

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BREMERTON**

In the Matter of the Application of)	No. BP18-00094
)	
Stanley Xu, on behalf of Bremerton)	
Property First, LLC)	
)	
)	FINDINGS, CONCLUSIONS,
<u>For a Conditional Use Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for a conditional use permit to allow for the adaptive reuse of an existing building, the Frances Haddon Morgan Center, at 3424 Burwell Street, is **APPROVED**. The building would be converted from its existing commercial use to use as a 121-unit multi-family residential structure with additional parking and landscaping. Conditions are necessary to mitigate specific project impacts.

SUMMARY OF RECORD

Hearing Date:

The City of Bremerton Hearing Examiner held an open record hearing on the request on February 25, 2019.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Garrett Jackson, City Planner
Stanley Xu, Applicant Representative
Andrea Dolan-Potter

Exhibits:

The following exhibits were admitted into the record:

1. Conditional Use Permit Application, received September 17, 2018
2. SEPA Environmental Checklist, dated September 5, 2018
3. Letter from Gregory Belding to Andrea Spencer, revised September 18, 2018
4. Site Plan, dated September 18, 2018
5. Agency and Public Comments:
 - a. Letter from Aaron Leavell, Bremerton School District Superintendent, dated October 26, 2018
 - b. Email from Stanley Xu to Garrett Jackson, dated November 27, 2018

*Findings, Conclusions, and Decision
City of Bremerton Hearing Examiner
Frances Haddon Morgan Adaptive Reuse, CUP
No. BP18-00094*

- c. Letter from Dennis Wardlaw, Department of Archaeology and Historic Preservation, dated October 24, 2018
- d. Letter from Stanley Xu to Garrett Jackson, dated October 24, 2018
- e. Letter from Andrea Dolan-Potter to the Department of Community Development (DCD), dated October 17, 2019
- f. Letter from Residents and Stakeholders of the Marion/Burwell area to DCD, dated October 24, 2018
- g. Letter from Garrett Jackson to Andrea-Dolan-Potter, dated October 29, 2018, with application material
- h. Letter from Andrea Dolan-Potter to Garrett Jackson, dated November 6, 2018
- i. Letter from Stanley Xu to Garrett Jackson, dated November 14, 2018
- 6. Trip Generation & Mitigation Memorandum, Gibson Traffic Consultants, Inc., dated December 31, 2018
- 7. Letter from Michael C. Six, Captain/Fire Marshal, dated February 7, 2019
- 8. Mitigated Determination of Nonsignificance, issued February 8, 2019
- 9. Binding Water and Sewer Availability Letter, City of Bremerton, dated February 8, 2019
- 10. Notice Materials:
 - a. Declaration of Mailing, dated February 8, 2019, with mailing list
 - b. Notice of Hearing, with mailing labels
 - c. Notice of Hearing
 - d. Mitigated Determination of Nonsignificance, issued February 9, 2019
 - e. Email from Garrett Jackson to Aaron Leavell, dated February 8, 2019
 - f. Email from Garrett Jackson to Andrea Dolan-Potter, dated February 8, 2019
 - g. Email from Garrett Jackson to Stanley Xu, dated February 8, 2019
 - h. Email from Garrett Jackson to Dennis Wardlaw, dated February 8, 2019
 - i. Declaration of Posting, dated February 8, 2018, with aerial photo of posting locations, and Notice of Hearing and Site Plan
 - j. Declaration of Mailing, dated October 12, 2018, with mailing list
 - k. Email from Garrett Jackson to various parties, dated October 12, 2018, with Notice of Application and SEPA Determination, dated October 12, 2018, and Site Plan
 - l. Declaration of Posting, dated October 12, 2018, with Notice of Application and SEPA Distribution, dated October 12, 2018, and Site Plan, and aerial photo of posting locations
 - m. Notice of Complete Application, dated October 1, 2018
- 11. Staff Report, dated February 13, 2019
- 12. Letter from Cathryn Mueller, received February 21, 2019

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

Findings, Conclusions, and Decision
 City of Bremerton Hearing Examiner
 Frances Haddon Morgan Adaptive Reuse, CUP
 No. BP18-00094

