



**Date** September 14, 2015

**RESOLUTION HOLDING HEARING ON REQUEST FROM WILLIAM H. WHEELER  
TO REZONE PROPERTY LOCATED AT 3601 6<sup>TH</sup> AVENUE**

**WHEREAS**, on August 24, 2015, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on August 6, 2015, its members voted 11-0 in support of a motion to recommend **DENIAL** of a request from William H. Wheeler (owner) to rezone real property locally known as 3601 6<sup>th</sup> Avenue (“Property”) from “C-2” General Retail and Highway-Oriented Commercial District to Limited “M-1” Light Industrial District to allow conversion of the building to a manufacturing use of preparing, bottling, packaging, and distributing salad dressing; and

**WHEREAS**, on August 24, 2015, by Roll Call No. 14-1431, it was duly resolved by the City Council that the application of William H. Wheeler to rezone the Property, legally described as follows, be set down for hearing on September 14, 2015 at 5:00 p.m. in the Council Chamber at City Hall:

Lot 13 of Block 22 in HIGHLAND PARK, now included in and forming a part of the City of Des Moines, Iowa; and

**WHEREAS**, due notice of said hearing was published in the Des Moines Register, as provided by law, setting forth the time and place for hearing on said proposed rezoning; and

**WHEREAS**, in accordance with said notice, those interested in said proposed rezoning, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Des Moines, Iowa, as follows:

1. Upon due consideration of the facts and any statements of interested persons and arguments of counsel, any and all comments for and against the proposed rezoning of the Property to Limited “M-1” Light Industrial District, to allow conversion of the building to a manufacturing use of preparing, bottling, packaging, and distributing salad dressing, are hereby received and filed, and the hearing is closed.

**Alternative A**

MOVED by \_\_\_\_\_ to adopt and **DENY** the proposed rezoning, and to make the following findings of fact regarding the proposed rezoning:

- a. The City Plan and Zoning Commission voted 11-0 to recommend denial of the requested rezoning of the Property to Limited “M-1” Light Industrial District, to allow conversion of the building to a manufacturing use.

( continued )



Date September 14, 2015

- b. The Highland Park Neighborhood Plan contemplates that the Property will remain in the character of the surrounding pedestrian-oriented commercial area.
- c. The character of the surrounding area is best suited by occupancies which serve pedestrian retail traffic, and thus the proposed rezoning is not consistent with the character of the surrounding commercial area.
- d. If the application of the existing zoning regulations has the effect of denying the owner all economic use of the Property, then the appropriate remedy is to seek relief from the Zoning Board of Adjustment.

**Alternative B**

MOVED by \_\_\_\_\_ to continue the public hearing until September 28, 2015, at 5:00 p.m. in the Council Chambers, and to direct the City Manager and Legal Department to prepare the necessary legislation to **APPROVE** the rezoning subject to conditions acceptable to the City and the owner.

FORM APPROVED:

*Glenna K. Frank*

Glenna K. Frank, Assistant City Attorney

(ZON2015-00130)

NOTE: Six affirmative votes are required to approve the proposed rezoning due to the Commission's recommendation for denial. Des Moines City Code §134-4.

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



August 18, 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 August 6, 2015, the following action was taken regarding a request from William H. Wheeler (owner) to rezone property located at 3601 6th Avenue.

**COMMISSION RECOMMENDATION:**

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

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
Dory Briles	X			
JoAnne Corigliano	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Jann Freed				X
John "Jack" Hilmes				X
Greg Jones	X			
Sasha Kamper	X			
Brian Millard	X			
William Page	X			
Jonathan Rosenbloom	X			
Mike Simonson	X			
CJ Stephens				X
Greg Wattier	X			

**APPROVAL** of Part A) to find the proposed rezoning not in conformance with the existing Des Moines' 2020 Community Character Plan existing future land use designation of Low Density Residential, Part B) **DENIAL** of an amendment to the Des Moines' 2020 Community Character Plan to revise the existing future land use designation from Commercial: Pedestrian-Oriented, Commercial Corridor to General Industrial and Part C) **DENIAL** of rezoning to a Limited "M-1" Light Industrial District.

