

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF SNOHOMISH**

In the Matter of the Application of)	No. 17-13-CUP
)	
Joshua Scott, Craft, LLC)	CD Trust
)	
)	FINDINGS, CONCLUSIONS,
<u>For Approval of a Conditional Use Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for a conditional use permit to allow conversion of existing vacant buildings into an assisted-living facility (ALF) at 402 Avenue E and 410 Avenue E, Snohomish, Washington, is **APPROVED**. Conditions of approval are necessary to ensure compliance with the Comprehensive Plan and to mitigate specific project impacts.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on February 26, 2014.

The Hearing Examiner kept the record open until 11:00 AM on March 7, 2014, to receive responses from Christopher Koh, CD Trust (Applicant), and the City of Snohomish to a list of questions regarding the conditional use permit application in Exhibit 45. This Order limited the Applicant's and the City's responses to those offered in answer to questions listed in Exhibit 45.

The Applicant timely submitted a letter from Joshua Scott, dated March 5, 2014, containing responses to Exhibit 45. This was admitted as Exhibit 49. The City timely submitted a letter from Owen Dennison, dated March 7, 2014, containing responses to Exhibit 45. This was admitted as Exhibit 50. Separately, the City provided a letter from Pat Anderson, City Attorney, dated March 5, 2014, responding to the Hearing Examiner's inquiry about whether the City's proposed condition of approval restricting residents to those 62 years old and older would violate federal or state laws. This was admitted as Exhibit 51.

Testimony:

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

Duane Dvorak, City Senior Planner
Owen Dennison, City Planning Director
Sharon Pettit, City Building Official
Andrew Sics, City Engineering Department
Christopher Koh, Applicant
Joshua Scott, Project Architect
Maria Morrow
Morgan Davis
Mitch Cornelison

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Henry Eskridge
Carroll Brown
Karen DeYoung
Fai Dawson
Diana Carver
Rich Softye
Carole Barnes

Exhibits:

The following exhibits were admitted into the record:

1. Application form, applicant narrative, site plan, and building elevations, dated December 2, 2013
2. Email from Anthony Holloway, 232 Avenue G, dated January 7, 2014
3. Email from Mitch Cornelison, 331 Avenue F, dated January 12, 2014
4. Email from Colleen Dunlap, 1614 Fourth Street, dated January 12, 2014
5. Email from John Dunlap, 1614 Fourth Street, dated January 12, 2014
6. Letter from Mitch Cornelison, 331 Avenue F, dated January 12, 2014
7. Email from Karen DeYoung, 418 Avenue G, dated January 13, 2014
8. Email from Mitch Cornelison, 331 Avenue F, dated January 14, 2014
9. Letter from Rich and Eileen Softye, 1314 Fourth Street, dated January 14, 2014
10. Email from Beth Jarvis, 1914 Fifth Street, dated January 14, 2014
11. Letter from Carroll Brown, 432 Avenue G, dated January 16, 2014
12. Letter from Becky Dawson, 220 Avenue D, dated January 15, 2014
13. Letter from Fai Dawson, 220 Avenue D, dated January 15, 2014
14. E-mail exchange between Owen Dennison and Beth Jarvis, dated January 17, 2014
15. Letter from Hank Eskridge, 416 Avenue E, dated January 17, 2014
16. Email from Gretchen Bender, 427 Avenue E, dated January 17, 2014
17. Letter from Verna Stegmer and Robin Bader, 318 Avenue E, dated January 17, 2014
18. Email from Eldon and Sayra Slife, 305 Avenue A, dated January 20, 2014
19. Letter from Nick Bender, 427 Avenue E, undated
20. Email from Bonnie Blake, 330 Avenue H, dated January 25, 2014
21. Email Exchange between Duane Dvorak and Karen DeYoung, dated February 3 and February 4, 2014
22. Email from Mitch Cornelison, 331 Avenue F, dated January 13, 2014
23. Email reply to Mitch Cornelison from Duane Dvorak, dated January 15, 2014
24. Email from Duane Dvorak to various "Parties of Record," dated January 17, 2014
25. Email from Duane Dvorak to Mitch Cornelison, dated January 27, 2014
26. Parties of Record list
27. Staff photographs of Existing Conditions @ 402 Avenue E, dated January 27, 2014
28. Letter to Charlie Chesterfield, Snohomish Trust from Brooke Eidem, regarding the approval of Boundary Line Adjustment File 19-08-001, dated August 25, 2009
29. SEPA Checklist, dated December 4, 2013
30. Excerpt from Parking Generation, 3rd Edition, Institute of Transportation Engineers, Washington D.C., 2004, undated

