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BEFORE THE HEARING EXAMINER FOR OAK HARBOR

Phil Olbrechts, Hearing Examiner

RE: Ms. Ashley’s Child Care Center Conditional Use File No. 2501-0002	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION.
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INTRODUCTION

Ashley Bernales has applied for a Conditional Use Permit for the use of an existing commercial building and adjacent outdoor play area for a child day care facility located at 640 E Whidbey Avenue. The proposal is approved subject to conditions.

One comment (see Exhibit 5) was received from the public stating support for the new day care but concern for impacts on existing parking to ensure customers of the day care do not park in patient parking for an adjoining business. Staff addressed this concern by recommending a condition adopted by this decision requiring the day care to notify their customers of restricted parking areas.

ORAL TESTIMONY

A computer-generated transcript of the hearing has been prepared to provide an overview of the hearing testimony. The transcript is not intended to provide a precisely accurate rendition of testimony but generally identifies the subjects addressed during the hearing. The transcript is provided for informational purposes only as Appendix A.

EXHIBITS

Exhibits 1-5 listed on page 1 of the staff report, were admitted into the record at the April 15, 2025, public hearing.

FINDINGS OF FACT

Procedural:

1. Applicant. Ashley Bernales, 1304 Big Berry Loop, Oak Harbor, WA 98277.
2. Hearing. The Hearing Examiner conducted a virtual hearing on the application at 2:00 pm on April 15th, 2025.

Substantive:

3. Site/Proposal Description. Ashley Bernales a Conditional Use permit for the use of an existing commercial building and adjacent outdoor play area for a child day care facility located at 640 E Whidbey Avenue. The facility would be for 21 – 28 children and operate from 8:00 am to 5:00 pm (see Exhibit 2) and provide for 11 parking spaces. The proposed facility consists of an approximately 1374-square foot building located on a 0.53 acre parcel of land on the north side of East Whidbey Avenue. As noted in the application, the building will be remodeled to satisfy the needs of the proposed use, and an outdoor play area added to the rear of the structure, to be fenced per the standards for such facilities set by the State of Washington.

An existing commercial building occupies the site, along with associated parking, landscaping, and other site improvements. The parcel is generally flat but does slope slightly down from the street to the north.

4. Characteristics of the Area.

	Existing Land Use	Zoning
North:	School track and play field	PF, Public Facilities
South:	Private school	R-O, Residential-Office
East:	Single family residence	R-O, Residential-Office
West:	Medical/dental office	R-O, Residential-Office

5. Adverse Impacts. No adverse impacts are anticipated from the proposal. Pertinent impacts are addressed as follows:

A. Parking. As conditioned, the proposal provides for adequate parking.

The staff report identifies that City parking standards don't address parking use and that consequently "*the applicant is required to provide a parking plan to show the number of spaces needed and a drop-off plan for parents.*" Presumably, the Ex. 2 application materials contain such a plan where the Applicant identifies that total of 12 parking spaces are available and that parking won't exceed five minutes per family. The Application materials further identify that the Applicant plans to have three classrooms that will accommodate up to 28 children. Given the brief drop-off timing for school children, it appears parking will be sufficient as determined by City planning staff. Concerns raised in written comment about parking on the adjoining lot are addressed by a condition requiring the Applicant to notify parents that parking on the adjoining lot is not allowed.

B. Noise, light and glare. The only significant exterior changes to the existing building are the addition of a play area in the back of the building. Given the relatively modest number of school children and the fact that the daycare center will operate during daylight hours there doesn't appear to be a noise issue with the project, especially since the only noise sensitive use, a single-family residence, is located to the east of the project. A condition of approval prohibits any light spillage into the adjoining single-family residence to resolve light and glare impacts.

C. Utilities and Facilities. The proposal will be served by adequate utilities and public facilities. There is already an existing commercial building on the project site in a fully developed area that presumably has been served with a

1 full complement of all necessary utilities. The staff report identifies that
2 utilities are available and there is no evidence to the contrary.

