

P&Z PARTICIPANTS: Leah Rudolphi, Chris Draper, Abby Chungath, Johnny Alcivar, Katie Gillette, Todd Garner, Francis Boggus, Carol Maher, Justyn Lewis (by phone), Will Page, and Carolyn Jenison

P&Z ABSENT: Emily Webb, Andrew Lorentzen and Kayla Berkson

STAFF PARTICIPANTS: Bert Drost, Nick Tarpey, Kyle Larson, Sreyoshi Chakraborty, Tyler Hall, and Chas Cahill.

Carolyn Jenison made a motion to approve the April 20, 2023, Plan and Zoning Commission meeting minutes. Motion carried 9-0 (Johnny Alcivar and Katie Gillette abstained).

Abby Chungath asked if any members of the public or Commission wished to speak on consent agenda items #1 or #2. No one was present or requested to speak.

Carolyn Jenison made a motion to approve consent agenda items #1 and #2. Motion carried 11-0

CONSENT AGENDA PUBLIC HEARING ITEMS

Item 1

Request from Charles E Koenigs and Shirley D Koenigs (owners), for the following regarding property located at 7905 Southeast 14th Street:

- A) Determination as to whether the requested rezoning is in conformance with the PlanDSM Creating Our Tomorrow Comprehensive Plan.
- B) Amend the PlanDSM Creating Our Tomorrow Comprehensive Plan to revise the future land use classification of a portion of the property generally in the northwest corner of the lot from Parks and Open Space with Development Control Zone to Low Density Residential. (COMP-2023-000015)
- C) Rezone a portion of the property generally in the northwest corner of the lot from "F" Flood District to "N1a" Residential District, to allow the construction of a new accessory building. (ZONG-2023-000020)

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is proposing to rezone a portion of the property currently located within the "F" Flood District to the existing "N1a" Neighborhood District zoning of the rest of the property. If approved, the request would allow the construction of a new accessory structure intended for private use. The applicant

has provided sufficient evidence documenting removal of the subject portion of the property by FEMA from the Special Flood Hazard Area

Any future construction or redevelopment of the subject property must comply with all applicable Building Codes and site plan and design regulations contained in the Planning and Design Ordinance (Chapter 135 of City Code).

2. **Size of Site:** 129,809 square feet (2.98 acres).
3. **Existing Zoning (site):** “N1a” Neighborhood District and “F” Flood District.
4. **Existing Land Use (site):** The subject property contains a one-story one-household dwelling built circa 1980 according to the Polk County Assessor’s webpage.
5. **Adjacent Land Use and Zoning:**
 - North** – “N1a” & “F”; Uses are low-density residential or undeveloped.
 - South** – “N1a” & “F”; Uses are low-density residential or undeveloped.
 - East** – “N1a” & “F”; Uses are low-density residential or undeveloped.
 - West** – “NX2” & “NM”; Uses are mixed-density residential and mobile home park.
6. **General Neighborhood/Area Land Uses:** The subject property is located on the east side of Southeast 14th Street between East County Line Road and Southridge Boulevard. The surrounding area consists predominantly of low-density residential, mixed-density residential, and mobile home park uses. A Regional Node is centered on the intersection of Southeast 14th Street and East Army Post Road.
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 public hearing by emailing of the Preliminary Agenda on April 14, 2023 and of the Final Agenda on April 28, 2023. Additionally, separate notifications of the hearing for this specific item were mailed on April 14, 2023 (20 days prior to the public hearing) and April 24, 2023 (10 days prior to the public hearing) to the Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

The applicant can provide a summary of the neighborhood meeting at the public hearing.
8. **Relevant Zoning History:** None.
9. **PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Low Density Residential and Parks and Open Space with Development Control Zone.

- 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 “Parks and Open Space” with “Development Control Zone” to “Low Density Residential”. 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.

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 portion of the parcel is currently zoned “F” District. The Zoning Ordinance describes this district as, “intended for flood plain and floodways pursuant to chapter 50 of this code.”

The applicant is proposing to rezone the subject portion of the parcel to the “N1a” District. The Zoning Ordinance describes this district as, “intended for large lots for mostly single-household residential houses with a more flexible building form pursuant to House A building type in section 135-2.13 of this code.”

Staff believes that the proposed rezoning in this request is appropriate as the applicant has provided sufficient evidence documenting removal of the subject portion of the property by FEMA from the Special Flood Hazard Area.

- 2. Planning and Design Ordinance Requirements:** Any development must comply with all applicable site plan and design regulations of the City’s Planning and Design Ordinance. Should the rezoning be approved, the applicant would be required to prepare a Site Plan which would likely be reviewed against the “Accessory Structure”.

III. STAFF RECOMMENDATION

Part A) Staff recommends that the requested “N1a” District be found not in conformance with the existing PlanDSM future land use designation of Parks and Open Space with Development Control Zone.

Part B) Staff recommends that PlanDSM: Creating Our Tomorrow Comprehensive Plan be amended to revise the future land use designation from Parks and Open Space with Development Control Zone to Low Density Residential.

Part C) Staff recommends approval of the request to rezone the subject portion of the property from “F” District to “N1a” Neighborhood District.

SUMMARY OF DISCUSSION

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

COMMISSION ACTION:

Carolyn Jenison made a motion for:

Part A) The requested “N1a” District be found not in conformance with the existing PlanDSM future land use designation of Parks and Open Space with Development Control Zone.

Part B) PlanDSM: Creating Our Tomorrow Comprehensive Plan be amended to revise the future land use designation from Parks and Open Space with Development Control Zone to Low Density Residential.

Part C) Approval of the request to rezone the subject portion of the property from “F” District to “N1a” Neighborhood District.

THE VOTE: 11-0

Item 2

Request from Lars Vinz (owner) for review and approval of a Public Hearing Site Plan for a Type 2 Design Alternative in accordance with City Code Sections 135-9.2.4(B) and 135-9.3.1(B), for property located in the vicinity of 1157 12th Street, to allow construction of a 624 square foot, 23-foot tall detached garage within the front yard of the existing single-household dwelling in an “N3a” Neighborhood District where the front yard location is not allowed per Section 135-2.22.1(D)(1) and the maximum allowed height is 17 feet per Section 135-2.22.1(D)(5). (BLDR-2023-000389)

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is proposing to construct a 24-foot by 26-foot detached garage in the front yard of a corner parcel. The house is set back at the rear of the parcel, which prevents placement of the garage behind the house. The garage plan includes a loft storage area that would cause the overall height of the garage to be 23 feet tall.
2. **Size of Site:** 47 feet by 130 feet (6,110 square feet).
3. **Existing Zoning (site):** “N3a” Neighborhood District.
4. **Existing Land Use (site):** The property is currently a one-household dwelling.
5. **Adjacent Land Use and Zoning:**
 - North** – “RX2”; Uses is a commercial building.
 - South** – “N3a”; Uses are one-household dwellings.
 - East** – “N3a”; Uses are one-household dwellings.
 - West** – “N3a”; Uses are one-household dwellings.
6. **General Neighborhood/Area Land Uses:** The subject property is located in a residential area that consists primarily of one-household dwellings.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the Cheatom Park Neighborhood. The neighborhood association was notified of the public hearing by emailing of the Preliminary Agenda on April 14, 2023 and by emailing of the Final Agenda on April 28, 2023. Additionally, separate notifications of the hearing for this specific item were mailed on April 24, 2023 (10 days prior to the public hearing) to the Cheatom Park 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 designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Cheatom Park Neighborhood mailings were sent to Debra Carr, 1105 14th Place, Des Moines, IA 50314.
8. **Relevant Zoning History:** None.
9. **PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Low Density Residential.
10. **Applicable Regulations:** Section 135-2.16.3.A.2 states that for House Type D the required accessory building shall be located in the side or rear yard.

