

# City of Detroit

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**TO:** City Planning Commission

**FROM:** George A. Etheridge, Staff

**RE:** **Request of Paul Silveri on behalf of Kirby Holdings, LLC and the Detroit City Planning Commission to amend Article XVII, District Map No. 6 of the 2019 Detroit City Code, Chapter 50, Zoning, by showing an R5 (Medium Density Residential District) zoning classification where an R3 (Low Density Residential District) zoning classification currently exists on six (6) parcels, commonly identified as 399, 401, 425, 433, 443 and 457 E. Kirby Avenue, generally bounded by E. Ferry Street to the north, Beaubien Street to the east, E. Kirby Street to the south and Brush Street to the west. (RECOMMEND APPROVAL)**

**DATE:** November 16, 2020

## **RECOMMENDATION**

The City Planning Commission (CPC) staff has completed its review of the above-captioned request from Paul Silveri on behalf of Kirby Holdings, LLC, and the Detroit City Planning Commission to amend Article XVII, District Map No. 6 and recommends approval.

## **BACKGROUND AND PROPOSAL**

The proposed map amendment is being requested to allow for the establishment of "Retail sales and personal service in multiple-residential structures" at 457 E. Kirby, as provided for in Section 50-12-312 of this Code," more specifically, a "coffee shop," or "standard restaurant". The petitioner is looking to establish a "Doc's Ice Cream Shop" and gallery. Upon approval, this location would be the petitioner's second "Doc's Ice Cream Shop" location in the Metro Detroit area. The proposed retail use as well as the food and beverage service use would be permitted on a conditional basis in the proposed R5 zoning district.

399 E. Kirby through 443 E. Kirby is being recommended for rezoning by the City Planning Commission to bring the existing properties into conformance with the Master Plan of Policies designation of Medium Density Residential by changing the zoning classification from R3 (Low-Density Residential District) to R5 (Medium Density Residential District).

## **PUBLIC HEARING, COMMUNITY ENGAGEMENT & OTHER COMMUNITY MEETINGS**

On November 5, 2020, the City Planning Commission held a public hearing on the subject rezoning request. Six members of the public who were in attendance spoke to the matter. Four persons spoke in support of the proposed rezoning. Two spoke expressing their frustrations with petitioner's lack of community outreach and their concerns over increased traffic and commercial activities.

The Commission expressed a desire for the petitioner to engage in meaningful community outreach directed to the adjacent property owners along E. Kirby and Beaubien Street. The Commission instructed CPC staff to work with the petitioners to organize an additional community meeting in the project area to ensure that residents might have another opportunity to be informed of the proposed development and express their opinions or concerns.

Since the initial public hearing of November 5, 2020, CPC staff has received several correspondences in regards to this proposed rezoning. Upon the recommendation of this Commission, the petitioner held a community meeting on Saturday, November 7, 2020, at Peck Park at which Mr. Peter Putnam along with four other neighbors were in attendance.

Chiefly among the concerns expressed by members of the public at the November 5, 2020 public hearing was a lack of off-street parking and the anticipated increase in vehicular and pedestrian traffic the proposed conditional uses might generate.

In a separate correspondence dated November 13, 2020, residents in the immediate area expressed their concerns over the proposed rezoning and/or commercialization of the subject area. Those correspondences have been attached for your review, however, the staff offers the following in response to the concerns outlined therein.

In the correspondence from Mr. Peter Putnam, which generally offered support for the proposed rezoning, there were five points of concern which the community raised in their initial email to the Commission for your consideration.

- 1. The residents want a signed agreement that, for several reasons (noise, hours, grease, rodents), no "standard restaurant," now or at any future date, occupy this space. (At our 11/7/2020 meeting in Peck Park, Mr. Silveri offered to put this in writing.)*

In this regard, the staff believes that the Commission does not have the authority to ask any developer to enter into a written agreement and/or impose deed restrictions upon their property to prohibit a particular use outside of the Planned Development (PD) zoning classification. The proposed uses, which in essence are the subject of the proposed rezoning, i.e. ice cream shop/ coffee shop/ gallery, are all conditional land uses under the R5 provisions of the zoning ordinance. Before a permit is issued for any of these uses, a Special Land Use hearing before the Buildings, Safety Engineering, and Environmental Department must be held in which the residents and property owners within 300 radial feet of the subject property would be notified of the request and of the hearing date, and be allowed to voice their concerns, support, or objections.

