

1 **BEFORE THE HEARING EXAMINER FOR THE CITY OF BURLINGTON**

2 Emily Terrell, Hearing Examiner

3

4 RE: Raising Canes	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION\</b>
5 Conditional Use Permit	
6 File No. CUP 1-25	

7

8 **INTRODUCTION**

9 Raising Cane’s Restaurants requests conditional use permit approval to construct a  
10 Raising Cane drive-through restaurant to be located at 1075 South Burlington  
11 Boulevard. The proposed development consists of a restaurant building with two  
12 queueing lanes and outdoor seating. The project will involve demolishing existing  
buildings, clearing, grading, and the installation of related landscaping, stormwater,  
and utility improvements. The application is approved subject to conditions.

13 **ORAL TESTIMONY**

14 A computer-generated transcript has been prepared of the appeal hearing to provide an  
15 overview of the hearing testimony. The transcript is provided for informational  
16 purposes only as Appendix A. Since the transcript is computer generated, it is not 100%  
accurate, but does provide a useful indication of what testimony was presented during  
the hearing.

17 **EXHIBITS**

18 Exhibits 1-23 listed on the Exhibit List were admitted into the record during the  
19 November 21, 2025 hearing.

20 **FINDINGS OF FACT**

21 **Procedural:**

- 22
- 23 1. Applicant. The Applicant is LuAron Foster, Raising Cane’s Restaurants  
LLC, 6800 Bishop Road, Plano, Texas 75024.
  - 24 2. Hearing. A hybrid public hearing on the application was held on November  
25 21, 2025, at 10:40 am.

**Substantive:**

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2 3. Site/Proposal Description. The Applicant has applied for a conditional use  
3 permit for a proposed development of a 3,298sf Raising Cane’s restaurant with indoor  
4 seating and a drive-through window with two queuing lanes. The existing 1.25-acre  
5 site is occupied by a Red Robin restaurant that will be removed with the project. The  
6 project will involve demolishing the existing building, clearing, grading, and the  
7 installation of related landscaping, stormwater, and utility improvements.

8 4. Characteristics of the Area. The surrounding area is comprised of retail uses  
9 including Target, Fred Meyers and the Cascade Mall. The site is part of a larger  
10 shopping complex with a Target, a Dollar Tree, Planet Fitness and other retail uses to  
11 the north and shared parking areas between. Retail uses surround the subject site on all  
12 sides.

13 5. Adverse Impacts. The proposal is not found to create any significant  
14 adverse impacts. A Mitigated Determination of Non-Significant impact was issued for  
15 the proposal on October 29, 2025. Pertinent impacts are addressed as follows:

16 a. Critical Areas. No adverse impacts to critical areas are anticipated. The project is  
17 located within the regulatory floodplain of Gages Slough, approximately 0.3 miles  
18 east/south of the subject property. There are no other wetlands, streams or water  
19 courses in the vicinity of the subject property. The Applicant provided a Habitat  
20 Assessment and Mitigation Report (Ex. 12). The report concluded there are no  
21 anticipated impacts to Endangered Species Act listed species or their habitat. The  
22 report also concluded there will be no adverse impacts to water quality, quantity or  
23 flood storage capacity as the property is tied to the City’s stormwater system and  
24 its water quality treatment measures. Additionally, the project is a redevelopment  
25 of an already highly impacted commercial site.

b. Lighting. As mitigated, the proposal will not create any significant adverse lighting  
impacts. The Applicant submitted a lighting plan (Ex. 6), that shows that the  
fixture type will be pole top mounted and wall mounted. The lighting plan shows  
where the lighting will be placed and demonstrates the light intensity within and  
leaving the site. The City imposed a SEPA mitigation measure requiring all light  
fixtures to comply with the approved lighting plan prior to issuance of certificate  
of occupancy. The City will withhold issuance of building permits until the  
Applicant provides documentation demonstrating the lighting complies with  
Washington State Energy Code requirements.

c. Stormwater. As mitigated, the proposal will not create any significant adverse  
stormwater impacts. The Applicant provided a Preliminary Stormwater Report (Ex.  
11). Stormwater currently sheet flows north and west and is collected in catch  
basins located within the neighboring properties where it is routed through the