Pursuant to Section 135-9.1.1.B of the Planning and Design Ordinance, the site plan review requirements of Chapter 135 are designed to ensure the orderly and harmonious development of property in a manner that shall:

- Promote the most beneficial relation between present and proposed future uses of land and the present and proposed future circulation of traffic throughout the city;
- Permit present development of property commensurate with fair and orderly planning for future development of other properties in the various areas of the city with respect to the availability and capacity, present and foreseeable, of public facilities and services. The factors to be considered in arriving at a conclusion concerning proposed present development of property shall include the following:
 - The maximum population density for the proposed development, the proposed density of use, and consideration of the effect the proposal will have on the capacity of existing water and sanitary sewer lines to the end that existing systems will not become overloaded or capacity so substantially decreased that site use will inhibit or preclude planned future development;
 - Zoning restrictions at the time of the proposal;
- The city's comprehensive plan;
- The city's plans for future construction and provision for public facilities and services; and
- The facilities and services already available to the area which will be affected by the proposed site use;
- Encourage adequate provision for surface and subsurface drainage, in order to ensure that future development and other properties in various areas of the city will not be adversely affected;
- Provide suitable screening of parking, truck loading, refuse and recycling disposal, and outdoor storage areas from adjacent residential districts;
- Encourage the preservation of canopied areas and mature trees and require mitigation for the removal of trees; and
- Consider the smart planning principles set forth in Iowa Code Chapter 18B.

Based on Chapter Section 135-9.2.4 and 135-9.3.1.B of the Planning and Design Ordinance, Type 2 Design Alternatives are to be considered by the Plan and Zoning Commission after a public hearing whereby the following criteria are considered:

- The design alternative provisions of Section 135-9.2.4 are intended to authorize the granting of relief from strict compliance with the regulations of this chapter as part of the site plan or alternate design documentation review process when specific site features or characteristics of the subject property, including the presence of existing buildings, creates conditions that make strict compliance with applicable regulations impractical or undesirable. The design alternative provisions are also intended to recognize that alternative design solutions may result in equal or better implementation of the regulation's intended purpose and greater consistency with the comprehensive plan.
- Consideration of requested design alternatives through the administrative and public hearing review processes will be evaluated on the merits of the applicable request and independently of prior requests from the same applicant, and may include the following criteria:
 - An evaluation of the character of the surrounding neighborhood, such as:
 - Whether at least 50% of the developed lots within 250 feet of the subject property are designed and constructed consistently with the requested design alternative(s); and
 - Whether the directly adjoining developed lots are designed and constructed consistently with the requested design alternative(s);
 - For purposes of this subsection, if the lots that exist within 250 feet of the subject property are undeveloped, then the neighborhood character determination will be based upon the assumption that such lots, as if developed, comply with the applicable requirements of this chapter for which a design alternative(s) has been requested;
 - The totality of the number and extent of design alternatives requested compared to the requirements of this chapter for each site plan or alternate design documentation reviewed;
 - Whether the requested design alternative(s) is consistent with all relevant purpose and intent statements of this design ordinance and with the general purpose and intent of the comprehensive plan;
 - Whether the requested design alternative(s) will have a substantial or undue adverse effect upon adjacent: property, the character of the surrounding area or the public health, safety and general welfare;
 - Whether any adverse impacts resulting from the requested design alternative(s) will be mitigated to the maximum extent feasible; and
 - Other factors determined relevant by the community development director, plan and zoning commission, or city council as applicable.

II. ADDITIONAL APPLICABLE INFORMATION

- 1. Garage Location and Height:** Due to the location of the principal dwelling at the rear of the parcel, the applicant does not have the ability to construct a detached garage in the side or rear yards as required by City Code. The only option is to construct the garage in the front yard.

The applicant has proposed to construct a garage plan that includes a loft storage area that increases the overall height of the garage to 23 feet. The loft would not be a finished space for an accessory housing unit, as it is strictly intended to be used as additional storage.

The proposed garage would have two (2) single overhead garage doors facing Enos Avenue. The design also shows windows in the south (street-facing) gable.

- 2. Staff Analysis:** Staff believes that the requested design alternatives would not have an adverse impact on the adjacent properties, the character of the surrounding area or the public health, safety and general welfare so long as the garage is built in substantial conformance with the submitted design. It would meet the general intent of the code. Staff is supportive of the requested waiver to place the garage in the front yard.

III. STAFF RECOMMENDATION

Staff recommends approval of the Public Hearing Site Plan and of the requested Type 2 Design Alternatives, subject to the condition that the garage shall be built in substantial conformance with the submitted design.

SUMMARY OF DISCUSSION

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

COMMISSION ACTION:

Carolyn Jension made a motion for approval of the Public Hearing Site Plan and of the requested Type 2 Design Alternatives, subject to the condition that the garage shall be built in substantial conformance with the submitted design.

THE VOTE: 11-0

NON-CONSENT AGENDA PUBLIC HEARING ITEMS

Item 3

Request from R.M. Madden Construction (owner), represented by Michael Madden (officer), for review of a Public Hearing Site Plan and for a Type 2 Design Alternative in accordance with City Code Sections 135-9.2.4.B and 135-9.3.1.B, for property located at 2437 East Douglas Avenue, to allow for construction of a House A building type home in an “N1b” Neighborhood District with an attached garage overhead door that comprises 42.6% of the front façade width of the house, where the maximum allowable width is 30% of the front façade, per City Code Section 135-2.13.3.A.10. (BLDR-2023-000276)

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is proposing to construct a 1,313-square foot single-household dwelling with a 417-square foot attached garage that would have a garage entrance on the front façade of the dwelling. The proposed garage door consists of 16-foot wide, two-car overhead door. The garage door would encompass 42.6% of the front façade width, where only 30% of the front façade width is allowed. Design alternative review criteria can be found in Section I, subparagraph 10 of this report. Staff analysis of the proposal can be found in Section II of the report.
2. **Size of Site:** 59.5 feet by 207.5 feet (12,357 square feet or 0.28 acres).
3. **Existing Zoning (site):** “N1b” Neighborhood District.
4. **Existing Land Use (site):** Undeveloped lot.
5. **Adjacent Land Use and Zoning:**
 - North** – “N1b”; Use is a one-household dwelling.
 - South** – “MX3”; Use is commercial mixed use.
 - East** – “N1b”; Use is a one-household dwelling.
 - West** – “N1b”; Use is a one-household dwelling.
6. **General Neighborhood/Area Land Uses:** The subject property is in a residential area that consists primarily of one- and two-household dwellings.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the Douglas Acres Neighborhood. The neighborhood association was notified of the April 20, 2023 public hearing by emailing of the Preliminary Agenda on April 14, 2023 and by emailing of the Final Agenda on April 28, 2023, and notified of the May 4, 2023 public hearing by emailing of the Final Agenda on April 28, 2023. Additionally,

separate notifications of the hearing for this specific item were mailed on April 24, 2023 (10 days prior to the public hearing) to the Douglas Acres 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. The Douglas Acres Neighborhood Association notification was sent to Joe Youngwirth at 3824 Lay Street, Des Moines, IA 50317.

8. Relevant Zoning History: N/A.

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

10. Applicable Regulations: Pursuant to Section 135-9.1.1.B of the Planning and Design Ordinance, the site plan review requirements of Chapter 135 are designed to ensure the orderly and harmonious development of property in a manner that shall:

- Promote the most beneficial relation between present and proposed future uses of land and the present and proposed future circulation of traffic throughout the city;
- Permit present development of property commensurate with fair and orderly planning for future development of other properties in the various areas of the city with respect to the availability and capacity, present and foreseeable, of public facilities and services. The factors to be considered in arriving at a conclusion concerning proposed present development of property shall include the following:
 - The maximum population density for the proposed development, the proposed density of use, and consideration of the effect the proposal will have on the capacity of existing water and sanitary sewer lines to the end that existing systems will not become overloaded or capacity so substantially decreased that site use will inhibit or preclude planned future development;
 - Zoning restrictions at the time of the proposal;
- The city's comprehensive plan;
- The city's plans for future construction and provision for public facilities and services; and

- The facilities and services already available to the area which will be affected by the proposed site use;
- Encourage adequate provision for surface and subsurface drainage, in order to ensure that future development and other properties in various areas of the city will not be adversely affected;
- Provide suitable screening of parking, truck loading, refuse and recycling disposal, and outdoor storage areas from adjacent residential districts;
- Encourage the preservation of canopied areas and mature trees and require mitigation for the removal of trees; and
- Consider the smart planning principles set forth in Iowa Code Chapter 18B.

