



Date March 9, 2015

**RESOLUTION SETTING HEARING ON REQUEST FROM AZHAR IQBAL AND DOMINIC MATHEW (OWNERS) TO REZONE PROPERTY LOCATED AT 4538 LOWER BEAVER ROAD FROM “R-4” MULTIPLE-FAMILY RESIDENTIAL DISTRICT TO “C-2” GENERAL RETAIL AND HIGHWAY-ORIENTED COMMERCIAL DISTRICT**

**WHEREAS**, the City Plan and Zoning Commission has advised that at a public hearing held on February 19, 2015, its members voted 7-2 in support of a motion to recommend **APPROVAL** of a request from Azhar Iqbal and Dominic Mathew (owners) to rezone real property locally known as 4538 Lower Beaver Road (“Property”) from “R-4” Multiple-Family Residential District to “C-2” General Retail and Highway-Oriented Commercial District, to allow the right to request a necessary Conditional Use Permit to continue selling alcoholic liquor, wine, and beer as part of either a limited food/retail sales establishment or as a liquor store; and

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

A tract of land situated in the Southwest ¼ of the Northeast ¼ of Section 20, Township 79 North, Range 24 west of the 5th Prime Meridian, now included in and forming a part of the City of Des Moines, Polk County, Iowa, which is described as: Commencing at the Northwest corner of the Southwest ¼ of the Northeast ¼ of said Section 20, thence East 654.3 feet to the Westerly line of Lower Beaver Road, as presently established, thence South 1°51’ East along said Westerly line of said Lower Beaver Road and 33.0 feet West of and parallel to the center line of said Lower Beaver Road as presently established, 1034.6 feet to the Northeast corner of Lot 1 Monterey Park Plat No. 7, thence North 1°51’ West along the Westerly line of said Lower Beaver Road 310.5 feet to the point of beginning, thence continuing North 1°51’ West along said Westerly line 120.0 feet to the Southeast corner of the D.X. Oil Company property, thence North 90°00’ West 120 feet to the Southwest corner of the D.X. Oil Company property, thence South 1°51’ East parallel to and 120.0 feet West of the West line of said Lower Beaver Road, 120.0 feet, thence North 90°00’ East 120.0 feet to the point of beginning.

**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 rezoning is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa, at 5:00 p.m. on April 6, 2015, at which time the City Council will hear both those who oppose and those who favor the proposal.



Roll Call Number

Agenda Item Number

30

Date March 9, 2015

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- 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.

MOVED BY \_\_\_\_\_ TO ADOPT.

FORM APPROVED:

Glenna K. Frank, Assistant City Attorney

(ZON2015-00009)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

\_\_\_\_\_  
Mayor

**CERTIFICATE**

I, DIANE RAUH, 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.

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

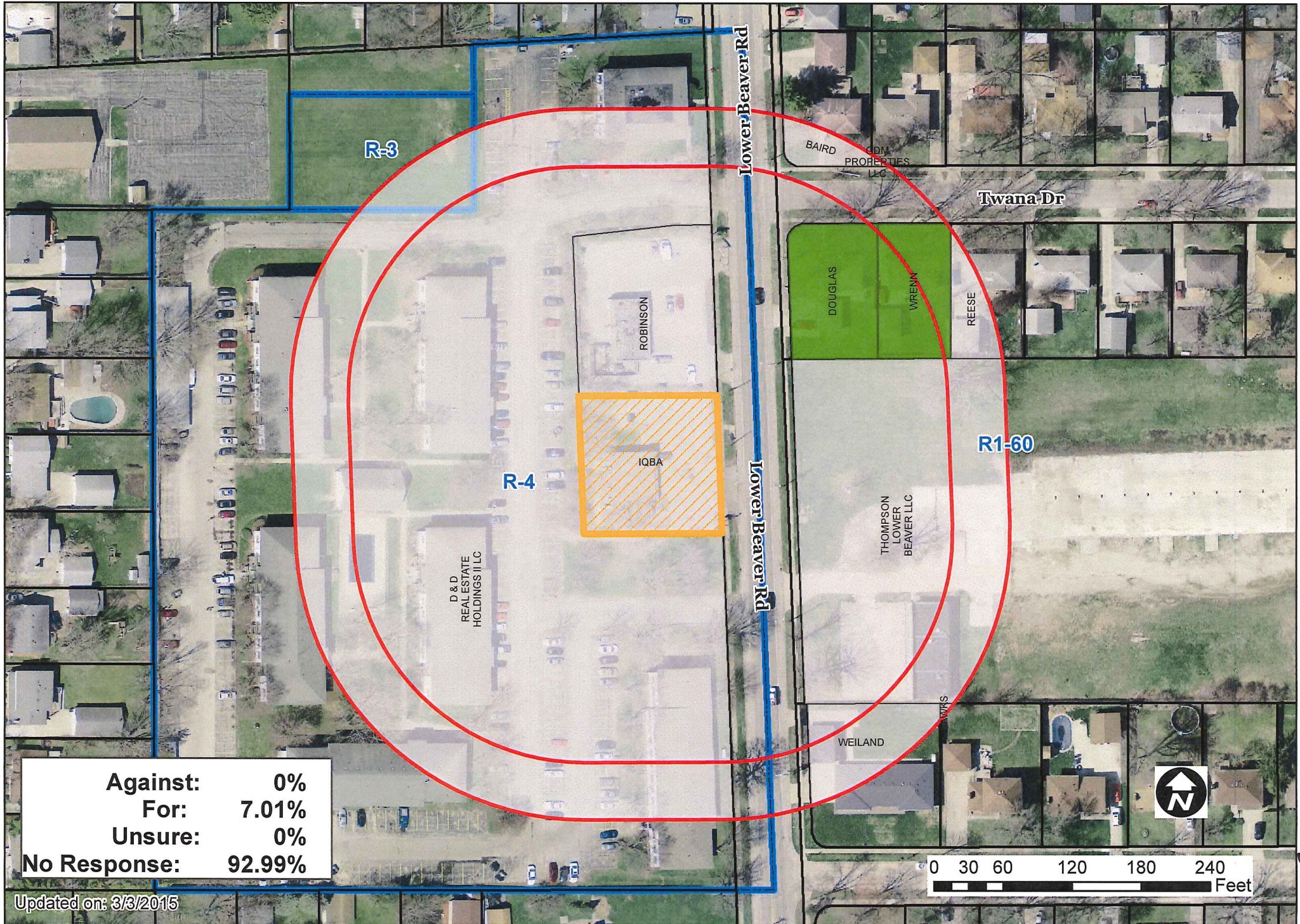
Azhar Iqbal and Dominic Mathew (owners) for property located at 4538 Lower Beaver Road.		<b>File #</b> ZON2015-00009		
<b>Description of Action</b>	Approval of request to rezone property from "R-4" Multiple-Family Residential District to "C-2" General Retail and Highway-Oriented Commercial District, to allow the right to request a necessary Conditional Use Permit to continue selling alcoholic liquor, wine, and beer as part of either a limited food/retail sales establishment or as a liquor store.			
<b>2020 Community Character Plan</b>	Current: Medium-Density Residential. Proposed: Commercial: Auto-Oriented, Small-Scale Strip Development.			
<b>Horizon 2035 Transportation Plan</b>	No planned improvements.			
<b>Current Zoning District</b>	"R-4" Multiple-Family Residential District.			
<b>Proposed Zoning District</b>	"C-2" General Retail and Highway-Oriented Commercial District.			
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area	2	0		
Outside Area				
<b>Plan and Zoning Commission Action</b>	Approval	7-2	<b>Required 6/7 Vote of the City Council</b>	Yes
	Denial			No

