

Department of Community Planning and Economic Development – Planning Division
Conditional Use Permit and Expansion of a Nonconforming Use
BZZ-4800

Date: July 19, 2010

Applicant: Duke and King Acquisition Corporation

Addresses of Property: 925 Washington Avenue SE

Project Name: Burger King

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

Planning Staff and Phone: Jim Voll 612-673-3887

Date Application Deemed Complete: May 12, 2010

End of 60-Day Decision Period: July 11, 2010

Date Extension Letter Sent: June 16, 2010

End of 120-Day Decision Period: September 9, 2010

Ward: 2 Neighborhood Organization: PPERRIA

Existing Zoning: C2 Neighborhood Corridor Commercial District, PO Pedestrian Oriented Overlay District, and UA University Area Overlay District

Zoning Plate Number: 22

Legal Description: Not applicable for this application

Existing Use: Fast food restaurant with a drive-through.

Concurrent Review:

Conditional use permit: To allow the restaurant to open at 5:00 a.m. Monday through Saturday and to stay open until 1:00 a.m. Sunday through Wednesday and until 3:00 a.m. Thursday through Saturday.

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

Applicable zoning code provisions: Chapter 525, Article VII, Conditional Use Permits and Chapter 531, Nonconforming Uses and Structures.

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Background: This item was continued from the June 14, 2010, and June 28, 2010, meetings of the City Planning Commission to allow the applicant to meet with the Police Department. The City Council approved, on appeal, a site plan (PR-329) and parking variance (V-4063) from 136 spaces to 74 spaces for a shopping center, including the Burger King restaurant with a drive-through, in 1996. The City Planning Commission approved a revised site plan (PR-368) and parking variance (V-4156) to 35 spaces for a shopping center at its meeting of June 22, 1997. A final site plan was approved (PW#6325) by staff on September 12, 1997, and the building was completed in 1997-98. A parking variance (BZZ-3321) was granted by the Board of Adjustment to reduce the parking from 75 spaces to 35 spaces for the entire mall in 2007. At that time a revised site plan was submitted (PW#8073). The PO Pedestrian Oriented Overlay District was added to this site as a part of the general remapping of the city with the adoption of the 1999 zoning code and districts. The PO Overlay District prohibits drive-through facilities. The Burger King drive-through was constructed before the addition of the PO Overlay District and is now legally nonconforming. An expansion of hours for a legally nonconforming use requires a conditional use permit and an expansion of a nonconforming use.

As of the writing of this report staff has not received comments from the neighborhood group, but will forward comments, if any, at the Planning Commission meeting.

CONDITIONAL USE PERMIT:

Findings as Required by the Minneapolis Zoning Code:

The Minneapolis City Planning Department has analyzed the application and from the findings above 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 permitted hours of operation in the C2 Neighborhood Corridor Commercial District are 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:00 p.m. Friday and Saturday. The applicant proposes to open 5:00 a.m. Monday through Saturday and to stay open until 1:00 a.m. Sunday through Wednesday and until 3:00 a.m. Thursday through Saturday. The majority of uses in the immediate area, that do not have the hours regulated by liquor licenses, are open no later than 1:00 a.m. There is a multi-family residential building across Washington Avenue SE. The Police Department has raised concern about the late night hours of the proposed use and others in the area.

In response to the Police Department's concerns, Burger King has removed the pay phone at the site, will update the security system and add a public view screen and additional cameras, will install new bathroom locks with keys available at the counter, will implement a no loitering policy with regular sweeps by staff, and will post no trespassing signs. While the applicant has proposed several steps to mitigate the impact of later hours, due to the proximity of residential to the south, and the concern of the Police Department that several businesses operating at later hours increases the difficulty of maintaining public safety, the proposed hours may be detrimental to the public safety and general welfare. However, the site is adjacent to an Activity Center, which allows business to be open until 1:00 a.m. Other businesses in the area are also open until 1:00 a.m. (or later with a liquor license). The Stadium Village

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LRT station will be located just northeast of this site. Therefore, staff does recommend that the business be allowed to stay open until 1:00 a.m. everyday. The applicant's proposed changes to the site and operations should ensure that the extended hours do not prove detrimental to public health, safety, comfort or general welfare and would be a reasonable use of the property.

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.

Staff uses the following criteria to determine compatibility of extended hours with the surrounding area:

- a) Proximity to permitted or conditional residential uses. There are commercial or University of Minnesota buildings adjacent to the site and beyond to the north, east, and west. There is a multi-family residential building (Dinnaken House) and across the street to the south
- b) Nature of the business and its impacts of noise, light and traffic. The business is a fast food restaurant with a drive-through window. The majority of the light and traffic would be from cars utilizing the drive-through window and parking lot. There is significant pedestrian traffic to the site due to the proximity of the University of Minnesota.
- c) Conformance of use. The site appears to be in conformance with the zoning code and licensing requirements. If the conditional use permit for extended hours is approved, then the proposed hours and use will be in conformance with the code.
- d) Complaints received. The City has received no formal complaints. The Licensing Division of Regulatory Services inspected and cited the use after concerns were raised by the Police Department regarding operations at the restaurant. During extended hours there have been 16 calls for service to the police in 2010, 41 during 2009, 39 during 2008, and 31 in 2007. Please note that these are calls for service and are not necessarily related to problems with the restaurant.

