

## ZONING COMMITTEE STAFF REPORT

1. **FILE NAME:** Dairy Queen **FILE #:** 13-143-806
  2. **APPLICANT:** Craig Thaemert/Maureen Herring **HEARING DATE:** January 31, 2013
  3. **TYPE OF APPLICATION:** Rezoning
  4. **LOCATION:** 1537 White Bear Ave N, between Hoyt & Montana
  5. **PIN & LEGAL DESCRIPTION:** 222922140019, 222922140020; J A Humphreys Subdivision A, Lots 28 29 And Lot 30 Blk 1
  6. **PLANNING DISTRICT:** 2 **EXISTING ZONING:** B2
  7. **ZONING CODE REFERENCE:** §66.300; §67.500; §61.801(b)
  8. **STAFF REPORT DATE:** January 24, 2013 **BY:** Bill Dermody
  9. **DATE RECEIVED:** January 9, 2013 **60-DAY DEADLINE FOR ACTION:** March 10, 2013
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- A. **PURPOSE:** Rezoning from B2 Community Business to T2 Traditional Neighborhood.
- B. **PARCEL SIZE:** 123 ft. (White Bear Ave.) x 118 ft. (Montana Ave.), totaling 14,564 sq. ft.
- C. **EXISTING LAND USE:** C-Restaurant-Fast Food
- D. **SURROUNDING LAND USE:** North and south along White Bear Avenue are a variety of commercial uses (B2), including retail and gas station. To the west is an apartment property (RM2) with a residential building on its western portion and a single-level parking garage for residents on its eastern portion. Beyond the apartments to the west are single-family houses (R3).
- E. **ZONING CODE CITATION:** §66.300 details the intent and regulations for the T2 district; §67.500 details the provisions of the Hillcrest Village Overlay District; §61.801(b) provides for changes to the zoning of property initiated by the property owner.
- F. **HISTORY/DISCUSSION:** The site was developed for the restaurant use prior to 1953. It has been zoned B2 since 1975. In 2010, the Hillcrest Village Overlay District was created and it includes the subject property. An application for a conditional use permit (File #13-143-820) accompanies this request.
- G. **DISTRICT COUNCIL RECOMMENDATION:** District 2 has provided a letter of support for the rezoning, which is among the attachments.
- H. **FINDINGS:**
  1. The application requests rezoning from B2 to T2 in order to allow for consideration of a drive-through addition to the existing restaurant. The restaurant meets the definition of a fast-food restaurant in §65.616 and is a legal nonconforming use in the B2 district. The drive-through is prohibited in B2. Both the fast-food restaurant and the drive-through can be considered through a conditional use permit in T2.
  2. The proposed zoning is consistent with the way this area has developed. The T2 district allows most, but not all of the commercial uses prevalent along White Bear Avenue. The T2 district also allows residential uses that would not be inconsistent with the surrounding area, which is predominantly residential to the west.
  3. The property is located within the Hillcrest Village Overlay District (HVOD). The HVOD prohibits certain uses including auto service stations, auto repair facilities, pawn shops, and currency exchange businesses. The HVOD is unaffected by the proposed rezoning.
  4. The proposed zoning is consistent with the Comprehensive Plan, which designates the property as being part of a Mixed Use Corridor, as shown in the Generalized 2030 Future Land Use Map (Figure LU-B). The property is also on the edge of a Neighborhood Center, as designated by the Comprehensive Plan. Both the Mixed Use

Corridor and Neighborhood Center designations call for a mix of uses, such as those allowed in T2. The District 2 Plan has no provisions specific to this site.

5. The proposed zoning is compatible with the surrounding uses, including commercial uses to the north and south along White Bear Avenue and residential uses to the west.
6. Court rulings have determined that "spot zoning" is illegal in Minnesota. Minnesota courts have stated that this term "*applies to zoning changes, typically limited to small plots of land, which establish a use classification inconsistent with the surrounding uses and create an island of nonconforming use within a larger zoned property.*" The proposed zoning is not "spot zoning" because it allows uses consistent with the adjacent B2 uses along White Bear Avenue and provides a potential transition between the commercial uses and residential uses to the west.

- I. **STAFF RECOMMENDATION:** Based on the above findings, staff recommends approval of the rezoning from B2 Community Business to T2 Traditional Neighborhood.



