

**Roll Call Number****Agenda Item Number**38A**Date** May 5, 2008

An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, amended by Ordinance No. 13,878 passed November 6, 2000, and Ordinance No. 14,018 passed November 19, 2001, and Ordinance No. 14,081 passed May 6, 2002, and Ordinance No. 14,326 passed March 22, 2004, and Ordinance No. 14,455 passed May 23, 2005, by amending Sections 82-208 and 82-209 and by adding and enacting a new Section 82-214.8, thereof, relating to gas station/convenience store site plan design guidelines",

which was considered and voted upon under Roll Call No. 08-519 of March 24, 2008; again presented.

Moved by _____ that this ordinance be considered and given second vote for passage.

(Second of three required readings)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

Mayor**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

38A+B



Roll Call Number

08-518

Agenda Item Number

56

Date March 24, 2008

WHEREAS, on March 10, 2008 by Roll Call No. 08-387 it was duly resolved by the City Council that the City Plan and Zoning Commission's recommendation for approval of amendments to Municipal Code of the City of Des Moines Chapters 82 and 134 regarding site plan design guidelines for gas stations and convenience stores, as more fully described in Exhibits A and B attached hereto, be set down for hearing on March 24, 2008 at 5:00 p.m. in the Council Chambers, 400 Robert D. Ray Drive, Des Moines, Iowa; and

WHEREAS, due notice of the hearing was published in the Des Moines Register as provided by law on March 13, 2008; and


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

NOW, THEREFORE, BE IT RESOLVED by the City Council for the City of Des Moines, Iowa:

That upon consideration of the facts, statements of interested persons and arguments of Council, the objections to the proposed amendments to Chapters 82 and 134 of the Municipal Code are hereby overruled, and the hearing is closed.

Moved by Kiernan to refer to City Manager to place this item on a workshop agenda for discussion and to have second consideration of the ordinances after that workshop.


APPROVED AS TO FORM:


Michael F. Kelley
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
HENSLEY	✓			
KIERNAN	✓			
MAHAFFEY	✓			
MEYER	✓			
VLASSIS	✓			
TOTAL	7			

MOTION CARRIED

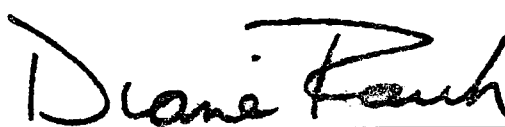
APPROVED


Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.


City Clerk

May 5, 2008

Date _____

Agenda Item 38

Roll Call # _____

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held April 17, 2008, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 7-4 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
JoAnne Corigliano		X		
David Cupp	X			
Shirley Daniels	X			
Dann Flaherty		X		
Bruce Heilman	X			
Jeffrey Johannsen				X
Greg Jones	X			
Frances Koontz		X		
Kaye Lozier				X
Brian Millard		X		
Mike Simonson				X
Kent Sovern				X
Tim Urban	X			
Marc Wallace	X			

APPROVAL of text amendments to the Zoning Ordinance and the Site Plan Ordinance establishing design guidelines for review of gas station and convenience store site development by the Plan and Zoning Commission. (10-2008-5.01)

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Staff recommends approval of the recommended revisions to the ordinance providing for review of gas station / convenience store Site Plans by the Plan and Zoning Commission under specific design guidelines.

STAFF REPORT

I. GENERAL INFORMATION

Exhibit "A" contains the proposed convenience store ordinance that was approved on first reading by the City Council on March 24, 2008. The City Council also requested that City Manager schedule the item for a Council workshop prior to second reading based upon written communication submitted by Quik Trip that requested modifications to the proposed ordinance. At their March 31, 2008 workshop, the City Council requested that the Plan and Zoning Commission review the proposed ordinance and communications from Quik Trip and Des Moines Neighbors for possible amendments to the ordinance. The letters from Quik Trip Corporation's representative and Des Moines Neighbors are also attached.



CITY PLAN AND ZONING COMMISSION
ARMORY BUILDING
602 ROBERT D. RAY DRIVE
DES MOINES, IOWA 50309-1881
(515) 283-4182

ALL-AMERICA CITY
1949, 1976, 1981
2003

The Regulation and Ordinances (R & O) subcommittee reviewed the communications from Quik Trip and Des Moines Neighbors on April 9, 2008 with representatives of Quik Trip in attendance. Based on that discussion, the R & O subcommittee recommends the following changes to the proposed ordinance prior to second reading by the City Council:

- Amend the first paragraph of Section 82-214.8 to state.....*"Any site plan application which includes property used as a gas station or convenience store shall be approved by the plan and zoning commission if the proposed site plan conforms with the design regulations in Section 82-213 and the following additional design guidelines, unless the commission determines that the construction and use of the site will have a significant detrimental impact on the use and enjoyment of adjoining residential uses."*

The revised language simply states the previous criteria in an affirmative or positive manner and does not change the regulatory intent.

- Amend Section 82-214.8 [1][C] to state.....*"Minimum open space should be 20% of the site or 1,000 square feet per vehicle fueling location, whichever is greater."*

A one acre site contains 43,560 square feet. 20% of 43,560 square feet is equivalent to 8,712 square feet of open space. Therefore, a maximum of 8 vehicle fueling locations (4 pumps) would be allowed if only 20% open space was provided on a one acre site. However, a 12 vehicle fueling location (6 pumps) would require a minimum of 12,000 square feet of open space. 12,000 square feet is the equivalent of 27.5% open space on a one acre site. For comparison purposes, all development in the PBP, Planned Business Park district requires a minimum of 35% open space.