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31. Adjacent Property Owners Affidavit, map and labels, dated December 6, 2013
32. Letter of Complete Application, dated December 23, 2013
33. Notice of Application, with Affidavits of mailing/posting/publishing, dated January 3, 2014
34. Notice of Public Hearing/Determination of Non-Significance, with Affidavits of mailing/posting/publishing and corrected site plan, dated February 1, 2014
35. Recorded Lot Line Adjustment for 401 and 410 Avenue E, AFN 8901090330, dated May 10, 1988
36. Email from Mitch Cornelison acknowledging an email to Parties of Record, dated January 17, 2014
37. Letter from Louisa Moe, 417 Avenue H, dated January 8, 2014
38. Staff Report to Hearing Examiner, dated February 11, 2014
39. Email from Carroll Brown, dated January 17, 2014
40. Email from Carroll Brown, dated February 21, 2014
41. Letter from Mitch and Lauren Cornelison to Ted Hunter, Snohomish City Examiner, and Duane Dvorak, Snohomish City Senior Planner, dated February 25, 2014
42. Letter from Henry Eskridge, undated
43. Points for Consideration by Carroll Brown, dated February 26, 2014
44. Letter from Gretchen Bender, undated
45. Questions for Hearing, undated
46. Letter from Carole S. Barns with Attachments, undated
47. Letter from Diana Raphael Carver, undated
48. Exhibits from Owner 17-13-CUP
 - I. Decision from Hearing No. 19-08, dated December 2, 2008
 - II. Letter from Susan Starrfield, Supervisor, Snohomish County Long Term Care and Aging, dated February 19, 2014
 - III. Snohomish Health District, *Creating an Aging-Friendly Snohomish County Series III*, dated April 2012
 - IV. Snohomish County Area Plan on Aging 2012-2015
 - V. Letter from Sam Wan, CEO of KIN ON, dated February 21, 2014
 - VI. Email from Chris Koh, dated January 31, 2014
49. Applicant's Post Hearing Response, dated March 5, 2014
50. City's Post Hearing Response, dated March 7, 2014
51. Letter from Pat Anderson, City Attorney, dated March 5, 2014
52. Letter from Chris Koh, undated¹
53. Letter from Morgan Davis, dated February 28, 2014²

¹ This document was not admitted into the record because it was submitted after the close of the hearing and is beyond the scope of the Order that kept the record open.

² This document was not admitted into the record because it was submitted after the close of the hearing and is beyond the scope of the Order that kept the record open.

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. Christopher Koh, CD Trust (Applicant), requests a conditional use permit (CUP) to allow conversion of existing vacant buildings into an assisted-living facility (ALF) at 402 Avenue E and 410 Avenue E,³ Snohomish, Washington.⁴ *Exhibit 1; Exhibit 38, Staff Report, page 2.*
2. The City of Snohomish (City) determined that the CUP application was complete on December 23, 2013. The City provided notice of the application by posting notice in City Hall and on the site; mailing notice to the Applicant and all property owners within 300 feet of the property; and publishing notice in *The Herald* on January 3, 2014. The City provided notice of the public open record hearing by posting notice in City Hall and on the site; mailing notice to the Applicant and all property owners within 300 feet of the property; and publishing notice in *The Herald* on February 1, 2014. *Exhibit 32; Exhibit 33; Exhibit 34.*

State Environmental Policy Act Review

3. The City acted as lead agency to determine the environmental impact of the CUP proposal, as required by the State Environmental Policy Act (SEPA). The City reviewed the environmental checklist and other information on file with the lead agency and determined that, through compliance with City ordinances and state law, the proposal would not have a probable significant adverse impact on the environment. The City issued a Determination of Nonsignificance (DNS) on February 1, 2014. The City provided notice of the DNS by posting notice in City Hall and on the site; mailing notice to the Applicant and all property owners within 300 feet of the property, and to the parties of record; and publishing notice in *The Herald* on February 1, 2014. Duane Dvorak, City Senior Planner, testified that no appeal of the DNS was filed. *Exhibit 29; Exhibit 34; Exhibit 38, Staff Report, page 7; Testimony of Mr. Dvorak.*

Comprehensive Plan, Zoning, and Surrounding Property

4. The property is designated Single Family Residential (SFR) by the City Comprehensive Plan. Mr. Dvorak testified that the proposed use is consistent with the Comprehensive Plan because the use is identified as a CUP in the zoning regulations, and the zoning regulations implement the Comprehensive Plan. Joshua Scott, the Applicant's Project

³ 410 Avenue E is also included within the scope of the review because a substantial portion of the off-street parking requirement in support of use proposed for 402 Avenue E is planned to be located on 410 Avenue E. *Exhibit 1; Exhibit 38, Staff Report, page 2.*

⁴ The property is identified by tax parcel numbers 28051300110300, 00444500200300 and 28051300103000. *Exhibit 38, Staff Report, page 1.*

Architect, pointed out that the City Council enacted zoning codes to implement the Comprehensive Plan. Mr. Scott testified that a 6-unit adult family home is already a permitted use. Mr. Dvorak testified that the property is located within the Single Family Residential zoning district. Properties to the north, south, east and west are developed as single-family residences. The Applicant received approval of a CUP for this site in 2008, but the proposed use was not implemented. Mr. Scott stated that the previous application in 2008 is not relevant to the current request, except for the descriptions of the history of the use of the property. Mr. Dvorak agreed with this statement, and asked that the current request be evaluated ‘on its own merits.’ Christopher Koh, Applicant, asked that the 2008 CUP application be included in the record as a reference.⁵ *Exhibit 38, Staff Report, pages 4 to 5; Testimony of Mr. Dvorak; Testimony of Mr. Scott; Testimony of Mr. Koh.*

5. The City identified several Comprehensive Plan goals and policies relevant to the proposed project, including the following:⁶
 - a. Housing goals and policies promote safe and sanitary housing that is available for all economic sectors of the population, including those with special needs, and housing of a standard that is in character with the existing community characteristics and visions for quality development. *City Comprehensive Plan; Exhibit 38, Staff Report, Attachment A.*
 - b. Economic Development goals and policies promote maintaining a standard that identifies and conserves physical capability and suitability of the community’s economy, and maintaining the practice of assisting with special planning and development efforts to promote reuse and infill for older buildings, to redevelop vacant properties, and to revitalize the economic opportunities areas, especially in the Maple Avenue area and Historic Business District. *City Comprehensive Plan; Exhibit 38, Staff Report, Attachment A.*
 - c. Land Use goals and policies promote maintaining a standard for consistent and compatible development with the adopted Vision Statement and other policies in the Policy Plan, and with the State of Washington’s Growth Management Act (GMA), in order to allow for increased density and planned growth; utilizing the adopted land use policies and maps to evaluate all annexations, subdivisions, and other land use actions and requests; and following a standard of City promotion of all new development that occurs in a manner consistent with the ability of the City

⁵ Snohomish Trust LLC, CUP and Minor Variance Request, No. 19-08 decision is included as Exhibit 48, I.