Azhar Iqbal and Dominic Mathew, 4538 Lower Beaver Road

ZON2015-00009



1 inch = 86 feet



Against:	0%
For:	7.01%
Unsure:	0%
No Response:	92.99%

Updated on: 3/3/2015



March 3, 2015

Honorable Mayor and City Council  
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held February 19, 2015, the following action was taken regarding a request from Azhar Iqbal and Dominic Mathew (owners) to rezone property located at 4538 Lower Beaver Road.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 9-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Jann Freed				X
John "Jack" Hilmes				X
Greg Jones	X			
William Page	X			
Jonathan Rosenbloom				X
Mike Simonson	X			
CJ Stephens	X			
Vicki Stogdill	X			
Greg Wattier				X

**APPROVAL** of staff recommendation that the requested rezoning be found not in conformance with the existing Des Moines' 2020 Community Character Plan.

By separate motion Commissioners recommended 8-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Jann Freed				X
John "Jack" Hilmes				X
Greg Jones	X			
William Page	X			
Jonathan Rosenbloom				X
Mike Simonson	X			
CJ Stephens		X		
Vicki Stogdill	X			
Greg Wattier				X

**APPROVAL** of the request to amend the Des Moines' 2020 Community Character Plan to revise the existing future land use designation from Medium-Density Residential to Commercial: Auto-Oriented, Small-Scale Strip Development. (21-2015-4.03)

By separate motion Commissioners recommended 7-2 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Jann Freed				X
John "Jack" Hilmes				X
Greg Jones		X		
William Page	X			
Jonathan Rosenbloom				X
Mike Simonson	X			
CJ Stephens		X		
Vicki Stogdill	X			
Greg Wattier				X

**APPROVAL** of rezoning property from "R-4" Multiple-Family Residential District to "C-2" General Retail and Highway-Oriented Commercial District to allow the right to request a necessary Conditional Use Permit to continue selling alcoholic liquor, wine, and beer as part of either a limited food/retail sales establishment or as a liquor store: (ZON2015-0009)

### STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the Commission find the proposed rezoning is not in conformance with the existing Des Moines' 2020 Community Character Plan.

Part B) Staff recommends denial of the request to amend the Des Moines' 2020 Community Character Plan to revise the existing future land use designation from Medium-Density Residential to Commercial: Auto-Oriented, Small-Scale Strip Development.

Part C) Staff recommends denial of the request to rezone property from "R-4" Multiple-Family Residential District to "C-2" General Retail and Highway-Oriented Commercial District.

Should the rezoning be denied by the City Council, the applicant would be eligible to apply for a Use Variance from the City's Zoning Board of Adjustment.

#### Written Responses

2 In Favor

0 In Opposition

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

#### **I. GENERAL INFORMATION**

- 1. Purpose of Request:** The requested rezoning would allow the applicant the right to request a Conditional Use Permit that is necessary to continue selling alcoholic liquor, wine, and beer as either a limited food sales establishment or as a liquor store. The business has been permitted to sell alcohol as a food sales establishment so long as no more than 40% of their overall sales were derived from the sale of liquor, wine, beer, and tobacco products. However, recent revisions to the Zoning Ordinance require all limited food sales establishments selling alcohol to obtain a Conditional Use Permit in order to continue selling alcohol.

At any time the business files an application for a Conditional Use Permit with the Zoning Board of Adjustment, they must submit an audit that demonstrates the percentage of their overall sales that were derived from the sale of liquor, wine, beer, and tobacco products. If total sales from liquor, wine, beer, and tobacco products are under 40%, they can request a Conditional Use Permit for a limited food sales establishment. If sales from such exceed 40%, then they must request a Conditional Use Permit for a liquor store. As detailed later in the report, the business would only be subject to the current separation distance requirements if they convert the business from a limited food sales establishment to a liquor store. The subject property does not satisfy the separation distances required for a liquor store since there is a both a church and a licensed child care facility within 500 feet of the site.

Should the rezoning be denied by the City Council, the applicant would be eligible to apply for a Use Variance from the City's Zoning Board of Adjustment. If the Use Variance is granted, the Board could then consider a Conditional Use Permit for either a limited food sales establishment or a liquor store.

- 2. Size of Site:** 14,400 square feet or 0.33 acre.
- 3. Existing Zoning (site):** "R-4" Multiple Family Residential District.

4. **Existing Land Use (site):** The site includes a 2,604-square foot commercial building occupied by a limited food sales establishment known as Family Pantry.

5. **Adjacent Land Use and Zoning:**

*North* – “R-4”, Use is Lower Beaver Auto Repair.

*South* – “R-4”, Use is multiple-family residential.

*East* – “R1-60”, Uses are undeveloped land and single-family residential.

*West* – “R-4”, Use is multiple-family residential.