Quik Trip's initial proposal for 20% open space or 1,000 square feet per pump (500 square feet per fueling location) whichever is greater would always result in the provision of only the existing minimum 20% open space unless more than 17 fueling locations were provided on a 1 acre site. Quik Trip representatives indicated they would look at their typical 12 vehicle fueling location (6 pump) layout on a one acre site to determine if they provide at least 12,000 square feet of open space.

- Amend Section 82-214.8 [2][H] to state.....*"Perceived height and bulk should be reduced by dividing the building mass into smaller-scaled components. Examples of treatments that could be used to avoid excessive bulk and height include:.....(items i through vii remain the same)."*

The code language is permissive and provides examples of treatments but does not absolutely require all of the listed treatments to be incorporated in every design.

- Amend Section 82-214.8 [2][I][i] to state.....*"Integration of materials on canopies that are similar or compatible to those used on the building or site walls is desirable (e.g. wrap the canopy columns with brick that matches the building). Multiple canopies or canopies that express differing masses are encouraged."*

The new language clarifies use of the term "integration" so that it is not construed to require a physical connection of the building, canopy and site walls.

- Amend Section 82-214.8 [2][I][ii] to state.....*"Canopy height should not be less than 13'-9" as measured from the finished grade to the lowest point on the canopy fascia. The overall height of canopies should not exceed 18 feet."*

The new language increases the maximum height from 17 feet to 18 feet.

- Amend Section 82-214.8 [2][J] to state.....*"All display items for sale, excluding seasonal items (i.e. sand, salt, pop, firewood) should be located within the main building. All outdoor storage of seasonal items shall be identified on the site plan and be located outside of any required setbacks. No display of seasonal items should exceed 5-feet in height."*

Note that only by relief of Zoning Ordinance granted by the Board of Adjustment may display of merchandise be allowed within required front yard setbacks.

- Amend Section 82-214.8 [4][C] to state.....*"Light fixtures mounted under canopies should be completely recessed into the canopy with flat lenses that are translucent and completely flush with the bottom surface (ceiling) of the canopy. Generally, lights shall not be mounted on the top or sides (fascias) of the canopy and internally illuminated / entirely translucent canopies should be prohibited. However, accent lighting on the sides (fascias) of the canopy may be permitted."*

An example of acceptable accent lighting is Quick Trip's use of a narrow static band of LED lights on the canopy fascia.

SUMMARY OF DISCUSSION

Mike Ludwig: Presented staff report and recommendation.

Brian Millard: Asked if there was any discussion about limiting the thickness of the canopy.

Mike Ludwig: Noted staff did not want to preclude developers from putting a hip or gabled roof on the canopy.

JoAnne Corigliano: Asked about stacked displays being restricted in height.

Mike Ludwig: Noted if that standard were in place stacked displays would be restricted. The applicant would need to identify where the display would be and the display areas would have to be approved on the site plan.

Bruce Heilman: Noted the 5' height restriction on outdoor display came from a convenience store because of the liability.

Marc Wallace: Noted there are some convenience stores that have been sold and the previous signage has been removed with nothing replaced. Asked if there is a workable definition of gas station/convenience stores.

Mike Ludwig: Noted the current and proposed ordinance define gas stations/convenience stores. In the "C-1" zoning district the maximum number of pumps on the site are limited, which would still carry precedence over the site plan regulations, even if they had enough open space.

Tim Urban: Suggested in the future they will be referred to as fueling stations.

Mike Ludwig: Noted currently in the ordinance it is referred to as fueling locations, but it has been a source of confusion because City Council and some of the industry interpret that to be "pumps".

Bruce Heilman: Noted one of the first documents R&O was privy to in the reorganization of the zoning ordinance was commercial design standards from Cary, N.C, which discussed building facades, setbacks, how to vary roof features, etc. It is incorporated into the zoning rewrite.

JoAnne Corigliano: Asked if requiring the canopy be removed when a station is vacated was in the proposed ordinance or would be considered.

Mike Ludwig: Noted it is not in the proposed ordinance but the Commission could make a recommendation to add it.

Bruce Heilman: Noted a similar issue was discussed during the review of the sign ordinance in the new code. Is it better to have a pole sign that is intact or a pole going up with wires hanging out or capped at the base when a station and the signage is abandoned. An intact sign would be an asset to the property that someone could come in and reuse.

Tim Urban: Suggested putting a two-year sunset on the abandonment or vacation of a building that would require the extraneous structures to be removed.

Mike Ludwig: Noted that issue is being considered in the comprehensive zoning ordinance rewrite. Staff is incrementally updating the ordinance.

Brian Millard: Thought it would be an asset to have the canopy with the poles removed down to the ground.

Mike Ludwig: Noted the question is where it should go into the ordinance. Staff is currently working on site plan regulations and he was not certain that was the proper enforcement mechanism for the removal of the canopy. Could have a use standard under the new ordinance or go under the non-conforming or abandonment sections of the code that deal with how long a project can be vacated or vacant before losing its non-conforming rights.

Bruce Heilman: Noted signage and a canopy is an asset to the property but any part of the property that falls into disrepair should be removed after a given period of time if the property hasn't been developed into a similar reuse.

Mike Ludwig: Noted property maintenance has been discussed numerous times but a property maintenance code has not been adopted. There are options to proceed through the nuisance section of the code.

Fran Koontz: Asked why when a business comes in that constructs a sign or canopy they couldn't be asked to escrow a certain amount of money so if it is abandoned the City would have the money to take it down and if the owner does it themselves the money is returned to them.

Mike Ludwig: Noted a recommendation could be made to that effect.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one in the audience to speak in favor of this item.

The following individual spoke in opposition:

John Morrissey, 2913 Oxford Street, Des Moines: Asked if Quik Trip representatives participated in the discussions at R&O. Asked the Commission to retain the wording of the opening portion of the ordinance because he felt it gives citizens to have an opportunity to have a say as to whether these types of things belong in residential neighborhoods. Expressed concern that Quik Trip had a part in writing the ordinance.

