



Date November 6, 2017

**RESOLUTION SETTING HEARING ON REQUEST FROM  
BOBMAR, LC TO REZONE PROPERTY AT 1233 63<sup>RD</sup> STREET**

**WHEREAS**, the City Plan and Zoning Commission has advised that at a public hearing held on October 19, 2017, its members voted 12-0 in support of a motion to recommend **APPROVAL** of a request from Bobmar, LC (owner), represented by Dr. Robert Margeas (officer), to rezone property locally known as 1233 63rd Street ("Property") from Limited "C-1" Neighborhood Retail Commercial District to revised Limited "C-1" Neighborhood Retail Commercial District, to revise the condition requiring that the Property be landscaped and maintained in accordance with the site/landscape plan signed by the Planning Director on September 25, 2003, as on file in the Community Development Department, subject to the following rezoning conditions:

- a. Only one building may be constructed or maintained on the Property. Accessory structures are not permitted. The building shall not exceed a total of 5,400 square feet (2,755 gross square feet on the upper floor and 2,645 gross square feet on the lower level). Gross square footage shall be measured from the outside face of all exterior walls. The exterior dimensions of the building cannot be changed.
- b. The Property shall be landscaped and maintained in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City.
- c. The building and parking shall be configured in accordance with a revised Site Plan that shall be kept on file with the City. This shall provide a landscape plan that is generally the plan signed by the Planning Director on 9/25/03, but with the following modifications:
  - i. The twelve (12) Dark Green Arborvitae trees to the east of the building shall be replaced by two (2) Black Gum or Eastern Red Bud trees.
  - ii. Five (5) Tina Crab trees shall be provided to the south of the building.
  - iii. The landscape island within the parking may be eliminated.
  - iv. The overstory tree to the southwest of the building that is not identified on the planting plan shall be retained.
  - v. The overstory tree to the north of the building that is not identified on the planting plan shall be retained.
- d. A 6' tall, 90% opaque cedar fence shall be installed and maintained along the east and north lines of the Property in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City.
- e. One monument sign shall be installed on the Property in the location identified on the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City. Said monument sign shall include a base measured no greater than 24" in height. The sign face shall not exceed 12.75 square feet in gross area. Total sign and base height shall not exceed 66" in overall height measured from the grade level. The sign face width shall be no greater than 54". Sign shall be illuminated from the ground (not internally illuminated). Sign lighting shall not



**Date** November 6, 2017

- operate between the hours of 8pm and 7am. No exterior wall signs or interior mounted window signs shall be permitted.
- f. All exterior building and site lighting shall be in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 and in accordance with building plans approved on October 9, 2002 on file at the Community Development Department of the City except that no exterior building mounted lights shall be allowed on the north, east or west building elevations. In addition, no ground mounted exterior building lighting shall be allowed on any building elevation.
- g. Storm water shall be directed into the City storm sewer in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 on file at the Community Development Department of the City.
- h. All building entries, sidewalks and patio areas shall be in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 on file at the Community Development Department of the City.
- i. The trash enclosure shall be constructed in the location and manner as identified on the site / landscape plan signed by the Planning Director on 9/25/03 on file at the Community Development Department of the City.
- j. Both floors of the building shall be operated as a single unit with the primary entrance to the building being on the upper floor. The building use shall be limited to professional office with NO retail component of any kind: This shall include the office of a physician, dentist, osteopath, chiropractor, optometrist, chiropodist, or similar profession; and business or professional offices including the following: law, engineering, architecture, urban planning, real estate, insurance, accounting or bookkeeping, and similar uses, but not including uses involving retail sales or non-professional services.
- k. Exterior building materials shall conform to the building plans approved on October 9, 2003 with the following exception: Paint color of all siding materials shall be one color with the exclusion of the brick. Trim color may be different than the siding material. The siding and trim color shall be complimentary to the brick in a muted, light, earth tone. Roofing materials shall be asphalt shingles that are complimentary in color to the building.
- l. Existing shrubs along the north line of the Property (owned by the adjacent property owner) shall be protected during construction.
- m. The foregoing conditions are in replacement of those conditions imposed pursuant to Ordinance No. 14,067 passed March 18, 2002 and Ordinance No. 14,303 passed December 8, 2003, which shall no longer apply to the Property.

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

Lots 1 and 2, (Except 63rd Street Right-Of-Way) in WALDRON PLACE, an Official Plat, all now included in and forming a part 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:



**Roll Call Number**

**Agenda Item Number**

19

**Date** November 6, 2017

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 November 20, 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.

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

FORM APPROVED:

Glenna K. Frank, Assistant City Attorney

(ZON2017-00104)

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 November 6, 2017

Agenda Item 19

Roll Call # \_\_\_\_\_

October 26, 2017

Honorable Mayor and City Council  
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their October 19, 2017 meeting, the following action was taken regarding a request from Bobmar, LC (owner) dba Iowa Dental Group represented by Dr. Robert Margeas, DDS (officer) to rezone property at 1233 63rd Street.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 12-0 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	(Recused)			
Rocky Sposato	X			
Steve Wallace	X			
Greg Wattier	X			

**APPROVAL** of Part A) the rezoning is in conformance with the existing PlanDSM Creating Our Tomorrow future land use designation and approval of Part B) rezoning from Limited "C-1" Neighborhood Retail Commercial District to Limited "C-1" Neighborhood Retail Commercial District, so that the zoning conditions adopted by Ordinance 14,300 on December 8, 2003, are revised as follows: (ZON2017-00104)