6. **General Neighborhood/Area Land Uses:** The subject property is located along the west side of Lower Beaver Road in a predominantly residential neighborhood. The only commercial business in close proximity to the subject property is Lower Beaver Auto Repair at 4540 Lower Beaver Road. This business is also zoned “R-4” District but it is permitted to operate in accordance with a temporary Use Variance (10 years) granted by the Zoning Board of Adjustment on November 28, 2012.

7. **Applicable Recognized Neighborhood(s):** The subject property is within the Lower Beaver Neighborhood. All recognized neighborhoods were notified of the meeting by mailing of the Preliminary Agenda on January 30, 2015. Additionally, separate notifications of the hearing for this specific item were mailed on January 30, 2015 (10 days prior to the scheduled hearing) and on February 9, 2015 (20 days prior to the scheduled hearing) to the Lower Beaver Neighborhood and 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 meeting was mailed to all the recognized neighborhood associations on February 13, 2015.

All agendas and notices are mailed to the contact person(s) designated to the City of Des Moines Neighborhood Development Division by the recognized neighborhood association. The Lower Beaver Neighborhood Association mailings were sent to Evan Shaw, 3920 Lynner Drive, Des Moines, IA 50310.

The applicant held their neighborhood meeting on January 31, 2015. A summary of the neighborhood meeting will be provided at the hearing.

8. **Relevant Zoning History:** N/A.

9. **2020 Community Character Land Use Plan Designation:** Medium-Density Residential.

10. **Applicable Regulations:** The Commission reviews all proposals to amend zoning regulations or zoning district boundaries 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 recommend that certain conditions be applied to the subject property if the property owner agrees in writing, prior to the City Council Hearing. The recommendation of the Commission will be forwarded to the City Council.



**II. ADDITIONAL APPLICABLE INFORMATION**

**1. Zoning History:** The Zoning Ordinance was amended by Ordinance No. 14,980 on December 6, 2010, to lower the percentage of revenues that a business can derive from the sale of alcoholic liquor, wine, beer and tobacco products without being classified as a liquor store, from 50 percent to 40 percent. Businesses then in existence were allowed until December 31, 2013, to conform to the new requirement that no business other than a liquor store can derive more than 40% of its revenues from the sale of alcoholic liquor, wine, beer and tobacco products.

The Zoning Ordinance was amended again by Ordinance No. 15,059 passed October 24, 2011, to require a Conditional Use Permit for any limited food sales establishment selling alcoholic liquor, wine, or beer. Businesses then in existence were allowed to operate until December 31, 2013, at which a time a Conditional Use Permit is required prior to issuance of any further liquor license, beer permit, or wine permit.

The Zoning Ordinance was further amended by Ordinance No. 15,133 passed September 10, 2012, to increase the separation distance requirements from schools, churches, parks, daycares, and certain other establishments selling alcoholic liquor. Existing businesses that had current a liquor license, beer permit, or wine permit on July 1, 2012 are not subject to the revised separation distances. Therefore, the separation distances are not applicable to the subject business so long as it operates as a limited food sales establishment. However, if they were to convert to a liquor store, the site would not comply with the separation distances since it is less than 500 feet from both a church and a licensed daycare. The Grace Reformed Presbyterian Church at 4601 38<sup>th</sup> Street is within 305 feet of the site and an in-home childcare facility on Bel Air Road is within 310 feet of the site.

**2. Businesses Selling Liquor, Wine, and Beer:** Any future request for a Conditional Use Permit for a tavern use would be subject to the following regulations applicable for businesses selling liquor, wine, and/or beer:

**Sec. 134-954. Selling of liquor, wine and beer.**

*The use of land in all districts for the sale of alcoholic liquor, wine and beer is subject to the restrictions set forth in this section.*

a. *The sale of alcoholic liquor, wine and beer is permitted only in the zoning districts and subject to the conditions applicable to the business identified in the table below:*

	Sale of Alcoholic Liquor		Sale of Wine and Beer	
	C-1, C-1A & D-R Districts	C-2, NPC and less restrictive Districts	C-1, C-1A & D-R Districts	C-2, NPC and less restrictive Districts
<b>Food Sales Establishments and Retail Sales Establishments</b>				
Limited (less than 12,000 sq ft)	Not Allowed	CUP 40% of sales 500 feet	CUP 40% of sales 150 feet	CUP 40% of sales 150 feet

		1/4 mile		
General (12,000 sq ft or larger, but less than 40,000 s ft)	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet
Large (40,000 sq ft or larger)	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet
<b>Gas Station/ Convenience Stores</b> (not allowed in D-R)	Not Allowed	CUP 40% of sales 500 feet 1/4 mile	40% of sales 150 feet (C-1 & C-1A only)	40% of sales 150 feet
<b>Liquor Stores</b>	Not Allowed	CUP 500 feet 1/4 mile	Not Allowed	CUP 150 feet
<b>Restaurants</b>	50% of sales 75 feet	50% of sales 75 feet	50% of sales 75 feet	50% of sales 75 feet
<b>Taverns and Night Clubs</b> (not C-1 & C-1A)	CUP (D-R only)	CUP 150 feet	CUP (D-R only)	CUP 150 feet

Where used in the table above the following terms shall have the meaning identified below:

- 1) **CUP means that a conditional use permit must be obtained for such use as further provided in this section.**
  - 2) **40% of sales means that no more than 40 percent of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine, beer or tobacco products.**
  - 3) **50% of sales means that at least 50 percent of the gross receipts by a restaurant must be derived from the sale of prepared food and food-related services.**
  - 4) **75 feet means that the premises occupied by such use must be separated by at least 75 feet from any church, school, public park or licensed child care facility as defined by I.C. ch. 237A. However, this condition is not applicable in the C-3, C-3A, C-3B, C3-R and D-R Districts.**
  - 5) **150 feet means that the premises occupied by such use must be separated by at least 150 feet from any church, school, public park or licensed child care facility as defined by I.C. ch. 237A. However, this condition is not applicable in the C-3, C-3A, C-3B, C3-R and D-R Districts.**
  - 6) **500 feet means that the premises occupied by such use must be separated by at least 500 feet from any church, school, public park or licensed child care facility as defined by I.C. ch. 237A. However, this condition is not applicable in the C-3, C-3A, C-3B, C3-R and D-R Districts.**
  - 7) **1/4 mile means that the premises occupied by such use must be separated by at least one-fourth mile from any other limited food sales establishment, limited retail sales establishment, gas station/convenience store and liquor store engaged in the sale of alcoholic liquor. However, in the C-3, C-3A, C-3B, C3-R and D-R Districts this condition is only applicable to liquor stores.**
- b. A conditional use permit is required for the use of a premises for the sale of alcoholic liquor, wine or beer, under the circumstances identified in subsection (a), above. The board shall grant such a conditional use permit only where the business, when operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:
- 1) *The business conforms with the conditions identified in subsection (a), above.*
  - 2) *The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.*

