



Date May 19, 2014

HEARING ON REQUEST FROM MISTY KNIGHT, FOR AN AMENDMENT TO THE TOBIS PARK ESTATES PUD CONCEPT PLAN ON PROPERTY AT 5300 SE 28th STREET, TO ALLOW ACCESSORY USE OF THE SINGLE-FAMILY DWELLING FOR A HOME OCCUPATION BUSINESS AS A BEAUTY PARLOR

WHEREAS, on May 5, 2014, by Roll Call No. 14-0690, it was duly resolved by the City Council, that a public hearing to be held on May 19, 2014, at 5:00 p.m., in the Council Chambers at City Hall, to consider a proposal from Misty Knight (occupant), for an amendment to the Tobis Park Estates PUD Concept Plan on property owned by Bradley Noon at 5300 SE 28th Street, to allow accessory use of the single-family dwelling for a home occupation business as a beauty parlor; and,

WHEREAS, due notice of said hearing was published in the Des Moines Register on May 8, 2014, as provided by law, setting forth the time and place for hearing on said proposed amendment to the approved "PUD" Conceptual Plan; and,

WHEREAS, the Plan and Zoning Commission has recommended that the proposed amendment to the approved "PUD" Conceptual Plan be approved, subject to the amendment being first modified to incorporate the following conditions:

1. Any home occupation shall uphold the intent and spirit of the standards in Section 134-1326(10) of the Zoning Ordinance and applicable to home occupations in other zoning districts.
2. Operation of the business shall occur only between the hours of 11:00 am and 7:00 pm on Monday through Friday.
3. Any business shall only be in effect for so long as the premises are owned and occupied by the applicant.
4. Additional employees beyond the applicant are prohibited.
5. Should the business be determined to be operating detrimentally to the surrounding neighborhood area, the Zoning Enforcement Officer may initiate the process to repeal the amendment.

WHEREAS, in accordance with the published notice those interested in said proposed amendment to the approved "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, statements of interested persons and arguments of counsel, the objections to said proposed amendments to the approved "PUD" Conceptual Plan for



Date May 19, 2014

the property in the vicinity of 5300 SE 28th Street, and more specifically described below, are hereby overruled and the hearing is closed.

Lot 69, Easter Lakes Estates Plat 6, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

2. The proposed amendment to the approved "PUD" Conceptual Plan is hereby found to be in conformance with the Des Moines 2020 Community Character Land Use Plan, subject to the conditions identified above.

3. The proposed amendment to the Tobis Park Estates PUD Concept Plan for the Property described above, which is on file in the Community Development Department, is hereby approved, subject to the amendment being first amended to incorporate the conditions listed above, and subject to approval of such amendments by the Community Development Director.

MOVED by _____ to adopt.

FORM APPROVED:

Roger K. Brown
Assistant City Attorney
G:\SHARED\LEGAL\BROWN\REZONING\5300 SE 28\RC - PUD Plan Amendment.docx

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GATTO, GRAY, HENSLEY, MAHAFFEY, MOORE, and 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 Misty Knight (occupant) at 5300 Southeast 28th Street. The subject property is owned by Bradley Noon.		File # ZON2014-00057		
Description of Action	Review and approval of an amendment to the Tobis Park Estates PUD Conceptual Plan to allow accessory use of the single-family dwelling property as a home occupation business for a beauty parlor.			
2020 Community Character Plan	Low-Density Residential (current & no change proposed).			
Horizon 2035 Transportation Plan	No planned improvements.			
Current Zoning District	"PUD" Planned Unit Development. Tobis Park Estates PUD Conceptual Plan			
Proposed Zoning District	NA.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area				
Outside Area				
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes
	Denial			No

Knight, 5300 Southeast 28th Street

ZON2014-00057





May 9, 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 May 1, 2014, the following action was taken regarding a request from Misty Knight (occupant) for review and approval of an amendment to the Tobis Park Estates PUD Conceptual Plan on property located at 5300 Southeast 28th Street. The subject property is owned by Bradley Noon.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano	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 staff recommendation to find the proposed request for an amendment to the Tobis Park Estates PUD to allow a home occupation at 5300 SE 28th Street to operate a hair salon business, subject to the following conditions: (ZON2014-00057)

1. Any home occupation shall uphold the intent and spirit of standards applicable to other Zoning Districts found in Section 134-1326(10) of the Zoning Ordinance.

