



Date January 13, 2014

RESOLUTION SETTING HEARING ON A REQUEST FROM KWIK TRIP, INC. D/B/A TOBACCO OUTLET PLUS REPRESENTED BY DONALD ZIETLOW (OFFICER) TO REZONE PROPERTY LOCATED AT 3301 EAST EUCLID AVENUE TO ALLOW A FUTURE CONDITIONAL USE APPLICATION FOR CONTINUED USE OF THE PROPERTY FOR A BUSINESS WHERE MORE THAN 40 PERCENT OF THE GROSS RECEIPTS FROM SALES MAY BE DERIVED FROM THE SALE OF BEER, WINE OR TOBACCO PRODUCTS

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on December 19, 2013, a motion was passed on a vote of 12-1-1 to recommend APPROVAL of a request from Kwik Trip, Inc. d/b/a Tobacco Outlet Plus represented by Donald Zietlow (Officer) to rezone property located at 3301 East Euclid Avenue from the "C-1" Neighborhood Retail Commercial District and "FW" Floodway District to the "C-2" General Retail and Highway-Oriented Commercial District, to allow a future Conditional Use application for continued use of the property for a business where more than 40 percent of the gross receipts from sales may be derived from the sale of beer, wine or tobacco products subject to the owner agreeing to the following conditions:

- A. Limit the rezoning of any property to the "C-2" District to only that portion of the subject property which is outside of the existing and proposed federally designated flood hazard areas.
B. Rezone those portions of the subject property currently zoned to the "C-1" District and located inside of the existing and proposed federally designated flood hazard areas to the "FW" Floodway District.

(Prior to the hearing by the City Council on this matter the owner should be required to procure a legal description for such areas from a professional engineer.)

- C. The following uses of structures or land shall not be permitted on the subject property:
1) Any business required to have a Class E Liquor License.
2) Adult entertainment businesses.
3) Delayed deposit services.
4) Off-premises advertising signs.
5) Taverns and nightclubs.
6) Vehicle display lots.

WHEREAS, the subject property is owned by Grayslake Outparcels, LLC and is more specifically described as follows:

An irregular parcel of land in the Northwest 1/4, of the Northeast 1/4, of Section 29, Township 79 North, Range 23 West of the 5th P.M., all now in and forming a part of the City of Des Moines, Polk County, Iowa, more specifically described as follows:

Commencing at a point 718.2 feet South and 64.5 feet East of the North quarter-corner of said Section 29; thence South 87°14'30" East along the South right-of-way



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Date January 13, 2014

line of E. Euclid Avenue 622 feet; thence South 55°19'30" West 179.5 feet; thence North 87°14'30" West 89.1 feet; thence South 47°47'30" West 337.5 feet; thence North 00°21'30" East 127.2 feet; thence West 150.0 feet to the East right-of-way line of E. 33rd Street; thence North 03°26'30" East along the East right-of-way line of E. 33rd Street 228.0 feet to the Point of Beginning.

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

- 1. That the meeting of the City Council at which the proposed rezoning is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. on January 27, 2014, at which time the City Council will hear both those who oppose and those who favor the proposal.
2. That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

MOVED by _____ to adopt.

FORM APPROVED:

Roger K. Brown (signature)

Roger K. Brown

Assistant City Attorney

G:\SHARED\LEGAL\BROWN\REZONING\Kwik Trip - 3301 E. Euclid\Set Hearing Roll Call.docx

(ZON2013-00186)

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GRAY, HENSLEY, MAHAFFEY, MOORE, VOSS, and 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

