

Department of Community Planning and Economic Development – Planning Division

Conditional Use Permit and Expansion of Non-conforming Use
BZZ-3796

Date: October 15, 2007

Applicant: Arlyn Lomen, Wendy's FourCrown, Inc.

Address of Property: 325 E. Franklin Avenue and 2015 Clinton Avenue S.

Date Application Deemed Complete: September 24, 2007

End of 60 Day Decision Period: November 23, 2007.

End of 120 Day Decision Period: Not applicable for this application.

Contact Person and Phone: Peter Roos, 612-269-2204

Planning Staff and Phone: Michael Wee, (612) 673-5468

Ward: 6 **Neighborhood Organizations:** Whittier Alliance and Steven's Square-Loring Heights

Existing Zoning: C4

Proposed Use: Not applicable for this application.

Concurrent Review: Conditional use permit to extend the hours of operation of a fast food restaurant with a drive-thru in the C4 district from 10:00 p.m. to 12:00 a.m. Sunday through Thursday and from 11:00 p.m. to 1:00 a.m. Friday and Saturday.

Expansion of a nonconforming use in the PO Pedestrian Oriented Overlay District to allow the extension of hours.

Applicable zoning code provisions: Conditional use permit, Article VII Chapter 525; Non-conforming Uses and Structures, Chapter 531; Article II Pedestrian Oriented Overlay District, Chapter 551. Section 548.480 hours open to the public; Chapter 531 Non-conforming Uses and Structures; and Chapter 536 Specific Development Standards for fast food restaurants.

Background:

A CUP to establish Wendy's Restaurant at 325 E. Franklin Avenue was denied by the Planning Commission on March 7, 2005 (BZZ-2192), but was appealed by the applicant and subsequently granted approval by the City Council on May 13, 2005. Similarly, a CUP to open until 2:00 am every day was denied. A site plan review was granted approval to include a drive through and landscaping as depicted in the application. The property is located in a designated Pedestrian Oriented Overlay District.

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On behalf of Arlyn Lomen, Wendy's FourCrown, Inc., Peter Roos of Roos and Associates submitted an application for extended hours for an existing Wendy's Restaurant at 325 E. Franklin Avenue and 2015 Clinton Avenue S to extend its business hours from the permitted 6:00am to 10:00pm Sunday through Thursday and 6:00am to 11:00pm Friday and Saturday in a C4 District to 6:00 am to 12:00 midnight Sunday through Thursday and 6:00 am to 1:00 am Friday and Saturday for the drive-through facility only. The dining room will close at permitted hours in the district

Drive-through facilities are restricted in an establish Pedestrian Oriented Overlay District, however, because it was established before the PO overlay was adopted, it is a legally non-conforming use. The application for expansion of a non-conforming use is also requested for the intensification of the drive-through usage as a result of the extended hours. The zoning administrator has determined the extended hour for the drive-through facility is an expansion of a non-conforming use. The applicant intends to extend the permitted hours by two hours everyday to provide services at the drive through. The drive-through is located on the east side of the restaurant adjacent to a commercial use in C2 district; and somewhat buffered by the restaurant building to the residential development across Clinton Avenue on the west. The undeveloped south section of the property, which is zoned R4, is landscaped to screen to meet the screening requirements of the zoning code. There are no physical changes to existing drive-through facility or to the existing building.

The property is well lighted during business hours and for the past year since its opening; it has shown to comply with Specific Development Standards required for fast food restaurants. Litter in the premises, adjacent streets, sidewalks and alleys within 100 feet appear to be removed regularly. The applicant will keep the property well lighted after hours where it does not impact the residential uses to keep it safe and deter criminal activity.

At the time of writing this staff report, no comments were received from the neighborhood group. However, one resident sent his comment via email (enclosed). Staff will forward comments, if any are received, at the City Planning Commission meeting.