Dann Flaherty: Noted the hearings and R&O meetings are public record and the public is welcome to attend.

John Morrissey: Suggested the process is unfair that as a resident in the neighborhood he has no control what happens in his neighborhood. Explained he is suspicious of the ulterior motive behind the process. Expressed concern relative to the fascia of the canopy constituting a sign. He felt

Quik Trip was being allowed to circumvent the sign ordinance by being allowed to have a thicker canopy with their lighting on it. Suggested the canopy issue needs further thought and asked the Commission to reconsider. He was concerned the ordinance takes away from the original intent that as a resident he would have a voice.

Tim Urban: Reiterated the language originally had a negative connotation because it said "shall not be approved unless it could be demonstrated..." and the revision is positive but accomplishes the same thing. Asked if the canopy structure is also a building and subject to the same criteria as the main convenience building with height limitations and setbacks.

Mike Ludwig: Noted under the zoning ordinance the canopy is subject to height limitations, but the zoning ordinance specifically allows an exemption for canopies for gas stations to be located in the front yard setback. The building has to meet the front yard setback, but the canopy is exempted from that provision under the ordinance. A canopy is a structure like the building; under the existing ordinance they can choose whether they want signage on the building or on the canopy, but only earn a total amount of signage on their property. They are limited in how much building signage can be transferred to the canopy.

Brian Millard: Expressed concern that the canopy without a logo could still constitute a sign, particularly when color, pattern and lighting is applied that is identifiable to a brand and asked how that would be dealt with.

Mike Ludwig: Noted the Commission will be able to review the architectural, but urged the Commission not to get into determining art and signage. The lighting issue was specifically directed by Council. They did not find the Quik Trip lighting to be objectionable. Explained City Council received written comments specifically requesting changes to the ordinance rather than passing it on all three readings at the first consideration. They referred it back for public comment and input through the Planning Commission. The public input opportunity does not end at this meeting. There would be another opportunity to speak at the City Council meeting.

CHAIRPERSON CLOSED THE PUBLIC HEARING

David Cupp: Moved staff recommendation.

Bruce Heilman: Explained the ordinance is being changed so that site plans would be required to come before the Commission. Noted R&O is open to the public but they need to hear from the stakeholders so the Commission can judge whether a request is detrimental to the residential area.

Brian Millard: Expressed concern for the fascia issue as well as the canopies and noted R&O meetings are held when the public are unable to attend; he is unable to attend because he works.

Tim Urban: Suggested the comments by the opposition brings things to light that he would not have thought of otherwise and agreed about the nature of the canopy fascia being a sign. Suggested an amendment that would give some discretion to the Commission over canopy fascia treatments to determine whether they appear as a sign or not.

David Cupp: Suggested a lot of the canopy issue is if the station is abandoned, but there is no enforcement for taking canopies down.

JoAnne Corigliano: Agreed the canopies are getting bigger and what is on them needs to be considered; also felt the canopies on vacated stations should come out, particularly if the pumps are removed.

Dann Flaherty: Agreed with regard to pump islands; has difficulty with doubling signage by putting in islands; color is a sign. He would not be voting in favor because he feels it lacks something. Agreed with the opposition and did not believe the ordinance had to be positive.

Tim Urban: Offered a friendly amendment that the canopy fascia appearance should not appear as a sign and the Commission should have the discretion to limit the color and character of such fascias.

Dann Flaherty: Suggested if color was going to be limited it should state the only color allowed on the fascia is white.

Mike Ludwig: Noted the signage regulations are enforced through the Board of Adjustment. Suggested looking at it individually, but urged not getting into regulating the colors on individual properties and review it as a whole site plan as it comes in.

Tim Urban: Proposing language to give the Commission the discretion to accept a color or character of a fascia.

David Cupp: Did not like the idea of dictating color; signage he agreed with and the branding of the fascia, but not the color.

Motion for the Amendment failed 5-6 (Greg Jones, Leisha Barcus, Marc Wallace, Shirley Daniels, Bruce Heilman and David Cupp were in opposition)

Motion to approve staff recommendation passed 7-4 (Fran Koontz, Brian Millard, Dann Flaherty & JoAnne Corigliano were in opposition).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. G. Ludwig".

Michael G. Ludwig, AICP
Planning Administrator

MGL:dfa

cc: File

ORDINANCE NO. _____

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, amended by Ordinance No. 13,878 passed November 6, 2000, and Ordinance No. 14,018 passed November 19, 2001, and Ordinance No. 14,081 passed May 6, 2002, and Ordinance No. 14,326 passed March 22, 2004, and Ordinance No. 14,455 passed May 23, 2005, by amending Sections 82-208 and 82-209 and by adding and enacting a new Section 82-214.8, thereof, relating to gas station/convenience store site plan design guidelines.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, amended by Ordinance No. 13,878 passed November 6, 2000, and Ordinance No. 14,018 passed November 19, 2001, and Ordinance No. 14,081 passed May 6, 2002, and Ordinance No. 14,326 passed March 22, 2004, and Ordinance No. 14,455 passed May 23, 2005, amending Sections 82-208 and 82-209 and by adding and enacting a new Section 82-214.8, thereof, relating to gas station/convenience store site plan design guidelines, as follows:

Sec. 82-208. Determination for property subject to administrative approval.