FINDINGS

Application and Notice

1. Stanley Xu, on behalf of Bremerton Property First, LLC (Applicant), requests a conditional use permit (CUP) to allow for the adaptive reuse of an existing building, the Frances Haddon Morgan Center. The Applicant would convert the existing building from its current commercial use to use as a 121-unit multi-family residential structure with additional parking and landscaping. The property is located at 3424 Burwell Street and 6th Street and Marion Avenue both provide access to the site.¹ *Exhibit 1; Exhibit 3; Exhibit 4; Exhibit 11, Staff Report, page 1.*

2. The City of Bremerton (City) determined the application was complete on October 1, 2018. On October 12, 2018, the City mailed or emailed notice of the application to surrounding property owners, interested parties, and reviewing government departments and agencies. The same day, the City also posted notice in two locations at the project site. On February 8, 2019, the City provided notice of the open record hearing associated with the application by mailing or emailing notice to interested parties and reviewing government departments and agencies, posting notice in two locations at the project site, and publishing notice in the *Kitsap Sun*. As discussed in greater detail below, the City received several comments from reviewing departments and agencies in response to its notice materials as well as several written comments from interested members of the public. *Exhibit 5; Exhibit 7; Exhibit 10; Exhibit 11, Staff Report, pages 11 and 12; Exhibit 12.*

State Environmental Policy Act

3. The City's Department of Community Development (DCD) acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). DCD consolidated the application and SEPA comment periods under the optional process provided for by the Washington Administrative Code (WAC) 197-11-355, with a comment deadline of October 18, 2018. The notice materials stated that the City expected to issue a Determination of Nonsignificance (DNS) for the proposal. As noted above (and discussed in detail below), the City received several comments from reviewing departments and agencies, and interested members of the public, in response to its notice materials. Following the comment period, DCD reviewed the Applicant's Environmental Checklist and other information on file and determined that, with mitigation, the proposal would not have a probable significant adverse impact on the environment. Accordingly, DCD issued a Mitigated Determination of Nonsignificance (MDNS) on February 8, 2019, with an appeal deadline of February 22, 2019. The MDNS requires that the Applicant ensure impact fees have been paid to the Bremerton School District prior to occupancy and that the Applicant adheres to all conditions of

¹ The property is identified by tax parcel numbers 152401-4-015-2005 and 152401-4-020-2008. *Exhibit 1.*

approval associated with this decision. The MDNS was not appealed. *Exhibit 10; Exhibit 11, Staff Report, page 9.*

4. Although there are no critical areas on the project site, there are geologically hazardous areas within the vicinity of the developed site, to the east. With the exception of adding additional parking areas, however, the project would consist of retaining existing structures on-site and remodeling them for residential use. Any future development within 200 feet of slopes classified as geologically hazardous would require additional analysis to determine whether a geotechnical report is necessary. The Applicant would either submit a geotechnical report for the proposed parking area, consistent with Bremerton Municipal Code (BMC) 20.14.600, or explain how construction of the parking area would be exempt from this requirement prior to site development. *Exhibit 11, Staff Report, page 10.*

Comprehensive Plan and Zoning

5. The 12.15-acre project site contains an existing hospital building, constructed in 1940, that has subsequently been used for various residential and commercial uses. Many portions of the building have been chronically vacant for over 10 years. The site is designated Low Density Residential under the City's Comprehensive Plan. The purpose of the LDR designation is to support existing single-family neighborhoods and other compatible uses. The adaptive reuse of structures is encouraged in Low Density Residential areas under the Comprehensive Plan. *Comprehensive Plan, page LU-31.* City staff identified several Comprehensive Plan goals and policies as relevant to the proposed project, including:
 - Planning for the City's population and employment growth.
 - Encouraging economic development in the City.
 - Promoting occupancy for buildings that are experiencing prolonged vacancy through zoning regulations that encourage adaptive reuse.
 - Supporting flexible development regulations to allow transitions of uses over time.
 - Supporting the adaptive reuse of existing buildings with uses that are compatible with surrounding neighborhoods.
 - Encouraging the development of a variety of housing options and densities to meet the changing needs of City residents.
 - Supporting the private sector's efforts to provide a full range of housing options that meet the needs of all ages and demographics.
 - Providing opportunities for the production of new housing for all incomes, ages, and family types through in-fill development and stimulating growth of non-

traditional housing types where they will seamlessly in-fill into the fabric of existing neighborhoods.²

Exhibit 11, Staff Report, page 5.

