



Date September 28, 2015

**RESOLUTION HOLDING HEARING ON REQUEST FROM KESHAV KOIRALA (OWNER)
FOR AN AMENDMENT TO THE RIVERWOODS PUD CONCEPTUAL PLAN FOR
PROPERTY LOCATED AT 2511 SHADOW CREEK LANE**

WHEREAS, on September 14, 2015, by Roll Call No. 15-1512, the City Council received and filed a communication from the City Plan and Zoning Commission advising that at a public hearing held on August 20, 2015, its members voted 8-4 in support of a motion to recommend **APPROVAL** of a request from Keshav Koirala (owner) for an amendment to the Riverwoods PUD Conceptual Plan for property located at 2511 Shadow Creek Lane ("Property"), to allow the existing single-family dwelling to be used for a home based retail sales business, subject to the following conditions:

1. Any business operating on the Property shall be limited to non-food retail business selling religious and cultural items.
2. Any customers on the Property shall arrive on an appointment basis only.
3. Any appointment where customers are on the Property shall be between the hours of 8:00 AM and 5:00 PM daily.
4. There shall be no outdoor signage related to the business.
5. Any business operating on the Property shall not employ any non-residents.
6. Any business operating on the Property shall be limited to no more than 10% of the finished floor area within the dwelling. This represents 191.1 square feet of floor area within the existing 1,911-square foot dwelling; and

WHEREAS, on September 14, 2015, by Roll Call No. 15-1512, it was duly resolved by the City Council that the application of Keshav Koirala for review and approval of the proposed amendment to the Riverwoods PUD Conceptual Plan for the Property, as legally described below, be set down for hearing on September 28, 2015, at 5:00 p.m. in the City Council Chambers at City Hall; and

WHEREAS, due notice of said hearing was published in the Des Moines Register, as provided by law, setting forth the time and place for hearing on said proposed amendment to the approved Riverwoods PUD Conceptual Plan; and

WHEREAS, in accordance with said notice, those interested in said proposed amendment to the approved Riverwoods PUD Conceptual Plan, 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. Upon due consideration of the facts and any statements of interested persons and arguments of counsel, any and all objections to the proposed amendment to the Riverwoods PUD Conceptual Plan for the Property, locally known as 2511 Shadow Creek Lane and legally described as follows, are hereby overruled, and the hearing is closed:

(continued)



Roll Call Number

Agenda Item Number

53

Date September 28, 2015

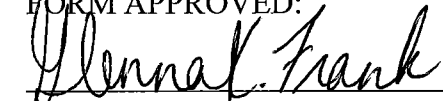
-2-

Lot 45 WOODS ON THE RIVER PLAT 9, an Official Plat, all within the City of Des Moines, Polk County, Iowa.

2. The proposed amendment to the Riverwoods PUD Conceptual Plan, as on file in the Community Development Department, is hereby found to be in conformance with the Des Moines' 2020 Community Character Land Use Plan and is hereby approved.

MOVED BY _____ TO ADOPT.

FORM APPROVED:


Glenna K. Frank, Assistant City Attorney

(ZON2015-00127)

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

Date September 28, 2015Agenda Item 53

September 1, 2015

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 August 20, 2015, the following action was taken regarding a request from Keshav Koirala (owner) for an amendment to the Riverwoods PUD Conceptual Plan for property located at 2511 Shadow Creek Lane.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 8-4 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano	X			
Jacqueline Easley	X			
Tim Fitzgerald				X
Jann Freed		X		
John "Jack" Hilmes	X			
Greg Jones	X			
Sasha Kamper		X		
Brian Millard		X		
William Page	X			
Jonathan Rosenbloom		X		
Mike Simonson				X
CJ Stephens	X			
Greg Wattier	X			

APPROVAL of an amendment to the Riverwoods PUD Conceptual Plan to allow a single-family dwelling at 2511 Shadow Creek Lane to operate a home-based business involving retail sales, subject to the following conditions: (ZON2015-00127)

1. Any business operating on the premise shall be limited to non-food retail business selling religious and cultural items.
2. Any customers on the premise shall arrive on an appointment basis only.

3. Any appointment where customers are on the premise shall be between the hours of 8:00 AM and 5:00 PM daily.
4. There shall be no outdoor signage related to the business.
5. Any business operating on the premise shall not employ any non-residents.
6. Any business operating on the premise shall be limited to no more than 10% of the finished floor area within the dwelling. This represents 191.1 square feet of floor area within the existing 1,911-square foot dwelling.

