



CITY OF SHELBYVILLE, INDIANA | PLANNING AND BUILDING DEPARTMENT

MAYOR SCOTT A. FURGESON | DIRECTOR ADAM M. RUDE

BOARD OF ZONING APPEALS | STAFF REPORT

Meeting Date: March 5, 2024

Case Name and #:	BZA 2024-01: DG Market, Retail Type 2; Special Exception Use			
Petitioner's Name(s):	Second Circle Investments, LLC			
Owner's Name(s):	Twin Lakes, LLC			
Petitioner's Representative(s):	Briane House - Pritze & Davis, LLP Joe Leonard - Second Circle Investments, LLC			
Address of Property:	At the intersection of McKay Road, Twin Lakes Blvd, and Bush Way; Approx. 1714 Twin Lakes Blvd. Parcel Number: 73-11-09-100-137.000-002			
Zoning Classification:	PD - Planned Development BN - Business Neighborhood			
Future Land Use:	Single Family Residential			
	North	East	South	West
Surrounding Properties' Zoning Classification:	PD - Planned Development (Single Family Residential)	PK - Parks and Open Space	R1 - Single Family Residential & RM - Multiple Family Residential	PD - Planned Development (Two-Family Residential)
Surrounding Properties' Future Land Use:	Single Family Residential	Commercial	Single Family Residential	Single Family Residential
History:	The subject site is located within the Twin Lakes PUD (Planned Unit Development) which received its initial approvals in late 2005 and early 2006, establishing a neighborhood that would have a wide variety of residential types with commercial nodes at both ends of Twin Lakes Blvd. Since its first approvals, this PUD has had a number of amendments to alter the layout, configuration, and make-up of the residential uses, but these two commercial nodes have remained untouched. These commercial areas utilize the prescribed uses and standards of the <i>BN - Business Neighborhood</i> zoning district.			
Vicinity Map:				
Action Requested:	A request for Special Exception Use approval for "Retail Type II"			

Revisions since the initial 2/13/2024 publication of this report are indicated with ORANGE text.

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Relevant Facts About The Case:

1. The subject property is part of the Twin Lakes PUD, and within that PUD there are numerous sub-districts which establish specific requirements for that sub-district. This subject property is located within the “Business Neighborhood” sub-district. For this specific sub-district, the PUD cross-references all of the applicable requirements of the UDO’s “BN-Business Neighborhood” zoning district. These are the standards that apply to the property and will be imposed.
2. In the BN district, the use of “Retail Type I” is always permitted, while the use of “Retail Type II” is considered a Special Exception Use, requiring it to be heard on a case-by-case basis. The table below is an excerpt from the UDO which outlines the difference between the three types of retail:

Retail Types	Characteristics						
	Max. Vehicle per Day	Max. Retail Floor Area	Max. Outdoor Display or Merchandise	Outdoor Storage	Hours of Operation	Drive Through	Sexually Oriented Retail Sales
Type 1: Low Intensity	1,500	10,000 Sq. Ft.	5% of retail floor area or 200 sq. ft. whichever is more restrictive	Not allowed	Open between 5 AM and 10 PM	Not allowed	Not Allowed
Type 2: Medium Intensity	5,000	50,000 Sq. Ft.	10% of retail floor area or 1,000 sq. ft. whichever is more restrictive	20% of retail floor area or 4,000 sq. ft. whichever is more restrictive	No limit	Allowed	Up to 2% of retail floor area or 2% of gross revenue whichever is more restrictive
Type 3: High Intensity	No limit	No limit	No limit	No limit	No limit	Allowed	Up to 100% of retail floor area or 100% of gross revenue

3. The proposed building is 10,640 sq. ft. in area, exceeding the maximum limit for “Retail Type I”, therefore falling into the “Retail Type II” classification.
4. On February 13th, the Board of Zoning Appeals heard this case and held a public hearing. During that public hearing, numerous members of the public spoke, raising different questions and concerns for the board members to consider. The Board then instructed the staff to provide further guidance on a few items that they want to consider before making a final decision on the case. Those items of consideration include:
 - a. Altering the permitted hours of operation
 - b. Limiting the hours in which trucks and commercial vehicles can make deliveries to the site
 - c. Adopting architectural standards similar to those that are imposed by the neighboring HOA, specifically requiring a “Full Brick-Wrap” on the structure
 - d. Incorporating trash and debris filters to be used in the on-site stormwater system

- e. Limiting the ability for overnight parking of trucks and other commercial vehicles
 - f. Ensuring the outdoor storage is properly screened from public view
 - g. Allowing access to the site from McKay Road
 - h. Reviewing the need for a 4-way stop at the intersection of Twin Lakes Boulevard and Bush Way
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Special Exception Use | Retail Type II

General Welfare - Findings of Fact #1 – That the approval of the Special Exception Use will not be injurious to the public health, safety, morals, and general welfare of the community.

