



Roll Call Number

Agenda Item Number

68

Date November 4, 2019

RESOLUTION DISMISSING HEARING ON REQUEST FROM LUCKY GAL 1, INC. TO REZONE PROPERTY LOCATED AT 3104 SOUTHWEST 9TH STREET

WHEREAS, on October 14, 2019, by Roll Call No. 19-1598, the City Council received a recommendation from the City Plan and Zoning Commission advising that at a public hearing held on October 3, 2019, its members voted 10-0 in support of a motion to recommend **DENIAL** of a request from Lucky Gal 1, Inc. (owner), represented by Chris Puisner (officer), to rezone property located at 3104 Southwest 9th Street ("Property") from "C-1" Neighborhood Retail Commercial District to "C-2" General Retail and Highway-Oriented Commercial District, to allow for a portion of the existing building on the Property to be reused for a game room or indoor recreational use; and

WHEREAS, on October 14, 2019, by Roll Call No. 19-1598, it was duly resolved by the City Council that the application of Lucky Gal 1, Inc. to rezone the Property, legally described as follows, be set down for hearing on November 4, 2019 at 5:00 p.m. in the Council Chamber at the Council Chambers:

THE NORTH 121 FEET OF THE EAST 125 FEET OF LOT 1 IN SOUTHGATE AND PARCEL "B" OF THE PLAT OF SURVEY FILED IN THE OFFICE OF THE RECORDER OF POLK COUNTY, IOWA ON JANUARY 16, 2003, AND RECORDED IN BOOK 9578 PAGE 185, BEING A PART OF LOT 1 IN SOUTHGATE, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA; 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 rezoning; and

WHEREAS, thereafter Lucky Gal 1, Inc. requested to withdraw its application for the proposed rezoning of the Property in order to postpone said application for processing under the City's new Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that the public hearing on the proposed rezoning of 3104 Southwest 9th Street from "C-1" Neighborhood Retail Commercial District to "C-2" General Retail and Highway-Oriented Commercial District is hereby dismissed, and the matter of the proposed rezoning is withdrawn from City Council consideration at this time.

FORM APPROVED:

MOVED BY _____ TO ADOPT.

Glenna K. Frank

Glenna K. Frank, Assistant City Attorney

(ZON2019-00185)

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE | | | | |
| BOESEN | | | | |
| COLEMAN | | | | |
| GATTO | | | | |
| GRAY | | | | |
| MANDELBAUM | | | | |
| WESTERGAARD | | | | |
| TOTAL | | | | |
| MOTION CARRIED | | | | |

APPROVED

CERTIFICATE

I, *P. Kay Cmelik*, 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 4, 2019

Agenda Item 6B

Roll Call # _____

October 15, 2019

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their October 3, 2019 meeting, the following action was taken regarding a request from Lucky Gal 1, Inc. (title holder) represented by Chris Pruisner (officer) to rezone property located at 3104 Southwest 9th from "C-1" Neighborhood Retail Commercial District to "C-2" General Retail and Highway-Oriented Commercial District to allow reuse of a portion of the existing building for a game room or indoor recreational use.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 10-0 as follows:

| Commission Action: | Yes | Nays | Pass | Absent |
|---------------------|-----|------|------|--------|
| Francis Boggus | X | | | |
| Dory Briles | X | | | |
| Abby Chungath | 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 | | | |
| Rocky Sposato | | | | X |
| Steve Wallace | X | | | |
| Greg Wattier | | | | X |
| Emily Webb | | | | X |

APPROVAL of Part A) the Commission find the proposed rezoning in conformance with the Des Moines' PlanDSM: Creating Our Tomorrow Plan future land use designation of Community Mixed Use and Part B) **DENIAL** of the request to rezone to a "C-2" 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 an application could be filed simultaneously with an application for a Conditional Use Permit for alcohol sales and a Variance to the separation distance requirements for such.

(ZON2019-00185)

Written Responses

4 in Favor

5 in Opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the Commission find the proposed rezoning in conformance with the Des Moines' PlanDSM: Creating Our Tomorrow Plan future land use designation of Community Mixed Use.

