



Community Development Department

DATE: April 17, 2018
TO: Members of the Planning Commission
FROM: Scott Tempel, City Planner
RE: The Crossing variances

At the ZBA/Planning Commission meeting this week we will be reviewing a proposal for a drive-through on the corner of Hwy 3 and Second Street. The property is zoned C1 Downtown with a Planned Unit Development Overlay (PUD). In zoning, the overlay zone takes precedent, but any component not covered by the PUD reverts to the underlying zoning.

Our current Land Development Code (LDC) regulates PUDs in the following manner:

(A) Classification of Amendments

The city planner shall have the authority to classify proposed amendments based on the following thresholds.

(1) Minor Amendments

Minor amendments shall be restricted to those changes that do not:

- (a) Increase or decrease the density or intensity by more than ten percent of the approved density or number of units (residential uses) or building square footage (nonresidential uses);

The PUD was approved with 25,005 square feet of Retail/Office use. The current proposal eliminates the 2,400 sq. ft. commercial building on lot 4, which is less than a 10% decrease in development intensity.

- (b) Change the overall use; or

The overall use of the PUD was a mix of residential, office, retail and restaurants. The proposal for a restaurant does not constitute a change of overall use.

- (c) Create changes that will create an increased impact for on- or off-site improvements as determined after development review committee review.

The proposal creates no increased impacts to on- or off-site improvements such as turn lanes, increasing infrastructure capacity, signalization or other such improvements according to the Development Review Committee. Eliminating one building reduces parking demand on-site.

(2) Major Amendments

Major amendments shall be all proposed amendments that are not classified as a minor amendment above.

There is a strong argument to be made that this proposal could be approved administratively through a minor amendment to the PUD. Changing the location of buildings is NOT a trigger for Major Amendment. However, the proposed drive-through requires a CUP to be located in the C1 Downtown zone district, so the appropriate path is to go to Planning Commission and City Council. Variances are needed to meet the dimensional requirements of the Use Specific Standards for Drive-Throughs, not for the use itself.

The proposal meets the practical difficulties legal standard for variances. It is a reasonable use of the land, with unique circumstances related to the property not caused by the owner, which will not alter the essential character of the locality. The legal review procedure for meeting the essential character is to consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. The findings adopting the PUD stated the architectural design of the project is reasonably compatible with structures and uses in the area including, but not limited to, exterior materials, height and building style. The proposal meets the architectural standards and scale of the PUD.

In the PUD Conceptual Plan, approved 8/15/2005, the building on Lot 5 was designated a two-story office building. The other two pads were one story. There was a condition in the approval that either lot 4 or 5 could be developed as a restaurant, instead of office, if additional parking was provided. The PUD Conceptual Plan did not show the final lot line layout that was platted for the project. The Final Plat was approved 12/28/2005 with a one-story office on lot 5. Staff have classified the proposed one-story development as allowable.

Conditional uses are those uses that because of special requirements or characteristics may be allowed in a particular zoning district only after a recommendation by the planning commission and a decision by the city council. In the approval of a conditional use permit, the city council may impose such conditions as necessary to make the use compatible with other uses allowed in the same district zone or vicinity. In other words, conditional uses are permitted uses, but the Council may require changes to mitigate incompatible conditions.



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Apart from being an allowed conditional use, all CUP approval criteria shall be **considered** in the review of conditional use permit applications. The criteria are intended to highlight areas of potential conflict so mitigating conditions can be applied. They are not requirements that must be met for approval.