



Roll Call Number

Agenda Item Number

45A

Date July 9, 2018

RESOLUTION ON REQUEST FROM LEE ROSE, LLC TO AMEND THE EXISTING PLANDSM: CREATING OUR TOMORROW PLAN FUTURE LAND USE DESIGNATION (2701 AND 2703 EAST GRAND AVENUE)

WHEREAS, on April 25, 2016, by Roll Call No. 16-0717, the City Council adopted the PlanDSM: Creating Our Tomorrow Plan; and

WHEREAS, at a public hearing held on June 7, 2018, the City Plan and Zoning Commission voted 12-0 in support of a motion to recommend DENIAL of a request by Lee Rose, LLC (owner) d/b/a Des Moines Comfort, Inc., represented by Lee Rose, Jr. (officer), to amend the existing PlanDSM: Creating Our Tomorrow Plan future land use designation for real property locally known as 2701 and 2703 East Grand Avenue, from Low Density Residential to Neighborhood Mixed Use to allow for rezoning to "C-2" General Retail and Highway-Oriented Commercial District and expansion of the existing mechanical contractor shop use.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that the proposed amendment to the PlanDSM: Creating Our Tomorrow Plan, as described above, is hereby approved / denied.

MOVED by \_\_\_\_\_ to adopt and APPROVE / DENY the proposed amendment.

FORM APPROVED:

Glenna K. Frank, Assistant City Attorney

(21-2018-4.09)

NOTE: Six affirmative votes are required to approve the proposed amendment due to the Plan and Zoning Commission's recommendation for denial. Des Moines City Code §82-78.

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, and TOTAL. Includes MOTION CARRIED and APPROVED indicators.

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

Mayor



June 19, 2018

Date 7/9/18  
 Agenda Item 45A  
 Roll Call # \_\_\_\_\_

Honorable Mayor and City Council  
 City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their June 7, 2018 meeting, the following action was taken regarding a request from Lee Rose, LLC (owner), represented by Lee Rose, Jr. (officer), dba Des Moines Comfort, Inc. to rezone property located at 2701 and 2703 East Grand Avenue from "C-1" Neighborhood Retail Commercial District to "C-2" General Retail and Highway-Oriented Commercial District, to allow expansion of the existing mechanical contractor shop use. Additional subject property is owned by Lee Rose, Jr.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 12-0 as follows:

| Commission Action:  | Yes | Nays | Pass | Absent |
|---------------------|-----|------|------|--------|
| Francis Boggus      | X   |      |      |        |
| Dory Briles         | X   |      |      |        |
| Chris Cutler        |     |      |      | 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) the proposed rezoning be found **NOT in conformance** with the existing PlanDSM future land use designation of Low Density Residential, Part B) **Denial**

of the requested amendment to the PlanDSM future land use designation from Low Density Residential to Neighborhood Mixed Use and Part C) **Denial** of rezoning the property from “C-1” Neighborhood Retail Commercial District to “C-2” General Retail and Highway-Oriented Commercial District. (21-2018-4.09) & (ZON2018-00080)

### Written Responses

5 in Favor

1 in Opposition

### **STAFF RECOMMENDATION**

Part A) Staff recommends that the proposed rezoning be found in not in conformance with the existing PlanDSM future land use designation of Low Density Residential.

Part B) Staff recommends denial of the requested amendment to the PlanDSM future land use designation from Low Density Residential to Neighborhood Mixed Use.

Part C) Staff recommends denial of rezoning the property from “C-1” Neighborhood Retail Commercial District to “C-2” General Retail and Highway-Oriented Commercial District.

Should the rezoning be denied, the applicant would have up to one (1) year following that denial to seek a Use Variance from the Zoning Board of Adjustment to allow use of the property for a specific commercial use. Such a Use Variance would not require an amendment to the PlanDSM Creating Our Tomorrow future land use plan.

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

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

- 1. Purpose of Request:** The proposed rezoning would allow the existing mechanical contractor shop use (Des Moines Comfort) operating within the building on the parcel known as 2703 East Grand Avenue to expand by paving an existing graveled parking lot on the adjoining parcel known as 2701 East Grand Avenue. The expansion would also include the addition of overhead doors on the building’s west facade.

