



Date January 13, 2014

RESOLUTION SETTING 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

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on December 19, 2013, a motion was passed on a vote of 12-2 to recommend **DENIAL** of a request from Kwik Trip, Inc. D/B/A Tobacco Outlet Plus, represented by Donald Zietlow (Officer), to rezone property located at 3409 SW 9th Street from the "C-1" Neighborhood Retail Commercial District to the "C-2" General Retail and Highway-Oriented Commercial 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.

WHEREAS, the subject property is owned by First Financial Group, LC. and is 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.

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

1. That the meeting of the City Council at which the proposed rezoning is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. on January 27, 2014, at which time the City Council will hear both those who oppose and those who favor the proposal.



Roll Call Number

Agenda Item Number

27

Date January 13, 2014

- 2. That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

MOVED by _____ to adopt.

FORM APPROVED:

Roger K Brown

Roger K. Brown
Assistant City Attorney

(ZON2013-00187)

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

Request from Kwik Trip, Inc. d/b/a Tobacco Outlet Plus (lessee) represented by Donald Zietlow (officer) to rezone property located at 3409 Southwest 9th Street. The subject property is owned by First Financial Group, LC.		File # ZON2013-00187			
Description of Action	Denial of the requested rezoning from "C-1" Neighborhood Retail Commercial District to "C-2" General Retail and Highway-Oriented Commercial 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.				
2020 Community Character Plan	Commercial: Auto-Oriented, Small-Scale Strip Development.				
Horizon 2035 Transportation Plan	Widen Southwest 9 th Street from 4 Lanes to 5 Lanes.				
Current Zoning District	"C-1" Neighborhood Retail Commercial District.				
Proposed Zoning District	"C-2" General Retail and Highway-Oriented Commercial District.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	2	1			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	12-2		No	

Kwik Shop, In (dba Tobacco Outlet Plus), 3409 Southwest 9th Street

ZON2013-00187



January 7, 2014

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 December 19, 2013, the following action was taken regarding a request from Kwik Trip, Inc. d/b/a Tobacco Outlet Plus (lessee) represented by Donald Zietlow (officer) to rezone property located 3409 Southwest 9th Street. The subject property is owned by First Financial Group, LC.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 12-2 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Dann Flaherty	X			
Jann Freed				X
John "Jack" Hilmes	X			
Ted Irvine	X			
Greg Jones	X			
William Page	X			
Christine Pardee	X			
CJ Stephens	X			
Vicki Stogdill		X		
Greg Wattier		X		

APPROVAL of a motion to find the proposed rezoning is in conformance with the Des Moines' 2020 Community Character Plan and **DENIAL** of the requested rezoning to a "C-2" General Retail and Highway-Oriented Commercial 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. (ZON2013-00187)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the Commission find the requested rezoning in conformance with the Des Moines' 2020 Community Character Plan.

Part B) Staff recommends denial of the requested rezoning to a "C-2" District.



CITY PLAN AND ZONING COMMISSION
 ARMORY BUILDING
 602 ROBERT D. RAY DRIVE
 DES MOINES, IOWA 50309 -1881
 (515) 283-4182

ALL-AMERICA CITY
 1949, 1976, 1981
 2003

Written Responses

2 In Favor

1 In Opposition

STAFF REPORT

I. GENERAL INFORMATION

- 1. Purpose of Request:** The applicant is seeking to retain the existing tobacco store which sells beer and wine. The store was given occupancy as a grocery store with a permit to sell beer and wine not to exceed 50% of the gross revenues. This was prior to revisions in the Zoning Ordinance restricting businesses that sell alcoholic beverages and including tobacco products in the sales numbers.

Under these revisions, while beer and wine may continue to be sold in the "C-1" District as part of a limited retail or food sales business; gross revenues of wine, beer, and tobacco products may not exceed 40% of the total revenues. When the 40% provision is exceeded, the Zoning Ordinance defines the business operation as a liquor store selling beer and wine, which requires "C-2" District zoning and a separation distance of 150 feet from any property with a school, church, public park or licensed child care facility as defined by the State of Iowa. This provision takes effect for any beer and wine licenses renewed after December 31, 2013. The applicant has indicated that the existing and proposed business model exceeds the 40% limitation and therefore it must be considered a liquor store for purposes of the Zoning Ordinance.

- 2. Size of Site:** 11,090 square feet.
- 3. Existing Zoning (site):** "C-1" Neighborhood Retail Commercial District.
- 4. Existing Land Use (site):** The site includes a 3,200-square foot commercial building with two tenant bays. The applicant occupies approximately 2,135 square feet on the north part of the building.
- 5. Adjacent Land Use and Zoning:**

North – "C-1", Use is Earlham Savings Bank drive-up branch office.

South – "C-1", Use is Pasutti Real Estate office.

East – "R1-60", Uses are single-family dwellings.

West – "C-1", Use is burial vault retail business.

