

Date December 2, 2019

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION
GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW SALES OF
ALCOHOLIC LIQUOR, WINE AND BEER AT 3104 UNIVERSITY AVENUE**

WHEREAS, on November 20, 2019, the Zoning Board of Adjustment voted 5-1 to approve an application from Kum and Go L.C., for certain requests seeking zoning code relief to allow redevelopment of this site, which requests included a variance of the separation requirement that the premises of any gas station/convenience store in an NPC - Neighborhood Pedestrian Commercial Zoning District seeking to sell alcoholic liquor, wine and beer be separated by at least 500 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 a new gas station/convenience store building selling alcoholic liquor, wine and beer on the real property locally known as 3104 University Avenue ("Property"), which new store building would replace Kum and Go's existing building on the Property where wine and beer is currently sold; and

WHEREAS, the Property is located within 202' of a property at 3223 University Avenue, which contains both a church and a licensed childcare facility; and

WHEREAS, the Board found that the proposed new gas station/convenience store building selling alcoholic liquor, wine and beer on the Property would not alter the essential character of the locality of the land in question, as the currently existing building sells wine and beer, another nearby business sells alcoholic liquor, wine, and beer, the Property's lot line is physically separated from the licensed childcare facility by an arterial street right-of-way, and that the intent of the separation distance requirements of the Zoning Code have been met; 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 December 23, 2019.
- 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

36

Date December 2, 2019

(Council Communication No. 19- 508)

MOVED by _____ to adopt alternative _____, above.

APPROVED AS TO FORM:

Judy K. Parks-Kruse
Judy K. Parks-Kruse
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
WESTERGAARD				
TOTAL				

CERTIFICATE

I, P. KAY CMELIK, 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



**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 2019-00175
KUM & GO, LC	:	
ON PROPERTY LOCATED AT	:	PUBLIC HEARING: NOVEMBER 20, 2019
VICINITY OF 3104 UNIVERSITY AVENUE	:	

SUBJECT OF THE APPEAL

Proposal: Allow a gas station/convenience store to have sales of alcoholic liquor in addition to the otherwise permitted sales of wine and beer. As a gas station/convenience store, the business would be allowed to derive no more than 40% of its gross sales from alcoholic liquor, wine, beer, and/or tobacco products. The property within 202 feet of a property at 3223 University Avenue, which contains both a church and a licensed child care facility use. The appeals would also allow the gas station use to have more than six (6) fueling locations.

Appeal(s): Conditional Use for a business selling liquor, wine, and beer.

Variance of the provision that requires any gas station convenience store in an "NPC" District to provide at least 500 feet of separation from any church, school, public park, or licensed child care facility.

Variance of the provision that limits any gas station in an "NPC" District to no more than six (6) fueling locations.

Required by City Code Sections 134-954, 134-954(a), & 134-912(2)(q)63

FINDING

The appellant has satisfied the criteria necessary for granting the requested Conditional Use with conditions. 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 area, which contains primarily commercial uses. The business is not contrary to the public interest and will not unduly increase congestion on the streets in the adjoining area and will have a minimal impact on the surrounding properties so long as it operates in accordance with the recommended conditions of approval. 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.

The appellant has further satisfied the criteria necessary for granting the requested Variances to sell alcoholic liquor without providing at least 500 feet of separation distance from any church or licensed childcare facility and to have more than six (6) fueling locations. The owner has demonstrated that its plight is due to unique circumstances not of the owner's own making, which circumstances relate specifically to the land in question and not to general conditions in the neighborhood, and that the use to be authorized by the Variance will not alter the essential character of the locality of the land in question.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeals for a Conditional Use for a business selling alcoholic liquor, a Variance of the provision that requires any gas station convenience store in an "NPC" District to provide at least 500 feet of separation from any church, school, public park, or licensed child care facility, and a Variance of the provision that limits any gas station in an "NPC" District to no more than six (6) fueling locations, to allow a gas station/convenience store to have sales of alcoholic liquor in addition to the otherwise permitted sales of wine and beer, and more than six (6) fueling locations, are **granted** subject to the following conditions:

1. The sale of alcoholic liquor, wine, and/or beer shall only be ancillary to a gas station/convenience store, where no more than 40% of gross receipts from sales on the premises may be derived from the sale of alcoholic liquor, wine, beer, and/or tobacco products.
2. The business selling alcoholic liquor, wine and/or 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.
3. Display of any alcoholic liquor shall only be within a locked case or behind a counter accessible only to employees.
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. 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.

KUM & GO, LC
VICINITY OF 3104 UNIVERSITY AVENUE
ZON 2019-00175

NOVEMBER 20, 2019

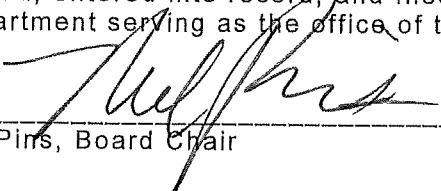
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- 8. Any construction on the site shall be in compliance with all applicable Building and Fire codes, with issuance of all necessary permits by the Permit and Development Center.
- 9. Any gas station convenience store shall be limited to eight (8) fueling locations.
- 10. The Conditional Use shall be 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.
- 11. 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, the Zoning Enforcement Officer may apply to the board to reconsider the issuance of the Conditional Use for such business.

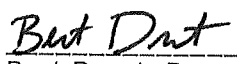
VOTE

The foregoing Decision and Order was adopted by a vote of 5-1, with Board members Carlson, Gaer, Gross, Pins, & Smith voting in favor thereof & Board member Jones voting in opposition thereto.

Signed, entered into record, and filed with the City of Des Moines Community Development Department serving as the office of the Board, on November 22, 2019.



 Mel Pins, Board Chair



 Bert Drost, Board Secretary