



## **NOTICE OF DECISION**

**PURSUANT TO RICHLAND MUNICIPAL CODE SECTIONS 19.60.080 & 23.46.050, NOTICE IS HEREBY GIVEN THAT THE RICHLAND HEARING EXAMINER HELD A PUBLIC HEARING ON MARCH 11, 2019 TO CONSIDER AN APPLICATION SUBMITTED BY BUSH LIVING TRUST FOR A SPECIAL USE PERMIT TO OPERATE A DRIVE-THROUGH COFFEE SHOP IN THE RETAIL BUSINESS (C-1) ZONE.**

**REQUEST:** Construct and operate a drive-thru coffee shop in the C-1 (Neighborhood Retail) zone

**LOCATION:** Southeast corner of Steptoe Street and Center Parkway (APN's 1-01881BP4808001 & 1-01881BP4808002).

**DESCRIPTION OF ACTION:** Special Use Permit approved subject to the following findings of fact, conclusions of law and conditions of approval.

### **FINDINGS OF FACT:**

1. As required by RMC 23.46.040(B), the Examiner expressly finds that he is empowered by RMC 23.46.025(A)(3), RMC 23.46.060 and RMC 19.20.030 to consider the Bush Living Trust's application for a special use permit to construct a coffee shop with drive-through window service in a C-1 Neighborhood Retail Business Zone.
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.
6. The record includes a preponderance of evidence that includes design plans, testimony by the applicants' design professional, a thorough project analysis summarized in 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:

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

Criteria 2 – The record also includes substantial, credible evidence, sufficient to establish that the physical conditions of the site, including size, shape, topography, and drainage, are suitable for the drive-through window service at the proposed coffee shop, 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.

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

Criteria 4 – The Staff Report includes a detailed summary and analysis of how the proposed project will, or can be conditioned to, satisfy all zoning standards applicable to the property, including without limitation C-1 zone Performance Standards, Dimensional and Parking Standards, and specific Standards for Drive-Through Window Service, found at RMC 23.42.047. See Staff Report, particularly pages 5-6, and Analysis on pages 10-13. Beyond compliance with applicable zoning and development regulations that are valid and enforceable because they have been adopted by the city to implement various provisions 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.

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

7. The Staff Report includes a number of specific findings and explanations that establish how the underlying application satisfies provisions of applicable law and is consistent with the city's zoning regulations, including C-1 performance standards and RMC 23.42.047, standards for drive through window service. Except as modified in this Decision, all Findings and statements of fact contained in the Staff Report are incorporated herein by reference as Findings of the undersigned-hearing examiner.
8. Any factual matters set forth in the foregoing or following sections of this Decision are hereby adopted by the Hearing Examiner as findings of fact, and incorporated into this section as such.
9. Based on the record, the applicant demonstrated its special use permit application merits approval, meeting its burden of proof imposed by RMC 19.60.060.
10. Approval of this special use permit will not and does not constitute, nor does it imply any expectation of, approval of any administrative permit or subsequent reviews that may be required for construction, increased intensity of uses, or other activities on the site of the special use permit.

#### **CONDITIONS OF APPROVAL:**

1. The project shall comply with all conditions identified in the REVISED Technical Advisory Committee Report, dated 3/11/2019, included in the Record as Exhibit 7. Any 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 portion of the site. City staff shall have discretion to facilitate and/or approve any 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. Landscaping within the 10-foot landscape strip along the eastern property boundary shall include tree plantings for each 30 linear feet along the landscape strip. Trees shall be species having an average mature spread of crown of greater than 15 feet and shall have a minimum of six to eight feet in height and have a diameter at breast height (dbh) caliper of at least one and one-half inches at planting. Diameter at breast height is measured at four 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.
4. The applicant shall provide a striping plan for Center Parkway to be prepared by a professional engineer for review and approval by the Richland Public Works Department in consultation with the City of Kennewick Public Works Department.
5. The current application does not identify any proposed signage for the project, but any future requests for signs must satisfy all development regulations in effect at such time.
6. No exterior sound-generating or sound-receiving electronic communication devices can be used on the project site in connection with the drive-through window service at the coffee shop. It is the intent of this provision to recognize that the applicant does not propose to use any freestanding microphone/speaker device along the approach to the drive-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.

7. The applicant shall comply with all performance standards applicable to the C-1 Neighborhood Retail Zone (RMC 23.33.020(B)).
8. Final plans for location and utilization of exterior lighting on the project site shall be 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.
9. The coffee shop shall not be permitted to roast coffee beans on-site, to reduce potential smell impacts on neighboring properties.
10. Respecting the close proximity of the coffee shop to homes, and to minimize potential impacts to same, the coffee shop shall not be open to customers before 5:00 a.m.
11. The coffee shop shall be closed to customers by 7:00 p.m. in Winter months, and 8:30 p.m. in other seasons.
12. Consistent with RMC 23.46.090, the validity of this special use permit shall be contingent upon exercise of the special use, as granted, and the special use permit shall run with the property regardless of a change in ownership of the property. This Decision granting the underlying special use permit shall be recorded with the Benton County auditor's office as a special covenant, which shall run with the property regardless of a change in ownership of the property. Such recording shall be the responsibility of the permit-holder/applicant, and a conformed copy of the recorded instrument reflecting a valid recording number shall be filed with the city prior to the conduct of any drive-through service at the coffee shop on the property. Any change in the special use for which the original permit is issued, which is determined to be substantial by the administrative official, shall void the original permit and necessitate the submission of a new application.
13. Under authority provided in RMC 23.46.040(F), this permit shall be void and of no legal effect if the permit-holder fails to develop and open the coffee shop approved in this permit within two (2) years of the date of this Decision, provided this time limit may be extended by the Examiner for good cause.

**APPEAL PROCEDURES:** Written notice of appeal to the city council, together with such fees as are required by RMC [19.80.020](#), must be filed with the city clerk within 10 days from the date of the issuance of this notice of 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. Appeals must be filed within 10 business days of issuance of this notice. The deadline for filing an appeal is May 13, 2019.

  
\_\_\_\_\_  
Mike Stevens,  
Planning Manager

April 25, 2019  
Date