

CITY OF MARYSVILLE
Hearing Examiner
Findings, Conclusions and Decision

APPLICANT: Chick-fil-A, Inc

CASE NO.: PA 23-001

LOCATION: 8810 36th Avenue NE, Marysville, WA 98270

APPLICATION: Request for a variance to reduce on-site parking from 56 to 41 stalls, reduce the 15-foot L3 landscape buffer along 88th Street NE to approximately 7-feet and reduce the 15-foot L2 landscape buffer adjacent to I-5 to approximately 9-feet to accommodate a second drive-thru lane.

SUMMARY OF DECISION

Staff Recommendation: Approve a variance to reduce required on-site parking outlined in MMC 22C.130.030 and approve a variance to reduce the required landscape buffers outlined in MMC 22C.120.120.

Hearing Examiner Decision: Approve a variance to reduce required on-site parking outlined in MMC 22C.130.030 and approve a variance to reduce the required landscape buffers outlined in MMC 22C.120.120, with two conditions of approval.

PUBLIC HEARING OVERVIEW

After reviewing the official public record file (Exhibits 1-28), that included the Marysville Community Development Department Staff Recommendation (Exhibit 28, September 21, 2023), and after viewing the site, the Hearing Examiner conducted a public hearing on the variance requests. The hearing was opened at 6:10 p.m., September 28, 2023, and was closed at 6:17 p.m.. The public hearing took place in hybrid format, both in-person and by Zoom teleconference. The Hearing Examiner and City staff attended in-person and a representative of the applicant attended and participated via Zoom teleconference. No members of the public participated in this hearing, Participants who provided testimony were a representative of the



city of Marysville Community Development Department, and a representative of the applicant. Participants are listed in this report together with a summary of their testimony. All participants in the public hearing affirmed to be truthful in their testimony. A verbatim recording of the hearing and summary minutes may be obtained from the Community Development Department. Section D of this report is a list of exhibits entered into the record at the hearing.

The elements for consideration of a variance request by the Hearing Examiner following a public hearing are defined for the required parking supply in MMC 22C.130.090.1(a-c) and for the required landscape buffer width in MMC 22G.010.420.1(a-i). These are addressed in Section A of this report.

PUBLIC HEARING TESTIMONY

The Hearing Examiner opened the public hearing, admitted Exhibits 1-28 into the public record, and outlined the procedures for the hearing. The Hearing Examiner summarized the request for a variance to reduce required number of on-site parking spaces, and for a variance to reduce the required width of landscape buffers.

Testimony was provided by the city of Marysville Community Development Department staff and a representative of the applicant. No members of the public provided testimony.

City of Marysville, Development Services Department

Chris Holland, Planning Manager, reviewed the proposal for a variance to the required number of parking spaces and the required width of landscape buffers. The variance requests are necessitated by traffic issues associated with vehicle stacking onto 36th Avenue NE in a queue for drive-up window service. The proposal is accommodated with the documented underutilization of existing on-site parking. Staff believes the proposed site plan is good and that the proposed reductions in the landscape buffer will be minimal and not impactful to the streetscape. Staff recommends two conditions of approval related to the site plan and the landscape plan.

Applicant

Jason Carey, Barghausen Consulting Engineers, affirmed that the applicant has reviewed the Staff Recommendation and concurs with the two conditions of approval.

PUBLIC TESTIMONY

None provided at the hearing.

WRITTEN COMMENTS

No new written comments were provided at the hearing.

FINDINGS, CONCLUSIONS AND DECISION

Having considered the entire record in this matter, the Hearing Examiner now makes and enters the following:

A. FINDINGS

1. The information contained in the Community Development Department Staff Recommendation (Exhibit 28, September 21, 2023) is found by the Hearing Examiner to be complete and supported by the evidence presented during the hearing and is by this reference adopted as portion of the Hearing Examiner's findings and conclusions. A copy of the Staff Recommendation is available from the Marysville Community Development Department.
2. The minutes of the hearing accurately summarize the testimony offered at the hearing and are by this reference entered into the official public record.
3. **Parking Requirements Variance.** The Hearing Examiner finds that the public record supports approval of the parking requirements variance request. Pursuant to MMC 22C.130.090.1(a-c) the Hearing Examiner shall consider the following factors:
 - a. Type of use proposed and traffic generation, including hours of operation, frequency of employee and customer trips, and other specific factors relating to the proposed use.

