



Date August 28, 2017

RESOLUTION SETTING HEARING ON REQUEST FROM RSC PARTNERS, LLC TO REZONE PROPERTY AT 900 42ND STREET

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on August 17, 2017, its members voted 14-1 in support of a motion to recommend **APPROVAL** of a request from RSC Partners, LLC (owner), represented by Rick Krause (officer), to rezone property at 900 42nd Street (“Property”) from "C-1" Neighborhood Retail Commercial District to Limited “NPC” Neighborhood Pedestrian Commercial District, to allow the ability to request a Conditional Use Permit for a tavern as part of the existing art instruction business “Pinot’s Palette”, subject to the following conditions:

1. The following uses shall be prohibited on the Property:
 - a. Any business that derives more than 50% of its gross sales from the sale of alcoholic or tobacco products
 - b. Billiard parlors/game rooms;
 - c. Communication towers/antennas (excluding an extension of 20 feet or less from an existing structure);
 - d. Delayed deposit services;
 - e. Pawn brokers;
 - f. Gas stations/convenience stores;
 - g. Off premises advertising signs; and,
 - h. Liquor stores.

2. Any redevelopment or construction on the site shall be in accordance with a Site Plan under the Design Guidelines applicable to the “NPC” District; and

WHEREAS, the Property to be rezoned is legally described as follows:

EAST 150 FEET OF LOT 34, CHAMBERLAIN HEIGHTS, NOW INCLUDED IN AND FORMING APART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

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

1. That the attached communication from the Plan and Zoning Commission is hereby received and filed.

2. That the meeting of the City Council at which the proposed rezoning is to be considered shall be held at the Richard A. Clark Municipal Service Center (MSC), located at 1551 E. Martin Luther King, Jr. Parkway, Des Moines, Iowa, at 5:00 p.m. on September 11, 2017, at which time the City Council will hear both those who oppose and those who favor the proposal.

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.

25

Date August 28, 2017

-2-

MOVED BY _____ TO ADOPT.

FORM APPROVED:



 Glenna K. Frank, Assistant City Attorney

(ZON2017-00126)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
TOTAL				
MOTION CARRIED		APPROVED		

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.

_____ Mayor

_____ City Clerk



Date August 28, 2017

Agenda Item 25

Roll Call # _____

August 23, 2017

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 17, 2017, the following action was taken regarding a request from RSC Partners, LLC (owner) represented by Rick Krause (officer) to rezone property at 900 42nd Street from "C-1" Neighborhood Retail Commercial District to "NPC" Neighborhood Pedestrian Commercial District, to allow the ability to request a Conditional Use Permit that would allow sale of alcohol as part of the existing art instruction business operating as "Pinot's Palette".

COMMISSION ACTION:

After public hearing, the members voted 14-1 as follows:

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
Francis Boggus	X			
Dory Briles	X			
JoAnne Corigliano		X		
David Courard-Hauri	X			
Jacqueline Easley	X			
Jann Freed	X			
John "Jack" Hilmes	X			
Lisa Howard	X			
Carolyn Jenison	X			
Greg Jones	X			
William Page	X			
Mike Simonson	X			
Rocky Sposato	X			
Steve Wallace	X			
Greg Wattier	X			

APPROVAL of Part A) that the proposed rezoning be found in conformance with the existing PlanDSM: Creating Our Tomorrow Plan designation of Community Mixed Use; and Part B) rezoning to "NPC" District, subject to the following conditions:

1. The following uses shall be prohibited on the property:

- a. Any business that derives more than 50% of its gross sales from the sale of alcoholic or tobacco products
 - b. Billiard parlors/game rooms;
 - c. Communication towers/antennas (excluding an extension of 20 feet or less from an existing structure);
 - d. Delayed deposit services;
 - e. Pawn brokers;
 - f. Gas stations/convenience stores;
 - g. Off premises advertising signs; and,
 - h. Liquor stores.
2. Any redevelopment or construction on the site shall be in accordance with a Site Plan under the Design Guidelines applicable to the "NPC" District.

(ZON2017-00126)

Written Responses

4 in Favor
1 in Opposition

RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the proposed rezoning be found in conformance with the existing PlanDSM: Creating Our Tomorrow Plan designation of Community Mixed Use.

