

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

In the Matter of the Application of)	No. 2306-0033
City of Oak Harbor Fire Department)	
For a Conditional Use Permit)	Swantown Avenue Fire Station
_____)	
	FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The request for a conditional use permit to allow for the construction of a fire station on an irregularly shaped, approximately 1.6-acre property, located at 1250 SW Swantown 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 July 20, 2023.

Testimony:

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

Ray Lindenburg, City Senior Planner
Blaine Oborn, City Administrator
Ray Merrill, City Fire Chief
Coreen Lerch, Property Owner

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report
2. Application Materials:
 - A. Site Plan (8 Sheets), dated April 2023
 - B. Preliminary Stormwater Site Plan, Sound Development Group, LLC, dated June 12, 2023
 - C. Summary Application, dated June 16, 2023
 - D. Legal Description
 - E. Project Narrative
3. Zoning and Vicinity Map
4. Notice Materials:
 - A. Certification of Public Notice, dated June 23, 2023

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- B. Notice of Application, dated June 24, 2023
- C. Notice of Public Hearing, dated June 24, 2023
- D. Mailing List
- E. Certification of Public Notice, dated June 23, 2023
- F. Open House Flyer, with Attachments

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. The City of Oak Harbor Fire Department (Applicant) requests a conditional use permit (CUP) to allow for the construction of a fire station facility on an approximately 1.6-acre property. The facility would consist of a 7,100 square foot two-story building: the first floor would contain an apparatus bay, decontamination room, storage area, and sleeping facilities; the second floor would contain offices, kitchen, day room, and an exercise area. Associated improvements on the property would include parking areas, utilities, landscaping, solid waste disposal facilities, and a backup generator. Access to the property would be provided by a curb cut sharing an access driveway with the parcel to the west. The property is located at 1250 SW Swantown 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 June 16, 2023. On June 23, 2023, the City provided notice of the application by mailing or emailing notice to property owners within 500 feet of the property and to reviewing agencies and by posting notice on-site and at City Hall, with a comment deadline of July 7, 2023. The next day, the City published notice of the application in the *Whidbey News Times*. On June 23, 2023, the City provided notice of the open record hearing associated with the application by mailing or emailing notice to property owners within 500 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, pages 5 and 6; 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, which provides an exemption for minor new construction of government facilities of this type. *Exhibit 1, Staff Report, page 5; Testimony of Ray Lindenburg.*

¹ The property is identified by tax parcel number R13203-138-1910. *Exhibit 1, Staff Report, page 1.* A legal description is contained in the application materials. *Exhibit 2.D.*

Comprehensive Plan and Zoning

4. The irregularly shaped subject property is split-zoned and has split land use designations under the City's Comprehensive Plan. The southern portion of the property is designated "High Intensity Residential/Low Intensity Commercial" by the City Comprehensive Plan. The northern portion of the property is designated "Low Intensity Residential" by the 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*. The Low Intensity Residential designation is intended to "accommodate most of the residential uses and support low intensity uses such as religious institutions, care facilities, schools, etc., that create healthy livable neighborhoods." *City Comprehensive Plan, page 25*.

City staff identified the following Comprehensive Plan policies as relevant to the proposal:

- Maintain and enhance fire protection services to safeguard life, property and firefighting personnel. [Government Services Element Goal 2]
- Ensure that existing fire protection levels are not diminished as a result of urban growth. [Government Services Element Policy 2.a]
- Maintain a fire protection response time standard of five minutes or less for fire-related incidents, and four minutes or less for medical-related incidents. [Government Services Policy 2.b]
- Maintain adequate fire protection staffing in order to meet its LOS standards. [Government Services Policy 2.d]
- Maintain or improve the City's Survey and Rating Bureau rating. [Government Services 2.e]

Exhibit 1, Staff Report, pages 1 and 5.

5. The northern portion of the property is zoned "Limited Multiple Family Residential" (R-2). The southern portion of the property is zoned "Multiple Family Residential" (R-4). Properties to the north and west are zoned R-2. Properties to the south and east are zoned R-4. The R-2 zoning district is intended for medium density residential housing. *Oak Harbor Municipal Code (OHMC) 19.20.125*. The R-4 zoning district is intended to "provide for and protect areas for high density multiple-family residential development for persons who desire to live in an apartment environment." *OHMC 19.20.195*. Government facilities are "government-owned properties and/or buildings utilized for administrative or protective services, storage yards, treatment plants, well sites, pump stations and sanitary landfills." *OHMC. 19.08.334*. Government facilities are permitted in the R-2 and R-4 zoning districts with approval of a conditional use permit. *OHMC 19.20.1050*. Accordingly, the Applicant is requesting a conditional use permit to

construct the requested two-story fire station facility. *Exhibit 1, Staff Report, pages 1 through 3.*

