

**BEFORE the LAND USE HEARING EXAMINER for the
CITY of DUVALL**

DECISION

FILE NUMBERS: SPR17-009, LLE19-001, VAR19-001, VAR19-002, & VAR19-003

APPLICANT: Canaday Investments, Inc.
ATTN: Chris Canaday
13172 Bear Mountain Road SE
Monroe, WA 98272

TYPE OF CASE: Consolidated: 1) Preliminary Site Plan Approval (“SPA”) for Darci’s Dinky Donuts; 2) Lot Line Elimination (“LLE”) to combine two lots for development; 3) Variance from Duvall Municipal Code (“DMC”) 14.42.220.B and .F to allow stormwater discharge within the inner portion of a wetland buffer; 4) Variance from DMC Table 14.38.090.A to reduce the landscape width between a parking area and the adjacent sidewalk; and 5) Variance from DMC Table 14.44.130.B to reduce drive aisle width

STAFF RECOMMENDATION: Approve all applications subject to conditions

EXAMINER DECISION: GRANT all applications subject to conditions

DATE OF DECISION: October 17, 2019

INTRODUCTION ¹

Canaday Investments, Inc. (“Canaday”) seeks Preliminary SPA for Darci’s Dinky Donuts, an LLE to combine two parcels into one for development of Darci’s Dinky Donuts, and three United Development Regulations (“UDR”) Variances to facilitate development of Darci’s Dinky Donuts, to wit: DMC 14.42.220.B and .F to allow stormwater discharge within the inner portion of a wetland buffer; DMC Table 14.38.090.A to reduce the landscape width between a parking area and the adjacent sidewalk; and DMC Table 14.44.130.B to reduce drive aisle width. Canaday elected to consolidate the applications for processing as allowed under DMC 14.08.010.B.2. (Testimony)

Canaday filed a Master Permit Application for Preliminary SPA on November 20, 2017, which was augmented by a Site Plan Review Permit Application on December 13, 2017. (Exhibits 2; 3 ²) The Duvall

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

Planning Department ("Planning") deemed the SPA application to be complete as of December 13, 2017. (Testimony) Canady filed the LLE and variance applications on January 28, 2019. (Exhibits 24 – 27; 37) Those applications were complete when filed. (Testimony) Planning issued a Notice of Application for the SPA Application on December 22, 2017, and revised Notices of Application covering all the applications on March 6 and 21, 2019. (Exhibits 35 – 40)

The subject property is located in the 15100 block of Main Street NE (aka SR-203), opposite NE Valley Street.

The Duvall Land Use Hearing Examiner ("Examiner") viewed the subject property on October 8, 2019.

The Examiner held an open record hearing on October 8, 2019. Planning gave notice of the hearing as required by the Duvall Municipal Code ("DMC"). (Exhibits 51; 52)

The following exhibits were entered into the hearing record during the hearing:

- Exhibits 1 - 55: As enumerated in Exhibit 1, the Departmental Staff Report
- Exhibit 56: Letter, Alice McCormick to the City, October 8, 2019

Section 14.08.020(G) DMC generally requires that decisions on preliminary subdivisions be issued within 90 days of application completeness and that decisions on all other applications which require a quasi-judicial hearing be issued within 120 days of application completeness. The Examiner's hearing was held well beyond the 120-day time period. (Exhibit 1, p. 2) Canaday agreed to extend the review period as permitted by DMC 14.08.020(H)(2). (Testimony)

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. Darci's Dinky Donuts is a very modest proposal (only a 625 square foot ("SF") building with three on-site parking spaces) on a large (slightly over one acre) parcel of which only about 6,500 SF is actually usable. Canaday has applied for five land use entitlement approvals:³

² Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Decision is based upon all documents in the record.

³ On August 21, 2019, Canaday filed a Departure Request from DMC 14.34.040.A.2.a.i to reduce the 12-foot sidewalk minimum width to 5 feet. (Exhibit 49) Departure Requests are handled administratively. Canaday did not elect to consolidate the Departure Request with the rest of his applications. The basis for the Departure Request was that the City

