

[2023-0127](#)

Public Hearing for Drive Through Ordinance Amendments

(Memorandum by Sara Roediger and Chris McLeod dated 3/15/23, Draft Ordinance Amendment, Draft PC Minutes Excerpt 2/21/23, Public Hearing Notice and Public Comment had been placed on file and by reference became a part of the record thereof.)

Mr. McLeod stated that before the Commission tonight is a proposed text amendments to the Zoning Ordinance dealing specifically with drive-through facilities. He commented that over the course of the last couple of years there have been some questions and concerns raised in terms of the regulations pertaining specifically to the size of drive-through facilities, stacking configuration, and the architecture of the drive-through facility. City staff along with the City's planning consultants and City Attorney drafted the following provisions which hopefully will address the majority of the concerns that have been pretty common amongst Planning Commissioners over the course of time.

He listed the changes, and explained that as a drive-through facility comes forward, it will have to be located within a building that is at least 2,000 square feet. The use itself does not necessarily have to be 2,000 square feet, for instance if it is part of a larger building; but the structure that the drive-through sits within would have to be that 2,000 square feet. They shall be built as an integral part of the primary structure; a standalone type of drive-through is not permissible. They must be located on the side or rear portion of the structure itself, and set back a minimum of 10 feet from the front wall of the building that it is proposed upon. Screening of headlights is a current provision, unless a more intense buffer is required, and a minimum buffer D would be required, pursuant to Ordinance. Any use of a drive-through should also provide customers with a means of accessing the inside of the building, so providing pedestrian circulation. He noted that one of the newer provisions is basically physical separation between the drive-through itself and the maneuvering lane, and requiring a three-foot landscaped area between those to provide physical separation so they do not commingle amongst drive-through lanes and maneuvering lanes. In terms of additional pedestrian amenities, the drive-through lanes shall be a minimum of nine-foot width, and the vehicle stacking spaces are increasing to 20 feet in length rather than the current 16 feet. Providing for additional turning radius within the drive-through itself at 25 feet so that way some of these pin turns would not be allowed within the drive-through configuration. Also making sure that stacking does not conflict with any vehicle circulation on site.

Mr. McLeod noted that in terms of the drive-through spaces themselves, they are not requiring any additional stacking spaces, but indicating that if they have multiple lanes for a drive-through they would be required to have the additional spaces. If it is a traditional one-lane, the requirement does not change; if additional lane-age or an additional configuration which brings a second or third or fourth, ten spaces would be required for each one of those particular lanes. He added that the definition of drive-through establishment is renamed to drive-through facility, and it is providing a service out of a window or while you are in a motor vehicle. He explained that right now there are some technical

issues that it is only out of a window, and they wanted to open that up a little bit because not every drive-through configuration is serviced directly out of a window, sometimes it is handed to a customer outside of a window.

He noted that this is a Public Hearing for the Ordinance amendment, and once the Planning Commission sees fit they can make a recommendation hopefully for approval by City Council for their first and second readings.

Chairperson Brnabic noted that this requires a Public Hearing and opened the public hearing at 7:31 p.m. and noted that she had one speaker's card.

John Gaber, Williams, Williams, Rattner & Plunkett, P.C., stated that he appreciated the effort the Planning Staff has taken to look at this issue, particularly post-COVID as everyone is moving in this direction. He commented that drive-throughs are proliferating. He noted that in terms of some of these standards he would wonder if consideration could be given to a potential for waivers of any of these standards. He stated that in the example of the Bank of America drive-through recommended for approval tonight, a three-foot island would be required on the right side of that car, and there might not be adequate space for that on that particular site. He commented that he understands this for larger and more-intensive drive-throughs, but he would request that they have the ability to grant some type of waiver for something like this.

He asked for consideration of grandfathering this Ordinance like was done with the FB moratorium. He mentioned that Bebb Oak was well into the process when that moratorium was adopted. He stated that as a matter of fairness and fundamental due process, that should be considered for this Ordinance too. He mentioned Chick-Fil-A and stated that this is one of the prime topics of discussion that was considered by City staff in putting these conditions together. He reiterated that as a matter of fundamental fairness, as the precedent for grandfathering was set when the moratorium was enacted, that same principle should apply in this situation. He commented that this would prejudice applicants that are in the process already and make them start over with site plans. He stated that otherwise drive-throughs are a major concern and the standards do have to be enhanced to make sure they address some of the issues that have come before the Commission.

Ms. Roediger addressed Mr. Gaber's comments, noting that if the Planning Commission wanted to change the way this was written for smaller drive-through uses it could be modified. She stated that this was intended for the long stacking lanes, not for the one or two. She commented that in terms of Mr. Gaber's point about grandfathering existing reviews, that would be under the discretion of the Planning Commission. She pointed out that the moratorium was different as it was action taken by City Council that paused the ability for someone to submit a site plan under the Ordinance. She commented that there are plans that have been submitted that have undergone a number of reviews, and if the Planning Commission would have the discretion whether to allow some leeway for those going through the site plan process.

Ms. Neubauer stated that it is a good idea to allow a waiver or adjust the

language for the smaller drive-throughs, noting that in the case mentioned it would not make any sense. She stated that she would be okay with providing leeway. She commented that with respect to the ones that are grandfathered in, legally that is wise for the City to do as it does not want to prompt any proceeding based on anyone alluding that it is prejudicial and could be construed as changing the rules mid-game. She mentioned that the whole reason that this started was because of the Biggby proposal, and their goal was to prevent the Biggby-type of structures popping up all over the city; however, they also do not want it to be detrimental to those who are conducting business in their normal fashion, just in the way that they would in any other city. She stated that providing some leeway with respect to smaller drive-throughs and keeping the applicants that are already in grandfathered so as to not prompt litigation. She commented that leaving the discretion to the Planning Commission is a good idea.

Chairperson Brnabic noted that she received an email from Melanie Martin who would like the Commission to consider that drive-throughs have detrimental impacts on citizens and the well-being of the environment. She stated that Ms. Martin believes that the City has so many drive-throughs already with more applications on the table and would like support for more non-drive-through businesses with the help of the community and the Commission. After noting this email, she closed the public hearing at 7:38 p.m.

Mr. Struzik stated that he agrees with having some leeway especially for some lower intensity uses and also agrees with the fairness aspect and avoiding litigation for people who are already going through reviews. He stated that going through this process represents a very large investment on behalf of the applicants and to change the rules partway through that does not make the city a great place to do business.

Dr. Bowyer questioned how many site plans currently in review would be affected.

Ms. Roediger responded that it included Chick-Fil-A and Biggby coming back for a different Meijer outlot with an actual building with a permanent foundation. She mentioned that the proposed Biggby should meet all these changes and is on the north side of the site. She added that there have been some concept meetings but they are all very conceptual.

Dr. Bowyer stated that she would agree that the people that have already submitted concrete plans and are in the process should be grandfathered in. She commented that she thinks this definitely helps prevent the city from being littered with pop-up places that can go in any parking lot.

Mr. Weaver questioned when the grandfathering period end.

Ms. Roediger responded it would be after the second readings and the Ordinance becomes effective. She stated that if the first reading were April 17, there would be a second reading in May and then it would be seven days after.

Mr. Hooper suggested that the grandfathering clause would be for existing

proposed plans in the pipeline that have been submitted and in review prior to the effective date of this Ordinance.

Mr. McLeod stated that the effective date would be May 8 if this Ordinance tracks through as suggested.

Mr. Hooper noted that it would still allow people to come in up to a month from now. He questioned whether it could be made more strict, or prior to first reading.

Ms. Roediger stated that she would consult the City Attorney. She noted that there is a concept plan meeting tomorrow.

Mr. McLeod stated that the person requesting the Concept Meeting is fully aware of this Ordinance and he believes that they are taking it into consideration.

Ms. Roediger stated that they have been advising new people coming in that this is likely to get adopted, and suggesting that they follow it.

Mr. Hooper questioned whether the suggestion that a three-foot island would be applicable except in the case of two or fewer drive-throughs with less than ten stacking spaces would be workable. He mentioned that the Bank of America had eight spaces.

Mr. McLeod noted that under the new ordinance it would technically require six.

Mr. Hooper suggested two lanes or less with six or fewer stacking spaces. He noted that he did not want someone to have two drive-throughs and put 50 stacking spaces on there.

Ms. Roediger stated that it would be anything that requires less than three spaces per lane, and noted that only banks and pharmacies that would be exempt from this.

Mr. Hooper suggested two or fewer lanes and three or fewer stacking spaces per lane.

Ms. Roediger noted that they would wordsmith the changes with the idea that it is no more than three deep per lane.

Mr. McLeod questioned whether the Planning Commission would want this as automatic, or wants the discretion to waive it.

Mr. Hooper suggested it be made automatic, as it seems fair. He commented that the drug store he frequents rarely has anyone in front of him, and neither does the other bank he uses. He made the motion in the packet to recommend City Council approval of the Ordinance, adding two conditions, 1) Regarding three-foot islands, to add language as approved by staff, to limit the applicability of the three foot island to two or fewer drive-through lanes with three or fewer

stacking spaces per lane; and 2) To grandfather existing proposed plans that have been submitted and are in review prior to the effective date of the Ordinance, as reviewed and approved by the City Attorney. Ms. Neubauer seconded the motion.

Ms. Roediger questioned whether there would be a cleaner way to say that in the Ordinance. She stated that in looking at the Ordinance under stacking requirements, it requires three stacking spaces per general use window or station and it requires ten stacking spaces per restaurant or service use. She suggested that the island is only required for a restaurant because everyone else would be three or less.

Mr. Hooper questioned whether someone with three or less could come in and request more stacking.

Ms. Roediger commented that they possibly could.

Ms. Neubauer questioned whether Mr. Gaber might have a suggestion.

Mr. Gaber stated that as long as Council got their intent and they worked with the City Attorney between now and the time it goes to City Council to get the language right. He commented that as long as the intent is there it could be wordsmithed.

Dr. Bowyer questioned language in B they have drive-through facilities “must shall be”, and C the windows “must shall be located”.

Ms. Roediger stated that this was tracked changes and the wording would be corrected to “shall be”.

After a roll call vote on the motion, Chairperson Brnabic announced that the motion passed unanimously. She expressed appreciation to staff for putting the Ordinance together in a timely manner.

Ms. Roediger gave credit to Giffels Webster for their efforts.

A motion was made by Hooper, seconded by Neubauer, that this matter be Recommended for Approval to the City Council Regular Meeting. The motion carried by the following vote:

Aye 9 - Bowyer, Brnabic, Denstaedt, Dettloff, Gallina, Hooper, Neubauer, Struzik and Weaver

Resolved, that the Planning Commission recommends to City Council approval of an ordinance to amend Section 138-4.410 of Article 4, Section 138-11.204 of Article 11 and Section 138-13.101 of Article 13 of Chapter 138, Zoning, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to provide additional specific design standards for drive through facilities, clarify the number of stacking spaces required and provide a new definition of drive through facility, and to ensure consistency across various ordinance sections; to repeal conflicting or inconsistent ordinances, and prescribe a penalty for violations with the following conditions:

Conditions

1. Regarding three-foot islands, to add language as approved by staff, to limit the applicability of the three foot island to two or fewer drive-through lanes with three or fewer stacking spaces per lane.

2. To grandfather existing proposed plans that have been submitted and are in review prior to the effective date of the Ordinance, as reviewed and approved by the City Attorney.