2. Hours of operation of any hair salon business shall occur only between the hours of 11:00 a.m. and 7:00 p.m. on Monday through Friday.
3. Any business shall only be in effect for so long as the premise is occupied by the applicant.
4. Additional employees beyond the applicant are prohibited.
5. Should the business be determined to be operating detrimentally to the surrounding neighborhood area, the Zoning Enforcement Officer may initiate the process to repeal the amendment.

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of an amendment to the Tobis Park Estates PUD to allow a home occupation at 5300 SE 28th Street to operate a hair salon business, subject to the following conditions:

1. Any home occupation shall uphold the intent and spirit of standards applicable to other Zoning Districts found in Section 134-1326(10) of the Zoning Ordinance.
2. Hours of operation of any hair salon business shall occur only between the hours of 11:00 a.m. and 7:00 p.m. on Monday through Friday.
3. Any business shall only be in effect for so long as the premise is occupied by the applicant.
4. Additional employees beyond the applicant are prohibited.
5. Should the business be determined to be operating detrimentally to the surrounding neighborhood area, the Zoning Enforcement Officer may initiate the process to repeal the amendment.

Written Responses

In Favor

1 In Opposition

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The subject property is a single-family residence within the Tobis Park Estates single-family residential Planned Unit Development.

The applicant is proposing to operate a hair salon in a 250-square foot portion of their basement. She recently moved to Des Moines from Ames and wishes to be able to offer her clients the option of receiving services at her existing location in Ames or at her home in Des Moines. Her existing client base includes the Des Moines metro. The basement salon area would contain a single salon chair and there would be no

additional employees. Hours of operation are proposed to be Monday from 11:00 a.m. to 7:00 p.m. and Friday from 11:00 a.m. to 4:00 p.m. It is anticipated that no more than 6 customers would be served in a single day.

2. **Size of Site:** 16,593 square feet or 0.381 acres.
3. **Existing Zoning (site):** "PUD" Planned Unit Development (Tobis Park Estates).
4. **Existing Land Use (site):** The property contains a two-story single-family dwelling with an attached three-car garage.
5. **Adjacent Land Use and Zoning:**
 - North** – "R1-80"; Use is a single-family dwelling and outbuilding owned by the Polk County Conservation Board in common with Easter Lake.
 - South** – "PUD"; Uses are single-family dwellings.
 - East** – "PUD"; Uses are single-family dwellings.
 - West** – "R1-90"; Use is a single-family dwelling on a 5.5-acre lot.
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 Easter Lake Area Neighborhood. This neighborhood association was notified of the public hearing by mailing of the Preliminary Agenda on April 11, 2014. Additionally, separate notifications of the hearing for this specific item were mailed on April 14, 2014 (20 days prior to public hearing) and April 21, 2014 (10 days prior to the public hearing) to the Easter Lake Area 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 April 25, 2014.

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 Easter Lake Area Neighborhood Association notices were mailed to Jim Bollard, 4007 SE 26th Street, Des Moines, IA 50320.
8. **Relevant Zoning History:** The Tobis Park Estates PUD zoning was approved on July 22, 1996 by the City Council. The Conceptual Plan did not provide for home occupation uses and therefore are not considered a "by-right" accessory use for single-family dwellings.
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 Easter Lake New Town Low Density Residential.

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.

The Commission further reviews any amendments to Planned Unit Development proposed after its approval by the City Council in the same manner as the original rezoning in accordance with Section 134-700 of the Zoning Ordinance.

