

Date: May 24, 2010

COMMUNICATION from the City Plan and Zoning Commission advising that at a public hearing held on May 6, 2010, its members voted 13-0 in support of a motion requesting that City Council authorize and direct staff to prepare a text amendment to address operational concerns and to allow beverage container redemption uses in "C-2" Districts.

MOVED by _____ to receive and file.

FORM APPROVED:


 Michael F. Kelley
 Assistant City Attorney

(10-2010-5.01)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

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.

MOTION CARRIED

APPROVED

 Mayor

 City Clerk

May 11, 2010

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 May 6, 2010, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 13-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley				X
Dann Flaherty	X			
Joel Huston	X			
Ted Irvine	X			
Jeffrey Johannsen	X			
Greg Jones	X			
Jim Martin	X			
Brian Millard	X			
William Page	X			
Mike Simonson	X			
Kent Sovern	X			

APPROVAL of a motion to send a letter to the Council requesting authorization for staff to prepare a text amendment to address operational concerns and to allow beverage container redemption uses in "C-2" District.
 (10-2010-5.01)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends that the City should not pursue a text amendment to the Zoning Ordinance to allow the principle use of a C-2 property for a "beverage container redemption center". Such use should remain as a permitted use in an M-1 industrial district provided that all operations are contained within a building in accordance with existing City Code.

STAFF REPORT

I. GENERAL INFORMATION



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

Retail and Highway Oriented Commercial District. The subject property was formerly occupied by the Holub Greenhouse and is now owned by George M. Clayton. Prior to February 2, 2010, the Zoning Enforcement staff of the Permit and Development Center issued a verbal notice to the leaseholder (Mr. Egenberger) that use of the property for a beverage container redemption center was not permitted in the C-2 zoning district and that he was illegally occupying the building without a certificate of occupancy. 20

Mr. Egenberger and Mr. Clayton attended a pre-application meeting on February 2, 2010 and were advised by city staff that a stand-alone beverage container redemption center is classified as a "warehousing", "manufacturing" or "recycling" use under the Zoning Ordinance of the City Code. Such a use requires M-1, Light Industrial District zoning and requires all operations to be contained within a building. If such a use cannot comply with the provisions of the M-1 District, then M-2 Heavy Industrial zoning is required.

Mr. Egenberger and Mr. Clayton were advised of the process to change the zoning of the subject property from the C-2 commercial district to an M-1 industrial district and were also advised of the process to request a use variance from the Zoning Board of Adjustment should the applicant's rezoning application be denied by the City Council.

On February 22, 2010 the City received a citizen complaint that Mr. Egenberger was continuing to operate a redemption center for beverage containers (aluminum cans, plastic bottles and glass bottles) from the subject property. A written notice of zoning violation was issued by the Zoning Enforcement Officer on February 23, 2010.

On March 8, 2010 Mr. Egenberger submitted a letter requesting a zoning text amendment to distinguish the principle use of a property for a beverage container redemption center from other warehousing, manufacturing and recycling center uses and to permit the beverage container redemption center use in all C-2, General Retail and Highway Oriented Commercial Districts rather than to apply for a zoning district change for a single property located at 4109 SE 14th Street. Mr. Egenberger did not propose specific language for a text amendment but did note that his operation does not include use of any manufacturing equipment.

On March 24, 2010 Mr. Egenberger attended the Plan and Zoning Commission Regulation and Ordinance (R&O) Subcommittee meeting to explain his operations and request for a text amendment. He noted that he has redeemed a maximum of 10,000 beverage containers per day and his goal is to redeem approximately 33,333 beverage containers per day (1,000,000 cans/bottles per month). Mr. Egenberger manually sorts the redeemed cans/bottles according to the distributor, places them in plastic bags and stores the bags in a portion of his 1,000 s.f. of leased space or in distributor supplied trailers that are stored on the property for distributor pick-up and exchange of an empty trailer. Mr. Egenberger is not recycling or storing the cans/bottles for commodity trading purposes. Mr. Egenberger has not contracted any pest or rodent control services at this time due to cost and the infancy of his business.

