

BOARD OF ADJUSTMENT MEETING MINUTES

BOA_AF_10-05-2022

Chairperson Stevens called to order the October 5, 2022, regularly scheduled meeting of the Board of Adjustment at 5:30 p.m. in Council Chambers, West Des Moines City Hall, located at 4200 Mills Civic Parkway, in West Des Moines, Iowa, and electronically through Zoom.

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

Item 1 – Consent Agenda

Item 1a – Minutes of September 21, 2022

Chairperson Stevens asked for any corrections to the meeting minutes of September 21, 2022. Hearing none, Chair Stevens declared the minutes approved as presented.

Item 2 – Old Business

There were no Old Business items.

Item 3 – Public Hearings

Item 3a – Kum & Go #0098, 5760 Raccoon River Drive – Approval to establish a convenience store with fuel pumps – Kum & Go, LC – PC-005615-2022 (continued from September 21, 2022)

Chairperson Stevens opened the public hearing and asked the Recording Secretary to state when the public hearing notice was published. The Recording Secretary stated that the notice was published on September 9, 2022, in the Des Moines Register.

Moved by Board Member Blaser, seconded by Board Member Pfannkuch, the Board of Adjustment accepted and made a part of the record all testimony and documents received at this public hearing.

Vote: Blaser, Pfannkuch, StevensYes
Christiansen.....Abstained
Cunningham.....Absent
Motion carried.

Alex Sappingfield, Kum & Go, 1459 Grand Avenue, Des Moines, presented the application. He began by addressing concerns expressed by a resident pertaining to potential rise in crime levels in the area where a store is located. He informed the Board that both he and his boss had met with the concerned resident to discuss the issue. Mr. Sappingfield stated he had reached out to the West Des Moines police department and Chief Scott informed him that the analysis of crime provided was not an accurate representation of crime at the Kum & Go locations. Chief Scott recommended that Mr. Sappingfield request a different set of data reported to the FBI for the same time period. This analysis of the crime data reflected a potential 3.25 serious crimes per year per store in the metro area. Regarding the request to limit hours of operation, Mr. Sappingfield informed that the other Kum & Go stores located in West Des Moines do not restricted hours of operation, nor do their competitors. With 24-hour use, they offer additional security to the public if

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there are issues needing reporting. Mr. Sappingfield noted that some of the crime data reflected stops originating elsewhere, but concluding at their site due to being available and well-lit. He refuted the uniqueness of their location and compared to similar existing store locations.

Mr. Sappingfield provided distances of proximity of existing Kum & Go stores in West Des Moines adjacent to residential neighborhoods. Mr. Sappingfield noted that Kum & Go has been working with the Glen Oaks HOA regarding access, and that the HOA is under contract with Kum & Go to sell a piece of property which will provide that access to their site. He concluded by providing a letter to the City from the HOA stating that they are in support of this development.

Keith Weggen, Civil Design Advantage, 4121 NW Urbandale Drive, Urbandale, added comments pertaining to the site plan for this location. He informed that this project would place a 3,098 square foot convenience store with fuel pumps on the southern half of approximately 4 acres. The land use and zoning are compatible with this requested use. The store and canopy will face south. Stormwater will be located to the south, landscaping will be installed throughout the site, a public water main will be completed. He added there will be easements pertaining to the future widening of Grand Avenue.

Chair Stevens asked if there is a considerable elevation change on the site as exists with adjacent properties. Mr. Weggen responded that the site will require considerable fill, and will be elevated, allowing for detention at a lower level to the south.

Chair Stevens asked the size of the site. Mr. Weggen responded that they are building on 2 of the 4 acres.

Board Member Blaser questioned the lighting onsite. Mr. Weggen noted that there will be pole lighting and some fixtures attached to the building, all of which will be downcast. None face upward or toward neighbors.

Board Member Pfannkuch asked if the applicant was aware of and in agreement with the Staff conditions of approval. Mr. Weggen informed that they are, and that all of them are in the process of being completed.

Chair Stevens asked if Kum & Go owns the office land piece to the West. Mr. Weggen stated it has been sold. Mr. Sappingfield offered that the property to the West had been sold and that Kum & Go had helped to install the roadway.

Chairperson Stevens asked for any questions or comments from the audience.

