

**BEFORE THE HEARING EXAMINER
FOR SEDRO-WOOLLEY**

In the Matter of the Application of)	No. CUP-2020-125
)	
Bob Hayden, on behalf of the)	USIT Auxiliary Storage Building
Upper Skagit Indian Tribe)	
)	
)	FINDINGS, CONCLUSIONS,
<u>For a Conditional Use Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for a conditional use permit to allow construction of a 9,025 square foot auxiliary storage building behind an existing commercial building at 640 SR-20 is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on September 24, 2020, using remote technology in light of the COVID-19 outbreak.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Katherine Weir, Assistant City Planner
Bob Hayden, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

- A. Staff Report
- B. Conditional Use Permit Application, dated May 14, 2020
- C. Enlarged Site Plan (No. A-1.0), revised April 20, 2020
- D. Notice of Application and SEPA Comment Period, published July 14, 2020, with Enlarged Site Plan
- E. SEPA Notice of Threshold Determination – Mitigated Determination of Nonsignificance, issued August 18, 2020
- F. Letter from Katelynn Piazza, Department of Ecology SEPA Coordinator, to Katherine Weir, dated July 27, 2020
- G. Notice of Public Hearing, published September 12, 2020
- H. SEPA Environmental Checklist, dated June 3, 2020

*Findings, Conclusions, and Decision
Sedro-Woolley Hearing Examiner
USIT Auxiliary Storage Building, Conditional Use Permit
No. CUP-2020-125*

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing.

FINDINGS

Application and Notice

1. Bob Hayden, on behalf of the Upper Skagit Indian Tribe (USIT) (Applicant), requests approval of a conditional use permit to allow construction of a 9,025 square foot auxiliary storage building behind an existing commercial building on the property. The new storage building would serve the existing commercial use and other cultural uses for USIT. The property is located at 640 SR-20.¹ *Exhibit A, Staff Report, pages 1 and 2; Exhibit B; Exhibit C.*

2. The City of Sedro-Woolley (City) held a pre-application meeting on February 26, 2020. The City determined that the application was complete on July 10, 2020. On July 13, 2020, the City mailed notice of the application to residents and property owners within 500 feet of the subject property. Notice of the application was posted on-site and published in the *Skagit Valley Herald* the following day. On September 10, 2020, the City provided notice of the public hearing associated with the application by posting notice on-site and by mailing notice to interested parties and to residents and property owners within 500 feet of the subject property. The City published notice of the public hearing in the *Skagit Valley Herald* on September 12, 2020. The City did not receive any public comments in response to its notice materials. *Exhibit A, Staff Report, pages 1, 3, 4, and 5; Exhibit D; Exhibit G.*

State Environmental Policy Act

3. The City acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City consolidated notice of the SEPA review and application comment periods under the optional process provided for by Washington Administrative Code (WAC) 197-11-355, with a comment deadline of July 28, 2020. The notice materials stated that the City expected to issue a Mitigated Determination of Nonsignificance (MDNS) for the proposal. The City received one agency comment specific to SEPA in response to its notice materials. The Washington State Department of Ecology (DOE) provided a general comment letter noting that there are three contaminated sites within a 750-foot radius of the subject property and that none of these sites is likely hydrogeologically upgradient of the location. After reviewing the Applicant's Environmental Checklist and other information on file, the City determined that, with mitigation, the proposal would not have a significant adverse impact on the environment. Accordingly, the City issued an MDNS on August 18, 2020, with an appeal deadline of September 1, 2020. The MDNS was not appealed. The MDNS