Based on Chapter Section 135-9.2.4 and 135-9.3.1.B of the Planning and Design Ordinance, Type 2 Design Alternatives are to be considered by the Plan and Zoning Commission after a public hearing whereby the following criteria are considered:

- The design alternative provisions of Section 135-9.2.4 are intended to authorize the granting of relief from strict compliance with the regulations of this chapter as part of the site plan or alternate design documentation review process when specific site features or characteristics of the subject property, including the presence of existing buildings, creates conditions that make strict compliance with applicable regulations impractical or undesirable. The design alternative provisions are also intended to recognize that alternative design solutions may result in equal or better implementation of the regulation's intended purpose and greater consistency with the comprehensive plan.
- Consideration of requested design alternatives through the administrative and public hearing review processes will be evaluated on the merits of the applicable request and independently of prior requests from the same applicant, and may include the following criteria:
 - An evaluation of the character of the surrounding neighborhood, such as:
 - Whether at least 50% of the developed lots within 250 feet of the subject property are designed and constructed consistently with the requested design alternative(s); and
 - Whether the directly adjoining developed lots are designed and constructed consistently with the requested design alternative(s);
- For purposes of this subsection, if the lots that exist within 250 feet of the subject property are undeveloped, then the neighborhood character determination will be based upon the assumption that such lots, as if

developed, comply with the applicable requirements of this chapter for which a design alternative(s) has been requested;

- The totality of the number and extent of design alternatives requested compared to the requirements of this chapter for each site plan or alternate design documentation reviewed;
- Whether the requested design alternative(s) is consistent with all relevant purpose and intent statements of this design ordinance and with the general purpose and intent of the comprehensive plan;
- Whether the requested design alternative(s) will have a substantial or undue adverse effect upon adjacent: property, the character of the surrounding area or the public health, safety and general welfare;
- Whether any adverse impacts resulting from the requested design alternative(s) will be mitigated to the maximum extent feasible; and
- Other factors determined relevant by the community development director, plan and zoning commission, or city council as applicable.

II. ADDITIONAL APPLICABLE INFORMATION

Garage Width: The applicant is proposing to construct a 1,313-square foot single-household dwelling with a 417-square foot attached garage that would have a garage entrance on the front façade of the dwelling. The proposed garage door consists of 16-foot wide, two-car overhead door. The garage door would encompass 42.6% of the front façade width, where on 30% of the front façade width is allowed.

Staff supports this waiver request given the wide variety of architectural character in the surrounding area. In addition, there are examples of properties in the vicinity where the bulk of their vehicle parking takes place within the front yard. This includes a house on the north side of E. Douglas Avenue, across the street from the subject property, that has a front-loaded garage with a double-wide overhead door located at 2414 E. Douglas Avenue. The submitted drawing from the applicant indicates that the overhead garage door would have windows.

III. STAFF RECOMMENDATION

Staff recommends approval of the Public Hearing Site Plan and of the requested Type 2 Design Alternative, subject to the condition that any overhead garage door shall be in substantial conformance with the submitted design.

SUMMARY OF DISCUSSION

Kyle Larson presented staff report and recommendation and stated the hearing had been continued from the April 20, 2023 Plan & Zoning Commission meeting so that the applicant could be present at the hearing.

Will Page asked for the average set back of other houses on the street.

Kyle Larson stated for infill development the city code requires staff to review adjoining lots to establish an average set back. After reviewing the 2 houses to the east and west of the lot, the average setback came out to 30 feet.

Will Page asked City staff if they believe the houses would be less visibly intrusive if set back greater than 30 feet.

Kyle Larson stated if the houses had an increased setback further from the road, they would be less visible.

Chris Draper asked if the majority of houses in the area have detached garages.

Kyle Larson stated that the majority of houses in the area have detached garages in the rear yard areas.

Michael Madden, R M Madden Construction, 5909 Grand Avenue, stated a 16-foot-wide overhead door comes to 42.6% of the front façade width. The maximum width of a garage door under a Type 1 design alternative would be 14.5-foot. Thus, their request is only 1.5-feet more than what a type 1 design alternative would allow. Also, there is a significant grade change from east to west and having the front door close to the garage door helps keep the grade from becoming too steep between the houses. These are also larger, more desirable lots so they proposed a plan that is larger than most houses they develop on in-fill lots. The proposed house plan would be listed around \$320,000 and the smaller house plan without a garage would be listed around \$250,000.

Chris Draper asked if their alternate house plan would include a detached garage.

Michael Madden stated they would provide a shed in the backyard and that the future homeowner could add a garage if they chose.

Will Page asked if they would be willing to provide a larger front yard setback, so the house doesn't disrupt the existing horizontal uniformity along the street.

Michael Madden stated the new development would fall in line with the existing homes.

Carol Maher asked for square footage of the home with a garage and without.

Michael Madden stated the proposed house plan would be 1,313 square feet and the alternate house plan would be 1,091 square feet.

Carol Maher asked how they arrived at these price points.

Michael Madden stated those are based off their other developments of this size and quality.

Carol Maher stated \$70,000 seems like a significant change in price for the addition of a garage.

Michael Madden stated the additional 200 square feet is where most of the additional cost comes from. In the modern day, people desire an attached garage with a bigger back yard.

Bert Drost noted the house type A allowed in this zoning district does allow for a garage on the front façade of the home so long as the garage door does not exceed 30% of the house's width. If the applicant would reduce the garage to a 1-car garage, they would probably meet the 30% requirement and this item would not be in front of the Commission.

CHAIRPERSON OPENED THE PUBLIC HEARING

No one was present or requested to speak.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Chris Draper stated he will be voting in opposition of approval because it's not clear the market will support the proposed house; the neighbors were aggressively opposed to it at the public hearing on April 20, 2023, and the proposed house is out of character with the surrounding area.

COMMISSION ACTION:

Francis Boggus made a motion for approval of the Public Hearing Site Plan and of the requested Type 2 Design Alternative, subject to the condition that any overhead garage door shall be in substantial conformance with the submitted design.

THE VOTE: 7-4 (Chris Draper, Johnny Alcivar, Abby Chungath and Carol Maher voted in opposition).

Item 4

Request from R.M. Madden Construction (owner), represented by Michael Madden (officer), for review of a Public Hearing Site Plan and for a Type 2 Design Alternative in accordance with City Code Sections 135-9.2.4.B and 135-9.3.1.B, for property located at 2445 East Douglas Avenue, to allow for construction of a House A building type home in an "N1b" Neighborhood District with an attached garage overhead door that comprises 42.6% of the front façade width of the house, where the maximum allowable width is 30% of the front façade, per City Code Section 135-2.13.3.A.10.

(BLDR-2023-000277)

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is proposing to construct a 1,313-square foot single-household dwelling with a 417-square foot attached garage that would have a garage entrance on the front façade of the dwelling. The proposed garage door consists of 16-foot wide, two-car overhead door. The garage door would encompass 42.6% of the front façade width, where only 30% of the front façade width is allowed. Design alternative review criteria can be found in Section I, subparagraph 10 of this report. Staff analysis of the proposal can be found in Section II of the report.
2. **Size of Site:** 59.5 feet by 207.5 feet (12,393 square feet or 0.28 acres).
3. **Existing Zoning (site):** “N1b” Neighborhood District.
4. **Existing Land Use (site):** Undeveloped lot.
5. **Adjacent Land Use and Zoning:**
 - North** – “N1b”; Use is a one-household dwelling.
 - South** – “MX3”; Use is commercial mixed use.
 - East** – “N1b”; Use is a one-household dwelling.
 - West** – “N1b”; Use is a one-household dwelling.
6. **General Neighborhood/Area Land Uses:** The subject property is in a residential area that consists primarily of one- and two-household dwellings.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the Douglas Acres Neighborhood. The neighborhood association was notified of the April 20, 2023 public hearing by emailing of the Preliminary Agenda on April 14, 2023 and by emailing of the Final Agenda on April 28, 2023, and notified of the May 4, 2023 public hearing by emailing of the Final Agenda on April 28, 2023. Additionally, separate notifications of the hearing for this specific item were mailed on April 24, 2023 (10 days prior to the public hearing) to the Douglas Acres 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. The Douglas Acres Neighborhood Association notification was sent to Joe Youngwirth at 3824 Lay Street, Des Moines, IA 50317.
8. **Relevant Zoning History:** N/A.

