



## **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 DECEMBER 9, 2019, TO CONSIDER AN APPLICATION SUBMITTED BY O'BRIEN CONSTRUCTION COMPANY INC, FOR A SPECIAL USE PERMIT TO OPERATE A DRIVE-THROUGH FOOD SERVICE WINDOW IN THE CENTRAL BUSINESS DISTRICT. THE PROJECT SITE IS LOCATED AT 1018 GEORGE WASHINGTON WAY. ON JANUARY 3, 2020 THE EXAMINER ISSUED A WRITTEN DECISION TO APPROVE SPECIAL USE PERMIT # 2019-103.

**REQUEST:** Operate a drive-through food service window in the Central Business District (CBD)

**LOCATION:** 1080 George Washington Way

**DESCRIPTION OF ACTION:** Request approved subject to the conditions as listed in the Hearing Examiner's written decision.

**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)(12), RMC 23.46.060, and RMC 19.20.030 to consider the pending application for a special use permit to operate a business with drive-through window service on a site in the city's Central Business District (CBD) zoning district.

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

2. On or about October 1, 2019, O'Brien Construction Company Inc., via their designated contact person, Chris O'Neill (no relation to the City planner reviewing this project), submitted the pending application for a Special Use Permit ("SUP") needed to operate a food service/restaurant business with drive-through window service in the City's Central Business District (CBD) Zone in the City of Richland. *Exhibit 1, application materials; Staff Report, page 10, providing date.* Following receipt, City staff complied with all applicable public notice requirements for the SUP application and the public hearing held for the matter. *Exhibit 3, Notice of Application and Public Hearing.*

3. Staff determined that the pending application is exempt from SEPA review, citing the SEPA exemption found at WAC 197-11-800(6)(b)(i) and (ii), generally noting the proposed activities addressed in this application would occur in an existing building on the site. *Staff Report, page 11.* No one offered any comments or evidence to challenge Staff's SEPA exemption determination.

4. The project site is immediately north of the Homewood Suites Hotel, in the southernmost tenant space of a recently constructed multi-unit commercial building, built to include a possible exterior drive-up service

window bordered by a circular drive route, addressed as 1080 George Washington Way in the City of Richland, Washington. At the time of the application, the potential tenant was identified as a restaurant business known as “Fresh Leaf Co.”

5. The Staff Report, short witness testimony, maps of the area, and the Examiner’s site visits all establish that the proposed drive-through window service is not likely to be detrimental to surrounding uses in the immediate vicinity. The site plan and site visit confirm that there is sufficient room for queuing on the development site, to ensure that customers do not interfere with the movement of cars along the City’s busy George Washington Way, or those visiting the neighboring hotel. *See analysis and discussion provided in Staff Report.*

6. Based on the application materials, site visits, site plan, and proposed conditions, there is no reasonable basis to deny the requested permit in the location where it is proposed. No one submitted any written comments questioning or opposing the pending application and no one appeared at the public hearing to offer sworn testimony questioning or opposing the application.

***Application satisfies approval criteria***

7. The record includes a preponderance of evidence which establishes that the proposed landscaping business satisfies all 5 approval criteria contained in RMC 23.46.040(C)(1-5), as explained in more detail below:

Criteria 1 – the newly constructed commercial building, parking areas, and designated service lanes on the development site, were designed and developed to provide sufficient room to include the requested drive-through window as part of the proposed restaurant business operation, while providing adequate space for vehicle queuing/stacking and service lanes on the development site, thereby preventing impacts on drivers on George Washington Way and/or those using parking areas and access points for the neighboring hotel. Also see discussion on page 12 of the Staff Report; Criteria 2 – The record also includes a preponderance of evidence sufficient to establish that the physical conditions of the site, including size, shape, topography, and drainage, are suitable for the requested use. Elements of the record supporting such finding include, but are not limited to: the Site Plan (Ex. 2); Site Visits; Staff Report, discussion on page 12; and Testimony of Mr. O’Neill.

Criteria 3 – The Staff Report, Testimony of Mr. O’Neill, and readily apparent conditions observed on the Examiner’s multiple site visits, provides credible and substantial evidence sufficient to establish that all required public facilities necessary to serve the proposed business with a drive-through service window extend to the site. While George Washington Way is one of the City’s busiest roads, the queuing and access lanes provided on the development site appear to be designed in a manner that is not likely to cause congestion on city streets. The street system appears adequate to serve the proposed use. Water, sewer, stormwater, and electrical services appear to be more than adequate to serve the proposed use.

Criteria 4 – The Staff Report generally explains that the proposed project will, or can be conditioned to, satisfy all zoning standards applicable to the property. Further, the Staff Report includes a credible explanation as to

how the application has been designed or can be conditioned to comply with the special requirements for restaurants with drive-through window service found in RMC 23.42.047. 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 outside of the shoreline jurisdiction (over 200 feet away from the west bank of the Columbia River), is relatively flat, appearing to be free of wetlands, steep slopes, geological hazards, floodplains, or other conditions that would necessitate compliance with such regulations. And the final aspect of Criteria 4, compliance with the City's sign code provisions found in RMC Title 27, are not at issue in this matter, as the application materials do not identify specific plans to install signs. If the applicant later decides to include signs as part of its business operation, it will need to comply with any and all applicable city sign regulations in effect at the time of such application. If further information is received by the city as part of any administrative permit review or code enforcement action regarding construction or alteration of buildings or other regulated activities on the site, including without limitation any unforeseen site conditions, sinkholes, natural springs, archeological features, expansion or intensification of uses on the site, and/or the like, then compliance with applicable city regulations will be required.

Criteria 5 – As conditioned in this Decision, potential impacts on adjacent properties, surrounding uses and public facilities have been adequately mitigated. Through the public notice and comment period, and at the public hearing, no one offered any questions, evidence or testimony raising concerns about potential impacts associated with the requested permit.

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, site alterations, increased intensity of uses, sign installation, or other activities on the site of the special use permit.

**CONDITIONS OF APPROVAL:**

1. The drive-through window project shall be developed in substantial conformance with the site plan submitted as part of the application materials, included in the record as part of Exhibit 1.

2. Any communication systems utilized in conjunction with the drive-through window service shall operate in compliance with noise standards set forth in RMC 23.42.047(D), as currently written or as may subsequently be amended, including without limitation the requirement that the volume of any associated outdoor communication systems shall not exceed 55 decibels as measured at any residential property line adjoining the site. Further, the same noise restriction shall apply as measured from any

interior space of the current Homewood Suites Hotel located immediately south of the project site.

3. Pavement markings and/or directional signage approved by the Public Works Director or designee shall be maintained on the project site to direct traffic using the drive-through window authorized by this permit.

4. Businesses operating on the site must comply with the City's sign code provisions found in RMC Title 27, as written or as may subsequently be amended, including without limitation the requirement to obtain a city sign permit prior to installing/placing business advertising signs on the site.

**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 January 14, 2020.



---

Shane O'Neill,  
Senior Planner

January 3, 2020

Date