(21-2015-4.15 & ZON2015-00130)

## STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the proposed rezoning be found not in conformance with the existing Des Moines' 2020 Community Character Plan existing future land use designation of Low Density Residential.

Part B) Staff recommends denial of an amendment to the Des Moines' 2020 Community Character Plan to revise the existing future land use designation from Commercial: Pedestrian-Oriented, Commercial Corridor to General Industrial.

Part C) Staff recommends denial of rezoning to a Limited "M-1" Light Industrial District.

### Written Responses

3 In Favor

2 In Opposition

## STAFF REPORT TO THE PLANNING COMMISSION

### I. GENERAL INFORMATION

- 1. Purpose of Request:** The applicant is seeking to rezone the subject property to allow continued use by a tenant to conduct a light manufacturing business that involves the production and bottling of salad dressing for wholesale customers.
- 2. Size of Site:** Approximately 3,150 square feet.
- 3. Existing Zoning (site):** "C-2" General Retail and Highway-Oriented Commercial District and "FSO" Freestanding Sign Overlay District.
- 4. Existing Land Use (site):** The property is a commercially built structure occupied most recently by a light manufacturing use and previously by a bakery and a restaurant before that.
- 5. Adjacent Land Use and Zoning:**
  - North** – "C-2" & "FSO"; Use is off-street parking and hardware store.
  - South** – "C-2", "GGP" & "FSO"; Use is multi-tenant commercial center.
  - East** – "C-2" & "FSO"; Uses is multi-tenant commercial center.
  - West** – "C-2" & "FSO"; Uses is mixed-use multiple-family residential and retail building.
- 6. General Neighborhood/Area Land Uses:** The subject property is located in the Highland Park neighborhood commercial district and the intersection of the 6<sup>th</sup> Avenue and Euclid Avenue (U.S. Highway 6) corridors.

7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Highland Park Neighborhood and within 250 feet of the Oak Park Neighborhood. This neighborhood associations were notified of the meeting by mailing of the Preliminary Agenda to all recognized neighborhood associations on July 17, 2015. Additionally, separate notifications of the hearing for this specific item were mailed on July 17, 2015 (20 days prior to the hearing) and July 27, 2015 (10 days prior to the hearing) to the Highland Park Neighborhood Association, the Oak Park Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the requested rezoning. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on July 31, 2015.

All agendas and notices are mailed to the primary contact person designated to the City of Des Moines Neighborhood Development Division by the recognized neighborhood association. The Highland Park Neighborhood Association notices were mailed to Andy Anderson, 4011 North Union Street, Des Moines, IA 50313. The Oak Park Neighborhood Association notices were mailed to Viola Christenson, 3615 18<sup>th</sup> Street, Des Moines, IA 50313.

8. **Relevant Zoning History:** The Zoning Enforcement Officer has determined that this operation is consistent with an industrial use since it does not involve regular retail sales of the products produced on premises, such as a bakery with retail sales found as a permitted use in the "C-1" District regulations. The property is under notice of an enforcement action as of June 3, 2015.
9. **2020 Community Character Land Use Plan Designation:** Commercial: Pedestrian-Oriented, Commercial Corridor.
10. **Applicable Regulations:** 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, and taking into consideration the criteria set forth in Chapter 18B 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. **2020 Community Character Plan:** The Highland Park Neighborhood Plan as an element to the Des Moines' 2020 Community Character Plan contemplates that the property will remain in the character of the surrounding pedestrian-oriented commercial area. This area has a traditional development pattern with zero setback buildings and pedestrian scale.

While the owner may be willing to restrict the rezoning to the light manufacturing use in operation as part of rezoning and the fact that the use does not appear to be causing any direct adverse impact to the area, the overall character of the area is best suited by occupancies which serve pedestrian retail traffic. Staff does not believe that introducing the allowance for light industrial uses with no retail component is conducive for the surrounding retail viability.

**SUMMARY OF DISCUSSION**

Erik Lundy presented the staff report and recommendation.

Brian Millard asked what the procedure is to ask for a use variance.

