



Date September 11, 2017

**RESOLUTION HOLDING HEARING ON REQUEST FROM RSC PARTNERS, LLC TO  
REZONE PROPERTY AT 900 42<sup>ND</sup> STREET**

**WHEREAS**, on August 28, 2017, by Roll Call No. 17-1469, the City Council received a communication from the City Plan and Zoning Commission advising 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**, on August 28, 2017, by Roll Call No. 17-1469, it was duly resolved by the City Council that the application of RSC Partners, LLC (owner) to rezone the Property, as legally described below, be set down for hearing on September 11, 2017 at 5:00 p.m. in the Council Chambers at the Municipal Service Center; 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 amendment to the Zoning Ordinance; 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; and

**WHEREAS**, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone the Property locally known as 900 42<sup>nd</sup> Street, legally described as:

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

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 conditions stated above as agreed to and

**Roll Call Number**

Agenda Item Number

56Date September 11, 2017

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accepted by execution of an Acceptance of Rezoning Ordinance in writing by the owner of the Property, which is binding upon the owner and its successors, heirs and assigns.

**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 and all statements of interested persons and arguments of counsel, any objections to the proposed rezoning of the Property to Limited "NPC" Neighborhood Pedestrian Commercial District with conditions as set forth above, are hereby overruled, and the hearing is closed.
2. The proposed rezoning of the Property to Limited "NPC" Neighborhood Pedestrian Commercial District with conditions as set forth above, is hereby found to be in conformance with PlanDSM: Creating Our Tomorrow Plan, and is hereby approved, subject to final passage of an ordinance rezoning the Property as set forth herein.