Should the rezoning be denied, the applicant would have up to one (1) year following that denial to seek a Use Variance from the Zoning Board of Adjustment to allow use of the property for a specific commercial use. Such a Use Variance would not require an amendment to the PlanDSM Creating Our Tomorrow future land use plan.

- 2. Size of Site:** 84 feet by 150 feet (12,600 square feet).
- 3. Existing Zoning (site):** “C-1” Neighborhood Retail Commercial District and “FSO” Freestanding Sign Overlay District.
- 4. Existing Land Use (site):** The property known as 2701 East Grand Avenue includes a one-story 860-square foot building occupied by a hair salon (Cut Hut) and the property known as 2703 East Grand Avenue includes a one-story, 5,136-square foot building occupied by a mechanical contractor shop (Des Moines Comfort).

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

**East** - "R1-60"; Use is a single-family dwelling.

**West** - "C-1"; Uses are East 27<sup>th</sup> Street and a church.

**North** - "C-1"; Uses are East Grand Avenue and single-family dwellings.

**South** - "R1-60"; Uses are single-family dwellings.

- 6. General Neighborhood/Area Land Uses:** The subject property is located in an area that is developed primarily with single-family residential use with scattered, older commercial structures.
- 7. Applicable Recognized Neighborhood(s):** The subject property is located within the Fairground Neighborhood. All neighborhood associations were notified of the meeting by mailing of the Preliminary Agenda on May 18, 2018. Additionally, separate notifications of the hearing for this specific item were mailed on May 18, 2018 (20 days prior to the hearing) and May 25, 2018 (10 days prior to the hearing) to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the requested rezoning. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on June 1, 2018. The Fairground Neighborhood Association mailings were sent to Sharon Cooper, 2838 Logan Avenue, Des Moines, IA 50317.

The applicant held their neighborhood meeting on May 24, 2018, and will be available to provide a summary of the neighborhood meeting at the hearing.

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

- 9. PlanDSM Land Use Plan Designation:** Low Density Residential.

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

**II. ADDITIONAL APPLICABLE INFORMATION**

- 1. PlanDSM Creating Our Tomorrow:** The future land use designation for the property is currently Low Density Residential, which is defined as areas developed primarily with single-family and two-family residential units, up to 6 units per net acre.

The proposed rezoning would require an amendment to the Neighborhood Mixed Use designation. This designation accommodates small scale mixed use development

typically located at the intersections of collector and arterial streets and along transportation corridors. Non-residential development is designed to serve the immediate neighborhood and include small retail, offices, restaurants, and service-oriented development. Development in this classification could have a large impact on adjoining low density residential properties and the environment which would need to be mitigated.

The proposed Neighborhood Mixed Use designation would be surrounded by remaining Low Density Residential designation. While the property is currently zoned "C-1" Neighborhood Retail Commercial District, the PlanDSM designates this area for Low Density Residential. The Plan does not contemplate adding additional commercial use or development in the immediate area. While Staff believes the existing business is an asset to the neighborhood and the property is well-maintained, the proposed amendment to the PlanDSM future land use designation and the proposed rezoning to an "C-2" General Retail and Highway-Oriented Commercial District are not appropriate, given the recent adoption of PlanDSM.

Should the rezoning be denied, the applicant would have up to one (1) year following that denial to seek a Use Variance from the Zoning Board of Adjustment to allow use of the property for a specific commercial use. Such a Use Variance would not require an amendment to the PlanDSM Creating Our Tomorrow future land use plan.

