

CITY OF GARRISON

CITY COUNCIL

MEETING PACKET FOR THE

October 2, 2008

REGULARY SCHEDULED MEETING



STAFF REPORT

Application: Variance Application to Exceed 50 Percent Impervious in Commercial District

Applicant: Greg Dolphin, Dolphin Real Estate Management, LLC.

Background: The applicant is applying for a Variance to exceed 50 percent impervious coverage limit in the Commercial Zoning District. The proposed impervious cover is 53.4 percent. The subject property is the former Dairy Queen site. It is located at 9427 Madison Street. The applicant is proposing to develop the site into a Burger King by demolishing the existing building, adding additional screening and constructing a new parking lot.

The request for Variance is due to the fact the applicant would like to have 27 parking stalls on the property. The applicant is indicating this number is needed due to high volumes of daily traffic. The area of the proposed Burger King is located adjacent to and visible from TH 169, which at times, especially during the busy tourist season, can be extremely busy. The applicant would like the 27 stalls to minimize the potential for unauthorized and potentially dangerous parking on City streets, adjacent private properties or in green spaces. The applicant has stated that they would need to remove approximately six parking stalls to meet the 50 percent impervious surface cover limit.

Applicable Statutes: The purpose and intent of the Commercial Zoning District is to provide a zoning classification for commercial uses oriented around the automobile. Parcels are larger than in the Downtown Mixed-Use zone in order to provide on-site parking, on-site stormwater facilities as well as on-site water supply and sewage treatment where municipal utilities are not immediately available.

Section 5.5, subdivision 3, lists the specific lot, use, and density requirements of the Commercial District:

5.5 Commercial (C)

Setback, right of way, City road- feet, minimum	10
Setback, side yard – feet, minimum	10
Setback, rear – feet, minimum	10
Setback, parking from lot line – feet, minimum	10
Setback, wetland – feet, minimum	15
Impervious surface – percent, maximum	25%
Building height – feet, maximum	25

Subdivision 4 provides for an increased impervious surface cover allowance provided the following are met:

4. Performance Standards. The following performance standards apply to all development in this zone:
 - A. Impervious Coverage. Impervious coverage may be increased by up to 25%, not to exceed 50% of the property, through a conditional use permit if the following is provided and approved by the City:
 - i. A storm water retention plan showing containment of the 10-year, 24-

- hour storm event on the parcel.
 - ii. Direct runoff of stormwater to adjacent properties and wetlands shall be eliminated through the use of berms, infiltration ponds, swales, filtration strips or other permanent means.
- B. Compatibility of Use. Use shall be compatible with the surrounding neighborhood. Uses shall not present noise, odor, light nuisances or any other nuisances.
- C. Parking. Off-street parking shall be provided as per Section 7.10. On-street parking may be allowed by the Planning Commission. To reduce the visual impacts and amount of surface parking, shared parking and surface parking shall be located behind or to the side of a building. Additionally, suitable trees and shrubs shall be planted between parking lots and all adjacent sidewalks, roads, lots and buildings.

7.10 Parking.

- 3. Parking Ratios. Adequate parking shall be required, with the following standards to be guidelines subject to site specific review by the Planning Commission:
 - N. Eating and Drinking Establishments: one (1) parking space for each of three (3) seats based upon maximum seating capacity.

11.5 Variiances.

- 5. Variances shall be decided within the required time frame with consideration for the following:
 - A. The strict interpretation of the Ordinance would create undue hardship, and
 - B. The strict interpretation of the Ordinance would be impractical because of circumstances relating to lot size, shape, topographic or other characteristics of the property not created by the land owner, and
 - C. The deviation from the Ordinance with any attached conditions will still be in keeping with the spirit and intent of the Ordinance, and
 - D. The variance will not create a land use not permitted in the zone, and
 - E. The variance will not alter the essential character of the locality, and
 - F. The variance is not for economic reasons alone, but reasonable use of the property does not exist under the Ordinance.

Findings of Fact: Staff offers the following findings of fact for review by the Council:

- 1. The proposed development is for a Burger King. The property currently exists as a Dairy Queen. The proposed development is a compatible use in the Commercial Zoning district.
- 2. The proposed development meets the setback requirements except for the proposed drive through encroaches into the road setback from Madison Street abutting the property line. Also, there is not an indication of the setback from the wetlands on the property.
- 3. The applicant has applied for a Variance as the proposed impervious surface cover is at 53.4 percent. The Ordinance allows for an increased impervious cover up to 50 percent provided the applicant prepares a storm water retention plan

- showing containment of the 10-year, 24 hour storm event. This has been submitted with the proposed development.
4. The current use on the property is for a restaurant. The proposed use is also for a restaurant. This use is compatible with the surrounding neighborhood as it is zoned Commercial and there are other drinking and eating establishments in the vicinity.
 5. The applicant has provided for 27 off-street parking spaces. The proposed parking is located to the side and behind the building.
 6. The applicant has submitted a landscaping plan showing trees and shrubs being planted along the southern property line and also along the eastern property line between the property and the existing City sidewalk. There are also proposed trees between the parking area and wetland.
 7. The applicant has not provided information as to what the maximum seating capacity of the restaurant is. Thus we cannot calculate how many parking stalls are required.
 8. The strict interpretation of the Ordinance would not create undue hardship as there is currently reasonable use of the property. The Ordinance provides for redevelopment of the site and parking area.
 9. The strict interpretation of the Ordinance would not be impractical because of circumstances relating to lot size, shape, or topographic characteristics. The lot is conforming and currently contains a restaurant. There is nothing about the lot that makes application of the ordinance impractical.
 10. The use, with conditions, would still be in keeping with the spirit and intent of the Ordinance as this is a commercially zoned property and a restaurant is a permitted use in this district.
 11. The Variance would not create a land use not permitted in the commercial zone which provides parking provisions to allow off street parking.
 12. The Variance would not essentially alter the character of the neighborhood as there are other restaurants and businesses in the area that provide off street parking.
 13. The Variance does not seem to be for economic reasons alone, but reasonable use of the property would still exist under the Ordinance as parking would still be provided, just six fewer spots.

Planning Commission Direction: The City Council should review the findings of fact presented by Staff for consideration by the Council. Based upon these findings, the Council may approve or deny the variance application, or table if additional information is required to make a decision on the application.

Staff Recommendation: A variance for impervious coverage is a difficult thing. The impervious coverage limitation allocates a property's "share" of the total coverage total amount of coverage allowed within the City. For Garrison, we are already exceeding Minnesota Rules for Shoreland Areas regarding impervious coverage, which would allow a maximum of 25%. It is difficult, if not impossible, to identify a hardship that would provide for additional impervious coverage beyond what the City has allowed.

This is a judgment call, however, and it is the City Council's to make. There are certainly long-term concerns with the site the way it currently is and this proposal does improve the situation, addressing much of the stormwater concerns and providing increased capacity to neighboring properties. If this is approved, we do not recommend any conditions beyond full implementation of the plan, as presented.