

## Conditional Use Permit – Applicant Requests to Recommendations

**Date:** March 28, 2025

**Project:** Chick-Fil-A (CUP 2-24)

**Location:** 680 Hwy 20 & 808 Nevitt Rd

**Parcel(s):** P23672 & P23664

**Applicant:** Steve Schwartz, Chick-fil-A, Inc.

**Representative:** Andrew Hunt, 4G Development & Consulting, Inc.

**Staff:** Miranda Sires, Planner

### Permit Recommendation:

#### Condition 7.j.i

For the safety of pedestrians and customers attempting to access the subject site, the applicant respectfully requests this condition be revised as follows, given the entire subject site due south of the southern-most access from the WSDOT property is entirely landscaping and proposed infiltration area. No pavement or circulation is proposed in this area.

***7.j.i. A sidewalk, with a minimum width of five feet, shall be provided along the western edge of the WSDOT access road, from SR-20 and extending down and not past the southern-most proposed access along WSDOT access road. This sidewalk shall be connected to the east-west pedestrian path bisecting the parking lot and shall be extended to connect with any existing pedestrian access points on adjacent sites***

Additionally, the applicant has noted in Finding #14 that Staff will allow the applicant to redevelop the WSDOT access road with written and clear WSDOT approval, but as noted by staff *“it is not clear which set of design standards apply”* and *“The function of the [access] road, serving little to no through traffic...”* Included in the communications provided between applicant and WSDOT staff, WSDOT staff agrees that the road be classified as a private access drive for both safety and circulation concerns. Private access drives would not subject to required right-of-way improvements given that the street would be private, not public. Even still, the applicant would like to acknowledge their willingness to add a 5' wide sidewalk along the private drive, from SR-20 up to the southern-most access curb-cut as a means of meeting *enhanced public amenities*.

## Recommended Revisions

### Condition 3.

Given the aforementioned information, the applicant respectfully requests the removal of recommended revisions condition #3, or revision to the language as follows:

*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~~ access road. The designation for this access road shall be a private access street. The design specifications shall be consistent with the requirements set forth by WSDOT and shall be approved by the City of Burlington. ~~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.~~*

## Permit Recommendation:

### Condition 8.f.

In relation to Finding #22, the applicant respectfully requests the removal or strike through of condition 8.f. with reference to the information provided from Skagit County Assessors Office, WSDOT records and correspondence, Records of Survey and Burlington City Zoning maps which all indicate that a type III buffer to the east is not required given that the subject site is not adjacent to a freeway. Condition 7.j.i. also appears to acknowledge that the parcel/site to the east of the subject site is “WSDOT access road”, as well as Finding #14 which references the “WSDOT access road” to the east of the subject site as something that the city does not own. This area to the east of the subject site is not adjacent to the freeway and could also likely meet Table 17.81.110.C-1 Exception (1) which states *“An adjacent property is one that directly abuts the property on which development is occurring. Properties separated by a street or railroad right-of-way shall not be considered adjacent and no buffer shall be required.”*

In relation to other conditions related to the “access road” to the east, the applicant is willing to provide the city’s suggested “Enhanced Pedestrian Amenities” in the form of accepting both of the following conditions of approval: **Condition j.i** and **Condition j.ii** even though this WSDOT access road may no longer be considered a public access road.

### **New Condition (#19?)**

As referenced in Finding #13, the applicant respectfully requests consideration of the following:

The applicant would respectfully ask City Staff or the Hearing Examiner to confirm the definition of “queuing lane” as the applicant cannot find a definition in Burlington’s Municipal Code. As generally defined, a “queuing lane” is a lane (or lanes) where customers or people may queue **or wait** for their food or service. The applicant can only find one instance of a pedestrian path crossing a queuing lane on this proposed site plan, which is in the middle of the drive-through, not after the end of the drive-thru, after customers have picked up their food and have been served.

Can City Staff or the Hearing Examiner make note on record that there is only one (1) crossing proposed?

Additionally, if acceptable, the applicant requests a condition of approval be created to allow an additional option of stamped concrete in lieu of a raised crossing (speed table) as the applicant believes this would meet the intent of city code section BMC 17.50.070.C.5 as well as keep both drivers and pedestrians vigilant, aware of their surroundings and safe as they cross the raised crossing. The intent of stamped concrete allows a safe and well-defined pedestrian crossing areas but removes the significant driving hazard that can come with a 5’ wide raised crossing, especially after a customer has been served both hot and cold drinks and food and it typically making a 180-degree U-turn, exiting the site. If the intent of a raised crossing is to more-safely get pedestrians across the walkway, then they would likely be better served in an environment where drivers can focus more on the road in front of them, rather than protecting their food and drinks as is typical with raised crossings or swales.

