

Department of Community Planning and Economic Development – Planning Division
Conditional Use Permit
BZZ – 1953

Date: September 27, 2004

Applicant: Dolphin Real Estate Management LLC

Address of Property: 4605 Hiawatha Ave. (aka 4641 Hiawatha Ave.)

Project Name: Burger King

Contact Person and Phone: David Nelson, (612) 371-7458

Planning Staff and Phone: Jason Wittenberg, (612) 673-2297

Date Application Deemed Complete: August 27, 2004

End of 60-Day Decision Period: October 26, 2004

Ward: 12 **Neighborhood Organization:** Longfellow Community Council

Existing Zoning: C2

Proposed Zoning: Not applicable for this application

Zoning Plate Number: 34

Legal Description: Not applicable for this application

Proposed Use: Extend hours open to the public for to allow 24-hour-per-day operation of a drive through facility for an existing fast food restaurant located at 4605 Hiawatha Avenue. The main restaurant and seating area would continue to close at 10:00 p.m. nightly. The public notice incorrectly stated that the main restaurant would be open until midnight on weeknights and 2:00 a.m. Friday and Saturday evenings.

Concurrent Review: Not applicable for this application

Applicable zoning code provisions:

Section 548.300 (3) *Hours open to the public*

Background: The City Planning Commission and City Council, in 1987, granted Burger King's application to "allow operating hours before 6:00 a.m. and after 11:00 p.m. Sunday through Thursday and 12:00 Friday and Saturday." The application appears to have authorized 24-hour operation. While the restaurant may have operated 24-hours-per-day after receiving the conditional use permit in 1987, the restaurant subsequently reduced its hours of operation for

more than one year and therefore cannot return to 24-hour operation without a new conditional use permit. The applicant appears to have retained rights to operate the drive through until 12:00 a.m. Sunday through Thursday evenings and 2:00 a.m. Friday and Saturday evenings. The applicant requests to extend the drive through hours to 24 hours per day nightly. The indoor area would close at 10:00 p.m. nightly.

CONDITIONAL USE PERMIT -

Required Findings for the Conditional Use Permit:

- 1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.**

The drive through currently operates until midnight on weeknights and 2:00 a.m. on weekends. The request would add six hours more of operation on weeknights and an additional four hours on weekends. Staff believes the hours of operation could be extended beyond the existing hours without being detrimental to the safety and comfort of the surrounding area. Staff is concerned about the additional impact associated with emissions from vehicles idling at the drive through. Note that a drug store currently operates 24-hours per day one-half block north of the site.

- 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.**

Although staff does not expect that 24-hour operation would substantially impede development of the surrounding area, the Planning Department is concerned that 24-hour operation could discourage future residential construction in very close proximity to the site.

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

Utilities, access roads, drainage and other facilities would not be affected by 24-hour operation. Traffic flow at the 46th Street and Hiawatha Avenue intersection has been troublesome for a number of years but is unlikely to be substantially affected by the extended drive through hours.

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

With 24-hour operation, the number of trips to the site during a 24-hour period would undoubtedly increase. However, the number of trips during *peak periods*, the most troublesome traffic times at 46th and Hiawatha, would not be expected to increase.

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

The site is located in a designated Transit Station Area (TSA). Staff has identified the following comprehensive plan policies as relevant to the conditional use permit:

Relevant Policy: **9.36** Minneapolis will encourage both a density and mix of land uses in TSAs that both support ridership for transit as well as benefit from its users.

Relevant Implementation Step: Discourage automobile services and drive-through facilities from locating or expanding in these designated areas.

Staff comment: Consistency with the above implementation step hinges on an interpretation of whether the plan envisioned discouraging only the physical expansion of drive through facilities or whether expanded hours of the drive through facility represents an intensification and therefore an expansion of the facility. Regardless, given that the language states that the City should “discourage” rather than “prohibit” such expansions, staff believes that the proposal is not inconsistent with the provisions of the comprehensive plan.

The *46th & Hiawatha Station Area Master Plan*, adopted by the City Council on December 28th, 2001, does not appear to specifically address hours of operation.

6. And, does in all other respects conform to the applicable regulations of the district in which it is located upon approval of this conditional use permit.

While the *layout* of the site appears to be consistent with the project’s approved site plan, a number of the trees and shrubs indicated on the approved plan were either not installed or have been removed. Most of the landscape does indeed exist on the site. However, it appears that one deciduous tree, two spruce trees, and at least 21 shrubs are shown on the approved plan that are not actually on the site. The landscaping on the site must come into conformance with the approved landscaping plan. Staff observed one unenclosed dumpster on the site. Further, a freestanding Burger King sign is located in the public right of way along 46th Street, adjacent the Holiday site. This sign must be removed. The freestanding sign along Hiawatha Avenue appears to have been placed closer to Hiawatha Avenue than was shown on the approved plan. The applicant must verify that the on-site sign is not also located in the public right of way.

In addition to the conditional use standards, 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.**

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As noted above, a mixed use building with 61 dwelling units is under construction approximately 360 feet from the Burger King building and residential dwellings across Hiawatha Avenue are approximately 460 feet from the Burger King building.

(2) Nature of the business and its impacts of noise, light and traffic.

Drive through facilities for fast food restaurants generate a substantial amount of noise (e.g., vehicles, speaker boxes), light (e.g., lighting of freestanding signs), and traffic compared to most other uses allowed in the C1 and C2 Districts.

(3) Conformance with applicable zoning regulations, including but not limited to use, yards, gross floor area and specific development standards.

While the layout of the site appears to be in conformance with the approved plan, some of the landscaping is missing. While Planning staff strongly encourages the applicant to install the missing landscaping this year, staff recognizes that it is late in the year. The missing landscaping should be installed within nine months (by June 27, 2005). Further, an unenclosed dumpster was observed on the site and a freestanding sign is located in the public right of way along 46th Street and must be removed.

(4) History of complaints related to the use.

Staff is not aware of complaints specifically related to the use. Police reports from the site dating back to the beginning of 1999 indicate that the extended hours of operation currently utilized by the applicant have not resulted in a significant amount of criminal activity during those hours.

RECOMMENDATIONS

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 application for a conditional use permit to extend the maximum hours open to the public for an existing drive through facility accessory to a fast food restaurant at 4605 Hiawatha Avenue (aka 4641 Hiawatha Ave.) to allow 24-hours per day operation, subject to the following conditions:

1. The main restaurant and seating area will continue to comply with the maximum hours allowed in the C2 District.
2. The site shall be brought into full compliance with the landscape plan approved in 1987 no later than June 27, 2005.
3. The freestanding Burger King sign located in the public right of way along 46th Street shall be removed.

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Attachments:

1. Statements submitted by the applicant
2. Letters from the applicant to the council office and neighborhood group
3. Letter from the property owner
4. Zoning map
5. Site plan
6. Landscape plan (approved in 1987)
7. Site survey
8. Floor plans
9. Elevations
10. Building sections
11. Photos