



City of CHARLOTTE

MEMORANDUM

TO: Mayor Lewis and City Council Members

FROM: Gregg Guetschow, City Manager

SUBJECT: Rezoning of South Cochran Dairy Queen Parcels

DATE: September 8, 2017

The City Council has previously approved the first reading of a zoning map amendment for three parcels of land on South Cochran Street that, for convenience, I will refer to hereafter as Dairy Queen. The amendment, if approved, would rezone the parcels from R-1 Single Family Residential District to B-1 Local Business District. The Planning Commission, during its meeting of September 5 held public hearings regarding an amendment to the master plan and the zoning map amendment and has recommended to Council that the master plan not be amended and that the zoning of Dairy Queen not be changed. Actions related to a conditional use permit and the site plan were postponed pending Council action.

The agenda packet includes various documents related to the proposed rezoning including the proposed minutes of the Planning Commission. At Mayor Lewis' request, we have resumed video recording of Planning Commission meetings with this most recent meeting being the first such instance. The recording has been uploaded to the City's Vimeo page and can be accessed through the City's website. I encourage you at least to review the minutes in order to garner a sense of the issues that have been raised by Dairy Queen owner Bret Roberts and neighboring property owners.

Introduction. One of the challenges Council will face in considering the proposed rezoning is the absence of any formal findings of fact made by the Planning Commission. I do not wish this comment to be seen as critical of the Planning Commission and its handling of this matter. This matter has highlighted some weaknesses in the administration's work to prepare Planning Commissioners for the sometimes complex issues that they must address. I take full responsibility for this and will be working with Bryan Myrkle and the Planning Commission chairman to improve upon our procedures for the future.

One example of procedural weakness is the approach that we have taken in this and other issues in amending the master plan. The master plan is a document that is a general guide to current and future land use in the City. The plan was adopted in 2008 and reviewed by the Planning Commission in 2013-14. Since its original adoption, there have been several minor amendments to the plan made

in conjunction with proposed rezoning actions. I believe that in some instances these master plan amendments might have been unnecessary. In any case, the manner of making the amendments was inconsistent with the process established in Michigan's Planning Enabling Act for amending the master plan. We have repeated these errors in the Dairy Queen case. For reasons that I will explain below, the proposed rezoning of these parcels can be accomplished without amending the master plan.

Dairy Queen as legal nonconforming use. Dairy Queen is, under the terms of the City's zoning ordinance, a legal nonconforming use. The store and the office building to the south were built prior to the City's having adopted a zoning ordinance. These uses are permitted to continue indefinitely. In addition, other similar uses may take place in those buildings that are no more objectionable than the current uses. In other words, the Dairy Queen store could be converted to another retail use, for example.

If Dairy Queen is designated a class A nonconforming use, (and it is possible that it has already been granted that designation), it may also expand its building. It is my opinion that a class A nonconforming use designation would allow Mr. Roberts to construct a larger building without indoor seating or drive-through. If this building caused the loss of parking, I believe he would be allowed to replace that parking elsewhere on the site. In addition, he would be allowed to continue to use or rent the other building for office purposes.

This option, however, is limited and could not be used to accomplish the entire plan that Mr. Roberts has incorporated within the proposed site plan for the property. That plan encompasses the demolition of the store (561 square feet) and office (1067 square feet) and construction of a new Dairy Queen store with indoor seating and drive-through (1969 square feet). The plan also includes revisions to parking, ingress from and egress to South Cochran, storm water retention, dumpster screening and fencing.

.Proposed rezoning as "spot zoning." One of the critiques of the proposed rezoning of Dairy Queen that was raised at the September 5 Planning Commission meeting is that it would constitute spot zoning. Spot zoning is sometimes referred to as illegal. A better way of thinking of it is that it subjects a rezoning action to legal challenge by members of the citizenry or neighboring property owners.

A short, helpful article on sport zoning written by Brad Neumann of Michigan State University Extension can be found at the following web site: http://msue.anr.msu.edu/news/how_to_spot_a_spot_zoning. He identifies four characteristics of spot zoning. In the next paragraphs, I list those characteristics with comments about whether the proposed rezoning constitutes spot zoning.

The area is small compared to districts surrounding the parcel in question. Dairy Queen is largely surrounded by property zoned and used as single-family residential or multiple-family residential. There are other local business district zoned properties on the west side of South Cochran between Henry and Seminary Streets. I believe most observers would conclude that the proposed rezoning would meet this test as spot zoning.

The new district allows land uses inconsistent with those allowed in the vicinity. Many but not all of the uses in the vicinity are residential in character as discussed in the preceding paragraph. That does not mean that the proposed uses that are allowed in a local business district are inconsistent with residential neighborhoods. This will be discussed more thoroughly below.