⁶ The City identified the following goals and policies as particularly relevant to the proposed project: Environmental Protection Element Policy 3.1; Economic Development Policy ED 1.6, ED 10.2; Community Facilities and Services Policy CO 6; Land Use Element Policy 3.1, Goal LU-8, and Policies PA 8.1 and PA 8.4; Transportation Element Policy 4.5; Utilities Policies UT 2.5, 2.8, and 2.9; Capital Facilities Policies CF 1.4 and CF 2.7; and Policy Plan Implementation Policies PI 1.6 and PI 1.7. *City Comprehensive Plan; Exhibit 1, Staff Report, pages 5 to 7 and Attachment A.*

and/or private individuals to provide and pay for necessary street improvements, services, facilities, and utilities needed to accommodate a given intensity or development density. *City Comprehensive Plan; Exhibit 38, Staff Report, Attachment A.*

- d. Single Family Land Use goals and policies promote standards that provide for suitable living environments for individuals and families with characteristics of quietness, privacy, safety, and land use stability and compatibility; that maintain a practice that single-family areas should coincide with defined planning areas and defined historic districts or areas that exhibit special qualities should be preserved; that provide allowance for low-density apartments as a conditional use in conjunction with the operation of a nursing home in single-family areas, provided that they are used for housing, or are managed-care facilities on a site of three acres or more for the overall operation; and that maintain a practice that senior housing be permitted in close proximity to urban centers and transportation systems.⁷ *City Comprehensive Plan; Exhibit 38, Staff Report, Attachment A.*
 - e. Policy Plan Implementation goals and policies provide for the Official Land Use Plan Map as adopted by the City Council to be incorporated as an element of this plan and to implement the Vision Statement and policies of this plan; provide the evaluation process and guidelines for proposed plan amendments and requests for new development or redevelopment; provide encouragement for citizens to participate in all phases of the planning policy, and provide for formulation and revision phases as well as plan implementation. *City Comprehensive Plan; Exhibit 38, Staff Report, Attachment A.*
6. Mr. Dvorak testified that there is no definition of “Senior Assisted Facility” in the City’s ordinances. He stated that the proposed use for the “Senior Assisted Living Facility” appears to be consistent with “Senior Citizen Assisted” and “Community Residential Facility – CRF,” which are both identified as conditional uses in the land use table for Single Family Residential in Snohomish Municipal Code (SMC) 14.207.070. He stated his opinion that the designation of “Senior Citizen Assisted” in the land use table is equivalent to an “Assisted Living Facility” (ALF) as defined in RCW 18.20.020(2). Mr. Dvorak testified that City staff used the ALF definition in the RCW to review the potential impacts and possible mitigation measures for the project. The City recommended that the RCW definition be referenced as a condition for any approval of this application to ensure that any use of the site will not be as a Community Residential Facility featuring counseling or transitional living services. This would be considered an expansion of services substantially different from the use that is requested in this application. *Exhibit 38, Staff Report, pages 2 to 3; Testimony of Mr. Dvorak.*

⁹ In the City’s Post Hearing Response, Owen Dennison, Planning Director, explained that City staff looked at this policy as having the intent of providing multi-family use on a limited basis and did not mean to correlate this proposal to a nursing home. *Exhibit 50.*

Subject Property and Proposed Use

7. The site is 0.52 acres and generally flat. A structure that was a former single-family residence sits on the site. The structure had been expanded to function as a nursing home between 1985 and 1990. Following the nursing home use, the structure was used as a private school and day-care facility between 1990 and 2000. The structure is currently not used and is in a state of disrepair. The site also contains a detached single-family home to the north. According to a boundary line adjustment (BLA) recorded in 1989, the dwelling and the primary structure are considered to be on one parcel for the purposes of construction, land use, and utility codes. The site was approved for a second BLA in 2008 that was intended to establish the detached residence on a separate lot. City staff could find no evidence, however, that the approved BLA was recorded. Without a recorded BLA, the single-family structure may constitute a second dwelling on one parcel in the Single Family designation, which would conflict with the permitted uses for the site. Mr. Dvorak explained that, although the 2008 BLA is not recorded, it is valid because it was already approved. He recommended a condition of approval that the BLA be recorded.

The site also includes a small, unpaved parking lot at the north end of the site, pedestrian access ways from the sidewalk on Avenue E to both structures, and a combination of fencing and landscaping along Avenue E. The detached single-family structure has a separate driveway between the home and the north property line. *Exhibit 1; Exhibit 27; Exhibit 28; Exhibit 35; Exhibit 38, Staff Report, pages 6 to 7; Testimony of Mr. Dvorak.*