- a. Only one building may be constructed or maintained on the Property. Accessory structures are not permitted. The building shall not exceed a total of 5,400 square feet (2,755 gross square feet on the upper floor and 2,645 gross square feet on the lower level). Gross square footage shall be measured from the outside face of all exterior walls. The exterior dimensions of the building cannot be changed.
- b. The Property shall be landscaped and maintained in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City.
- c. **The building and parking shall be configured in accordance with a revised Site Plan that shall be kept on file with the City. This shall provide a landscape plan that is generally the plan signed by the Planning Director on 9/25/03, but with the following modifications:**
  - i. **The twelve (12) Dark Green Arborvitae trees to the east of the building shall be replaced by two (2) Black Gum or Eastern Red Bud trees.**
  - ii. **Five (5) Tina Crab trees to the south of the building shall be provided.**
  - iii. **The landscape island within the parking may be eliminated.**
  - iv. **The overstory tree to the southwest of the building that is not identified on the planting plan shall be retained.**
  - v. **The overstory tree to the north of the building that is not identified on the planting plan shall be retained.**
- d. A 6' tall, 90% opaque cedar fence shall be installed and maintained along the east and north lines of the Property in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City.
- e. One monument sign shall be installed on the Property in the location identified on the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City. Said monument sign shall include a base measured no greater than 24" in height. The sign face shall not exceed 12.75 square feet in gross area. Total sign and base height shall not exceed 66" in overall height measured from the grade level. The sign face width shall be no greater than 54". Sign shall be illuminated from the ground (not internally illuminated). Sign lighting shall not operate between the hours of 8pm and 7am. No exterior wall signs or interior mounted window signs shall be permitted.

- f. All exterior building and site lighting shall be in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 and in accordance with building plans approved on October 9, 2002 on file at the Community Development Department of the City except that no exterior building mounted lights shall be allowed on the north, east or west building elevations. In addition, no ground mounted exterior building lighting shall be allowed on any building elevation.
- g. Storm water shall be directed into the City storm sewer in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 on file at the Community Development Department of the City.
- h. All building entries, sidewalks and patio areas shall be in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 on file at the Community Development Department of the City.
- i. The trash enclosure shall be constructed in the location and manner as identified on the site / landscape plan signed by the Planning Director on 9/25/03 on file at the Community Development Department of the City.
- j. Both floors of the building shall be operated as a single unit with the primary entrance to the building being on the upper floor. The building use shall be limited to professional office with NO retail component of any kind: This shall include the office of a physician, dentist, osteopath, chiropractor, optometrist, chiropodist, or similar profession; and business or professional offices including the following: law, engineering, architecture, urban planning, real estate, insurance, accounting or bookkeeping, and similar uses, but not including uses involving retail sales or non-professional services.
- k. Exterior building materials shall conform to the building plans approved on October 9, 2003 with the following exception: Paint color of all siding materials shall be one color with the exclusion of the brick. Trim color may be different than the siding material. The siding and trim color shall be complimentary to the brick in a muted, light, earth tone. Roofing materials shall be asphalt shingles that are complimentary in color to the building.
- l. Existing shrubs along the north line of the Property (owned by the adjacent property owner) shall be protected during construction.
- m. The foregoing conditions are in replacement of those conditions imposed pursuant to Ordinance No. 14,067 passed March 18, 2002 and Ordinance No. 14,303 passed December 8, 2003, which shall no longer apply to the Property.

Written Responses

3 in Favor

5 in Opposition

## STAFF RECOMMENDATION

Part A) Staff recommends that the Commission find the proposed rezoning in conformance with the existing PlanDSM Creating Our Tomorrow future land use designation.

Part B) Staff recommends approval of the rezoning from Limited "C-1" Neighborhood Retail Commercial District to Limited "C-1" Neighborhood Retail Commercial District, so that the zoning conditions adopted by Ordinance 14,300 on December 8, 2003, are revised as follows:

- a. Only one building may be constructed or maintained on the Property. Accessory structures are not permitted. The building shall not exceed a total of 5,400 square feet (2,755 gross square feet on the upper floor and 2,645 gross square feet on the lower level). Gross square footage shall be measured from the outside face of all exterior walls. The exterior dimensions of the building cannot be changed.
- b. The Property shall be landscaped and maintained in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City.
- c. **The building and parking shall be configured in accordance with a revised Site Plan that shall be kept on file with the City. This shall provide a landscape plan that is generally the plan signed by the Planning Director on 9/25/03, but with the following modifications:**
  - i. **The twelve (12) Dark Green Arborvitae trees to the east of the building shall be replaced by two (2) Black Gum or Eastern Red Bud trees.**
  - ii. **The seven (7) Tina Crab trees to the south of the building identified on the planting plan shall be provided.**
  - iii. **The landscape island within the parking may be eliminated.**
  - iv. **The overstory tree to the southwest of the building that is not identified on the planting plan shall be retained.**
  - v. **The overstory tree to the north of the building that is not identified on the planting plan shall be retained.**
- d. A 6' tall, 90% opaque cedar fence shall be installed and maintained along the east and north lines of the Property in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City.
- e. One monument sign shall be installed on the Property in the location identified on the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City. Said monument sign shall include a base measured no greater than 24" in height. The sign face shall not exceed 12.75 square feet in gross area. Total sign and base height shall not exceed 66" in overall height measured from the grade level. The sign face width shall be no greater than 54". Sign shall be illuminated from the ground (not internally illuminated). Sign lighting shall not operate between the hours of 8pm and 7am. No exterior wall signs or interior mounted window signs shall be permitted.
- f. All exterior building and site lighting shall be in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 and in accordance with building plans approved on October 9, 2002 on file at the Community Development

- Department of the City except that no exterior building mounted lights shall be allowed on the north, east or west building elevations. In addition, no ground mounted exterior building lighting shall be allowed on any building elevation.
- g. Storm water shall be directed into the City storm sewer in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 on file at the Community Development Department of the City.
  - h. All building entries, sidewalks and patio areas shall be in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 on file at the Community Development Department of the City.
  - i. The trash enclosure shall be constructed in the location and manner as identified on the site / landscape plan signed by the Planning Director on 9/25/03 on file at the Community Development Department of the City.
  - j. Both floors of the building shall be operated as a single unit with the primary entrance to the building being on the upper floor. The building use shall be limited to professional office with NO retail component of any kind: This shall include the office of a physician, dentist, osteopath, chiropractor, optometrist, chiropodist, or similar profession; and business or professional offices including the following: law, engineering, architecture, urban planning, real estate, insurance, accounting or bookkeeping, and similar uses, but not including uses involving retail sales or non-professional services.
  - k. Exterior building materials shall conform to the building plans approved on October 9, 2003 with the following exception: Paint color of all siding materials shall be one color with the exclusion of the brick. Trim color may be different than the siding material. The siding and trim color shall be complimentary to the brick in a muted, light, earth tone. Roofing materials shall be asphalt shingles that are complimentary in color to the building.
  - l. Existing shrubs along the north line of the Property (owned by the adjacent property owner) shall be protected during construction.
  - m. The foregoing conditions are in replacement of those conditions imposed pursuant to Ordinance No. 14,067 passed March 18, 2002 and Ordinance No. 14,303 passed December 8, 2003, which shall no longer apply to the Property.