- (a) Generally. Application for site plan approval shall be considered and determined in accordance with the procedures in this section, except for the following types of improvements which shall instead be subject to section 82-209:
- (1) Improvements to property in the NPC neighborhood pedestrian commercial district.
 - (2) Improvements which include an extension of parking into an adjoining residential district under the authority of section 134-1377(f)(8).
 - (3) Improvements to property used as a vehicle display lot.
 - (4) Improvements to property used for multiple family, boardinghouse or roominghouse use.
 - (5) Improvements to property in the D-R downtown riverfront district or C-3B central business mixed use district.

- (6) Improvements to property used as a gas station, with or without a convenience store.
-

Sec. 82-209. Determination for property not subject to administrative approval.

- (a) Applications for site plan approval shall be considered and determined in accordance with the procedures in this section for the following types of improvements:
- (1) Improvements to property in the NPC neighborhood pedestrian commercial district.
 - (2) Improvements which include an extension of parking into an adjoining residential district under the authority of section 134-1377(f)(8).
 - (3) Improvements to property used as a vehicle display lot.
 - (4) Improvements to property used for multiple family, boardinghouse or roominghouse use.
 - (5) Improvements to property in the D-R downtown riverfront district or C-3B central business mixed use district.
 - (6) Improvements to property used as a gas station, with or without a convenience store.
-

Sec. 82-214.8. Gas Station/Convenience Store Site Plan Design Guidelines.

Any site plan application which includes property used as a gas station or convenience store shall be denied by the plan and zoning commission unless the commission determines that the construction and use of the site will have no significant detrimental impact on the use and enjoyment of adjoining residential uses, and that the proposed site plan conforms with the design regulations in section 82-213 and the following additional design guidelines:

1. Site Design.

- A. The optimal layout of any individual site requires an in-depth understanding of local context and a thorough site analysis. The components of a gas station and convenience store to be considered in site design include, but are not limited to:**
- (i) Primary structure/retail sales building/single or multiple tenant;
 - (ii) Pump island, canopy structure, and lighting;
 - (iii) Refuse, service and storage area;
 - (iv) Circulation systems and parking;
 - (v) Service bays;
 - (vi) Ancillary uses such as car washes, drive through uses, ATMs and telephones.
- B. Maximum size of site should not exceed two (2) acres without a rezoning to a PUD Planned Unit Development pursuant to Chapter 134, Division 13 of the Municipal Code of the City of Des**

Moines and site review under a Conceptual Plan approved by the Plan and Zoning Commission and City Council.

C. Minimum open space should be 1,000 square feet per fueling location. This would include landscaping open space required for all site plans.

D. All development proposals should show evidence of coordination with the site plan as well as arrangement of buildings and planning elements of neighboring properties by:

(i) Responding to local development patterns and the streetscape by use of consistent building setbacks, orientation and relationship of structures to the street and linkages to pedestrian facilities;

(ii) Seeking shared-access with adjoining commercial uses where feasible to minimize curb cuts and enhance pedestrian and vehicular circulation;

(iii) Minimizing cross traffic conflicts within parking areas.

E. The site plan shall mitigate the negative impacts from site activities on adjoining uses as follows:

(i) Service areas, storage areas and refuse enclosures should be oriented away from public view and screened from adjacent sites;

(ii) Drive-through windows, menu boards and associated stacking lanes should be oriented away from residential areas or screened from public view;

(iii) Auto repair bay openings and car-wash openings should be oriented away from residential uses;

(iv) Lighting should be non-invasive to adjoining residential use.

F. The site plan shall provide identifiable pedestrian access from adjoining public pedestrian routes through the site to the primary building and from accessory functions within the site. This can be accomplished by use of special paving colors or textures and appropriately scaled lighting.

2. Architecture.

A. The following architectural guidelines encourage creative response to local and regional context and contribute to the aesthetic identity of the community.

B. Building design should consider the unique qualities and character of the surrounding area and be consistent with the city's 2020 Character Area Plans. Where character is not defined by 2020 Community Character Plan, building design should be of a high quality with primary use of durable materials such as masonry, block, or stone.

C. A facility occupying a pad or portion of a building within a larger commercial center should be designed to reflect the design elements of that center.

D. Drive-through elements should be integrated into the building rather than appear to be applied or "stuck-on" to the building.

E. All sides of a building should express consistent architectural detail and character, with a primary use of

- durable materials such as brick, masonry block, or in special instances a predominant material found in the surrounding commercial area. Columns should be designed to minimize visual impact.
- F. Walls, pump island canopies and other outdoor covered areas should be compatible with the building, using similar material, color and detailing.
- G. To encourage visually interesting roofs, variations in the roof line and treatments such as extended eaves and parapet walls with cornice treatments are encouraged.
- H. Perceived height and bulk should be reduced by dividing the building mass into smaller-scaled components. Possible treatments to avoid excessive bulk and height include:
(i) Low-scale planters and site walls.
(ii) Wainscot treatment.
(iii) Clearly pronounced eaves or cornices.
(iv) Subtle changes in material color and texture.
(v) Variation in roof forms.
(vi) Covered pedestrian frontages and recessed entries.
(vii) Deeply set windows with mullions.
- I. Canopies:
(i) Integration of canopies to building and site walls is desirable. Multiple canopies or canopies that express differing masses are encouraged.
(ii) Canopy height should not be less than 13'- 9" as measured from the finished grade to the lowest point on the canopy fascia. The overall height of canopies should not exceed 17'.
- J. All display items for sale should be located within the main building or within designated areas screened from public streets and not within required building setbacks.
3. Landscape Design.
- A. Landscaping is integral to the overall design concept and should be carefully planned to enhance the overall appearance and function of the site.
- B. Landscape buffers with screen fencing should mask the site from adjacent residential uses. Plantings that exceed the minimum Des Moines Landscaping Standards may be required.
- C. Dense landscaping or architectural treatments should be provided to screen unattractive views and features such as storage areas, trash enclosures, utility cabinets and other similar elements.
- D. A site design for projects located at a street intersection should provide special landscape treatments, including by way of example perennial plant beds, site walls, native grasses, decorative sign foundations and housing.
- E. Proper maintenance and timely replacement of plant material is required and will be enforced based on the approved site plan.
- F. Monument signs are encouraged and are required when the site adjoins a residential district.