Part B) Staff recommends denial of the request to rezone to a "C-2" 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 an application could be filed simultaneously with an application for a Conditional Use Permit for alcohol sales and a Variance to the separation distance requirements for such.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed rezoning would allow reuse of a portion of the existing building for a game room or indoor recreational use. The appellant has indicated that they would like to have alcohol sales as part of the future use.

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.

2. **Size of Site:** 15,914 square feet (0.37 acres).
3. **Existing Zoning (site):** "C-1" Neighborhood Retail Commercial District, "GGP" Gambling Games Prohibition Overlay District, and "FSO" Freestanding Sign Overlay District.
4. **Existing Land Use (site):** The subject property contains a 1-story commercial building containing approximately 4,384 square feet of space, which was previously occupied by Jim's Appliances.

5. Adjacent Land Use and Zoning:

North - "C-1", Uses include Pleasant View Drive and an unoccupied 1-story commercial building.

South - "C-1"; Use is the Park Avenue Presbyterian Church.

East - "C-1"; Uses are Southwest 9th Street, a multiple-family residential dwelling, and Park Avenue Elementary School.

West - "C-1"; Use is a parking lot for the Park Avenue Presbyterian Church.

6. **General Neighborhood/Area Land Uses:** The subject property is located along the west side of the Southwest 9th Street corridor, in an area that includes a mix of commercial, educational, and religious assembly uses. The subject property is separated from a low-density residential neighborhood to the west by Park Avenue Presbyterian Church's parking lot.

7. **Applicable Recognized Neighborhood(s):** The subject property is located within the Gray's Lake Neighborhood and within 250 feet of the Indianola Hills Neighborhood. All neighborhood associations were notified of the public hearing by mailing of the Preliminary Agenda on September 13, 2019. Additionally, separate notifications of the hearing for this specific item were mailed on September 13, 2019 (20 days prior to the public hearing) and September 23, 2019 (10 days prior to the public hearing) 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. A Final Agenda was mailed to recognized neighborhoods on September 27, 2019.

The Gray's Lake Neighborhood mailings were sent to Rick Trower, 1310 Broad Street, Des Moines, IA 50315, and the Indianola Hills Neighborhood mailings were sent to Jeni Dooley, 712 Virginia Avenue, Des Moines, IA 50315.

The applicant is scheduled to hold their neighborhood meeting on September 29, 2019. The applicant 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:** Community Mixed Use, which is described as: "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 customer."

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. **Proposed Zoning Ordinance & Map:** The City Council has passed the 2nd of 3 readings for the new Zoning Ordinance and Map. The current draft of this Zoning Map designates the subject property and most of the Southwest 9th Street corridor as "RX1" District, which is described as follows: *intended for transitional areas between MX (mixed use) districts and N (neighborhood) districts, providing for residential and office buildings at a scale and intensity appropriate for corridors adjacent to low-scale neighborhoods.*

The "RX1" district also allows for retail uses up to 12,000 square feet in area and restaurant uses. The "RX1" District does not allow consideration of a Conditional Use Permit for alcohol sales, which would be required in order for any non-restaurant use to sell alcohol.

In order for the proposed game room or indoor recreation use to be allowed and to even be eligible to seek a Conditional Use Permit necessary to sell alcohol, the property must be designated as "MX3" District on the proposed Zoning Map. Staff does not believe that the "MX3" District would be appropriate for this site, given its proximity to both a church and school use, and since the "MX3" District allows uses such as bail bonds, pawnbrokers, gas stations, vehicle sales, and bars.

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 an application could be filed simultaneously with an application for a Conditional Use Permit for alcohol sales and a Variance to the separation distance requirements for such.

2. **Streets and Access:** A traffic study was not required by City's Traffic Engineering Division for the requested rezoning.
3. **Alcohol Sales:** Any sale of alcohol on the premise would be subject to the Zoning Board of Adjustment granting a Conditional Use Permit for such. It is likely that the Zoning Board of Adjustment would have to also grant a Variance to provision that requires 150 feet of separation from any church or school if it were to ever consider a Conditional Use Permit to allow alcohol sales since both a church and a school are within 150 feet of the site.

