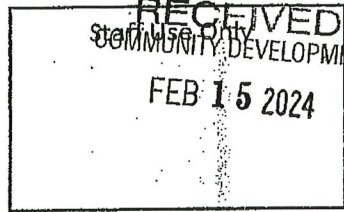


1 inch = 87 feet

Item: ZONG-2024-000002 Date: 2/15/24

Please mark one of the following:

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



Titleholder Signature: *[Signature]* President

Name/Business: Brit-N-Less Store, LLC

Impacted Address: 3274 E. University

Comments: _____

Item: ZONG-2024-000002

Date: 1-12-24

Please mark one of the following:

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

RECEIVED
Staff Use Only
FEB 15 2024
Per _____

Titleholder Signature: *[Handwritten Signature]*

Name/Business: John Claire Swicker

Impacted Address: 1121 E 33rd Ct

Comments: _____

Item: ZONG-2024-000002

Date: 2/8/24

Please mark one of the following:

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

Staff Use Only
RECEIVED
FEB 12 2024
Per _____

Titleholder Signature: *[Signature]*

Name/Business: Keith A Isley, Chief Operating Officer, Hope Ministries

Impacted Address: 3323 E. University

Comments: _____

Item: ZONG-2024-000002

Date: _____

Please mark one of the following:

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

Staff Use Only

RECEIVED

FEB 1 2 2024

Per _____

Titleholder Signature: _____

Name/Business: _____

Impacted Address: _____

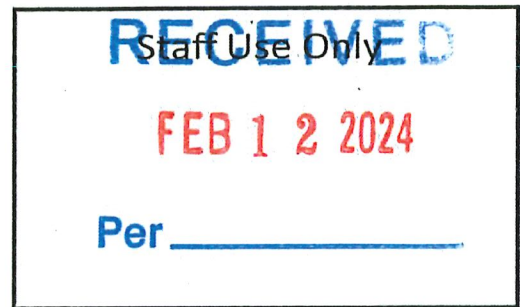
Comments: _____

Item: ZONG-2024-000002

Date: Feb. 19/2024

Please mark one of the following:

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



Titleholder Signature: 

Name/Business: Helio Canas

Impacted Address: 1211 E. 33rd

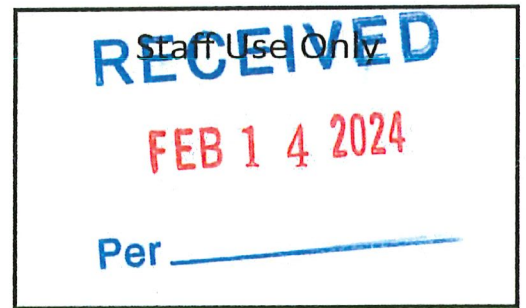
Comments: I like to see a new retaining wall
between 1205 E 33rd St and 1211 E 33rd St.
The actual retaining wall is so bad that it is
collapsing and it need a new one; no a repair
of it Thank you

Item: ZONG-2024-000002

Date: 2-10-24

Please mark one of the following:

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



Titleholder Signature: *[Handwritten Signature]* Kevin Markew

Name/Business: Accent Neighborhood

Impacted Address: _____

Comments: _____


Item: ZONG-2024-000002

Date: 9/10/2024

Please mark one of the following:

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

Staff Use Only
RECEIVED
FEB 14 2024
Per _____

Titleholder Signature: 

Name/Business: _____

Impacted Address: 1206 E 33rd Ct.

