

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE CITY OF CHEHALIS HEARING EXAMINER

In the Matter of:

CU-21-004; VR-22-002; ST-21-0014

CASCADE COMMUNITY HEALTHCARE,
Application for Conditional Use Permit,
Variance, and Site Plan Review,

Applicant.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION APPROVING
CONDITIONAL USE PERMIT, SITE
PLAN, AND VARIANCE

Applicant: Cascade Community Healthcare
135 W Main Street
Chehalis, WA 98532

Representative: Ron Wright
2003 Western Ave, Suite 610
Seattle, WA 98121

City of Chehalis: Amelia Schwartz, City Planner
City of Chehalis
1321 S. Market Boulevard
Chehalis, WA 98532

Summary and Background of Project Proposal

Applicant seeks approval of a conditional use permit, site plan, and variance as a part of its proposal to redevelop an existing building within the City of Chehalis for use as a voluntary permanent housing center.

Location of Project

The property is situated at 135 W Main Street within the city limits of Chehalis, Washington, and is identified for tax purposes as Lewis County Tax Parcel Number 003848000000.

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION APPROVING CONDITIONAL
USE PERMIT, SITE PLAN, AND VARIANCE - 1

VANDER STOEP, BLINKS, JONES & UNZELMAN
OFFICE: 345 N.W. Pacific
MAILING: P.O. Box 867
CHEHALIS, WASHINGTON 98532
PHONE: (360) 748-9281
FAX: (360) 748-3184

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Summary of Ruling

The applications are approved/granted, subject to the conditions as set forth herein.

Open Public Hearing

An open public hearing was held before the Hearing Examiner on April 28, 2022 at 4 00 pm at Chehalis City Hall.

Materials Submitted and Record of Evidence

In advance of the hearing, the City submitted a staff report providing an overview of the application along with staff recommendations. The City’s staff report, along with its exhibits A through F, were presented at the commencement of the hearing and admitted into evidence based upon the agreement of the parties. The Staff Report was admitted as **Exhibit 1.**

The Applicant, through representative Ron Wright, submitted Letter of Support in advance of the hearing, along with all Exhibits. The Applicant’s Letter of Support was presented at the commencement at the hearing and admitted into evidence based upon the agreement of the parties. Applicant’s Letter of Support was admitted as **Exhibit 2.**

A letter from the Washington State Department of Commerce was submitted in advance of the hearing. The letter from the Department of Commerce was admitted based on agreement of the parties as **Exhibit 3.**

A letter from nearby property owners Megan and Roman Kirkov was submitted in advance of the hearing. The Kirkovs’ letter was presented at the commencement at the hearing and admitted into evidence based upon the agreement of the parties. The Kirkovs’ letter was admitted as **Exhibit 4.**

Testimony at Public Hearing

At the hearing, Chehalis City Planner Amelia Schwartz provided an overview of the City’s Staff Report and recommendations. Ron Wright appeared on behalf of the applicant and provided an overview of the application and requested conditional use. Dr. Richard Stride of Cascade Community Healthcare also spoke on behalf of the applicant.

Findings of Fact and Conclusions of Law

NOW THEREFORE, upon consideration of the testimony and materials submitted prior to and during the open record hearing, the Hearing Examiner enters the following decision.

The evidence submitted in the City’s Staff Report reflects that adequate notice was provided for this matter, that the SEPA process was sufficiently completed, and that the hearing examiner

1 has jurisdiction to decide the matters presented.

2 The following findings are made with respect to each of the three applications submitted by
3 the Applicant:

4 **Conditional Use Permit Application**

5 The City and applicant agree that applicant's conditional use permit should be approved.
6 Under CMC 17.09.185, the following findings are made pertaining to applicant's conditional use
7 permit application.

8 Under CMC 17.09.185(A)(1) the first requirement of a conditional use permit is that the
9 proposed use must be listed as a conditional use in the master use table in Chapter 17.78. The
10 project site is within the Central Business District (CBD) zone of the City of Chehalis. The
11 proposed project is a voluntary permanent supportive housing center. RCW 35A321.430 requires
12 that a code city shall not prohibit permanent supportive housing in any zone in which residential
housing units or hotels are allowed. As set forth in City's staff report and agreed upon by the
parties, the City's master use table allows hotels as a conditional use within the City's CBD zone.
Accordingly, the application satisfies 17.09.185(A)(1).

