

city of saint paul
planning commission resolution
file number
date

WHEREAS, Dr. David Wetherill, File # 19-081-471, has applied to rezone from RM2 multiple-family residential to T2 traditional neighborhood under the provisions of § 61.801(b) of the Saint Paul Legislative Code, property located at 600 - 602 Lawson Avenue West, Parcel Identification Numbers (PINs) 25.29.23.23.0060 and 25.29.23.23.0061, legally described as Lots 12 thru 14, Block 13; Como Prospect Addition; and

WHEREAS, the Zoning Committee of the Planning Commission, on September 26, 2019, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of § 61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing, as substantially reflected in the minutes, made the following findings of fact:

1. The applicant owns and operates the Como Park Animal Hospital at 1014 Dale Street North. The applicant purchased property at 600 and 602 Lawson Avenue West in 1982 and has been using the duplex for residential use (Unit 2 on the second floor) and for commercial storage for the animal hospital use to the west (Unit 1 on the main level and in the basement), as well as for a meeting area, break room, and occasional conferences. The garage is used for commercial storage and employee parking occurs on the paved area behind the duplex. In addition, dumpsters for the animal hospital use are in front of the garage at 600 and 602 Lawson Avenue West. The applicant states that the area behind the duplex was paved to accommodate additional off-street parking in response to neighbors' complaints about animal hospital employees parking on the street.
2. In January 2019 a fire correction notice was issued as part of the certificate of occupancy inspection stating that the commercial use of the property does not conform to the residential zoning of the property. The notice stated that the basement unit was being used as an office and to house animals in the kennels and that commercial parking for the commercial use to the west was occurring on the residentially zoned property. The applicant petitioned to rezone the property to T2 to make the zoning of the property conform to the use of the property. The applicant states that the kennel in the basement is used for the owner's dog and occasionally for the tenant's dog and that the kennel is not used for the animal hospital's clients.

moved by _____
seconded by _____
in favor _____
against _____

The correction notice is pending before the Legislative Hearing Officer and a hearing was scheduled for September 10, 2019; the applicant has been granted an extension to pursue the rezoning petition. The applicant stated he was unaware of any zoning compliance issues until the recent inspection and is working to correct the situation.

3. The proposed zoning is consistent with the way the area has developed and with the intent of the T2 zoning district. T2 zoning is designed for use in existing and potential pedestrian and transit nodes. The property is with a Neighborhood Center as defined in the comprehensive plan and within a Neighborhood Node in the 2040 Comprehensive Plan. T2 is a flexible zoning district that allows for residential or commercial uses or a mix of uses, as the applicant currently uses the property.
4. The proposed zoning is consistent with the Comprehensive Plan. The Land Use chapter of the Comprehensive Plan identifies the subject property as being in a Neighborhood Center, which is described as compact mixed-use areas that historically developed adjacent to major intersections. Neighborhood Centers are served by transit and include two or more of the following uses: residential, commercial retail and office, small scale industry, institutional, and open space. Policy 1.14 in the Land Use Plan states, "Plan for growth in Neighborhood Centers" and policy 1.15 states, "Promote Neighborhood Centers as compact, mixed-use communities that provide services and employment close to residences."
5. The proposed zoning is compatible with the surrounding uses. The site is just east of property in a B3 zone along Dale Street and is just west of a multifamily apartment building and within a Neighborhood Center. The applicant has been using the property for commercial uses for many years without complaint, except for complaints about employee parking on neighborhood streets, which led to paving space to accommodate off-street parking. The proposed zoning, T2, allows veterinary clinics. The definition of veterinary clinic (§ 65.536) is "An establishment for the routine examination, medical or surgical treatment and care of domestic household pets generally with overnight boarding facilities for pets in care but without kenneling of animals" and the standards and conditions for the use are, "All activity shall take place within completely enclosed buildings with soundproofing and odor control; outdoor kennels are prohibited. In traditional neighborhood and B2 business districts, there shall be no kenneling of animals not under medical treatment."
6. Court rulings have determined that "spot zoning" is illegal in Minnesota. Minnesota courts have stated that this term "applies to zoning changes, typically limited to small plots of land, which establish a use classification inconsistent with the surrounding uses and create an island of nonconforming use within a larger zoned property." Uses permitted under the proposed T2 zoning are similar to the residential uses permitted in the adjacent RM2 multiple-family residential district to the east, and to the commercial uses permitted in the adjacent B3 general business district to the west. T2 zoning is consistent with the comprehensive plan and compatible with surrounding land uses and zoning and is not spot zoning.
7. The petition to rezone was found to be sufficient on September 4, 2019: 16 parcels eligible; 11 required; and 11 parcels signed.

