

RECEIVED

CITY OF BAINBRIDGE ISLAND
DEPARTMENT OF THE HEARING EXAMINER

MAR 10 1995
CITY OF BAINBRIDGE ISLAND

In the Matter of an Application)	CUP07-22-94-1
for a Conditional Use Permit to)	
Construct an Addition to the)	
Messenger House Care Center,)	
)	FINDINGS OF FACT, CONCLUSIONS
Soundcare, Inc.,)	OF LAW AND ORDER
Applicant.)	

On March 2, 1995, at 9:30 a.m., City of Bainbridge Island Hearing Examiner J. Robin Hunt conducted a public hearing to consider a Conditional Use Permit application to construct a new 20,500 square-foot, 49-bed addition and to replace the seventy-stall parking area at the Messenger House Care Center located at 10861 NE Manitou Park Boulevard in the Skiff Point area on the east side of Bainbridge Island. Applicant Soundcare, Inc. proposes to move 49 patients from the existing old building into the new structure; the old structure would be refurbished into offices and storage, as it is no longer suitable for patient care. The number of residents would not increase.

Ten persons attended the public hearing. George Johnston, Assistant Planner with the City of Bainbridge Island ("the City") Department of Planning and Community Development ("DPCD"), testified on behalf of the City. Ray Ramsdell, the project manager for Messenger House, testified on behalf of Applicant. Both Mr. Johnston and Mr. Ramsdell answered questions from the Hearing Examiner and the audience concerning the following issues:

1. Drainage, particularly during heavy storms with water running down Mountain View Road on the north side of the property;
2. Treatment of sewage and discharge of treated sewage and stormwater into Puget Sound, sewage-related smells, and disposal of infectious wastes;

3. The cutting of trees;

cc: JYG, RD WHISLER, CON UNIT, BRIAN FITZGERALD, PATRICK LEUNER,
DALE ROHL, MARLY DALEY, ELINOR

4. The routing of traffic into and out of the site;
5. The presence or absence of any significant nesting or perching sites for such birds as eagles and herons;
6. Parking lot landscaping and screening;
7. Impact on the steep slope above a ravine off the northeast corner of the new building;
8. Emergency access, fire hydrants and sprinklers¹;
9. The height of new structures and their visibility from Manitou Park Boulevard, to the east of the site;
10. Protection of the well on site; and
11. Lot coverage, and the size of the various side, front and rear yards.

Based upon a view of the site, the exhibits in the file, and testimony at the public hearing, the Hearing Examiner now makes and enters the following:

FINDINGS OF FACT

I.

Applicant Soundcare, Inc. owns and operates a private, 96-bed, skilled nursing facility located at 10861 NE Manitou Park Boulevard, Bainbridge Island, Washington. A legal description can be found in Exhibit 1C, attached to the Conditional Use Permit Application, and is incorporated by reference herein. Applicant seeks to build a new 20,596 square-foot, two-story facility, northwest of the existing buildings on

¹Mr. Ramsdell promised the Mountain View residents that he would check with North Bainbridge Water Company concerning the periodic emptying of the fire hydrant at the north side of the property along Mountain View Road to see if the resultant gushing of water therefrom could be eliminated or minimized.

the seven-acre site. Forty-nine patients would be moved from the old facility to the new facility. The old facility would be refurbished into office and storage. No new patients would be added. There would be two additional employees (Ex. 1B, p. 14).

It is not anticipated that the new addition will cause traffic to increase, aside from the traffic associated with construction. Construction vehicles will be routed from the Manitou Beach Drive access, except insofar as is necessary for the paving and routing of the driveway connection with Mountain View Road NE.

II.

The existing building was constructed as a hotel in the early 1900's. Around 1914 it became the Moran School for Boys. The building was used for various other activities until about 1960, when Messenger House was established. In 1986 a classified use permit was obtained from Kitsap County for the addition of a 1,200 square foot wing to the south; this permitted Messenger House to increase its capacity from 76 patients, housed in the 1914 structure, to the current 96 patients.

