

1. **JAKE RIORDAN & MARK A. JETER ZONING MAP AMENDMENT & LIBERTY HEIGHTS SUBDIVISION, LOTS 4-10 & 44-47 ZONING DEVELOPMENT PLAN**

- a. MARV 2015-4: JAKE RIORDAN & MARK A. JETER (5/3/15)* – petition for a zone map amendment from a Wholesale & Warehouse Business (B-4) zone to a Highway Service Business (B-3) zone, for 0.47 net (0.69 gross) acre; and from a Two-Family Residential (R-2) zone to a Highway Service Business (B-3) zone, for 0.55 net (0.62 gross) acre, for property located at 836 & 840 Winchester Road; 912, 916, 920 & 922 Detroit Avenue; and a portion of 915, 917, 919 & 921 Dayton Avenue. A dimensional variance has also been requested.

The Zoning Committee made no recommendation.

The Staff Recommends: Postponement, for the following reasons:

1. The applicant's proposed redevelopment is not sensitive and respectful to the adjacent residential neighborhood as a proposed infill and redevelopment site, as recommended by the 2013 Comprehensive Plan and cited by the applicant (Theme A, Goal 2a.).
2. The applicant has not proposed any conditional zoning restrictions to reduce the intensity of the proposed B-3 zone adjacent to an established single-family residential neighborhood.

b. REQUESTED VARIANCE

1. Increase the maximum allowable front yard from an average setback of 26 feet to an average setback of 42 feet

- c. ZDP 2015-20: LIBERTY HEIGHTS SUBDIVISION, BLOCK C, LOTS 4-10 & 44-47 (5/3/15)*- located at 836 & 840 Winchester Road, 912-922 Detroit Avenue and 915-921 Dayton Avenue. (Vision Engineering)

The Technical Committee and Staff Recommended: Postponement. There were some questions regarding the proposed parking, landscape buffers, and stormwater detention.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property B-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Denote building height in feet.
8. Addition of a note about location of required grease trap.
9. Addition of direct pedestrian access to Detroit Avenue.
10. Addition of required tree inventory information.
11. Discuss proposed landscape buffer and dumpster location adjacent to residential zone.
12. Discuss the excessive amount of parking proposed.
13. Discuss access to adjoining street system.
14. Discuss the need for stormwater detention.
15. Discuss compliance with Art. 15-2(a)(6) of the Zoning Ordinance.
16. Discuss site lighting and exterior noise reductions needed for menu board.

Zoning Presentation: Ms. Wade presented the staff report on this requested zone change for property located at the intersection of Winchester Road and Detroit Avenue. She said that the two parcels that front onto Winchester Road are zoned B-4; four parcels that front onto Detroit Avenue are zoned R-2; and the rear portion of four parcels with Dayton Avenue frontage are also zoned R-2. Zoning in the immediate vicinity includes R-2, to the south; and B-1, B-3, and B-4 along Winchester Road, as well as I-1 to the north. A Speedway store and gas station is located across Detroit Avenue from the subject property, with several small businesses across Winchester Road, and the former location of the Big Ass Fan company a short distance to the west.

Displaying an aerial photograph of the subject property, Ms. Wade noted that several existing structures are still in place, including three residential buildings and two commercial structures with frontage on Winchester Road. The petitioner is proposing to demolish those structures in order to construct a fast food restaurant with a drive-through facility. Ms. Wade displayed the following additional aerial photographs: 1) a view of the subject property looking toward the south, noting that the existing buildings with Winchester Road frontage are located close to the roadway; 2) a view toward the downtown area, including the three existing houses that face Detroit Avenue; and 3) a view to the east.

* - Denotes date by which Commission must either approve or disapprove request.

Ms. Wade said that the petitioner contends that the B-3 zone is appropriate at this location, and the combination of B-4 and R-2 zoning is inappropriate. The B-3 zone specifically provides intent language, which includes, "providing for retail and other uses which are necessary to the economic vitality of the community, but may be inappropriate in other zones. Special consideration should be given to the relationship of such uses in the zone to the surrounding land uses, and to the adequacy of the street system that it serves." One of the staff's concerns about the proposed B-3 zone was the provision of buffering to the adjoining residential properties. Winchester Road is a primary arterial, so the staff believes that a sufficient street system is in place to serve the proposed use of the property. Ms. Wade added that the petitioner cited some issues with the current zoning that the staff believes are particularly applicable, noting that the B-4 lots are situated at an angle on Winchester Road, and they are smaller than typical B-4 lots, which are intended for Wholesale & Warehouse use. In addition, B-4 zoning adjacent to residential uses can also be of concern.

