

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF OAK HARBOR**

In the Matter of the Application of)	No. 2210-0078
)	
Michele McMahan)	Teahouse at 640 E. Whidbey CUP
)	
)	FINDINGS, CONCLUSIONS,
<u>For a Conditional Use Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for a conditional use permit to allow for the operation of a teahouse in an existing commercial building on a 0.53-acre property, located at 640 E. Whidbey Avenue, 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 January 4, 2023, utilizing a hybrid approach allowing for participation in person or through remote access technology.

Testimony:

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

Ray Lindenburg, City Senior Planner
Michele McMahan, Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report
2. Application Materials:
 - A. Summary Application Form, dated October 19, 2022
 - B. Site Plan (3 Sheets), undated
3. Zoning and Vicinity Map
4. Notice Materials:
 - A. Certification of Public Notice, dated December 22, 2022
 - B. Notice of Application, dated November 30, 2022
 - C. Notice of Public Hearing, dated December 16, 2022

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

*Findings, Conclusions, and Decision
City of Oak Harbor Hearing Examiner
Teahouse at 640 East Whidbey CUP
No. 2210-0078*

FINDINGS

Application and Notice

1. Michele McMahan (Applicant) requests a conditional use permit (CUP) to allow for the operation of teahouse in an existing commercial building on a 0.53-acre property. The property previously contained a medical office and is developed with an enclosed courtyard, parking areas, utilities, and landscaping. The Applicant would retain all existing development on the property and does not propose any exterior modifications other than signage and minor landscaping. The interior of the building would be remodeled, and office areas would be converted to spaces for tables and chairs, a prep area, and a private party room. The proposed interior remodeling would not include construction of a full kitchen. The teahouse would serve beverages and pre-packaged, pre-cooked food items. Access to the property would be provided by an existing driveway off of E. Whidbey Avenue that is shared with the parcel to the west and leads to two paved parking areas with a total of ten parking spaces for use of the property. The property is located at 640 E. Whidbey Avenue.¹ *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 2.*
2. The City of Oak Harbor (City) determined that the application was complete on November 18, 2022. On November 22, 2022, the City provided notice of the application by mailing or emailing notice to property owners within 300 feet of the property and to reviewing agencies and by posting notice on-site and at City Hall, with a comment deadline of December 13, 2022. On November 30, 2022, the City published notice of the application in the *Whidbey News Times*. On December 16, 2022, the City provided notice of the open record hearing associated with the application by mailing or emailing notice to property owners within 300 feet of the property and to interested parties and by posting notice at City Hall. The next day, the City published notice of the hearing in the *Whidbey News Times*. The City did not receive any comments on the proposal from reviewing agencies or members of the public in response to its notice materials. *Exhibit 1, Staff Report, page 4; Exhibit 4.*

State Environmental Policy Act

3. The City determined that the proposal is categorically exempt from review under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW), as provided in Washington Administrative Code (WAC) 197-11-800(1)(b)(iv). Specifically, the City determined that the proposal would be exempt from SEPA review because it involves the construction of commercial space measuring less than 4,000 square feet, with associated parking consisting of fewer than 20 spaces. *Exhibit 1, Staff Report, page 4; Testimony of Mr. Lindenburg.*

¹ The property is identified by tax parcel number S7285-00-0C015-2. *Exhibit 1, Staff Report, page 1.*

Comprehensive Plan and Zoning

4. The property is designated “High Intensity Residential/Low Intensity Commercial” by the City Comprehensive Plan. The High Intensity Residential/Low Intensity Commercial designation “accommodates high density residential uses, fringe neighborhood scale commercial uses and office-type uses.” *City Comprehensive Plan, page 25*. City staff identified the following Comprehensive Plan policies as relevant to the proposal:
- Encourage land use densities/intensities where services exist or are readily available. [Land Use Element Goal 1.a.]
 - Ensure that the location, situation, configuration, and relationship of the varied land uses within the UGA are consistent and compatible. [Land Use Element Goal 8]
 - Establish and maintain sufficient land within the City of Oak Harbor zoned to ensure a wide range of public and quasi-public services to meet community needs. [Land Use Element Goal 15]
 - Create and maintain a balanced community that mixes residential use and non-residential uses in a way that promotes environmental quality and community aesthetics. [Land Use Element Goal 19]
 - Encourage land use development patterns that reduce the demand for increased capacity on roadways. [Transportation Element Goal 4.c]
- Exhibit 1, Staff Report, pages 1, 3, and 4.*
5. The property is zoned Residential Office (RO). Properties to the south, east, and west are also zoned RO. The property to the north is zoned Public Facilities (PF). The purpose of the RO zone is to “provide for areas appropriate for professional and administrative offices.” *Oak Harbor Municipal Code (OHMC) 19.20.230*. The RO zoning district is “intended that such districts shall buffer residential districts and the development standards are such that office uses should be compatible with residential districts.” *OHMC 19.20.230*. Restaurants, including sidewalk cafes, are permitted in the RO zoning district with approval of a conditional use permit. *OHMC 19.20.1050*. A restaurant or coffee house is defined as a “commercial establishment where food and beverages are prepared, served and consumed within the principal building or adjacent sidewalk café.” *LHMC 19.08.711*. *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 3.*

