

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF BAINBRIDGE ISLAND**

In the Matter of the Application of	)	No. PLN51717 SPR/CUP
	)	
	)	
<b>Charles Wenzlau</b>	)	Messenger House Phase 2
	)	SPR/CUP
	)	
For Approval of Site Plan and Design	)	<b>FINDINGS, CONCLUSIONS,</b>
<u>Review and a Conditional Use Permit</u>	)	<b>AND DECISION</b>

**SUMMARY OF DECISION**

The request for approval of site plan and design review, and a conditional use permit, to construct a three-story, 52,460 square foot addition to an existing health care facility on a 7.01-acre property located at 10861 Manitou Park Blvd NE is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

**SUMMARY OF RECORD**

Hearing:

The Hearing Examiner held an open record hearing on the request on August 12, 2021, using remote access technology.

Testimony:

The following individuals testified under oath at the open record hearing:

Kelly Tayara, City Senior Planner  
Paul Nylund, City Engineering Manager  
Charles Wenzlau, Applicant Representative  
Jeff Bouma  
Anne Corbett

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated July 28, 2021
2. Site Assessment Review, dated June 5, 2020
3. Preapplication Conference Summary Letter, dated September 22, 2020
4. Master Land Use Application, dated November 24, 2021, with Owner/Agent Agreement, dated August 4, 2020
5. Notice of Incomplete Application, dated December 21, 2020
6. Notice of Complete Application, dated March 25, 2021

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7. Notice of Application, SEPA Comment Period, and Hearing, issued April 2, 2021
  - a. Mailing List
  - b. Postcard Mailer
  - c. Affidavit of Publication, dated April 2, 2021, with Legal Invoice and Classified Proof, *Bainbridge Island Review*, published April 2, 2021
  - d. Certificate of Posting, dated April 6, 2021
  - e. Three (3) Posted Notice Photographs
8. SEPA Environmental Checklist, dated January 4, 2021
9. Geotechnical Engineering Report, Aspect Consulting, LLC, dated June 22, 2020
  - a. Slope Study (Sheet 1 of 1), MAP, Ltd., dated January 7, 2021
10. Preliminary Stormwater Design Report, MAP, Ltd., dated November 13, 2020
11. Trip Generation and Parking Analysis, Heath and Associates, Inc., dated November 2020
12. Plan Set (19 Sheets), submitted November 25, 2020
  - a. Basic Site Plan (Sheet A1.00), revised March 26, 2021
  - b. Revised Preliminary Utilities Plan (Sheet 1 of 1), dated November 12, 2020
  - c. Revised Tree Retention and Aquifer Recharge Protection Area Plan Set (6 Sheets), submitted February 1, 2021
  - d. Revised Aquifer Recharge Protection Area Plan, dated March 2021
  - e. Existing Native Vegetation Study, dated January 14, 2020
13. Storm Water Pollution Prevention Plan (Sheet C-3.0), dated March 3, 2021
  - a. Grading Plan (Sheet C4.0), dated February 25, 2021
  - b. Path Grading Plan (Sheet C-4.1), dated March 1, 2021
14. Comment from Mark Maxwell, dated April 8, 2021
15. Comment from David Sprinkle, dated April 13, 2021
16. Comment from Mark Freeman, dated April 15, 2021
17. Comment from Charles Schmid, dated April 15, 2021
  - a. Revised Comment from Charles Schmid, dated April 23, 2021
18. Comment from Anne and Hoyt Corbett, dated April 16, 2021
  - a. Attachment to Comment from Anne and Hoyt Corbett, dated April 16, 2021
19. Comment from Michael Coleman, dated April 16, 2021
  - a. Attachment to Comment from Michael Coleman, dated August 16, 2021
20. Comment from Michael Coleman, dated May 3, 2021
  - a. Attachment to Comment from Michael Coleman, dated May 3, 2021
21. Tree Appraisal, Katy Bigelow, Arborist, LLC, dated November 9, 2020
22. Applicant Comprehensive Plan Narrative, Wenzlau Architects, dated November 24, 2020
23. Project Narrative and Decision Criteria, Wenzlau Architects, dated November 24, 2020
24. Hearing Examiner Findings of Fact, Conclusions of Law, and Order (CUP07-22-94-1), dated March 10, 1995.
25. Water Availability Letter, dated November 9, 2020
26. Comment from Kitsap Public Health, dated December 2, 2020
27. Bainbridge Island Fire Department Recommendation, dated December 9, 2020
28. Design Review Board Recommendation, dated May 3, 2021

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29. Planning Commission Recommendation, dated July 22, 2021
30. Mitigated Determination of Nonsignificance, issued July 28, 2021
31. Revised Site Plan (Sheet A-1.X), revised July 26, 2021.

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

## **FINDINGS**

### Background

1. The Messenger House Care Center is a health care facility that has existed on the site since around 1960. In 1984, Kitsap County approved an unclassified use permit to allow construction of an 8,000 to 9,000 square foot addition to the existing facility and, in 1986, approved a revision to the unclassified use permit to allow construction of a 2,600 square foot building addition. On March 10, 1995, the former City of Bainbridge Island Hearing Examiner (J. Robin Hunt) approved a conditional use permit to allow construction of a new 20,500 square foot, 49-bed building addition and to replace a 70-stall parking area at the existing facility. Following the construction of the new building addition and parking area approved with the 1995 conditional use permit, no major additions to the existing facility have occurred. Some structures on the property have been removed, however, including a house that was demolished between 2009 and 2010 and a theater building that was demolished between 2017 and 2018, both of which had been located at the southeast portion of the site. *Exhibit 1, Staff Report, pages 2 and 4; Exhibit 9; Exhibit 23; Exhibit 24; Exhibit 28.*

### Application and Notice

2. Charles Wenzlau, Wenzlau Architects (Applicant), requests site plan and design review (SPR) approval and approval of a conditional use permit (CUP) to construct a three-story, 52,460 square foot addition to the existing Day Hall building at the Messenger House Care Center facility. The Day Hall building was constructed in 1917 and has recently been listed on the Local Historic Register. The proposed addition would house 46 beds with assisted- and independent-living units and would replace an existing one-story, 46-bed skilled nursing building wing attached to Day Hall that was constructed in 1986 and would be demolished as part of the redevelopment. The property consists of two parcels totaling 7.01 acres that would be aggregated through a boundary line adjustment. The property is located at 10861 Manitou Park Blvd NE.<sup>1</sup> *Exhibit 1, Staff Report, pages 2, 3, and 9; Exhibit 3; Exhibit 4; Exhibit 12; Exhibit 23.*

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<sup>1</sup> The property is identified by tax parcel numbers 4156-002-0005-0203 and 4156-002-007-0003. *Exhibit 1, Staff Report, page 3.* A legal description of the property is included with the plan set. *Exhibit 12.c.*