Ms. Wade said that, prior to the scheduled Zoning Committee meeting (which was cancelled due to a snow emergency), the staff recommended postponement of this request. The staff's primary concerns were how the property would transition to the adjacent residential area; and how the residential uses would be protected, since the petitioner had not proposed any conditional zoning restrictions. Since that time, the petitioner met with the staff, and provided a revised development plan and proposed conditional zoning restrictions. The revised development plan included reduced parking; the original plan had included nearly double the number of parking spaces required by the Zoning Ordinance, which was of concern to the staff. Also included on the revised plan was a more substantial buffer to the neighborhood than would normally be required. Ms. Wade stated that the petitioner proposed conditional zoning restrictions that would permit only Neighborhood Business (B-1) uses on the subject property; however, since the intent and uses of the B-1 and B-3 zones are quite different, the staff believed that it might be more appropriate to recommend a list of prohibited B-3 zone uses, which would not be appropriate adjacent to a residential area. The staff also believed it would be appropriate to prohibit billboards at this location, and to require a buffer to provide a transition between the commercial and residential zones. The staff is now recommending approval of this request, for the following reasons:

1. The restricted Highway Service Business (B-3) zone is appropriate, and the combined Wholesale and Warehouse Business (B-4) and Two-Family Residential (R-2) zoning is inappropriate, for the following reasons:
 - a. The restricted B-3 zone is compatible with the existing zoning along a majority of the Winchester Road corridor inside New Circle Road. The subject site is primarily surrounded by business zoning (B-1, B-3 and B-4).
 - b. The existing B-4 zoning is not generally appropriate for these small lots along an urban arterial corridor along Winchester Road. The possible land uses for these vacant properties in a B-4 zone are not appropriate immediately adjacent to the existing residential neighborhood.
 - c. The existing R-2 zoning is not appropriate, as it is located directly across Detroit Avenue from a business zone, which is currently occupied by an automobile service station with 24-hour lighting and high traffic generation.
 - d. The depth of business zoning along Detroit Avenue will be consistent along both sides of the street at approximately 250' feet from the intersection of Winchester Road.
 - e. The proposed landscape buffer will provide an appropriate transition between the proposed B-3 zone and the adjacent residential neighborhood.
2. This recommendation is made subject to approval and certification of ZDP 2015-20: Liberty Heights Subdivision, Block C, Lots 4-10 & 44-47, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall be restricted in the following manner, via conditional zoning:

Prohibited Uses

1. Establishments and lots for the display, rental, sale, service, and minor repair of farm equipment, contractor equipment, automobiles, motorcycles, trucks, boats, travel trailers, mobile homes, or supplies for such items.
2. Cocktail lounges and nightclubs.
3. Motel or hotel.
4. Indoor amusements, such as billiard or pool halls; dancing halls; skating rinks; miniature golf or putting courses; theaters or bowling alleys.
5. Drive-in restaurants.
6. Carnivals, even on a temporary basis.
7. Business colleges, technical or trade schools or institutions.
8. Pawnshops.
9. Adult arcades, massage parlors, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers.
10. Advertising signs, also known as billboards, as regulated by Article 17.

Landscape & Buffering Restrictions

1. A 15-foot wide landscape buffer shall be provided along the southwest (rear of 916, 920 and 922 Detroit Avenue parcels) and southeast property boundaries (side of 922 Detroit Avenue parcel). The landscape buffer shall contain a 6-foot privacy fence, shrubs located between the fence and parking areas, and a tree every forty (40) feet on center, selected from Group A or B in the Planting Manual.

These restrictions are necessary and appropriate in order to restrict the most intense land uses on the subject property and to provide an adequate land use transition. Such uses could have a negative impact on the nearby neighborhoods related to noise, lighting and/or traffic congestion.

Ms. Wade stated that four properties along the southwest property line are owned by the petitioner, and are planned for future redevelopment. The petitioner is proposing to include five feet of landscaping on the subject property, and a 10' landscape easement on the residential properties, in order to maintain the 15' landscape buffer along the entire boundary. The staff is recommending that the petitioner install a fence, as well as trees and shrubs, in order to buffer the residential uses from the lighting and noise of the proposed drive-through restaurant.

Commission Questions: Ms. Mundy asked if the four lots on Dayton Avenue were proposed for residential use, which Ms. Wade answered affirmatively. She added that the lots currently contain three single-family residences; the petitioner proposes to redevelop the properties with either duplexes or new single-family units. Ms. Mundy asked if the 5' landscape buffer would be adequate to protect the residences. Ms. Wade responded that there would be an additional 10' easement on the residential properties. The petitioner indicated intent to install the required fence and shrubs on the commercial property, and the trees on the residential lots. She added that the petitioner is proposing parking on that side of the building because it is a "squeeze point" on the property. If the property is not developed with the proposed drive-through restaurant, the Planning Commission could require that the entire 15' landscape buffer be installed entirely on the subject property. Mr. Sallee added that there is a constraint on the residential lots; because they are located in the Infill & Redevelopment area, the rear yard is required to be 20% of the lot depth. For that reason, the petitioner cannot place the entire 15' buffer on the residential lots, and maintain that standard.

Mr. Owens asked if trees and shrubs would provide an adequate buffer from the proposed restaurant's parking area. Ms. Wade answered that the conditional zoning restrictions would require a fence, shrubs, and trees; the current development plan depicts the location of a fence, as well.

Development Plan Presentation: Mr. Martin presented the preliminary zoning development plan, noting that the Commission had received a revised staff recommendation prior to the start of the hearing. Referring to a rendered copy of the plan, he noted the surrounding area and the specific areas proposed for the location of the landscape easement.

Mr. Martin stated that the petitioner proposes to construct a 3,652 square-foot restaurant building, 22' in height, with 70 seats. The rendering is a revised submission plan; the staff believed that the original submittal included too much excess parking, so the petitioner reduced the parking to not quite double the number of spaces required on this version of the plan. The staff believes that the proposed drive-through stacking will be more than adequate. Access to the restaurant is proposed to both Winchester Road and Detroit Avenue. Mr. Martin noted that the entire layout on the property is driven by the proposed fast food restaurant use.

Mr. Martin said that the Subdivision Committee did not review this plan, due to a cancellation of the meeting because of a snow emergency. He said that the staff is recommending approval of this plan, subject to the following conditions:

1. Provided the Urban County Council rezones the property B-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. ~~Department of Environmental Quality's approval of environmentally sensitive areas.~~
6. ~~Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.~~
7. ~~Denote building height in feet.~~
8. Addition of a note about the general location of the required grease trap.
9. ~~Addition of direct pedestrian access to Detroit Avenue.~~
10. ~~Addition of required tree inventory information.~~
11. ~~Discuss proposed landscape buffer and dumpster location adjacent to residential zone.~~
12. ~~Discuss the excessive amount of parking proposed.~~
13. ~~Discuss access to adjoining street system.~~
14. Discuss Denote: The need for on-site stormwater detention shall be resolved at time of the final development plan.
15. ~~Discuss compliance with Provided the Planning Commission grants a variance to Art. 15-2(a)(6) of the Zoning Ordinance.~~
16. Discuss Denote: Site lighting and exterior noise reductions needed for menu board shall be resolved at time of the final development plan.

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Mr. Martin said that condition #6 refers to the need to resolve the issue of on-site detention at the time of the Final Development Plan, since the property is over an acre in size. Condition #8 refers to the staff's concern about lighting and noise reduction in situations where drive-through menu boards are located near residential areas.

Commission Questions: Mr. Drake asked if a drive-through restaurant is the same as a drive-in. Mr. Sallee answered that "drive-in restaurant" is a throwback term in the Zoning Ordinance from the 1950s, referring to establishments where carhops serve food from a building to customers in parked cars. That feature distinguishes a drive-in from a restaurant with an accessory drive-through window. Mr. Drake asked if the Parkette Restaurant would meet the definition of a "drive-in restaurant." Mr. Sallee replied affirmatively.

Variance Presentation: Mr. Emmons presented the staff report on the requested dimensional variance to Article 15-2(a)(6), which is a compatibility standard for business setbacks within the Infill & Redevelopment Area. That standard requires a "build-to" area, wherein a new structure must be constructed to within 5' (front or back) of the setback of the adjacent buildings in the same block.

Mr. Emmons said that, in this instance, there is one building on the subject property that has an average setback of 21', because of the skewed lotting pattern along Winchester Road. The petitioner would be required a maximum setback of 26'. The original development plan depicted five to six parking spaces along the frontage of Winchester Road, with a drive aisle, and the building pushed further back into the property. In response to the staff's concerns about the extent of the requested variance, the petitioner moved the building forward as far as they felt was feasible in order to maintain an operable drive-through lane. Mr. Emmons explained that the lot has a unique geometry, which, without a variance, would not permit the drive-through lane to circle completely around the building. Rather, the drive-through lane would have to circle into the property and exit much closer to the Detroit Avenue/Winchester Road intersection, which would not be safe.

