



Date November 6, 2023

**HOLD PUBLIC HEARING ON REQUEST FROM BREW OIL, LLC (OWNER), REPRESENTED BY RUPINDER KAUR (OFFICER) TO AMEND PLANDSM TO REVISE THE FUTURE LAND USE DESIGNATION AND TO REZONE THE PROPERTY LOCATED AT 4140 PARK AVENUE**

**WHEREAS**, the City Plan and Zoning Commission has advised that at a public hearing held on September 21, 2023, its members voted 8-0 in support of a motion to recommend **DENIAL** of a request from Brew Oil, LLC (owner), represented by Rupinder Kaur (officer), for the proposed rezoning for Property located at 4140 Park Avenue from “RX1” Mixed Use District to “MX3” Mixed Use District be found not in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of Neighborhood Mixed Use; and to amend the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation for the subject property from Neighborhood Mixed Use to Community Mixed Use; and

**WHEREAS**, the City Plan and Zoning Commission has further advised that at a public hearing held on September 21, 2023, its members voted 8-0 in support of a motion to recommend **DENIAL** of a request from Brew Oil, LLC (owner), represented by Rupinder Kaur (officer), to rezone the Property from “RX1” Mixed Use District to “MX3” Mixed Use District, to allow the redevelopment of an existing building as a convenience store with liquor sales; and

**WHEREAS**, after discussion with the City of Des Moines Development Services Department, Brew Oil, LLC (owner), represented by Rupinder Kaur (officer) requests to rezone the Property from “RX1” Mixed Use District to Limited “MX3” Mixed Use District, to allow for the redevelopment of an existing building as a convenience store with liquor sales, and to determine that the amendment to the PlanDSM: Creating Our Tomorrow Comprehensive Plan to revise the future land use classification for the property from Neighborhood Mixed Use to Community Mixed Use in not necessary given the zoning conditions, subject to the condition that use of the property shall be limited to the following:

1. Any use as permitted and limited in the “RX1” Mixed Use District.; and/or
2. A “Retail Sales, Limited” or “Fuel Station” use, with sales of alcoholic liquor, wine, and/or beer only so long as the Zoning Board of Adjustment grants any Conditional Use necessary for such use.; and

**WHEREAS**, the Property is legally described as follows:

**THE NORTH 200 FEET OF THE WEST 173 FEET OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 19, TOWNSHIP 78 NORTH, RANGE 24, WEST OF THE 5TH P.M., NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, EXCEPT LEGALLY ESTABLISHED HIGHWAYS.; and**

.....  
**Date** November 6, 2023

**WHEREAS**, on October 2, 2023, by Roll Call No. 23-1322, it was duly resolved by the City Council that the request for approval of the proposed amendment and zoning be set down for hearing on October 23, 2023, at 5:00 p.m., at the City Council Chambers; and

**WHEREAS**, on October 23, 2023, by Roll Call No. 23-1493, it was duly resolved by the City Council that the request for approval of the proposed amendment and zoning be opened and continued to the City Council meeting on November 6, 2023, at 5:00 p.m., at the City Council Chambers, to allow the City Manager and Legal Department prepare the necessary legislation to approve the request; 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 proposals; and

**WHEREAS**, in accordance with said notice, those interested in said proposals, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council.

**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 are hereby overruled, and the hearing is closed.
2. The proposed rezoning of the Property, as legally described above, from “RX1” Mixed Use District to Limited “MX3” Mixed Use District, to allow for the redevelopment of an existing building as a convenience store with liquor sales, subject to the conditions 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.

**(APPROVAL REQUIRES SIX VOTES DUE TO THE PLAN & ZONING COMMISSION RECOMMENDING DENIAL)**



**Roll Call Number**

**Agenda Item Number**

45

**Date** November 6, 2023

MOVED BY \_\_\_\_\_ TO ADOPT.

SECOND BY \_\_\_\_\_.

