

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

Regarding an Application for a Special )  
Use Permit to Operate a Drive-Through )  
Window on a property in the Central )  
Business District (CBD) Zone, submitted )  
by )  
O'BRIEN CONSTRUCTION COMPANY )  
INC, )  
Applicant, )  
VANDERVERT DEVELOPMENTS LLC, )  
Property Owner )

**File No. SUP 2019-103**

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

*(The site is immediately north of the Homewood Suites Hotel  
in a newly constructed multi-tenant commercial building with  
an end-cap suite built to include a possible exterior drive-up  
service window bordered by a circular drive isle, addressed  
as 1080 George Washington Way in the City of Richland,  
Washington. At the time of the application, the potential  
tenant was identified as "Fresh Leaf Co.").*

**I. SUMMARY OF DECISION.**

The applicant met his burden of proof to demonstrate that his Special Use Permit application merits approval.

**II. BACKGROUND and APPLICABLE LAW.**

In this matter, the Hearing Examiner has jurisdiction to conduct an open record public hearing and issue a Decision regarding the pending application for a Special Use Permit to operate a drive-through window for a food service/restaurant business on a property in the

**FINDINGS OF FACT, CONDITIONS OF  
APPROVAL AND DECISION RE: "FRESH LEAF"  
APPLICATION FOR A SPECIAL USE PERMIT TO  
OPERATE A RESTAURANT DRIVE-THROUGH  
WINDOW ON A SITE IN THE CITY'S CENTRAL  
BUSINESS DISTRICT (CBD) ZONE -  
FILE NO. SUP 2019-103**

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1 City's Central Business District (CBD) Zone, submitted by O'Brien<sup>1</sup> Construction for a  
2 possible tenant identified as Fresh Leaf Co. *See* RMC 23.42.047 (re: requirements for  
3 restaurant businesses with drive-through window service when permitted as a special use in  
4 a zoning district); RMC 23.46.025(A)(12) (re: authority for Hearing Examiner to issue  
5 Special Use Permit for a "restaurant/drive-through in the CBD – central business district";  
6 and RMC 23.46.040 (re: special use permit process and Examiner's authority to impose  
7 conditions).

8  
9 A Special Use Permit is a Type II permit reviewed under the City's Type III process,  
10 which requires an open record public hearing by the Hearing Examiner, who is given  
11 authority to approve such permits, provided any Decision is subject to a closed-record appeal  
12 before the City Council. *See* RMC 23.46.040 and .070, RMC 19.20.010(B)(9) and RMC  
13 19.20.030.

14 The applicant bears the burden of proof to show that his application conforms to the  
15 relevant elements of the city's development regulations and comprehensive plan, and that  
16 any significant adverse environmental impacts have been adequately addressed. RMC  
17 19.60.060.

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

20 **23.46.040 Hearings – Findings – Conditions.**

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

23 A. Any person may appear at the public hearing in person, or by agent or attorney.

24 B. The hearing body shall make a finding that it is empowered under the section of this code  
25 described in the application to consider the application for the special use permit.

26 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:

1. The size and dimensions of the site provide adequate area for the proposed use;
2. The physical conditions of the site, including size, shape, topography, and drainage, are suitable for the proposed development;

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<sup>1</sup> The applicant's name is spelled differently in the application form (O'Brein) and the Staff Report (O'Brien).  
Online sources show the spelling as O'Brien.

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1 3. All required public facilities necessary to serve the project have adequate capacity to serve the proposed project;

2 4. The applicable requirements of this zoning regulation (RMC Title 23), the city  
3 comprehensive plan, the city sensitive area regulations (RMC Title 20), the city  
4 shoreline management regulations (RMC Title 26) and the city sign regulations  
5 (RMC Title 27) have been met; and

6 5. Identified impacts on adjacent properties, surrounding uses and public facilities  
7 have been adequately mitigated.

8 D. The hearing body may impose conditions on the approval of a special use permit in  
9 addition to or above and beyond those required elsewhere in this title, which are found  
10 necessary to ensure the use is compatible with the public interest. These conditions may  
11 include, but are not limited to, the following:

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

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

26 F. The hearing body may prescribe a time limit within which the action for which the special  
use permit is required shall be begun and/or completed. Failure to begin and/or complete such  
action within the time limit set shall void the special use permit. The time limits may be  
extended by the hearing body for good cause shown. In the event that no specific time limit  
to begin or complete a special use permit is identified, then the special use permit shall remain  
valid for a period of two years from the date that the permit was issued. The hearing body  
may authorize issuance of a special use permit for a specified 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].

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**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.

**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 December 9, 2019:

Shane O’Neill, Senior Planner, for the City of Richland. Mr. O’Neill summarized the Staff Report, the site location, the review process that included no public or outside agency comments, suggested conditions, and his recommendation of approval.

Deb Cozzetto and Chris O’Neill appeared on behalf of the applicant, and did not raise any concerns or objections to the analysis and proposed conditions of approval included in the Staff Report.