LAND USE HEARING EXAMINER DECISION

RE: SPR17-009, LLE19-001, VAR19-001, VAR19-002, and VAR19-003

Darci's Dinky Donuts

October 17, 2019

Page 3 of 17

- A. SPR17-009: Preliminary SPA for Darci's Dinky Donuts;
 - B. LLE19-001: An LLE to combine the two lots comprising the subject property so that the proposed development will not be split by a lot line
 - C. VAR19-001: A variance from DMC 14.42.220.B and .F to allow the stormwater discharge facility to be located within the inner 50% of a wetland buffer;
 - D. VAR19-002: A variance from DMC Table 14.38.090.A to reduce the landscape width between a parking area and the adjacent sidewalk from a minimum of 10 feet to a minimum of 5 feet; and
 - E. VAR19-003: A variance from DMC Table 14.44.130.B to reduce drive aisle width from 13.5 feet to 9.5 feet.
2. The subject property consists of two generally east-west oriented, rectangular lots in the plat of *Duvall Business Tracts* which together total 45,085 SF (approximately 1.03 Acres). The two lots together have about 200 feet of frontage on the west side of Main Street NE. NE Valley Street intersects Main Street NE across from the north edge of the subject property. The lots in the *Duvall Business Tracts* subdivision are subject to a consolidated access easement; one of the consolidated access points straddles the north line of the subject property. Main Street NE in the vicinity of the subject property was recently reconstructed by the City. Full frontage improvements consisting of curb and gutter, planter strip, 5-foot wide sidewalk, and decorative street lights were installed. A commercial driveway curb cut was installed at the consolidated access point at the north end of the subject property. (Exhibits 13; 28; 54)
 3. The subject property is extensively constrained by regulated wetlands and their buffers. An area about 45' (E to W) by 115' (N to S) in the northeast corner of the subject property was filled at an unknown time in the (apparently) distant past to match (more or less) the grade of Main Street NE. The rest of the subject property drops off to the west towards the Snoqualmie River which lies about 900 feet west of the site. That portion of the site is wooded and contains two regulated wetlands. Wetland A is an 8,798 SF on-site portion of a 12 acre Category II wetland. The other wetland is a small (544 SF), Category III wetland. Both wetlands are located on the western half of the site. When required buffers are considered, only about 6,500 SF of the 1-acre site, essentially the filled area along Main Street, is developable. (Exhibits 10; 12; 13)
 4. Darci's Dinky Donuts will be a drive-thru and walk-up coffee stand on the existing filled area (which will be extended southerly about 85 feet) along Main Street NE. The stand will have a footprint of

had only recently rebuilt this portion of Main Street, constructing 5-foot wide sidewalks in the process. Planning approved the Departure Request. (Exhibit 1, p. 13)

LAND USE HEARING EXAMINER DECISION

RE: SPR17-009, LLE19-001, VAR19-001, VAR19-002, and VAR19-003

Darci's Dinky Donuts

October 17, 2019

Page 4 of 17

about 625 SF. The drive-thru window on the west side of the building will be served by a one-way drive-thru lane entering on the north at the shared curb cut and exiting at the south end of the fill. The walk-up window will be on the east side of the building adjacent to the sidewalk; a customer seating area will adjoin the walk-up window adjacent to the south side of the stand. Three 45-degree angle staff parking spaces will be located along the sidewalk north of the stand. (Exhibits 6 – 8; 14 – 17)

5. Planning Commission (“Commission”) review of preliminary site plans for sites greater than 0.5 acres is required by DMC 14.08.010(C)(2), Footnote 1, under certain circumstances. The DMC is somewhat unclear regarding the circumstances under which Commission review is required. Planning has consistently interpreted the code provision to require Commission review only of SPA applications involving construction of buildings. Aside from the Examiner’s own analysis, the Examiner accords considerable deference, absent clear error, to the professional opinions and interpretation of regulations rendered by the agencies charged with administering them. [*Mall, Inc. v. Seattle*, 108 Wn.2d 369, 739 P.2d 668 (1987)] Planning’s interpretation has not been challenged and does not appear to be clearly erroneous.

The Commission reviewed Canaday’s proposed site and building plans on September 26, 2018, and again on September 11, 2019. On September 11, 2019, the Commission recommended (by unanimous vote) that the proposed design and pedestrian space be approved subject to five conditions. (Exhibits 45a; 45k)

6. Duvall’s State Environmental Policy Act (“SEPA”) Responsible Official issued a Mitigated Determination of Nonsignificance (“MDNS”) on July 3, 2019. (Exhibit 41) The MDNS was not judicially appealed.⁴ (Testimony) The mitigation measures within the MDNS have been carried forward by Planning as recommended conditions of approval. (Exhibit 1)
7. Planning recommends approval of all five applications subject to 21 conditions. Recommended Conditions 6 and 7 alter two of the requested variances; Recommended Condition 9 incorporates the conditions recommended by the Commission; Recommended Condition 10 incorporates the MDNS mitigation measures. (Exhibit 1, pp. 27 – 32)

Recommended Condition 6 changes the minimum landscape width between the 45-degree angle parking spaces and the sidewalk from 5 feet requested by Canaday to zero (0) feet, resulting in an average landscape width of 5 feet adjacent to the three parking stalls and 10-feet further to the north.