## STAFF REPORT TO THE PLANNING COMMISSION

### I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed rezoning would revise the zoning conditions that were applied to the property on December 8, 2003, by Ordinance Number 14,303. These existing zoning conditions require strict compliance with a Site Plan approved by the Planning Director on September 25, 2003. This Site Plan includes a specific planting plan and parking lot configuration.

On December 1, 2015, the applicant was mailed a notice of zoning violation after it was determined that the site was not in compliance with the planting plan. During an inspection on August 29, 2017, it was determined that a total of 15 required trees, including one within a parking lot landscape island, are currently missing.

The applicant has requested that the zoning condition be revised so that a revised planting plan can be permitted. They also have indicated that the reason the trees are missing is primarily because the required species (dark green arborvitae trees) are not



able to survive given the wet soil conditions due to the storm water basin.

If the rezoning is granted, the applicant would have to amend the Site Plan that is on file with the City's Permit and Development Center to reflect any changes to the landscaping plan and/or parking lot configuration.

2. **Size of Site:** 11,640 square feet with 120 feet of frontage along 63<sup>rd</sup> Street.
3. **Existing Zoning (site):** Limited "C-1" Neighborhood Retail Commercial District.
4. **Existing Land Use (site):** Dental office.
5. **Adjacent Land Use and Zoning:**

*North* – "R1-60", Use is a single-family dwelling.

*South* – Limited "C-1", Use is professional office.

*East* – "R1-60", Use is single-family residential.

*West* – Windsor Heights equivalent to "R-3" Use is single-family residential.

6. **General Neighborhood/Area Land Uses:** The subject property is immediately north of a major traffic node at 63<sup>rd</sup> Street and University Avenue. It is within a transition area from a major corridor of University Avenue and the residential neighborhood to the north.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Merle Hay Neighborhood. All neighborhoods were notified of the Commission meeting by mailing of the Preliminary Agendas on August 21, 2017 and September 29, 2017. A Final Agenda was mailed to the neighborhood associations on September 1, 2017 and October 13, 2017. Additionally, separate notifications of the hearing for this specific item were mailed on August 18, 2017 (20 days prior to the September 7, 2017 hearing) and on August 28, 2017 (20 days prior to the September 7, 2017 hearing) to the neighborhood association 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. The Merle Hay Neighborhood Association notices were mailed to Jason Pulliam, 2327 49<sup>th</sup> Place, Des Moines, IA 50310.

The applicant held their neighborhood meeting on June 16, 2017 and will be available to provide a summary at the Plan & Zoning Commission meeting.

8. **Relevant Zoning History:** The City Council rezoned the property to conditional "C-1" Neighborhood Retail Commercial District on March 18, 2002 by Ordinance No. 14,067 with the following restrictions agreed to by the property owner at that time.

- a. Only one building may be constructed or maintained on the Property. The building shall not exceed 2,400 square feet on each of two floors. One of the two floors shall be partially below grade.
- b. The Property shall be landscaped to meet or exceed the landscaping plan dated 1/15/02 which is on file in the Community Development Department of City, and in conformance with all site plan regulations for landscaping in the "C-1" District.
- c. The building and parking shall be configured per the submitted site plan dated 1/15/02 which is on file in the Community Development Department of City.
- d. An opaque (cedar) fence (per site plan of December 26, 2001) shall be constructed along the east line of the Property with the top edge of the fence level to the existing 4-foot-high fence to the south, provided that no portion of the fence shall be more than 8 feet above grade.
- e. Freestanding signage shall be limited to one (1) new monument sign to be illuminated from the ground (not to be back lighted) and not exceeding 20 square feet in size (measured from pedestal and pedestal not to exceed six (6) inches). The existing sign illumination (on property to the south) will be reduced from eighty-five (85) watt bulbs to forty-five (45) watt bulbs (the above being approximately forty-seven percent (47%) reduction). The signs (on lot 4 and, as well as the new sign to be located on lots 1 and 2) shall be on a timer and shall not be illuminated between 8:00 p.m. and 7:00 a.m. No building (wall mounted) signage shall be permitted on the new building on lots 1 and 2.
- f. A lighting plan for the building shall be submitted with the site plan showing fixtures, types, specifications, and locations for the City Planning Director's approval. There shall be no exterior surface mounted wall-pack lights or other lights which cast light out on any elevation. There shall be no exterior lights on the north and east walls. The wall packs on the east side of the existing building shall have shields added to cast the light down.
- g. Storm water shall be directed into the City storm sewer and shall not discharge to the northeast.
- h. Any lower level door shall be alarmed and for emergency use only. There shall be no sidewalk to connect the lower level entry to the parking lot.
- i. The new building may utilize a separate dumpster. The dumpster shall be within a cedar enclosure per City standards and shall be located south of the building.
- j. The building use shall be limited to professional office with NO retail component of any kind: This shall include the office of a physician, dentist, osteopath, chiropractor, optometrist, chiropodist, or similar profession; and business or professional offices including the following: law, engineering, architecture, urban planning, real estate, insurance, accounting or bookkeeping, and similar uses, but not including uses involving retail sales or nonprofessional services.
- k. The exterior materials and aesthetics shall match the submitted elevations dated 12/26/01 on file in the Community Development Department of City. Materials shall

be a stone base along 63rd Street, cement board lap siding (6" maximum) on other elevations. Corner trim and window trim to be 4" minimum. Roof to be asphalt residential looking shingles, being the same style as an existing building.

