

★ **Roll Call Number**

Agenda Item Number

65A

Date July 9, 2007

An Ordinance entitled, "AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 902 E. Euclid Avenue from the "R1-60" One-Family Low-Density Residential District to a Limited "C-2" General Retail and Highway Oriented Commercial District classification",

presented.

MOVED by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

Roger K. Brown

Roger K. Brown
Assistant City Attorney

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

City Clerk

MOTION CARRIED

APPROVED

Mayor

ORDINANCE NO. _____

AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 902 E. Euclid Avenue from the "R1-60" One-Family Low-Density Residential District to a Limited "C-2" General Retail and Highway Oriented Commercial District classification.

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

Section 1. That the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, be and the same is hereby amended by rezoning and changing the district classification of certain property located in the vicinity of 902 E. Euclid Avenue, more fully described as follows, from the "R1-60" One-Family Low-Density Residential District to a Limited "C-2" General Retail and Highway Oriented Commercial District classification:

Lot 14, except the North 310.8 feet and except the South 165.0 feet, of Euclid Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter referred to as the "Property").

Sec. 2. That this ordinance and the zoning granted by the terms hereof are subject to the following imposed additional conditions which have been agreed to and accepted by execution of an Acceptance of Rezoning Ordinance by all owners of said property and are binding upon the owners and their successors, heirs, and assigns as follows:

- A. The following uses of structures and land shall be prohibited upon the Property:
- 1) Adult entertainment business;
 - 2) Automobile establishments for display, hire and rental, including used car sales lot.
 - 3) Garage for general motor vehicle repair;
 - 4) Off-premises advertising sign;
 - 5) Package goods store for the sale of alcoholic beverages;
 - 6) Taverns and nightclubs; and,

- 7) Businesses that derive their primary revenue from title or advance payroll loans and/or pawn brokering.

- B. Any commercial use of the Property shall be subject to an approved site plan. In the site plan approval process, easements shall be recorded upon the remaining residential portion of the parcel (consisting of the South 125.0 feet of the North 310.8 feet of said Lot 14), to allow the owner of the Property to maintain, and to relocate if necessary in the future, any required landscaping and stormwater management facilities installed on such adjoining residential property for the benefit of the commercial use upon the Property.

Sec. 3. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Sec. 4. That the City Clerk is hereby authorized and directed to cause a certified copy of the Acceptance of Rezoning Ordinance, this ordinance, a vicinity map, and proof of publication of this ordinance, to be properly filed in the office of the Polk County Recorder.

FORM APPROVED:



Roger K. Brown

Assistant City Attorney

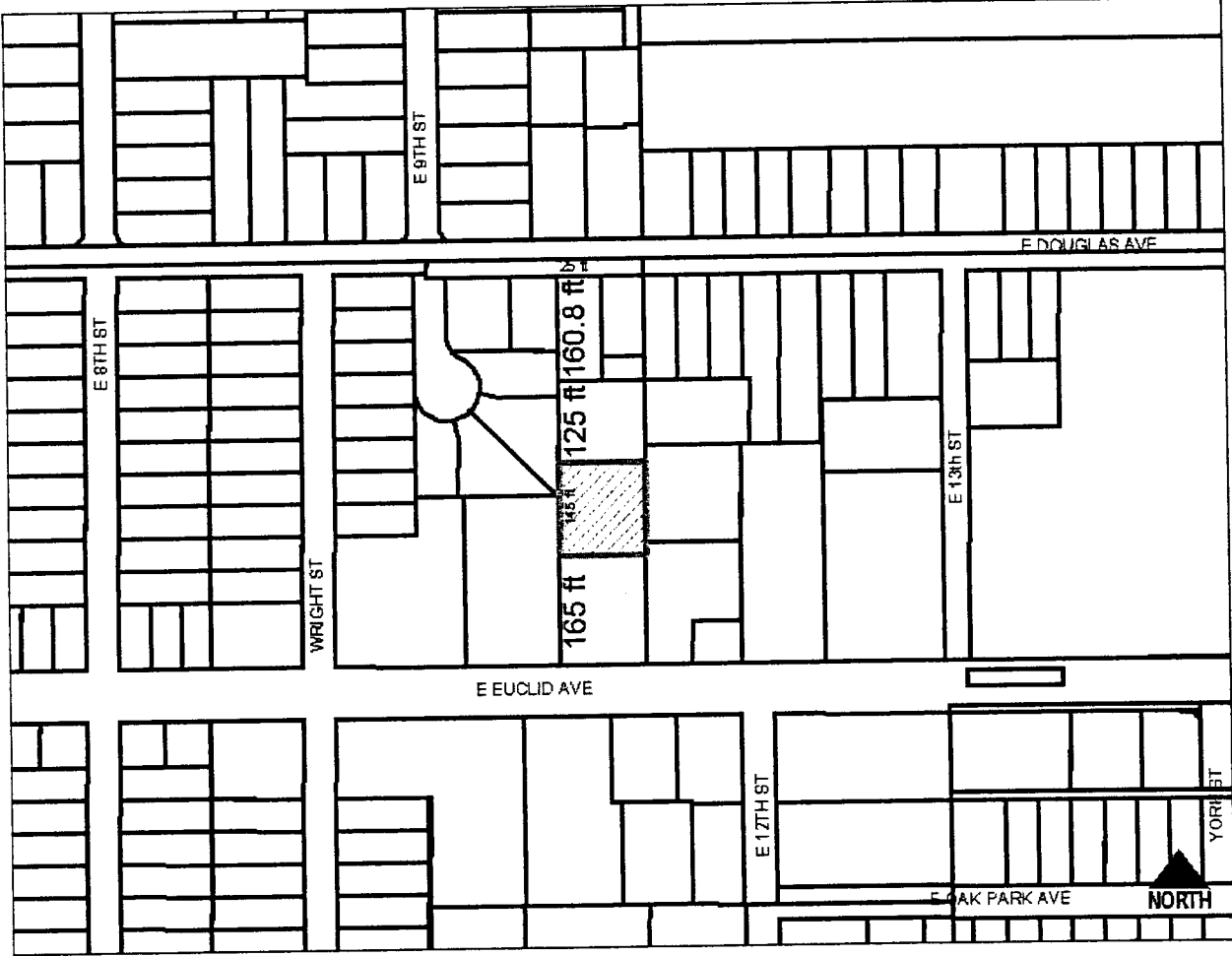
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65A

