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## Community Development Memo

**To:** City of Burlington Hearing Examiner

**From:** Brad Johnson, Community Development Director

**Project:** Supplement to CUP Recommendation (CUP 2-24)

**Date:** March 26, 2025

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### Summary:

On March 7, 2025, the Burlington Community Development Department issued a Conditional Use Recommendation and SEPA Determination for permit CUP 2-24. This document was subsequently transmitted to the Hearing Examiner. In an email dated March 18, 2025, the permit applicant submitted a list of questions and concerns regarding the Recommendation and SEPA Determination issued by the Community Development Department.

The Community Development Department has reviewed the questions and concerns raised by the permit applicant. Based on this review, the Community Development Department has prepared the following clarifications and responses. In addition, the Community Development Department respectfully requests that the Hearing Examiner consider the revised conditions of approval included in the memo.

### Questions and Clarifications:

The questions raised by the permit applicant in their email dated March 18, 2025, are addressed individually below. Where appropriate, Community Development has provided clarification or recommended corrections.

1. *Finding "11" - The applicant cannot find any condition (nor in COA #7) where additional right of way is required/needed to accommodate the city's request. Also, the city previously allowed (via email) that either A) a ROW dedication can accommodate this request or B) a limited easement for pedestrian access and utilities. Are either of these options still acceptable options?*

The applicant is correct. A condition should have been included specifying that sufficient right-of-way (ROW) be provided to accommodate all of the required and proposed frontage improvements, such as curbs, sidewalks, and planter strips. Any additional ROW may be provided through a fee simple conveyance, or by conveying a public access and utility easement to the City. Community Development recommends that revised condition “1” be added to the permit decision.

2. *Additionally, BMC 12.28.120 calls out a buffer strip of 5’ between curb and sidewalk. The applicant would like to refer to this finding #11 and finding #19 to confirm with city staff if the following is acceptable to meet both requirements at once: The applicant would like the ability to revise the “buffer” strip area along one or both frontages/streets (west and north) to provide a 10’ buffer strip with landscaping and trees planted every 30ft. The applicant will continue to provide the required sidewalk behind the buffer strip (10’ and 8’, along Hwy 20 and Nevitt Road, respectively). Will this meet both BMC 12.28.120 and BMC 17.81.070.A in this finding #11 and #19?.*

The applicant appears to be confusing the on-site landscaping improvements required by Chapter 17.81 BMC with right-of-way and frontage improvements required by Chapter 12.28 BMC. These requirements are separate and cannot be combined. As explained in the initial staff recommendation, under BMC 17.81.070, a landscaping strip with a minimum width of ten feet must be provided along all public and private streets (BMC 17.81.070.A) and must include, among other planting requirements, trees planted at intervals of 30 feet (BMC 17.81.070.B). These requirements apply to the development site, not the adjoining right-of-way. Separately, and in addition to the requirements in Chapter 17.81 BMC, BMC 12.28.010.A requires that “improved ROW” be provided for all projects. Improved ROW is defined as a street segment that conforms to the appropriate street classification type listed in Chapter 12.28 BMC (BMC 12.28.010.C).

SR-20, which abuts the site to the north, is classified as a “Major Arterial”. Under BMC 12.28.120, improved ROW for Major Arterials includes sidewalks at least ten feet in width (BMC 12.28.120.K) and buffer strips at least five feet in width (BMC 12.28.120.L). When a buffer strip is provided, it must also be planted with street trees planted at intervals of 30 feet (BMC 17.81.070.D).

To help provide additional clarification regarding the required frontage improvements, Community Development recommends that revised condition “2” below be added to the permit decision.

3. *Finding “12” - Can staff please confirm this suggested “enhanced pedestrian amenity” of a new 5’ wide sidewalk along the access road may be designed in the access road property, and not inside the private parcel lines?*

The sidewalk can be designed either within the property lines or within the proposed access road property that will be constructed along the adjacent WSDOT ROW, provide WSDOT agrees to permit the construction of the proposed access road.