⁴ The right to an administrative appeal of SEPA threshold determinations is optional at local government discretion. [WAC 197-11-680(3)(a)] Duvall has legislatively elected to provide for local administrative appeal of threshold determinations associated with Type I and II applications, but not those associated with Type III – VI applications. [DMC 14.08.060(C)]

Recommended Condition 7 reduces the drive aisle width from 13.5 feet required to 12 feet, as opposed to the 9.5 foot width requested by Canaday with a commensurate increase in the width of the stacking space from 9 feet to 12 feet.

8. Canaday has no objection to the recommended conditions. (Testimony)
9. One citizen participated in the hearing process: Alice McCormick ("McCormick") submitted a letter and summarized it during the hearing. (Exhibit 56; and testimony) McCormick's concerns will be addressed in the Conclusions of Law.

Ivana Halvorsen, consulting engineer for the church which owns the abutting property on the north, testified solely to make clear that the church is not holding worship services in the building on that property. (Testimony)

10. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁵

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

Duvall classifies land use applications into six categories based on their processing requirements (Type I–Type VI). [DMC 14.08.010.A] When a project requires multiple applications of different types, the applicant may elect to consolidate them for processing. [DMC 14.08.010.B.2] Consolidated applications are processed in accordance with the highest numbered procedure in the consolidation. [DMC 14.08.010.B.2.a]

Canaday elected to consolidate his five applications for processing. (Testimony)

SPA is a two-step process. Preliminary SPA for a site greater than 0.5 acres is a Type III process ⁶; an LLE is a Type I process; UDR Variances are a Type II process. Thus, the consolidated applications are processed as Type III applications. Type III applications are subject to an open record hearing before the Examiner. The Examiner makes a final decision on the consolidated applications which is subject to the right of reconsideration and appeal to Superior Court. [DMC 2.30. 070(A)(2) and 14.08.010(C), Tables 14.08.010.C.1 and .2]

The examiner's decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as

⁵ Any statement in this section deemed to be either a Finding of Fact /or a Conclusion of Law is hereby adopted as such.

⁶ Preliminary site plan review for sites up to 0.5 acres is a Type II administrative process. [DMC 14.08.010(C)(1)]

LAND USE HEARING EXAMINER DECISION

RE: SPR17-009, LLE19-001, VAR19-001, VAR19-002, and VAR19-003

Darci's Dinky Donuts

October 17, 2019

Page 6 of 17

the examiner finds necessary to make the application or appeal compatible with the DMC, state laws and regulations, including Chapter 43.21C RCW, and the regulations, policies, objectives, and goals of the Duvall comprehensive plan, the unified development regulations, and other official laws, policies and objectives of the city of Duvall.

[DMC 2.30.070(B)] The Final Site Plan Permit is an administrative Type I process. [DMC 14.08.010(C), Table 14.08.010.C.1]

Review Criteria

SPA Criteria

The review criteria for SPA applications are set forth at DMC 14.62.030. The criteria include standards regarding Consistency [Subsection A], Lot and Block Layouts [Subsection C], Road and Street Access Elements [Subsection D], and Site Plan Elements [Subsection E].

The "consistency determination" required by DMC 14.08.040(A)(2) duplicates the criteria within DMC 14.62.030(A). Therefore, in the case of Preliminary SPA reviews, compliance with DMC 14.62.030(A) suffices for compliance with DMC 14.08.040(A)(2).

LLE Criteria

The review criteria for LLE applications are set forth at DMC 14.66.120.B:

The director may approve an application for a boundary line adjustment provided the following criteria are met:

1. The proposed adjustment shall meet the exemption requirements provided in RCW 58.17.040(6);
2. The boundary line adjustment shall not result in the creation of any additional tract, lot, parcel, site or division;
3. The property being transferred within the boundary line adjustment shall be combined with the benefiting parcel and shall not be a separate parcel, which could be mistaken as a separate and distinct, conveyable tract without proper research;
4. The lots, tracts, or parcels resulting after the boundary line adjustment shall meet all dimensional requirements specified for the applicable zone as outlined in this title;
5. All lots modified by the boundary line adjustment procedures shall have legal access meeting the standards of the City of Duvall;
6. The boundary line adjustment shall not violate an applicable requirement or condition of a previous land use action, subdivision, short subdivision or binding site plan;
7. All boundary line adjustments shall be recorded surveys consistent with the requirements of Chapter 58.09 RCW and Chapter 332-130 WAC. All lot lines being adjusted shall be surveyed, and newly established lot corners shall be staked.

