



Agenda

RICHLAND PLANNING COMMISSION MEETING NO. 3-2014

Richland City Hall - 505 Swift Boulevard - Council Chamber

WEDNESDAY, March 26, 2014

7:00 p.m.

COMMISSION MEMBERS: James Utz, Chair; Carol Moser Vice-Chair; Debbie Berkowitz; Marianne Boring; Clifford Clark; Stanley Jones; Kent Madsen; Amanda Wallner and James Wise

LIAISONS: Rick Simon, Planning and Development Services Manager
Phil Lemley, City Council

Regular Meeting, 7:00 p.m.

Welcome and Roll Call

Approval of the Agenda

Approval of February 26, 2014 Meeting Minutes

Public Comments

Public Hearing Explanation

Unfinished Business

1. APPLICANT: VSI DEVELOPMENT LLC (Z2014-100)

Request: TEXT AMENDMENTS TO THE LAND USE & DEVELOPMENT REGULATIONS FOR THE BADGER MOUNTAIN SOUTH MASTER PLANNED COMMUNITY.

Location: BADGER MOUNTAIN SOUTH, GENERALLY LOCATED SOUTH OF BADGER MOUNTAIN, EAST OF DALLAS ROAD AND NORTH OF REATA ROAD.

New Business – Public Hearings

1. APPLICANT: EMERALD OF SIAM RESTAURANT (SUL2104-001)

Request: APPROVAL OF A SIDEWALK USE LICENSE TO AUTHORIZE THE OPERATION OF A SIDEWALK CAFÉ

Location: 1314 JADWIN AVENUE

Communications

Commission/Staff/Liaison Comments

Adjournment

Planning Commission Workshop Meeting, Wednesday, April 9, 2014

Planning Commission Regular Meeting – Wednesday, April 23, 2014

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MINUTES
RICHLAND PLANNING COMMISSION MEETING No. 2-2014
Richland City Hall – 550 Swift Boulevard – Council Chamber
WEDNESDAY, February 26, 2014
7:00 PM

Call to Order:

Chairman Utz called the meeting to order at 7:00 PM

Attendance:

Present: Commissioners Berkowitz, Boring, Clark, Jones, Madsen, Wallner, Wise, Vice-Chair Moser and Chairman Utz. Also present were City Council Liaison Phil Lemley, Deputy City Manager Bill King, Development Services Manager Rick Simon, Senior Planner Aaron Lambert and Recorder Penny Howard.

Approval of Agenda:

Chairman Utz presented the February 26, 2014 meeting agenda for approval.

The agenda was approved as written.

Approval of Minutes

Chairman Utz presented the meeting minutes of the January 22, 2013 regular meeting for approval.

A motion was made by Commissioner Wise and seconded by Commissioner Clark to approve the meeting minutes of the January 22, 2014 regular meeting as amended.

The motion carried, 9-0.

Public Comment

Chairman Utz asked for public comment on any item not on the agenda. Seeing none, he closed this portion of the meeting.

PUBLIC HEARING

Public Hearing Explanation: **Ms. Howard** explained the public hearing notice and appeal process and asked Commissioners to identify any conflicts of interest, ex parte contact or any other appearance of fairness issues.

Commissioner Berkowitz disclosed her affiliation with the Friends of Badger Mountain organization that the Applicant for Agenda Item 3 made donations to. The Board had no concern with conflicts of interest.

Unfinished Business

A motion was made by **Commissioner Madsen** and seconded by **Commissioner Jones** to remove the update of the City Shoreline Master Program (M2014-100) from the table.

MOTION CARRIED 9-0.

1. **Update of the City Shoreline Master Program, consisting of a proposed new “Shoreline Management” section of the Comprehensive Plan; amendments to Title 26 of the Richland Municipal Code – Shoreline Management; amendments to Title 19 – Development Regulation Administration; amendments to Title 23 – Zoning; and amendments to Title 22 – Sensitive Areas Ordinance, all as they relate to shoreline areas within the City of Richland. (M2014-100)**

Mr. Simon summarized the changes made since the January 22 meeting. The only unresolved issue identified was related to Amon Basin and whether or not it should be under the shoreline jurisdiction which would be determined by the Washington Department of Ecology. If they determine Amon Basin is a shoreline, the document would require additional work by the Planning Commission. **Mr. Simon** pointed out the Planning Commission would need to be follow up on the preservation of view corridors and amendments for zoning codes in the future.

Chairman Utz opened the Public Hearing at 7:15 PM.

Seth Defoe, Kennewick Irrigation District, 12 West Kennewick Avenue, Kennewick: “KID, early in, was kind of more heavily involved early in this process. We provided a lot of information; a lot of data on the Amon system to the City to use to help the Commission and the City officials make a decision on SMP status for the Amon area. We did miss out on a few meetings, but I wanted to come here tonight to kind of answer a few of the questions that I saw; some of the discussion that came up in the January 22 meeting that I thought could be clarified through KID participation and answer questions that any of the Commissioners had if that’s part of the process. As I said, we have provided a wealth of information. I do have a letter that I’d like to submit for the record, for the Commissioners to read. I’m not gonna read from it right now, but it

basically, kind of, summarizes some of the points in the huge ream of information that we gave and if you'd take a look at it, I'd appreciate it. I also understand that the ball's kind of in the Department of Ecology's court at this point. It looks like they're gonna make the call on this and we understand that. So, um, KID's official position is that we would oppose an SMP designation for the Amon Basin. The entire main wasteway that KID refers to as the Amon Wasteway, to others is known as the East Fork of Amon Creek for our operational spill. We have a, we've had an easement on that, a federally designated easement since the irrigation system went in back in 1955 to operate and maintain that wasteway through that area down to near the CID flume is where our jurisdiction ends. And the other area that KID calls the East Badger Drain, which is known as the West Fork Amon Creek, we don't have operational spill in there, but we do have return flows that seep up from the ground as springs in that area, that from all studies that we've done, come from applied irrigation and canal seepage. We do have drainage easements in that area as well to get in there and clean it out. Over the years, as you've seen, that we haven't really done that so wetland vegetation has formed in that area and is highly valuable to the community. KID recognizes that. We recognize the ecological services that the wetlands provide in that area. So, going back, I don't know if; I didn't bring any of the photos with me, but I know there's photos going back that show the channelized nature of both east and west Amon when they were constructed to use as: one) an operation spillway, the other to convey drainage away from the low spots there. Over time, this has grown up, urbanization has filled in, more irrigation has been applied and these wetland habitats have formed.

There was a couple comments from the January 22nd meeting that I did want to address briefly. One gentleman named Mark Kraft, made a comment about 'maybe KID's interested because we'd like access to get into the drains to maintain them if needed'. And, yes, we do have a concern about that, especially in the main Amon wasteway. As development encroaches upon areas around the wasteway, ah – especially during water on season, we could run into problems with flooding and potentially washing out homes and streets. We do have a scenario currently, apparently where the channel has shifted from its original position due to, a, movements in sand across the area and it's formed a new channel. And, as development occurs in that area, we want to be able to get in that area to maintain it and ensure that channel doesn't endanger any homes or property.

And, I'll just reiterate, I know that some of the testimony from Tapteal focused on how the wasteway is not a year around spillway and that's absolutely true. But, KID's interest does not only lie in the operational spillway, we also have an interest in that east fork, because it's our water that has created those wetlands. We're fortunate it's in an area where it's appreciated and not flooding people's homes. But, we have drainage easements in there and I know it was also mentioned by the consultant in some of the materials that the water that's in there is KID's water to re-appropriate. Many of you are probably aware of the Gage pumps which are located down the basin. KID has a pump station there. We collect some of that water and serve about 1500 customers.

So, I will just close with, because it's a complex system, but in the end it was dry before the onset of irrigation. KID's stance is that it's a constructed system; we have lots of evidence of that. It actually works pretty well. I think we've been a fairly good steward of it because a lot of those values that are causing some conflict are because it's because it's such a valuable area. But, we don't believe that state regulation and SMP designation is correct for a constructed drainage area. But we are interested in being good neighbors and working with interested parties to balance KID's rights to operate and maintain a drain with those community values that are found in Amon. So, thank you for your time tonight."

Chairman Utz closed the Public Hearing at 7:22 PM.

Discussion:

Commissioner Berkowitz shared the Department of Ecology's definition of a stream: 'An area where open surface water produces a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial water courses unless they are used by salmonids or are used to convey a water course naturally occurring prior to construction.' She stated that since salmonids were in Amon, she thought it should be considered by the Department of Ecology.

Commissioner Berkowitz pointed out that one of the Washington Administrative Codes state residential developments, structures and uses should be set back from steep slopes and shorelines vulnerable to erosion so additional protective structures would not be required. Since there were residential developments, she wanted to confirm that the buffers were sufficient. **Mr. Simon** confirmed the sufficiency of those buffers.

A motion was made by Commissioner Madsen and seconded by Commissioner Boring to concur with the findings and conclusions set forth in Staff Report (M2014-100) and recommend to the City Council adoption of the proposed updates to the Richland Shoreline Master Program.

Commissioner Moser thanked the staff, consultant, and commissioners for their hard work on the Shoreline Master Plan. She specifically commended Commissioners Berkowitz and Wise for their intense review and expressed her happiness with the final product.

Chairman Utz thanked the staff, consultant and the Kennewick Irrigation District for their contributions, communication and a good final document.

MOTION CARRIED 9-0.

New Business

1. Preliminary plat approval to subdivide an approximately 4.75 acre parcel into 14 residential lots known as The Dwellings (S2014-101)

Mr. Lambert reviewed the staff report, with pictures on the overhead, for a preliminary plat request for The Dwellings, pointing out that it would provide a new connection for Melissa Street. The plat of approximately 4.75 acres would be divided into 14 residential lots surrounded, generally, by single family structures. Since driveways are not permitted on Melissa Street, per the Richland Municipal Code, the lots would share access drives. Although Brantingham Road and Melissa Street will not be connected, a sidewalk was recommended between the two roadways. Letters from the Peyton family requested a maximum height barrier and staff recommended a six foot fence along the northern property line to help alleviate light and glare from vehicles on the proposed shared access drives.

Chairman Utz opened the Public Hearing at 7:34 PM.