4. Lighting.

- A. Lighting of gas stations and convenience stores should enhance safety and provide light levels appropriate to the visual task with minimal glare, light trespass and excess site brightness. Lighting should not be a nuisance or a hazard.
- B. Direct light trespass beyond property lines is prohibited. The maximum horizontal illuminance at grade and the maximum vertical illuminance at five feet above grade measured at the property line should not exceed Illuminating Engineering Society of North America (IESNA) recommended practices for light trespass. (0.5 footcandles for residential, 2.0 footcandles for commercial). The site plan must contain illuminance models showing light levels throughout the site.
- C. Light fixtures mounted under canopies should be completely recessed into the canopy with flat lenses that are translucent and completely flush with the bottom surface (ceiling) of the canopy. Lights shall not be mounted on the top or sides (fascias) of the canopy, and the sides (fascias) shall not be illuminated.
- D. Parking Lot and Site Lighting:
(i) All luminaries should be of full cut-off design, aimed downward and away from the property line;
(ii) Maximum pole heights should not exceed 20'.
- F. Building-Mounted Lighting:
(i) All luminaries should be a full cut-off design and aimed downward.
(ii) All luminaries should be recessed or shielded so the light source is not directly visible from the property line.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Michael F. Kelley
Assistant City Attorney



**DICKINSON
MACKAMAN TYLER & HAGEN PC**
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March 24, 2008

Honorable Mayor and City Council
City of Des Moines
400 Robert D. Ray Drive
Des Moines, IA 50309

Re: Gas Station/Convenience Store Site Plan Guidelines

Honorable Mayor and City Council:

Our client, QuikTrip Corporation, would like to express its support for the proposed amendments to the Zoning and Site Plan Ordinances to add gas stations and convenience stores to site plan review subject to the following requested changes and clarifications.

Sec. 82-214.8. Gas Station/Convenience Store Site Plan Design Guidelines.

Current:

Any site plan application which includes property used as a gas station or convenience store shall be denied by the plan and zoning commission unless the commission determines that the construction and use of the site will have no significant detrimental impact on the use and enjoyment of adjoining residential uses, and that the proposed site plan conforms with the design regulations in section 82-213 and the following additional design guidelines:

Requested change:

Any site plan application which includes property used as a gas station or convenience store shall be approved by the plan and zoning commission if the proposed site plan conforms with the design regulations in section 82-213 and the following additional design guidelines, unless the commission determines that the construction and use of the site will have a significant detrimental impact on the use and enjoyment of adjoining residential uses.

March 24, 2008

Page 2

1. Site Design (C)

Current:

Minimum open space should be 1,000 square feet per fueling station.

Requested change:

Minimum open space should be 1,000 square feet per fuel pump.

2. Architecture (H)

Current:

Perceived height and bulk should be reduced by dividing the building mass into smaller-scaled components. Possible treatments to avoid excessive bulk and height include:

- (i) Low-scale planters and site walls.
- (ii) Wainscot treatment.
- (iii) Clearly pronounced eaves or cornices.
- (iv) Subtle changes in material color and texture.
- (v) Variation in roof forms.
- (vi) Covered pedestrian frontages and recessed entries.
- (vii) Deeply set windows with mullions.

Requested change:

Perceived height and bulk should be reduced by dividing the building mass into smaller-scaled components. Possible treatments to avoid excessive bulk and height include:

- (i) Low-scale planters and site walls.
- (ii) Wainscot treatment.
- (iii) Clearly pronounced eaves or cornices.
- (iv) Subtle changes in material color and texture.
- (v) Variation in roof forms.

(NOTE: Request (vi) and (vii) be removed as this would potentially require a larger building to accommodate these design changes.)

2. Architecture (I) Canopies (I)

Current:

- (i) Integration of canopies to building and site walls is desirable. Multiple canopies or canopies that express differing masses are encouraged.

Requested change:

- (i) Integration of canopies to building and site walls is desirable. (PLEASE CLARIFY: Does this mean the canopy and building should use similar materials or that they are physically joined?)

DICKINSON, MACKAMAN, TYLER & HAGEN, P.C.

March 24, 2008

Page 3

REMOVE: Multiple canopies or canopies that express differing masses are encouraged. (NOTE: QuikTrip requests that the last sentence be removed as it does not appear to offer a visual benefit to the design.)

2. Architecture (I) Canopies (ii)

Current:

Canopy height should not be less than 13'9" as measured from the finished grade to the lowest point on the canopy fascia. The overall height of the canopies should not exceed 17'.

Requested change:

Canopy height should not be less than 15' as measured from the finished grade to the lowest point on the canopy fascia. The overall height of the canopies should not exceed 19'.

2. Architecture (J)

Current:

All display items for sale should be located within the main building or within designated areas screened from public view and not within required building setbacks.

Requested change:

All display items for sale, excluding seasonal items (i.e. sand, salt, pop, firewood), should be located within the main building or within designated areas and not within required building setbacks. (NOTE: QuikTrip would support defining the designated area on the site plan.)

4. Lighting (C)

Current:

Lights shall not be mounted on the top or sides (fascias) of the canopy, and the sides (fascias) shall not be illuminated.

Requested change:

Lights shall not be mounted on the top or sides (fascias) of the canopy. (NOTE: QuikTrip respectfully requests that it be allowed to illuminate the sides of its canopies with its red stationary LED lights as the illuminated band is part of its brand image.)