Josh Janeczko, 5637 Booneville Road, provided his analysis of crime data provided from the West Des Moines Police department in completing a public information request by Mr. Janeczko. He noted in particular that the number of incidents called in increase after 9 PM, and that this would increase the burden on the local police. He requested that the hours of operation be limited to 5 AM to 10 PM. He noted that nearby business hours were posted as closing at 5 PM and asserted that having a 24-hour convenience store would draw traffic from the interstate into the residential neighborhood. Mr. Janeczko pointed out the location of his residence and asserted that his property is unique in having a second entrance. The proposed convenience store entrance is directly opposite his roadway, and traffic would face his garage. His private second drive has a padlocked gate, but he frequently sees gawkers driving up it. Referencing Mr. Sappingfield's comment about other Kum & Go stores in West Des Moines, Mr. Janeczko pointed out that the Kum & Go on Mills Civic Parkway is across several traffic lanes with a median, and that the front entrance of Glen Oaks has a gate, with 24-hour security present. The back entrance of the community has a gate,

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but without security. Mr. Janeczko noted that Kum & Go had owned this site for the past 20 years without developing it, and he was aware that they owned it when he purchased his property, however they owned another location as well, so he did not anticipate them building directly opposite his home.

Chair Stevens asked Mr. Janeczko to limit his comments to new material, in the interest of time, informing him that Staff had been provided with the written comments for review which Mr. Janeczko was in the process of detailing.

Mr. Janeczko expressed his support of Kum & Go stores, noting he was not objecting to the project, just requesting limited hours of operation. He also pointed out that there are three other convenience stores located within a mile and a half of this location, and he did not believe it was necessary to provide services to the area. Referencing the potential increase in crime in the area, he explained that he did not feel this use meets the burden of protecting the health, safety, and welfare of the public, due to its proximity to the Glen Oaks neighborhood. Mr. Janeczko concluded that he believes the HOA does not support or disapprove of the Kum & Go development, they are rather in the position of selling the strip of land for access in order to gain funding for street repair and to be relieved of lawn maintenance responsibilities for this site.

Chair Stevens clarified that Mr. Janeczko was aware when he bought his property that Kum & Go owned this site, and also that his request was to limit the hours of operation. Mr. Janeczko agreed that he was aware, however noted that they also owned a second property. He agreed that his request is for limited hours.

Chair Stevens commented that the Board has heard several requests during the past months for restricted hours and it placed the Board in the position of making a decision regarding businesses that they are not familiar with managing. She clarified that the Board is tasked with determining use for a property but has not been comfortable assigning hours of operation.

Board Member Blaser asked if the back access to Glen Oaks is gated. Mr. Janeczko responded that it is.

Board Member Blaser noted that access requires a code to enter through the gate. Mr. Janeczko responded that it does and added that he wished there had been time to present more crime statistics, referencing warnings from the HOA regarding theft.

As there were no additional comments or questions, Chair Stevens declared the public hearing item closed.

Kate DeVine, Development Services Associate Planner, informed that Staff were unaware of restrictions on hours for any businesses located near the proposed site, adding that if a store chose to operate under different hours, it was not required in the PUD.

Chair Stevens asked if the RecPlex was available for use at 3 AM. Planner DeVine responded that she was not aware. Development Coordinator Schemmel responded that there were no restrictions on hours of use, and that it's their decision. Once it is occupied, Staff were not kept informed of hours. Assistant Attorney Grove added that she didn't know the specific hours of operation at the RecPlex but had personally been there past 5 pm while events were being held. She noted she did not know what time it closed. Board Member Pfannkuch inserted that it would depend on demand and use.

Chairperson Stevens asked for continued discussion or a motion and a second for this item.

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Board Member Pfannkuch noted that this item was similar to recent items where there had been requests for restricted hours of operation and commented that the use is already allowed under the PUD. She stated she did not want to restrict the hours, and that this is an approved use.

Board Member Blaser agreed and suggested that landscaping with trees would be helpful to block lighting from impacting the adjacent neighbors.

Board Member Pfannkuch noted that there will still be a site plan process for the developer to go through.

Chair Stevens asked for information regarding the process. Ms. Schemmel noted that the use needed to be assured prior to the site plan being approved. Chair Stevens commented that both are in progress and appear to be on dual tracks. Ms. Schemmel stated that’s up to the developer if they choose to take that risk. Ms. Grove inserted that this was similar to the recent request for bar use for an applicant who was also required to obtain a liquor license.

Chair Stevens commented that this wasn’t the first Kum & Go to come before the Board.

Moved by Board Member Pfannkuch, seconded by Board Member Blaser, the Board of Adjustment adopted a resolution to approve the permitted conditional use with the following condition of approval:

- 1. The applicant acknowledging and agreeing that a building permit may not be issued on Kum & Go #0098 until the associated preliminary plat and/or site plan is approved by City Council.

Vote: Blaser, Pfannkuch, StevensYes
Christiansen.....Abstained
Cunningham.....Absent

Motion carried.

Item 4 – New Business

There were no New Business items.

Item 5 – Staff Reports

The next hearing is scheduled for October 19, 2022.

Item 6 – Adjournment

Chairperson Stevens asked for a motion to adjourn the meeting.

Moved by Board Member Pfannkuch, seconded by Board Member Blaser, the Board of Adjustment meeting adjourned at 6:17 PM.

Michele Stevens, Chairperson

Jennifer Canaday, Recording Secretary