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**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF RICHLAND**

Regarding an Application for a Special )  
Use Permit to Provide Drive-Through )  
Window Service at a Proposed Coffee )  
Shop to be Located in a C-1 )  
Neighborhood Retail Business Zone, )  
submitted by )  
  
**Bush Living Trust,** )  
Applicant(s), )  
  
*(The site is located in the Southeast corner of the Steptoe )  
Street and Center Parkway intersection in the City of )  
Richland)* )  
\_\_\_\_\_ )

**File No. SUP 2019-100**

**FINDINGS OF FACT,  
CONDITIONS OF APPROVAL AND  
DECISION**

**I. SUMMARY OF DECISION.**

The applicants have met their burden of proof to demonstrate that their Special Use Permit (SUP) application merits approval. This Decision is limited in scope to the drive-through window service to be provided at a proposed coffee shop. The same applicant received approval in 2015 for a Special Use Permit (SUP 2015-100) on the same parcel of land, but it was connected with development of a car wash. That development plan failed to go forward, and the previous SUP expired. This permit applies to a drive-through coffee shop element of a new development plan for the site that does not include a car wash, but instead includes a commercial building, which is permitted outright under existing city codes. The current plan is far less likely to generate negative impacts on neighboring residents than the original car wash plan. The new SUP application is hereby approved, subject to conditions.

**FINDINGS OF FACT, CONDITIONS OF  
APPROVAL AND DECISION RE: THE BUSH  
FAMILY TRUST APPLICATION FOR A SPECIAL  
USE PERMIT TO PROVIDE DRIVE-THROUGH  
WINDOW SERVICE AT A COFFEE SHOP  
LOCATED IN A C-1 NEIGHBORHOOD RETAIL  
BUSINESS ZONE, FILE NO. SUP 2019-100**

**GARY N. MCLEAN  
HEARING EXAMINER FOR THE CITY OF RICHLAND  
CITY HALL – 505 SWIFT BOULEVARD  
RICHLAND, WASHINGTON 99352**

1 **II. BACKGROUND and APPLICABLE LAW.**

2 In this matter, the Hearing Examiner has jurisdiction to conduct an open record  
3 public hearing and issue a Decision regarding the pending application for a Special Use  
4 Permit to provide drive-through window service at a coffee shop, which will be located in a  
C-1 Neighborhood Retail Business Zone. See RMC 23.46.025(A)(3) and RMC 23.46.060.

5 The applicant bears the burden of proof to show that its application conforms to the  
6 relevant elements of the city’s development regulations and comprehensive plan, and that  
7 any significant adverse environmental impacts have been adequately addressed. RMC  
19.60.060.

8 RMC 23.46.040 specifies the hearing process and criteria that must be satisfied by  
9 an applicant to obtain a Special Use Permit, and reads as follows:

10 **23.46.040 Hearings – Findings – Conditions.**

11 The hearing body shall conduct an open record public hearing on an application for special  
use permit as required by RMC Title 19 for a Type III permit application.

- 12 A. Any person may appear at the public hearing in person, or by agent or attorney.
- 13 B. The hearing body shall make a finding that it is empowered under the section of this code  
14 described in the application to consider the application for the special use permit.
- 15 C. The hearing body shall approve, approve with conditions or deny an application for a  
special use permit based on findings of fact with respect to the following criteria:
- 16 1. The size and dimensions of the site provide adequate area for the proposed use;
  - 17 2. The physical conditions of the site, including size, shape, topography, and  
18 drainage, are suitable for the proposed development;
  - 19 3. All required public facilities necessary to serve the project have adequate  
20 capacity to serve the proposed project;
  - 21 4. The applicable requirements of this zoning regulation (RMC Title 23), the city  
comprehensive plan, the city sensitive area regulations (RMC Title 20), the city  
22 shoreline management regulations (RMC Title 26) and the city sign regulations  
23 (RMC Title 27) have been met; and
  - 24 5. Identified impacts on adjacent properties, surrounding uses and public facilities  
25 have been adequately mitigated.