NOW, THEREFORE, BE IT RESOLVED, that the Saint Paul Planning Commission recommends to the City Council that the application of Dr. David Wetherill for rezoning from RM2 multiple-family to T2 traditional neighborhood at 600-602 Lawson Avenue West be approved.

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WHEREAS, McDonald's Corporation, File # 19-080-600, has applied for a relocation of a nonconforming drive-through service window and addition of a second pickup window under the provisions of § 62.109(d) of the Saint Paul Legislative Code, on property located at 471 Marion Street, Parcel Identification Number (PIN) 36.29.23.41.0001, legally described as Lots 3-11, Block 2; Florence Addition and

WHEREAS, the Zoning Committee of the Planning Commission, on September 26, 2019, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of §61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing, as substantially reflected in the minutes, made the following findings of fact:

1. *In residential districts, the expansion or relocation will not result in an increase in the number of dwelling units.* This finding is met. The subject parcel is zoned T3 traditional neighborhood.
2. *For expansion of a structure, the expansion will meet the yard, height and percentage of lot coverage requirements of the district.* This finding is met. The expansion of the drive-through meets yard and height requirements, and brings the structure in greater conformity with the minimum 0.5 floor area ratio in the T3 traditional neighborhood zoning district.
3. *The appearance of the expansion or relocation will be compatible with the adjacent property and neighborhood.* This finding is met provided a litter collection plan is submitted and approved and noise from the drive through is controlled to help mitigate the impact on nearby residential properties. The additional pick up window is intended to improve vehicular flow through the site, reducing potential back-ups onto Galtier Street and resulting impacts on the neighborhood.
4. *Off-street parking is provided for the expansion or relocation that meets the requirements of article 63.200 for new uses.* This finding is met. No additional parking is required because of the addition and relocation of the drive through windows.
5. *Rezoning the property would result in a "spot" zoning or a zoning inappropriate to surrounding land use.* This finding is met. The parcel was rezoned as part of the central corridor zoning study to help foster transit oriented development along the corridor over time. Rezoning to allow more service windows would constitute spot zoning.
6. *After the expansion or relocation, the use will not result in an increase in noise, vibration, glare, dust, or smoke; be detrimental to the existing character of development in the immediate neighborhood; or endanger the public health, safety, or general welfare.* This finding is met. The additional window will help improve vehicular ingress and egress from the site, thereby lessening impacts on adjacent properties from cars idling in the drive through or in Galtier street waiting to get into the drive-through lane.

moved by _____

seconded by _____

in favor _____

against _____

7. *The use is consistent with the comprehensive plan.* This finding is met. The subject parcel is located in a mixed-use corridor, neighborhood center, and is within the Rice Street station area. While the comprehensive plan generally discourages auto oriented uses in mixed use corridors, the proposed addition of a drive through window will not significantly increase the capacity of this drive through. The additional window is intended to help improve vehicular flow through the site and alleviate current traffic safety issues caused by the current layout. According to the applicant, traffic in the drive through at peak times can spill out onto Galtier street, creating potential vehicular and pedestrian conflicts. Policy 30 of the Summit University Neighborhood Plan calls for creating an environment in which traveling from one place to another is safe and convenient for all modes of travel, including walking and biking. Improved vehicular flow through the site and reducing potential vehicular and pedestrian conflicts is consistent with this policy.

McDonald's has new menu items that take longer to cook. The absence of an additional drive-through window means that employees need to run food out to customers that takes longer to cook. This contributes to delays for vehicles in the drive through. Policy LU 1.50 calls for facilitating the redevelopment of commercial areas where existing buildings are no longer considered functional to accommodate viable retail and businesses. The additional pick up window will increase the viability of the business, consistent with this policy.

8. *A notarized petition of at least two-thirds of the owners of the described parcels of real estate within one hundred (100) feet of the subject property has been submitted stating their support for the expansion or relocation.* This finding is met. The petition was found sufficient on September 4, 2019: 11 parcels eligible; 8 parcels required; 8 parcels signed.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the application of McDonald's Corporation for a relocation of a nonconforming drive-through service window and addition of a second pickup window at 471 Marion Street is hereby approved subject to the following conditions.