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of an amendment to the Riverwoods PUD Conceptual Plan to allow a single-family dwelling at 2511 Shadow Creek Lane to operate a home-based business involving retail sales, subject to the following conditions:

1. Any business operating on the premise shall be limited to a retail business selling religious and cultural items.
2. Any customers on the premise shall arrive on an appointment basis only.
3. Any appointment where customers are on the premise shall be between the hours of 8:00 AM and 5:00 PM daily.
4. There shall be no outdoor signage related to the business.
5. Any business operating on the premise shall not employ any non-residents.
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STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The subject property is a single-family residence within the Riverwoods single-family residential Planned Unit Development. The applicant is proposing to operate a retail sales business within a bedroom with the basement of the dwelling. The business would sell religious and cultural items, such as clothing and jewelry, from foreign countries. Customers would come to the site on an appointment basis only, between 8:00 AM and 5:00 PM daily. Additional sales would be conducted off-site at various cultural events.
2. **Size of Site:** 8,581 square feet or 0.20 acres.
3. **Existing Zoning (site):** Riverwoods "PUD" Planned Unit Development.

4. **Existing Land Use (site):** The property was developed in 2014 with a two-story single-family dwelling with an attached two-car garage. The dwelling contains 1,911 square feet of finished floor area, including 640 square feet on the main level, 697 square feet on the upper level, and 574 square feet in the lower level.

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

North – “PUD”; Uses are undeveloped lots designated for single-family dwellings.

South – “PUD”; Use is an undeveloped lot designated for single-family dwellings.

East – “PUD”; Uses are single-family dwellings.

West – “PUD”; Uses are single-family dwellings.

6. **General Neighborhood/Area Land Uses:** The subject property is located within a predominantly single-family residential neighborhood area.

7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Riverwoods Neighborhood. This neighborhood association was notified of the public hearing by mailing of the Preliminary Agenda on July 31, 2015. Additionally, separate notifications of the hearing for this specific item were mailed on July 31, 2015 (20 days prior to public hearing) and August 10, 2015 (10 days prior to the public hearing) to the Riverwoods Neighborhood Association 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 August 14, 2015.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Riverwoods Neighborhood Association notices were mailed to Joe Calvert, 2220 East Virginia Avenue, Des Moines, IA 50320.

8. **Relevant Zoning History:** The property was rezoned to “PUD” on April 25, 1994. Since that time, the Riverwoods “PUD” Conceptual Plan has been amended five times. The last amendment was approved by the City Council of May 5, 2003 by Roll Call Number 03-1077.
9. **2020 Community Character Land Use Plan Designation:** The subject property is located within an area designated on the Des Moines’ 2020 Community Character Plan future land use map as Low Density Residential.
10. **Applicable Regulations:** Taking into consideration the criteria set forth in Chapter 18B of the Iowa Code, 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. **Parking & Access:** The subject property is located on the southwest corner of the Shadow Creek Lane and River Ridge Road intersection. The subject property has a two-car garage and a paved driveway where two additional vehicles can park. Staff believes this would provide adequate parking for the applicant's personal use and for the business. The impact of the proposed home occupation would likely have little impact on the adjoining streets.
2. **Staff Rationale:** In a typical "R" Residential District, the proposed type of business would be reviewed by the Zoning Board of Adjustment as a request for a Special Permit for a Home Occupation. The Zoning Board of Adjustment would review such an application against the following standards as provided in City Code Section 134-1326(10):

Sec. 134-1326. Uses allowed by special permit.

(10) Home occupations, subject to the following requirements:

- a. *The occupation shall be clearly incidental to or secondary to the residential use of the premises.*
- b. *No more than two non-resident individuals shall be engaged or employed in the business upon the premises.*
- c. *One sign advertising the business is allowed, attached to the residence. Such sign not to exceed one square foot in total area. Free-standing signs are not permitted.*
- d. *The occupation shall not cause or produce noise, vibration, smoke, dust, odor, or heat or any other impact of a type or quantity not in keeping with the residential character of the neighborhood.*
- e. *No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive, or other restricted material of a type or quantity not ordinarily used for household purposes shall be used or stored on the premises, and the applicant must identify the proper disposition of any hazardous waste. No activity will be allowed which is hazardous to the public health, safety or welfare.*
- f. *There are no outside operation, storage or display of materials or products.*
- g. *Not more than one-half of the area of one floor level of the dwelling or accessory building shall be used for such business, including the storage of materials or products.*
- h. *No alteration of the residential appearance of the premises shall occur.*
- i. *Hours of operation must not infringe on the residential atmosphere of the neighborhood. All outside activity related to the business must cease between the hours of 9:30 p.m. and 7:00 a.m.*
- j. *The home occupation, including any business storage, shall not displace or impede use of parking spaces required by this chapter. The home occupation shall not displace, interfere with or impede access to public parking.*