13 Under CMC 17.09.185(A)(2), the project must be suitable for the proposed site considering
14 size, shape, location, topography, existence of improvements and natural features. The evidence
15 presented by both parties establishes that the project involves the renovation of an existing
16 structure that is currently used for the same purpose and would not materially change the use of
property. As such the use is suitable for the proposed site and satisfies the requirement of
17.09.185(A)(2).

17 Under 17.09.185(A)(3), the project must be timely, considering the adequacy of the
18 transportation systems, public facilities, and services existing or planned for the area affected by
19 the use. As set forth above, the evidence submitted by both parties reflects that the proposed project
20 does not involve a use of the property that is materially different from the current use of the
21 building. Being within the central business zone, the project is timely considering the adequacy
and proximity of public facilities and services in the area. Accordingly, the application satisfies
the requirements of 17.09.185(A)(3).

22 CMC 17.09.185(A)(4) requires that the location, size, and functional characteristics of the
23 proposal are such that it can be made reasonably compatible with and have minimal impact on the
24 livability and development opportunities in the neighboring area. As a supportive housing center,
25 the proposed project involves the enhancement of the current use of the property and would have
26 minimal impact on the surrounding area. The letter submitted by neighborhood residents Megan
27 and Roman Kirkov expressed apprehension regarding the proposed use given the proximity to a
residential neighborhood. The Kirkovs concerns are well articulated in their letter and are well
taken. After review of the letter, the issue of proximity of the project to the residential
neighborhood was raised to the applicant and the City at the hearing and both the City and the

1 applicant discussed a number of safety and security measures that are a part of the proposed project
2 and that are specifically designed to mitigate the impacts on the nearby residents. The evidence
3 submitted satisfies the requirements of CMC 17.09.185(A)(4).

4 Under CMC 17.09.185(A)(5), the use must be consistent with the applicable goals of the
5 City's comprehensive plan and the purpose of the underlying zone. The City's staff report and
6 testimony provided by the City at the hearing establishes that the project is consistent with the
7 goals of the City's Comprehensive Plan. Moreover, as set forth above, the proposed use is
8 consistent with RCW 35A321.430 requirement that a code city shall not prohibit permanent
9 supportive housing in any zone in which residential housing units or hotels are allowed. As such,
10 the evidence satisfies the requirements of CMC 17.09.185(A)(5).

11 Under CMC 17.09.185(A)(6), the proposed project must comply with all applicable site
12 plan review requirements. The City indicates that the project sufficiently meets the applicable site
13 plan review requirements and satisfies CMC 17.09.185(A)(6).

14 Under CMC 17.09.185(A)(7) requires that the project not have significant environmental
15 consequences when compared with other permitted uses in the underlying zone which cannot be
16 mitigated through conditions of approval. The proposed project is for expanded use of the current
17 use and there is no evidence of significant environmental impact that cannot otherwise be
18 mitigated. The project satisfies CMC 17.09.185(A)(7).

19 **The application for a conditional use permit is APPROVED/GRANTED subject to**
20 **the following condition:**

21 Privacy fencing must be installed around the site as a buffer to adjacent single family
22 housing prior to final approval to meet comprehensive plan LU.06.02 intentions.

23 Site Plan Review Application

24 The findings and discussion set forth in sections above are reincorporated herein. The City
25 and applicant agree that applicant's site plan review application should be approved. Under CMC
26 17.09.130(C) the following findings are made pertaining to applicant's request for site plan review
27 approval.

28 Under CMC 17.09.139(C)(1), the project must be consistent with the comprehensive plan
and City Code. As set forth in the findings related to applicant's conditional use application above,
the evidence establishes that the project is consistent with the City's Comp Plan and City Code
and satisfies the requirements of CMC 17.09.139(C)(1).

Under CMC 17.09.130(C)(2), the physical location, size, and placement of the
development on the site and location of the proposed uses within the project minimize impact to
any critical resources or floodplain area to the greatest extent possible or are compatible with the
character and intended development pattern of surrounding properties. The proposed project will

1 not result in use that is materially different in character from the existing use and is compatible
2 with the central business district zoning. The application satisfies CMC 17.09.130(C)(2).

