



Date January 25, 2021

RESOLUTION HOLDING HEARING ON REQUEST FROM JAMES ANDREW AND NANCY ALBRIGHT-ANDREW TO AMEND PLANDSM FUTURE LAND USE DESIGNATION AND TO REZONE PROPERTY LOCATED AT 3900 SOUTHEAST 34TH STREET

WHEREAS, on January 11, 2021, by Roll Call No. 21-~~0018~~, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on December 17, 2020, its members voted 12-0 in support of a motion to recommend **APPROVAL** of a request from James Andrew and Nancy Albright-Andrew (Owners) to amend the PlanDSM: Creating Our Tomorrow future land use designation for real property locally known as 3900 Southeast 34th Street (“Property”) from Park and Open Space with Development Control Zone overlay to Low Density Residential to allow rezoning to ‘N2b’ Neighborhood District to allow the property to be filled and developed with a One Household Living Dwelling use; and

WHEREAS, on January 11, 2021, by Roll Call No. 21-~~0018~~ the City Council further received the City Plan and Zoning Commission’s recommendation that at a public hearing held on December 17, 2020, its members voted 12-0 in support of a motion to recommend **APPROVAL** of a request from James Andrew and Nancy Albright-Andrew (Owners), to rezone the Property from ‘F’ Flood District to ‘N2b’ Neighborhood District for the above-stated purpose subject to the following conditions:

1. Any site modification, filling and permitting of development must have an approved Conditional Letter of Map Revisions (CLOMR-F) from the Federal government. Upon completion of any permitted development, the owner shall obtain a formal Letter of Map Revisions based on Fill (LOMR-F) that would provide the as-built conditions;
2. Any site modification, filling and permitting shall be subject to the requirements of Chapter 50 of the City Code for floodplain development; and
3. Any removal of trees for any development of the property shall comply with tree mitigation requirements as applicable to a commercial Site Plan or Subdivision approval; and

WHEREAS, on January 11, 2021, by Roll Call No. 21-____, it was duly resolved by the City Council that the request to amend the land use designation and to rezone the Property be set down for hearing on January 25, 2021 at 5:00 P.M., by electronic means in accordance with the Governor’s and Mayor’s Proclamations and to encourage and maintain social distancing to curb the spread of COVID19 in the community, without public access to the meeting location; 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 land use amendment and rezoning; and



Date January 25, 2021

WHEREAS, in accordance with said notice, those interested in said proposed land use amendment and 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

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 3900 Southeast 34th Street, legally described as:

A PART OF LOT 30, LAKEWOOD COVE PLAT 1, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 30; THENCE NORTH 87°40'40" WEST ALONG THE SOUTH LINE OF SAID LOT 30, A DISTANCE OF 300.11 FEET; THENCE NORTH 00°44'19" EAST, 262.00 FEET; THENCE SOUTH 89°15'41" EAST, 44.57 FEET; THENCE SOUTH 35°05'58" EAST, 111.74 FEET; THENCE SOUTH 00°00'00" WEST, 82.00 FEET; THENCE SOUTH 90°00'00" EAST, 50.00 FEET; THENCE SOUTH 65°00'00" EAST, 50.00 FEET; THENCE SOUTH 90°00'00" EAST, 15.00 FEET; THENCE NORTH 49°01'08" EAST, 41.04 FEET; THENCE SOUTH 87°40'40" EAST, 47.76 FEET TO THE EAST LINE OF SAID LOT 30; THENCE SOUTH 00°44'19" WEST ALONG SAID EAST LINE OF SAID LOT 30, A DISTANCE OF 104.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.00 ACRES (43,560 S.F.).

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

from 'F' Flood District to 'N2b' Neighborhood District to allow the property to be filled and developed with a One Household Living Dwelling use.

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 amendment to the PlanDSM future land use designation or rezoning of the Property to 'N2b' Neighborhood District are hereby overruled, and the hearing is closed.
2. The proposed amendment to the PlanDSM: Creating Our Tomorrow Plan for the Property locally known as 3900 Southeast 34th Street to Low Density Residential is hereby approved.



Roll Call Number

Agenda Item Number

60

Date January 25, 2021

3. The proposed rezoning of the Property, as legally described above, to 'N2b' Neighborhood District, 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:



Judy K. Parks-Kruse, Assistant City Attorney

(21-2020-4.28)
(ZON2020-00151)

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE | | | | |
| BOESEN | | | | |
| GATTO | | | | |
| GRAY | | | | |
| MANDELBAUM | | | | |
| VOSS | | | | |
| WESTERGAARD | | | | |
| 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 29, 2020

Date 1/25/21
 Agenda Item 60
 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 17, 2020 meeting, the following action was taken regarding a request from James Andrew and Nancy Albright-Andrew (owners) to rezone property located at 3900 Southeast 34th Street from “F” Flood District to “N2b” Neighborhood District to allow the property to be filled and developed with a One Household Living Dwelling use.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 12-0 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 “N2b” Neighborhood District be found not in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of Parks and Open Space and Development Control Zone overlay, Part B) **APPROVAL** of the proposed amendment of the PlanDSM Creating Our Tomorrow future land use designation from Parks and Open Space with Development Control Zone overlay

to Low Density Residential and Part C) **APPROVAL** of rezoning the subject property from “F” Flood District to “N2b” Neighborhood District, subject to the following conditions:

1. Any site modification, filling and permitting of development must have an approved Conditional Letter of Map Revisions based on Fill (CLOMR-F) from the Federal government. Upon completion of any permitted development, the owner shall obtain a formal Letter of Map Revisions based on Fill (LOMR-F) that would provide the as-built conditions.
2. Any site modification, filling and permitting shall be subject to the requirements of Chapter 50 of the City Code for floodplain development.
3. Any removal of trees for any development of the property shall comply with tree mitigation requirements as applicable to a commercial Site Plan or Subdivision approval. (21-2020-4.28 & ZON2020-00151)

Written Responses

0 in Favor

0 in opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the proposed rezoning to “N2b” Neighborhood District be found not in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of Parks and Open Space and Development Control Zone overlay.

Part B) Staff recommends approval of the proposed amendment of the PlanDSM Creating Our Tomorrow future land use designation from Parks and Open Space with Development Control Zone overlay to Low Density Residential.

Part C) Staff recommends approval of rezoning the subject property from “F” Flood District to “N2b” Neighborhood District, subject to the following conditions:

1. Any site modification, filling and permitting of development must have an approved Conditional Letter of Map Revisions based on Fill (CLOMR-F) from the Federal government. Upon completion of any permitted development, the owner shall obtain a formal Letter of Map Revisions based on Fill (LOMR-F) that would provide the as-built conditions.
2. Any site modification, filling and permitting shall be subject to the requirements of Chapter 50 of the City Code for floodplain development.
3. Any removal of trees for any development of the property shall comply with tree mitigation requirements as applicable to a commercial Site Plan or Subdivision approval.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to develop a One Household Living dwelling on the property by filling a portion so that it may be removed from the regulatory floodplain.
2. **Size of Site:** 1 acre. The overall property owned by the applicant is 13.272 acres.
3. **Existing Zoning (site):** "F" Mixed Use District.
4. **Existing Land Use (site):** Vacant land currently listed as Forest Reserve by Polk County.
5. **Adjacent Land Use and Zoning:**
 - North** – "F" & "P1"; Uses are floodplain used for agriculture and wastewater pumping station.
 - South** – "N2a"; Uses are One Household Living dwellings.
 - East** – "N1a" & "F"; Use is a One Household Living dwellings.
 - West** – "N2b" & "F"; Use is vacant land.
6. **General Neighborhood/Area Land Uses:** The subject property is in a transitional fringe area between the Des Moines River floodplain, rural acreage development and One Household Living subdivision development.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the Easter Lake Area Neighborhood. The neighborhood association was notified of the hearing by mailing of the Preliminary Agenda on November 30, 2020 and by mailing of the Final Agenda on December 11, 2020. Additionally, separate notifications of the hearing for this specific item were mailed November 25, 2020 (23 days prior to the hearing due to Thanksgiving postal holiday) and December 7, 2020 (10 days prior to the hearing) to the Easter Lake Area 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 on the date of the mailing. The Easter Lake Area Neighborhood Association notices were mailed to Jim Bollard, 4007 SE 26th Street, Des Moines, IA 50320.
8. **Relevant Zoning History:** The subject property was zoned to "F" Flood District as part of the citywide Zoning Ordinance and Map update effective on December 16, 2019. This designation reflects the Federal Insurance Rate Map (FIRM) revisions approved by the Federal government in February 2019.
9. **PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Parks and Open Space and Development Control Zone overlay.

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 subject property is designated “Park and Open Space” and “Development Control Zone” overlay. Plan DSM describes these designations as follows:

PARKS AND OPEN SPACE

Land or water areas generally free from development. Primarily used for park and recreation purposes but may also indicate private or public open spaces reserved for natural resource conservation.

DEVELOPMENT CONTROL ZONE

Areas that are sensitive to development, such as airport runway protection zones, flood hazard areas, etc.

Applicable portions of PlanDSM Creating Our Tomorrow:

Goal 8

Recognize the value of ecologically sensitive land and natural resources and ensure preservation of these areas for future residents and urban vitality.

LU40: Prohibit development in identified ecologically sensitive and critical areas to limit impacts of construction and land disturbing activities.

LU42: Permit reasonable development of land that addresses environmental constraints and minimizes disturbance of natural habitats.

LU43: Regulate development in flood prone areas to protect from damage to public health, safety, and property.

Staff believes the proposed rezoning could be determined in conformance with these goals and objectives and be appropriate at the fringe of ecologically sensitive land given the location of the subject property on a public street with access to necessary public utilities, so long as the property is able to be modified to remove it from any recognized flood hazard and mitigate the removal of trees. Any development and filling of the property must be sensitive to requirements for tree removal and mitigation and all floodplain development requirements of Chapter 50 of the City Code.

Because of the proximity of the project to One Household Living uses in the neighborhood to the south, Staff would want to further ensure any modification of the flood hazard area would be designed to prevent any shifting of the impact onto nearby properties. Recent updates to Chapter 50 of the City Code help insure that filling in the

floodplain be done in a fashion that actually improves the displaced volume by increasing it using a ratio of 1.5 cubic yard of displacement provided for every 1 cubic yard of fill.

- 2. **Engineering Comments:** This proposed development of the property would be required to meet all Chapter 50 requirements of the City Code for floodplain development. Engineering Staff communications with the applicant's consultant indicates that based on the proposed structure location that the owner would need to build the house on fill. Any rezoning and permitting should be conditioned on the owner having an approved Conditional Letter of Map Revisions based on Fill (CLOMR-F) from the Federal government. Once the project would be completed, the condition should require follow-up with a formal Letter of Map Revisions based on Fill (LOMR-F) which would provide the as-built conditions.
- 3. **Planning and Design Ordinance:** Any development for a One Household Living dwelling must comply with all applicable Site Plan and Design regulations of the Chapter 135 Planning and Design Ordinance. For the proposed "N2b" Neighborhood District, this would involve reviewing any One Household Living dwelling under the House Type A regulations in the Chapter. The applicant has provided a concept of the proposed dwelling. This would be subject to a separate full review under the International Residential Code and Chapter 135 requirements. Staff recommendation of conditional approval of the proposed rezoning should not be construed as support for the submitted concept for the proposed dwelling.

SUMMARY OF DISCUSSION

Jann Freed noted that if there was no opposition present or requests to speak regarding Item #5, it can be moved to the consent agenda. No one was present or requested to speak.

Dory Briles made a motion to move items #5 and #6 to the consent agenda. Motion Carried 12-0.

COMMISSION ACTION:

Greg Wattier made a motion for approval of Part A) the proposed rezoning to "N2b" Neighborhood District be found not in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of Parks and Open Space and Development Control Zone overlay, Part B) **APPROVAL** of the proposed amendment of the PlanDSM Creating Our Tomorrow future land use designation from Parks and Open Space with Development Control Zone overlay to Low Density Residential and Part C) **APPROVAL** of rezoning the subject property from "F" Flood District to "N2b" Neighborhood District, subject to the following conditions:

- 1. Any site modification, filling and permitting of development must have an approved Conditional Letter of Map Revisions based on Fill (CLOMR-F) from the Federal government. Upon completion of any permitted development, the owner shall obtain a formal Letter of Map Revisions based on Fill (LOMR-F) that would provide the as-built conditions.

2. Any site modification, filling and permitting shall be subject to the requirements of Chapter 50 of the City Code for floodplain development.
3. Any removal of trees for any development of the property shall comply with tree mitigation requirements as applicable to a commercial Site Plan or Subdivision approval.

Motion passed: 12-0

Respectfully submitted,



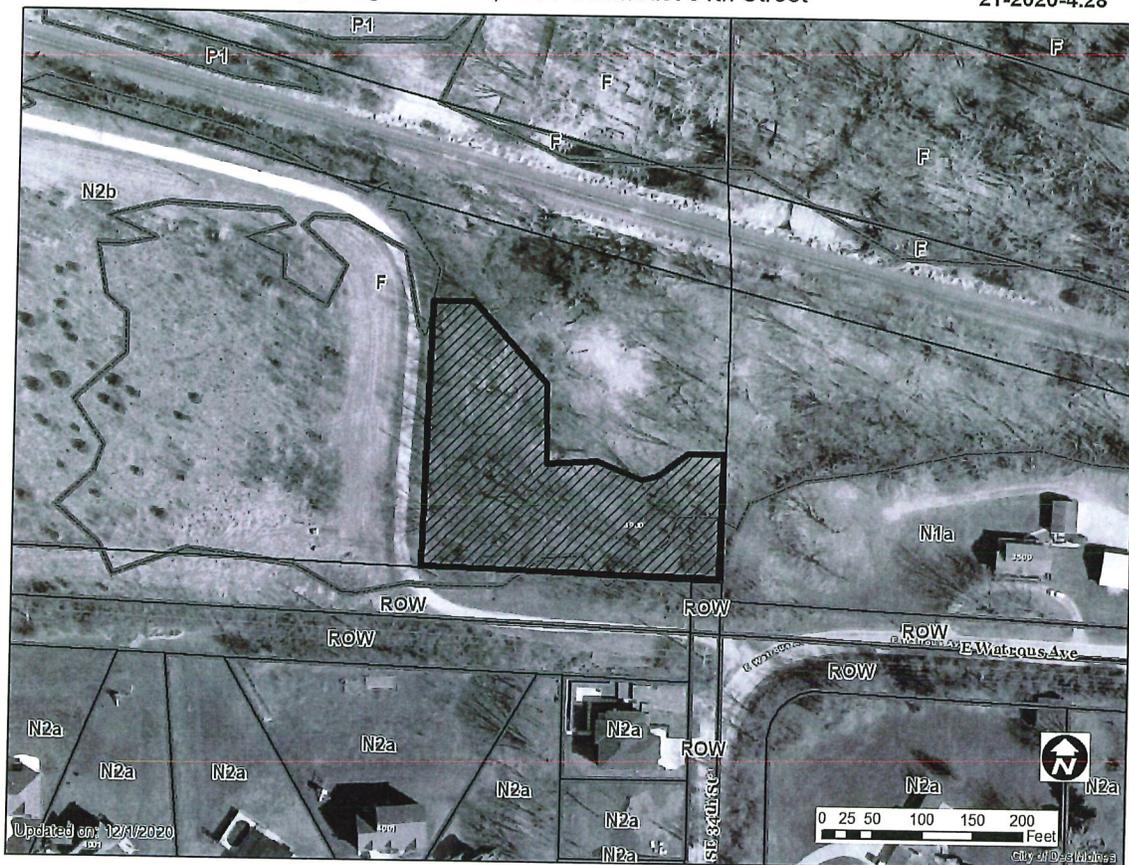
Michael Ludwig, AICP
Planning Administrator

MGL:tjh

| | | | | |
|---|---|--------------|---------------------------------------|--------------|
| James Andrew and Nancy Albright-Andrew (owners) for the property at 3900 Southeast 34th Street. | | File # | | |
| | | 21-2020-4.28 | | |
| Description of Action | Amendment to the PlanDSM Creating Our Tomorrow Plan future land use classification from Park and Open Space with Development Control Zone overlay to Low Density Residential. | | | |
| PlanDSM Future Land Use | Current: Parks and Open Space with Development Control Zone overlay. Proposed: Low Density Residential. | | | |
| Mobilizing Tomorrow Transportation Plan | No planned improvements. | | | |
| Current Zoning District | "F" Flood District. | | | |
| Proposed Zoning District | "N2b" 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 |

James Andrew and Nancy Albright-Andrew, 3900 Southeast 34th Street

21-2020-4.28

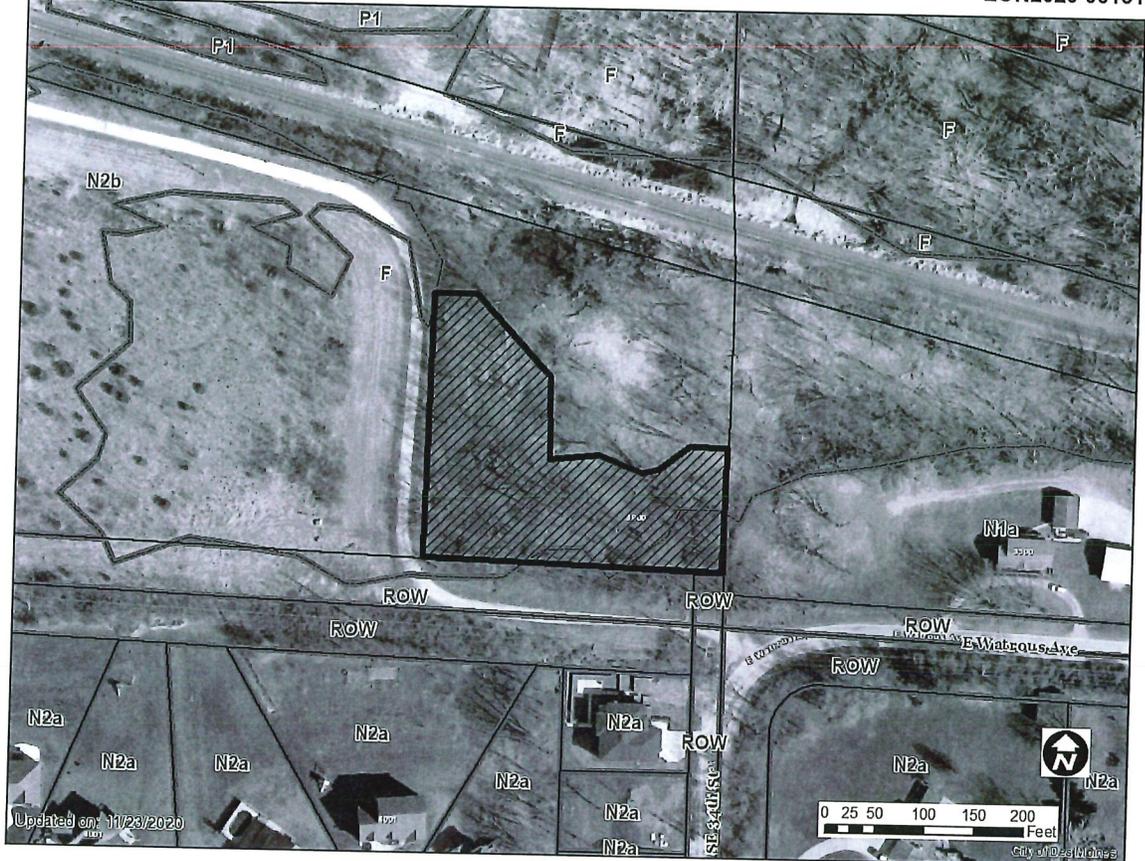


1 inch = 113 feet

| | | | | |
|---|---|---------------|---------------------------------------|--------------|
| James Andrew and Nancy Albright-Andrew (owners) for the property at 3900 Southeast 34th Street. | | File # | | |
| | | ZON2020-00151 | | |
| Description of Action | Rezone property from "F" Flood District to "N2b" Neighborhood District to allow the property to be filled and developed with a One Household Living Dwelling use. | | | |
| PlanDSM Future Land Use | Current: Parks and Open Space with Development Control Zone overlay. Proposed: Low Density Residential. | | | |
| Mobilizing Tomorrow Transportation Plan | No planned improvements. | | | |
| Current Zoning District | "F" Flood District. | | | |
| Proposed Zoning District | "N2b" 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 |

James Andrew and Nancy Albright-Andrew, 3900 Southeast 34th Street

ZON2020-00151



1 inch = 113 feet

60