¹ The property is identified as parcel number P76946. *Exhibit 1, Staff Report, page 2.*

requires the Applicant to shield vehicle lights and other exterior lighting from surrounding residential properties; to comply with all local, state, and federal regulations, including Chapter 13.36 Sedro-Woolley Municipal Code (SWMC) Stormwater Management Standards, Chapter 13.40 SWMC Stormwater Facilities Maintenance, Chapter 15.40 SWMC Public Works Construction Standards, Title 17 SWMC Zoning, Sedro-Woolley Public Works Design Standards, and the Sedro-Woolley Comprehensive Plan; to comply with Northwest Clean Air Agency Regulations during construction; to receive approval from the Public Works Department for any water that would be discharged to the City stormwater system; and to provide a temporary erosion and sedimentation plan for approval from the City engineer. *Exhibit A, Staff Report, pages 3, 4, and 8; Exhibit D; Exhibit E; Exhibit F; Exhibit H.*

Comprehensive Plan and Zoning

4. The property is designated “Mixed Commercial” by the City Comprehensive Plan. The purpose of the Mixed Commercial designation is to allow for a comparable mix of commercial and residential development, with standards intended to present an attractive and welcoming appearance to visitors at the entrances to the city and at selected nodes along major roads. *City Comprehensive Plan, page 31.* City staff identified the following Comprehensive Plan goals and policies as relevant to the proposal:
 - Buffer commercial and industrial land uses when they abut residential development (Policy LU1.5).
 - Recognize the rights of property owners to freely use and develop private property consistent with City regulations (Policy LU5.7).
 - Recognize and retain Native American culture present within and near the urban growth area. Improve and enhance relations with the Upper Skagit Tribe. Encourage development of tribal businesses within the central business district. (Policy LU9.4).*Exhibit A, Staff Report, pages 2 and 5.*
5. The property is zoned Mixed Commercial (MC). The intent of the MC zone is to encourage a compatible mix of commercial and residential development, with standards intended to present an attractive and welcoming appearance to visitors at city entrances and selected nodes along major roads; manage traffic impacts; encourage non-motorized trips; and reduce stormwater runoff. *SWMC 17.20.005.* Auxiliary storage buildings may be allowed in the MC zone with a conditional use permit. *SWMC 17.20.010.B.4.* SWMC 17.20.020 provides bulk restrictions applicable to development in the MC zone, including minimum setback and maximum building height requirements. City staff reviewed the Applicant’s site plan and determined that the proposal would comply with bulk restrictions under SWMC 17.20.020. *Exhibit A, Staff Report, pages 5 and 6; Exhibit C.*
6. Property to the north of the site is zoned MC and is developed with single-family residences. Property to the east is zoned MC and is developed with commercial and retail

businesses. Property to the south is zoned Industrial and is developed with industrial facilities and single-family residences. Property to the west is zoned MC and Residential 15 and is developed with commercial and retail businesses and multi-family residences. *Exhibit A, Staff Report, page 2.*

Conditional Use Permit

7. As noted above, the Applicant requests a CUP to allow construction of a 9,025 square foot auxiliary storage building that would be located approximately 160 feet behind an existing commercial building on the same parcel. The auxiliary storage building would be constructed within the footprint of a 10,536 square foot building that was previously on the property. An existing access driveway and gravel parking lot would serve the new building. The access driveway and some parking stalls would receive new paving. Stormwater would be managed through an existing catch basin leading to a detention pond located west of the existing building. City staff reviewed the Applicant's site plan and determined that the proposal would meet the off-street parking requirements under Chapter 17.36 SWMC. The Applicant proposes to install 4,044 square feet of new landscaping. City staff determined that the new landscaping, together with existing landscaped areas on-site, would comply with the 15 percent landscaped area requirement of SWMC 17.50.040. City staff also determined that, with a condition requiring the Applicant to maintain an existing sight-obscuring fence, the project would comply with screening requirements under SWMC 17.50.120. The Applicant would be required to submit a final landscape plan with the building permit application. The project would be required to comply with the design review requirements of Chapter 15.44 SWMC. The screening of blank walls is a design requirement for buildings in the MC zone. City staff determined, however, that the blank walls of the proposed building would have little to no visual impacts because of the building's location and orientation to neighboring commercial uses and that the Applicant's proposal to install 20-foot landscaping along a blank wall would meet the intent of the screening design requirement. *Exhibit A, Staff Report, pages 6 through 8; Exhibit B; Exhibit C; Exhibit H.*

