



Date December 21, 2021

RESOLUTION SETTING HEARING ON REQUEST FROM ANTONIO DOMINGUEZ AND GABRIELLA HERRERA TO AMEND PLANDSM FUTURE LAND USE CLASSIFICATION AND TO REZONE 301 SOUTHEAST 28TH STREET

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on December 3, 2020, its members voted 9-3 in support of a motion to recommend DENIAL of a request from Antonio Dominguez and Gabriella Herrera (owners) to amend the PlanDSM: Creating Our Tomorrow comprehensive plan future land use classification for real property locally known as 301 Southeast 28th Street ("Property") from Industrial to Low Density Residential, and to rezone the Property from I1 Industrial District to N3c Neighborhood District, to allow the existing Household Living use to be extended with addition of a new accessory 2-story detached garage use; and

WHEREAS, the Property is legally described as follows:

THE NORTH 45 FEET OF LOT 8 AND THE NORTH 46 FEET OF LOTS 9 AND 10 IN LINCOLN PARK, TOGETHER WITH ALL THAT PART OF THE SOUTH 12 FEET OF THE VACATED 24 FEET OF EAST ELM STREET RIGHT-OF-WAY LYING NORTH OF AND ADJOINING LOTS 8,9 AND 10 IN LINCOLN PARK, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, IOWA a/k/a 301 SE 28th STREET, DES MOINES, IOWA a/k/a PARCEL #050-02987-001-000

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

- 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 future land use classification and the proposed rezoning are to be considered, and at which time the City Council will hear both those who oppose and those who favor the proposals, shall be held at 5:00 p.m. on January 11, 2021, by electronic means to encourage and maintain social distancing to curb the spread of COVID19 in the community, without public access to the meeting location.
3. That the City Clerk is hereby authorized and directed to cause notice of said proposals 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. The City Clerk is instructed to provide this notice including information about participation in the electronic meeting as indicated above.

FORM APPROVED:

MOVED BY _____ TO ADOPT.

/s/ Glenna K. Frank
Glenna K. Frank, Assistant City Attorney

(21-2020-4.26)
(ZON2020-00139)

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, GRAY, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL.

MOTION CARRIED APPROVED

Mayor

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.

City Clerk



December 15, 2020

Date December 21, 2020
 Agenda Item 22
 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 December 3, 2020 meeting, the following action was taken regarding a request from Antonio Dominguez and Gabriella Herrera (owners) to rezone property located at 301 Southeast 28th Street from "I1" Industrial District to "N3c" Neighborhood District to allow the existing Household Living use to be extended with addition of a new accessory 2-story detached garage use

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-3 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus				X
Dory Briles	X			
Abby Chungath	X			
Kayla Berkson	X			
Jann Freed				X
Johnny Alcivar		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 proposed rezoning to "N3c" Neighborhood Mix Use District be found **not** in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of Industrial, Part B) **DENIAL** of amending the PlanDSM Creating Our Tomorrow Plan future land use designation from Industrial to Low Density Residential and Part C) **DENIAL** of rezoning the subject property from "I1" Industrial District to "N3c"

Neighborhood District so that the applicant can seek a use variance from the Zoning Board of Adjustment. (21-2020-4.26 & ZON2020-00139)

Written Responses

1 in Favor
0 in opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the proposed rezoning to “N3c” Neighborhood Mix Use District be found not in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of Industrial.

Part B) Staff recommends denial of amending the PlanDSM Creating Our Tomorrow Plan future land use designation from Industrial to Low Density Residential.