Aaron Magula, Applicant, Dream Builders, 674 Big Sky Drive: “Everything that we’ve gone over on this with the City, in the pre-application meeting, with them was fine and agreeable. As they said, the private access road was their idea. I’d prefer to do; the six lots have their own driveways. And, the City had since changed that to an arterial collector street and had asked for the private drive, which was... You know, that’s fine. The only thing that came up, that we hadn’t talked about, was the fence along the back. I just ask that that’s a shorter fence, rather than the maximum height to close in the lots that are there. I prefer to do, either a 3 foot block fence to help, since there is an elevation change between this lot and the lots below. I know one concern was the cars driving into their yards. And so, I’d prefer just to do a block wall there, 3 foot tall. Something a little more stable than just a wood fence as they’d asked for.”

Chairman Utz closed the Public Hearing at 7:36 PM.

Discussion:

Vice-Chair Moser shared her iPad google map showing driveways that access Melissa Street, asking why driveways were not allowed when they clearly existed. **Mr. Peters** confirmed that there were driveways on the collector street and explained that for some reason, the previous developer was allowed to construct driveways emptying onto Melissa Street, which meant they would not have received the collector fee (reimbursement for roadway construction). They try to minimize the number of driveways on an arterial collector street because it becomes a residential roadway. **Vice-Chair Moser** pointed out driveways to the east and west of the property and stated that it was confusing and a strange configuration for the neighborhood.

Vice-Chair Moser asked if Brantingham Road was going to go through or end as a cul-de-sac. **Mr. Peters** confirmed that it would end in a cul-de-sac due to a past decision. Also in the past, Melissa Street was designated as a collector street with no direct access. He agreed that it did not seem to make a lot of sense, but they were executing past decisions.

Vice-Chair Moser suggested that since there were many driveways on Melissa Street, that decision had also been made and asked what other roadblocks there might be. **Mr. Peters** stated that it might be possible, but there was a solution to minimize driveways and it tended to be a domino effect. If exceptions were made, they would be made everywhere. **Vice-Chair Moser** stated her support for the Applicant's original design, but could not support the current proposal.

An in-depth discussion followed, covering a number of concerns about traffic safety, future roadway plans, topography, lot size, easements, fencing, and other options provided by the Applicant for the property.

Commissioner Jones suggested that the group table the item for now, return it to staff and allow them to take another look at the proposal.

A motion was made by Vice-Chair Moser and seconded by Commissioner Berkowitz to ask staff to work with the developer to come up with an alternative option that keeps Melissa as an arterial collector, but creates better driveway access.

Vice-Chair Moser changed her motion to the original staff report recommendation with the following condition changes: Eliminate the first sentence of TAC report condition 22 under Traffic & Streets to read: Lots 1 & 2 and lots 3 & 4 and lots 5 & 6 would have three shared driveways accessing Melissa Street. Also, strike the TAC report condition 1 under the Planning Department related to fencing on the northern property line.

The Commissioners and the Applicant were agreeable to the changed motion.

Discussion on Motion:

Commissioner Berkowitz asked how surface water drainage would be dealt with due to additional irrigation. **Mr. Lambert** informed all that drainage concerns would be addressed when civil engineering did their review.

Commissioner Berkowitz noted the Migratory Bird Act would probably need to be enforced if cutting down trees during nesting season. **Mr. Lambert** agreed that it would need to be enforced if nests were identified.

Commissioner Madsen offered his support of the motion.

THE MOTION CARRIED 9-0.

2. Text amendments to the Land Use Development Regulations for the Badger Mountain South master planned community (Z2014-100)

Mr. Simon reviewed the staff report summarizing 42 proposed changes to various sections of the Land Use Development Regulations which were developed in 2010 and first amended in 2012. Highlighted changes proposed were:

- Identification of the green belt with a 20 foot wide green space between the roadway and the 8 foot sidewalk.
- A map that would eliminate secondary trails in the open space areas.
- A regulated plan for streets, with a sidewalk and planting strip for streets adjoining the open spaces.
- A proposed standard for no sidewalk on the green space side, which already has a primary trail, and a different type of landscaping.
- A standard for a primary trail to have a 2 foot wide paved trail surface with a 2 foot wide gravel shoulder. There should be a 1 foot gravel shoulder one side and a 2 foot wide gravel shoulder on the other.
- A new configuration for duplex garages with living areas in front and garages toward the rear of the property.
- An updated housing photograph to better match the description in the text.
- A photo that better depicts the 20 foot wide green space standard.

Mr. Simon recommended approval of the amendments.

Chairman Utz opened the Public Hearing at 8:34 PM.

Loren Combs, Applicant: "I agree with everything that Mr. Simon said. There is a mistake on exhibit 3 that we will fix and he pointed that out to you. The intent was there, the drafting wasn't. So, we will correct that before it goes to Council. It's a scrivener's error. There was a change that was made that was from a sidebar conference with one of the Commissioners at the last workshop. And, she brought to my attention that one of the recommended treatments for outdoor furniture was teakwood. Well, unbeknownst to me, that is not a good thing to have outdoors anymore because it is in a threatened tree species and we shouldn't be using it in an area that's supposed to be geared for sustainability. So, we struck teak out of there. So, if any one of you want it back, we did not discuss that. But, I did strike it out in this proposal. So, teak would not be used in the outdoor furniture. Other than that, I'd be glad to answer any questions. One of the big issues that we came up with; we were house cleaning; but in trying to respect the topography, and especially in the smaller lots with alley load. It just didn't allow us to do some of the things that we needed to do there and we thought that the main thing was to have alley loaded houses. Because, by gosh, we do not want those curb cuts on those primary arterials. So, we want to encourage alley load, and, so we had to make

some changes to take care of the terrain difference that has to take place on the very small lots. I'd be glad to answer any questions that you may have for me."

Chairman Utz closed the Public Hearing at 8:37 PM.

Discussion:

A motion was made by Commissioner Madsen and seconded by Commissioner Boring to concur with the findings and conclusions set forth in Staff Report (Z2014-100) and recommend to the City Council adoption of the proposed amendments to the Badger Mountain South Land Use Development Regulations.

Discuss the Motion:

Commissioner Berkowitz brought up the concern that without the trail and sidewalk, it would be less bike-friendly.

Vice-Chair Moser expressed gratitude for all of the changes that had been made since the workshop and thanked Mr. Combs for keeping the sustainability standards. She felt it was important to maintain Badger Mountain South as a sustainable development.

MOTION CARRIED 9-0.

3. Preliminary plat approval to subdivide 126.8 acres into 281 lots and 14 tracts known as the plat of South Orchard I (S2014-100)

Mr. Lambert presented the staff report requesting preliminary plat approval to allow for development of a proposed 281 lot subdivision for single family and multi-family development including a 14 acre future school site, a 6 acre City park site and a storage lot to be utilized by the residents. The 127 acre area located in the southeastern corner of the Badger Mountain Community and overhead photos were displayed. The proposal was found to be consistent with the master agreement and the planned action environmental ordinance for the Badger Mountain South Community. Mr. Lambert verbally corrected page 3 of the staff report, where a 214 acre parcel should have been stated as a 14 acre parcel to be occupied by the school district.

Chairman Utz opened the Public Hearing at 8:44 PM.

Loren Combs, Applicant "I'm pleased to be bringing forward before you another plat and I did some calculations here. If we spend as much time on that 3.75 acre plat that you just dealt with and we take an hour for breakfast, lunch and dinner; and breakfast on Friday, we could break before noon on Friday, based on this plat; based on the same number of acres. But, the discussion was good because the issues that you were struggling with are dealt with in this plat. And, we have taken the LUDR amendments

that you just recommended and some of them appear in this plat because of the surfaces that we're dealing with and the grades that we're dealing with. But, there are no alley; or, excuse me, the houses are alley loads on that primary collector, because it makes it... It lets the traffic move, it lets the bicycles move and you don't have as much car interference. It's interesting, one of the notes the other Aaron, the other developer that was here today mentioned, I thought was really interesting: 'The alley load product makes for a nicer streetscape.' I don't know if you caught that because you were focused on the driveways, but he acknowledged that when you do alley loads, it makes a better looking front of the house. And, so, we have a lot of alley load in this product. We have a lot of safe pedestrian corridors. To clear up one item that Mr. Lambert brought up, Kennewick School District actually owns the land and you'll see they're one of the applicants for this. Because, they are entitled to the 20 acre parcel and as part of this platting process, 6 acres of that will be cut off and conveyed to the City of Richland for the area of the community park. So, you'll have the 14 acre elementary school site bordering a 6 acre City owned park. That's all I have. I concur with the staff report and the recommended findings and conclusions and would ask you to approve it and send it on to the Council for action. Thank you."

Chairman Utz closed the Public Hearing at 8:47 PM.

Discussion:

A motion was made by Commissioner Madsen and seconded by Commissioner Jones to concur with the findings and conclusions set forth in Staff Report (S2014-100) and recommend that the City Council approve the proposed preliminary plat of South Orchard 1 subject to the conditions of approval set forth in the Technical Advisory Committee Report dated January 28, 2014.

Discuss the Motion:

Commissioner Jones asked for clarity on where the irrigation lines connect. **Mr. Combs** assumed the irrigation would follow the same method as that being used to irrigate the West Vineyard trees. He guaranteed they would be watered, but did not know the exact method. **Commissioner Jones** suggested an indication on the drawings of the irrigation source for the Planners. **Mr. Lambert** informed all that irrigation would be provided by Badger Mountain Irrigation District.

Commissioner Madsen congratulated Mr. Combs and supported the project. He asked about when the project would tie in with the current construction. **Mr. Combs** explained that the water line was put through entire development early on due to poor flow from the Badger Mountain Irrigation District and a requirement by the Fire Marshall. Then, sewer and water became available sooner. Since utilities were made available on both ends, they began development on both ends of the project. He pointed out on overhead maps that the water lines would follow the road. **Mr. Combs** anticipated the roadway tie

in would occur in 2017. He also commented that he was glad the Planning Commission liked the plan, because they helped with the design.

MOTION CARRIED 9-0.

Communications:

Mr. Simon

- Reminded the Commission of the workshop on March 12.