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendations. Staff believes the proposed C-2 zoning is too intense compared to the "RX1" zoning currently proposed in the public hearing draft of the new code. The property does not comply with the required separation distance from a church to sell alcohol. Noted the

David Courard-Hauri asked if the response map was complete since they received more than 3 cards in opposition?

Erik Lundy noted that for a couple of the cards received only a sliver of the property is within the 200' and 250' boundaries so the coloring may not be visible.

Mike Ludwig stated the response map will be updated before it goes to council. To reflect all cards received.

Chris Puisner, 3104 SW 9th Street stated he and his wife have been doing business on the South Side for over 9 years and are graduates of Lincoln High School. They are in need of more space and that is why they bought this building. With the extra space, they thought it would be a good idea to have an arcade that his customers could utilize while waiting for an appointment or for the kids to play while their parents are being tattooed. Originally, they thought it would be a good idea to offer beer for sale, but they decided that's not their goal and have dropped the idea of selling any type of alcoholic beverages.

Dory Briles asked if the applicant held a Neighborhood meeting.

Chris Puisner stated they did hold a meeting and 2 individuals showed up. There were concerns about noise that has transpired in the past from a bike club that occupied the building but he assured people there would be no loud noise and no bike clubs.

Jacqueline Easley asked what concerns were raised at the meeting.

Chris Puisner stated the bike club was the main concern. They no longer occupy the building.

Francis Boggus asked for age range of his target audience for the arcade.

Chris Puisner stated from 8 years old to teenagers.

Carolyn Jenison asked how long he has been invested in property on the southside of Des Moines.

Chris Puisner stated 9 years. They have intentions of beatifying SW 9th. They utilized City grant money to replace the siding at their current location.

Abby Chungath asked if there is an alternate zoning that would allow the use of an arcade.

Carolyn Jenison stated she would be against strapping them down to just being an arcade. Up Down in the east village has been a great business and would hate for them not to have that type opportunity in the future.

Erik Lundy stated the game room would require the "C-2" zoning under the current code or the "MX3" under the new code. The Commission could place a condition that would prohibit the sale of alcohol.

Glenna Frank stated there could be a condition placed now under the current zoning but once the new code is adopted, that condition would no longer apply. They did discuss the

applicant deferring the rezoning and seeking the "MX3" zoning once the new code is adopted.

CHAIRPERSON OPENED THE PUBLIC HEARING

Natalie Richardson, 921 Boulder Avenue stated her family's bedroom windows face the church parking lot. The sound of a car door closing wakes them up at night so you could only imagine what having a bar next to your house would be like. She worked hard to purchase a good safe place for her daughter and doesn't want this commercial activity in her neighborhood. She believes the church parking lot will be used for overflow parking with people making noise all night.

Brianna Richardson, 921 Boulder Avenue read submitted letter verbatim.

Brenda Blazek, 926 Boulder Avenue stated there is a transitional home for 12-18-year-old children located at Park Avenue and 10th Street. They currently have a problem with the kids hanging out on the street and leaving garbage all over. She is concerned with these two uses meshing and creating a bigger problem for the neighborhood.

Kim Church, 2900 SW 9th Street stated with the sale of beer, this is no longer a family arcade and is just another bar. Alleged that the existing Lucky Gal location on University Avenue and one in Ankeny have had numerous police calls to the premises. She asked the commission to please keep this property zoned "C-1" to can keep additional noise, traffic and safety issues out of her neighborhood.

Ruth Canny, 910 Boulder Avenue stated she was told Lucky Gal would be applying to sell beer and tonight they said that is no longer the plan. The sale of alcohol is a real downer for the neighbors and suggest the commission deny the request.