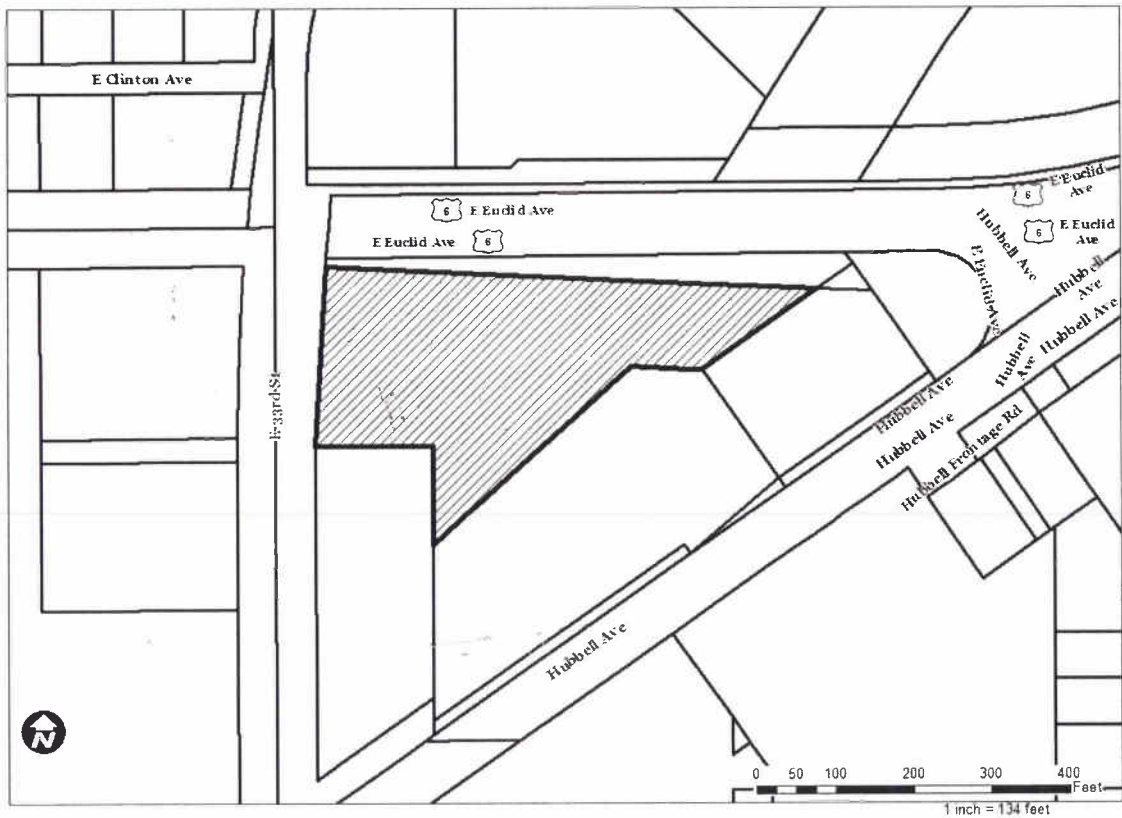
Mayor

City Clerk

Request from Kwik Trip, Inc. d/b/a Tobacco Outlet Plus (lessee) represented by Donald Zietlow (officer) to rezone property located at 3301 East Euclid Avenue. The subject property owner is Grayslake Outparcels, LLC.		File #			
		ZON2013-00186			
Description of Action	Approval of the requested rezoning from "C-1" Neighborhood Retail Commercial District and "FW" Floodway District to "C-2" General Retail and Highway-Oriented Commercial District, to allow a future Conditional Use application for continued use of the property for a business where more than 40 percent of the gross receipts from sales may be derived from the sale of beer, wine or tobacco products subject to conditions.				
2020 Community Character Plan	Commercial: Auto-Oriented, Community Commercial.				
Horizon 2035 Transportation Plan	Widen Hubbell Avenue (U.S. Hwy 6) to 4 Lanes at East Euclid Avenue.				
Current Zoning District	"C-1" Neighborhood Retail Commercial District and "FW" Floodway 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	2	1			
Outside Area					
Plan and Zoning Commission Action	Approval	12-1-1	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Kwik Trip, Inc. (dba Tobacco Outlet Plus), 3301 East Euclid Avenue

ZON2013-00186



ZON2013-00186

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Item _____

Date 12/12/13

I (am) (am not) in favor of the request.

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

Print Name B J BAKER

Signature [Signature]

DEC 16 2013

Address 3400 E Euclid

DEPARTMENT

Reason for opposing or approving this request may be listed below:

ZON2013-00186

Item _____

Date 12/11/13

I (am) (am not) in favor of the request.

RECEIVED
COMMUNITY DEVELOPMENT

DEC 16 2013

Print Name Baker Real Estate LP
Gregory W Baker

Signature [Signature]

DEPARTMENT

Address 4224 Hubbard

Reason for opposing or approving this request may be listed below:

ZON2013-00186

28

Item

Date 12-10-13

I (am) (am not) in favor of the request.

