

**CITY-COUNTY PLANNING BOARD
STAFF REPORT**

PETITION INFORMATION	
Docket #	W-3344
Staff	Gary Roberts, Jr. AICP
Petitioner(s)	Burger King Corporation #1283
Owner(s)	Same
Subject Property	PIN# 6835-67-9815
Address	510 North Martin Luther King Jr. Drive
Type of Request	General use rezoning from HB MLKO to HB
Proposal	<p>The petitioner is requesting to amend the Official Zoning Maps for the subject property from HB MLKO (Highway Business – Martin Luther King Overlay) to HB (Highway Business).</p> <p>NOTE: General, special use limited, and special use district zoning were discussed with the petitioner(s) who decided to pursue the rezoning as presented. With a General use, all uses in the District must be considered.</p>
Neighborhood Contact/Meeting	<p>The petitioner has submitted the following summary of their neighborhood outreach efforts:</p> <p>“On August 15, 2017, Carrols LLC representative, Tom Brogan, met with a number of neighboring property and business owners and designated City Officials. The meeting was coordinated through Councilman Montgomery’s office and attended by (including but not limited to) Evelyn Arcree (M&F Bank), Virginia Hardesty (Forsyth Seafood), Carol Davis (S.G. Atkins CDC), Pete Williams (M&F Bank), Drew Gerstmyer (neighboring property owner) and Carol Brooks (City of Winston-Salem).</p> <p>The project and requirements triggering the necessity for the zone change request were reviewed in detail. There were no objections to our request expressed by any attendee; to the contrary, by our estimates, all were in support.</p> <p>Respectfully submitted, Carrols LLC Thomas Brogan”</p>
Zoning District Purpose Statement	<p>The HB District is primarily intended to accommodate retail service and distributive uses. The district is established to provide locations for establishments which require high visibility and good road access, or which cater primarily to passing motorists. However, the district is not intended to encourage or accommodate strip commercial development. Developments in this district generally have substantial front setbacks. This district is intended for application in GMAs 2, 3 and 4.</p>

Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(R)	(R)(1) - Is the proposal consistent with the purpose statement(s) of the requested zoning district(s)?					
	The request is consistent with the proposed HB district purpose statement in that the site is currently zoned HB MLKO and it has high visibility due to its location at a major intersection.					
GENERAL SITE INFORMATION						
Location	Northwest corner of Martin Luther King Jr. Drive and Fifth Street					
Jurisdiction	City of Winston-Salem					
Ward(s)	East					
Site Acreage	± .8 acre					
Current Land Use	Currently, a Burger King restaurant with drive through service is located on the site.					
Surrounding Property Zoning and Use	Direction	Zoning District			Use	
	North	HB MLKO			Multiple business uses within the East Winston Shopping Center	
	East	RM18 MLKO			Apartments	
	South	RS7 MLKO			Automotive repair	
	West	HB MLKO			Office uses	
Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(R)	(R)(2) - Is/are the use(s) permitted under the proposed classification/request compatible with uses permitted on other properties in the vicinity?					
	Yes, the uses permitted in the proposed zoning are the same as the uses permitted within the existing zoning.					
Physical Characteristics	The developed site has a gentle to moderate slope downward toward the northeast. The northern portion of the site does sit several feet above the road grade from North Martin Luther King Jr. Drive and is bordered by an existing retaining wall.					
Proximity to Water and Sewer	Public water and sewer are available to the site.					
Stormwater/ Drainage	No known issues.					
Watershed and Overlay Districts	The site is not located within a water supply watershed. The site is located within the Martin Luther King Overlay District (MLKO).					
Analysis of General Site Information	The site appears to have no significant development constraints such as steep slopes, watersheds, or floodplains. The retaining wall along North Martin Luther King Jr. Drive could play a role in any future development/redevelopment of this site.					
RELEVANT ZONING HISTORIES						
Case	Request	Decision & Date	Direction from Site	Acreage	Recommendation	
					Staff	CCPB
W-3112	Multiple districts to MLK Overlay	Approved 10-3-2011	Included current site	30.96	Approval	Approval

W-3020	RM18 to PB-S	Approved 6-1-2009	200' northeast	1.75	Denial	Denial
SITE ACCESS AND TRANSPORTATION INFORMATION						
Street Name		Classification	Frontage	Average Daily Trip Count	Capacity at Level of Service D	
Martin Luther King Jr. Drive		Boulevard	240'	18,000	38,100	
Fifth Street		Minor Thoroughfare	130'	4,300	15,800	
Proposed Access Point(s)		Because this is a general use request, the exact location of access points is unknown. The site has public road frontage on Martin Luther King Jr. Drive and Fifth Street.				
Trip Generation - Existing/Proposed		No trip generation is available for the existing or proposed zonings as neither includes a site plan.				
Sidewalks		Sidewalks are located along both sides of all nearby streets.				
Transit		Routes 92, 94, 96, 100, and 105 serve the intersection of Martin Luther King Jr. Drive and Fifth Street.				
Analysis of Site Access and Transportation Information		The corner lot has frontage on a boulevard and a minor thoroughfare, both of which have extra capacity. The site is also well served with sidewalks and transit and is located within an area which experiences a high degree of pedestrian traffic.				
CONFORMITY TO PLANS AND PLANNING ISSUES						
Legacy 2030 Growth Management Area		Growth Management Area 1 - City Center				
Relevant Legacy 2030 Recommendations		<ul style="list-style-type: none">Promote a pedestrian-friendly orientation for new development and redevelopment and reduce the visual dominance of parking areas.Promote activity centers as compact, mixed-use areas supporting walking and transit use and providing services and employment close to residences.				
Relevant Area Plan(s)		East-Northeast Area Plan Update (2015)				
Area Plan Recommendations		<ul style="list-style-type: none">The subject property is recommended for commercial land use.The reuse and redevelopment of underutilized sites is recommended. <p>The site is located within the East Winston Activity Center. Recommendations include:</p> <ul style="list-style-type: none">Locate buildings closer to the street to create an interesting and inviting public/private streetscape and locate parking to the rear or side of building to de-emphasize vehicles.Create pedestrian-friendly character through the development/redevelopment of properties by making sure buildings and streets are designed for pedestrian comfort.				

	<ul style="list-style-type: none"> • Add street trees, wide sidewalks, street furniture, special paving areas, pedestrian lighting and planning areas. • Encourage more retail, office and entertainment developments to serve the existing neighborhoods and to attract more people from surrounding areas.
Site Located Along Growth Corridor?	The site is located along the Martin Luther King Jr. Growth Corridor.
Site Located within Activity Center?	The site is located within the East Winston Activity Center.
Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(R)	(R)(3) - Have changing conditions substantially affected the area in the petition?
	No
	(R)(4) - Is the requested action in conformance with <i>Legacy 2030</i>?
	No
Analysis of Conformity to Plans and Planning Issues	<p>The subject request is to rezone the site which is currently developed with a Burger King restaurant from HB MLKO to HB.</p> <p>In 2011, the S.G. Atkins CDC spearheaded the creation of the Martin Luther King Overlay. After many community meetings were held, the City Council approved this +/-31 acre area which extends along both sides of the street for approximately one half mile from US 421 northward to Cleveland Avenue. The purpose of the MLKO is to require that new development be of an “urban form and character” and “to prevent new suburban-style development while still allowing for creativity and flexibility in creating urban, pedestrian-oriented design opportunities in this area.” This effort was similar to the form-based code provisions of the Winston Overlay District which was adopted for portions of downtown in 2010.</p> <p>The Martin Luther King Overlay District contains standards pertaining to building setbacks including build-to lines to ensure that new buildings address the street rather than being placed behind parking lots. The standards also pertain to ground floor facade transparency, building entrances, signage, and landscaping for off-street parking (see Attachment B).</p> <p>The subject property is located in an area characterized by significant pedestrian traffic which is one of the reasons this section of Martin Luther King Jr. Drive was selected as a suitable area for pedestrian oriented development.</p> <p>The benefit of urban form (where buildings are pulled up to the street) is that it promotes pedestrian activity and interaction. One of the</p>

	<p>overarching themes of <i>Legacy 2030</i> is the promotion of pedestrian-friendly development. This is particularly the case in the City Center Growth Management Area.</p> <p>This site is also located within the East Winston Activity Center as designated by the 2015 <i>East-Northeast Area Plan Update</i>. One of the principal activity center recommendations of this recently adopted plan is to “locate buildings closer to the street to create an interesting and inviting public/private streetscape and locate parking to the rear or side of building...”.</p> <p>Additionally, the site is at a pivotal location in the new East End Master Plan, which is being funded by the City, administered by the S.G. Atkins CDC, and is being led by the consultant team of Ayers Saint Gross. The Master Plan effort is being done in order to position this area to take advantage of the urban economic growth that is being generated in the Wake Forest Innovation Quarter. Both Fifth Street and Martin Luther King Jr. Drive are being seen as key mixed-use, pedestrian oriented corridors connecting the East End area back to the Wake Forest Innovation Quarter and Winston-Salem State University.</p> <p>Staff sees no reason to remove the subject property from the MLKO. If this site is removed, it would set a precedent for the removal of other properties and raises the issue of whether such an overlay is still appropriate.</p> <p>Staff also notes that UDO-282 is a text amendment which is tracking in tandem with the subject rezoning request. This amendment would permit more flexibility for auto dependent uses while still retaining the objective of buildings being placed closer to the street.</p>
CONCLUSIONS TO ASSIST WITH RECOMMENDATION	
Positive Aspects of Proposal	Negative Aspects of Proposal
The request would permit more development flexibility on the subject property.	The request would allow development on the site which is not pedestrian oriented and not consistent with the purpose of the MLKO.
	The site is a highly visible corner lot. The manner in which this site may redevelop will influence the character of this portion of Martin Luther King Jr. Drive.
	The site is surrounded by properties which have the MLKO designation.
	The request could establish a precedent for other properties along this portion of Martin Luther King Jr. Drive to be removed from the MLKO designation.

STAFF RECOMMENDATION: Denial

NOTE: These are **staff comments** only; final recommendations on projects are made by the City-County Planning Board, with final decisions being made by the appropriate Elected Body, who may approve, deny, table or request modification for any project. **THE APPLICANT OR REPRESENTATIVE IS STRONGLY ENCOURAGED TO ATTEND THE PUBLIC HEARINGS WHERE THE CASE WILL BE CONSIDERED BY THE PLANNING BOARD AND THE ELECTED BODY.**

CITY-COUNTY PLANNING BOARD

PUBLIC HEARING

MINUTES FOR W-3344

SEPTEMBER 14, 2017

Gary Roberts presented the staff report.

PUBLIC HEARING

FOR:

Tom Brogan, 13 West Austin Street, Skaneateles, NY 13152

- I am the Director of Real Estate for Carrols LLC. We are the owner/operator of the Burger King restaurant. We acquired this facility in June 2012.
- As part of our revamping of approximately 500 restaurants, we did an internal evaluation of this restaurant. Also as part of that process we sent a professional out to do a site investigation report to understand what might need to happen for us to improve this property.
- After making some inquiries with the City, the City reached out to us to encourage us to invest in that neighborhood.
- We were encouraged to proceed with the project understanding that sometime in 2011 they instituted the Overlay District over the Highway Business district zoning which put further constraints on this property.
- This parcel has topography, shape, and geography issues.
- We worked with the City to see what we could and couldn't do with regard to the intent of the overlay.
- We determined that we cannot push the building up closer to the streets.
- We cannot continue as we are existing today.
- We were seeking to make significant improvements to the physical structure, the character of the property and the character of the neighborhood.
- Subsequently we've had several meetings with City officials and with neighbors and Council Member Montgomery.
- By our perspective it seemed to be very supportive and positive by everyone who attended our neighborhood meeting.
- To do this type of development you have to get ahead of things and spend some money preparing.
- There are so many shortcomings to this project that it's really not a candidate to reimage.
- If we're going to do it, we want to do it right.
- If there was a variance provision in the code, that's what we'd be looking at.

- We're trying to make a very significant improvement to the corridor and the neighborhood.
- CVS was able to pull their building up because their site is approximately two (2) acres while ours is 0.8 acre.
- A lot of things that are going on and aren't conducive to improving a neighborhood tend to decrease when we redo our restaurants.
- There has been discussion about leveling the site.
- The requirements under ADA today are pretty challenging.
- Putting lipstick on what is there wouldn't cure anything and wouldn't be worth the effort.
- This project is probably what stimulated the idea of making some allowances for variations in the Overlay District.
- We are 100% behind the Overlay and our intent would be to develop this in a similar manner to the elements already around us.
- We're totally transparent with the challenges and with possible solutions.
- We would honor what we said we would do.

Joycelyn Johnson, 2426 Edison Court, Winston-Salem, NC 27101

- I support this project as submitted. There needs to be some flexibility along the corridor.
- We need a place where people can come in, enjoy a meal without being in full view of pedestrians and vehicular traffic.
- The one thing we don't want to do is to increase the heat islands that are within the community.
- This brings the flexibility that we want to see in the community.
- There are businesses which are right on the street but it's because of the widening of Martin Luther King, Jr. Drive, not because they were built that way.
- Please support this because it does bring flexibility.
- Maybe we need to rethink the Overlay District so we can have true pedestrian interaction within the community.