4. *Finding “14” - This finding notes a “condition 7” but did staff mean condition 10?*

The applicant is correct. Finding “14 should reference condition “10”, not condition “7”.

5. *Finding – “14” - Additionally, what pavement improvements does the city find acceptable/reasonable for this eastern access road—For example, is a seal coat of existing asphalt areas and new striping along this road acceptable (also included would be new concrete sidewalks)? Areas without existing asphalt would receive new asphalt to look and function completely uniform*

Finding “14” addresses the design specifications and classification of the proposed access road in detail. Specifically, as noted in finding “14”, the proposed road along the WSDOT ROW to the east of the site should be classified as an “access street” and constructed accordingly. General standards for the construction of public streets, in addition to the specific standards for “access streets” are identified in Chapter 12.28 BMC. Engineering and construction details are more appropriately resolved during the grading permit/engineering phase of the permit review.

In order to provide more clarity and ensure the proposed street complies with applicable city standard, the Community Development Department recommends that revised condition “3” be added to the permit decision.

6. *Finding “16” - This finding does not align with any prior staff feedback and direction and a full height walls along a canopy is not possible with this design. Per city notes from a TRC on 03-01-2024 in which the building design and location has not materially changed or altered since then—“The building addition shown on the preliminary plans you submitted for the TRC meeting exceeds the maximum setback from Burlington Boulevard; however, the addition will extend the existing building line and will not increase the extent of the existing non-conformity. In addition, exceptions to the maximum street setback requirement may be granted when necessary to avoid interfering with existing site access arrangements. A drive aisle and loading area are located between the existing building and the street. Extending the addition to comply with the maximum setback would block the drive aisle. Given these factors the maximum street setback will not apply to this project.”*

The Community Development department stands by the original recommendation. The City is not requiring the applicant to change the building setback, instead the City is asking the applicant to provide more details on what the current proposed awnings will look like. The City is simply requesting additional design details for the edge of the proposed canopy abutting the street, showing how the canopy will be used to visually establish a building wall along the maximum setback line. In addition, TRC (pre-

application) notes are informal guidance, and are not binding. The TRC memo provided to the applicant clearly states this. The examples below show how the awnings at other Chick-Fil-A locations have been used to establish a clearly building wall along the street.



7. Finding "19" - Please see the request above in Finding #11 comments. Please also note that the applicant can not find that any buffer between curb and sidewalk is required per code along Nevitt Rd but the applicant would like to understand if BMC 17.81.070.A can be met by combining the 5-6' wide landscape buffer that currently exists along Nevitt Rd and a new 5' wide landscaping area behind the new 8' sidewalk to meet this 10' requirement in BMC 17.81.070.A? Or if not, can the buffer area between curb and sidewalk be widened to 10' and meet both BMC 17.81.070.A and BMC.12.28.120? If not, the applicant may intend to

*remove the existing buffer along Nevitt Rd to make space for the required 10' landscaping buffer.*

The applicant again appears to be confusing the onsite landscaping requirements in Chapter 17.81 BMC with the ROW improvement requirements identified in Chapter 12.28 BMC. If the applicant's current site plan does not adequately address these requirements, then the site plan must be revised. This is what the original permit recommendation requires.

To help provide additional clarity regarding the required frontage improvements, Community Development recommends that revised condition "4" below be added to the permit decision.

8. *Finding "22" - The applicant finds Table 17.81.110.C-1 and has reviewed it. Under "Zone Where Development is Proposed" the MUC zone aligns with the "Adjacent Zoning Designation or Area..." and in this table, the applicant finds that the public access road to the east of this property would fall under PFT-2 and thus require no buffer, nor a Type 3 buffer. Furthermore, WSDOT records and city GIS maps show the city-defined access road to the subject property's east as being in between the freeway and the subject property. In this case, the city zoning map defines the WSDOT access road (adjacent to the Zone where development is proposed) as "PFT-2" and thus, requires no buffer for the MUC zone the applicant is developing. The applicant also would like to acknowledge that a significant landscaping buffer with mature arborvitae trees exist along a portion of the eastern property line and would meet the intent of screening. The applicant respectfully requests that this finding be revised to acknowledge that there is no requirement to provide screening or walls of any sort (including Type III) along the eastern or south-eastern property line given the above-mentioned notes/information.*

