



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 11/09/2022

ITEM NO: 4

DATE: November 4, 2022

TO: Planning Commission

FROM: Joel Paulson, Community Development Director

SUBJECT: Requesting Approval of a Variance to Allow a Drive-Thru Use at an Existing Restaurant (McDonald's) and Modification to a Conditional Use Permit for a Drive-Thru Restaurant on Property Zoned CH. **Located at 15475 Los Gatos Boulevard.** APN 424-19-065. Variance Application V-21-001 and Conditional Use Permit Application U-21-005. PROPERTY OWNER: Franchise Realty Interstate Corporation. APPLICANT: Mike Yao, Core States Group. PROJECT PLANNER: Erin Walters.

RECOMMENDATION:

Denial.

PROJECT DATA:

General Plan Designation: Mixed Use Commercial

Zoning Designation: Restricted Commercial Highway - CH

Applicable Plans & Standards: General Plan, Zoning Code

Parcel Size: 1.3 acres

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Medical Office and Office	Mixed Use Commercial	CH
South	Commercial	Mixed Use Commercial	CH
East	Commercial	Mixed Use Commercial	CH
West	Commercial	Mixed Use Commercial	CH

PREPARED BY: ERIN WALTERS
Associate Planner

Reviewed by: Planning Manager and Community Development Director

CEQA:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15301: Existing Facilities.

FINDINGS:

- The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15301: Existing Facilities.
- As required by Section 29.20.170 of the Town Code for granting a Variance application.
- As required by Section 29.20.190 of the Town Code for granting a Conditional Use Permit.

ACTION:

The decision of the Planning Commission is final unless appealed within ten days.

BACKGROUND:

The subject property is located on the west side of Los Gatos Boulevard, south of Gateway Drive, and north of Los Gatos-Almaden Road (Exhibit 1).

On August 1, 1977, the Town Council adopted Ordinance 1363, adding a section to the Town Code prohibiting specific uses in all zones, including drive-in restaurant uses, which is defined as, “a restaurant where food or beverages are sold to be eaten in vehicles whether on or off the premises or are delivered directly to the occupants of vehicles.”

On December 15, 1976, the Town Architecture and Site Committee approved Conditional Use Permit (CUP) applications U-76-18 and U-76-18A to allow a restaurant use (McDonald’s) with the sale of packaged foods and non-alcoholic beverages for consumption on- and off-site (Exhibit 5).

On June 2, 1983, the Planning Commission approved CUP application U-83-14 to allow the operation of an existing restaurant with take-out food service, drive-thru window, and approval for exterior rehabilitation of an existing Jack-in-the-Box restaurant located at 15771 Los Gatos Boulevard (Exhibit 6). This is currently the Town’s only drive-thru restaurant.

On December 12, 1984, the Planning Commission denied CUP application U-76-18B requesting approval of plans to modify the use of an existing restaurant (McDonald’s) to include drive-thru food service and to make exterior modifications to the building to accommodate this change of use. Public testimony expressed concerns regarding potential air pollution from idling cars,

BACKGROUND (continued):

traffic congestion, and noise pollution. A member of the public expressed support of the proposed drive-thru to increase accessibility for people with disabilities.

On December 9, 2020, the Conceptual Development Advisory Committee (CDAC) considered a request by the subject applicant for preliminary review of a proposal for a Variance to allow a drive-in (thru) use at the existing fast-food restaurant (McDonald's) on the subject site (Exhibit 7). A summary of the CDAC meeting and the applicant's response to comments are provided in a later section of this report.

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is located on the west side of Los Gatos Boulevard, south of Gateway Drive, and north of Los Gatos-Almaden Road (Exhibit 1). The 1.3-acre site is currently developed with an existing one-story fast-food restaurant (McDonald's), which has been in operation since 1976. The property abuts commercial properties to the north, west, south, and across Los Gatos Boulevard to the east.

B. Project Summary

The applicant is requesting approval of a Variance application to allow a prohibited use, a drive-thru restaurant, and requesting approval of a modification to a Conditional Use Permit for a drive-thru restaurant use. The project includes adding a single drive-thru lane to the existing restaurant's parking lot, the addition of an order canopy with built in speaker box, and an outdoor digital menu board. In addition, the project includes minor window and door modifications to the existing building to accommodate the drive-thru, and restriping and minor reconfiguration of the existing parking lot.

C. Zoning Compliance

The proposed drive-thru restaurant use is a prohibited use in all zones pursuant to Town Code Section 29.10.045 (b).

DISCUSSION:

A. Project Summary

The applicant proposes to add a single drive-thru lane; associated menu board and intercom; and pick up window to an existing 4,267-square foot fast-food restaurant building and parking lot. New order

DISCUSSION (continued):

and pick-up windows are proposed to be installed on the front (east) elevation of the existing building. The front door is proposed to be relocated to the north elevation. The proposed minor window and door changes do not significantly modify the building's exterior. Parking stalls at the front of the building are proposed to be reconfigured to accommodate the drive-thru lane. The parking lot will be restriped and the landscape areas adjacent to the proposed drive-thru lane will be enhanced. No additional square footage is proposed for the existing building. The proposed parking meets Town Code requirements.

The applicant proposes to modify general business hours (dining and drive-thru) to the following (Condition of Approval 5, Exhibit 4):

Existing Business Hours	Proposed Business Hours
Monday through Friday – 7 a.m. to 11 p.m. Weekends – 7 a.m. to midnight	Monday through Thursday – 6 a.m. to 10 p.m. Friday – 6 a.m. to 11 p.m. Saturday – 7 a.m. to 11 p.m. Sunday – 7 a.m. to 10 p.m.

The applicant has provided a Project Description and Letter of Justification (Exhibit 8), Site Photographs (Exhibit 9), and Development Plans (Exhibit 17).

B. Conceptual Development Advisory Committee

The CDAC considered a request by the subject applicant for preliminary review of a proposal for a Variance to allow a drive-in (thru) use at the existing fast-food restaurant (McDonald's) on the subject site on December 9, 2020. Meeting minutes are included in Exhibit 7. The applicant's responses to CDAC's comments are included in Exhibit 8. At that meeting the CDAC discussed numerous items, including the following (underlined). A summary of the applicant's responses are provided in italics below:

- Reduce the volume of the outdoor menu speaker.
Applicant Response: The volume of the outdoor menu speaker can be manually adjusted to meet required noise levels.
 Staff Note: Condition of Approval 7 has been included in the Conditional Use Permit Conditions of Approval to set the outdoor menu speaker to meet the Town's noise level requirements (Exhibit 4).
- Provide screening between business and residential uses to reduce the noise from the outdoor menu speaker.
Applicant Response: Landscape screening is proposed to reduce noise from the outdoor menu speaker, see Sheet L1.0, Exhibit 17. The site is not adjacent to residential uses.

DISCUSSION (continued):

Sheet EX-1, Exhibit 17 provides a diagram showing the distance to neighboring residential uses.

- The existing ordinance prohibits drive-thru, but there is a current demand for contactless food service.
Applicant Response: The applicant's letter of justification describes the demand for contactless ordering and food service due to the on-going pandemic. The applicant's letter also describes the need to provide service for a diverse customer population including people with disabilities, illnesses and customers with different family status, job status, and socio-economic backgrounds (Exhibit 8).
- Need more information on how the use affects traffic.
*Applicant Response: A Drive-Thru Queue Analysis and Traffic Impact Analysis have been prepared and peer reviewed by the Town's Traffic consultants (Exhibit 12 and 11).
Staff Note: See Traffic discussion provided in a later section of this report.*

C. Variance

The applicant is requesting a Variance from Town Code Section 29.10.045 (b) to allow a drive-thru restaurant use where the Town Code strictly prohibits the use in all zones.

As required by Section 29.20.170 of the Town Code, the deciding body, on the basis of the evidence submitted at the hearing, may grant a variance if it finds that:

1. Because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this ordinance deprives such property of privileges enjoyed by other properties in the vicinity and under identical zone; and
2. The granting of a variance would not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone which such property is situated.

The applicant has provided the following justifications for the required Variance findings (Exhibit 8):

1. In regard to the first finding, McDonald's property is situated in a commercial zone, specifically within the CH Zone or Restricted Highway Commercial Zone, which is far from residential uses and is surrounded by similar commercial establishments. McDonald's is deprived of privileges that other properties in the same zone are enjoying. McDonald's customers do not have the same access to convenience and

DISCUSSION (continued):

safety that Jack-in-the Box offers its customers because the latter has an existing drive-thru. McDonald's is deprived of serving diverse members of the public who would benefit from ordering food from a drive-thru. Some of these people include handicapped persons who may prefer not to leave their vehicles to order food and parents who would rather grab food on the go than dining inside with their children.

2. In regard to finding two, granting of a Variance would not constitute a grant of special privileges inconsistent with the limitations upon other business in the same vicinity and zone because Jack-in-the-Box, another restaurant in the same zone (CH-Restricted Commercial Highway) currently has an approved drive-thru.

D. Conditional Use Permit

The existing restaurant has an approved CUP (U-76-18 and U-76-18A) to allow a restaurant use (McDonald's) with the sale of packaged foods and non-alcoholic beverages for consumption on- and off-site (Exhibit 5). The applicant proposes to modify the CUP to allow the proposed drive-thru restaurant use with modified business hours (Exhibit 8).

In order to grant approval of a CUP for the proposed drive-thru restaurant project, the deciding body must make the following findings:

1. The proposed use of the property is essential or desirable to the public convenience or welfare;
2. The proposed use will not impair the integrity and character of the zone;
3. The proposed use would not be detrimental to public health, safety, or general welfare; and
4. The proposed use of the property is in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code.

The applicant has provided the following justifications for the required CUP findings (Exhibit 8):

1. In regard to the first finding, the proposed drive-thru is desirable to the public convenience because it makes ordering food quicker than ordering or dining inside the restaurant. Customers do not have to park their vehicles and walk into the restaurant if they do not intend to dine in.
2. As required by finding two, the proposed drive-thru will not impair the integrity of the zone which already has other similar types of commercial establishments, restaurants, and retail businesses. A drive-thru use is already existing and approved for Jack-in-the-Box, which is located in the same zone, CH – Restricted Commercial Highway.

DISCUSSION (continued):

3. In regard to the third finding, the proposed use would not be detrimental to public health, safety, or general welfare because it promotes a healthier, safer, and more efficient way of ordering food. The drive-thru allows handicap persons to buy food without leaving their vehicles. Customers do not have to be in an enclosed space with other people while ordering in a drive-thru, reducing the risk of potentially being exposed to viruses like Covid-19 and its variants.
4. In regard to the final finding, the proposed use is not in conformance with the Town Code and General Plan therefore a variance is being requested.

E. Parking and Circulation

The existing site is currently developed with a 4,267-square foot commercial building, with a total of 92 parking spaces. Pursuant to Section 29.10.150 (c)(9) of the Town Code, restaurants outside of the downtown require one parking space for each 235 square feet of gross floor area. The existing restaurant requires a total of 19 parking spaces. The proposed parking lot reconfiguration to accommodate the drive thru lane and circulation will reduce the parking to a total of 77 parking spaces, a reduction of 15 parking spaces. The proposed number of parking spaces exceed the Town Code's parking requirements. The proposed single drive-thru lane will be oriented on the south and east side of the existing building (Exhibit 17). The parking lot will be restriped.

F. Traffic and Public Improvements

Traffic Impact Analysis

A Traffic Impact Analysis was prepared for the subject site by the applicant's Traffic Engineering and Transportation Planning Consultant, TJW (Attachment B, Exhibit 10). The Town's Traffic Consultant, TJKM, peer reviewed the document (Exhibit 11). Based on the Institute of Transportation Engineers (ITE) Trip Generation, 10th Edition and the proposed addition of a drive-thru window, the drive-thru lane will attract more customers. The biggest increase is in the morning peak hours during which there is a 60 percent increase in trips. There will be about 64 more peak hour trips in the morning, which results from 32 vehicles arriving and leaving the site. Based on the large data base of ITE statistics, half of the trips are made by vehicles already driving on the street, categorizing them as pass-by trips. The Town's Traffic Consultant states, that it could be argued that passby percentages would be even higher than the ITE-quoted 50 percent, making the net trips noted in the table conservatively high. The report states that it is not expected that significant traffic issues will be created by the additional traffic generated by the drive-thru at the proposed site.

DISCUSSION (continued):

Traffic Impact Fees

Per Town Policy "All Projects that generate one or more new Average Daily Trips are required to pay Transportation Impact Fees, previously known as Traffic Impact Mitigation Fees. Fees shall be calculated by multiplying net new ADT by the per trip amount in place at the time the fees are paid."

The addition of a drive-thru window will generate an additional 532 daily trips with the 50 percent reduction for pass-by trips resulting in a net increase in daily trips of 266 in accordance with ITE.

Condition of Approval 24 (Exhibit 3), requires that prior to the issuance of any building permits, the Owner/Applicant shall pay traffic impact fees for transportation improvements. The final traffic impact mitigation fee for this project shall be calculated from the final plans using the current fee schedule and rate schedule in effect at the time, using a comparison between the existing and proposed uses. Based on current fees, the estimated Traffic Impact Mitigation Fees are estimated to be \$269,990.00.

Drive-Thru Queue Analysis

A Drive-Thru Queue Analysis was prepared for the subject site by the applicant's Traffic Engineering and Transportation Planning Consultant, TJW (Exhibit 12). The Town's Traffic Consultant, TJKM, peer reviewed the document and concluded that provisions for queuing at the proposed drive-thru lane are very satisfactory and will not impact surrounding businesses (Exhibit 11).

Vehicle Miles Traveled

The Town's Traffic Consultant states that the proposed addition of the drive-thru lane at the existing restaurant can be classified as local serving retail project, which technically does not create new trips or Vehicle Miles Traveled (VMT) in the urban setting, but redistributes existing traffic. The Town's Traffic Consultant concluded that this project has no significant VMT impacts (Exhibit 11). Although, the Town's Traffic Consultant's statement appears to contradict what both consultants stated regarding new average daily trips in accordance with ITE, as noted above, the consultant is saying no new trips should be factored in for the VMT analysis because it is a local serving retail project. In other words, the proposed project will generate new trips, but they will come from the local area and not create a significant VMT impact.

G. Air Quality, Energy, and Greenhouse Gases

An Emissions Modeling, Air Quality, Energy, and Greenhouse Gases Determination was prepared by the Town's Environmental Consultant, EMC Planning Group Inc., for the proposed project (Exhibit 13). The results of these analyses found that the operational

DISCUSSION (continued):

criteria pollutants would be reduced by the addition of the drive-thru lane and will have no significant impacts related to regional air quality or greenhouse gasses, and will have essentially the same energy demand.

H. Noise

An Environmental Noise Assessment was prepared by the Town's Acoustic Sub-Consultant, WJV Acoustics, to determine if significant noise impacts will be produced by the proposed project and describe mitigation measures for noise impacts (Attachment C, Exhibit 10). The assessment evaluated the proposed project, drive-thru intercom system, and Drive-Thru Queue Analysis and Traffic Impact Analysis prepared by TJW Engineering.

The proposed drive-thru intercom system provides an adjustable noise level at the speaker system (Exhibit 16). Condition of Approval 7 has been included in the Conditional Use Permit Conditions of Approval to set the outdoor menu speaker to meet the Town's noise level requirements (Exhibit 4).

Traffic noise exposure along Los Gatos Boulevard, in the vicinity of the project site, was calculated for both background conditions and background plus proposed project conditions. The project would not be expected to result in any increases in traffic noise exposure along Los Gatos Boulevard, in the vicinity of the project.

I. Tree Impacts

An arborist report was prepared by the Town's Consulting Arborist, Monarch Consulting Arborists, LLC, noting that the site has a total of 46 trees of nine different species (Attachment D, Exhibit 10). Of the 46 trees onsite, 20 trees are in good condition, 22 trees in fair condition, one in poor condition, one in very poor condition, and two coast redwoods are dead. The project proposes the removal of the two dead coast redwood trees (#489 and #491). The applicant proposes a total of nine replacement trees including six trees located on the northern edge of the property to provide additional landscape/noise buffer between the proposed drive-thru lane and intercom system and the adjacent commercial site (Sheet, L1.0, Exhibit 17).

J. General Plan

The 2020 General Plan Land Use designation for the site is Mixed Commercial Use Commercial. The Mixed Use Commercial designation permits a mixture of retail, office, and residential in a mixed-use project, along with lodging, service, auto-related businesses, non-manufacturing industrial uses, recreational uses, and restaurants. Projects developed under this designation shall maintain the smalltown, residential scale and natural environments of

DISCUSSION (continued):

adjacent residential neighborhoods, as well as provide prime orientation to arterial street frontages and proper transitions and buffers to adjacent residential properties.

Applicable goals and policies of the 2020 General Plan Land Use Element include, but are not limited to the following:

- Goal LU-9 - To provide residents with adequate commercial and industrial services.
- Policy LU-9.2 - Maintain a variety of commercial uses, including a strong Downtown commercial area combined with Los Gatos Boulevard and strong neighborhood commercial centers to meet the shopping needs of residents and to preserve the small-town atmosphere.
- Goal LU-13 - To promote appropriate and compatible development along Los Gatos Boulevard that complements the whole Town and serves residents and families.
- Policy LU-13.2 - Commercial activity along Los Gatos Boulevard shall complement the whole Town and shall provide a dependable source of income, employment opportunities, goods, and services.

K. CEQA Determination

The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act (CEQA), Section 15301, Existing Facilities. A memorandum providing information as to how the project is categorically exempt from CEQA was prepared by the Town's Environmental Consultant, EMC Planning Group Inc. (Exhibit 10). As part of the memorandum, technical documents regarding the project's Traffic Impact Analysis, Environmental Noise Assessment, and Arborist Report were prepared and are attached (Attachments B, C, and D, Exhibit 10). In the evaluation of the technical documents, it was determined that with conditions of approval there would be no significant impacts as a result of the proposed project.

PUBLIC COMMENTS:

The applicant provided a summary of their efforts to communicate with adjacent tenants and property owners and provided signed petitions of support (Exhibit 14 and Exhibit 15). The applicant has summarized that a total of 2,619 signatures of customer support were collected between August 2021 and October 2022 with 1,390 people indicating they live in the Town of Los Gatos. Six neighboring residents canvased stated they supported the proposed drive-thru. In contrast, six residents indicated they were opposed to the proposed project due to concerns regarding idling vehicles, pollution, and noise issues.

Written notice was sent to property owners and tenants within 300 feet of the subject property. At time of preparation of this report, no public comment has been received.

CONCLUSION:

A. Summary

The applicant is requesting approval of a Variance application to allow a prohibited use, a drive-thru restaurant, and requesting approval of a modification to a CUP for a drive-thru restaurant use with modified hours of operation. The project includes adding a single drive-thru lane to the existing restaurant's parking lot, intercom system, and an outdoor digital menu board. In addition, the project includes minor window and door modifications to the existing building to accommodate the drive-thru, restriping, minor reconfiguration of the existing parking lot, and landscaping.

The technical reports provide that the proposed project would not result in a significant impact to air quality, energy, or greenhouse gases. The project would not be expected to result in any increases in traffic noise exposure along Los Gatos Boulevard, in the vicinity of the project. The noise impacts can be mitigated by a condition of approval requiring the volume level on the intercom system to meet Town Code noise level requirements. The Traffic Impact Analysis states that traffic generated by the drive-thru at the proposed site will create any significant traffic issues. The Town's Traffic Consultant concluded that provisions for queuing at the proposed drive-thru lane is very satisfactory and the site size can accommodate the proposal and that this project has no significant VMT impacts.

The proposed drive-thru restaurant use is a prohibited use in all zones pursuant to Town Code Section 29.10.045 (b).

B. Recommendation

Based on the analysis above, staff recommends denial of the Variance application and Conditional Use Permit application as the proposed drive-thru restaurant use is a prohibited use in all zones pursuant to Town Code Section 29.10.045 (b), as discussed in this report.

CONCLUSION (continued):

C. Alternatives

Alternatively, the Commission can:

1. Approve the applications by taking the following actions:
 - a. Make the findings that the proposed project is Categorically Exempt, pursuant to the adopted Guidelines for the implementation of the California Environmental Quality Act, Section 15301: Existing Facilities (Exhibit 2);
 - b. Make the required findings as required by Section 29.20.170 of the Town Code for granting a Variance (Exhibit 2);
 - c. Make the findings as required by Section 29.20.190 of the Town Code for granting approval of a CUP (Exhibit 2); and
 - d. Approve Variance Application V-21-001, and Conditional Use Permit Application U-21-005 with the conditions contained in Exhibits 3 and 4 and the development plans in Exhibit 17.
2. Approve the applications with additional and/or modified conditions; or
3. Continue to the matter to a date certain with specific direction.

EXHIBITS:

1. Location Map
2. Required Findings
3. Recommended Conditions of Approval – Variance
4. Recommended Conditions of Approval – Conditional Use Permit
5. Existing Conditional Use Permit – U-76-18A and B
6. Existing Conditional Use Permit – U-83-14 - Jack-in-the-Box
7. December 9, 2020, Conceptual Development Advisory Committee Meeting Minutes
8. Applicant's Project Description and Letter of Justification, received January 14, 2022
9. Site Photographs
10. Environmental Consultant's CEQA Categorical Exemption Memorandum and Technical Reports
11. Town's Traffic Peer Review, received June 8, 2021
12. Applicant's Drive-Through Queue Analysis, dated February 3, 2021
13. Environmental Consultant's Emissions Modeling, Air Quality, Energy and Greenhouse Gases Determination Memorandum
14. Summary of Applicant's Outreach, received October 6, 2022
15. Applicant's Additional Outreach, received October 28, 2022
16. Menu Board and Drive-Thru Canopy Details
17. Development Plans