**2. Additional Information:** *If the Commission is inclined to recommend approval of the requested comprehensive plan amendment and rezoning, staff recommends that it be made subject to the following:*

1. *Only the following uses shall be allowed:*

- a) *Plumbing and Heating shops (or similar mechanical contractor shop) son long as there is no outdoor storage or outdoor operation.*
- b) *Any use as permitted in the "C-1" District, except the following uses shall be prohibited:*
  - i. *Assembly uses*
  - ii. *Bakeries*
  - iii. *Boarding houses and rooming houses*
  - iv. *Colleges and universities*
  - v. *Correctional placement residences*
  - vi. *Dance studios*
  - vii. *Delicatessens*
  - viii. *Department stores with more than 30,000 square feet of gross floor area*
  - ix. *Gas stations/convenience stores*
  - x. *Multiple-family residential dwellings*
  - xi. *Nursing, convalescent, and retirement homes*
  - xii. *Radio stations*
  - xiii. *Restaurants*
  - xiv. *Shelters for the homeless*
  - xv. *Theaters*

2. *Any construction shall be in full conformance, and kept in accordance, with an approved Site Plan under requirements as applicable to "C-2" Districts, including landscaping and paving requirements.*
3. *Any buildings on site shall be kept in good repair to the satisfaction of the Zoning Enforcement Officer and Neighborhood Inspections Division Administrator.*
4. *Any refuse collection container shall be kept within an enclosed building or within an enclosure structure that complies with zoning requirements.*

## **SUMMARY OF DISCUSSION**

Erik Lundy presented the staff report and recommendation.

### **CHAIRPERSON OPENED THE PUBLIC HEARING**

Lee Rose, 2701 E. Grand Representing Des Moines Comfort, stated he does have a mixed-use of the building. Based on the photos on their Facebook page, the Zoning Enforcement Officer believes they are more of an HVAC contractor than a repair facility. He isn't sure why they need to be zoned to "C-2", but was made aware that would be best so they are in conformance with the use of their property.

### **CHAIRPERSON CLOSED THE PUBLIC HEARING**

Greg Wattier asked for clarification on the zoning issues.

Erik Lundy stated if they weren't to do anything today, they would be able to continue as is.

Greg Wattier asked what was the part about them being a commercial contractor?

Erik Lundy stated plumbing and heating shops require "C-2" zoning. They could be at risk if a fire or damage to their property was to occur resulting in loss of non-conforming rights.

Greg Wattier asked for the definition of alteration?

Erik Lundy stated is was not defined in the Zoning Ordinance. The Zoning Officer has used accepted dictionary definitions.

Greg Wattier asked the applicant if he was clear about the Use Variance option through the Zoning Board of Adjustment.

Lee Rose stated yes.

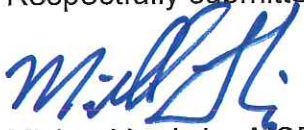
Greg Wattier stated they shouldn't change the zoning of the property and the applicant should request a use variance through the Zoning Board of Adjustment.

**COMMISSION ACTION:**

Greg Wattier made a motion for approval of Part A) the proposed rezoning be found **NOT in conformance** with the existing PlanDSM future land use designation of Low Density Residential, Part B) **Denial** of the requested amendment to the PlanDSM future land use designation from Low Density Residential to Neighborhood Mixed Use and Part C) **Denial** of rezoning the property from "C-1" Neighborhood Retail Commercial District to "C-2" General Retail and Highway-Oriented Commercial District.

Motion Passed: 12-0

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

EML:tjh

|   |   |              |                                       |                         |   |
|---|---|--------------|---------------------------------------|-------------------------|---|
| Lee Rose, LLC (owner), represented by Lee Rose, Jr. (officer), dba Des Moines Comfort, Inc. for property located at 2701 and 2703 East Grand Avenue.<br>Additional subject property is owned by Lee Rose, Jr. |   |              |                                       | File #<br>ZON2018-00080 |   |
| Description of Action   | Rezone the property from "C-1" Neighborhood Retail Commercial District to "C-2" General Retail and Highway-Oriented Commercial District, to allow expansion of the existing mechanical contractor shop use. |              |                                       |                         |   |
| PlanDSM Future Land Use   | Current: Low Density Residential.<br>Proposed: Neighborhood Mixed Use.  |              |                                       |                         |   |
| 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  | "C-2" General Retail and Highway-Oriented Commercial District and "FSO" Freestanding Signs Overlay District.  |              |                                       |                         |   |
| Consent Card Responses  | In Favor  | Not In Favor | Undetermined                          | % Opposition            |   |
| Subject Property  | 5   | 1            |                                       |                         |   |
| Outside Area (200 feet)   |   |              |                                       |                         |   |
| Plan and Zoning Commission Action   | Approval  |              | Required 6/7 Vote of the City Council | Yes                     | X |
|   | Denial  | X            |                                       | No                      |   |