1 City's storm drainage system and eventually outfalls into the Gages Slough. The  
2 Applicant proposes to intercept stormwater in several catch basins located at the  
3 low points of the site and route it to one of two temporary detention facilities before  
being routed to a water quality vault for oil and metals treatment. From there it will

4 BMC 17.70.135B adopts the Washington State Department of Ecology's  
5 Stormwater Manual for Western Washington. The Manual adopts all known,  
6 available and reasonable methods of stormwater prevention, control and treatment  
7 (AKART). See RCW 90.52.040 and RCW 90.48.010. In addition to protecting  
8 water quality, these standards also require that the proposal not generate off-site  
9 flows that exceed those generated by the predeveloped forested condition of the  
10 project site.

11 BMC 17.70.135.C and E require the Applicant to utilize Low Impact Development  
12 (LID) techniques in the design of the stormwater system. Additionally, landscaping  
13 areas must be used to treat, store and/or infiltrate stormwater runoff. The Applicant  
14 did not propose the use of LID techniques for this project and did not provide an  
15 explanation as to why these techniques are not appropriate for this project.

16 Two staff recommended conditions of approval are imposed with this decision.  
17 Conditions of Approval #7 and 8 require the Applicant to submit a revised  
18 stormwater report and plans showing where and how LID techniques and the use  
19 of landscaping areas to address stormwater have been incorporated into the project  
20 prior to issuance of a grading permit.

21 Given the requirements of the stormwater manual and staff recommended  
22 conditions of approval, the proposal is found to adequately mitigate against  
23 stormwater impacts.

24 d. Aesthetics. The proposal will not create any significant adverse aesthetic impacts  
25 due to conformance to the City's landscaping and refuse screening requirements.

Drive-through establishments are required to provide pedestrian amenities and  
mitigation measures to mitigate the impacts of additional vehicle traffic on  
pedestrian access (BMC.17.50.070.C.7). These additional requirements are  
intended to supplement and enhance the normal standards for design, landscaping,  
and pedestrian access. The Applicant provided a narrative (Ex. 14) that states they  
will be addressing the enhanced pedestrian amenities by raised walkways and  
landscaping. The landscaping plans (Ex. 3) show pedestrian lighting, added  
landscaping, and outdoor seating. The plans appear to have three awnings for  
pedestrians. Together, these amenities meet the requirements for enhanced  
pedestrian amenities.

1 A minimum of 15 percent of the site must be landscaped (BMC 17.81.060.C). The  
2 site has a total area of approximately 54,518sf, meaning a minimum of 8,177sf of  
3 landscaping must be provided. The preliminary landscaping plan (Ex. 3) submitted  
4 with the application depicts landscaping buffers located around the perimeter of the  
5 site, within the parking lot and along the street frontage. However, the submitted  
6 landscaping plan and narrative do not provide a calculation showing that at least 15  
7 percent of the site will be landscaped. A condition of approval (COA No. 8) will  
8 require the Applicant to revise the landscape plan to demonstrate the project  
9 landscaping meets the minimum requirement.

10 The landscaping plan illustrates the required street frontage landscaping along both  
11 Burlington Boulevard and Cascade Mall Drive along with showing adequate trees  
12 and shrubs. However, along Burlington Boulevard there are no dimensions showing  
13 the street frontage buffer of 10 feet in width. A condition of approval (COA No. 8)  
14 will require the Applicant to revise the landscaping plans to show the dimensions  
15 of the buffer widths.

16 Landscaping along interior lot lines must be 5 feet or more in width (BMC  
17 17.81.080.A and B). The landscaping plans demonstrate an intent to provide  
18 interior perimeter landscaping but do not show the dimensions. A condition of  
19 approval (COA No. 8) will require the Applicant to revise the landscaping plans to  
20 show the dimensions of the interior landscaping strips.

21 Drive-through queuing lanes in the MUC-2 zone require enhanced screening  
22 requirements including a landscaped earthen berm or a low masonry wall. The  
23 Applicant provided civil plans demonstrating compliance with this requirement.  
24 Additionally, the civil plans demonstrating compliance with the parking lot  
25 landscaping provisions.

