

Date August 11, 2014

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION
GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW
RECONSTRUCTION OF A GAS STATION/CONVENIENCE STORE SELLING WINE
AND BEER ON THE PROPERTY AT 2428 HUBBELL AVENUE**

WHEREAS, the real property locally known as 2428 Hubbell Avenue (“Property”) has been operated as a gas station/convenience store selling wine and beer since 1991, and Quik Trip Corporation is currently undertaking demolition of the existing store and construction of a new 5,858-square foot structure for a gas station/convenience store selling wine and beer on the Property; and

WHEREAS, on July 23, 2014, the Zoning Board of Adjustment voted 4-1 to approve an application from Quik Trip Corporation for a variance of the separation requirement that the premises of any gas station/convenience store seeking to sell wine and beer be separated by at least 150 feet from any church, school, public park or licensed child care facility, as set forth in Municipal Code Section 134-954(a), to allow for Quik Trip’s project and the reconstructed store selling wine and beer on the Property; and

WHEREAS, the Property is located within 65’ of a church use located at 2412 Easton Boulevard, and the Easton Place United Methodist Church has provided a letter of support for granting the variance of the separation requirement; and

WHEREAS, Iowa Code §414.7 and Section 134-65(d) of the Zoning Ordinance require that any variance from a separation requirement granted by the Board be forwarded to the City Council for its review, and the City Council may remand the variance of the separation requirement back to the Zoning Board of Adjustment for further study if the Council believes the variance was improperly granted.

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

ALTERNATIVE RESOLUTIONS

- A The City Council remands the Decision and Order to the Zoning Board of Adjustment for further study. The effective date of the Board’s decision will be deferred for 30 days from the date of this remand.
- B The City Council takes no action to review the Decision and Order. The decision of the Board will become final on August 29, 2014.
- C The City Council declines to remand the decision to the Zoning Board of Adjustment. The decision of the Board becomes final on this date.

★ Roll Call Number

Agenda Item Number

46

Date August 11, 2014

(Council Communication No. 14-383)

MOVED by _____ to receive and file the staff report and comments received, and to adopt alternative _____, above.

APPROVED AS TO FORM:

Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
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



**ZONING BOARD OF ADJUSTMENT
CITY OF DES MOINES, IOWA
DECISION AND ORDER**

This Decision and Order of the Board of Adjustment does not constitute approval of any construction. All necessary permits must be obtained before any construction is commenced upon the Property. A Certificate of Occupancy must be obtained before any structure is occupied or re-occupied after a change of use.

Any use allowed by this Decision and Order shall not be commenced or resumed until all the requirements imposed on such use by the Zoning Ordinance and this Order have been satisfied.

The use allowed by this Order must be commenced within **two years** or this Order will be void and of no further force and effect.

IN THE MATTER OF THE APPEAL FROM	:	DOCKET: ZON 2014-00123
QUIK TRIP CORPORATION	:	
	:	PUBLIC HEARING: JULY 23, 2014
ON PROPERTY LOCATED AT	:	
	:	
VICINITY OF 2428 HUBBELL AVENUE	:	

SUBJECT OF THE APPEAL

Proposal: Redevelopment of the site with a new 5,858-square foot structure for a Gas Station/Convenience Store selling wine and beer, where no more than 40% of gross receipts from sales on the premises may be derived from the sale of wine, beer, and tobacco products. The site is within 65 feet of a church (Easton Place United Methodist Church) at 2412 Easton Boulevard.

Appeal(s): Variance of the provision that requires any Gas Station Convenience Store selling wine and beer to provide at least 150 feet of separation from any church, school, public park, or licensed childcare facility.

Required by City Code Section 134-954(a)

FINDING

The appellant has satisfied the criteria necessary for granting a Variance to the separation distance requirement that would allow reconstruction of the existing gas station/convenience store. The site is considered to be legal non-conforming with regards to the current separation distance requirements and could continue to sell wine and beer in the existing structure. Thus, granting the Variance would not alter the essential character of the neighborhood, as a gas station/convenience store has already been selling beer and wine on the premises since 1991. The appellant has demonstrated that the current separation distance requirement creates an unnecessary hardship since it prevents them from making a reinvestment into the site. Furthermore, if the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use Permit, the Zoning Enforcement Officer may apply to the Zoning Board of Adjustment to reconsider the issuance of the Conditional Use Permit for such business.

DECISION AND ORDER

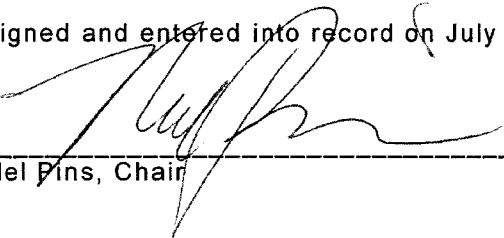
WHEREFORE, IT IS ORDERED that the appeal for a Variance of the provision that requires any Gas Station/Convenience Store selling wine and beer to provide at least 150 feet of separation from any church, school, public park, or licensed childcare facility, to allow redevelopment of the site with a new 5,858-square foot structure for a Gas Station/Convenience Store selling wine and beer, where the site is within 65 feet of a church use at 2412 Easton Boulevard, is **granted** subject to the following conditions:

1. The sale of alcoholic liquor shall be prohibited.
2. The sale of wine and beer shall only be ancillary to a gas station/convenience store use, where no more than 40% of gross receipts from sales on the premises may be derived from the sale of wine, beer, and tobacco products.
3. The business selling wine and beer shall operate in accordance with the necessary permit or license obtained through the Office of the City Clerk as approved by the City Council.
4. The business shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
5. The business shall institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
6. The business shall not dispense alcoholic beverages from a drive-through window.
7. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of the business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
8. Parking areas 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.
9. Any redevelopment of the site must be in compliance with a Site Plan under the design guides applicable to gas stations, as approved by the City Plan & Zoning Commission. Any structure must be in accordance with current Building Codes with issuance of any necessary permits by the Permit and Development Center.
10. The Variance 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 Decision and Order.

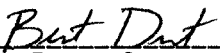
VOTE

The foregoing Decision and Order was adopted by a vote of 4-1, with Board members Gaer, Pins, Christensen and Westergaard voting in favor thereof, and Board member Mortice voting in opposition thereto.

Signed and entered into record on July 30, 2014.



Mel Pins, Chair



Bert Drost, Secretary