Part B) Staff recommends approval of the requested rezoning to "NPC" District, subject to the following conditions:

- 1. The following uses shall be prohibited on the property:
 - a. Any business that derives more than 50% of its gross sales from the sale of alcoholic or tobacco products.
 - b. Billiard parlors/game rooms;
 - c. Communication towers/antennas (excluding an extension of 20 feet or less from an existing structure);
 - d. Delayed deposit services;
 - e. Pawn brokers;
 - f. Gas stations/convenience stores;
 - g. Off premises advertising signs; and,
 - h. Liquor stores.
- 2. Any redevelopment or construction on the site shall be in accordance with a Site Plan under the Design Guidelines applicable to the "NPC" District.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

- 1. **Purpose of Request:** The subject property includes a tenant (Pinot's Palette) where customers can paint in a group setting while drinking alcohol that they bring to the premises. The business owner would prefer to be able to sell patrons alcohol so that customers don't have to bring it in.

The rezoning is the first of multiple steps that are necessary for the business to obtain a beer or wine permit and/or a liquor license that would allow them to sell and serve alcohol. If the property is successfully rezoned to "NPC" Neighborhood Pedestrian District, it would be eligible to request a Conditional Use Permit from the Zoning Board of Adjustment. However, for the Board to grant the Conditional Use Permit, they must also grant a Variance to the provision that requires 150 feet of separation from a school use (Hubbell Elementary School).

- 2. **Size of Site:** 150 feet by 166 feet (24,900 square feet).
- 3. **Existing Zoning (site):** "C-1" Neighborhood Retail Commercial District.
- 4. **Existing Land Use (site):** The site contains a multi-tenant commercial, a single tenant commercial structure, and a surface parking lot.

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

North – "C-1"; Use is the Drake Garage (motor vehicle repair).

South – "R1-60"; Uses are Hubbell Elementary School and Roosevelt High School's baseball field.

East – "C-1" & "NPC"; Uses are Git-n-Go (gas station convenience store) and the Shops at Roosevelt (retail center).

West – "R-4"; Use is a parking lot.

- 6. **General Neighborhood/Area Land Uses:** The subject property is located along the west side of the 42nd Street corridor, in an area that includes a mix of commercial, residential, and educational uses.
- 7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Waveland Park Neighborhood and within 250 feet of the Drake Neighborhood. These neighborhood associations were notified of the public hearing by mailing of the Preliminary Agenda on July 28, 2017 and by mailing of the Final Agenda on August 11, 2017. Additionally, separate notifications of the hearing for this specific item were mailed on July 28, 2017 (20 days prior to public hearing) and August 7, 2017 (10 days prior to initial public hearing) to the Waveland Park and Drake Neighborhood Associations and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines' Neighborhood Development Division on the date of the mailing. The Waveland Park Neighborhood Association notices were mailed to Charles D. Chedester, 1238 46th Street, Des

Moines, IA 50311, and the Drake Neighborhood Association notices were mailed to Kristina Johnson, 3523 University Ave #12A, Des Moines, IA 50311.

The applicant is scheduled to hold a neighborhood meeting on August 15, 2017. The applicant can report on their neighborhood meeting at the hearing.

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

9. **PlanDSM: Creating Our Tomorrow Land Use Plan Designation:** Community Mixed Use.

10. **Applicable Regulations:** Taking into consideration the criteria set forth in Chapter 18B of the Iowa Code, the Commission reviews all proposals to amend zoning boundaries or regulations within the City of Des Moines. Such amendments must be in conformance with the comprehensive plan for the City and designed to meet the criteria in 414.3 of the Iowa Code. The Commission may make recommendations to the City Council on conditions to be made in addition to the existing regulations so long as the subject property owner agrees to them in writing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** The subject property is located within an area designated on the PlanDSM future land use map as "Community Mixed Use". The plan defines this category as "Small- to medium-scale mixed-use development located on high capacity transit corridors or at the intersection of commercial corridors. Community mixed use areas include both a mix of retail and service establishments designed to attract customers from a large service area encompassing multiple neighborhoods and may include specialty retail that attracts regional customers". The proposed "NPC" District is compatible with this classification and does not require it to be amended.

Furthermore, Staff recommends that the "NPC" District classification is appropriate for this site since the buildings are constructed in a manner that is consistent with the "NPC" District regulations.

