



Date January 27, 2014

RESOLUTION CLOSING HEARING ON A REQUEST FROM KWIK TRIP, INC.,
D/B/A TOBACCO OUTLET PLUS, REPRESENTED BY DONALD ZIETLOW
(OFFICER), TO REZONE PROPERTY LOCATED AT 3409 SOUTHWEST 9TH
STREET, 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,
AND DENYING SAME

WHEREAS, on January 13, 2014 by Roll Call No. 14-0050, it was duly resolved by the City Council that the application of Kwik Trip, Inc., d/b/a Tobacco Outlet Plus, to rezone certain property located in the vicinity of 3409 S.W. 9th Street and more specifically described as follows:

Lot 3 and the North 36 feet of Lot 4, DARNES 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"),

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

WHEREAS, the Plan and Zoning Commission has recommended that the proposed rezoning be denied; 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.

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

1. That upon due consideration of the facts, statements of interested persons and arguments of counsel, the objections to the proposed rezoning of the Property from the "C-1" Neighborhood Retail Commercial District to a Limited "C-2" General Retail and Highway-Oriented Commercial District classification are hereby overruled, the hearing is closed.



Roll Call Number

Agenda Item Number

42A

Date January 27, 2014

- 2. The City Council hereby makes the following findings regarding the proposed rezoning:
 - a) Rezoning the Property to the "C-2" General Retail and Highway Oriented Commercial District is consistent with the planned future use of the Property as shown by the Des Moines 2020 Community Character Land Use Plan, but is premature and inconsistent with the current use and zoning of the adjoining land. The Property is surrounded on three sides by the "C-1" Neighborhood Retail Commercial District, and backs up to land within the "R-1" One-Family Low-Density Residential District used for single-family residential use. The nearest land along SW 9th Street within the C-2" District is over one-quarter mile away.
 - b) If the Property were rezoned to the "C-2" District, the continued use of the Property for a business where more than 40 percent of the gross receipts from sales are derived from the sale of beer, wine or tobacco products, would still require a Conditional Use Permit and a variance from the required 150 foot separation from the existing church located 102 feet to the southwest.
 - c) If the termination of the current use of the Property for a business where more than 40 percent of the gross receipts from sales are derived from the sale of beer, wine or tobacco products would constitute an undue hardship upon the owner or tenant, the appropriate remedy is a use variance from the Zoning Board of Adjustment.

MOVED by _____ to adopt and deny the proposed rezoning.

FORM APPROVED:

Roger K. Brown

Roger K. Brown

Assistant City Attorney

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| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE | | | | |
| COLEMAN | | | | |
| GRAY | | | | |
| HENSLEY | | | | |
| MAHAFFEY | | | | |
| MOORE | | | | |
| VOSS | | | | |
| 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

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 3409 Southwest 9th Street. The subject property is owned by First Financial Group, LC.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 12-2 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 | | |



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

APPROVAL of a motion to find the proposed rezoning is in conformance with the Des Moines' 2020 Community Character Plan and **DENIAL** of the requested rezoning to a "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. (ZON2013-00187)

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 denial of the requested rezoning to a "C-2" District.

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 licensed 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 must be considered a liquor store for purposes of the Zoning Ordinance.

- 2. Size of Site:** 11,090 square feet.
- 3. Existing Zoning (site):** "C-1" Neighborhood Retail Commercial District.
- 4. Existing Land Use (site):** The site includes a 3,200-square foot commercial building with two tenant bays. The applicant occupies approximately 2,135 square feet on the north part of the building.
- 5. Adjacent Land Use and Zoning:**

North – "C-1", Use is Earlham Savings Bank drive-up branch office.

South – "C-1", Use is Pasutti Real Estate office.

East – "R1-60", Uses are single-family dwellings.

West – "C-1", Use is burial vault retail business.

- 6. General Neighborhood/Area Land Uses:** The subject property is located along the Southwest 9th Street commercial corridor.
- 7. Applicable Recognized Neighborhood(s):** The subject property is not within a recognized neighborhood but is within 250 feet of the Gray Lake Neighborhood to the west. 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 Gray's Lake Neighborhood Association contact 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 Gray's Lake Neighborhood Association mailings were sent to Evan Shaw, 2615 Druid Hill Drive, Des Moines, IA 50315.

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 Gray's Lake Neighborhood representation 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 Small-Scale Strip Development.

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 of 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.