The zoning ordinance does not distinguish an ice cream shop or coffee shop as a specific land use, rather "Standard Restaurant" is the catch-all classification under which these uses fall. If there were any objections to a "standard restaurant" use at the aforementioned Special Land Use

hearing, and that objection was upheld, neither the ice cream shop nor the coffee shop would be permitted to locate at 457 E. Kirby.

2. *The residents want to know the plan for the parking for the tenants of the 30 units at 475 E. Kirby.*

The petitioner has indicated that they are in preliminary talks with an adjacent property owner to acquire land which could be utilized for parking. Given the age and location of the development and despite the property being 98% occupied, no off-street parking is required for the residential aspect of this site. In regards to the newly proposed uses of a standard restaurant and gallery, given that the combined spaces are less than 3,000 square feet, no additional off-street parking is required for either of these uses.

3. *To curb noise, the residents want reasonable hours of operation for the ice cream/coffee shop/gallery.*

This request could possibly be one of the conditions imposed at the special land use hearing before the Buildings, Safety Engineering, and Environmental Department. Hours of operation are typically one of the conditions which are added for a conditional land use, particularly those located adjacent to or across the street from land zoned Residential.

4. *The residents want an agreement that the outer area surrounding the ice cream/coffee shop/gallery be kept clean.*

In this regard, if this is not done, a blight ticket could be issued; additionally, this too could possibly be one of the conditions imposed at the special land use hearing before the Buildings, Safety Engineering, and Environmental Department.

5. *The residents are requesting a stop sign at the southwest corner of Kirby and Beaubien streets, directly across the street from the proposed shop. This is especially essential since the ice cream shop will likely draw several children from the three schools that are all within a two-block vicinity of the shop.*

As a part of the staff's recommendation, we support the community in their request that the Department of Public Works / Traffic Engineering Division erect a stop sign at the intersection of Kirby and Beaubien streets for safety purposes.

Additionally, correspondence was received from the residents of the Centurion Place on Ferry Street condominium complex in which they state their unanimous opposition to the proposed conditional land uses sought by the petitioner. Among their concerns is additional noise along Beaubien Street generated by vehicular and pedestrian traffic, and, noise pollution from passenger vehicles, delivery trucks, ambient noise, etc.

The letter presented by the residents of Centurion Place On Ferry Street also expressed a concern over a "standard restaurant" use obtaining a state-issued liquor license which would accommodate a different type of clientele with extended hours of operation along with additional deleterious effects such as grease disposal, garbage disposal, additional truck deliveries, etc. "Standard restaurants" which serve beer and/or wine are not permitted in the R5 zoning classification, as they are first permitted in the B2 (Local Business/Residential District) zoning classification. In response to the condominium association's concerns over a future owner

changing the destination of any of the commercial or retail spaces, any conditional use outside of a gallery or standard restaurant would have to go back before the Buildings, Safety Engineering, and Environmental Department for another Special Land Use Hearing in which residents and property owners within 300 radial feet would again be notified of the proposed use. If any restaurant operation under the definition of “standard restaurant” was proposed at this location, it would be permitted, as the conditional land use designation runs with the land and not with the owner.

Also among the concerns expressed by the condominium association are those of parking. For those residents who do not have the benefit of off-street parking associated with their dwellings, Kirby Holdings, LLC has committed to working with the established neighborhood association and the Municipal Parking Department to pursue residential permit parking for the residents along E. Kirby and Beaubien streets. To staff's knowledge, the Department of Public Work's Traffic Engineering Division has not conducted traffic and/or parking studies related to the occupancy of 457 E. Kirby. As stated previously, given the age of the subject property and the less than 3,000 square foot allocation of commercial space for the proposed uses, additional off-street parking is not required; however, the petitioner is exploring the possibility of acquiring additional land to utilize for off-street parking.

In regards to the condominium association's concerns over light trespass from any type of signage, the subject property is within a local historic district, the East Kirby Street Historic District, which would require any signage to be reviewed and approved by the Historic District Commission before issuing any permits. Sign types will be based on Master Plan designation as per a provision of the newly revised Chapter 4 (Signs) of the City Code. In this case, the Master Plan designation of Medium Density Residential correlates to the sign district classification of High-Density Residential/Mixed Use Sign District which prohibits any type of dynamic, animated, or digital signs. Illuminated wall signs, such as what is proposed by the petitioner, are permitted to be illuminated either internally or externally in the R5 zoning classification, however, given the subject properties proximity to the Centurion Place On Ferry Street condominiums, only shielded directional external lighting, which is directed away from all residences, would be permitted.

