

JULIA KEEN NEIGHBORHOOD ASSOCIATION

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December 15, 2014

Zoning Examiner Linus Kafka
c/o John Beall, Planner
Planning & Development Services Department
Public Works Building, 3rd Floor
201 North Stone Avenue
Tucson, Arizona 85701

Via Hand Delivery

**RE: Zoning Examiner's Public Hearing, December 18, 2014, Agenda Item #1, C9-14-10,
McDonald's – 22nd Street**

Dear Mr. Kafka:

The Julia Keen Neighborhood Association (JKNA) hereby protests the above-referenced rezoning application. This protest is particularly in support of our residential home owners who live in immediate vicinity of the existing McDonald's Restaurant located at 3310 E. 22nd Street that would be subject to closure upon approval of the rezoning request. For reference, the Julia Keen Neighborhood is bounded by 22nd Street on the north, Alvernon Way on the east, Barraza-Aviation Parkway on the south, and Country Club Road on the west. The subject development site lies kitty corner across the 22nd St/Alvernon intersection from the northeast corner of the neighborhood, while the existing McDonald's is located within the Julia Keen Neighborhood along its north perimeter.

The JKNA protest is based on the following reasons: 1) closure of the existing McDonald's would likely result in a vacant building, adding to the existing blighted conditions along 22nd Street; 2) the requested rezoning from R-1 Residential Zone to the P Parking Zone does not comply with the Alvernon-Broadway Area Plan (ABAP); 3) the requested rezoning does not comply with applicable General Plan policies; and 4) the existing and proposed zoning for the development site is insufficient for the proposed use.

I. Closure of Existing McDonald's Would Increase Blighted Conditions on 22nd Street

The underlying purpose for the subject rezoning request is to close an existing McDonald's Restaurant located in the Julia Keen Neighborhood (3310 E. 22nd St.) and to move the operations to a new McDonald's Restaurant on the subject development site. Such closure has the potential to further exasperate the blighted conditions of vacant commercial properties on 22nd St. and elsewhere along the Julia Keen Neighborhood perimeter. These properties include the former El Campo Tire at 3000 E. 22nd St. (an old building in poor condition that closed many years ago), the

former ARCO AM-PM at 3102 E. 22nd St.(now a fenced graffiti magnet that has been closed for a number of years), and the former 7-11 convenience store at 3394 E. 22nd St. (that was later a liquor store and then most recently a tile store and sports a tall “ghost sign”). In addition, the Cactus Bowl on Alvernon Way is now closed and vacant, a service station on Alvernon has been closed for many years, and further to the south an old radio station building with an unused radio tower has remained vacant and blighted for decades. In short, vacancies of commercial properties have been increasing and the prospect of the uniquely configured McDonald’s building remaining vacant for a substantial period of time is high. It is too much to endure to think of yet another fenced, blighted property in our neighborhood that could represent the tipping point.

This is hardly conjecture, as one only need look at the state of the closed McDonald’s at 7202 E. 22nd St. that gave way for a new McDonald’s (as proposed here) a block to the west on the southwest corner of Kolb. The former McDonald’s remained vacant for a couple of years and now houses a fenced contractor’s yard and is graced with a giant freestanding “ghost sign” that remains in place contrary to change of use and abandonment provisions of the Sign Code.

Furthermore, the prospects of any type of future occupancy at the Julia Keen McDonald’s that would be compatible with neighborhood are not good. The former shopping center at the southeast corner of 22nd Street and Cherry Avenue serves as a crystal ball. The only remaining business there for many years was a liquor store that, upon demolition of the shopping center, moved a few feet away to a brand new building that added a drive-through window. Given the existing drive-through window at the Julia Keen McDonald’s, the building would be most attractive to a liquor store (to then form a trilogy with the adjacent smoke shop and tattoo parlor).

The commercial zoning is very shallow on this block and abuts the rear yards of single family residences. Consequently, the commercial activities have a great impact on the residential neighbors with abutting yards or that are otherwise located in close proximity. The problems flowing from successive liquor licenses at the 7-11 from the mid-1980’s to 2000 were enormous and included inebriated persons passing out on residents’ porches, passing out in residents’ driveways, and urinating on bushes in residents’ yards.

