



Date January 27, 2014

REQUEST FROM KWIK TRIP, INC. D/B/A TOBACCO OUTLET PLUS, TO REZONE PROPERTY LOCATED AT 3301 E. EUCLID AVENUE FROM THE "C-1" AND "FW" DISTRICTS TO LIMITED "C-2", "FW" AND "U-1" DISTRICTS 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, on January 13, 2014 by Roll Call No. 14-0051, it was duly resolved by the City Council that the application of Kwik Trip, Inc., d/b/a Tobacco Outlet Plus and represented by Donald Zietlow (Officer), to rezone property located at 3301 E. Euclid Avenue and 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 and hereinafter referred to as the "Property":

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 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.

from the "C-1" Neighborhood Retail Commercial District and "FW" Floodway District to the "C-2" General Retail and Highway-Oriented Commercial District and "U-1" Floodway 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, be set down for hearing on January 27, 2014, at 5:00 P.M., in the Council Chambers at City Hall; and,

WHEREAS, due notice of the hearing was published in the Des Moines Register on January 16, 2014, as provided by law, setting forth the time and place for hearing on the proposed amendment to the Zoning Ordinance; and,

WHEREAS, in accordance with the notice those interested in the proposed rezoning, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council; and,



Date January 27, 2014

WHEREAS, the Plan and Zoning Commission has recommended that only the portion of the property located outside the federally designated flood hazard area be rezoned to the "C-2" District, and that the balance of the property be rezoned "FW" Floodway District, subject to the further conditions identified below; and,

WHEREAS, the applicant has provided a survey that identifies and describes the portion of the Property outside the federally designated flood hazard area, and the portion of the Property located in the floodplain; and,

WHEREAS, a portion of the property within the floodplain is within the floodway required for the conveyance of flood flows and should remain within the "FW" Floodway District, and the balance of the property within the floodplain outside the floodway is appropriate for rezoning to the "U-1" Floodplain District, but the legal description of the floodway was not established in time for this hearing; and,

WHEREAS, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone only that portion of the Property located outside the floodplain and described below, from the "C-1" Neighborhood Retail Commercial District to a Limited "C-2" General Retail and Highway-Oriented Commercial District classification:

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

Beginning at a Point 718.2 feet South and 64.5 feet East of the North 1/4 corner of said Section 29; thence South 87°14'30", East along the South right-of-way line of Euclid Avenue, 186.19 feet; thence South 18°40'59" West, 37.76 feet; thence South 25°36'31" West, 69.07 feet; thence South 21°24'49" West, 22.05 feet; thence South 68°53'53", West, 33.05 feet; thence South 55°44'58" West, 29.26 feet; thence South 81°42'17" West, 29.99 feet; thence North 86°49'52" West, 11.64 feet; thence North 75°31'49" West, 10.28 feet; thence North 61°09'23" West, 23.04 feet; thence North 13°48'07" West, 14.85 feet; thence North 18°35'53" West, 39.25 feet to the East right-of-way of East 33rd Street; thence North 03°26'30" East along said East right-of-way line of East 33rd Street, 94.74 feet to the Point of Beginning and containing 0.53 acres (23,207 S.F.),

subject to the following conditions which have been agreed to and accepted by execution of an Acceptance of Rezoning Ordinance in writing by all owners of the property and are binding upon the owners and their successors, heirs and assigns as follows:



Date January 27, 2014

The following uses of structures or land shall not be permitted on the Property:

- a) Any business required to have a Class E Liquor License.
- b) Adult entertainment businesses.
- c) Delayed deposit services.
- d) Off-premises advertising signs.
- e) Taverns and nightclubs.
- f) Vehicle display lots.

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

1. The hearing on the rezoning of that portion of the Property located outside the floodplain and proposed to be rezoned to a Limited "C-2" District is hereby closed. The hearing on the rezoning of that portion of the Property located within the floodplain is hereby continued until February 10, 2014, at 5:00 p.m. in the Council Chambers at City Hall.
2. That upon due consideration of the facts, statements of interested persons and arguments of counsel, the objections to the proposed rezoning of that portion of the property located outside the floodplain from the "C-1" Neighborhood Retail Commercial District to a Limited "C-2" General Retail and Highway-Oriented Commercial District classification are hereby overruled, and such rezoning is hereby APPROVED.