6. The property is zoned Low Density Residential (R-10). The purpose of the R-10 zone is to accommodate single-family housing by infilling at a range of lot sizes consistent with urban growth patterns. *BMC 20.60.010*. Surrounding properties to the north, east and south are also zoned R-10. Property to the west is located in unincorporated Kitsap County and is also zoned for residential development. Residential uses, including duplexes and a four-plex, are developed to the north of the project site. The City's Forest Ridge Park is located to the east. School district administration buildings and a school are located to the south. Properties to the west contain single family homes and the 36-unit Marion Apartments. *Exhibit 2; Exhibit 11, Staff Report, pages 4 and 6.*

7. The adaptive reuse of commercial buildings is permitted in the R-10 zone with a conditional use permit. *BMC 20.60.040(f)*. In addition, *BMC 20.46.070* provides requirements that must be met for the adaptive reuse of commercial buildings. Specifically:
 - New traffic shall be accommodated within the existing levels of service on the surrounding neighborhood streets.
 - Provision for off-street parking must be evaluated and, to the greatest extent possible, meet the parking demand for change of uses.
 - The new use must not generate noise that exceeds City standards for residential zones.
 - Adequate street trees and landscaping must be incorporated in a manner that buffers the adaptive reuse from adjacent residential uses and makes it more compatible with the surrounding neighborhood.
 - No new floor area may be constructed for residential uses and residential uses must meet density limits of the underlying zoning district.*BMC 20.46.070.*

8. The property consists of two parcels that total 12.15 acres. Under *BMC 20.60.065(b)*, density in the R-10 zone shall not exceed 10 dwelling units per acre. Here, the proposal for 121 dwelling units on 12.15 acres would satisfy the maximum density requirements of the R-10 zone. The Applicant would aggregate the two underlying parcels prior to building permits being approved and no additional floor area would be added to the existing structure. *Exhibit 1; Exhibit 3; Exhibit 4; Exhibit 11, Staff Report, page 6.*

² The specific Comprehensive Plan goals and policies identified by City staff include: Land Use Goals 1 and 2, Land Use Policies 2(A), 2(B), and 2(C), Housing Goals 2 and 3, and Housing Policies 2(A) and 3(A). *Exhibit 11, Staff Report, page 5.*

9. The Applicant submitted a Traffic Memorandum, prepared by Gibson Traffic Consultants, Inc., dated December 31, 2018. Gibson Traffic determined that, compared to past and current uses of the property, the proposed use would have fewer impacts on levels of service in the vicinity and would generate fewer AM and PM peak hour trips. The City's engineering staff reviewed the Traffic Memorandum and concurs with its determinations. *Exhibit 6; Exhibit 11, Staff Report, page 10.*
10. Under BMC 20.48.060(i), the number of parking spaces required for a multi-family residential structure is dependent on the number of bedrooms planned. City staff analyzed the proposal and determined that 242 parking spaces would be required if every unit in the proposed structure had three bedrooms. The site currently contains 166 parking spaces, 44 of which are noncompliant with City standards. Of the 44 noncompliant parking stalls, 37 are "head-in" stalls accessed directly from 6th Street that are noncompliant because a portion of the stalls are located within the City right-of-way. The other 7 stalls are located on adjacent private property owned by the Applicant. Under BMC 20.46.070(2), the Hearing Examiner may reduce the required number of parking spaces if commute trip reduction methods are employed and the adaptive reuse does not generate an increase in on-street parking demand. Here, City staff recommends that a reduction of 37 required spaces be granted because the 37 "head-in" stalls on 6th Street would continue to be available for resident parking, there are mass transit options available in the immediate vicinity, the proposal would not increase on-street parking demand, and additional off-street parking is available on adjacent property owned by the Applicant. Even accounting for the reduction in required parking, there are up to 258 potential parking spaces available for the project site, satisfying minimum parking requirements. It is unlikely that every unit in the facility would contain three bedrooms and a combination of one-bedroom, two-bedroom, and three-bedroom units is expected. Accordingly, the Applicant would demonstrate compliance with the minimum number of parking stalls at the time the final configuration of bedrooms within the facility is known during the building permit application process. *Exhibit 11, Staff Report, pages 6 through 8; Exhibit 4.*
11. The new use is not expected to generate additional noise that would exceed the standards for residential noise under the City's noise ordinance, Chapter 6.32 BMC. *Exhibit 11, Staff Report page 11.*
12. Because the project would not involve the expansion of floor area on the project site, strict compliance with landscaping and screening requirements is not required under BMC 20.50.030(b)(1). City staff and the Applicant have identified several areas on-site, however, that would benefit from additional landscaping. The Applicant would submit a formal landscaping plan with the Site Development Permit and all landscaping would be installed prior to building occupancy. In addition, the Applicant would install a sight-