- l. The existing large tree in the northeast corner shall be saved, if possible, and incorporated into the landscaping.
- m. Existing shrubs along the north line of the Property (owned by the adjacent property owner) shall be protected during construction.

On September 25, 2003, the City's Permit & Development Center administratively approved a Site Plan (10-2004-7.26). When it was realized that the Site Plan allowed construction of a building that violated Ordinance 14,067, the applicant sought a rezoning to revise the zoning conditions regarding building size and placement, landscaping, signage, and site configuration.

On December 8, 2003, the City Council approved Ordinance 14,303, which amended the zoning conditions as follows:

- a. Only one building may be constructed or maintained on the Property. Accessory structures are not permitted. The building shall not exceed a total of 5,400 square feet (2,755 gross square feet on the upper floor and 2,645 gross square feet on the lower level). Gross square footage shall be measured from the outside face of all exterior walls. The exterior dimensions of the building cannot be changed.
- b. The Property shall be landscaped and maintained in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City.
- c. The building and parking shall be configured in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City.
- d. A 6' tall, 90% opaque cedar fence shall be installed and maintained along the east and north lines of the Property in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City.
- e. One monument sign shall be installed on the Property in the location identified on the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City. Said monument sign shall include a base measured no greater than 24" in height. The sign face shall not exceed 12.75 square feet in gross area. Total sign and base height shall not exceed 66" in overall height measured from the grade level. The sign face width shall be no greater than 54". Sign shall be illuminated from the ground (not internally illuminated). Sign lighting shall not operate between the hours of 8pm and 7am. No exterior wall signs or interior mounted window signs shall be permitted.
- f. All exterior building and site lighting shall be in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 and in accordance with building plans approved on October 9, 2002 on file at the Community Development

Department of the City except that no exterior building mounted lights shall be allowed on the north, east or west building elevations. In addition, no ground mounted exterior building lighting shall be allowed on any building elevation.

- g. Storm water shall be directed into the City storm sewer in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 on file at the Community Development Department of the City.
- h. All building entries, sidewalks and patio areas shall be in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 on file at the Community Development Department of the City.
- i. The trash enclosure shall be constructed in the location and manner as identified on the site / landscape plan signed by the Planning Director on 9/25/03 on file at the Community Development Department of the City.
- j. Both floors of the building shall be operated as a single unit with the primary entrance to the building being on the upper floor. The building use shall be limited to professional office with NO retail component of any kind: This shall include the office of a physician, dentist, osteopath, chiropractor, optometrist, chiropodist, or similar profession; and business or professional offices including the following: law, engineering, architecture, urban planning, real estate, insurance, accounting or bookkeeping, and similar uses, but not including uses involving retail sales or non-professional services.
- k. Exterior building materials shall conform to the building plans approved on October 9, 2003 with the following exception: Paint color of all siding materials shall be one color with the exclusion of the brick. Trim color may be different than the siding material. The siding and trim color shall be complimentary to the brick in a muted, light, earth tone. Roofing materials shall be asphalt shingles that are complimentary in color to the building.
- l. Existing shrubs along the north line of the Property (owned by the adjacent property owner) shall be protected during construction.
- m. The foregoing conditions are in replacement of those conditions imposed pursuant to Ordinance No. 14,067 passed March 18, 2002, which shall no longer apply to the Property.

On December 1, 2015, the applicant was sent a notice of zoning violation after an inspection determined that the property was not in compliance with "Condition B", which states "The Property shall be landscaped and maintained in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City."

9. **PlanDSM Creating Our Tomorrow Land Use Plan Designation:** The subject property is designated as Low-Density Residential on the future land use map. When the property was originally rezoned to Limited "C-1" District in 2002, it was determined that that land use plan did not need to be amended to a commercial designation since the zoning conditions were requiring development of the property to have residential

characteristics. Staff does not believe that the proposed revision to the zoning condition would warrant a land use plan amendment.

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. **Landscaping Plan:** The zoning conditions contained in Ordinance 14,303 require the site to comply with a specific landscaping plan that was approved by the Planning Director on September 25, 2003. On August 30, 2017, a City Zoning Inspector determined that the site was missing 15 trees shown on the plan, including 12 Dark Green Arborvitae trees east of the building, 2 Tina Crab trees south of the building, and 1 Ginko tree within a missing landscape island.

The applicant has indicated that the twelve (12) Dark Green Arborvitae trees east of the building have been unable to survive due to wet soil conditions. However, two (2) locust trees, one (1) maple tree, and (2) bald cypress trees remain. As a replacement to the Dark Green Arborvitae trees, the applicant proposes to plant two (2) Black Gum or Eastern Red Bud trees. Staff believes that these trees, in addition to the five (5) existing overstory trees, would provide an adequate buffer from the residential properties to the east.

The site is also missing two (2) of seven (7) Tina Crab trees in the area to the south of the building. Staff believes that these trees are necessary to screen the parking lot. Therefore, the two (2) missing trees should be replaced.

The proposed changes to the landscaping plan eliminate a landscape island that contained a tree. The City's Landscape Standards only require plantings within a parking lot ("interior plantings") when a parking lot contains at least 50 parking spaces. Since the existing parking lot only contains 43 parking spaces, the tree would not typically be required.

There is an existing overstory tree to the southwest of the building and an existing overstory tree to the north of the building that are not identified on the planting plan. These trees should be retained and identified on the plan.

- a) **Permit & Development Center Comments:** If the rezoning is granted, the applicant would have to amend the Site Plan that is on file with the City's Permit and Development Center to reflect any changes to the landscaping plan and/or parking lot configuration.

## **SUMMARY OF DISCUSSION**

Bert Drost presented the staff report and recommendation. Noted that there was currently 30.25% opposition from owners of property within 250 feet of the subject property. A 6/7<sup>th</sup> vote of City Council will be required.

Dr. Robert Margeas stated over the last 13 years the 7 crab trees have grown so big, 2 of them have died. He would like to stay with 5 trees because there is just no room to plant any more. When he bought the building, there were conditions on the property that made him do additional landscaping and he believes they have done more than they needed to.