Mr. King

- Attended a City Council workshop the previous night and reported that they asked the Planning Commission to proceed in developing more specific regulations regarding the production and sale of marijuana. Additional public hearings and work would be forthcoming.

Mr. Peters

- Appreciated all the comments and discussion on traffic issues.

Commissioners Madsen, Boring, Wise Berkowitz and Clark

- Congratulated Chairman Utz on conducting his first Planning Commission meeting.

Commissioners Wallner and Wise

- Commented that the staff reports were clearer and more concise which made it easier to go through.

Commissioner Clark

- Appreciated Mr. Peters' patience in dealing with property pieces that are left after other developments have gone in.

Commissioner Moser

- Commented on the wonderful vision of the Badger Mountain South community and thought of Mr. Combs as a great developer.
- Reflected on the recent loss of Robert Young, a great developer in Richland who had a lot of influence, specifically in commercial development.

Commission Boring

- Buzzed in extra tonight since she hadn't been able to in the last two years.

Chairman Utz

- Commented that running the meeting was a bit like juggling and thanked all for their patience.

ADJOURNMENT:

The February 26, 2014 Richland Planning Commission Regular Meeting 1-2014 was adjourned at 9:05 PM. The next regular meeting of the Planning Commission will be held on March 26, 2014.

PREPARED BY: Penny Howard, Recorder, Planning and Development

REVIEWED BY:

Rick Simon, Secretary
Richland Planning Commission

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SUPPLEMENTAL STAFF REPORT

TO: PLANNING COMMISSION
FILE NO.: Z2014-100

PREPARED BY: RICK SIMON
MEETING DATE: MARCH 26, 2014

GENERAL INFORMATION:

APPLICANT: VSI DEVELOPMENT, LLC

REQUEST: TEXT AMENDMENTS TO THE LAND USE & DEVELOPMENT REGULATIONS FOR THE BADGER MOUNTAIN SOUTH MASTER PLANNED COMMUNITY.

LOCATION: BADGER MOUNTAIN SOUTH, GENERALLY LOCATED SOUTH OF BADGER MOUNTAIN, EAST OF DALLAS ROAD AND NORTH OF REATA ROAD.

REASON FOR REQUEST

The owners of the Badger Mountain South master planned community have identified two more amendments to the Land Use and Development Regulations (LUDR) beyond those that the Commission reviewed at their February meeting.

FINDINGS AND CONCLUSIONS

Staff has completed its review of the proposed zoning amendments to the Badger Mountain South Land Use and Development Regulations (Z2014-100) and submits that:

- 1) The City adopted the Badger Mountain Subarea Plan on September 7, 2010, which includes a detailed master planned community known as "Badger Mountain South".
- 2) The Badger Mountain South master plan includes a finer level of detail than other City planning documents. To fully implement the plan, a more detailed development regulation was needed. Nor Am Investment drafted the Land Use and Development Regulation (LUDR) which was adopted by the City to fully implement the Badger Mountain South master plan.
- 3) The purpose of the LUDR is to:
 - a) Establish neighborhoods with a range of housing styles and types to accommodate a population of diverse ages and incomes;
 - b) Promote health benefits of a walkable, pedestrian environment;
 - c) Establish mixed-use neighborhoods where daily activities can occur within walking distance of most homes;
 - d) Reduce traffic and congestion by creating a traditional neighborhood development street grid;
 - e) Improve the character and quality of the built environment;
 - f) Promote building and landscape design that conserve energy, water and other resources;
 - g) Promote lot and block orientation that accommodates passive solar capture; and

- h) Conserve areas for parks, trails and open spaces by established a connected open space network.
- 4) The LUDR was adopted in December of 2010, was amended in 2012 and has been used to regulate the first development constructed within the Badger Mountain South community, a subdivision of 156 lots, known as West Vineyards.
- 5) Further review of the LUDR has revealed that there are a number of minor corrections, clarifications and improvements that constitute desirable improvements to the LUDR.
- 6) The proposed amendments do not impact the overall intent or purpose of the LUDR. Rather they provide some clarifications, corrections and improvements to the LUDR document.
- 7) The proposed amendments provide some additional development options for housing styles to meet market demands that would not otherwise be available.
- 8) Based on the above findings and conclusions, adoption of the proposed LUDR would be in the best interest of the community of Richland.

RECOMMENDATION

Staff recommends the Planning Commission concur with the findings and conclusions set forth in Supplemental Staff Report (Z2014-100) and recommend to the City Council adoption of the proposed amendments to the Badger Mountain South Land Use & Development Regulations.

EXHIBITS

- 1. Supplemental Information
- 2. Correspondence from Applicant, dated 3/19/14
- 3. Proposed LUDR Text Amendments
- 4. Illustrations

EXHIBIT (1)

SUPPLEMENTAL INFORMATION

DESCRIPTION

At the February 26th meeting, the Commission conducted a hearing to consider the amendments proposed to 42 sections of LUDR. The applicants still want to move forward with those amendments but are now adding two additional amendments to their request.

In fact, the first of the two amendments proposed is actually a revision to one of the earlier amendments that the Commission considered last month. One of the intentions of the LUDR is to limit the dominance of garages when viewed from the public street. The standard included in the previous amendments was to limit the garage to *“no more than 40% of the structure façade when directly facing the street”*.

After review, this standard is unworkable in the Badger Mountain South community. Single family homes have a minimum of a 2 car garage. The standard width of a two car garage is 24 feet. In order to comply with the garage standard, a home's front building façade would need to be 60 feet in width to be able to accommodate a 24 foot garage. However, many of the lots within the West Vineyards subdivision are 50 to 60 feet in width. When the side yard setbacks are considered, the building enveloped is only 38 to 48 feet in width. So this standard would only limit homes to a single car garage in those circumstances.

The proposed amendment to this standard would eliminate the 40% maximum garage requirement on the front building façade.

In fact, the market for single family homes quite commonly calls for a 3 car garage. The applicants would like to offer that option to their home builders and have sought ways to accommodate a third garage bay while still maintaining the intent to keep the garage secondary to the front elevation of the house. They propose to allow a third garage bay when two conditions are met: First, that the third bay of the garage must be recessed a minimum of 8 feet from the front building façade and secondly that the porch must be increased in size to a minimum of 80 square feet.

The second proposed amendment relates to paired housing (duplexes). It would provide for an enclosed courtyard within the front yard of these units. The current standards limit the height of fencing in the front yard to a maximum of three feet. The attached designs show a configuration of a block of paired housing. After providing for the home, garage and driveway on the lot, there is very limited outdoor space left. An enclosed courtyard would provide some usable outdoor space for the residents of these units and would be an important amenity. The proposed amendment would provide for the enclosed courtyard to extend no further than 4 feet in front of the front porch and no closer to the street than the build to line, which is 10 feet from the edge of the public right of way. The maximum fence height would be limited to five feet.

Copies of the proposed LUDR language and illustrations depicting examples of both the 3 bay garage and the enclosed courtyards are attached.

ANALYSIS

One of the purposes of the LUDR regulations is to “establish mixed-use neighborhoods where daily activities can occur within walking distance of most homes.” One of the ways to ensure that neighborhoods remain walkable is to keep densities high. Higher densities and smaller lots do provide some challenges in accommodating the amenities that the market demands. For some, the lack of a third garage bay or the lack of usable and private outdoor space would significantly detract from the appeal of the home. The applicants have devised reasonable provisions to accommodate the market demands for these amenities while still maintaining the overall intent of the LUDR.

SUMMARY

The proposed amendments to the LUDR are in keeping with the purposes of the original LUDR document and provide additional options for home styles within the Badger Mountain South community and should be approved.

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EXHIBIT (2)



Loren D. Combs
ldc@vsilawgroup.com

March 19, 2014

Sent Via Email: RSimon@ci.richland.wa.us

Mr. Rick Simon
Development Services Manager
City of Richland
P.O. Box 190
Richland, Washington 99352

RE: Our Client: Nor Am Investment LLC
Our File Number: 33266
Project: Badger Mountain South Master Planned Community
Subject matter: Amendment to Exhibit C, Land Use and Development
Regulations (LUDR), of the Master Agreement between the City
of Richland and Nor Am Investment LLC Regarding the
Community Known as Badger Mountain South

Dear Mr. Simon:

I appreciate your willingness to review additional Land Use and Development Regulation (LUDR) amendments for Badger Mountain South and to include them at the Planning Commission's public hearing now scheduled for March 26, 2014. The attachment to this letter includes the additional LUDR amendments that we are proposing. Our desire is that after the Planning Commission's review, these amendments would be included in the set of amendments that will ultimately be considered by the City Council on April 15, 2014.

Amendments to the LUDR are typically the result of: 1) correcting typographic errors or errors of omission; 2) the need to clarify an existing LUDR provision; or 3) the need to meet the local market expectations while still maintaining the integrity of the overall plan and goals of Badger Mountain South to create a walkable, energy-efficient community of neighborhoods and commercial areas. Occasionally an amendment is the result of 4) working through a real life application of the LUDR requirements and recognizing that a particular situation was unforeseen in the original LUDR document.

Mr. Rick Simon
March 19, 2014
Page Two

One of the earlier proposed LUDR amendments, reviewed by the Planning Commission last month, was to restrict the size of the garage to no more than 40% of the front facade. However, upon applying this to real world conditions with 50 foot wide lots, the requirement would make it so that a front load two car garage would not be allowed, even if it was otherwise architecturally appealing from the public areas and otherwise allowed. We have thus withdrawn that amendment.

We have proposed a new amendment to the fencing section to allow enclosing small outdoor areas. In an alley load condition on the smaller lots found in Badger Mountain South, there functionally isn't room for a private outdoor living area space on the lot. A local builder has proposed the use of fencing to accommodate these private patio spaces, and, when done within the limitations we have proposed, it will work nicely within the LUDR intent.

Finally, we have tried to accommodate what seems to be the desire for 3 car garages, by allowing the 3 car garages on wider lots, so long as the impact of the 3rd bay is diminished by an additional 8 foot setback, and a significant sized porch feature is added.

We have included illustrations with the proposed amendments to help you visualize how they would apply. I will be present to answer any Planning Commission questions at the public hearing. I would also be happy to provide you with any additional information you may need.