II. ADDITIONAL APPLICABLE INFORMATION

- 1. Parking & Access:** The subject property is located on the southwest corner of the Easter Lake Drive and SE 28th Street intersection. Easter Lake Drive is a collector street with few properties having direct access to the street. The subject property has a three-car garage and a large paved driveway, which would provide adequate parking for the applicant's personal use and for the home occupation. The impact of the proposed home occupation would have no noticeable impact on the adjoining streets.
- 2. Staff Rationale:** In a standard residentially zoned district, this type of request would be review by the Board of Adjustment under the standards listed in Section 134-1326(10) of the Zoning Ordinance as follows:

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.*

After reviewing these standards, staff believes that the requested PUD amendment would comply with these criteria if used as a guideline for reviewing a home occupation use in a PUD. One of the provisions that should be a condition of any approval would be that the Zoning Officer could initiate an action to repeal the amendment in a situation where the business became detrimental to the neighborhood.

SUMMARY OF DISCUSSION

Dann Flaherty asked if anyone was present to speak on Items #2 & #3. None were present or requested to speak.

Greg Jones made a motion to move Items #2 and #3 to the consent agenda. Motion carried 11-0. Christine Pardee was not yet in attendance.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one to speak in favor or in opposition of the applicant's request.

COMMISSION ACTION:

Ted Irvine moved staff recommendation to approve an amendment to the Tobis Park Estates PUD to allow a home occupation at 5300 SE 28th Street to operate a hair salon business, subject to the following conditions:

1. Any home occupation shall uphold the intent and spirit of standards applicable to other Zoning Districts found in Section 134-1326(10) of the Zoning Ordinance.

2. Hours of operation of any hair salon business shall occur only between the hours of 11:00 a.m. and 7:00 p.m. on Monday through Friday.
3. Any business shall only be in effect for so long as the premise is occupied by the applicant.
4. Additional employees beyond the applicant are prohibited.
5. Should the business be determined to be operating detrimentally to the surrounding neighborhood area, the Zoning Enforcement Officer may initiate the process to repeal the amendment.

Motion passed 11-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment

Request from Misty Knight (occupant) at 5300 Southeast 28th Street. The subject property is owned by Bradley Noon.				File #	
				ZON2014-00057	
Description of Action		Approval of request to amend the Tobis Park Estates PUD Conceptual Plan to allow accessory use of the single-family dwelling property as a home occupation business for a beauty parlor subject to conditions.			
2020 Community Character Plan		Low-Density Residential (current & no change proposed).			
Horizon 2035 Transportation Plan		No planned improvements.			
Current Zoning District		"PUD" Planned Unit Development. Tobis Park Estates PUD Conceptual Plan			
Proposed Zoning District		NA.			
Consent Card Responses		In Favor	Not In Favor	Undetermined	% Opposition
Inside Area			1		
Outside Area					
Plan and Zoning Commission Action		Approval	11-0	Required 6/7 Vote of the City Council	
		Denial		Yes	
				No	X

Knight, 5300 Southeast 28th Street

ZON2014-00057



Updated on: 4/10/2014

Item ZON2014-00057

Date 04-22-14

I (am) (am not) in favor of the request.
COMMUNITY DEVELOPMENT

(Circle One)
APR 29 2014

Print Name CARRIE BECKER

Signature Carrie Becker

Address 2812 E Kenyon Ave

DEPARTMENT

Reason for opposing or approving this request may be listed below:

This residence is located on the corner of 28th and
Easter Lake Dr. There are already 3 to 4 cars owned by
the residents and street parking limited due to the corner
lot. Additionally neighboring homes have multiple vehicles also
parked on the street. In the winter this is already an unsafe
Area to drive much less the added vehicle parking.

Item ZON2014-00057

Date 4-22-2014

I (am) (am not) in favor of the request.

RECEIVED
COMMUNITY DEVELOPMENT

APR 28 2014

DEPARTMENT

Print Name Brad Noon

Signature BRN

Address 5300 SE 28th

applicant

Reason for opposing or approving this request may be listed below:

