



Richland

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 AUGUST 12, 2024, TO CONSIDER AN APPLICATION SUBMITTED BY SHANE O'NEILL, CLOVER PLANNING & ZONING (AGENT) ON BEHALF OF THE WAKE-UP CALL COFFEE CAFÉ, FOR A SPECIAL USE PERMIT TO CONSTRUCT A 498 SQUARE FOOT DRIVE THROUGH COFFEE STAND LOCATED AT 590 GAGE BOULEVARD. ON SEPTEMBER 10, 2024, THE HEARING EXAMINER ISSUED A WRITTEN DECISION TO APPROVE SPECIAL USE PERMIT # PLN-T2-2024-00003.

REQUEST: Special use permit to construct a 498 square foot drive through coffee stand.

LOCATION: 590 Gage Blvd, Richland Washington. (APN 1-26984000012000)

DESCRIPTION OF ACTION: Request approved subject to the conditions as enumerated in the Hearing Examiner's written decision, attached below.

SEPA REVIEW: The above referenced action was reviewed in compliance with the requirements of the State Environmental Policy Act (RCW 43.21c). A SEPA Threshold Determination of Non-Significance was issued by the City of Richland on June 3, 2024 under WAC 197-11-340(2).

APPEAL PROCEDURES: This Special Use Permit is a Type II Permit action under RMC 19.20.010.B.9. RMC 19.70.010 explains that project permit applications shall be appealable as provided in the framework in RMC 19.20.030, which provides that Type II Permit decisions may be appealed to Superior Court. RMC 19.70.060, captioned "Judicial appeals", reads as follows:
Except in the event of legal authority providing for a different appeal process, the city's final decision on an application may be appealed by a party of record with standing to file a land use petition in Benton County superior court. Such petition must be filed within 21 days of issuance of the decision, as provided in Chapter 36.70C RCW.

DATE OF DECISION: September 10, 2024

Mike Stevens
Planning Manager

September 13, 2024
Issuance Date

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

Regarding an Application for a Special
Use Permit to Develop and Operate a
Drive-Through Window on property in
the Neighborhood Retail (C-1) Zone,
submitted by

File Nos. PLN-T2-2024-00003

**SHANE O’NEILL, CLOVER PLANNING &
ZONING (AGENT) ON BEHALF OF
THE WAKE-UP CALL COFFEE CAFÉ,**

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

Applicant,

*(Request to construct and operate a drive-through coffee café
on the northwest corner of Gage Boulevard and Leslie Road,
at 590 Gage Boulevard, in the City of Richland).*

I. SUMMARY OF DECISION.

The applicant met its burden of proof to demonstrate that its requested Special Use Permit application (File No. PLN-T2-2024-00003) merits approval, subject to limited conditions of 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 (SUP) to develop and operate a drive through window as part of a proposed new coffee café to be located on a parcel in the City’s Neighborhood Retail (C-1) zone. See RMC 23.42.047

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OPERATE A DRIVE THROUGH WINDOW IN THE
CITY’S C-1 ZONE – FILE NO. PLN-T2-2024-00003**

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1 (re: requirements for restaurant businesses with drive-through window service when
2 permitted as a special use in a zoning district); RMC 23.46.025(A)(3) (re: authority for
3 Hearing Examiner to issue Special Use Permit for “Businesses with drive-through window
4 service in the C-1 neighborhood retail and WF – waterfront districts”; and RMC 23.46.040
5 (re: special use permit process and Examiner’s authority to impose conditions).

6 A Special Use Permit is reviewed under the City’s Type II process, which requires an
7 open record public hearing by the Hearing Examiner, who is given authority to approve such
8 permits. No development application for a Type II or Type III permit shall be approved by
9 the city of Richland unless the decision to approve the permit application is supported by the
10 findings and conclusions mandated by RMC 19.60.095.

11 The City’s review procedure chart provides that decisions made by the Examiner on
12 Type II matters are subject to appeal to superior court. *See 19.20.010(B)(9), RMC 23.46.070,*
13 *and RMC 19.20.030.*

14 The applicant bears the burden of proof to show that their 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;
3. All required public facilities necessary to serve the project have adequate capacity to serve the proposed project;

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

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

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

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

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

25 F. The hearing body may prescribe a time limit within which the action for which the special
26 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].

27 **FINDINGS OF FACT, CONDITIONS OF**
28 **APPROVAL AND DECISION APPROVING**
29 **THE WAKE-UP CALL COFFEE CAFE**
30 **APPLICATION FOR A SPECIAL USE PERMIT TO**
31 **OPERATE A DRIVE THROUGH WINDOW IN THE**
32 **CITY'S C-1 ZONE – FILE NO. PLN-T2-2024-00003**

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III. QUESTION PRESENTED.

