

CITY1708.DSS

Chairperson Blaser called to order the December 28, 2016, regularly scheduled meeting of the Board of Adjustment at 5:30 p.m. in the City Council Chambers, West Des Moines City Hall, located at 4200 Mills Civic Parkway, in West Des Moines, Iowa.

Roll Call: Blaser, Celsi, Christiansen, Pfannkuch.....Present
Cunningham.....Absent

Item 1 – Consent Agenda

Item 1a – Minutes of December 14, 2016

Moved by Board Member Celsi; seconded by Board Member Christiansen, to approve the December 14, 2016 meeting minutes.

Vote: Blaser, Celsi, Christiansen.....Yes
Pfannkuch.....Abstain
Cunningham.....Absent

Motion carried.

Item 2 – Old Business

There were no Old Business items reported.

Item 3 – Public Hearings

Item 3a – Kum & Go, 330 Jordan Creek Parkway – Construct a 6,217 sq. ft. convenience store with eight fuel pumps – Kum & Go, LC - PC-003227-2016

Chairperson Blaser opened the public hearing and asked the Recording Secretary to state when the public hearing notice was published. The Recording Secretary indicated that the notice was published on December 2, 2016, in the Des Moines Register.

Chairperson Blaser then asked for a motion to accept and make a part of the record all testimony and all other documents received at this public hearing.

Moved by Board Member Celsi, seconded by Board Member Pfannkuch, the Board of Adjustment accepts and makes a part of the record all testimony and documents received at this public hearing.

Vote: Blaser, Celsi, Christiansen, Pfannkuch.....Yes
Cunningham.....Absent

Motion carried.

Board Member Christiansen recused himself from participation on this item due to a conflict of interest.

Siobhan Harman, Kum & Go, 6400 Westown Parkway, West Des Moines, gave a brief overview of Kum and Go company changes. The square footage of the Kum & Go store has evolved from 32,000 sq. ft. to 5,000 sq. ft., and most recently to 6,200 sq. ft. With the change in store square footage, convenience retailers have placed more emphasis on offerings inside of their store. Ms. Harman commented that Kum & Go now offers fresh takeout food due to this change in emphasis. Also, the convenience store no longer provides automobile repair,

as that function has reverted back to the dealership.

Ms. Harman provided building elevations indicating that there would be a material variation using more stone and glass on the buildings. She commented that Kum & Go is LEED certified by the US Green Building Council and continues to recycle papers, bottles, etc.

Ms. Harman mentioned that Kum & Go has now gone from ten pumps to between six to eight gas pumps depending upon location. This is due to a decrease in fuel sales as vehicles have become more fuel efficient and other modes of transportation are available to consumers.

Nicole Neal, Civil Design Advantage, 3405 SE Crossroads Drive, Grimes, discussed the store and canopy orientation which will face north, as well as the two full accesses into the site, one at the eastern north/south roadway and the other at the east/west roadway through the Jordan West development. There will be parking on two sides of the building. Existing infrastructure services are currently in place, i.e., storm, sewer, water, etc.

Board Member Pfannkuch asked if this site would be replacing the Bridgewood location. Ms. Neal affirmed that yes this would be a replacement to the Bridgewood Kum & Go location which is for sale. There has been interest in this property, but there have been no offers to date.

Chairperson Blaser then asked for any other questions or comments from the audience and upon hearing none, declared the public hearing item closed.

Jeremy Christiani, 1100 50th Street, expressed his opposition to this application and respectfully requested a continuance of this matter until such time that this use of land was assigned an appropriate standard industry classification code number. These typical standards and conditions set by our codes are to protect public health, safety, and welfare. City Code 965 states: "In all cases, except when noted by the lack of a Standard Industrial Classification (SIC) code number, the SIC manual will be used to define uses for the category, and any application for a development permit shall be accompanied by such a provision as it is deemed necessary by the Director of Community Development in order to determine the applicable standard industry classification code. The assignment of appropriate classifications shall determine the proper zoning district with the intended use. The SIC code shall be used as a guide."