Very truly yours,

Lawrence I. James, Jr.

John Morrissey
2913 Oxford St.
Des Moines, IA

Date _____

Agenda Item _____

Roll Call # _____

38 A: B

Mayor Frank Cownie and Council members
Des Moines City Hall
Des Moines, IA

HAND DELIVERED

Re: Design guidelines for convenience stores and gas stations

May 5, 2008

Dear Mayor and Council:

I am writing to urge you to defer third reading of the so called "convenience store ordinance" and send the current version back to the Plan and Zoning Commission for further consideration.

I make this request because I believe there are significant new issues that P&Z overlooked during its review. I also make this request because I believe this entire re-review process has been instigated and orchestrated by one particular operator and tailored to meet its specific objections and purposes. Ordinances ought not be written to advance the business interests of one company to the potential detriment of other competitors. This ordinance provides a classic study of just this situation.

Special pleading solely beneficial to one firm

As proof of this latter assertion, please review the history of the P&Z review, as described in the staff report. "The Regulation and Ordinances (R & O) subcommittee reviewed the communications from Quik Trip and Des Moines Neighbors on April 9, 2008 with *representatives of Quik Trip* [emphasis added] in attendance. ...

Regarding proposed open space requirements: "Quik Trip's initial proposal for 20% open space or 1,000 square feet per pump (500 square feet per fueling location) whichever is greater would always result in the provision of only the existing minimum 20% open space unless more than 17 fueling locations were provided on a 1 acre site. Quik Trip representatives indicated they would look at their typical 12 vehicle fueling location (6 pump) layout on a one acre site to determine if they provide at least 12,000 square feet of open space."

Regarding lighting requirements for canopy fixtures: "An example of acceptable accent lighting is Quik Trip's use of a narrow static band of LED lights on the canopy fascia."

All three of these citations refer specifically and directly to objections raised by, and addressed on behalf of Quik Trip Corp. to the sole benefit of this company. While the city's ordinance and regulation drafting and review processes should be mindful of stakeholder concerns, including those of the firms or individuals to be regulated; while these processes should be responsive to comments and suggestions of these same people; and while these processes should be conducted in the light of day; such does not appear to be the case here.

Recall that objections to the proposed ordinance were raised very late in the P&Z process. As the commission was poised to adopt this ordinance, general, unspecified objections were raised by the legal representative of Quik Trip. Both R&O chair Dr. Bruce Heilman and Commission chair Dann Flaherty pleaded with Quik Trip's representative to describe even *one* specific objection to the proposed ordinance and pledged to work with industry representatives to find solutions. Both chairs reviewed the Commission's efforts to engage the industry in the ordinance drafting process. Despite the invitation, not one single objection was described by industry representatives. The commission proceeded to vote on the ordinance and forwarded the item for your consideration. Nor were any specific objections raised during Council's public hearing at first consideration of this ordinance. It was only after Quik Trip had successfully jammed up the regular and proper authorization process for this ordinance that the objections were identified publicly.

Recall that when these obstructionist tactics were initiated, several other representatives of the convenience store industry appeared to voice their support of Quik Trip's objections. A representative of the Petroleum Marketers of Iowa appeared apparently on behalf of all convenience store operators who belong to this organization. The PMI representative similarly voiced no specific objections to language in the ordinance. PMI's subsequent absence from meetings on this topic, the dearth of communications from PMI regarding the issues at stake and its subsequent absence from P&Z consideration of the revised ordinance raises questions about on whose behalf PMI originally appeared and what benefit its supposed intervention conveyed to its member companies. How are the supposed objections raised by other convenience store operators addressed in the revised ordinance? Indeed, what are the specific objections that other operators have? A reading of the revised ordinance offers no clue as to the disposition of these questions.

Unintended broadening of the city's sign ordinance

Immediately prior to approving the revisions now pending before you, the P&Z Commission discussed the issue of how the proposed canopy changes in the ordinance fit within the framework of the city's sign ordinance. Convenience stores are allowed more latitude in placing signs on their property than other commercial businesses by virtue of the large canopies they erect in the front yard setbacks of their properties. The total square foot area of their signs falls under the same restrictions, but these operators are allowed to allocate that square footage in a different way – putting some signage on the main building and other signs on the canopy.

But leaving aside consideration of what manner of materials constitute a sign, for purposes of the ordinance, the P&Z commission seemed to recognize that the canopy structure itself comprises a sign. As convenience stores get larger, these canopy structures are also becoming larger and more obtrusive. In commercial zones this is less objectionable but where new convenience stores will abut existing residential uses, these structures are out of place.

Quik Trip Corp. asked the commission to dramatically increase the allowable dimensions of canopies. The proposed ordinance called for a minimum clearance of 13'-9" and a maximum overall height of 17'. Quik Trip asked that this be changed to a 15' minimum clearance and 19' overall height. True to form, the company provided no showing of hardship or burden. What they failed to disclose is this change equates to a 23 percent increase in the maximum square footage available on the canopy fascia, compared to the draft ordinance. This is a billboard-sized impact on the surrounding neighborhood and demonstrates the lack of good faith on the part of this particular operator in recommending changes to this ordinance.

Discussion was had by P&Z about whether the a canopy comprises a sign. The general consensus that I heard was the color, shape and texture of a convenience store canopy -- more particularly the fascia of

a canopy -- comprises a sign. The legal doctrine of trade dress certainly covers these attributes. Convenience store operators are protective of their trademarks, service marks and trade dress. Anyone who might infringe upon them is likely to face legal proceedings, which is right and proper under the law. The commission felt it unwise to attempt to place restrictions on canopy fascia attributes such as color but noted instances where the color of the fascia alone denoted a particular convenience store operator. While it is understandable for P&Z to avoid trying to implement aesthetic guidelines regarding convenience store canopies, there is a better way to accomplish this. Reject the recommended height restrictions because they overtly increase the maximum allowable fascia square footage.