AGAINST: None.

WORK SESSION

During discussion by the Planning Board, the following points were made:

The three main components of the overlay district are to have the building pulled up to within five (5) to ten (10) feet of the right-of-way, to have ground level transparency, and that there be some form of pedestrian entrance to the street, just to make it pedestrian friendly.

The vision for this area as presented by the S.G. Atkins Community Development Corporation a number of years ago was for an urban, pedestrian-oriented atmosphere. The Martin Luther King Overlay District is the mechanism to ensure that.

Although the Planning Board just recommended approval of UDO-282 which adds alternative compliance provisions for the Martin Luther King Overlay District, staff's recommendation would still have been for denial due to the request for general use zoning. General use zoning offers no protections for the area.

Most national franchises, including Burger King, have urban models. The issue is simply whether they are required to use them.

This is a general use rezoning. As such, conditions cannot be attached to it and site plan details cannot be considered.

In response to questions from the Board, Carol Davis, Executive Director of the Simon Green Atkins Community Development Corporation, 1922 S. Martin Luther King, Jr. Drive, Winston-Salem, NC 27107, made the following comments:

- It was our intent with the Overlay District to follow the vision that was set by the neighbors and neighborhood meetings that we had in 2011.
- We had numerous meetings, looked at different urban forms, and people voted in developing the vision for this corridor.
- Overwhelmingly people chose a more urban form, not the suburban model which shows a lot of parking right up against the street and the building sitting back. So we followed that vision. We looked at other communities. We looked at what was going on downtown. The people spoke and they asked that we consider relocating buildings up against the street so it would be pedestrian friendly.
- It was not our intent to discourage any new development. In fact I don't know of any new development that has been denied since this overlay has been in place.
- It has been slow going in terms of finding investors to put new businesses or new housing on the corridor, but we haven't turned anybody away.
- It is my hope that we can still find a way to create a site plan that works for everyone. I understand that a Planning staff person did do some kind of drawing, but I haven't seen it.
- We do want to see an improved Burger King. We think that would be a great signal to the community that Burger King wants to be a viable business in the neighborhood, that they appreciate the community, and the patronage of that business there.
- We want to see business investment in the corridor but at the same time we want to see some uniformity of design so any new businesses that come are aesthetically appealing, that it's in keeping with the pedestrian nature that is consistent with the vision that people have for the area.
- In response to a question by a Board member about how to make the proposal more pedestrian friendly, Ms. Davis stated that it would be nice for Burger King to make an outside area similar to the one CVS has. They could possibly create a pedestrian friendly corner with a nice bricked area and some benches. Perhaps there could be a patio and some seating outside that would come up to the curb.
- I do think staff had some suggestions that could work that would meet the spirit of the overlay.
- I don't want to gut the overlay. A lot of time and effort and thinking went into that, a lot of community meetings and expense. Those studies that we did that included community meetings were probably done mostly with City funds. The overlay sets a good standard and we should try to comply with it as much as possible.

- I hope with the alternative compliance provision that we could do something else.

The goal of the text amendment was to allow some wiggle room but also limit it because if you start allowing bays of parking there, then there is no sense in having the overlay. The idea of pedestrian oriented development is not just that you pedestrianize the sidewalk, but you pull the building closer so there can be more interaction of what is happening on the sidewalk and what is happening in the building.

Parking is not allowed on Fifth Street.

We have here a request to come out of the Overlay District. If the site does, it essentially does away with the Overlay District.

If the site does come out, everybody should consider the legitimacy of the Overlay District and consider eliminating it because there is no rationale for expecting anyone else to conform with those standards so you probably want to ask yourself the question, "do we even need the Overlay?"

The second issue here is that the request is for general use zoning so the site plan we saw doesn't mean anything. It could be any type of site plan. The other side of the coin is if we don't do that, you're not going to get your new Burger King. So that's what you need to consider.

The petitioner indicated he is not able to consider a continuance to come back with special use district zoning.

These pictures which have been shown cannot be considered since this is a general use district zoning.

MOTION: Allan Younger moved approval of the zoning petition.

SECOND: Chris Leak

VOTE:

FOR: Jason Grubbs, Tommy Hicks, Arnold King, Chris Leak, Brenda Smith, Allan Younger

AGAINST: George Bryan, Melynda Dunigan, Clarence Lambe

EXCUSED: None

A. Paul Norby, FAICP
Director of Planning and Development Services