

Memo

To: Planning Commission
From: Bryan Myrkle, Community Development Director
Date: August 30, 2017
Re: Dairy Queen expansion proposal

On your September Planning Commission agenda are several items related to a proposed expansion of Dairy Queen.

As you will be able to see from the site plan submittal, the basic proposal is to demolish the existing Dairy Queen store, along with a vacant commercial building to the south, and use those lots, along with existing open space behind those properties to construct an all new, larger Dairy Queen restaurant with improved parking.

The agenda items include –

- Potential change to the City's Master Plan (this will be required if the project is to be approved). This will be a recommendation to the City Council.
- Potential change to the City's Zoning Map (this will also be required if the project is to be approved). This will also be a recommendation to the City Council.
- Conditional Use approval – The requested zoning change is to B-1 Local Business District. A restaurant is a conditional use in that zone, meaning that the use is allowed if certain specified conditions are met. The Planning Commission is not required to impose additional conditions, but is authorized to do so.
- Site Plan review – This will need to be addressed by the Planning Commission, even if it recommends against the Master Plan and Zoning change, because the final decision on those issues will be made by the City Council.

Master Plan Change

These two commercial buildings predate the zoning ordinance and are considered legal non-conforming uses (i.e. they are grandfathered), however the City's Future Land Use Plan calls for them to become residential lots. By law, zoning decisions must be supported by underlying planning documents. In practice, this means the city cannot make a zoning change without

making a corresponding Future Land Use Map change, because one plan legally supports the other.

The question you are being asked is whether the commercial uses of these two lots in an otherwise residential block should be allowed to exist in perpetuity, or whether it's beneficial to the community that these lots should eventually become residential.

In this matter, you are making a recommendation to the City Council.

Zoning Map Change

As mentioned above, these two lots are commercial in nature, but are planned and zoned for residential use, making them non-conforming. Except in special circumstances, non-conforming uses cannot be expanded.

Under our zoning code, the most appropriate classification for a small commercial district in close proximity to residential use is the B-1 Local Business District, and you are being asked to consider changing these parcels to have that designation.

If approved, the change would allow the owners of Dairy Queen to make improvements and expansions to the restaurant in keeping with B-1 district regulations, which is the primary intent of the change.

When making such a change, there are other things to consider aside from the potential benefit to the business.

Because this would be, essentially, a permanent change, the zoning classification may outlast the existence of this particular business. And, while it's assumed that this expansion would make the restaurant a more prosperous and sustainable enterprise, it's also possible that the property could be sold or changed to other uses allowed in a B-1 district. Therefore, it's important to consider the long-term effects this potential zoning change could have on neighboring properties, rather than just the expansion of this particular business.

This issue goes hand-in-hand with the Future Land Use Map change, and is a recommendation you are making to the City Council.

Conditional Use Permit

Restaurants are a Conditional Use under the B-1 Local Business District zoning classification. This means that, according to our ordinance, the Planning Commission must determine the following:

- Access shall be provided so as not to conflict with adjacent businesses or adversely affect traffic flow on a major thoroughfare.
- Access to the site is not from a primarily residential street.
- Trash receptacle shall be screen from public view and covered.
- Outdoor lighting of buildings and parking lots shall be shielded from abutting residential.

- Accommodations shall be made for off-street loading and unloading.
- A 6-foot obscuring wall shall be provided to screen site from adjacent districts.*

*(*A note on walls: We have paid particular attention to the matter of the requirement for an obscuring wall. In this proposal, you will see that the screening requirement is proposed to be met through the use of fencing, trees and plants. While everyone likely has in their mind an idea of what constitutes a wall, the zoning ordinance does not necessarily conform to those ideas. There are several sections of the code that apply here. **First, and perhaps most importantly, is the actual definition of an obscuring wall contained in the code.** It states that obscuring wall is “a structure of definite height and location to serve as an obscuring screen carrying out the requirements of this chapter.” This is a broad definition that would allow nearly anything to serve as an obscuring wall. Other relevant sections state that landscape screening between land uses can be accomplished through the use of “a wall or fence” with a minimum height of 6 feet, or a hedge, berm, or combination thereof. Similarly, the section of the code dedicated specifically to walls state the Planning Commission may, in its review of a site plan, allow or require the provision of an earth berm and/or a greenbelt planning consisting of trees and shrubs to serve as an obscuring wall. Furthermore, the Planning Commission “may approve a reduction in height requirements, or may approve an alternate location for the wall, or may waive the wall requirement . . .” The most affirmative statement in the code regarding walls simply states that obscuring walls shall be constructed of materials approved by the Building Official to be durable, weather resistant and rustproof, and shall be maintained by the property owner at all times in equal condition to the completed structure at the time of initial installation.)*

In addition to the above conditions, the zoning code authorizes the Planning Commission to impose “**such other conditions which in the opinion of the Planning Commission are necessary to provide adequate protection to the neighborhood and to abutting properties . . .**” This provides the Planning Commission discretion to impose additional conditions it deems appropriate.

Site Plan Review

At this point, the issues change from a general consideration of commercial uses on these properties, to issues specific to the expansion of Dairy Queen.

The city has worked with the owner of Dairy Queen and the engineering firm LSG to create a site plan that we believe is appropriate and approvable for this type of use in a B-1 zoning district.

As in most cases of redevelopment or in-fill construction in a fully-developed block, there are aspects to this site plan that differ from what would be proposed in a completely new setting. In some cases, where strict application of our code seems unreasonable to require, we evaluate whether the changes represent significant improvements over existing conditions, or make reasonable sense when considering the balance of the proposal.

Specifics I would like to highlight about this site plan as you consider its approval:

- The parking provided for in this site plan meets and exceeds the minimum number of spaces required by our ordinance.

- The plan documents include on-site management of storm water through the use of curb and guttering that directs run-off to a retention pond at the rear of the interior lot.
- The proposal includes the required screening structures to protect neighboring properties. This plan makes use of new privacy fencing and existing trees and plants to accomplish this screening.
- The proposal adequately addresses local drive-through design standards.
- A loading zone is provided, as required in the ordinance; and adequate ingress and egress for trucks is also accommodated by this plan.
- Internal traffic controls appear to be appropriate for anticipated volume.
- Parking lot lighting and landscaping is adequately addressed.
- Setbacks are adequate and meet our requirements for the new-build portion of this project. An existing garage on the site, which is being retained in this plan, may be slightly too close to the property line, but does not represent any change from the existing condition.
- Driveway spacing on Cochran is narrower than our ordinance would normally require for a new development, however what is shown on the plan is a significant improvement over the existing driveway configuration. Furthermore, this driveway plan will need to be evaluated and approved by the Michigan Department of Transportation, because Cochran is a state highway over which MDOT has jurisdiction.
- The landscaping required at the front of the property is included in this plan, but is slightly reduced in scope (6' of greenbelt vs. 10', 1 tree vs. 2 trees) in order to make space for outdoor seating.
- A screened dumpster enclosure is included.
- The signage plan is in accordance with our local code requirements.

Again, it is our determination that this site plan is appropriate for the project as proposed, with only minor deviations from our local code.