Existing Property and Surrounding Development

6. The property slopes down approximately 35 feet from the north edge of the property to the street for a distance of approximately 450 feet. The property is currently developed with a single-family residence, detached garage, barn, and storage building on the southern half of the site. The property also contains a gravel driveway and landscaping consistent with a single-family residence. The northern portion of the property contains a variety of trees and other vegetation. The property's frontage on SW Swantown Avenue is developed with typical public improvements, including curb, gutter, and sidewalk. All public utilities are located in the right-of-way or nearby easements. Properties to the north, east, and west are currently developed with multi-family residences. The property to the south is currently vacant but has been approved for multi-family development. *Exhibit 1, Staff Report, pages 1 and 2.*

Conditional Use Permit

7. As noted above, the Applicant requests a CUP to construct a fire station facility within the R-2 and R-4 zoning districts. 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 specific use in the R-2 or R-4 zoning district.
 - The proposal is not expected to create any excessive light, glare, or soil erosion. If the Conditional Use is approved, the site plan would include standards for lighting and the minimization of glare to neighboring properties per OHMC 19.48.052.6. This is likely to be a concern for neighboring parcel owners and residents, and a condition of approval has been recommended.
 - The nature of a fire station would introduce noise to the area, however, as noted by the Fire Chief, SW Swantown Avenue is a major thoroughfare through the area and already has fire trucks, ambulances and other emergency services operating in the area. City staff recommends a condition that the Fire Department not utilize sirens until underway on SW Swantown Avenue, not upon exiting the building.
 - Parking has been proposed for the site, though no specific standard is set for this land use in Chapter 19.44 OHMC. In that situation, the Applicant may propose parking space counts to meet the needs of the facility – comparable to operation of a fire station on East Whidbey Avenue, the Applicant has proposed a site plan showing parking to meet their needs.
 - The location of the proposed fire station is adjacent to all public services and the use of the property should not create any undue burden on those existing services.
 - The two underlying zoning districts are generally intended to provide space for residential neighborhoods. The property is located adjacent to a major

thoroughfare in the southwest quadrant of the City, which was a key consideration in the location of a fire station facility. While the proposed use is not specifically contemplated in the purpose and intent statements of the zoning code, the provision of a “government facility” has been shown in the land use matrix of the OHMC, and before the matrix was created, in the two separate zoning districts’ “permitted uses” lists.

- The proposed use meets a key need for protective services in this geographic area, and would not negatively impact the provision of land for higher density residential development for several reasons: (1) the subject parcel is oddly shaped, making efficient development of multiple residential units difficult; (2) neighboring parcels with low- to medium-density development exist, which could be easily reconfigured without significant changes to be higher density; (3) the split zoning designation between two different land use categories limits the overall density to an average of the two zoning districts, rather than a maximum of 22 units per acre set in the R-4 district.
- Potential negative impacts to neighboring parcels are proposed to be mitigated in the following ways:
 - Heavy landscaping is proposed to be located along the east and west perimeter of the site adjacent to the proposed fire station building.
 - Landscaping would screen parking areas and utilities such as a generator and solid waste facility.
 - Lighting would be directed downward, avoiding glare to neighboring parcels.
 - The northern portion of the site would be maintained as existing landscaping and native vegetation.
 - The exterior design of the building would be high quality to be a positive visual impact in the area.
 - Noise and increased traffic would be offset by significantly faster emergency response times to the south and west portions of the City.
- If the Conditional Use Permit is approved, the Applicant plans to submit a full site plan review package including a site plan, landscape plan, building plans and other supporting documents to be reviewed as a Type II staff review level. As a part of that process, the Applicant would be required to meet the conditions of approval, as well as appropriate building code standards and requirements of the OHMC including, but not limited to Landscaping requirements (19.46), Parking standards (19.44) and elements of the Design Regulations and Guidelines (DRG) document. Those items are not up for specific consideration for the Hearing Examiner but would be reviewed as part of an overall permit submittal by staff administratively. City staff would ensure that the standards listed in the City code are met by the Applicant.

Exhibit 1, Staff Report, pages 3 through 5.

Testimony

8. City Senior Planner Ray Lindenburg testified generally about the proposal and how, with conditions, it would comply with the City Comprehensive, zoning ordinances and the specific criteria for approval of a conditional use permit. He explained that the proposed government facility requires a conditional use permit in both the R-2 and R-4 zoning districts. He stated that there would be an entrance for the fire apparatus and a separate driveway that leads to parking located behind the building. He noted that the Applicant would install landscaping in addition to maintaining some existing vegetation in order to screen the proposed use from adjacent residential properties. Mr. Lindenburg explained that surrounding uses primarily consist of multi-family residential development. He noted that the property contains an existing well that would be decommissioned. He explained that, while the proposed use would introduce noise consistent with the nature of a fire station, fire trucks currently pass through the area and sirens would not start up immediately upon exiting the facility. He noted that lighting would be directed downward. Mr. Lindenburg stated that the property is well suited for the proposed use because it is located adjacent to a major thoroughfare and would be located in an area where fire services are needed. He commented that increased noise and traffic would be offset by significantly faster emergency response times, which would benefit all members of the community. *Testimony of Mr. Lindenburg.*