2. **Permitted Uses:** Given the location of the site near residential and educational uses, staff recommends that the following uses be prohibited:

- a) Any business that derives more than 50% of its gross sales from the sale of alcoholic or tobacco products.
- b) Billiard parlors/game rooms;
- c) Communication towers/antennas (excluding an extension of 20 feet or less from an existing structure);
- d) Delayed deposit services;
- e) Pawn brokers;
- f) Gas stations/convenience stores;
- g) Off premises advertising signs; and,

3. **Conditional Use Permit:** Should the property be rezoned to "NPC" District, the property would be eligible to request a Conditional Use Permit from the Zoning Board of Adjustment that would allow for the sale and/or service of alcohol. However, for the Board to grant the Conditional Use Permit, they must also grant a Variance to the requirement for 150 feet of separation from Hubbell Elementary School. Staff cannot speculate whether such a request would even be granted by the Zoning Board of Adjustment.
4. **NPC Design Guidelines:** Should the property be rezoned to "NPC" District, any future redevelopment or construction the site shall be in accordance with a site plan and building elevations that must be reviewed and approved by the Plan and Zoning Commission under the following design guidelines:
- A) Buildings should frame the street and maintain a minimal setback from the street.
 - B) The front facade of the first floor of the building on the primary commercial street should have a ratio of at least 40 percent window and window display area to total street facade.
 - C) The front entrance should be oriented to the street. On a corner lot, the building should have a well-defined entrance on the primary commercial street.
 - D) Materials should be brick, stone, tile, stucco, or horizontal wood clapboard with a maximum width of six inches. Two-story buildings are encouraged.
 - E) Commercial buildings with over 50 feet of building frontage should have the appearance of being broken into separate bays of between 20 to 35 lineal feet using structural elements, fenestration patterns, protruding or recessed bays, or architectural details.
 - F) Building frontage should occupy at least 50 percent of the primary street frontage.
 - G) Off-street loading and parking spaces should be provided in compliance with sections 134-1376 and 134-1377 of the zoning chapter, subject to the following modifications:
 - a. The minimum number of off-street parking spaces is 60 percent of the number of spaces otherwise required by subsection 134-1377(a).
 - b. Parking should not exceed the amount otherwise required by section 134-1377 of this Code.
 - c. Parking should not use the front yard but should be concentrated along the side and in back of the building in the predominant pattern of character defining buildings.
 - d. Shared parking among businesses or between business and residential projects will be allowed, provided a shared parking plan is presented at the time of application, signed by the property owners, ensuring no duplication of parking. The shared parking must be within 300 feet of the business or dwelling.
 - e. On-street parking directly adjacent to the occupant frontage shall count toward the minimum off-street parking requirement. Elimination of such on-street parking by the city shall have no effect on an approved site plan.
 - f. Tandem parking spaces shall count toward the minimum off-street parking requirement if a parking plan demonstrates that the parking will be for employees and will be occupied for over four hours between changes.
 - g. An emphasis of trees, shrubs and other plantings should be placed around the perimeter of any parking area and within large parking lots to create a more attractive area. The landscape plan should generally enhance the visual appearance of the building, parking area and any pedestrian areas.
 - H) The following bulk regulations should be observed:

- a. Minimum lot area:
 - i. Single-family detached dwelling, 5,000 square feet.
 - ii. Single-family semidetached dwelling, 3,000 square feet.
 - iii. Two-family dwelling, 6,000 square feet.
 - iv. Multiple dwelling, 10,000 square feet.
 - v. Mixed-use project, 10,000 square feet.
 - vi. Shelter for the homeless, 8,000 square feet.
 - vii. No minimum requirement for permitted nonresidential uses.
- b. Minimum lot area per dwelling unit:
 - i. Row and multiple dwellings, 2,000 square feet.
 - ii. Shelter for the homeless, 300 square feet of lot size for each resident.
- c. Front yard: minimum of zero feet.
- d. Side yards: minimum of zero feet.
- e. Rear yard: None required, except when adjoining any R or C-0 district or portion of a PUD designated for residential use, in which case ten feet.
- f. Height: minimum of 15 feet, maximum of 45 feet.
- g. Number of stories:
 - i. Residential uses, a maximum of four stories.
 - ii. All other permitted uses, a maximum of two stories.
- l) Signs, which are attached or projecting from the building and designed for the character of the building, are preferred. Monument signs are allowed.

5. Site Plan Requirements: Any future redevelopment or construction on the property must conform to the City’s site plan requirements, including those regarding stormwater management, and landscaping. All outdoor lighting fixtures will be required to be downward directional, sharp cut-off type fixtures. Any trash enclosure constructed shall consist of masonry walls and 100% opaque steel gates

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation.