Chris Praisner stated they will not be pursuing the sale of alcohol. The building has been purchased so the tattoo shop will be moving there regardless. He only tattoos the people that come in and can't say the people who come in are undesirable. What happens in the church parking lot is out of his control. He can only control what happens in the parking lot he owns. He is not aware of any case numbers from the police department. He has been broken into a couple times but that is it.

Dory Briles asked Mr. Praisner for the anticipated hours of operation.

Chris Praisner stated 8 PM will be his cut off. He believes parents will not bring their kids to an arcade that late during the school year. This will be more for daytime hours to occupy customers during their wait.

Lisa Howard asked if the business has its own off-street parking lot.

Chris Praisner stated yes, but they are required by the City Traffic and Transportation Division to share as single drive way location on Pleasant View Drive that serves his parking lot and the church parking lot. His parking lot will continue to have an exit onto SW 9th Street.

Mike Ludwig asked if they can enter the building from the west side.

Chris Puisner stated the doors on the west side of the building are fire exits. Customers will only be able to enter through the east side of the building.

Mike Ludwig asked if there will be signage in the parking lot directing people to the east side of the building.

Chris Puisner stated yes, they want to direct people to the front door.

Abby Chungath asked for the hours of the tattoo parlor.

Chris Puisner stated they are currently open from noon to 9 pm every day. Some days they close early and some days they are open a little later.

Carolyn Jenison asked for the applicant to verify that they have operated a tattoo business just up the street for 9 years.

Chris Puisner stated yes, with 2 other locations located on University Avenue and another in Ankeny.

Abby Chungath asked if the tattoo parlor and the arcade will be 2 separate businesses.

Chris Puisner stated yes.

Ruth Canny asked how they will keep people from parking in the church parking lot.

Chris Puisner stated they will have an extensive security system on the building with cameras on the outside of the building. This will be an adjustment for the neighborhood and if problems arise, he hopes neighbors will come speak with him and find a resolution.

Kim Church stated with the traffic on SW 9th, she doesn't see people following the one-way directional parking and exiting onto SW 9th.

Chris Puisner stated he can only follow the direction the City has given him. He's trying to make this building a lot nicer than it is now.

CHAIRPERSON CLOSED THE PUBLIC HEARING.

COMMISSION ACTION:

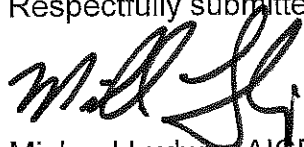
David Courard-Hauri made a motion for approval of Part A) the Commission find the proposed rezoning in conformance with the Des Moines' PlanDSM: Creating Our Tomorrow Plan future land use designation of Community Mixed Use and Part B) **DENIAL** of the request to rezone to a "C-2" District.

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 an application could be filed simultaneously with an application for a Conditional Use Permit for alcohol sales and a Variance to the separation distance requirements for such.

Mike Ludwig noted that a 6/7th vote of the City Council would be necessary to over-ride the Plan and Zoning Commission's recommendation and approve the zoning.

