



Date January 28, 2019

**RESOLUTION HOLDING HEARING ON REQUEST FROM
JS BAKER PROPERTIES, LLC TO REZONE PROPERTY LOCATED AT
2800 EAST UNIVERSITY AVENUE**

WHEREAS, on January 14, 2019, by Roll Call No. 19-0040, the City Council received a recommendation from the City Plan and Zoning Commission advising that at a public hearing held on December 20, 2018, its members voted 8-0 in support of a motion to recommend **APPROVAL** of a request from JS Baker Properties, LLC (owner), represented by John Baker (officer), to rezone property located at 2800 East University Avenue (“Property”) from Limited “C-2” General Retail and Highway-Oriented Commercial District to a revised Limited “C-2” General Retail and Highway-Oriented Commercial District, to revise zoning conditions and allow retention of a driveway access to an overhead door on the north side of the principal building, subject to the following conditions:

- A. The following uses of structures and land shall be prohibited upon the Property:
 - 1) Adult entertainment businesses;
 - 2) Tavern and/or nightclub;
 - 3) Off-premises advertising;
 - 4) Sales and display of vehicles larger than scooters, mopeds, motorcycles, or ATVs.
 - 5) Pawn Brokers;
 - 6) Delayed Deposit Services;
 - 7) Any business selling alcohol, exclusive of a tobacco store.

- B. The north 50 feet of the Property shall not be used for any use except open space in conjunction with adjoining commercial use or a single-family dwelling, or for a driveway leading to an overhead door on the north façade of the building so long as the following criteria are satisfied:
 - 1) Any driveway shall be in accordance with all Site Plan requirements and shall comply with all zoning regulations, such as minimum width, unless the Zoning Board of Adjustment grants an appeal of such.
 - 2) Any driveway shall exit either to the alley or to the existing parking lot and not directly to East 28th Street.
 - 3) A 6-foot tall solid wood fence shall be provided along the entire north property line, exclusive of the portion of the fence within the minimum required front yard which may be no taller than 3 feet tall.
 - 4) A chain and bollards shall be provided where the driveway accesses any alley or parking lot to minimize use of the driveway.

- C. Any outdoor display of scooter, mopeds, motorcycles, ATVs and similar small vehicles permitted upon the Property shall be in conformance with a Site Plan approved under the adopted procedures and design guidelines for a vehicle display lot; and

WHEREAS, on January 14, 2019, by Roll Call No. 19-0040, it was duly resolved by the City Council that the application of JS Baker Properties, LLC to rezone the Property, as legally described below, be set down for hearing on January 28, 2019 at 5:00 p.m. in the Council Chambers at City Hall; 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

Date January 28, 2019

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 2800 East University Avenue, legally described as:

(EXCEPT AN IRREGULAR PIECE BEGINNING AT THE SW CORNER OF LOT 9; THENCE EAST 29 FEET; THENCE NORTHWESTERLY TO A POINT 27 FEET NORTH OF THE SW CORNER OF LOT 11; THENCE SOUTH TO THE POINT OF BEGINNING) LOTS 9, 10, 11 AND 12, IN BLOCK 9, FAIRVIEW, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA

from Limited "C-2" General Retail and Highway-Oriented Commercial District to a revised Limited "C-2" General Retail and Highway-Oriented Commercial District, to revise zoning conditions and allow retention of a driveway access to an overhead door on the north side of the principal building, subject to the conditions stated above as agreed to and accepted by execution of an Acceptance of Rezoning Ordinance in writing by the owner(s) of the Property, which is binding upon the owner(s) and their 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 revised Limited "C-2" General Retail and Highway-Oriented Commercial District with conditions as set forth above, are hereby overruled, and the hearing is closed.
2. The proposed rezoning of the Property to revised Limited "C-2" General Retail and Highway-Oriented Commercial District with conditions as set forth above, is hereby found to be in conformance with the PlanDSM: Creating Our Tomorrow Land Use Plan and is 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

(ZON2018-00235)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
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 January 28, 2019
 Agenda Item 46
 Roll Call # _____

