

### GENERAL INFORMATION

Applicant: 94 Lyndale LLC (owner)  
Dairy Queen (user)

Location: 9304 Lyndale Avenue South

Request: Conditional use permit for the reestablishment of a restaurant with a drive-through and outdoor patio

Existing Land Use and Zoning: Restaurant; zoned B-2 – General Commercial

Surrounding Land Use and Zoning: North – Auto repair and retail; zoned B-2  
East – Auto sales; zoned B-2  
South – Apartments, zoned RM-50  
West – Office/Production, zoned I-3

Comprehensive Plan Designation: General Business

### HISTORY

City Council Action: 04/18/2011 – Approved a conditional use permit and final site and building plans for a freestanding restaurant with a drive-through and preliminary and final plat of 94<sup>th</sup> and Lyndale Commerce Center (Case 10872ABCD-11).

### CHRONOLOGY

Planning Commission 02/11/2021 – Item continued.

Planning Commission 03/11/2021 – Public Hearing scheduled.

### DEADLINE FOR AGENCY ACTION

Application Date: 01/06/2021  
60 Days: 03/07/2021  
Extension Letter Mailed: Yes  
120 Days: 05/06/2021  
**Applicable Deadline: 05/06/2021 – Extension by Applicant**  
Newspaper Notification: Confirmed – (01/28/2021 Sun Current – 10 day notice)  
Direct Mail Notification: Confirmed – (500 buffer – 10 day notice)

**STAFF CONTACT**

Liz O'Day  
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**PROPOSAL**

The applicant proposes a conditional use permit to reestablish a restaurant with a drive-through and outdoor patio area. The 2011 Conditional Use Permit for the restaurant with outdoor seating and a drive-through expired after the restaurant closed in November 2019 and remained vacant. The City Code states a conditional use permit expires if a use discontinues for a year or more. A new operator intends to reopen the restaurant. The applicant has applied for Final Site and Building plans for an approximate 208 square foot addition (Case PL2021-21). A Conditional Use Permit is required in this case given the drive through and outdoor seating and will apply to the existing space and proposed addition.

**ANALYSIS**

Dairy Queen received approval in 2011 to construct a new freestanding restaurant with drive-through and outdoor seating at 9304 Lyndale Avenue. The use was approved in for a drive-through restaurant with 69 interior and 16 outdoor seats, whereas the submitted floor plans for the proposed application identify 56 seats and 16 outdoor seats. The site has one-way circulation with the drive-through wrapping counter-clockwise around the building. The outdoor patio is located in front of the restaurant facing Lyndale Avenue with three tables and 16 seats.

The parking provided exceeded the parking requirement in 2011. The Code required 34 spaces for the seat count explained above. There are 49 parking spaces on-site. On February 20, 2020, the City Council amended restaurant parking requirements to decrease the required parking. The Code now requires 1 space per three seats and 1 space per five outdoor seats where the 2011 requirement was 1 space per 2.5 seats, indoor or outdoor (See Table 1). The parking exceeds Code and Staff is unaware of any parking related concerns during the past operation. Staff believes the proposed level of parking is sufficient.

**Table 1: Parking analysis**

Approval	Requirement	Spaces Required
2011 Conditional Use Permit (Case 10872ABCD-11)	1 space per 2.5 seats (interior and exterior)	34 spaces
Proposed Conditional Use Permit (Case PL2021-2)	1 space per 3 interior seats and 1 space per 5 outdoor seats; Exception: if seasonal outdoor dining seats exceed 20% of indoor/rooftop seating, the required parking for outdoor dining seats exceeding 20% is one space per 2.5 seats	23 spaces
<b>Total provided</b>	<b>49 spaces</b>	

Since the 2011 approval, the site to the south has been reguidd and rezoned for residential use. Construction is underway on an 81 unit, four story apartment building, Lyndale Flats. Because there is residential within 300 feet of the drive through, the City Code requires that speakers “not produce noise that exceeds 75 dBA measured five feet from the speaker” (Section 21.301.05 (e)) and that the drive through “not be operated between the hours of 10:00 p.m. and 6:00 a.m.” (Section 21.301.05 (f)). Because the previous Conditional Use Permit expired, the restaurant is not considered to be legally nonconforming and it must comply with the City Code requirements.