Request from Central Iowa KFC, Inc. (developer) represented by Kevin Schlutz (officer) to rezone property located at 902 E. Euclid Avenue. Subject property is owned by K and E, LLC.			File # ZON2007-00068	
Description of Action	Rezone property from "R1-60" One-Family Low-Density Residential District to "C-2" General Retail and Highway-Oriented Commercial District, to allow for expansion of the existing restaurant site.			
2020 Community Character Plan	Low-Density Residential			
Horizon 2025 Transportation Plan	No Planned Improvements			
Current Zoning District	"R1-60" One-Family Low-Density Residential District			
Proposed Zoning District	"C-2" General Retail and Highway-Oriented Commercial District			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area				
Outside Area	1	1	0	<20%
Plan and Zoning Commission Action	Approval	8-0	Required 6/7 Vote of the City Council	Yes
	Denial			No

Central Iowa KFC Inc. - 902 E Euclid Avenue

ZON2007-00068



65A

Prepared by: Roger K. Brown, Assistant City Attorney, 400 Robert Ray Dr., Des Moines, IA 50309
515/283-4541
Return Address: City Clerk - City Hall, 400 Robert Ray Dr., Des Moines, IA 50309
Taxpayer: No change
Title of Document: Acceptance of Rezoning Ordinance
Grantor's Name: K and E, L.L.C., an Iowa limited liability company
Grantee's Name: City of Des Moines, Iowa
Legal Description:

Lot 14, except the North 310.8 feet and except the South 165.0 feet, of Euclid Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter referred to as the "Property").

ACCEPTANCE OF REZONING ORDINANCE

The undersigned K and E, L.L.C., an Iowa limited liability company, hereby states, warrants and agrees as follows:

1. That K and E, L.L.C., is the sole owner of the Property in the vicinity of 902 E. Euclid Avenue, more specifically described above.

2. That in the event the City of Des Moines, Iowa, acts to rezone the Property from the "R1-60" One-Family Low-Density Residential District to a Limited "C-2" General Retail and Highway Oriented Commercial District classification, we agree and accept on behalf of the owners to the imposition of the following conditions to run with the land and be binding upon all successors, heirs and assigns as part of the ordinance so rezoning the Property:

- A. The following uses of structures and land shall be prohibited upon the Property:
- 1) Adult entertainment business;
 - 2) Automobile establishments for display, hire and rental, including used car sales lot.
 - 3) Garage for general motor vehicle repair;
 - 4) Off-premises advertising sign;
 - 5) Package goods store for the sale of alcoholic beverages;
 - 6) Taverns and nightclubs; and,

7) Businesses that derive their primary revenue from title or advance payroll loans and/or pawn brokering.

B. Any commercial use of the Property shall be subject to an approved site plan. In the site plan approval process, easements shall be recorded upon the remaining residential portion of the parcel (consisting of the South 125.0 feet of the North 310.8 feet of said Lot 14), to allow the owner of the Property to maintain, and to relocate if necessary in the future, any required landscaping and stormwater management facilities installed on such adjoining residential property for the benefit of the commercial use upon the Property.

3. A certified copy of the rezoning ordinance shall be attached hereto, and a certified copy of this document and the rezoning ordinance shall be recorded by the City in the land records of the County Recorder to memorialize the rezoning of the Property as identified above.

4. That in the event any portion of the Property is hereafter rezoned to a district classification different from Limited "C-2", then this Acceptance shall be immediately terminated as applied to the real estate so rezoned on the effective date of such rezoning, and the conditions agreed to herein shall be rendered null and void, provided, if there be any such rezoning to a more restricted zoning classification, any then legal actual use of such real estate shall become a legal non-conforming use.

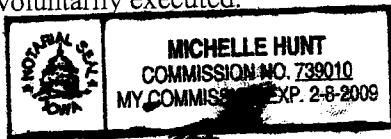
The words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

K and E, L.L.C.,

By: Kevin Schlutz Manager
Kevin Schlutz, Manager

STATE OF IOWA)
COUNTY OF POLK) ss:

BE IT REMEMBERED, that on this 20th day of June, 2007, before me, the undersigned, a Notary Public in and for Polk County, Iowa, personally appeared **Kevin Schlutz**, to me personally known, who, being by me duly sworn did say that he is the Manager of **K and E, L.L.C.**, an Iowa limited liability company; that said instrument was signed on behalf of said company by authority of its Members; and that he acknowledged the execution of said instrument to be the voluntary act and deed of said company, and by it and by him voluntarily executed.



Michelle Hunt
Notary Public
My commission expires: 2-8-09