Attached for your review and consideration is a letter of support from Ms. Anne Beck, the CFO of the College for Creative Studies, submitted by the petitioner following the Saturday, November 7, 2020 meeting. Unsuccessful attempts were made to have a follow-up meeting on Saturday, November 14, 2020, with additional neighbors at Peck Park.

## **ANALYSIS**

The proposed zoning classification of R5 would permit the requested uses of a “Standard Restaurant” and “Art Gallery” on a conditional basis.

The proposed R5 zoning classification would permit 35 by-right residential, public, civic, institutional, and other uses. The most intensive uses in the R5 zoning classification include “Hospital or hospice,” and “Outdoor recreation facility.”

The following analysis details how the proposed rezoning either meets or fails to meet the eight approval criteria of Section 50-3-70 of the Zoning Ordinance, which must be considered in making recommendations and decisions on standard rezoning requests.

- (1) Whether the proposed amendment corrects an error or meets the challenge of some changing condition, trend, or fact;

In this regard, the subject site has recently been renovated and restored to its former grandeur in conformance with the requirements of the local historic district, preserving the medium density residential character of the neighborhood as stated in the Master Plan of Policies.

- (2) Whether the proposed amendment is consistent with the Master Plan and the stated purposes of this Zoning Ordinance;

The proposed rezoning of R5 is consistent with the Master Plan of Policies as indicated in PDD's October 15, 2020 report.

- (3) Whether the proposed amendment will protect the health, safety, and general welfare of the public;

There are no foreseen adverse effects associated with the requested zoning classification in terms of health, safety, and/or the general welfare of the public. There have been concerns expressed by members of the public regarding the amount of increased vehicular and pedestrian traffic that the proposed conditional uses may generate. As a result, the staff is supporting the community's request of the Department of Public Works – Traffic Engineering Division to erect a stop sign at the intersection of E. Kirby and Beaubien Street.

- (4) Whether the City and other service providers will be able to provide adequate public facilities and services to the subject property while maintaining adequate levels of service to existing development;

The physical characteristics of the subject property will not change significantly as a result of any future development. Disruption to city services is not anticipated.

- (5) Whether the proposed rezoning will have significant adverse impacts on the natural environment, including air, water, soil, wildlife, and vegetation and with respect to anticipated changes in noise and regarding stormwater management;

There are no anticipated adverse impacts associated with rezoning regarding any of the aforementioned.

- (6) Whether the proposed amendment will have significant adverse impacts on other property that is in the vicinity of the subject tract;

Residents of the Centurion Place On Ferry Street condominium complex believe that the proposed conditional uses would have an adverse impact on their property, however, the zoning classification of Medium Density Residential is not objectionable, nor does it present any significant adverse impacts on other property.

- (7) The suitability of the subject property for the existing zoning classification and proposed zoning classification; and

The R5 zoning classification has been determined to be appropriate for the subject site.

(8) Whether the proposed rezoning will create an illegal “spot zone.”

Given the residential and mixed-use nature of the corridor in which this rezoning has been requested, the size, and the proposed rezoning's consistency with the Master Plan of Policies, the staff is of the opinion that the proposed rezoning would not constitute an illegal "spot zone."

***Master Plan Consistency***

The subject site is located within the Lower Woodward area of Neighborhood Cluster 4 of the Detroit Master Plan of Policies. The Future Land Use map for this area shows “Medium Density Residential” for the subject properties. The Planning and Development Department has provided a report dated October 15, 2020, which speaks to the appropriateness of the requested rezoning.

***Land Use***

CPC staff believes that an R5 zoning classification is an appropriate designation which will allow for the establishment of mixed-use residential and commercial related uses consistent with the characteristics of the given context.

**CONCLUSION**

Based on the above analysis and consistent with the approval criteria of Sec. 50-3-70 of the Zoning Ordinance, CPC staff recommends approval of the rezoning request.

Attachment

cc: Katy Trudeau, Interim Director PDD  
Karen Gage, PDD  
Greg Moots, PDD  
Ester Yang, PDD  
David Bell, Director, BSEED  
Arthur Jemison, Group Executive for Housing Planning and Development  
Lawrence Garcia, Corporation Counsel