



Date March 7, 2022

RESOLUTION HOLDING HEARING ON REQUEST FROM 205 LAND INVESTMENTS, LLC TO REZONE PROPERTY LOCATED AT 1106 ARMY POST ROAD

WHEREAS, on February 21, 2022, by Roll Call No. 22-0238, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on February 3, 2022, its members voted 11-0 in support of a motion to recommend **APPROVAL** of a request from 205 Land Investments, LLC (owner), represented by Anthony Celsi (officer), to rezone real property locally known as 1106 Army Post Road (“Property”) from RX1 Mixed Use District to MX1 Mixed Use District to address the subject property’s current legal non-conforming use status as a Restaurant use with alcohol sales located within 75 feet of the required separation distance from a parcel containing a Place of Worship use; and

WHEREAS, on February 21, 2022, by Roll Call No. 22-0238, it was duly resolved by the City Council that the request for approval of the proposed rezoning of the Property be set down for hearing on March 7, 2022 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 rezoning; 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.

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 1106 Army Post Road, legally described as:

The East 125 feet of the West 175 feet (except that part conveyed to the State of Iowa by Warranty Deed recorded in Book 3275 Page 415), and the West 50 feet (except the North 10 feet thereof), all in the North 1/2 of Lot Thirteen (13) in Block One (1) in RODGERS PLACE, an Official Plat, now included in and forming a part of the City of Des Moines, Iowa

from RX1 Mixed Use District to MX1 Mixed Use District to address the subject property’s current legal non-conforming use status as a Restaurant use with alcohol sales located within 75 feet of the required separation distance from a parcel containing a Place of Worship 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 rezoning of the real property locally known as 1106 Army Post Road from RX1 Mixed Use District to MX1 Mixed Use District are hereby overruled, and the hearing is closed.
2. The proposed rezoning of the Property, as legally described above, to MX1 Mixed Use District, is hereby found to be in conformance with the PlanDSM: Creating Our Tomorrow Land Use Plan and is approved as set forth herein.



Roll Call Number

Agenda Item Number

58

Date March 7, 2022

MOVED BY _____ TO ADOPT.

SECONDED BY _____.

APPROVED AS TO FORM:

/s/ Glenna K. Frank

Glenna K. Frank, Assistant City Attorney

(ZONG-2022-000002)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
SHEUMAKER				
MANDELBAUM				
VOSS				
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 March 7, 2022
Agenda Item 58
Roll Call # _____

February 8, 2022

Communication from the City Plan and Zoning Commission advising that at their February 3, 2022 meeting, the following action was taken regarding a request from 205 Land Investments, LLC (owners), represented by William M. Reasoner (officer) to rezone property located at 1106 Army Post Road from "RX1" Mixed Use District to "MX1" Mixed Use District, to allow the sale of alcohol at the restaurant without regard to a 75 feet separation requirement from a church parcel.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
Dory Briles	X			
Abby Chungath	X			
Kayla Berkson	X			
Chris Draper	X			
Jann Freed				X
Todd Garner	X			
Johnny Alcivar	X			
Lisa Howard	X			
Carolyn Jenison	X			
William Page				X
Andrew Lorentzen	X			
Greg Wattier				X
Emily Webb	X			

APPROVAL of Part A) The requested rezoning be found in conformance with the existing PlanDSM future land use designation of Community Mixed Use and Part B) **Approval** of the request to rezone the property from "RX1" Neighborhood Mixed Use District to "MX1" Mixed Use District. (ZONG-2022-000002)

Written Responses

- 0 in Favor
- 1 in opposition

Date _____

Agenda Item _____

Roll Call # _____

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the requested rezoning be found in conformance with the existing PlanDSM future land use designation of Community Mixed Use.

Part B) Staff recommends approval of the request to rezone the property from “RX1” Neighborhood Mixed Use District to “MX1” Mixed Use District.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is proposing to rezone the subject property in order to mitigate its current legal non-conforming use status as a Restaurant use with alcohol sales. The subject property is currently zoned “RX1” District, which allows a restaurant use but requires at least 75 feet of separation distance from a parcel containing a Place of Worship use in order to allow for alcohol sales. If the subject property were to be unoccupied for a period of at least 6 months, it would lose its legal non-conforming status.