- 3) *The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.*
  - 4) *The business will not unduly increase congestion on the streets in the adjoining residential area.*
  - 5) *The operation of the business will not constitute a nuisance.*
- c. *Any conditional use permit granted by the board of adjustment for the use of a premises for the sale of alcoholic liquor, wine and beer shall be subject to the following general conditions, together with such additional special conditions as may be reasonably required by the board to ensure that the criteria in subsection (b), above, are satisfied:*
- 1) *Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.*
  - 2) *The business shall comply with article IV of chapter 42 of this Code pertaining to noise control. The business shall have no outside speakers or amplified sound except when used in compliance with a type E sound permit.*
  - 3) *Any such business must comply with the following requirements:*
    - a. *Every limited food sales establishment, limited retail sales establishment and gas station/convenience store shall display alcoholic liquor only in a locked case or behind a counter accessible only to employees. Any other business selling alcoholic liquor for off premises consumption shall either: i) display alcoholic liquor only in a locked case or behind a counter accessible only to employees; ii) employ an electronic security cap or tag system on all containers of alcoholic liquor on display; or iii) have more than one employee on duty at all times the business is open to the public.*
    - b. *Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.*
    - c. *Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.*
    - d. *Not dispense alcoholic beverages from a drive-through window.*
  - 4) *Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.*
  - 5) *The conditional use permit is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the conditional use permit.*
  - 6) *If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions set forth in the conditional use permit, the zoning enforcement officer may apply to the board to reconsider the issuance of the conditional use permit for such business. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such business at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board finds that the operation of such business exhibits a pattern of violating the conditions set forth in the conditional use permit, the board shall have the authority to amend or revoke the conditional use permit.*

**3. 2020 Community Character Land Use Plan:** The 2020 Community Character Land Use Plan designates the subject property for Medium-Density Residential use, which allows for multiple-family residential development with a density up to 17 units per acre. Therefore, the proposed rezoning to "C-2" District requires the future land use designation to be revised to Commercial: Auto-Oriented, Small-Scale Strip Development. This designation is generally located along commercial corridors since it allows for commercial uses that are primarily focused on the needs of motorists.

In addition, on May 6, 2013, the City Council adopted the Lower Beaver Neighborhood Action Plan as an element of the 2020 Community Character Land Use Plan. This plan calls for retaining the Medium-Density Residential designation on the subject property.

The plan also calls for focusing commercial uses along major commercial corridors, such as Douglas Avenue.

- 4. Staff Rationale:** The character of the surrounding area is predominantly residential in character. The nearest property zoned "C-2" General Retail and Highway-Oriented Commercial District is over two-thirds of a mile to south along the Douglas Avenue commercial corridor. Staff does not believe that the proposed "C-2" District is appropriate at this location since it is located in a predominantly residential area.

Should the City Council deny the requested rezoning, the applicant may seek a Use Variance from the Zoning Board of Adjustment.

## SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation.

John "Jack" Hilmes asked if there were any comments or response cards received.

Erik Lundy showed the consent map and there was no written response, except for the Lower Beaver Neighborhood Association letter.

Will Page asked what prompted the applicant's request.

Erik Lundy stated the renewal of their liquor license.

Don Nguyen 3816 Ingersoll, in-house Counsel for Community CPA and the attorney for the applicant. He stated the applicants want to preserve the neighborhood the way it is. He attended the meeting the applicants held on January 31, 2015 and had a chance to talk to a lot of the customers of the store and the consensus is that they are concerned that they will lose their neighborhood store. He pointed out that the store has been in existence for 40 years. The applicants purchased the store 11 years ago and have been operating and trying to improve the store. He explained that the neighborhood is very diverse with different incomes and backgrounds. This store is in walking distance and very convenient. The applicant has no intent on turning their store into a liquor store. "C-2" zoning would allow them to do business the way they are currently operating the store. They have also applied for being able to accept Supplemental Food Stamps. However, it is contingent on this situation. Once they are in compliance they anticipate the liquor sales will go down and the level of grocery sales and other products will go up reaching that 40% threshold at some point. The reason for the request is that it is the easiest, fairest and the most cost effective way of approaching this after doing business there for years.

CJ Stephens asked at what currently is the percentage of food sales.

Ying Sa Community CPA 3816 Ingersoll stated currently food sales is 32%.

CJ Stephens asked if they attended a neighborhood meeting, because the Commission was given a letter from the Neighborhood Association in opposition of the applicant's request and yet you have said the neighbors are in support of the applicant's request.

Don Nguyen stated Mr. Millard did not attend their neighborhood meeting and believe there was some misunderstanding of what the applicant wants to do. The applicant has support from the neighbors, some are in attendance and would like to talk to the Commission and let them know why the store is necessary in their neighborhood and why the Commission should approve the applicant's request.

Jacqueline Easley asked if the owners were in attendance. She believes that it is necessary so they can hear all of the challenges that the Commission faces in trying to make decisions.

Don Nguyen stated yes they are in attendance.

Jacqueline Easley asked does the applicant understand that it is the zoning issue the Commission is looking at and not necessarily trying to change their business.

Don Nguyen stated he understands that and he tried to explain it to both the applicant and the neighbors at the meeting.

## **CHAIRPERSON OPENED THE PUBLIC HEARING**

### *In Favor*

Ying Sa 3816 Ingersoll stated she had three points:

- People are not educated in the City's proceedings. What they are really asking today is to continue to be allowed to do business as they are today and make it less of a zoning issue.
- The applicants are honest people. – They have 68% of liquor sales and they are determined to meet the City's requirements as long as they can continue to do business at their location.
- The neighbors enjoy this business and would not like to see the business go away.

