

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit) CUP2009-0002
Application for)
)
Robert and Melissa Bartel) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Conditional Use Permit to continue to operate a Health Rehabilitation Center within two existing residential structures. In addition, the request includes the interior remodel of the existing residential structures, additional associated parking and a future potential second story addition consisting of approximately 3,225 sq. ft. The application also includes a 32 square foot sign.

The proposed phasing of the project is summarized as follows:

Phase I: Tenant Improvement of the existing residential structures (located at 1145 and 1151 Mt. Baker Highway) for conversion to the Health Rehabilitation Center with associated parking and drainage facilities.

Phase II: Tenant Improvement and second story addition to the building located at 1151 Mt. Baker Highway into approximately 6,000 square feet of office space and convert the building located at 1145 Mt. Baker Highway back into a single family residence and if necessary, complete the parking lot and drainage facilities.

Anticipated Timing: The anticipated timing of Phase I is approximately two years with the interior construction anticipated to commence in the spring of 2010. Phase II is anticipated to be completed within three years.

Decision: The requested Zoning Conditional Use Permit is approved, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

I.

Applicant: Robert and Melissa Bartel

Property Address: 1145 and 1151 Mt. Baker Highway
Bellingham, Washington

Legal Description: within the SW¹/₄ of the NE¹/₄ of Section 16, Township 38N, Range 3E, W.M.
Assessor's Parcel No: 380316 340305 and 330295

Zoning: Urban Residential Mixed (URMX)

Comprehensive Plan: Urban Growth Area

Subarea: Urban Fringe

SEPA Review: SEPA Exempt (WAC 197-11) (Categorical Exemptions)

Authorizing Ordinances:

Whatcom County Comprehensive Land Use Plan
Whatcom County Code Chapter 15, Building Code
State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
Whatcom County Code Chapter 16.16, Critical Areas
Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
Whatcom County Code Title 24, Health Regulations

Legal Notices: Posted – October 17, 2009
Mailed – October 14, 2009
Published – March 5 and October 22, 2009

Hearing Date: November 4, 2009

Parties of Record:

Robert and Melissa Bartel
1145 Mt. Baker Highway
Bellingham, WA 98226

Terry Unger
Ronald Jepson and Associates
222 Grand Avenue, Ste C
Bellingham, WA 98225

Sanja Barisic
Division of Engineering

Brenda Wilson
Planning and Development Services

Exhibits:

- 1 Land Use Application, with attachments
 - 1-1 Supplemental Application
 - 1-2 Letter of Incompleteness, dated February 17, 2009
 - 1-3 Letter dated February 23, 2009 from Terry Unger, Ronald Jepson & Associates re: Determination of Incompleteness
 - 1-4 Letter of Completeness dated March 3, 2009
 - 1-5 Form Memo to Tech Committee, dated March 5, 2009
 - 1-6 Form Comment Letter to Property Owners, dated March 5, 2009
 - 1-7 Mailing Labels
 - 1-8 Property Owner Addresses
 - 1-9 Assessor's Recorders
 - 1-10 Statutory Warranty Deed
 - 1-11 Letter dated July 30, 2004 from City of Bellingham Public Works re: Water and Sewer Service
 - 1-12 Preliminary Traffic Information
 - 1-13 Payment History
- 2 Staff Report, dated October 26, 2009
- 3 Revised Site Plan, dated June 24, 2009
- 4 Aerial Map
- 5 Vicinity Map
- 6 Zoning Map
- 7 SEPA Checklist
- 8 Legal Notice, dated March 5, 2009
- 9 Certificate of Mailing, dated October 14, 2009
- 10 Certificate of Posting, dated October 17, 2009
- 11 Legal Notice Affidavit, dated October 22, 2009

II.

The Land Use Services Division of Whatcom County Planning and Development Services

recommended approval of the requested Zoning Conditional Use Permit, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit #2, dated October 26, 2009, a copy of which is attached hereto and incorporated herein by this reference.

The Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant indicated no objection to any of the Conditions of Approval requested by Staff. There was no public comment on this matter.

