BEFORE THE HEARING EXAMINER FOR THE CITY OF EDMONDS

Phil Olbrechts, Hearing Examiner

RE: Panera Bread Conditional Use Permit (PLN201110002)	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION**

INTRODUCTION

The Applicant have applied for approval of a conditional use permit to authorize an addition of 39 outdoor seats to its restaurant. The permit is approved subject to conditions.

TESTIMONY

Gina Coccia, Edmonds planner, summarized the proposal. She noted that she received a phone call inquiring about the hours of operation and whether noise would carry across the highway. Ms. Coccia stated that the only adjoining property is located to the west and that the outdoor seating is buffered from this use by the building on the project site. She also noted that the City has a noise ordinance that regulates noise levels. Ms. Coccia stated she didn't see any reason why the permit should be transferrable if hours of operation are limited. In response to questions from the Examiner, there are homes to the southeast in Shoreline and also homes 300 feet away to the north. She explained that the topography drops as you go north and there is a small berm with trees and shrubs that separates homes to the north. She also explained that her recommendation for approval is contingent on the seating being located on the east side of the building.

Justin Knepper testified there would not be any alcohol served and hours of operation would be 6:00 am to 9:30 pm Monday through Saturday and 7:00 am to 9:00 pm on Sundays. The outdoor seating will be enclosed and at the same level as the drive-thru.

Alvin Rutledge lives about six blocks from the project. He wanted to know how many days a week the business would be open. He noted there's another restaurant

up the street that applied for outdoor seating and they testified that restaurants in the Auburn Village had open seating as well. He felt that the restaurants should have similar operating hours. He noted that there has been a bank robbery nearby and there have been several burglaries. He said it was unclear whether the restaurant would hold any special events, that permits are required for special events and that this should be coordinated with the other restaurant nearby to protect public safety.

EXHIBITS

The 4/14/11 staff report and attached "application materials" identified at page 6 of the report were admitted into evidence at the hearing.

FINDINGS OF FACT

Procedural:

1. Applicant. The Applicant is Panera Bread.

2. Hearing. The Hearing Examiner conducted a hearing on the subject application on April 21, 2011 at 3:00 pm in the Council Chambers of the Edmonds Public Safety Complex.

Substantive:

3. Site and Proposal Description. The Applicant proposes to construct a new single story restaurant to replace an existing building at 7929 244th Street SW. The conditional use permit is for the inclusion of 39 outdoor seats in the proposal. The site is accessed via 244th Street SW, which is considered a principal arterial.

4. Characteristics of the Area. The surrounding neighborhood consists of commercial development and is situated in the "Highway 99 Corridor" just east of Highway 99 and adjacent to SR-104 to the north. There is only one property adjacent to the site, a treatment facility to the west under the same zoning designation. There is a bank and a retail store located west along 244th Street SW, as well as a small multi-family development further west near a car dealership. The closest residences are located about 300 feet to the north, across SR 104.

5. Adverse Impacts of Proposed Use. The primary impact of concern for outdoor seating is noise. There are no significant noise impacts associated with the proposal because the noise generated by the proposal will most likely be dwarfed by surrounding traffic. The triangular parcel of property is adjoined on one side by SR 104 and the other by 244th St, a principal arterial. The only parcel adjoining the site is located to the west and is a treatment center. The treatment center is buffered from the outdoor seating by the restaurant building itself. Land uses opposite 244th St. are all commercial except for residential properties located to the southeast. The closest residential uses are some single-family homes on the north side of SR-104, which are

buffered by a vegetative strip. The conditions of approval limit hours of operation, which will prevent noise from carrying during quitter night time hours. The conditions also require compliance with the City's noise ordinance, Chapter 5.30 ECDC, to ensure that music and other noises are consistent with the noise levels determined acceptable by the City Council.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. The hearing examiner is authorized to conduct hearings and issue final decisions on conditional use permit applications for outdoor dining. Edmonds Community Development Code ("ECDC") 17.75.020; 20.01.003.

Substantive:

2. Zoning Designations. The subject property is designated as General Commercial (GC).

3. Permit Review Criteria. ECDC 17.75.020 provides that in the CG zone outdoor seating requires a conditional use permit if outdoor seating exceeds 10% of indoor seating. The Applicant proposes 39 outdoor seats and 104 indoor seats, which exceeds the 10% threshold. The criteria for a conditional use permit are governed by ECDC 20.05.010, which are quoted below in italics and applied by corresponding conclusions of law.