1. Prior to the approval of a site plan and building permit, a litter collection plan shall be developed, submitted, and approved by the zoning administrator. At a minimum, the plan shall obligate the applicant to pick up litter once a day in streets, boulevards and catch basins along the south side of University between Galtier and Marion, the west side of Marion between University and Aurora, both sides Aurora between Marion and Galtier, and both sides of Galtier between University and Aurora. The zoning administrator may adjust these boundaries if litter continues to be found outside of the boundaries specified by this condition.
2. A sign shall be posted at the entry of the drive through requesting that music be turned down or turned off while waiting in the drive through.
3. Impact on adjoining property by use of the site may not result in the following:
 - (a) Loud, boisterous and disturbing noise levels;
 - (b) Hazardous traffic conditions;
 - (c) Offensive, obnoxious and disturbing odors;
 - (d) Excessive litter;
 - (e) Excessive artificial lighting;
 - (f) Substantial decrease in adjoining property values.
4. A solid 6.5-foot high audio- and visual-screening fence or wall shall be installed along the south side of the property between the drive-through lane and the alley and along the west side of the parking lot south of the alley. The west end of the fence or wall along the drive-through lane shall be no more than ten (10) feet from the property line along Galtier Street and shall extend to as close to the east property line (extended) of the residential property across the alley at 237 Aurora Avenue. The length and height of the fence as it tapers at the east end of the drive-through shall be determined through site plan review to ensure safety and proper sight lines. The fence or wall along the west side of the parking lot shall extend south to the front setback line of the house at 237 Aurora.

ZONING COMMITTEE STAFF REPORT

1. **FILE NAME:** McDonald's Corporation **FILE #** 19-080-600
 2. **APPLICANT:** McDonald's Corporation **HEARING DATE:** September 26, 2019
 3. **TYPE OF APPLICATION:** NUP - Expansion/Relocation
 4. **LOCATION:** 471 Marion St, SW corner at University Avenue
 5. **PIN & LEGAL DESCRIPTION:** 36.29.23.41.0001; Florence Addition Lots 3 -11, Block 2
 6. **PLANNING DISTRICT:** 8
 7. **ZONING CODE REFERENCE:** Sec. 62.109(d) **PRESENT ZONING:** T3
 8. **STAFF REPORT DATE:** September 19, 2019 **BY:** Tony Johnson
 9. **DATE RECEIVED:** September 4, 2019 **60-DAY DEADLINE FOR ACTION:** November 3, 2019
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- A. **PURPOSE:** Relocation of a nonconforming drive-through service window and addition of a second pickup window.
- B. **PARCEL SIZE:** 343 ft of frontage on University Ave W x 96.98 (frontage on Marion and Galtier Street) = 33,248 sq. ft.
- C. **EXISTING LAND USE:** Fast food restaurant with accessory drive through service and sales
- D. **SURROUNDING LAND USE:**
 - North: Commercial (T2 and T3)
 - East: Commercial (CAAPB)
 - South: One- family residential, Two- Family residential, accessory parking (T3 and RT2)
 - West: Commercial (T2)
- E. **ZONING CODE CITATION:** Sec. 62.109(d) lists the conditions under which the Planning Commission may grant a permit to expand or relocate a legal nonconforming use.
- F. **PARKING:** There are no minimum parking requirements at this location per section 63.207 (b) minimum off-street parking requirements shall be reduced 100 % for traditional neighborhood zoned parcels within a quarter mile of University Avenue.
- G. **HISTORY/DISCUSSION:** The subject structure and drive though were originally constructed in 1973 as a Home Federal Savings and Loan Association branch bank. A conditional use permit was granted at that time for the parking lot and drive through with no conditions attached to the approval. In 1985, the McDonalds corporation was granted a conditional use permit to convert the bank into a fast food restaurant, with three conditions attached to that approval. Since that time the zoning code section pertaining to fast food restaurants was amended and one of the conditions that was added was that fast food restaurants must submit a litter collection plan. In 2005 a site plan was approved to add an additional lane to the drive-through. At that time the site was zoned B3 and drive throughs were considered an accessory use that was permitted by right in the district. In 2010 the zoning code was amended to make drive-throughs a sperate use category. In 2011 the subject parcel was rezoned to T3, traditional neighborhood, as part of the central corridor zoning study. Drive-throughs are not a permitted use in the T3 zoning district, making the existing drive through legally non conforming. The applicant now wishes to relocate an existing drive through window and add another pick up window to the drive-through, which necessitates this application for a relocation and expansion of a non conforming use.
- H. **DISTRICT COUNCIL RECOMMENDATION:** The District 8 Council has not made a recommendation at the time of this staff report.
- I. **FINDINGS:**

Section 62.109(d) *Expansion or relocation of nonconforming use states that the planning commission may permit the expansion or relocation of a legal nonconforming use if the commission makes the following findings:*