8. The primary existing structure has a non-conforming rear-yard setback because a part of the rear of the principal structure encroaches onto the alley right-of-way and does not meet the required 20-foot rear-yard setback at any point on the west façade. The Applicant does not propose to enlarge the structure, but would remove a portion of it at the southeast corner in order to accommodate an expanded parking area in support of the proposed ALF use. Adjacent Avenue E and Fourth Street frontages are currently improved with curbs, gutters, and sidewalks. The adjacent 16-foot-wide public alley is not paved. *Exhibit 1; Exhibit 35; Exhibit 38, Staff Report, pages 6 to 7; Testimony of Mr. Scott.*
9. The Applicant proposes converting the existing vacant structures into a 25-bed Senior ALF, consisting of a mixture of single- and double-occupancy rooms. The facility would also include a common dining area, a multi-use entertainment room, and a shared computer room. The Applicant plans on following the Snohomish Design Standards when improving the structure. Mr. Dvorak testified that the City would require that the proposed project be reviewed by the City Design Review Board to ensure compatibility with surrounding developments. He recommended a condition of approval to ensure that design review would occur. *Exhibit 1; Testimony of Mr. Dvorak; Testimony of Mr. Scott.*
10. The City recommended a condition of approval to limit the facility to one kitchen (Recommended Condition No. 3). Mr. Dvorak testified that a kitchen is defined as a room where meals are prepared and served. Mr. Dvorak testified that the City suggests

including an annual visit requirement to Recommended Condition No. 3 in order to determine compliance. City Building Official Sharon Pettit testified that the City already has a policy of annual inspections of multi-family and commercial properties. Mr. Scott testified that he would like to remove the last clause of Recommended Condition No. 3, which reads: “there shall be no meal preparation allowed in resident occupied rooms, administrative offices or other service areas,” or defer to the state definition of “kitchen” facility. *Exhibit 38; Staff Report, page 12; Testimony of Mr. Dvorak; Testimony of Ms. Pettit; Testimony of Mr. Scott.*

11. The Applicant plans to include landscaping for the project to buffer the proposed use, including parking areas and garbage dumpsters, from surrounding streets and properties. The site contains “significant trees” as defined in SMC 17.100.020. The current site plan indicates only that existing playgroup equipment would be removed and the yard re-landscaped. Under SMC 14.240.030, the City requires that, when significant trees are approved for removal, the trees must be replaced in an appropriate manner and in accordance with an approved landscape plan. City staff also noted that that blackberry vines are colonizing along the edge of a concrete path leading off the southern sidewalk. Mr. Dvorak recommends a condition of approval to address implementation of an approved landscape plan. Mr. Scott testified that the Applicant would prepare a complete landscaping plan for City review to be implemented following approval. *Exhibit 1; Exhibit 38, Staff Report, pages 9 and 12; Testimony of Mr. Dvorak; Testimony of Mr. Scott.*
12. Maria Morrow, owner of four assisted-living facilities, testified she may be the operator of the proposed facility. Ms. Morrow explained that every one of her facilities is licensed by the State for six individuals. Ms. Morrow testified that no resident has a car on the premises of the facilities she operates, and no one cooks in their rooms. *Testimony of Ms. Morrow.*

Noise and Surrounding Property Impact

13. The City received twenty-one letters and emails commenting on the proposal. Mr. Dvorak testified that the comments expressed a wide range of concerns with the proposed use, including traffic generation related to visitors, staff, deliveries, and support service vehicles; on-street parking related to visitors, staff, and deliveries; density of the proposed use; illumination of parking areas and entryways; reduction of surrounding property values; noise; building design incompatibility with surrounding single-family uses; potential adverse impacts on city services and infrastructure; outdoor employee smoking areas; and inadequate time for public comment. *Exhibit 2; Exhibit 3; Exhibit 4; Exhibit 5; Exhibit 6; Exhibit 7; Exhibit 8; Exhibit 9; Exhibit 10; Exhibit 11; Exhibit 12; Exhibit 13; Exhibit 14; Exhibit 15; Exhibit 16; Exhibit 17; Exhibit 18; Exhibit 19; Exhibit 20; Exhibit 21; Exhibit 37; Exhibit 38, Staff Report, pages 5 to 6; Testimony of Mr. Dvorak.*
14. A number of interested parties testified at the hearing about their concerns with the CUP application. Testimony included the following statements:

- a. Morgan Davis expressed a concern that, if the facility is not restricted only to seniors, being open to all may be problematic for this location. *Testimony of Morgan Davis.*
- b. Mitch Cornelison testified that he believes a CUP should not override the restrictions of single-family zoning that limit unrelated residents living in the same household to six people. Mr. Cornelison explained that large numbers of people, beyond six, living in one home is detrimental to the neighborhood. Mr. Cornelison testified that the staff report is problematic because the City did not place restrictions on age, density, or parking. Mr. Cornelison stated that large facilities should be not promoted in SFR zones and that he believes that past uses that were not SFR uses may have been allowed due to prior codes. Mr. Cornelison expressed his goal to have the facility be an “Adult Family Home,” which RCW 70.12.021 restricts to six or fewer people, rather than an “Assisted Living Facility,” which is defined to consist of seven or more residents. Mr. Cornelison pointed out that a facility with multiple kitchens would constitute multi-family housing. *Testimony of Mr. Cornelison.*
- c. Henry Eskridge, a neighbor who lives next door to the subject property, testified that he would like the application to be denied because the BLA is inaccurate, not approved, and could not be approved. Mr. Eskridge explained that the BLA could not be approved because it is inconsistent with surrounding lots and the BLA proposal degrades the property because the property’s back yard cannot be used, and there is a parking lot right outside of the back door. Mr. Eskridge testified that he believes the proposed use is contradictory to the Comprehensive Plan policy that encourages “stable family neighborhoods” and is contradictory to the qualities of life defined in the Plan’s goals. *Testimony of Mr. Eskridge.*
- d. Carroll Brown testified that this proposal is inconsistent with Comprehensive Plan Single Family Policy SF 4.10, which provides for “the operation of a nursing home in single-family areas, provided: that they are used for housing . . . and that the *size of the overall operation will be on a site of three acres or more [emphasis added].*” Ms. Brown points out that 25 people residing on two city lots is “high” density. Ms. Brown testified that there are three ALFs in the city now, and all are on large tracts of land. Ms. Brown expressed her belief that the design and appearance of the proposed structures are not compatible with surrounding buildings because all other buildings are single-family houses or single-family houses with an apartment on the second floor. Ms. Brown testified that, although adult family houses were contemplated by City codes and zoning, ALFs were not, and thus the proposed use would be spot zoning. *Testimony of Ms. Brown.*
- e. Karen DeYoung testified that she is a twenty-year resident of the city and her son went to pre-school in the building proposed to be converted by this application. Ms. DeYoung expressed her belief that the proposal is not in compliance with the

