



Date February 5, 2024

RESOLUTION SETTING HEARING ON REQUEST FROM CLAYTON ENTERPRISES (OWNER), REPRESENTED BY GEORGE MICHAEL CLAYTON (OFFICER), FOR PROPERTY LOCATED AT 1726 OAKLAND AVENUE, TO AMEND THE PLANDSM: CREATING OUR TOMORROW COMPREHENSIVE PLAN TO REVISE THE FUTURE LAND USE CLASSIFICATION FROM LOW-MEDIUM DENSITY RESIDENTIAL TO HIGH DENSITY RESIDENTIAL

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on January 18, 2024 its members voted 11-1 in support of a motion to recommend **DENIAL** of a request from Clayton Enterprises (owner), represented by George Michael Clayton (officer), to amend the PlanDSM: Creating Our Tomorrow future land use designation from Low-Medium Density Residential to High Density Residential, to allow three (3) additional dwelling units within the existing 6-unit building; and

WHEREAS, the Property is legally described as follows:

THE SOUTH 60 FEET OF LOT 41 IN OAKLAND, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

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 amendment to the comprehensive plan future land use designation is to be considered, and at which time the City Council will hear both those who oppose and those who favor the proposal, shall be held at 5:00 p.m. on February 19, 2024, in the Council Chambers, City Hall, 400 Robert D. Ray, Drive, Des Moines.
3. That the City Clerk is hereby authorized and directed to cause notice of said proposal 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.



Roll Call Number

Agenda Item Number

22

Date February 5, 2024

Moved by _____ to adopt. Second by _____

APPROVED AS TO FORM:

/s/ Chas M. Cahill
Chas M. Cahill
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN				
COLEMAN				
GATTO				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED	APPROVED			

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.

Mayor

City Clerk

Date February 5, 2024

Agenda Item 22

Roll Call # _____

January 18, 2024

Communication from the City Plan and Zoning Commission advising that at their January 18, 2024 meeting, the following action was taken regarding a request from Clayton Enterprises (owner), represented by George Michael Clayton (officer) for property located at 1726 Oakland Avenue, Amend PlanDSM: Creating Our Tomorrow Comprehensive Plan to revise the future land use designation from Low-Medium Density Residential to High Density Residential to the addition of three (3) additional dwelling units for a net density greater than 17 dwelling units per acre.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-1 as follows.

Commission Action:	Yes	Nays	Pass	Abstain	Absent
Francis Boggus					X
Leah Rudolphi					X
Abby Chungath	X				
Kayla Berkson	X				
Chris Draper		X			
Laura Kessel	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				

Denial of the request to amend PlanDSM: Creating Our Tomorrow Comprehensive Plan to revise the future land use designation from Low-Medium Density Residential to High Density Residential

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends denial of the request to amend PlanDSM: Creating Our Tomorrow Comprehensive Plan to revise the future land use designation from Low-Medium Density Residential to High Density Residential

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is proposing to amend the future land use designation from Low-Medium Density Residential to High Density Residential to allow construction of three (3) dwelling units in the building's basement which would be in addition to the existing six (6) units. The resulting nine (9) dwelling units on 0.342-acre of land represents a net density of 27 dwelling units per acre.

Approval of this Land Use Plan amendment request would allow any future site plan for the subject property with nine (9) dwelling units to be found in conformance with PlanDSM: Creating Our Tomorrow comprehensive plan.

2. **Size of Site:** 14,880 square feet (0.342 acre).
3. **Existing Zoning (site):** "NX2" Neighborhood Mix District.
4. **Existing Land Use (site):** The subject property contains a multiple-household residential building with six (6) dwelling units and a paved parking lot.
5. **Adjacent Land Use and Zoning:**
 - North – "NX2" and "N5"; Uses are one-household residential and multiple-household residential.
 - South – "NX2", "N5", & "N5-4"; Uses are one-household residential and multiplehousehold residential.
 - East – "NX2", "N5", & "N5-4"; Uses are one-household residential and multiplehousehold residential.
 - West – "RX1" & "MX1"; Uses are nursing home, senior multiple-household residential, and multiple-household residential.
6. **General Neighborhood/Area Land Uses:** The site is located along the west side of Oakland Avenue to the south of the intersection with Franklin Avenue. The area consists of a mix of one-household residential and multiple-household residential uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the River Bend Neighborhood Association. All neighborhood associations were notified of the public hearing by emailing of the Preliminary Agenda on December 29, 2023, and of the Final Agenda on January 12, 2024.