The applicant has provided the following response to Finding of Fact #1: “Granting this request will not be harmful to the public health, safety, and general welfare of the City of Shelbyville because the store will be properly screened and landscaped from the adjacent streets with a separate drive off of Twin Lakes Blvd.”

Staff Response: The planning staff has determined that there are aspects of this project that, without proper precautionary measures being taken, could result in an injurious impact to the public health, safety, morals, or general welfare of the community at large. An item that falls under the umbrella of “general welfare” is ensuring that the proposed building is meeting architectural and commercial standards that better align with the neighborhood and area of the community it is being located within. To ensure an aesthetic cohesiveness in the area, the staff is recommending that the BZA impose a condition requiring that the architectural and commercial standards for the BG - Business General district be applied to this project.

Finding #1 has been satisfied if suggested conditions are imposed

Compatibility - Findings of Fact #2 – That the approval of the Special Exception Use will be in harmony with the adjacent uses and will not substantially have an adverse impact on the adjacent properties and property values.

The applicant has provided the following response to Finding of Fact #2: “The special exception use will be in harmony with the adjacent uses because it will allow for the nearby residents to walk to a convenience store rather than drive, increasing their values.”

Staff Response: Any adjacent properties that have any amount of development on them will also have some degree of impact to one another, but it is the role of the BZA through this process to ensure that any adverse AND substantial impacts to adjacent properties are identified and mitigated if an approval is to be granted. The planning staff has reviewed the submitted documents and the development standards that will be applicable to this project, and have identified some potential impacts that should be addressed and mitigated prior to the project moving forward. These impacts are ones that the planning staff feels won’t be fully addressed by the applicable development standards alone. Those impacts are:

Lighting and “Light Trespass”- The development has requirements under section 5.38 of the UDO to provide lighting in the parking areas of the development. This standard also sets maximum heights of these lights and maximum lighting levels at the property lines of adjacent properties. Due to the proximity of the neighboring residential properties, and the fact that excessive lighting could have a negative impact on them,

additional restrictions should be placed on both the maximum height and maximum lighting levels. The planning staff recommends that a condition be imposed that the maximum height of freestanding lights on the site be four (4) feet tall, as opposed to the twenty (20) feet tall prescribed in the ordinance. Additionally, a condition should be imposed that a photometric study be conducted and submitted to the planning staff ensuring that the lighting levels at the property lines of any non-commercial properties is zero (0) lux, as opposed to the five (5) lux prescribed in the ordinance.

Buffer Yards and Screening- The proposed development is currently subject to Bufferyard requirements outlined in section 5.36 of the UDO, but there is still a chance that these bufferyards will not provide enough coverage to stop headlights from vehicles on the site from shining into nearby residences. To address this potential impact, the planning staff recommends that a condition be imposed to require the utilization of “Buffer Yard Type 3” and the fence option outlined in UDO 5.36-H-3 along the northern side of the property, and require the utilization of “Buffer Yard Type 3” and a 3’ tall mound on the western side of the property.

Finding #2 has been satisfied if suggested conditions are imposed

Character - Findings of Fact #3 – That the approval of the Special Exception Use will not adversely alter the character of the zoning district.

The applicant has provided the following response to Finding of Fact #3: “The special exception will not adversely affect the character of the zoning district because it works to incorporate commercial business into the neighborhood setting with proper screenings and the addition of bike and walking paths that connect to the business.”

Staff Response: When this Planned Unit Development (PUD) was first proposed and adopted, the intent was to combine multiple densities of residential with neighborhood commercial at the two ends of Twin Lakes Blvd, so the proposal of a commercial use at the southern end of Twin Lakes Blvd is in line with the intended character of this district. The planning staff has determined that the approval of the required Special Exception Use will not adversely alter the character of the zoning district.

