

PLANNING COMMISSION REPORT
Regular Agenda - Public Hearing Item

PC Staff Report
2/23/11

ITEM NO. 4A PCD TO CN2; 3.47 ACRES; 4000 W 6TH ST (MKM)

Z-12-19-10: Consider a request to rezone approximately 3.47 acres from PCD (Planned Commercial Development-Monterey Center) to CN2 (Neighborhood Commercial Center), located at 4000 W. 6th Street. Submitted by Allen Belot, for Monterey Partners, LLC., property owner of record.

STAFF RECOMMENDATION: Staff recommends approval of the request to rezone approximately 3.5 acres located at 4000 W 6th Street from PCD-[Monterey Center] to CN2, based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval contingent upon the following condition:

That the property owner of the remaining portion of the Planned Development provide their written consent to the rezoning.

Reason for Request: *“Suite ‘A’ in the existing building was designed in the original PCD with a drive-up pick-up window with a drive-up lane attached. The first and only tenant in this space was a dry cleaner that used the drive-up window for drop-off and pick-up. That establishment has vacated that space and a national restaurant franchise would like to move into this space and continue to use the drive-up window for pick-ups only; no menu/order kiosk will be installed. The existing Land Development Code will not allow this new use without a change in the zoning even though the proposed use is almost identical to the previous allowed use.*

KEY POINTS

- The subject property is part of the Monterey Center Planned Commercial Development which was zoned PCD-1. This zoning converted to the PCD-[Monterey Center] zoning with the adoption of the 2006 Development Code.
- The pre-2006 Code permitted the following restaurant uses in the PCD-1 District: *Restaurant, not including one with drive-up facilities or service to automobiles.* The restaurant drive-up facility is not permitted in the PCD-1 Zoning; therefore, rezoning is necessary.
- The CN2 District permits *Fast Order Food with Drive-In* uses with the approval of a Special Use Permit (SUP). A SUP has been submitted and is being considered at the February Planning Commission with this rezoning request.
- The rezoning request is for one lot; however, the lot has been divided into a smaller parcel and the remainder was combined with Lot 2, Monterey Addition No 7. (Figures 1A and 1B) These parcels are under the same ownership.
- The rezoning request would remove Lot 1B from the Monterey Center Planned Commercial Development. The applicant should provide consent from the other property

owner of the Planned Development for the rezoning.

ASSOCIATED CASES/OTHER ACTION REQUIRED

Other action required on this rezoning:

- City Commission approval of the rezoning request and publication of Ordinance following the second reading.

Other case and action required: SUP-12-9-10; Special Use Permit for the *Fast Order Food with Drive-In* use.

- This item is being considered by the Planning Commission at their February meeting concurrently with the rezoning.
- City Commission approval and publication of an ordinance following the second reading is required.

ATTACHMENTS

- Attachment A: Comparison Table of Permitted Uses
- Attachment B: Page Map

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- None

Project Summary:

The request is for rezoning from a Planned Commercial Development District to a Neighborhood Commercial Center District to allow the addition of a restaurant with a pick up window, which is classified as a *Fast Order Food with Drive-In* use in the Development Code.

1. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant's Response:

"The Comprehensive Plan identifies the 6th & Monterey Way intersection as a Neighborhood Commercial Center. The proposed zoning would be compatible with this designation."

Staff Finding –The 6th and Monterey intersection is listed as an existing Neighborhood Commercial Center in Chapter 6 of the comprehensive plan. The rezoning to the Neighborhood Commercial Center, which is a new zoning designation created with the 2006 Development Code, is in conformance with the comprehensive plan.

2. ZONING AND USE OF NEARBY PROPERTY, INCLUDING OVERLAY ZONING

Current Zoning and Land Use: PCD-[Monterey Center] (Planned Commercial Development) District; shopping center.

Surrounding Zoning and Land Use: To the north, west and southeast: PCD-[Monterey Center] (Planned Commercial Development) District; townhomes to the north, shopping center to the west, and a bank to the southeast.

To the south: RSO (Single-Dwelling Residential-Office) District; bank.

To the east: RM12 (Multi-Dwelling Residential) District; townhomes.