- 6. General Neighborhood/Area Land Uses:** The subject property is located along the Southwest 9th Street commercial corridor.
- 7. Applicable Recognized Neighborhood(s):** The subject property is not within a recognized neighborhood but is within 250 feet of the Gray Lake Neighborhood to the west. All recognized neighborhoods were notified of the meeting by mailing of the Preliminary Agenda to all recognized neighborhoods on December 2, 2013. Additionally, separate notifications of the hearing for this specific item were mailed on November 27, 2013 (20 days prior) and December 9, 2013 (10 days prior to the

scheduled hearing) to the Gray's Lake Neighborhood Association contact 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 December 13, 2013.

All agendas and notices are mailed to the contact person(s) designated to the City of Des Moines Neighborhood Development Division by the recognized neighborhood association. The Gray's Lake Neighborhood Association mailings were sent to Evan Shaw, 2615 Druid Hill Drive, Des Moines, IA 50315.

The applicant is required to schedule a neighborhood meeting prior to the hearing which includes invitation to neighborhood contacts and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. The applicant invited neighboring property owners and Gray's Lake Neighborhood representation to attend a meeting scheduled and held on December 9, 2013. However, the applicant has indicated that nobody attended the meeting.

8. Relevant Zoning History: N/A.

9. 2020 Community Character Land Use Plan Designation: Commercial: Auto-Oriented Small-Scale Strip Development.

10. Applicable Regulations: 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. Businesses Selling Liquor, Wine, and Beer: The following applicable regulations are now enforceable for businesses selling liquor, wine, and/or beer

Sec. 134-954. Selling of liquor, wine and beer.

The use of land in all districts for the sale of alcoholic liquor, wine and beer is subject to the restrictions set forth in this section.

a. The sale of alcoholic liquor, wine and beer is permitted only in the zoning districts and subject to the conditions applicable to the business identified in the table below:

	Sale of Alcoholic Liquor		Sale of Wine and Beer	
	C-1, C-1A & D-R Districts	C-2, NPC and less restrictive Districts	C-1, C-1A & D-R Districts	C-2, NPC and less restrictive Districts
Food Sales Establishments and Retail Sales Establishments				
Limited (less than 12,000 sq ft)	Not Allowed	CUP 40% of sales 500 feet 1/4 mile	CUP 40% of sales 150 feet	CUP 40% of sales 150 feet

General (12,000 sq ft or larger, but less than 40,000 sq ft)	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet
Large (40,000 sq ft or larger)	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet
Gas Station/ Convenience Stores (not allowed in D-R)	Not Allowed	CUP 40% of sales 500 feet 1/4 mile	40% of sales 150 feet (C-1 & C-1A only)	40% of sales 150 feet
Liquor Stores	Not Allowed	CUP 500 feet 1/4 mile	Not Allowed	CUP 150 feet
Restaurants	50% of sales 75 feet	50% of sales 75 feet	50% of sales 75 feet	50% of sales 75 feet
Taverns and Night Clubs (not allowed in C- 1 and C-1A)	CUP (D-R only)	CUP 150 feet	CUP (D-R only)	CUP 150 feet

Where used in the table above the following terms shall have the meaning identified below:

- 1) CUP means that a conditional use permit must be obtained for such use as further provided in this section.
- 2) 40% of sales means that no more than 40 percent of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine, beer or tobacco products.
- 3) 50% of sales means that at least 50 percent of the gross receipts by a restaurant must be derived from the sale of prepared food and food-related services.
- 4) 75 feet means that the premises occupied by such use must be separated by at least 75 feet from any church, school, public park or licensed child care facility as defined by I.C. ch. 237A. However, this condition is not applicable in the C-3, C-3A, C-3B, C3-R and D-R Districts.
- 5) 150 feet means that the premises occupied by such use must be separated by at least 150 feet from any church, school, public park or licensed child care facility as defined by I.C. ch. 237A. However, this condition is not applicable in the C-3, C-3A, C-3B, C3-R and D-R Districts.
- 6) 500 feet means that the premises occupied by such use must be separated by at least 500 feet from any church, school, public park or licensed child care facility as defined by I.C. ch. 237A. However, this condition is not applicable in the C-3, C-3A, C-3B, C3-R and D-R Districts.
- 7) 1/4 mile means that the premises occupied by such use must be separated by at least one-fourth mile from any other limited food sales establishment, limited retail sales establishment, gas station/convenience store and liquor store engaged in the sale of alcoholic liquor. However, in the C-3, C-3A, C-3B, C3-R and D-R Districts this condition is only applicable to liquor stores.

b. A conditional use permit is required for the use of a premises for the sale of alcoholic liquor, wine or beer, under the circumstances identified in subsection (a), above. The board shall grant such a conditional use permit only where the business, when operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:

- 1) The business conforms with the conditions identified in subsection (a), above.
- 2) 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 residential area.
- 3) The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.
- 4) The business will not unduly increase congestion on the streets in the adjoining residential area.
- 5) The operation of the business will not constitute a nuisance.