Assuming 24 beverage containers occupy a space of one cubic foot, staff estimates that Mr. Egenberger's current operations (redemption of up to 10,000 containers per day) would require a minimum 1,250 cubic feet of storage area in a building assuming distributors remove all cans every 3 days (approximately twice per week). Mr. Egenberger's anticipated business operations (redemption of approximately 33,333 containers per day) would require a minimum 4,150 cubic feet of storage area in a building

assuming distributors remove all cans every 3 days (approximately twice per week). Therefore, Mr. Egenberger’s current operations are already exceeding the space he has leased and has resulted in the use of distributor trailers for storage.

II. ADDITIONAL APPLICABLE INFORMATION

Grocery stores, convenience stores and other like beverage dealers allowed in the City’s C-1 and C-2 commercial districts cannot refuse to accept from a consumer any empty beverage container of the kind, size and brand sold by the dealer, or refuse to pay to the consumer the refund value of a beverage container as provided under section 455C.2 of the Iowa Code. However, these accessory redemption activities are contained entirely within the principal or accessory buildings on the site.

The zoning code also states that an accessory building means a structure on the same lot with, separate from, and of a nature customarily incidental and subordinate to the principal structure and intended for the storage of equipment and materials of the principal use. Trailers, semi-trailers, tents, motor vehicles and component parts thereof are excluded for use as accessory buildings in the definition of accessory structures.

Many C-2 districts are located adjacent to residentially zoned areas of the City. While allowing the principle use of a C-2 property for beverage container redemption may be a convenient alternative to grocery stores or convenience stores for consumers, staff is concerned that the operations of such a facility have a high likelihood of creating nuisance impacts on adjoining residential properties due to inadequate storage space within a building, the potential for change in business operations from redemption activities to a commodity trading activity, debris, odor, and attraction of insects and rodents.

No specific zoning text language has been proposed by the applicant. Due to limited staff resources, staff requests a specific directive from the Plan and Zoning Commission and City Council to prepare a text amendment to address these operational concerns if such use is desired in a C-2 district.

SUMMARY OF DISCUSSION

Mike Ludwig presented the staff report and recommendation.

Joe Egenberger 4109 SE 14th Street stated he is not in agreement with staff’s recommendations. The amount of space he has for storing the beverage containers is triple the 1,000 square feet because everything is stacked. Therefore, he is not exceeding the space he has leased. His vendors are coming at least twice a week depending on how much he takes in and one vendor has said they will come more if needed. He has not contracted any pest or rodent control services at this time due to cost and the infancy of his business. The citizen complaint was from a competing center that is trying to monopolize the business. Mr. Egenberger does not understand why a redemption center use requires “M-1” zoning and not “C-2” zoning.

Larry Hulse explained that staff recommendation is really not looking at the specific location. It is a text change so it is something that is going to have citywide impact. The zoning ordinance does not always list exactly what each business is but the people that administer the ordinance to compare what type of use it is. The Commission has to determine if they want the use allowed in “C-2” Districts or to remain in “M-1” Districts.

Mike Ludwig stated the applicant is correct there is not a specific listing of a can redemption center in the zoning code. By strict interpretation of the code if a specific use is not listed, then it is not permitted anywhere in the City. Staff chose to take the approach that when a use is not specifically listed, they find a use that is most similar or compatible to the proposed use in the zoning code and then apply those regulations. Staff feels confident in their recommendation. There are other means available to the applicant such as rezoning of the specific parcel.

Greg Jones stated that R&O felt it was at least worthy of sending to the Commission to answer the question. The applicant is providing a service so that people do not have to stand in front of a machine to redeem beverage containers.

Ted Irvine asked if the applicant was before the Commission because he decided to go this route instead of going to the Board of Adjustment and get a variance for this use.

Mike Ludwig stated that there were multiple options. A use variance would be specific to the property just like zoning would be specific to the property, and Mr. Egenberger elected to ask for a text amendment change. The applicant must be denied zoning before they can seek a use variance.

Ted Irvine stated that this kind of business make sense, but encourages the applicant to go to the Board of Adjustment for a variance.

Jeffrey Johannsen stated that he was not in support of changing the zoning but recommends that Mr. Egenberger goes to the Board of Adjustment for a variance.