III.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

The proposed operation and remodel of a Health Rehabilitation Center business can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (2 through 8). Subject to the Conditions of Approval attached to the granting of this permit, the proposal is consistent with the Conditional Use Criteria. A Zoning Conditional Use Permit should be granted, subject to conditions.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

A Zoning Conditional Use Permit is hereby granted to Robert and Melissa Bartel for the proposed operation and phased remodel of a Health Rehabilitation Center within two existing residential structures, including additional associated parking, and a future potential second story addition consisting of approximately 3,225 square feet. The business is located on Assessor's Parcel No. 380316 340305 and 330295, 1145 and 1151 Mt. Baker Highway, Bellingham, Washington, subject to the following conditions:

1. The use and location on the site as approved by this permit shall not be amended or changed in any way without further approval of the Hearing Examiner.
2. The Applicant shall comply with the conditions of Whatcom County Division of Engineering, as stated in the memorandum, dated March 17, 2009, unless modified by the Division of Engineering, or appealed to the appropriate agency.
3. As-built drawings for the new drainage facility shall be provided and approved by Public Works Engineering prior to a Certificate of Occupancy.

4. All outside lighting shall be shielded or directed away from neighboring streets and properties.
5. The Applicant shall comply with the conditions of the Whatcom County Chief Plans Examiner, outlined in the memorandum, dated March 10, 2009, unless modified by the Chief Plans Examiner or appealed to the appropriate agency.
6. The Applicant shall comply with the conditions of the Whatcom County Health Department memorandum, dated March 12, 2009; unless modified by the Health Department or appealed to the appropriate agency.
7. The Applicant shall obtain a commercial building permit for the proposed improvements.
8. Upon completion of all conditions, the Applicant shall request and obtain a Certificate of Occupancy from Planning and Development Services for the proposed use, to finalize this permit.
9. The Applicant shall comply with the landscaping requirements set forth in WCC 20.80.300.
10. The Applicant shall comply with the parking requirements set forth in WCC 20.80.500.
11. All trash and/or garbage collection and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high.
12. The Applicant shall obtain a building permit for the proposed sign.
13. The Applicant shall complete construction or, if no construction is contemplated as a part of this permit, shall demonstrate compliance with all of the conditions of this permit within 36 (thirty-six) months of the date of the issuance of this decision. Failure to complete construction or demonstrate compliance shall result in the expiration of this permit. Substantial progress toward completion may satisfy the terms of this condition if approved by Whatcom County Planning & Development Services and the Hearing Examiner. The applicant or permit holder may apply for an extension for a term of up to one year upon a showing that substantial progress has been made toward completion or compliance. An extension shall be granted if the Hearing Examiner finds that the applicant or permit holder will suffer a substantial hardship if the extension is denied. The Hearing Examiner may grant an extension for any other good cause shown, in his discretion, but extraordinary circumstances must be shown to obtain an extension of more than one year. The Hearing Examiner shall obtain the comments of Whatcom County Planning & Development Services before granting any extension.

NOTICE

This approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing.

Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF
THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office.

After an appeal has been filed and the Council office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 10th day of November 2009.

Michael Bobbink, Hearing Examiner



October 26, 2009

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

**The application of
Robert and Melissa Bartel
for a Zoning Conditional Use
Permit**

CUP2009-00002

**FINDINGS, CONCLUSIONS
AND RECOMMENDATIONS**

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application:

The applicant is requesting a Zoning Conditional Use Permit to continue to operate a Health Rehabilitation Center within two existing residential structures. In addition, the request includes the interior remodel of the existing residential structures, additional associated parking and a future potential second story addition consisting of approximately 3,225 sq. ft. The application also includes a 32 square foot sign.

The proposed phasing of the project is summarized as follows:

Phase I: Tenant Improvement of the existing residential structures (located at 1145 and 1151 Mt. Baker Highway) for conversion to the Health Rehabilitation Center with associated parking and drainage facilities.

Phase II: Tenant Improvement and second story addition to the building located at 1151 Mt. Baker Highway into approximately 6,000 square feet of office space and convert the building located at 1145 Mt. Baker Highway back into a single family residence and if necessary, complete the parking lot and drainage facilities.