MOVED by \_\_\_\_\_ to adopt; to continue the hearing on the rezoning of the portion of the Property located within the floodplain; and, to approve the rezoning of a portion of the Property outside the floodplain to a Limited "C-2" District subject to final passage of the rezoning ordinance.

FORM APPROVED:

*Roger K. Brown*  
Roger K. Brown, Assistant City Attorney

G:\AREZONING\Kwik Trip - 3301 E. Euclid\RC Close Hearing V2.docx

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
VOSS				
TOTAL				
MOTION CARRIED	APPROVED			

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.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

41 ✓

Project No:	1140086
Engineer:	Checked By: TJC
Scale:	1" = 60'
Date:	
Region:	
Drawn By:	
Sheet:	1 of 1

**SNYDER & ASSOCIATES, INC.**  
 2727 SW SNYDER BLVD  
 AMES, IOWA 5023  
 515-984-2020 | www.snyder-associates.com

**ZONING EXHIBIT**  
**KWIK TRIP - 3301 EAST EUCLID AVENUE**

**SN**

Project No: 1140086  
 Sheet: 1 of 1



**PROPERTY DESCRIPTION**  
 WARRANTY DEED BK 15080 PG 165

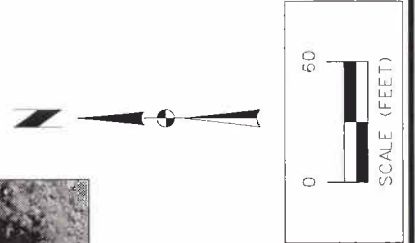
**REQUESTED BY**  
 KWIK TRIP, INC.

**VERTICAL DATUM**  
 NAVD88

**DATE OF SURVEY**  
 01-21-14

**U-1 ZONING DESCRIPTION:**  
 A PARCEL OF LAND LOCATED IN THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 79 NORTH, RANGE 23 WEST OF THE 5TH P.M., BEING IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
 COMMENCING AT A POINT 718.2 FEET SOUTH AND 64.5 FEET EAST OF THE NORTH 1/4 CORNER OF SAID SECTION 29, THENCE SOUTH 87° 14' 30" EAST ALONG THE SOUTH RIGHT-OF-WAY LINE OF EUCLID AVENUE, 186.19 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 87° 14' 30" EAST ALONG THE SOUTH RIGHT-OF-WAY LINE OF EUCLID AVENUE, 435.81 FEET; THENCE SOUTH 55° 19' 36" WEST, 179.50 FEET; THENCE NORTH 87° 14' 30" WEST, 89.10 FEET; THENCE SOUTH 47° 47' 30" WEST, 337.50 FEET; THENCE NORTH 00° 21' 30" EAST, 127.20 FEET; THENCE WEST, 150.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF EAST 33RD STREET; THENCE NORTH 03° 26' 30" EAST ALONG THE EAST RIGHT-OF-WAY LINE OF EAST 33RD STREET, 133.26 FEET; THENCE SOUTH 35° 53' EAST, 39.25 FEET; THENCE SOUTH 13° 48' 07" EAST, 14.85 FEET; THENCE SOUTH 61° 09' 23" EAST, 11.64 FEET; THENCE SOUTH 75° 31' 49" WEST, 10.28 FEET; THENCE SOUTH 86° 49' 52" WEST, 23.04 FEET; THENCE NORTH 13° 48' 07" WEST, 14.85 FEET; THENCE NORTH 18° 35' 53" WEST, 39.25 FEET TO THE EAST RIGHT-OF-WAY LINE OF EAST 33RD STREET; THENCE NORTH 03° 26' 30" EAST ALONG EAST RIGHT-OF-WAY LINE OF EAST 33RD STREET, 94.74 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.92 ACRES (83,606 S.F.).

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.



January 7, 2014

Agenda Item

41

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 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.

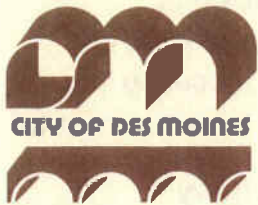
**COMMISSION RECOMMENDATION:**

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