26 In accordance with BMC 17.81.110.A, all loading, storage, and outdoor service  
27 areas such as trash enclosures must be screened from view. Trash requires a type I  
28 buffer which includes a buffer width of five feet and a physical screening with  
29 either a solid site obscuring fence or wall that has a minimum height of six feet  
30 (BMC.17.81.110.1). The current plans show where the trash enclosure will be on  
31 the site and also show adequate details of the trash enclosure and the buffer  
32 screening and show that it will be covered and connected to sewer, therefore  
33 complying with the code.

34 e. Parking. The proposal will not create any significant parking impact. At 3,298sf,  
35 the project must provide 16 parking spaces (BMC 17.85.060.A.1). The Applicant  
36 has proposed 32 parking spaces. This exceeds the maximum parking allowance for  
37 the project site. The City's parking code (BMC 17.85.060.B) limits parking to a  
38 maximum of 120 percent of the total requirement. This limitation may be waived  
39 if a traffic and parking study is submitted showing the need for additional parking.

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The Applicant has not sufficiently demonstrated that double the maximum parking stalls is necessary for the project site. A condition of approval will require the applicant to either revise the plans to show a maximum of 20 parking stalls or provide a parking study demonstrating the need for additional parking.

- f. Traffic. The proposal will not result in adverse impacts upon traffic facilities. The project replaces an existing restaurant with drive-thru with the same use. The new structure itself is proposed to be smaller than the existing restaurant but will contain two, rather than one drive-thru queuing lane.

The Applicant has proposed frontage improvements compliant with the City’s 10-foot-wide sidewalk and five-foot wide buffer strip standard (BMC.12.28.120) along Burlington Boulevard. The current plans largely comply with the five-foot width minimum sidewalk requirement adjacent to Cascade Mall Drive. However, there is a portion of sidewalk near the intersection southwest of the site that is slightly too narrow (4.9-feet instead of 5-feet wide). A condition of approval (COA No. 7) will require the sidewalk along Cascade Mall Drive to be widened to at least five feet (BMC 12.28.150.L).

The Applicant provided a Traffic Impact Report (Ex. 9) assessing compliance with the City’s level of service (LOS) standards. The adopted LOS for City and state roads is LOS D. As demonstrated in Table 3 of the Applicant’s traffic study, intersections materially affected by the proposal will still operate at the existing LOS with or without the project. Delays at intersections resulting from the project will be less than 1.3 seconds in all cases.

Proportionate share impact to the City’s overall road network is mitigated by the payment of traffic impact fees as regulated by Chapter 15.12 BMC. Traffic impact fees come due during building permit review.

- g. Utilities. The proposal will be served by adequate utilities. The project site has is currently developed with a Red Robin restaurant. There is no reason to conclude that utilities could not meet the demand of a similar Raising Cane’s restaurant. The staff report notes that utilities including public water, sewer, and fiber optic communications are available adjacent to the development site

**CONCLUSIONS OF LAW**

**Procedural:**

- 1. Authority of Hearing Examiner. Conditional use permits are classified as “Type III” permits. Type III permit decisions must be made by the City Hearing Examiner (BMC 14A.05.060.C.7).

**Substantive:**

2. Zoning Designation. The parcel is zoned MUC-2.

3. Review Criteria and Application. Conditional Use Permits must be consistent with all of the criteria enumerated in BMC 14A.05.080. For purposes of clarity the applicable criteria have been addressed individually below

**Conditional Use Permit Criteria**

*BMC 14A.05.080.a: The use will have no more adverse effect on the health, safety or comfort of people living or working in the area, and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area, than would any use generally permitted in the district. Among matters to be considered are traffic flow and control, access to and circulation within the property, off-street parking and loading, refuse and service areas, utilities, screening and buffering, signs, yards and other open spaces, height, bulk and location of structures, location of proposed open space uses, hours and manner of operation, and noise, lights, dust, odor, fumes and vibration.*

4. Criterion Met. The criterion is met for the reasons identified in Finding of Fact No. 5.

*BMC 14A.05.080.b: The proposal is in accordance with the goals, policies and objectives of the comprehensive plan*

5. Criterion Met. The criterion is met for the reasons identified in Staff Report Findings of Fact No. 34 on pages 7-10 of the staff report (Ex. 1).