1. *In residential districts, the expansion or relocation will not result in an increase in the number of dwelling units. This finding is met. The subject parcel is zoned T3 traditional neighborhood.*
2. *For expansion of a structure, the expansion will meet the yard, height and percentage of lot coverage requirements of the district. This finding is met. The expansion of the drive-through meets yard and height requirements, and brings the structure in greater conformity with the minimum 0.5 floor area ratio in the T3 traditional neighborhood zoning district.*
3. *The appearance of the expansion or relocation will be compatible with the adjacent property and neighborhood. This finding is met provided a litter collection plan is submitted and approved **and noise from the drive through is controlled** to help mitigate the impact on nearby residential properties. The additional pick up window is intended to improve vehicular flow through the site, reducing potential back-ups onto Galtier Street and resulting impacts on the neighborhood.*
4. *Off-street parking is provided for the expansion or relocation that meets the requirements of article 63.200 for new uses. This finding is met. No additional parking is required because of the addition and relocation of the drive through windows.*
5. *Rezoning the property would result in a "spot" zoning or a zoning inappropriate to surrounding land use. This finding is met. The parcel was rezoned as part of the central corridor zoning study to help foster transit oriented development along the corridor over time. Rezoning to allow more service windows would constitute spot zoning.*
6. *After the expansion or relocation, the use will not result in an increase in noise, vibration, glare, dust, or smoke; be detrimental to the existing character of development in the immediate neighborhood; or endanger the public health, safety, or general welfare. This finding is met. The additional window will help improve vehicular ingress and egress from the site, thereby lessening impacts on adjacent properties from cars idling in the drive through or in Galtier street waiting to get into the drive-through lane.*
7. *The use is consistent with the comprehensive plan. This finding is met. The subject parcel is located in a mixed-use corridor, neighborhood center, and is within the Rice Street station area. While the comprehensive plan generally discourages auto oriented uses in mixed use corridors, the proposed addition of a drive through window will not significantly increase the capacity of this drive through. The additional window is intended to help improve vehicular flow through the site and alleviate current traffic safety issues caused by the current layout. According to the applicant, traffic in the drive through at peak times can spill out onto Galtier street, creating potential vehicular and pedestrian conflicts. Policy 30 of the Summit University Neighborhood Plan calls for creating an environment in which traveling from one place to another is safe and convenient for all modes of travel, including walking and biking. Improved vehicular flow through the site and reducing potential vehicular and pedestrian conflicts is consistent with this policy.*

McDonald's has new menu items that take longer to cook. The absence of an additional drive-through window means that employees need to run food out to customers that takes longer to cook. This contributes to delays for vehicles in the drive through. Policy LU 1.50 calls for facilitating the redevelopment of commercial areas where existing buildings are no longer considered functional to accommodate viable retail and businesses. The additional pick up window will increase the viability of the business, consistent with this policy.
8. *A notarized petition of at least two-thirds of the owners of the described parcels of real estate within one hundred (100) feet of the subject property has been submitted stating their support for the expansion or relocation. This finding is met. The petition was found sufficient on September 4, 2019: 11 parcels eligible; 8 parcels required; 8 parcels signed.*

- J. **STAFF RECOMMENDATION:** Based on the findings above, staff recommends approval of the relocation of a nonconforming drive-through service window and addition of a second pickup window subject to the following conditions:
1. Prior to the approval of a site plan and building permit, a litter collection plan shall be developed, submitted, and approved by the zoning administrator. At a minimum, the plan shall obligate the applicant to pick up litter once a day in streets, boulevards and catch basins along the south side of University between Galtier and Marion, the west side of Marion between University and Aurora, both sides Aurora between Marion and Farrington, and both sides of Galtier between University and Aurora. The zoning administrator may adjust these boundaries if litter continues to be found outside of the boundaries specified by this condition.
 2. A sign shall be posted at the entry of the drive through requesting that music be turned down or turned off while waiting in the drive through.
 3. Impact on adjoining property by use of the site may not result in the following:
 - (a) Loud, boisterous and disturbing noise levels;
 - (b) Hazardous traffic conditions;
 - (c) Offensive, obnoxious and disturbing odors;
 - (d) Excessive litter;
 - (e) Excessive artificial lighting;
 - (f) Substantial decrease in adjoining property values.

As I was preparing for today's meeting it occurred to me that there is no condition on the hours of operation, something the Planning Commission often requires for similar uses.

The restaurant website lists the hours of operation as:

| | |
|-----------------|-----------------|
| Thursday | 5AM-12AM |
| Friday | 5AM-12AM |
| Saturday | Open 24 hours |
| Sunday | 4AM-12AM |
| Monday | 5AM-12AM |
| Tuesday | 5AM-12AM |
| Wednesday | 5AM-12AM |

Given the proximity of the drive-thru to residential uses, staff also recommends the following condition on the drive-thru hours of operation to limit impact on residential uses:

Recommended Condition:

4. The drive-thru lanes shall not be open between the hours of 12:00 midnight and 5:00 a.m.