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BEFORE THE HEARING EXAMINER FOR THE CITY OF PORT ORCHARD

RE: Dental Clinic)	
)	
Conditional Use)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW AND FINAL DECISION
LU-24-CUP-01)	
)	
)	
)	

Introduction

Tyler Schnebele has applied for a Conditional Use Permit to operate a dental office within the new McCormick Village Commercial development located west of McCormick Village Dr. and south of SW Yarrow St. The application is approved.

Testimony

Shaun Raja, Associate Planner, summarized the staff report. The applicant concurred with the staff recommendation for approval. In response to Examiner questions, the City Engineer noted that the proposal has passed traffic concurrency and the existing building was also subject to prior land disturbing permit review. No members of the public testified.

Exhibits

Exhibits 1-13 of the Index to the Record attached to the staff report were admitted into the record during the hearing as well as the staff report itself.

1 **FINDINGS OF FACT**

2 **Procedural:**

- 3 1. Applicant. Tyler Schnebele, The Cordillera Group, 805 Kirkland Ave Suite 200, Kirkland,
4 WA 98033.
- 5 2. Hearing. A hearing was held before the Hearing Examiner on the subject application at 9:00
6 am on April 12, 2024.

7 **Substantive:**

8 3. Project/Site Description. Tyler Schnebele has applied for a Conditional Use Permit to
9 operate a dental office within the new McCormick Village Commercial development located west
10 of McCormick Village Dr. and south of SW Yarrow St.

11 4. Site and Surrounding Area. Properties surrounding the new commercial development are
12 largely vacant with some residential development to the north. The properties to the north, south
13 and west are zoned residential and to the east parks and recreation.

14 5. Adverse Impacts. There are no significant adverse impacts associated with the project. The
15 SEPA Responsible Official determined that the project is categorically exempt from SEPA under
16 WAC 197-11-800(6)(b) as a use proposed within an existing building that doesn't change the
17 character of the building. The proposal will not create any significant land use impacts because no
18 exterior alterations are proposed and impacts and infrastructure needs have already been addressed
19 through prior site plan and land disturbing review for the new commercial development. As testified
20 by the City Engineer, the proposal has already been evaluated for and found to pass traffic
21 concurrency and traffic impact fees will be assessed once building permit review is completed to
22 address system wide traffic impacts.

23 6. Adequacy of Infrastructure. The proposal will be served by adequate infrastructure.
24 Pertinent infrastructure area addressed as follows:

25 A. Utilities. The proposal will be served by adequate utilities. The adequacy of infrastructure has
26 already been addressed through prior site plan and land disturbing activity review. The proposal
will not create any greater infrastructure needs than those projected for the proposed site plan
of the new commercial development.

B. Transportation. The proposal will be adequately served by transportation facilities. The
proposed project is currently served by improved roadways and has passed traffic concurrency
review by the City Engineer.

Conclusions of Law

1
2 1. Authority. Table 20.22.020 classifies conditional use permit applications as Type III
3 applications. Section 20.22.050 POMC identifies that the hearing examiner holds hearings and issues
4 final decisions on Type III applications, subject to judicial appeal.

5
6 2. Zoning Designation. Commercial Mixed-Use (CMU).

7 3. Review Criteria. As identified in Section 20.39.040 POMC, Medical uses (which include
8 dental offices)¹ are authorized in the CMU zone as a conditional use. Section 20.50.050(1) POMC
9 governs the criteria for conditional use permit review and Section 20.24.100 POMC adds additional
10 standards that apply to all land use permit applications. Applicable criteria are quoted below in italics
11 and applied through corresponding conclusions of law.

12 **POMC 20.50.050(1)(a):** *That the conditional use is consistent with the objectives of the zoning code
13 and the purpose of the zoning district in which the subject site/property is located;*

14 4. Criterion met. The criterion is met for the reasons identified at page 4 of the staff report.

15 **POMC 20.50.050(1)(b):** *Granting the conditional use will not have a substantively greater adverse
16 effect on the health, safety or welfare of persons living or working in the area and will not be
17 substantively more injurious, economically or otherwise, to property or improvements in the
18 surrounding area than would any use generally permitted in the zone. Among matters to be
19 considered are traffic flow and control, access to and circulation within the property, off-street
20 parking and loading, refuse and service area, utilities, screening and buffering, signs, yards and
21 other open spaces, height, bulk, and location of structures, location of proposed open space uses,
22 hours and manner of operation, and noise, lights, dust, odor, fumes, and vibration;*

23 5. Criterion met. The criterion is met. As determined at Finding of Fact No. 5, no significant
24 adverse impacts will be created by the proposal. Since the proposal creates no significant adverse
25 impacts, it will not be detrimental to public health, safety and welfare.