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

10. Applicable Regulations: Pursuant to Section 135-9.1.1.B of the Planning and Design Ordinance, the site plan review requirements of Chapter 135 are designed to ensure the orderly and harmonious development of property in a manner that shall:

- Promote the most beneficial relation between present and proposed future uses of land and the present and proposed future circulation of traffic throughout the city;
- Permit present development of property commensurate with fair and orderly planning for future development of other properties in the various areas of the city with respect to the availability and capacity, present and foreseeable, of public facilities and services. The factors to be considered in arriving at a conclusion concerning proposed present development of property shall include the following:
 - The maximum population density for the proposed development, the proposed density of use, and consideration of the effect the proposal will have on the capacity of existing water and sanitary sewer lines to the end that existing systems will not become overloaded or capacity so substantially decreased that site use will inhibit or preclude planned future development;
 - Zoning restrictions at the time of the proposal;
- The city's comprehensive plan;
- The city's plans for future construction and provision for public facilities and services; and
- The facilities and services already available to the area which will be affected by the proposed site use;
- Encourage adequate provision for surface and subsurface drainage, in order to ensure that future development and other properties in various areas of the city will not be adversely affected;
- Provide suitable screening of parking, truck loading, refuse and recycling disposal, and outdoor storage areas from adjacent residential districts;
- Encourage the preservation of canopied areas and mature trees and require mitigation for the removal of trees; and

- Consider the smart planning principles set forth in Iowa Code Chapter 18B.

Based on Chapter Section 135-9.2.4 and 135-9.3.1.B of the Planning and Design Ordinance, Type 2 Design Alternatives are to be considered by the Plan and Zoning Commission after a public hearing whereby the following criteria are considered:

- The design alternative provisions of Section 135-9.2.4 are intended to authorize the granting of relief from strict compliance with the regulations of this chapter as part of the site plan or alternate design documentation review process when specific site features or characteristics of the subject property, including the presence of existing buildings, creates conditions that make strict compliance with applicable regulations impractical or undesirable. The design alternative provisions are also intended to recognize that alternative design solutions may result in equal or better implementation of the regulation's intended purpose and greater consistency with the comprehensive plan.
- Consideration of requested design alternatives through the administrative and public hearing review processes will be evaluated on the merits of the applicable request and independently of prior requests from the same applicant, and may include the following criteria:
 - An evaluation of the character of the surrounding neighborhood, such as:
 - Whether at least 50% of the developed lots within 250 feet of the subject property are designed and constructed consistently with the requested design alternative(s); and
 - Whether the directly adjoining developed lots are designed and constructed consistently with the requested design alternative(s);
 - For purposes of this subsection, if the lots that exist within 250 feet of the subject property are undeveloped, then the neighborhood character determination will be based upon the assumption that such lots, as if developed, comply with the applicable requirements of this chapter for which a design alternative(s) has been requested;
 - The totality of the number and extent of design alternatives requested compared to the requirements of this chapter for each site plan or alternate design documentation reviewed;
 - Whether the requested design alternative(s) is consistent with all relevant purpose and intent statements of this design ordinance and with the general purpose and intent of the comprehensive plan;
 - Whether the requested design alternative(s) will have a substantial or undue adverse effect upon adjacent: property, the character of the

surrounding area or the public health, safety and general welfare;

- Whether any adverse impacts resulting from the requested design alternative(s) will be mitigated to the maximum extent feasible; and
- Other factors determined relevant by the community development director, plan and zoning commission, or city council as applicable.

II. ADDITIONAL APPLICABLE INFORMATION

Garage Width: The applicant is proposing to construct a 1,313-square foot single-household dwelling with a 417-square foot attached garage that would have a garage entrance on the front façade of the dwelling. The proposed garage door consists of 16-foot wide, two-car overhead door. The garage door would encompass 42.6% of the front façade width, where on 30% of the front façade width is allowed.

Staff supports this waiver request given the wide variety of architectural character in the surrounding area. In addition, there are examples of properties in the vicinity where the bulk of their vehicle parking takes place within the front yard. This includes a house on the north side of E. Douglas Avenue, across the street from the subject property, that has a front-loaded garage with a double-wide overhead door located at 2414 E. Douglas Avenue. The submitted drawing from the applicant indicates that the overhead garage door would have windows.

III. STAFF RECOMMENDATION

Staff recommends approval of the Public Hearing Site Plan and of the requested Type 2 Design Alternative, subject to the condition that any overhead garage door shall be in substantial conformance with the submitted design.

SUMMARY OF DISCUSSION

Kyle Larson presented staff report and recommendation.

Michael Madden, R M Madden Construction, 5909 Grand Avenue, stated while this home would sell for \$300,000 - \$320,000, any new house they construct has a minimum sale price of \$250,000.

CHAIRPERSON OPENED THE PUBLIC HEARING

No one was present or requested to speak.

CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION:

Francis Boggus made a motion for approval of the Public Hearing Site Plan and of the requested Type 2 Design Alternative, subject to the condition that any overhead garage door shall be in substantial conformance with the submitted design.

THE VOTE: 7-4 (Chris Draper, Johnny Alcivar, Abby Chungath and Carol Maher voted in opposition).

Item 5

Request from the Cambodian Buddhist Society Inc (owner), represented by Noy Noeuy (officer), for the following regarding two parcels located in the vicinity of 1301 19th Street:

A) Determination as to whether the requested rezoning is in conformance with the PlanDSM Creating Our Tomorrow Comprehensive Plan.

B) Rezone property from “NX1” Neighborhood Mix District to “RX1” Mixed-Use District, to allow the reuse of an existing building as a grocery store.

(ZONG-2023-000021)

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is proposing to change the use of an existing 5,008-square foot building from an assembly, place of worship use to a small grocery store. No alcohol is proposed to be sold. An accessory parking area is proposed to the north of the building. The proposed use falls under the Commercial category and does not conform to what is allowed in the existing “NX1” zoning district. Should the rezoning be approved, any change in use of the property would be subject to conformance with a Site Plan that complies with all applicable design regulations within City Code Chapter 135.
2. **Size of Site:** 31,876 square feet (0.73 acres).
3. **Existing Zoning (site):** “NX1” Neighborhood Mix District.
4. **Existing Land Use (site):** The subject property has been used as an assembly, place of worship use with an accessory parking area.
5. **Adjacent Land Use and Zoning:**

North – “NX1”; Uses are one-household residential.

South – “NX1” and “P2”; Uses are a paved undeveloped lot and Polk County Social Services offices.

East – “N5”; Uses are one-household residential.

West – “P2”; Use is Polk County Health Department offices.

- 6. General Neighborhood/Area Land Uses:** The subject property is located on the northeast intersection of 19th Street, Keosauqua Way and Carpenter Avenue. It is located along a corridor that contains a mix of commercial, public, and residential uses. There are one-household uses to the immediate east of the property.

- 7. Applicable Recognized Neighborhood(s):** The subject property is located in the King Irving Neighborhood Association. All neighborhood associations were notified of the public hearing by emailing the Preliminary Agenda on April 14, 2023 and of the Final Agenda on April 28, 2023.