8. The Applicant submitted a project narrative addressing how the project would comply with the criteria for a CUP under SWMC 17.56.060. Specifically, the Applicant's narrative notes:
 - The proposed use would comply with the City Comprehensive Plan. The proposal would serve as an accessory use to the existing office/retail space currently on-site. The proposed auxiliary storage building would replace a storage building that was previously on the property. The proposed building would not front any main street and would mainly face the east property, which serves as the delivery area for the existing Food Pavilion and retail building.
 - No adjacent areas would be affected by the proposed use. The proposed building would be located to the north of the existing office/retail building along SR-20, to the west of the back of existing retail development, and to the south of an old

access road and vegetated areas. Although the proposed building would be located to the east of residential development, there is an existing access road and landscape screening that would create separation from the proposed building. Although the building would not be highly visible, it would have two different metal wall panels and colors to add variety to the design.

- The building would serve as additional storage for the existing office/retail building. It would help to mitigate the storage needs of those facilities and would therefore prevent the need to add to the existing street frontage. The proposed building would fit within the footprint of the building that was removed from the property and, therefore, would not result in an increase in impervious surfaces.

Exhibit B.

9. City staff analyzed the proposal to ensure that it would be consistent with the criteria for a CUP under SWMC 17.56.060 and determined:
 - The proposal would be consistent with goals and policies of the City Comprehensive Plan. The proposed building would not be visible from nearby roads and therefore would not have an aesthetic impact on visitors. The proposal has a buffer between existing residential developments (setbacks over 100 feet, plus an existing fence and trees), and the Applicant has followed applicable procedures and City regulations. The proposed building would be an asset to the Upper Skagit Tribe's commercial building located at the site and would also serve cultural uses for the tribe.
 - The proposed building would not significantly affect the surrounding residential uses and would be compatible with the surrounding commercial uses. The building would serve the existing commercial use on the developed lot and would be set back approximately 360 feet from SR-20.
 - With the building placement, additional landscaping, and proposed alternating building colors, City staff finds that the proposal is well planned in all respects so as to be an asset to the community.

Exhibit A, Staff Report, pages and 5 and 6.

Testimony

10. City Assistant Planner Katherine Weir testified generally about the proposal and how, with conditions, it would meet the criteria for a conditional use permit. She noted that the proposed auxiliary storage building would replace a building that has been demolished. Ms. Weir explained that storage buildings are not permitted outright in the MC zone and therefore require a conditional use permit. She stated that she reviewed the application and the City recommends approval, with conditions that would require the Applicant to provide a landscape plan with the building permit application, to comply with the mitigation requirements of the MDNS, and to maintain an existing sight-obscuring fence on the property. Ms. Weir discussed the comment received from the Department of

Ecology, noting that it mentioned contaminated areas near the project site but that the issue would not have any impact on the proposal. *Testimony of Ms. Weir.*

11. Applicant Representative Bob Hayden described the proposed building, noting that it would support both existing businesses on the parcel as well as provide a small storage and workshop area to support multi-family residential properties in the area owned by the tribe. Mr. Hayden stated that he anticipates beginning construction this winter. He noted that the tribe currently owns and operates a pharmacy in the existing building on-site and that other spaces in the commercial building are vacant. Mr. Hayden stated that the proposed auxiliary storage building would support the pharmacy and other future uses. He clarified that the proposed storage building would be located to the east of an existing driveline through the property. Mr. Hayden stated that the Applicant agrees with the City's recommended conditions. *Testimony of Mr. Hayden.*

Staff Recommendation

12. City staff recommends approval of the conditional use permit, with conditions. *Exhibit A, Staff Report, page 8.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide conditional use permit applications. *SWMC 17.56.030.E; Chapter 17.61 SWMC.*

Criteria for Review

The criteria upon which a conditional use permit application is judged shall be the extent to which it:

- A. Conforms to the comprehensive plan;
- B. Is compatible with the surrounding area, that is, causes no unreasonable adverse impacts; and
- C. Is well-planned in all respects so as to be an asset to the community.