The parcel adjacent to the west of the subject property includes a Place of Worship use. Therefore, the “MX1” rezoning has been requested since it does not require a Restaurant use to provide separation for alcohol sales.

2. **Size of Site:** The site is approximately 26,851 square feet (0.62 acres).
3. **Existing Zoning (site):** “RX1” Neighborhood Mix District.
4. **Existing Land Use (site):** The site consists of a one-story restaurant building surrounded by a paved parking lot.
5. **Adjacent Land Use and Zoning:**

North – “RX1”; Uses are a food and liquor store, and an auto store.

South – “N3b”; Uses are one-household residential.

East – “RX1”; Uses are commercial.

West – “P2”; Use is religious assembly.

6. **General Neighborhood/Area Land Uses:** The subject property is located along the south side of Army Post Road between Southwest 13th Street and Southwest 11th Street. The area along the corridor consists of a mix of commercial, retail, restaurant, and religious assembly uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is not within a designated Neighborhood but is within 250 feet of the Watrous South Neighborhood. All neighborhood associations were notified of the public hearing by mailing of the Preliminary Agenda on January 14, 2022 and by mailing of the Final Agenda on January 28, 2022. Additionally, separate notifications of the hearing for this specific item were mailed on January 14, 2022 (20 days prior to the public hearing) and

January 24, 2022 (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 on the date of the mailing. The Watrous South Neighborhood mailings were sent to Mitch Harris, PO Box 35845, Des Moines, IA 50315.

The applicant has conducted neighborhood outreach and provided a summary of that to Staff. They will be available to provide additional information during the public hearing, if necessary.

8. Relevant Zoning History: None.

9. PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation: Community Mixed Use.

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 “Community Mixed Use”. Plan DSM describes this designation as follows:

Community Mixed Use

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.

The applicant is proposing to rezone the subject property from “RX1” District to “MX1” District. The Zoning Ordinance states that the “RX1” District is intended for transitional areas between “MX” districts and “N” districts, providing for residential and office buildings at a scale and intensity appropriate for corridors adjacent to low scale neighborhoods. It also states that the “MX1” District is intended for the mixed-use, neighborhood-scale nodes and corridors within the city, where daily uses are accessible by walking from surrounding neighborhoods.

Based on these descriptions, the proposed “MX1” Mixed Use District zoning would be found in conformance with the Comprehensive Plan designation of Community Mixed Use.

Given the location of the property along Army Post Road, Staff believes that the proposed C "MX1" Mixed Use District is appropriate.

2. **Planning and Design Ordinance:** Any future construction or redevelopment of the site must comply with all applicable site plan and design regulations of the Planning and Design Ordinance (Chapter 135 of City Code).
3. **Staff Rationale:** Given the location of the property along Army Post Road, Staff believes that the subject property is appropriate for the "MX1" Mixed Use District, which would allow for commercial and other small-scale retail that is complementary to the existing uses along this corridor. Also, given that this legal non-conforming use has been in existence in this location for many years, Staff is supportive of the proposed rezoning, which would allow this use to continue without providing 75 feet of separation requirement from the adjacent parcel that contains a Place of Worship use.

SUMMARY OF DISCUSSION

Emily Webb asked if any member of the public or commission desired to speak on the item. No one requested to speak.

COMMISSION ACTION:

Francis Boggus made a motion for approval of Part A) The requested rezoning be found in conformance with the existing PlanDSM future land use designation of Community Mixed Use and Part B) **Approval** of the request to rezone the property from "RX1" Neighborhood Mixed Use District to "MX1" Mixed Use District.