Additionally, separate notifications of the hearing for this specific item were mailed on April 14, 2023 (20 days prior to the public hearing) and April 24, 2023 (10 days prior to the public hearing) to the Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. 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 King Irving Neighborhood Association notices were sent to Margaret Wright, 1537 12th Street, Des Moines, IA 50314.

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

- 8. Relevant Zoning History:** None.

- 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 area 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 future land use designation for the property is “Neighborhood Mixed Use”. PlanDSM describes this designation 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.

The subject property is currently zoned “NX1” District. The Zoning Ordinance describes “NX1” district as, “intended for a mix of single-and smaller-scaled multiple-household uses and building forms to preserve the scale and character of the existing neighborhood while allowing for new infill housing.”

The applicant is proposing to rezone the subject property to the “RX1” District. The Zoning Ordinance describes “RX1” district as, “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.”

Staff believes that the proposed rezoning to “RX1” District would be consistent with the Neighborhood Mixed Use future land use designation where small scale non-residential uses serve the immediate neighborhood. It is also consistent with the general character and existing uses along the 19th Street corridor and the surrounding area. The proposed small-scale grocery store would be next to residential areas which provides easy access to this business on foot. A future City project proposes a shared use path along 19th Street bringing non-motorized amenity to the area. Additionally, a DART transit route runs along 19th Street with a bus stop adjacent to the subject property.

However, given the close proximity of residential uses immediately to the east, and the lack of available off-street parking in the immediate vicinity, Staff believes that it is reasonably necessary to recommend zoning conditions that ensure the future use of the property remains sensitive to the surrounding neighborhood and does not become a nuisance for surrounding residents.

2. **Planning and Design Ordinance:** Should the rezoning be approved, the applicant would be required to prepare a site plan and building elevations for any proposed additions or modifications.

Any future construction or development of the site including vehicular and pedestrian access and circulation must comply with all applicable site plan and design regulations of the Planning and Design Ordinance (Chapter 135 of City Code).

- 3. King Irving Neighborhood Plan:** One of the goals outlined in the King Irving Neighborhood Plan is to “encourage commercial opportunities” in the neighborhood. Additionally, “improve the physical appearance and functionality of the neighborhood’s streets, sidewalks, and curbs”. The proposed use supports this goal and bringing the subject site to compliance with an approved site plan improves the aesthetics of this highly visible intersection, so long any use on the property complies with the recommended zoning conditions.

III. STAFF RECOMMENDATION

Part A) Staff recommends that the requested rezoning be found in conformance with PlanDSM: Creating Our Tomorrow Comprehensive Plan future land use designation of Neighborhood Mixed Use.

Part B) Staff recommends approval of the request to rezone the property from “NX1” Neighborhood Mix District to Limited “RX1” Mixed-Use District, subject to all titleholders of the property agreeing to the following zoning conditions:

1. Prohibition of any sale of alcoholic liquor, wine, beer, and/or other controlled substance on the premise.
2. Prohibition of any gambling games, arcade games, video games, games of chance, or other comparable gaming on the premise.
3. Any business on this property shall only operate between the hours of 8:00 AM to 8:00 PM Monday to Sunday.
4. Any business on this property shall institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs and cooperate with police in addressing loitering on the premises.
5. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of the business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
6. Any business on this property shall provide at least the minimum number of off-street parking spaces required by City Code Chapter 135.
7. Landscaping and screening will be provided as per design regulations pursuant to Chapter 135 and to the satisfaction of the Planning and Design Administrator.

SUMMARY OF DISCUSSION

Sreyoshi Chakraborty presented the Staff report and recommendation.

Johnny Alcivar asked if the change of use would require a site plan.

Sreyoshi Chakraborty stated if the rezoning is approved, the applicant will be required to go through a Site Plan process to bring the site into compliance with current standards.

Johnny Alcivar asked if recommended conditions #6 and #7 would already be required by the Site Plan.

Bert Drost stated they would be required to comply with parking and landscaping standards. City staff added those conditions to provide assurance to the neighboring property owners.

Johnny Alcivar asked if they could request type 1 design alternatives.

Bert Drost stated that the proposed zoning conditions would preclude type 1 and type 2 design alternatives without first seeking a rezoning to remove the zoning condition.

Abby Chungath asked what the minimum number of off-street parking spaces would be.

Sreyoshi Chakraborty stated the requirement is 1 parking space per 400 square feet, so approximately 12 parking spaces would be required for this building.

Chris Draper asked if the lot is large enough to allow for 12 off-street parking spaces.

Sreyoshi Chakraborty stated the northern portion of the parcel could likely accommodate the off-street parking, landscaping, and other required site improvements.

Chris Draper asked how many buildings have a no loitering restriction.

Bert Drost stated the recommended zoning condition that mentions loitering is borrowed from the supplemental use regulations for businesses that sell alcohol.

Chris Draper asked why this condition is being recommended if staff is also recommending alcohol sales be prohibited.

Bert Drost stated the conditions recommended by Staff are intended to provide assurance to the surrounding properties that the proposed use of this building would not constitute a nuisance for them. The subject property is very close to residential uses and there isn't much on-street parking available in the immediate vicinity, so the recommended conditions are intended to ensure that a business in this location would not be a nuisance for surrounding residents.

Chris Draper stated we are putting in pre-nuisance provisions, when other bodies, such as the Board of Adjustment, are in better position to do so when the need is known.

Bert Drost stated the applicant indicated they don't intend to sale alcohol so they wouldn't need conditional use from the Zoning Board of Adjustment. Therefore, city

staff or the Zoning Board of Adjustment might not have another opportunity to apply these types of conditions.

Abby Chungath asked if any other prohibited items would need approval from the Zoning Board of Adjustment.

Bert Drost stated alcohol sales would need approval from the Zoning Board of Adjustment. Recommended condition #2 regarding gambling would be licensed or regulated by the state.

Carol Maher asked if that includes lottery tickets.

Bert Dorst stated it was not intended to prevent lottery ticket sales but rather electronic video or arcade games that offer some form of reward.

Katie Gillette asked if the owner would have the ability to sell the northern portion of the site.

Bert Drost stated if there is excess land after providing the minimum number of off-street parking spaces, they could hypothetically sell a portion of the property.

Katie Gillette asked if the commission could request only a portion of the property be rezoned.

Bert Drost stated that would be in the commission's purview if deemed appropriate, but that staff has analyzed how much land would be necessary to provide the minimum number of off-street parking spaces .

Chris Draper asked if excess parking space at other public buildings could be accounted for to meet parking requirements.

Bert Drost stated there are places around the city, such as Ingersoll, that all excess parking stalls be shared with surrounding properties to meet parking requirements. However, in this instance City staff wouldn't want to encourage people to cross 19th Street as it's a busy thoroughfare. Keo Way, Carpenter Street, and northbound 19th Street all intersect there.

Justyn Lewis stated he is not ok with the prohibition of loitering given the racist undertones that this phrase has.

Chris Draper stated he agrees with Justyn and sees this as problematic.

Bert Drost stated after hearing this perspective, Staff is willing to revise the recommendation to strike the proposed condition on loitering.

Dhammapala Bhikkhu, representing the Cambodian Buddhist Society, 1301 19th Street, stated the proposed buyer wants to provide a neighborhood grocery store that would benefit the surrounding area in a positive way. The owner would be providing

their own security with the addition of security lighting. This would not be a convenient store, but rather a grocery store with fresh fruit and vegetables, canned goods, and frozen foods. The City of Des Moines Traffic and Transportation Department didn't see issues with increased traffic but recommended use of the alley for access to the parking lot. They believe there is enough room to provide the necessary parking stalls as the retail space will only take up 3,500 square feet of the building, which would only require provision of 9 off-street parking spaces.

Francis Boggus asked if the grocery store would be selling fruit, vegetables, meat, fish, and poultry.

Dhammapala Bhikkhu stated he was told they will not be selling meat, fish, or poultry but they would have fresh fruits and vegetables.

Chris Draper asked for clarification to whether a traffic study was done.

Dhammapala Bhikkhu stated the Traffic and Transportation Department informed them a traffic study wouldn't be necessary as the proposed use would not cause a significant increase in vehicular traffic.