Comprehensive Plan, that the proposed density is too great, and that the application should be denied. *Testimony of Ms. DeYoung.*

- f. Fai Dawson testified that the application should be denied because RCW 70.128 limits the use to six residents, there is no final design on record, and there are traffic and parking concerns that are not resolved. Ms. Dawson referenced a letter from Gretchen Bender (Exhibit 44) that expresses concerns about inadequate parking for visitors and displacement of parking spaces for neighborhood residents. *Exhibit 44; Testimony of Ms. Dawson.*
- g. Diana Carver testified that the application should be denied because chapter 14.65 SMC requires proposed uses to be consistent with the Comprehensive Plan, and this proposal is not consistent with the Plan's Single Family goals and policies, namely SF 4.1, SF 4.2, SF 4.10, and SF 4.7. Ms. Carver pointed out that the density for the proposed use is too great in this single-family area. *Testimony of Ms. Carver.*
- h. Rich Softye submitted Exhibit 45, a list of thirty questions about the CUP application. Exhibit 45 was admitted into the record. Mr. Softye expressed concerns for the high density of the proposed project, inadequate parking, problematic access to the parking area from the alley, and monitoring of compliance with required conditions if the application is approved. Mr. Softye pointed out that the 2008 CUP approval was for housing of the frail and elderly, but in this application, there is no target population indicated. Mr. Softye questioned whether this proposal would be a "back door" to apodments use that was previously denied. *Testimony of Mr. Softye.*
- i. Carole Barnes testified that she opposes the CUP application for several reasons. First, Ms. Barnes stated that constructing the alley to City standards equates to hard surface or paving. Paving may lead to flooding and significant soil erosion, which would be detrimental to surrounding properties and would invite greater use of the alley. Second, Ms. Barnes pointed out that the proposed facility is planned with a commercial kitchen, food prep area, and dining room. As a previous owner and chef of a small restaurant, Ms. Barnes stated that servicing the food requirements of the proposed facility would require deliveries from commercial food service distribution companies that would not use box vans—as indicated by the application—but rather large, commercial vehicles. Ms. Barnes explained that, in addition to food service use of the alley, other commercial needs, such as laundry services, would utilize the alley. Third, Ms. Barnes expressed her concern that weekly pickup of garbage, especially because there would be a significant volume of adult diaper waste, would be inadequate. Ms. Barnes testified of her concerns for strict compliance with landscaping, setback requirements, and responsiveness to neighborhood compatibility. Further, Ms. Barnes stated that the Applicant's belief that this proposed facility would provide affordable senior housing in Snohomish is inaccurate because the likely cost per

month for the residents would be far greater than what is deemed affordable.
Exhibit 46; Testimony of Ms. Barnes.

15. In addition to the concerns expressed above, there were concerns expressed from those that testified at the hearing that there is no age restriction for this proposed ALF and that the potential population could be those who need assistance for a variety of reasons, including alcohol and drug dependencies. In response to this concern, City Planning Director Owen Dennison stated that the City recommends a condition of approval that restricts the age of residents to 62 and over. Mr. Scott testified that the Applicant would agree to this age restriction so long as such restriction is not prohibited by federal or state laws. Mr. Dennison testified that other City regulations define seniors as those age 62 and over.⁸ Because the age restricted recommendation was made at the time of hearing, the Hearing Examiner requested a legal opinion from the City on the validity of an age restriction.

In a post-hearing response, the City Attorney concluded that an age restriction does not appear to violate federal or state laws, but noted that a separate issue is whether an age restriction would be in compliance with Washington State's Department of Social and Health Services' (DSHS) licensure requirements for ALFs. The City Attorney concluded that it is likely that the Applicant cannot place an age restriction on an ALF and still receive a license from the State. Without an age restriction, the review of the potential impacts from the proposal must include the possibility that the residents would be those who own their vehicles and are active and mobile. *Exhibit 50; Exhibit 51; Testimony of Mr. Dennison; Testimony of Mr. Scott.*

16. In his Post Hearing Response, Mr. Dennison wrote that the City requires compliance with all permitting conditions prior to final approval of the use and that community members are encouraged to report alleged violations at any point before or after the facility begins its operations. Mr. Dennison also pointed out that other agencies are involved in various aspects of the facility's operations. He recommended a condition that the facility's owner be required to provide all resulting inspection reports by all agencies to the Department of Planning and Development Services in order to allow access to this information by the community. Mr. Scott, in the Applicant's Post Hearing Response, acknowledged the City's role in monitoring compliance with conditions. During the hearing, both the Applicant and the City agreed to a condition that allows for opportunities to re-open the record in the event there is evidence of non-compliance with conditions of approval or applicable law. *Exhibit 49; Exhibit 50; Testimony of Mr. Dvorak; Testimony of Mr. Scott.*
17. In the City's Post Hearing Response, Mr. Dennison stated that one goal and responsibility of the City goal is to ensure that the proposed use of the property would maintain a