Along the same line, Quik Trip made a seemingly innocuous request that it be allowed to use LED lighting on its canopy fascias "as part of its brand image." On this very fact Quik Trip has conceded the argument above. The commission has already found that a canopy functions as a sign. Respectfully requested or not, Quik Trip proposes to drive a gas tanker through the city's sign ordinance. This matter should be referred back to P&Z for further consideration.

Canopy removal when operations cease.

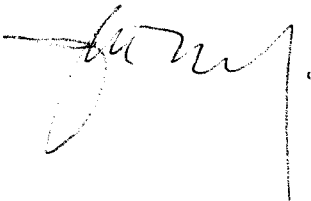
Des Moines Neighbors asked that this ordinance contain a provision that any convenience store or gas station operator who ceases operations should be required to remove a canopy on their abandoned site. This issue has renewed urgency with the recent departure of Kum & Go stores from the Highland Park neighborhood and elsewhere across the city. I would call your attention to the current circumstance at the store located on the southeast corner of East 14th Street and Hull Avenue where not only has the canopy fascia been removed, but the store signage is gone as well. I am hopeful this is only a temporary condition as new signage is prepared for this location.

But it could just as easily be a permanent condition, especially if Quik Trip begins abandoning its current generation of stores and is unsuccessful in selling such properties. This particular operator has a long history of abandoning store locations, either because the store outgrew the location, or it was located on the wrong side of the street or for some other inexplicable reason. Most of these structures have been converted to other uses, but the same may not hold true in the future. Since the canopy fascia constitutes part of the company's trade dress, and is therefore legally protected, it is not unreasonable to expect these operators to remove their property once they cease operations at a given location.

I thank you and especially the Plan & Zoning Commission for all their work on this ordinance. This is an important issue in our city and we need to get it right. The current version of the ordinance does not do this and I ask that you consider these remarks as a way to correct the ordinance.

Cordially,

John Morrissey

A handwritten signature in dark ink, appearing to read "John Morrissey", with a long, sweeping vertical line extending downwards from the end of the signature.

ORDINANCE NO. _____

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, amended by Ordinance No. 13,878 passed November 6, 2000, and Ordinance No. 14,018 passed November 19, 2001, and Ordinance No. 14,081 passed May 6, 2002, and Ordinance No. 14,326 passed March 22, 2004, and Ordinance No. 14,455 passed May 23, 2005, by amending Sections 82-208 and 82-209 and by adding and enacting a new Section 82-214.8, thereof, relating to gas station/convenience store site plan design guidelines.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, amended by Ordinance No. 13,878 passed November 6, 2000, and Ordinance No. 14,018 passed November 19, 2001, and Ordinance No. 14,081 passed May 6, 2002, and Ordinance No. 14,326 passed March 22, 2004, and Ordinance No. 14,455 passed May 23, 2005, amending Sections 82-208 and 82-209 and by adding and enacting a new Section 82-214.8, thereof, relating to gas station/convenience store site plan design guidelines, as follows:

Sec. 82-208. Determination for property subject to administrative approval.

- (a) *Generally.* Application for site plan approval shall be considered and determined in accordance with the procedures in this section, except for the following types of improvements which shall instead be subject to section 82-209:
- (1) Improvements to property in the NPC neighborhood pedestrian commercial district.
 - (2) Improvements which include an extension of parking into an adjoining residential district under the authority of section 134-1377(f)(8).
 - (3) Improvements to property used as a vehicle display lot.
 - (4) Improvements to property used for multiple family, boardinghouse or roominghouse use.
 - (5) Improvements to property in the D-R downtown riverfront district or C-3B central business mixed use district.

- (6) Improvements to property used as a gas station, with or without a convenience store.
-

Sec. 82-209. Determination for property not subject to administrative approval.

- (a) Applications for site plan approval shall be considered and determined in accordance with the procedures in this section for the following types of improvements:
- (1) Improvements to property in the NPC neighborhood pedestrian commercial district.
 - (2) Improvements which include an extension of parking into an adjoining residential district under the authority of section 134-1377(f)(8).
 - (3) Improvements to property used as a vehicle display lot.
 - (4) Improvements to property used for multiple family, boardinghouse or roominghouse use.
 - (5) Improvements to property in the D-R downtown riverfront district or C-3B central business mixed use district.
 - (6) Improvements to property used as a gas station, with or without a convenience store.
-

Sec. 82-214.8. Gas Station/Convenience Store Site Plan Design Guidelines.

Any site plan application which includes property used as a gas station or convenience store shall be approved by the plan and zoning commission if the proposed site plan conforms with the design regulations in section 82-213 and the following additional design guidelines, unless the commission determines that the construction and use of the site will have a significant detrimental impact on the use and enjoyment of adjoining residential uses:

1. Site Design.

- A. The optimal layout of any individual site requires an in-depth understanding of local context and a thorough site analysis. The components of a gas station and convenience store to be considered in site design include, but are not limited to:
- (i) Primary structure/retail sales building/single or multiple tenant;
 - (ii) Pump island, canopy structure, and lighting;
 - (iii) Refuse, service and storage area;
 - (iv) Circulation systems and parking;
 - (v) Service bays;
 - (vi) Ancillary uses such as car washes, drive through uses, ATMs and telephones.
- B. Maximum size of site should not exceed two (2) acres without a rezoning to a PUD Planned Unit Development pursuant to Chapter 134, Division 13 of the Municipal Code of the City of Des

Moines and site review under a Conceptual Plan approved by the Plan and Zoning Commission and City Council.