Erik Lundy explained there is no standing for use variance request without first being denied a rezoning that would allow for the proposed use.

Greg Wattier asked does the applicant understand this formality.

Erik Lundy stated he believes they understand that is a remedy available to them.

Bill Wheeler 3613 6<sup>th</sup> Avenue stated he is in opposition of his request for rezoning. He wants a use variance. This is a low usage operation, no big trucks, not a lot of noise. They met with the neighborhood leaders and neighboring business and property owners and they all agreed the current tenant runs a clean operation.

**CHAIRPERSON OPENED THE PUBLIC HEARING**

Michael Harden he owns the property one block to the north. He is opposed to the applicant's request. He believes trying to make this "M-1" Light Industrial District conflicts with the purpose of the streetscape and SSMID. His biggest concern is when it fails and it will fail there is no longer going to be a salad dressing distribution company. In 15 years it might become a body shop or something that is not in keeping with the SSMID agreement.

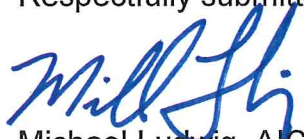
**CHAIRPERSON CLOSED THE PUBLIC HEARING**

**COMMISSION ACTION:**

Sasha Kamper moved staff recommendation Part A) to find the proposed rezoning not in conformance with the existing Des Moines' 2020 Community Character Plan existing future land use designation of Low Density Residential, Part B) denial of an amendment to the Des Moines' 2020 Community Character Plan to revise the existing future land use designation from Commercial: Pedestrian-Oriented, Commercial Corridor to General Industrial and Part C) denial of rezoning to a Limited "M-1" Light Industrial District.

Motion passed 11-0.

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

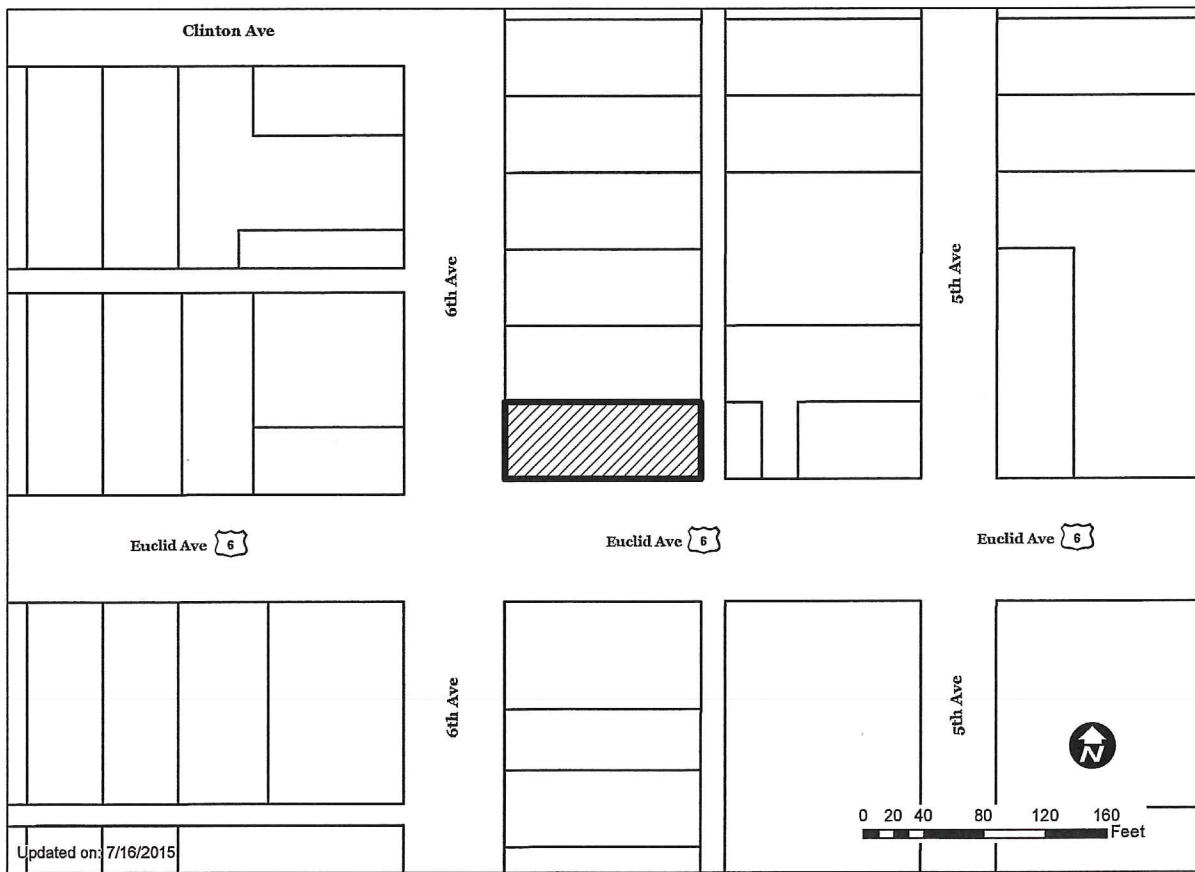
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Attachment