⁸ Under SMC 14.100.020, a retirement apartment is defined as a dwelling unit exclusively designed and occupied by *senior citizen residents 62 years and older*. In the Snohomish 2014 Application for Special Utility Rates and Services, a *senior citizen is defined as a person 62 years of age or older*.

single-family residence character, including limiting the number of occupants of the facility if necessary. City staff acknowledged that mitigation of potential impacts from the number of occupants of the proposed facility is relevant to help ensure compliance with the approval criteria for a conditional use permit. *Exhibit 38, Staff Report, pages 5 and 12; Exhibit 50.*

18. In the Applicant's Post Hearing Response, Mr. Scott stated that the Applicant anticipates this proposal would serve residents who would be compatible with the quietness and stability of the existing neighborhood. Without an age restriction, however, an ALF could potentially serve a wide range of ages of residents. Mr. Dennison stated in the City's Post Hearing Response that the City does not believe the proposal contradicts the Plan's goals for quietness and stability because these are subjective terms and compliance can be accomplished in a number of ways, including appropriate conditions of approval. *Exhibit 49; Exhibit 50.*
19. In the City's Post Hearing Response, Mr. Dennison explained that the economic viability of land use is not a criterion for CUP consideration under City code (SMC 14.65.020.B). Mr. Dennison wrote that it is the right of any property owner to change the use of a site provided that the new use complies with all applicable standards and review processes. Mr. Dennison explained that there are no restrictions on the current owner for how long he must maintain the business that he is proposing. Mr. Dennison described the grant of CUP approval runs with the land in perpetuity for the life of that use unless it is discontinued, abandoned by virtue of a conversion, or if it is limited in duration as a condition of CUP approval. Thus, anyone who acquires the property would have the same rights and restrictions on the use as the current owner. *Exhibit 50.*

Utilities and Services

20. The subject property is served by City water and sewer facilities. Stormwater from this proposal would be collected on site and discharged into the City's stormwater drainage system through piping to the greatest extent feasible. Electricity would be provided by Snohomish County P.U.D., and Puget Sound Energy would provide natural gas. *Exhibit 29.*
21. City staff consulted with Snohomish Fire District #4 about this application. Fire Chief Simmons stated that the alley could not be used for emergency vehicle access because the driving surface of the alley would have to be widened to code, and there would have to be more separation from the building. City staff determined that fire district personnel would still be able to access the building from the alley, without the use of emergency vehicles. Fire hydrants and emergency vehicle access is available from Fourth Street and Avenue E. Addressing emergency egress and other life safety requirements, Mr. Dennison, in the City's Post Hearing Response, noted that emergency egress is reviewed as part of the building permit application. All life safety and code requirements would be enforced during the building permit and other inspection stages. These types of requirements, including emergency power and generator, are not part of the CUP review. *Exhibit 50.*

22. The alley would be maintained according to the City's regular maintenance schedule. *Exhibit 50*. Parking for the proposed ALS would be accessed through the alleyway. Mr. Dvorak testified that the City requires this alleyway to be brought up to City standards. Andrew Sics, City Engineering Department, testified that the standards include paving to a width of twelve feet. City staff relied on the *Institute of Transportation Engineers (ITE) Manual, 7th Edition*, to estimate a generation of 8.75 PM peak-hour trips for a 25-bed senior assisted housing facility. SMC 14.55.030.C provides that the City may exempt from concurrency review projects that generate fewer than 10 peak-hour trips when there are no known issues with intersections around the site. Since there are no known issues, and less than 10 PM peak-hour trips, no traffic impact fee payment is required for concurrency. Mr. Scott testified that he believes traffic to be less than what it was with the permitted past use of the property. The Applicant has committed to restrict deliveries to 402 Avenue E to between 8:00 AM and 4:00 PM, as specified in Recommended Condition No. 14. *Exhibit 38, Staff Report, pages 11 and 13; Exhibit 49; Exhibit 50; Testimony of Mr. Dvorak; Testimony of Mr. Sics; Testimony of Mr. Scott.*

Parking Impact

23. The Applicant proposes providing thirteen off-street parking spaces. There are five parking spaces on the northwest corner of the property, three parallel parking spaces on the west side of property adjacent to the existing structure, four parking spaces on the southwest corner of the property achieved from demolishing an existing one-stall garage locate within the building at the sound end of the property, and one handicap-van accessible parking space adjacent to the northwest corner of the existing building. A legally drawn easement agreement must be recorded for off-site parking spaces. SMC 14.235.080.B. A boundary line adjustment (BLA) to divide the single-family dwelling on 410 Avenue E from 402 Avenue E was initiated, but was not properly recorded. City staff recommends that recording the BLA be a condition of approval. City staff notes that recording of the easement must occur prior to the initiation of the proposed use. *Exhibit 1; Exhibit 38, Staff Report, page 8.*

Testimony and exhibits show a current shortage of on-street parking spaces. In the Applicant's Post Hearing Response, Mr. Scott wrote that there may be a need to rent parking spaces from the nearby high school, which is in recognition of the limited on-street parking. City staff notes that compliance with the parking code is no guarantee that additional parking demands would not be placed on the limited number of available on-street parking spaces. Avenue E and Fourth Street, abutting the subject properties, are in a permit-controlled area that restricts parking to allow only permit holders between 8 AM and 4 PM daily. *Exhibit 30; Exhibit 38, Staff Report, pages 8 to 9; Exhibit 49; Exhibit 51; Testimony of Mr. Dvorak; Testimony of Mr. Scott.*