- C. Minimum open space should be 20 percent (20%) of the site or 1,000 square feet per vehicle fueling location, whichever is greater.
- D. All development proposals should show evidence of coordination with the site plan as well as arrangement of buildings and planning elements of neighboring properties by:
 - (i) Responding to local development patterns and the streetscape by use of consistent building setbacks, orientation and relationship of structures to the street and linkages to pedestrian facilities;
 - (ii) Seeking shared-access with adjoining commercial uses where feasible to minimize curb cuts and enhance pedestrian and vehicular circulation;
 - (iii) Minimizing cross traffic conflicts within parking areas.
- E. The site plan shall mitigate the negative impacts from site activities on adjoining uses as follows:
 - (i) Service areas, storage areas and refuse enclosures should be oriented away from public view and screened from adjacent sites;
 - (ii) Drive-through windows, menu boards and associated stacking lanes should be oriented away from residential areas or screened from public view;
 - (iii) Auto repair bay openings and car-wash openings should be oriented away from residential uses;
 - (iv) Lighting should be non-invasive to adjoining residential use.
- F. The site plan shall provide identifiable pedestrian access from adjoining public pedestrian routes through the site to the primary building and from accessory functions within the site. This can be accomplished by use of special paving colors or textures and appropriately scaled lighting.

2. Architecture.

- A. The following architectural guidelines encourage creative response to local and regional context and contribute to the aesthetic identity of the community.
- B. Building design should consider the unique qualities and character of the surrounding area and be consistent with the city's 2020 Character Area Plans. Where character is not defined by 2020 Community Character Plan, building design should be of a high quality with primary use of durable materials such as masonry, block, or stone.
- C. A facility occupying a pad or portion of a building within a larger commercial center should be designed to reflect the design elements of that center.
- D. Drive-through elements should be integrated into the building rather than appear to be applied or "stuck-on" to the building.
- E. All sides of a building should express consistent architectural detail and character, with a primary use of

durable materials such as brick, masonry block, or in special instances a predominant material found in the surrounding commercial area. Columns should be designed to minimize visual impact.

- F. Walls, pump island canopies and other outdoor covered areas should be compatible with the building, using similar material, color and detailing.
- G. To encourage visually interesting roofs, variations in the roof line and treatments such as extended eaves and parapet walls with cornice treatments are encouraged.
- H. Perceived height and bulk should be reduced by dividing the building mass into smaller-scaled components. Examples of treatments that could be used to avoid excessive bulk and height include:
 - (i) Low-scale planters and site walls.
 - (ii) Wainscot treatment.
 - (iii) Clearly pronounced eaves or cornices.
 - (iv) Subtle changes in material color and texture.
 - (v) Variation in roof forms.
 - (vi) Covered pedestrian frontages and recessed entries.
 - (vii) Deeply set windows with mullions.
- I. Canopies:
 - (i) Integration of materials on canopies that are similar or compatible to those used on the building or site walls is desirable (e.g., wrap the canopy columns with brick that matches the building). Multiple canopies or canopies that express differing masses are encouraged.
 - (ii) Canopy height should not be less than 13'- 9" as measured from the finished grade to the lowest point on the canopy fascia. The overall height of canopies should not exceed 18'.
- J. All display items for sale, excluding seasonal items (i.e., sand, salt, pop, firewood) should be located within the main building. All outdoor display of seasonal items shall be identified on the site plan and be located outside of any required setbacks. No display of seasonal items should exceed 5' in height.

3. Landscape Design.

- A. Landscaping is integral to the overall design concept and should be carefully planned to enhance the overall appearance and function of the site.
- B. Landscape buffers with screen fencing should mask the site from adjacent residential uses. Plantings that exceed the minimum Des Moines Landscaping Standards may be required.
- C. Dense landscaping or architectural treatments should be provided to screen unattractive views and features such as storage areas, trash enclosures, utility cabinets and other similar elements.
- D. A site design for projects located at a street intersection should provide special landscape treatments, including by way of example perennial plant beds, site walls, native grasses,

- decorative sign foundations and housing.
- E. Proper maintenance and timely replacement of plant material is required and will be enforced based on the approved site plan.
- F. Monument signs are encouraged and are required when the site adjoins a residential district.

4. Lighting.

- A. Lighting of gas stations and convenience stores should enhance safety and provide light levels appropriate to the visual task with minimal glare, light trespass and excess site brightness. Lighting should not be a nuisance or a hazard.
- B. Direct light trespass beyond property lines is prohibited. The maximum horizontal illuminance at grade and the maximum vertical illuminance at five feet above grade measured at the property line should not exceed Illuminating Engineering Society of North America (IESNA) recommended practices for light trespass. (0.5 footcandles for residential, 2.0 footcandles for commercial). The site plan must contain illuminance models showing light levels throughout the site.
- C. Light fixtures mounted under canopies should be completely recessed into the canopy with flat lenses that are translucent and completely flush with the bottom surface (ceiling) of the canopy. Generally, lights shall not be mounted on the top or sides (fascias) of the canopy and internally illuminated/entirely translucent canopies should be prohibited. However, accent lighting on the sides (fascias) of the canopy may be permitted.
- D. Parking Lot and Site Lighting:
- (i) All luminaries should be of full cut-off design, aimed downward and away from the property line;
- (ii) Maximum pole heights should not exceed 20'.
- F. Building-Mounted Lighting:
- (i) All luminaries should be a full cut-off design and aimed downward.
- (ii) All luminaries should be recessed or shielded so the light source is not directly visible from the property line.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:



Michael F. Kelley
Assistant City Attorney