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BEFORE THE HEARING EXAMINER FOR THE CITY OF PORT ORCHARD

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|--|---|----------------------------------|
| RE: Sound Sport and Spine Chiropractic |) | |
| |) | |
| Conditional Use |) | FINDINGS OF FACT, CONCLUSIONS OF |
| |) | LAW AND FINAL DECISION |
| LU-24-CUP-02 |) | |
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Introduction

Sound Sport and Spine Chiropractic (Jessica Lester, Applicant) has applied for a Conditional Use Permit to operate a chiropractic office in an existing building located at 1180 Bethel Avenue, Suite 110. The application is approved.

Testimony

A public hearing for this application was held on Thursday, March 21, 2024 at 10:00 A.M. using remote meeting technology. Shaun Raja, Associate Planner, summarized the staff report. The applicant concurred with the staff recommendation for approval. No members of the public testified.

Exhibits

Exhibits 1-9 of the Index to the Record attached to the staff report were admitted into the record during the hearing.

1 **FINDINGS OF FACT**

2 **Procedural:**

3 1. Applicant. Sound Sport and Spine Chiropractic located at 1180 Bethel Avenue, Suite 110,
4 Port Orchard, Washington. The applicant is Jessica Lester, Post Office Box 1123, Port Orchard,
5 Washington 98366. The property owner is Kris Mihuka, Post Office Box 2737, Silverdale,
6 Washington 98383.

7 2. Hearing. A hearing was held before the Hearing Examiner on the subject application at 10:00
8 am on March 21, 2024.

8 **Substantive:**

9 3. Project/Site Description. The applicant is seeking to establish a chiropractic office in an
10 existing commercial building located within the Commercial Mixed-Use zoning designation.

11 4. Site and Surrounding Area. Adjacent properties to the north and south are similarly zoned
12 (Commercial Mixed-Use) with current uses that are a mix of commercial, retail and office. The
13 adjacent property to the east is zoned as Public Facilities. The adjacent property to the west is zoned
14 as Greenbelt and is undeveloped.

15 5. Adverse Impacts. There are no significant adverse impacts associated with the project. The
16 SEPA Responsible Official determined that the project is categorically exempt from SEPA under
17 WAC 197-11-800(6)(b) as a use proposed within an existing building that doesn't change the
18 character of the building. The proposal will not create any significant land use impacts. The
19 proposed project will establish a medical use in an existing building within the Commercial Mixed-
20 Use District. Only interior tenant improvements and minor exterior changes (such as signage) are
21 proposed and the prior use was general office and services. The intensity of the proposed use is
22 anticipated to be similar to other uses already established within the district. As the intensity of use
23 for this district has been anticipated by the City in the Comprehensive Plan and its implementing
24 regulations, there is no risk of cumulative impacts, provided that all conditional use criteria are met.

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

27 A. Utilities. The proposal will be served by adequate utilities. As an existing developed site, the
28 reuse of the building will not create additional impacts on utilities. No new utility connections
29 are needed.

30 B. Transportation. The proposal will be adequately served by transportation facilities. The
31 proposed project is currently served by improved roadways, will likely not generate more traffic
32 than past use of the site and has access to public transportation as the site is located on Kitsap
33 Transit's number 8 route.

34 **CONDITIONAL USE**

1
2 **Conclusions of Law**
3

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

7 2. Zoning Designation. Commercial Mixed-Use (CMU).

8 3. Review Criteria. As identified in Section 20.39.040 POMC, Medical uses¹ are authorized in
9 the CMU zone as a conditional use. Section 20.50.050(1) POMC governs the criteria for conditional
10 use permit review and Section 20.24.100 POMC adds additional standards that apply to all land use
11 permit applications. Applicable criteria are quoted below in italics and applied through corresponding
12 conclusions of law.

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

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

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

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

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.

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

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

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

POMC 20.50.050(1)(e): *The conditional use will be supported by adequate public facilities or 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*

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

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

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

Universal Permitting Criteria

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

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

- (a) *The type of land use;*
- (b) *The level of development, such as units per acre or other measures of density;*
- (c) *Availability of infrastructure, including public facilities and services needed to serve the development; and*
- (d) *The character of the development, such as development standards.*

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

- (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.*

1 (3) *Additional Review Criteria.* Additional review criteria appear in each chapter or section of the
2 POMC relating to the development regulations for an individual project permit application or other
3 approval. All of the criteria in this section and the criteria relating to the individual application(s) must
4 be satisfied in order for the city to make a determination of consistency and issue an approval.

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

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

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

11 **DECISION**

12 Conditional Use Permit Application No. LU-24-CUP-02 satisfies all applicable criteria as
13 determined in the Conclusions of Law of this decision and is therefore approved.

14 DATED this 4th day of April 2024.

15 *Phil Olbrechts*

16

Hearing Examiner for Port Orchard

17 **Appeal Right and Valuation Notices**

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

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