Mr. Emmons said that, when the staff was considering the compatibility issues with the surrounding neighborhood, they noted that the subject property has two existing businesses along Winchester Road, which do comply with the Zoning Ordinance standards. They found, however, that there are several gaps in that setback distance along this portion of Winchester Road, as well as the auto-oriented gas station and convenience store across Detroit Avenue. There are many other lots along the south side of Winchester Road that share the same obtuse geometry as the subject property, and approximately half of the businesses are set further back from the roadway, with parking lots in front. Mr. Emmons stated that the staff ultimately found that granting the requested variance would not negatively or positively affect the character of the area. When they considered whether unique circumstances were present on the subject property, they determined that the unique geometry of the property created such a circumstance, since the drive-through could not safely be constructed without the requested variance.

The staff is recommending approval of the requested variance, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; nor will it negatively alter the essential character of the general vicinity because Winchester Road has other properties with similar setbacks as requested.
- b. There is a special circumstance regarding this property (a skewed geometry) that makes standard development more difficult. It applies to this property (and others in this vicinity) but does not generally apply to most commercial properties, which are generally much more rectangular in shape.
- c. According to the applicant, strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship for the applicant because an allowable use (restaurant with an accessory drive-through) cannot be safely developed due to the skewed lot geometry without approval of a setback increase.
- d. The requested variance is not an unreasonable circumvention of the Zoning Ordinance, because a restaurant with a drive-through is an allowable B-3 use; but the drive-through cannot be safely constructed on the subject property without the requested variance. Developing this use with the building closer to Winchester Road would require that the drive-through exit be on Detroit Avenue at a distance that is much too close to the existing intersection.
- e. The circumstances surrounding the requested variance are not the result of prior actions taken by this applicant, as no construction (or even building demolition) has yet occurred on the subject site.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property B-3; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
4. This dimensional setback variance is conditioned upon the proposed use having a drive-through facility; otherwise, construction shall comply with the requirements of Article 15-2(a)(6).

Mr. Emmons stated that the staff is conditioning their approval on the construction of the requested drive-through facility. Should the property be developed without a drive-through, all of the typical requirements must be considered.

Petitioner Representation: Matt Carter, Vision Engineering, was present representing the petitioners. He stated that the petitioners are in agreement with the staff's recommendations, and he requested approval.

Citizen Opposition: Judy Pugh, owner of 924 Detroit Avenue, stated that she and her husband plan to redevelop that parcel and two adjoining properties, which are zoned R-2. She said that she would like some reassurance that the proposed fast food restaurant on the subject property will not conflict with the planned multi-family dwellings on her property. Ms. Pugh said that she was primarily concerned about traffic flow; the dumpster location on the property; the need for adequate buffering; and potential truck traffic.

Commission Comment: Mr. Owens stated that he believed that the 15' buffer, with a fence, will be adequate to buffer the property. Ms. Pugh asked if the fencing would be made of chain link or a privacy fence. Mr. Saltee answered that the fencing is required by the Zoning Ordinance to be a solid privacy fence; chain link fencing is not compliant with the Ordinance for screening.

Ms. Pugh asked how the proposed restaurant would affect the traffic flow on Detroit Avenue. Mr. Martin responded that the petitioner is proposing an access to Detroit Avenue. He said that the staff believes that the access will function appropriately, and the traffic to and from the site should not interfere with any future redevelopment on the adjacent properties. Mr. Martin noted the proposed dumpster location on the rendered development plan. He added that a condition is recommended to discuss lighting and noise (menu board restrictions) at the time of a Final Development Plan for the property, to ensure that the adjoining residential properties are properly buffered. Mr. Owens added that Ms. Pugh could request to be notified of the filing of a Final Development Plan for the property. Mr. Martin noted that, if the Final Development Plan is significantly different from the plan before the Commission today, the staff will want a thorough explanation as to why the plan was changed.

Zoning Action: A motion was made by Mr. Brewer, seconded by Mr. Wilson, and carried 11-0 to approve MARV 2015-4, for the reasons provided by staff, including the conditional zoning restrictions as proposed.

Variance Action: A motion was made by Mr. Brewer, seconded by Ms. Richardson, and carried 11-0, to approve the requested variance, for the reasons provided by staff, subject to the conditions as recommended by staff.

Development Plan Action: A motion was made by Mr. Brewer, seconded by Mr. Wilson, and carried 11-0 to approve DP 2015-20, subject to the nine conditions as listed in the revised staff recommendation.