FORM APPROVED:

/s/ Chas M. Cahill

Chas M. Cahill  
Assistant City Attorney

(ZONG-2023-000052) (COMP-2023-000029)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

**CERTIFICATE**

I, LAURA BAUMGARTNER, 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

September 26, 2023

Communication from the City Plan and Zoning Commission advising that at their September 21, 2023 meeting, the following action was taken regarding a request from Brew Oil, LLC (owner), represented by Rupinder Kaur (officer) to rezone the property located at 4140 Park Avenue from "RX1" Mixed Use District to "MX3" Mixed Use District, to allow the redevelopment of an existing building as a convenience store with liquor sales.

**COMMISSION RECOMMENDATION:**

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

Commission Action:	Yes	Nays	Pass	Abstain	Absent
Francis Boggus	X				
Leah Rudolphi					X
Carol Maher	X				
Abby Chungath	X				
Kayla Berkson					X
Chris Draper					X
Todd Garner					X
Johnny Alcivar					X
Justyn Lewis	X				
Carolyn Jenison	X				
William Page	X				
Andrew Lorentzen	X				
Emily Webb					X
Katie Gillette					X
Rick Trower	X				

**APPROVAL** of Part A) The proposed rezoning be found **not** in conformance with the PlanDSM: Creating Our Tomorrow Comprehensive Plan, which designates the property as Neighborhood Mixed Use.

Part B) **Denial** of the request to amend the PlanDSM future land use designation from Neighborhood Mixed Use to Community Mixed Use.

Part C) **Denial** of the rezoning of the property from "RX1" Mixed Use District to "MX3" Mixed Use District.

## STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the proposed rezoning be found not in conformance with the PlanDSM: Creating Our Tomorrow Comprehensive Plan, which designates the property as Neighborhood Mixed Use.

Part B) Staff recommends denial of the request to amend the PlanDSM future land use designation from Neighborhood Mixed Use to Community Mixed Use.

Part C) Staff recommends denial of the rezoning of the property from "RX1" Mixed Use District to "MX3" Mixed Use District.

## STAFF REPORT TO THE PLANNING COMMISSION

- 1. Purpose of Request:** The applicant is proposing to remodel the existing building for conversion to a "Limited Retail Sales" use. This use is permitted in the current "RX1" Mixed Use District and is eligible to seek a Conditional Use for wine and beer sales. The applicant has requested the rezoning to "MX3" District so that they are eligible to seek a Conditional Use for alcoholic liquor sales in addition to wine and beer sales. The submitted request indicates alcohol sales are not expected to account for more than 40 percent of the business' projected revenues.

The submitted site sketch demonstrates that the existing parking lot and driveways are proposed to be replaced with new pavement generally matching the current parking lot layout and provide a new sidewalk along Southwest 42<sup>nd</sup> Street. The sketch also demonstrates that the building would have a drive-up window for pickup of sales items on its west facade. Staff notes that City Code Section 134-3.9.9.C.3.d prohibits any dispensing of alcoholic beverages through a drive-through window.

- 2. Size of Site:** 0.51 Acres (22,341.4 square feet).

- 3. Existing Zoning (site):** "RX1" Mixed Use District.

- 4. Existing Land Use (site):** The subject property includes an existing vacant 2,646 square feet building with a surface parking lot which was previously a convenience store/gas station.

- 5. Adjacent Land Use and Zoning:**

**North** – "NX2"; Uses are multiple-household residential buildings.

**South** – "RX1"; Uses are a small retail business.

**East** – "RX1"; Uses are a small retail business.

**West** – "NX2"; Uses are multiple-household residential buildings.

- 6. General Neighborhood/Area Land Uses:** The subject property is located southeast of the intersection of Park Avenue and Southwest 42<sup>nd</sup> Street. The area includes a mix of residential uses and small-scale commercial uses in the immediate vicinity along Park Avenue.



- 7. Applicable Recognized Neighborhood(s):** The subject property is located in the Southwestern Hills Neighborhood Association. All neighborhood associations were notified of the September 21, 2023, public hearing by mailing of the Preliminary Agenda on September 1, 2023, and by mailing of the Final Agenda on September 15, 2023. Additionally, separate notifications of the hearing for this specific item were mailed on September 1, 2023 (20 days prior to the public hearing) and September 7, 2023 (10 days prior to the public hearing) to the Southwestern Hills 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 Services Department on the date of the mailing. The Southwestern Hills Neighborhood mailings were sent to George Davis, 3124 SW 29th St, Des Moines, IA 50321.