**Exhibits:** The Staff Report, including a recommendation of approval, was provided to the Examiner in the week before the hearing. The Staff Report, and the following Exhibits, were all accepted into the Record in their entirety without modification:

1. Application form;
2. Site Plan, Floor Plan, Elevations and illustrative site photos provided as part of the application materials, showing drive-up window location and access lane;
3. Public Notice and confirmation materials;
4. Ord. No. 11-09;
5. Short Plat No. 3323; and
6. Staff photos of project site and surrounding properties.

**FINDINGS OF FACT, CONDITIONS OF APPROVAL AND DECISION RE: “FRESH LEAF” APPLICATION FOR A SPECIAL USE PERMIT TO OPERATE A RESTAURANT DRIVE-THROUGH WINDOW ON A SITE IN THE CITY’S CENTRAL BUSINESS DISTRICT (CBD) ZONE – FILE NO. SUP 2019-103**

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2  
3 The Examiner has visited the project site numerous times over the past several years,  
4 as well as the road network and vicinity of the proposed Special Use Permit before the public  
5 hearing, and is fully advised on matters at issue herein, including without limitation  
6 applicable law, application materials, and relevant codes. The applicant and parties were  
7 informed at the public hearing that the Holiday Season would likely affect issuance of this  
8 decision, anticipated no later than early January. Accordingly, this Decision is now in order.

## 9 V. FINDINGS OF FACT.

10 Based upon the record, the undersigned Examiner issues the following Findings of  
11 Fact.

### 12 *Jurisdiction*

13 1. As required by RMC 23.46.040(B), the Examiner expressly finds that he is  
14 empowered by RMC 23.46.025(A)(12), RMC 23.46.060, and RMC 19.20.030 to consider  
15 the pending application for a special use permit to operate a business with drive-through  
16 window service on a site in the city's Central Business District (CBD) zoning district.

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

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

26 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.

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1 4. The project site is immediately north of the Homewood Suites Hotel, in the  
2 southernmost tenant space of a recently constructed multi-unit commercial building, built to  
3 include a possible exterior drive-up service window bordered by a circular drive route,  
4 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 5. The Staff Report, short witness testimony, maps of the area, and the Examiner’s site  
6 visits all establish that the proposed drive-through window service is not likely to be  
7 detrimental to surrounding uses in the immediate vicinity. The site plan and site visit confirm  
8 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.*

9 6. Based on the application materials, site visits, site plan, and proposed conditions,  
10 there is no reasonable basis to deny the requested permit in the location where it is proposed.  
11 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  
12 application.

13 ***Application satisfies approval criteria***

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

16 *Criteria 1* – the newly constructed commercial building, parking areas, and  
17 designated service lanes on the development site, were designed and developed to provide  
18 sufficient room to include the requested drive-through window as part of the proposed  
19 restaurant business operation, while providing adequate space for vehicle queuing/stacking  
20 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;

21 *Criteria 2* – The record also includes a preponderance of evidence sufficient to  
22 establish that the physical conditions of the site, including size, shape, topography, and  
23 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.

24 **FINDINGS OF FACT, CONDITIONS OF**  
25 **APPROVAL AND DECISION RE: “FRESH LEAF”**  
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1            *Criteria 3* – The Staff Report, Testimony of Mr. O’Neill, and readily apparent  
2 conditions observed on the Examiner’s multiple site visits, provides credible and substantial  
3 evidence sufficient to establish that all required public facilities necessary to serve the  
4 proposed business with a drive-through service window extend to the site. While George  
5 Washington Way is one of the City’s busiest roads, the queuing and access lanes provided on  
6 the development site appear to be designed in a manner that is not likely to cause congestion  
7 on city streets. The street system appears adequate to serve the proposed use. Water, sewer,  
8 stormwater, and electrical services appear to be more than adequate to serve the proposed  
9 use.

7            *Criteria 4* – The Staff Report generally explains that the proposed project will, or can  
8 be conditioned to, satisfy all zoning standards applicable to the property. Further, the Staff  
9 Report includes a credible explanation as to how the application has been designed or can be  
10 conditioned to comply with the special requirements for restaurants with drive-through  
11 window service found in RMC 23.42.047. The City’s sensitive area regulations, found in  
12 RMC Title 20, and the City’s shoreline management regulations, found in RMC Title 26, are  
13 not applicable to this application, because the project site is outside of the shoreline  
14 jurisdiction (over 200 feet away from the west bank of the Columbia River), is relatively flat,  
15 appearing to be free of wetlands, steep slopes, geological hazards, floodplains, or other  
16 conditions that would necessitate compliance with such regulations. And the final aspect of  
17 *Criteria 4*, compliance with the City’s sign code provisions found in RMC Title 27, are not  
18 at issue in this matter, as the application materials do not identify specific plans to install  
19 signs. If the applicant later decides to include signs as part of its business operation, it will  
20 need to comply with any and all applicable city sign regulations in effect at the time of such  
21 application. If further information is received by the city as part of any administrative permit  
22 review or code enforcement action regarding construction or alteration of buildings or other  
23 regulated activities on the site, including without limitation any unforeseen site conditions,  
24 sinkholes, natural springs, archeological features, expansion or intensification of uses on the  
25 site, and/or the like, then compliance with applicable city regulations will be required.