In addition to the more typical nursing home residents, Messenger House provides care for Alzheimer patients and other "cognitively impaired persons." The new facility would have a fenced-in courtyard area to provide security for the latter residents, providing maximum mobility.

III.

The western boundary line has been adjusted, moving its midsection westward in order to permit the relocation of the driveway and parking. (The black broken line on the colorized version of the site plan, Exhibit 1G, depicts the original property line before the boundary line adjustment.) Currently there are seventy undifferentiated parking spaces in a large, gravel lot; the new parking would be segregated into three paved lots with defined stalls, and the requisite interior landscaping. The gravel driveway now

FINDINGS, CONCLUSIONS & ORDER - 3

leading to Mountain View Road NE would be paved. However, the main access would continue to be along the asphalt driveway connecting the site to Manitou Beach Drive NE on the west. See Preliminary Site Plan, Exhibit 1G.

IV.

Some 47 significant trees will be marked and probably removed in the building process. Any such trees removed will each be replaced with three trees. The bulk of the clearing would occur in the southwest portion of the site where some of the parking would be relocated. The two new southwestern parking lots will be reconfigured to meet the fifteen-foot side yard setback requirement for the western property line.²

V.

The western portion of the site is generally flat. The property slopes downward to the east by 30 to 40 percent. There are small localized areas on the site with slopes in excess of 70 percent. The area of the proposed new building is generally flat and well vegetated. The northern portion of the proposed building would be located in an area with average slopes of approximately 30 percent. There would be no disturbance of the steep sloped area. The City Engineer has determined that the slopes are stable enough so that allowing some portion of the new building to protrude into what otherwise might be a required buffer would not disturb the slopes.

VI.

There is a well on site and also a sewage treatment facility. Protective measures, such as extra

²Looking at the site plan, there was originally some confusion by about whether or not the new adjusted boundary line continued along the southern side of the asphalt driveway leading to Manitou Beach Drive NE. The boundary line adjustment did not continue south along that southwestern portion of the property, even though the site plan depicts a broken line there.

concrete under some portions of the parking area, will be required to protect the well. The on-site sewage treatment facility will meet requirements of the Army Corp of Engineers, the State Departments of Fisheries and Ecology, and the City Engineer for effluent quality prior to discharge into Puget Sound at Skiff Point.³ Stormwater would not mix with the effluent until after it had left the sewage treatment plant, thus avoiding the problem of overburdening the sewage treatment system in the event of a large storm. A drainage system has been proposed for the site and will be approved by the City Engineer. See Exhibit 1G-2.

VII.

Neighbors along Mountain View Drive northwest of the site testified concerning gushing waters running down the road during times of heavy storms and when the North Bainbridge Water Company empties the fire hydrant in that location. They are concerned that the water be allowed to continue to run on down to the ravine to the northeast of the site and not be diverted onto the neighbors' property. Mr. Ramsdell, on behalf of Applicant, took note of their concerns and promised to check with North Bainbridge Water Company about the fire hydrant openings.

VIII.

The new building, parking lots and driveway would be constructed behind or to the west of the existing buildings. The new building has been designed to tie in visually with the existing structures. See Elevations on Exhibit 34A. There is a large, sweeping green lawn between the east side of the existing main building and Manitou Park Boulevard to the east. The front of the building will not be altered, so

³The fact that there are sometimes "sewage odor" near the treatment plant and warning signs prohibiting shellfish gathering near the sewer outfall does not mean that harmful sewage is being emptied into Puget Sound. Apparently, this is standard health department practice.

that the appearance will remain essentially the same to the residents across Manitou Park Boulevard to the east. It is possible that the rooftop of the new building will protrude somewhat above the old building, but for the most part, the new development will be tucked out of sight. There will be vegetation along the driveway from Mountain View Drive and vegetation in and around the parking lots.

IX.

There are two fire hydrants on site. An additional, new fire hydrant would be added. There have been some problems with low fire flow, which will be corrected and approved prior to the final building permit approval. The existing fire lane along the south side of the site to Manitou Park Boulevard would remain open, but used only in emergencies. There will also be access from the two paved driveways, the primary one to Manitou Beach Drive NE, and the other to Mountain View Drive NE. The circular driveway would provide close, on-site access to both the new building and the old building in case of an emergency. There will also be sprinklers in the new building.

X.

The old structure is no longer adequate to provide a safe, efficient, and healthy environment for the residents. In fact, Messenger House does not currently have its full 96 beds set up. Various governmental agencies have had to issue "waivers" in the past because the old facility no longer meets the current requirements for a nursing care facility. Applicant has filed a detailed report entitled, "Functional Program for the Replacement of 49 Existing Nursing Home Beds," included in the file as Exhibit 1H. This report contains details of the service that the new facility would provide.

XI.

This area is zoned R-2, Single Family Residential. The Comprehensive Plan designation is semi-rural. The surrounding area is also zoned Single Family Residential, R-2 or semi-rural in the

Comprehensive Plan. There are single-family residences to the north, south and east of the site. These residences have co-existed with Messenger House for many years in a well-settled neighborhood. The land to the west is vacant with a single-family residence further to the west. It is along this land to the west that the boundary line adjustment was accomplished.

XII.

Applicants filed their Conditional Use Permit application on July 22, 1994. For a time it was thought that a Shoreline Substantial Development Permit might be required because of the proposed sewage and stormwater outfall into Puget Sound. The City ultimately determined that a Shoreline Substantial Development Permit was not required.

XIII.

A Mitigated Determination of Non-Significance was issued on December 9, 1994, with seven mitigating conditions:

1. Proposed drainage control measures shall be developed and approved prior to the issuance of building permit.
2. The project shall comply with City landscaping regulations per BIMC 18.81 and 18.84.
3. The parking lot shall comply with City parking regulations per BIMC 18.81.
4. The height of the structures shall not exceed 35 feet per BIMC 18.30.
5. Approved erosion control measures shall be in place prior to any grading activity.
6. All significant trees (as defined in Section 18.06.090 BIMC) cleared during construction, shall be replaced at a ratio of 3 new trees for every 1 tree cleared. Size and species of new trees to be planted shall be approved by the Planning Department and can be included in the overall landscape plan.

7. Development in the slope-area of the building site (located at the northeast corner of the proposed new addition), shall comply with the recommendations listed in the Slope Evaluation Report prepared by Myers Biodynamics, September 29, 1994.

Exhibit 15.

Two comments were received, one questioning whether or not blue heron, which had been seen flying over the general area, had nests on the site, and the possible affect of removal of large trees (Ex. 30-D). Mr. Johnston testified at the public hearing the he had checked with the Bainbridge Island map for the significant wildlife populations, including eagle and heron, and had found no nesting or perching sites to be located on this piece of property.

XIV.

On February 21, 1995, the City recommended approval of the Conditional Use Permit, with three conditions in addition to the previously-mentioned SEPA conditions:

8. The applicant shall provide fire protection systems adequate to meet the requirements of the Fire Marshall.
9. Outdoor lighting shall be designed so that light is directed away from adjoining properties. In addition, lighting for parking areas and driveways shall comply with the provisions of Ch.18.81.130 (BIMC), Lighting for Multifamily and Nonresidential Developments.
10. Approval is limited to the proposal as depicted in the August 31, 1994 site plan and related CUP application. Approval is not to be construed as implied approval for more extensive utilization of the subject site.

XV.

Notice of the public hearing was published in the *Bremerton Sun* on February 15, 1995 (Ex.31), and in the *Bainbridge Review* on February 15 and 22, 1995 (Ex. 32). Notice was posted at the Bainbridge Island Chamber of Commerce, City Hall and Winslow Ferry Terminal on February 7, 1995 (Ex. 25), and on

the subject property on February 15, 1995 (Ex. 29). A copy of the Notice was also sent to all property owners within 300 feet of the subject property and parties of interest on February 8, 1995 (Ex. 27).

CONCLUSIONS OF LAW

I.

This matter is properly before the Hearing Examiner at this time, pursuant to BIMC 18.108B, "regular" conditional use permit procedure.

II.

Notice of the public hearing was legal and adequate.

III.

A health care facility is a conditional use in an R-2 residential zone pursuant to BIMC 18.30.030F.

IV.

Under BIMC 18.108.080(B), major changes to an existing conditional use permit require a new conditional use permit:

For both administrative and regular conditional use permits, adjustments other than minor adjustments to an approved conditional use permit require an amended application as a new conditional use permit application. Major adjustments are those which change the basic design, intensity, density and/or use.

The Messenger House care facility was approved as a 96-bed care facility on July 26, 1986 by the Kitsap County Board of Commissioners. Although this project represents an adjustment to an approved Kitsap County Unclassified Use Permit, the use is considered "conditional" for the R-2 zone and is processed the same as a major adjustment to a conditional use permit.

V.

The Hearing Examiner may approve a conditional use permit application if the following criteria are met:

- 1) The conditional use is harmonious and appropriate in design, character and appearance with the existing or intended character and quality of development in the immediate vicinity of the subject property and with the physical characteristics of the subject property.
- 2) The conditional use will be served by adequate public facilities including roads, water, fire protection, sewage disposal facilities, and storm water drainage facilities;
- 3) The conditional use will not be materially detrimental to uses or property in the immediate vicinity of the subject property;
- 4) The conditional use is in accord with the comprehensive plan;
- 5) The conditional use complies with all other provisions of this code;
- 6) The conditional use will not adversely affect the area or alter the area's predominantly residential nature; and
- 7) All necessary measures have been taken to eliminate the impacts that the proposed use may have on the surrounding area.

BIMC 18.108.040A.

VI.

The above conditional use criteria are met as follows:

1. The proposed project is harmonious and appropriate in design, character and appearance with the character of the site and the surrounding neighborhood. The scale and design of the proposed facility will be very similar to the existing building, even though of larger scale than nearby residences. The sweeping front lawn from the front of the old building to Manitou Park Boulevard will remain essentially the same.

2. The proposed development, as conditioned, will be served adequately by public facilities.

The City Engineer has given preliminary approval of the stormwater detention/drainage plan. A final stormwater drainage plan is required as a condition of approval prior to the issuance of a building permit.

Fire flow will be upgraded and approved prior to issuance of a building permit.

3. The development will not materially affect the surrounding property. Most of the area around the proposed new building and parking area is heavily wooded which acts as a buffer from neighboring residences. Traffic is not expected to change.

4. The conditional use is in accord with the comprehensive plan. The area is designated semi-rural in the Bainbridge Island Subarea Plan.⁴ This semi-rural area was designated suitable for residential development without the full provision of full public services. In accordance with the Plan, the bulk of the neighborhood is single-family residential, which, as previously mentioned, has coexisted for many years with the quiet, private nursing home facility.

5. The project as conditioned, will be in compliance with all other provisions of the code:

- a. BIMC 16.20.080 regulates development in environmentally-sensitive areas, such as geologically hazardous areas and slopes. Although slopes in the northeast portion of this site range from thirty to forty percent, no part of the new building would protrude into this slope; it would, however, occur within a slope buffer area. The City Engineer has evaluated this slope and has concurred with the report from Myers Biodynamics, Inc., that the slope is stable and the proposed development will not impact the overall slope stability. See Exhibits 13A and 30F.

⁴The Bainbridge Island Subarea Plan applies because the date of application preceded adoption of the new Bainbridge Island Comprehensive Plan in September, 1994.

- b. No additional parking spaces will be required because the use is not expanding.

The number of spaces provided appear to be adequate to accommodate the peak shift, as required by BIMC 18.81.030K. The proposed parking lots, except for the southwest parking lot protruding into the side yard, meet design standards of BIMC 18.81.070 and 18.81.100. The southwest lot will be reconfigured to meet the side yard requirement. Testimony at the public hearing indicated that the parking lot landscaping will meet or exceed the ten percent requirement of BIMC 18.84.050. In addition, a vegetative buffer will be maintained around the parking areas; much of the existing heavy vegetation will be retained for screening pursuant to BIMC 18.81.120 and 18.81.110.

c. BIMC 18.84.050 requires preserving existing significant vegetation in the perimeter/buffer areas. In the interior, at least fifteen percent of significant trees are encouraged to be retained. The existing vegetation will be retained in the front and side yards. Approximately 47 significant trees will be removed, mostly to create the new parking area in the southwest. All of these trees will be flagged prior to construction and mapped. Three new trees of similar species will be planted for every significant tree removed. See SEPA Conditions. Replacement trees will be replanted around the sloped areas to the northeast of the proposed building as well as along the access roads and parking areas. An approved landscaping plan prior to construction is a condition of approval.

6. The proposed project will not adversely affect the surrounding area. The Messenger House Care facility has been at this location since 1960. The proposed project will not expand the use of the facility; no new beds will be added. Increased traffic or other significant environmental impacts will not occur as result as a of the proposed project.

7. All necessary measures have been taken or will be required prior to the issuance of a building permit to mitigate possible impacts (see SEPA Conditions of Approval).

ORDER

For the foregoing reasons, the Conditional Use Permit is granted, allowing construction of a new 20,596 square-foot structure to replace the old 49-bed unit at the Messenger House Care Center and development of a new 70-stall parking lot to replace the existing parking area, as proposed, on the following conditions:

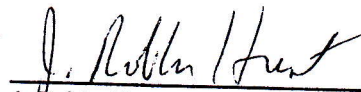
1. Proposed drainage control measures shall be developed and approved prior to the issuance of building permit.
2. The project shall comply with City landscaping regulations per BIMC 18.81 and 18.84.
3. The parking lot shall comply with City parking regulations per BIMC 18.81.
4. The height of the structures shall not exceed 35 feet per BIMC 18.30.
5. Approved erosion control measures shall be in place prior to any grading activity.
6. All significant trees (as defined in Section 18.06.090 BIMC) cleared during construction, shall be replaced at a ratio of three new trees for every one tree cleared. Size and species of new trees to be planted shall be approved by the Planning Department and can be included in the overall landscape plan.
7. Development in the slope-area of the building site (located at the northeast corner of the proposed new addition), shall comply with the recommendations listed in the Slope Evaluation Report prepared by Myers Biodynamics, September 29, 1994, as follows:
 - Site drainage discharges such as roof downspouts, foundation drains,

driveway drainage or other site drainage features should be introduced along the contours of natural site grades and away from existing steep slopes if infiltration systems are used. Site drainage discharges should be maintained within the natural site drainage basins wherever possible or tightlined to a suitable discharge location.

- Maintenance of existing vegetation on the site slope is encouraged. Cut and filled slopes should be revegetated and exposed soil slopes protected from erosion until vegetation is reestablished.
 - Materials, heavy equipment, etc., should not be stockpiled at the top of steep slopes. Vegetation, woody debris, or other natural or man-made materials should not be disposed of onto steep slopes. These materials can create an unstable mass on the slope which is subject to sliding.
 - Signs of erosion on natural or fill slopes should be repaired before they develop into significant features.
 - Future geotechnical design recommendations for the project development should be followed. Recommendations for foundation support, soil bearing, cut and fill slopes, and fill placement will be presented with consideration given to the existing natural steep slope condition.
8. Applicant shall provide fire protection systems, including a new fire hydrant and sprinkler system, adequate to meet the requirements of the Fire Marshall.
9. Outdoor lighting shall be designed so that light is directed away from adjoining properties. In addition, lighting for parking areas and driveways shall comply with the provisions of BIMC 18.81.130, Lighting for Multifamily and Nonresidential Developments.
10. Approval is limited to the proposal as depicted in the August 31, 1994, site plan and related CUP application. Approval is not to be construed as implied approval for more extensive utilization of the subject site.

11. No construction activities shall commence until Applicant receives the requisite grading and building and other associated permits from the City.

DATED this 10th day of March, 1995.


J. Robin Hunt
Hearing Examiner for the City of Bainbridge Island

Motion for Reconsideration

A Motion for Reconsideration to correct "obvious error" may be filed within ten (10) calendar days pursuant to BIMC 2.16.050H.

Right of Appeal (BIMC 18.111.080).

The Hearing Examiner's decision may be appealed to the City Council within ten (10) calendar days in accordance with the provisions of BIMC 2.16.060.