The applicant can provide a summary of the neighborhood meeting at the public hearing.

- 8. Relevant Zoning History:** NA.

- 9. PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Neighborhood 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 applicant has requested the property be rezoned to "MX3" Mixed Use District to allow the existing building to be used as a "Limited Retail Sales" use that could potentially sell alcoholic liquor, wine, and beer.

PlanDSM designates the subject property as "Neighborhood Mixed Use". The proposed "MX3" Mixed Use District is not consistent with this land use designation, which PlanDSM describes as follows:

*Neighborhood Mixed Use: Small scale mixed use development typically located at the intersections of collector and/or arterial streets and along transportation corridors. Non-residential development is designed to serve the immediate neighborhood and include small retail, offices, restaurants, and service oriented development. Low-medium density residential may be included in mixed use development.*



In order for the proposed rezoning to “MX3” District to be in conformance with PlanDSM, the future land use designation must be amended to “Community Mixed Use”. PlanDSM 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 Zoning Ordinance states that the “MX3” District is intended for mixed-use nodes and corridors within the city, where residents and visitors may access multiple uses by walking and automobile. This district accommodates higher intensity commercial uses at a smaller scale. Building types allowed in this district include the Storefront, Commercial Cottage, General Building, Commercial Center, Civic Building, and Principal-Use Parking Structure.

Staff believes that higher intensity commercial uses within the “MX3” District should be focused along major corridors and nodes within the City where there are similar established uses. A “Limited Retail Sales” use with wine and beer sales is allowed a Conditional Use within the current “RX1” zoning district so long as the revenues from wine, beer, and/or tobacco products don’t exceed 40 percent of total sales. Such a “Limited Retail Sales” use is appropriate for this location. However, rezoning to the requested “MX3” District to allow alcoholic liquor sales would not be appropriate at this location, as it is incompatible with surrounding uses in this general area.

2. **Planning and Design Ordinance:** Any construction or change in use must comply with all applicable site plan and design regulations of the Planning and Design Ordinance (City Code Chapter 135). Furthermore, a Site Plan and building elevations would be required for any future development before the property can be legally occupied by the proposed use.
3. **Conditional Use:** A Conditional Use Approval from the Zoning Board of Adjustment is required for any “Limited Retail Sales” use selling alcoholic liquor, wine, and/or beer, in accordance with City Code Section 134-6.4.

## **SUMMARY OF DISCUSSION**

Sreyoshi Chakraborty presented staff report and recommendation.

Jason Van Essen emphasized the amendment to the PlanDSM future land use plan designation as Community Mixed Use belongs on high-capacity corridors.

Carol Maher asked if the Traffic and Transportation Department recommended closing the curb cut off Park Avenue.

Sreyoshi Chakraborty stated access would be reviewed during the site plan process.

Carol Maher asked if their focus would be on coffee.



Sreyoshi Chakraborty stated they intend to provide a variety of food and beverage options.

Carol Maher asked if they could be open 24 hours a day.

Sreyoshi Chakraborty stated that would be allowed but the hours for alcohol sales would be determined with their conditional use.

Carol Maher asked if a conditional use is required for the sale of beer.

Sreyoshi Chakraborty stated any type of alcohol would require conditional use.

Abby Chungath asked if the sale of alcohol is allowed at other nearby establishments within the RX1 zoning.

Jason Van Essen stated restaurants such as Jethro's are treated differently than convenient stores.

Carol Maher noted that Casey's General store on Park Avenue does not sale liquor.

Richard McCollum, Representing Brew Oil, LLC, Sanborn, IA stated with several locations in Northwest, Iowa, they are looking to expand into Des Moines. Within their existing fuel sites, they have developed their own coffee brand, which is how Brew Oil got its name. Their focus is specialty coffee drinks but also provide products you would see at other convenience stores.

Carolyn Jension asked if their business model would collapse if they didn't sale liquor.

Richard McCollum stated no.

Abby Chungath asked if they have other locations not selling liquor.