3 The proposal will be served by adequate streets. At the street frontage, typical
4 public improvements of curb, gutter and sidewalk line the public street. A curb
5 cut from the street exists at the western portion of the property frontage,
6 sharing an access driveway with the parcel to the west.

7 CONCLUSIONS OF LAW

8 **Procedural:**

9 1. Authority of Hearing Examiner. OHMC 19.67.030 authorizes the hearing
10 examiner to issue decisions on applications for conditional use permits.

11 **Substantive:**

12 2. Zoning / Comprehensive Plan Designation. The property is currently zoned
13 R-O, Residential-Office; and High Intensity Residential/Low Intensity Commercial in
14 the Comprehensive Plan

15 3. Review Criteria. OHMC 19.20.1050 requires a conditional use permit for
16 child daycare centers in the R-4 zone. OHMC 19.67.03 sets the criteria for conditional
17 use permit applications. Pertinent criteria are quoted below and applied via
18 corresponding conclusions of law.

19 **OHMC 19.67.030:** *No conditional use shall be granted unless it meets the following
20 criteria:*

21 *(1) All special conditions for the particular use are met;*

22 4. Criterion met. The criterion is met. The current Oak Harbor Municipal Code
23 19.08.676 standard for day care centers is “an establishment for the care and education
24 of children in connection with an outdoor play area having a minimum area of 1,000
25 square feet plus an additional 50 square feet for each child in excess of eight.” This
code section is currently under review by the Planning Commission and City Council
to be changed to “an establishment for the care and education of children in compliance
with the standards set forth by the State of Washington for such use.”

The applicant is seeking the approval of a Conditional Use permit to allow for the use
of the site as a day care facility. The future change noted above to the OHMC puts the
standards for capacity on such facilities to be based on state requirements which will
be addressed by the Washington State Department of Children, Youth and Families
(DCYF).

1 According to the application materials, the business will likely be open in July to
2 August 2025, by which time the proposed change to the OHMC should be approved.
3 A condition of approval requires that the applicant meet the standard in effect at that
4 time. Further conditions of approval of this CUP will address the use itself, while the
5 DCYF will determine total number of students permitted based on their standards
6 according to WAC 110-300-0354.

7 **OHMC 19.67.030(2):** *It does not have a significant, adverse environmental impact*
8 *resulting in excessive noise, light and glare or soil erosion on adjacent property;*

9 5. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
10 5.

11 **OHMC 19.67.030(3):** *It is provided with adequate parking;*

12 6. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
13 5A.

14 **OHMC 19.67.030(4):** *It is served with adequate public streets, public utilities and*
15 *facilities;*

16 7. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
17 5C.

18 **OHMC 19.67.030(5):** *It otherwise meets the purpose of the district in which it is to be*
19 *placed;*

20 4. Criterion met. The criterion is met. The designated purpose of the RO district is
21 to provide for areas appropriate for professional and administrative offices. It is
22 intended that such districts shall buffer residential districts and the development
23 standards are such that office uses should be compatible with residential districts.

24 **OHMC 19.67.030(6):** It meets the goals and policies of the Oak Harbor comprehensive
25 plan.

4. Criterion met. The criterion is met for the reasons identified in the staff report.

DECISION

As conditioned below, the proposed Conditional Use Permit conforms to all required
criteria for approval of the Child Day Care Facility for the reasons detailed in the
Conclusions of Law above. The conditions necessary to assure compliance and
required by this Decision are as follows:

- 1 1. The child day care center be limited to the number of children based on the
2 standard found in OHMC 19.08.676 at the time of business operation. Should the
3 standard change during the subsequent operation of the business, the capacity
4 shall follow the new requirement.
- 4 2. Any physical expansion to the facility or increase in number of students, not
5 based on formulas found in local or state regulations, shall be subject to a revised
6 conditional use permit. The applicant shall notify city staff of any proposed
7 expansion to determine the proper process for approval.
- 7 3. Customers be notified of parking locations on paved areas adjacent to the business
8 and that parking at the adjacent office is not permitted.
- 9 4. That all requirements for building and fire codes be met for the building prior to
10 occupancy.
- 11 5. That all State licensing requirements be met prior to commencement of the day
12 care facility.
- 13 6. The conditional use permit applies only to the property for which the application
14 is made.
- 15 7. All light fixtures shall comply with City lighting standards. If not already required,
16 all lights on the east side of the building facing the adjoining residence must be
17 shielded and directed downward to prevent light or glare from spilling onto the
18 residential property.