The property to the east of the site is a freeway and therefore requires a type III screening. As clearly specified in Table 17.81.110.C-1, when development is proposed in an MUC-2 zone on a site adjacent to a freeway ROW, a type III buffer is required. The site is zoned MUC-2 and abuts a freeway ROW. Therefore, finding #22 is correct as originally drafted, and a final landscaping plan must be submitted that depicts the correct buffer type as required by condition "8" in the original permit recommendation.

Table 17.81.110.C-1

Zone Where Development Is Proposed	Adjacent Zoning Designation or Area and Required Buffer Type <sup>1</sup>					
	RD and RA-1	RA-2 and MUR	MUC and PFT-1	CI and PFT-2	Resource Zones	Freeway or Railroad ROW
RD and RA-1	N/A	None	None	None	Type IV	Type IV
RA-2 and MUR	Type III	N/A	None	None	Type IV	Type IV
MUC and PFT-1	Type III	Type III	None	None	Type IV	Type III
CI and PFT-2	Type IV	Type IV	Type III	None	Type IV	None
Resource Zones	N/A	N/A	N/A	N/A	N/A	N/A
Freeway or Railroad ROW	Type IV <sup>2</sup>	Type IV <sup>2</sup>	Type IV <sup>2</sup>	Type IV <sup>2</sup>	N/A	N/A

9. *Finding “23” - Can staff please confirm that the type II screening wall required along Hwy 20 and Nevitt Rd be placed within the (BMC 17.81.070.A) 10’ landscaping area along the street?*

The Community Development Department concurs. The type II screening wall may be placed within the 10-foot landscaping buffer. BMC.17.81.110.B.2.b code states “If the wall is adjacent to a street it shall be setback at least five feet from the right-of-way”.

10. *Finding “26” - TENW will be working to provide an updated parking study. With that in mind, the parking study already provides justification for the apparent need that Chick-fil-A has to require 75 stalls, at least. There are significant circulation, safety and parking issues with stores that have insufficient parking on-site, such as Bellevue, WA. It will be critically important to the applicant’s design, functionality of the site and safety for its customer to provide 75 stalls. If city staff or the commission do not agree with the justification or need for the required 75 stalls, the applicant can not move forward with this project due to the aforementioned significant concerns. With the revised TENW parking study, the applicant respectfully requests staff’s preliminary feedback prior to the commission hearing.*

Community Development staff fully understand the applicant wants 75 parking spaces, and that similarly large amounts of parking are provided at other Chick-Fil-A locations; however, in order to grant a waiver to the parking limit in BMC 17.85.060.B, the applicant must show why the additional parking is needed. The parking report provided with the application states that 75 parking stalls are needed but provides no data or evidence to support this assertion. Instead, the parking report engages in a circular argument by stating the parking is needed because it is shown on the plan, or similar to the parking provided at other locations. The applicant brought up via email how the Bellevue Chick-Fil-A has insufficient on-site parking and how it affects circulation and safety from insufficient parking; however, they did not use this data in the parking analysis to help prove why this project will need 75 stalls. The City is looking for more data and justification in order to demonstrate compliance with BMC 17.85.060.B.

Specifically, data connecting anticipated trip generation rates and parking turnover is needed. Information regarding peak-hour occupancy rates at other locations may also be helpful in demonstrating a need for additional parking.

To help provide additional clarity regarding the required frontage improvements, Community Development recommends that revised condition “5” below be added to the permit decision.

11. *Finding “28” - Can staff please confirm that the intent/verbiage of this finding is actually “...preliminary landscaping plan **does not include** an irrigation... and complies with the code.”?*

The applicant is correct, finding “28” contains an error; however, there are no associated conditions impacted by this finding.