- k. *The home occupation shall not cause the congregation of business employees at the site or congestion in the availability of on-street parking.*
- l. *The business must be of a type that would be permitted anywhere in the C-2 general retail and highway oriented commercial district without approval from the board of adjustment.*
- m. *Any special permit for a home occupation shall be in effect only for so long as the premises are owned and occupied by the applicant.*
- n. *Any special permit for a home occupation shall be subject to reconsideration by the board if at any time the zoning enforcement officer determines that the conduct of the occupation has become detrimental to the neighborhood.*

Staff believes that the proposed business would generally satisfy these criteria. In order to ensure that the business does not become a nuisance for surrounding property owners, staff recommends that any business operating within the dwelling be limited to a retail business selling religious and cultural items, where any customers on the premise shall arrive on an appointment basis only between 8:00 AM and 5:00 PM daily. Staff also believes it is reasonably necessary to prohibit the business from having outdoor signage and to prohibit the business from having employees that are not residents of the dwelling.

Also, in order to comply with the City's Building and Fire Codes, the business cannot occupy more than 10% of the finished floor area within the dwelling. This represents 191.1 square feet of floor area within the existing 1,911-square foot dwelling.

SUMMARY OF DISCUSSION

Jason Van Essen presented the staff report and recommendation.

Jann Freed asked how the conditions of approval are enforced.

Jason Van Essen stated that zoning and conditions are generally enforced on a complaint basis.

John "Jack" Hilmes stated the indoor area is limited to 191 square feet. Questioned whether that will be sufficient for storage and sale of product.

Jason Van Essen stated there were a lot of discussions internally when developing the staff recommendation. Staff tried to balance what could possibly go wrong and what is reasonable to allow this property owner to do if it was zoned "R1-60".

Sasha Kamper asked why a PUD is different and why the request wouldn't go to the Zoning Board of Adjustment.

Jason Van Essen stated the zoning ordinance specifically prohibits the Board's review on PUD zoned property. The thought behind a PUD District is working with the Commission, neighbors, the City Council to develop a plan that everyone is comfortable with and there is a give and take. The Zoning Board of Adjustment is not a part of that dialogue.

Sasha Kamper asked if the Commission can request a sunset provision.

Jason Van Essen stated zoning runs with the property and not the owner, which is why staff tried to make condition #1 tied specifically to the applicant's business model.

Sasha Kamper pointed out criteria "m" for Board of Adjustment review states that the home occupation remains in effect only for so long as the premises are owned and occupied by the applicant.

Jason Van Essen noted this is a zoning request. Future owners could operate subject to the same business model. Otherwise they would need to amend the PUD zoning.

CJ Stephens asked has staff heard from the neighborhood.

Jason Van Essen stated there has been no response.

CJ Stephens asked what would prohibit this business from going into a counseling business or holding some church services. She believes staff recommendations are very broad.

Jason Van Essen pointed out the first condition in the staff recommendation limits the home occupation to a retail business selling religious and cultural items. It has to be that specific model.

Brian Millard asked if parking can be restricted to the applicant's driveway. Asked if such a condition has been placed on some other PUDs.

Jason Van Essen stated that has been requested by the Commission on a case by case basis.

Brian Millard stated that parking seems to be the complaint a lot of times.

Jason Van Essen stated a lot of these do end up at the Board of Adjustment because of an enforcement activity. In this case the applicant has come forward voluntarily to seek a zoning amendment.

John "Jack" Hilmes asked how many properties are within the PUD.

Mike Ludwig stated there are apartments across the street and approximately 200 units. It has not been built out yet.

John "Jack" Hilmes asked about the count for single-family properties within the PUD.

Jason Van Essen showed an aerial photo to demonstrate.

John "Jack" Hilmes asked if approved, would the applicant have one more permitted use than what is permitted today for the other single-family properties in this PUD.

Jason Van Essen stated yes, and everybody else would have the opportunity to go through this same process.

Keshav Koiraia 2511 Shadow Creek Lane stated he is asking for permission from the City to sell his cultural items from his home.

