



**MEETING DATE:** August 27, 2024

**ITEM NUMBER:** 9.A

**SECOND READING:** N/A

{{customfields.ResoOrdNumber}}

**TYPE OF ITEM:** Consent

**PRESENTED BY:**

Kristin Cote, Planning & Development Services, kristin.cote@longmontcolorado.gov

**SUBJECT/AGENDA TITLE:**

Appeal Of The Planning & Zoning Commission Decision On The Mcdonalds At Sandstone Marketplace Conditional Use Site Plan (CUSP)

**EXECUTIVE SUMMARY:**

On June 26, 2024, the Planning and Zoning Commission held a public hearing (see attached meeting minutes) considering the McDonald's at Sandstone Marketplace Conditional Use Site Plan application. This development proposal involves constructing a 4,965-square-foot fast food restaurant with a drive-through on the property. The Commission denied the application with a 4-3 vote in Resolution PZR 2024-3C (attached), determining that the review criteria were not met for the following reasons:

1. The Envision Longmont Comprehensive Plan does not specifically mention fast food restaurants with drive-throughs as a use in the zone district at issue.
2. The proposal does not fit the site.
3. Traffic volume proposed by this development would impact the surrounding properties.

A copy of the meeting minutes is included with this item.

For this type of major development application, the Planning and Zoning Commission is the decision-making body per the Land Development Code. However, any major development application that the Planning and Zoning Commission approves or denies can be appealed to the City Council if an appeal request is filed with the city within seven days of the decision. During the appeal period for this project, the City received an appeal from the applicant challenging the Commission's decision to deny the request.

Section [15.02.040.K](#) of the Land Development Code outlines the appeals process, including the review criteria and the timeframes for holding an appeal hearing. According to the code, the City Council will serve as the appeal body for this case and may hold a public hearing on the appeal.

**Meeting Process:** To assist the City Council in conducting the hearing, an outline of the steps involved is provided below. A more detailed version is attached to this communication.

1. Staff presents appeal report
2. Applicant/Appellant's presentation - The appellant/applicant shall each have 15 minutes to present their arguments, unless more or less time is approved by the Council.
3. Public Hearing
- 4. Council Questions**
5. Rebuttal (if the city council allows augmentation of the record by considering additional relevant evidence).
  - a. Staff**
  - b. Applicant/Appellant**
6. Council Discussion
7. Council Decision.

### **Grounds for Appeal:**

Section [15.02.040.K](#) lists the permissible grounds for appeals and allowable allegations. For the Planning and Zoning Commission's decision to be overturned the appellant must prove that one of the three (3) permissible grounds and allegations listed in 15.02.040.K.9.b have been met. These grounds are:

1. The decision is not supported by any competent evidence in the record;
2. The decision is plainly inconsistent with the review criteria, as shown by clear and convincing evidence; or
3. The decision maker exceeded its authority or jurisdiction as contained in the Municipal Code or Charter.

### **COUNCIL OPTIONS:**

1. Uphold the decision of the Planning and Zoning Commission, finding that the Conditional Use Site Plan does not meet the review criteria (Proposed Resolution).
2. Reverse the decision of the Planning and Zoning Commission, with findings that applicant-appellant met their burden to show that the Commission decision was in error.
3. Modify the decision of the Planning and Zoning Commission.
4. Remand the decision to the Planning and Zoning Commission with directions for further discussion.

### **RECOMMENDED OPTIONS:**

This is a Council policy decision

### **FISCAL IMPACT & FUND SOURCE FOR RECOMMENDED ACTION:**

N/A

## BACKGROUND AND ISSUE ANALYSIS:

**Proposal:** On August 2, 2023 Kimley-Horn, as the project consultant, submitted a Conditional Use Site plan application to the City of Longmont on behalf of SSC Investors, LLC (property owner) and McDonald's USA, LLC (applicant) for consideration of the construction of a 4,965 SF +/- fast food restaurant with a drive through within the Sandstone Marketplace final plat lying south of Ken Pratt Blvd, west of Common Drive, and east of County Road 1.

On June 26, 2024, the Planning and Zoning Commission held a public hearing to consider the McDonalds at Sandstone Marketplace Conditional Use Site Plan. The proposed fast-food restaurant with a drive-through is a conditional secondary use in the MU-R zoning district, adheres to specific use standards, and requires a public hearing due to the inclusion of the drive through. These use standards include compliance with vehicle stacking requirements (Section [15.05.080.I](#)), conditional use approval for properties adjacent to city-owned parks, greenways, or open spaces, and adherence to residential compatibility standards if within 250 feet of a residential zoning district. This proposal is not within 250 feet of a residential district, and is not adjacent to city-owned parks, greenways, or open spaces.