Lee Rose, LLC, dba Des Moines Comfort, Inc., 2701 and 2703 East Grand Avenue

ZON2018-00080



1 inch = 93 feet



|  |  |              |  |              |   |
|--|--|--------------|--|--------------|---|
| Lee Rose, LLC (owner), represented by Lee Rose, Jr. (officer), dba Des Moines Comfort, Inc. for property located at 2701 and 2703 East Grand Avenue. Additional subject property is owned by Lee Rose, Jr. |  |              | File #<br>21-2018-4.09                       |              |   |
| <b>Description of Action</b>   | Amend the existing PlanDSM Creating Our Tomorrow future land use designation from Low Density Residential to Neighborhood Mixed Use. |              |  |              |   |
| <b>PlanDSM Future Land Use</b>   | Current: Low Density Residential.<br>Proposed: Neighborhood Mixed Use.   |              |  |              |   |
| <b>Mobilizing Tomorrow Transportation Plan</b>   | No planned improvements.   |              |  |              |   |
| <b>Current Zoning District</b>   | "C-1" Neighborhood Retail Commercial District and "FSO" Freestanding Signs Overlay District.   |              |  |              |   |
| <b>Proposed Zoning District</b>  | "C-2" General Retail and Highway-Oriented Commercial District and "FSO" Freestanding Signs Overlay District.                         |              |  |              |   |
| <b>Consent Card Responses</b>  | In Favor   | Not In Favor | Undetermined                                 | % Opposition |   |
| <b>Subject Property</b>  | 5  | 1            |  |              |   |
| <b>Outside Area (200 feet)</b>   |  |              |  |              |   |
| <b>Plan and Zoning Commission Action</b>   | Approval   |              | <b>Required 6/7 Vote of the City Council</b> | Yes          | X |
|  | Denial   | X            |  | No           |   |

Lee Rose, LLC, dba Des Moines Comfort, Inc., 2701 and 2703 East Grand Avenue 21-2018-4.09



1 inch = 93 feet

Item ZON2018-00080

Date 07-26-2018

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

(Circle One)

Print Name Toney Jenkins

Signature Toney Jenkins

Address 2714 Capitol Ave

RECEIVED  
COMMUNITY DEVELOPMENT

MAY 31 2018

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

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

Item ZON2018-00080

Date 5/27/18

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

(Circle One)

Print Name George Broxson

Signature 2719 E Grand Ave

Address \_\_\_\_\_

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

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

Item ZON2018-00080

Date 5-25

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

(Circle One)

RECEIVED

COMMUNITY DEVELOPMENT

Print Name William Botler

Signature William Botler

MAY 31 2018

Address 2718 Capitol Ave

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

There is enough trouble with the drivers at the Heating and Cooling Company driving up and down the alley like they are on University. Fast and reckless I have informed them on many occasions

Item ZON2018-00080

Date 5-27-18

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

(Circle One)

**RECEIVED**  
**COMMUNITY DEVELOPMENT**

Print Name MARVIN LUMBAR

Signature [Signature]

Address 414 E. 27<sup>th</sup> ST.

MAY 31 2018

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

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

Item ZON2018-00080

Date 5/29/2018

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

(Circle One)

**RECEIVED**  
**COMMUNITY DEVELOPMENT**

Print Name SUBJECT PROPERTY OWNER

Signature [Signature]

Address 2703 E Grand

JUN 01 2018

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

Looking forward to the new green spec  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Item ZON2018-00080

Date 5/29/2018

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

(Circle One)