Staff Finding – The subject property is a part of the Monterey Center Planned Commercial Development and is surrounded on the north, west and southeast by other property within this development. The surrounding uses are predominately retail and office with multi-dwelling structures, townhomes, to the north and across Monterey Drive to the east.

3. CHARACTER OF THE NEIGHBORHOOD

Applicant's Response:

"Multi-family duplex to the North, multi-family townhouse and residential office to the east. Neighborhood commercial to the south and west."

Staff Finding – The neighborhood contains a mix of retail, office and multi-dwelling residential uses in close proximity to W 6th Street, a principal arterial, and Monterey Way, a collector street.

4. PLANS FOR THE AREA OR NEIGHBORHOOD, AS REFLECTED IN ADOPTED AREA AND/OR SECTOR PLANS INCLUDING THE PROPERTY OR ADJOINING PROPERTY

Staff Finding – The subject property is not within any formal neighborhood boundaries.

5. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED UNDER THE EXISTING ZONING REGULATIONS

Applicant's Response:

"Suite A with the drive-up window is not sustainable under the present code due to the extensive limiting factors placed on it. About the only use that could fully realize the potential of this space would be another dry cleaner. For whatever reason, it has been demonstrated that a dry cleaner was not able to survive at this location and the Lawrence market does not seem to have a pent up demand for more dry cleaners."

The subject property is currently zoned for a Planned Commercial Development which permits a mix of retail, office and residential uses. The property is developed with these uses; therefore, the property is suited for the uses to which it is restricted with the PCD zoning. The property is also well suited for the uses permitted under the CN2 Zoning, as it is the current zoning designation for a Neighborhood Commercial Center and the permitted uses in both districts are quite similar. (Table 1, Attachment A)

Staff Finding –The property is well suited for the uses it is restricted to under the PCD zoning as well as the proposed CN2 Zoning, as the property is developed with commercial uses which are permitted in both zoning districts.

6. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

Applicant's Response:

"May 2008 Pride Cleaner vacated Suite 'A' (2 years 7 months)"

Staff Finding – The subject property, Lot 1B, Monterey No 7 Addition, is developed with a retail center. Planning files indicate that a revised preliminary and final development plan for the Center was submitted in 1995 so it is clear that it has been developed since that time. Suite A has been vacant for over 2 years; however, the rezoning would apply not only to Suite A, but all of Lot B, approximately 3.5 acres.

7. EXTENT TO WHICH APPROVING THE REZONING WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES

Applicant's Response:

"The neighboring properties should benefit from this change by extending a service that is in demand within the service area but not presently available. It would also allow limited flexibility of other services that could be offered to the surrounding neighborhood in the future."

The rezoning is being requested to allow the conversion of an existing drive-up facility which previously served a dry cleaning business into a drive-up facility for a fast order restaurant. This rezoning would make it possible to develop other restaurants with drive-thrus on the lot; however, negative impacts of any additional drive-thru use would be evaluated and minimized through the Special Use Permit process.

Table 1, Attachment A lists the uses which are permitted on the subject property under the current zoning and those which would be permitted under the CN2 Zoning. The permitted uses are very similar with the following differences:

- A fast order food with drive-in is permitted under the CN2 Zoning with Special Use Permit approval but is prohibited under the current zoning.
- Different types of community facilities are permitted in each zoning.
 - 'Halfway house', 'rehabilitation', 'government health center' and 'institutions for children and the aged' are permitted under the current zoning with a Special Use Permit.
 - 'Temporary shelter' and 'community meal program' are permitted in the CN2 Zoning with a Special Use Permit.
- A laboratory is permitted in the current zoning, but is not a permitted use in the CN2 District.
- Public safety (police), mixed media and crop agriculture are permitted uses in the CN2 District but are not permitted in the current zoning.

Given the similarity of permitted uses, the rezoning should have no detrimental impact on nearby properties.

Staff Finding – The rezoning should have no negative impact upon nearby properties due to the similarity of permitted uses between the current and proposed zoning districts and the fact that a fast order food with drive-in, and other uses which could have an impact on nearby properties, would require additional review and approval through a Special Use Permit.

8. THE GAIN, IF ANY, TO THE PUBLIC HEALTH, SAFETY AND WELFARE DUE TO THE DENIAL OF THE APPLICATION, AS COMPARED TO THE HARDSHIP IMPOSED UPON THE LANDOWNER, IF ANY, AS A RESULT OF DENIAL OF THE APPLICATION

Applicant's Response:

"The status quo would remain if the zoning change were allowed due to the fact that the type of use would not be substantially different than what previously occupied this space. The hardship would be that the present zoning is so limiting in what this space can be used for that it could very well remain vacant for an indefinite period of time or under-utilized for improvements that have been approved and installed."

Evaluation of this criterion includes weighing the benefits to the public versus the hardship imposed on the owners of the subject property if the rezoning were denied. Benefits are measured based on anticipated impacts of the rezoning request on the public health, safety, and welfare.

Denial of a rezoning request could benefit the public by maintaining the nature of the development. In this case the nature of the development would be maintained by the similarity of permitted uses between the current and the proposed zoning districts. If the rezoning request is denied, it is possible that the retail space may remain vacant. Other drive-thrus similar to the dry cleaner, such as a pharmacy drive-thru would be permitted in this zoning district; however, the predominate use for a drive-thru is fast order food.

Approval of this request will allow a retail space to be reused, after a vacancy period of over 2.5 years. Approval of the request will add a drive-thru component to the commercial development on this lot. A Special Use Permit is required in the CN2 District for any fast order food with drive-in, so there would be an opportunity for a public hearing to evaluate any negative impacts associated with additional restaurant drive-in uses.

Staff Finding – The approval of the rezoning could benefit the public by allowing the reuse of a commercial space. The denial of the rezoning request would have minimal impact on the public health, safety, and welfare.

9. PROFESSIONAL STAFF RECOMMENDATION

Rezoning of Lot 1B, Monterey No 7 Addition from the PCD [Monterey Center] zoning to the CN2 zoning is being requested to allow a fast order restaurant to utilize an existing drive-up facility. A Special Use Permit is required for this drive-thru use and the applicant indicated that the window will be restricted to pick-up only, so there will be no speaker or order box. This restriction will maintain the character of the drive-up facility from the previous use. With the rezoning to the CN2 District, a fast order food with drive-thru is possible but requires a public hearing and approval of a Special Use Permit. This process ensures the compatibility of the current proposal and any future proposed drive-thru uses with the surrounding area.

STAFF RECOMMENDATION: Staff recommends approval of the request to rezone approximately 3.5 acres from PCD-[Monterey Center] District to CN2 (Neighborhood Commercial Center) District based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval contingent upon the consent of the property owner of the remainder of the Planned Development, Heartland Pantry.



Figure 1A Property included within this rezoning request, Lot 1B Monterey Addition No 7, outlined in red.

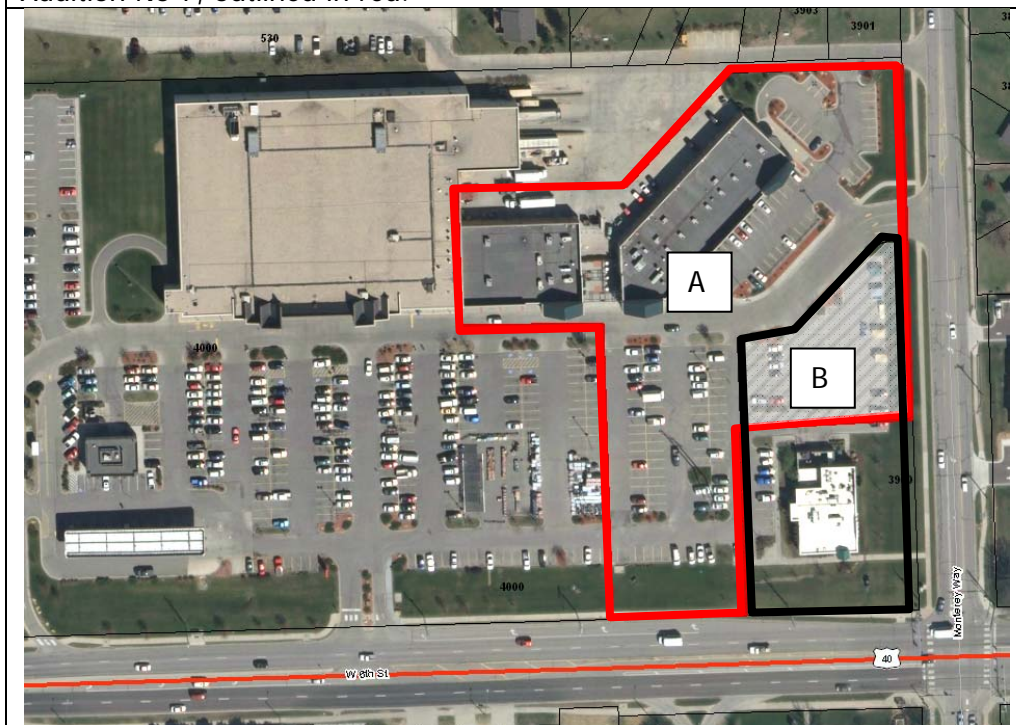


Figure 1B Lot 1B has been divided into a parcel (labeled as A) and the remaining property (highlighted and labeled as B) was added to Lot 2 Monterey Addition No 7 to create a larger parcel. These parcels, A and B, are under the same ownership.

Table 1. Comparison of permitted uses under current and proposed zoning districts.	
PCD-[Monterey Center] Pre-2006 Zoning Designation PCD-1	CN2
SIMILAR USES PERMITTED IN BOTH DISTRICTS	
Residential dwelling units Attached, detached or mixed	Residential Multi-Dwelling Structures Non-Ground Floor Dwelling; Work/Live Unit Group Home General (SUP)
Adaptive reuse (SUP)	Adaptive reuse (SUP)
Communication towers (SUP)	Communication towers (SUP)
Art Gallery , Library, museum	Cultural Center/Library
Cemetery, Mausoleum , Mortuary	Cemetery, Funeral and interment
Child care	Day Care
Church or Institution of Religious Training	Religious Assembly
Club or Lodge	Lodge (SUP)
School	College/School
Public Utilities (SUP)	Minor Utility, Major Utility (SUP)
Medical Offices	Health Care Office (SUP) Outpatient Care Facility Extended Care, General (SUP) Extended Care, Limited
Professional and Governmental Offices Financial Institutions, Loan Office, Photographic Studio	Administrative and Professional Offices Financial, Insurance and Real Estate Offices; Other Offices
Veterinarian office and incidental boarding	Pet Sales and Grooming, Veterinarian Office
ATM	ATM
Post Office Branch	Postal service
Studio for professional work or teaching of fine arts	Personal Improvement
Food store, not including 24 hr convenience store	Food and Beverage
Hair Care Establishment, Dry Cleaning , Laundry-Self Serve	Personal Convenience
Restaurant, not including one with drive-up facilities or service to automobiles	Fast Order Food Private Dining Establishment, Quality Restaurant
Shoe Repair, Bicycle Sales, rental, repair	Repair Service, Consumer
Reverse Vending Machine (recycling) Small Collection Facilities (recycling)	Small Collection (Recycling)
Retail stores and service establishment General Retail Sales including Department Store, Drug Store, Pawn Shop, Variety Store and Retail Baker, Copy Center	Retail Sales, General Retail Establishment, Medium Retail Establishment, Specialty
Licensed premises Liquor, wine and beer sales, for consumption off the premises	Accessory Bar Brewpub
Radio and Television or Recording Studio	Communication Service Establishment
Professional cleaning services	Building Maintenance, Business Equipment
Secretarial Service , Personnel Services Telephone answering service	Business Support
Theatre, live; Bowling Alley; Community Building Golf Course	Entertainment and Spectator Sports; Indoor Sports/Recreation Active Recreation
Automobile service stations Food convenience store, including gasoline sales and single- bay auto wash	Cleaning/ car wash (SUP) Gas and Fuel Sales (SUP) Light Equipment Repair (SUP) Light Equipment Sales/Rental

DIFFERENT USES PERMITTED IN EACH DISTRICT	
Halfway house/rehabilitation (SUP)	---
Health center, government (SUP)	
Institution for children and aged (SUP)	
Laboratory	---
---	Fast Order Food with Drive-In (SUP)
---	Temporary Shelter (SUP/A)
---	Social Service Agency
---	Community Meal Program (SUP/A)
---	Public Safety
---	Mixed Media Store
---	Crop Agriculture