Richard McCollum stated many of their locations do not sale liquor.

Rick Trower asked if gasoline will be sold at this location.

Richard McCollum stated no.

### **CHAIRPERSON OPENED THE PUBLIC HEARING**

No one was present or requested to speak.

### **CHAIRPERSON CLOSED THE PUBLIC HEARING**

Carolyn Jension asked if the applicant would be able to seek a conditional use for beer and wine if the commission approves staff recommendation.

Jason Van Essen stated yes, the current zoning allows beer and wine sales.



**COMMISSION ACTION:**

Carolyn Jenison made a motion for:

Part A) The proposed rezoning be found not in conformance with the PlanDSM: Creating Our Tomorrow Comprehensive Plan, which designates the property as Neighborhood Mixed Use.

Part B) Denial of the request to amend the PlanDSM future land use designation from Neighborhood Mixed Use to Community Mixed Use.

Part C) Denial of the rezoning of the property from "RX1" Mixed Use District to "MX3" Mixed Use District.

**THE VOTE: 8-0**

Respectfully submitted,



Jason Van Essen, AICP  
Planning & Urban Design Administrator

JMV:tjh



71  
45

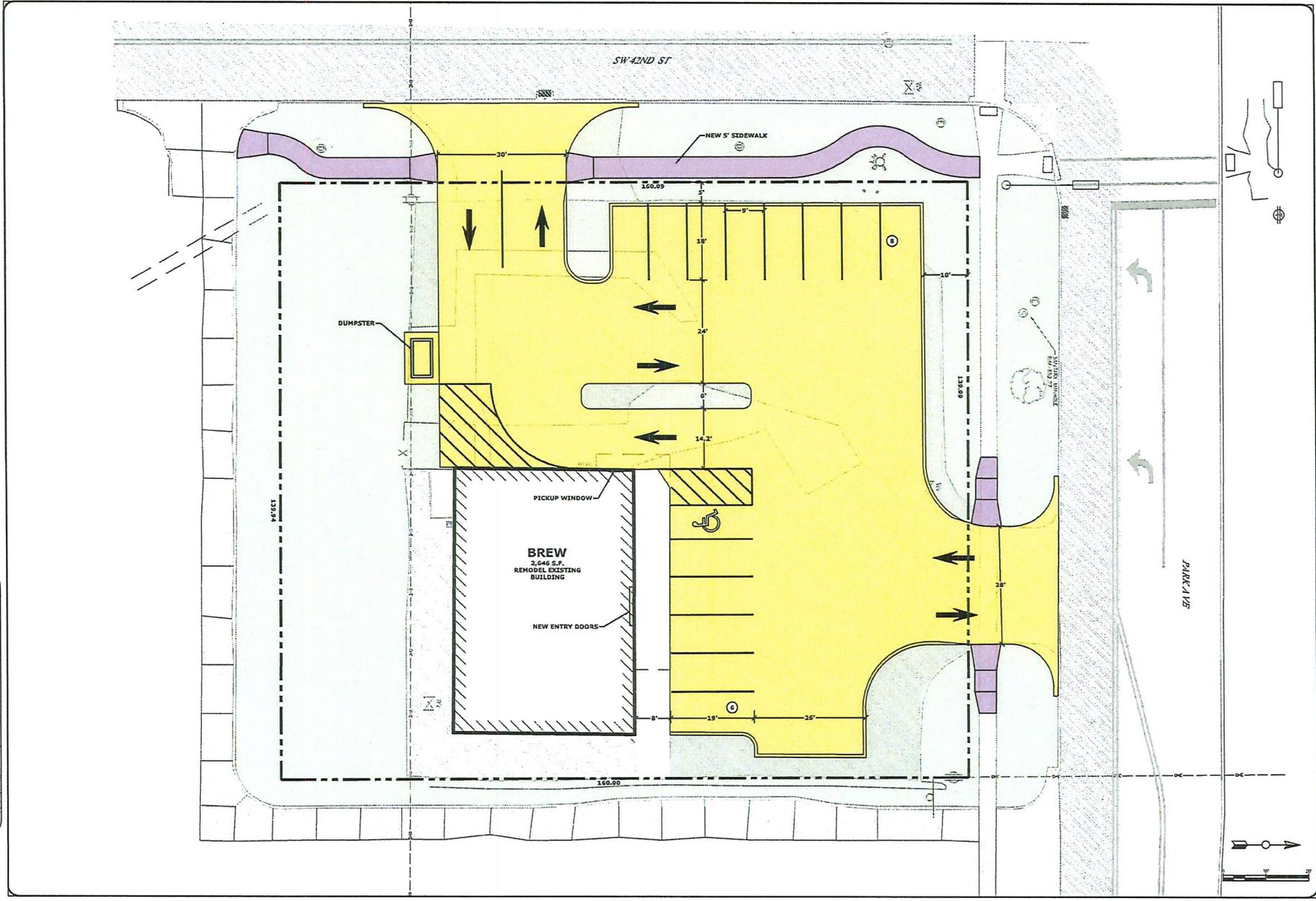


Updated on: 8/30/2023

City of Des Moines

23-1493

DATE PLOTTED	DATE MODIFIED	DATE CHECKED	DATE APPROVED



PROJECT NO. 7140.051	SHEET A	CONCEPTUAL SITE PLAN		FOX STAND 414 South 17th Street, Suite 100 Phone: (515) 233-0000 FAX: (515) 233-0103
		BREW HOUSE 4140 NORTH AVENUE DES MOINES, IOWA		
REVISION DATE BY DRAWN CHECKED INCHES LAST UPDATE: 04/23/13				

57  
H-28



ERS  
BY  
EST. U.









2027  
4/5  
HLL



3571  
45

Planning Staff

E-mailed to: [nhmeeting@dmgov.org](mailto:nhmeeting@dmgov.org)

RE: Summary of Neighborhood Meeting (4140 Park Ave, Des Moines rezoning to MX3)

Dear Planning Staff,

This Summary Letter is being sent on behalf of Brew Oil, LLC (Brew), an Iowa Limited Liability company. At noon, on 9/18/2023, Brew Oil, LLC, conducted a Neighborhood meeting regarding the requested zoning change to allow for liquor sales on site. The neighbors on the attached list\ (exhibit A) were each sent the attached letter (exhibit B) on September 11, 2023, via USPS, first class mail. Each was invited to participate in the Zoom meeting or call in with the provided number. Brew's general manager, Inder Singh, fielded all of the neighbors' questions and listened to comments, concerns and requests.