18 Dated this 30th day of April 2025.

20 *Phil Olbrechts*

21 Phil Olbrechts,
22 City of Oak Harbor Hearing Examiner

23 **Appeal Right and Valuation Notices**

24 Pursuant to OHMC 19.67.060, this conditional use permit decision is a final land use
25 decision of Oak Harbor and may be appealed to superior court within 21 days as
governed by the Washington State Land Use Petition Act, Chapter 36.70C RCW.

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

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Appendix A

April 15, 2025, Hearing Transcript

CUP for Day Care Facility

File No. – 2501-0002

Note: This is a computer-generated transcript provided for informational purposes only. The reader should not take this document as 100% accurate or take offense at errors created by the limitations of the programming in transcribing speech. A recording of the hearing is available from the City should anyone need an accurate rendition of the hearing testimony.

Speaker 1 ([00:00](#)):

You want to get the recorder going Ms. Heller? Yep, we're on. Thank you. Alright, perfect. Alright, for the record, it's April 15th, 2025, 2:00 PM I'm Phil Albrecht, hearing examiner for the City of Oak Harbor holding a hearing this afternoon on a conditional use permit application for a daycare facility. This is case number 25 0 1 dash I believe Mr. Lindenberg is going to be the lead staff person on this one. He'll start the hearing off by giving us an overview of the project Once he's finished then we can take comments from the applicant if they want. It's not required or even necessary, but if you want to be heard that's certainly the time to get up to the podium and make your comments. After that then we'll move on to public comments. And so far it looks like probably Ms. Heller, the only persons here are going to be the applicant and staff. Is that right?

Speaker 2 ([00:50](#)):

That's correct.

Speaker 1 ([00:51](#)):

Okay. Alright. So we'll still I'll ask if any members of the public going to say something and if there's anyone there that happens to come in, we'll give him a chance to speak. After that, we go back to Mr. Lindenberg to answer any questions that were raised. Applicant gets final word. If you hear something you want to respond to applicant's, you can put that in at the end of the hearing. And then I have 10 business days to issue a decision. So not too complicated by state law I'm only allowed to consider evidence that's put in the record today. And so far that would be comprised of Mr. Lindenberg staff report and he included some attachments to that. We have exhibit one as a staff report, two or application materials prepared by the applicant. Three is the zoning and vicinity map. Four are the noticing documents used for this proceeding.

([01:38](#)):

And finally five is a public comment which I believe was submitted by a neighboring property owner. At this point, just want to ask if there are any objections to entry of those documents in the record if you need to see them or have any objection, just wave your hand if you're in the meeting room or if you're attending virtually, just click on the virtual hand that's up at the bottom of your screen says raise. Alright. Not seeing or hearing any takers. I'll go ahead and admit exhibits one through five. And Mr. Lindenberg, let me swear in at this point, just raise your right hand. Do you swear affirm to tell the truth, nothing but the truth in this proceeding?

Speaker 2 ([02:14](#)):

I do.

Speaker 1 ([02:14](#)):

Okay, great. Go ahead.

Speaker 2 ([02:17](#)):

So one note to start. The case number on this is a typo. There should be a two on the end of that. It's 2 5 0 1 dash zero two.

Speaker 1 ([02:25](#)):

Okay good.

Speaker 2 ([02:28](#)):

So this is a very straightforward application. I'm not going to go into too much detail here. To be perfectly honest. The location was previously a tea house and they had tea service there essentially and food and drink. So we did not experience any traffic issues based on that. So we weren't too concerned about having a daycare in that location. It is surrounded mostly by other residences, a multifamily single family and some offices and a school to the north. So it seems to fit in fairly well with the neighborhood there. The concern that we have from neighbor was parking kind of spilling over into that neighboring parcel and so we've put a condition of approval on there to have the patrons notified of where that they're supposed to park and drop off and everything. And I would expect that that's something that the applicant could do with a kind of introductory packet or orientation type thing.