***19. Drive-throughs are required to include a raised pedestrian crossing wherever a pedestrian path crosses a queuing lane (BMC 17.50.070.C.5). Alternatively, the applicant may provide stamped concrete in the area(s) where raised pedestrian crossings may be required.***

## Recommended Revisions

### Condition 5.

City Staff has added a new condition (Condition #5), in addition to Finding #26, which requests that significant and technical information be provided to city staff under reference to BMC 17.85.060.B.

*In BMC 17.85.060.B., city code exception number states “5. This limitation may be waived if a traffic and parking study is submitted showing the need for additional parking. Such studies shall be prepared by a licensed engineer, shall be consistent with, and integrated into, any other traffic study prepared for the project, and shall be reviewed by the city engineer.”*

As noted in this section, the applicant may be granted a waiver to exceed the maximum number of parking stalls if a parking study or traffic study is submitted showing the need for additional parking. While it can be inferred that highly technical and specific data is helpful for justification, the code appears to allow applicants the ability to use their parking and traffic studies to justify their need for parking.

As requested by City Staff, the applicant has provided a revised Traffic Study and supplemental Parking Memo as of 03/26/2025 in which TENW references the Peak Parking demand with the ITE manual and utilizes trip generation studies conducted at 4 existing Chick Fil A restaurants. These two technical analyses pair together to factor that weekday peak hour vehicle trip rates are 70% higher than typical fast-food restaurant ITE trip rates. With this in mind, TENW concludes by noting that 75 stalls will ensure that the estimated peak parking demand would be accommodated on-site without impacting neighboring businesses (as concerned by a neighbor via public comment period) and acknowledges that off-site street parking is not permitted or designed for. Another important fact, related to meeting the Burlington Comprehensive Plan objective and requiring additional parking would be that at any given peak-day shift, Chick-fil-A employees can use **on average**, 30 parking stalls, just for employees. This would only leave approximately 40-45 standard stalls for customers.

Increased parking would also support the Burlington Comprehensive Plan 2.5.4 which calls for *“Uses in the MUC designation...have high occupancy, employment densities, and generate significant customer traffic”* and as noted by City Staff *“The proposed*

*development...would also increase significant customer traffic.” Furthermore, the Chick-fil-A proposal appears to fit well into meeting the objectives of the Western Gateway Special Planning General Objectives where Section 2.7.3 states “This area is intended to provide convenient services to surrounding residential areas and provide a location for traveler-oriented businesses such as gas stations, car washes, and hotels.” Chick-fil-A’s consistent demand for a high turnover of customers similar to gas stations and hotels necessitates a surplus of parking on-site.*

Given that parking is one of the most critical aspects to the success of a safe and functional Chick-fil-A restaurant—particularly one located directly off SR-20 and an interstate highway off-ramp—and supported by data from TENW in a Parking Memo, the applicant respectfully requests that City Staff and/or the Hearing Examiner grant approval of the requested maximum 75 on-site parking stall and revise or remove this condition accordingly.

***5. City Staff has received the updated Traffic Impact Analysis and Supplemental Parking Memo dated March 26, 2025. This revised report and supplemental memo meets the requirements of a parking waiver under BMC 17.85.060.B to allow for a maximum of 75 on-site parking stalls.***

***~~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 Chick-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.~~***

## **Building and Occupancy Conditions:**

### **Condition 18.**

As noted in a supplemental memo of questions and clarifications to staff, the applicant has acknowledged the city's original Finding #16 related to building setbacks; however, City Staff Community Director Brad Johnson noted in a Technical Review Committee on March 1, 2024 that "...*Given these factors the maximum street setback will not apply to this project.*"

City staff has subsequently responded on 03/26/25 noting that the Technical Review Committee is informal, although there is no written/found validation or acknowledgement that Brad Johnson's interpretation of this exception is no longer valid. Furthermore, the applicant has been working with staff for now well-over one year on-and-off through the land use process both informal and formal where the applicant submitted their site design to the City of Burlington formally in December of 2024. Through the entire process and up to the issuance of this staff report, city staff has never communicated with the applicant (formally or informally) that they are no longer validating or standing by this exception to setbacks.

Given that the site design has not materially changed in over a year and the building location, queuing lane and drive lanes have stayed almost in the exact same spot, coupled with the understanding that code section BMC.50.090.D and exceptions related to building setbacks have not changed throughout the Technical Review Committee or Land Use Process, the applicant respectfully requests for relief on this condition.

Formally, the applicant respectfully requests relief from and removal of this Condition 18 on the basis of "*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.*"