Chapter 11.10 SMC provides permit parking regulations. The ordinance authorizes the City Council to designate tow-away zones where only those residents with permits are allowed to park. SMC 11.10.030 provides that resident drivers are allowed to obtain an on-street parking permit. Without an age restriction, the residents of the proposed facility

may obtain on-street resident permits, which would contribute to the existing difficulty of finding on-street parking in the neighborhood. *See Finding 24; Exhibit 38, Staff Report, page 8; Exhibit 49, page 2.*

24. Each resident of an ALF may own and drive his or her own vehicle. Every vehicle requires a parking space. Mr. Scott stated that the Applicant believes it is prudent to restrict the facility to no more vehicles than can be parked on site because on-street parking is not always available. In order to accommodate parking needs with the proposed thirteen on-site parking spaces, the number of residents must be limited. Thirteen parking spaces would allow for nine resident parking spaces, two visitor parking spaces, and two staff parking spaces. *Exhibit 38, Staff Report, pages 8 to 9; Exhibit 49; Exhibit 51; Testimony of Mr. Dvorak; Testimony of Mr. Scott.*

City Staff Recommendation

25. City staff reviewed the application and determined that the proposed project would be consistent with the City's Comprehensive Plan and City development regulations. Mr. Dvorak testified that the City recommends approval of the CUP with conditions. Conditions include occupancy limitations; compliance with Washington State operational requirements; allowing only one kitchen; implementation of an approved landscape plan; restriction on unlicensed rooms; recording of a BLA; improvements to alley to City standards; construction of a City-approved, gated, screening enclosure for trash and recycling; payment of all applicable fees; recording of an easement for 410 Avenue E; compliance with all parking lot standards; a maximum number of staff/employees at any given shift; restoration and improvements to the structure at 402 Avenue E to the standards of the City of Snohomish Historical District Design Standards; limitation on delivery hours and location; and provision for opportunities to reopen the record or revoke approval. *Exhibit 38, Staff Report, pages 7 to 10, 12, and 14; Exhibit 49; Exhibit 50; Testimony of Mr. Dvorak; Testimony of Mr. Scott.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide requests for conditional use permits. *Snohomish Municipal Code (SMC) 14.50.060; SMC 14.95.010.*

Criteria for Review

The Snohomish City Code provides that the Hearing Examiner shall not approve a conditional use permit unless the following criteria are satisfied:

1. Adequate streets, sidewalks, transit stops, open spaces, parks, schools, water, sewer, and stormwater facilities shall be available to the proposed development.
2. The design and appearance of the structure shall be compatible with surrounding developments that are in conformance with the land use designation.
3. The development shall be consistent with the Comprehensive Plan.
4. The development shall mitigate any significant adverse environmental impacts.
5. Concurrency requirements (SMC 14.55.030) shall be complied with.

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6. The development shall be consistent with the health, safety, and general welfare.
SMC 14.65.020.B.

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.*

Conclusions Based on Findings

1. **With a condition, the proposed use would be adequately served by streets, sidewalks, transit stops, open spaces, parks, schools, water, sewer, and stormwater facilities.** The public streets and water/sewer utilities serving the site are adequate for the proposed use. Avenue D, one block east of the site, is served with transit routes. There are two public parks within a five-block radius of the site. Schools have adequate capacity, although it is unlikely that an ALF will have residents that are of school age. The alley west of the site is not adequate and does not meet City standards. A condition of approval is necessary to bring the alley up to City standards. *Findings 1, 7 to 9, 11, 20 to 25.*
2. **With conditions, the design and appearance of the proposal would be compatible with surrounding developments.** The Applicant would restore the historical portion of the existing structure and renovate the remaining portions of the building in a manner compatible with the surrounding single-family residential buildings. The Applicant testified that the Snohomish Design Standards would be followed to ensure compatibility. Although the mass and scale of the existing structures on site are larger than those of the surrounding properties, the Applicant does not intend to add to the structure and would be removing part of structure on the southeast corner. Conditions are necessary to ensure implementation of an approved landscape plan; recording of a BLA; improvements to the alley to City standards; construction of a screened enclosure for trash and recycling; recording of an easement for 410 Avenue E; and restoration of the structure at 402 Avenue E to the standards of the City of Snohomish Historical District Design Standards. *Findings 1, 7 to 9, 11, 13 to 19, 23 to 25.*
3. **With conditions, the proposed use would be consistent with the Comprehensive Plan.** The subject property is designated Single Family on the Comprehensive Plan Land Use Map. The Comprehensive Plan states that the Single Family designation is intended to “allow for the retention and development of stable single family neighborhoods with individual character and identity” (Policy SF 4.1) and that “single-family areas should have the following characteristics: quietness, privacy, safety, and land use stability and compatibility” (Goal LU 4). The proposed assisted-living facility cannot be age-restricted. The Hearing Examiner must therefore consider the potential impacts from a resident population that may own and use vehicles, and that may make active use of the property. It is also necessary to consider the potential number of deliveries to the facility utilizing the alley with delivery trucks that do not presently frequent the neighborhood.

Conditions of approval are necessary to limit the number of residents and to limit on-street parking so that there is no adverse impact on the surrounding neighborhood -- including noise, privacy, and incompatibility -- which may occur if a mobile and active population of 25 additional residents are allowed to occupy the facility. A condition is also needed to limit delivery hours. Even with these limitations, there may be adverse impacts that can be identified only after the facility commences operation. Thus, a condition to allow for re-opening of the record is needed to ensure ongoing consistency with the Comprehensive Plan. *Findings 1, 4 to 11, 15, 17, 18, 23 to 25.*

4. **With conditions, the proposed development would provide mitigation of any significant adverse environmental impacts.** Potential adverse impacts to the surrounding community from an assisted-living facility that cannot be age-restricted include impacts from increased density, noise, lighting, on-street parking, and additional delivery-truck traffic. Conditions can likely mitigate these potential adverse impacts to the surrounding environment. The proposed assisted-living facility cannot be age-restricted. The Hearing Examiner must therefore consider the potential impacts from a resident population that may own and use vehicles, and that may make active use of the property including going to and from the facility. It is also necessary to consider the potential number of deliveries to the facility utilizing the alley with delivery trucks that do not presently frequent the neighborhood. Conditions are necessary to limit the number of residents and limit on-street parking so that there is no adverse impact on the surrounding neighborhood, including noise, privacy, and incompatibility, which may occur if a mobile and active population of additional residents are allowed to occupy the facility. A condition is also needed to limit delivery hours. Even with these limitations, there may be adverse impacts that can be identified only after the facility commences operation. Thus, a condition to allow for re-opening of the record is needed to ensure ongoing consistency with the Comprehensive Plan. *Findings 1, 3, 7 to 11, 13 to 17, 23 to 25.*
5. **With conditions, the proposal would comply with concurrency requirements.** The City estimated that a 25-bed senior assisted housing facility would generate 8.75, PM peak-hour trips. SMC 14.55.030 allows the City Planner to exempt from concurrency review projects that generate fewer than 10 peak hour trips. There are no known level-of-service issues with intersections in the vicinity of the site. The City has determined that the proposed use of the existing structure would not add vehicle trips to the city's transportation network that were not previously accounted for in calculating the city's projected capacity needs. The City thus concluded that no traffic impact fee payment is required for concurrency. This analysis is supported by substantial evidence in the record of the hearing. *Findings 1, 6 to 9, 12, 23 to 25.*
6. **With conditions, the proposal would be consistent with the health, safety, and general welfare.** The alley and other infrastructure improvements must be designed and constructed to follow the City's engineering standards. Building construction must comply with the International Building Code and City codes and standards. The licensing and operation of the facility must comply with all applicable state and federal

regulations. Conditions are necessary to comply with applicable laws governing construction and operational standards for a facility of this type. *Findings 1 to 3, 6 to 16, 19, 20 to 25.*

DECISION

Based on the preceding Findings and Conclusions, a conditional use permit to allow conversion of existing vacant buildings into an assisted-living facility at 402 Avenue E and 410 Avenue E, Snohomish, Washington, is **APPROVED**, subject to the following conditions:⁹

1. Occupancy of the ALF shall be limited to persons who are protected from housing discrimination under the Federal Fair Housing Act of 1988, as amended, by virtue of a disability or who are otherwise protected under the act. The number of residents (beds) of the ALF shall be limited to nine. A change in client type or increase in the number of residents shall require approval of a new conditional use permit.
2. The Assisted Living Facility shall be operated in a manner consistent with the definition of Assisted Living Facility RCW 18.20.020(2), and the facility shall be operated under a license from the State of Washington in compliance with WAC 388-78A.
3. The Assisted Living Facility shall only have one kitchen and dining facility. This limitation shall not restrict the residents from taking meals in their rooms. The City shall conduct a field visit, annually or more frequently if warranted, to determine compliance with this condition.
4. Prior to issuance of a certificate of occupancy, the Applicant shall implement an approved landscape plan that shall include, at a minimum, evergreen screening for the parking areas adjacent to Fourth Street and within the right-of-way along both Avenue E and Fourth Street frontages; to include the identification of existing trees to be removed and the type and location of proposed replacement trees.
5. There shall be no unlicensed rooms on the premises for occupancy by City staff or offered to non-residents of the Assisted Living Facility.
6. Prior to issuance of building permit, a Boundary Line Adjustment (BLA) that will bifurcate 402 Avenue E from the single-family residence on 410 Avenue E shall be recorded.
7. Prior to issuance of a certificate of occupancy, the alley adjacent to the site shall be improved to City alley standards.
8. Prior to issuance of a certificate of occupancy, a gated, screening enclosure for trash and recycling collection shall be constructed and approved by the City.

⁹ This decision includes conditions required to reduce project impacts as well as conditions required to meet City code standards.

9. Prior to issuance of a certificate of occupancy, all applicable fees, including administrative and permit fees shall be paid.
10. Prior to issuance of a certificate of occupancy, an easement providing exclusive use for parking in support of 402 Avenue E shall be recorded for 410 Avenue E as indicated on the site plan and in application submittals.
11. Prior to issuance of building permit, compliance with all parking lot standards regarding the handicap accessible parking space and van loading area to be located on 410 Avenue E shall be confirmed.
12. Thirteen parking spaces shall be provided on the site. Primary parking for all residents and visitors shall be in the on-site parking area. No resident may park a vehicle on the street without the appropriate street parking permit.
13. Prior to issuance of building permit, restoration and improvements to the structure located on 402 Avenue E shall be consistent with the residential standards of the City of Snohomish Historical District Design Standards.
14. Deliveries to 402 Avenue E shall use an on-site loading zone and shall be limited to the hours between 8:00 AM and 4:00 PM and at no time shall block the alley behind the principal structure. Delivery vehicles shall be limited to box vans, with no semi-trucks or trailers.
15. There shall be two opportunities to reopen the record. Within 10 days after six months and within 10 days after one year from the date of operation of the facility, a party of record may request that the Hearing Examiner re-open the hearing to allow consideration of additional conditions to mitigate specific impacts to the surrounding neighborhood not anticipated at the time of the hearing or to revoke approval of the application.
16. The Applicant must make substantial progress toward implementing this approved conditional use within one year of the date of approval, and must commence operation of the proposed use within three years of the date of approval, or the conditional use permit shall become void.

Decided this 20th day of March 2014.


THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center

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