Existing Property and Surrounding Development

6. The 0.53-acre property is generally flat with a slight downward slope from E. Whidbey Avenue to the northern property line. E. Whidbey Avenue has been developed with typical frontage improvements, including curb, gutter, and sidewalk. The street has recently been resurfaced, and all public utilities are located in the right-of-way or nearby easements. Access to the property is provided by a shared access driveway on the western portion of the property frontage. The property to east of the subject property is developed with a single-family residence. Property to the south is developed with a

private school. Property to the north is developed with a school track and play field. The property to the west contains a medical/dental office. *Exhibit 1, Staff Report, pages 1 and 2.*

7. OHMC 19.44.100 requires one parking space for every three seats, plus one space for every two employees on the largest shift, for food and beverage places with sales and consumption on premises. The Applicant's site plan indicates that the proposed development would provide 21 seats with two staff maximum per shift. Accordingly, eight parking stalls would be required to serve the proposed use. The property is currently developed with 10 parking spaces, which would be retained as part of the proposal. *Exhibit 2.b.*

Conditional Use Permit

8. As noted above, the Applicant requests a CUP to operate a teahouse within the RO zoning district. City staff reviewed the proposal and determined that it would meet the specific criteria for approval of a conditional use permit under OHMC 19.67.030, noting:
 - There are no listed special conditions for this proposed indoor use in the RO zoning district.
 - The proposed use would not create any adverse environmental impact. The use would be wholly contained within the existing structure unless the Applicant chooses to utilize the enclosed courtyard area. Any noise or other impacts generated by traffic would not be expected to be significantly more than those uses permitted outright in the zoning district. The proposal does not include any additional lighting, and no glare is expected. Future glare issues could be addressed through a compliance process with other sections of the municipal code. There is no proposed exterior work that would cause any soil erosion.
 - Proposed parking would meet the standards of Chapter 19.44 OHMC. It may be expected that some customers would arrive on foot, reducing traffic impacts. A condition of approval has been included to ensure that additional seating is not added beyond what is currently proposed unless additional parking is provided and reviewed by staff.
 - The location of the proposed development is adjacent to all public services, and the use of the property as a teahouse should not create any undue burden on those existing surfaces.
 - The RO zoning district is intended to buffer commercial uses from residential uses, and on the official zoning map, the RO zones are generally located between areas of heavier commercial use and residential neighborhoods. In this case, the property is located adjacent to a large school track and play field, daytime office use, a private school, and an existing, legally non-conforming house in the same zoning district. The proposed use would meet the purpose and intent of the zoning district because it would not adversely affect any residential districts, create additional impacts to the surrounding community, or negatively impact

neighboring parcels. The proposed use would not include late hours, obtrusive levels of noise, or significant traffic.

- The proposed use would be consistent with City Comprehensive Plan goals and policies.
- If the CUP is approved, the Applicant intends to submit a tenant improvement building permit and occupancy permit to utilize the site. As part of that process, the Applicant would be required to meet the conditions of approval, appropriate building code standards, and requirements of the municipal code, including, but not limited to, landscaping requirements (Chapter 19.46 OHMC), parking standards (Chapter 19.44 OHMC), and elements of the Design Regulations and Guidelines (DRG) document. These elements are not up for specific consideration by the Hearing Examiner but would be reviewed administratively by City staff as part of an overall permit submittal. City staff would ensure that the standards listed in the OHMC are met by the Applicant.

Exhibit 1, Staff Report, pages 2 through 4.

Testimony

9. City Senior Planner Ray Lindenburg testified generally about the proposal and how City staff reviewed the application for consistency with the Comprehensive Plan, zoning ordinances, and the specific criteria for a CUP. He explained that the Residential Office zoning district serves as a buffer between higher density commercial uses and residential development, and that the CUP process was put in place to prevent extensive commercial development near residential uses. Mr. Lindenburg stated that City staff recommends approval of the CUP, with conditions, noting that the proposed use is not anticipated to negatively impact surrounding uses or the environment. He explained that, if the Applicant wants to add additional seating for the proposed use, the Applicant would be required to consult with City staff because such an expansion would require additional parking spaces and would necessitate the site plan review process. Mr. Lindenburg clarified that the City did not receive any comments on the proposal from members of the public in response to its notice materials and that the proposed development is exempt from SEPA environmental review because it involves construction of less than 4,000 square feet of commercial space. *Testimony of Mr. Lindenburg.*
10. Applicant Michele McMahan testified that she understood that she would need to consult with City staff if the proposed use would be expanded to include additional seating. *Testimony of Ms. McMahan.*