William H. Wheeler (owner) for property located at 3601 6th Avenue.			File #		
			21-2015-4.15		
Description of Action	Denial of an amendment to the Des Moines 2020 Community Character Plan existing future land use designation from Commercial: Pedestrian-Oriented Commercial Corridor to General Industrial.				
2020 Community Character Plan	Current: Commercial, Pedestrian-Oriented Commercial Corridor. Proposed: General Industrial.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	"C-2" General Retail and Highway-Oriented Commercial District and "FSO" Freestanding Sign Overlay District.				
Proposed Zoning District	"M-1" Light Industrial District and "FSO" Freestanding Sign Overlay District.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	3	2			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	11-0		No	

Wheeler, 3601 6th Avenue

21-2015-4.15



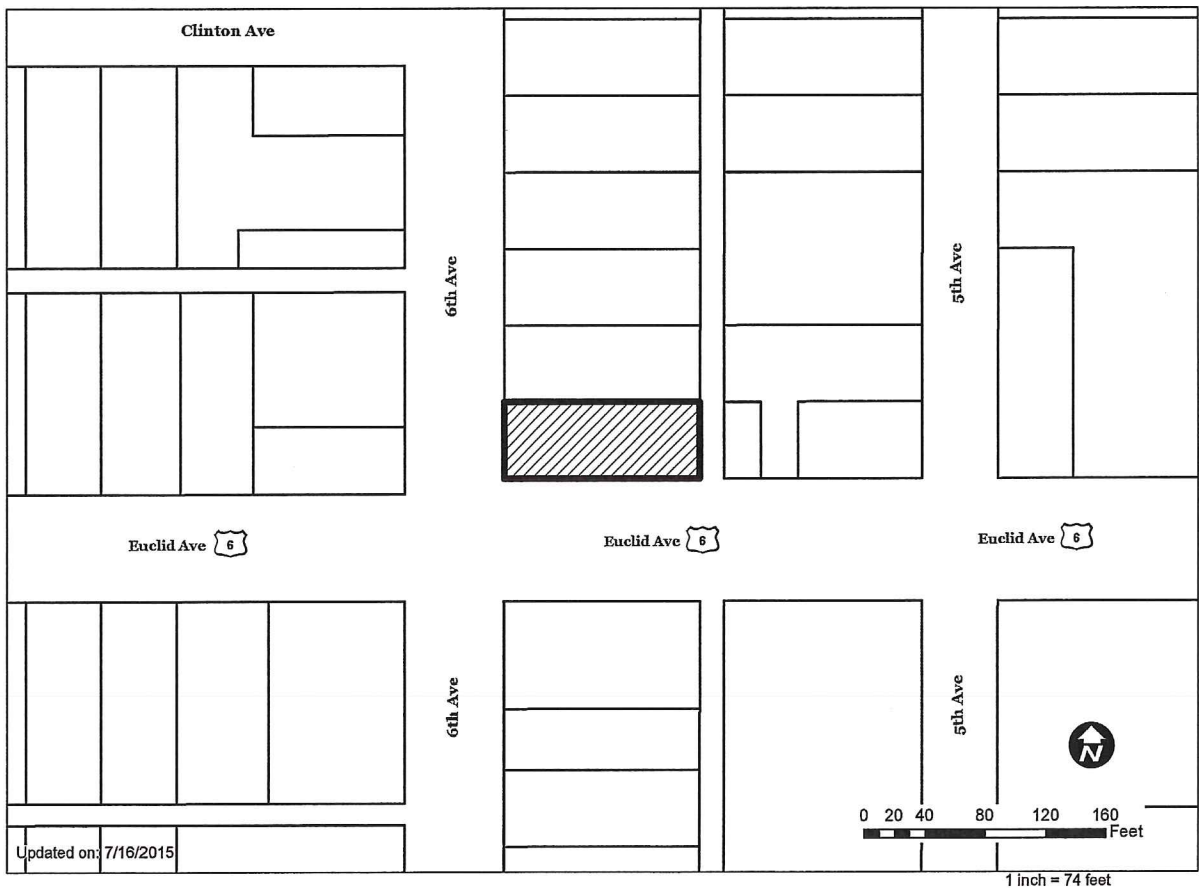
1 inch = 74 feet

62B

William H. Wheeler (owner) for property located at 3601 6th Avenue.		File #			
		ZON2015-00130			
Description of Action	Denial of request to rezone property from "C-2" General Retail and Highway-Oriented Commercial District to "M-1" Light Industrial District to allow conversion of the building to a manufacturing use of preparing, bottling, packaging, and distributing salad dressing.				
2020 Community Character Plan	Current: Commercial, Pedestrian-Oriented Commercial Corridor. Proposed: General Industrial.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	"C-2" General Retail and Highway-Oriented Commercial District and "FSO" Freestanding Sign Overlay District.				
Proposed Zoning District	"M-1" Light Industrial District and "FSO" Freestanding Sign Overlay District.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	3	2			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	11-0		No	