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

Print Name John Thomas

Signature John Thomas

DEC 16 2013

Address 2658 Boyd ST.

Reason for opposing or approving this request may be listed below.

~~DEPARTMENT~~
We have a Dahl's grocery store right on
East 33rd street that sells Beer wine & spirits
Also have a quick Trip gas station
just up the street on East 37th + Hubble ave
That sells the same things. See no need
~~FARMONT PARK NEIGHBORHOOD ASS.~~

Date January 13, 2014

Agenda Item 28

Roll Call # _____

January 7, 2014

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 December 19, 2013, the following action was taken regarding a request from Kwik Trip, Inc. d/b/a Tobacco Outlet Plus (lessee) represented by Donald Zietlow (officer) to rezone property located at 3301 East Euclid Avenue.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 12-1-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley			X	
Tim Fitzgerald	X			
Dann Flaherty	X			
Jann Freed				X
John "Jack" Hilmes	X			
Ted Irvine	X			
Greg Jones	X			
William Page	X			
Christine Pardee	X			
CJ Stephens		X		
Vicki Stogdill	X			
Greg Wattier	X			

APPROVAL of a motion to find the proposed rezoning is in conformance with the Des Moines' 2020 Community Character Plan and **APPROVAL** of the requested rezoning to a "C-2" District, subject to the owner agreeing to the following conditions. (ZON2013-00186)

1. Limit the rezoning of any property to the "C-2" District only to portions which are outside any existing or proposed Federally designated flood hazard areas. Prior to setting a hearing by the City Council the owner would be responsible for procuring a professional engineer to develop a legal description of that such area.
2. Rezone portions of the subject property zoned "C-1" District to "FW" Floodway District. Prior to setting a hearing by the City Council the owner would be responsible for procuring a professional engineer to develop a legal description of that such area.



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

3. Prohibit the use of any portion of property zoned to the "C-2" District from issuance of a Class E Liquor license.
4. Prohibit the use of any portion of property zoned to the "C-2: District for adult entertainment businesses, delayed deposit services, off-premises advertising signs, taverns and nightclubs, and vehicle display lots.

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the Commission find the requested rezoning in conformance with the Des Moines' 2020 Community Character Plan.

Part B) Staff recommends approval of the requested rezoning to a "C-2" District, subject to the owner agreeing to the following conditions:

1. Limit the rezoning of any property to the "C-2" District only to portions which are outside any existing or proposed Federally designated flood hazard areas. Prior to setting a hearing by the City Council the owner would be responsible for procuring a professional engineer to develop a legal description of that such area.
2. Rezone portions of the subject property zoned "C-1" District to "FW" Floodway District. Prior to setting a hearing by the City Council the owner would be responsible for procuring a professional engineer to develop a legal description of that such area.
3. Prohibit the use of any portion of property zoned to the "C-2" District from issuance of a Class E Liquor license.
4. Prohibit the use of any portion of property zoned to the "C-2: District for adult entertainment businesses, delayed deposit services, off-premises advertising signs, taverns and nightclubs, and vehicle display lots.

Written Responses

2 In Favor

1 In Opposition

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to retain the existing tobacco store which sells beer and wine. The store was given occupancy as a grocery store with a permit to sell beer and wine not to exceed 50% of the gross revenues. This was prior to revisions in the Zoning Ordinance restricting businesses that sell alcoholic beverages and including tobacco products in the sales numbers.

Under these revisions, while beer and wine may continue to be sold in the "C-1" District as part of a limited retail or food sales business; gross revenues of wine, beer, and tobacco products may not exceed 40% of the total revenues. When the 40% provision is exceeded, the Zoning Ordinance defines the business operation as a liquor store selling beer and wine, which requires "C-2" District zoning and a separation distance of 150 feet from any property with a school, church, public park or license child care

facility as defined by the State of Iowa. This provision takes effect for any beer and wine licenses renewed after December 31, 2013. The applicant has indicated that the existing and proposed business model exceeds the 40% limitation and, therefore, it is considered a liquor store for purposes of the Zoning Ordinance.