The applicant requested continuance from the February 11<sup>th</sup> Planning Commission meeting to the March 11<sup>th</sup> meeting to review the recommended conditions of approval. Upon further review, the drive-through does not meet the screening standards. Similar to the above, if there is residential within 300 feet of the drive-through, screening must be provided to shield vehicle headlights from residential view. The screening can consist of a fence, berm or two rows of evergreen and must be at least five feet tall. There are some existing trees along the south property line but not enough to screen from view. In addition, staff reviewed the landscaping plan for the residential development to the south and found there would be a short retaining wall along their north property line which would not qualify as adequate screening. Therefore, the applicant must provide required screening along the residential property line prior to opening the restaurant.

The landscaping and lighting are both compliant. There is a trash room with overhead door on the north side of the building. The trash room must continue to be maintained.

**FINDINGS**

**Required Conditional Use Permit Findings - Section 21.501.04 (e) (1)**

Required Finding	Finding Outcome/Discussion
(1) The proposed use is not in conflict with the Comprehensive Plan.	<b>Finding Made</b> – The proposed restaurant is not in conflict with the Comprehensive Plan’s General Business land use designation. The designation allows for restaurants with drive-throughs and outdoor seating.
(2) The proposed use is not in conflict with any adopted District Plan for the area.	<b>Finding Made</b> – There is no adopted District Plan for the area.
(3) The proposed use is not in conflict with City Code provisions.	<b>Finding Made</b> – The proposed restaurant with drive-through and outdoor patio is a conditional use in the B-2 Zoning District. The use was previously approved in 2011 and has operated subject to conditions of approval without issue. The recommended conditions of approval address compliance with City Code provisions.
(4) The proposed use will not create an excessive burden on parks, schools, streets, and other public facilities and utilities which serve or are	<b>Finding Made</b> – The proposed use is not anticipated to create an excessive burden on parks, schools, streets and other public facilities and utilities. There are adequate parking spaces to accommodate the use.

proposed to serve the planned development.	
(5) The proposed use will not be injurious to the surrounding neighborhood or otherwise harm the public health, safety and welfare.	<b>Finding Made</b> – The proposed use will not be injurious to the surrounding neighborhood provided the required screening along the residential use is provided. The use is compatible with other neighboring uses. The proposed use is not anticipated to otherwise harm the public health, safety and welfare.

**RECOMMENDATION**

**Note the Planning Commission has final approval authority on this Conditional Use Permit application unless an appeal to the City Council is received by 4:30 p.m. on March 16<sup>th</sup>.**

Staff recommends approval through the following motion:

In Case PL2021-2, having been able to make the required findings, I move to adopt a resolution approving a Conditional Use Permit for the reestablishment of a restaurant with a drive-through and outdoor patio at 9304 Lyndale Avenue South, subject to the conditions and Code requirements attached to the staff report.

## RECOMMENDED CONDITIONS OF APPROVAL

Case PL2021-2

**Project Description:** Conditional use permit for the reestablishment of a restaurant with a drive-through and outdoor patio

**Address:** 9304 Lyndale Avenue S

The following conditions of approval are arranged according to when they must be satisfied. In addition to conditions of approval, the use and improvements must also comply with all applicable local, state, and federal codes. Codes to which the applicant should pay particular attention are included below.

1. Prior to Occupancy An Environmental Health Plan review and approval is required prior to occupancy.
2. Prior to Occupancy Five foot high perimeter screening must be provided along the south property line as approved by the Planning Manager (Sec 19.52).
3. Ongoing Continued compliance with the approved landscaping and lighting plans is required.
4. Ongoing All trash and recyclable materials must be stored inside the principal building (Sec. 21.301.17).
5. Ongoing The drive-through speakers must not produce noise that exceeds 75 dBA measured five feet from the speaker (Sec. 21.301.05).
6. Ongoing Restaurant drive through windows must not be operated between the hours of 10:00 p.m. and 6:00 a.m. (Sec. 21.301.05).