The foregoing would be of little import were McDonald’s Corporation to make a private business decision to move to a location that was supported by community planning. However, where planning processes are being violated and the new location is not supported by community planning, as detailed below, JKNA believes that the potential consequences that abandonment of the existing McDonald’s would have on our neighborhood should be an integral part of the analysis and a basis for denial.

II. The Requested Rezoning Does Not Comply With The Alvernon-Broadway Area Plan

The subject rezoning request does not comply with the Alvernon-Broadway Area Plan (ABAP; available at <http://pdsd.tucsonaz.gov/pdsd/all-plans>). The lot that would be rezoned from R-1 to the P Zone is designated Low Density Residential on the ABAP Conceptual Land Use Map (CLUM) and is not designated for Parking Buffer or Commercial/Office/High Density Residential, either of which would support the proposed rezoning. The ABAP is clear that staff is not to process a rezoning request that does not comply its terms: “If the requested plan

amendment does not comply with ... land use policies, the need for an amendment to the *Plan* is determined by the Planning Director before the rezoning process can be initiated” (ABAP, Plan Implementation, Item #1). Nonetheless, Planning and Development Services (PDS) staff has processed the subject rezoning application without regard to the requisite plan amendment.

The specific importance of compliance with CLUM designations is noted in the ABAP text policies: “Limit new office and commercial development and redevelopment of existing uses to the locations shown on the Conceptual Land Use Map ...” (ABAP, Section II.C Non-Residential Policies, Policy 2). (emphasis added). Also note that the second ABAP general goal is to “[i]dentify appropriate locations for new development” (ABAP, General Goals for the Alvernon-Broadway Area Plan).

Furthermore, ABAP background statements, policies, and legislative history all show an overarching intent to protect and preserve existing low density residential development as follows: 1) the first ABAP general goal is to “[p]reserve and protect the integrity of established low-density neighborhoods” (ABAP, General Goals for the Alvernon-Broadway Area Plan); 2) “One of the themes that emerged from the planning process was to limit new commercial development to already established nonresidential areas” (ABAP, Section II.C Nonresidential Policies, Nonresidential Background, ¶5); and 3) “This [ABAP] planning process was initiated in response to the larger issue of redevelopment of existing single-family residential units into more intense uses. Upon working with the Steering Committee, staff determined the best way to further stabilize this area of the community was to maintain the existing single family character of the area ...” (Department of Planning Report to Citizens Advisory Planning Committee [now named Planning Commission], January 4, 1995). The foregoing should leave no doubt as to the intent of the ABAP in the CLUM designating the subject R-1 lot as Low Density Residential.

In contrast, the current staff report (December 3, 2014) attempts to avoid the clear letter and intent of the ABAP by citing the purpose statement of the P Zone that alludes to parking “within residential areas”. First, general purpose statements for a zone in the UDC cannot be whipsawed back to trump specific policies of an area plan document. The UDC simply makes that zone available where supported by the applicable planning document. Second, and even more importantly, the staff report neglects to note that the P Zone is classified within the Commercial Services Land Use Group (UDC, Table 4.8-6, at Page 4-43 and 4-44).. This classification has existed since at least 1995 when the above-referenced purpose statement appeared for the first time in the then newly adopted Land Use Code (Ordinance 8498, adopted July 1, 1995).

The staff report further alludes to the ABAP definition of “Associated Parking” as if it somehow decouples it entirely from its commercial use nature. That term is never actually used in the ABAP, but it is consistent with the CLUM Parking Buffer designation that was applied to a number of lots or parcels within the ABAP boundaries. In other words, the drafters of the plan knew well how to designate a location as a parking buffer to be used as an element of commercial site design, but chose not to do so for the R-1 lot at issue.

Lastly, it should be noted that when rezoning to the P Zone has been sought where a conceptual land use map or equivalent designated otherwise, a plan amendment has always been required (Santa Barbara/Alvernon Way, Amendment to Alvernon-Broadway Area Plan (Low Density Residential to Parking Buffer), Resolution 18098 (1998), rezoned from R-1 to P; Goldman,

Amendment to Arroyo Chico Area Plan, Resolution 20217 (2006), & C9-06-11, rezoned from R-1 to P); and Broadway Village, Amendment to Arroyo Chico Area Plan, PA-13-02 (Mayor and Council action pending), proposed rezoning O-3 to P). The subject case appears to be an attempt to set a precedent to not require plan amendments when changes in planning are sought from existing residential use to parking that serves a commercial or other non-residential use.

In sum, the Alvernon-Broadway Area Plan designates the R-1 lot proposed to be rezoned to the P Zone as Low Density Residential and an amendment to the ABAP designating it Parking Buffer is necessary prior to pursuing any such a rezoning. JKNA urges the Zoning Examiner to use any powers within his authority to remand the application back to PDSB due to not having first processed an amendment to the ABAP and, if no such authority exists, to then recommend denial to the Mayor and Council on this basis independent of any other.

III. The Requested Rezoning Does Not Comply With The General Plan

In addition to not complying with the more specific ABAP that takes precedence, the subject request neither complies with the General Plan ("Plan Tucson"). The 22nd Street frontage is designated Mixed Use Corridor on the Plan Tucson Opportunity Areas map, while the Alvernon Way frontage and neighborhood interior are designated Existing Neighborhood. The identical Review Guidelines (LT. 26.2.8 & LT.26.7.7) are applicable and state in relevant part: "Consider expansion of commercial areas into adjoining residential areas when logical boundaries, such as existing streets or drainageways, can be established ...". There are, however, no drainageways or similar boundaries in the area at all, and no street boundary between the rezoning site and the abutting single-family residences to the east. As such, the rezoning is not supported by the General Plan in addition to the ABAP. It should lastly be noted that the afore-mentioned "review guidelines" have the force of policy per Land Use, Transportation & Urban Design Policy LT26.

IV. The Requested Rezoning Is Insufficient For The Proposed Use

Even if the rezoning application were compliant with the applicable planning documents, the existing and proposed zones are not sufficient for the actual use shown on the Preliminary Development Plan (PDP). It is apparent from even a cursory review that the P Zone would not only accommodate routine parking for customer and employee motor vehicles, but would also serve as ingress/egress lanes and a maneuvering area for heavy trucks making deliveries to the loading zone and large waste hauling trucks servicing the refuse containers. In addition, customer vehicles using the drive-through lanes (i.e., not parking in the proposed P Zone) would most typically traverse the access lane that runs the better part of the length of the proposed P Zone. These activities are additional to and far more intensive than those for which the P Zone was ostensibly established as a parking buffer. Such additional activities are so integral to the principal use as to require the same zoning as the principal use (be it C-1 or C-2, as further discussed below). The ABAP, however, would not support such requisite zoning without substantial amendment.

In addition, JKNA does not agree that the drive-through service lane configuration as shown on the PDP is permissible in the C-1 Zone. PDSB staff relies on a 2012 Zoning Administrator

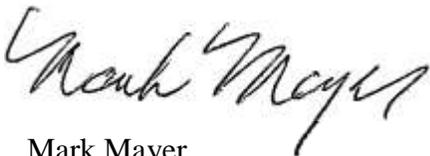
interpretation of the UDC for a different McDonald's location (6105 E. Broadway Blvd.) that appears to have a similar configuration as that for the subject case.

The configuration shown on the PDP consists of two service points for order placement located on two separated vehicular lanes that then merge into two contiguous parallel lanes. The inner of these two parallel lanes are then successively served by an order payment window and an order delivery window. In addition, one of the two contiguous lanes typically includes a dedicated temporary parking space for additional order delivery. This results in a total of five service points. The C-1 Zone, in contrast only permits one drive through service lane (per Table 4.8-4). The two service lanes shown on the PDP for order placement and two parallel lanes that facilitate two order delivery points do not comply with this requirement and the Zoning Administrator interpretation is in error.

Although the Zoning Examiner does not hear appeals of Zoning Administrator interpretations, JKNA urges that the underlying facts showing the undue level of land use intensity that the drive-through service and associated ingress lanes represent be taken fully into account when weighing this request.

In sum, the Julia Keen Neighborhood Association urges the Zoning Examiner to remand this rezoning request back to PDS staff for noncompliance with the Alvernon-Broadway Area Plan or, to the extent that is not possible, to recommend denial to the Mayor and Council on that independent basis alone. We also urge a recommendation of denial, as necessary, for the other reasons set forth, including the potential for increased blight along the 22nd Street corridor resulting from closure of the existing McDonald's Restaurant.

Sincerely,



Mark Mayer
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Concur:



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