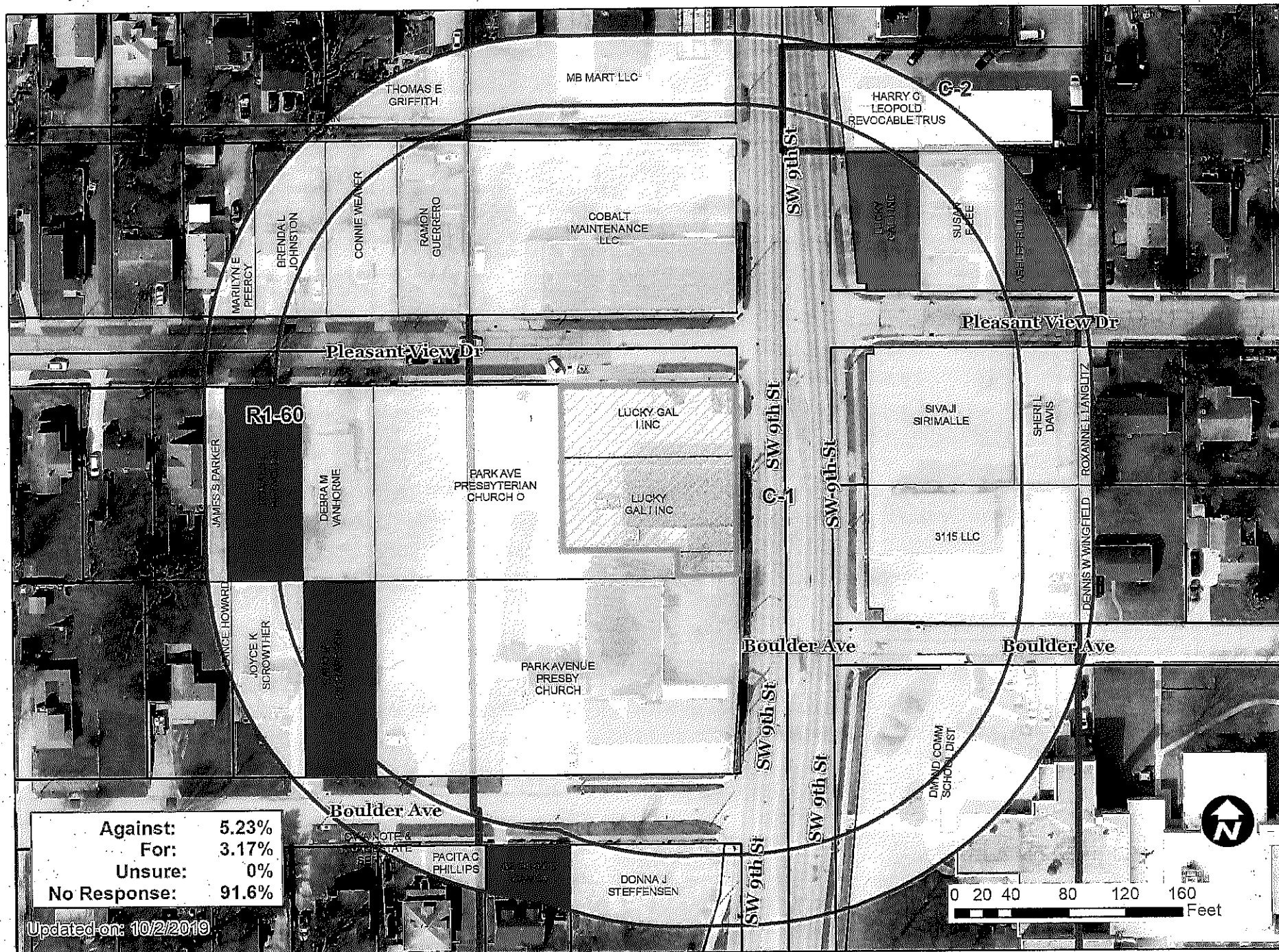
Motion Carried: 10-0

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mike Ludwig", written over the typed name.

Michael Ludwig, AICP
Planning Administrator

MGL:tjh



| | |
|--------------|-------|
| Against: | 5.23% |
| For: | 3.17% |
| Unsure: | 0% |
| No Response: | 91.6% |

Updated on: 10/2/2019

1 inch = 90 feet

68

Item ZON2019-00185 Date 9-26-19

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

(Circle One)

Print Name Ashlee Butler

RECEIVED
COMMUNITY DEVELOPMENT

Signature Ashlee Butler

SEP 30 2019

Address 817 Pleasant View Dr.

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

I think it will be great for the
community. Allowing kids to have a safe
place to hang out and have fun.

Item ZON2019-00185 Date 9/30/19

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

(Circle One)

Print Name Chris Pruis

RECEIVED
COMMUNITY DEVELOPMENT

Signature Chris Pruis

OCT 02 2019

Address 3023 SW 9th

1001 NE Fountain View Dr.

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

Great addition to the
Southside!!

ZON2019-00185

Date 9/30/19

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

(Circle One)

Print Name Michelle Pruis

RECEIVED
COMMUNITY DEVELOPMENT

Signature Michelle Pruis

OCT 02 2019

Address 3023 SW 9th St.

