



# PLANNING AND ZONING COMMISSION STAFF REPORT

---

**Date** July 20, 2023

**To** Planning and Zoning Commission

**From** Sarah Dircks, AICP  
Planner

**Subject** **SWIG Peoria**  
Northwest corner of 83rd Avenue and Cactus Road

## PROPOSAL

---

The applicant is requesting a Conditional Use Permit to allow a new drive through restaurant located on the northwest corner of 83rd Avenue and Cactus Road.

## APPLICATION INFORMATION

---

**Case Numbers** Conditional Use Permit (CU23-06)

**Applicant** Dawn Marie Foruna, of Bowman, on behalf of Cactus 83 Equities LLC.

**Request(s)** Approval of a Conditional Use Permit (CUP) to operate a new drive through restaurant within the grocery anchored commercial center at the northwest corner of 83rd Avenue and Cactus Road.

## LOCATION AND CONTEXT

---

### SUBJECT SITE

The site consists of a vacant pad (0.72 acres) within a commercial center located at the northwest corner of Cactus Road and 83<sup>rd</sup> Avenue, as shown in more detail in **Exhibit 2 and Exhibit 3**.

### CONTEXT

Contextually, the subject site is located on the southeast corner of the Safeway anchored commercial center (“the Center”). The Center is a multi-tenant commercial and retail center, with access from multiple driveways along Cactus Road and 83<sup>rd</sup> Avenue (**Exhibit 2**). The Center contains three existing commercial buildings, which operate various uses including a Safeway grocery store, restaurants such as Barro’s Pizza, the Knockout Fitness gym, offices, and personal services establishments.

Surrounding the west and north of the Center is the Cactus Point Crossing residential community. To the west of the site is 83<sup>rd</sup> Avenue followed by Copper Sky Plaza and the Village Estates

## SWIG PEORIA: CONDITIONAL USE PERMIT (CU23-06)

---

residential community to the east (**Exhibit 3**). To the south of the site, separated by Cactus Road is the Bridlewood single-family residential development.

### APPLICANT'S PROPOSAL

---

The applicant is requesting to operate SWIG Peoria as a drive through *only* restaurant on the subject vacant pad. SWIG is a drive-through soda-fountain chain, primarily located in the western United States. Within the Valley, there are current locations in Gilbert, Mesa and Phoenix.

The proposed 665 square foot single story building will encompass the kitchen area. No dining area or walk-up ordering service is proposed or provided. As illustrated in the Conceptual Site Plan, the drive through will start as two lanes that will merge into one before approaching the pick-up window (**Exhibit 4**). The Applicant's project narrative describing the proposal more in depth is provided as **Exhibit 5**.

### DEVELOPMENT INFORMATION

<u>Existing Use:</u>	Vacant, undeveloped
<u>Proposed Use:</u>	Restaurant with drive through facility
<u>Property Size:</u>	0.72-acres
<u>Building Size:</u>	665 square feet
<u>Required Parking</u>	3 parking stalls
<u>Provided Parking</u>	4 parking stalls
<u>Hours of Operatio:</u>	Monday – Thursday 8:00 a.m. - 9:00 p.m. Friday – Saturday 8:00 a.m. – 10:00 p.m. Closed Sunday

## STAFF ANALYSIS

### ZONING HISTORY AND PROPERTY DEVELOPMENT

---

- Property was annexed into the City from Maricopa County on August 14, 1979 through *Ordinance 79-38*.
- The land was subsequently rezoned from General Agricultural (AG) to the current zoning designation of Intermediate Commercial District (C-2) on March 24, 1980 through *Ordinance 80-20*.
- The Center was approved in 2000 as a multi-tenant commercial shopping center anchored by Safeway grocery store.
- The subject vacant pad was originally anticipated as a future gas station location (PR00-06A.1). Despite preliminary interest to develop, the pad has remained undeveloped for the past 20 years.

### ***CONDITIONAL USE PERMIT ANALYSIS***

---

The purpose of the Conditional Use Permit requirement is to ensure that the physical and operating characteristics inherent with the land use have been sufficiently resolved or mitigated, optimizing compatibility with the surrounding area, and that the use is not injurious to the health, safety, and general welfare of the community.

Within the C-2 Zoning District, a *Drive Through Restaurant* is permitted, subject to the issuance of a Conditional Use Permit and operating in conformance with the stated review criteria and special limitations within the Peoria Zoning Ordinance as further discussed below.

#### **REVIEW CRITERIA**

Section 21-321 of the Peoria Zoning Ordinance outlines the applicable criteria for evaluating Conditional Use Permits. The Planning and Community Development Department shall review applications and make a recommendation for approval or denial to the Planning and Zoning Commission based on the following criteria:

1. Whether the use is designated as a permitted Conditional Use within the zoning district in which the property is located.
2. Whether the use meets the locational and development standards provisions, as applicable for the Conditional Use Permit, for the zoning district in which the property is located.
3. Whether the use is consistent with the goals, policies, and intent of the General Plan and any adopted Specific Plan applicable to the site where the proposed use is located.
4. Whether the use is consistent with documentation and recommendations provided by reviewing City Departments.
5. Whether the use complies with all applicable City Codes, standards, and guidelines governing such use.
6. Whether the use will be materially detrimental to the health, safety, or general welfare of persons residing or working in the vicinity of the property, to the neighborhood, or to the public welfare; or if the use will unreasonably interfere with the use and enjoyment of nearby properties. Consideration shall include, but not be limited to the following factors:
  - a. Damage or nuisance arising from noise, smoke, odor, dust, vibration, or illumination;
  - b. Impact on surrounding areas resulting from an unusual volume or character of traffic;
  - c. Ingress and egress to the property and proposed structures;
  - d. Pedestrian and vehicular circulation with particular reference to fire protection;
  - e. Parking and loading; and
  - f. Impact on public services, including schools, utilities, and recreation.
7. The Planning Manager shall not approve or recommend approval of any Conditional Use Permit unless the Department has received a Waiver of Proposition 207 from the Owner(s)

## SWIG PEORIA: CONDITIONAL USE PERMIT (CU23-06)

---

of the property that is the subject of the Conditional Use Permit or has determined that the absence of such a Waiver of Proposition 207 is consistent with the City's General Plan and zoning goals and regulations.