SWMC 17.56.060.

Conditional use permits become void if substantial progress toward construction of improvements is not made within two years or if the use has not commenced within five years. The Hearing Examiner may extend these periods for good cause. *SWMC 17.56.050.*

The criteria for review adopted by the City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

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Conclusions Based on Findings

- 1. With conditions, the proposal would conform to the Comprehensive Plan.** The property is designated Mixed Commercial by the City Comprehensive Plan, which allows for a comparable mix of commercial and residential development, with standards intended to present an attractive and welcoming appearance to visitors at the entrances to the city and at selected nodes along major roads. City staff determined that the proposed auxiliary storage building would be consistent with Comprehensive Plan goals and policies, including policies promoting the development of tribal businesses and recognizing the rights of property owners to freely use and develop private property consistent with City regulations. The Hearing Examiner concurs with City staff's determination. Conditions are necessary to ensure that the Applicant adheres to the mitigation requirements of the MDNS and to ensure that the Applicant provides adequate screening by maintaining an existing sight-obscuring fence and by submitting a landscape plan meeting the requirements of City code. *Findings 1, 4 – 12.*

- 2. With conditions, the proposal would be compatible with the surrounding area and cause no unreasonable adverse impacts.** The property is zoned Mixed Commercial (MC), which encourages a compatible mix of commercial and residential development. Surrounding property to the north and east is zoned MC and is developed with single-family residences and various commercial/retail uses. Property to the west is zoned MC and Residential 15 and is developed with multi-family residences and various commercial/retail uses. Property to the south is zoned Industrial and is developed with single-family residences and industrial facilities. The Applicant's site plan shows that the project would comply with bulk restrictions applicable to development in the MC zone, including requirements for minimum setbacks and maximum building heights. City staff determined that the blank walls of the proposed building would have little to no visual impacts because of the building's location and orientation to neighboring commercial use and that the Applicant's proposal to install 20-foot landscaping along a blank wall would meet the intent of the design requirements for buildings in the MC zone. The Hearing Examiner concurs with City staff's determination. The Applicant would be required to submit landscape plans with its building permit application to demonstrate compliance with City code landscaping requirements. As detailed in Conclusion 1, conditions would ensure that the proposal meets all requirements of the municipal code and criteria required for CUP approval. *Findings 1, 5 – 12.*

- 3. The proposal is well planned in all aspects to thus be an asset to the community.** The City provided reasonable notice of the application and associated open record hearing. The City did not receive any public comments on the proposal. The City received a comment from Department of Ecology that noted the presence of three contaminated areas near the project site but did not note any impacts to the proposal. Appropriate conditions related to landscape and fence screening would ensure that the

use is compatible with residential development in the area. The City issued an MDNS for the proposal, with requirements that must be followed to ensure the project does not have adverse impacts on the environment. The MDNS was not appealed. All appropriate planning has occurred with the proposal to ensure that it is an asset to the community.
Findings 1 – 12.

DECISION

Based on the preceding findings and conclusions, the request for a conditional use permit to allow the construction of an auxiliary storage building behind an existing commercial building at 640 SR-20 is **APPROVED**, with the following conditions:

1. Provide a landscape plan that meets the requirements of Chapter 17.50 SWMC at time of building application.
2. Comply with the mitigation requirements set forth by the MDNS.
3. Maintain a sight-obscuring fence around the storage building. If the existing fence is to be altered or replaced, a fence detail must be submitted to the Sedro-Woolley Planning Department for review.

Decided this 5th day of October 2020.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center