Whether the pending application for a Special Use Permit satisfies the approval criteria set forth in applicable city codes and regulations, including without limitation RMC 23.46.040(C)?

Short Answer: Yes, as conditioned below.

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, which opened on August 12, 2024:

1. Kyle Hendricks, Planner for the City of Richland. Mr. Hendricks summarized the Staff Report, the site location, applicable codes, suggested conditions, lack of public comments, and no further action letter from the Department of Ecology regarding conditions on the project site that was once a gas station;
2. Shane O’Neill, applicant’s agent and land use consultant with Clover Planning, acknowledged that applicant accepts the analysis and conditions addressed in the Staff Report, provided slides showing current site conditions and how the proposed new coffee business should help improve aesthetics and general appearance at one of the City’s busier intersections; explained how the business operations do not include any speaker box or other features that sometimes generate off-site noise; and
3. R. McLeod (audio unclear), applicant’s engineering consultant, confirmed that he accepted recommended conditions referenced in the hearing.

Exhibits: The Staff Report, was provided to the Examiner in the week before the initial hearing. The Staff Report, and the following Exhibits, were all accepted into the Record in their entirety without modification:

1. Application materials;
2. Site Plan;

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3. SEPA Checklist;
4. SEPA Determination of Non-Significance;
5. Public Notices & confirmation materials;
6. Agency Comments;
7. Applicant’s hearing presentation.

The Examiner visited the project site, as well as the road network and vicinity of the proposed Special Use Permit before and after the public hearing, and is fully advised on matters at issue herein, including without limitation applicable law, application materials, and relevant codes.

V. FINDINGS OF FACT.

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

Jurisdiction

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 pending application for a special use permit to operate a business with drive-through window service on a site in the city’s Neighborhood Retail (C-1) zoning district.

Application, Location, Public Notice, and Review

2. In June of this year, Clover Planning (Shane O’Neill), the applicant’s land use consultant, submitted the pending application for a Special Use Permit (“SUP”) to authorize drive-through window service in connection with a proposed new coffee café on a property located in the city’s C-1 zone. (*Ex. 1, application materials*).

3. The project site is addressed as 590 Gage Blvd and assigned Benton County Tax Parcel No. 126984000012000. The applicant’s project would develop a 498 square foot drive-through café located at the northwest corner of the intersection of Gage Blvd. and Leslie Blvd. The parcel is 0.36 acres in size and directly fronts both Leslie Road and Gage Blvd. (*Ex. 1; Staff Report*).

4. There is no dispute that the Richland Municipal Code requires a Special Use Permit to authorize development and operation of a drive through window on properties that are zoned C-1. (*See RMC 23.46.025(A)(3)*).

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1 5. Staff deemed the application materials complete for purposes of vesting and public
2 review, complied with all applicable public notice requirements for the SUP application and
3 the public hearing held for the matter. (*Exhibit 5, copies of public notices mailed, posted, and
4 published, with confirmation materials*).

5 6. Staff reviewed the SEPA Checklist completed by the project applicant and issued a
6 SEPA Determination of Non-Significance (DNS). (*Ex. 3, SEPA Checklist; Ex. 4, SEPA DNS,
7 issued on July 3, 2024; Staff Report, SEPA discussion on page 12*). Notices regarding the
8 application were issued in accord with City practices, inviting comments from adjacent
9 property owners and public agencies. (*Exs. 5 and 6, notice materials and Agency Comments*).

10 7. As explained in the Staff Report, the proposed coffee café (known as the “Wake Up
11 Call”) use is consistent with applicable provisions and policies in the City’s zoning code and
12 Comprehensive Plan. It also confirms that the City has domestic water, sewer and electrical
13 service lines in place to serve the site and has adequate capacity to do so. (*Staff Report, pages
14 6-14*).

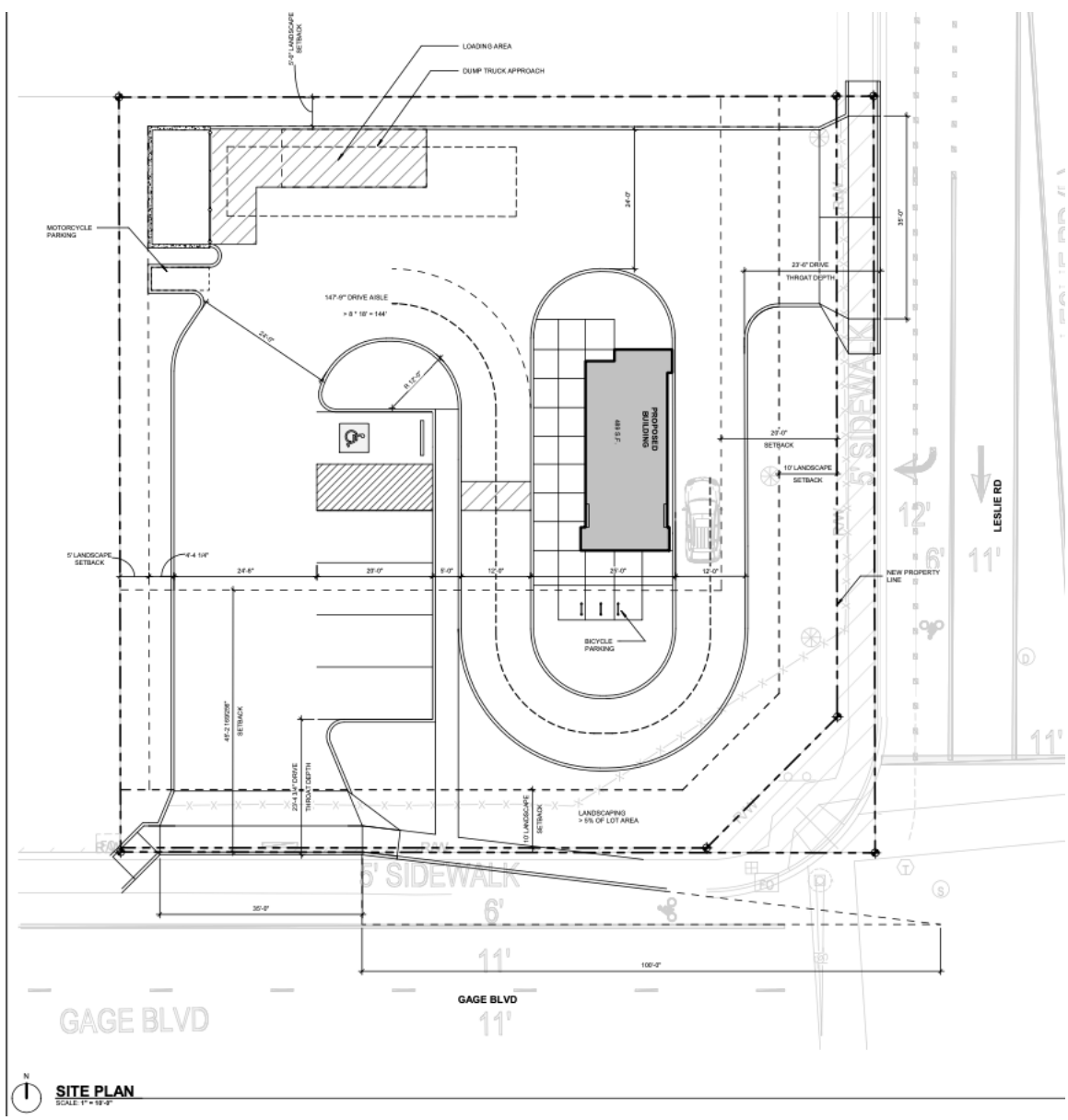
15 8. As noted above, this matter was noticed and advertised for a public hearing, which
16 occurred on August 12, 2024 in council chambers at Richland City Hall, with the undersigned
17 presiding, with Staff and an applicant representative present. During the hearing, Staff
18 summarized the proposal, their review, and recommendation of approval, with a condition
19 intended to address pedestrian safety concerns. Applicant representatives accepted the
20 condition of approval recommended by staff, and answered questions posed by the Examiner.
21 No one appeared during the public hearing to oppose or offer evidence that would serve as a
22 basis to deny the pending permit application.

23 9. The Staff Report and Staff testimony during the public hearing raised one primary
24 concern regarding pedestrian safety. As credibly explained on page 10 of the Staff Report,
25 the proposed project design will allow for pedestrians to cross stacking lanes intended to
26 serve vehicles lining up to order or pick up products at the drive-through window, and it
appears as though serving walk-up customers will be part of the business model. The Site
Plan layout would require pedestrians – and perhaps service staff from inside the coffee
business – to cross stacking lanes to get to and from a service window. (*See Ex. 2, site plan,
screen shot of relevant design elements provided below*).