3. The City determined that the application was complete on March 25, 2021. On April 2, 2021, the City provided notice of the application and the associated public hearing by mailing notice to property owners within 500 feet of the subject property, posting notice at City Hall kiosks and on the City website, and publishing notice in the *Bainbridge Island Review* with a comment deadline of April 16, 2021. Notice was posted at the subject property on April 6, 2021. *Exhibit 1, Staff Report, page 2; Exhibit 6; Exhibit 7.*
4. The City received two reviewing agency comments in response to its notice materials. The Kitsap Public Health District did not raise any concerns about the proposal and noted that the on-site septic system serving the property is under the jurisdiction of the Washington State Department of Health. The City Deputy Fire Marshal noted that the project would be required to install fire sprinklers and alarms in compliance with applicable fire code provisions, necessary fire flow would be met through existing hydrants, fire lane markings appear adequate, and gates installed across the south side fire department access road would be required to have a Knox override installed to provide emergency access to the property. The City also received several comments on the proposal from members of the public:
  - Mark Maxwell requested additional information regarding the anticipated traffic impacts of the proposal.
  - David Sprinkle noted existing issues concerning speeding vehicles impacting pedestrian safety along Manitou Beach Drive NE. He requested that an electronic speed sign be installed at the corner where NE Valley Road becomes Manitou Beach Drive NE. Mr. Sprinkle also requested that the facility operator inform staff that speeding is prohibited and develop a program for neighbors to report excessive speeders to the operator for appropriate action.
  - Mark Freeman noted existing issues about staff traveling to and from the facility at excessive speeds and requested that road calming measures be implemented, such as the installation of speed bumps, electronic speed monitoring, and monitoring by the City police department.
  - Charles Schmid submitted a comment noting that he and his wife have lived near the facility since 1970 and are looking forward to a well-designed facility. He requested additional information about several aspects of the proposal, including the project's phased development, any proposed boundary line changes, open space elements, traffic and road impacts, steep slopes, shoreline impacts, and light and noise impacts.
  - Anne and Hoyt Corbett submitted a comment noting that a condition of the 1995 Messenger House facility expansion approval required neighboring residences to be buffered by the property's existing heavily forested vegetation. They stated a portion of the existing buffer had been cut to facilitate a new parking lot and that the replacement buffer plantings have been insufficient to mitigate for visual and noise impacts to their neighboring property. The Corbetts requested that the construction activity be limited to specified hours and that noise-proof fencing be

installed to mitigate for temporary construction noise impacts. They also requested that the Applicant be required to plant and maintain a dense vegetative buffer around the southwest parking lot and on the neighboring side of the proposed new three-story building wing, locate staff parking to the west lot to minimize noise impacts during staff shift changes, assure that ground lighting minimizes impacts to neighboring residential properties, and consider limiting the footprint of the proposed new building extension to the footprint of the existing building wing. In addition, the Corbetts raised concerns about the project's impacts to area wildlife, opposed a public pathway bordering their property, and requested that the City vacate the right-of-way between their property and the subject property.

- Michael Coleman submitted comments that generally expressed support for having memory care services and assisted living residents in the neighborhood. Mr. Coleman raised concerns, however, about the proposal exceeding the scope of the 1995 conditional use permit, use of his property for a fire lane, the proposed location of a pedestrian path, construction noise, the height and footprint of the proposed building addition, and adequate buffering to screen the facility from neighboring residential properties.

*Exhibit 1, Staff Report, pages 2, 6, and 7; Exhibits 14 through 20; Exhibit 26; Exhibit 27.*

#### State Environmental Policy Act

5. The City acted as lead agency and analyzed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City consolidated notice of the SEPA review and application comment periods under the optional process provided for by Washington Administrative Code (WAC) 197-11-355, with a comment deadline of April 16, 2021. The notice materials stated that the City expected to issue a Determination of Nonsignificance (DNS) for the proposal. The City reviewed the Applicant's Environmental Checklist and other information on file and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a Mitigated Determination of Nonsignificance (MDNS) for the proposal on July 28, 2021, with a comment and appeal deadline of August 11, 2021. The City did not receive any comments on the MDNS, and the MDNS was not appealed. The MDNS requires the Applicant to submit with the building permit application lighting plans demonstrating compliance with Bainbridge Island Municipal Code (BIMC) 18.15.040; incorporate soundproofing barriers for all existing and new generators and heating, ventilation, and air conditioning units; and submit with construction permit applications a management plan consistent with Puget Sound Clean Air Agency (PSCAA) Fugitive Dust Controls. *Exhibit 1, Staff Report, page 2; Exhibit 5; Exhibit 7; Exhibit 8; Exhibit 30; Testimony of Kelly Tayara.*

### Comprehensive Plan and Zoning

6. The property is designated Residential-2 by the City Comprehensive Plan. City staff identified the following Comprehensive Plan goals and policies as relevant to the proposal:
- Encourage preservation of existing historic structures and sites as an important tool in building a sustainable and unique community. [Policy LU 21.1]
  - Engage in cooperative efforts with owners to encourage the preservation of historic resources. [Policy LU 21.6]
  - Collaborate with interested stakeholders to promote historic preservation on the Island. [Policy LU 22.3]
  - Promote on-Island access to healthcare facilities and medical services, particularly those addressing the needs of the Island's increasing older population. [Policy EC 9.4]
  - Facilitate the siting and development of housing opportunities for special needs populations. [Goal HO-8]
  - Preserve places where the Island's history can be experienced, interpreted, and shared with the general public, in order to deepen an understanding of our heritage and the relationship of the past to our present and future. [Goal CUL-3]
  - Support programs that provide needed services for families, e.g., child or adult day care, respite care for caregivers and mental health services. [Policy HS 2.4]
  - Promote the creation of a mix of housing alternatives and services for people at different levels of independence. [Policy HS 3.2]

*Exhibit 1, Staff Report, pages 8 and 9; Exhibit 22.*

7. City staff determined the proposal would be consistent with the goals and policies of the Comprehensive Plan, noting: the property has contributed to the local culture for over 100 years; institutions operating the site have been important to the local economy throughout much of the twentieth century; the current property owners have been in the process of modernizing the health care facility; the property owners have engaged in cooperative efforts with the Historic Preservation Committee and City staff to retain historic elements of the site during redevelopment despite having no requirement to do so; the proposed redevelopment would retain and rehabilitate the Day Hall building in recognition of its historic character; the completed project would provide memory care services, along with assisted- and independent-living facilities, to serve the special needs of an aging population; and redevelopment conditions would ensure that the facility would comply with current building, health, fire code, stormwater, and environmental regulations. *Exhibit 1, Staff Report, page 9.*
8. The subject property and all the surrounding properties are within the Residential 2 (R-2) zoning district. The purpose of the R-2 zoning district is "to provide residential neighborhoods in an environment with special Island character consistent with other land uses such as agriculture and forestry, and the preservation of natural systems and open

space, as a somewhat higher density than the R-1 district.” *BIMC 18.06.020.C*. The proposed use is for a health care facility, which is allowed in the R-2 zone with a conditional use permit.<sup>2</sup> *BIMC Table 18.09.020. Exhibit 1, Staff Report, pages 2 and 3.*

9. BIMC Table 18.12.020-2 provides dimensional standards applicable to development in the R-2 zone. The Applicant’s proposal would comply with dimensional standards related to minimum lot area, minimum lot dimensions, maximum building height, and minimum setbacks for front lot lines. Because the property has more than one front lot line, all other lot lines are considered side lot lines and, thus, the minimum rear lot line setback requirements of BIMC Table 18.12.020-2 would not apply. *BIMC 18.12.050.N*. The existing building wing attached to Day Hall is currently nonconforming with the minimum side setback requirements, and the proposed new building extension would extend over both parcels that currently comprise the subject property. The Applicant would aggregate both parcels through a boundary line adjustment, which would ensure that the building addition would be contained on a single parcel and would comply with minimum side setback requirements. The existing lot coverage is 15.9 percent, as approved with the 1995 conditional use permit, and the proposed lot coverage would be 16.9 percent, exceeding the 10 percent maximum lot coverage generally applicable to health care facilities in the R-2 zone. *BIMC 18.09.030.C.7.b; BIMC Table 18.12.020-2*. The proposal, however, received approval for a modification from the maximum lot coverage requirement to allow for the proposed lot coverage through provisions of the City’s Historic Preservation Program, Chapter 18.24 BIMC, which are applicable to properties listed on the Local Historic Register. *Exhibit 1, Staff Report, page 10.*

#### Existing Site, Surrounding Development, and Critical Areas

10. The subject property is currently developed with the Messenger House Care Center health care facility, which consists of a building complex that includes a Memory Care wing constructed in 1996, the Day Hall building and existing single-story skilled nursing building wing, and a caretaker’s house, as well as associated parking areas, landscaping, and pedestrian pathways. Properties immediately to the west of the subject property consist of undeveloped forested areas. Surrounding properties to the north, east, and south consist of residential development, apart from one property to the east that contains a parking lot for the Rolling Bay Walk community. *Exhibit 1, Staff Report, page 3; Exhibit 9; Exhibit 10; Exhibit 12.*
11. Aspect Consulting, LLC, prepared a Geotechnical Engineering Report (GER) for the proposed project, dated June 22, 2020. The GER notes that the site is generally flat (0 to 5 percent inclinations) over the western half of the property, contains moderate slopes (5 to 15 percent inclinations) at the center, and contains scattered steep slopes (15 to 50

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<sup>2</sup> *Health care facility* is defined as “a building or buildings used for human health care with more than 10,000 square feet in floor area, such as a hospital or major medical clinic.” *BIMC 18.36.030.*

percent inclinations) in limited areas in the north and northeast. The GER determined that the scattered steep slopes do not constitute geologic hazard areas under the municipal code due to the minimal height of the slopes and the absence of seeps. The GER further determined that the proposed project would be feasible from a geotechnical perspective and provided detailed design and construction recommendations for the building foundations, slabs-on-grade, and earthwork activities. *Exhibit 1, Staff Report, page 3; Exhibit 9.*

12. The entirety of the City is classified as an aquifer recharge area. The proposed redevelopment on the R-2 zoned property requires a designation of an Aquifer Recharge Protection Area (ARPA). *BIMC 16.20.100.E.* The ARPA must include all existing native vegetation on-site, up to a maximum of 65 percent of the total site area. *BIMC 16.20.100.E.2.b.* ARPA design standards provide that healthy, existing trees and vegetation should be retained to the maximum extent possible; trees shall be retained in one or more stands or clusters; the ARPA shall be delineated to include a low perimeter-to-area ratio and a minimum width of 12 feet, and the critical root zone of all significant trees; the ARPA shall be contiguous with abutting, off-site areas of other ARPAs, open space, or critical areas to the extent feasible; and the ARPA may include landscaping or open space requirements and other critical areas and associated buffers or setbacks. *BIMC 16.20.100.E.3.* In accord with these requirements, the Applicant submitted site plans designating ARPAs along the northeast, northwest, and southwest corners of the property, which represent approximately 13 percent of the site area. No other critical areas have been identified on the property. *Exhibit 1, Staff Report, page 9; Exhibit 2; Exhibit 12.C through 12.E.*

#### Traffic, Parking, and Access

13. Primary access to the facility would be provided from a driveway extending to Manitou Beach Drive NE to the west of the property. In addition, emergency vehicle access would be provided from Manitou Park Blvd NE. In response to concerns from neighboring property owner Michael Coleman that the proposed emergency access drive would encroach on his property, the Applicant submitted a revised site plan relocating the proposed emergency access drive within the City right-of-way located on the subject property. Heath and Associates, Inc., prepared a Trip Generation and Parking Analysis report for the project, dated November 20, 2020. The report determined that the proposal to replace skilled nursing beds with assisted- and independent-living beds would result in 12 fewer average daily trips, no additional AM peak-hour trips, and 3 fewer PM peak-hour trips. Because the proposal would generate fewer trips than the existing use, the report determined that an additional traffic impact analysis would not be required for the project and that the Applicant would not be required to mitigate for the project's anticipated traffic impacts. The report also determined that the average parking demand for the proposal would be 45 parked vehicles and, therefore, the existing 72 parking stalls on-site would be sufficient to meet this demand. City planning and engineering staff

reviewed the proposal and determined that the existing parking facilities would be adequate to serve the proposed redevelopment. *Exhibit 1, Staff Report, pages 14, 15, and 19; Exhibit 11; Exhibit 12; Exhibit 19; Exhibit 31; Testimony of Paul Nylund.*

14. BIMC 18.15.030 provides requirements for pedestrian, bicycle, and transit user access. The City development engineer reviewed the proposal and determined that the project, as conditioned, would conform to City design and construction standards and specifications. City staff determined that, given the intended population, few residents of the facility would likely have the need for bicycle facilities. City staff recommends that the Applicant be required to provide an outdoor covered bicycle facility supporting a minimum of five bicycles for visitors of the facility, as well as indoor or outdoor bicycle storage for employees at a ratio of one bicycle space per five employees. *Exhibit 1, Staff Report, pages 11 and 12.*

#### Landscaping and Trees

15. Non-residential development projects in the R-2 zoning district are required to comply with the landscaping, screening, and tree retention requirements identified in BIMC 18.15.010.D. *BIMC 18.15.010.B.* Pursuant to these requirements, the Applicant would be required to provide full perimeter landscape screening with a minimum 25-foot perimeter width. *BIMC Table 18.15.010-3.* City staff reviewed the Applicant's site plans and determined that the required landscape screening buffer would be provided. A portion of the existing parking lot on the property, however, is located within the required 25-foot screening buffer area along the southwest side of the site. Because the Applicant does not propose to enlarge or alter the existing nonconforming parking lot, it would be allowed to remain and be used on the property under the nonconforming structure provisions of the zoning code. *BIMC 18.30.040.* The Applicant would also be required to have at least 40 tree units per acre following redevelopment, which equates to 280 tree units for the 7.01-acre property. The Applicant submitted a tree retention plan, as well as an appraisal report prepared by Katy Bigelow, Arborist, LLC, dated November 9, 2020, which identified 21 trees on-site that would be retained after redevelopment, constituting 171 tree units based on diameter-at-breast-height measurements of the 21 trees, consistent with BIMC Table 18.15.010-5. The Applicant's project plans also identify the location of new tree plantings on-site that would total 109 tree units thereby satisfying the 280-tree unit requirement. *Exhibit 1, Staff Report, page 11; Exhibit 12.c; Exhibit 21.*

#### Stormwater

16. MAP, Ltd., prepared a preliminary stormwater design report for the proposal, dated November 13, 2020. The report notes that stormwater runoff from the proposed redevelopment would be addressed by the existing stormwater management system serving the site: roof runoff from the new addition would be conveyed to the existing drainage conveyance system in the service drive area, and runoff from a new service entrance and modified fire lane would be collected by surface grading to catch basins

fitted with oil/water separator baffles and piped to the nearest existing conveyance pipe. City Engineering Manager Paul Nylund testified at the hearing that he reviewed the preliminary stormwater design report and determined that the existing stormwater management system appears capable of handling any additional runoff generated from the redevelopment in compliance with the requirements of the Washington State Department of Ecology 2012 Stormwater Management Manual for Western Washington, as amended in 2014. The Applicant would be required to submit with the building permit application a final stormwater report detailing the project's compliance with the 2012 Stormwater Management Manual for Western Washington, as amended in 2014. *Exhibit 1, Staff Report, pages 16, 19, 23, and 24; Exhibit 2; Exhibit 10; Exhibit 13; Testimony of Mr. Nylund.*

#### Utilities

17. An existing on-site well supplies sufficient water to serve the existing and proposed development, with emergency backup water service provided by Kitsap Public Utility District. The property is served by an on-site wastewater treatment plant that operates under a Department of Ecology National Pollutant Discharge Elimination System permit. The project would include replacement of numerous fixtures with new low-flow fixtures in compliance with code requirements. *Exhibit 1, Staff Report, pages 15 and 20; Exhibit 25.*

#### Site Plan and Design Review

18. A proposal requiring site plan/design review must be reviewed by the City's Design Review Board (DRB), as well as by the City's Planning Commission, to ensure the proposal complies with City design review guidelines. *BIMC 2.16.040; BIMC 2.16.110.* An Applicant may request that review of a site plan and design be consolidated with review of other land use permits, such as a CUP. *BIMC 2.16.040.E.7; BIMC 2.16.170.* The Applicant requested consolidated review of its site plan and design with its request for a CUP. *Exhibit 1, Staff Report, pages 1 and 2.*
19. The DRB reviewed the proposal at a meeting on May 3, 2021. The DRB determined that the proposal would be consistent with applicable City design review standards and recommended approval with conditions addressing parking lot lighting, off-street parking restrictions, delivery vehicle access limitations, and separation of a pedestrian footpath from the driving surface on Ocean View Drive. The Planning Commission reviewed the proposal at a July 22, 2021, meeting; determined that the project, as conditioned, would be consistent with the Comprehensive Plan, zoning regulations, and applicable design standards; and recommended approval of the proposal, subject to conditions recommended by City staff, as well as an additional condition requiring the Applicant to provide affordable beds if supported under SEPA or the Comprehensive Plan. The City Planning and Community Development Director (Director) determined that a condition requiring the provision of affordable beds would not be supported under SEPA because

the proposal does not include any change in the number of beds that would be provided by the facility. The Director also determined that there are no provisions addressing affordable beds in the Comprehensive Plan or in the municipal code. Accordingly, the Director's recommended conditions of approval do not include any requirement for the provision of affordable beds. *Exhibit 1, Staff Report, pages 7 and 8; Exhibit 28; Exhibit 29.*

20. The Director and City staff analyzed the proposal and determined that, with conditions, the proposal would meet the site plan and design review criteria of former BIMC 2.16.040 (2019), noting:
- The Planning Commission unanimously recommended approval subject to City staff's recommended conditions, with an additional condition requiring the Applicant to provide affordable beds if supported under SEPA or the Comprehensive Plan. The provision of affordable beds would not be supported under SEPA or the Comprehensive Plan.
  - The DRB recommendations were considered and incorporated into the Planning Commission's recommended conditions of approval where necessary, including the requirement for compliance with current lighting regulations and vehicular access restrictions. The conditions recommended in the staff report to the Hearing Examiner are the same conditions recommended to the Planning Commission.
  - The proposed development, as conditioned, would comply with all applicable provisions of the municipal code.
  - The DRB and the Historic Preservation Commission determined that, as conditioned, the proposed redevelopment would be context-sensitive and harmonious in design, character, and appearance with Day Hall and the additional historic elements on the property, as well as with the character of the neighborhood. The Messenger House Care Center facility has operated harmoniously within this residential district since 1960. The proposed redevelopment would be consistent with the character and quality of development in the vicinity and sensitive to the physical characteristics of the subject property.
  - The Kitsap Public Health District recommends approval and notes that the on-site septic system is under the jurisdiction of the Washington State Department of Health.
  - The City Development Engineer determined: the streets and pedestrian ways, as conditioned, would be adequate to accommodate anticipated traffic; the site plan, as conditioned, demonstrates conformance with applicable drainage regulations; the site plan would not cause an undue burden on the drainage basin or water quality and would not unreasonably interfere with the use and enjoyment of downstream properties; the site would be adequately served by an existing on-site well and a backup water source provided by Kitsap Public Utility District, as well as by an on-site wastewater treatment plant; the site plan, as conditioned, would

conform with City design and construction standards and specifications; and the site plan would conform with application portions of the Comprehensive Plan addressing streets, roads, and utilities.

- The DRB determined that the project would be consistent with applicable design guidelines.
- Recommended conditions, including conditions addressing transportation and access, water, sanitation, and stormwater, would ensure that the proposed redevelopment would not endanger the public health, safety, or welfare.
- The proposed redevelopment would be consistent with the Comprehensive Plan and other applicable adopted community plans.
- The City of Bainbridge Island is classified as an aquifer recharge area. Aquifer Recharge Protection Areas are designated on the property, and a recorded notice on the title would be required prior to issuance of a building permit.
- The Fire Marshal recommends approval subject to the recommended conditions.
- The site plan and design were prepared consistent with the purpose of the site design review process pursuant to BIMC 2.16.040.

*Exhibit 1, Staff Report, pages 13 through 16.*

#### Conditional Use Permit

21. The Applicant provided a project narrative that addresses the specific criteria for approval of a CUP under BIMC 2.16.110.F. The Applicant contends that the proposal would satisfy the criteria, noting:

- The proposed use has been in existence since 1960. The current facility was last enlarged in 1996 to its current 96 bed facility. The proposed plans would not enlarge or intensify the existing use. The hours of operation and types of activities would remain unchanged. The staffing would be reduced from 30 to 12 based upon the elimination of skilled nursing care.
- The proposed use would be consistent with prior CUP approvals and would not intensify site activities. The prior units had two residents sharing a unit. The building height would be increased from one floor to three floors to accommodate larger, non-shared living units. The scale of the new wing would be consistent with the three-story 1917 building to the north. The site previously included a four-story theater building that was removed in 2017. The traffic to and from the site would be further restricted from current patterns by closing off the gravel fire lane and directing service vehicles to only use NE Ocean Drive.
- The project would support multiple relevant sections of the Comprehensive Plan. The project would include a non-motorized pedestrian path along the south edge within the unopened right-of-way.
- The site design meets all applicable development standards, including dimensional standards, landscape requirements, ARPA, and parking.
- Potential impacts to properties in the vicinity would be reduced by restrictions to vehicle access and new landscape screening.

- The project would comply with all local noise restrictions.
- The project would comply with all required right-of-way improvements, including construction of a new non-motorized pedestrian path along the unopened right-of-way.
- City engineering staff has determined that no traffic impact analysis is warranted due to the minimal changes to anticipated vehicle trips.
- The project would comply with all relevant local regulations.
- The Applicant has coordinated with the City Fire Department with regard to fire flow, fire protection, and fire access requirements.

*Exhibit 23.*

22. City staff analyzed the proposal and determined that, with conditions, the proposal would meet the CUP criteria of BIMC 2.16.110.F, noting:

- The DRB determined that the project would be consistent with applicable design guidelines and recommends approval with conditions. The DRB and the Historic Preservation Commission determined that, as conditioned, the proposed redevelopment would be context-sensitive and harmonious in design, character, and appearance with Day Hall and the additional historic elements on the property, as well as with the character of the neighborhood.
- The Messenger House Care Center facility has operated harmoniously within this residential district since 1960. The proposed redevelopment would be consistent with the character and quality of development in the vicinity and sensitive to the physical characteristics of the subject property.
- The proposed redevelopment would be consistent with the Comprehensive Plan and the Island-Wide Transportation Plan. The City Development Engineer determined that the project, as conditioned, would be consistent with application portions of the Comprehensive Plan pertaining to streets, roads, and utilities, including the Island-Wide Transportation Plan.
- The conditional use, as conditioned, would be consistent with applicable zoning standards, including dimensional standards, design guidelines, and landscaping and parking requirements.
- Recommended conditions, including conditions addressing transportation and access, water, sanitation, stormwater, lighting, noise, and bicycle and trail facilities would ensure that the conditional use would not endanger the public health, safety, or welfare.
- All activities on the property would be required to comply with current noise regulations.
- The City Development Engineer determined: the streets and pedestrian ways, as conditioned, would be adequate to accommodate anticipated traffic; the site plan, as conditioned, demonstrates conformance with applicable drainage regulations; the site plan would not cause an undue burden on the drainage basin or water quality and would not unreasonably interfere with the use and enjoyment of

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downstream properties; the site would be adequately served by an existing on-site well and a backup water source provided by Kitsap Public Utility District, as well as by an on-site wastewater treatment plant; the site plan, as conditioned, would conform with City design and construction standards and specifications; and the site plan would conform with application portions of the Comprehensive Plan addressing streets, roads, and utilities.

- The Kitsap Public Health District recommends approval and notes that the on-site septic system is under the jurisdiction of the Washington State Department of Health. Kitsap Public Health District approval would also be required for building occupancy.
- The Fire Marshal recommends approval subject to the recommended conditions.
- City staff recommends approval subject to the recommended conditions.

*Exhibit 1, Staff Report, pages 18 through 21.*

#### Institutions in Residential Zones

23. BIMC 2.16.110.G contains additional decision criteria applicable to proposals for health care facilities in residential zones. City staff analyzed the proposal and determined that it would meet the criteria, noting:

- The site fronts on residential suburban roads.
- The DRB's determination that the proposal would meet applicable design standards included an analysis of bulk, height, and architectural compatibility with the surrounding area.

*Exhibit 1, Staff Report, page 21.*

#### Testimony

24. City Senior Planner Kelly Tayara testified generally about the proposal and how, with conditions, it would meet the criteria for site plan and design review approval and approval of a conditional use permit. She noted that the proposed redevelopment would include demolition of an existing single-story building wing attached to the historic Day Hall building and the construction of a new 52,460 square foot, three-story building wing. Ms. Tayara detailed how the proposed redevelopment would comply with applicable standards for development in the R-2 zoning district. She noted that the City issued a SEPA MDNS on July 28, 2021, which was not appealed. Ms. Tayara explained that the City received several comments from members of the public that generally raised concerns about the project's traffic impacts; the adequacy of roads to serve vehicles, bicycles, and pedestrians; and compliance with conditions of the previous conditional use permit approved in 1995, particularly with respect to conditions requiring a vegetative buffer to be maintained to ensure that the previously approved use would be compatible with the surrounding neighborhood. Regarding public concerns about a vegetative buffer that had apparently been cleared in conflict with the conditions of the previous CUP approval, she noted that the City relies on citizen complaints to investigate alleged violations and that the City had not received any complaints about improper vegetation

removal on the property. Ms. Tayara stressed that the Applicant would be required to provide full perimeter landscape screening as part of the current proposal. She also stressed that the Director recommended approval of the proposal, with conditions, after considering the concerns raised by members of the public, as well as the comments from reviewing agencies, the recommendations of the Design Review Board and the Planning Commission, the character of the area in which the property is located, the applicable comprehensive plan goals and policies, and the requirements of the municipal code and all other applicable law. She noted that there have been recent amendments to the municipal code and that the project vests to the code criteria in effect at the time of the complete application. *Testimony of Ms. Tayara.*

25. City Engineering Manager Paul Nylund testified that the City received a comment from neighboring property owner Michael Coleman that raised concerns about the location of an existing gravel path encroaching on his property, which the Applicant had proposed to utilize as an emergency fire access lane. He stated that, in response to Mr. Coleman's concerns, the Applicant submitted a revised site plan relocating the proposed emergency access drive outside of Mr. Coleman's property. Mr. Nylund also discussed comments from members of the public raising concerns about the location of a heavily used pedestrian pathway that abuts residential properties. He stated that the City is requiring the Applicant to retain a pedestrian pathway in the area and that the current plan to preserve the existing pathway would satisfy City requirements, but he noted that the Applicant and the City are working with neighboring property owners to potentially realign the pathway in a manner that would address their concerns. Mr. Nylund explained that the City would review any proposed realignment of the pathway with the building permit application. He stated that he reviewed the Applicant's preliminary stormwater design report and determined that the existing stormwater management system serving the property appears capable of handling any additional runoff generated from the proposed redevelopment in compliance with the requirements of the Washington State Department of Ecology 2012 Stormwater Management Manual for Western Washington, as amended in 2014. Mr. Nylund noted that the City would review the Applicant's final stormwater management plan at the building permit stage. *Testimony of Mr. Nylund.*

26. Applicant Representative Charles Wenzlau testified that the Applicant has worked with City staff, the Historic Preservation Committee, the Design Review Board, and the Planning Commission to ensure that the proposed redevelopment of the property would comply with all requirements for site plan and design review approval and approval of a conditional use permit. He explained that the proposed building addition would be approximately the same height as the historic Day Hall building and as the façade of the theater building that was recently demolished. Mr. Wenzlau stated that the Applicant has been working with adjacent property owners to realign a pedestrian pathway as far from their property as feasible. He noted that the Applicant has a preliminary pathway design

that appears amenable to the neighboring property owners and that the Applicant would continue to work with the neighbors and the City to finalize the design of the pathway. *Testimony of Mr. Wenzlau.*

27. Landscape Architect Jeff Bouma testified that the Applicant's landscape plans depict additional vegetation that would be planted to satisfy or exceed the requirement for full perimeter landscape screening. *Testimony of Mr. Bouma.*
28. Anne Corbett testified that she appreciates the care with which the Applicant and City staff have responded to her concerns as a neighboring property owner and that she looks forward to the project moving forward. *Testimony of Ms. Corbett.*

#### Staff Recommendation

29. Ms. Tayara testified that the Director reviewed recommendations from City staff, the Design Review Board, and the Planning Commission; determined that, with conditions, the project would comply with municipal code requirements and with the City Comprehensive Plan; and recommends approval of the application subject to conditions. Mr. Wenzlau testified that the Applicant has reviewed and would not have any issue complying with the recommended conditions. *Exhibit 1, Staff Report, pages 21 through 25; Testimony of Ms. Tayara; Testimony of Mr. Wenzlau.*

### **CONCLUSIONS**

#### Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and approve, approve with conditions, or deny applications for conditional use permits, under BMIC 2.14.030 and BMIC 2.16.110. The Hearing Examiner is also granted jurisdiction to hear and approve, approve with conditions, or deny applications for site plan and design review through a consolidated review process under BIMC 2.16.040 and BIMC 2.16.170.

In a major conditional use permit application, the planning commission reviews the application prior to the review and final decision. The planning commission recommends approval, approval with conditions, or denial of an application. *BIMC 2.16.110.E.3.*

The planning commission's recommendation is given substantial weight in the consideration of the application by the Director when preparing a staff recommendation to the Hearing Examiner. The Director must review the application materials, staff report, and recommendations of the planning commission and prepare a report to the Hearing Examiner recommending approval, approval with conditions, or disapproval of the application. *BIMC 2.16.110.E.4.*

The Hearing Examiner is directed to consider the application materials and the Director's recommendation at a public hearing. The Hearing Examiner must "make compliance with the

recommendations of the planning commission a condition of approval,” unless the Hearing Examiner concludes that the recommendations:

- i. Reflect inconsistent application of design guidelines or any applicable provisions of this code;
- ii. Exceed the authority of the design review board or planning commission;
- iii. Conflict with SEPA conditions or other regulatory requirements applicable to the project
- iv. Conflict with requirements of local, state, or federal law.

*BIMC 2.16.110.E.5.*

#### Criteria for Review

##### *Conditional Use Permit*

A major conditional use permit is a mechanism by which the city may require specific conditions on development or the use of land to ensure that designated uses or activities are compatible with other uses in the same zone and in the vicinity of the subject property. If imposition of conditions will not make a specific proposal compatible the proposal shall be denied.

*BIMC 2.16.110.A.*

A conditional use may be approved or approved with conditions if:

1. The conditional use is consistent with applicable design guidelines in BIMC Title 18. The conditional use is compatible with the established and intended character of the neighborhood, considering factors that include, but are not limited to, hours of operation, the type of activities generated by the use, and the predictable levels of any adverse impacts; and
2. The conditional use will not be materially detrimental to uses or property in the vicinity of the subject property; and
3. The conditional use is consistent with the comprehensive plan and other applicable adopted community plans, including the Island-Wide Transportation Plan; and
4. The conditional use complies with all other provisions of the BIMC; and
5. All necessary measures have been taken to eliminate or reduce to the greatest extent possible the impacts that the proposed use may have on the vicinity of the subject property; and
6. Noise levels shall be in compliance with BIMC 16.16.020 and 16.16.040.A; and
7. The streets and nonmotorized facilities as proposed are adequate to accommodate anticipated traffic; and
8. The city engineer has determined that the conditional use meets the following decision criteria:

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- a. The conditional use conforms to regulations concerning drainage in Chapters 15.20 and 15.21 BIMC; and
  - b. The conditional use will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use of properties downstream; and
  - c. The streets, nonmotorized facilities, locations of buildings, structures, and vehicular circulation systems as proposed align with and are otherwise coordinated with streets and nonmotorized facilities serving adjacent properties and are adequate, safe, efficient and consistent with the Island-Wide Transportation Plan; and
  - d. If a traffic study shows that the use will have an adverse impact on traffic, including nonmotorized traffic, the impact shall be mitigated as required by the city engineer; and
  - e. If the conditional use will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the conditional use, and the required service(s) can be made available at the site; and
  - f. The conditional use conforms to the “City of Bainbridge Engineering Design and Construction Standards and Specifications” unless the city engineer has approved a deviation to the standards; and
9. The Kitsap public health district has determined that the conditional use meets the following decision criteria:
- a. The proposal conforms to current standards regarding domestic water supply and sewage disposal; or if the proposal is not to be served by public sewers, then the lot has sufficient area and soil, topographic and drainage characteristics to permit an on-site sewage disposal system; and
  - b. If the health district recommends approval or disapproval of the application the health district shall so advise the director; and
10. The Bainbridge Island fire department has reviewed the application and determined that the conditional use will ensure fire protection.

*BIMC 2.16.110.F.*

*Additional Decision Criteria for Institutions in Residential Zones*

As applicable to this proposal, applications to locate health care facilities in residential zones shall be processed as major conditional use permits and shall be required to meet the following criteria:

- 1. All sites must front on roads classified as residential suburban, collector, or arterial on the Bainbridge Island functional road classification map.

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2. The scale of proposed construction including bulk and height and architectural design features is compatible with the surrounding area.
3. If the facility will have attendees and employees numbering fewer than 50 or an assembly seating area of less than 50, the director may waive any or all the above requirements in this subsection G, but may not waive those required elsewhere in the BIMC.

*BIMC 2.16.110.G.*

Under former BIMC 2.16.110.E.5 (2019):

- a. The hearing examiner shall consider the application materials and the director's recommendation at a public hearing following the procedures of BIMC 2.16.100.C and applicable provisions of BIMC 2.16.020.
- b. The hearing examiner shall make compliance with the recommendations of the planning commission a condition of approval, unless the hearing examiner concludes that the recommendations:
  - i. Reflect inconsistent application of design guidelines or any applicable provisions of this code;
  - ii. Exceed the authority of the design review board or planning commission;
  - iii. Conflict with SEPA conditions or other regulatory requirements applicable to the project; or
  - iv. Conflict with requirements of local, state, or federal law.

#### *Site Plan and Design Review*

The stated purpose of the City's site plan and design review code provisions is: to establish a comprehensive site plan and design review process that ensures compliance with the adopted plans, policies, and ordinances of the city. The overall goal of this chapter is to minimize land alteration, provide greater site development flexibility and consequently provide more creative and imaginative design than generally is possible under conventional zoning regulations. It is further intended to provide for the review of development proposals with respect to overall site design and to provide a means for guiding development in a logical, safe, attractive, and expedient manner, while also allowing property to be developed in phases. An additional purpose is to promote those specific purposes for each zoning district stated in Chapter 18.06 BIMC.

*BIMC 2.16.040.A.*

As applicable to this proposal, the following criteria apply to decisions on site plan and design review:

1. The site plan and design is consistent with all applicable provisions of the BIMC; and

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2. The locations of the buildings and structures, open spaces, and landscaping result in a context-sensitive design; and
3. The Kitsap public health district has determined that the site plan and design meets the following decision criteria:
  - a. The proposal conforms to current standards regarding domestic water supply and sewage disposal; or if the proposal is not to be served by public sewers, then the lot has sufficient area and soil, topographic and drainage characteristics to permit an on-site sewage disposal system; and
  - b. If the health district recommends approval of the application with respect to those items in subsection F.3.a of this section, the health district shall so advise the director; and
  - c. If the health district recommends disapproval of the application, it shall provide a written explanation to the director; and
4. The streets and nonmotorized facilities, as proposed, are adequate to accommodate anticipated traffic; and
5. The city engineer has determined that the site plan and design meets the following decision criteria:
  - a. The site plan and design conforms to regulations concerning drainage in Chapters 15.20 and 15.21 BIMC; and
  - b. The site plan and design will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use of properties downstream; and
  - c. The streets, nonmotorized facilities, locations of buildings, structures, and vehicular circulation systems as proposed align with and are otherwise coordinated with streets and nonmotorized facilities serving adjacent properties and are adequate, safe, efficient and consistent with the island-wide transportation plan; and
  - d. If a traffic study shows that the use will have an adverse impact on traffic, including nonmotorized traffic, the impact shall be mitigated as required by the city engineer; and
  - e. If the site will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the conditional use, and the required service(s) can be made available at the site; and
  - f. The site plan and design conforms to the “City of Bainbridge Engineering Design and Construction Standards and Specifications” unless the city engineer has approved a deviation from the standards; and
6. The site plan and design is consistent with applicable design guidelines in BIMC Title 18; and

7. No harmful or unhealthful conditions are likely to result from the proposed site plan; and
8. The site plan and design is consistent with the comprehensive plan and other applicable adopted community plans; and
9. If the subject property contains a critical area or buffer, as defined in Chapter 16.20 BIMC, the site plan and design review permit conforms to all requirements of that chapter; and
10. If the subject property is within the shoreline jurisdiction, as defined in Chapter 16.12 BIMC, the site plan and design review permit conforms to all requirements of that chapter; and
11. If the applicant is providing privately owned open space and is requesting credit against dedications for park and recreation facilities required by BIMC 17.20.020.C, the requirements of BIMC 17.20.020.D have been met; and
12. The Bainbridge Island fire department has reviewed the application and determined that the site plan has been properly designed to ensure fire protections; and
13. The site plan and design has been prepared consistent with the purpose and review procedures of this chapter.

*Former BIMC 2.16.040.F (2019).*

“The director may approve, approve with conditions, or disapprove the application for site plan and design review. Conditions may be imposed to enable the proposal to meet the standards of the decision criteria.” *BIMC 2.16.040.G.*

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 conditions, the proposed development would comply with the criteria for site plan and design review approval.** The City provided reasonable notice and opportunity to comment on the proposal. The City received two reviewing agency comments and several comments from members of the public in response to its notice materials. The City Deputy Fire Marshal provided a comment noting that the project would be required to install fire sprinklers and alarms in compliance with applicable fire code provisions and that fire department access gates would be required to have a Knox override installed to provide emergency access to the property. Conditions, as detailed below, are included to address the Deputy Fire Marshal’s comments. The Kitsap Public Health District did not raise any concerns with the proposal. Comments from members of the public

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generally raised concerns about the proposal's traffic impacts, temporary construction noise, vegetative screening, the location of an existing pedestrian pathway next to adjacent residential properties, and the proposed location of an emergency access driveway that would encroach on neighboring property. Heath and Associates, Inc., prepared a Trip Generation and Parking Analysis report for the project, which determined that the proposal to replace skilled nursing beds with assisted- and independent-living beds would result in fewer average daily trips and fewer PM peak-hour trips. Accordingly, the proposal would not have adverse traffic impacts as compared to the conditional use that had been previously approved. Construction activity on the property would be required to comply with City noise ordinances. The Applicant would be required to provide full perimeter landscape screening with a minimum 25-foot perimeter width in accord with the landscaping requirements of the municipal code. In response to concerns about the emergency access driveway and the pedestrian pathway, the Applicant has submitted revised site plans relocating the driveway off neighboring property and is actively working with the City and neighboring property owners to realign the pedestrian pathway as far from adjacent properties as feasible. Accordingly, the concerns raised by the public have been adequately addressed.

The Design Review Board reviewed the proposal and determined that, with conditions, it would comply with City design standards and guidelines. The Planning Commission also reviewed the proposal and determined that, with conditions, it would be consistent with the Comprehensive Plan and would comply with the criteria for a site plan and design review approval, as well as all other applicable code requirements. The Planning Commission recommended a condition requiring the Applicant to provide affordable beds if supported under SEPA or the Comprehensive Plan. Because this condition is not supported under SEPA and because the Comprehensive Plan does not contain any provisions addressing affordable beds, the conditions for site plan and design review approval does not include any requirement for the provision of affordable beds. City staff reviewed the proposal and determined that, with conditions, it would be consistent with several identified goals and policies of the City Comprehensive Plan by preserving the historic Day Hall building and other historic features on-site and by providing health care facilities addressing the needs of the City's older population.

The property and all surrounding properties are located in the R-2 zoning district. With the aggregation of the two parcels comprising the property through a boundary line adjustment, the project would comply with dimensional standards applicable to development in the R-2 zone related to minimum lot area, minimum lot dimensions, maximum building height, and minimum setbacks for front and side lot lines. The proposal has received approval for a modification from the maximum 10 percent lot coverage requirement to allow for the proposed 16.9 percent lot coverage through the City's Historic Preservation Program. The entirety of the City is classified as an aquifer recharge area, and the Applicant has submitted site plans designating Aquifer Recharge Protection Areas on the property consistent with the requirements for redevelopment

projects in the R-2 zoning district. No other critical areas have been identified on the property.

The City Engineer reviewed the proposal and determined that, with recommended conditions, the proposal would comply with drainage, water quality, street, pedestrian way, and other applicable design standards. Water service to the property would be provided by an existing on-site well, and emergency backup water service would be provided by the Kitsap Public Utility District. Sewage service is provided by an on-site wastewater treatment plant. No harmful or unhealthful conditions are likely to result from the proposed site plan. Conditions, as detailed below, are necessary to ensure that the project complies with all local, state, and federal requirements related to the proposed redevelopment and to ensure that the proposal meets all criteria for site plan and design review approval. *Findings 1 – 29.*

2. **With conditions, the proposed development would comply with the criteria for CUP approval, including the specific criteria applicable to institutions located in residential zones.** As addressed in Conclusion 1, above, the proposed project would be consistent with the City Comprehensive Plan; meet applicable design guidelines; be adequately served by public facilities; and, with approval of a modification from the maximum lot coverage requirements and the future boundary line adjustment, would comply with all dimensional standards for development in the R-2 zone. Environmental impacts of the proposal were considered, as required by SEPA, and the City issued an MDNS that was not appealed. The MDNS requires the Applicant to submit with the building permit application lighting plans demonstrating compliance with municipal code lighting requirements; incorporate soundproofing barriers for all existing and new generators and heating, ventilation, and air conditioning units; and submit with construction permit applications a management plan consistent with PSCAA Fugitive Dust Controls. The MDNS requirements are incorporated into the conditions for CUP approval. The project would be required to comply with municipal noise regulations. The Applicant's Trip Generation and Parking Analysis demonstrates that new building wing's assisted- and independent-living units would generate fewer vehicle trips than the existing skilled nursing units that would be removed and that the existing parking stalls on-site would be adequate to meet the parking demands of the proposed use. The City Engineer reviewed the proposal and determined that, with conditions, the project would meet requirements for drainage, water quality, street, pedestrian ways, and other applicable design standards. The Applicant would be required to provide full perimeter landscape screening with a minimum 25-foot perimeter width, which would ensure that the use would be harmonious with the character of the subject property and with surrounding development and would not be materially detrimental to uses or property in the vicinity of the subject property. Conditions, as detailed below, are necessary to ensure that the project would comply with all local, state, and federal requirements related to the proposed development and to ensure that the proposal meets all criteria for

approval of a conditional use permit, including criteria specific to institutions in the City's residential zoning districts. *Findings 1, 4 – 29.*

### **DECISION**

Based on the preceding findings and conclusions, the request for approval of site plan and design review, and a conditional use permit, to construct a three-story, 52,460 square foot addition to an existing health care facility on a 7.01-acre property located at 10861 Manitou Park Blvd NE is **APPROVED**, with the following conditions:<sup>3</sup>

#### **SEPA Conditions:**

1. To mitigate light impacts, all existing and proposed outdoor lighting, including lighting on buildings, street lighting, parking lot lighting, and landscape lighting, shall comply with current regulations in BIMC 18.15.040. The Applicant shall submit lighting plans which demonstrate compliance with building permit application.
2. To mitigate adverse impact from potential environmental health hazards, all existing and new heating, ventilation, and air conditioning (HVAC) units, along with generators, shall incorporate soundproofing barriers, including but not limited to soundproof panels and/or barriers. The soundproofing shall be designed to reduce, to the extent feasible, noise levels to within 55 dBA for surrounding residential receiving properties.
3. To mitigate air impacts, all sources and emission units are required to meet the emission and ambient air quality standards specified in Chapter 173-400 WAC and administered by the Puget Sound Clean Air Agency (PSCAA) and shall apply to all air contaminants listed in that regulation. The Applicant shall submit with application for construction associated with this approval a management plan which is consistent with PSCAA Fugitive Dust Controls.

#### **Project Conditions:**

4. The authorization for construction activities automatically expires and is void if the Applicant fails to file for construction permit or other necessary development permit within three years of the effective date of the decision on this application.
5. Plans submitted for construction shall substantially comply with the site, architectural, landscape and civil plans approved through this consolidated land use permit, as modified by these conditions. The Applicant and City staff have been in discussion concerning altering the location of a pedestrian pathway on-site. The City shall have the discretion to approve the location of the pedestrian pathway without further review by the Hearing Examiner.

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<sup>3</sup> Conditions include both ordinance requirements applicable to all developments and requirements to mitigate the specific impacts of this development.

6. Any alterations to the property must observe all pertinent regulations of the Historic Preservation Program (Chapter 18.24 BIMC). Any alteration of the exterior of Local Register properties requires a Certificate of Appropriateness or a review waiver from the Historic Preservation Commission.
7. Prior to any construction, the Applicant shall obtain the appropriate permits from the City, including but not limited to clearing, grading, and/or building permits.
8. The Applicant shall designate a contact person that can be reached at all times during construction and this contact information shall be provided to all area residents potentially impacted by construction of the project.
9. If any historical or archaeological artifacts are uncovered during excavation or construction, work shall immediately stop, and the Department of Planning and Community Development and the Washington State Office of Archaeology and Historic Preservation shall be immediately notified. Construction shall only continue thereafter in compliance with the applicable provisions of law.
10. Prior to construction activity authorized through this permit, the Applicant must submit a complete application for Boundary Line Adjustment (BLA) to aggregate the subject properties and obtain BLA approval from the Department of Planning and Community Development.
11. The Applicant shall record Notice on Title for the Aquifer Recharge Protection Area prior to issuance of building permit related to this proposal.
12. All plantings shall be installed, or installation financially assured, in accordance with BIMC 18.15.010.H prior to occupancy of any of the new buildings. After installation approval by the Department, maintenance financial assurance shall be required in accordance with BIMC 18.15.010.H.
13. The proposed plan depicts the full perimeter, landscape screening buffer. A section of the existing parking lot lies within the 25-foot width buffer area along the southeast side of the site: as provided in BIMC 18.30.030, existing nonconforming structures may remain and be used provided there is no change to the structure that would alter or increase the nonconformity.
14. The development must provide, at a minimum: a bicycle facility for a minimum of five bicycles that is under cover and in proximity to the visitor entrance, and indoor or covered outdoor bicycle facilities for employees at a ratio of one bicycle space per five employees.

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15. The project shall comply with the following conditions to the satisfaction of the Fire Marshal:
  - a. The project shall comply with all applicable provisions of the adopted Fire Code.
  - b. Fire sprinklers and alarms will be required for the project. Fire sprinkler shall meet the requirements of NFPA 13; fire alarms shall meet the requirements of IFC 907 and NFPA 72.
  - c. FDC and PIV are located on the west side of the structure. Applicant shall ensure systems are in good working order.
  - d. Gates installed across the south side fire department access road will be required to have a Knox override installed to provide quick access by fire department personnel during an emergency.
16. The project shall comply with the following conditions to the satisfaction of the City Engineer:
  - a. Civil improvement plans, reports, and computations, prepared by a civil engineer registered in the State of Washington shall be submitted with the applications for construction permits to construct all necessary infrastructure and utilities serving the site. Certificate of occupancy will not be issued for any building until all civil improvements have been completed and accepted through the final inspection process.
  - b. A completed Transportation Impact Fee worksheet shall be due at the time of construction permit submittal and required fees shall be paid in full prior to construction permit issuance.
  - c. A Construction Stormwater Pollution Prevention Plan (SWPPP) prepared by a civil engineer licensed in the State of Washington is a required submittal for permitting any construction activities including clearing or grading or other civil improvements for all phases of the project.
  - d. A final stormwater report shall be submitted with the building permit detailing compliance with all applicable minimum requirements as required by BIMC 15.20.
    - i. New and replaced hard surfaces associated with the modified fire lane shall be subject to water quality stormwater requirements per BIMC 15.20; treatment shall be provided for these surfaces as noted in the preliminary civil utilities plan.
    - ii. The final stormwater report shall include a final geotechnical evaluation of the stormwater system.
  - e. The bioswale located along the southern edge of the property shall be evaluated and maintained/repaired/upgraded to comply with the 2012 Stormwater Manual for Western Washington as amended in 2014 (BMP T7.30). Additional existing collection and conveyance systems comprising the man-made conveyance from the site to the local receiving water (Puget Sound) used to

- satisfy Minimum Requirement #7 (Flow control exemption) shall be free of debris and in good working order prior to final construction inspections.
- f. Construction Stormwater General Permit coverage shall be obtained from the Washington State Department of Ecology and the site shall be monitored for discharge of pollutants and sediment offsite for the duration of the project. No land clearing or construction permits shall be issued prior to obtaining the State permit.
  - g. Potential changes in sanitary sewer connections and appurtenances shall be calculated, designed, reviewed, installed, and inspected per applicable Washington Administrative Code and in compliance with any conditions in order to remain compliant with the NPDES permit covering the onsite Wastewater Treatment Plant.
  - h. Prior to building permit final occupancy, the Applicant shall submit an operation and maintenance plan for the on-going maintenance of the storm drainage system.
  - i. All on-site stormwater facilities shall remain privately owned and maintained. The owner(s) shall be responsible for maintenance of the storm drainage facilities for this development following construction. Annual inspection and maintenance reports shall be provided to the City. A Declaration of Covenant for stormwater system operation and maintenance will be required to be recorded before submittal. The approved language for the Declaration of Covenant is found in BIMC Chapter 15.21, Exhibit A.
  - j. Cross connection control requirements as established by Washington Administrative Code and implemented by local water service provider shall be satisfied during the building permit review/construction process.
  - k. The Applicant shall obtain a Right-of-Way Use permit prior to any construction activities within the right-of-way (Ocean Drive, Manitou Park Blvd, or Mountain View Drive). The permit shall be subject to separate conditions, fees, and bonding requirements.
  - l. The existing gravel road that is located partially in the public right-of-way on the southern edge of the property shall be realigned to be fully located within the mapped/surveyed public right of way adjacent to the property.
  - m. The portion of realigned gravel road that is within the mapped "Ocean Drive" right of way extending north of Manitou Park Boulevard terminates at the southern property line of the project, where it becomes a fire lane on private property. Once realigned, this road shall be used as emergency vehicle access only.
  - n. Appropriate signage/pavement marking shall be installed in conjunction with City of Bainbridge Island and Bainbridge Island Fire District standards/requirements. Signage and striping may include but is not limited to: gates/bollards, red curbing, "no parking" signs, fire lane only signs, and authorized vehicles only signage.
  - o. A pedestrian path consistent with City of Bainbridge Island Design and Construction Standards shall be provided to maintain the established connection

between Manitou Beach Road at the western extent of the site to Manitou Park Boulevard at the southern edge of the site.

- i. The path should minimize uncontrolled pedestrian crossing of the existing parking lot and should be located to maximize the existing vegetated boundary between the project site and adjacent residences to the south.
  - ii. The path should be located topographically to minimize additional vegetative disturbance or sidehill cuts.
  - iii. The path shall provide for horizontal pedestrian/vehicle separation.
  - iv. A public pedestrian easement shall be provided to the City for approval for those portions of the path that are located on the subject property. The easement must be drafted and recorded with the Kitsap County Auditor prior to issuance of the final certificate of occupation.
  - v. The path in its entirety shall remain privately maintained by the Applicant for public use.
- p. As-built civil construction plans stamped by a civil engineer shall be provided by the Applicant prior to final certificate of occupancy being issued unless otherwise waived by the City Engineer.
17. All refuse which, if thrown or deposited as prohibited in BIMC 8.16, tends to create a danger to public health, safety and welfare, shall be properly transported to, and disposed of within an approved solid waste facility. The property shall be left in a clean, safe condition, protected from erosion. For information regarding solid and hazardous waste, contact the Kitsap Public Health District at (360) 728-2235.

**DECIDED** this 26<sup>th</sup> day of August 2021.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center