Anticipated Timing: The anticipated timing of Phase I is approximately two years with the interior construction anticipated to commence in the spring of 2010. Phase II is anticipated to be completed within three years.

Recommendation:

Staff recommends approval of the request, subject to the attached conditions.

II. PRELIMINARY INFORMATION

Applicant: Robert and Melissa Bartel

Property Address: 1145 and 1151 Mt. Baker Hwy.
Bellingham, WA 98229

Legal Description: Located within the SW1/4 of the NE¼ of Section16,
Township 38N, Range 3E, W.M.
Assessor's Parcel No: 380316340305 and 330295

Zoning: Urban Residential Mixed (URMX) (10-24)

Comprehensive Plan: Urban Growth Area

Subarea: Urban Fringe

SEPA Review: SEPA Exempt (WAC 197-11) (Categorical Exemptions)

Authorizing Ordinances:

1. Whatcom County Comprehensive Land Use Plan.
2. Whatcom County Code Chapter 15, Building Code
3. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
4. Whatcom County Code Chapter 16.16, Critical Areas
5. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
6. Whatcom County Code Title 24, Health Regulations

III. FINDINGS AND CONCLUSIONS

In order for a Conditional Use to be approved, the proposal must satisfy the criteria of WCC 20.84.200 (.200) 1 through 8. In summary, these criteria state that the proposal must: be harmonious and in accordance with the general and specific goals and policies of Whatcom County's Comprehensive Plan and zoning regulations, be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area, will not be hazardous or disturbing to existing or future neighboring uses, be serviced adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services, not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community, not involve uses, activities, processes, materials, equipment and property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors, have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets, and not result in destruction, loss or damage of any natural, scenic or historic feature of major importance.

Applicable Codes and Policies

Health Rehabilitation Centers are conditionally permitted in the Urban Residential Mixed zone district pursuant to WCC 20.24.154.

In addition, WCC 20.24.010 sets forth the Purpose of the URMX zone district which provides for mixed uses in a manner that encourages access to jobs and services.

WCC 20.24.010 Purpose: It is the purpose of this zone district to provide an orderly transition from rural to urban development by limiting densities and uses until services are available and then to provide for mixed uses in a manner that encourages a range of densities and dwelling unit types and pedestrian access to convenience shopping and jobs while maintaining an overall single-family character and property values for the neighborhoods created within this district.

The Whatcom County Comprehensive Plan: The proposed conditional use is in accordance with the objectives of Whatcom County's Comprehensive Plan. For example, the Introduction section of Chapter Seven "*Economics*" states: *Purpose:*

1. Maintenance of a strong sustainable economic base.

Also, Chapter Seven states in part...Economic vitality can also be described as private capital investment. The proposed Health Rehabilitation Center contributes to the maintenance of a strong economic base and economic vitality through private capital investment.

In addition, the following goal and policies within Chapter Seven "*Economics*" support the proposed conditional use:

GOAL 7A: Promote a healthy economy which provides ample opportunity for family-wage jobs for diverse segments of the community which is essential to the quality of life in the area.

Policy 7A-1: Together with the cities, provide an ample, developable land supply for commercial and industrial uses to provide opportunity for new and expanding firms wishing to locate or remain in Whatcom County.

Policy 7A-3: Employ innovative techniques to attract a mix of diversified industries for a broader economic base.

Zoning Review:

Building Setbacks: Mt. Baker Highway is a State Highway. Therefore, setbacks are 45-feet from the front property line along Mt. Baker Highway and 5-feet from all other property lines, per WCC 20.80.210.

Building Height: Maximum building height in the Urban Residential Mixed District is 35-feet, per WCC20.24.400. The second story addition will comply with this height regulation and the building height will be measured pursuant to the definition of building height set forth in the Whatcom County Zoning Ordinance.

Lot coverage: Pursuant to WCC20.24.450, "No structure or combination of structures, including accessory buildings, shall occupy or cover more than 2,500 square feet or 40%, whichever is greater, of the total area..." The structures exist on site and the proposed new construction is second story construction.

Parking: Offices require one parking space for each 200 square feet of floor area. Therefore, upon completion of Phase II (6,000 sq. ft. of office space) the subject proposal would require 30 parking spaces. The current plan complies with this requirement.