All 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 River Bend Neighborhood Association mailings were sent to Kathy Hellstern.

8. Relevant Zoning History: None.

9. PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation: Low-Medium Density Residential.

10. Applicable Regulations: Taking into consideration the criteria set forth in Chapter 18B of the Iowa Code, the Commission reviews all proposals to amend the future land use map within the City of Des Moines' Comprehensive Land Use Plan. The recommendation of the Commission will be forwarded to the City Council.

In accordance with City Code Section 135-9.1.1, any future Site Plan for the property must be in accordance with the City's Comprehensive Land Use Plan, including conformance with the density of use allowed per the City's future land use map.

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 "Low-Medium Density Residential" to "High Density Residential." Plan DSM describes these designations as follows:

Low-Medium Density Residential: Areas developed with mix of single family, two-family and multi-family residential up to 12 dwelling units per net acre.

High Density Residential: Areas developed with primarily higher intensity multi-family housing with a minimum density over 17 dwelling units per net acre.

The subject property is currently zoned "NX2" Neighborhood Mix District. The Zoning Ordinance describes this district as "intended for a mix of single-household houses with appropriately scaled and detailed multiple-household building types in the same neighborhood."

In 2016, the City of Des Moines adopted a new Land Use Map which designated the surrounding area, including the subject property, as Low-Medium Density Residential. Staff notes that the subject's property is legal non-conforming as the pre-existing six (6) units on 0.342 acre of land represent a current net density of 18 dwelling units per acre, which already exceeds the density allowed by the Low-Medium Density Residential designation.

The subject property is located midblock along Oakland Avenue in an area that consists of a mix of single-household residential and multiple-household residential uses. The dwellings were either purpose-built multiple-household residential uses from the 1950s to the 1980s or conversions of Victorian era houses. These building styles typically did not include the use of basement levels for individual dwelling units. The basement levels of the buildings in the surrounding area would have typically been used as service and storage areas.

For these reasons, staff believes that the request to increase the allowed density would not be appropriate and would negatively impact the surrounding area.

- 2. Planning and Design Ordinance:** Any future redevelopment must comply with all applicable site plan and design regulations of the Planning and Design Ordinance (City Code Chapter 135). As such, the applicant would be required to prepare a Site Plan and building elevations for review before the property can be occupied by the proposed use.

SUMMARY OF DISCUSSION

Kathryn Drahos presented staff report and recommendation.

Carolyn Jenison inquired if the building was currently occupied.

Kathryn Drahos stated that the building was vacant and had been monitored for a number of years due to a fire. Some work has started, and the applicant has gone to the Historic Preservation Commission for consideration on work.

Andrew Lorentzen asked if the Historical Preservation Commission was consulted on adding the three units.

Jason Van Essen stated that HPC does not oversee interior work or how a property is used.

Chris Draper asked if it was common for basements to not have been used for living spaces.

Kathryn Drahos stated basements were generally used for storage, laundry and service space rather than household occupation.

Jason Van Essen clarified that the staff report noted that basements were not typically used as context in defining the character of the area. The primary basis for the staff recommendation is that the proposal does not conform to the low-medium density residential designation, and it is not located or sized appropriately for additional density.

CHAIRPERSON OPENED THE PUBLIC HEARING

Robert Rypma with Hildreth Construction stated that he was brought on as general contractor for the property. He stated that construction costs had been driven up by adding historical elements. Adding the additional three units in the basement area would make the numbers work financially.

Clinton Akerberg representing Mike Clayton as client and friend, stated that this property has been marred with issues including a contractor that took advantage of Mike as well as his architect passing away. Construction on the additional units had started as they thought they had permission. In summary, many problems making the situation financially viable with only six units. If not allowed to do nine units, the property will likely be demolished by the City of Des Moines and will serve no purpose.