12. *Condition “8-b” - This condition of approval states the “north and south site boundaries” but the north side boundary is along State Hwy 20. Is this correctly stated, or did staff mean **east** and south site boundaries?*

The applicant is correct, condition “8-b” should be revised to reference the “east” and “south” site boundaries.

13. *Condition “8-e” - Can staff please confirm if the 10-ft street frontage landscaping strip can be counted if the (BMC 17.81.070.A) buffer strip is widened to 10’?*

As previously discussed, the onsite landscaping requirements in Chapter 17.81 BMC are not interchangeable with the ROW improvement requirements in Chapter 12.28 BMC. The applicant is required to comply with the provisions of both code chapters. There is no provision in the Burlington Municipal Code that would allow these requirements to be waived.

14. *Condition “8-f” - The applicant respectfully requests this condition to be removed given the information relayed above related to Finding #22.*

As previously discussed, the onsite landscaping requirements in Chapter 17.81 BMC are not interchangeable with the ROW improvement requirements in Chapter 12.28 BMC. The applicant is required to comply with the provisions of both code chapters. There is no provision in the Burlington Municipal Code that would allow these requirements to be waived.

15. *Condition “18” - The applicant respectfully requests this condition to be removed given the information relayed above related to Finding #16.*

Community Development recommends condition “18” be retained. The City is not requesting that the applicant change the building setback. The City is requesting that design details be provided showing how the awning will be used to establish a clear building line along the street. This is clearly feasible for the applicant given that similar design solutions have been employed at other locations (see photos above). The alternative is for the applicant to comply with the code, as written, which would limit the development to a single queuing lane (BMC 17.50.070.C.3).

**Recommended Revisions:**

1. Prior to final occupancy approval a licensed surveyor shall survey the location and boundaries of any right-of-way improvements located outside of the existing established public right-of-way. Any additional right-of-way necessary to accommodate the improvements shall be provided to the city through a fee simple conveyance or by conveying a public access and utility easement. A licensed surveyor shall prepare legal descriptions and visual illustrations for the conveyance documents. The additional right-of-way shall be conveyed to the city prior to final occupancy.
2. The civil engineering plans submitted with the grading permit application shall include improved right-of-way along the SR-20 frontage consistent with the requirements identified in BMC 12.28.120 for major arterials designated as pedestrian amenity streets. At a minimum, the SR-20 street frontage shall include:
  - a. A sidewalk with a minimum width of 10 feet; and
  - b. A buffers strip with a minimum width of five feet between the street and the sidewalk.
3. The civil engineering plans submitted with the grading permit application shall include design specifications for the proposed access road to the east of the development site in the WSDOT ROW. The design specifications shall be consistent with the requirements identified in BMC 12.28.150 for access streets and the applicable construction standards in Chapter 12.28 BMC.
4. The civil engineering plans submitted with the grading permit application shall include improved right-of-way along the Nevitt Road frontage consistent with the requirements identified in BMC 12.28.130 for secondary arterials. At a minimum, the Nevitt Road frontage improvements shall include:
  - a. The sidewalk shall be widened so that it is at least 8 feet wide; and
  - b. Consistent with the tree retention requirements identified in chapters 12.20 and 17.81 BMC, the existing buffer strip and street trees shall be retained.

5. Prior to the approval of a grading permit application, a revised transportation report shall be submitted. In addition to addressing any other requirements identified in this decision, the revised transportation report shall demonstrate why any additional parking spaces in excess of the parking limit established by BMC 17.85.060.B are needed. This report shall include evidence in the form of trip generation numbers connected to parking turnover rates and shall also include peak hour parking occupancy rates from a statistically valid sample of similarly situated Chik-fil-a locations. The trip generation rates used to substantiate the parking needs shall be fully consistent with trip generation numbers used elsewhere in the report and transportation impact fees shall be calculated accordingly. Conclusory statements, unsubstantiated assertions, and information pertaining solely to the amount of parking desired or provided at other locations shall not be sufficient for purposes of demonstrating a need under BMC 17.85.060.B.