

Date September 12, 2016

**REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION
GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW A
GAS STATION/CONVENIENCE STORE SELLING WINE AND BEER ON THE
PROPERTY AT 849 ARMY POST ROAD**

WHEREAS, Quik Trip Corporation (“QT”) has proposed to construct a new 5,757 square foot gas station/convenience store selling wine and beer on the real property locally known as 849 Army Post Road (“Property”); and

WHEREAS, QT will be decommissioning its current gas station/convenience store located in close proximity to the Property, where QT currently sells alcoholic liquor, wine and beer; and

WHEREAS, the Property is located within 35 feet of a church use located at 6205 Southwest 9th Street; and

WHEREAS, on August 24, 2016, the Zoning Board of Adjustment voted 6-0 to approve an application from QT for a variance of the separation requirement that the premises of any gas station/convenience store seeking to sell wine and beer be separated by at least 150 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 QT’s project and the new store selling wine and beer on the Property, and the Board found that the variance was necessary in order to allow for redevelopment of the Property due to the existing billboard and view corridor easement encumbering the Property which limit potential uses thereof; 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 September 22, 2016.

★ Roll Call Number

Agenda Item Number

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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.

(Council Communication No. 16-500)

MOVED by _____ to adopt alternative _____, above.

APPROVED AS TO FORM:

Glenna K. Frank
Glenna K. Frank, Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GATTO, GRAY, HENSLEY, MOORE, WESTERGAARD, and TOTAL.

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.

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 QUIK TRIP CORPORATION ON PROPERTY LOCATED AT VICINITY OF 849 ARMY POST ROAD	: : : : : : :	DOCKET: ZON 2016-00115 PUBLIC HEARING: AUGUST 24, 2016
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SUBJECT OF THE APPEAL

Proposal: Development of a new 5,757 square foot gas station/convenience store with sales of wine, and beer. The site is within 35 feet of a church use at 6205 Southwest 9th Street.

Appeal(s): Variance of the provision that requires any gas station/convenience store selling wine and beer (no alcoholic liquor) to provide at least 150 feet of separation from any church, school, public park, or licensed child care facility.

Required by City Code Sections 134-954 & 134-954(a)

FINDING

Prior to the public hearing, the appellant revised their request to seek the sale of wine and beer only, rather than alcoholic liquor, wine, and beer.

The Board finds that the appellant has satisfied the criteria necessary for the granting the Variance to separation distance requirement for a gas station/convenience store selling wine and beer, so long as the business complies with all conditions of approval. The Board finds that the use to be authorized by the Variance would not alter the essential character of the locality of the land in question, as the gas station/convenience store under construction to the west of this site will also be permitted to sell wine and beer. Also, the Board finds that the plight of the owner is due to unique circumstances not of the owner's own making, including the existing billboard and view corridor easement encumbering the subject property, and as Quik Trip Corporation is able to continue selling alcoholic liquor, wine, and beer in their current location in close proximity to the subject property, but is subject to current regulations in order to relocate to this larger and better functioning site.

The appellant provided testimony that a gas station/convenience store is the only feasible reuse of the property given the need to preserve the view corridor easement and view of the existing billboard at the southeast corner of the property, and that the property would not yield a reasonable return other than through the store usage set back from the street frontage as proposed. Furthermore, the Board finds that granting the Variance would actually reduce the impact of alcohol sales in the immediate vicinity since the proposed store would only sell wine and beer whereas the existing store sells alcoholic liquor, wine, and beer.

DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal for a Variance of the provision that requires any gas station/convenience store selling wine and beer (no alcoholic liquor) to provide at least 150 feet of separation from any church, school, public park, or licensed child care facility, to allow development of a new 5,757 square foot gas station/convenience store with sales wine and beer only (no alcoholic liquor), where the site is within 35 feet of a church use at 6205 Southwest 9th Street, is **granted** subject to the following conditions:

1. The sale of wine and 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 wine, beer, and/or tobacco products.
2. Any business selling wine and beer shall operate in accordance with the necessary permits obtained through the Office of the City Clerk as approved by the City Council.
3. The business shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
4. 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.
5. The business shall not dispense alcoholic beverages from a drive-through window.
6. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of the business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
7. Any parking area 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.
8. If the Zoning Enforcement Officer determines at any time that the operation of such a business becomes a nuisance, exhibits a pattern of violating the conditions set forth in the Conditional Use Permit, or violates the requirements of City Code Section 134-954(c), the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use Permit.

VOTE

The foregoing Decision and Order was adopted by a vote of 6-0, with all Board members voting in favor thereof.

Signed, entered into record, and filed with the City of Des Moines Community Development Department serving as the office of the Board, on August 30, 2016.

Mel Pina, Chair

Bert Drost, Secretary