*John "Jack" Hilmes left the meeting @ 6:55 p.m.*

Michael Graves 3630 Twana Drive stated he has worked at the store for about one year and six months and believes they have a strong community presence at the store. It is safe and is not an eye sore, no loitering and no disturbance.

Mike Simonson asked have the police been called to the store in the last 12 to 24 months.

Michael Graves stated in the last 18 months the police have not come to the store as a complaint of the store, but they have occasionally come to ask if they have seen anything or if they can be of service to them.

Tammy Essink 4869 NW 52<sup>nd</sup> Street stated she works at Family Pantry and stated the store is convenient, in walking distance and she feels very safe. She stated that the building has been operating for 45 years instead of 40 years and she would not like to see the business leave. Across the street is not buildable because it is on clay. She just wants to keep their building.

Kathryn Ferber 3630 Twana Drive stated she is a single mother of three children and she currently has no driver license so the store is very convenient for her. She can send her children to the store and know they are safe. There is a bus that comes down the street but it only comes twice a day. Once in the morning around 7:00 a.m. and then again in the evening at 5:00 p.m. She believes it would be a detriment if the neighbors lose the store.

Greg Robinson 4540 Lower Beaver Road stated the reason his auto repair business to the north is in business and the applicant's business is in business is because of the neighborhood. He believes that he and the applicant would not be in business if the neighbors were not for their businesses and both businesses are a benefit to the neighborhood.

Erika Bendixen 3630 Twana Drive stated she has been using the store for about nine years. This store is convenient and in walking distance and she believes it would be really sad to see them go.

Dominic Mathew stated he has owned the store for 12 years and says it is a very friendly store. There is a special relationship with the customers and there are no problems, no crimes, no drugs and no gangs. Everybody feels comfortable coming to the store.

Mark Ritter 4018 40<sup>th</sup> stated he has lived in this neighborhood for 24 years. He does not drive and did not understand why the applicant needed to rezone their property. However, after sitting and listening he now understands. He pointed out that there were five different owners who could not make it work until the current applicants came along and made it work. He believes that changing the business model would affect him and the neighbors.

Greg Crawford 3312 Bel-Aire Road stated he has been living in the area since 2005 and has seen no issues with the establishment. It is convenient for him and he considers the people who work there and the people who own the place his friends. He believes that if they were not able to sell liquor at that establishment they would not be able to clear a profit which might put them out of business. If they go out of business the property would probably be a blight on the neighborhood.

Joe Nemmers 4509 29<sup>th</sup> Street stated he frequents the Family Pantry all of the time. He is supportive of the applicant's request, it is a great location, friendly people and it provides great products.

Brian Millard 3920 Lynner Drive Lower Beaver Neighborhood Association stated they have worked very closely with businesses in the neighborhood, that it is not about the applicant because the zoning goes with the land. He pointed out that this area was spoke about when they went through their neighborhood plan. He stated this is not a convenient store any longer. The Lower Beaver Board's only opposition of the rezoning is not the people. He suggested to the applicant that they make this a convenient store. He also pointed out the land across the street is not blighted and would like the Commission to keep the zoning "R-4".

Mike Simonson asked would the Neighborhood Association Board support a request for Use Variance to the Zoning Board of Adjustment, if this body were to deny the rezoning.

Brian Millard stated that he could not answer that.

Mike Simonson pointed out that 90 neighbors signed a petition in support of the applicant's request.

### Opposition

Brian Millard stated they have 2200 homes in the neighborhood. The Board would have to meet and reach a decision. He pointed out that the Board members are very business oriented.

Janet Herrold 3025 Bel-Aire Road stated she can empathize with the people that live in the apartments, particularly since the bus route along their area has been decreased the number of times it comes by. That does make transportation difficult. However, her question to the people who spoke tonight is, if they used that convenient store so much for bread, milk and food then why can't they be in compliance with the percentage of food that needs to be sold.

Jacqueline Easley stated she believes because they probably do not control what the model is for the store. Those items are less expensive than the liquor. They are just speaking on their current use of the store.

Janet Herrold stated the 200 to 300 people in the apartment complex probably got notice about this situation but there is a total of 2200 households. So there was a whole lot of households in the overall neighborhood that did not get notified.

CJ Stephens stated she believes that this is the kind of store and the fiber of what they are trying to build in neighborhoods. There is a big meeting coming up and one of the questions is "What do we want Des Moines to look like?" If this store could find a way to meet the requirements of food versus liquor would the Lower Beaver Board still oppose it?

Janet Herrold stated that she could not answer the question for the Board but she personally believes it would make a huge difference if they could get into compliance.

Vicki Stogdill asked did the Neighborhood Association meet or did just the Board meet.

Janet Herrold stated it was just the Board.

Vicki Stogdill asked was this issue brought up at their Neighborhood Association meeting.

Brian Millard stated this issue is something that the Board dealt with. Their annual meeting was on Monday, February 16, 2015 and this is one of the issues that was spoken about. There was no vote taken but they received a lot of comments about it.

Will Page asked is there were any contradictions to the public hearing testimony tonight that there has been no police calls due to complaints made from the applicants.

Janet Herrold stated she would not contradict those comments and she is very proud to say that the Lower Beaver Neighborhood area has a very low crime rate compared to other areas within the City. The police do not get called to their area very often unless it is because they are invited to a neighborhood event.

Rebuttal

Don Nguyen stated the purpose is not to turn this store into a liquor store but they are trying to preserve the store the way it is. They are trying to work towards having more food sales but believe that cannot be resolved until the issue about the rezoning is resolved.

Vicki Stogdill stated that it should be noted about how many loaves of bread you can buy for a six-pack of beer. Some of the food items are less costly than liquor, wine and beer.

Don Nguyen stated yes.

Vicki Stogdill asked the likelihood of them doing something that could help them get their food sales up.

Don Nguyen stated just by the people raising their hands in the audience that they are willing to come to the store and make the food purchases. He also noted that his office did the audit of the percentage of food sales versus liquor sales to try to improve this business. The State did not.

Glenna Frank clarified that because this property is already zoned "R-4" they cannot go to the Zoning Board of Adjustment for any conditional use permit at this time. They cannot go to sell liquor and they cannot go to sell beer or wine. They have to be at least "C-1" as a limited food sales or retail sales establishment to sell beer and wine only. They would have to be zoned "C-2" to continue to sell liquor. If they were classified as a liquor store they would also have to be "C-2" to sell liquor and beer and wine. After the Commission votes on their recommendation it will go to City Council on the rezoning. If that is approved they can go to the Zoning Board of Adjustment for either sales as a liquor store or sales as a limited food sales establishment. If the rezoning were to be denied the applicant could also go to the Zoning Board of Adjustment for the Use Variance.

Will Page asked which of the two scenarios mentioned by legal is the easiest.

Glenna Frank stated that anyone that is zoned correctly can come in and has to come into the Zoning Board of Adjustment and get a Conditional Use Permit. Because the applicant is not zoned correctly that is why they are asking Plan and Zoning Commission for approval of rezoning.

Erik Lundy explained that the difference when the Use Variance component is added if the rezoning is denied is the demonstration of criteria in which they have to show in order to be granted the Use Variance.

Vicki Stogdill asked does the Use Variance stay with the current ownership.

Erik Lundy stated that Use Variances generally they stay with the land. The Zoning Board of Adjustment would be the ones to determine that.



Don Nguyen stated that if the applicant's request is denied they will have more hurdles of difficulties on how to simply to business. He pointed out that even the ones that are in opposition of the rezoning are not saying anything negative about the way the store is currently being operated. Therefore, he believes the easiest solution is to grant the applicant's request for rezoning.

## **CHAIRPERSON CLOSED THE PUBLIC HEARING**

JoAnne Corigliano asked if what she heard tonight is that if the applicant is denied the rezoning then the applicant can go to the Zoning Board of Adjustment to get a Use Variance, and operate the same as if the Plan and Zoning Commission approved their request for a "C-2" zoning.

Glenna Frank stated if it were approved then that would be true.

Erik Lundy pointed out that a Use Variance would be very specific to their use. They would not get "C-2" zoning.

Mike Simonson asked would the applicant have to demonstrate hardship.

Erik Lundy stated yes that is the other layer of criteria.

Mike Simonson pointed out that there are three conditions with the Zoning Board of Adjustment and one is could they get a reasonable return on that property unless it was granted. He believes that is very challenging.

JoAnne Corigliano stated then what the Commission has to do is either vote staff recommendation or vote in opposition of staff recommendation and if they vote in opposition what is the next step.

Greg Jones stated they could then vote to approve the rezoning.

Mike Simonson stated he was moved by the neighbor's testimony and clearly the people in the neighborhood want the store to continue to operate in the same manner. Therefore, he would like to see the Commission recommend approval of the applicant's request. His concern is what happens if there is a new owner/operator who does not run a good clean business and there were problems with liquor sales. What components are used to stop liquor sales?

Erik Lundy stated that is more of a legislative function of the City Council. The liquor license renewals are usually annually. There is another aspect to that in that they can be appealed through the State. If this was zoned to allow the use then if there was a break in use the new operator/owner would have to come to the Zoning Board of Adjustment for a new conditional use or an amendment if they are expanding it. So the use of the actual liquor sales or business selling beer, wine and liquor is governed by the conditional use that the Zoning Board of Adjustment would look at.

Vicki Stogdill asked if this was zoned commercial at one time.

Erik Lundy stated yes, there was a rezoning in 1974. Staff is also aware that in 1970 there was a Zoning Board of Adjustment request when the store was built to get waiver of some of the minimum parking requirement and at that time it was "C-1". Then in 1974 the property was zoned to the "R-4" Designation.

CJ Stephens commented that neighborhoods spend a lot of hours to figure out what kind of neighborhood they want, how they want their neighborhood zoned, and the Plan and Zoning Commission and the City Council recently approved this neighborhood's plan. She believes even though she would like to see the applicant stay in business they are not currently conforming to the zoning and believes that the Commission should respect that when an applicant comes before them for rezoning.

Mike Simonson stated he believes there should be a mechanism that should there not be a good operator that a liquor license could be revoked. He would like to give the applicant a chance to get more food in the store, allow food stamps and have a safety mechanism in place. He believes that the applicant would not be able to get a Use Variance due to the three hurdles by law they would have to demonstrate.

Vicki Stogdill stated she is going to support the applicant's request. She believes that even though the Lower Beaver Neighborhood Association worked and agreed to their plan it was a small number of people. The applicant has turned in over 90 signatures of neighbors in the exact area of the store that for whatever reason may have supported the neighborhood plan at that time but they also want to keep this neighbor.

JoAnne Corigliano agrees with Commissioners Simonson and Stogdill because of what she has heard tonight that there are no issues with the store and sees no problem in the applicant and believes they will have real challenges getting approval if they have to go the Zoning Board of Adjustment.

Erik Lundy pointed out that for the Commission to recommend approval of the amendment in Part B) it would take 2/3<sup>rd</sup> of the members sitting there. If it were not to pass, then it would still require 6/7<sup>th</sup> vote of the City Council to approve that amendment.

Mike Simonson stated that the City Council has the ultimate say and would like for them to be able to consider this.

### **COMMISSION ACTION:**

Mike Simonson moved staff recommendation for Part A) to find the proposed rezoning is not in conformance with the existing Des Moines' 2020 Community Character Plan.

Motion passed 9-0.

Mike Simonson made a motion to approve Part B) the request to amend the Des Moines' 2020 Community Character Plan to revise the existing future land use designation from Medium-Density Residential to Commercial: Auto-Oriented, Small-Scale Strip Development.

Motion passed 8-1 (CJ Stephens voted in opposition).

Mike Simonson made a motion to approve the Part C) request to rezone property from "R-4" Multiple-Family Residential District to "C-2" General Retail and Highway-Oriented Commercial District.

Motion passed 7-2 (CJ Stephens and Greg Jones voted in opposition).

Respectfully submitted,



Erik Lundy, AICP  
Senior Planner

EML:clw

Attachment

We, the residents of the community, as well as customers who come to Family Pantry, 4538 Lower Beaver Road, ask the Members of the Des Moines City Plan & Zoning to approve the Rezoning Application filed by the store owners.

We feel that the store is an important part of the neighborhood. The store provides merchandise and services in an area that is underserved by the big national and state stores. Each of us would have to travel a longer distance to purchase our necessities resulting in unnecessary expenses of time and resources. The store has been serving this area for the last 11 years, prior to the change in zoning. The store provides good prices and selection. It is clean with easy access and very well stocked for our needs. The owners and staff at the store are very helpful, professional and knowledgeable.

It would be a great loss to this community if the store should be closed for a zoning issue. This neighborhood store is an asset to the community and it serves to improve and maintain the standard of living for each of us.

Name Kevin Jenkins  
Address: 2725 Payne Rd

Kevin Jenkins  
Signature

\* Name Michael Walker  
Address: 4530 Lower Beaver Rd #B

Michael Walker  
Signature

Name DEBBIE LAKINER  
Address: 3401 TWANA DR. DSM 50310

Debbie Lakiner  
Signature

Name MIKE COSTANZO  
Address: 1022 DOUGLAS

Mike A Costanzo  
Signature

property  
owner  
within 250ft

Name William D. Wynn  
Address: 3412 Twana Dr

William D Wynn  
Signature

Name Marc Cochran  
Address: 4823 Lawnwoods Dr

Marc Cochran  
Signature

Name Keith Reed  
Address: 2975 Twana Dr

Keith Reed  
Signature

\* - Tenant  
within 250 feet of subject property

Name Dax Christensen  
Address: 3630 Twana Dr

Dax Christensen  
Signature

Name Payton Furber  
Address: 3630 Twana Dr

Payton Furber  
Signature

Name Erika Bendixen  
Address: 3630 Twana Dr

Erika L Bendixen  
Signature

Name Maribeth Savage  
Address: 7928 Greenbelt Circle Urbendale

Maribeth S.  
Signature

Name Neelzad Miskic  
Address: 7928 Greenbelt Circle Urbendale 215002

Neelzad Miskic  
Signature

Name James Sage  
Address: 3700 Twana Dr

James Sage  
Signature

Name Shawnda Epping  
Address: 4530 Lower Beate Rd. #24

Shawnda Epping  
Signature

Name Michael Graves  
Address: 3630 Twana Dr #11

Michael Graves  
Signature

Name Matt Costanzo  
Address: 3710 Twana Dr #12

Matt Costanzo  
Signature

Name Robert F Rhoads  
Address: 3630 Twana Dr #8

Robert F Rhoads  
Signature

Name Carol L Rhoads  
Address: 3630 Twana Dr #8

Carol Rhoads  
Signature

Name Andrew Scott  
Address: 3200 Twana Dr. #2

Andrew Scott  
Signature

Name Jerome Scott  
Address: 3200 Twana Dr. #2

Jerome Scott  
Signature

Name Mary Costanzo  
Address: 1022 Douglas

Mary Costanzo 30  
Signature

Name Stacy Rasty  
Address: 3914 40th St

Stacy Rasty  
Signature

Name ERNIE RUKON  
Address: 4530 Apt 16 U.S.M.C.  
Lower Beaver

Ernie Rukon Closing Store  
Signature is God

Name GARY DOUGLAS  
Address: 3416 Twana DR.

Mary Douglas  
Signature

Name MARK PAUTERIVE  
Address: 4521 84TH ST

Mark  
Signature

Name Sandra Douglas  
Address: 3416 Twana Dr.

Sandra Douglas  
Signature

Name Jacob Larsen  
Address: 3819 Twana Drive

Jacob Larsen  
Signature

Name Kathryn Ferber  
Address: 3630 Twana Drive

Kathryn Ferber  
Signature

Name Lori Shatto  
Address: 3020 Bel-Aire Rd

Lori Shatto  
Signature

Name TESSA DELARIA  
Address: nw 52nd

Tessa Delaria  
Signature

Name Larry ESSINK  
Address: 4018 40th

Larry Essink  
Signature

Name Richard Bear  
Address: 3600 Twana Dr apt 23

Richard Bear  
Signature

Name Michael Deetjen  
Address: 3700 twana dr. #5

Michael Deetjen  
Signature

reporty  
when  
return 250ft

\*

\*

\*

\*

\*

Name Edwin E Hayes  
Address: 3700 Twana Dr #14

Edwin E Hayes  
Signature

Name [Signature]  
Address: 3212 Fleming Ave

James Rhiner  
Signature

Name Colt Bendixen  
Address: 3630 Twana Dr. #9

Colt Bendixen  
Signature

Name Kelvin Mambo  
Address: 3600 Twana Dr #5

Kelvin Mambo  
Signature

Name Douglas  
Address: 2910 Madison Ave Des Moines

Douglas  
Signature

Name STEPHEN SMART  
Address: 3413 TWANA DRIVE  
DES MOINES, IA.

Stephen Smart  
Signature

Name Janet Cochran  
Address: 4823 Lawrence Dr.  
D. M. IA

Janet Cochran  
Signature

Name Dominique Jackson  
Address: 1915 30th St. Des Moines, IA

Dominique Jackson  
Signature

Name Jerome Malone  
Address: 3560 Douglas #B7

Jerome Malone  
Signature

Name Steven Williams  
Address: 6800 S.W 9th Apt #8

Steven Williams  
Signature

Name Robert Patterson  
Address: 3601 AURORA AVE

Robert Patterson  
Signature

Name Jacob Andersson  
Address: 3700 Twana Drive Apt #4

Jacob Andersson  
Signature

Name Lisa Rokey  
Address: 4132 Ardmore Rd

Lisa Rokey  
Signature

Name Bugs Chapman

Address: 2600 Lower Beaver #5

Bugs Chapman 30  
Signature

Name ROY RASTY

Address: 3914 40TH ST

[Signature]  
Signature

Name Andrew Leonard

Address: 4530 Lower Beaver #29

[Signature]  
Signature

Name PATTI KATZENBERGER

Address: 4530 LOWER BEAVER  
ASM FA 3030 #19

[Signature]  
Signature

Name Guy Cornve II

Address: 3812 CLINTON  
TIRIA

[Signature]  
Signature

Name Tiasia Herron

Address: 2749 Boston

[Signature]  
Signature

Name Kory Biv

Address: 2853 Merced Dr

[Signature]  
Signature

\* Name JASON ALLER

Address: 3620 Twana Dr #13

[Signature]  
Signature

Name Derek Hood

Address: 3515 Bel Air Rd.