Sreyoshi Chakraborty stated the only recommendation from the Traffic and Transportation Department was that no access drive could be provided from 19th Street.

Chris Draper asked if the alley can be safely used.

Sreyoshi Chakraborty stated it needs to be improved but can be used for access.

Johnny Alcivar asked if the proposed buyer owns and operates another grocery store in the city.

Dhammapala Bhikkhu stated they do own another grocery store but isn't aware of the address. He was told they have a landlord that doesn't keep up with property maintenance and have outgrown their current space.

Johnny Alcivar asked if this grocery store will provide ethnic foods.

Dhammapala Bhikkhu stated no.

Carolyn Jension asked about the current grocery stores located along Forest Avenue.

Dhammapala Bhikkhu stated those are ethnic grocery stores.

Bert Drost asked if the proposed buyer would agree to the requested conditions.

Dhammapala Bhikkhu stated during the neighborhood meeting, the proposed buyer spoke to each of those recommended zoning conditions and could comply with them.

CHAIRPERSON OPENED THE PUBLIC HEARING

Jean Minahan, 943 29th Street, stated based on what they know about the proposed buyer, this wouldn't be a positive influence on the surrounding area. (Jean read submitted letter verbatim.)

Sara Boese, Polk County Deputy Administrator, 1900 Carpenter Avenue, stated they would like to express their opposition to any sales of alcohol due to the conflict it may have on the proposed rehabilitation and sobering center across the street. They appreciate the zoning conditions recommended by Staff but would like to see the subject property have a more beneficial use for the neighborhood.

Chris Draper asked if they would support a grocery store without the sale of alcohol.

Sara Boese stated a grocery store without the sale of alcohol, without gambling, and without loitering would be fine. They still have concerns with the proposed owner having these types of issues at their current location.

Joann Muldoon, 1338 18th Street, read her submitted letter.

Todd Garner asked for clarification to who is buying the property.

Joann Muldoon stated at the neighborhood meeting, she was given the address to their current location at 3008 East 9th Street but didn't get their names.

Bert Drost stated City staff have also been trying to obtain that information throughout the week but have been unsuccessful.

Todd Garner asked if that could be used as relevant information for this decision.

Bert Drost stated city staff based the staff recommendation on the size of the subject property and its proximity to the surrounding residential uses. City Staff cannot base their recommendation on hearsay of who the proposed operator would be.

Donna Ruth Beary, 1333 and 1339 19th Street, read her submitted letter and expressed concerns with the proposed use.

Denise Anderson, 1321 19th Street, expressed concerns about the neighborhood kids walking to and from school, the potential of increase trash, and loitering. She visited the owner's other location and was scared to enter due to the loitering going on outside.

Will Page asked if she feels the neighborhood has a need for the grocery store.

Denise Anderson stated no.

Andres Rodriguez, 1812 Forest Avenue, stated the traffic around this area is already a mess given how Keo Way, Carpenter Street, and northbound 19th Street all intersect there. He doesn't see the need or benefit of a grocery store at this location.

Sandra Jamison, 1806 Forest Avenue, stated the alley is currently used by residents and during school hours. It's already almost impossible to get through Forest Avenue due to school parking. She believes the alley will be unsafe to use as access and is opposed to a grocery store at this location.

Jason Zilk, 1548 19th Street, stated the Commission has heard opposition from the neighborhood, and you can see they care about what goes into this location.

Will Page asked how comfortable he is with the city's ability to enforce all 7 conditions listed in the staff recommendation.

Jason Zilk stated he doesn't believe the City could enforce all the recommended conditions.

Steven Woods, 1339 19th Street, stated the additional traffic and the condition of the alley are his major concerns.

Courtney Ackerson, representing the Drake Neighborhood Association, 979 26th Street, shared information on the Hilal Groceries moving to University Avenue. This is a well-established grocery store and will serve as another option for residents of this area.

Dhammapala Bhikkhu stated he has heard a lot of what ifs and the possibility of what could happen, but has not seen evidence to prove these speculations. He agrees the alley is in horrible condition, but the proposed buyer would be required to pave the alley up to the parking lot and provide a curb along Carpenter Street. He asks the neighborhood to consider the economic benefits of the use.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Justyn Lewis stated he would like to hear from the proposed buyer and would request the item be continued.

Johnny Alcivar asked if tobacco is included under controlled substances.

Bert Drost stated the intent of prohibiting the sale of controlled substances with the prohibition of alcohol sales was to provide the neighbors assurance that no controlled substances, such as marijuana, could be sold here should such become legal in the future.

Johnny Alcivar asked if the commission could request tobacco sales be prohibited, too.

Bert Drost stated yes.

Chris Draper stated he would be opposed to condition #1, #3, #4, #6 and #7, as they're based on conjecture.

Bert Drost stated city staff's recommendations are based on the size and location of the lot, proximity to single-family residential and limited availability of on-street parking. The recommended conditions aren't based on speculations of a bad business owner, but rather geared towards ensuring the property does not become a nuisance for surrounding residents.

Chris Draper stated there hasn't been enough evidence to indicate these conditions are warranted.

Francis Boggus stated he would make a motion for denial of the rezoning, due to the amount of unanswered questions and the significant neighborhood opposition.

Will Page asked if a supermajority vote from the commission is needed.

Bert Drost stated since approximately 62% of the land within 200 feet is owned by people who have registered in opposition to the rezoning, it would take a supermajority vote from City Council to pass, meaning 6 of the 7 Councilmembers would have to vote affirmatively. If Commissioner Boggus' motion to recommend denial of the rezoning passes, that recommendation would also trigger the need for a supermajority vote from City Council.

Chris Draper asked if Polk County counted for 1 or 3 votes.

Bert Drost stated the percentages are based on the area of land and not based on the number of property owners. Polk County accounts for 35% of the 62% of the land in opposition. If Polk County wasn't accounted for, the percentage of opposition would still be greater than 20% and trigger a supermajority vote.

COMMISSION ACTION:

Francis Boggus made a motion for:

Part A) The requested rezoning be found in conformance with PlanDSM: Creating Our Tomorrow Comprehensive Plan future land use designation of Neighborhood Mixed Use.

Part B) Denial of the request to rezone the property from "NX1" Neighborhood Mix District to Limited "RX1" Mixed-Use District.

THE VOTE: 8-2-1 (Chris Draper and Carol Maher voted in opposition, Justyn Lewis passed).

Item 6

Request from The Iowa State Bar Association (owner), represented by Dwight Dinkla (officer), for review and approval of a Public Hearing Site Plan “Collins Community Credit Union ITM Facility,” for property located in the vicinity of 601 E Court Avenue, and for the following Type 2 Design Alternatives in accordance with City Code Sections 135-9.2.4(B) and 135-9.3.1(B):

- A) Allow the construction of a Drive-Through Facility in the DX2 zoning district, when this is not permitted by-right per City Code Section 135-2.22-1.
- B) Allow a Drive-Through Facility to be located 2.6 and 2.3 feet from the northern and southern property lines, respectively, when all accessory structures are required to have a 5-foot side-yard setback, per City Code Section 135-2.22.1.D.3.b.
- C) Allow a Drive-Through facility to be visible from a primary street and exist unscreened by a building when this is not permitted per City Code Section 135-2.22.3.D.1.
- D) Waive the requirement to install a public sidewalk for the full extent of the site frontage, per City Code Section 135-8.5.2.A. (SITE-2023-000020)

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed site plan would allow the construction of a standalone, “ITM-style” Drive-Through Facility for conduction of drive-up banking activities. Staff understands this to be the first phase of the applicant’s plans to redevelop their entire site, including the construction of a new building.

Design Alternative review criteria can be found in Section I, subparagraph 10 of this report. Staff analysis of the proposal can be found in Section II of the report.