January 8, 2019

Honorable Mayor and City Council
 City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their December 20, 2018 meeting, the following action was taken regarding a request from JS Baker Properties, LLC (owner) represented by John Baker (officer) to rezone property located at 2800 East University Avenue from Limited "C-2" General Retail and Highway-Oriented Commercial District to a revised Limited "C-2" General Retail and Highway-Oriented Commercial District, whereby the condition "The north 50 feet of the property shall not be used for any use except open space in conjunction with adjoining commercial use or a single-family dwelling" be stricken in order to allow retention of a driveway access that was subsequently developed through that area to an overhead door on the north side of the principal building.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 8-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
Dory Briles	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 with conditions is in conformance with PlanDSM: Creating Our Tomorrow Plan; and **APPROVAL** of Part B) to recommend rezoning of the subject property to a revised Limited C-2 District subject to the following conditions:

- A. The following uses of structures and land shall be prohibited upon the Property:
- 1) Adult entertainment businesses;
 - 2) Tavern and/or nightclub;
 - 3) Off-premises advertising;
 - 4) Sales and display of vehicles larger than scooters, mopeds, motorcycles, or ATVs.
 - 5) Pawn Brokers;
 - 6) Delayed Deposit Services;
 - 7) Any business selling alcohol, exclusive of a tobacco store.
- B. The north 50 feet of the Property shall not be used for any use except open space in conjunction with adjoining commercial use or a single-family dwelling, or for a driveway leading to an overhead door on the north façade of the building so long as the following criteria are satisfied:
- 1) Any driveway shall be in accordance with all Site Plan requirements and shall comply with all zoning regulations, such as minimum width, unless the Zoning Board of Adjustment grants an appeal of such.
 - 2) Any driveway shall exit either to the alley or to the existing parking lot and not directly to East 28th Street.
 - 3) A 6-foot tall solid wood fence shall be provided along the entire north property line, exclusive of the portion of the fence within the minimum required front yard which may be no taller than 3 feet tall.
 - 4) A chain and bollards shall be provided where the driveway accesses any alley or parking lot to minimize use of the driveway.
- C. Any outdoor display of scooter, mopeds, motorcycles, ATVs and similar small vehicles permitted upon the Property shall be in conformance with a Site Plan approved under the adopted procedures and design guidelines for a vehicle display lot.

(ZON2018-00235)

Written Responses

3 in Favor

3 in Opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the Commission find the requested rezoning not in conformance with PlanDSM: Creating Our Tomorrow Plan.

Part B) Staff recommends denial of the request to rezone the property from Limited "C-2" General Retail and Highway-Oriented Commercial District to a Limited "C-2" District, to eliminate a zoning condition that requires the north 50 feet of the property to only be used as open space in conjunction with adjoining commercial use or a single-family dwelling.

However, if the Commission is inclined to grant the request, Staff recommends that the zoning conditions contained in Ordinance No. 14,712 be revised as follows:

- A. The following uses of structures and land shall be prohibited upon the Property:
- 1) Adult entertainment businesses;
 - 2) Tavern and/or nightclub;
 - 3) Off-premises advertising;
 - 4) Sales and display of vehicles larger than scooters, mopeds, motorcycles, or ATVs.
 - 5) Pawn Brokers;
 - 6) Delayed Deposit Services;
 - 7) Any business selling alcohol, exclusive of a tobacco store.
- B. The north 50 feet of the Property shall not be used for any use except open space in conjunction with adjoining commercial use or a single-family dwelling, or for a driveway leading to an overhead door on the north façade of the building so long as the following criteria are satisfied:
- 1) Any driveway shall be in accordance with all Site Plan requirements and shall comply with all zoning regulations, such as minimum width, unless the Zoning Board of Adjustment grants an appeal of such.
 - 2) Any driveway shall exit either to the alley or to the existing parking lot and not directly to East 28th Street.
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- C. Any outdoor display of scooter, mopeds, motorcycles, ATVs and similar small vehicles permitted upon the Property shall be in conformance with a Site Plan approved under the adopted procedures and design guidelines for a vehicle display lot.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed rezoning would eliminate a zoning condition that requires the northernmost 50 feet of the property to only be used as open space in conjunction with an adjoining commercial or single-family residential use. The rezoning would allow for retention of an 8-foot wide paved driveway that has been constructed in this area that provides access directly from East 28th Street to an overhead garage door on the north façade of the building. The applicant indicates that if the existing driveway is allowed to remain, it would be reconfigured so that it leads to the off-street parking lot rather than to East 28th Street.
2. **Size of Site:** 0.65 Acres (28,302 square feet).
3. **Existing Zoning (site):** Limited "C-2" General Retail and Highway-Oriented Commercial District, & "FSO" Freestanding Sign Overlay District.