John "Jack" Hilmes asked if he is ok with all the conditions with the exception of the 2 additional crab trees.

Robert Merge stated yes, he agrees with all of the conditions with the exception of planting 2 additional crab trees.

Will Page asked what's the difference between the red bud and black gum tree.

Robert Merge stated he left it up to his arborist to pick the trees that should be planted on the property.

Will Page asked if the applicant can select the one the gives more opaque qualities to the property.

Robert Merge stated yes, he can select the tree that gives more opaque qualities to the property.

## **CHAIRPERSON OPENED THE PUBLIC HEARING**

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 stated she would like to move staff recommendation with the amendment of condition C, to request 5 crab trees instead of 7.

Rocky Sposato asked why this item required P&Z review. Asked why is the City requesting 7 trees.

Mike Ludwig stated zoning conditions require full compliance with the originally approved site plan. Without amendment to the zoning conditions, the site plan will not comply with zoning.

## **COMMISSION ACTION:**

JoAnne Corigliano moved staff recommendation for approval of Part A) the rezoning is in conformance with the existing PlanDSM Creating Our Tomorrow future land use designation and approval of Part B) rezoning from Limited "C-1" Neighborhood Retail

Commercial District to Limited "C-1" Neighborhood Retail Commercial District, so that the zoning conditions adopted by Ordinance 14,300 on December 8, 2003, are revised as follows:

- a. Only one building may be constructed or maintained on the Property. Accessory structures are not permitted. The building shall not exceed a total of 5,400 square feet (2,755 gross square feet on the upper floor and 2,645 gross square feet on the lower level). Gross square footage shall be measured from the outside face of all exterior walls. The exterior dimensions of the building cannot be changed.
- b. The Property shall be landscaped and maintained in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City.
- c. **The building and parking shall be configured in accordance with a revised Site Plan that shall be kept on file with the City. This shall provide a landscape plan that is generally the plan signed by the Planning Director on 9/25/03, but with the following modifications:**
  - i. **The twelve (12) Dark Green Arborvitae trees to the east of the building shall be replaced by two (2) Black Gum or Eastern Red Bud trees.**
  - ii. **Five (5) Tina Crab trees to the south of the building shall be provided.**
  - iii. **The landscape island within the parking may be eliminated.**
  - iv. **The overstory tree to the southwest of the building that is not identified on the planting plan shall be retained.**
  - v. **The overstory tree to the north of the building that is not identified on the planting plan shall be retained.**
- d. A 6' tall, 90% opaque cedar fence shall be installed and maintained along the east and north lines of the Property in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City.
- e. One monument sign shall be installed on the Property in the location identified on the site/landscape plan signed by the Planning Director on 9/25/03 which is on file in the Community Development Department of the City. Said monument sign shall include a base measured no greater than 24" in height. The sign face shall not exceed 12.75 square feet in gross area. Total sign and base height shall not exceed 66" in overall height measured from the grade level. The sign face width shall be no

greater than 54". Sign shall be illuminated from the ground (not internally illuminated). Sign lighting shall not operate between the hours of 8pm and 7am. No exterior wall signs or interior mounted window signs shall be permitted.

- f. All exterior building and site lighting shall be in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 and in accordance with building plans approved on October 9, 2002 on file at the Community Development Department of the City except that no exterior building mounted lights shall be allowed on the north, east or west building elevations. In addition, no ground mounted exterior building lighting shall be allowed on any building elevation.
- g. Storm water shall be directed into the City storm sewer in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 on file at the Community Development Department of the City.
- h. All building entries, sidewalks and patio areas shall be in accordance with the site/landscape plan signed by the Planning Director on 9/25/03 on file at the Community Development Department of the City.
- i. The trash enclosure shall be constructed in the location and manner as identified on the site / landscape plan signed by the Planning Director on 9/25/03 on file at the Community Development Department of the City.
- j. Both floors of the building shall be operated as a single unit with the primary entrance to the building being on the upper floor. The building use shall be limited to professional office with NO retail component of any kind: This shall include the office of a physician, dentist, osteopath, chiropractor, optometrist, chiropodist, or similar profession; and business or professional offices including the following: law, engineering, architecture, urban planning, real estate, insurance, accounting or bookkeeping, and similar uses, but not including uses involving retail sales or non-professional services.
- k. Exterior building materials shall conform to the building plans approved on October 9, 2003 with the following exception: Paint color of all siding materials shall be one color with the exclusion of the brick. Trim color may be different than the siding material. The siding and trim color shall be complimentary to the brick in a muted, light, earth tone. Roofing materials shall be asphalt shingles that are complimentary in color to the building.
- l. Existing shrubs along the north line of the Property (owned by the adjacent property owner) shall be protected during construction.



- m. The foregoing conditions are in replacement of those conditions imposed pursuant to Ordinance No. 14,067 passed March 18, 2002 and Ordinance No. 14,303 passed December 8, 2003, which shall no longer apply to the Property.

Motion Passed: 12-0 (Mike Simonson recused himself)