Applicant Response

Based on recorded store data, the year-to-date transaction count at noon (highest hour of the day) is 180 overall with 115 in the drive-thru, 30 dine in, 15 curbside and 15 carryout and 5 third party delivery. With the additional drive-thru lane and site reconfiguration, we'd expect up to a 10% lift in the peak hour in the drive-thru (i.e 10 additional cars) as speed of service increases. We expect to see a correlated 10% drop in dine-in, curbside, and carryout orders as a result. In our opinion, this justifies the requested reduction in the number of required parking stalls for the site.

Staff Response

As you can see in the photos taken on April 5, 2023 (Exhibit 18), many of the off-street parking stalls are currently "coned-off" as the queuing for the drive-thru prevents customers for utilizing these stalls as they would be blocked in. Essentially, off-street parking has already been reduced on-site and the additional drive-thru lane with greater queuing length will allow these stalls to actually be utilized as originally intended.

Hearing Examiner Findings

Concur with applicant/staff response. MMC 22C.130.030 provides the minimum required parking spaces to accommodate the demand from various land use types. The Hearing Examiner finds that a variance from the minimum required parking spaces is justified based on how customers actually access the restaurant, in drive-thru mode rather than to park and dine-in.

- b. Location of the subject property, proximity to and availability of public transportation facilities, likelihood of customers or employees to use public transportation.

Applicant Response

The site is in very close proximity to a bus stop with route 222 servicing a wide area from the Tulalip Indian Reservation, through neighborhoods reaching Gretchell Hill and then to State Avenue with several commercial and multi-use developments. We can expect reduced vehicle traffic for dine-in guests as they can utilize public transportation that is readily available and conveniently located.

Staff Response

Most customers will not utilize public transportation to dine at Chick-fil-A, however, Community Transit Route 222 has a bus stop located at the intersection of 88th Street NE and 36th Avenue NE.

Hearing Examiner Findings

Concur with applicant/staff response. Transit service is currently available to team members and dine-in customers of Chick-fil-A, as well as to other commercial establishments in the shopping center. Transit use by team members and dine-in customers may provide an unquantified reduction in the demand for parking spaces on the site. Bicycle parking is also available, and sidewalks provide for pedestrian access to the site.

- c. Other information which is relevant and necessary to make a determination as to the validity of the request for modification. Such additional information may include parking studies and traffic surveys for the proposed project vicinity and data concerning the actual parking demand of other similar uses.

Applicant Response

The site also has a shared parking agreement in place, allowing Chick-fil-A team members and customers to utilize parking stalls within the Shopping Center. This brings our proposed total parking stall count to 112 available parking stalls.

Staff Response

Off-street parking for Chick-fil-A has not been a problem since opening. However, queuing for the drive-thru has backed traffic onto 36th Avenue NE and has caused delays to the general public trying to access the neighborhood to the north and other businesses in the area, including the need for traffic control to be performed by the Marysville Police Department to ensure public safety. Doubling the drive-thru capacity and providing additional queuing length will provide much needed relief to the adjacent roadway capacity and businesses.

Hearing Examiner Findings

Concur with applicant/staff response. Absent testimony to the contrary regarding the availability and shared-use of parking spaces within the shopping center, the record supports the applicant/staff response.

4. **Landscape Buffer Variance.** The Hearing Examiner finds that the public record supports approval of the landscape buffer variance request. Pursuant to MMC 22G.010.420.1(a-i) the city may grant a variance only if the applicant demonstrates all of the following:
 - a. The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner.

Applicant Response

The 15' landscape buffers between the drive-thru and 88th and the drive-thru and I-5 will not allow the width necessary on-site to provide adequate safety for team member walkways and a dual-lane drive-thru to increase on-site flow through the site and order efficiency.

Staff Response

The site is located such that it is not visible from 88th Street NE or I-5, due to the grades of the interchange at 88th Street NE and I-5. Therefore, reducing the widths of the required buffers will not have an impact on the streetscape.

Hearing Examiner Findings

Concur with applicant/staff response. The intent of landscape buffer requirement is met with the minor reduction in buffer width adjacent to and grade-separated from the arterial and freeway.

- b. The variance is necessary because of the unique size, shape, topography, or location of the subject property.

Applicant Response

The property is located on the intersection corner of 88th Street NE and the I-5 on-ramp. Due to the proximity to the I-5 on-ramp, heavy traffic volumes are observed along 88th Street NE. The modifications to the site will reduce traffic volume by increasing on-site queuing.