### SPECIAL LIMITATIONS

Section 21-505.B.2 of the Peoria Zoning Ordinance sets the following limitations on restaurants with a *Drive Through Facility*. These limitations are enumerated with staff's response in italics below each requirement.

1. All drive-through lanes, menu boards, speaker box, and other related elements shall be located at least 50 feet from any residentially zoned property or use. Speakers at a drive through shall not be audible from residentially zoned property. Sound shall be mitigated through the use of sound attenuation walls, landscaping, or other measures.

*As is customary with establishing zoning districts, zoning boundary lines are placed within the centerline of any adjacent street, which in this case is Cactus Road. Therefore, the proposed drive-through lane, menu boards, speaker box and all related appurtenances are at least 50-feet away from the residential zoned property and this criteria is met.*

2. The drive-through lane shall be separated from parking areas and driving lanes by a minimum 5-foot wide landscaping island or other alternative as approved by the Planning Manager.

*This criteria has been met as shown on the Conceptual Site Plan Layout, **Exhibit 4**.*

3. Drive through canopies and other appurtenances shall be architecturally compatible with the principal building.

*City staff will ensure this criteria is met as part of the required Site Plan and Building Plan review should the project obtain the Conditional Use Permit and move forward in the development process.*

4. Through the Conditional Use Permit (CUP) process, the conditions considered for imposition by the Planning and Zoning Commission may include, but are not limited to, a restriction on operating hours, additional screening, relocation of the drive-through, modification of the minimum drive-through stacking requirements, noise and visual mitigation, and other measures appropriate to the relevant circumstances.

*The applicant is aware the Planning and Zoning Commission may impose additional restrictions such as those listed above, and has worked with staff to ensure mitigation and minimize of potential concerns. Given the location of the proposed drive through restaurant, staff is recommending no additional restrictions.*

### OPERATIONAL CHARACTERISTICS

#### *Access and Queuing*

Multiply driveways into the Center exist along 83<sup>rd</sup> Avenue and Cactus Road, which provides adequate access to the site. Likewise, the proposed drive through operation will provide more than twice the queuing length required by the Peoria Zoning Ordinance. Given that the drive through entrance is designed to be more internal to the commercial center, City staff concurs that no additional mitigation or alterations to the existing driveways are needed to address potential impact from excessive queuing. Although not anticipated, should substantial queuing occur on a regular basis, staff will work with the operator and Center to reroute the vehicles internally to address peak demand for queuing.

#### *Parking*

Employee parking spaces will be provided on-site. Additionally, the Center was approved with 435 parking stalls; therefore, cross-access parking is available.

### CONTINUING JURISDICTION

If any issues arise regarding the operation of the business, Section 21-321.I of the Peoria Zoning Ordinance provides the Planning Manager with continuing jurisdiction over all Conditional Use Permits. This means that the Planning Manager may recommend to the Planning and Zoning Commission that a permit may be revoked, modified, or suspended should any of the following occur:

1. The permit was obtained by fraud or misrepresentation;
2. The use authorized by the permit has been exercised in violation of the conditions of its approval;
3. A change in circumstances consisting of any of the following has occurred:
  - a. Impacts from the approved conditional use to neighboring properties.
  - b. Changes in aesthetic or environmental impacts such as noise, odors, or pollution.
4. The use authorized by the permit has been exercised in a manner that is detrimental to the public health, safety, or welfare of the community or in a manner that constitutes a nuisance to neighboring property owners, adjacent neighborhoods, or the City.

### COMMUNITY INVOLVEMENT

---

#### *Public Noticing*

The application was properly noticed pursuant to Section 21-315 of the Peoria Zoning Ordinance, which includes notification to all property owners within 600 feet of the site and registered HOAs within one (1) mile, posting of a sign on the site, and placing an ad in the Peoria Times at least 15 days prior to the Public Hearing.

## SWIG PEORIA: CONDITIONAL USE PERMIT (CU23-06)

---

### *Support / Opposition*

At the time of this writing, no correspondence has been received in support or opposition to this request.

### ***KEY FINDINGS***

---

1. The proposal meets the Conditional Use Permit standards and applicable special limitations within the Peoria Zoning Ordinance.
2. When operated in accordance with the recommended conditions of approval, the use is not expected to have an impact on adjacent properties.
3. On behalf of the owner, the applicant has submitted a signed and notarized Proposition 207 waiver, which will be recorded with the conditions outlined below.

### ***RECOMMENDATION***

---

Staff recommends that the Planning and Zoning Commission take the following action:

**Approve the Conditional Use Permit for Case CU23-06, subject to Conditions of Approval identified within Exhibit 1.**

### ***STAFF CONTACT***

---

Sarah Dircks, AICP  
Planner  
623-773-7514  
Sarah.Dircks@peoriaaz.gov