

**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 Central Business District (CBD)
Zone, submitted by

HC KLOVER ARCHITECTS,
ON BEHALF OF **PANDA EXPRESS, INC.**

Applicant,

*(Request to construct and operate a drive-through restaurant
greater than 20 feet from the front property line within the
City's Central Business District, at 924 George Washington
Way).*

File Nos. SUP 2022-101 and M2022-106

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

I. SUMMARY OF DECISION.

After substantial revisions to its original proposal, which could not be approved as submitted, the applicant met its burden of proof to demonstrate that its requested Special Use Permit application (File No. SUP 2022-101) and its associated "Alternative Design" application (File No. M2022-106), both merit 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 restaurant

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1 to be located in the City's Central Business District (CBD) zone. *See* RMC 23.42.047 (re:
2 requirements for restaurant businesses with drive-through window service when permitted as
3 a special use in a zoning district); RMC 23.46.025(A)(12) (re: authority for Hearing Examiner
4 to issue Special Use Permit for a "restaurant/drive-through in the CBD – central business
5 district"; and RMC 23.46.040 (re: special use permit process and Examiner's authority to
6 impose conditions).

7 A Special Use Permit is reviewed under the City's Type II process, which requires an
8 open record public hearing by the Hearing Examiner, who is given authority to approve such
9 permits. The City's review procedure chart indicates that decisions made by the Examiner
10 on Type II matters are subject to appeal to superior court. *See* 19.20.010(B)(9), RMC
11 23.46.070, and RMC 19.20.030.

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

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

18 **23.46.040 Hearings – Findings – Conditions.**

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

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

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

24 C. The hearing body shall approve, approve with conditions or deny an application for a
25 special use permit based on findings of fact with respect to the following criteria:

- 26 1. The size and dimensions of the site provide adequate area for the proposed use;
- 27 2. The physical conditions of the site, including size, shape, topography, and
28 drainage, are suitable for the proposed development;
- 29 3. All required public facilities necessary to serve the project have adequate
30 capacity to serve the proposed project;
- 31 4. The applicable requirements of this zoning regulation (RMC Title 23), the city
32 comprehensive plan, the city sensitive area regulations (RMC Title 20), the city

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shoreline management regulations (RMC Title 26) and the city sign regulations (RMC Title 27) have been met; and

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

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

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

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

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].

As explained below, this Decision consolidates consideration of the applicant's associated application for Alternative Design approval, authorizing certain deviations from otherwise applicable design standards for projects in the City's Central Business District. The criteria for approval of an Alternative Design request reads as follows:

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RMC 23.22.020(E)(9), captioned “Alternative Design” – In the event that a proposed building and/or site does not meet the literal standards identified in this section, or the maximum setback standards set forth in RMC 23.22.040 or the maximum parking standards set forth in RMC 23.22.050, a project representative may apply to the Richland planning commission for a deviation from these site design standards. The Richland planning commission shall consider said deviation and may approve any deviation based on its review and a determination that the application meets the following findings:

- a. That the proposal would result in a development that offers equivalent or superior site design than conformance with the literal standards contained in this section; and
- b. The proposal addresses all applicable design standards of this section in a manner which fulfills their basic purpose and intent; and
- c. The proposal is compatible with and responds to the existing or intended character, appearance, quality of development and physical characteristics of the subject property and immediate vicinity.

III. QUESTION PRESENTED.

Whether the consolidated applications for a Special Use Permit and Alternative Design approval satisfy the approval criteria set forth in applicable city codes and regulations, particularly RMC 23.46.040(C) and RMC 23.22.020(E)(9)?

Short Answer: Yes, as revised to satisfy substantial design and traffic concerns raised by Public Works staff, and 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 July 21, 2022, and continued on August 18, 2022:

1. Mike Stevens, Planning Manager for the City of Richland. Mr. Stevens summarized the Staff Report, the site location, applicable codes, suggested conditions, lack of public comments, Public Works Department comments opposing the project design as submitted, due to potential conflicts with traffic flowing out of the drive through lane presenting conflicts with parking spaces, concerns with traffic on Gge Wa Way, and suggested condition limiting all

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1 traffic to right-in, right-out, among other things, on the first hearing night; then
2 on August 18th, Mr. Stevens modified Staff's recommendation to accept the
3 applicant's revised design, subject to conditions, with supplementary written
4 materials to follow for the Examiner to consider (*see new Exs. 6, 7, and 8,*
5 *described below*); and

- 6
- 7 2. Vu Le, Applicant representative, with Klover Architects, requested additional
8 time at the initial hearing to confer with his design team and Public Works
9 staff to see if a revised design could merit approval, noting that his client very
10 much wanted traffic to be able to turn both directions at Gge Wa Way. When
11 the hearing continued on August 18th, Mr. Le appeared online and expressed
12 appreciation for the opportunity to work through problems with the original
13 site plan design.

14
15 ***Exhibits:*** The Staff Report, was provided to the Examiner in the week before the
16 initial hearing. The Staff Report, and the following Exhibits, were all accepted into the
17 Record in their entirety without modification:

- 18
- 19 1. Application materials;
 - 20 2. Site Plan(s) (originals, modified after initial hearing);
 - 21 3. Public Notices & confirmation materials;
 - 22 4. Environmental Checklist and Determination of Non-Significance;
 - 23 5. Agency Comments;
 - 24 6. REVISED Site Plan, dated Aug. 15, 2022;
 - 25 7. Correspondence between Applicant's project architect/designers and City Public
26 Works staff, accepting proposed design changes to address Public Works' concerns
with original project design;
 8. Memo from Planning Manager, Mr. Stevens, supplementing Staff Report,
recommending modified conditions and approval, based on revised design
submitted by the applicant team, reviewed and accepted by Public Works.

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

5 **V. FINDINGS OF FACT.**

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

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1 ***Jurisdiction***

2 1. As required by RMC 23.46.040(B), the Examiner expressly finds that he is
3 empowered by RMC 23.46.025(A)(12), RMC 23.46.060, and RMC 19.20.030 to consider
4 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.

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

6 2. In June of this year, the Klover Architects firm submitted the pending application for
7 a Special Use Permit ("SUP") to authorize drive-through window service in connection with
8 a proposed new Panda Express restaurant on a property located in the City's Central Business
9 District zone. (*Staff Report; Exhibit 1, application materials*). Staff deemed the application
10 materials complete for purposes of vesting and public review, complied with all applicable
11 public notice requirements for the SUP application and the public hearing held for the matter.
(*Exhibit 3, copies of public notices mailed, posted, and published, with confirmation
materials*).

12 3. Under provisions of the City's code referenced above, CBD zoning standards
13 mandate that businesses seeking to use drive through window service in such zone must first
obtain approval through the special use permit process.

14 4. In addition, CBD zoning provisions include a variety of other performance standards
15 and special requirement for new developments. *See RMC 23.22.020(E)*. "Alternative
16 Design" proposals that seek to deviate from these standards must first obtain approval of such
17 deviation(s) under review criteria found in RMC 23.22.020(E)(9). Normally, an Alternative
Design application would be considered by the Planning Commission, but because the
applicant's proposal also required a Special Use Permit, the two applications have been
consolidated for review and approval by the Examiner.

18 5. As originally proposed, the new restaurant would be approximately 2,600 square feet
19 in size and would be located approximately 35.42 feet from the front property line (along
20 George Washington Way), and would require approval to use several "alternative design
standards" described in the original Staff Report, including:

21 a) Increasing the maximum front yard building setback from 20 feet to 35.42 feet [increased to 43.3
22 feet in updated Site Plan, *Ex. 6*, submitted to address Public Works' comments] *See otherwise
applicable CBD standard found in RMC 23.22.040.*

23 b) Reducing the glass fenestration for the ground floor standard of the building facade, below the

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50-80% requirement. *See otherwise applicable CBD standard found in RMC 23.22.020(E)(2)(a).*

- c) Increasing from 1 to 2 pedestrian entrances into the proposed building on its south façade [omitting a pedestrian entrance on one façade that faces a street]. *See otherwise applicable CBD standard found in RMC 23.22.020(E)(3).*

6. The application materials (*Ex. 1, Project Narrative, on .pdf pages 20-22*) include explanations to justify each of the requested Alternative Design standards, which read in relevant part as follows:

For item (a):

Per Chapter 23.22, the City of Richland Municipal Code, we have determined that our project would be subject to the maximum building setback of 20'. However, the strict restrictions of the 20' Max build-to-line does not offer enough room for the drive-thru to exist between the building with the other required 10' landscaping setbacks. Strict adherence to the 20' build-to-line would result in traffic exiting directly onto George Washington Way. If we adhere to the current 20' build-to-line traffic may become an issue when exiting the drive-thru directly onto George Washington Way. [...].

For item (b):

Per Chapter 23.22, the City of Richland Municipal Code, we have determined that our project would be subject to the 50 to 80 percent glass fenestration of the ground floor faced that face a street. However, due to our kitchen design we are only able to provide 13.5 percent of glazing on the West façade. Our drive-thru area exits out at the Northwest corner of the building which means the drive-thru prep equipment is in the entire Northwest corner. The equipment extends all the way to the door that is on the West façade, and technically the door is a part of the kitchen area as it is used for operational purposes. We are asking for a reduction of 36.5-66.5 percent. We are providing an additional 19% on the Southern façade to help offset some of the reduction that we are asking for. A literal interpretation of the provisions of this Zoning code would deprive Panda Express of rights commonly enjoyed by other properties in the CBD zoning district. This is evident by the fact that many adjacent and nearby buildings have less than 50-80 percent glazing on facades that face the street such as Sterling's, McDonald's, Taco Bell (facade facing George Washington Way), Dairy Queen and Black Rock Coffee."

For Item (c):

"Per Chapter 23.22, the City of Richland Municipal Code, we have determined that our project would be subject to the one pedestrian entrance into the building on each street frontage or at the building

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corner. However, due to the location of the drive-thru we are proposing two pedestrian entrances on the South façade for the safety of our customers. We would like to deter customers from crossing over the drive-thru exit lane for their safety and the safety of the driver. The two pedestrian entrances on the South façade will be directly accessible from the parking lot. [notes several other restaurants in area that do not have separate entrances on each façade with street frontage].”

7. Under HEx Rule 1.1(b), the Hearing Examiner holds discretion, consistent with state law and City code, to consolidate related matters for hearing on any topic whenever the interests of justice and efficient procedure will be served by such action. In this matter, RMC 19.20.020(B) expressly allows for “consolidated permit processing” – meaning the associated permit/approval needed to authorize the applicant’s “alternative design standards” in the CBD zone can be processed together with the applicant’s other application, for a Special Use Permit, which is subject to review and approval by a higher decision-maker, in this instance, the Hearing Examiner. Accordingly, the Staff Report issued for this matter, the hearing process, and this Decision, consolidate the Special Use Permit approval with approval of certain alternative design standards, as modified in supplementary exhibits offered to address substantial concerns expressed by Public Works staff.

8. Staff reviewed the SEPA Checklist completed by the project applicant and issued a SEPA Determination of Non-Significance (DNS). (*Ex. 4, SEPA Checklist, DNS materials; Staff Report, SEPA discussion on page 1*). Notices regarding the application were issued in accord with City practices, inviting comments from adjacent property owners and public agencies. (*Exs. 3 and 5, notice materials and Agency Comments*).

9. As noted in the original Staff Report, the proposed restaurant use is consistent with applicable provisions and policies in the City’s zoning code and Comprehensive Plan. It also confirms that the City has domestic water, sewer and electrical service lines in place to serve the site and has adequate capacity to do so. (*Staff Report, page 10*).

10. Written comments from City departments and State agencies are summarized in the Staff Report, including without limitation the following:

The Richland Parks and Public Facilities Department indicated that the applicant would need to coordinate with them at the time of building permit regarding landscaping owned by the City located in the Newton Street right of way.

The Yakama Indian Nation reiterated comments previously submitted to the City during the SEPA review period requesting an Inadvertent Discovery Plan and/or cultural monitoring for ground disturbing activities beyond the existing infrastructure to avoid potential impacts to a nearby archaeological site.

Finally, the Richland Public Works Department responded with comments concerning

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the driveway providing ingress/egress to George Washington Way and indicated that the George Washington Way driveway needs to be limited to an “exit only” driveway due to the proximity of future parking stalls (Phase 2) and the proposed drive-thru exit lane creating a condition that may prevent inbound vehicles from entering the site, thereby causing traffic on George Washington Way to stop. Public Works has requested that a condition of approval be placed on the permit requiring that signage and/or striping indicating that the George Washington Way driveway is an “exit only” be installed by the developer.

The Public Works Department also requested that a condition of approval be placed on the project requiring the developer to widen the sidewalk along George Washington Way to 8-feet per Richland Municipal Code.

(Staff Report, summaries of agency comments, pages 10 and 11).

Public Hearing, Applicant’s request to modify proposal to address Public Works’ concerns.

11. As noted above, this matter was noticed and advertised for a public hearing, which opened on July 21, 2022 in council chambers at Richland City Hall, with the undersigned presiding, with Staff and an applicant representative present. During the hearing, the City’s Planning Manager, Mr Stevens, summarized the applicant’s proposal, how the site could be served with possible access from Newton Street to the south, and/or George Washington Way to the west, how a drive-through can be allowed in the CBD zone through approval of a Special Use Permit, and how the proposal includes requests to deviate from several design standards. He focused on Public Works’ concerns about the project design, and their request to condition the project to only allow exits from the restaurant onto George Washington Way, with Newton Street providing both entry and exit movements. *(Testimony of Mr. Stevens).*

12. The applicant’s representative at the hearing, Vu Le, with Klover Architects, strongly objected to the conditions proposed by Public Works’ staff. Mr. Le explained that his client would like to ‘push back’ on the Public Works’ recommendations, noting that Wendy’s restaurant to the north already has in/out access along George Washington Way. Staff subsequently explained that Wendy’s was permitted before current development standards applicable to the Panda proposal were adopted by the City Council. In any event, Mr. Le requested additional time to confer with his client and Public Works staff to see if there might be a way to modify the design to obtain a recommendation that would allow full access for the restaurant exiting and entering along George Washington Way. *(Testimony of Mr. Le).*

13. No one appeared during the public hearing process to oppose the project.

14. The Examiner granted the applicant’s request to continue the public hearing to see if they might be able to modify their proposal to address Public Works’ concerns.

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1 15. In the following month, Staff transmitted copies of a revised site plan for the project,
2 along with updated comments from Public Works and Planning staff regarding the
3 applicants' design changes. (*See Exs. 6, 7 and 8*).

4 16. On August 11, 2022, the applicant team met with John Deskins, City Traffic Engineer,
5 and John Whittier, Civil Engineer 1, using the Zoom meeting platform, to discuss the City's
6 concerns with the Panda Express proposal. The concerns were primarily related to the site's
7 ingress/egress from George Washington Way and the safety issues related to the proposed
8 turning movements at the proposed George Washington Way driveway location. After
9 discussion, the applicant team indicated that they would submit a revised site plan for Public
10 Work's review prior to the continued public hearing scheduled for August 18, 2022. (*See*
11 *explanation in Ex. 8*).

12 17. Just one day before the continued public hearing, on August 17, 2022, the City
13 received a copy of the revised site plan (*Exhibit 6*).

14 18. The Examiner reopened the public hearing on August 18, 2022, with Staff and
15 applicant representatives present, either in person or on the Zoom hearing platform. While it
16 appeared the applicant's site plan changes satisfied Public Works' staff, the Examiner asked
17 Staff to complete its review of the changes, and submit written materials verifying its final
18 recommendations regarding the pending applications.

19 19. The Public Works Department reviewed the revised site plan and submitted an email
20 (*Exhibit 7*) indicating that Public Works reviewed and approved the revised site plan. (*Ex.*
21 *8*).

22 20. As a result of the new site plan, the front setback for the proposed Panda Express
23 restaurant would increase from 35.42 feet to approximately 43.3 feet. City Planning Staff
24 reviewed the requested increase in light of the maximum 20-foot setback required in the
25 Central Business District and concluded that the requested setback is acceptable and
26 consistent with the review analysis provided in the original Staff Report. Accordingly, Staff
modified its recommendation, explaining that the Hearing Examiner should approve the
requested Special Use Permit with a revised front setback increase from 35.42 feet to
approximately 43.3 feet. (*Ex. 8*).

21 21. The Examiner received copies of the revised site plan and Staff's supplement to the
22 Staff Report (*Ex. 8*) in late August and was then able to conduct follow up site visits in
23 connection with other public hearings in the following months. This proposal changed in
24 significant aspects from its original design and required additional time for final review and

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1 approval. The property's location, with two possible access streets, presents distinctions from
2 other projects that may only face one public roadway. While Public Works staff modified
3 their recommendation as to specific conditions to include as part of this Special Use Permit
4 approval, the Examiner recognizes that future conditions may warrant traffic or road access
5 changes made by officials with authority to address such situations. Accordingly, a new
6 condition of approval has been added, expressly recognizing the Public Works Director's
7 authority to regulate access from or onto city streets under applicable city or state laws,
8 including without limitation Title 11 and Title 12 of the Richland Municipal Code.

9 22. Based on the application materials, site visits, the revised site plan, and the Staff
10 Report's updated analysis and proposed conditions, there is now a preponderance of evidence
11 to support approval of the requested Special Use Permit and associated Alternative Design
12 proposal. Agency comments included in the record focused upon applicable development
13 regulations and are addressed in conditions of approval, where appropriate.

14 *Application satisfies approval criteria*

15 23. The record includes a preponderance of evidence which establishes that the revised
16 site plan (*Ex. 6*) for the applicant's proposed restaurant with a drive-through service window
17 has been designed, or can be conditioned, to comply with the specific performance standards
18 for such use in the CBD zone, and that its limited Alternative Design changes warrant
19 approval. (*See discussion and analysis in the Staff Report, as modified in supplemental*
20 *memo, Ex. 8*).

21 24. The record includes a preponderance of evidence which establishes that the proposed
22 residential apartment project has been designed, or can be conditioned, to comply with all 5
23 approval criteria for the requested Special Use Permit found in RMC 23.46.040(C)(1-5), as
24 explained in the analysis provided in the Staff Report and supplemental memo from Staff,
25 *Ex. 8*.

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

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

31 27. All statements of fact and findings included in the Staff Report, as modified by *Ex. 8*,
32 are adopted herein as findings of fact by the Examiner, supporting approval of the requested
33 Special Use Permit and Alternate Design.

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1 28. 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 29. 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, business operations, or other activities on the site of the special use
6 permit.

6 VI. CONDITIONS OF APPROVAL.

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

12 A. Except as modified to comply with other Conditions of Approval, the project shall be
13 developed in substantial conformance with the revised site plan submitted as part of this
14 application (*Ex. 6*), provided the Planning Manager shall have full discretion and authority to
15 require submittal of more detailed plans for city review and approval (for building permits
16 and the like) that will conform to these conditions of approval, and/or otherwise applicable
17 city development standards.

18 1. The permittee shall contract with a qualified professional archaeologist to inspect the
19 site and perform monitoring work during all ground disturbing activities beyond the existing
20 infrastructure. In addition, the permittee shall commission preparation of an Inadvertent
21 Discovery Plan (IDP) by a qualified professional to be submitted for review and approval by
22 the Planning Manager, following input from the Yakama Nation and the Washington
23 Department of Archaeology and Historic Preservation. The Inadvertent Discovery Plan must
24 be reviewed and approved before issuance of any permits that could include ground
25 disturbance work and must be followed throughout project development.

26 2. Separate sign permit(s) shall be obtained from the City prior to installation of any
signage associated with this project.

3. Landscaping of the site shall conform with RMC 23.54.140.

4. The project shall comply with all performance standards applicable to the CBD zone
found in RMC 23.22.020(E), except for the following three (3) CBD zoning standards

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WINDOW IN THE CITY'S CBD ZONE – FILE NO.
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CITY HALL – 625 SWIFT BOULEVARD
RICHLAND, WASHINGTON 99352

modified upon this approval of the applicant's Alternative Design application under RMC 23.22.020(E)(9), assigned File No. M2022-106:

- a) Increase of the maximum front yard building setback from 20 feet to approximately 43.3 feet.
- b) Reduction of the 50 to 80 percent glass fenestration of the ground floor of the building façade, as limited and in general conformance with modifications described in the Project Narrative, included as part of Ex. 1, on .pdf page 21.
- c) Increasing pedestrian entrances into the building on the south façade from one to two and eliminating possible requirement for entrance on west facade.

5. ~~The proposed driveway onto George Washington Way shall be limited to an "exit only" driveway. Signage and/or striping indicating it is an "exit only" driveway shall be installed by the developer.~~ *[*Language originally recommended in the Staff Report, not imposed as a condition, following modifications reflected in Ex. 6, as reviewed and accepted by Public Works' staff. See Exs. 7 and 8].* New Condition added by the Hearing Examiner: Nothing in this Decision should be construed or read to limit or restrict the Public Works Director's authority to regulate access from or onto public streets in the City of Richland as future conditions may warrant under authority granted in City codes or state law, including without limitation Title 11 RMC (captioned "Traffic") and Title 12 RMC (captioned "Streets and Sidewalks").

6. The sidewalk along George Washington Way shall be widened to 8-feet, consistent with requirements found in the Richland Municipal Code.

7. 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 operation of any drive through service at the restaurant building 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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VII. DECISION.

Based upon the preceding Findings and Conditions of Approval, the Panda Express Special Use Permit application to construct and operate a drive-through restaurant in the City's CBD zoning district (File No. SUP 2022-101) and the associated "Alternative Design" application (File No. M2022-106) are each APPROVED in this consolidated Decision, 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 31st Day of October, 2022



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:

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.

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