Variance Approval for Board of Adjustment Case 2011-10
Parcel ID 193-303-10

At the Thursday, January 5\textsuperscript{th}, 2012 Board of Adjustment Meeting, a variance was granted to allow the three existing Captain D's signs to remain on the building at 9715 East Independence Blvd. More specifically, the variance allows the pending rezoning application (#578) to rezone the property to B-2 (CD) to move forward on the scheduled decision date on Monday, January 9\textsuperscript{th}. The conditions of the variance state that the existing signs may remain until such time that they are removed. The signs may be shifted to new locations on the building if the property owner deems such a change necessary. Normal repair and maintenance is also allowed. However, any new signage or replacement signage placed on the building must adhere to the current maximum of 80 sq ft of total attached signage.
REQUEST
This petition combines 3 conditionally zoned properties on US 74 and proposes appropriate zonings based on the current buildings and land uses there today. No additions to structures or changes to site plans will be allowed without further action by the Town Board should these rezonings be approved.

LOCATION
9715 & 9721 E. Independence & 1725 Windsor Square

PROPERTY OWNER
PMPJL LLC, Rebpat Leasing, TMB Ventures

PETITIONER
Same

AGENT/REPRESENTATIVE
Town Planning Staff

PLANNING STAFF REVIEW

Elements of the Request
As part of the Town's ongoing process to remove old Conditional designations and convert to existing categories, 3 of the 6 parcels on the site plan agreed to move forward with the process. The existing Leslie's Pools building (Former Verizon/Bell Atlantic store) and Woodcraft will be zoned B-1 (CD). Since it currently operates as a drive thru restaurant, Captain D's is proposed as a B-2 (CD). Should this request be approved, the site plan, location of these 3 buildings and maximum square footage allowed on each site become conditions and cannot be altered without further action by the Town Board.

Does Request Support Adopted Plans and Policies? [x] Yes [ ] No
(If no, see unresolved and outstanding issues)

Are any Zoning Variances needed? [x] Yes [ ] No
The Captain D's sign measures 135 sq ft (Sign was granted by Town Board in 1994) and will require a variance due to its size.

Previous Action on this Property
Parcel B - Petition 237 11/14/94 (Captain D's allowed up to 135 sq ft of signs)
Parcel C - Petition 224 2/14/94 for Bell Atlantic Mobile

Existing Improvements on Parcel
Three existing buildings to remain
<table>
<thead>
<tr>
<th>Requirement</th>
<th>Meets Requirement?</th>
<th>Staff Recommended Changes?</th>
<th>Changes Made?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Setbacks and Yards</td>
<td>☑ Yes ☐ No</td>
<td>☐ Yes ☑ No</td>
<td>☐ Yes ☐ No</td>
</tr>
<tr>
<td>Parking</td>
<td>☑ Yes ☐ No</td>
<td>☐ Yes ☑ No</td>
<td>☐ Yes ☐ No</td>
</tr>
<tr>
<td>Landscaping</td>
<td>☑ Yes ☐ No</td>
<td>☐ Yes ☑ No</td>
<td>☐ Yes ☐ No</td>
</tr>
<tr>
<td>Off Site Improvements</td>
<td>☑ Yes ☐ No</td>
<td>☐ Yes ☑ No</td>
<td>☐ Yes ☐ No</td>
</tr>
<tr>
<td>Fire Access</td>
<td>☑ Yes ☐ No</td>
<td>☐ Yes ☑ No</td>
<td>☐ Yes ☐ No</td>
</tr>
<tr>
<td>Connectivity</td>
<td>☑ Yes ☐ No</td>
<td>☐ Yes ☑ No</td>
<td>☐ Yes ☐ No</td>
</tr>
<tr>
<td>Signage</td>
<td>☑ Yes ☐ No</td>
<td>☐ Yes ☑ No</td>
<td>☐ Yes ☐ No</td>
</tr>
</tbody>
</table>

**PUBLIC INFRASTRUCTURE**

<table>
<thead>
<tr>
<th>Report Received From:</th>
<th>Issues Identified?</th>
<th>If yes, see outstanding issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Matthews Fire Department</td>
<td>☐ Yes ☑ No</td>
<td></td>
</tr>
<tr>
<td>LUESA</td>
<td>☐ Yes ☑ No</td>
<td></td>
</tr>
<tr>
<td>CMS</td>
<td>☐ Yes ☑ No</td>
<td></td>
</tr>
<tr>
<td>Matthews P&amp;R</td>
<td>☐ Yes ☑ No</td>
<td></td>
</tr>
<tr>
<td>Is project subject to PCO concept plan approval before zoning decision?</td>
<td>☐ Yes ☑ No</td>
<td></td>
</tr>
<tr>
<td>Traffic impact study received?</td>
<td>☐ Yes ☑ No</td>
<td></td>
</tr>
</tbody>
</table>

What Improvements are recommended and/or committed to?