Comments: _____

Item: ZONG-2024-000002

Date: 2-9-24

Please mark one of the following:

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

Staff Use Only RECEIVED FEB 12 2024 Per _____

Titleholder Signature: Susan M. Wickham

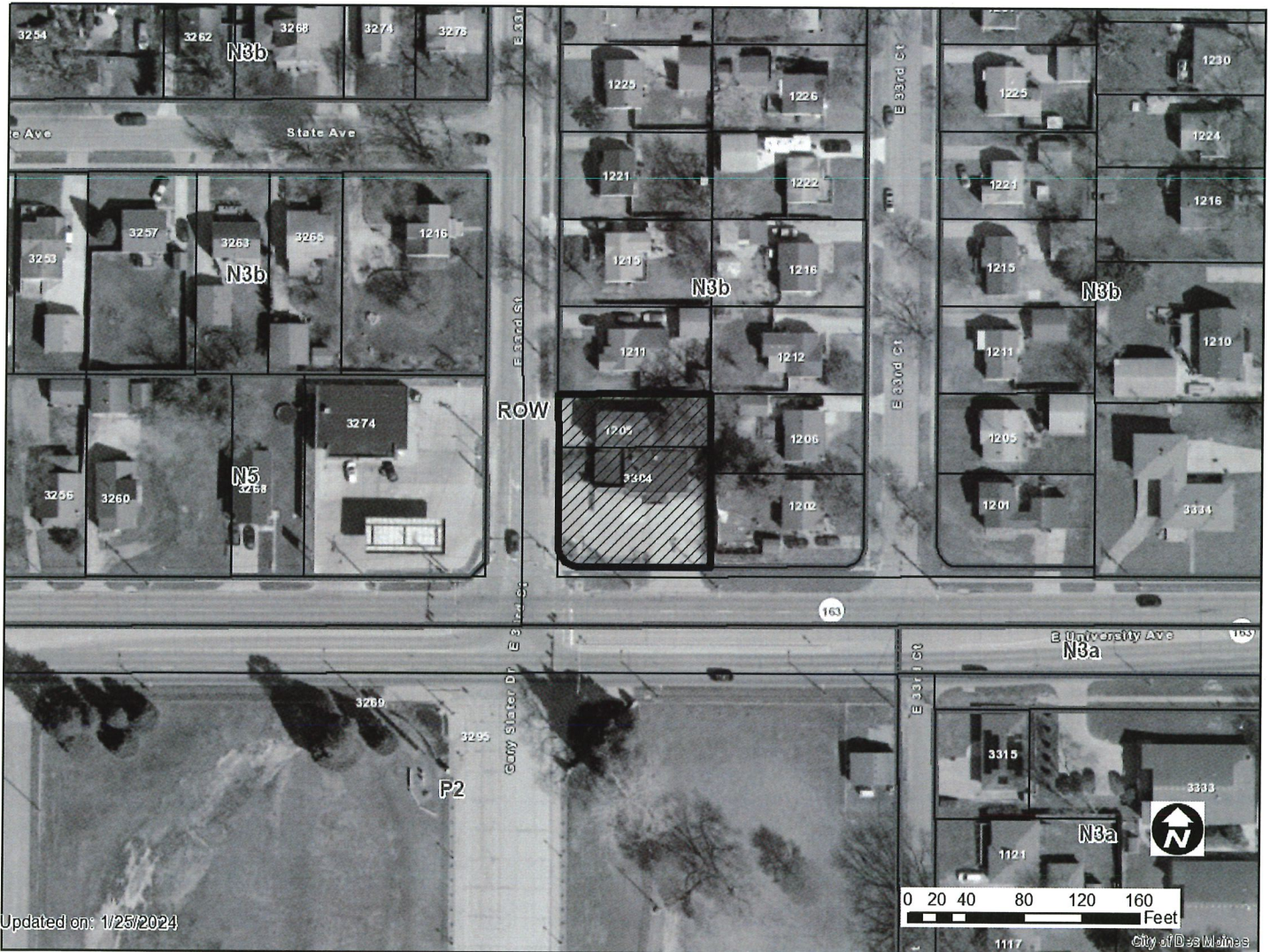
Name/Business: Susan M. Wickham

Impacted Address: 1216 East 33rd Street

Comments: What are the CX code requirements for maintaining safe, presentable properties in a residential neighborhood? What types of businesses (besides a Bawder's warehouse and a Donut King bakery) would be permitted by CX code if these properties are sold?

3800-8804 Ingersoll, LLC & MGS, LLC, 1205 East 33rd St & 3304 East University Ave

ZONG-2024-000002



1 inch = 87 feet