Staff Response

Staff agrees with the applicant's response and doubling the capacity of the drive-thru and providing additional queuing length will provide much needed relief on 36th Avenue NE and 88th Street NE.

Hearing Examiner Findings

Concur with applicant/staff response. The adjacent and grade-separated arterial and freeway represent conditions that are unique to this site.

- c. The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone.

Applicant Response

The upcoming WSDOT improvement project is expected to cause the site to violate setback requirements, and it is likely that other neighboring sites will also be affected by the preliminary design work done seen through coordination with WSDOT. The condition at Chick-fil-A will not be the only property facing this issue.

Staff Response

The property is not deprived by the MMC, of rights and privileges enjoyed by other properties in the vicinity under the same zoning classification. However, the applicant has demonstrated that the additional drive-thru lane will not impact the funded interchange improvements at 88th Street NE and I-5 and intersection improvements at 88th Street NE and 36th Avenue NE (Exhibits 13 & 14).

Hearing Examiner Findings

Concur with applicant/staff response. Strict application of the buffer width requirement would unnecessarily constrain the proposed on-site vehicle circulation.

- d. The need for the variance is not the result of deliberate actions of the applicant or property owner.

Applicant Response

Chick-fil-A has observed high customer traffic volumes for this store and is taking the appropriate actions to increase flow to and from the site to limit potential impacts to 88th Street NE. The 15' Landscape buffer variance is necessary to accommodate the additional drive-thru lane and will allow for more cars to get through the drive-thru service line of Chick-fil-A more efficiently, reducing impacts to the surrounding neighborhoods.

Staff Response

Staff agrees with the applicant's response and doubling the capacity of the drive-thru and providing additional queuing length will provide much needed relief on 36th Avenue NE and 88th Street NE.

Hearing Examiner Findings

Concur with applicant/staff response. The need for the landscape buffer variance addresses an on-site and off-site vehicle circulation situation that is not the result of the deliberate actions of the applicant, but rather by the public demand for the products offered and the drive-thru manner by which those products are ordered and delivered.

e. The variance does not create health and safety hazards.

Applicant Response

The requested variance does not create health and safety hazards. The variance will allow for safety striping on-site for workers to safely walk between lanes and service multiple cars as necessary to maintain faster service times. By accommodating more cars in the drive-thru, we are reducing any potential queuing issues that would block pedestrian paths and driveway access.

Staff Response

Reducing the width of the required landscape buffer will not create a health of safety risk. Doubling the capacity of the drive-thru and providing additional queuing length will provide much needed relief on 36th Avenue NE and 88th Street NE which will provide added safety to pedestrians and motorists.

Hearing Examiner Findings

Concur with applicant/staff response.

f. The variance does not allow establishment of a use that is not otherwise permitted in the zone in which the proposal is located.

Applicant Response

The variance does not change the use or intent of the project that has been permitted within this zone. The site is and will remain a Chick-fil-A quick serve restaurant.

Staff Response

Drive-thru restaurants are a permitted use in the Community Business zone.

Hearing Examiner Findings

Concur with applicant/staff response.

g. The variance does not allow the creation of lots or densities that exceed the base residential density for the zone.

Applicant Response

Additional lots are not proposed, nor is this a residential site. The variance does not allow the creation of lots or densities to exceed the base residential density for the zone.

Staff Response

The zoning designation is Community Business. Residential uses are permitted above ground floor commercial, however, it is not required. The applicant is not proposing creation of additional lots or residential uses.

Hearing Examiner Findings

Concur with applicant/staff response.

h. The variance is the minimum necessary to grant relief to the applicant.

Applicant Response

The requested variance is to grant the site an additional 7.5-9.5 feet to meet the minimum width necessary to safely incorporate a second drive-thru lane. Without the approved variance, the project cannot implement a second drive-thru lane to accommodate additional queueing.

Staff Response

As noted above the site is located such that it is not visible from 88th Street NE or I-5, due to the grades of the interchange at 88th Street NE and I-5. Therefore, reducing the widths of the required buffers will not have an impact on the streetscape. Additionally, doubling the capacity of the drive-thru and providing additional queuing length will provide much needed relief on 36th Avenue NE and 88th Street NE which will provide added safety to pedestrians and motorists.