Matt Palen stated they had submitted the egress window designs to the Historic Preservation Committee for the basement windows and they had been approved.

Clinton Akerberg addressed the question about it not being common for basements to be used as living space. He stated it had appropriate ceiling height and could be viable.

Matt Palen added that the nine units would trigger a sprinkler system and they have it in the budget to sprinkle the building.

Clinton Akerberg noted that there are other apartments on the street and in the area. The property has been on the blight list since the fire and restoring it would be good for the city and the neighborhood. They can only consider moving forward if they are allowed to do the nine units.

Andrew Lorentzen asked if the building was eligible and had they applied for historic tax credits.

Clinton Akerberg stated the Neighborhood Inspection Division is not giving them enough time to complete something like that and it would have been something that Mike Clayton should have pursued from the beginning.

Andrew Lorentzen stated that the credit could help offset expenses on the six units if applied for in the future.

Clinton Akerberg stated that the Neighborhood Service Division wants the building demolished and not allowing them the time they need go through the process. If they were allowed some leniency on timing, they could maybe pursue this if they are not allowed to have the nine units.

Andrew Lorentzen stated they do not have to have the tax credits approved or in hand to move forward with the project as long they can show expectations to comply with the standards, it may not take as long as they perceive.

Jason Van Essen noted that the property is considered a noncontributing structure and they would have to go through the documentation process to establish that it was contributing. Not impossible but may be a challenge.

Katie Gillette asked if there were enough parking spots for nine units.

Matt Palen stated there is.

Jason Van Essen stated that the parking lot would have to be increased from what is there currently.

Johnny Alcivar wanted clarification if this project was being pushed by Neighborhood Inspections violations and when the building was last occupied.

Clinton Akerberg stated that it was being driven by violations and it was last occupied he believed in 2019.

Jason Van Essen stated that the property has been listed as a Public Nuisance and has already been cleared through the courts for demolition. The applicant was given a last reprieve to make repairs.

Clinton Akerberg state the project has been hampered by COVID, the passing of the architect that was first working on the project and a contractor that was in over his head. Mike Clayton simply had a bad team around him and now they are trying to work through this to get a good outcome.

Chris Draper asked them to define viable as they continue to use this term.

Clinton Akerberg expressed that Mike Clayton wanted to see a reasonable return on his investment which will be nearly one million dollars. Exponentially, it won't be that much more to create nine units to better establish lasting profits. Viability means rate of return and with six units, he will never see the return in his lifetime. If he cannot establish the nine units, he will likely let the city take it for demolition.

Jason Van Essen asked if the property had been insured.

Clinton Akerberg stated that the building had not been insured and Mike Clayton has always just self-insured. He does have the financial means to complete the project.

OPPOSITION

Kathy Hellstern with the River Bend Neighborhood Association expressed opposition to the request. Current code for low-medium density is correct for this property. Decreasing density has served their neighborhood well. Increasing density by cramming more people in small spaces only serves the financial gains of the ownership and not the community. Asked that the board not allow this project to continue and maintain the current density designation.

David Hellstern, board member of Des Moines Historical Society and Home Inc. expressed opposition to the request. Adding three more units to this property in the basement after a fire in 2018 does not seem like a good idea. He mapped out in two blocks, on same side of the street, there are 44 units. Noted that the current ownership has sat for six years and did little to nothing to repair the property and only now with threat of tear down, do they come with a plan, and it relies on increasing the density.

Chris Draper replied to the points made by David Hellstrom that having nine units in this area would be typical for what is currently there. Also, increasing the unit count to nine would trigger a sprinkler system that would make the building safer.

David Hellstrom responded stating that this building is much smaller than the other buildings nearby with more units. This building was only built for six units and cramming in three more units is not in the best interest of the area. He has not seen the plans for egress to get people out of the building should there be a fire.

Andrew Lorentzen said there was no direct knowledge of if a sprinkler system would be required, therefore, this should not be a topic of debate.