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

Great update & addition to
the Southside of DSM.

Item

Date 9/30/19I ☒ (am) ☐ (am not) in favor of the request.

SUBJECT PROPERTY

(Circle One)

Print Name Chris Pruisne (Lucky Gal)Signature ChrisAddress 3023 SW 9th St., DSM, IA

50320

RECEIVED
COMMUNITY DEVELOPMENT

OCT 02 2019

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

- Great addition to the southside of DSM. Taking a bldg. that needs updates $\frac{1}{3}$ making it no longer an eye sore.

ZON2019-00185

Item

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

(Circle one)

Print Name Michelle RushingSignature Michelle RushingAddress 941 Boulder Ave.RECEIVED
COMMUNITY DEVELOPMENT

OCT 02 2019

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

This will bring lots of traffic and noise into the night in a neighborhood of working families. It may also bring crime into our quiet neighborhood.

Date 9-26-19DATE 250 FEET

Item

Date 9/25/2019I ☒ (am) ☐ (am not) in favor of the request.

OUTSIDE 250 FEET

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

SEP 30 2019

Print Name Ben WebberSignature Ben WebberAddress 934 Pleasant View Dr.

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

Oppose: This will increase noise, traffic during quiet evening hours. This will increase high speed traffic on a residential street. It will gather an unruly crowd during PM. hours and allow congregation/loitering in and around the church and vacant parking lots. Will also increase risk for property damage up & down the street.

158

Item ZON2019-00185

Date Sept 30, 2019

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

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

OCT 02 2019

Print Name RONALD L. REYNOLDS

Signature Ronald L. Reynolds

Address 928 PLEASANTVIEW

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

INCREASED VANDALISM, LOUD NOISE, POSSIBLE
FIGHTING, SQUEALING TIRES, CURFEW VIOLATIONS
POSSIBLE GANG VIOLENCE?

Item ZON2019-00185

Date 9-30-19

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

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

OCT 02 2019

Print Name Natalie Richardson

Signature Natalie Richardson

Address 921 Boulder Ave

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

I purchased my home in a residential
area hoping for peace and quiet
near a church. All the noise from the door
will keep my child and I from sleeping well
and we pay taxes and deserve quality of life
They plan "alcohol bar" my child must sleep.

68

Item ZON2019-00185

Date 9-26-19

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

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

OCT 1 2019

Print Name Ruth Canby

Signature Ruth Canby

Address 910 Boulder Ave.

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

Concerned about parking issues, loud noises, groups of
people standing outside bldg, business hours can
this be shut down later if changed more if disturbances
continue

Dear Neighbors,

Thank you for taking the time to read this Letter. So old Jim's Appliance building is now bought by Lucky gal and they want to make it a Aradel Bar / Tatto parlor.

And in that building there used to be a motorcycle club and they would park next to me and my mommys window and they would wake us up in the middle of the night so I couldn't rest.

And I was falling asleep in class. And if a lot of people come to that monsteranza place and park next to my window and wake me up so I can't get rest. And mom said that if it gets bad then we will have to move to a different town and I don't want to lose all of my friends.

So please vote no it means a lot to me Thank you!

Brianna Richardson

Dear City of Des Moines,

The following property owners hereby protest the rezoning request at 3104 SW 9th presented 10/3/19

| Printed Name | Signed Name | House # | Street Name |
|--------------------|--------------------|---------|-------------|
| Deb Van Horne | Deb Van Horne | 926 | Wascott Ave |
| Natalie Richardson | Natalie Richardson | 921 | Boulder Ave |
| Costello Casillas | Costello Casillas | 925 # | Boulder Ave |
| Michelle Ruching | Michelle Ruching | 941 | Boulder Ave |
| Lance Howard | Lance Howard | 933 | Boulder Ave |
| BRENDA BLAKE | BRENDA BLAKE | 920 | Boulder Ave |

14
13
12
11
10
9
8
7
6
5
4
3
2
1