

**Department of Community Planning and Economic Development—Planning Division
Expansion of a Nonconforming Use Application
BZZ-1923**

Hearing Date: 10/13/04 (continued from 9/13/04)

Applicant: Ken Darula, 16795 County Rd. 24, Suite 100, Plymouth, MN 55447; 763-557-0022, fax: 763-557-0044

Address of Property: 2929 Hennepin Ave. S., Minneapolis, MN

Project Name: Extended hours application (24-hour operation) for an existing McDonald's restaurant (for both restaurant and drive through facility)

Contact Person and Phone: Same as applicant

Staff Contact Person and Phone: J. Michael Orange, Principal Planner. Phone: 612-673-2347; facsimile: 673-2728; TDD: 673-2157; e-mail: michael.orange@ci.minneapolis.mn.us

Date Application Deemed Complete: 8/30/04

End of 60-Day Decision Period: 10/29/04

End of 120-Day Decision Period: N/A

Ward: 10 **Neighborhood Organization:** Lowry Hill East Neighborhood Assoc.

Existing Zoning: C3A, Community Activity Center District, Pedestrian Oriented Overlay District

Zoning Plate Number: 24

Proposed Use: Application by Mr. Ken Darula for an expansion of a nonconforming use permit to allow 24-hour operation of the restaurant and the drive-through service at the existing McDonalds restaurant located at 2929 Hennepin Ave. S.

Prior approvals: PR-324

Concurrent Review: Expansion of a nonconforming use permit to allow the intensification (extended hours open to the public) of the drive through service and the restaurant, which is the nonconforming use prohibited by the current zoning.

Applicable zoning code provisions: Original approval of drive through (PR-324) on 8/21/96 was based on Chapter 540.1390 (2) of the 1963 Code. Chapter 548.360 (4) and 551.90 (1) of the 1999 Code prohibit drive through facilities in the C3A District and in the Pedestrian Oriented

**If you need more information or have special needs, please call the
Minneapolis Planning Department at 612-673-2597.**

Department of Community Planning and Economic Development—Planning Division
Expansion of a Nonconforming Use Application, BZZ-1923

Overlay District respectively. Chapter 531.50 (b) regulates structures containing a legal nonconforming use (the drive through facility is the nonconforming use).

Background: This is an existing restaurant that, since 1971, has been in a much older building located within the Uptown commercial area. The Inspections Department cited the owner for operating the restaurant and drive-through service on a 24-hour basis without the appropriate zoning permit. The Inspections Department is currently not enforcing its order to operate within the allowable hours of the C3A District during the period the City is considering the subject permit. Originally, Planning staff processed this application erroneously as a conditional use permit for extended hours.

The City implemented limits on hours that businesses may be open to the public on June 16, 1983. Hours businesses can be open to the public in the C3A District are 6:00 a.m. to 1:00 a.m. seven days a week. On 8/21/96, the City approved a site plan review application (PR-324) by the business which included drive-through service consistent with Chapter 540.1390 (2) of the 1963 Code. The 1999 Code prohibited drive-through facilities in the C3A District and in the Pedestrian Oriented Overlay District (Chapter 548.360 (4) and 551.90 (1) respectively) thus making the drive-through service a legal nonconforming use. Chapter 531.50 (b) regulates the structures containing a legal nonconforming use (the drive through). Attachment 4 includes the applicant's arguments in favor of the application.

On 9/8/04, the Lowry Hill East Neighborhood Association supported the request subject to the following conditions (Attachment 5):

1. The 24-hour service must be restricted to the drive-through service and not include the restaurant.
2. There will be no walk-up service.¹
3. Should a safety issue arise, McDonald's staff will take appropriate steps to enforce the no-walk-up policy.
4. McDonalds must meet or exceed the City's landscaping and screening requirements.

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 an application if it meets the following standards and all other applicable regulations in the zoning ordinance (this section shall not authorize a use prohibited in the zoning district in which it is located to be expanded beyond the boundaries of its zoning lot):

¹ McDonald's policy is to not serve people who walk up to or bike to the menu board. There is a camera there to ensure the patron is in a vehicle.