Sasha Kamper asked for a description of some of his cultural items.

Keshav Koiraia stated the cultural items would be clothing items.

Sasha Kamper asked where he intends to store materials.

Keshav Koiraia stated he plans to store the materials in his basement, in one of the small rooms.

Brian Millard asked if the applicant understands the staff recommendation and requirement that only 10% of the square footage of his home can be used, which would include storage of the items and the sales area.

Keshav Koiraia stated he understood and he believes he will be able to operate in that square footage and it would suit his needs. He has also explained to his customers his business hours will be 8:30 to 5:00. He does not like anyone coming at 6:00 am disturbing his neighbors or after 5:00 pm. His customers will call first before coming to his house.

Jacqueline Easley asked if he met with people from his neighborhood.

Keshav Koiraia stated he sent a letter to everyone in his neighborhood and only received one response who said that everything is fine.

Jonathan Rosenbloom asked for clarification. Does the 10% include the retail area and the storage?

Mike Ludwig stated yes.

Will Page asked if he proposes to sell food, food items or prepared food of any kind.

Keshav Koiraia stated he does not propose to sell any type of food.

CJ Stephens asked if anyone knows how large this cultural community in the metro is.

Damodhar Adhikari 2303 Shadow Creek Circle stated currently there may be approximately 350 families including Des Moines and West Des Moines.

Sasha Kamper asked would the applicant be concerned if the use of parking was limited to his driveway.

Kesha Koiraia stated yes because his customers will only come by appointment. He does not believe there is a need for such a restriction.

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

CJ Stephens moved approval of the staff recommendation.

Sasha Kamper asked for a friendly amendment to limit customer parking to the driveway.

CJ Stephens stated she does not accept this friendly amendment.

Jonathan Rosenbloom asked to make the standard in City Code Section 134-1326(10) "j" and "n" clear and added to one of staff's recommendation which says:

- j. The home occupation, including any business storage, shall not displace or impede use of parking spaces required by this chapter. The home occupation shall not displace, interfere with or impede access to public parking.*
- n. "Any special permit for a home occupation shall be subject to reconsideration by the board if at any time the zoning enforcement officer determines that the conduct of the occupation has become detrimental to the neighborhood".*

Will Page stated this particular business model doesn't disturb him but he believes the word cultural is a very broad term. Cultural items can include food products, prepared food. Is there anything that would prohibit someone from selling food in the basement?

Jason Van Essen stated the word retail would suggest items that are non-food. However, if they want to add an extra word to clarify that such as non-food retail that might help to clarify.

CJ Stephens stated she agrees to the friendly amendment to add limited to non-food items in the condition. She believes that the parking should be no issue with the small number of potential customers. If it becomes an issue then it would probably be brought back and if another homeowner wants to do something else at that location they will have to go through this same process. Therefore, she believes they should be open to the diversity in the City.

Dory Biles stated she applauds the applicant for establishing his own business.

Sasha Kamper stated the reason for her friendly amendment is because she is aware of a variance that was granted recently in her neighborhood and there was a promise about how parking would be used and that variance was completely misused. The City is working on fixing that, so she believes that having the parking restriction as part of the condition would not be prohibitive for the business and it is easier after the fact to enforce if it needs to be.

COMMISSION ACTION:

CJ Stephens moved staff recommendation for approval of an amendment to the Riverwoods PUD Conceptual Plan to allow a single-family dwelling at 2511 Shadow Creek Lane to operate a home-based business involving retail sales, subject to the following conditions:

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Motion passed 8-4 (Jann Freed, Brian Millard, Sasha Kamper and Jonathan Rosenbloom voted in opposition)

Brian Millard explained that he does not support the motion as he believes parking will be a problem.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw
Attachment

Request from Keshav Koirala (owner) regarding property located at 2511 Shadow Creek Lane.			File # ZON2015-00127	
Description of Action	Approval of request for an amendment to the Riverwoods PUD Conceptual Plan to allow the premises of the existing single-family dwelling to be used for a home based retail sales business subject to conditions.			
2020 Community Character Plan	Current: Low Density Residential. Proposed: N/A.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"PUD" Planned Unit Development and "FSO" Freestanding Sign Overlay District.			
Proposed Zoning District	N/A.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area				
Outside Area				
Plan and Zoning Commission Action	Approval	8-4	Required 6/7 Vote of the City Council	Yes
	Denial			No

Keshav Koirala, 2511 Shadow Creek Lane

ZON2015-00127