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

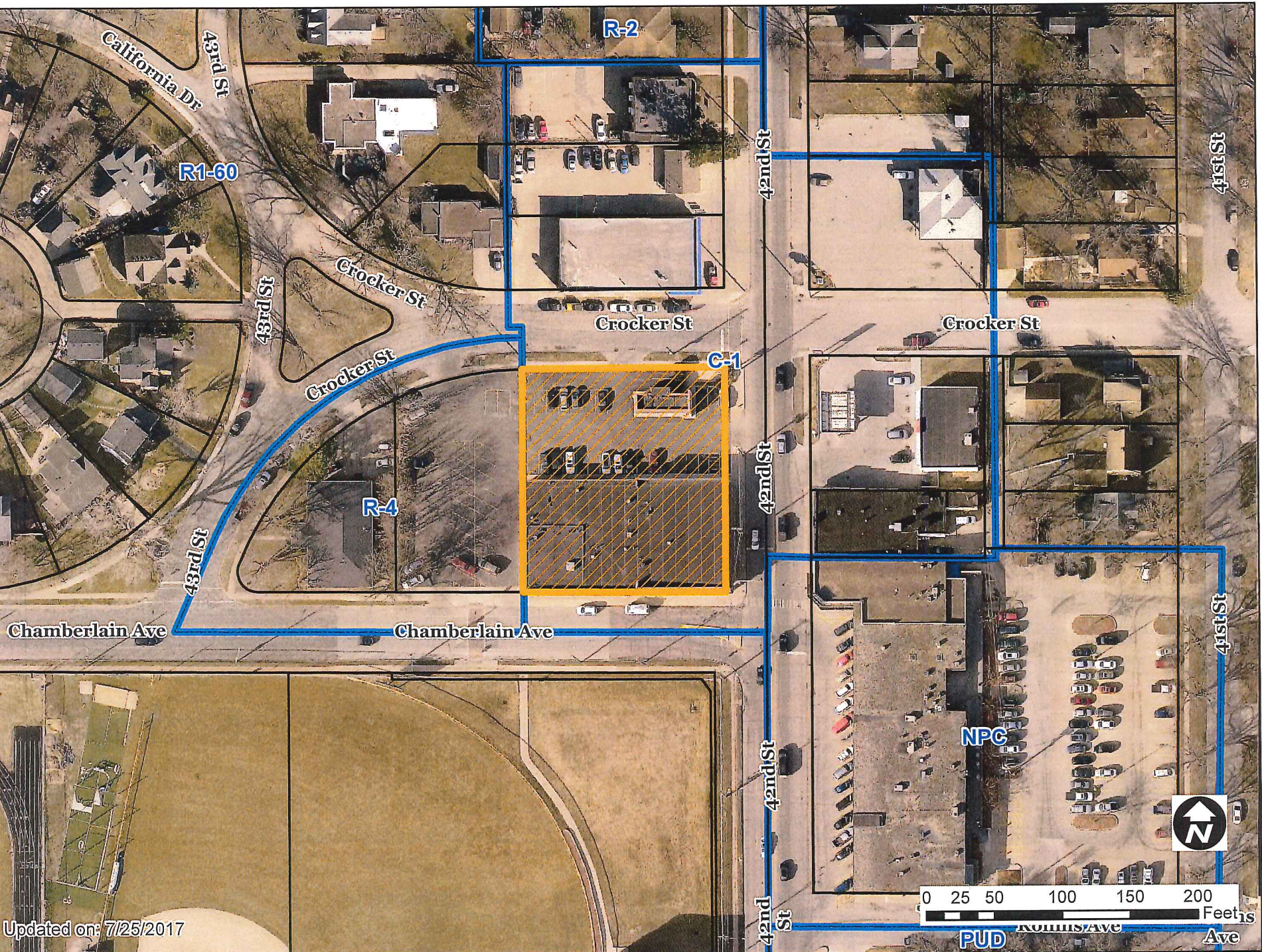
**CERTIFICATE**

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



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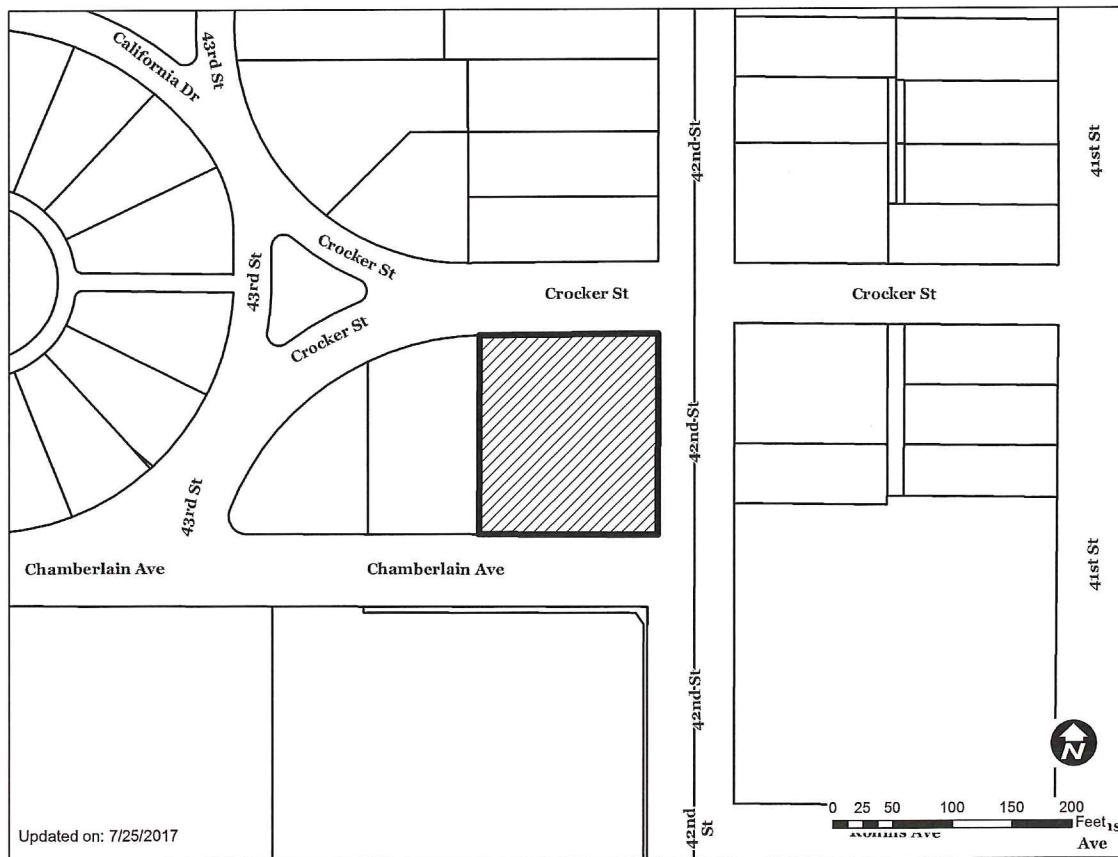


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RSC Partners, LLC (owner) represented by Rick Krause (officer) for property at 900 42nd Street.				File #		
				ZON2017-00126		
Description of Action		Rezoning of property from "C-1" Neighborhood Retail Commercial District to "NPC" Neighborhood Pedestrian 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	X

RSC Partners, LLC, 900 42nd Street

ZON2017-00126



1 inch = 94 feet

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 42<sup>nd</sup> 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:

Commission Action:	Yes	Nays	Pass	Absent
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 42<sup>nd</sup> 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 46<sup>th</sup> 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:

- 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

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

Item **ZON2017-00126**

Date 8/9/17

56

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

(Circle One)  
**RECEIVED**  
**COMMUNITY DEVELOPMENT**

Print Name

Git-N-Gro Stores, Inc.

Dennis Flare

Signature

Dennis Flare, Pres.

AUG 14 2017

Address

2716 Indiana Ave. D.A., La.

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**  
**COMMUNITY DEVELOPMENT**

Print Name

CARL COOPER

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

8/9/1956☒ (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., OSM, IA50312

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 WPNA 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

56

(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