Will Page asked if the request to rezone circumvents the separation distance prescribed by City Code for sale of alcohol.

Erik Lundy stated that the separation distance is determined by the Board of Adjustment as part of the Conditional Use Permit review. He noted that the property must be rezoned before the applicant can apply for a conditional use permit from the Board of Adjustment. The placement of the existing building is more consistent with NPC zoning. Staff believes the NPC zoning is consistent with PlanDSM. Staff recommends approval of the NPC zoning with conditions. Staff does not speculate whether the Board of Adjustment will approve a conditional use permit to sell alcohol for the premises or not.

CHAIRPERSON OPENED THE PUBLIC HEARING

Michael Murdock and Sarah Murdock, 600 SW 42nd St, 50312, owners of Pinot’s Palette, 900 42nd St., noted they currently offer recreational art instruction. They have art instructors who run classes. People pre-register for these classes, they do not come in off the street. People who register are allowed to bring alcohol to the classes and can consume the alcohol during the classes. This establishment has been there since 2014. They aren’t

changing anything about their establishment except that they would like to opportunity to sell beer and wine to the clients that come to the classes. This is the first step in that process. They must have the property rezoned before they can seek a conditional use permit from the Board of Adjustment.

Jacqueline Easley asked what the hours of operation will be.

Sarah Murdock stated classes are typically held Thursday, Friday and Saturday evenings, and some Sunday afternoons. They have private parties that are scheduled any day of the week or weekend, so it's very irregular. They also offer children's classes but no alcohol is consumed or served during those classes.

Jacqueline Easley asked if anyone was present to speak on this item. None were present or requested to speak.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Joanne Corigliano expressed concern regarding sale of alcohol.

Glenna Frank noted sale of alcohol is a Board of Adjustment decision.

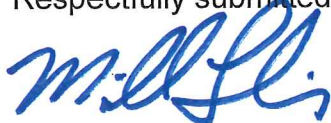
Jack Hilmes noted that the zoning would ultimately be determined by City Council. If approved, the sale of alcohol would ultimately be determined by the Board of Adjustment.

COMMISSION ACTION:

John "Jack" Hilmes moved that Item #4 be recommended for approval per the staff recommendation.

Motion passed 14-1. (JoAnne Corigliano voted in opposition)

Respectfully submitted,



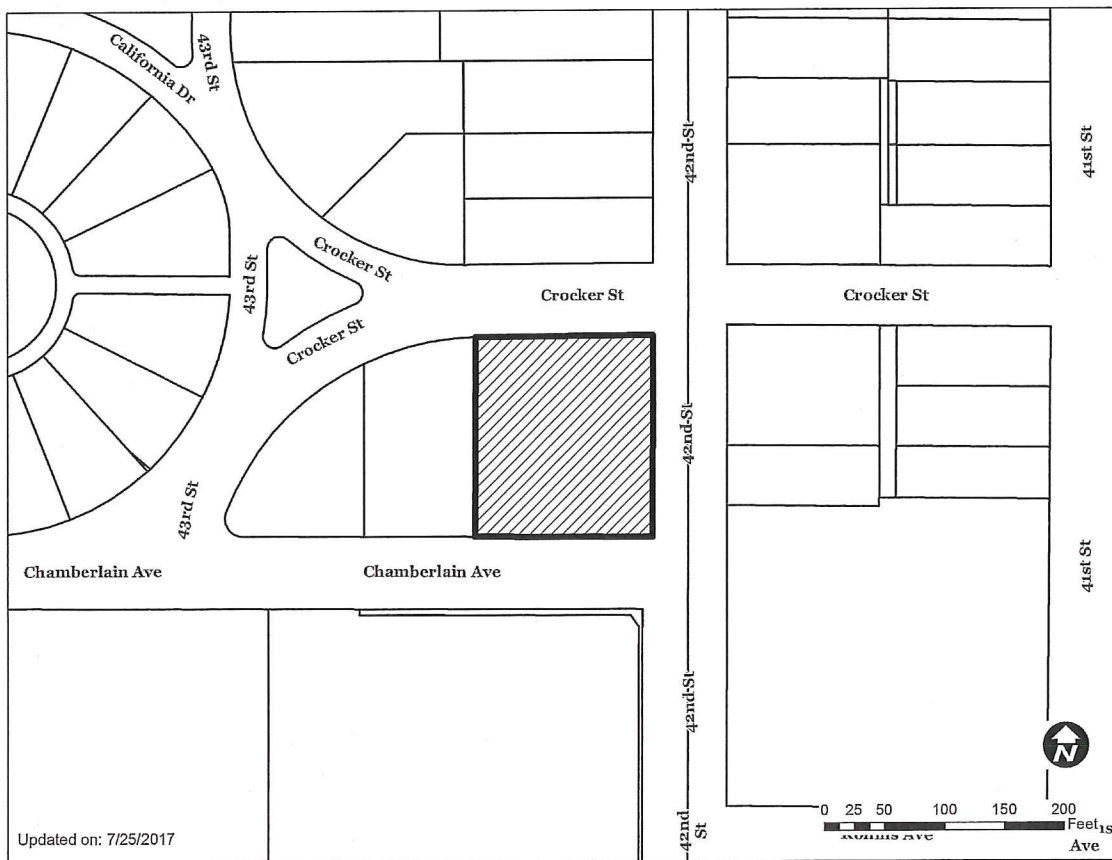
Michael Ludwig, AICP
Planning Administrator