UDR Variance Criteria

The review criteria for UDR variances are set forth at DMC 14.70.040:

LAND USE HEARING EXAMINER DECISION

RE: SPR17-009, LLE19-001, VAR19-001, VAR19-002, and VAR19-003

Darci's Dinky Donuts

October 17, 2019

Page 7 of 17

Applications for variances from the terms of these regulations shall be granted only if the decision making body finds all of the following:

- A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and land use district in which the subject property is located;
- B. Such variance is necessary because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property to provide it with use rights and privileges permitted to other properties in the vicinity and in the land use district of the subject property;
- C. The granting of such variance will not be materially detrimental to the public welfare or injurious to the property for improvements in the vicinity and zone in which the subject property is situated;
- D. The denial of the variance would entail undue hardship for the property owner or that the variance, if approved, would contribute significantly to the improvement of the environmental conditions;
- E. The need for the variance is not the result of deliberate actions of the applicant, property owner, or their predecessor in interest;
- F. The variance is consistent with this title and the Duvall comprehensive plan; and
- G. The variance is the minimum necessary to grant relief to the applicant.

Vested Rights

“Vesting” serves to “fix” the regulations against which a development application is judged. [*Potala Village Kirkland, LLC v. City of Kirkland*, 183 Wn. App. 191 (2014), *review denied*, 182 Wn.2d 1004, 342 P.3d (2015)] Over the years state appellate courts developed the “vested rights doctrine” which was applied in cases where there was no statutory vesting. In 2014 the State Supreme Court flatly declared: “While it originated at common law, the vested rights doctrine is now statutory.” [*Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 173, 322 P.3d 1219 (2014)]

Land division applications are subject to statutory vested rights: such applications “shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application ... has been submitted ...” [RCW 58.17.033]

SPAs are not the subject of any state vesting statute. If Duvall had a local vesting ordinance applicable to land use applications, which it does not, the Examiner would be obliged to follow it as enacted. [*Erickson & Associates v. McLerran*, 123 Wn.2d 864, 872 P.2d 1090 (1994); *Abbey Rd. Grp., LLC v. City of Bonney Lake*, 167 Wn.2d 242, 250, 218 P.3d 180 (2009)] Under the most current case law, there is no vesting for stand-alone SPA applications because there is no statutory provision providing vesting for such applications. However, where an SPA application is inextricably intertwined with a land division application, the Examiner concludes that it enjoys the land division application’s statutory vested rights, just as would an

inextricably intertwined planned unit development. [See *Schneider Homes, Inc. v. City of Kent*, 87 Wn. App. 774 , 942 P.2d 1096 (1997), rev. denied 134 Wn.2d 1021 (1998)]

UDR Variances are not the subject of any state vesting statute. The vested rights doctrine has never been applied to variance applications or other applications which seek an exception from established regulations.

Given the consolidation of the applications in this case, the Examiner will accord vested rights to the consolidation (exclusive of the variances) based on the statutory vesting of land division applications.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [DMC 14.62.030(B)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. McCormick's letter addresses several topical areas. Her first general concern is over the number of variances that Canaday has requested. She posits that we "ought to trust the original writers of codes & believe they were farsighted enough to know what they were doing for the good of everyone to come." (Exhibit 56, p. 3, ¶ 1)

In fact, that's exactly what we are doing. The variance process is a part of the DMC because not all properties are created equal: Some are flat, some have extreme slopes; some are dry, some are significantly encumbered with wetland areas; some have rather regular shapes, some have what could best be described as weird shapes. The variance process was placed in the DMC by the officials who adopted it to recognize that properties which exhibit steep slopes, wetland areas, weird shapes, etc. may not be able to develop if standard regulations are applied to them. The DMC explains the concept of a variance in this way:

"Variance" means an adjustment in the application of these regulations to a particular piece of property in a situation where the property, because of special circumstances found to exist on the land, is deprived as a result of the imposition of these regulations, of privileges commonly enjoyed by other properties in the same vicinity and zone. The adjustment in the application of these regulations shall remedy the disparity in privilege. A variance shall not be used to convey special privileges not enjoyed by other properties in the same vicinity and zone and subject to the same restrictions.