REBUTTAL

Clinton Akerberg stated he realizes this is not an ideal situation, but they are trying to revitalize the area and improve the building. He could sell the building but has concerns that anyone else could make it financially viable. Mike Clayton has already unfortunately put \$225k into the building that he maybe shouldn't have. It's been a series of unfortunate events that have brought them here. They now just want to see the project done right, tastefully with historic context and improving tax revenue for the city. If they can't continue the project, it will likely be torn down, which will not be good for anyone.

No one requested to speak.

CHAIRPERSON CLOSED THE PUBLIC HEARING

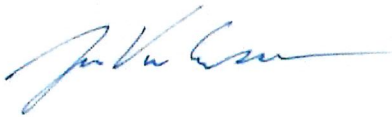
COMMISSION ACTION:

Carolyn Jenison made a motion for approval on the following:

Denial of the request to amend PlanDSM: Creating Our Tomorrow Comprehensive Plan to revise the future land use designation from Low-Medium Density Residential to High Density Residential

THE VOTE: 11-1 (Chris Drapper voted in opposition)

Respectfully submitted,



Jason Van Essen, AICP
Planning & Urban Design Administrator

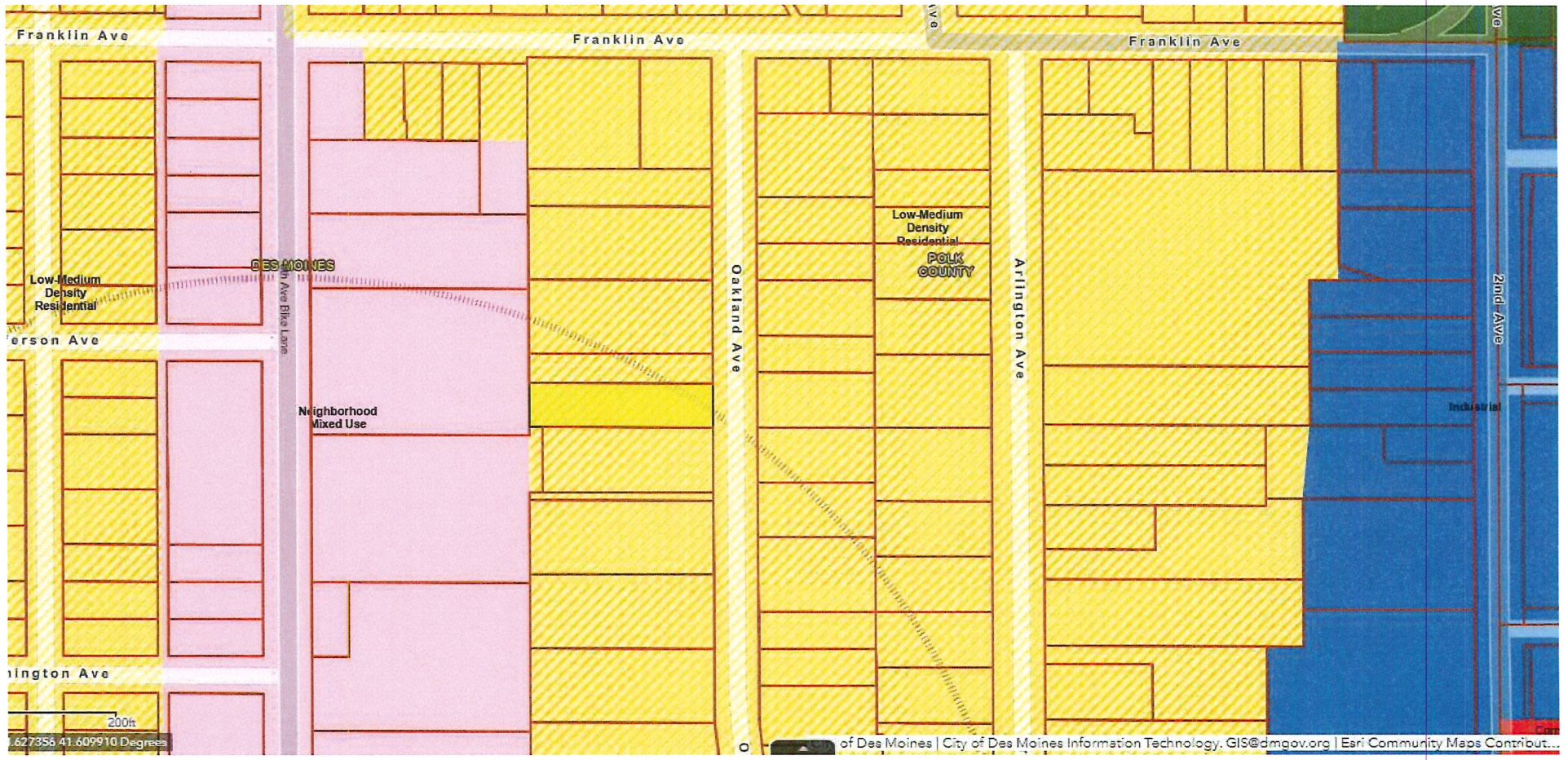
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Updated on: 12/22/2023