2. **Size of Site:** 2.5 acres (109, 248 square feet). Area of site outside of the flood hazard area is approximately 22,250 square feet (0.51 acres).

3. **Existing Zoning (site):** "C-1" Neighborhood Retail Commercial District and "FW" Floodway District.

4. **Existing Land Use (site):** The site includes a 1,937-square foot commercial building occupied by the applicant as a tobacco shop. The previous occupancy was a drive-in restaurant.

5. **Adjacent Land Use and Zoning:**

North – "Timberbrook Terrace PUD", Uses are medical and dental offices, a group home and a hospice facility.

South – "FW", Use is Four Mile Creek.

East – "FW", Use is Four Mile Creek.

West – "Eastwood Village PUD", Uses include Dahl's grocery store and commercial center retail, office, and restaurant uses.

6. **General Neighborhood/Area Land Uses:** The subject property is located along the East Euclid Avenue (U.S. Hwy 6) commercial corridor just west of the junction with Hubbell Avenue along Four Mile Creek.

7. **Applicable Recognized Neighborhood(s):** The subject property is within a recognized neighborhood but is within 250 feet of the Fairmont Park Neighborhood, the Sheridan Gardens Neighborhood to the east, and the Douglas Acres Neighborhood to the north. All recognized neighborhoods were notified of the meeting by mailing of the Preliminary Agenda to all recognized neighborhoods on December 2, 2013. Additionally, separate notifications of the hearing for this specific item were mailed on November 27, 2013 (20 days prior) and December 9, 2013 (10 days prior to the scheduled hearing) to the Fairmont Park Neighborhood, Sheridan Gardens Neighborhood and Douglas Acres Neighborhood contacts and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on December 13, 2013.

All agendas and notices are mailed to the contact person(s) designated to the City of Des Moines Neighborhood Development Division by the recognized neighborhood association. The Fairmont Park Neighborhood Association mailings were sent to John Thomas, 2658 Boyd Street, Des Moines, IA 50317. The Sheridan Gardens Neighborhood Association mailings were sent to Kurt Lee, 3507 East 29th Court, Des Moines, IA 50317. The Douglas Acres Neighborhood Association mailings were sent to Linda Westergaard, 4009 East 23rd Street, Des Moines, IA 50317.

The applicant is required to schedule a neighborhood meeting prior to the hearing which includes invitation to neighborhood contacts and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. The applicant invited neighboring property owners and Fairmont Park Neighborhood, Sheridan Gardens Neighborhood, and Douglas Acres Neighborhood representatives to attend a meeting scheduled and held on December 9, 2013. However, the applicant has indicated that nobody attended the meeting.

8. **Relevant Zoning History:** N/A.

9. **2020 Community Character Land Use Plan Designation:** Commercial: Auto-Oriented Community Commercial.

10. **Applicable Regulations:** The Commission reviews all proposals to amend zoning regulations or zoning district boundaries 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 recommend that certain conditions be applied to the subject property if the property owner agrees in writing, prior to the City Council Hearing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Businesses Selling Liquor, Wine, and Beer:** The following applicable regulations are now enforceable for businesses selling liquor, wine, and/or beer

Sec. 134-954. Selling of liquor, wine and beer.

The use of land in all districts for the sale of alcoholic liquor, wine and beer is subject to the restrictions set forth in this section.

a. The sale of alcoholic liquor, wine and beer is permitted only in the zoning districts and subject to the conditions applicable to the business identified in the table below:

	Sale of Alcoholic Liquor		Sale of Wine and Beer	
	C-1, C-1A & D-R Districts	C-2, NPC and less restrictive Districts	C-1, C-1A & D-R Districts	C-2, NPC and less restrictive Districts
Food Sales Establishments and Retail Sales Establishments				
Limited (less than 12,000 sq ft)	Not Allowed	CUP 40% of sales 500 feet 1/4 mile	CUP 40% of sales 150 feet	CUP 40% of sales 150 feet
General (12,000 sq ft or larger, but less than 40,000 sq ft)	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet
Large (40,000 sq ft or larger)	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet
Gas Station/ Convenience Stores (not allowed in D-R)	Not Allowed	CUP 40% of sales 500 feet 1/4 mile	40% of sales 150 feet (C-1 & C-1A only)	40% of sales 150 feet