CONDITIONAL USE PERMIT FOR EXTENDED HOURS

Findings as Required by the Minneapolis Zoning Code:

The Minneapolis City Planning Department has analyzed the application and from the findings below concludes that the establishment, maintenance, or operation of the proposed conditional use:

- 1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.**
The proposed extended hours for the drive-through facility of an existing fast food restaurant will not be detrimental to or endanger the public health, safety, comfort or general welfare of the neighborhood. The drive through is located where headlights from vehicles do not directly impact the residential uses across Clinton Avenue and property to the south.
- 2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for**

uses permitted in the district.

The proposed extended hours for the drive-through facility of an existing fast food restaurant do not have substantial correlation with the normal or orderly development of surrounding property for uses permitted in the district. The surrounding area appears to be fully developed and should not be impacted by the proposed extended hours provided Specific Development Standards for fast food restaurants are implemented. Given that the drive-through facility is located on the east side and adjacent to properties zoned commercial, the proposed extended hours for the drive-through facility should not have an adverse impact to the C2 district.

3. Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.

Existing utilities, access roads, drainage and other facilities are adequate. No other utilities are required for this application.

4. Adequate measures have been or will be provided to minimize traffic congestion in the public streets.

Traffic congestion and its potential increase had been considered in the site plan review on March 7, 2005. The development is in compliance with parking requirements for fast food restaurant. There will be no changes to existing parking layout and interior circulation. The potential increase in vehicular traffic during the extended hours will mostly occur when many businesses in the surrounding area are closed and traffic volumes on East Franklin are minimal. East Franklin Avenue is a commercial corridor which can accommodate up to 20,000 AADT count.

5. Is consistent with the applicable policies of the comprehensive plan.

This portion of Franklin Avenue is designated as a Commercial Corridor in *The Minneapolis Plan*. The plan has the following relevant policies:

Policy 4.3 “Minneapolis will support development in Commercial Corridors where it enhances the street’s character, improves its ability to accommodate automobile traffic and foster pedestrian movement, and expands the range of goods and services offered.

Relevant Implementation Step:

Ensure that commercial uses do not negatively impact nearby residential areas.

Policy 9.23 “Minneapolis will continue to provide a wide range of goods and services for city residents, to promote employment opportunities, to encourage the use and adaptive reuse of existing commercial buildings, and to maintain and improve compatibility with surrounding areas.”

Relevant Implementation Step:

Encourage comprehensive and site specific solutions that address issues of compatibility of commercial areas with surrounding uses.

Policy 9.28 “Minneapolis will support development in commercial corridors where it enhances the street’s character, improves its ability to accommodate automobile traffic and foster pedestrian movement, and expands the range of goods and services offered.”

Relevant Implementation Step:

Reduce the impact of non-residential uses on neighboring residential areas by considering appropriate access, buffering between incompatible uses and regulating hours of operation.

Staff comment: The existing fast-food restaurant is designed to accommodate vehicular traffic as well as pedestrian traffic. The drive-through facility is appropriately situated where it is farther away from existing residential development across Clinton Avenue. The south section of the property has sufficient landscaping and screening separating the parking and drive-through facility from residentially zoned district. The proposed extended hour for the drive-through facility should not significantly impact the residential uses. It will also increase the availability of services to residents in the neighborhood being advanced by the Minneapolis Plan.

6. And, in all other respects, conform to the applicable regulations of the district in which it is located.

With the approval of the conditional use permit and the expansion of nonconforming use application, the extended hours would comply with the applicable regulations of the zoning district where the property is located.

ADDITIONAL STANDARDS FOR EXTENDED HOURS

In addition to the conditional use standards above, the city planning commission shall consider, but not be limited to, the following factors when determining the hours open to the public:

1) Proximity to permitted or conditional residential uses. There are residential developments located across both East Franklin Avenue and Clinton Avenue from the site. The drive-through facility is located on the east side of the building, which would act somewhat as a buffer between the activities of the drive-through and the residential uses to the west. The residential use to the north is set back approximately 200 feet from East Franklin Avenue. Within the 200-foot setback there is a parking lot. The parking lot also acts somewhat as a buffer between the activities of the drive-through and the residential building to the north.