1. **A rezoning of the property would be inappropriate.**

Prohibited in the C3A District and in the Pedestrian Oriented Overlay District, the drive-through facility would require a rezoning to C2, C3S, or C4, and the removal of the Pedestrian Oriented Overlay District from the site. C2 and C3S Districts lie 1 to 1/2 blocks to the west and east of the site respectively. The site is within the heart of the Pedestrian Oriented Overlay District. One of the expressed purposes of the district was to prevent drive-through uses.

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

Location impacts: The restaurant is located in an existing storefront building and the site is within the Commercial Corridor areas designated for E. Lake St., Lagoon, and Hennepin Ave. The restaurant use is an appropriate one consistent with the *Minneapolis Plan*, however the plan designates the Hennepin Lake commercial area as an Activity Center and it discourages drive-through services in Activity Centers. Fast food restaurants with drive-through service generate a substantial amount of noise (e.g., vehicles, speaker boxes), light (e.g. headlight glare and parking lot lighting), and traffic compared to other uses allowed in the C3A District. In this case, however, the site is in the center of a major commercial center that is vibrant on a 24-hour basis and there are no residential uses close enough to the site to be impacted by traffic, noise, or light pollution. The same is true if the restaurant and drive-through service had 24-hour operation.

Parking and traffic: The parking is behind the restaurant and on site landscaping provides some screening of the parking lot from the street and sidewalk on Lagoon and Girard. There is sufficient parking on site for the use and to accommodate customers during the proposed extended hour period. The site has three curb cuts that access streets in the commercial district. The site configuration does not result in significant traffic or noise problems during the day. Since this is a major commercial area of the City with numerous other businesses with extended hours and late night/early morning worker shifts, extending the hours of the restaurant and drive-through service to 24-hour operation should not result in a significant incremental increase in traffic or noise impacts.

Landscaping and screening: The site (28,140 sq. ft.) less the building footprint (4,107 sq. ft.) equals a net site of 24,033 sq. ft. All areas of the site not used for buildings or parking are landscaped. This is consistent with the approved site plan (PR-324). The site includes 1,555 sq. ft. of landscaping, which equals 7% of the net site. The Code requires 20% of the net site be landscaped. As a condition of approval, the applicant will be required to provide screening for the parking lot consistent with Section 530.160 (b) (2).

Police reports: According to Police Dept. incident reports, the property had the following incidents (available upon request):

**Department of Community Planning and Economic Development—Planning Division
Expansion of a Nonconforming Use Application, BZZ-1923**

	Incidents	# of Reports Files
2004	33	1
2003	44	4
1999-2002	202	32
Total (54 months)	279	37
Average per month	5	1

Neighborhood recommendations:

- **Restriction of 24-hour extension to drive-through service:** The *Minneapolis Plan* and Zoning Code encourage pedestrian-oriented uses in Activity Centers and within the Pedestrian-Oriented Overlay District. Extending the hours for the restaurant would serve transit users, pedestrians, and bicyclists consistent with the Plan and the Code. This is not the case for the drive-through service because McDonald's policy prohibits service to people unless they are in a vehicle.
- **No walk-up service:** Even though McDonalds prohibits walk-up service, it is not in the interest of the City to restrict it.
- **Landscaping and screening:** As stated above, the applicant will be required to provide screening for the parking lot consistent with Section 530.160 (b) (2) and 541.360 as a condition of approval.

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.**

Refer to the above response.

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

As a condition of approval, the applicant must bring the site up to current requirements as regards screening of the parking lot.

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 on the subject property than is allowed by the regulations of the district in which the property is located.**

N/A

6. **The enlargement, expansion, relocation, structural alteration or intensification will not be located in the Floodway District.**

Department of Community Planning and Economic Development—Planning Division
Expansion of a Nonconforming Use Application, BZZ-1923

The site is not in a Floodway District.

RECOMMENDATIONS

The Community Planning and Economic Development—Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the expansion of a nonconforming use permit application for 2929 Hennepin Ave. S., with the following conditions:

1. The applicant shall provide screening for the parking lot consistent with Section 530.160 (b) (2) and 541.360 of the Zoning Code by April 30, 2005.
2. On a daily basis, the applicant shall police all litter on the property and ensure litter does not leave the site.

ATTACHMENTS

- 1) Site and zoning map
- 2) Site plan
- 3) Information from the applicant
- 4) Photos of the site and surrounding area
- 5) LHENA letter