



ZONING EXAMINER

REPORT TO MAYOR AND COUNCIL

February 13, 2015

C9-14-10 McDonald's – 22nd Street, R-1 and O-3 to P
Public Hearing: December 18, 2014, et.al.

BACKGROUND

This is a request by Kelly Lee of the Planning Center, on behalf of the properly owners, Kettenbach, LLC and Deed & Note Traders, LLC, to rezone two rectangular shaped parcels that comprise approximately 0.54 acres from R-1 and O-3 to P (Parking) zoning. The rezoning site is located near the northeast corner of Alvernon Way and 22nd Street.

Land use policy direction for this area is provided by the *Alvernon - Broadway Area Plan* (ABAP) and *Plan Tucson*.

PUBLIC HEARING SUMMARY (Minutes Attached)

Glenn Moyer, Planning and Development Services Department, presented the staff report. Mr. Moyer reported that the number of protests received in the formal protest area were sufficient to require a supermajority vote of Mayor and Council.

FINDINGS OF FACT

This is a request by Kelly Lee of the Planning Center, on behalf of the properly owners, Kettenbach, LLC and Deed & Note Traders, LLC, to rezone two rectangular shaped parcels that comprise approximately 0.54 acres from R-1 and O-3 to P (Parking) zoning. The northern parcel fronts onto Camino de Palmas, a residential street. The southern parcel fronts onto 22nd Street. The rezoning site is located near the northeast corner of Alvernon Way and 22nd Street. When combined with the existing commercial parcel the total area of the proposed development is 1.45 acres.

The preliminary development plan proposes a parking lot to be built in conjunction with the development of a fast food McDonald's restaurant on the existing C-1 zoned parcel immediately west of the rezoning site. The proposed McDonald's is intended to replace an existing, older one located approximately ½ mile west of the rezoning site. The properties immediately north are zoned R-1 and O-3 and contain office and residential uses. The properties to the east, along Camino de Palmas are zoned R-1, with established residential uses. The properties to the east, along 22nd Street are zoned R-2 and O-3, and are vacant. The properties to the south, across 22nd Street are zoned C-2 with a variety of commercial uses, including several fast food restaurants and a Walgreen's. The property to the west, across Alvernon Way, is zoned R-1, but developed as the Operations Division Midtown (Hardesty Multi-Service Center) of the Tucson Police Department.

Access to the site is from Alvernon Way and 22nd Street. Both Alvernon Way and 22nd Street are identified as arterial streets on the *Major Streets and Routes Plan* map, with Alvernon

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Way also identified as a Gateway Route. Camino de Palmas is a local street. The Pima Association of Governments – Transportation Planning Division estimates that the proposed development will generate 685 vehicle trips per day.

Land use policy direction for this area is provided by the *Alvernon - Broadway Area Plan* (ABAP) and *Plan Tucson*.

The purpose of the ABAP is to guide future development while protecting and enhancing existing uses. The general goals of the ABAP include preservation and protection of the integrity of established, low-density neighborhoods and protecting private property rights. Residential Policy 2(a) limits development within the interior of established neighborhoods to low density residential. The Conceptual Land Use Map identifies the specific parcels in this case as low density residential.

Nonresidential Policy 2 limits new commercial uses and redevelopment of existing uses to locations shown on the Conceptual Land Use Map when primary access is provided from an arterial, all parking and maneuvering can be met onsite, screening and buffering for adjacent residential uses can be provided onsite, and new development complies with General Design Guidelines.

Plan Tucson locates the rezoning site along 22nd Street within a Mixed-Use Corridor and the site along Alvernon Way as an Existing Neighborhood as identified on the Future Growth Scenario Map. The goal in *Plan Tucson* for Existing Neighborhoods is to maintain the character of these neighborhoods, while accommodating some new development and redevelopment that contributes to neighborhood stability. Mixed-Use Corridors provide a higher-intensity mix of jobs, services, and housing along major streets. Within Mixed-Use Corridors, *Plan Tucson* calls for urban design that is sensitive to the surrounding scale and intensities of existing development. *Plan Tucson* supports neighborhood commercial uses located at the intersections of arterial streets, and redevelopment of commercial projects that stabilize and enhance the transition edge when adjacent to existing residential uses.

The P zone provides for off-street motor vehicle parking within residential areas to serve land uses in another zone. The P zone can serve as a buffer or transition area between more intense and less intense uses such as commercial and residential.

The rezoning site is proposed to be developed in conjunction with a 24-hour drive-thru restaurant use. The site layout shows that no buildings, dumpsters, drive-thru lane, or loading zones will be located on the proposed P zoned portion of the development site.

At the public hearings many neighboring residents testified in opposition to the proposed rezoning. Some testified that they did not wish to have a McDonald's or similar fast food restaurant use near their homes, citing noise, traffic, odors and other concerns. Conversely, neighbors of the existing McDonald's expressed concern that the property might become blighted should that location be vacated. It is acknowledged as a point of law that a fast food restaurant such as a McDonald's can be built in the neighborhood on the C-1 portion of the property by right, without a rezoning, should a developer present a plan meeting all

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applicable development criteria that fits on the parcel. This case is limited to consideration of whether the fast food restaurant, as configured with the accessory parking buffer, is compatible with City of Tucson plans and policies. Likewise, although vacant properties are a legitimate public concern, and notwithstanding any laws regarding maintenance of such properties, no policy or law prevents any property owner from vacating a property and relocating if they so wish.

The initial site plan proposal included a number of mitigation techniques including an eight foot decorative masonry wall, increased setbacks, additional landscaping, advance drive-thru speakers, odor controls, and limited delivery schedules. After the first public hearing, the applicant redesigned many aspects of the site plan to improve the transition between the proposed fast food use on the C-1 parcel and the existing residences nearby the proposed P zone buffer. These changes included, among others, enhanced landscape borders, reconfiguration of parking to minimize patron and loading uses nearest the residential boundary, and elimination of one of the two 22nd Street entrances to better control traffic flow.

The redevelopment of the existing abandoned gas station at the intersection of arterial streets to an activated restaurant space is supported by *Plan Tucson* policies and can serve neighborhood needs. Indeed many neighbors of the existing McDonald's noted how it functions as a welcome meeting space. Moreover, commercial expansion into the vacant O-3 zoned property along 22nd Street may serve to improve the vitality of the Mixed-Use Corridor.

Plan Tucson encourages expansion of commercial development into adjoining residential areas in existing neighborhoods when logical boundaries, such as existing streets or drainage ways, can be established and adjacent residential properties can be appropriately screened and buffered. *Plan Tucson* also encourages protection of established residential neighborhoods and sensitive design that protects the integrity of neighborhoods. It also supports strengthening the identity of individual neighborhoods, as do most area plans such as the *Alvernon Broadway Area Plan*. The ABAP specifically identifies Camino de Palmas as a low-density residential street.

Although the residential parcel proposed for rezoning is adjacent to a C-1 zoned property, rezoning that residential parcel to P would weaken the integrity of the low density residential character of the interior neighborhood. The southern frontage of Camino de Palmas, a residential street, would become more than half non-residential in character and use. On some sites, in addition to walls and landscape boundaries, a P zone may contain overflow parking and is accessory to an activity that is less than intense, for instance one with limited hours. Here, the proposed P zone contains parking spaces that will be used for a 24-hour operation that is relatively intense and located on a relatively compact site, which limits the full impact of buffers. Thus, although the site plan proposal includes some beneficial buffering techniques at its boundaries, the P zone as proposed here does not function optimally as a buffer. Furthermore, the proposed rezoning as configured to include both the R-1 parcel along Camino de Palmas and the O-3 parcel along 22nd Street does not preserve the integrity of the existing residential neighborhood.

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CONCLUSION

The proposed land use is not consistent with neighborhood integrity provisions of *Plan Tucson* or the *Alvernon Broadway Area Plan* and not in keeping with the residential character of the area adjacent to the northeast portion of the proposed site. Rezoning to the proposed P zone is inappropriate at this time.

RECOMMENDATION

The Zoning Examiner recommends denial of P zoning.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'L. Kafka', with a long horizontal flourish extending to the right.

Linus Kafka
Zoning Examiner

ATTACHMENTS:

Public Hearing Minutes