JoAnne Corigliano stated that if Mr. Egenberger could keep his business firmly within the boundaries of his building then she sees no problem with it but also do not want to change "C-2" text.

Greg Jones stated that Mr. Egenberger mentioned at the R&O meeting that if the text amendment change was successful this would be the only time anyone would have to go through the process of requesting the use of a Beverage Container Redemption Center as a Permitted Use within the "C-2" District. He believes all operations should be within a building if allowed in the "C-2" District.

Ted Irvine stated he believes customers are going to prefer to go to a redemption center in the "C-2" District rather than in an "M" zone. He would be comfortable with what Mr. Jones is suggesting.

Mike Ludwig clarified options that were explained to the applicant. If the applicant wants to apply for a rezoning to change this existing property from a "C-2" to "M-1" staff would consider that and would propose reasonable limitations on the property. However, staff will not support a text amendment to the "C-2" zoning district. It is more appropriate to consider a use such as this on an individual basis. The applicant elected to request a text amendment for the entire district.

Greg Jones stated that would be defeating the purpose and thinks that it is the wrong approach and what the applicant is doing has merit.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following spoke in favor of the application

Candace Linville, Indianola stated that as a small business owner they have spent in excess of \$10,000 for site plans and renovation for another use at a different location. The applicant’s proposal is an important service for the City.

Ed. Egenberger explained the reason for the applicant (his son) choosing to ask for a text amendment is so that redemption centers can be placed around the City like on Fleur, Army Post Road, and East 14th Street as long as containers are contained in the building and maintained.

There was no one to speak in opposition of the application

Rebuttal

Joe Egenberger stated that he was not trying to cause any grief by applying for the text amendment. He does not understand staff recommendations. He tries to keep the place as clean as he can, and he thinks the redemption centers are an appropriate use in the “C-2” District. He hopes the Commission grants his request.

Brian Millard asked if the applicant is site specific. He asked if “M-1” zoned properties available on commercial corridors would be an option.

Joe Egenberger stated in the beginning he was not set. However, after all the customers that are coming in now, he is set.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Mike Simonson suggested that Council send this issue back to Plan & Zoning to study the language and consider allowing something like this in the “C-2” with a conditional use permit. There is no different. He thinks that the applicant is being penalized because he is the first one.

Larry Hulse explained that no specific zoning text language has been proposed by the applicant. Due to limited staff resources, staff requests a specific directive from the Plan and Zoning Commission and City Council to prepare a text amendment to address these operational concerns if such use is desired in a “C-2” District.

Mike Simonson asked if the applicant can continue to operate while waiting on decision and if the applicant can be refunded his application fee.

Larry Hulse stated that the applicant can continue to operate subject to conditions of the Zoning Enforcement Officer while waiting on a decision. The Plan and Zoning Commission does not have the authority to refund his application fee but can recommend to the Council in the letter.

Brian Millard stated that he would like to see the applicant bring his outdoor storage into compliance.

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JoAnne Corigliano asked what kind of money he would have to be penalized if he were to continue and go before the Board of Adjustment.

Mike Ludwig explained \$50.00 text amendment fee was paid. The applicant was advised to seek a rezoning (\$100.00 plus notification mailing cost), and if he were denied zoning and had to go the Zoning Board of Adjustment there would be a \$300.00 use variance application fee.

Ted Irvine asked if a text amendment is approved and a special use permit is required, would that allow the Commission to approve the use on a case by case in "C-2" Districts.

Larry Hulse stated that Zoning Board of Adjustment reviews special use permits on a case by case basis. The application fee would currently be \$300.00.

Leisha Barcus stated the applicant needs to understand that there may be some changes that need to be made.

Larry Hulse stated that if staff observes a problem according to code they will note that and expects the applicant will take care of it.

COMMISSION ACTION

Mike Simonson moved that Plan and Zoning Commission send a letter to the Council asking that staff prepare a text amendment to address operational concerns of beverage container redemption uses in "C-2" District.

Motion passed 13-0.

Respectfully submitted,


Michael Ludwig, AICP
Planning Administrator

MGL:clw

cc: File