26 **POMC 20.50.050(1)(c):** *The proposal is in accordance with the goals, policies, and objectives of
the comprehensive plan;*

6. Criterion met. The proposal is consistent with the Comprehensive Plan for the reasons identified
at page 4-5 of the staff report.

POMC 20.50.050(1)(d): *The proposal complies with all requirements of this title;*

¹ POMC TABLE 20.39.040 defines "Medical uses" to include "Medical, dental office or chiropractor, osteopath,
physician, medical practitioner;"

1 7. Criterion met. The criterion is met. As outlined in the staff report, City staff have reviewed the
2 proposal for consistency with the City's development standards and regulations and found in their Staff
3 Report that the project to be consistent and in compliance with all requirements of Title 20 POMC.

4 **POMC 20.50.050(1)(e):** *The conditional use will be supported by adequate public facilities or*
5 *services and will not adversely affect public services to the surrounding area, or conditions can be*
established to mitigate adverse impacts on such facilities; and

6 8. Criterion met. The criterion is met. As determined in Finding of Fact No. 6 the proposal is
7 served by adequate public facilities and services.

8 **POMC 20.50.050(1)(f):** *Existing conditions of approval required as part of a prior land division*
9 *or permit shall be met.*

10 9. Inapplicable. The criterion is not applicable as Staff has indicated at page 6 of their Staff Report
11 that there are no existing conditions of approval associated with a prior land division or permit.

12 **Universal Permitting Criteria**

13 **POMC 20.24.100:** *The criteria set forth below shall apply to all Type I through IV land use and*
14 *development permit applications:*

15 (1) *Determination of Consistency. The applications are reviewed by the city to determine*
16 *consistency between the proposed project and the applicable land use and development regulations*
17 *and the comprehensive plan. A proposed project's consistency with the city's land use and development*
18 *regulations shall be determined by consideration of:*

19 (a) *The type of land use;*

20 (b) *The level of development, such as units per acre or other measures of density;*

21 (c) *Availability of infrastructure, including public facilities and services needed to serve the*
22 *development; and*

23 (d) *The character of the development, such as development standards.*

24 (2) *Upon review of an application, the decision-maker shall also determine whether the building*
25 *and/or site design complies with the following provisions:*

26 (a) *The comprehensive plan;*

(b) *The applicable provisions of this title;*

(c) *The Washington State Environmental Policy Act (SEPA), pursuant to Chapter 20.160 POMC,*
if not otherwise satisfied;

(d) *The city's public works design standards.*

(3) *Additional Review Criteria. Additional review criteria appear in each chapter or section of the*
POMC relating to the development regulations for an individual project permit application or other

1 approval. All of the criteria in this section and the criteria relating to the individual application(s) must
2 be satisfied in order for the city to make a determination of consistency and issue an approval.

3 (4) *Limitations on Review.* During project review, the city shall not reexamine alternatives to or
hear appeals on the review requirements of this section except for issues of code interpretation.

4 (5) *Burden of Proof.* The burden of proof for demonstrating that the application is consistent with
5 the applicable regulations is on the Applicant.

6 10. Criterion met. The criterion is met. As outlined in the staff report, City staff have reviewed the
7 application and found the proposal to conform to City standards. No issues of compliance have been
8 raised by the public or City staff. As previously determined, the proposal is found to comply with all
applicable development standards as relevant to conditional use permit review. As determined in
Finding of Fact No. 6, the proposal will be served by adequate infrastructure.

9 **DECISION**

10
11 Conditional Use Permit Application No. LU-24-CUP-01 satisfies all applicable criteria as
12 determined in the Conclusions of Law of this decision and is therefore approved.

13 DATED this 29th day of April 2024.

14 *Phil Olbrechts*

15

Hearing Examiner for Port Orchard

16 **Appeal Right and Valuation Notices**

17
18 POMC 20.22.050(8) provides that the final decision of the Hearing Examiner is subject to
19 appeal to superior court. Appeals of final land use decisions to superior court are governed by
20 the Land Use Petition Act (“LUPA”), Chapter 36.70C RCW. LUPA imposes short appeal
deadlines with strict service requirements. Persons wishing to file LUPA appeals should
consult with an attorney to ensure that LUPA appeal requirements are correctly followed.

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