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BEFORE THE HEARING EXAMINER FOR THE CITY OF PORT ORCHARD

RE: Amici House Congregate Living)	
Facility)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW AND FINAL DECISION
Conditional Use)	
)	
LU-23-CUP-01)	

Introduction

Amici House has applied for a Conditional Use Permit to improve an existing structure and operate it as a congregate living facility with 22 sleeping units, up to 40 beds and five shared bathroom facilities located at 902 Dekalb Street, Port Orchard, WA. The project site is southeast of the intersection of Dekalb Street and Harrison Avenue and is more fully identified as parcel #4053-005-002-0005. The application is approved subject to conditions.

Significant opposition to the proposal could be construed as in part based upon neighborhood fears that the young adult population of the proposed facility will engage in nuisance and criminal activities. As outlined in Footnote No. 1 below, unfounded neighborhood fears based solely upon the age of the residents likely cannot serve as a basis for land use decisions, including permit conditions. As noted in the court opinion referenced in Footnote No. 1, even if the young adults were transitioning out of a juvenile detention facility, the City could still not condition the proposed use based upon unfounded fears and stereotypes. For this application, no studies or other data have been presented establishing facilities similar to that proposed are a source of nuisance or criminal conduct. However, the Applicant has stated in its project narrative that its proposal includes a code of conduct that will be enforced as resident lease terms. These

1 statements are considered to be part of the proposal. Any material deviation from their terms,
2 including failure to enforce the codes of conduct, will be considered to be a use that is not
3 authorized by this decision.

4 Key issues that were raised through comment and testimony regarding the proposal are
5 summarized as follows:

- 6 1. Adequacy of existing infrastructure to accommodate project. Concerns were raised
7 regarding the adequacy of existing roads to accommodate additional traffic
8 generated by the proposal. Additional concerns were raised regarding the adequacy
9 of the municipal sewer system to meet demands generated by the proposal.

10 As noted in the staff report, staff verified that public infrastructure and services are
11 sufficient to serve the proposal. Given that the project site is an existing building
12 that served as a house of worship, it is not surprising that the proposal doesn't create
13 an unsupportable demand upon public services.

14 As to traffic impacts specifically, the Applicant prepared a transportation impact
15 analysis verified by an independent City consultant, Ex. 27, establishing that the
16 proposal meets the City's transportation level of service standards (LOS). LOS
17 standards are essentially standards adopted by the City Council that set acceptable
18 levels of congestion and other acceptable levels of traffic impact. Since the
19 standards are met and no evidence to the contrary was presented, the project is found
20 to not create any significant adverse traffic impacts.

- 21 2. Effect of the proposal on the surrounding on-street parking supply and on access to
22 the adjacent Clayton Park. Concerns were raised regarding the adequacy of
23 available on-street parking to accommodate the vehicles associated with future
24 residents of the project. Specifically, as the subject site has no off-street parking, it
25 will by default place any parking demands on the surrounding on-street parking
26 supply, which has short duration limits for those who did not have neighborhood-
specific parking permit. It was also asserted that access by those who wish to park
and use the adjacent public park would also be impacted.

On-street parking has been found adequate because the Applicant presented a
parking study documenting sufficient on-street parking. See Ex. 26. The study was
verified by an independent City consultant. See Ex. 27. In regard to parking access
for Clayton Park, the City has proposed to conduct public outreach and pursue
drafting an ordinance to limit the on-street all-day parking in front of Clayton Park
to 2- or 4- hour parking, similar to what is already enforced in the surrounding area.

3. Screening of future residents. Concerns were raised regarding the need to screen and
facilitate background checks on potential future project residents. The project
proponents testified that they intend to screen and facilitate background checks on
all potential residents.

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- 4. Confusion on proposed future use of the site. Some commenters erroneously assumed that the proposal would establish a residential treatment facility. By definition, congregate living facilities may not provide medical care or social welfare services. Information was provided by staff that clarified the nature of the proposal.

- 5. Incompatibility with surrounding residential uses. Concerns were raised regarding the intensity of the proposed use and its asserted incompatibility with the surrounding neighborhood. These concerns include fears that future project residents would congregate in front of the building due to prohibitions on smoking within the proposed project. It was asserted that this congregation would promote inappropriate activities and generate crime, noise and litter. In the Applicant’s application of code criteria, Ex. 1E, the Applicant stated that there will be no alcohol, tobacco, marijuana or other recreational drug or substance used on the property or in the house. The Applicant also stated that residents also commit to not use any of these substances at Clayton Park or in the surrounding blocks. Further, City noise and substance abuse standards will be incorporated into the lease of residents. Finally, the on-site house managers and the ownership team will provide oversight and accountability. As noted in Footnote 3, the Applicant’s commitment to a code of conduct is considered part of the proposal and the proposal is only approved as proposed. Material deviations, to the extent allowed by law, can be considered unauthorized use subject to City code enforcement.

- 6. Property values. Concerns were raised that the proposed use will adversely affect surrounding property values. As outlined in Finding of Fact 5D below, the record does not establish that the proposal will reduce property values. As noted in Conclusion of Law No. 10 below, case law places the burden on the City (and by extension project opponents) to establish that a project will reduce surrounding property values to serve as a basis for zoning restrictions. The preponderance and substantial evidence in this case supports a finding of no impact to property values.

The key issues identified above were fully considered and evaluated during the preparation of this decision and addressed in the Findings of Fact below.

Testimony

A computer-generated transcript has been prepared of the appeal hearing to provide an overview of the hearing testimony. The transcript is provided for informational purposes only as Appendix A. Since the transcript is computer generated, it is not 100% accurate, but does provide a useful indication of what testimony was presented during the hearing.

Exhibits

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2 Exhibits 1-29.8 of the Index to the Record attached to the staff report were admitted into the
3 record during the hearing. Appendix A, an audio transcript, was prepared after the conclusion
4 of the public hearing and is included for informational purpose only.

5 **FINDINGS OF FACT**

6 **Procedural:**

- 7 1. Applicant. Amici House, Aaron Bates, Post Office Box 1681, Port Orchard,
8 Washington 98366
- 9 2. Hearing. A hearing was held before the Hearing Examiner on the subject application at
10 10:00 am on April 11, 2023.

11 **Substantive:**

12 3. Project/Site Description. The Applicant is requesting to establish a Congregate Living
13 Facility in a renovated existing building with 22 sleeping units with up to 40 beds, 5 shared
14 bathroom facilities, 2 resident director suites, one large shared kitchen, and two smaller shared
15 kitchen spaces. As testified by City planning staff, the proposal will have a target audience of
16 young professionals and or college students looking for affordable housing options as they start
17 out living on their own. The Applicant states that lease terms will be 6-12 months, with no
18 alcohol, tobacco, marijuana, or any other recreational drug or substance allowed on the property
19 or in the house. The existing building was formerly used as a place of worship. The project
20 site is developed with a vacant building that was formerly a place of worship with approximately
21 10,500 square feet of floor area. The parcel is approximately 5,000 square feet in size.

22 4. Site and Surrounding Area. Adjacent uses are a City Park (Clayton Park) to the east and
23 single-family residences to the north, south and west.

24 5. Adverse Impacts. There are no significant adverse impacts associated with the project.
25 A SEPA Determination of Non-significance was issued by the City of Port Orchard as lead
26 agency on March 10, 2023 with a 14-day comment period. Pertinent impacts are addressed as
follows:

- 27 A. Aesthetics. The proposal will not create any significant aesthetic impacts. The project
28 proposes to adaptively re-use an existing building with limited exterior alterations such as
29 new board and batten sidings and new windows. Therefore, the proposal does not involve
30 any impacts to aesthetics or related incompatibilities due to bulk and scale.
- 31 B. Noise. The proposal will not create any significant noise impacts. No basis has been
32 established to support the assertion that this project will generate more noise than that
33 possible from a single or group of pre-existing residences in the neighborhood. Should

1 any significant noise impacts occur, the Applicants have stated that there will be on-site
2 resident managers who could address matters quickly. Significant noise impacts are further
3 regulated by Section 9.24.050 POMC and are subject to enforcement by the City.

4 C. Inappropriate behavior. The proposal will not serve as a source of nuisance or criminal
5 behavior, including loitering and littering. Neighbors expressed considerable concern over
6 the behavior of such a high number of young adults. However, unfounded fears of nuisance
7 or criminal behavior based solely upon the age of young adults likely cannot serve as a legal
8 basis for restricting conduct in a manner that differs from regulation of other residencies¹.
9 Despite the legal limitations on regulating conduct, the Applicant has integrated numerous
10 safeguards into its proposal to promote compatible behavior. As detailed in Section 5 of
11 the Introduction, the proposal as presented involves several rules of conduct prohibiting
12 nuisance and criminal activity that will be enforced as lease terms. As noted in Footnote
13 No. 3, enforcement of these rules of conduct is considered to be part of the project that is
14 approved by this decision. Failure to enforce the rules will, to the extent authorized by law,
15 be considered unauthorized use subject to code enforcement.

16 D. Property values. As qualified with the burden of proof discussed in Conclusion of Law
17 No. 11 below, the proposal is not found to have an adverse impact on surrounding property
18 values. The subject structure is a former place of worship. When that use ended
19 subsequent uses were intermittent and the building became vacant. The Applicants have
20 stated that maintenance differed during this period and that the condition of the building
21 deteriorated. Vacant buildings, especially those near downtown areas, often attract
22 inappropriate and illegal activities, which was the case here. The Applicants assert that the
23 long-term vacancy and the declining condition of a building adversely effects property
24 values. Conversely, a renovated and well-managed building would support property
25 values. While it might be asserted that this type of residential use (Congregate Living
26 Facility) would adversely affect surrounding property values, the City and project
opponents have not met their burden in establishing such an impact.

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

A. Utilities. The proposal will be served by adequate utilities. As an existing developed site,

¹ In a decision reversing Pasco's decision to deny a special use permit for a group home for troubled teens, a court ruled that such a decision could not be based upon unfounded neighborhood fears that the young adults would engage in any criminal or nuisance behavior. See *Sunderland Family Treatment Services v City of Pasco*, 127 Wn. 2d 782 (1995)(...there is an important distinction between well founded fears and those based on inaccurate stereotypes and popular prejudices. ... Courts have long held the latter cannot justify zoning restrictions.). Given this legal restriction, the conditions of approval addressing criminal and nuisance behavior are based upon the fact that the Applicant did not object to them at the permit hearing. A condition prohibiting littering and loitering was added after the hearing to further address neighborhood concerns, as it appears that the Applicant is willing to have such conditions imposed to provide some added assurance that their proposed use will not detrimentally affect the neighborhood. If the Applicant does in fact oppose these conditions, they are encouraged to request reconsideration. Such a request will be expeditiously reviewed.

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the repurposing of the building will not create additional impacts on utilities. No new utility connections are needed. City staff have testified to the availability of sufficient capacity to provide sewer and water service to serve the proposed use of the site.

B. Parking. The proposal will be served by adequate parking.

A major concern amongst the neighbors was adequacy of parking. The Port Orchard Municipal Code does not identify a minimum off-street parking requirement for the proposed use. No off-street parking exists to serve the current site and none is proposed to be established by the project. As no off-street parking is required or proposed, all parking associated with the future use of the building will need to be accommodated by available on-street parking, public parking areas or through other private arrangement. A parking study (Exhibit 1F) was prepared by Transportation Engineering Northwest (TENW) to identify the on-street parking demand generated by the proposal and assess its impact on the available parking supply. This study was subsequently third-party reviewed by the City’s contract consultant Transportation Solutions (Exhibit 27). The third-party review concluded that the proposal is anticipated to generate peak parking demand of 17 spaces. The TENW report identifies a worst-case scenario of 57 unutilized parking spaces within 400 feet of the Project. The available on-street parking supply is therefore adequate to support the anticipated project peak parking demand as well as existing demand from surrounding uses such as existing residences and the adjacent public park.

While off-street parking was found to be adequate, Transportation Solutions recommended that due to the lack of parking availability during weekday business hours the project offer incentives to encourage alternative modes of transportation and reduce the necessity for personal vehicle ownership. This may include providing Kitsap Transit monthly passes for residents. It is also suggested that the Applicant provide secure bicycle storage for residents. These recommendations are consistent for development in urban centers, such as the “Downtown Center” in which the subject property is located. As these center areas redevelop over time and increase in density, increased on-street parking demands will be generated. Managing on-street parking by limiting parking duration will help reduce some impacts, but ultimately the use of alternative travel modes (bus, bike, walking) will become increasingly more viable.

Although concerns were raised regarding the timing of the parking study prepared for the proposal and its continued applicability, no evidence of any significant changes in the neighborhood that would warrant increased on-street parking demands over those found in the prepared study have been noted. Similarly, parking counts taken in residential areas during periods of the COVID emergency have typically been found to be higher due to increased instances of remote work. As such, the study data remains valid. Concerns were raised regarding the potential issuance of additional parking permits to the proposed project beyond the number (4 per residence) allowed by regulation. Staff has confirmed that the subject property and project would comprise one residence would be entitled to only 4 on-street parking permits.

1 C. Roads and Traffic. The proposal will not create any significant adverse impacts to the
2 City's transportation network. As noted in Section 1 of the introduction, the Applicant has
3 prepared a transportation impact analysis, verified by an independent City contractor, Ex.
4 27, that the proposal conforms to the City's LOS standards. The project's proportional
5 impact on the City-wide transportation system will be mitigated by the payment of required
6 traffic impact fees, designed to require the Applicant to pay for its proportionate share
7 demand upon the City's transportation network.

8 **Conclusions of Law**

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

12 2. Zoning Designations. Residential 2 (R2).

13 3. Review Criteria. As identified in Section 20.39.040 POMC, congregate living facilities²
14 are authorized in the R2 zone as a conditional use. Section 20.24.100 POMC establishes decision
15 criteria for all applications. Section 20.50.050(1) POMC governs the criteria for conditional use
16 permit review and Section 20.24.100 POMC adds additional standards that apply to all land use
17 permit applications. Applicable criteria are quoted below in italics and applied through
18 corresponding conclusions of law.

19 **Conditional Use Criteria**

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

22 4. Criterion met. The criterion is met for the reasons identified at pages 5-8 of the staff
23 report.

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

² The proposal qualifies as a congregate care facility for the reasons identified at Page 6 of the staff report.

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

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

5 6. Criterion met. The proposal is consistent with the Comprehensive Plan for the reasons
6 identified at pages 12-15 of the staff report.

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

8 7. Criterion met. The criterion is met. Planning and public works staff have reviewed the
9 proposal for consistency with the City's development standards and regulations and found the
10 project to be consistent and in compliance with all requirements of Title 20 POMC.

11 **POMC 20.50.050(1)(e):** *The conditional use will be supported by adequate public facilities
12 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*

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

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

16 10. Inapplicable. The criterion is not applicable as there are no existing conditions of
17 approval associated with a prior land division.

18 **Universal Permitting Criteria**

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

21 (1) *Determination of Consistency. The applications are reviewed by the city to
22 determine consistency between the proposed project and the applicable land use and
23 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:*

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

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

26 (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.*

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

3 (a) The comprehensive plan;

4 (b) The applicable provisions of this title;

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

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

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

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

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

17 11. The criterion is met. The criterion is met. City staff have reviewed and found the
18 proposal to conform to City standards. Contested issues of compliance have been addressed
19 in the findings and conclusions of this decision. As previously determined, the proposal is
20 found to comply with all applicable development standards as relevant to conditional use
21 permit review. Additional review under Title 20 will be required as part of subsequent
22 development applications.

23 The requirement above on burden of proof is not entirely consistent with court opinions on
24 assessing impacts to property values. The courts have ruled that the City bears the burden
25 of proof in assessing impacts to property values. See *City of Medina v. T-Mobile USA, Inc.*,
26 123 Wn. App. 19, FN No. 45 (2004)(citing *Sprint Spectrum, L.P. v. Town of N. Stonington*,
12 F. Supp. 2d 247, 254 (D. Conn. 1998) (holding that in order for the Town Planning and
Zoning Commission to deny a permit application based on property values, the Town bore
the burden of putting evidence into the record tending to show such a negative impact)).
With these parameters, given the vacant history of the subject property and the measures
taken by the Applicant to avoid nuisance activity, some documented evidence must be
presented to support neighborhood concerns that property values will be adversely affected.
In the absence of such evidence for this application, it is determined in Finding of Fact No.
5D that the proposal will not adversely affect property values.

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DECISION

Conditional Use Permit Application No. LU-23-CUP-01 satisfies all applicable criteria as determined in the Conclusions of Law of this decision and is therefore approved³ subject to the following conditions:

- 1) All lighting for the building will be downward-directional with no direct lighting facing surrounding properties.
- 2) Individual residential leases for the Amici House shall have a tenancy of no less than 30 days.
- 3) Amici House shall have 24-hour on-site residential management. The residential manager(s) shall be responsible for the operations and maintenance of the facility and shall serve as a point of community contact. Contact information for the resident manager(s) shall be publicly available.
- 4) No social or welfare services shall be provided on the Amici House site.
- 5) The Applicant shall pursue methods of encouraging public transit use by Amici House residents, including but not limited to, providing monthly or annual transit passes and providing bike racks and/or bike storage.

DATED this 28th day of August 2023.

Phil Olbrechts
Hearing Examiner for Port Orchard

Appeal Right and Valuation Notices

POMC 20.22.050(8) provides that the final decision of the Hearing Examiner is subject to appeal to superior court. Appeals of final land use decisions to superior court are governed by 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.

³ The use approved is a congregate care facility limited to a population of young adults and subject to rules of enforced conduct as described by the Applicant in its application materials, most notably the “hours and manner of operation, noise, lights” response at page 5 of Ex. 1E. The extent of impacts and hence analysis by the Examiner and likely staff was based upon these representations made by the Applicant. Any material change in the proposed demographics of housing residents, codes of conduct, material failure to enforce the code of conduct, or other material changes in the project as proposed in the exhibits by the Applicant shall be considered a change in use requiring application of a new conditional use permit and/or amendment to the existing conditional use permit according to City amendment practices and ordinance requirements.

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