Mr. Christiani expressed that this Kum & Go Store has not been appropriately classified. No SIC number has been assigned. Required findings cannot be satisfied without an appropriate classification. Mr. Christiani stated that City Code 967 provides, under the condition letter G, that the standard industry classification should be number 541 Classified Land Use Convenient Store. This Kum & Go Store does not fit the SIC manual definition for a convenience store. No consideration has been given to SIC number 5921 Liquor Store and how many thousands of square feet will be dedicated to alcohol sales. What percentage of sales and store inventory will be alcoholic beverages? Will the applicant prevent alcohol marketing that has special appeal to underage drinkers? This store will have a walk-in liquor cooler, beer on tap, and the same liquor license as a liquor store. Reasonable and appropriate safeguards to protect the health and safety of the community have not been considered. The Development & Planning Subcommittee did not even discuss this Kum & Go Store. Retail alcohol has great potential to negatively impact public health, comfort, safety, and welfare; therefore, consideration is necessary. In 2015, the Iowa Supreme Court ruled that Iowa's Alcoholic Beverage Open Container Law does not permit open containers in vehicles parking on private property. West Des Moines public consumption of alcohol law stops at the sidewalk. Consumption of alcohol in the Kum & Go outdoor seating area and parking lot will be allowed and unregulated. This loophole poses an extreme threat to the quality of life for adjacent residents. Underage drinkers may find greater access with less law enforcement and be at greater risk of death or injury. It would be reasonable to define the definition of premises to include the outdoor seating area and the parking lot, and to prohibit alcohol consumption in these areas unless specifically allowed by the State of Iowa with an approved outdoor service privilege liquor license.

Mr. Christiani expressed that no one has considered the nuisance and violent crime linked to the density of retail alcohol distribution. He stated that West Glen Town Center has become the highest alcohol related and nuisance crime neighborhood in town. This past year's criminal activity at West Glen Town Center included robbery, pick-pocketing, simple assaults, willful injuries, auto thefts, possession of drugs, multiple complaints of consumption of alcohol by a minor, indecent exposure, and criminal mischief. These are just the ones that made the crime map. Mr. Christiani asked how many got away with their crimes? West Glen Town Center is clearly a nuisance property and a drain of police resources. The root cause of these problems are conditionally permitted retail alcohol outlets. Mr. Christiani provided that his neighborhood has been severely and negatively impacted by a high density of retail alcohol outlets. There have been more police responses to his neighborhood this year than in the previous 15 years combined. The calls involving drunkenness take place every weekend. Three years ago the City decided not to remove the unlawfully established bar adjacent to Mr. Christiani's residence in a zoning designation that does not allow bars. The Director of Plan & Zoning told residents that there would be no new bars. Two years ago, the Director of Plan and Zoning decided to create a new interpretation of zoning to allow a bar as a restaurant without a required conditional use permit and without Board of Adjustment approval.

Chair Blaser asked Mr. Christiani to please limit his comments to this particular project application.

Mr. Christiani continued that the Center for Disease Control Community Preventative Services Task Force supports limiting alcohol outlet density on the basis of sufficient evidence of positive association to output density and excessive alcohol consumption and related harms. The task force reviews studies regarding excessive consumption.

Chair Blaser again requested that Mr. Christiani speak specifically to this application.

Mr. Christiani resumed by stating that the minutes approved from the December 14, 2016, Board of Adjustment meeting, affirmed the Director's decision to assign the SIC number to a residential dwelling accessory use for the keeping of quail. The citizens of West Des Moines deserve equal or greater consideration and appropriate classification of a land use that has been factually proven to have a negative effect on public health, safety and welfare of the community, and this use is Standard Industry Classification number 5921 Liquor Store.

Chair Blaser asked for further comment; hearing none, closed the public hearing and asked for staff's presentation.

Development Coordinator Schemmel asked for any specific concerns or questions regarding the public comment.

Board Member Celsi asked when is the SIC code/number typically issued to a specific property in the development process. Ms. Schemmel replied that a SIC code is used to define a use and is not necessarily issued to a piece of property. It is part of either the zoning ordinance or, in this case, a specific plan. It specifies what is an allowed use and what is not an allowed use. Within the City's zoning ordinance, there is a list of uses which are matched to the SIC numbers which is considered a standard industrial classification. The manual describes the typical activities of that use. The SIC code classifies convenience stores the same as a grocery store or other food type places. This particular use requires a Permitted Conditional Use Permit due to the sale of liquor, traffic impacts, and the extensive sale of gasoline and other services.

Chair Blaser asked if the Kum & Go Store would be considered the same as a bar. Ms. Schemmel replied that it would not be considered the same as a bar as it does not have the same SIC code. Convenience stores as a whole may sell liquor based on the type of license obtained. When a convenience store is classified, it is not specified what type of liquor can be sold, and all sorts of goods can be offered for sale.

Board Member Celsi stated that she has served on the Iowa Alcoholic Beverages Commission for five years, and

soon after she was part of the Board, there was a change in law. Previously, convenience and grocery stores had to have a separate area to sell liquor, and the convenience store was not allowed to sell liquor unless there was a separate building for liquor sales. In 2010, the legislature changed the law to allow convenience stores to sell liquor in their stores and offer the use of a “growler” as well. Board Member Celsi commended and appreciated Mr. Christiani’s comments and that as a parent and a citizen, she was not a fan of the law change, but this is state law, and it is not illegal to sell liquor in a convenience stores.

Board Member Celsi pointed out that it would still be illegal to consume alcohol on the patio, sidewalk, or in the car after purchasing at a convenience store. When a bar receives a liquor license, the patio area is also licensed so that consumption would be legal on the patio.

Chair Blaser asked who makes the determination as to whether or not all landscaping was installed for a project, and if it was in thriving condition. Ms. Schemmel responded that when a temporary occupancy permit is requested, staff inspects the landscaping. This inspection can be deferred depending on the season, and until it can be determined if landscaping had been installed and was flourishing. Ms. Schemmel continued that the developer is to comply with staff recommendations as outlined in the site plan. There can be an obligation for upkeep and maintenance, as well as for plant replacement, but there would need to be a complaint or another application received for the site for the City to be aware if compliance was being met.

Chair Blaser hearing no further comment; entertained a motion and a second for this item.

Moved by Board Member Pfannkuch, seconded by Board Member Celsi, the Board of Adjustment adopt a resolution approving the Permitted Conditional Use Permit to allow construction of a 6,217 sq. ft. convenience store with eight fuel pumps at 330 Jordan Creek Parkway, subject to meeting all City Code requirements and the following:

1. That the site landscaping associated with this building and site be installed prior to issuance of any occupancy permit, including temporary occupancy permits or to allow issuance of a temporary occupancy permit, surety be provided in the amount of 1½ times the bid amount for materials and installation. No final occupancy permit shall be issued until all landscaping in accordance with the site plan is installed and in a thriving condition.
2. Prior to issuance of any building permit, including footing and foundation permits, the applicant submitting final site plan drawings for approval stamping.

Vote: Blaser, Celsi, Pfannkuch.....Yes
 Christiansen.....Abstain
 Cunningham.....Absent

Motion carried.

Item 4 – New Business

There were no New Business items presented.

Item 5 – Staff Reports

There were no staff reports.

Item 6 – Adjournment

BOARD OF ADJUSTMENT MEETING MINUTES

December 28, 2016

Chairperson Blaser asked for a motion to adjourn the meeting.

Moved by Board Member Celsi, seconded by Board Member Pfannkuch, the Board of Adjustment meeting adjourns.

Vote: Blaser, Celsi, Christiansen, Pfannkuch.....Yes
Cunningham.....Absent

Motion carried.

The meeting adjourned at 5:55 p.m.

Michael R. Blaser, Chairperson
Board of Adjustment

Kimberly Taylor, Recording Secretary