At the June 26, Planning and Zoning Commission meeting conversation was held, and public comments were taken (see attached meeting minutes) in reference to the proposed use. Ultimately the application was denied (4-3) based on the following:

1. The Envision Longmont Comprehensive Plan does not specifically mention fast food restaurants with drive-throughs as a use on the zone district at issue.
2. The proposal does not fit the site.
3. Traffic volume proposed by this development would impact the surrounding properties.

A copy of the planning commission meeting minutes is included in this packet, as is the staffport to the Commission and all the attachments.

On July 3, 2024 an appeal request (see attached) was submitted to the City Clerk of Longmont by Brownstein, Hyatt, Farber, Schreck, LLP on behalf of the applicant, Kimley-Horn and Associates, Inc. which bases the appeal request on criteria's 1 and 2 of Section 15.02.040.K which state, the decision is not supported by any competent evidence in the record and the decision is plainly inconsistent with the review criteria, as shown by clear and convincing evidence. Appellants assert and present for the basis of their appeal that, with respect to criterion 1, that the Planning and Zoning Commission ignored how the project aligns with the comprehensive plan and adheres to the purpose of the code and the MU-R (mixed use regional) zoning district. "The Planning and Zoning Commission concluded that drive thru restaurant use is incompatible with Envision Longmont because Envision Longmont does not expressly list drive thru restaurants as either primary or secondary uses. However, drive-thru use is specifically allowed in the zoning code under the MU-R zoning as designated for this Site Plan. The zoning code is the expression of Envision Longmont through the implementation of detailed

regulations. This is evidenced by the following quote from the “how to use the plan” section of Envision Longmont: [e]nvision Longmont is an advisory document that outlines Longmont’s aspirations for the future. Therefore, the PZ acted plainly inconsistent with review criterion 1 when ignoring the allowed drive-thru use under the MUR zoning designation.” Applicants also assert that, “With respect to criterion 2, the PZ failed to acknowledge that the Site Plan adheres to applicable city standards for street and utility design and layout. Further, adequate utilities are available or will be provided to ensure appropriate urban-level services.”

**Review Criteria for Appeals** Section [15.02.040.K](#) lists the permissible grounds for appeals and allowable allegations. or the Planning and Zoning Commission’s decision to be overturned the applicant-appellant has the burden of proving that at least one of the three (3) permissible grounds listed in 15.02.040.K.9.b have been met. These grounds are:

1. The decision is not supported by any competent evidence in the record;
2. The decision is plainly inconsistent with the review criteria, as shown by clear and convincing evidence; or
3. The decision-maker exceeded its authority or jurisdiction as contained in the Municipal Code or Charter.

**Appeal Process:** The Council reviews the appeal report that includes the decision of the Planning and Zoning Commission, the appeal letter and a copy of the Planning and Zoning Commission meeting minutes. The Council opens the appeal hearing by receiving a report from the planning staff and then gives the applicant/appellant an opportunity to present evidence and argument to the Council within the 15-minute timeframe allowed by Code. The Council at its discretion may consider additional evidence.

An outline of the appeal process is included with this item.

## **Council Options**

1. Uphold the decision of the Planning and Zoning Commission, finding that the applicant-appellant did not meet their burden to show that the Commission decision was in error (Proposed Resolution).
2. Reverse the decision of the Planning and Zoning Commission, with findings that the applicant-appellant met their burden to show that the Commission decision was in error.
3. Modify the decision of the Planning and Zoning Commission.
4. Remand the decision to the Planning and Zoning Commission with directions for further discussion.

If Council decides to reverse or modify the decision of the Planning and Zoning Commission, Council should adopt a motion indicating their decision and reasons, and direct City staff to return with a resolution consistent with their motion at the next available meeting.

## **Permitted Action**

a. The appeal body may postpone or continue the public hearing if additional time is needed. A hearing for which proper notice was given may be continued to a later date without again complying with the notice requirements of this chapter, provided that the continued hearing is set for a certain date and the date and time of the continued hearing is announced at the time of continuance.

b. The appeal body may accompany its decision with findings of fact specifying the reasons for its decision. Any of these bodies not composed of city staff may, by motion, request (or, if the city council, direct) staff to prepare the findings of fact to accompany a specified determination of the application based on evidence in the record and may continue consideration of the application until the next public meeting at which consideration will be practicable. At such future meeting, no further public hearing shall be necessary, and the body may approve a final determination and findings of fact.

### **Prohibited Action**

The appeal body may not recommend or approve a greater density of development, a more intensive use, or a more intensive zoning classification than what was indicated in the public notice; however, a lower density or intensity development may be recommended or approved.

### **ATTACHMENTS:**

1. Appeal Hearing Procedure
2. Applicant Request for Appeal
3. PZR 2024-3C denying the McDonalds at Sandstone Marketplace CUSP
4. Minutes of the June 26, 2024, Planning and Zoning Commission Meeting
5. Planning and Zoning Commission Staff Report of June 26, 2024, with attachments