Part C) Staff recommends denial of rezoning the subject property from “I1” Industrial District to “N3c” Neighborhood District so that the applicant can seek a use variance from the Zoning Board of Adjustment.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The subject property is zoned “I1” District, which does not allow residential uses. The existing one household residential use has legal non-conforming rights to exist, but cannot be expanded. The applicant is proposing to construct a two-story detached garage. For this to occur, the property must be rezoned to a district that allows one household residential uses. If the rezoning is denied, the applicant can seek a Use Variance from the Zoning Board of Adjustment to allow a garage to be constructed.
2. **Size of Site:** 58 feet by 180 feet (10,440 square feet or 0.24 acres).
3. **Existing Zoning (site):** “I1” Industrial District.
4. **Existing Land Use (site):** The property contains a one household residential building and a 9-foot by 16-foot shed.
5. **Adjacent Land Use and Zoning:**
 - North** – “I1”; Uses are one household residential.
 - South** – “I1”; Uses are one household residential.
 - East** – “I1”; Use are one household residential.
 - West** – “EX”; Use are one household residential.
6. **General Neighborhood/Area Land Uses:** The subject property is in an area that contains a mix of one household residential and industrial uses.

7. **Applicable Recognized Neighborhood(s):** The subject property is not located within 250 feet of a recognized neighborhood association. All neighborhood associations were notified of the hearing by mailing of the Preliminary Agenda on November 13, 2020 and by mailing of the Final Agenda on November 25, 2020. Additionally, separate notifications of the hearing for this specific item were mailed November 13, 2020 (20 days prior to the hearing) and November 23, 2020 (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 site. All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division on the date of the mailing.
8. **Relevant Zoning History:** None.
9. **PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Industrial.
10. **Applicable Regulations:** Taking into consideration the criteria set forth in Chapter 18B of the Iowa Code, the Commission reviews all proposals to amend zoning boundaries or regulations within the City of Des Moines. Such amendments must be in conformance with the comprehensive plan for the City and designed to meet the criteria in 414.3 of the Iowa Code. The Commission may make recommendations to the City Council on conditions to be made in addition to the existing regulations so long as the subject property owner agrees to them in writing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **PlanDSM Creating Our Tomorrow:** The applicant is requesting that the future land use designation for the property be amended from “Industrial” to “Low Density Residential.” Plan DSM describes these designations as follows:

Industrial: Accommodates industrial development and limited supporting commercial uses. Development in this classification could have a large impact on adjoining properties and the environment which would need to be mitigated.

Low Density Residential: Areas developed with primarily single family and two family residential units with up to 6 dwelling units per net acre.

The subject property is currently zoned “I1” District. The Zoning Ordinance describes this district as “intended for general industrial uses, warehousing, and transportation terminals.” Building types allowed in this district by Chapter 135 include the General Building, Workshop/Warehouse, Civic Building and Principal-Use Parking Structure.

The applicant is proposing to rezone the subject property to the “N3c” District. The Zoning Ordinance describes this district as “intended to preserve the scale and character of residential neighborhoods developed predominately in the cottage or worker cottage style pursuant House Type C is Section 135-2.15 of this Code.” House Type C is the only building type allowed in this district by Chapter 135.

The existing one household residential use has legal non-conforming rights to exist, but cannot be expanded. The applicant is proposing to construct a two-story detached

garage with a 27-foot by 30-foot footprint. For this to occur, the property must be rezoned to a district that allows one household residential uses. The second floor of the proposed garage cannot be used as living space unless the property is zoned to a district that allows accessory household units.

The site is in an area that contains a mix of industrial and one household uses that is generally bound by a major railroad line to the north and East Martin Luther King, Jr. Parkway to the south. PlanDSM envisions this area transition to industrial uses over an extended period due to the magnitude of the industrial uses in the area and its proximity to the railroad and East Martin Luther King, Jr. Parkway. Circumstances have not changed since PlanDSM was adopted in 2016. If the rezoning is denied, the applicant can seek a Use Variance from the Zoning Board of Adjustment to allow a garage to be constructed.

- 2. Planning and Design Ordinance:** Any development must comply with all applicable Site Plan and Design regulations of the Chapter 135 Planning and Design Ordinance. If a rezoning or use variance are approved, any accessory building can be no taller than the principal structure on the property. A proposed 2 story accessory building that is taller than the principal structure will require a Type Design Alternative from the Plan and Zoning Commission.

SUMMARY OF DISCUSSION

Jason Van Essen presented staff report and recommendation.

Greg Wattier asked if the applicant is aware that a denial must be made for them to seek a Use Variance?

Jason Van Essen stated that information is shown in the mailed staff report but he has not had any direct communication with the applicant.

Valerie Cramer 1163 24th Street Representing Antonio Dominguez stated when Mr. Dominguez purchased the home, it was zoned residential and then the City decided to rezone the property as Industrial. They did send out notice to their neighbors on October 21st with no objection to the garage being built. She believes the property should be rezoned back to residential as it is unfair to Mr. Dominguez.

CHAIRPERSON OPENED THE PUBLIC HEARING

No one was present or requested to speak.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Greg Wattier stated this feels like (it should be) a Use Variance and shouldn't be rezoned back to residential after the years of progress.

Abby Chungath stated she would also agree with Greg Wattier's statement.

Johnny Alcivar asked what the Commission's action was on a similar item they had seen in the recent past?

Jason Van Essen stated that property was near Dixon Avenue where Interstate 235 turns to the North and South of Guthrie Avenue (2104 East 21st Street). The motion from the Commission was to recommend rezoning the property and in hope of City Council having a discussion on whether the whole area needed to be rezoned from Industrial.

Greg Jones stated we should leave the zoning alone and would recommend approving staff recommendation.

COMMISSION ACTION:

Greg Jones made a motion for approval of Part A) the proposed rezoning to "N3c" Neighborhood Mix Use District be found **not** in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of Industrial, Part B) **DENIAL** of amending the PlanDSM Creating Our Tomorrow Plan future land use designation from Industrial to Low Density Residential and Part C) **DENIAL** of rezoning the subject property from "I1" Industrial District to "N3c" Neighborhood District so that the applicant can seek a use variance from the Zoning Board of Adjustment.

Motion passed: 9-3

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:tjh

Antonio Dominguez and Gabriella Herrera (owners) for the property at 301 Southeast 28th Street.			File #		
			21-2020-4.26		
Description of Action	Amendment to the PlanDSM Creating Our Tomorrow Plan future land use classification from Industrial to Low Density Residential.				
PlanDSM Future Land Use	Current: Industrial. Proposed: Low Density Residential.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	"I1" Industrial District.				
Proposed Zoning District	"N3c" Neighborhood District.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Outside Area (200 feet)	0	0			
Within Subject Property					
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Antonio Dominguez and Gabriella Herrera, 301 Southeast 28th Street

21-2020-4.26



1 Inch = 77 feet

Antonio Dominguez and Gabriella Herrera (owners) for the property at 301 Southeast 28th Street.		File #		
		ZON2020-00139		
Description of Action	Rezone property from "I1" Industrial District to "N3c" Neighborhood District to allow the existing Household Living use to be extended with addition of a new accessory 2-story detached garage use.			
PlanDSM Future Land Use	Current: Industrial. Proposed: Low Density Residential.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"I1" Industrial District.			
Proposed Zoning District	"N3c" Neighborhood District.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Outside Area (200 feet)	1	0		
Within Subject Property				
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes
	Denial			No

Antonio Dominguez and Gabriella Herrera, 301 Southeast 28th Street

ZON2020-00139



1 inch = 77 feet

Item: ZON2020-00139 Date: _____

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature: Thomas Mangan

Name: Thomas Mangan

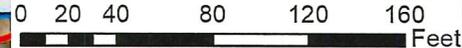
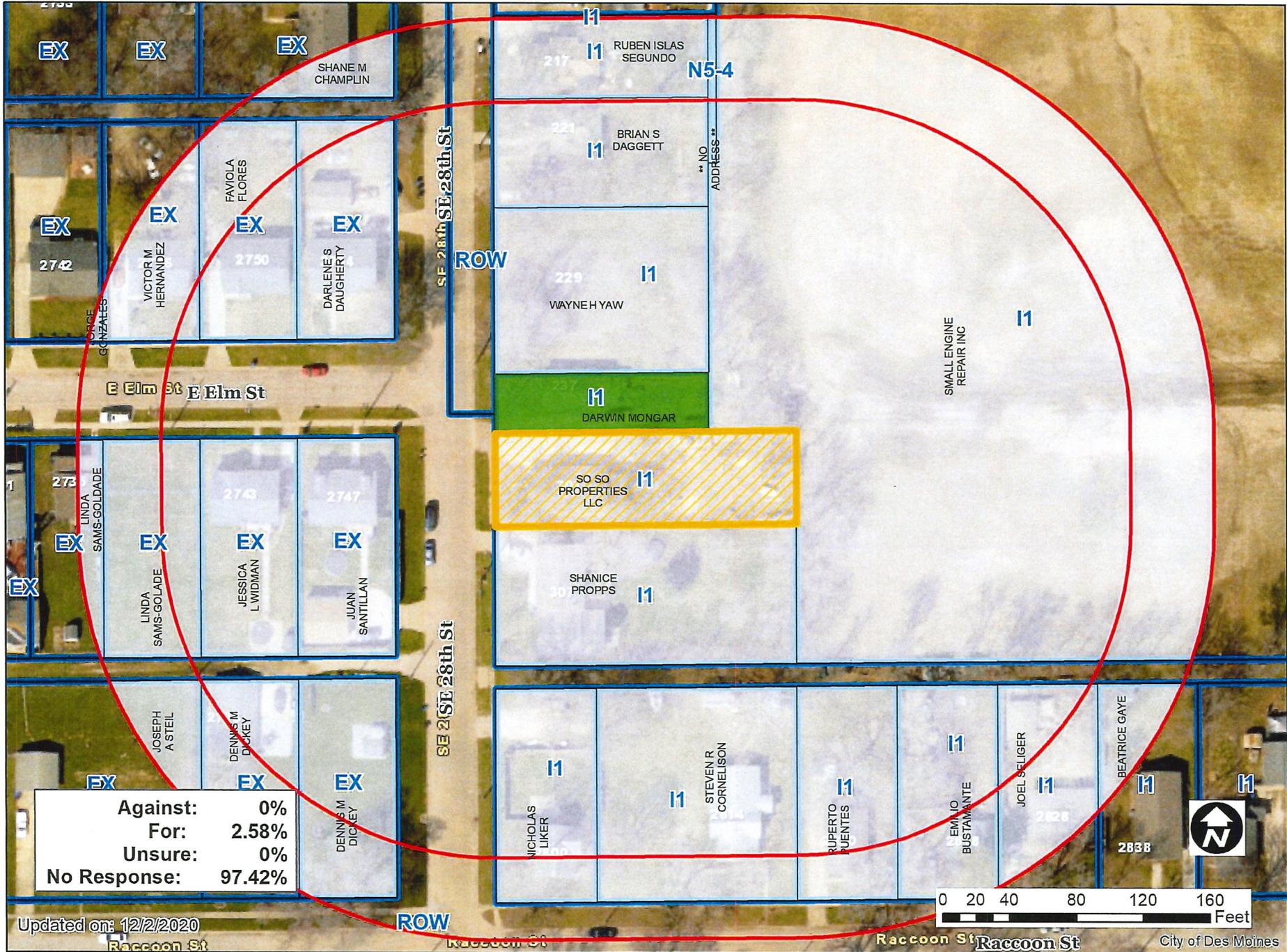
Address: 2375E 28th ST DES MOINES

Staff Use Only
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COMMUNITY DEVELOPMENT
DEC 01 2020

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

Antonio Dominguez and Gabriella Herrera, 301 Southeast 28th Street

ZON2020-00139



City of Des Moines

1 inch = 77 feet