While staff is concerned about the possible noise and activity impacts of extended hours on the adjacent area and the residential use to the south, the use is in an Activity Center and there are other uses open until 1:00 a.m., as well as uses regulated by their liquor licenses. Allowing the use to open at 5:00 a.m. and be open until 1:00 a.m. every day would be a reasonable use of the property. Extended hours until 3:00 a.m. may have an impact that is detrimental to the surrounding area.

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

The site is served by existing infrastructure and utilities and access roads are adequate. The site is subject to an approved site plan (PW#8073). The site plan in the staff report does not accurately reflect all aspects of the approved site plan, as it omits landscaping, but does show the correct site layout.

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

The extension of hours should not have an effect on traffic congestion in the public streets as the applicant has indicated that in general the late night hours attract more pedestrian traffic than vehicular traffic.

5. The conditional use is consistent with the applicable policies of the comprehensive plan.

The Minneapolis Plan for Sustainable Growth designates this site as part of the Stadium Village Activity Center. The plan states that Activity Centers are “areas that support a wide range of commercial, office, and residential uses. They typically have a busy street life with activity throughout the day and into the evening. An important consideration is the balance between the benefits Activity Centers bring to the city as a whole and the need to mitigate undesirable impacts...”

The plan has the following relevant policy and implementation steps:

Policy 1.12: Support Activity Centers by preserving the mix and intensity of land uses and by enhancing the design features that give each center its unique urban character.

1.12.1 Encourage a variety of commercial and residential uses that generate activity all day long and into the evening.

1.12.2 Encourage mixed use buildings, with commercial uses located on the ground floor and secure entrances for residential uses.

1.12.3 Encourage active uses on the ground floor of buildings in Activity Centers.

1.12.4 Discourage uses that diminish the transit and pedestrian character of Activity Centers, such as automobile services, surface parking lots, and drive-through facilities.

1.12.5 Encourage a height of at least two stories for new buildings in Activity Centers, in keeping with neighborhood character.

1.12.8 Support district parking strategies in Activity Centers, including shared parking facilities with uniform signage, and other strategies.

The staff recommended hours of operation are in conformance with these goals.

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.

With the approval of the conditional use permit and the expansion of the nonconforming use, the use will conform to the applicable district regulations. The site is required to remain in compliance with the

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approved site plan (PW# 8073). Fast food restaurants are subject to the following specific development standard:

(1) The premises, all adjacent streets, sidewalks and alleys, and all sidewalks and alleys within one hundred (100) feet shall be inspected regularly for purposes of removing any litter found thereon.

The applicant is aware of the requirement to remove litter.

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 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. A rezoning of the property would be inappropriate.

The restaurant with a drive-through facility was approved as a part of the site plan for the shopping center in 1996 and was built in 1997-98. The PO Pedestrian Oriented Overlay District was added to the site in 1999, as a part of the general remapping of the city with the adoption of the 1999 zoning code and districts. There have been no small area plans or amendments to the comprehensive plan that would anticipate or support the removal of the PO Overlay District, so a 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 hour (5:00 a.m. rather than 6:00 a.m.) every morning, except Sunday, and to stay open four hours later Monday through Wednesday, five hours later on Thursday, and four hours later on Friday and Saturday. As indicated in the conditional use permit of the extended hours may have an impact on the surrounding area due to increased noise, traffic, and disruptions, particularly for the residential use to the south. However, because the site is in an Activity Center, it would be reasonable to allow operations until 1:00 a.m. and to open an hour earlier at 5:00 a.m.

- 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 extended hours will be for an additional hour (5:00 a.m. rather than 6:00 a.m.) every morning, except Sunday, and to stay open four hours later Monday through Wednesday, five hours later on Thursday, and four hours later on Friday and Saturday. As indicated in the conditional use permit of the extended hours may have an impact on the surrounding area due to increase noise, traffic, and disruptions, particularly for the residential use to the south. However, because the site is in an Activity Center, it would be reasonable to allow operations until 1:00 a.m. and to open an hour earlier at 5:00 a.m.

- 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 beyond those normally allowed in an Activity Center may have an impact on the stability of the neighborhood. No changes to the structure are proposed.

- 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.**

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.

RECOMMENDATIONS:

Recommendation of the Community Planning and Economic Development Department - Planning Division for conditional use permit for to allow extended hours:

The Community Planning and Economic Development Department - Planning Division recommends that the City Planning Commission adopt the findings above and **deny** the conditional use permit to allow the restaurant to open at 5:00 a.m. Monday through Saturday and to stay open until 1:00 a.m. Sunday through Wednesday and until 3:00 a.m. Thursday through Saturday and in lieu thereof **approve** a conditional use permit to allow the restaurant to open at 5:00 a.m. Monday through Saturday and to stay open until 1:00 a.m. every day for property located at 925 Washington Avenue SE subject to the following condition:

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.

Recommendation of the Community Planning and Economic Development Department - Planning Division for the expansion of a nonconforming use to allow extended hours:

The Community Planning and Economic Development Department - Planning Division recommends that the City Planning Commission adopt the findings above and **deny** the expansion of a nonconforming use to allow the restaurant to open at 5:00 a.m. Monday through Saturday and to stay open until 1:00 a.m. Sunday through Wednesday and until 3:00 a.m. Thursday through Saturday and in lieu thereof **approve** an expansion of a nonconforming use to allow the restaurant to open at 5:00 a.m. Monday through Saturday and to stay open until 1:00 a.m. every day for property located at 925 Washington Avenue SE.

Attachments:

1. Statements from the applicant.
2. Letter from 2nd Precinct
3. Police calls.
4. Statement from applicant.
5. Zoning map.
6. Photos.