



Roll Call Number

14-0165

Agenda Item Number

42A

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.



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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 Hensley 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	7			

MOTION CARRIED

APPROVED

T. M. Franklin 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.

Diane Rauh City Clerk