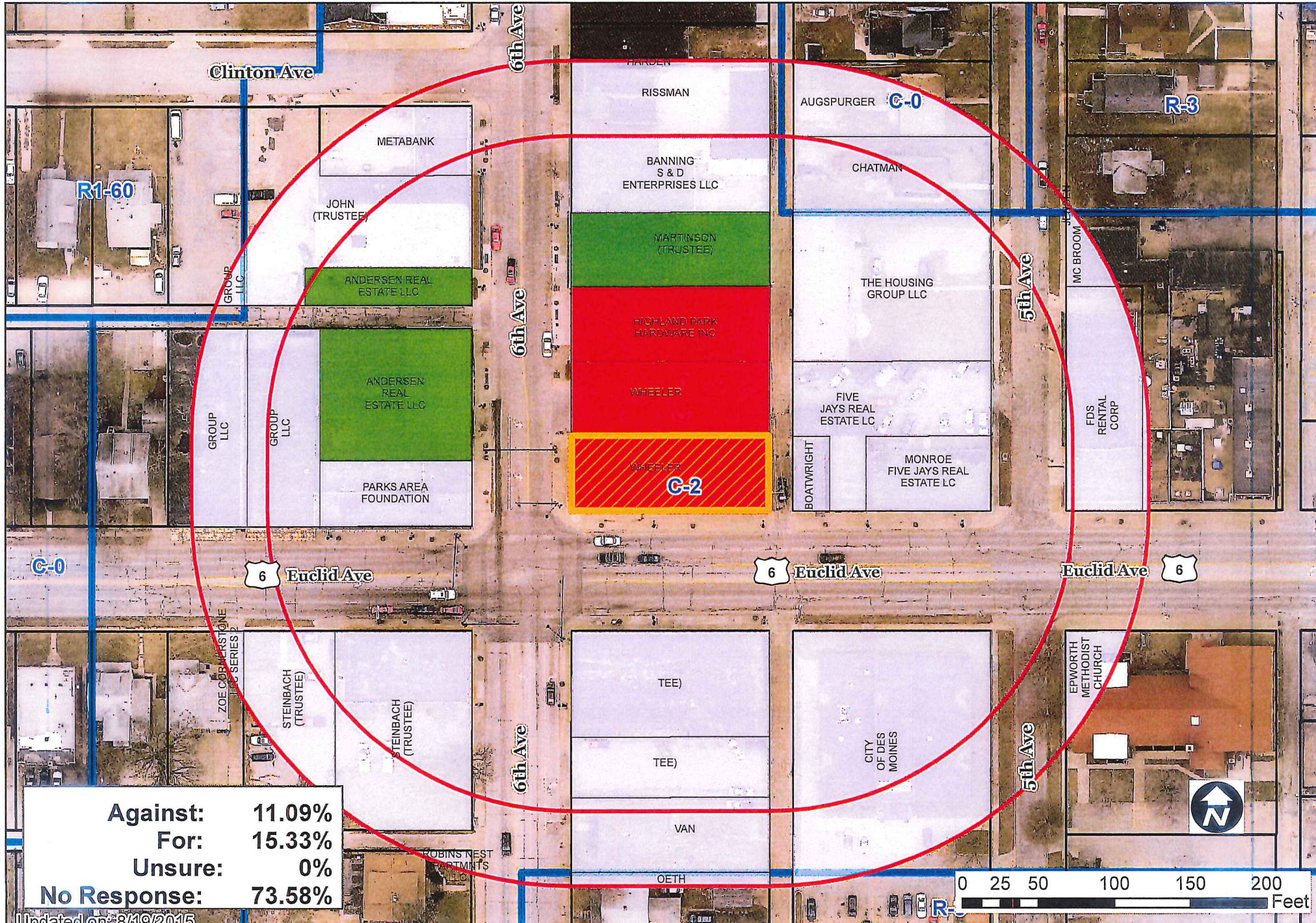
Wheeler, 3601 6th Avenue

ZON2015-00130



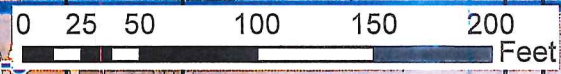
1 inch = 74 feet





<b>Against:</b>	<b>11.09%</b>
<b>For:</b>	<b>15.33%</b>
<b>Unsure:</b>	<b>0%</b>
<b>No Response:</b>	<b>73.58%</b>

Updated on 3/19/2015



Item ZON2015-00130

Date 7/28/15 62B

I  (am)  (am not) in favor of the request.

RECEIVED  
Circle One

COMMUNITY DEVELOPMENT

Print Name Emily Anderson

AUG 10 2015

Signature [Handwritten Signature]

DEPARTMENT

Address 3610 10th Ave.

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

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

Item ZON2015-00130

Date August 2, 2015

I  (am)  (am not) in favor of the request.

RECEIVED  
Circle One

COMMUNITY DEVELOPMENT

Print Name Martha Martinson

AUG 7 2015

Signature Martha L Martinson

DEPARTMENT

Address 8308 Colby Pkwy, Urbandale

Iowa

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

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

Item ZON2015-00130

Date July 28, 2015 WZB

I (am) (am not) in favor of the request.

*Highland Park*

(Circle One)

RECEIVED

Print Name William H. Wheeler

COMMUNITY DEVELOPMENT

Signature William H. Wheeler

JUL 31 2015 Address 3613 6<sup>th</sup> Ave.

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

In lieu of rezoning I'd prefer that a variance  
be granted to allow for this operation. I think this  
operation is an asset to the neighborhood. Therefore  
I think that the granting of a variance to the  
current zoning makes more sense than rezoning.

Item ZON2015-00130

Date 7-31-15

I (am) (am not) in favor of the request.

*Anderson Real Estate*

(Circle One)

RECEIVED

Print Name ANDY ANDERSON

COMMUNITY DEVELOPMENT

Signature Andy Anderson

AUG 04 2015

Address 4011-14 Union 50313

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

It's a very small business trying to make  
a living (using the Highland park area)  
They have lived here for years - well  
acquainted with everyone - No trucks are  
used to distribute the products.