Finding #3 has been satisfied by the applicant

Zoning District and Comprehensive Plan - Findings of Fact #4 – That the approval of the Special Exception Use is consistent with the intent of the zoning district and the goals of the Comprehensive Plan.

The applicant has provided the following response to Finding of Fact #4: “The special exception is consistent with the intent of the zoning district because the Business Neighborhood districts intent is to provide goods and services to neighborhoods and residential developments within the city. This business will provide easy access for nearby residence.”

Staff Response: The UDO describes the intent of this zoning district as “to permit the development of traditional, mixed-use neighborhood areas and to maintain a residential appearance and scale” and “This district should be integrated into the community’s neighborhoods at significant street intersections and with open space or institutional uses.” Furthermore, the Comprehensive Plan’s Future Land Use Map shows the intersection of McKay Road and Progress Parkway as a transition between residential uses and commercial

uses, reinforcing the intent of the district by providing an area for commercial development near residential developments.

The planning staff has determined that the specifically proposed project is consistent with the intent of the zoning district and comprehensive plan, but conditions should be imposed to ensure that future inconsistent land uses are not permitted through an action taken on this petition. An approval of a Special Exception Use to allow “Retail Type II” without any restrictions could allow uses that are not consistent with the intent of the zoning district or the Comprehensive Plan in the future. To address these concerns, the planning staff is suggesting that a condition be imposed that a written commitment is recorded against the subject parcel that imposes the restrictions of Retail Type I, aside from the Maximum Retail Floor Area, which should instead be set at 11,000 sq. ft. This would include limitations on the maximum number of vehicles per day, the maximum outdoor display or merchandise area, the restrictions on outdoor storage, the hours of operations, the ability to install a drive through, and the ability to sell sexually oriented retail.

Finding #4 has been satisfied if suggested conditions are imposed

Impact to Adjacent Areas - Findings of Fact #5 – That the approval of the Special Exception Use will not result in a substantial adverse impact to the use and value of the area adjacent to the subject property.

The applicant has provided the following response to Finding of Fact #5: “The neighboring property values will not be negatively affected because the development of this property will promote the development of the remaining property of the parent parcel by building a drive off of Twin Lakes Blvd.”

Staff Response: The planning staff has determined that the adverse impacts and concerns raised previously in this report, specifically for Findings of Fact #1, 2, and 4, would also be areas of concerns for this finding. Similarly, those concerns and potential impacts are being addressed through suggested conditions for each of those findings, and with those conditions being imposed, the planning staff does not find that the approval of the Special Exception Use will result in a substantially adverse impact to the use or value to the adjacent subject properties.

Finding #5 has been satisfied if suggested conditions are imposed

Further Items Of Consideration:

This section of the report addresses the items which the Board asked for additional guidance based on the comments and questions raised at the public hearing. All of the recommendations from this section have been incorporated into the “Staff Recommendation” section of this report, directly following this section.

Altering the permitted hours of operation

Concerns were raised that the typically permitted hours of operations for *Retail Type 1* of 5:00 AM - 10:00 PM might have compatibility issues with the existing land uses in the area. The petitioner mentioned during the meeting that they would be amenable to reducing these down, but only to their intended hours of operations,

as not to impose an undue burden on the operation of the facility, which would be permitted by-right as a *Retail Type 1* facility. After further discussion between the staff and the petitioner, it was determined that the intended operating hours for this facility would be 8:00 AM - 10:00 PM. The staff finds that imposing these limitations is both addressing the possible conflicts with Finding of Fact #2, #3, and #5, while also ensuring an undue burden is not being imposed on the petitioner. The planning staff is recommending that a condition be imposed that limits the hours of business operations to between 8:00 AM and 10:00 PM.

Limiting the hours in which trucks and commercial vehicles can make deliveries to the site

Similar to the previous topic, the residential land uses that surround the site could conflict with deliveries to the subject site if permitted to occur throughout the night when most residents are sleeping. In a similar manner as with the previous condition, the staff has tried to balance the concerns of the nearby residents also also considering the current rights that the petitioner has in regard to hours of delivery in a “*Retail Type 1*” use, in an effort to not impose an undue burden on the operations of the proposed use. The staff is recommending that the board impose a condition that deliveries to the site only be permitted to occur between the hours of 8:00 AM and 10:00 PM.