Sincerely,



Loren D. Combs

Enclosures: (1) LUDR Text Amendments
(2) House Plans with Privacy Walls
(3) Front Load Lots w/3 Car Frontage

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EXHIBIT (3)

Proposed LUDR Text Amendments
March 26, 2014

LUDR Section 3.D -- Neighborhood General District

4. Parking

c. Parking Requirements:

(2) Maximum 2 car garage door frontage on front load lots. On alley access lots, and front load lots developed with side-yard garage or with one garage bay recessed a minimum of 8 ft and the house having a front porch of at least 80 sq. ft., 3 car garage door frontages are permitted.

Rationale:

The LUDR intent is to minimize the garage door dominance from the street by limiting a front-load house to a 2 car garage. However this issue is not present either where alley-load lots exist or where the house has a side-yard or side-loaded garage, or when one bay is significantly recessed from the front façade and includes a minimum of an 80 sq. ft. front porch. In these instances the garage doors do not dominate the street view and 3 car garages can be permitted.

LUDR Section 8.O -- Single-Family House -- Street Access

6. Building Size and Massing

c. Garages shall be secondary to the front elevation of the house. ~~and in no case may the garage be more than 40 percent of the structure facade when directly facing the street.~~

(2) Attached garages with a front driveway condition shall be setback a minimum of 4 ft. from the front façade, or reduced (1) story minimum in height from the main portion of the house. When otherwise permitted, attached garages with a front driveway condition may have three bays when one of the bays is recessed from the front façade at least 8 ft and when a Porch Frontage Type is used with a porch at least 80 sq. ft. in size, (see Section 9.G).

(4) If an attached garage is setback 16 ft. or more from the main façade of the house, or if the conditions of c.(5) below are met, it shall be considered as a side yard driveway condition per 5.c block face percentage calculation.

(5) A garage may be part of a front façade when the garage has a side driveway condition, ~~in these instances.~~ With a side driveway condition, the garage portion of

the façade facing the street will feature design elements to match the residence. These elements may include similar window types, an upper story, and/or further architectural articulation complementary to the principal structure.

Rationale:

The LUDR requirements and standards for garages and access to single family houses are in place because of the desire to create a neighborhood with variety of house styles and elevations, making the neighborhood more interesting to walk in and live in. However, subsequently to our initial amendment of garages making up no more than 40% of the front façade of a house, we have found that requirement would play havoc with many of the smaller lots within Badger Mountain South – the house and garages would not fit – and thus we have withdrawn this amendment.

To provide more buildable ways to meet the requirement (8.O.5.c) that houses on front access lots have at least 40% per block face with a “side yard driveway condition,” we have proposed that when a front-accessed garage extending beyond the residence portion of the façade has a side garage entrance, it will be considered as meeting the standard for a side yard driveway condition. This design feature will increase the variety, interest and diversity of the streetscape, a desired LUDR outcome, and will count towards meeting the 40% requirement.

LUDR Section 13.A --Fencing

1. Residential

a. General Considerations

(4) Privacy screening may be permitted for Hot Tubs/Spas and for enclosed courtyards on lots less than 61 ft. in width, or on alley load lots up to 70 ft. when an alley adjoins the side yard.

b. Standards

(12) Enclosed Courtyard Screen.

i. A solid or semi-solid partition constructed of the same or similar materials as the principal structure and either partially or completely surrounding an outdoor living space.

ii. May extend into the front yard setback no more than 4 ft. beyond the front façade/front porch of the principal structure, but in no event beyond the minimum build to line.

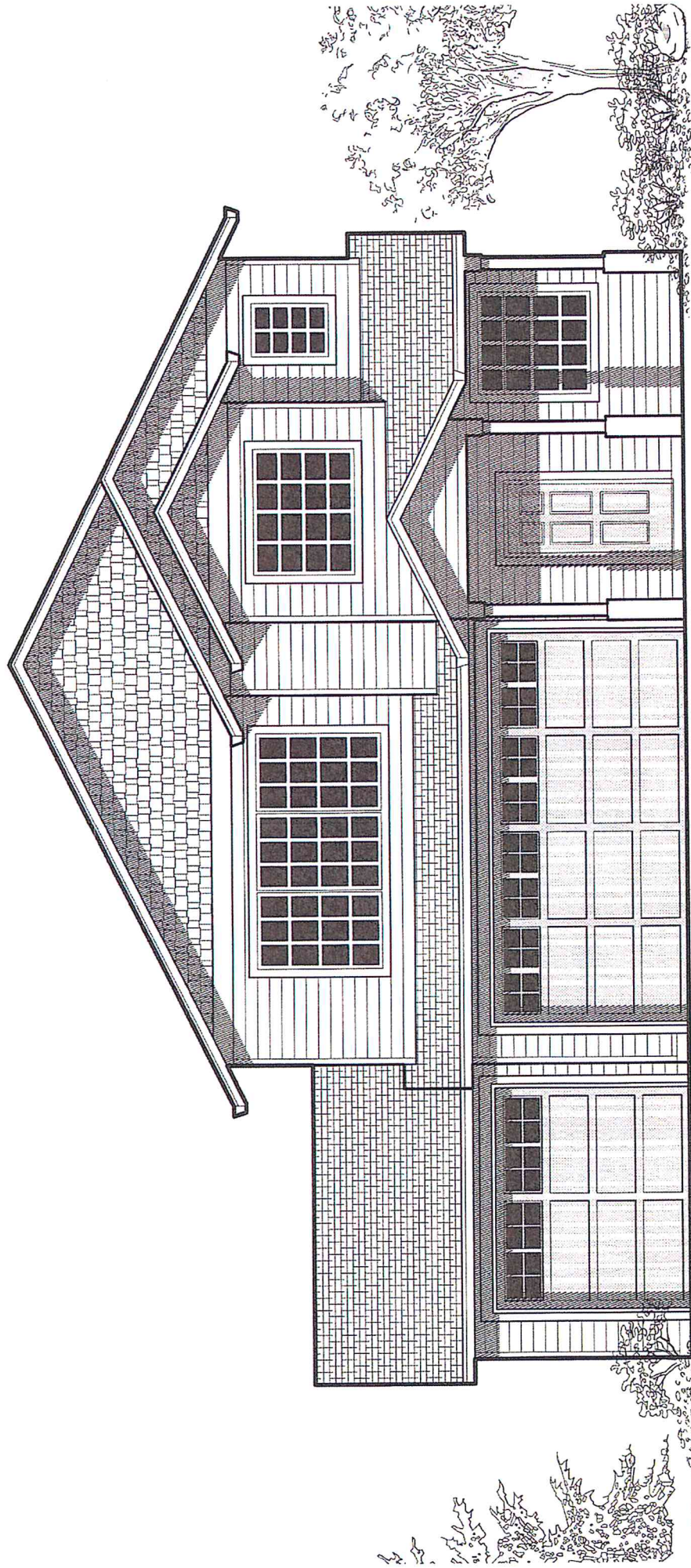
iii. Must be decoratively embellished on the exterior when a solid screen is built.

iv. Maximum height of 5 ft.

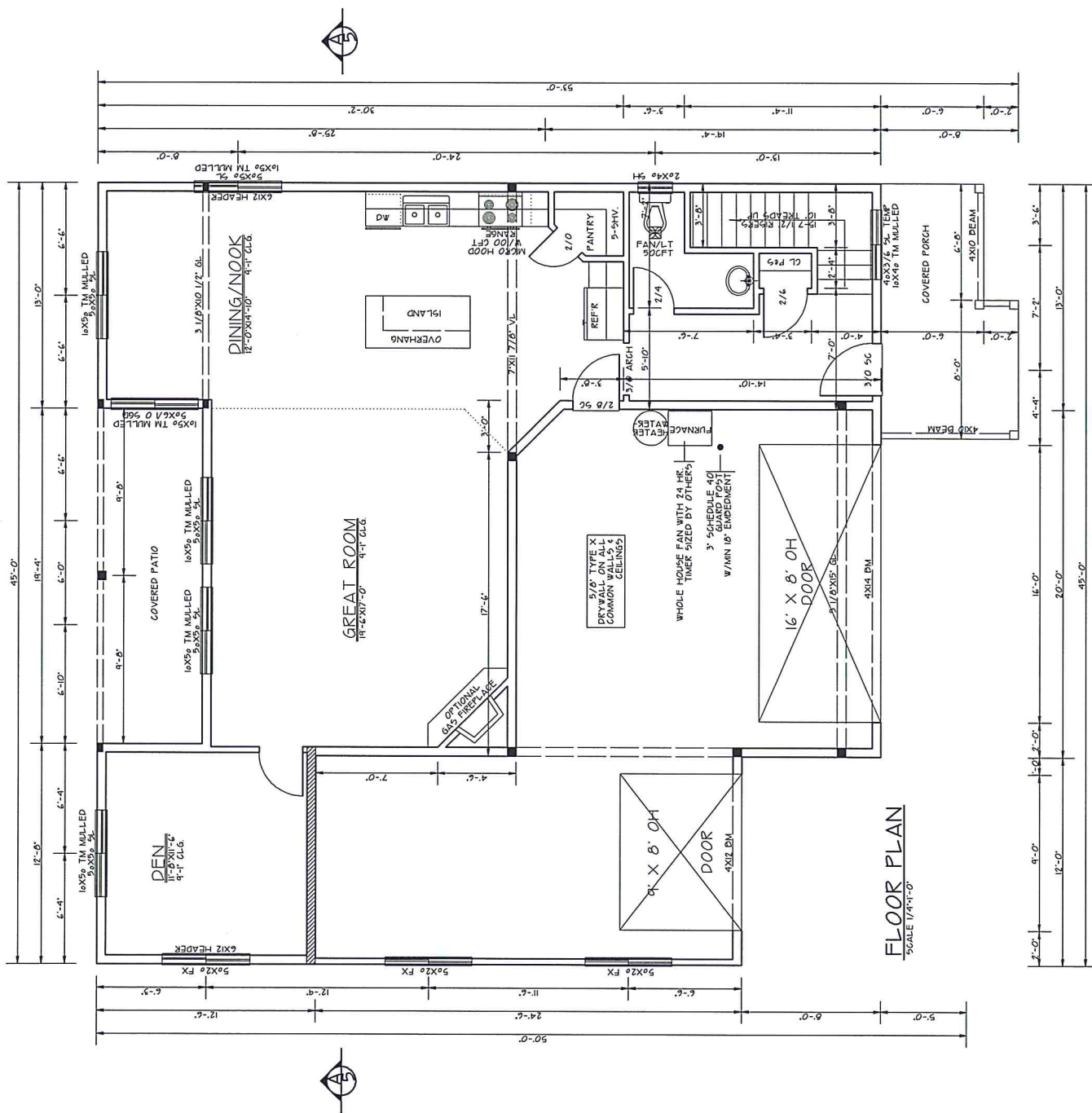
Rationale:

Many of the alley load lots in Badger Mountain South range in size from 5,000 sq. ft. to 7,000 sq. ft. When placing a house and garage on these lots it is desirable to also include a private outdoor recreation space. This new amendment would allow those outdoor spaces to be created and placed on the lot in best relationship to the principal structure. It would also set new standards for privacy screens (now allowed only for hot tubs and pools) so that the neighborhood isn't filled with blank screens.

EXHIBIT (4)

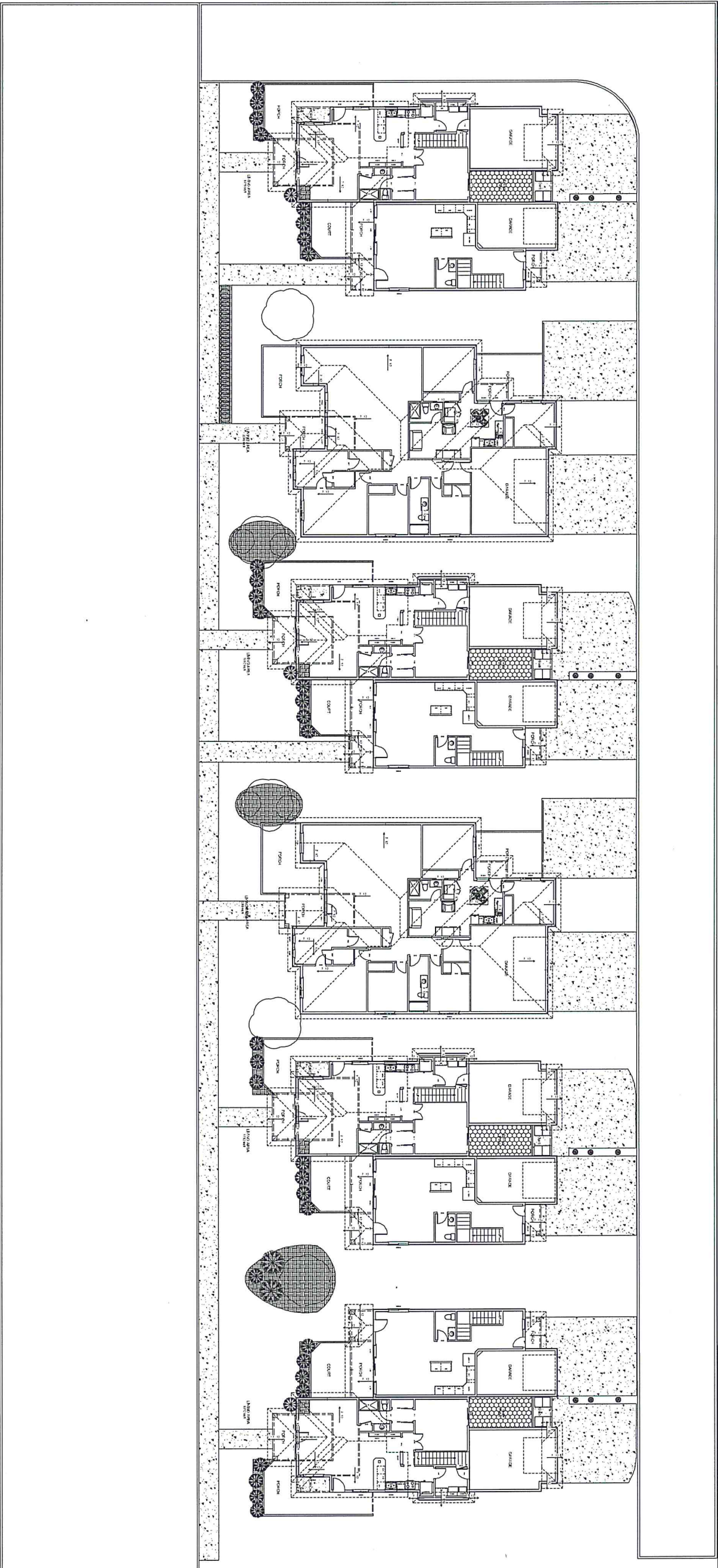


FRONT ELEVATION
SCALE 1/4"=1'-0"











STAFF REPORT

TO: PLANNING COMMISSION
FILE NO.: SUL2014-001

PREPARED BY: AARON LAMBERT
MEETING DATE: MARCH 26, 2014

GENERAL INFORMATION:

APPLICANT: WILLIAM QUINN (EMERALD OF SIAM)

REQUEST: APPROVAL OF A SIDEWALK USE LICENSE TO AUTHORIZE THE
OPERATION OF A SIDEWALK CAFÉ

LOCATION: 1314 JADWIN AVENUE. (UPTOWN SHOPPING CENTER)

REASON FOR REQUEST

The applicant is requesting a sidewalk use license in order to offer outdoor food and beverage service to its customers on the public sidewalk immediately adjacent to the Emerald of Siam Restaurant located at 1314 Jadwin Avenue.

FINDINGS AND CONCLUSIONS

Staff has completed its review of the application for a sidewalk use license SUL2014-001 and subject to the recommended conditions of approval submits that:

Findings of Fact:

1. The Richland Comprehensive Plan designates the site as a part of the Central Business District land use category and the property is zoned CBD.
2. The site is located within the Uptown Shopping Center and other adjoining uses are commercial businesses. The closest residential property is located over 600 feet away to the northwest, separated from the proposed outdoor seating area by the Uptown Shopping Center parking lot and Jadwin Avenue.
3. In 2009 the City adopted Ordinance 04-09 which created a new Central Business District (CBD) zoning classification. Among other items, the CBD zoning classification encourages outdoor seating for cafes and restaurants within the CBD

as stated in the purpose section of Section 23.22.010 of the Richland Municipal Code.

4. Richland Municipal Code Chapter 5.14 adopted in 2009, provides specific criteria for the issuance of sidewalk use licenses. Subject to the recommended conditions of approval the application demonstrates compliance with those criteria.
5. RMC Section 5.14.070 requires a public hearing before the Planning Commission for a sidewalk cafe and requires that notice of the hearing be posted on the property, mailed to owners within 300 feet and advertised in the newspaper.
6. Public notice was given in accordance with the requirements of the RMC and the City has received a comment letter from a neighboring business, exhibit 3.

Conclusion of Law

7. **The application, as conditioned, meets all the applicable requirements set forth in RMC Chapter 5.14 for sidewalk cafes.**

Overall Conclusion

8. **Subject to the recommended conditions of approval, the application for a sidewalk use license meets City code requirements, is located appropriately in the CBD, given the nature of the existing uses adjacent to the site and should be approved.**

RECOMMENDATION

Staff recommends that the Planning Commission concur with the findings and conclusions set forth in Staff Report SUL2014-001 and approve the request for a sidewalk use license to operate a sidewalk cafe subject to the conditions set forth in Exhibit 2 to the Staff Report.

EXHIBITS

- 1 - Supplemental Information
- 2 - Conditions of Approval
- 3 - Public Comment(s)
- 4 - Public Hearing Notice
- 5 - Application Materials
- 6 - RMC Chapter 5.14 – Sidewalk Use License
- 7 - Aerial Photo
- 8 - Site Photos

EXHIBIT (1)

SUPPLEMENTAL INFORMATION

PROPOSED DEVELOPMENT

William Quinn, co-owner of the Emerald of Siam Restaurant proposes to operate a sidewalk café in conjunction with the business located at 1314 Jadwin Avenue in the Uptown Shopping Center. The proposed outdoor seating area would be located directly in front of their business facing the Uptown Shopping Center parking lot and Jadwin Avenue. The seating area would be enclosed with a 42" high railing meeting the requirements of the State Liquor Control Board. The enclosed area would be approximately 12 feet in depth and 26 feet in length. Approximately 7' 6" of sidewalk clear width would be maintained between the enclosed seating area and the curb of the adjoining parking lot.

SPECIFIC CODE REQUIREMENTS

In 2009, the City adopted sidewalk use license regulations. This code (RMC Chapter 5.14) provides a licensing requirement for the use of public sidewalks. Cafes, including those that serve liquor, are among the list of uses that are permitted through the licensing regulations. The code includes specific requirements for insurance, requires that the applicant enter into a hold harmless agreement with the City and provides specific standards of operation. The code specifies that the Planning Commission will hold a public hearing and decide certain categories of sidewalk use licenses, including those that involve sidewalk cafes. A complete copy of RMC Chapter 5.14 is attached.

SURROUNDING ZONING AND LAND USE

The entire Uptown Shopping Center is zoned CBD. The property immediately to the north of the subject site is occupied by the Carpet One store and the property immediately to the south is occupied by the Desserts by Kelly Alexander shop.

The stated purpose of the CBD zone is to encourage the transformation of the area from principally a strip commercial auto-oriented neighborhood to a more compact development pattern. RMC Section 23.22.010 states in pertinent part:

"The Central Business District is envisioned to become a center for housing, employment, shopping, recreation, professional service and culture. The uses and development pattern will be integrated and complementary to create a lively and self-supporting district. Medium rise buildings will be anchored by pedestrian oriented storefronts on the ground floor with other uses including housing on upper floors. Projects will be well designed and include quality building materials. Appropriate private development will be encouraged via public investments in the streetscape and through reduction in off-street parking standards. Uses shall generally be conducted completely within an enclosed

building, except that outdoor seating for cafes, restaurants, and similar uses and outdoor product display is encouraged. Buildings shall be oriented to the fronting street or accessway, to promote a sense of enclosure and continuity along the street or accessway.”

