


## COUNCIL COMMUNICATION

	Number:	<b>19-508</b>	Meeting:	<b>December 2, 2019</b>
	Agenda Item:	<b>36</b>	Roll Call:	<b>19-1935</b>
	Submitted by:	<b>Chris Johansen, Community Development Director</b>		

### AGENDA HEADING:

Review of Zoning Board of Adjustment decision granting a Variance to a separation distance requirement to allow sales of alcoholic liquor within a new gas station convenience store building (Kum & Go) at 3104 University Avenue.

### SYNOPSIS:

Staff recommends that the Council decline to remand the decision of the Zoning Board of Adjustment granting a Variance to a separation distance requirement to allow sale of alcoholic liquor within a gas station convenience store (Kum & Go) at 3104 University Avenue.

### FISCAL IMPACT: NONE

### ADDITIONAL INFORMATION:

- On November 20, 2019, the Zoning Board of Adjustment voted 5-1 to approve a Variance to a separation distance requirement, as well as a Conditional Use, to allow the sale of alcoholic liquor within a new gas station convenience store building (Kum & Go) at 3104 University Avenue. As a gas station convenience store, the business is allowed to sell wine and beer without a Conditional Use.
- In order for a gas station convenience store to sell alcoholic liquor, it must be at least 500 feet from any church, school, public park, or licensed child care facility. The subject property is within 202 feet of a property at 3223 University Avenue, which contains both a church use and a licensed child care facility use.
- The conditions imposed by the Zoning Board of Adjustment are intended to protect the surrounding neighborhood, including the nearby church and licensed child care facility, from any negative impacts of the business. The Zoning Officer also has the ability to bring the Conditional Use Permit back to the Board for reconsideration if the business becomes a nuisance.
- The site is located at the southwest corner of University Avenue and 31st Street and is located within the Drake Neighborhood Association.

- The site is owned by Kum & Go, LC, and Mirell Flats Condominiums, both of which are represented by Dan Garneau, 1459 Grand Avenue, Des Moines, IA 50309.
- Pursuant to City Code Section 134-65, the City Council shall review the Board’s decision within 30 days after the decision is filed. After such review, the City Council may remand the decision to the Board for further study. If the City Council declines to remand the decision, that decision shall become final on the date of the City Council’s action (December 2, 2019).

**PREVIOUS COUNCIL ACTION(S):**

Date: November 4, 2019

Roll Call Number: [19-1786](#), [19-1787](#), [19-1788](#), and [19-1789](#)

Action: Items regarding 3104 University Avenue and 1134 31<sup>st</sup> Street:

- (A) [Amend](#) the existing PlanDSM: Creating Our Tomorrow Plan future land use designation from Neighborhood Mixed Use and Low-Medium Density Residential to Community Mixed Use. Moved by Mandelbaum to adopt and approve the proposed amendment. Motion Carried 7-0.
- (B) [Hearing](#) on request from Kum & Go, LC (Dan Garneau, Officer) to rezone the property from “C-1” (Neighborhood Retail Commercial), “R-3” (Multiple-Family Residential), and “C-0” (Commercial-Residential) to Ltd. “NPC” (Neighborhood Pedestrian Commercial) to allow redevelopment of existing fuel station and 8-unit apartment building for a new 5,661-square foot fueling station with retail sales of convenience items and with eight (8) fueling locations. Moved by Mandelbaum to adopt. Parties will work in good faith exploring ways to move the Mirell Flats. Motion Carried 7-0.
- (C) [First](#) consideration of ordinance above. Moved by Mandelbaum that this ordinance be considered and given first vote for passage. Motion Carried 7-0.
- (D) [Final](#) consideration of ordinance above (waiver requested by the applicant), requires six votes. Moved by Mandelbaum that the rule requiring that an ordinance must be considered and voted on for passage at two Council meetings prior to the meeting at which it is to be finally passed be suspended, that the ordinance be placed upon its final passage and that the ordinance do now pass, [#15,827](#). Motion Carried 7-0.

**BOARD/COMMISSION ACTION(S):**

Board: Plan & Zoning Commission

Date: September 19, 2019

Resolution Number: ZON2019-00165

Action: Motion to recommend approval of rezoning to “NPC” Neighborhood Pedestrian Commercial District, approved by an 11-0 vote.

Board: Zoning Board of Adjustment

Date: November 20, 2019

Resolution Number: ZON2019-00175

Action: Motion to grant Conditional Use Permit & Variance to separation distance requirement, approved by a 5-1 vote.

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

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