Adopting architectural standards similar to those that are imposed by the neighboring HOA

Multiple members of the public raised concerns about the aesthetics of the facility and their desire to ensure it didn’t detract from the architectural character of the neighborhood. Specifically, the residents in the area discussed the architectural requirements that apply to the properties within the Twin Lakes Estates HOA, which mandate brick or masonry materials on all facades of the structures, at least to the top of the first floor. As mentioned previously in this report, the staff is recommending that heightened standards be imposed to address this, but it would also be appropriate to require that these heightened standards be satisfied by utilizing brick or masonry materials on all facades of the structure up to the top of the first floor. This requirement would align with the staff’s previous findings regarding aesthetics outlined in Finding of Fact #1.

Incorporating trash and debris filters to be used in the on-site stormwater system

Another area of concern was in regard to properly capturing any debris that could enter the stormwater system, prior to it being discharged into the shared pond to the north. Specifically, the suggestion was to incorporate trash and debris containment systems into the onsite stormwater system so that any debris from the proposed development would be contained before entering the larger stormwater system of the neighborhood or the City at-large. After consultation with the City Engineer’s Office and the MS4 Director, the planning staff is recommending that the board impose a condition to require the incorporation of a trash and debris containment system within the on-site stormwater system. The design of this system will be reviewed and approved by the City’s MS4 Director at the Technical Review Committee meeting.

Limiting the ability for overnight parking of trucks and other commercial vehicles

Similar to other concerns related to minimizing adverse impacts to the character of the surrounding areas, the board was concerned with the possibility of semi-trucks and other commercial vehicles parking on the site overnight. If left unmitigated, this could result in adverse impacts to the character of the neighborhood, as well as potential violations to the City's Noise Ordinance if these vehicles are left idling throughout the night. These concerns directly relate to Findings of Fact #2, #3, and #5, and for all of these reasons the planning staff is recommending that the board impose a condition to prohibit the overnight parking of semi-trucks and other commercial vehicles, and require the placement of signage on the site that indicates this restriction.

Ensuring the outdoor storage areas are properly screened from public view

It was raised by both members of the public as well as members of the board that if the outdoor storage at this facility were not properly screened, it could result in an adverse impact to the surrounding areas, as described by the staff in Findings of Fact #4. While staff is already recommending a condition that all outdoor storage shall not be visible from the public right-of-way, it is also recommended that the board impose a requirement that the outdoor storage areas that have gates or doors to access them should provide that access through a fully opaque door or gate and that those doors and gates be closed at all times when items aren't being moved in or out of the storage area.

Allowing access to the site from McKay Road

Many members of the public and members of the board voiced an interest in providing an access drive on McKay Road to allow vehicular traffic to enter the site from multiple points. The planning staff met with the City Engineer's office to review all applicable requirements for allowing a new curb cut on this segment of roadway, predominantly the requirements of UDO 5.15. The largest factor in permitting a new curb cut on a roadway is the required separation of that curb cut from existing driveways and intersections. Due to the existing intersections of Progress Parkway and Twin Lakes Boulevard, the areas where a new curb cut could be permitted and the types of curb cuts are drastically limited. After careful review of these standards, and guidance from the City Engineer's office, the planning staff is recommending that the development incorporate a right-in-only access point on McKay Road which meets the separation requirements of UDO 5.15, and can be shared with the future commercial outlot to the east of the subject site. The petitioner has provided a revised site plan showing these changes and how the internal drives would be adjusted to connect to this new curb cut on McKay Road.

Reviewing the need for a 4-way stop at the intersection of Twin Lakes Boulevard and Bush Way

The existing curb cut on Twin Lakes Boulevard that accesses this site is less than 75 feet away from the intersection of Twin Lakes Boulevard and Bush Way. This separation of the two drives is not conforming with the current standards of the City's Unified Development Ordinance, but due to the fact that it was previously

approved, it maintains a “Legal Non-Conforming” status, commonly referred to as a “Grandfathered” status. With the drive having this close proximity to the intersection, it was suggested that the intersection should be considered for conversion to a four-way stop, instead of its current configuration as a two-way stop with Twin Lakes Boulevard having right-of-way. This type of decision about traffic control devices on the City’s roadways is not within the scope of authority of the Board of Zoning Appeals, but the board can make a formal request for the responsible board to examine the situation and consider making this change. If this petition is approved, the planning staff, on behalf of the BZA, will make a formal request to the Board of Public Works and Safety to examine this intersection for conversion to a four-way stop.