Hearing Examiner Findings

Concur with applicant/staff response.

- i. The variance from setback or height requirements does not infringe upon or interfere with easement.

Applicant Response

The variance does not infringe upon or interfere with any easements. The project team has closely reviewed the ALTA survey dated December 23, 2022 and confirmed that no on-site easements will be impacted by the variance request and proposed additional drive-thru lane.

Staff Response

A building setback or height variance is not contemplated with this proposal. The applicant has provided a copy of the Protective Covenants, Conditions and Restriction and Grant of Easement, recorded under Auditor's File Number 202304070300 (Exhibit 23). In review of the Protective Covenants a permanent exclusive access easement and striping has been provided to Chick-fil-A for the additional drive-thru land as shown on Exhibit D of the recorded covenants.

Hearing Examiner Findings

Concur with applicant/staff response.

B. CONCLUSIONS

The Hearing Examiner concludes that the applicant has demonstrated compliance with the criteria for a variance from required parking in accordance with MMC 22C.130.090.1(a-c) and for a variance from the required landscape buffer width in accordance with MMC 22G.010.420.1(a-i)

C. DECISION

Based upon the foregoing findings of fact and conclusions, the Hearing Examiner APPROVES the variance requests, as recommended in the Staff Recommendation (Exhibit 28, September 21, 2023) with the following conditions:

1. The preliminary site plan received by the Community Development Department (Exhibit 25) shall be the approved preliminary site plan layout.
2. Prior to civil construction plan approval, a FINAL Landscape Plan shall be approved and designed in accordance with the applicable landscaping standards outlined in MMC Chapter 22C.120 Landscaping and Screening.

Dated this 8th day of October, 2023



Kevin D. McDonald, AICP
Hearing Examiner

D. EXHIBITS

The following exhibits were offered and entered into the record

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| 1. Land Use Application | 16. Notice of Application |
| 2. Project Narrative | 17. Request for Review |
| 3. Title Report | 18. Photos 04.05.23 |
| 4. Correspondence – Landscape Buffer Variance | 19. Affidavit of Publication |
| 5. Correspondence – Parking Overview | 20. Technical Review Comments |
| 6. Correspondence – Parking Variance | 21. TR1 Response |
| 7. Drainage Report | 22. Title Report |
| 8. Geotechnical Report | 23. CC&Rs |
| 9. Geotechnical Report Addendum | 24. Survey |
| 10. Preliminary Grading Plan | 25. Site Plan |
| 11. Preliminary Drainage Plan | 26. Notice of Public Hearing |
| 12. Preliminary Site Plan | 27. Affidavit of Publication |
| 13. Site Plan – ROW Improvement Overlay 1 | 28. Staff Recommendation |
| 14. Site Plan – ROW Improvement Overlay 2 | |
| 15. Letter of Completeness | |

E. PARTIES of RECORD – PARTICIPANTS at the PUBLIC HEARING

Chris Holland City of Marysville Community Development Department 80 Columbia Avenue Marysville, WA 98270	Jason Carey Barghausen Consulting Engineers 18215 72nd Avenue S Kent, WA 98032
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RECONSIDERATION - MMC 22G.010.190.

A party to a public hearing may seek reconsideration only of a final decision by filing a written request for reconsideration with the director within fourteen (14) days of the final written decision. The request shall comply with MMC 22.010.530(3). The hearing examiner shall consider the request within seven (7) days of filing the same. The request may be decided without public comment or argument by the party filing the request. If the request is denied, the previous action shall become final. If the request is granted, the hearing examiner may immediately revise and reissue the decision. Reconsideration should be granted only when a legal error has occurred, or a material factual issue has been overlooked that would change the previous decision.

JUDICIAL APPEAL - MMC 22G.010.560.

- (1) Appeals from the final decision of the hearing examiner, or other city board or body involving MMC Title 22 and for which all other appeals specifically authorized have been timely exhausted, shall be made to Snohomish County superior court pursuant to the Land Use Petition Act, Chapter 36.70C RCW, within 21 days of the date the decision or action became final, unless another applicable appeal process or time period is established by state law or local ordinance.
- (2) Notice of the appeal and any other pleadings required to be filed with the court shall be served as required by law within the applicable time period. This requirement is jurisdictional.
- (3) The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant. The record of the proceedings shall be prepared by the City or such qualified person as it selects. The appellant shall post with the city clerk prior to the preparation of any records an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant.