



# CITY OF EDMONDS

121 5TH AVENUE NORTH • Edmonds, WA 98020 • (425) 771-0220 • FAX (425) 771-0222  
HEARING EXAMINER

GARY HAAKENSON  
MAYOR

**RECEIVED**  
JUL 19 2010  
PLANNING DEPT.

In the Matter of the Application of	)	NO. PLN20100029 (Green Bean Java)
	)	
<b>Ki Nam</b>	)	FINDINGS, CONCLUSIONS,
	)	AND DECISION
For a Conditional Use Permit and	)	
<u>Design Review Approval.</u>	)	

### SUMMARY OF DECISION

The request for a conditional use permit and design review approval to construct and operate a drive-through coffee stand at 7601 244<sup>th</sup> Street SW is **GRANTED**, subject to conditions.

### SUMMARY OF RECORD

Request:

Ki Nam (Applicant), on behalf of Chong Pac (Owner), requested a conditional use permit (CUP) and design review approval to construct and operate a drive-through coffee stand at 7601 244<sup>th</sup> Street SW, Edmonds, Washington.

Hearing Date:

The City of Edmonds Hearing Examiner conducted an open record hearing on the request on July 1, 2010.

Testimony:

At the open record hearing, the following individuals presented testimony under oath:

1. Gina Coccia, Associate Planner, City of Edmonds
2. Ki Nam, Applicant
3. Alvin Rutledge

Exhibits:

At the open record hearing the following exhibits were admitted into the record:

- A. Staff Report dated June 18, 2010, with the following attachments:
  1. Zoning/Vicinity Map
  2. Land Use Application filed May 6, 2010
  3. Site Plan filed May 6, 2010
  4. Building Elevations filed May 6, 2010
  5. Applicant's Criteria Statement filed May 6, 2010
  6. Notice of Development Application and Public Hearing dated June 8, 2010, with Declaration of Mailing and Public Notice Payment Agreement
  7. Completed Request for Comment Form from Engineering dated May 21, 2010
  8. City of Edmonds Traffic Impact Analysis Work Sheet filed May 6, 2010

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions:

### FINDINGS

1. The Applicant requested a CUP and design review approval to construct and operate a drive-through coffee stand (Green Bean Java) at 7601 244<sup>th</sup> Street SW, Edmonds, Washington. *Exhibit A, Attachment 2.*
2. The subject property is 0.62 acre in area and is located at the northwest corner of 76<sup>th</sup> Avenue West and 244<sup>th</sup> Street.<sup>1</sup> The subject property is developed with a gas station and a convenience store. The proposed coffee stand will be located in the southwest corner of the property, along the property's 244<sup>th</sup> Street SW frontage. *Exhibit A, pages 1 and 2; Exhibit A, Attachment 3.*
3. The subject property is zoned Community Business (BC). One of the purposes of the BC zone is "to reserve areas for those retail stores, offices, service establishments and amusement establishments which offer goods and services to the entire community." *ECDC 16.50.005.* Drive-in businesses are allowed in the BC zone with approval of a CUP. *Exhibit A, pages 1 and 2; Exhibit A, Attachment 1; ECDC 16.50.010.*
4. Adjacent properties to the north and west are zoned BC, and properties to the east of 76<sup>th</sup> Avenue West (opposite side of street from subject property) are zoned RS-8. The properties to the south of 244<sup>th</sup> Street SW are within the City of Shoreline. *Exhibit A, Attachment 1; Testimony of Ms. Coccia.*
5. Existing land uses in the vicinity of the site include commercial, church, and residential uses. The off-site land use that is closest to the proposed coffee stand (adjacent to the west boundary of the subject property) is a retail store. The nearest residential use is on the east side of 76<sup>th</sup> Avenue West. *Testimony of Ms. Coccia; Exhibit A, Attachment 3.*
6. The proposed coffee stand will not affect any environmentally critical areas as designated by the City of Edmonds. Although there is a steep slope adjacent to the northeast corner of the subject property, the coffee stand will be located at least 100 feet from the top of the slope and will be constructed over an already paved surface. *Exhibit A, page 2; Exhibit A, Attachment 3; Testimony of Ms. Coccia.*
7. The area of the proposed coffee stand building will be 278 square feet, including a 223-square-foot store area and a 55-square-foot restroom. *Exhibit A, Attachment 4.*
8. There are no building setback requirements applicable to development within the BC zone unless the adjacent zoning is residential. In this case the adjacent parcels are zoned BC. *Exhibit A, page 2; Exhibit A, Attachment 1; ECDC 16.50.020.*
9. The maximum building height in the BC zone is 25 feet. According to the proposed building elevations, the proposed coffee stand will have a height of 22.5 feet. *Exhibit A, Attachment 4; Exhibit A, page 2.*

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<sup>1</sup> SW 244<sup>th</sup> Street SW is also known as SR-104, North 205<sup>th</sup> Street, and Lake Ballinger Way. *Exhibit A, page 2.*

10. The Comprehensive Plan designation of the subject property is Highway 99 Corridor. *Exhibit A, page 2*. The Comprehensive Plan policies that are relevant to the proposal include Commercial Land Use goals B.4 and B.5 and Urban Design Goals C.2.d, C.9.b, C.10.a, D.2.a, D.2b, and E.1.a. *Exhibit A, pages 4-5*. The facts that demonstrate the project's compliance with the relevant policies are as follows:
  - a. Commercial Land Use goals B.4 and B.5 and Urban Design Goal C.2.d:
    - i. The City Engineering Division has reviewed and preliminarily approved the queuing plan for the project, and will complete its review prior to building permit issuance. *Exhibit A, page 5; Exhibit A, Attachment 7*.
    - ii. The Applicant will be required to pay traffic impact fees in accordance with City ordinances. *Exhibit A, Attachments 7 and 8; Exhibit A, page 6*.
    - iii. Pedestrian safety features such as striped walkways are not needed because the coffee stand is for drive-through customers only; the building and proposed traffic circulation route will not displace any existing walkways for convenience store customers; and coffee stand employees will not be required to walk to the convenience store to use the restroom or sinks. *Exhibit A, Attachments 3 and 4; Testimony of Mr. Nam*.
  - b. Urban Design goal C.9.b: The proposed building elevations indicate that there will be an awning over the drive-through window. *Exhibit A, Attachment 4*.
  - c. Urban Design goal C.10.a: There is an existing light pole in the landscaping in front of the proposed building. *Exhibit A, Attachment 3*.
  - d. Urban Design goals D.2.a, D.2.b, and E.1.a: The proposed building will be small in scale and will include diversity in design. *Exhibit A, Attachment 4*.
11. The existing parking on site is sufficient to allow the proposed and existing uses to comply with the City's parking regulations. The parking requirement for the use (based on one parking stall per 200 square feet of gross floor area) is one parking stall. There are 12 existing parking stalls on the subject property, and the convenience store only requires six of the stalls. *Exhibit A, page 3; Exhibit A, Attachment 3*.
12. The subject property contains perimeter landscaping, and the small increase in building area proposed does not warrant additional perimeter plantings. The Applicant proposes to install additional landscaping along the north, south, and east sides of the building foundation. A curb will protect the landscaping from vehicular traffic. The landscaping will soften the building elevations consistent with ECDC 20.13.025(B). *Exhibit A, page 4; Exhibit A, Attachment 3*.
13. The project is subject to design review. However, because the project is exempt from SEPA, a hearing before the Architectural Design Board was not required. Instead, staff evaluated the project design and made a design review recommendation to the Hearing Examiner. The Hearing Examiner adopts staff's analysis as set forth on pages 3 and 4 of the Staff Report. In addition, the Hearing Examiner finds that, consistent with ECDC 20.11.030(A)(4)(a), the design includes

multiple rooflines or forms, appropriate landscaping, and the use of multiple materials.<sup>2</sup> *Exhibit A, pages 3 to 4; Exhibit A, Attachment 4.*

14. A different coffee stand had operated temporarily on the subject property at the same location as the proposed coffee stand. The stand was in operation for one year, and was removed one and a half years ago. City staff is not aware of any adverse impacts associated with the prior use. *Testimony of Ms. Coccia.*
15. The Applicant requested that the CUP be transferable, and City staff concurred with the request. *Exhibit A, page 6; Exhibit A, Attachment 5.*
16. The City determined the conditional use permit application to be exempt from review under the State Environmental Policy Act (SEPA). *Exhibit A, page 3.*
17. Notice of the open record hearing was mailed to adjacent property owners; posted on site, at the Civic Center, and at the library; and published in *The Herald* in accordance with Chapter 20.02 ECDC. *Exhibit A, page 2; Exhibit A, Attachment 6.* Public comment was in support of the application. *Testimony of Mr. Rutledge.*

## CONCLUSIONS

### Jurisdiction:

The Hearing Examiner has jurisdiction to hear and decide CUP applications pursuant to ECDC 20.01.003 and ECDC 20.05.020, and to make design review decisions pursuant to ECDC 20.11.010(A) and ECDC 20.01.002(C). Because design review in this case is a Type I administrative decision that is consolidated with a Type III-B decision, the Hearing Examiner has jurisdiction over both applications.

### Criteria for Review:

The criteria for general design review are set forth in ECDC 20.11.030.

Pursuant to ECDC 20.05.010, the Hearing Examiner may not approve a CUP unless the following findings can be made:

- A. That the proposed use is consistent with the comprehensive plan;
- B. Zoning Ordinance. That the proposed use, and its location, is consistent with the purposes of the zoning ordinance and the purposes of the zoning district in which the use is to be located, and that the proposed use will meet all applicable requirements of the zoning ordinance;
- C. Not Detrimental. That the use, as approved or conditionally approved, will not be significantly detrimental to the public health, safety and welfare, and to nearby private property or improvements unless the use is a public necessity; and
- D. Transferability. The hearing examiner shall determine whether the conditional use permit shall run with the land or shall be personal. If it runs with the land and the hearing examiner finds it in the public interest, the hearing examiner may require that

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<sup>2</sup> These criteria are designed to avoid long, massive, unbroken or monotonous buildings. While the Hearing Examiner concurs with staff's conclusion that excessive mass is not an issue in this case due to the small size of the building, the design details are noted here to show how the project complies with the criteria even on a small scale.

it be recorded in the form of a covenant with the Snohomish County auditor. The hearing examiner may also determine whether the conditional use permit may or may not be used by a subsequent user of the same property.

Conclusions Based on Findings:

1. The proposed use is consistent with the Comprehensive Plan. *Finding 10.*
2. The proposed use in the proposed location is consistent with the purposes of the zoning ordinance and the zoning district, and will meet all applicable requirements of the zoning ordinance. *Findings 1, 3, 6, 8, 9, 10, 11, 12 and 13.*
3. As conditioned, the use will not be significantly detrimental to the public health, safety, or welfare, or to nearby private property or improvements. A condition of approval is included to ensure that pedestrians do not use the drive-through window. With such condition, the use should not result in conflicts between vehicular and pedestrian traffic. *Findings 5, 6, 10 and 14.*
4. The permit should run with the land and be transferable. *Finding 15.*
5. The project satisfies the criteria for design review approval. *Finding 13.*

**DECISION**

Based on the preceding Findings and Conclusions, the request for a conditional use permit to construct and operate a drive-through coffee stand at 7601 244<sup>th</sup> Street SW is **GRANTED**, subject to the following conditions:

1. Pedestrians shall not be allowed to use the drive-through window.
2. The conditional use permit shall run with the land and may be transferred to future owners.

**DECIDED** this 15th day of July 2010.

Toweill Rice Taylor LLC  
City of Edmonds Hearing Examiners  
By:   
LeAnna C. Toweill

### **RECONSIDERATION AND APPEAL**

The following is a summary of the deadlines and procedures for filing requests for reconsideration and appeals. Any person wishing to file or respond to a request for reconsideration or an appeal should consult the relevant ordinances and/or contact the Planning Division of the Development Services Department for further procedural information.