No proposed changes at any of the parcels included in this petition.

**UNRESOLVED OR OUTSTANDING ISSUES**

A neighborhood informational meeting is scheduled for Thursday, December 8th at 4pm.

**STAFF COMMENTS AND RECOMMENDATION**

Staff recommends approval of these three zoning petitions based on the Town's policy of converting old conditional zonings to current categories.
# PETITION # 578

## ZONING PETITION STAFF CHECKLIST

*(Entries are entered based on Parcels B, C, and E)*

### IDENTIFYING DATA

<table>
<thead>
<tr>
<th>Name of Owner</th>
<th>PMPJL LLC, Rebpat Leasing, TMB Ventures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address of Property</td>
<td>9715 &amp; 9721 E. Independence &amp; 1725 Windsor Square</td>
</tr>
<tr>
<td>Tax Parcel Number(s)</td>
<td>193-303-04, 193-303-10, 193-303-14</td>
</tr>
<tr>
<td>Date</td>
<td>11/5/11</td>
</tr>
</tbody>
</table>

### GENERAL BACKGROUND DATA

<table>
<thead>
<tr>
<th>Current Zoning</th>
<th>C (Conditional)</th>
<th>Proposed Zoning</th>
<th>B-2 (CD) on Parcel &quot;B&quot;, B-1 (CD) on parcels &quot;C&quot; and &quot;E&quot;.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Use</td>
<td>Restaurant &amp; Retail</td>
<td>Proposed Use</td>
<td>Restaurant &amp; Retail</td>
</tr>
<tr>
<td>Property Dimensions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lot Width</td>
<td>90', 117', 131'</td>
<td>Proposed Lot Width</td>
<td>None</td>
</tr>
<tr>
<td>Lot Area</td>
<td>36,868 sq ft, 37,950 sq ft, 27,114 sq ft</td>
<td>Proposed Lot Area</td>
<td>None</td>
</tr>
<tr>
<td>Established front setback, if structure present</td>
<td>60', 50', 60'</td>
<td>Proposed Front Setback</td>
<td>50'</td>
</tr>
</tbody>
</table>

### DIMENSIONAL REQUIREMENTS

<table>
<thead>
<tr>
<th>Current Zoning</th>
<th>CONDITIONAL</th>
<th>Proposed Zoning</th>
<th>B-1 (CD) &amp; B-2 (CD) ON PARCEL C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Area</td>
<td>None</td>
<td>Proposed Lot Area</td>
<td>None</td>
</tr>
<tr>
<td>Lot Width</td>
<td>None</td>
<td>Proposed Lot Width</td>
<td>None</td>
</tr>
<tr>
<td>Front Setback</td>
<td>50'</td>
<td>Proposed Front Setback</td>
<td>50'</td>
</tr>
<tr>
<td>Side Yards</td>
<td>None</td>
<td>Proposed Side Yards</td>
<td>None</td>
</tr>
<tr>
<td>Rear Yards</td>
<td>10'</td>
<td>Proposed Rear Yards</td>
<td>10'</td>
</tr>
<tr>
<td>Max. Height</td>
<td>40'</td>
<td>Proposed Max. Height</td>
<td>40'</td>
</tr>
<tr>
<td>Open Space</td>
<td>None</td>
<td>Proposed Open Space</td>
<td>None</td>
</tr>
</tbody>
</table>

Comments: No square footage additions are proposed or allowed with this rezoning however increases in square footage are possible with future Town Board site plan approval.
MISCELLANEOUS PROVISIONS

If considered necessary, has a copy of the petition been sent by the applicant to the property's fire department for their review? No

Date sent
Is any portion of this property in floodplain? No

Are there any known zoning violations on this site? No

If so, explain: na

Tax records indicate the owner(s) as: PMPJL LLC, Rebpat Leasing, TMB Ventures

This application is submitted by: X the owner listed above
X an agent for the owner
_ _other

If agent or other, what documentation has been provided from owner or is none required?

Signatures

LAND USE PLAN CONFORMANCE

Is there a discrepancy between current or proposed zoning and the Land Use Plan? If so, what is the discrepancy? No. The proposed B-2 (CD) zoning for the Captain D’s is in keeping with the Town policy of drive thru establishments being located primarily on US 74.