1 inch = 81 feet

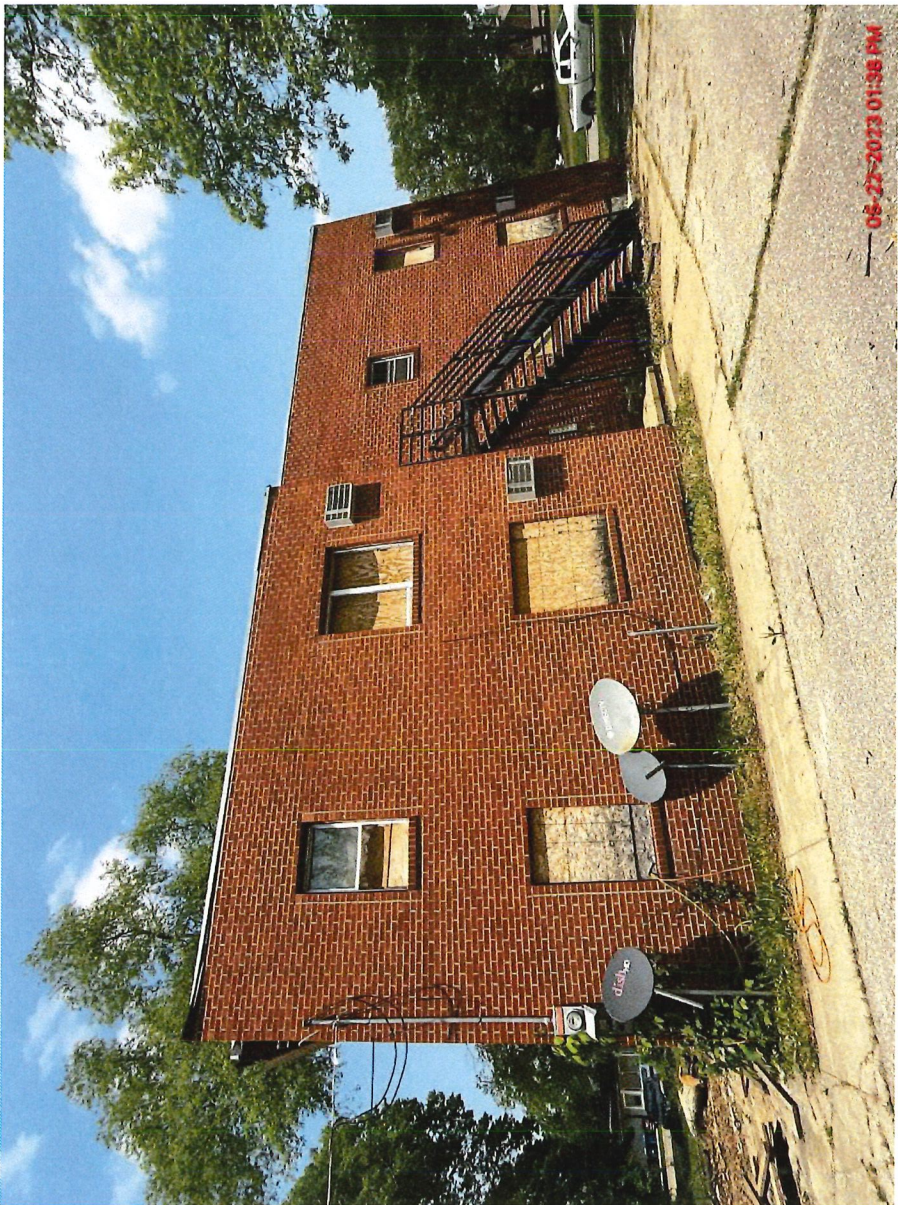


Land Use Map

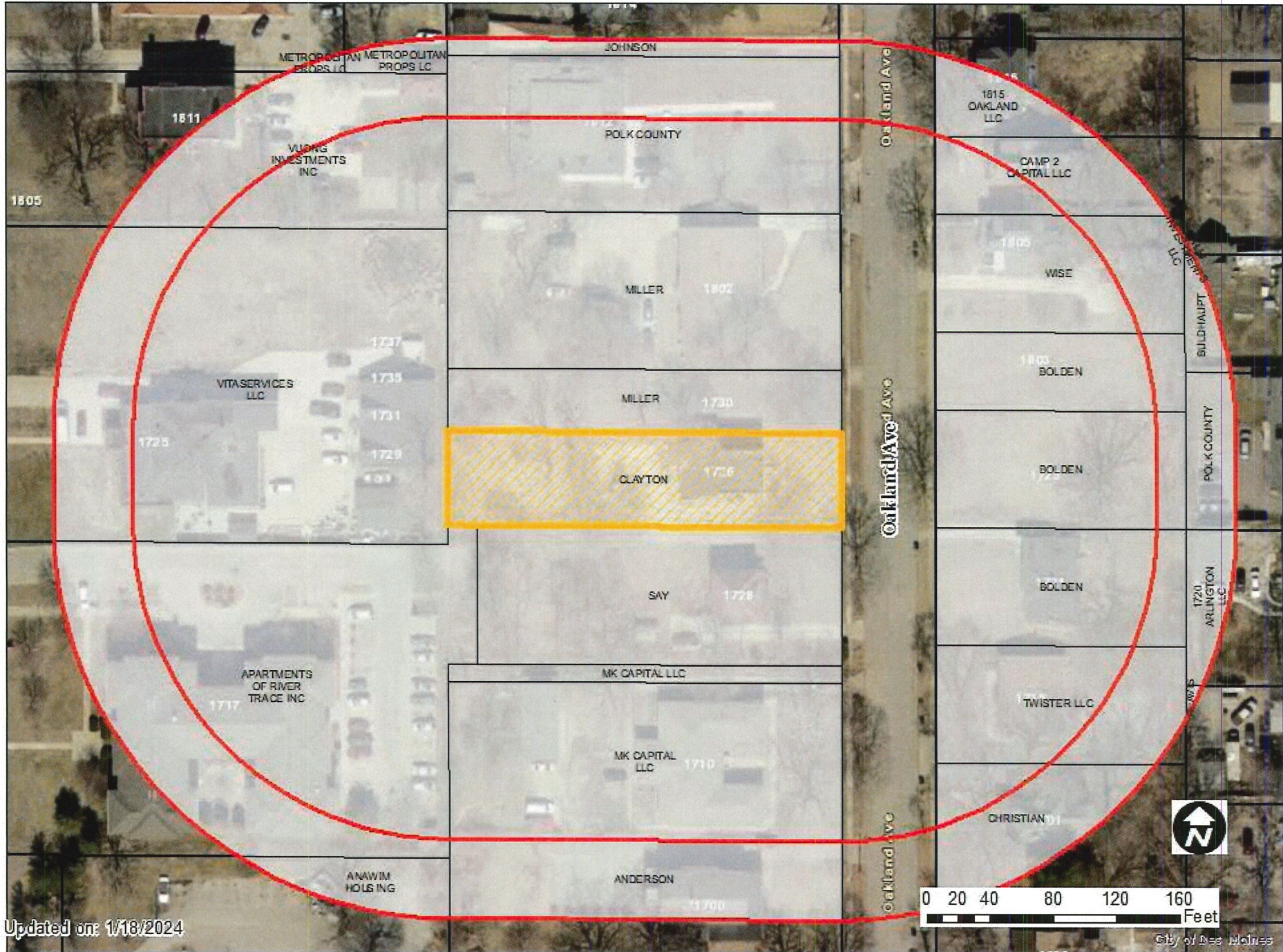




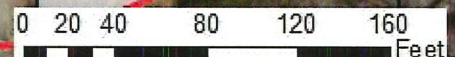




This property isn't financially viable with only 6 units. We are currently approved for 6 