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

MGL:tjh

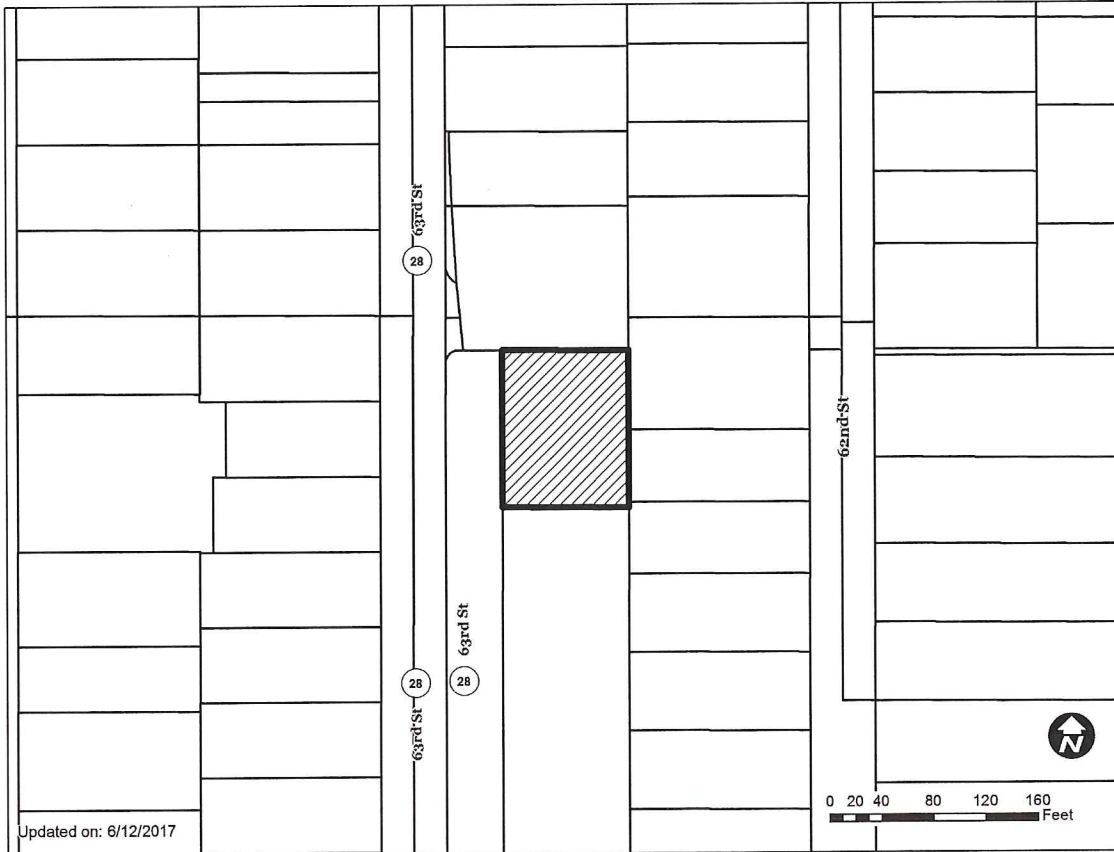
Attachments

3B

Bobmar, LC (owner) dba Iowa Dental Group represented by Dr. Robert Margeas, DDS (officer) for property at 1233 63rd Street.			File # ZON2017-00104		
Description of Action	Approval of rezoning of property from Limited "C-1" Neighborhood Retail Commercial District to Limited "C-1" Neighborhood Retail Commercial District, to allow for removal of the condition requiring that the Property shall be landscaped and maintained in accordance with the site/landscape plan signed by the Planning Director on September 25, 2003 which is on file in the Community Development Department of the City, revisions adopted by ordinance 14,300..				
PlanDSM Future Land Use	Current: Low Density Residential Proposed: N/A.				
Mobilizing Tomorrow Transportation Plan	2015-2024 Widen IA 28/63 <sup>rd</sup> Street from 2 to 4 lanes.				
Current Zoning District	Limited "C-1" Neighborhood Retail Commercial District and "FSO" Freestanding Signs Overlay District.				
Proposed Zoning District	Revised Limited "C-1" Neighborhood Retail Commercial District and "FSO" Freestanding Signs Overlay District.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Subject Property	3	5		>20%	
Outside Area (200 feet)					
Plan and Zoning Commission Action	Approval	12-0	Required 6/7 Vote of the City Council	Yes	X
	Denial			No	

Bobmar, LC, 1233 63rd Street

ZON2017-00104



1 inch = 87 feet

To whom it may concern -

I'm writing in regards to the proposed rezoning of 1233 63<sup>rd</sup> Street, ZON2017-00140. I live at 1312 62nd St, directly behind this property. It's my understanding that the species of plant that is required to be grown on the property doesn't grow well given the location. It's near a shaded area and a storm drainage easement which pumps water back up to 63<sup>rd</sup> St. I understand the desire to remove this species of plant and why they're not ideal under these circumstances. In my opinion, the zoning requirement should change to include a different species, or multiple species of plant that can grow well in this environment. I'm in opposition of completely removing the requirement for privacy plants with no replacement solution offered for them. The office in question has multiple, large windows facing directly at my property. These windows are located in each operatory, with people present throughout the day. In these situations, I believe a simple, neighborly compromise is an easy solution. Planting a different species that thrives in these particular conditions lowers the burden on the office for maintaining the plants and also gives neighbors a little more privacy.

Respectfully

Jacob Ernst

Item ZON2017-00104 Date 9-1-17

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

(Circle One)

COMMUNITY DEVELOPMENT

Print Name Jake Ernst

Signature [Handwritten Signature]

SEP 06 2017

Address 1312 62<sup>nd</sup> St.

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

See attached letter  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ZON2017-00104

Item

Date

AUG. 30, 2017

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

(Circle One)

RECEIVED

Print Name

SCOTT ROSS

COMMUNITY DEVELOPMENT

Signature

*[Handwritten Signature]*

SEP 06 2017

Address

1327 63rd. Street

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

The back side of the property looks into the back yards of 3 residential properties. The property sits higher than the res. properties. The windows look down into the back yards. There is little buffer to the view from these windows.

Item ZON2017-00104

Date 8-31-17

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

(Circle One)

Print Name Mark Richman

COMMUNITY DEVELOPMENT Signature *MR*

SEP 07 2017 Address 1320 62nd St Des Moines IA 50311

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

I would like the privacy that Dr. Barber agreed to provide.

Item ZON2017-00104

Date 8/1/17

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

(Circle One)

Print Name WINIFRED WILLIAMS (TRUST)

COMMUNITY DEVELOPMENT Signature *Winifred Williams*

SEP 06 2017 Address 431 64th St

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

I wish to have surrounding properties maintain the integrity of the Winifred Williams reputation. It is not a murder or a caretaker. It should be an honor to them.

Item ZON2017-00104

Date 9-1-17

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

(Circle One)

Print Name NICHOLAS COSTANZO, MGR STRATOFALCON WV. LLC

COMMUNITY DEVELOPMENT

Signature *Nicholas Costanzo*

SEP 14 2017

Address 1316 62nd St DM.