LAND USE HEARING EXAMINER DECISION

RE: SPR17-009, LLE19-001, VAR19-001, VAR19-002, and VAR19-003

Darci's Dinky Donuts

October 17, 2019

Page 9 of 17

[DMC 14.06.220] Thus, if a site suffers from physical hardships, its owner may apply for one or more variances to seek relief from those hardships. It is worth noting that the code requires that any variance granted must be “the minimum necessary to grant relief to the applicant.” [14.70.040.G]

2. The physical hardship which forms the basis for all three requested variances is the subject property's significant encumbrance by regulated wetlands and their buffers. On a site of over 45,000 SF, only about 6,500 SF is not encumbered by wetlands and their buffers. Thus, only about 14% of the total site is usable, and that is before trying to apply standard code requirements.
3. In addition to her general concern regarding the number of variances, she expresses specific concerns about each of the three variance requests. She is worried that the stormwater control system will be overwhelmed by intense storms, thus harming the wetlands. Duvall requires that stormwater control systems within the City be designed to comply with the 2016 King County Surface Water Design Manual (“2016 KCSWDM”). [DMC 9.06.030] Runoff from the north end of the site will flow over a gently sloping grassy strip to remove pollutants before discharge; runoff from the south portion of the site will pass through a mechanical filter (not a chemical treatment process) before being discharged. Treated water will be discharged into the on-site wetland area. The system will be designed to handle the flow from a 100-year storm. That system complies with the 2016 KCSWDM. (Exhibit 12)

With respect to the second variance, she believes that reducing the landscape width is not fair to those other businesses in the City who have met the code requirement. She would be correct if the site were not heavily encumbered by wetlands and their buffers. While Canaday asked for a landscape width reduction from 10 feet to 5 feet, Planning recommends that the Examiner grant a variance that would result in an average width of 5 feet – expressly to allow the drive aisle to be wider without infringing on the wetland buffer.

With respect to the third variance, she believes that a 9.5 foot wide drive aisle is too narrow. Planning agrees and has recommended that it be reduced only to 12 feet wide. A 12-foot wide travel lane is wider than most travel lanes on local streets (which are commonly 10 or 11 feet wide). A 12-foot wide drive aisle will be safe and functional.

4. McCormick worries that the pedestrian eating area isn't big enough. That's a matter of opinion. The Examiner is familiar with walk-up coffee stands which have no eating area. The proposed eating area is well located in relation to the walk-up window and will provide a modest area for pedestrian customers to gather.

McCormick also worries that the site's location is problematic due to the volume of traffic on Main Street NE, the Main Street NE/NE Valley Street intersection, etc. (Exhibit 56, p. 3) The coffee stand will have a one-way circulation pattern: Entrance at the north end, exit at the south end. Thus entering left turns will be compatible with southbound left turns onto NE Valley Street. The

Examiner sees nothing in the record to suggest that ingress-egress from this site will be any different than that at the many other commercial driveways onto Main Street NE in the City.

Finally, McCormick questions whether the coffee stand will be economically viable. Economic viability is not a consideration in granting land use entitlements.

5. Planning has provided an extremely comprehensive, exhaustive, detailed analysis of each application's compliance with its criteria for approval. (Exhibit 1) The record contains no challenge to Planning's analysis. The Examiner concurs in full with the substance of that analysis and the conclusions resulting therefrom. Therefore, in the interest of economy, the substantive analysis and conclusions in Exhibit 1 are incorporated herein by reference as if set forth in full.⁷
6. The recommended conditions of approval as set forth in Exhibit 1 are supported by the evidence and capable of accomplishment with one clarification. Recommended Condition 2 adopts Exhibit 8 as the approved SPA site plan. However, Recommended Conditions 6 and 7, the landscaping and drive aisle width conditions, require changes to Exhibit 8. For clarity, the Examiner will add wording making Exhibit 8 subject to any modifications required by other conditions.⁸
7. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner:

- A. **GRANTS** Preliminary Site Plan Approval under File No. SPR17-009 **SUBJECT TO THE ATTACHED CONDITIONS;**
- B. **GRANTS** Lot Line Elimination under File No. LLE19-001 **SUBJECT TO THE ATTACHED CONDITIONS;**
- C. **GRANTS** a UDR Variance under File No. VAR19-001 **SUBJECT TO THE ATTACHED CONDITIONS;**
- D. **GRANTS** a UDR Variance under File No. VAR19-002 **SUBJECT TO THE ATTACHED CONDITIONS;** and

⁷ Exhibit 1 contains a few clerical/scrivener's errors which were discussed during the hearing and which do not affect the substantive content of Exhibit 1.

⁸ The Recommended Conditions use "isle" where "aisle" is meant in several places. The Examiner will correct those mis-uses.

E. **GRANTS** a UDR Variance under File No. VAR19-003 **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued October 17, 2019.

\s\ John E. Galt (Signed original in official file)

John E. Galt
Land Use Hearing Examiner

HEARING PARTICIPANTS⁹

Chris Canaday, Applicant
Troy Davis, for the City
Ivana Halvorsen, for the adjacent owner
Aaron Booy, for the Applicant

Arthur Adamov, for the Applicant
Alice McCormick
Gerald Walken, for the Applicant

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file a written motion for reconsideration within 10 calendar days of the date this Decision was mailed to the parties. See DMC 2.30.240 for additional information and requirements regarding reconsideration.

NOTICE of RIGHT of APPEAL

This Decision is final subject to the right of a party of record with standing, as provided in RCW 36.70C.060, to file a land use petition in Superior Court in accordance with the procedures of DMC 2.30.230 and 14.08.060(E). Any appeal must be filed within 21 days following the issuance of this Decision. See DMC 2.30.230 and 14.08.060(E) for additional information and requirements regarding judicial appeals.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."

⁹ The official Parties of Record register is maintained by the City's Hearing Clerk.

**CONDITIONS OF APPROVAL
DARCI'S DINKY DONUTS
SPR17-009, LLE19-001, VAR19-001, VAR19-002, and VAR19-003**

This consolidated Preliminary Site Plan Approval, Lot Line Elimination, and UDR Variances is subject to compliance with all applicable provisions, requirements, and standards of the Duvall Municipal Code, standards adopted pursuant thereto, and the following special conditions:

FROM PLANNING

1. The Developer's construction drawings and building permit shall be in conformance with the conditions of this approval.
2. **Exhibit 8** is the approved site plan for the proposed development subject to corrections necessitated by other conditions in this approval and subject to the following conditions:
 - a. A bicycle rack suitable to accommodate at least one bicycle shall be provided. The bicycle rack shall be installed adjacent to the sidewalk just north of the proposed building.
 - b. One van-sized ADA parking stall and aisle consistent with the dimensional requirements of the International Code Council (ICC) shall be provided.
 - c. The northern most parking stall shall include a vehicle driver step out space at grade with the parking stall in accordance with the requirements of DMC Section 14.44.130.I.
 - d. A full lighting plan in compliance with the requirements of DMC Chapter 14.46 shall be submitted with construction drawings.
 - e. A drive-thru height clearance guard shall be installed at the entry to the drive-aisle/drive-thru.
 - f. Stacking spaces 9 and 10 shall be removed with the subject area split between the adjacent landscape buffer and required stacking space area for spaces 7 and 8.
 - g. The Developer shall obtain Final Site Plan approval in conformance with the requirements of DMC 14.62.070 prior to issuance of building occupancy.
3. **Exhibit 10** is the approved Sensitive Area Study and Enhancement Plan subject to the following conditions:
 - a. The boundary between the sensitive area tract and the adjacent developable area shall be identified by installing permanent signs in conformance with the requirements of DMC 14.42.110.
 - b. Native trees (species and quantity shall be approved by the City) shall be included in the mitigation plant schedule.

LAND USE HEARING EXAMINER DECISION

RE: SPR17-009, LLE19-001, VAR19-001, VAR19-002, and VAR19-003

Darci's Dinky Donuts

October 17, 2019

Page 13 of 17

- c. The Developer shall post a mitigation surety in the amount of one-hundred and twenty-five (125) percent of the estimated cost of installation, monitoring and maintenance prior to issuance of any construction permits.
 - d. The surety shall remain in effect until the Community Development Director determines, in writing, that the performance standards of the mitigation action(s) have been met. Surety shall generally be held for a period of five years to ensure that the required mitigation has been fully implemented and demonstrated to function and may be held for longer periods when necessary. A surety for construction may be reduced after initial completion in an amount not to exceed the cost of monitoring plus not less than twenty-five (25) percent of the construction cost plus one hundred (100) percent of the cost of irrigation, maintenance, and adaptive management.
4. **Exhibit 17** is the approved landscape plan for the proposed development subject to the following conditions:
 - a. Trees located within the planter strip between the parking lot and sidewalk as identified on the landscape plan shall be a tree species capable of providing a minimum 50% shading of the parking area within 10 years.
 - b. Root barriers with a minimum 6-foot length and 18-inch depth shall be installed on-center at back of sidewalk in front of all trees within 10 feet of the sidewalk along Main Street NE.
 - c. All areas outside of Tract A that are maintained in a pervious manner shall be landscaped in accordance with DMC 14.38.050.O.
 - d. The refuse facility shall be screened with five feet of Type I landscaping on the west, south, and east sides of the facility.
 - e. Prior to the issuance of any construction permits for a project, performance security in an amount equal to one hundred fifty (150) percent of the landscaping material, irrigation, and installation cost shall be submitted to the city to guarantee installation of the required planting/irrigation. Such costs shall be based on a copy of a contract for such purchase and installation or bid for the required work. Required planting/irrigation shall be installed within six months of the date of final construction permit approval or the issuance of a certificate of occupancy, whichever is later. If the requirements are not met in the allotted time, the City may use the security to complete the planting/irrigation.
 - f. A maintenance bond, cash deposit, or other security in a form acceptable to the city attorney covering ten (10) percent of the cost of the performance assurance bond shall be in place prior to the release of a performance bond and shall be required for two years following installation.
5. The Variance (VAR19-001) from Duvall Municipal Code Sections 14.42.220.B and 14.42.220.F is subject to the following conditions:

LAND USE HEARING EXAMINER DECISION

RE: SPR17-009, LLE19-001, VAR19-001, VAR19-002, and VAR19-003

Darci's Dinky Donuts

October 17, 2019

Page 14 of 17

- a. Approval of Variance 19-001 is for the allowance of surface water discharge from on-site Pollution Generating Impervious Surfaces (PGIS) into the on-site wetlands and installation of the stormwater management facility within the inner 50% of the standard on-site wetland buffers.
 - b. The approved variance shall be recorded with King County in compliance with DMC 14.70.060 prior to building permit application submittal.
6. The Variance (VAR19-002) from Duvall Municipal Code Section 14.38.090 is subject to the following conditions:
 - a. Approval of Variance 19-002 is for a reduction in the required width of the landscape buffer between the parking stalls and the back of sidewalk from the standard 10 feet down to 0 feet at the eastern most corner of the 45-degree angled parking stall.
 - b. The angled parking shall be setback zero (0) feet from the back of side-walk instead of the proposed five (5) feet as shown in Exhibit 8.
 - c. The approved variance shall be recorded with King County in compliance with DMC 14.70.060 prior to building permit application submittal.
7. The Variance (VAR19-003) from Duvall Municipal Code Section 14.44.130 is subject to the following conditions:
 - a. Approval of Variance 19-003 is for a reduction in the required drive-aisle width from the standard 13 ½ feet.
 - b. The drive-aisle width shall be reduced no more than 1 ½ feet from the standard 13 ½ feet and minimum stacking space width shall be increased from the standard 9 feet to 12 feet.
 - c. The approved variance shall be recorded with King County in compliance with DMC 14.70.060 prior to building permit application submittal.
8. **Exhibit 28** is the approved Lot Line Elimination subject to the following conditions:
 - a. The lot combination survey shall be recorded with King County as required by DMC 14.66.120.B.7 prior to building permit application submittal.
9. **Exhibits 45f and 45i** are the approved Design Review documents subject to the following conditions:
 - a. Construction drawings shall be in substantial conformance with the building and pedestrian oriented space as recommended by the Planning Commission.
 - b. The hardscape within the pedestrian oriented space shall be a decorative concrete, brick, or other acceptable (City approved) paver type.
 - c. Foot candles for all luminaries shall be provided.
 - d. Refuse facilities shall be screened in accordance with DMC 14.34.062.I.

- e. Snow stops shall be added to the metal roof on the drive aisle side.
10. **Exhibit 41** is the SEPA Threshold Determination inclusive of the following Mitigation Measures:
- a. Stormwater Mitigation: Stormwater facilities, conveyance, and discharge locations shall be constructed to provide required water quality improvements in accordance with the 2016 King County Stormwater Design Manual and the Phase II National Pollutant Discharge Elimination System (NPDES) Permit. The system shall be privately owned and maintained by the property owner, who will be held responsible for proper function and maintenance of the on-site stormwater system. The final TIR shall address any downstream drainage issues or required improvements and comply with wetland recharge parameters (as required).
 - b. Plants Mitigation: Wetland and Buffer Mitigation shall be provided in accordance with the Applicant's Sensitive Areas Study and Enhancement Plan prepared by Environmental Science Associates (ESA) for Darci's Dinky Donuts & Coffee Development Project dated June 20, 2018.
 - c. Light & Glare Mitigation: The applicant shall submit a lighting plan in compliance with Duvall Municipal Code Chapter 14.46 (Exterior Lighting Standards) and Chapter 14.42 (Sensitive Area). Adequate vegetative screening shall be provided at points along the drive aisle where headlights from vehicles will project directly into sensitive areas.
 - d. Historic & Cultural Preservation Mitigation: Should archaeological materials (e.g. bones, shell, stone tools, beads, ceramics, old bottles, hearths, etc.) or human remains be observed during project activities, all work in the immediate vicinity shall stop. The State Department of Archaeology and Historic Preservation (360-586-3065), the County/City planning office, the affected Tribe(s) and the county coroner (if applicable) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) is required. The Developer shall provide documentation from the Snoqualmie Tribe as to whether or not a cultural survey of the site is warranted. If warranted by the Snoqualmie Tribe, the applicant shall conduct a cultural survey of the project area.
 - e. Transportation Mitigation: The applicant shall be responsible for traffic mitigation fees to fund system wide capital improvement projects in accordance with DMC 14.58. Payment of the traffic impact mitigation fee is required prior to building permit issuance. The proposed project access shall not negatively impact SR 203 function. If turning movements onto or off of SR 203 become an issue the City reserves the right to restrict left turning movements. The secondary access will comply with Public Works Development Design Standards (PWDDS).
 - f. Public Services Mitigation: The applicant shall be required to comply with King County Fire District's regulations to provide for public safety. Impacts to fire and police are typically mitigated through the payment of property taxes by the respective property owner.
 - g. Utility Mitigation: The applicant shall install required sewer and water improvements in general accordance with the PWDDS. The applicant shall be responsible for Water Capital