Ultimately, 2 neighbors, David and John, did participate. Overall, the discussion was very positive. These neighbors had questions about food options, beverage options, the focus of business for the site and renovations. Some suggestions were made about specific products, which Brew will try to stock – assuming these items are available. They both were very nice and appeared to be excited about the new operations.

Besides potentially inventory, there were really no concerns that needed to be addressed.

Sincerely,

*/s/ Ryan A. Mohr*

Ryan A. Mohr  
Attorney for Brew Oil, L.L.C.

Exhibit B



EXAMPLE(Trustee)  
4301 Park Ave Unit EXAMPLE  
Des Moines, IA 50321

RE: 4140 Park Ave, Des Moines, IA 50321 - rezoning to MX3 – Neighborhood Meeting

Dear neighbor,

This letter is being sent on behalf of Brew Oil, LLC (Brew), an Iowa Limited Liability company, that is 100% family owned. Brew proudly serves Iowa residents with over 40 convenience destinations. Each site is engaged in the sale of premium coffee, wine, spirits, as well as other convenience items. Some sites also sell fuel. Brew prides itself on creating an experience for the community that showcases the very best modern convenience store experience.

Recently, Brew became a part of your community by purchasing 4140 Park Ave., Des Moines, IA 50321. Brew is in the process of rehabbing and branding the site to the standards that Brew expects, and its customers have come to enjoy – something that this community can be proud of. With that in mind, Brew is investing over a million dollars to turn this old convenience store into a destination site that offers all the regular convenience items plus, fried chicken, ice cream, specialty coffees, beer, wine, spirits and much more. However, due to the current zoning, Brew is required to request permission to sell certain alcoholic beverages. NOTE: Brew only sells such beverages for off-site consumption.