### **REQUEST FOR RECONSIDERATION**

Section 20.06.010 of the Edmonds Community Development Code (ECDC) contains the procedures for requesting reconsideration of a Hearing Examiner decision. Requests for reconsideration must be filed with the City Planning Director within 10 calendar days of the Hearing Examiner's decision. The filing deadline is 4:30 p.m. on the last business day of the reconsideration period. Only parties of record (i.e., the applicant, any person who testified at the open record hearing on the application, any person who individually submitted written comments on the application, or the City of Edmonds) may file a request for reconsideration. The grounds for reconsideration are limited to errors of procedure, errors of law or fact, errors of judgment, or the discovery of new evidence that was not known and could not in the exercise of reasonable diligence have been discovered. Reconsideration requests must contain the information specified in ECDC 20.06.010(D) and be accompanied by the required filing fee.

### **APPEALS**

Pursuant to ECDC 20.05.020, appeals of a decision of the Hearing Examiner on a conditional use permit application are to City Council in accordance with the procedures set forth in ECDC 20.07. Only parties of record have standing to file an appeal. Appeals must be filed within 14 days of decision issuance. Filing a request for reconsideration is not a prerequisite to filing an appeal.

### **EFFECT OF REQUEST FOR RECONSIDERATION ON APPEAL DEADLINE**

The timely filing of a request for reconsideration stays the Hearing Examiner's decision until such time that the Hearing Examiner issues a decision on reconsideration. After the reconsideration decision has been issued, the time period for appeal shall recommence and be the same for all parties of record, regardless of whether a party filed a motion for reconsideration.

### **LAPSE OF APPROVAL**

Section 20.05.020(C) of the ECDC states: "Time Limit. Unless the owner obtains a building permit, or if no building permit is required, substantially commences the use allowed within one year from the date of approval, the conditional use permit shall expire and be null and void, unless the owner files an application for an extension of the time before the expiration date and the city approves the application."

### **NOTICE TO COUNTY ASSESSOR**

The property owner may, as a result of the decision rendered by the Hearing Examiner, request a change in the valuation of the property by the Snohomish County Assessors Office.



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HEARING EXAMINER

GARY HAAKENSON  
MAYOR

In the Matter of the Application of	)	NO. PLN20100029
	)	
<b>Ki Nam</b>	)	<b>DECLARATION OF SERVICE</b>
	)	
For a Conditional Use Permit and	)	
<u>Design Review Approval.</u>	)	

## DECLARATION

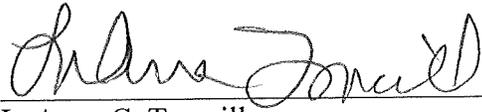
I, LeAnna C. Toweill, the undersigned, do hereby declare:

1. That I am a partner in the firm of Toweill Rice Taylor LLC, which maintains a professional services agreement with the City of Edmonds, Washington for the provision of Hearing Examiner services, and make this declaration in that capacity;
2. That I am now and at all times herein mentioned have been a citizen of the United States, a resident of the State of Idaho, over the age of eighteen (18), and competent to be a witness and make service herein;
3. That on July 15, 2010, I did serve a copy of the decision in case PLN20100029 upon the following individuals via U.S. first class mail:
  1. Ki Nam \*  
29605 Military Road South  
Federal Way, WA 98003
  2. City of Edmonds Development Services Dept.  
Attn: Diane Cunningham  
121 - 5<sup>th</sup> Avenue North  
Edmonds, WA 98020
  3. Edmonds City Council  
121 - 5<sup>th</sup> Avenue North – 1<sup>st</sup> Floor  
Edmonds, WA 98020
  4. Alvin Rutledge  
7101 Lake Ballinger Way  
Edmonds, WA 98026
  5. Chong (Larry) Pak  
8315 S. 212<sup>th</sup> Street  
Kent, WA 98032

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JUL 19 2010  
PLANNING DEPT.

I hereby declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct:

DATED THIS 15<sup>th</sup> day of July, 2010 at Boise, Idaho.

A handwritten signature in black ink, appearing to read "LeAnna Towell", written over a horizontal line.

LeAnna C. Towell  
Towell Rice Taylor LLC  
Serving as Hearing Examiner for Edmonds, Washington