units, however It is cost prohibitive to start and complete the 6, then start the process again for adding 3 in the basement. We respectfully request approval with our new contractor Hildreth to move toward increased density and complete all 9 units at once. Without this the property won't make enough money to justify the 6 units. Thank you for your consideration.

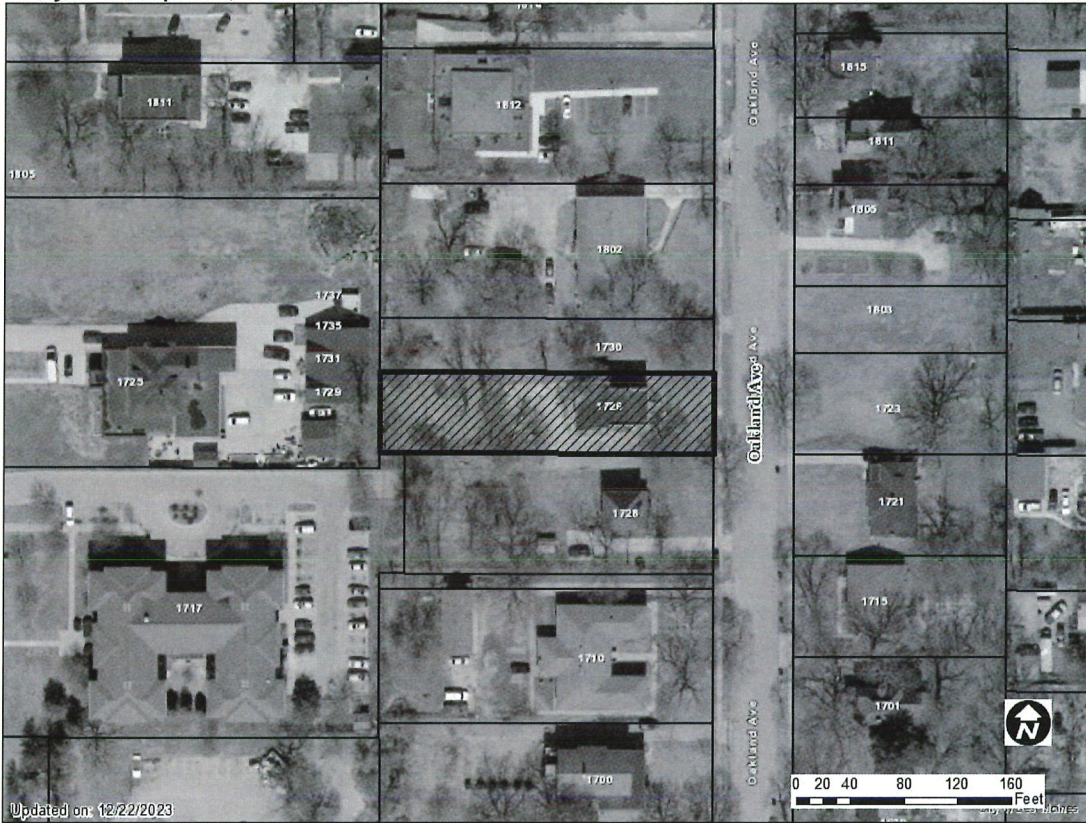


Updated on: 1/18/2024



City of Des Moines

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