Landscaping: A detailed landscaping/ buffering plan designed in accordance with the requirements of WCC 20.80.300 shall be submitted at the time of building permit application. Pursuant to WCC 20.80.375, all required landscaping/buffering shall be installed per the approved plan or bonded for 125% of the cost of labor and materials for installation prior to issuance of a Certificate of Occupancy. In addition, a maintenance bond for 10% of the cost of labor and materials for installation shall be submitted prior to issuance of a Certificate of Occupancy. This maintenance bond shall be released in two years provided that the landscaping is maintained in a healthy growing condition and any dead or dying plants have been replaced.

Signage: One 32 square foot sign has been requested as part of this application. The sign proposed for the site shall comply with the requirements of WCC 20.80.465 (1 through 3). In addition, proposed signs for the site shall not be located closer than 10-feet to any right-of-way, per WCC 20.80.410 (1). A building permit is required prior to installation.

Conditional Use Criteria (WCC 20.84.220):

Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use districts defining the conditional use are fulfilled, and shall find adequate evidence showing that the proposed conditional use at the proposed location:

- (1) Will be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan and zoning regulations.

Discussion:

The proposed construction of an approximately 6,000 square foot (upon completion) Health Rehabilitation Center with associated parking are an allowed use with a Conditional Use Permit pursuant to WCC20.24.154. The conditions set forth in the "Conditions of Approval" section of this report establish compliance, harmony and accordance with the parking, landscaping, screening and buffering provisions in the Whatcom County Zoning Code. Compliance with these requirements as well as the standard setback, building height and lot coverage provisions will provide compatibility with existing surrounding land uses; thereby establishing harmony and accordance with the general and specific objectives of the Whatcom County Zoning Ordinance and the conditional use at the proposed location.

The proposed conditional use is in accordance with the Whatcom County Comprehensive Plan as stated above.

Conditions are established to mitigate potential impacts and provide compatibility with existing, surrounding land uses in order to provide harmony and accordance with the general and specific objectives and requirements of zoning regulations.

(2) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area?

Discussion:

Design and construction: The proposed second story addition to one of the structures is designed and constructed in a manner that is harmonious and appropriate in appearance with the existing and intended character of the general vicinity because the proposed design has the appearance of both a residence and a professional health care center.

Operation and maintenance: The owners will provide regular maintenance in order to maintain the essential character of the area. Landscaping conditions to ensure compatibility with the existing and intended character of the general vicinity are established in the Conditions section of this report.

Essential character: The proposed Health Rehabilitation Center will not change the essential character of the area. The buildings exist on site and the proposed second story addition will be consistent with the existing structures. Landscaping, signage and lighting conditions are established in the Conditions section of this report.

(3) Will not be hazardous or disturbing to existing or future neighboring uses?

Discussion:

The proposed use is not hazardous and is consistent with allowed uses with conditions to ensure compatibility with existing surrounding land uses.

(4) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services?

Discussion:

The site is serviced adequately by necessary public facilities. Police protection is provided by the Whatcom County Sheriff's Office. Fire protection is provided by Fire District #4. Refuse disposal is provided by the private sector. Potable water is provided by the City of Bellingham. One of the existing units utilizes public sewer services provided by the City of Bellingham and the other unit is currently served by

an on-site sewage system. The Whatcom County Health Department has required either proof of a public sewer or a valid on-site sewage system permit at the time of building permit application. In addition, certified As-Built drawings for the drainage system installed on the site is required for review by Engineering Services prior to the issuance of the Certificate of Occupancy.

(5) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community?

Discussion:

The proposed improvements will not create excessive additional requirements at public cost. The proposed project is currently an existing use and the proposed improvements will be a benefit to the economic welfare of the community as a result of private sector investment.

(6) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors?

Discussion:

The activities associated with the Health Rehabilitation Center will involve normal long term uses however will not be detrimental to persons, property, or the general welfare due to the conditions placed on the proposed use of the property which will serve to mitigate potential impact. Building lights will be placed to avoid the glare produced by such lights. No fumes or odors are anticipated as a result of this proposal. Traffic, noise and glare impacts will be mitigated by the imposition of conditions on the use of the land for the facility.

