



Roll Call Number

14-0161

Agenda Item Number

41

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,



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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:



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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 Mahaffey 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

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE		✓		
COLEMAN	✓			
GRAY	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MOORE	✓			
VOSS	✓			
TOTAL	6	1		

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.

T. M. Franklin
Mayor

Diane Rauh
City Clerk