*BMC 14A.05.080.c: The proposal complies with all the requirements of this title (zoning code).*

6. Criterion Met. The criterion is met for the reasons identified at page 13 of the staff report.

*BMC 14A.05.080.d: The proposal can be constructed and maintained so as to be harmonious and appropriate in design, character, and appearance with the existing or intended character of the general vicinity and provides a high quality of development.*

7. Criterion Met. The criterion is met. As described in Finding of Fact No. 5, as mitigated and conditioned, the proposal will be constructed to City infrastructure and landscaping standards. The project will be compatible with the surrounding area in that it is a direct replacement for the existing use on the site. The project will meet the landscaping and aesthetic requirements of the City and represents a net aesthetic

1 improvement over the existing site development. The use itself is compatible with other  
2 commercial, retail and service uses in the project's vicinity (See FOF No. 3).

3 *BMC 14A.05.080.e: The proposal will not adversely affect the public infrastructure.*

4 8. Criterion Met. The criterion is met for the reasons identified in Findings of  
5 Fact 5c, e, f and g.

## 6 **DECISION**

7 As mitigated in the October 29, 2025 SEPA MDNS and as conditioned below, the  
8 conditional use permit conforms to all required criteria for approval of the proposed  
9 development of a 3,298sf Raising Cane's restaurant with indoor seating and a double  
10 queue drive-through window. The conditions necessary to assure compliance and  
11 required by this Decision are as follows:

### 12 **General Conditions:**

- 13 1. This approval shall not be construed to authorize any development or site  
14 modifications beyond those described in the application and shown on the  
15 approved plans. The approved plans shall be the plans and other project  
16 documents attached to, or referenced in, this decision.
- 17 2. Except as otherwise required by the conditions of approval identified in this  
18 decision and the associated SEPA threshold determination, all work,  
19 construction, and development activities shall conform to the approved plans. The  
20 approved plans shall be the plans and other project documents attached to, or  
21 referenced in, this decision. Minor modifications necessary to implement any  
22 changes requested by the Building Official, Fire Marshall, or City Engineer are  
23 permitted when necessary to ensure compliance with established regulatory  
24 requirements.
- 25 3. This approval shall expire two years from the date of approval. The date of  
approval for this decision shall be the date the Hearing Examiner's decision is  
signed.
4. This permit does not authorize the location, design, construction or installation of  
any signs. No signs may be installed unless authorized by a sign permit.
5. The property owner, developer, and all contractors shall be responsible for  
complying with all applicable laws and regulations pertaining to erosion control  
and water quality, including obtaining a Washington State Department of  
Ecology Construction Storm Water General Permit. Any additional erosion

1 control or construction management practices prescribed by the City Engineer or  
2 Building Official shall be immediately implemented.

3 Grading Permit and Site Development:

- 4 6. A grading permit is required prior to beginning any clearing, filling, excavation,  
5 building, construction, or other site development work.
- 6 7. Prior to the issuance of a grading permit civil engineering plans shall be submitted  
7 to, and reviewed by, the City Engineer for compliance with applicable  
8 stormwater, site development, and engineering requirements. A storm-water plan  
9 shall be included with the civil plans and the plans shall include LID measures.  
10 The civil engineering plans must include the following specific information:
- 11 a. Vicinity map legal description, survey notes, sheet index, legend, list of  
12 contacts, and signature blocks.
  - 13 b. Details sheet depicting ADA compliant ramps, aprons, and sidewalks.
  - 14 c. Waterline plan and profile.
  - 15 d. Sanitary sewer plan and profile.
  - 16 e. Site grading and drainage plan.
  - 17 f. Waterline specifications.
  - 18 g. Fiber optic conduit and vaults along all street frontages, connecting to any  
19 adjacent fiber optic conduit and vaults, and connecting to each building.
  - 20 h. Show the sidewalk along Cascade Mall Drive widened to a minimum  
21 unobstructed width of 5 feet.
  - 22 i. Bring the access point off of Burlington Boulevard located immediately north  
23 of the project site into compliance with current ADA standards (see exhibit  
24 "19").
  - 25 j. Provide a revised stormwater report and plans showing where and how LID  
techniques have been incorporated into the proposal.
  - k. Provide a revised Geotech report that shows infiltration of the site and the  
feasibility of LID measures.

1 8. No grading permit shall be approved or issued until a final landscaping plan has  
2 been submitted to, and approved by, the Community Development Department.  
The final landscaping plan shall be consistent with the following:

3 a. The landscaping plan shall demonstrate compliance with all applicable  
4 landscaping code requirements including but not limited to the requirements of  
this permit.

5 b. Provide a calculation table stating the percentage of landscaping that is being  
6 proposed.

7 c. Show dimensions for the 10-foot street frontage landscaping strip and the 5 foot  
8 in width perimeter landscaping strip.

9 d. Demonstrate how landscaping areas have been used to manage stormwater.

10 e. Provide an irrigation plan or a drought tolerant plan.

11 9. A demolition permit is required prior to demolishing any building or structure.  
12 No grading permit shall be issued until the approval has been obtained from the  
Northwest Clean Air Agency.

13 10. Prior to the approval of a grading permit application, a revised transportation  
14 report shall be submitted. In addition to addressing any other requirements  
15 identified in this decision, the revised transportation report shall demonstrate why  
16 any additional parking spaces in excess of the parking limit established by BMC  
17 17.85.060.B are needed. Or the plans shall be revised to reduce the amount of  
parking to only be limited to 20 parking spaces max.

18 **Building and Occupancy Conditions:**

19 11. The landscape irrigation system and all required landscaping shall be installed  
20 prior to final occupancy approval. The landscaping and landscape irrigation  
system shall be consistent with the landscaping plan required by this decision.

21 12. All clearing, grading, storm-water improvements, and utilities shall be consistent  
22 with the civil engineering plans approved by the City Engineer and no final  
occupancy shall be granted until the civil improvements have been inspected by  
the City Engineer.

23 13. No final occupancy or final building permit inspection shall be approved until  
24 civil engineering "as-built" drawing have been submitted to, and approved by,  
25 the City Engineer. No as-built drawings will be approved until the City Engineer  
has inspected the site and verified compliance with the approved civil plans, the

1 conditions of the approved grading permit, and the conditions of this permit. All  
2 infrastructure shown on the approved civil plans, including but not limited to fiber  
3 optic conduit and vaults, public and private street improvements, pedestrian  
access and crosswalk improvements, utilities, and storm-water management  
improvements.

- 4 14. The trash covered enclosure, screening, and sewer drain connection shall be  
5 installed prior to final occupancy approval.
- 6 15. Civil engineering “as-built” drawings shall be submitted to, and approved by, the  
7 City Engineer.
- 8 16. Prior to final occupancy approval a licensed surveyor shall survey the location  
9 and boundaries of any right-of-way improvements located outside of the existing  
10 established public right-of-way. Any additional right-of-way necessary to  
11 accommodate the required frontage or right-of-way improvements shall be  
12 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.
- 13 17. All fire and life safety requirements identified by the Building Official and Fire  
14 Marshal shall be fully addressed.
- 15 18. Building plans shall include design details for the proposed awnings. Awning  
16 design details must show how the awnings will be designed to establish a well-  
17 defined building wall at the maximum setback line, by including vertical supports  
and screening at the setback line.

18 Dated this 8<sup>th</sup> day of December 2025.

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21 Emily Terrell,  
22 City of Burlington  
23 Hearing Examiner Pro Tem

### 24 **APPEAL RIGHT AND VALUATION NOTICES**

25 Conditional Use Permits are type III decisions. The Hearing Examiner’s decision may  
be appealed in accordance with the applicable procedures identified in Title 14A of the

Burlington Municipal Code. For information on appeal procedures please contact the  
Community Development Department.

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