Liquor Stores	Not Allowed	CUP 500 feet 1/4 mile	Not Allowed	CUP 150 feet
Restaurants	50% of sales 75 feet	50% of sales 75 feet	50% of sales 75 feet	50% of sales 75 feet
Taverns and Night Clubs (not allowed in C-1 and C-1A)	CUP (D-R only)	CUP 150 feet	CUP (D-R only)	CUP 150 feet

Where used in the table above the following terms shall have the meaning identified below:

- 1) CUP means that a conditional use permit must be obtained for such use as further provided in this section.
- 2) 40% of sales means that no more than 40 percent of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine, beer or tobacco products.
- 3) 50% of sales means that at least 50 percent of the gross receipts by a restaurant must be derived from the sale of prepared food and food-related services.
- 4) 75 feet means that the premises occupied by such use must be separated by at least 75 feet from any church, school, public park or licensed child care facility as defined by I.C. ch. 237A. However, this condition is not applicable in the C-3, C-3A, C-3B, C3-R and D-R Districts.
- 5) 150 feet means that the premises occupied by such use must be separated by at least 150 feet from any church, school, public park or licensed child care facility as defined by I.C. ch. 237A. However, this condition is not applicable in the C-3, C-3A, C-3B, C3-R and D-R Districts.
- 6) 500 feet means that the premises occupied by such use must be separated by at least 500 feet from any church, school, public park or licensed child care facility as defined by I.C. ch. 237A. However, this condition is not applicable in the C-3, C-3A, C-3B, C3-R and D-R Districts.
- 7) 1/4 mile means that the premises occupied by such use must be separated by at least one-fourth mile from any other limited food sales establishment, limited retail sales establishment, gas station/convenience store and liquor store engaged in the sale of alcoholic liquor. However, in the C-3, C-3A, C-3B, C3-R and D-R Districts this condition is only applicable to liquor stores.

b. A conditional use permit is required for the use of a premises for the sale of alcoholic liquor, wine or beer, under the circumstances identified in subsection (a), above. The board shall grant such a conditional use permit only where the business, when operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:

- 1) The business conforms with the conditions identified in subsection (a), above.
- 2) The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.
- 3) The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.
- 4) The business will not unduly increase congestion on the streets in the adjoining residential area.
- 5) The operation of the business will not constitute a nuisance.

c. Any conditional use permit granted by the board of adjustment for the use of a premises for the sale of alcoholic liquor, wine and beer shall be subject to the following general conditions, together with such additional special conditions as may be reasonably required by the board to ensure that the criteria in subsection (b), above, are satisfied:

- 1) Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.
- 2) The business shall comply with article IV of chapter 42 of this Code pertaining to noise control. The business shall have no outside speakers or amplified sound except when used in compliance with a type E sound permit.

- 3) Any such business must comply with the following requirements:
 - a. Every limited food sales establishment, limited retail sales establishment and gas station/convenience store shall display alcoholic liquor only in a locked case or behind a counter accessible only to employees. Any other business selling alcoholic liquor for off premises consumption shall either: i) display alcoholic liquor only in a locked case or behind a counter accessible only to employees; ii) employ an electronic security cap or tag system on all containers of alcoholic liquor on display; or iii) have more than one employee on duty at all times the business is open to the public.
 - b. Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
 - c. Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
 - d. Not dispense alcoholic beverages from a drive-through window.
- 4) Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
- 5) The conditional use permit is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the conditional use permit.
- 6) If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions set forth in the conditional use permit, the zoning enforcement officer may apply to the board to reconsider the issuance of the conditional use permit for such business. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such business at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board finds that the operation of such business exhibits a pattern of violating the conditions set forth in the conditional use permit, the board shall have the authority to amend or revoke the conditional use permit.

d. Upon reasonable suspicion that any gas station/convenience store, food sales establishment or retail sales establishment derives more than 40 percent of its gross receipts from sales, from the sale of alcoholic liquor, wine, beer or tobacco products, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 40 percent of its gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products. In such event it shall be presumed that more than 40 percent of the gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products, which presumption may be overcome by the business timely furnishing a statement prepared and verified by a certified public accountant identifying the total dollar volume of all sales, and separately identifying the total dollar volume of sales derived from the sale of alcoholic beverages, from the sale of tobacco products, and from the sale of all other merchandise and food exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months.