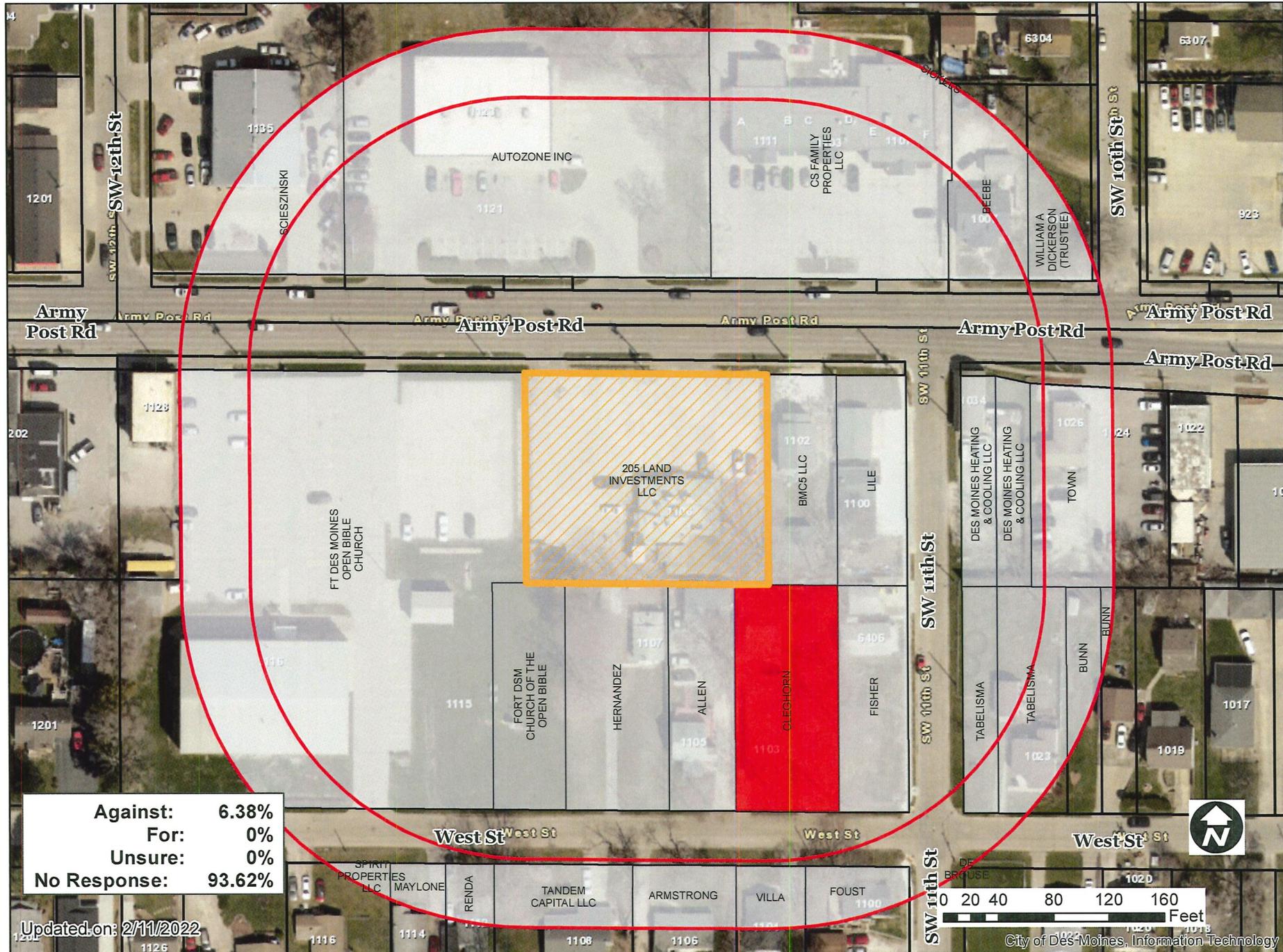
Motion passed: 11-0

Respectfully submitted,



Jason Van Essen, AICP
Planning & Urban Design Administrator

JMV:tjh



Against:	6.38%
For:	0%
Unsure:	0%
No Response:	93.62%

Updated on: 2/11/2022



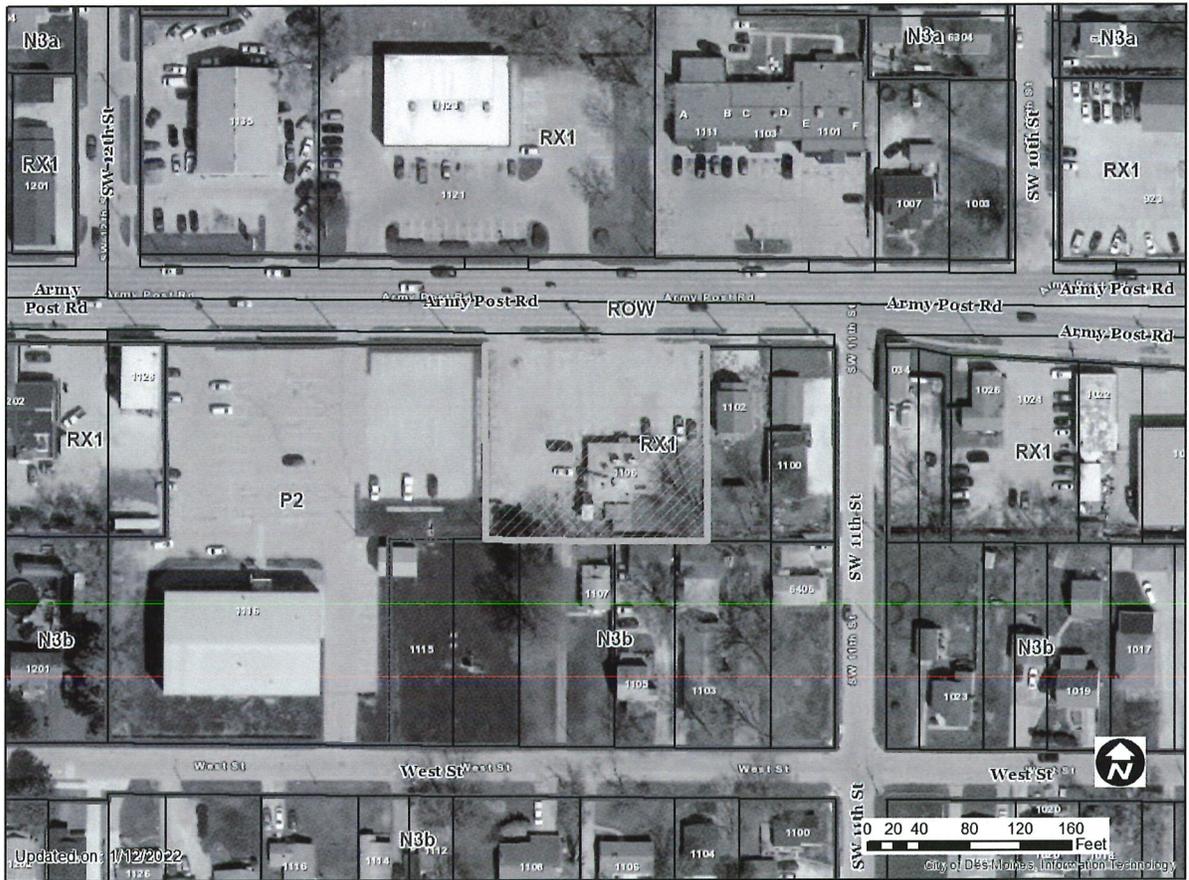
City of Des Moines, Information Technology

1 inch = 93 feet

59

205 Land Investments, LLC, 1106 Army Post Road

ZONG-2022-000002



1 inch = 93 feet

Don't want a bunch of people drinking outside or picknicking
 drinking etc + don't want fights etc and you know it
 well be a tavern soon after you change the zone
 they want pick up broken concrete yet I've told
 them twice plus they put up lights that shine in
 my backdoor plus they want to fix my fence they
 broke it will get clean right away they leave to me
 plus they want to cut trees branch in my yard on my
 garage they add all walk cooler + garage (all space)
 car trunk lights shine on us all night from their parking lot

Item: ZONG-2022-000002 Date: _____

Please mark one of the following

- I am in favor of the request
- I am not in favor of the request

Signature: Ronald I. Cleghorn
 Name: Donald I. Cleghorn
 Address: 1103 West Street

Staff Use Only

 RECEIVED
 COMMUNITY DEVELOPMENT
 FEB 03 2022

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

5

Drost, Bert A.

From: Watrous South Neighborhood Association <watroussouth@gmail.com>
Sent: Monday, January 24, 2022 8:52 AM
To: Drost, Bert A.
Subject: Re: Zoning change request for 1106 Army Post Road

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Bert,

I just wanted to let you know that Watrous South Neighborhood Association is in favor of the zoning change for this property.

Let me know if I need to notify anyone else.

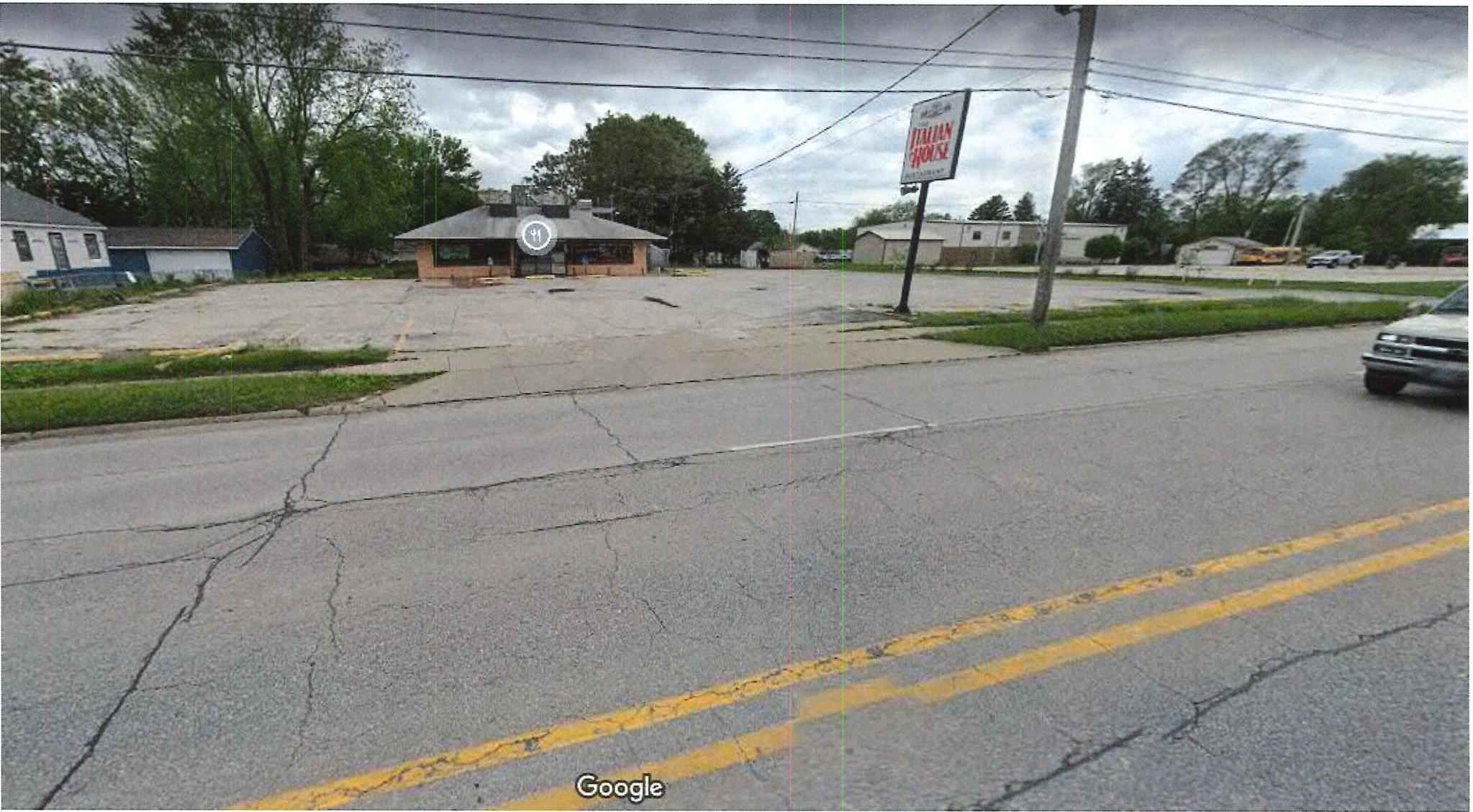
Thanks!

Mitch

*Mitch Harris, Vice President
Board of Directors*



Neighborhood Association
PO Box 35845
Des Moines, Iowa 50315



Google