2. **Size of Site:** Approximately 0.90 acres.
3. **Existing Zoning (site):** “DX2” Downtown District.
4. **Existing Land Use (site):** The subject site for the ITM construction is currently an undeveloped parcel. A one-story bank building and two-story office building and their accompanying accessory vehicular parking areas exist to the north of the subject site. The proposal would “tie in” the ITM facility to the existing parking areas to the north.
5. **Adjacent Land Use and Zoning:**

North – “DX2”, Uses are East Court Avenue, an accessory surface parking lot, and a two-story office building.

South – “DX2”, Uses is a Norfolk-Southern rail spur.

East – “DX2”, Uses are East 7th Street and an undeveloped parcel.

West – “DX2”, Uses are East 6th Street and a warehouse.

6. General Neighborhood/Area Land Uses: The subject property is located in the eastern fringes of the East Village neighborhood. The Iowa State Capitol complex is located to the northeast of this site. A collection of low-rise office buildings, surface parking areas, mid-rise residential buildings, and undeveloped parcels straddling the railroad exist within the vicinity of this site.

7. Applicable Recognized Neighborhood(s): The subject property is located within the Historic East Village Neighborhood. All neighborhoods were notified of the Commission meeting by emailing of the Preliminary Agenda on April 14, 2023 and the Final Agenda on April 28, 2023. Additionally, separate notifications of the hearing for this specific item were mailed on April 24, 2023 (10 days prior to the hearing) to the neighborhood association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the requested rezoning.

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.

8. Relevant Zoning History: N/A.

9. PlanDSM Future Land Use Plan Designation: Downtown Mixed-Use.

10. Applicable Regulations: Pursuant to Section 135-9.1.1.B of the Planning and Design Ordinance, the site plan review requirements of Chapter 135 are designed to ensure the orderly and harmonious development of property in a manner that shall:

- Promote the most beneficial relation between present and proposed future uses of land and the present and proposed future circulation of traffic throughout the city;
- Permit present development of property commensurate with fair and orderly planning for future development of other properties in the various areas of the city with respect to the availability and capacity, present and foreseeable, of public facilities and services. The factors to be considered in arriving at a conclusion concerning proposed present development of property shall include the following:

- The maximum population density for the proposed development, the proposed density of use, and consideration of the effect the proposal will have on the capacity of existing water and sanitary sewer lines to the end that existing systems will not become overloaded or capacity so substantially decreased that site use will inhibit or preclude planned future development;
- Zoning restrictions at the time of the proposal;
- The city's comprehensive plan;
- The city's plans for future construction and provision for public facilities and services; and
- The facilities and services already available to the area which will be affected by the proposed site use;
- Encourage adequate provision for surface and subsurface drainage, in order to ensure that future development and other properties in various areas of the city will not be adversely affected;
- Provide suitable screening of parking, truck loading, refuse and recycling disposal, and outdoor storage areas from adjacent residential districts;
- Encourage the preservation of canopied areas and mature trees and require mitigation for the removal of trees; and
- Consider the smart planning principles set forth in Iowa Code Chapter 18B.

Based on Chapter Section 135-9.2.4 and 135-9.3.1.B of the Planning and Design Ordinance, Type 2 Design Alternatives are to be considered by the Plan and Zoning Commission after a public hearing whereby the following criteria are considered:

- The design alternative provisions of Section 135-9.2.4 are intended to authorize the granting of relief from strict compliance with the regulations of this chapter as part of the site plan or alternate design documentation review process when specific site features or characteristics of the subject property, including the presence of existing buildings, creates conditions that make strict compliance with applicable regulations impractical or undesirable. The design alternative provisions are also intended to recognize that alternative design solutions may result in equal or better implementation of the regulation's intended purpose and greater consistency with the comprehensive plan.
- Consideration of requested design alternatives through the administrative and public hearing review processes will be evaluated on the merits of the

applicable request and independently of prior requests from the same applicant, and may include the following criteria:

- An evaluation of the character of the surrounding neighborhood, such as:
 - Whether at least 50% of the developed lots within 250 feet of the subject property are designed and constructed consistently with the requested design alternative(s); and
 - Whether the directly adjoining developed lots are designed and constructed consistently with the requested design alternative(s);
- For purposes of this subsection, if the lots that exist within 250 feet of the subject property are undeveloped, then the neighborhood character determination will be based upon the assumption that such lots, as if developed, comply with the applicable requirements of this chapter for which a design alternative(s) has been requested;
- The totality of the number and extent of design alternatives requested compared to the requirements of this chapter for each site plan or alternate design documentation reviewed;
- Whether the requested design alternative(s) is consistent with all relevant purpose and intent statements of this design ordinance and with the general purpose and intent of the comprehensive plan;
- Whether the requested design alternative(s) will have a substantial or undue adverse effect upon adjacent property, the character of the surrounding area or the public health, safety and general welfare;
- Whether any adverse impacts resulting from the requested design alternative(s) will be mitigated to the maximum extent feasible; and
- Other factors determined relevant by the community development director, plan and zoning commission, or city council as applicable.