ECDC 20.050.010: *No conditional use permit may be approved unless all of the findings in this section can be made.*

A. That the proposal is consistent with the comprehensive plan.

4. The project is located at the southern end of the comprehensive plan Highway 99 Corridor designation. The goals and policies of the Highway 99 Corridor designation are identified at pages 63-67 of the Edmonds Comprehensive Plan. The subject location is located in the "commercial redevelopment" portion of the Corridor, which is of course exactly what the Applicant proposes. The goals for the Corridor include encouraging a variety of uses and building types while being sensitive to surrounding neighborhoods. The goals and policies also recognize the pedestrian limitations of the area and encourages pedestrian development.

The proposal is consistent with the goals identified above. The outdoor seating is unique to the uses in the surrounding area and provides for variety of use as well as structure. The outdoor seating is located proximate to adjoining sidewalks, contributing to a pedestrian atmosphere. The outdoor seating is significantly buffered from adjoining neighborhoods by SR 104 and other commercial uses as discussed in the Findings of Fact and noise impacts are further mitigated by restricted hours and

compliance with the City's noise ordinance.

ECDC 20.05.010(B): *Zoning Ordinance. That the proposed use, and its location, is consistent with the purposes of the zoning ordinance and the purposes of the zone district in which the use is to be located, and that the proposed use will meet all applicable requirements of the zoning ordinance.*

5. ECDC 16.60.005 provides that the purposes of the CG zone include encouraging commercial development that provide high economic benefit; provide amenities for patrons; encourage variety; and provide for sensitivity to surrounding neighborhoods. For reasons previously discussed, the proposal is consistent with all of these purposes.

ECDC 20.05.010(C): *Not Detrimental. That the use, as approved or conditionally approved, will not be significantly detrimental to the public health, safety and welfare, and to nearby private property or improvements unless the use is a public necessity.*

6. As discussed in the Findings of Fact, there are no significant adverse impacts associated with the proposed outdoor seating as conditioned, including impacts to surrounding neighborhoods. The criterion is satisfied.

Mr. Rutledge raises several additional concerns beyond noise such as special events and public safety. It should be noted that restaurants are permitted outright in the CG zone and the conditional use permit is only for the outdoor seating portion of the proposal. As noted in ECDC 17.75.020, the types of impacts addressed in the review process include operating hours, location of the seating and buffering for the noise and visual impacts of the seating. All of these considerations arise from the outdoor searing and not from the other restaurant operations. The concerns of Mr. Rutledge do not appear to be linked to the outdoor seating but rather to restaurant operations in general. Further, as to special event permits, cities and counties typically only require special event permits for activities that use public property, such as parades and assemblies in public parks. Private events do not necessitate any public regulation and there is nothing to suggest that the subject project with its modest size could have any appreciable impact on public infrastructure if it hosted any event.

Given that the project is not in close proximity to any sensitive land use, the most important consideration of this project is hours of operation. Especially during evening hours when the noise level is reduced along adjoining roads, the noise of an outdoor event could adversely affect the nearest residences. The hours of operation recommended by staff adequately address this concern. However, this is based upon the understanding that there will not be any music accompanying the outdoor seating.

Mr. Rutledge raised a good question on whether the 10:00 pm closing time recommended by staff means that the outdoor seating must be cleared by that time or

whether that's just the time for final seating. The 10:00 pm closing time is the time that the outdoor seating should be cleared. If there are a handful of laggards who are quietly finishing their meal that will not be deemed a violation, but anything beyond that will be a violation of the conditions of approval.

ECDC 20.05.010(D): *Transferability. The hearing examiner shall determine whether the conditional use permit shall run with the land or shall be personal. If it runs with the land and the hearing examiner finds it in the public interest, the hearing examiner may require that it be recorded in the form of a covenant with the Snohomish County auditor. The hearing examiner may also determine whether the conditional use permit may or may not be used by a subsequent user of the same property.*

7. The conditional use permit is transferrable. As conditioned, there is nothing unique about the Applicant's operations that necessitate the approval to be person to it.

DECISION

The application is consistent with all criteria applicable to conditional use permit review and is approved as conditioned below. Approval is based upon the proposal as described in this decision, the SEPA environmental checklist and the land use application. The project is further approved with the understanding and limitation that the outdoor seating will not involve any music or any amplified noises and that the outdoor seating will be located on the east side of the building. Beyond this it is anticipated that Design Review may result in some minor changes that do not result in any increase in the number of outdoor seats. The following conditions shall also apply:

1. Hours of operation of the outdoor seating portion of the restaurant shall be limited to 7:00 am to 10:00 pm.

2. This permit shall be transferrable to subsequent purchasers as conditioned and approved.

Dated this 4th day of May, 2011.

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Phil Olbrechts
City of Edmonds Hearing Examiner

Appeal Right and Valuation Notices

This land use decision is final and only subject to appeal to superior court as governed by Chapter 36.70C RCW. Appeal deadlines are short (21 days from issuance of the decision) and the courts strictly apply the procedural requirements for filing an appeal.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.