3 CMC 17.09.130(C)(3) requires that project make adequate provision for water supply,
4 storm drainage, and environmental protection to ensure the proposed project would not be
5 detrimental to public health and safety. The evidence submitted by the parties reflects that the
6 project makes adequate provision for water supply, storm drainage, and environmental protection
7 and satisfies CMC 17.09.130(C)(3).

8 CMC 17.09.130(C)(4) requires that public access and circulation including nonmotorized
9 access, as appropriate, are adequate on the site. The proposed project is within the central business
10 district of the city's zone and the site is well served by infrastructure necessary for public access
11 and circulation. The requirements of CMC 17.09.130(C)(4) are satisfied.

12 CMC 17.09.130(C)(5) requires adequate setbacks and buffering. The evidence set forth by
13 the parties within the City staff report and applicant's build site plan indicates that setbacks and
14 buffering are adequate to meet the requirements of CMC 17.09.130(C)(5).

15 Under CMC 17.09.130(C)(6), the physical location, size, and placement of proposed
16 structures on the site and the location of the proposed uses within the project are compatible with
17 and relate harmoniously to the surrounding area. As set forth above, public comment was received
18 for the project which expressed concern for the proposed project in proximity to the residential
19 neighborhood. Both the City and the applicant set forth mitigation measures that are a part of the
20 project to ensure safety and security of the proposed project. The size and location of the proposed
21 project is harmonious with central business district zoning of the area. The application satisfies
22 CMC 17.09.130(C)(6).

23 Under CMC 17.09.130(C)(7), the project must adequately mitigate impacts through the
24 SEPA review process. The SEPA process for this project is complete and the project meets the
25 requirements of CMC 17.09.130(C)(7).

26 CMC 17.09.130(C)(8) requires that the project not be detrimental to the public interest,
27 health, safety, or general welfare. As set forth above, the evidence submitted by the City and the
28 applicant adequately establishes that the project would be detrimental to the health, safety, or
29 general welfare and satisfies CMC 17.09.130(C)(8).

The application for site plan review is APPROVED/GRANTED.

Variance Application

The findings and discussion set forth in sections above are reincorporated herein. Under CMC 17.09.190, the following findings are made pertaining to applicant's request for a variance.

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION APPROVING CONDITIONAL
USE PERMIT, SITE PLAN, AND VARIANCE - 5

VANDER STOEP, BLINKS, JONES & UNZELMAN
OFFICE: 345 N.W. Pacific
MAILING: P.O. Box 867
CHEHALIS, WASHINGTON 98532
PHONE: (360) 748-9281
FAX: (360) 748-3184

1 Under CMC 17.09.190(A), a variance may be granted to the density, height, setback and
2 development standards, provided, that the specific requirements are met. The variance requested
3 in this case is a request for a variance from the City's ordinance prohibiting cutting into new or
4 repaired streets for five years. More specifically, CMC 12.04.280(P)(1) prevents trench cuts in
5 new pavement for a five-year period on new or repaired streets. The applicants are requesting a
6 variance to this prohibition to allow them to access the water main underneath Main Street which
7 was repaired last summer. The City ordinance in question in this case is a development standard
8 for purposes of CMC 17.09.190(A). The requirements of CMC 17.09.190(B) are also established
9 and the parties agree that the variance requested is not to allow a use that is not permissible under
10 the zoning district.

11 Under CMC 17.09.190(C)(1), there must be special circumstances applicable to the subject
12 property, including size, shape, topography, location or surroundings in order to grant a variance.
13 The city and applicant agree that this provision is satisfied. The evidence submitted establishes
14 that the *location* of the property creates a special circumstances to satisfy the requirements of CMC
15 17.09.190(C)(1).