Land Use Plan elements that impact the subject property: None

ADDITIONAL CRITERIA FOR CONSIDERATION

1. What changes have, or are, occurring in the area to justify a change in zoning?
The Conditional category is being removed from all parcels in the Town with the consent of each property owner

2. What are adjacent properties zoned, and what are adjacent land uses?

<table>
<thead>
<tr>
<th>Direction</th>
<th>Zoning</th>
<th>Land Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>C</td>
<td>Retail Restaurant</td>
</tr>
<tr>
<td>Northeast</td>
<td>C</td>
<td>Retail Restaurant</td>
</tr>
<tr>
<td>East</td>
<td>C</td>
<td>Retail Restaurant</td>
</tr>
<tr>
<td>Southeast</td>
<td>C</td>
<td>Retail Restaurant</td>
</tr>
<tr>
<td>South</td>
<td>B-1 and B-2</td>
<td>Restaurant</td>
</tr>
<tr>
<td>Southwest</td>
<td>B-1</td>
<td>Restaurant</td>
</tr>
<tr>
<td>West</td>
<td>B-1</td>
<td>Retail</td>
</tr>
<tr>
<td>Northwest</td>
<td>C</td>
<td>Hotel/Retail</td>
</tr>
</tbody>
</table>

3. What are development plans in the area – roads, schools, future commercial development, etc.? The area is primarily built out; long term conversion of Independence to limited access highway, which may impact Windsor Square Dr.

4. Is there a reason the current land use cannot continue to be feasible as it now exists?
N/A

5. List some potential uses under existing zoning. Retail/Restaurant

6. List some potential uses under proposed zoning. Same
7. Are any of these uses inappropriate for this location, and if so, why? Of note, the drive thru restaurant is appropriate on US 74.

8. (A) What is applicant’s stated reason for requesting rezoning? Conversion of the Conditional districts to appropriate categories in accordance with Town policy
(B) Comments: none

9. (A) What will be the benefits to the surrounding properties? N/A
(B) What will be the detriments to the surrounding properties? N/A

10. Is a traffic study required for this petition? No
    If so, what are the recommendations of the study?

What does the purpose statement of the proposed zoning district say?

Neighborhood Business District: B-1. The purpose of this district is to create and protect business centers for the retailing of merchandise such as groceries, drugs, and household items and for the provision of professional services for the convenience of dwellers of nearby residential areas. Standards are so designed that uses within this district may be soundly and permanently developed and maintained in such a way as not to be harmful to adjacent properties.

General Business District: B-2. The purpose of this district is to create and protect business areas for the retailing of merchandise and for carrying on professional and business services, and in some cases, wholesaling services for a large population. This type of district will be located generally adjacent to major thoroughfares.

11. Will this proposal meet the intent of the above purpose statement? Yes

OUR TOWN – Our Vision

8. Firm and Fair Growth and Development Process The town government of Matthews has continued to advance a firm and fair process for managing growth and development. Through its land use plan and development ordinances, the Town has set clear policies and standards to assure quality development. The Town enforces these standards diligently and consistently. The Town’s development review process emphasizes effective communication and consensus among all parties, including the Town Council, the Planning Board, the Town staff, the developer, other Town advisory boards, and the public. The Town requires that necessary infrastructure, including especially adequate roads, schools, open space and greenways, sidewalks, and drainage, must be in place prior to the occupancy of the new development it serves.

9. Balanced, Compatible Commercial Development Town leaders have navigated a careful course, balancing the need for sustained economic development against the potential threats to the community from over-commercialization. Small, locally owned shops have been especially encouraged by a zoning and regulatory environment conducive to small business. Both small and large businesses alike have been required to take on development forms that blend easily into a small town setting and image. Previously vacant commercial and industrial buildings have been renovated and adapted for use as cultural facilities, retail enterprises, office and institutional use, innovative housing, and as small business development centers. Policies have been implemented to prevent indiscriminate abandonment and prolonged vacancies of “big boxes” left behind for “bigger boxes”.