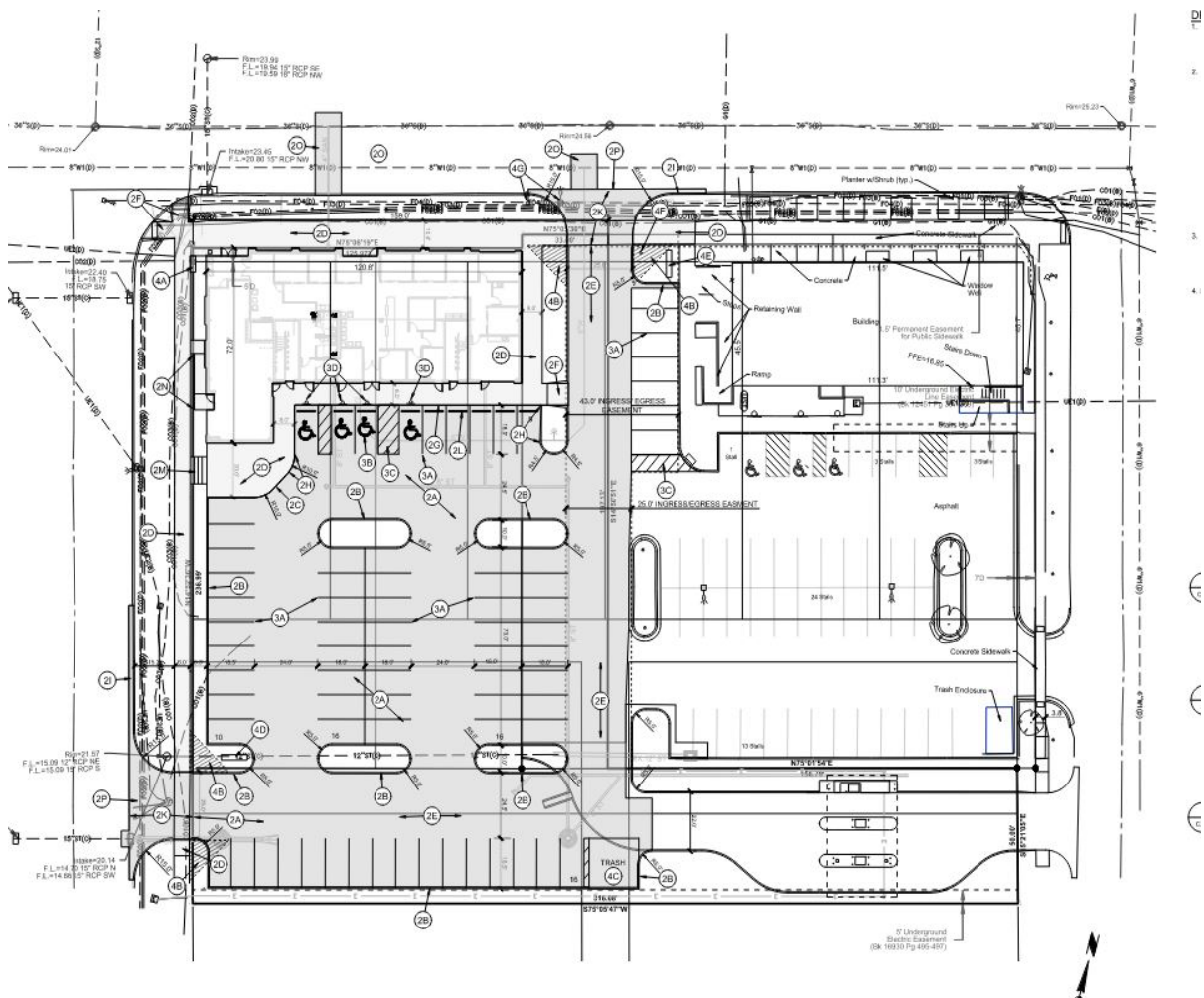
II. ADDITIONAL APPLICABLE INFORMATION

1. **Drive-Through Facility:** Drive-Through Facilities are regulated as Accessory Structures within Section 135-2.22 of the Planning and Design Ordinance. They are allowed by-right in MX3, CX, EX, and I1 zoning districts, but require a Type 2 Design Alternative when proposed in all other zoning districts. Further, Drive-Through Facilities must conform with the general Accessory Structure development standards outlined in City Code Section 135-2.22.1.D as well as the standards specific to Drive-Through Facilities outlined in City Code Section 135-2.22.3.D.

It is important to note that the proposed site plan represents Phase I of a larger redevelopment effort at this site. The existing Collins Community Credit Union

branch is proposed to be demolished and be replaced by a 4-story office building. The proposed Drive-Through Facility would support Collins' operations within the new building and replace the existing Drive-Through Facility that operates out of the existing building. The applicant has proposed phasing the project to allow the Drive-Through Facility to be constructed and become operational while the existing building is demolished and the western portion of this site is redeveloped. The site plan for Phase 2 (new building) has recently been submitted and likely will come under review by the Commission in the near future.

The image below illustrates the full redevelopment plan for this site. The proposed Drive-Through Facility is proposed in the southeast (bottom right) corner of the image. The new building is proposed in the northwest (top left) corner of the image.



In considering the construction of a new, standalone Drive-Through Facility at this site, the following factors should be taken into consideration.

- A Drive-Through Facility already exists at this site. The applicant is proposing to shift those operations from the principal building/corner and relocate them to the “rear” of the site, fronting East 7th Street.

- Contextually, the site sits in an edge condition of the larger East Village neighborhood. East 7th Street is not considered a primary street and is not developed in a typical urban cross section. The site is surrounded by an eclectic mix of legacy industrial users, low-rise office buildings, residential development, surface parking lots, and railroad/railroad frontage.
- The portion of the site where the proposed Drive-Through Facility would be located is approximately 50 feet wide and abuts a rail spur located directly to the south.
- Views of the Drive-Through Facility would be obscured from East Court Avenue by the future building and the existing building on the adjoining property.

Given all of the above information, Staff supports the Type 2 Design Alternative requests described in Parts A, B, and C, subject to the conditions listed in Section III of this report.

- 2. Sidewalk:** Per City Code Section 135-8.5.2.A, new development is required to install public sidewalks on all applicable street frontages. The applicant is proposing to install public sidewalk, but it would not extend for the duration of the parcel's frontage.

The applicant has indicated hesitancy in installing sidewalk to the site's south property line due to concerns about conflicts with and sidewalk design adjacent to the existing rail spur.

Discussions with City Traffic and Transportation staff have confirmed that there are no concerns with installing public sidewalk to the south property line. It would not be the responsibility of the applicant to install a crossing over the railroad. Any sidewalk railroad crossing would be the responsibility of the City in the future.

Staff does not support this Type 2 Design Alternative request.

III. STAFF RECOMMENDATION

Staff recommends approval of the Public Hearing Site Plan, and the following regarding the requested Design Alternatives:

- A) Approval of the Design Alternatives described in Parts A, B, and C, subject to the following conditions:
1. A site plan for Phase II of the development must be reviewed and approved before any building permits for the construction of the new Drive-Through Facility be issued.
 2. The placement, siting, and setbacks of the new Drive-Through Facility must be compliant with the standards of the International Building Code.

B) Denial of the Design Alternative request described in Part D.

SUMMARY OF DISCUSSION

Nick Tarpey presented the staff report and recommendation.

Leah Rudolphi asked if the 50-foot-long sidewalk along East 7th Street is the one in question.

Nick Tarpey stated yes but clarified that the applicant is proposing to provide a sidewalk along portion of this front, just not along the southernmost 10 to 15 feet.

Abby Chungath asked what direction drive-thru traffic will travel.

Nick Tarpey stated traffic would flow from west to east and exit onto East 7th Street.

Carol Maher asked whether curb cuts would be removed or if one curb cut would be added.

Nick Tarpey stated no curb-cuts would be eliminated in phase 1 of the development and one would be added along East 7th Street. The existing curb-cuts would be evaluated during phase 2 of the development.

Abby Chungath asked why phases 1 and 2 aren't being reviewed together.

Nick Tarpey stated it was the applicant's decision to split up their site development. They can better speak to that question.

Johnny Alcivar asked if the property south of the rail spur is private property.

Nick Tarpey stated yes, it's owned by Hawkeye Land Company.

Johnny Alcivar asked if the land to the south was developed, would a sidewalk connection along East 7th Street be required in front of their property.

Nick Tarpey stated yes.

Todd O'Rourke, Collins Community Credit Union, 1005 Blairs Ferry Rd, Cedar Rapids, IA, stated due to this branch being one of their busiest in Des Moines and 80% of the business being drive-thru, they've requested the proposed ITM machines (Interactive Teller Machine) as phase 1 of their development to allow it to operate while the new building is being constructed. During banking hours, the ITM will provide customers the support to do 99% of the things that they could otherwise do inside the branch bank. They would like time to train their customers on how to use the ITM machines before they demolish the existing building and construct the new building. They intend to beautify the area with this development and be an asset to the East Village area.

Carol Maher asked if you could walk or bike up to the ITM.

Todd O'Rourke stated yes.

Carol Maher asked if the 2 curb-cuts along East 7th will remain side by side.

Chad Soukup, Frew Development Group, stated the new curb-cut would be exclusively for Collins Community Credit Union, the existing curb-cut will serve as an exit from the Bar Associations parking lot.

Johnny Alcivar asked if they agree with staff recommendations aside from the public sidewalk.

Todd O'Rourke stated if the commission's recommendation is to complete the sidewalk along the entire frontage, they will do so.

Justin Strom, Snyder and Associates, 2727 SW Snyder Blvd, Ankeny, IA, stated the curb-cut along East 6th Street would remain during phase 1 but will then be shifted south to provide a straight east to west drive-thru during phase 2. Along East Court Avenue, there are currently 3 curb-cuts, 2 that serve Collins and 1 that serves the Iowa Bar Association. They would be removing 1 of Collins curb-cuts in phase 1 and the other during phase 2 with the remaining curb-cut becoming a shared access. Regarding the sidewalk, the reason for their requested waiver is due to the potential of it being torn out for realignment should the parcel to the south be developed.

CHAIRPERSON OPENED THE PUBLIC HEARING

Dwight Dinkla, Iowa Bar Association Executive Director, stated the directional drive-thru from west to east will be much better than what exists today. Collins Community Credit Union has been a good neighbor and they feel fortunate they've chosen to remain in this location. This will be a big improvement for the community, and they fully support the proposal.

CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION:

Johnny Alcivar made a motion for approval of the Public Hearing Site Plan, and the following regarding the requested Design Alternatives:

- A) Approval of the Design Alternatives described in Parts A, B, and C, subject to the following conditions:
 - 1. A site plan for Phase II of the development must be reviewed and approved before any building permits for the construction of the new Drive-Through Facility be issued.
 - 2. The placement, siting, and setbacks of the new Drive-Through Facility must be compliant with the standards of the International Building Code.

B) Denial of the Design Alternative request described in Part D.

THE VOTE: 11-0

Committee and Director’s Reports:

Meeting adjourned at 8:40pm