2) Nature of the business and its impacts of noise, light and traffic. All traffic after 10pm (Sunday through Thursday) and 11pm (Friday and Saturday), if the conditional use permit is approved, will be at the drive-through facility as the dining room will be closed. The menu board and speaker of the drive-through facility is located behind the restaurant building and appropriately landscaped and buffered so it is not visible from the residential development across Clinton Avenue to the west and to residentially zoned property to the south. The approved site plan review (BZZ-2192) required landscaping and screening for vehicles stacking to the drive-through. This landscaping should avert headlights from vehicles waiting in the drive-through stacking lane.

3) Conformance of use. If this conditional use permit and the expansion of nonconforming use is approved, the use will be in conformance with applicable regulations of the zoning code.

4) Complaints received. According to Police Department records, there were 23 total 911 calls in reference to this site between September of 2005 and March of 2007. Many of these calls were disturbances in which only three incidents were actually booked by the police. The police supports the

extended hours since there were no complaints from the neighborhood and service calls are not major issues.

EXPANSION OF A NON-CONFORMING USE

Findings As Required By The Minneapolis Zoning Code:

The Community Planning and Economic Development Planning Division has analyzed the application and makes the following findings:

The Planning Commission may approve a proposed expansion in use if the use meets the following standards as specified in section 531.50 of the Zoning Code:

1. A rezoning of the property would be inappropriate.

A drive-through facility was approved as a conditional use permit in C4 District on March 7, 2005 (BZZ-2192). On April 27, 2007, the City Council added the PO Pedestrian Oriented Overlay District to many properties located on Nicollet and Franklin Avenue, including this property. Due to the recent adoption of this zoning change, rezoning would not be appropriate.

2. The enlargement, expansion, relocation, structural alteration or intensification will be compatible with adjacent property and the neighborhood.

The proposed extended hours will be for an additional two hours every day from what is already permitted hours in C4 District. Given that the site is appropriately landscaped and screened, the proposed extended hours should not cause adverse impact to adjacent properties and the overall neighborhood.

3. The enlargement, expansion, relocation, structural alteration or intensification will not result in significant increases of adverse off-site impacts such as traffic, noise, dust, odors and parking congestion.

The proposed expansion should have no significant impact on traffic, noise, dust, odors and parking congestion in the surrounding area. The menu board/speaker is located behind the restaurant building and screened from residential uses across Clinton Avenue. Headlights from vehicles waiting in the stacking lane of the drive-through facility are screened by existing landscaping along East Franklin Avenue to the north and the R4 district to the south. The property adjacent to the east is zoned C2 district where a commercial business exists.

4. The enlargement, expansion, relocation, structural alteration or intensification, because of improvements to the property, will improve the appearance or stability of the neighborhood.

The extended hours may not necessarily improve the stability of the neighborhood, but it could possibly discourage criminal activities on the premises.

5. In districts in which residential uses are allowed, the enlargement, expansion, relocation, structural alteration or intensification will not result in the creation or presence of more dwelling units or rooming units on the subject property than is allowed by the regulations of the district in which the property is located.

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No dwelling or rooming units are proposed at this location.

6. The enlargement, expansion, relocation, structural alteration or intensification will not be located in the floodway district.

The subject property is not in a flood plain area.

RECOMMENDATION:

Recommendation of the Community Planning and Economic Development Department – Planning Division for the Conditional Use Permit:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the conditional use permit for extended hours from the permitted 6:00 am to 10:00 pm Sunday through Thursday and 6:00 am to 11:00 pm Friday and Saturday to 6:00 am to 12:00 midnight Sunday through Thursday and 6:00 am to 1:00 am Friday and Saturday for Wendy’s Restaurant located at 325 E. Franklin Avenue and 2015 Clinton Avenue South subject to the following conditions:

1. The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.
2. Compliance of the required Specific Development Standards for a fast food restaurant specified in Chapter 536 of the zoning code.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the expansion of a legal nonconforming use:

The Community Planning and Economic Development Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the application for an expansion of a nonconforming use allow an extended hours open to the public for the drive-through facility of Wendy’s Restaurant located at 325 E. Franklin Avenue and 2015 Clinton Avenue South.

Attachments:

Statement of Purpose
Applicant Findings
Site Plan
Photos
CODEFOR with Police Comment
Resident Comment