573
CONANTIONAL DISTRICT ZONING PETITION STAFF CHECKLIST

ATTACH TO:
ZONING PETITION STAFF CHECKLIST IF A CHANGE IN ZONING DISTRICT

Name of Petitioner: PMPJL LLC, Rebpat Leasing, TMB Ventures
Address of Property: 9715 & 9721 E. Independence & 1725 Windsor Square
Tax Parcel Number(s): 193-303-04, 193-303-10, 193-303-14
Name/Address of Owner if Different:

DIMENSIONS
Approximate property dimensions from site plan: (All entries are for Parcels B, C and E, respectively)

<table>
<thead>
<tr>
<th>Dimension</th>
<th>Parcels B</th>
<th>Parcels C</th>
<th>Parcels E</th>
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<tbody>
<tr>
<td>Lot width</td>
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<td></td>
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</tr>
<tr>
<td>Front setback</td>
<td>50'</td>
<td>50'</td>
<td>50'</td>
</tr>
<tr>
<td>Side yards</td>
<td>None</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rear yards</td>
<td>10'</td>
<td>10'</td>
<td>10'</td>
</tr>
<tr>
<td>Max height</td>
<td>40'</td>
<td>40'</td>
<td>40'</td>
</tr>
<tr>
<td>Open Space</td>
<td>Not given</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

DESCRIPTION OF REQUEST
The applicants seek to replace the existing Conditional zoning category with B-2 (CD) on Parcel "B" and B-1 (CD) on parcels "C" and "E".

SITE PLAN DATA
1. What existing structures are on this property? 3 existing commercial buildings
2. What is current land use? Retail, Drive-thru restaurant
3. Does this plan show:
   A. ______________________________ specific lots with buildings.
   Will additional site plan review by the Town be required? No

   B. ______________________________ a generalized development plan.
   Will individual site plan approval by Town Board be necessary on a lot-by-lot basis? No

   C. X ______________________________ a change in conditions to earlier zoning site plan.
   What previous approved plan(s) will this amend, if approved?
   Original zoning action approved on 6/5/87
   Parcel B - Petition 237 11/14/94 (Captain D's allowed up to 135 sq ft of signs)
   Parcel C - Petition 224 2/14/94 for Bell Atlantic Mobile
What changes or expansions of land use are proposed? There are no proposed changes to the land uses on these parcels. All buildings are to remain.

What new structures or additions are proposed? None

**CURBCUTS**

Number of curbcuts on site plan: None

Distance between closest curbcuts on property and/or adjacent property: N/A

Are curb cuts connecting to:
- ___ NCDOT maintained road.
- X_ Town maintained road.
- ___ Private street.
- ___ Thoroughfare designated on MUMPO Thoroughfare Plan.

Zoning conditions for curbcuts: All lots or parcels are entitled to at least one driveway per street frontage on any street except those where access is otherwise limited or controlled.

Are zoning conditions being met? Yes

**PARKING AND LOADING**

Proposed land use: Restaurant, Retail

How is parking calculated for this use in the Zoning Ordinance? One space per each three seats plus one space per each two employees on greatest shift, 1 space per 200 sq ft floor area for retail

Number of parking spaces required? 34, 40, 39

Number of parking spaces proposed? 47, 56, 43

Square footage of structure(s): 2,624, 8,302, 8,197

Number of employees on shift of greatest employment: Not given

Will this use require a loading dock or zone? No

If so, is it designed so it will not interfere with parking areas, driveways, streets or sidewalks?

**SIGNS**

Number of signs proposed attached: 3 per building allowed  detached: Shared monument allowed

Size(s) of attached signs: All signs except Captain D's appear to meet standard

Which way do attached signs face? North, East, South, West

Location of detached signs: N/A

Size(s) of detached signs: Not given

Zoning conditions for signs: Common shared monument sign allowed for parcels A-F

**LANDSCAPING AND OVERLAY REQUIREMENTS FOR SUBSEQUENT STAFF REVIEW**
This property is subject to landscaping provisions as found in: 153.075

- X Landscaping Chapter of Zoning Ordinance
- Highway Overlay
- Downtown Overlay
- Screening Requirements for lots with rear yards or side yards abutting a thoroughfare. This property is exempt from landscape requirements.

Have any plans been provided with sufficient detail to determine that landscaping or overlay provisions appear in general to be met? Yes

If so, what deviations or deficiencies should be noted here? No

**NEIGHBORHOOD MEETING**

Has the required neighborhood/community informational meeting been held? Scheduled for 12/8/11

What, if any, changes are proposed by the petitioner as a result of the meeting? N/A

**LAND USE PLANS**

Has the applicant provided an explanation of how the petition will comply with adopted land use plans covering the geographical location of the Conditional Petition? Yes

Is the explanation consistent with adopted plans? Yes

If not, what is the discrepancy?

**ADDITIONAL REQUIREMENTS OR COMMENTS:**

The joint monument sign will only be allowed with successful rezoning of all 6 parcels included in the development plan.