26 **FINDINGS OF FACT, CONDITIONS OF  
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1 D. The hearing body may impose conditions on the approval of a special use permit in  
2 addition to or above and beyond those required elsewhere in this title, which are found  
3 necessary to ensure the use is compatible with the public interest. These conditions may  
4 include, but are not limited to, the following:

- 5 1. Limiting the hours, days, place and/or manner of operation;
- 6 2. Requiring design features which minimize environmental impacts such as noise,  
7 vibration, air pollution, glare, odor and/or dust;
- 8 3. Requiring additional setback areas, lot area and/or lot depth or width;
- 9 4. Limiting the building height, size or lot coverage, and/or location on the site;
- 10 5. Designating the size, number, location and/or design of vehicle access points;
- 11 6. Requiring street right-of-way dedication and/or street improvement;
- 12 7. Requiring additional landscaping, berms and/or screening of the proposed use  
13 and/or its parking or loading areas and designating the required size, height, type  
14 and/or location of fencing and landscaping materials;
- 15 8. Limiting the number, size, location, height and/or lighting of signs.

16 E. Violation of any conditions, requirements, and safeguards, when made a part of the terms  
17 under which the special use permit is granted, shall be deemed a violation of this code and  
18 punishable under RMC 23.70.270.

19 F. The hearing body may prescribe a time limit within which the action for which the  
20 special use permit is required shall be begun and/or completed. Failure to begin and/or  
21 complete such action within the time limit set shall void the special use permit. The time  
22 limits may be extended by the hearing body for good cause shown. In the event that no  
23 specific time limit to begin or complete a special use permit is identified, then the special  
24 use permit shall remain valid for a period of two years from the date that the permit was  
25 issued. The hearing body may authorize issuance of a special use permit for a specified  
26 probationary period of time, at the termination of which the applicant must resubmit a new  
application in accordance with the provisions of RMC 23.46.020. [Ord. 28-05 § 1.02].

### III. QUESTION PRESENTED.

Whether the application for a Special Use Permit satisfies the approval criteria set forth in applicable city codes and regulations, particularly RMC 23.46.040(C)?

Short Answer: Yes.

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**IV. RECORD AND EXHIBITS.**

Exhibits entered into evidence as part of the record, and an audio recording of the public hearing, are maintained by the City of Richland, and may be examined or reviewed by contacting the City Clerk’s Office.

**Hearing Testimony:** The following individuals presented testimony under oath at the duly noticed public hearing for the underlying application, held on Monday, March 11, 2019:

1. Shane O’Neill, Senior Planner for the City of Richland. Mr. O’Neill summarized the Staff Report, suggested conditions, and his recommendation of approval. He answered questions posed by the Examiner, and provided responses to questions and comments made by those who testified or submitted written comments as part of the record.
2. Harvey Prickett, Applicant’s architect and project designer, provided details regarding the application, the site plan, revisions and adjustments made in light of comments and concerns raised by neighbors, highlighted features or aspects of the project intended to minimize impacts, noted some modifications he would like in the final conditions of approval, and provided responses to questions and comments made by those who testified during the public hearing. Mr. Prickett agreed to work with Staff to generate a final Site Plan for consideration, to eliminate possible conflicts with parking and traffic at the ingress/egress point for the site, and other details noted at the hearing.
3. Rebecca Bouie, resides in home located behind the proposed development, appreciates space separating homes from the new project, and noted that 6-foot fencing would be appreciated;

In the last public hearing for the Bush SUP in 2015, Tim Bush spoke on behalf of his family’s Trust, the same applicant(s) in this matter, and wanted to assure members of the public that his other developments in the Tri-Cities region include landscaping that is well-maintained, like it will be at this new site. He explained that his businesses are good neighbors, and wants to be the same in this new location.

**FINDINGS OF FACT, CONDITIONS OF APPROVAL AND DECISION RE: THE BUSH FAMILY TRUST APPLICATION FOR A SPECIAL USE PERMIT TO PROVIDE DRIVE-THROUGH WINDOW SERVICE AT A COFFEE SHOP LOCATED IN A C-1 NEIGHBORHOOD RETAIL BUSINESS ZONE, FILE NO. SUP 2019-100**

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***Application, Public Notice, and Review***

2. On or about January 8, 2019, the Bush Living Trust submitted its application for a Special Use Permit (“SUP”) needed to provide drive-through window service at a proposed coffee shop to be located in a C-1 Neighborhood Retail Business Zone in the City of Richland. *Staff Report, page 8; Exhibit 1.* Following receipt, City staff complied with all applicable public notice requirements for the SUP application and the public hearing held for the matter. *Staff Report, Page 8; Exhibit 4.*

3. As part of the SUP review, the applicant filed a completed SEPA Checklist disclosing various project features that could impact aspects of the surrounding environment. *Exhibit 5.* The City’s SEPA responsible official reviewed the completed checklist and issued a Determination of Non-Significance for the underlying SUP application. *Exhibit 6; Staff Report, page 8.*

4. Witness testimony, maps of the area, and the Examiner’s site visit all establish that the project site and neighboring single family homes are already impacted by sound from traffic on Steptoe, as well as the railroad line immediately to the south. In the previous SUP application from 2015, the Examiner takes notice that the Traffic Impact Analysis provided in connection with that matter (previous Ex. 5) explained that traffic volumes on Steptoe, and Center Parkway, will increase substantially, mostly due to future construction of homes in the new subdivision proposed to the west. The proposed Bush development is located within the City’s South Richland Traffic Impact Fee Program area, so the applicant will be required to pay traffic impact fees in effect at the time future building permits are issued for development on the site.

5. In this matter, the record demonstrates general conformance with the City’s comprehensive plan, zoning and development regulations. The Special Use Permit for the proposed drive-through service at a small, local coffee shop is among the lowest-impact commercial uses already permitted on the site outright as a parcel zoned C-1, Neighborhood Retail Business. Other commercial uses, like a sit-down restaurant with a full kitchen presumably necessitating an exhaust fan, an arcade, a laundry and/or dry-cleaning business, are all among the uses permitted outright in the C-1 zone. The development proposed in the site of the Special Use Permit addressed in this decision has been designed with due consideration and respect for concerns of surrounding property owners. The conditions of approval take those factors one-step further – mandating compliance with such terms so long as drive-through service is to be provided by the coffee shop on the site.

**FINDINGS OF FACT, CONDITIONS OF APPROVAL AND DECISION RE: THE BUSH FAMILY TRUST APPLICATION FOR A SPECIAL USE PERMIT TO PROVIDE DRIVE-THROUGH WINDOW SERVICE AT A COFFEE SHOP LOCATED IN A C-1 NEIGHBORHOOD RETAIL BUSINESS ZONE, FILE NO. SUP 2019-100**

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1 ***Application satisfies approval criteria***

2 6. The record includes a preponderance of evidence that includes design plans,  
3 testimony by the applicants' design professional, a thorough project analysis summarized in  
4 the Staff Report, all of which establish that the proposed drive-through window service at a  
coffee shop satisfies all 5 approval criteria contained in RMC 23.46.040(C), as explained in  
more detail below:

5 *Criteria 1* – the size and dimensions of the site provide adequate area for drive-  
6 through window service at the proposed coffee shop. (See *FINAL Site Plan, Ex. 12*);

7 *Criteria 2* – The record also includes substantial, credible evidence, sufficient to  
8 establish that the physical conditions of the site, including size, shape, topography, and  
9 drainage, are suitable for the drive-through window service at the proposed coffee shop,  
10 satisfying *Criteria 2* contained in RMC 23.46.040(C). Items in the record supporting such  
finding include, but are not limited to: the *FINAL Site Plan (Ex. 12)*; *Site Visit*; *Staff*  
*Report*; and *Testimony of applicant's design professional, Mr. Prickett*.

11 *Criteria 3* – The *Staff Report*, *Testimony of Mr. O'Neill and Mr. Prickett*, and site  
12 visits by the Examiner, all provide credible and substantial evidence sufficient to establish  
13 that all required public facilities necessary to serve the drive-through window/coffee shop  
project have adequate capacity to serve the proposed project.

14 *Criteria 4* – The *Staff Report* includes a detailed summary and analysis of how the  
15 proposed project will, or can be conditioned to, satisfy all zoning standards applicable to the  
16 property, including without limitation C-1 zone Performance Standards, Dimensional and  
17 Parking Standards, and specific Standards for Drive-Through Window Service, found at  
18 RMC 23.42.047. See *Staff Report, particularly pages 5-6, and Analysis on pages 10-13*.  
19 Beyond compliance with applicable zoning and development regulations that are valid and  
20 enforceable because they have been adopted by the city to implement various provisions  
21 and policies in the City's Comprehensive Plan, there are no specific Comprehensive Plan  
requirements to be applied in this matter. The City's sensitive area regulations, found in  
RMC Title 20, and the City's shoreline management regulations, found in RMC Title 26,  
are not applicable to this application, because the project site is free of wetlands, steep  
slopes, geological hazards, floodplains, or other conditions that would necessitate  
compliance with such regulations. The current application does not identify any proposed  
signage for the project, but any future requests for signs must satisfy all code requirements.

22 *Criteria 5* – As conditioned in this Decision, the identified impacts on adjacent  
23 properties, surrounding uses and public facilities have been adequately mitigated.

24 **FINDINGS OF FACT, CONDITIONS OF**  
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2 7. The Staff Report includes a number of specific findings and explanations that  
3 establish how the underlying application satisfies provisions of applicable law and is  
4 consistent with the city's zoning regulations, including C-1 performance standards and  
5 RMC 23.42.047, standards for drive through window service. Except as modified in this  
6 Decision, all Findings and statements of fact contained in the Staff Report are incorporated  
7 herein by reference as Findings of the undersigned-hearing examiner.

8 8. Any factual matters set forth in the foregoing or following sections of this Decision  
9 are hereby adopted by the Hearing Examiner as findings of fact, and incorporated into this  
10 section as such.

11 9. Based on the record, the applicant demonstrated its special use permit application  
12 merits approval, meeting its burden of proof imposed by RMC 19.60.060.

13 10. Approval of this special use permit will not and does not constitute, nor does it  
14 imply any expectation of, approval of any administrative permit or subsequent reviews that  
15 may be required for construction, increased intensity of uses, or other activities on the site  
16 of the special use permit.

## 17 VI. CONDITIONS OF APPROVAL.

18 Based on the record and authority specifically granted under applicable city codes,  
19 including without limitation RMC 23.46.040(D), the Examiner hereby imposes the  
20 following conditions on the approval for the pending special use permit in addition to or  
21 above and beyond those required elsewhere in the city's municipal code, specifically  
22 finding that such conditions are necessary to ensure the proposed use is compatible with the  
23 public interest:

24 1. The project shall comply with all conditions identified in the REVISED Technical  
25 Advisory Committee Report, dated 3/11/2019, included in the Record as Exhibit 7. Any  
26 minor modifications or deviations shall be subject to approval of the Planning Manager.

2. The project shall be developed in substantial conformance with the FINAL Site Plan  
included in the Record as Exhibit 12, and the eastern boundary of the site shall be re-graded  
to create a vertical separation of approximately 4-foot from the adjacent residential lots,  
with a 6 foot tall masonry fence installed along the entire eastern boundary of the developed

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1 portion of the site. City staff shall have discretion to facilitate and/or approve any  
2 agreement between affected property owners and the applicant as to the final location of the  
masonry fence, and possible removal of abutting cedar fences on residential lots.

3 3. Landscaping within the 10-foot landscape strip along the eastern property boundary  
4 shall include tree plantings for each 30 linear feet along the landscape strip. Trees shall be  
5 species having an average mature spread of crown of greater than 15 feet and shall have a  
6 minimum of six to eight feet in height and have a diameter at breast height (dbh) caliper of  
7 at least one and one-half inches at planting. Diameter at breast height is measured at four  
8 and one-half feet from average grade within six feet of the tree trunk so as not to include  
mounding at the tree base. Trees having an average mature spread of crown less than 15  
feet may be substituted by grouping the same so as to create the equivalent of a 15-foot  
crown spread.

9 4. The applicant shall provide a striping plan for Center Parkway to be prepared by a  
10 professional engineer for review and approval by the Richland Public Works Department in  
consultation with the City of Kennewick Public Works Department.

11 5. The current application does not identify any proposed signage for the project, but  
12 any future requests for signs must satisfy all development regulations in effect at such time.

13 6. No exterior sound-generating or sound-receiving electronic communication devices  
14 can be used on the project site in connection with the drive-through window service at the  
15 coffee shop. It is the intent of this provision to recognize that the applicant does not  
16 propose to use any freestanding microphone/speaker device along the approach to the drive-  
17 through service window, as commonly used by such businesses. This condition shall not be  
construed to prevent the use of texts, emails, or other silent, non-sound generating  
electronic devices that could be used to place orders for pick-up at the drive-through  
window addressed in this Decision.

18 7. The applicant shall comply with all performance standards applicable to the C-1  
19 Neighborhood Retail Zone (RMC 23.33.020(B)).

20 8. Final plans for location and utilization of exterior lighting on the project site shall  
21 subject to approval by the Planning Manager, with preference given to “Dark- Sky” fixtures  
and/or design considerations intended to reduce light glare upward into the night sky and  
‘fugitive light’ that could carry over onto residential properties.

22 9. The coffee shop shall not be permitted to roast coffee beans on-site, to reduce  
23 potential smell impacts on neighboring properties.

24 **FINDINGS OF FACT, CONDITIONS OF**  
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1 10. Respecting the close proximity of the coffee shop to homes, and to minimize  
2 potential impacts to same, the coffee shop shall not be open to customers before 5:00 a.m.

3 11. The coffee shop shall be closed to customers by 7:00 p.m. in Winter months, and  
4 8:30 p.m. in other seasons.

5 12. Consistent with RMC 23.46.090, the validity of this special use permit shall be  
6 contingent upon exercise of the special use, as granted, and the special use permit shall run  
7 with the property regardless of a change in ownership of the property. This Decision  
8 granting the underlying special use permit shall be recorded with the Benton County  
9 auditor's office as a special covenant, which shall run with the property regardless of a  
10 change in ownership of the property. Such recording shall be the responsibility of the  
11 permit-holder/applicant, and a conformed copy of the recorded instrument reflecting a valid  
12 recording number shall be filed with the city prior to the conduct of any drive-through  
13 service at the coffee shop on the property. Any change in the special use for which the  
14 original permit is issued, which is determined to be substantial by the administrative  
15 official, shall void the original permit and necessitate the submission of a new application.

16 13. Under authority provided in RMC 23.46.040(F), this permit shall be void and of no  
17 legal effect if the permit-holder fails to develop and open the coffee shop approved in this  
18 permit within two (2) years of the date of this Decision, provided this time limit may be  
19 extended by the Examiner for good cause.

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24 **FINDINGS OF FACT, CONDITIONS OF**  
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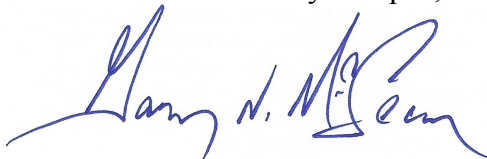
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**VII. DECISION.**

Based upon the preceding Findings and Conditions of Approval, the Bush Special Use Permit application to provide drive-through window service at a coffee shop is hereby APPROVED, as conditioned herein. Consistent with RMC 23.46.060, this Decision authorizes the City’s administrative official to issue a special use permit, subject to the applicant’s compliance with the above-referenced Conditions of Approval.

ISSUED this 25<sup>th</sup> Day of April, 2019



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Gary N. McLean  
Hearing Examiner

**Opportunity to Appeal**

As provided in RMC 23.46.070, this Decision shall be final unless written notice of appeal to the city council, together with such fees as are required by RMC 19.80.020 is filed with the city clerk within 10 days from the date of this Decision. Such appeal shall be consistent with the requirements set forth in Chapter 19.70 RMC for appeal of decisions on Type II permit applications. The city council shall review the official record of the special use permit application, including the notice of appeal, and shall consider testimony pertinent to the official record. If new evidence is received that is not part of the official record, the city council shall not use the new evidence as a basis of reversing a decision, but instead shall remand the application to the hearing body for reconsideration. The city council may, so long as such action is in conformity with the terms of this code, reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as the city council deems appropriate.

**FINDINGS OF FACT, CONDITIONS OF APPROVAL AND DECISION RE: THE BUSH FAMILY TRUST APPLICATION FOR A SPECIAL USE PERMIT TO PROVIDE DRIVE-THROUGH WINDOW SERVICE AT A COFFEE SHOP LOCATED IN A C-1 NEIGHBORHOOD RETAIL BUSINESS ZONE, FILE NO. SUP 2019-100**

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