ANALYSIS

The City adopted sidewalk use regulations in 2009 in part to provide opportunities for sidewalk uses that would increase public use, enjoyment and safety while at the same time ensuring appropriate provisions are made to ensure public access is not unreasonably impaired, adjoining businesses are not adversely impacted and provisions are made to indemnify the City from any potential liability.

Restaurants with outdoor seating areas can be a great way to encourage walking, add vitality to the street front, and promote local economic development. The site is located within the CBD zone and the use of outdoor seating for cafes, restaurants and similar uses is specifically encouraged within the purpose statement of the CBD zone and other businesses in the Uptown Shopping Center have been granted approval for outdoor seating.

The standards contained within the City sidewalk use regulations have been satisfied, provided that a list of recommended conditions is followed. The conditions are necessary to ensure that the public's ability to use the sidewalk is maintained in a safe and attractive manner. The plan as submitted would maintain an unobstructed clear walkway area of approximately 7' 6" in width where the minimum clear area required by code is 5' in width.

SUMMARY

The proposed use of a public sidewalk for a sidewalk café is consistent with the City's goals for the underlying CBD zoning district and subject to compliance with the recommended conditions of approval would be consistent with the standards set forth in RMC Chapter 5.14 for approval of a Sidewalk Use License.

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EXHIBIT (2)

CONDITIONS OF APPROVAL (SUL2014-001)
EMERALD OF SIAM - 1314 JADWIN AVENUE
SIDEWALK USE LICENSE

1. The railing to be placed on the sidewalk in front of the Emerald of Siam to delineate the outdoor seating area shall provide a minimum five foot (5') wide clear path of travel on the walkway between the proposed railing and the curb of the adjacent parking lot. Railing height shall not exceed 42 inches in height and shall allow at least 50% visibility. Said railing shall be maintained in good repair and any damaged or failing railing shall be promptly repaired.
2. Prior to the operation of the sidewalk café, the applicant shall submit plans to the City Parks and Recreation Department identifying how the railing will be affixed to the sidewalk. The Parks and Recreation Department may determine that a financial surety is required to ensure that the sidewalk and parking lot are returned to its pre-license condition. In such a case, the Department will determine the amount and form of the financial surety, which shall be posted prior to installation of the improvements.
3. The applicant shall obtain required Benton Franklin Health Department and State Liquor Control Board licenses for outdoor food and beverage service and document to the City that required approvals have been obtained prior to operation of the sidewalk café.
4. The applicant shall comply with City noise standards of RMC 9.16.045 at all times. If the operation of the sidewalk café results in noise complaints from residents, and those complaints are determined to be valid by the City, the Planning Commission may conduct a public hearing and decide to restrict the hours of operation of the sidewalk café beyond those proposed by the applicant in the submitted application and/or may revoke the sidewalk use license.
5. The applicant shall at all times maintain the adjoining sidewalk in a clean and safe condition for pedestrian travel in accordance with the requirements of RMC Section 5.14.100.
6. Any outdoor lighting installed to serve the sidewalk café shall meet the outdoor lighting standards as specified in RMC Chapter 23.58.
7. No equipment shall be placed or stored outside of the railing of the sidewalk café at any time.
8. The license shall be valid for a period of two years from the date of its issuance. An application for license renewal may be reviewed and approved administratively by the Development Services Division for additional two year periods.

9. All furniture, equipment and other appurtenances that are placed within the sidewalk café shall be kept clean, in good repair and sightly at all times.
10. The applicant shall post the outdoor seating area as a No-Smoking area and within the outdoor seating area shall be responsible for enforcement of Washington State regulations concerning no smoking within 25 feet of the entrance to buildings, including the entrances to the adjoining buildings.
11. At the time the sidewalk use license expires or the sidewalk use ceases, the applicant shall return the sidewalk to its original, pre-license condition per the provisions of RMC Section 5.14.080.

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EXHIBIT (3)

Lambert, Aaron

From: ronald thornhill <ronscontract@yahoo.com>
Sent: Wednesday, March 19, 2014 2:27 PM
To: Lambert, Aaron
Subject: Emerald of Siam

First I could not respond by your date time period because I didn't get the notice until today's mail, it was postmarked yesterday. So hopefully you'll accept these comments. I am the owner of the building to the north of Emerald of Siam. We have been having a bad time with the patrons destroying our planters and then using them as ash trays including a pot pipe. They leave litter gum and other debris. I'm not sure whether this would improve the situation or make it worse, Can the permit be for say 6 months with a review? What recourse would we have if it's a mess. What codes and statutes cover this permit process and guidelines. Thanks Ron Thornhill.

EXHIBIT (4)



CITY OF RICHLAND **NOTICE OF APPLICATION** **AND PUBLIC HEARING (SUL2014-100)**

Notice is hereby given that The Emerald of Siam Restaurant filed an application for a Sidewalk Use License to permit outdoor seating for the restaurant located at 1314 Jadwin Avenue in the Uptown Shopping Center. The sidewalk seating area is proposed to be located immediately in front of the restaurant space. Required pedestrian passage would be provided between the parking lot and proposed outside seating area.

The Richland Planning Commission, on Wednesday, March 26, 2014, will conduct a public hearing and review of the application at 7:00 p.m. in the Richland City Hall Council Chambers, 505 Swift Boulevard. All interested parties are invited to attend and present testimony at the public hearing.

Any person desiring to express his views or to be notified of any decisions pertaining to this application should notify Aaron Lambert, Senior Planner, 840 Northgate Drive, P.O. Box 190, Richland, WA 99352. Comments may also be faxed to (509) 942-7764 or emailed to alambert@ci.richland.wa.us. Written comments should be received no later than 5:00 p.m. on Tuesday, March 18, 2014 to be incorporated into the Staff Report. Comments received after that date will be entered into the record at the hearing.

Copies of the staff report and recommendation will be available in the Development Services Division Office, and at the Richland Public Library beginning Friday, March 21, 2014.

The proposed application will be reviewed in accordance with the regulations in RMC Title 5.14 Sidewalk Use Licenses.

AARON LAMBERT,
SENIOR PLANNER

EXHIBIT (5)

SIDEWALK USE LICENSE RECEIVED APPLICATION

Implementing RMC 5.14

\$200.00 application fee

JAN 27 2014

Planning &
Development Services

Development Services Division
840 Northgate Drive
P.O. Box 190
Richland, WA 99352
Phone: (509) 942-
Fax: (509) 942-7764



Type of License: Sidewalk Cafe

Note to Applicants. Other permits or authorizations may be required depending upon the nature and scope of the proposed sidewalk use license.

This Section For Staff Use Only

Permit Number: SUL2014-001 Date Received: 1/27/14

Fee: \$200.00 Receipt #: 2014-000159

Staff Contact: Aaron Lambert, SR. Planner

PROJECT INFORMATION

Name of Project (if applicable): Emerald of Steam Sidewalk Cafe

Project Site Address: 1314 Jadwin Ave.

Parcel Number: _____

OWNER

Name: James Go

Address: _____

Phone: _____

Fax: _____

e-mail: _____

APPLICANT

Name: William Quinn

Address: 1412 Putnam St. 99354

Phone: 509 460 7672

Fax: _____

e-mail: eatnsleepn@yahoo.com

CONTACT

Name: _____

Address: _____

Phone: _____

Fax: _____

e-mail: _____

PROPOSED PROJECT DESCRIPTION

Please provide a brief description of the proposed sidewalk use including the desired space to be used, modifications to city infrastructure, equipment and/or furniture proposed, days and hours of operation, and any light or noise impacts that will be associated with the proposal. Use an additional sheet of paper if necessary.

We intend to construct an enclosed outdoor seating area for our customers to enjoy food and drink during lunch, dinner, and late night business hours.

Zoning Designation: CBD

Adjacent Land Uses North: _____

(be specific including South: _____

business names) East: _____

West: _____

Check all that apply.

☒ Liquor will be served at a sidewalk cafe.

A liquor license must be obtained from the State of Washington that contemplates the sidewalk use area before a license may be issued by the City. Please attach. A private insurance policy naming the City as an additional insured and a hold harmless agreement are required for the duration of the license (see requirements below).

☒ Food and beverages will be served at a sidewalk cafe or vending cart.

A food and beverage license must be obtained from the Benton County Health Department that contemplates the sidewalk use area before a license may be issued by the City. Please attach. A private insurance policy naming the City as an additional insured and a hold harmless agreement are required for the duration of the license (see requirements below).

☐ The sidewalk or other City infrastructure will be modified.

A surety instrument may be required to ensure the return of City infrastructure to original, pre-license condition at the termination of the sidewalk use depending on the extent of modification proposed to City infrastructure. A private insurance policy naming the City as an additional insured and a hold harmless agreement are required for the duration of the license (see requirements below).

☐ The City's airspace will be used for signage, building elements, canopies, awnings, flags, or other private facilities.

Any proposed signage that is on or above City sidewalks, property or right of way must concurrently

apply for a sign permit. A sidewalk use license will not be issued until the associated sign permit is authorized. A private insurance policy naming the City as an additional insured and a hold harmless agreement are required for the duration of the license (see requirements below).

☐ Other, please describe.

Insurance Required

The licensee shall procure and maintain for the duration of the license and for 30 days following termination of the license, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the licensee, their agents, representative, employees or subcontractors. Licensee's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

The licensee shall provide a Certificate of Insurance and an *additional insured endorsement page(s)* evidencing: Commercial General Liability insurance written on an ISO occurrence basis for CG00 01 and shall cover liability arising from premises, operations, property damage, independent contractors and personal injury and advertising injury, with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate. The City shall be named as an additional insured on the insurance policy with respect to work performed by or on behalf of the Licensee and a copy of the endorsement naming the City as an additional insured shall be attached to the Certificate of Insurance prior to issuance of the sidewalk use license. The Licensee's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

The Licensee's insurance shall be primary insurance with respect to the City and the City shall be given at least thirty (30) days prior written notice of an cancellation, suspension or material change in coverage.

Any payment of deductible or self-insured retention shall be the sole responsibility of the licensee.

This certificate must be submitted along with an original copy of the endorsement naming the City as an *additional insured* and be acceptable to the City prior to issuance of the sidewalk use license.