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20 10. The Staff Report summarizes credible reasons to impose a condition of approval for
 21 this permit, that would require signage, a raised crosswalk, and/or an alternate road color and
 22 texturing to readily identify – and easily see – the pedestrian crosswalk area where it crosses
 stacking lanes used by vehicles. (Staff Report, pages 10 and 16).

23 11. During the public hearing, both applicant representatives accepted the condition of
 24 approval proposed by Staff. (Testimony of Mr. O'Neill; Testimony of Mr. McLeod).

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1 12. The Examiner finds and concludes that the pedestrian safety considerations for this
2 project are compelling and warrant a condition of approval intended to properly keep
3 pedestrians and cars separated on the project site, using signage and/or special colors and
4 textures on pavement, as addressed in the proposed condition of approval. Such condition is
5 within the Examiner's authority to impose in addition to or above and beyond those required
elsewhere in City codes, promotes safety for future customers, and is necessary to ensure the
applicant's coffee café use is compatible with the public interest. (See RMC 23.46.040(D)).

6 13. Based on the application materials, site visits, the site plan, and the Staff Report's
7 analysis and proposed condition, there is a preponderance of evidence to support approval of
the requested Special Use Permit, subject to conditions.

8 ***Application satisfies approval criteria***

9 14. The record includes a preponderance of evidence which establishes that the proposed
10 site plan (Ex. 2) for the applicant's proposed coffee café with a drive-through service window
11 has been designed, or can be conditioned, to comply with the specific performance standards
for such use in the C-1 zone. (See discussion and analysis in the Staff Report).

12 15. The record includes a preponderance of evidence which establishes that the proposed
13 coffee café project has been designed, or can be conditioned, to comply with all 5 approval
14 criteria for the requested Special Use Permit found in RMC 23.46.040(C)(1-5), as explained
in the analysis provided in the Staff Report.

15 16. As conditioned in this Decision, potential impacts on adjacent properties, surrounding
16 uses and public facilities have been adequately mitigated.

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

19 18. Except as modified in these findings, all statements of fact and findings included in
20 the Staff Report are adopted herein as findings of fact by the Examiner, supporting approval
of the requested Special Use Permit.

21 19. Based on the record, the applicant demonstrated its special use permit application
22 merits approval, meeting its burden of proof imposed by RMC 19.60.060.

23 20. Approval of this special use permit will not and does not constitute, nor does it imply

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1 any expectation of, approval of any administrative permit or subsequent reviews that may be
2 required for construction, business operations, or other activities on the site of the special use
3 permit.

4 VI. CONDITIONS OF APPROVAL.

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

10 1. Except as modified to comply with other Conditions of Approval, the project shall be
11 developed in substantial conformance with the site plan submitted as part of this application
12 (*Ex. 2*), provided the Planning Manager shall have full discretion and authority to require
13 submittal of more detailed plans for city review and approval (for building permits and the
14 like) that will conform to these conditions of approval, and/or otherwise applicable city
15 development standards.

16 2. Subject to review and approval by the City's Planning Manager, the Permittee shall
17 submit a revised site plan, incorporating pedestrian safety design changes explained in the
18 Staff Report and this Decision, including without limitation – "yield to pedestrian" signage
19 at any point where pedestrians will be channeled to cross the vehicle stacking lane and a
20 raised crosswalk platform or an alternate road color and texturing to delineate and readily
21 identify such crosswalk. The project shall be constructed and operated to fully implement
22 the approved pedestrian safety measures, which shall be maintained for the life of the project
23 authorized by this permit.

24 3. Consistent with RMC 23.46.090, the validity of this special use permit shall be
25 contingent upon exercise of the special use, as granted, and the special use permit shall run
26 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 operation of any drive through service at the coffee service
establishment to be constructed 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.

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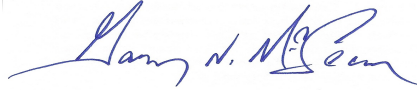
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VII. DECISION.

Based upon the preceding Findings and Conditions of Approval, the Wake Up Call Special Use Permit application to construct and operate a drive-through coffee café in the City’s C-1 zoning district (File No. PLN-T2-2024-00003) is 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 10th Day of September, 2024



Gary N. McLean
Hearing Examiner

OPPORTUNITY TO APPEAL

This Special Use Permit is a Type II Permit action under RMC 19.20.010.B.9. RMC 19.70.010 explains that project permit applications shall be appealable as provided in the framework in RMC 19.20.030, which provides that Type II Permit decisions are not subject to a closed record appeal before the City Council but may be appealed to Superior Court. RMC 19.70.060, captioned “Judicial appeals”, reads as follows:

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