16 Next, CMC 17.09.190(C)(2) requires that because of special circumstances, strict
17 application of this chapter would deprive the subject property of rights and privileges enjoyed by
18 other properties in the vicinity under the identical zoning district classification. This provision is
19 one of the provisions disputed by the parties. The City's position, as the Hearing Examiner
20 understands it, is that although the applicant cannot connect to the water supply immediately in
21 front of their property because that street has been recently repaired, the applicant still technically
22 does have access to connect to water utilities through a different connection route. On the other
23 hand, the applicant's position, as the Hearing Examiner understands it, is that being prohibited
24 from connecting to water in the street and being forced to pursue an alternative means of
25 connection would result in tremendously higher building costs and thereby deprive them of a
26 privilege enjoyed by others in this zone/vicinity—being able to connect to the water in the street
27 adjacent to the property. Notably, there are facts sufficient to support both positions. Neither party
28 is "wrong." The City's position is technically accurate in that it is technically possible for the
applicant to connect to the city water supply. However, the evidence submitted at the hearing and
by the applicant demonstrates that substantially higher costs would be incurred in order to
complete the water connection through the alternative connection route required because of the
ordinance in question. The costs required to connect to the water supply are substantial enough to
create an undue burden to the applicant that would deprive the applicant of the privilege of being
able to connect to the water supply in the manner that others in this zone are. Although it is true
that the properties immediately adjacent to the applicant may have this same detriment, the
remaining properties in the vicinity do not experience this detriment. The detriment directly results
from the ordinance in question and the inability to access the water supply in the street immediately
in front of the property.

 This is not to say that any case in which a person has to connect to city utilities through an
alternate route will necessarily constitute a denial of a privilege enjoyed by others in that district
for purposes of entitling the property owner to a variance. As the City Attorney Erin Hillier

1 articulated during the hearing, the specific facts and circumstances of each specific situation must
2 be individually considered to determine whether strict application of the rules would deprive the
3 property owner of rights enjoyed by others by creating an undue burden. There are many cases in
4 which the act of having to connect to city utilities through a separate route other than immediately
5 in front of the subject property would not amount to the deprivation of a privilege enjoyed by
6 others in the vicinity. But in this case, the substantial costs that would be incurred by the subject
7 property by having to connect through a separate route would deprive the property of a privilege
8 not faced by others in the vicinity who can connect to the utilities directly adjacent to their property.

9 For these reasons, the requirements of CMC 17.09.190(C)(2) have been satisfied.

10 Under CMC 17.09.190(C)(3), the granting of a variance must not be materially
11 determinantal to the public welfare or injurious to the property or improvements in the vicinity and
12 zoning district in which the property is situated. The City's concern is that trenching or cutting
13 into the new pavement will create damage to the newly renovated roadway. In response, the
14 applicant's architect testified at the public hearing that precautions could be taken to ensure that
15 the property is restored to its pre-construction state and that cutting into the street to connect to
16 utilities could be accomplished without material detriment to the roadway. Here again, there are
17 facts in evidence to support the positions set forth by both parties. In fact, the City's position is
18 expectedly in compliance with and supports its ordinance in question. However, the evidence and
19 testimony provided by applicant is sufficient to satisfy CMC 17.09.190(c)(3), **provided, however,**
20 that the applicant shall be responsible for returning the road to a condition that is reasonably equal
21 to its pre-construction state after the work is complete, subject to the City's reasonable satisfaction.
22 Restoring the road to its pre-construction condition shall be a condition to final approval of the
23 project and the City may withhold final occupancy approval until the road is returned to its pre-
24 construction state. The City may require a bond, security, or other conditions of applicant prior to
25 commencement of the work as the City deems reasonably necessary for it to ensure applicant's
26 compliance with this condition. It is highly recommended that the City and applicant agree in
27 advance on what will be required and what steps will be completed by applicant to return the road
28 to pre-construction condition and facilitate a plan to satisfy this condition.

Under CMC 17.09.190(C)(4), the special circumstances must not result from the actions
of the applicant. The special circumstances in this case result from the City's ordinance precluding
cutting into a street for five years after construction. There is no evidence that the reconstruction
of the roadwork was caused in any way by the applicant or that applicant in any way caused the
circumstances. The requirements of CMC 17.09.190(c)(4) are satisfied.

Under CMC 17.09.19(C)(5) the granting of a variance must be in harmony with the general
purpose and intent of the City Code, the zoning district, and the comprehensive plan. The City and
applicant agree that the proposed project would comply with the code, the comprehensive plan and
the zoning district. As set forth above, the project also comports with RCW 35A321.430. The
requirements of CMC 17.09.190(C)(5) have been satisfied.