Hold Harmless Agreement Required

Licensee (applicant) shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of, or in connection with, their performance under this license, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this license is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the licensee and the City, its officers, officials, employees, and volunteers, the licensee's liability hereunder shall be only to the extent of the liabilities negligence. It is further specifically and expressly understood that the


indemnification provided herein constitutes the licensee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. The provisions of this section shall survive the expiration or termination of this license.

The parties mutually agreed upon this waiver. This indemnity provision shall not apply in the event any acts or omissions of the City were the sole cause of any such damage or injury. To the extent any of the damages referenced herein were caused by or resulted from the concurrent negligence of the City, its agents or employees and the licensee, its officers, or employees and the licensee, its officers, agents, and employees, this obligation to indemnify, defend and hold harmless is valid and enforceable only to the extent of the negligence of the licensee, its officers, agents, and employees.

No vested rights. It is understood and agreed by the licensee that the permission to occupy the above described public place hereby contemplated is wholly of a temporary nature, vests no permanent rights whatsoever, and that upon thirty (30) days notice, posted on the premises, or by publication in the official newspaper, or without such notice, in case such use or occupation shall become dangerous or such structure shall become unsecured or unsafe, or shall not be constructed, maintained or used in accordance with the approved conditions of approval, the same may be revoked and the structures and obstructions ordered removed.

I certify that the information furnished by me is true and correct to the best of my knowledge, agree to hold the City harmless as specified herein, acknowledge that the proposed sidewalk use provides no vested rights, and that I will provide the necessary private insurance certificate prior to issuance of the sidewalk use license.

Signature: _____



Date: _____

1/27/14



**Washington State
Liquor Control Board**

Licensing and Regulation
PO Box 43098, 3000 Pacific Ave SE
Olympia WA 98504-3098
Phone – (360) 664-1600
Fax – (360) 753-2710

July 8, 2013

RECEIVED

JAN 27 2014

**Planning &
Development Services**

MORAKOT, INC.
1314 JADWIN AVE
RICHLAND, WA 99354-3404

Re: EMERALD OF SIAM
1314 JADWIN AVE
RICHLAND, WA 99354-3404

LICENSE #369150 - 4F
UBI 600-505-458-001-0001

Your request for the sidewalk café is approved subject to the following conditions. To obtain an inspection completed by your **Program Specialist 2- Katy Boyce; please contact her at (360) 280-7050** to schedule the inspection.

1. The sidewalk café area is for the exclusive use of the on-premises liquor licensee and conduct in this area is the responsibility of the licensee.
2. The sidewalk café area must be enclosed with a barrier at least 42 inches in height.
3. Food must be available in the sidewalk café area when liquor is being served.
4. Alcoholic beverages must be prepared in the liquor service area inside the licensed premise.
5. At least one employee must be designated at all times in the sidewalk café area and be responsible for the control of the area.
6. Lighting in the sidewalk café area must comply with WAC 314-11-055. (Area cannot be darkened, must be able to read patron ID and view patron behavior.)

This approval is based on your meeting all requirements of state, county, and city laws and ordinances relating to sanitation, zoning, fire, safety and building codes, including the laws relating to public accommodations for physically disabled persons (RCW 70.92).

Thank you,

Wil McGill
Customer Service Specialist
360-664-4539
Washington State Liquor Control Board

cc: Pasco Enforcement Office
File



City of Richland
840 Northgate Dr.
Richland, WA 99352

Phone: 509-942-7794
Fax: 509-942-7764

Paid Invoice Summary

Page 1 of 1

DATE

1/27/2014

ACCOUNT:

Emerald Of Siam
1314 Jadwin Ave
Richland WA 99354

Phone: 509 947 3479

PROJECT NAME

1314JadwinAveEmeraldofSiam-PLNG-140127-

1314 Jadwin Ave
Richland, WA 99354

Date	Reference Number	Invoice Number	FeeCat	Description	Status	Amount
1/27/2014	1314JadwinAve EmeraldofSiam-PLNG-140127-1	2014-000159	001345810	Planning - Sidewalk Use License	Paid	(-) 200.00

Date	InvoiceNum	Status	Payment	Amount
1/27/2014	2014-000159	Original Due		200.00
1/27/2014	2014-000159	Paid	CreditCard William Quinn CC	(-) 200.00

Total Paid

200.00

JADWIN AVE

Not to Scale 1/4" = 1'

PARKING LOT

42" RAILING

SIDEWALK CAFE AREA

RECEIVED
JAN 27 2014
Planning &
Development Services

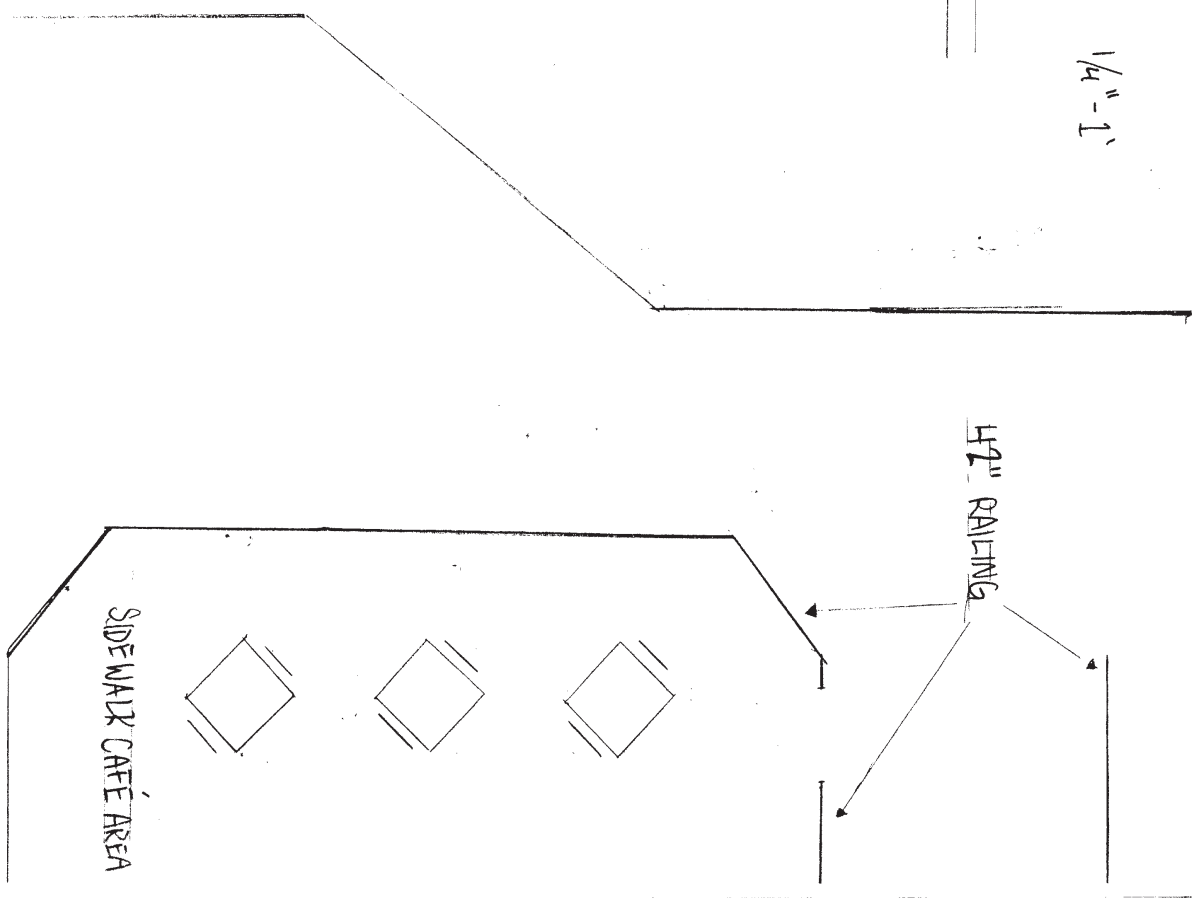


EXHIBIT (6)



Chapter 5.14

SIDEWALK USE LICENSE

Sections:

- [5.14.010](#) Definitions.
- [5.14.020](#) License required.
- [5.14.030](#) Application.
- [5.14.040](#) Uses allowed.
- [5.14.050](#) Terms and conditions.
- [5.14.060](#) Liquor.
- [5.14.070](#) Public hearing required for sidewalk use license.
- [5.14.080](#) Return of sidewalk to original condition.
- [5.14.090](#) Release of liability, surety and insurance.
- [5.14.100](#) Sidewalk condition.
- [5.14.110](#) Vested rights not created.
- [5.14.120](#) Compensation.
- [5.14.130](#) Design and placement standards.

5.14.010 Definitions.

“Air space” means the vertical area above city sidewalks or right-of-way that is projected upon by private signs, building elements, canopies, awnings, flags, banners, antennas, or overhead pedestrian walkways.

“Allowed merchandise” are products permitted for sale in the adjoining zoning district.

“Decoration” refers to privately owned objects placed on city-owned sidewalks including, but not limited to, seasonal ornament displays, lighting, flags, landscape planters and artwork.

“Merchandise display” means to place objects for sale by an adjoining, licensed business operating on private property on a city-owned sidewalk.

“Newsstands and mail services” are facilities intended to distribute newspapers, magazines and other literature or other facilities providing mail and package drop-off services.

“Sidewalk cafe” means an open-air seating area on a public sidewalk provided by an eating or drinking establishment located on the adjoining property and delineated by a fixed, semi-permanent enclosure such as a rail, wall or other partition.

“Sidewalk furniture” means any temporary and unaffixed improvements used as seating, tables, weather protection, or signage.

“Surety instrument” means a performance bond supplied by a licensee to guarantee the return of city property in an original, prelicense condition.

“Vending cart” is a nonmotorized cart used to prepare, store and sell food products. [Ord. 09-09].

5.14.020 License required.

The community development department will issue licenses for limited use of the city’s sidewalks and airspace. It shall be unlawful to utilize city sidewalks and rights-of-way, and air space over the sidewalks and rights-of-way, without a license. Decoration, merchandise display, sidewalk furniture, newsstands and mail services are not subject to the license requirement but remain subject to the remaining standards of this chapter. [Ord. 09-09].

5.14.030 Application.

An application for a sidewalk use license shall be made available from the community development department. A completed application including all necessary supporting plans and diagrams will initiate a maximum 60-day review period. There will be a \$200.00 fee for the license. [Ord. 09-09].