[Signature]  
Signature

Name Irma Karadza

Address: 3504 27th St

[Signature]  
Signature

\* Name Karena Smith

Address: 3700 Twana Dr #4

[Signature]  
Signature

\* Name Marcus Jenkins

Address: 3620 Twana Dr 20

[Signature]  
Signature

\* Name Chrestal Shetworth

Address: 3620 Twana Dr. 22

[Signature]  
Signature



Name Dominique Supter  
Address: 3700 Wana Drive #3

[Signature]  
Signature

Name Dani Halik  
Address: 3425 57th Street DM

[Signature]  
Signature

Name Omer Mustafa  
Address: 2116 Freddy Lost Ames, IA

[Signature]  
Signature

Name W P Smith  
Address: 2341 E 1st Des Moines Ia

[Signature]  
Signature

Name SHIRLEY SITER  
Address: 3630 TWANA DR #8

[Signature]  
Signature

Name Abby Van Kooten  
Address: 4846 63rd St. Urbandale  
Kendrick Mitchell

[Signature]  
Signature

Name Kristen Moore  
Address: 114 13th mile rd

[Signature]  
Signature

Name Dominique Williams  
Address: 3941 42nd Street

[Signature]  
Signature

Name Taya Smith  
Address: 3630 Tudana Dr

[Signature]  
Signature

Name CLAUDIA OETR  
Address: 3330 VALDE CT

[Signature]  
Signature

Name Rudy Richards  
Address: 1428 39th Pl.

[Signature]  
Signature

Name [Signature] American  
Address: 3670 Tudana Dr #23

[Signature]  
Signature

Signature [Signature]  
Name \_\_\_\_\_  
Address: \_\_\_\_\_

[Signature]  
Signature  
Name \_\_\_\_\_

\* Name Patricia Miller  
Address: 3620 Twana Dr #31  
Des Moines Ia 50310

Patricia Miller  
Signature

30

Name Robert Wright  
Address: 2126 University ave

Robert Wright  
Signature

\* Name DAVID EVANS  
Address: 3020 TAWANA

David Evans  
Signature

\* Name Emily McEvuder  
Address: 3020 Twana Dr #19

Emily McEvuder  
Signature

\* Name JEFF SCHARPING  
Address: 3020 TWANA #9

Jeff Scharping  
Signature

\* Name Scott Feldmacher  
Address: 3620 Twana Dr #12

Scott Feldmacher  
Signature

\* Name Crystal DAMASKO  
Address: 3620 TWANA APT 6

Crystal DAMASKO  
Signature

\* Name Kerstin Frederick  
Address: 3620 Twana Dr #8

Kerstin Frederick  
Signature

\* Name Heritier Behani  
Address: 3600 Twana Dr, #5

Heritier Behani  
Signature

\* Name Jacqui Cheney  
Address: 3600 Twana Dr #2

Jacqui Cheney  
Signature

\* Name Sari Ann  
Address: 3600 Twana Dr #3

Sari Ann  
Signature

\* Name DeShawn Robinson  
Address: 3620 Twana Dr #3

DeShawn Robinson  
Signature

Name Passion Soward  
Address: 1016 University ave Suite C

Passion Soward  
Signature

\* Name Lee Baumgardner  
Address: 3630 Twana Dr Apt

Lee Baumgardner  
Signature

\* Name Nicole Bronson  
Address: 3630 Twana drive #17

Nicole Bronson  
Signature

\* Name Daniel Bronson  
Address: 3630 Twana Dr. #17

Daniel Bronson  
Signature

\* Name Kathen Toliver  
Address: 3680 Twana Dr. 24

Kathen Toliver  
Signature

Name Marcia Stewart  
Address: 3117 Twana rd

Marcia J. Stewart  
Signature

Name Maria Jenkins  
Address: 1357 E 15th St

Maria Jenkins  
Signature

\* Name Barth Bendixen  
Address: 3630 Twana dr

Barth Bendixen  
Signature

Name Jesse White  
Address: 920 college ave

Jesse White  
Signature

# FAMILY PANTRY



February 17, 2015

Des Moines Plan & Zoning Commission  
Argonne Armory  
602 Robert D Ray Drive  
Des Moines, IA 50309

Attention Erik Lundy

RE: P&Z 2/19/15 Agenda item #2 – 4538 Lower Beaver Road

Honorable members of the Plan & Zoning Commission,

The Lower Beaver Neighborhood Association Board has discussed the applicant's request to rezone the property at 4538 Lower Beaver Road from R-4 to C-2.

We do not feel it would be appropriate to amend the 2020 Community Character Plan to revise the current land use plan, nor do we feel this rezoning would be consistent with the character of our neighborhood.

We ask that you vote no on part A, B and C.

Thanks for your consideration,

*Brian L Millard*

Brian L. Millard  
President, Lower Beaver Neighborhood Association  
3920 Lynner Drive  
Des Moines, IA 50310  
(515) 202-2788

<http://www.lowerbeaver.org>

<https://www.facebook.com/LowerBeaverNeighborhood>

*\* The LBNA was recognized by the City of Des Moines on July 24, 2000, became a designated neighborhood on November 21, 2011 & our neighborhood plan was accepted on May 6, 2013.*

Azhar Iqbal and Dominic Mathew (owners) for property located at 4538 Lower Beaver Road.		<b>File #</b> 21-2015-4.03		
<b>Description of Action</b>	Approval of request to amend the Des Moines' 2020 Community Character Plan to revise the existing future land use designation from Medium-Density Residential to Commercial: Auto-Oriented, Small-Scale Strip Development.			
<b>2020 Community Character Plan</b>	Current: Medium-Density Residential. Proposed: Commercial: Auto-Oriented, Small-Scale Strip Development.			
<b>Horizon 2035 Transportation Plan</b>	No planned improvements.			
<b>Current Zoning District</b>	"R-4" Multiple-Family Residential District.			
<b>Proposed Zoning District</b>	"C-2" General Retail and Highway-Oriented Commercial District.			
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area	2	0		
Outside Area				
<b>Plan and Zoning Commission Action</b>	Approval	8-1	<b>Required 6/7 Vote of the City Council</b>	Yes
	Denial			No



1 inch = 86 feet