The purpose of this correspondence is you inform you that Brew will be holding a meeting to discuss the rezoning of the site via zoom conference on Monday the 18<sup>th</sup> day of September, 2023, at 12:00 p.m. (noon). If they would like to join by phone, you can call in at (305)224-1968,, and by using the meeting id: 84065605896#.

Please use the link at <https://us02web.zoom.us/j/84065605896> or use the attached QR code (attached) to participate. We look forward to visiting with you and fielding any questions regarding the requested zoning change.

Sincerely,

*/s/ Inder Singh*

Inder Singh  
General Manager for Brew Oil, L.L.C.



Above is the QR code for the Neighborhood Meeting.

NOTE: This is a neighborhood meeting, the actual public hearing will be on Thursday, September 21, 2023, at the Richard A. Clark Municipal Service Center, 2<sup>nd</sup> floor, MSC Board room, 1551 East Martin Luther King, Jr., Parkway.

Item: ZONG-2023-000052 Date:

327H

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only  
**RECEIVED**  
 COMMUNITY DEVELOPMENT  
 SEP 20 2023

45

Titleholder Signature: Marian Riggs / Marian Riggs

Name/Business: \_\_\_\_\_

Impacted Address: 4310 Park Ave, #640

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Item: ZONG-2023-000052

Date: Sept. 14, 2023

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only  
**RECEIVED**  
 COMMUNITY DEVELOPMENT  
 SEP 18 2023

Titleholder Signature: Marylee Kelly

Name/Business: Marylee Kelly

Impacted Address: 4301 Park Ave. #410 DM Ia 50321

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Item: ZONG-2023-000052

Date: 9-16-23

3271  
45

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only  
**RECEIVED**  
 COMMUNITY DEVELOPMENT  
 SEP 21 2023

Titleholder Signature: [Signature]

Name/Business: SWHVA

Impacted Address: Neighborhood Association

Comments: We ~~are~~ are very much in favor  
of Brew on opening. We do not want a  
Monopoly. Would like Max Dater  
George Davis  
Southwestern Hills Neighborhood Assoc  
575-979-9291

Item: ZONG-2023-000052

Date: 9-13-2023

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only  
**RECEIVED**  
 COMMUNITY DEVELOPMENT  
 SEP 18 2023

Titleholder Signature: [Signature]

Name/Business: \_\_\_\_\_

Impacted Address: 4301 Park Ave DM IA 50321

Comments: I am against rezoning 4140 Park Ave  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Item: ZONG-2023-000052

Date: 9-15-2023 3211

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only  
**RECEIVED**  
 COMMUNITY DEVELOPMENT  
 SEP 18 2023

45

Titleholder Signature: Darryl Lewis

Name/Business: \_\_\_\_\_

Impacted Address: 4307 Park Ave., Unit 520

Comments: I'm concerned that the sale of liquor at this site will draw crime, like robberies, and potential gun violence to our quiet neighborhood. I am adamantly against this.

Item: ZONG-2023-000052

Date: 9/14/2023

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only  
**RECEIVED**  
 COMMUNITY DEVELOPMENT  
 SEP 18 2023

Titleholder Signature: Richard M. Boerig

Name/Business: Richard M. Boerig

Impacted Address: 3210 Southern Woods Drive

Comments: My wife and I are very opposed to rezoning. We do not want a liquor store in the neighborhood that will bring down property value!

Item: ZONG-2023-000052 Date: 9/16/23 32  
71  
45

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only  
**RECEIVED**  
COMMUNITY DEVELOPMENT  
SEP 20 2023

Titleholder Signature: Susan Fu

Name/Business: Susan Fager

Impacted Address: 4301 Park Ave, Unit 110

Comments: The area doesn't need another  
convenience store  
with liquor sales.

Item: ZONG-2023-000052 Date: 9-18-23

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only  
**RECEIVED**  
COMMUNITY DEVELOPMENT  
SEP 20 2023

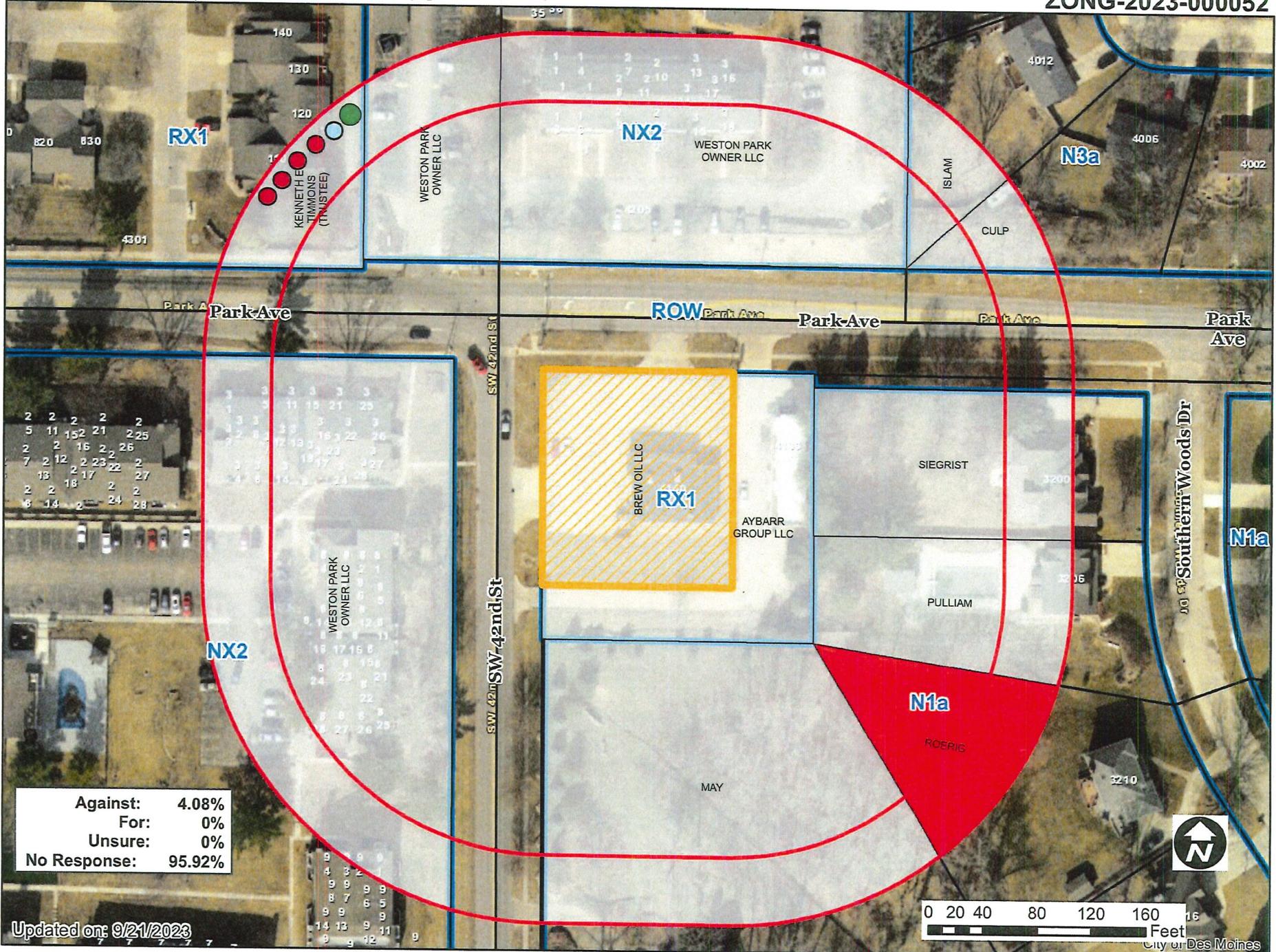
Titleholder Signature: Marcia DeKitt

Name/Business: \_\_\_\_\_

Impacted Address: 4301 Park Ave - Unit 310

Comments: I oppose 24x7 liquor sales  
that are routine operations of this  
company at other locations within  
the state.