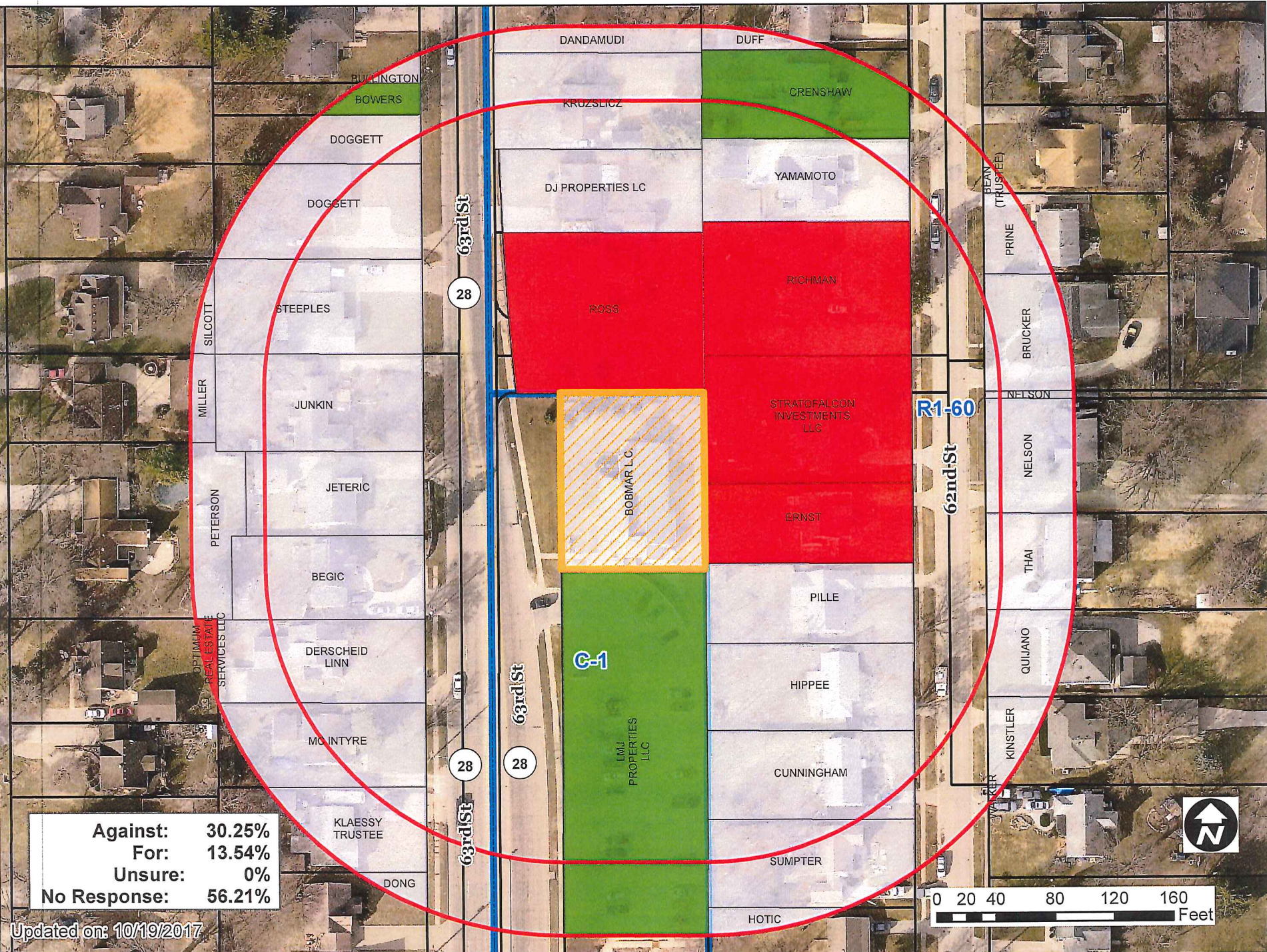
Reason for opposing or approving this request may be listed below.

DENTAL PROPERTY SITS ABOVE MY RENTAL HOUSE AND VIOLATES THEIR PRIVACY. SHRUBS AND TREES PROVIDE A NATURAL BUFFER. I WOULD CONSIDER ACCEPTING LAND DENTAL TO PLANT TREES AND SHRUBS ON MY PROPERTY TO PROVIDE PRIVACY, OR KEEP EXISTING RESTRICTIONS

19 Item ZON2017-00104 Date 08-03-2017  
I (am) (am not) in favor of the request.  
(Circle One)  
RECEIVED Print Name ROBERT L BOWERS Jr  
COMMUNITY DEVELOPMENT Signature [Signature]  
SEP 07 2017 Address 3220 SE 22ND ST  
Community 1A 50061  
Reason for opposing or approving this request may be listed below.

Item ZON2017-00104 Date 9/7/17  
I (am) (am not) in favor of the request.  
(Circle One)  
RECEIVED Print Name Joe Crenshaw  
COMMUNITY DEVELOPMENT Signature Joe D Crenshaw  
SEP 12 2017 Address 1100 63rd St  
Reason for opposing or approving this request may be listed below.

Item ZON2017-00104 Date 8-30-17  
I (am) (am not) in favor of the request.  
(Circle One)  
RECEIVED Print Name Jonathan Muller (LMJ Prop.)  
COMMUNITY DEVELOPMENT Signature [Signature]  
Address 1201 63rd St, 50311  
SEP 06 2017  
Reason for opposing or approving this request may be listed below.  
They've been great neighbors. Property looks good, and  
is an asset to the neighborhood. Current landscaping  
plan is not sustainable.