Staff Recommendation:

Approval W/ The Following Conditions:

1. The Architectural Standards (UDO 5.08) that would typically be applicable for a “Retail Type 2” facility in the “BG - Business General” district shall be required for this development.
2. The Commercial Standards (UDO 5.09 & 5.10) that would typically be applicable for a “Retail Type 2” facility in the “BG - Business General” district shall be required for this development.
3. The maximum height for any freestanding lights on the property shall be four (4) feet tall.
4. The maximum allowable light from this project, measured at the property line of any other property is zero (0) lux.
5. Along the northern edge of the property, a “Buffer Yard Type 3” shall be utilized in addition to the fence identified in UDO 5.38-H-3.
6. Along the western edge of the property, a “Buffer Yard Type 3” shall be utilized in addition to a three (3) feet tall mound.
7. A “Maximum Vehicle per Day” requirement of 1,500 shall be imposed.
8. A “Maximum Retail Floor Area” requirement of 11,000 sq ft shall be imposed.
9. A “Maximum Outdoor Display of Merchandise” requirement of 5% of retail floor area or 200 sq ft, whichever is more restrictive, shall be imposed.
10. No outdoor storage visible from the public right-of-way shall be permitted.
- ~~11. Hours of operations for the facility shall be limited to being open between 5 AM and 10 PM.~~
12. No drive-through facility shall be permitted.
13. No sexually oriented retail sales shall be permitted.
14. All of these conditions shall be outlined in a written commitment between the property owner and the City, and recorded against the property.
15. Hours of operations for the facility shall be limited to being open between 8 AM and 10 PM.
16. Deliveries to the subject property shall be limited to the hours of 8 AM and 10 PM.
17. The proposed building must utilize a combination of brick, masonry, and other similar materials on all sides of the building at least to the height of the top of the first floor.
18. The development shall incorporate trash and debris containment devices, as approved by the City’s MS4 Director, within the on-site stormwater system.
19. Overnight parking of semi-trucks and other commercial vehicles shall be prohibited, and the petitioner shall have signage installed on the site to indicate this prohibition.
20. All outdoor storage areas with doors or gates shall utilize opaque doors and gates, and shall keep those doors and gates closed at all times except for when items are being moved in or out of the storage areas.
21. A right-in-only access point shall be provided on McKay Road, in accordance with the standards of UDO 5.15 and all other applicable standards.

Special Exception Use: BZA 2024-01: DG Market, Retail Type 2; Special Exception Use

Staff Prepared

Suggested Motion:

(I) would like to make a motion to approve the requested Special Exception Use to allow “Retail Type 2” in accordance with the documents submitted, imposing all of the proposed conditions, pursuant to the findings of fact presented in the planning staff’s report.

Findings Of Fact By The Shelbyville Board Of Zoning Appeals:

1. General Welfare:

- ☐ The approval of the Special Exception Use **will not** be injurious to the public health, safety, morals, and general welfare of the community
- ☐ The approval of the Special Exception Use **will** be injurious to the public health, safety, morals, and general welfare of the community

2. Compatibility:

- ☐ The proposed Special Exception Use **will not** adversely alter the character of the district.
- ☐ The proposed Special Exception Use **will** adversely alter the character of the district.

3. Character:

- ☐ The proposed Special Exception Use **will not** adversely alter the character of the district.
- ☐ The proposed Special Exception Use **will** adversely alter the character of the district.

4. Zoning District and Comprehensive Plan:

- ☐ The proposed Special Exception Use **is consistent** with the intent of the zoning district and the goals and objectives within the Comprehensive Plan.
- ☐ The proposed Special Exception Use **is not consistent** with the intent of the zoning district and the goals and objectives within the Comprehensive Plan.

5. Impact to Adjacent Areas:

- ☐ The use and property value of the area adjacent to the subject property seeking a Special Exception **will not** be affected in a substantially adverse manner.
- ☐ The use and property value of the area adjacent to the subject property seeking a Special Exception **will** be affected in a substantially adverse manner.

Additional Conditions Imposed By The Board of Zoning Appeals:

- 1.
- 2.
- 3.

Shelbyville Board of Zoning Appeals

By: _____
Chair, Christopher Clark

Attest: _____
Secretary, Adam M. Rude