245



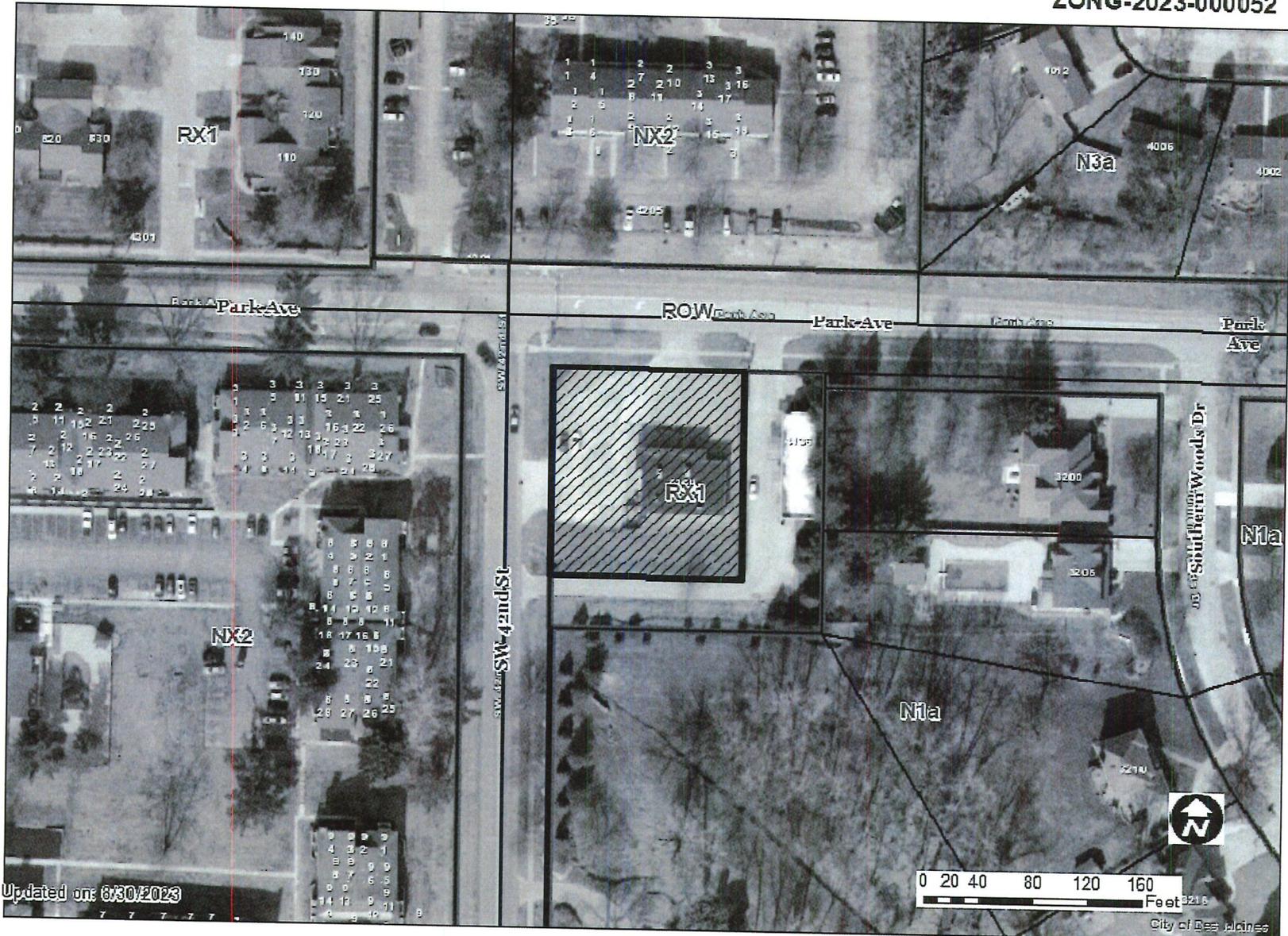
Against:	4.08%
For:	0%
Unsure:	0%
No Response:	95.92%

Updated on: 9/21/2023

23-1493

Brew Oil, LLC, 4140 Park Avenue

ZONG-2023-000052



Updated on: 6/30/2023

1 inch = 93 feet