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

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

24            **FINDINGS OF FACT, CONDITIONS OF**  
25            **APPROVAL AND DECISION RE: “FRESH LEAF”**  
26            **APPLICATION FOR A SPECIAL USE PERMIT TO**  
                 **OPERATE A RESTAURANT DRIVE-THROUGH**  
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1 9. Based on the record, the applicant demonstrated its special use permit application  
2 merits approval, meeting its burden of proof imposed by RMC 19.60.060.

3 10. Approval of this special use permit will not and does not constitute, nor does it imply  
4 any expectation of, approval of any administrative permit or subsequent reviews that may be  
5 required for construction, site alterations, increased intensity of uses, sign installation, or  
6 other activities on the site of the special use permit.

7 **VI. CONDITIONS OF APPROVAL.**

8 Based on the record and authority specifically granted under applicable city codes,  
9 including without limitation RMC 23.46.040, the Examiner hereby imposes the following  
10 conditions on the approval for the pending special use permit in addition to or above and  
11 beyond those required elsewhere in the city's municipal code, specifically finding that such  
12 conditions are necessary to ensure the proposed use is compatible with the public interest:

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

16 2. Any communication systems utilized in conjunction with the drive-through window  
17 service shall operate in compliance with noise standards set forth in RMC 23.42.047(D), as  
18 currently written or as may subsequently be amended, including without limitation the  
19 requirement that the volume of any associated outdoor communication systems shall not  
20 exceed 55 decibels as measured at any residential property line adjoining the site. Further,  
21 the same noise restriction shall apply as measured from any interior space of the current  
22 Homewood Suites Hotel located immediately south of the project site.

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

26 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.

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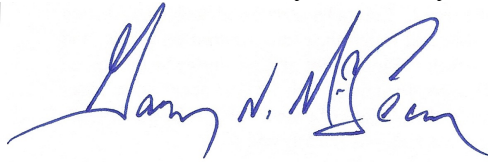


1 5. Consistent with RMC 23.46.090, the validity of this special use permit shall be  
2 contingent upon exercise of the special use, as granted, and the special use permit shall run  
3 with the property regardless of a change in ownership of the property. This Decision granting  
4 the underlying special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

13  
14 **VII. DECISION.**

15 Based upon the preceding Findings and Conditions of Approval, the pending Special  
16 Use Permit application to operate a restaurant business with drive-through window service at  
17 1080 George Washington Way in the City of Richland's Central Business District (CBD)  
18 zone is hereby APPROVED, as conditioned herein. Consistent with RMC 23.46.060, this  
19 Decision authorizes the City's administrative official to issue a special use permit, subject to  
20 the applicant's compliance with the above-referenced Conditions of Approval.  
21

22 ISSUED this 3<sup>rd</sup> Day of January, 2020

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26 Gary N. McLean  
Hearing Examiner

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FINDINGS OF FACT, CONDITIONS OF  
APPROVAL AND DECISION RE: "FRESH LEAF"  
APPLICATION FOR A SPECIAL USE PERMIT TO  
OPERATE A RESTAURANT DRIVE-THROUGH  
WINDOW ON A SITE IN THE CITY'S CENTRAL  
BUSINESS DISTRICT (CBD) ZONE -  
FILE NO. SUP 2019-103

GARY N. MCLEAN  
HEARING EXAMINER FOR THE CITY OF RICHLAND  
CITY HALL - 625 SWIFT BOULEVARD  
RICHLAND, WASHINGTON 99352

1 **Opportunity to Appeal**

2 As provided in RMC 23.46.070, this Decision shall be final unless written notice of appeal to the city council,  
3 together with such fees as are required by RMC 19.80.020 is filed with the city clerk within 10 days from the  
4 date of this Decision. Such appeal shall be consistent with the requirements set forth in Chapter 19.70 RMC  
5 for appeal of decisions on Type II permit applications. The city council shall review the official record of the  
6 special use permit application, including the notice of appeal, and shall consider testimony pertinent to the  
7 official record. If new evidence is received that is not part of the official record, the city council shall not use  
8 the new evidence as a basis of reversing a decision, but instead shall remand the application to the hearing body  
9 for reconsideration. The city council may, so long as such action is in conformity with the terms of this code,  
10 reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed  
11 from, and may make such order, requirement, decision or determination as the city council deems appropriate.  
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24 **FINDINGS OF FACT, CONDITIONS OF**  
25 **APPROVAL AND DECISION RE: "FRESH LEAF"**  
26 **APPLICATION FOR A SPECIAL USE PERMIT TO**  
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**WINDOW ON A SITE IN THE CITY'S CENTRAL**  
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