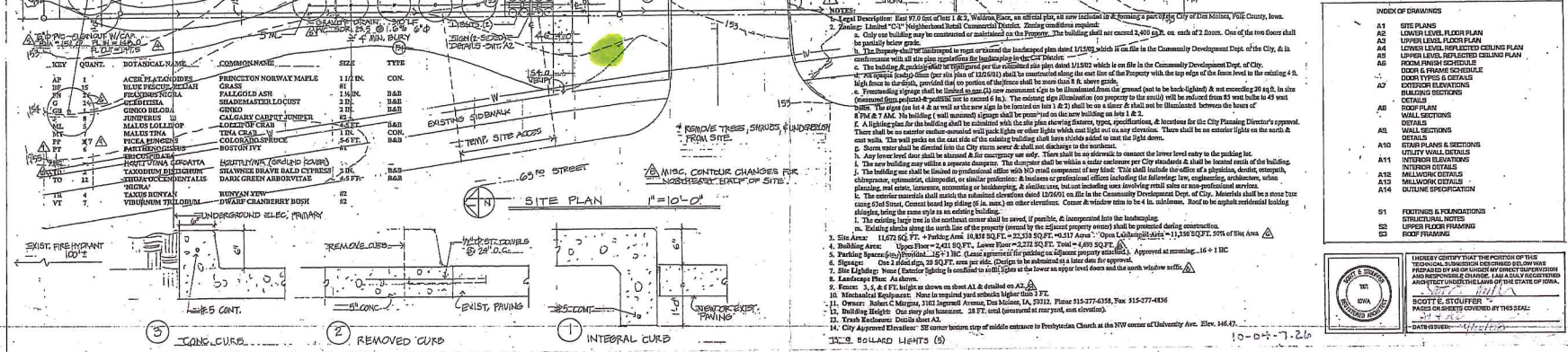
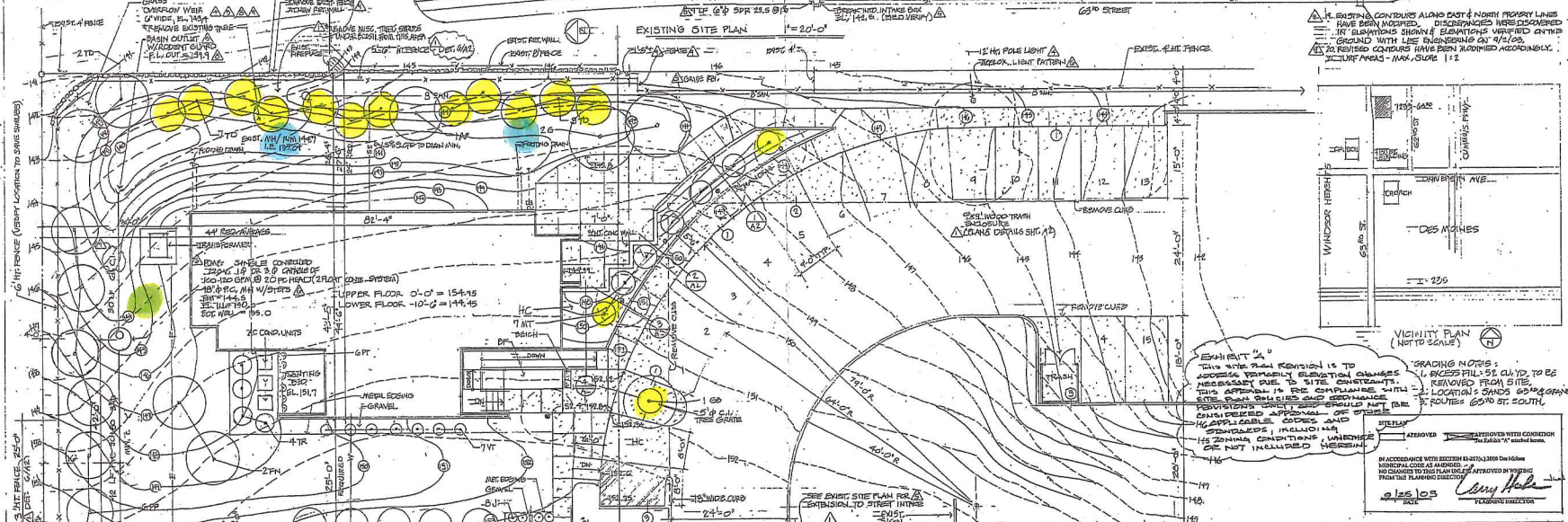
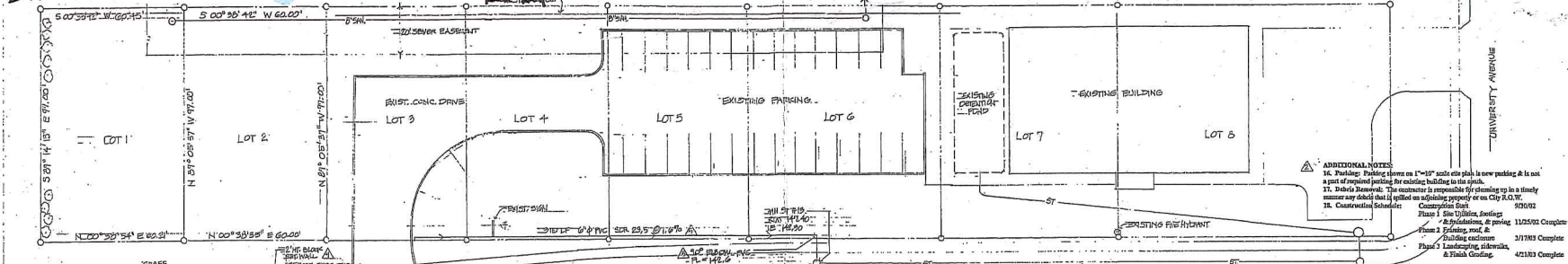


Against:	30.25%
For:	13.54%
Unsure:	0%
No Response:	56.21%

Updated on: 10/19/2017

Eliminate

Add Black Gum or Eastern Red Bud Extra Tree



Scott E. Stouffer Architect

STRUCTURAL: KATZMAN ENGINEERING 515 524 0733

DENTAL CLINIC ROBERT C. MARGAS DDS. 1000 S. UNIVERSITY AVENUE, SUITE 100, LEBANON, TN 37037

REVISIONS: 1/16/02, 1/25/02, 3/30/02, 5/18/02, 6/27/02, 7/9/02, 11/26/02, 1/21/03, 5/8/03

SEPT. 2002

A1

10-04-7-26