([03:31](#)):

And then the final thing that we had on there was we are currently in the process of doing a code amendment to essentially separate the regulation of square footage for the play area from our zoning code and allow the state regulations to guide that so that we are not regulating the amount of square footage required for play areas, which used to be in our code or is still in our code right now. So we put a condition of approval in there that said that it needs to meet the current standard at time of operation. The applicant indicated that they're probably still ways off on that by the time that they're operating they should be well within the new regulation, which will be the state standard and that's the standard that we want to go by. So that is one of the kind of caveats to this, but we figured that it'll work out well timing wise to get there. So that's about all that I have as far as presentation is concerned. Unless you have any questions for me,

Speaker 1 ([04:30](#)):

Just a couple of quick ones. I know that the adjoining property owner had asked for signage and you seem to be favoring information packets or something there a reason. I mean your condition leaves to open either option I think, but is there a reason signs wouldn't be the best option here or

Speaker 2 ([04:47](#)):

To be perfectly honest, it's kind of an awkward layout the way that the driveway is set up and you can see on your aerial photo there is kind of a shared driveway where drivers will enter in and just split off in either direction to go to whichever business. So where you would put that sign is if you put it in the middle, it's going to get run over. I guess you could put something alongside the building, the applicant's building to have on there. But I think once you get to that point it almost, it's kind of too late at that

time. So my thought is instead of having a sign put out there and the expense on a sign or having the neighbor have to do something too, is that when folks come in and this is going to be a regular business, people are going to come here every day or frequently not just visiting once every month or something like that. So there will be habits built into that. I think that having that just included as an introductory when you start your child there is probably

Speaker 1 ([05:48](#)):

Sufficient. Okay, that makes sense. And then your condition number two, which basically says if you expand the facility and it doesn't follow state or local regulations, you have to apply for an amended conditional use permit application. I mean that seems to kind of imply that you can exceed those standards if you get a conditional use permit approval. I'm not sure. I mean is there any utility to that condition because if they violate state or local standards, they're not allowed to expand anyway. So I don't know why you would require a conditional use permit application in that case. That's part I'm not tracking.

Speaker 2 ([06:25](#)):

Yeah, I think that not based on formulas was a poorly written attempt to make sure that it was the formula being used at the time. And I might have kind of messed that up because we are currently under a formula based on our OHMC standards and we're going to be moving over to a formula based on state standards. I think I just kind of muffed the wording on that one to be perfectly honest. So if you feel that that needs to be changed or removed or modified, we're certainly open to that.

Speaker 1 ([06:59](#)):

Okay, sounds great. Alright. Okay, well let's move on to applicant. Like I said, don't have to say anything but it's certainly welcome to always great to hear from the applicant.

Speaker 2 ([07:09](#)):

The applicant has declined to speak

Speaker 1 ([07:11](#)):

Up. Okay, that's perfectly fine too. Alright, let's move on to public comments and like I said, anyone in the room. I think we just have the applicant in the room, right? And attending virtually. I see a Tim Shelley, I don't know, is that somebody who's on staff or, yes. Okay. Alright, well I guess that's it then. I did last call for anyone else out there. Alright, no takers. I think I can just close the hearing then. That makes it real simple. And yeah, we just had another one of these Mr. Lindenberg like what, three months ago or something for a daycare center. So

Speaker 2 ([07:42](#)):

Yeah, I think we might be looking at changing our code so that we don't have to do these so frequently.

Speaker 1 ([07:47](#)):

Sounds good. Well it's always a big need for these facilities, so it's nice to see another one sprout up there in Oak Harbor and should be pretty easy approval on my part. So we'll get that decision of approval out within the next couple of weeks. Thanks all for participating. Have a great day and we're adjourned.