MGL:mgl
Attachments

RSC Partners, LLC (owner) represented by Rick Krause (officer) for property at 900 42nd Street.			File # ZON2017-00126	
Description of Action	Rezoning of property from "C-1" Neighborhood Retail Commercial District to "NPC" Neighborhood Pedestrian Commercial District, to allow the ability to request a Conditional Use Permit for a tavern as part of the existing art instruction business "Pinot's Palette"			
PlanDSM Future Land Use	Current: Community Mixed Use in a Neighborhood Node. Proposed: N/A.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"C-1" Neighborhood Retail Commercial District and "FSO" Freestanding Signs Overlay District.			
Proposed Zoning District	"NPC" Neighborhood Pedestrian Commercial District and "FSO" Freestanding Signs Overlay District.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Subject Property	0	0	0	
Outside Area (200 feet)	4	1	0	<20%
Plan and Zoning Commission Action	Approval	X (14-1)	Required 6/7 Vote of the City Council	Yes
	Denial			No

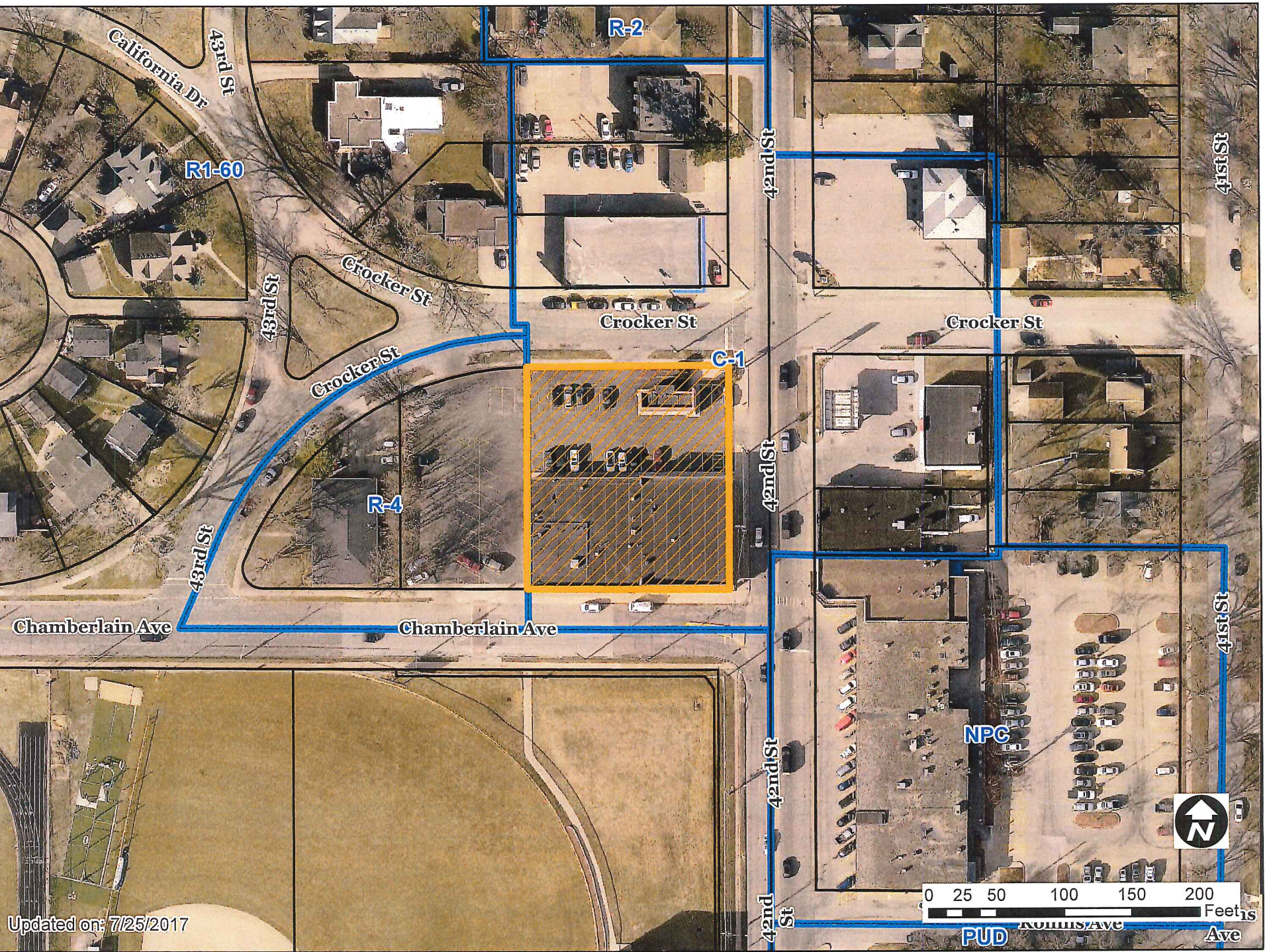
RSC Partners, LLC, 900 42nd Street

ZON2017-00126



Updated on: 7/25/2017

1 inch = 94 feet



Updated on: 7/25/2017

SL





PINOT'S PALETTE®

SN SUSAN NOLAND
DESIGNS IN G

902
SN SUSAN NOLAND
DESIGNS IN G

284

RIDE
Wor

DODGE

643 XKT



SHOPS ON
42ND ST.
FOR: Property Damage
FOR: Change of Use
FOR: Closing & R/O
FOR: Transfer of Title
FOR: AT the Reg.

SHOPS ON
CHAMBERLAIN
FOR: Property Damage
FOR: Change of Use
FOR: Closing & R/O
FOR: Transfer of Title
FOR: AT the Reg.



Item ZON2017-00126

Date

8/9/17

25

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

(Circle One)

RECEIVED

Print Name

