



TO: Baxter Planning and Zoning Commission

FROM: Matthew Gindele, City Planner

DATE: November 14, 2023 Planning and Zoning Commission Meeting

REQUEST: **PUBLIC HEARING. Conditional Use Permit** for a drive-through and a **Variance** for the drive-through stacking for property located at 15222 Dellwood Drive (city file 23-35)

APPLICANT: McCON Building Corporation

ZONING: C-2, Regional Commercial

1. Application Request

The subject property is currently developed with an existing Culver's restaurant which has an existing drive-through. The applicant is proposing to add one additional drive-through lane to have the flow of traffic through the drive-through. The applicant is requesting approval of the following items to allow the additional drive-through lane:

- **Conditional Use Permit (CUP):**
 - to expand an existing drive-through to have two lanes
- **Variances:**
 - For drive-through stacking spaces

2. Context

Adjacent Land Use and Zoning

	Adjacent Land Use	Zoning
North	Restaurant	C-2, Regional Commercial
East	Big Box Retail	C-2, Regional Commercial
South	Vacant	C-2, Regional Commercial
West	Dellwood Drive and State Highway 371	ROW

Characteristics of the Site

The subject property is fully developed and has little topography with existing landscape trees. There are no wetlands or floodplain on the site and the site is not located in the Shoreland Overlay District.

3. Analysis of Request

Conditional Use Permit for a Drive-through

The applicant is requesting a conditional use permit to expand an existing drive-through for Culver's. The zoning ordinance states that drive through business is allowed subject to the following standards:

- The business shall be located on a site with direct access to a minor arterial street, collector, or service road.

Staff finds that the proposed drive-through is located on Dellwood Drive which is a collector service road.

- Drive-Through Lanes: Drive-through or drive-in lanes are not allowed between the building and a lot line that faces a public street. This does not pertain to driveways.

Staff finds that the existing and proposed site layout does not place the drive-through lanes between the building and street. The drive-through lanes are located in a rear and side yard that does not face a public street

- Drive-through facilities, including, but not limited to, the service windows and stacking spaces, shall be separated from residentially zoned or guided property by an arterial or collector street or shall be set back at least two hundred feet (200') from residentially zoned or guided property.

Staff finds that there is not a residentially zoned or guided property within 200 feet of the subject property.

- The public address or order system shall not be audible from any adjacent residentially zoned or guided property. Electronic speaker devices, if used, shall not be audible beyond the property being served and shall not be operated between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M., unless extended by the city council as part of the conditional use permit.

Staff has added a condition to the resolution for compliance with this standard.

- Adequate stacking distance shall be provided, which does not interfere with other driving areas, parking spaces, or sidewalks. Stacking spaces shall not interfere with parking spaces or traffic circulation.

Staff finds that the stacking area proposed in the site plan does not interfere with driving areas, parking spaces, or sidewalks but that the stacking could back up during peak times and interfere with internal traffic circulation. A condition of approval has been added to the draft resolution requiring the removal of parking stalls and/or the provision of additional curbed islands if there is a documented traffic circulation issue due to the drive-through.

- Businesses with two (2) or more drive-through lanes shall provide stacking space for at least six (6) vehicles per lane, as measured from and including the last pick up station, window, or the like.

The proposed drive-through has two lanes. One lane has 10 stacking stalls and the other has 5 stacking stalls. A variance is discussed later in this report to allow one of the stacking lanes to have only 5 stacking spaces.

- The applicant shall demonstrate that such use will not significantly lower the existing level of service on streets and intersections. The city may require a traffic study to be prepared.

Staff finds that the proposed site alterations do not affect the existing traffic patterns and that the level of service on the existing street network will not be significantly reduced with the proposed alterations because the restaurant and the drive-through are existing uses and the restaurant is not being expanded.

- Screening shall be provided of automobile headlights in the drive-through lane to adjacent properties. Such screening shall be at least three feet (3') in height and fully opaque, consisting of a wall, fence, dense vegetation, berm, or grade change.

Staff finds that the existing coniferous trees on the north side of the drive-through provide the required screening. A condition of approval has been added to the draft resolution requiring the trees on the north property line to be replaced with coniferous trees meeting minimum size standards if they ever die or are damaged to the point that they no longer function as screening to the property to the north.

- A bypass lane shall be provided for each drive-through use, allowing cars to leave the drive-through lane from the stacking area.

A bypass lane has been provided.

CUP Standards

Staff has also reviewed the request against the general CUP standards. Section 10-7-4 of the Zoning Ordinance defines the criteria for reviewing and processing a conditional use permit (CUP). Specifically:

- A. Excessive Burden: The use shall not create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area.

The City finds that the drive-through business would not create an excessive burden on existing parks, schools, streets, and other public facilities because the use is existing and the surrounding road network has been designed to support the commercial development in the vicinity of the subject property.

- B. Compatibility: The use shall be compatible with adjacent land uses so that existing uses will not be depreciated in value and there will be no deterrence to development of vacant land.