5.14.040 Uses allowed.

Subject to the conditions and limitations set forth in this chapter, the city will allow use of city-owned sidewalks or fee simple public property, by property or business owners for newsstands and mail services and by adjoining property or business owners for merchandise display, decoration, sidewalk cafes, sidewalk furniture, vending carts, and air space intrusions. In no circumstance will uses or encroachments be allowed within right-of-way or fee simple property utilized by vehicular traffic. [Ord. 09-09].

5.14.050 Terms and conditions.

A. The community development department may issue a sidewalk use license only if:

1. The applicant is the owner of the adjoining property or business or is a designated representative, except for newsstands and mail service applications;
2. The proposed use would not unduly and unreasonably impair passage to and fro by the public on the sidewalk for which the license is sought and is consistent with the design standards contained herein; and
3. Proposed sidewalk cafe users obtain an approved food-service establishment permit issued by the Benton-Franklin health department and a liquor license by the State of Washington Liquor Control Board, if applicable, and that said permits include the sidewalk use area, prior to issuance of a sidewalk use license.

B. The community development department may include in the license such terms and conditions as the department may deem appropriate to satisfy applicable local, state and federal standards in addition to: general compatibility of the proposed sidewalk with the existing neighborhood, special events, and public access, high visual quality; and facilitation of a harmonious relationship between the public and private sectors. Conditions attached to a license approval may include, but are not limited to, the following:

1. Restrictions as to the number and placement of tables and chairs and as to the hours and dates of use;
2. Provisions that the licensee shall maintain the adjoining sidewalk in a clean and safe condition for pedestrian travel;
3. A requirement that the licensee clear the sidewalk as may be reasonably necessary to accommodate deliveries to adjacent or other nearby properties;
4. Regulations upon lighting and illumination of the sidewalk cafe; limitations upon noise; and restrictions upon the placement of equipment;
5. The prompt repair of damaged or failing improvements that present a safety risk to the public;
6. Collection of indemnity documentation, insurance, and/or surety instruments as contained herein;
7. Duration of the license and renewal procedure;

8. A requirement that furniture, equipment, and other appurtenances related to sidewalk uses remain clean, in good repair and sightly.

C. Unless expressly authorized by the city no pavement shall be broken, no sidewalk surface disturbed, and no permanent fixture of any kind shall be installed in or on sidewalk area in connection with a sidewalk use.

D. The community development department may suspend or revoke the permission granted if an applicant violates this title, any implementing rules, or the terms and conditions of the permit not sooner than 10 calendar days following written notice of intent to suspend or revoke the license. Suspension or revocation of a sidewalk use license is appealable to the city manager consistent with RMC [5.04.560](#). [Ord. 09-09].

5.14.060 Liquor.

Liquor, as defined in RCW [66.04.010](#)(16), as now existing or hereinafter amended, may be used and sold at a sidewalk cafe when authorized in both the sidewalk use permit and provided for in this chapter and by permit of the Washington State Liquor Control Board, and not otherwise. [Ord. 09-09].

5.14.070 Public hearing required for sidewalk use license.

Proposed sidewalk cafes and use of public air space shall require a public hearing. Notice of public hearing shall be published at least once in the official newspaper of the city. In addition, written notice shall be mailed to the owner or owners of the property involved, and to all property owners of record within a radius of 300 feet of subject property pursuant to a title insurance company report required by RMC [23.70.190](#). Both published and mailed notices shall be given at least 10 days in advance of the public hearing. The notice of hearing shall also be affixed to the property to be clearly seen from the proposed sidewalk use area at least 10 days in advance of the public hearing.

The notice of a public hearing required in this chapter shall at a minimum contain: the name of the applicant; the nature of the proposed use including a diagram clearly delineating the sidewalk, pedestrian circulation, proposed outdoor seating area, any fence, wall or partition wall, any proposed overhead projections into the city's air space, and adjoining buildings; and description of the affected property, which may be in the form of either a vicinity map or written description, reasonably sufficient to inform the public of its location; the date, time and place of the hearing; a statement that all interested persons may appear and provide testimony and the location where information may be examined prior to the hearing.

The planning commission shall conduct an open record public hearing and shall issue a decision by a recorded motion, which shall incorporate the findings of fact of the commission and the reasons for its action; and the motion shall refer expressly to the maps, description and other matters intended by the commission to constitute approval. The planning commission's findings of fact shall be based on: general compatibility of the proposed sidewalk use with the existing neighborhood, special events and pedestrian access; coordination with state and local regulations for liquor consumption and food establishments, and assurance that the public is protected via appropriate insurance and surety instruments.

Any sidewalk use license decision made by the planning commission shall be subject to appeal to the city council. [Ord. 09-09].

5.14.080 Return of sidewalk to original condition.

The licensee shall return the sidewalk to original, prelicense condition at no cost to the city at the time a license expires or the sidewalk use ceases. [Ord. 09-09].

5.14.090 Release of liability, surety and insurance.

A. Release of Liability. All persons utilizing the city sidewalk for air space, sidewalk cafe, and/or vending carts shall release the city from liability on a form available from the community development department in writing and acknowledged by the applicant, to hold and save the city free and harmless from any and all claims, actions or damages of every kind and description which may accrue to, or be suffered by, any persons by reason of or related to the operation of such sidewalk use. In addition, such agreement shall contain a provision that the permit is wholly of a temporary nature, that it vests no permanent right whatsoever, that upon 30 days' notice, posted on the premises, or by publication in the official newspaper of the city, or without such notice, in case the permitted use shall become dangerous or unsafe, or shall not be operated in accordance with the provisions of this title, the same may be revoked and the improvements shall be removed by the licensee immediately or by the city using associated surety instrument, if any, at the discretion of the community development director or designee.

B. Surety Instrument. Certain sidewalk uses will require the licensee to post a surety bond to ensure the return of the sidewalk to an original, prelicense condition.

C. Insurance. Sidewalk cafes shall in addition to releasing liability and providing a surety instrument also extend private commercial building insurance to include the sidewalk use area allowed in an associated license and name the city of Richland as an additional insured and provide \$1,000,000 of

accident coverage per incident. Said insurance shall include a provision prohibiting cancellation or reduction in coverage of policy except upon 30 days' prior written notice to the city. The amount of insurance coverage may be adjusted annually by the city and notice of such adjustment shall be given in writing to the licensee. A sidewalk use license for a sidewalk cafe will be revoked if the necessary private insurance does not remain in full effect.

The community development director shall require such release of liability, license, surety instrument and/or private insurance as follows (Y = yes and N = no):

Type of Use	Release of Liability	License Required	Surety Instrument	Private Insurance	Public Hearing
Air Space	Y	Y	N	Y	Y
Decoration	N	N	N	N	N
Newsstand and Mail Services	N	N	N	N	N
Merchandise Display	N	N	N	N	N
Sidewalk Cafe	Y	Y	Y*	Y	Y
Sidewalk Furniture	N	N	N	N	N
Vending Cart	Y	Y	N	Y	N

* If substantial modifications are made to city property, that are undesirable if the use ceases. Surety instrument, if required, shall be 115 percent of the estimated cost to revert the improvement to a prelicense, original condition as determined by the city engineer.

[Ord. 09-09].

5.14.100 Sidewalk condition.

The applicant shall comply with the terms and conditions of the sidewalk use license issued and maintain the sidewalk clean and free of debris, refuse, stains, and in a safe condition for pedestrian travel, and shall immediately clear the sidewalk area when ordered to do so by the community

development director or other appropriate city officer such as the chief of police or fire chief or their authorized representatives for matters of public safety, health and welfare. [Ord. 09-09].

5.14.110 Vested rights not created.

The grant of sidewalk uses pursuant to this chapter shall be subject always to the city's ownership of the right-of-way and the public health, safety, convenience and necessity. Grant of a sidewalk use shall not constitute a street vacation. No vested rights shall be created by grant of any sidewalk use. Such limitation shall be prominently displayed on all permits issued pursuant to this chapter. [Ord. 09-09].

5.14.120 Compensation.

Authorized sidewalk uses benefit the public by offering an active and pleasing streetscape environment and no compensation is therefore required. [Ord. 09-09].

5.14.130 Design and placement standards.

A. Exceptions. Sidewalk uses are expected to meet these design standards except in cases where special accommodation is made by the city via contract, special event permit, or other approval.

B. Pedestrian Clear Area. Sidewalk uses shall be placed so as to maintain at least five feet in width of unobstructed pedestrian travel and no more than 30-degree changes of direction around uses. The pedestrian clear area does not include the radius for the door openings of buildings.

C. Separation from Curb. Sidewalk uses may be placed adjacent to buildings and not closer than two feet from the curb and shall accommodate the pedestrian clear area. In all cases, the intersection sight distance, as required in Chapter [12.11](#) RMC, shall be met.

D. Fencing. Unless otherwise determined by the community development director, any containment of outdoor cafes shall be limited to 36 inches high maximum and shall allow at least 50 percent visibility.

E. Overhead Use of City Airspace. No projection of private building elements, signage, antennas, flags, banners, awnings, canopies, or overhead pedestrian walkways shall occur lower than 10 feet as measured vertically from sidewalk grade and shall meet Washington State Department of Transportation clearance standards for particular street classifications.

F. Allowable Sidewalk Use Area. Only portions of the sidewalk that directly adjoin a property for which a license is sought are eligible for use, except sidewalks used for newsstands and mail services.

G. Any vending cart shall be removed from the city right-of-way daily.

H. Newsstands and mail delivery services shall not: impair loading; hinder egress from parked vehicles; open toward the roadway if located on the curbside of the sidewalk; obscure signage; be fastened to any public utility poles, signs or equipment; contain advertising other than that which relates exclusively to the publication sold or distributed; or be used for purposes other than the sale and distribution of such publications. [Ord. 09-09].

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EXHIBIT (7)



EXHIBIT (9)

Approximate Location of Café



View looking north to south.



Not to Scale
Photos from
3/14/14

View looking north to south.



Not to Scale
Photos from
3/14/14

View Looking West to East.



Not to Scale
Photos from
3/14/14

View Looking Southwest to Northeast.

- END OF REPORT -