e. Upon reasonable suspicion that any restaurant does not derive at least 50 percent of its gross receipts from the sale of prepared food and food-related services, the zoning enforcement officer may require that the owner or operator or the restaurant demonstrate within 45 days that during the prior six months at least 50 percent of its gross receipts were derived from the sale of prepared food and food-related services. In such event it shall be presumed that less than 50 percent of the restaurant's gross receipts are derived from the sale of prepared food and food-related services, which presumption may be overcome by the business timely furnishing a statement prepared and verified by a certified public accountant identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of alcoholic beverages, and from the sale of prepared food and food-related services exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months.

f. All gas stations/convenience stores, food sales establishments, retail sales establishments and restaurants which have not continuously held an alcoholic liquor license or a beer or wine permit since July 1, 2012, shall comply with the requirements of subsections (a), (b), (c), (d) and (e) above. Any gas station/convenience store, **food sales establishment, retail sales establishment** or restaurant **which has continuously held an alcoholic liquor license or a wine or beer permit since July 1, 2012, shall comply with subsections (a), (b), (c), (d) and (e) above, exclusive of any changed separation requirements, commencing on December 31, 2013, and prior to that date shall continue to be subject to the general regulations regarding legal nonconforming uses set forth in sections 134-155 and 134-1351.**

- 2. Flood Hazard:** Approximately one-fifth of the site area is outside of known flood hazard areas and proposed Federal Insurance Rate Map delineated areas of floodway and Zone A flood hazard areas. A majority of the existing site improvements, including the primary building for the existing business, are located outside of these flood areas. Some paved parking is located within the flood areas.

Based on this information, staff recommends that no areas within the known flood hazard area be proposed to the City Council for rezoning. It is then recommended that the applicant have determined by engineering a legal description of the area of the subject property outside of the know flood hazard areas to be rezoned to the "C-2" District. It is further recommended that the applicant have determined by engineering a legal description of the portions of the property currently zoned "C-1" District which are within the know flood hazard areas, so that that property may be proposed to City Council for rezoning to "FW" Floodway District.

The continuation of the existing business would not require any site development. However, any future improvements to the property within the known flood hazard areas of the subject property must comply with Chapter 50 of the City Code pertaining to floodplain development.

- 3. Staff Rationale:** The character of the surrounding commercial corridor is made up of a mix of office, commercial and retail uses. The area to the east of Four Mile Creek along Hubbell Avenue is zoned "C-2" District. The area to the west is a PUD District that allows for "C-2" District uses.

In addition, if the property were to be zoned to "C-2" in order to allow a request for a Condition Use Permit, the property would meet the minimum 150 feet of separation distance from any existing church, school, public park, or licensed child care facility necessary for to allow sales of beer and wine. However, it would not meet the 500 foot separation distance from a church at 3225 East Douglas Avenue, Sargent Park located at 3530 East Douglas Avenue, and a licensed child care facility at 3451 Hubbell Avenue. Therefore staff would recommend any rezoning be conditioned to prohibit the sale of alcoholic liquor that would require a Class E Liquor license.

It should be noted, that if the business were to keep sales of beer, wine, and tobacco products at 40% or below, the rezoning would not be required for a limited food or retail use. Also, a similar 150-foot separation distance provision would not be required by the exemption in Section 134-954(f) listed above applied to businesses holding a beer and wine permit prior to July 1, 2012. Should the City Council deny the requested rezoning, the applicant may seek a Use Variance and Variance of the separation provision for a liquor store from the Zoning Board of Adjustment.

Also because of proximity to surrounding neighborhoods, staff recommends that additional uses allowed in "C-2" Districts be prohibited to allow for their protection. Specifically staff recommends that adult entertainment businesses, delayed deposit services, off-premises advertising signs, taverns and nightclubs, and vehicle display lots be prohibited.

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation.

Greg Wattier asked what is precluding the request for change.

Mike Ludwig stated they existed as the Tobacco Hut prior to the change in the City code about three years ago. Previously the code allowed up to 50% sales from beer, wine or liquor. The change was made to add tobacco and to lower the percentage to 40% which caused their business plan to be thrown up in the air. They were given approximately 2 ½ years to bring their use or their business plan into compliance with the 40% sales requirement. The way they operate it would be very difficult for them to meet the 40% requirement.

Erik Lundy stated this will still require review by the Board of Adjustment for the issuance of a conditional use permit.

Mike Ludwig stated they knew when the code was changed that over that 2 ½ year intervening period they would run into situations like this. He anticipates the Commission may see additional requests.

Greg Wattier asked because the applicant was in business before the zoning change does that give them any "grandfather" rights.

Roger Brown stated generally on zoning matters there is the thought of "grandfathering". In this case because it was generally believed that the change from 50% to 40% was an operational kind of requirement. The code change required businesses to change their operation. The tobacco shops fall into the category where this does not work so well because virtually 100% of their sales are now wine, beer and tobacco.

CJ Stephens asked if the notice to meet was received by the neighborhoods and why no one showed up for the meeting.

Erik Lundy stated his understanding is that no neighbors attended the meetings.

Dann Flaherty clarified that the neighborhoods had no meeting before the Commission was to meet.

Shirley Daniels asked about the response card and whether or not Mr. Thomas was representing the Fairmont Neighborhood or just himself.

Erik Lundy stated Mr. Thomas is the contact person of that neighborhood association and he is responding on behalf of Fairmont Neighborhood Association.

Vicki Stogdill asked if the zoning change would allow them to continue to sell tobacco and restrict the sale of liquor.

Erik Lundy stated the zoning change was required to allow them to keep their current business model. If they were not rezoned they would still have the ability to sell tobacco and if they could keep it under 40% of total sales. With the current zoning they could go to the Board of Adjustment and request approval for a limited food or limited retail sales establishment.

CJ Stephens asked does the applicant agree to staff's recommendations.

Erik Lundy stated up to this point they have not.

John Rewerts 1106 Woodring Drive, Waverly, IA district leader for Tobacco Outlet Plus states he understands the changes that have taken place and the need for the changes. 75% of the sales are derived from cigarette packs and carton sales. Less than 10% of their sales are derived from any alcoholic beverages which consist of beer and very limited selection of wine. They do not carry any liquor and will never sell liquor. To go under 40% threshold is impossible for a business such as theirs. It would require them to shut the doors or relocate to another facility. However, that is not an option at this time.

Will Page asked when did Kwik Trip Inc. acquire Tobacco Outlet and how long has Tobacco Outlet been at this site.

John Rewerts stated Tobacco Outlet Plus was started approximately 16 years ago. This use has been at this site for four years in March 2014.

Julie Alexander 1000 14th St. SE Altoona, IA store manager of Tobacco Outlet stated this Tobacco Outlet was located at E. 26th and Euclid for 12 years prior to that.

Tim Fitzgerald asked if they agree with staff recommendation.

John Rewerts stated they do agree with staff recommendation.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one to speak in favor or in opposition of the applicant's request.

CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION:

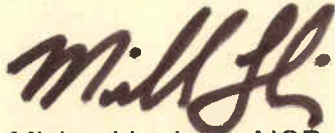
Ted Irvine moved staff recommendation to find the requested rezoning in conformance with the Des Moines' 2020 Community Character Plan and **APPROVAL** of the requested rezoning to a "C-2" District, subject to the owner agreeing to the following conditions:

1. Limit the rezoning of any property to the "C-2" District only to portions which are outside any existing or proposed Federally designated flood hazard areas. Prior to setting a hearing by the City Council the owner would be responsible for procuring a professional engineer to develop a legal description of that such area.
2. Rezone portions of the subject property zoned "C-1" District to "FW" Floodway District. Prior to setting a hearing by the City Council the owner would be responsible for procuring a professional engineer to develop a legal description of that such area.

3. Prohibit the use of any portion of property zoned to the "C-2" District from issuance of a Class E Liquor license.
4. Prohibit the use of any portion of property zoned to the "C-2: District for adult entertainment businesses, delayed deposit services, off-premises advertising signs, taverns and nightclubs, and vehicle display lots.

Motion passed 12-1-1. (CJ Stephens voted in opposition and Jacqueline Easley abstained)

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment