

**AGENDA REPORT
PLANNING AND ZONING COMMISSION MEETING
December 5, 2019**

SUMMARY

A request by Van Matre Law Firm, P.C. (agent) on behalf of TKG St. Peters Shopping Center LLC (owner) for a conditional use permit (CUP) to allow a drive-up facility (often described as a drive-through) on approximately 1.13 acres of M-DT (Mixed use- Downtown) zoned property for a Raising Cane's Restaurant. The property is located southwest of the intersection of Providence Road and Locust Street and is addressed 201 S. Providence Road. Restaurants are a permitted use in the M-DT; drive-up facilities are a conditional, accessory use which requires a conditional use permit subject to the provisions of Chapter 29-6.4(m). **(Case #06-2020)**.

DISCUSSION

The applicant seeks approval of a conditional use permit (CUP) to allow a Raising Cane's Restaurant with a drive-up facility. While restaurants are a permitted use in the M-DT district, drive-up facilities are a conditional, accessory use (CA) requiring approval of a CUP by the City Council following review and recommendation by the Planning Commission. The proposed restaurant is to be built on an approximately 1.13 acre portion of the vacant property located south of the Lucky's Market parking lot and north of the Custom Complete Automotive on the west side of Providence Road. The restaurant would occupy roughly 1/3 of the 3.26-acre lot platted in 2018 as part of the University Centre Subdivision final plat. There are presently no redevelopment plans or tenants identified for the remaining 2/3 of the lot.

As shown on the conceptual site plan, the restaurant is proposed to be a one-story, 3,316 square foot building with 25 parking spots. The front of the building would be oriented toward Providence Road with parking located on the north side of the building. Access to the site would be from the rear via a shared access driveway that connects to the Lucky's access driveway on the north to the parking lot/driveway access for Custom Complete Automotive on the south. Both northern and southern connection driveways access Providence Road. The subject restaurant site is not permitted to have direct driveway access to Providence Road, but the applicant would provide pedestrian connectivity via an ADA-accessible approach from the Providence Road sidewalk.

The M-DT district permits the improvement of a parcel with multiple structures without the necessity for further subdivision. Staff understands that the 1.13 acre development site for the restaurant is to remain under the ownership of TKG St. Peters Shopping Center LLC; therefore, no further subdivision action is required to permit the parcel's improvement. Pursuant to the submitted conceptual site plan, required cross-access easements have been provided to ensure that all future development on the 3.26-acre tract will be accessible. Easements running both north and south (as described above) and east-west have been identified on the conceptual site plan. Preliminary review of the easements by Public Works Traffic Engineering and Fire Department staff has found their location and size to be adequate to support the proposed restaurant and future site uses. Prior to the issuance of a building permit for site improvement the cross-access easement will be required to be recorded – the conceptual plan notes the easements would be recorded by separate document.

It should be noted that this application would only confer approval of a CUP allowing for a drive-up facility on the 1.13 acre portion the subject property to be improved with the restaurant. An approved CUP will run with the 1.13-acre parcel in perpetuity should Raising Cane's be replaced by another user. Should additional drive-up facilities be desired for the remaining 2.13 acres, separate applications for CUP approval would need to be sought.

The proposed drive-up facility would have a rear approach and circle around the building in a counter-clockwise manner. Access easements surround the building generally functioning as the required by-pass lane. This includes an internal east-west cross-access drive located between the Raising Cane's site and a proposed future parking lot intended to serve the undeveloped portion of lot remainder to the south of the proposed restaurant. The ordering location at the beginning of the drive-through (at the rear of the property) is shown with two ordering lanes, which may help to reduce stacking as cars enter the site.

The applicant has indicated seating areas will be located to the north of the restaurant between the building and the parking lot, and to the east (in front of the building) on the other side of the drive-up lane along the Providence Road frontage. As the conceptual site plan has the drive-up facility running in front of the building's Providence Road (and front entrance/street fronting side), the building will be unable to meet the required building line (RBL) provisions of the UDC, which require buildings (or in some instances street walls) to be built up to the sidewalk to maintain and integrate a consistent public realm.

The applicant has considered this aspect of their site design, and potential alternatives (e.g. a drive-up facility only at the rear which does not circulate in front of the building) to be unworkable for them. As such, should the CUP be approved for the drive-up facility, the applicant will need to seek Board of Adjustment approval of a variance from the RBL requirement in order to build what is shown on the conceptual site plan. Additionally, it is anticipated that the applicant will need a variance for the ground story height of the building to exceed the eighteen (18) inches above the average fronting sidewalk elevation permitted for non-residential uses under the Urban General - West Height Standards. The topography on the west side of Providence is such that this provision of the code may be challenging to meet without significant site grading.

It should be further noted that the conceptual site plan has been provided by the applicant to help the Planning Commission, staff, and City Council understand how the proposed improvements will function on the lot, to evaluate circulation and access, and to evaluate the six criteria laid out by the UDC when determining the appropriateness of a CUP. It is anticipated that minor revisions to the site plan may occur as building, site/civil, and landscaping plans are finalized to meet all other applicable city development regulations. Should the CUP be granted, it will permit a drive-up facility on the site that generally meets the concept as shown on the conceptual site plan.

Background

As noted above, restaurants are permitted uses in the M-DT district. Drive-up facilities are a conditional, accessory use (CA) in the M-DT district (as well as in the Mixed-use Office and Mixed-use Neighborhood districts). They are a permitted accessory use (A) in the Mixed-use Corridor (M-C) and Industrial (IG) districts. Drive-up facilities are also subject to the use-specific standards of Chapter 29-3.3(jj), as well as the Drive-Through Vehicle Stacking requirements in Chapter 29-4.3(i). The use-specific standards are designed to buffer the noise and other impacts that such facilities impose upon adjacent properties, particularly those improved with residential uses. The stacking requirements; however, are designed to circulate traffic safely through the site and to mitigate noise spillover to adjacent properties. A by-pass lane is required for financial and restaurant/retail uses with a drive-through.

The intent of the M- DT district is to encourage a mixed-use, pedestrian-oriented environment. With the adoption of the UDC and the M-DT form-based zoning and regulating plan, drive-up facilities became subject to the CUP process to work in tandem with the Drive-Up use-specific standards to mitigate negative externalities associated with queuing cars on adjacent roadways, neighboring properties and pedestrian travel. Potential impacts include conflicts for pedestrians, backed up intersections and driveways, exhaust and noise pollution from cars, pedestrian/auto conflict points, and sound and light spillover from loud speakers, signs and site lighting, among others. In mixed-use district with residential uses or those designed to be a walkable environment, such impacts especially need to be mitigated to allow the safe and efficient travel of people to and from multiple buildings and uses within a site. The potential detriment to

pedestrian safety and connectivity is the primary concern in the M-DT district as it is intended to be a pedestrian-oriented area.

While drive-thru facilities presently exist in the M-DT district, this is the first drive-thru CUP request to go before the Planning and Zoning Commission since the adoption of the UDC in 2017. Prior to the adoption of the UDC, CUP requests were considered by the Board of Adjustment. Also prior to the adoption of the UDC, drive-thru facilities were classified as customary accessory uses to retail and restaurant uses, both of which were permitted in the former C-2 district now generally replaced by the M-DT Regulating Plan and form-based zoning requirements.

It should further noted, that in 2014 the subject 3.26-acre site was before the Board of Adjustment seeking CUP approval to permit an off-street, on-site parking lot in associated with a proposed McDonald's drive-thru restaurant. The request was precipitated by the fact that off-street, on-site parking lots were not permitted within the C-2 zoning district without approval of a conditional use. The Board approved the CUP request which permitted the construction of the desired parking lot and the associated stacking spaces required for the drive-thru. The issued Board Order on the request did not indicate any special consideration being given to permit the associated drive-thru that would have accompanied the McDonald's restaurant.

After consultation with the City's Legal Department relating to the applicability of the previously granted CUP, it was determined that it was moot as a result of the adoption of the UDC and the changes it made to the list of permitted and conditional uses within each zoning district. Off-street, on-site parking is now a permitted use within the M-DT subject to specific form-based design requirements. Whereas, a drive-thru now requires a CUP.

In review of the City's downtown district and other thriving urban cores nationally, staff notes that drive-up facilities function best at the rear of buildings, especially in tandem with alleys, to avoid automobile curb cuts and traffic encroachment into the pedestrian realm. This is especially true when an alley can serve the function of a by-pass lane, such as the utility payment drive-up facility behind City Hall itself. Simply put, allocating large amounts of urban real estate to auto-centric uses has a negative impact on the pedestrian realm, creates pedestrian/vehicle conflict points, and takes away land that could be used for shops, restaurants, offices and apartments. As such, the CUP evaluation process is designed to consider such impacts while balancing the benefits of the drive-up use to users and businesses, and with site design elements which may mitigate safety and other such concerns.

It should also be noted that the adoption of the UDC did not expressly repeal any policy resolutions previously adopted by the City Council. As such, staff must consider applicable policy resolutions in addition to the provisions of the UDC, but note that the more recent adoption of the UDC and its regulatory function may supersede policy resolutions if conflicts exist. To this end, the Providence Road Policy Resolution adopted in 2005 is included with the analysis below, but is in secondary consideration to the CUP criteria as outlined in the UDC.

Analysis

In addition to the CUP criteria, which will be discussed in detail below, the appropriateness of a CUP for a drive-up facility at this location was also considered in terms of the goals and requirements of the UDC, the 2005 Providence Road Policy Resolution, and the Comprehensive Plan.

The principal regulatory sections of the M- DT district are the Regulating Plan, the Building Form Standards, and the Urban Space Standards, as presented in Section 29-4.2, M- DT Form-Based Controls of the Unified Development Code. Through these sections, the code utilizes urban form and site design practices encouraging a vibrant downtown district where an eclectic mix of uses may thrive. Building form standards are organized by street frontage location on the Regulating Plan, with unique standards inherent to the type of design appropriate for different parts of the Downtown District. Standards address façade composition,

building heights, pedestrian scale considerations (setbacks and build-to lines), architectural elements, site circulation and building arrangement, open space and civic areas, and the interaction between the public realm and private spaces.

The four primary area standards identified on the Regulating Plan are Urban Storefront, Urban General-West, Urban General, and Townhouse-Small Apartment. The proposed Raising Cane's location is in the Urban General- West area, which generally encompasses the Providence Corridor and the portion of the M-DT District to the west of Providence Road. For this area, the UDC envisions a variety of uses and a stepping-down in terms of development density (e.g. one to two-story buildings) with increased pedestrian traffic and connectivity to the urban core over time. While this proposed building may be at the density as envisioned by the UDC, it must also meet the intent of the pedestrian-oriented design of the UDC as well.

While staff notes efforts to provide pedestrian connectivity to the Providence Corridor and outdoor user amenities will mitigate some of the negative effects of a car-oriented use, there are inherent conflicts with drive-up facilities and pedestrians as the design of any building follows the needs of its users, and in fast-food restaurants, the design is often unable to prioritize the pedestrian over the car. The other potential negative impacts of drive-up facilities are described in more detail in previous paragraphs, such as traffic, noise and pollution concerns. The inability to meet the RBL because of the necessity to circulate drive-up lane traffic in front of a building also has a chilling effect on the promotion of a cohesive, pedestrian-oriented district. Pedestrians coming from Providence will have to walk through a driveway to get to the building, and the driveway, when not full of cars, will be a dead space that cannot otherwise be filled with a lively shopfronts or articulated building facades.

The 2005 Providence Road Policy Resolution passed by the Council describes desired development conditions for the Providence Road Corridor from Stewart Road to the south to I-70 on the north. Many of these provisions, such as reducing curb cuts to the extent possible, orientating residential uses to higher floors and active uses at the ground level, orientating parking behind buildings, and heightened landscaping standards have been codified by code revisions prior to, and with, the adoption of the UDC. The policy of planned development zoning as the preferred zoning for the corridor has been replaced by form-based code provisions of the M-DT, which, in conjunction with use-specific standards, provide much greater oversight in terms of urban design elements such as parking, landscaping and site layout. The change to make drive-up facilities subject to issuance of a CUP also goes far to implement the policy resolution consideration that "large traffic generators such as fast-food restaurants" should not be included along the corridor as such uses are now only allowed on a case-by-case basis subject the successful pursuit of a CUP via its discerning evaluation process.

The Columbia Imagined Comprehensive Plan's future land use map identifies the site as being located within the "City Center" classification, which is "...Intended to be the focal point of the City of Columbia, serving as the education and government center of the community. This single district is an area of mixed uses and is built at pedestrian scale..."

The Comprehensive Plan and the development of the UDC were highly informed by the 2010 Downtown Charrette Planning Process, which developed a vision and actionable design with associated objectives and policies intended to foster an active urban core in the Downtown District, and by the 2007-2008 Visioning Process that ultimately led to the development and adoption of the Columbia Imagined Comprehensive Plan. The call for a form-based code for the Downtown District, now codified in the UDC, came from these community planning processes. As such, a land use proposal that is inherently in conflict with the UDC and the pedestrian-oriented district envisioned by Columbia Imagined is challenging to support as "consistent with the Comprehensive Plan", one of the six criteria for the approval of a CUP as described below.

CUP Criteria

The evaluation criteria for a CUP are found in Chapter 29-6.4(m) of the Code as listed below. Staff and the applicant (see attached Supporting Documentation Provided by Applicant) have each provided an analysis of the facts of the case based upon the CUP Criteria.

Sec. 29-6.4 (m). Specific regulatory procedures - Conditional Use Permit

- (A) The proposed conditional use complies with all standards and provisions in this chapter applicable to the base and overlay zone district where the property is located;*
- (B) The proposed conditional use is consistent with the city's adopted comprehensive plan;*
- (C) The proposed conditional use will be in conformance with the character of the adjacent area, within the same zoning district, in which it is located. In making such a determination, consideration may be given to the location, type and height of buildings or structures and the type and extent of landscaping and screening on the site;*
- (D) Adequate access is provided and is designed to prevent traffic hazards and minimize traffic congestion;*
- (E) Sufficient infrastructure and services exist to support the proposed use, including, but not limited to, adequate utilities, storm drainage, water, sanitary sewer, electricity, and other infrastructure facilities are provided; and*
- (F) The proposed variance will not cause significant adverse impacts to surrounding properties.*

Staff review of the CUP criteria builds upon the analysis of the applicable plans, codes and consideration factors listed in the background and analysis portions of this report. In terms of Criteria (C), (D), (E), and (F), staff generally agrees with the applicant that adequate access is provided for *vehicular* traffic (though the pedestrian environment is degraded by the vehicle environment), that sufficient infrastructure and services exist or will be provided for by the developer in accordance with city codes for the development, and that the surrounding properties (Lucky's Market, Custom Complete Automotive and the undeveloped portions of this lot) may not be significantly adversely impacted in terms of land use by the proposed development, and the development itself is not out of character with the adjacent area west of Providence Road.

However, when evaluating criteria (A) and (B), staff does not find support for the CUP. The drive-up facility will prevent building to the RBL, which is one of the most significant design tools the code uses to foster a pedestrian environment. Additionally, there are inherent conflicts with the introduction of cars on the safety of pedestrians, especially when the design for cars supersedes the design for pedestrians, as described above.

When looking at the Comprehensive Plan in general and the Downtown Charrette in particular, it is challenging to believe that fast-food restaurants (which were expressly called out as a negative traffic generator in the Providence Road Policy Resolution) are envisioned as the highest and best use for this site. Furthermore, the Downtown Charrette identifies this site as the location of a catalytic project area.

Staff acknowledges the applicant's desires to find a user for this site; however, believes that the proposed CUP and intended fast-food development does not represent the vision of the desired catalytic project for this location. Given this parcel's highly visible location and 3+ acre of development area, staff believes the City's visioning and planning documents call for a higher quality of development which meets the UDC and the collective vision of the community.

RECOMMENDATION

Disapproval of a Conditional Use Permit to allow a drive-up facility on the site.

SUPPORTING DOCUMENTS (ATTACHED)

- Locator maps
- Conceptual Site Plan
- M-DT Regulating Plan
- Supporting documentation provided by applicant
- Providence Road Policy Resolution (2005)

SITE CHARACTERISTICS

Area (acres)	1.13 acres
Topography	Sloped eastward towards Providence Road
Vegetation/Landscaping	Turf
Watershed/Drainage	Flat Branch
Existing structures	Vacant

HISTORY

Annexation date	1826
Zoning District	M- DT
Land Use Plan designation	Civic Center
Previous Subdivision/Legal Lot Status	Legal Lot

UTILITIES & SERVICES

All utilities and services provided by the City of Columbia.

ACCESS

Driveway to Lucky's (vacated former Locust Street)	
Location	Along northern edge of property
Major Roadway Plan	Private Drive
CIP projects	N/A
Sidewalk	N/A

PARKS & RECREATION

Neighborhood Parks	Flat Branch Park
Trails Plan	Across Providence Road from Flat Branch Park & MKT Trailhead
Bicycle/Pedestrian Plan	N/A

PUBLIC NOTIFICATION

All property owners within 185 feet and City-recognized neighborhood associations within 1,000 feet of the boundaries of the subject property were notified of a public information meeting, which was held on October 29, 2019. 10 postcards were sent.

Public information meeting recap	Number of attendees: 8 Comments/concerns: Student journalists and law students attended with questions about the process; two members of the applicant team also attended. No members of the general public attended.
Notified neighborhood association(s)	Historic West Broadway and Park Hill Neighborhood Associations
Correspondence received	None to date.

Report prepared by Rachel Bacon

Approved by Patrick Zenner