4. **Existing Land Use (site):** The property contains a 7,700-square foot commercial building occupied by Baker Machines and Smokin' Joe's (tobacco store with alcohol sales) and a surface parking lot.

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

North – "R1-60", Uses are single-family dwellings.

South – "C-2" & "C-1", Uses are 1st Stop Liquor Shop and vacant commercial property.

East – "C-2" & "R1-60", Use is 2-story commercial/office strip center and single-family dwellings.

West – "C-2" & "R1-60", Uses are a vehicle display lot and single-family dwellings.

6. **General Neighborhood/Area Land Uses:** The subject property is located along the East University Avenue commercial corridor, which has primarily low density residential neighborhoods to the north and south.

7. **Applicable Recognized Neighborhood(s):** The subject property is located in the ACCENT Neighborhood and within 250 feet of the Fairground Neighborhood. The neighborhoods were notified of the initial public hearing on November 16, 2018 by mailing of the Preliminary Agenda. Additionally, separate notifications of the hearing for this specific item were mailed on November 16, 2018 (20 days prior to the December 6, 2018 hearing) and November 26, 2018 (10 days prior to the December 6, 2018 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. Final Agendas for the meetings were mailed on November 30, 2018 and December 14, 2018.

All agendas and notices are mailed to the primary contact person designated to the City of Des Moines' Neighborhood Development Division by the recognized neighborhood association. The ACCENT Neighborhood Association mailings were sent to Kevin Scott Marken, 2109 East 28th Street, Des Moines, IA 50317. The Fairground Neighborhood Association mailings were sent to Sharon Cooper, 2838 Logan Ave, Des Moines, IA 50317.

The applicant has scheduled their required neighborhood meeting for Tuesday, December 4, 2018. They will be able to provide a summary of that meeting at the public hearing on Thursday, December 20, 2018.

8. **Relevant Zoning History:** On October 8, 2007, by Ordinance No. 14,712, the City Council rezoned the subject property from "R1-60" One-Family Low-Density Residential District and "C-2" General Retail and Highway Oriented Commercial District, to a Limited "C-2" General Retail and Highway Oriented Commercial District, subject to the following conditions:

- A. The following uses of structures and land shall be prohibited upon the Property:
- 1) Adult entertainment businesses;

- 2) Tavern and/or nightclub;
 - 3) Off-premises advertising; and,
 - 4) Sales and display of vehicles larger than scooters, mopeds, motorcycles, or ATVs.
- B. The north 50 feet of the Property shall not be used for any use except open space in conjunction with adjoining commercial use or a single-family dwelling.
- C. Any outdoor display of scooter, mopeds, motorcycles, ATVs and similar small vehicles permitted upon the Property shall be in conformance with a Site Plan approved under the adopted procedures and design guidelines for a vehicle display lot.

On November 1, 2007, the Plan & Zoning Commission approved a Site Plan under design guidelines for vehicle display lots (10-2008-7.45) to allow outdoor display of ATVs, motorcycles, scooters and mopeds on the western portion of the subject property. The approval included a waiver of a 6-foot screen fence requirement on the north bufferyard, subject to the following:

1. Satisfaction of all comments by the Permit and Development Center based on the administrative review of the Site Plan.
2. Compliance with the 6' sidewalk requirements under the East University streetscape improvements in the Site Plan policies.
3. Applicant work with City staff to create a barrier to prevent vehicles from being parked on the required setback and landscaping

On June 5, 2014, the Zoning Board of Adjustment granted a Conditional Use Permit (ZON2014-00084) for a tobacco store to operate within the eastern portion of the building on the subject property. The Conditional Use Permit allows this business to sell alcoholic liquor, wine, and beer, subject to the following conditions:

1. The tobacco store shall derive less than 25% of gross receipts from the sale of alcoholic liquors, wine, and beer.
2. The tobacco store shall be limited to the existing 2,911-square foot area within the structure.
3. The business selling liquor, wine, and/or beer shall operate in accordance with a liquor license obtained through the Office of the City Clerk as approved by the City Council.
4. The business shall display alcoholic liquor only in a locked case or be secured behind a counter and in areas accessible only to employees.
5. The business shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
6. The business shall institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
7. The business shall not dispense alcoholic beverages from a drive-through window.
8. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of the business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
9. Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface

- at all times. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.
10. Any renovation on the site shall be in compliance with all applicable building and fire codes, with issuance of all necessary permits by the Permit and Development Center.
 11. If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use Permit, the Zoning Enforcement Officer may apply to the Zoning Board of Adjustment to reconsider the issuance of the Conditional Use Permit for such business

9. PlanDSM Future Land Use Plan Designation: Community Mixed Use.

- 10. Applicable Regulations:** Taking into the consideration of 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:** The subject property is designated as "Community Mixed Use" on the Future Land Use Map. Plan DSM describes this designation as follows:

Small- to medium-scale mixed use development, located on high capacity transit corridors or at the intersection of transportation corridors. Community mixed use areas include both a mix of medium density residential and 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.

Since there are many commercial uses permitted on the property, including the existing tobacco store with alcohol sales, Staff believes that the existing zoning condition requiring 50 feet of open space is reasonably necessary in order to prevent any commercial use of the property from having a negative impact on the single-family dwelling immediately to the north. Therefore, Staff recommends denial of the requested rezoning.

- 2. Site Plan Requirements:** Any driveway within the north 50 feet of the subject property must be in accordance with a Site Plan as approved by the City's Permit and Development. In addition, City Code Section 134-1377(f)(1)(b) requires any driveway for two-way circulation to be at least 20 feet wide. Therefore, retention of the existing 8-foot wide paved driveway may be subject to approval of a zoning appeal by the City's Zoning Board of Adjustment.

SUMMARY OF DISCUSSION

Erik Lundy stated the applicant agrees to the alternate staff recommendations. Therefore, Staff recommends that the zoning with conditions, is in conformance with PlanDSM: Creating Our Tomorrow Plan and staff recommends approval of the rezoning with conditions.

Jacqueline Easley asked if any member of the audience or the commission desired to speak regarding the item. None requested to speak.

COMMISSION ACTION:

Carolyn Jension made a motion for **APPROVAL** of Part A) that the proposed rezoning with conditions is in conformance with PlanDSM: Creating Our Tomorrow Plan; and **APPROVAL** of Part B) to recommend rezoning of the subject property to a revised Limited C-2 District subject to the following conditions:

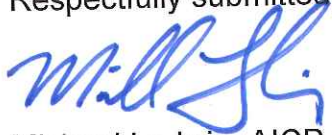
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- C. Any outdoor display of scooter, mopeds, motorcycles, ATVs and similar small vehicles permitted upon the Property shall be in conformance with a Site Plan approved under the adopted procedures and design guidelines for a vehicle display lot.

Motion Carried 8-0

Respectfully submitted,



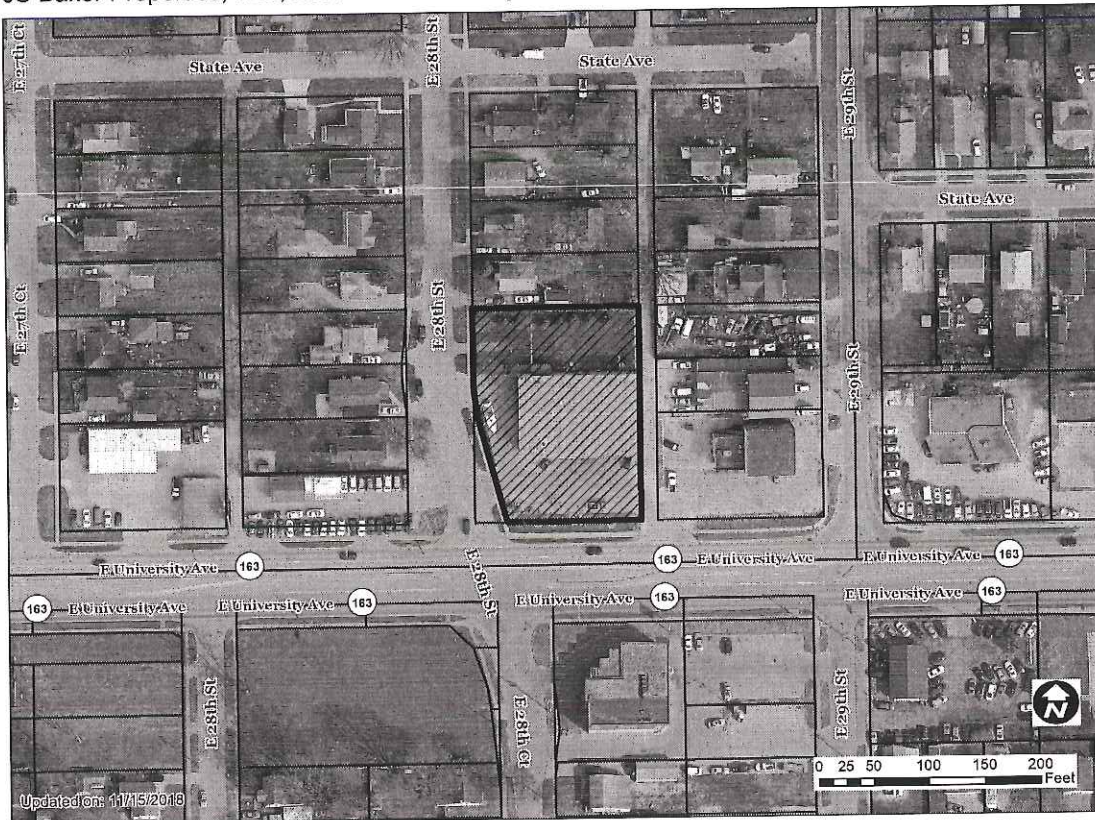
Michael Ludwig, AICP
Planning Administrator

MGL:tjh

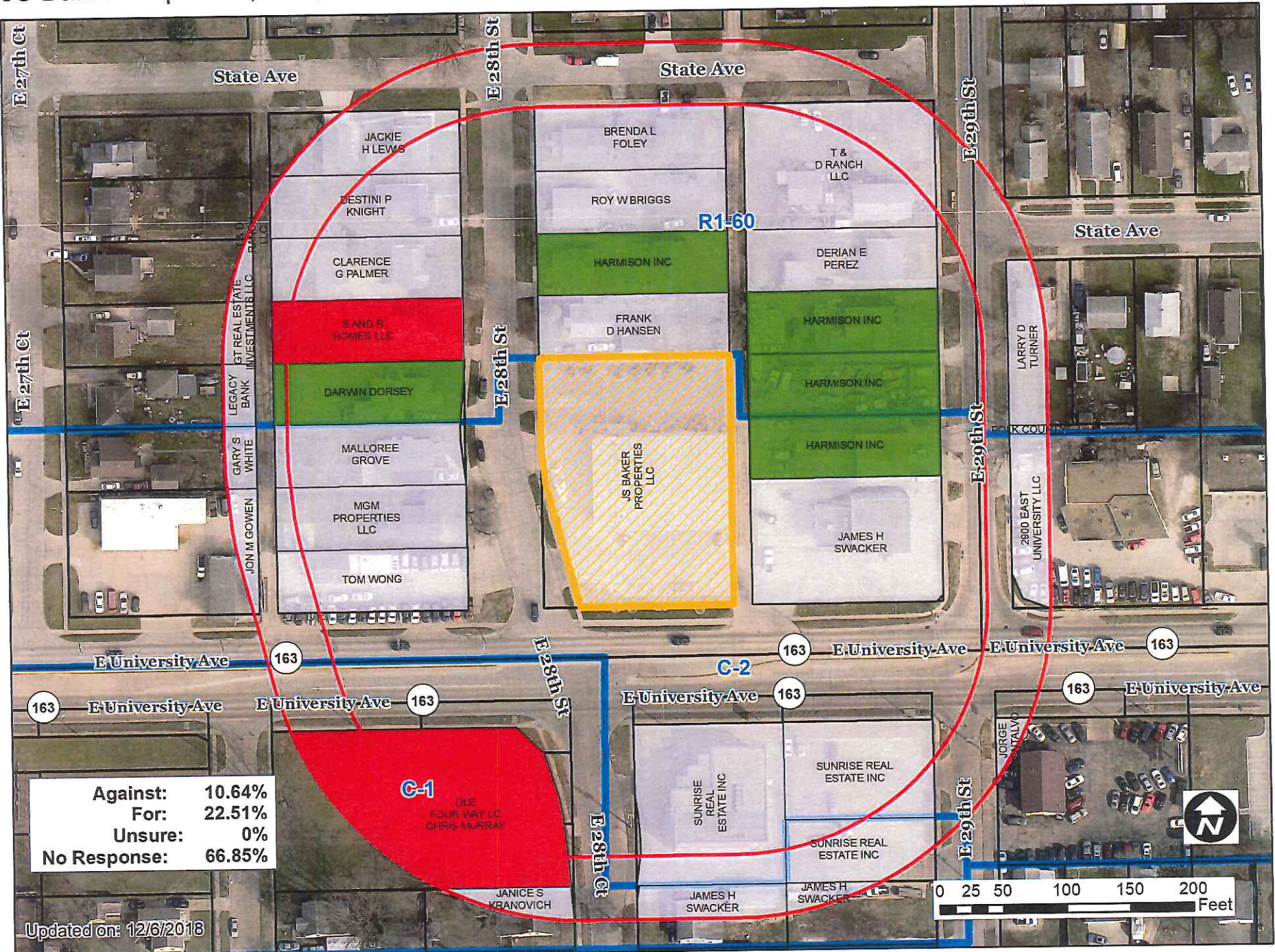
JS Baker Properties, LLC (owner) represented by John Baker (officer) to rezone property located at 2800 East University Avenue.				File # ZON2018-00235	
Description of Action	Rezone the property from Limited "C-2" General Retail and Highway-Oriented Commercial District to a revised Limited "C-2" General Retail and Highway-Oriented Commercial District, whereby the condition "The north 50 feet of the property shall not be used for any use except open space in conjunction with adjoining commercial use or a single-family dwelling" be stricken in order to allow retention of a driveway access that was subsequently developed through that area to an overhead door on the north side of the principal building.				
PlanDSM Future Land Use	Current: Community Mixed Use. Proposed: N/A.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	Limited "C-2" General Retail and Highway-Oriented Commercial District and "FSO" Freestanding Signs Overlay District.				
Proposed Zoning District	Revised Limited "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	3	3			
Outside Area (200 feet)					
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

JS Baker Properties, LLC, 2800 East University Avenue

ZON2018-00235



1 inch = 100 feet



Against:	10.64%
For:	22.51%
Unsure:	0%
No Response:	66.85%

Updated on: 12/6/2018

1 inch = 100 feet

410

Dec. 13, 2018

To whom it may concern,

I have been informed by mail and phone from John Baker and Dan Barry regarding the changes to the property just south of us. I am in compliance with Planning and Zoning as long as it will hopefully remain a green space, aside from necessary driveway access.

I think the whole neighborhood appreciated Jeff Baker's kindness, helpfulness, and loyalty to keeping the area safe. I hope we are lucky enough to have such a good neighbor as Jeff in the future.

Sincerely, Holly Hansen

Holly S. Hansen

Item ZON2018-00235

Date NOV - 30 - 2018

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

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

Print Name

DARWIN S. DORSEY

Signature

[Handwritten Signature]

Address

1214 E. 25th

DEC 03 2018

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

He keep up with Everthing
AND Does Everthing ASK of Him
AND is A Very Good person
AND Does Good things for the
neighborhood

Item ZON2018-00235

Date 1-2-18

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

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

Print Name

Harrison, Inc

Signature

[Handwritten Signature]

Address

4920 Orchard Drive

DEC 06 2018

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

Item ZON2018-00235

Date 11/30/18

I (am) in favor of the request.

(Circle One) RECEIVED

Print Name Dale For Way L.C.

Signature *[Handwritten Signature]*

Address P.O. Box 187

Annex, IA 50021

NOV 30 2018

COMMUNITY DEVELOPMENT

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

Item ZON2018-00234

Date 11/30/18

I (am) in favor of the request.

(Circle One) RECEIVED

Print Name Dale For Way L.C.

Signature *[Handwritten Signature]*

Address P.O. Box 187

Annex, IA 50021

NOV 30 2018

COMMUNITY DEVELOPMENT

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

Item ZON2018-00235

Date 12-3-18

I (am) in favor of the request.

(Circle One) RECEIVED

Print Name S+R Homes

COMMUNITY DEVELOPMENT

Signature *[Handwritten Signature]*

DEC 06 2018

Address 1216 E 28th St.

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

The traffic both foot and vehicle to this property is already too high. I think adding this entrance will only increase traffic especially for deliveries and may block traffic.