9. City Administrator Blaine Oborn explained that the City currently does not own the property but has it under contract and approval of the CUP is a condition for purchase of the property. He stated that the City Comprehensive Plan may be amended in the future for the property to be designated for public facilities, but that a change to the Comprehensive Plan and zoning is not necessary to accommodate the proposed use on the property. Mr. Oborn explained that, because the City is also the Applicant for this application, the City exceeded notice requirements. He noted that the City expanded the required radius for notice to property owners within 500 feet of the property and held an open house for members of the community. *Testimony of Mr. Oborn.*

10. City Fire Chief Ray Merrill explained that the City began working on the proposal to develop a new fire station about ten years and ago and completed strategic plans and feasibility studies before issuing a recommendation for constructing a fire station in the southwest quadrant of the City. He noted that the proposed building has been designed to be compatible with surrounding residential development. He also stated that the Applicant worked with electrical engineers in order to reduce glare from lighting on adjacent properties to the greatest extent possible. Mr. Merrill commented that he met with members of retirement community in the area, who voiced support for the location of the proposed facility. *Testimony of Mr. Merrill.*

11. Coreen Lerch explained that she is the current owner of the subject property and that she purchased the property in 2009 with the intent of building a multi-family development on

the property. Given the unique characteristics of the site, however, she welcomed the opportunity to work with the Fire Department on the subject proposal instead. She stated that she supports the location of the proposed use on the subject property and stressed that the proposed facility would provide an important service to the surrounding community. *Testimony of Ms. Lerch.*

Staff Recommendation

12. Mr. Lindenburg testified that City staff recommends the approval of the conditional use permit, with conditions. *Exhibit 1, Staff Report, page 6; Testimony of Mr. Lindenburg.*

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 approximately 1.6-acre property is located in two zoning districts. The northern portion of the property is zoned R-2, and the southern portion of the property is zoned R-4. Properties to the north and west are zoned R-2. Properties to the south and east are zoned R-4. Government facilities are permitted in the R-2 and R-4 zoning districts with a conditional use permit. There are no listed special conditions for government facilities in the R-2 and R-4 zoning districts. The proposed use of the property as a fire station

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facility would be consistent with the purposes of the R-2 and R-4 zoning districts by providing emergency services for residential development and other development in the area.

The City determined that the proposal is categorically exempt from SEPA environmental review. The Applicant would mitigate for impacts to neighboring parcels by installing heavy landscaping along the east and west perimeter of the site adjacent to the proposed building; screening parking areas and utilities with landscaping; directing light downward to avoid glare on neighboring properties; maintaining existing landscaping and native vegetation on the northern portion of the site; designing the exterior of the building to have a positive visual impact in the area; offsetting noise and increased traffic by significantly faster emergency response times to the southern and western portions of the City. The location of the proposed fire station is adjacent to all public services and the use of the property would not create any undue burden on those existing services.

The Applicant has proposed parking for the site, though no specific standard is set for the proposed land use in Chapter 19.44 OHMC. The Applicant will propose the number of parking spaces to meet the needs of the facility and this will be further evaluated during site development.

The proposed development would be consistent with several Comprehensive Plan policies, including policies encouraging the maintenance and enhancement of fire protection services to safeguard life, property, and firefighting personnel; ensuring that existing fire protection levels are not diminished as a result of urban growth; maintaining a fire protection response time standard of five minutes or less for fire-related incidents, and four minutes or less for medical-related incidents; maintaining adequate fire protection staffing in order to meet LOS standards; and maintaining or improving the City's Survey and Rating Bureau rating. 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 – 12.*

DECISION

Based on the above findings and conclusions, the request for a conditional use permit to allow for the construction of a fire station on an approximately 1.6-acre property, located at 1250 SW Swantown Avenue, is **APPROVED**, with the following conditions:

1. The proposed Conditional Use consisting of a fire station as described in the application materials, shall be in general conformance with the narrative and application materials included in Exhibit 2 and abide by conditions and requirements set forth by the City in its various review materials (including the Staff Report associated with the open record hearing before the Hearing Examiner).

2. Exterior lighting on the site shall be directed downward, away from neighboring residential units and minimized to the extent to allow for safety and convenience of employees and visitors to the site.
3. Noise generated on the site shall be minimized to the maximum extent feasible. Sirens should not be activated until vehicles are underway on SW Swantown Avenue or nearby streets unless in an emergency situation where it is necessary to do so.
4. Reversing alarms on vehicles on the site should be silenced or minimized except in emergency situations.
5. Testing or running of the generator should be conducted during daylight hours to the greatest extent feasible, except during emergency situations.
6. Landscaping shall be maintained throughout the site – native and non-native vegetation should be maintained to prevent overgrowth, poor appearance, or potential obscuring security visibility.
7. This 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.
8. This conditional use permit applies only to the property for which the application is made.

DECIDED this 3rd day of August 2023.



ANDREW M. REEVES
Hearing Examiner
City of Oak Harbor