Improvement Charges, Sewer General Facility Charges (GFC), Stormwater GFC, and Stormwater Drainage Acreage Charge. Payment of water, sewer, and stormwater system mitigation fees are required prior to building permit issuance.

FROM PUBLIC WORKS/ENGINEERING

General

11. Construction Drawings shall be submitted for review and final approval prior to building permit issuance. Project as-builts shall be submitted and reviewed prior to final approval or building occupancy and must include, storm, sewer, water, retaining walls and other site improvements.

Water

12. Water system connections shall be constructed in accordance with Public Works Development Design Standards. Connecting system is in the 330-pressure zone.

Sewer

13. Any existing septic drainfields must be identified, removed appropriately and abandoned per King County Department of Health regulations.
14. Sewer connections shall be constructed in accordance with Public Works Development Design Standards.

Stormwater

15. Water quality features and system conveyance will comply with Department of Ecology and 2016 KCSWDM requirements.
16. A drainage system is required for any permeable surface areas to be connected to the on-site stormwater facility. An approved cross-section for permeable pavements within the parking area shall be provided and approved by the City Engineer prior to building permit issuance. Acceptable materials may be (but not limited to) pavers, porous concrete, or Flexi-Pave material. Pervious asphalt may not be utilized.

Roads and Parking Lot

17. Road/frontage improvements were completed by the City's Main Street Improvements Project. Full joint to joint replacement for any damaged/removed/destroyed segments of the curb, gutter, and sidewalk shall be the sole responsibility of the owner and be repaired prior to final approval or building occupancy.
18. Site ingress and egress shall not negatively impact traffic flow on Main Street (SR-203). If traffic issues arise, the City reserves the right to limit turning movements into or out of the project site to reduce impacts to traffic on Main Street at the cost of the property owner.

LAND USE HEARING EXAMINER DECISION

RE: SPR17-009, LLE19-001, VAR19-001, VAR19-002, and VAR19-003

Darci's Dinky Donuts

October 17, 2019

Page 17 of 17

19. Any roadway cuts for utility extensions within Main Street will be subject to requirements within DMC 8.04.050. This may include a full lane patch. Dimensions (limits) and possible bond amount to be determined in a Street Use Permit.

Utility Easements

20. Utility easements have been reserved for and granted to all utilities serving the subject property and their respective successors and assigns, under and upon the front ten feet parallel with and adjoining the street frontage and all utility tracts in which to install, lay, construct, renew, operate and maintain underground conduits, cables, pipes, and wires together with other necessary facilities and equipment for the purpose of serving this property and other property with utility service, together with the right to enter upon the property at all times for the purpose herein stated. All utility lines shall be placed underground. These easements entered upon for these purposes shall be restored as near as possible to their original condition. These easements shall preclude grading or any other thing; except utility facilities. These conditions shall apply as determined by the City Engineer.

FROM KING COUNTY FIRE DISTRICT #45

General

21. The Developer shall be required to comply with Duvall King County Fire District # 45's regulations to provide for public safety.

Approval or approval with conditions of a site plan shall be effective for a period not to exceed two years from the date of the preliminary approval; provided, however, that an applicant who files a written request with the Planning Director for final site plan approval at least thirty (30) days before the expiration of this two-year period shall be granted a one-year extension upon a showing that the applicant has attempted in good faith to submit final plans for the issuance of a building permit within the two-year period. [DMC 14.62.050]