The City finds that the subject property is currently developed with a drive-through restaurant and that drive-throughs are allowed conditional uses in the C-2 district and therefore, would not depreciate adjacent properties.

- C. Appearance: The use shall have an appearance that will not have an adverse affect (sic) upon adjacent properties.

The City finds that the drive-through would not have an adverse effect on adjacent properties because the subject property is currently developed with a drive-through that provides screening to adjacent properties.

- D. Overall Needs: The use, in the opinion of the planning and zoning commission shall be reasonably related to the overall needs of the city and to the existing land use.

The City finds that drive-throughs are commonly a part of commercial development. Additionally, the City finds that the proposed drive-through expansion is needed to serve the existing land user to help traffic flow/circulation in the existing drive-through.

- E. Consistent With Purpose: The use shall be consistent with the purposes of this title and purposes of the zoning district in which the applicant intends to locate the proposed use.

The City finds that the drive-through use is consistent with the purposes of the zoning ordinance and the C-2 zoning district. Conditions have been added to the resolution addressing ordinance requirements for the drive-through use.

- F. Comprehensive Plan: The use shall not be in conflict with the comprehensive plan of the city.

The drive-through use would not conflict with the comprehensive plan of the city.

- G. Traffic: The use will not cause traffic hazard or congestion.

With the conditions in the resolution, the proposed use would not cause a traffic hazard or congestion.

- H. Facilities: The use shall have adequate utilities, access roads, drainage, and necessary facilities.

The site has adequate utilities, access roads, drainage, and necessary facilities.

Variance

Drive-through Stacking Variance

The applicant is requesting a variance to the required stacking for the drive-through. The ordinance requires a minimum of 6 stacking stalls per drive-through lane. The proposed site plan includes two drive-through lanes, one having 10 stacking stalls and one having 5 stacking stalls, for a total of 15 stacking stalls. The lane with 5 stacking stalls requires a variance. Staff finds that the total number of stacking stalls proposed is still greater than the minimum number required (12) for a drive-through with two lanes. Therefore, staff supports this variance request pursuant to the findings in this report.

Variance Standards

The variance standards are established by Minnesota Statute §462.357, Subd. 6.2. The burden of proof is on the applicant to show that the variance standards have been met. Specifically:

- a) *That there are practical difficulties in complying with the Zoning Ordinance.*

Staff finds that there are practical difficulties in complying with the Zoning Ordinance. The site is predeveloped with a restaurant and drive-through and the applicant is adding a second drive-through ordering lane to help traffic flow through the drive-through more quickly. The applicant has submitted a site plan that minimizes the need for variances but due to the existing development pattern within the site, the requested variance is still needed.

- b) *That the conditions upon which a petition for a variation is based are unique to the parcel of land for which the variance is sought and were not created by the landowner.*

Staff finds that the conditions are unique to the parcel of the land and were not created by the property owner. The subject property was developed prior to current drive-through ordinance standards. The applicant has indicated the need for the proposed second drive-through lane and has submitted a plan that provides the applicant with the needed improvements to improve traffic flow through the drive-through. However, due to ordinance requirements, the requested variance is still needed.

- c) *That the granting of the variation will not alter the essential character of the locality.*

The proposed variation would not alter the essential character of the locality. Adjacent lots are developed in a similar fashion and are of similar nature in use. Additionally, the subject property is already developed with a drive-through restaurant.

- d) *The proposed variance would be in harmony with the general purposes and intent of the Ordinance.*

The variances would be in harmony with the general purposes and intent of the ordinance because the variance is intended to help the traffic flow through the drive-through and drive-throughs are an allowed conditional use.

- e) *The variance is consistent with the Comprehensive Plan.*

The variance would be consistent with the Comprehensive Plan because the property is zoned as Commercial and the property is used for commercial purposes.

Site Plan

Parking

Restaurant uses required 1 parking stall for every 2.5 seats in the restaurant. The restaurant has a total of 120 seats which requires a total of 48 parking stalls. The current site layout contains a total of 59 parking stalls. The proposed site plan loses 9 stalls leaving a total of 50 parking stalls after the alterations meeting the minimum requirement. A condition of approval has been added to the draft

resolution requiring the removal of parking stalls and/or the provision of additional curbed islands if there is a documented traffic circulation issue due to the drive-through.

Screening

The zoning ordinance requires screening from drive-through headlights to adjacent properties. Screening is currently provided by four existing spruce trees along the north property line, and by the trash enclosure. A condition of approval has been added to the draft resolution requiring the trees on the north property line to be replaced with coniferous trees meeting minimum size standards if they ever die or are damaged to the point that they no longer function as screening to the property to the north.

4. Recommendation

Staff recommends approval of the conditional use permit for a drive-through use and variance for the drive-through stacking requirement for property located at 15222 Dellwood Drive, subject to the findings and conditions in the attached resolution.

Attachments

1. Draft Resolution Approving the Drive-through CUP and Variance
2. Site Location Map
3. Site Details