The spot zone would confer a special benefit on the individual property owner not commonly enjoyed by the owners of similar property. The primary benefit conferred through the proposed rezoning is the ability to expand a business enterprise as described above. The question as to whether or not this is available to other similar properties requires a judgment call as to what would be considered similar. If by similar property we mean residential properties in the same vicinity, then it seems clear that a special benefit would be conferred. Moreover, the very nature of the local business district zoning classification assumes that these are few in number and small in size.

The existence of the spot zone conflicts with the policies in the text of the master plan and the future land use map. The future land use map shows the area in question as planned for single family residential with mixed use in the block to the north on the east side of South Cochran and central business district in the block to the north on the west side of South Cochran. That is not the whole answer to the question, however, since it also necessary to look at the language of the text that relates to this subject. I address this question more fully in the section that follows.

Neighborhood Commercial. Page 71 of the master plan contains the following discussion regarding neighborhood commercial:

In order to create viable neighborhoods and a walkable community, neighborhood commercial districts have been outlined in the future land use plan. These areas are located at major intersections within existing neighborhoods. These commercial areas would offer goods and services that residents would need on a daily basis. Corner markets, mom and pop stores, dry cleaners and local cafes would be suitable commercial operations that would fit into local neighborhoods. Incorporating these into existing and future neighborhoods would also encourage residents to walk to commercial areas limiting the number of daily automotive trips. While limited areas are outlined in the future land use map, it is important to assess additional areas that would be suitable for neighborhood

commercial development. To manage the types of uses permitted within these areas, a specific zoning district and definition should be developed. The current B-1 zoning district would provide the security needed to preserve the character of each neighborhood and allow the commercial uses outlined above.

It is clear from this paragraph, then, that rezoning an area within a residential neighborhood so as to permit a business use is consistent with the master plan. It is for that reason that I have concluded that an amendment to the master plan is not required. The rezoning also would not constitute spot zoning because it clearly fails the fourth of the spot zoning tests.

This perspective is further supported by the language of the zoning ordinance: "The B-1 Local Business Districts, as established in this article, are designed to meet the day-to-day convenience shopping and service needs of persons residing in adjacent residential areas."

The zoning ordinance lists a variety of retail and service establishments that are suitable for location in a B-1 district and establishes the following conditions:

- (1) All business establishments shall be retail or service establishments dealing directly with customers. All goods produced on the premises shall be sold at retail on the premises where produced.
- (2) All business, servicing, processing and storage of goods, except for off-street parking or loading, shall be conducted within a completely enclosed building.

Some objections were raised at the Planning Commission meeting to the range of possible uses that could take place on the property if it were rezoned to B-1. Some speakers tended to overstate the latitude granted the owner of a property with B-1 zoning but I am of the opinion that the current ordinance language might be overly broad in light of the intent of neighborhood commercial districts as outlined in the master plan. This is a subject the Planning Commission should consider in future meetings.

The foregoing discussion provides a clear answer as to whether a local business district rezoning could be permitted as the applicant has asked. It does not answer the question of whether it should be permitted.

Findings of fact. When considering this or any rezoning, it is recommended that the planning body give consideration to specifically identifying the reasons justifying its action and these become a part of the public record. Listed below are some of the questions that you might wish to address as you take up this issue. The first four questions come from a document prepared by the Michigan

Association of Planning. The others are derived from the master plan and zoning ordinance.

- Would the rezoning be consistent with other zoning and land uses in the area?
- Is it consistent with development trends in the area?
- Are uses in the proposed zoned equally or better suited to the area than the current uses?
- Is the proposed rezoning consistent with both the policies and uses proposed for that area in the comprehensive plan? If not, is the plan current and reasonable or does it need to be updated?
- Is the area suitable for neighborhood commercial development?
- Would the rezoning encourage residents to walk to commercial areas?
- Would the district meet the day-to-day convenience shopping needs of persons residing in adjacent residential areas?
- Would the rezoning significantly depress property values of nearby properties?
- Would the rezoning be contrary to the public health, safety or welfare?

It is not necessary that Council address all of these questions. Council should be clear, when acting on this matter, however, to justify its decision, whether pro or con, based on an enumeration of facts derived from considering at least some of these questions.

As Council considers the comments of those in favor of the proposed rezoning and those opposed, it is important that it recognizes that some of the information it receives might not be relevant to the planning questions that it is asked to decide. Some of the comments made during the Planning Commission meeting relate to operational considerations. Some of this information might be useful as you formulate your findings of fact but some might be better addressed through the site plan approval process that the Planning Commission would undertake if the rezoning were approved.

Council action. The City Council has three courses of action from which to choose in considering whether or not to rezone the property from single-family residential district to local business district. It can reject the proposed ordinance amendment. It can approve the proposed ordinance amendment. It can return the question to the Planning Commission for further study and analysis.