**RECEIVED**  
**COMMUNITY DEVELOPMENT**

Print Name Lee Rose

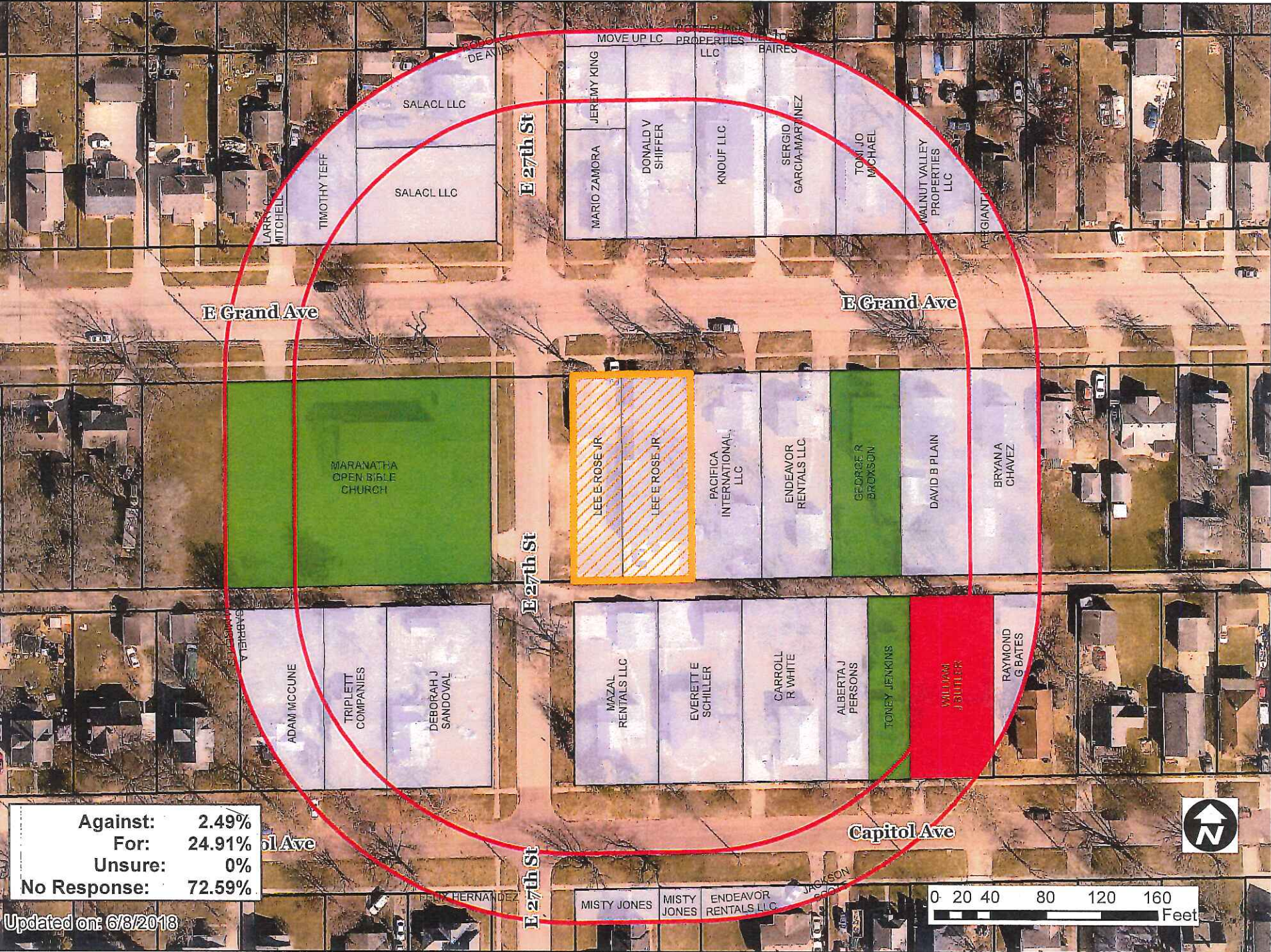
Signature [Signature]

JUN 01 2018

Address 2703 E Grand Ave

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

The improvements will make the neighborhood look better  
\_\_\_\_\_  
\_\_\_\_\_



|              |        |
|--------------|--------|
| Against:     | 2.49%  |
| For:         | 24.91% |
| Unsure:      | 0%     |
| No Response: | 72.59% |

Updated on: 6/8/2018

457A



Updated on: 5/3/2013

USA