Git-N-Go Stores, Inc.

Dennis Flare

COMMUNITY DEVELOPMENT

Signature

Dennis Flare, Pres.

AUG 14 2017

Address

2716 Indiana Ave. D.H., Pa.

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

Item ZON2017-00126

Date

8/9/17

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

(Circle One)

RECEIVED

Print Name

CARL COOPER

COMMUNITY DEVELOPMENT

Signature

Carl Cooper

AUG 14 2017

Address

918 42nd ST.

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

Item ZON2017-00126 Date 8/9/19 25

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

(Circle One)
RECEIVED
COMMUNITY DEVELOPMENT

Print Name JoAnn Scharlau

Signature [Signature]

AUG 15 2017

Address 915 42nd St., DSM, IA
50312

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

It will bring more business to the Shops @
Roosevelt.

Item ZON2017-00126 Date 8-14-17

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

(Circle One)
RECEIVED
COMMUNITY DEVELOPMENT

Print Name WAVELAND PARK N.A.
CHARLES CHEDESTER

Signature [Signature]

AUG 18 2017

Address SELF 1238 46TH ST

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

THE WPMA IS EXCITED FOR THE CURRENT BUSINESS
TO GET AN EXCEPTION (SINGLE USE) SO THEY CAN
BETTER SUPPORT THEIR CUSTOMERS REQUESTS.

Item ZON2017-00126

Date 8/13/2017 25

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

(Circle One)

Print Name

Peggy Russell

IMMUNITY DEVELOPMENT

Signature

Peggy Russell

AUG 18 2017

Address

900-43rd St.

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

1) Too close to schools

2) I do not consider rezoning to allow for
Towers, as an upgrade that will protect
residential district