(7) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets?

Discussion:

Whatcom County Engineering Services has required the applicant to contact the Washington State Department of Transportation for requirements they may have regarding this development.

(8) Will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance?

Discussion:

The proposed project will not result in the destruction, loss or damage of natural, scenic or historic feature of major importance.

Public Comment:

Staff received one public comment letter regarding this application which is attached as

Agency Comments:

Building Services Comments

See attached memo from the Whatcom County Plans Examiner for entry into the Hearing Examiner File as an exhibit and Conditions of Approval.

The applicant shall comply with the conditions of the Whatcom County Plans Examiner memo unless modified by the Plans Examiner or appealed to the appropriate agency.

Traffic and Engineering Comments

Sanja Barisic of Whatcom County Public Works Engineering Services provided comment on March 17, 2009. See attached memo for entry into the Hearing Examiner File as an exhibit and Conditions of approval.

The applicant shall comply with the conditions of the Whatcom County Engineering Service's memo dated March 17, 2009 unless modified by Engineering Services or appealed to the appropriate agency.

Fire and Safety Comments

Police and fire protection for the site is provided by the Whatcom County Sheriff's Office and Fire District # 4. No comments or concerns regarding this proposal were received from either agency.

The Whatcom County Fire Inspector, Bill Hewitt provided a memo stating the Fire Marshal's Office has no comments for the subject proposal.

Utilities

Water for the site is provided by the City of Bellingham and the method of sewage disposal is an on site sewage system for one unit and public sewer provided by the City of Bellingham for the other unit.

Whatcom County Environmental Health Specialist, Charles Sullivan provided comment on March 12, 2009. See attached memo for entry into the Hearing Examiner File as an exhibit and Conditions of Approval.

Critical Areas and Environmental Comments

Whatcom County Critical Areas staff determined that there will be no wetland or habitat conservation area impacts as a result of the proposal. See attached memo for entry into the Hearing Examiner File as an exhibit and Conditions of Approval.

IV. PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in WCC 2.33.

Notice of Application: The Notice of Application for this proposal was published on March 5, 2009. Notice was also mailed to property owners within 1000 feet of the site.

Public Input: During the public comment period staff received two comments in support of the application.

Notice of Public Hearing: The Notice of Public Hearing for this project was posted on the site. The notice was included in a one-time newspaper publication

V. STATE ENVIRONMENTAL POLICY ACT (SEPA)

The proposal is exempt for SEPA pursuant to WAC 197-11 (Categorical Exemptions)

VI. RECOMMENDATION

As a result of the above analysis and technical review, staff recommends approval of the Zoning Conditional Use Permit, subject to the following conditions:

VII. CONDITIONS OF APPROVAL

- 1) The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom Hearing Examiner.
- 2) The applicant shall comply with the attached conditions of the Whatcom County Engineering Service's memo dated March 17, 2009, unless modified by Engineering Services or appealed to the appropriate agency.
- 3) As-built drawings for the new drainage facility shall be provided and approved by Public Works Engineering prior to a Certificate of Occupancy.
- 3) All outside lighting shall be shielded or directed away from neighboring streets and properties.
- 4) The applicant shall comply with the attached conditions of the Whatcom County Chief Plans Examiner's memo dated March 10, 2009, unless modified by the Chief Plans Examiner or appealed to the appropriate agency.
- 5) The applicant shall comply with the attached conditions of the Whatcom County Health Department memo dated March 12, 2009; unless modified by the Health Department or appealed to the appropriate agency.
- 6) The applicant shall obtain a commercial building permit for the proposed improvements.
- 7) Upon completion of all conditions, the applicant shall request and obtain a Certificate of Occupancy from Planning and Development Services for the proposed use, to finalize this permit.
- 8) The applicant shall comply with the landscaping requirements set forth in WCC 20.80.300.
- 9) The applicant shall comply with the parking requirements set forth in WCC 20.80.500.

- 10) All trash and/or garbage collection and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high.
- 11) The applicant shall obtain a building permit for the proposed sign.

Report prepared in coordination with the Technical Review Committee by:
Brenda Wilson
Senior Planner