Staff Recommendation

11. Mr. Lindenburg testified that City staff recommends the approval of the conditional use permit, with conditions. Ms. McMahan testified that she understands and would comply with City staff's recommended conditions. *Exhibit 1, Staff Report, pages 4 and 5; Testimony of Mr. Lindenburg; Testimony of Ms. McMahan.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide applications for a conditional use permit. *OHMC 18.20.250; OHMC 19.67.030.*

Criteria for Review

OHMC 19.67.030 sets forth the following criteria for approval of a conditional use permit:

No conditional use shall be granted unless it meets the following criteria:

- (1) All special conditions for the particular use are met;
- (2) It does not have a significant, adverse environmental impact resulting in excessive noise, light and glare or soil erosion on adjacent property;
- (3) It is provided with adequate parking;
- (4) It is served with adequate public streets, public utilities and facilities;
- (5) It otherwise meets the purpose of the district in which it is to be placed;
- (6) It meets the goals and policies of the Oak Harbor comprehensive plan.

The criteria for review adopted by the Oak Harbor 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.*

Conclusions

With conditions, the proposed use would be consistent with the requirements for a conditional use permit under OHMC 19.67.030. The City provided reasonable notice and opportunity to comment on the proposal. The City did not receive any comments on the proposal in response to its notice materials. The 0.53-acre property and properties to the south, east, and west are located within the Residential Office (RO) zoning district, which allows, as a conditional use, restaurant uses, including sidewalk cafes. There are no listed special conditions for restaurant uses in the RO zoning district. The proposed use of the property as a teahouse would be consistent with the purpose of the RO zoning district by providing a commercial establishment compatible with residential and other surrounding uses, which include a medical/dental office space, a school, and a large track and play field.

The City determined that the proposal is categorically exempt from SEPA environmental review. Development activities associated with the proposed use would include only interior remodeling of the existing office building on the property, minor landscaping improvements, and signage. The Applicant does not propose any exterior modifications, and the proposed use would be adequately served by existing circulation, outdoor lighting, and frontage improvements. Adequate public services are available to serve the proposed use. Access to the property would be provided by a shared driveway off of E. Whidbey Avenue. The proposed teahouse use of the

property would include 21 seats and a maximum of two employees per shift, requiring eight parking spaces. The Applicant would exceed this parking requirement by utilizing ten existing parking spaces on the site for the proposed use. Conditions of approval would require the Applicant to obtain the necessary permits prior to any expansion of the number of available seats to address additional parking impacts.

The proposed development would be consistent with several Comprehensive Plan policies, including policies encouraging land use intensities where services exist or are readily available; ensuring that the location, situation, configuration, and relationship of the varied land uses within the UGA are consistent and compatible; establishing and maintaining sufficient land within the City to ensure a wide range of public and quasi-public services to meet community needs; creating and maintaining a balanced community that mixes residential use and non-residential uses in a way that promotes environmental quality and community aesthetics; and encouraging land use development patterns that reduce the demand for increased capacity on roadways. Conditions, as detailed below, are necessary to ensure that the proposal meets the specific criteria for conditional use permit approval and complies with all other applicable municipal code requirements. *Findings 1 – 11.*

DECISION

Based on the above findings and conclusions, the request for a conditional use permit to allow for the operation of a teahouse in an existing commercial building on a 0.53-acre property, located at 640 E. Whidbey Avenue, is **APPROVED**, with the following conditions:

1. The proposed conditional use, consisting of a teahouse as described in the application materials, serving non-alcoholic drinks and pre-cooked foods, shall be in general conformance with the narrative and application materials included in Exhibit 2 and abide by conditions and requirements set forth within the Staff Report.
2. Outdoor uses of the site shall be restricted to utilization of the enclosed courtyard areas for any business purposes and parking and landscaping only for the remainder of the property, unless submitted to and approved by City Staff.
3. That the number of seats provided in the business, whether indoors, or in the courtyard, do not exceed the number allowed by the ratio set forth in OHMC 19.44.100 of one space per three seats and one additional space for every two employees on the largest shift.
4. The conditional use shall not be transferable to a subsequent user unless specifically authorized by the Hearing Examiner who finds it appropriate and a permit authorizing the transferability is on record with the Island County auditor.
5. The conditional use permit must be acted on within one year of the date of granting – otherwise the conditional use permit shall expire and be null and void.

6. The conditional use permit applies only to the property for which the application is made.

DECIDED this 23rd day of January 2023.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center