obscuring fence adjacent to Marion Avenue, to screen existing parking areas from adjacent residential development to the west. *Exhibit 1, Staff Report, page 8; Exhibit 4.*

Conditional Use Permit

9. The Applicant submitted a project narrative with the application materials assessing how the proposal would comply with the criteria for a CUP under BMC 20.58.020(d). The project narrative notes:
- Adaptive reuse of existing commercial structures is encouraged in areas designated as Low Density Residential under the Comprehensive Plan.
 - The surrounding neighborhood consists mostly of single-family residential development. The existing buildings on-site are single-story, pitched roof buildings that, although large, would retain a residential character and use consistent with the neighborhood.
 - The project would provide a variety of additional housing options. This project would provide 1 to 3-bedroom rental units, of varying sizes.
 - The existing site is a near a city park that would provide recreational amenities for residents. The project site would also have gardens, patios, decks, play areas, and open space.
 - Existing trees on-site would be protected and stormwater facilities would be provided that meet municipal requirements.
 - Construction methods and materials would be used that promote green policies.
 - Mass transit currently serves the property.
 - The exterior façade of the building would be improved and updated and there would be no change to the proposed building height or footprint.
 - Adequate parking would be provided to serve the facility.
 - There are no anticipated, significant impacts to the environment. No work would occur within hazardous areas. Even with some trees being removed to provide additional parking, the site is largely wooded and has generous open space. Dust reduction and construction waste efforts would be implemented to protect the site and the environment during construction.
 - The proposed use is less intense than former and existing uses of the site.
 - The proposed use would have fewer traffic impacts than former and existing uses of the site.
 - Existing landscape areas adjacent to roads and parking areas would be improved to meet current landscaping and screening requirements.

Exhibit 3.

10. City staff also analyzed the proposal to ensure that it would be consistent with surrounding development and the requirements for a CUP and determined:
- The goals and policies of the Comprehensive Plan require the City to plan for a variety of housing types to account for expected population growth. The

proposed redevelopment of the project site would increase City housing stock, while reusing a structure that has not been fully occupied since at least 2004.

- The proposal would be compatible with existing neighborhood uses, including single-family residential development, multi-family residential development, and an area school and school administration buildings.
- The proposal would satisfy the requirements for adaptive reuse of a commercial building in the R-10 zone.
- Adequate parking would be provided on-site.
- Adequate screening and landscaping would be provided to ensure the use is compatible with other uses in the vicinity.
- The proposed use is not expected to generate noise that would exceed municipal standards for residential zones.
- The use would be compatible with nearby land uses and adverse impacts from light/glare, noise, parking, hours of operation, and air quality are not expected.
- The site is currently served by existing City services and utilities are available for the site.

Exhibit 11, Staff Report, pages 5 through 14.

Written Comments

13. As noted above, the City received several comments from reviewing government departments and agencies in response to its notice materials. Specifically:
- Aaron Leavell, Bremerton School District Superintendent, wrote that development would impact at least three school facilities in the area because of increased student enrollment: West Hills STEM Academy, the Mountainview Middle School, and Bremerton High School. To account for impacts, the School District requested that school impact fees be required.
 - The Washington State Department of Archaeology and Historic Preservation (DAHP) wrote that buildings associated with the proposal were originally constructed in the 1940s as part of the naval hospital. Because of the age of construction and association with a significant period in history, DAHP recommends that the site be assessed for inclusion on the National Register of Historic Places and that a Historic Property Inventory form be submitted by an architectural historian for review by DAHP.
 - The City's Building Division reviewed the proposal and determined that several approval conditions would be appropriate to ensure the proposal complies with the City's building code, fire safety code, and all other engineering requirements.

Exhibit 5; Exhibit 11, Staff Report, pages 12 through 14.

14. The City also received comments from area residents in response to its notice materials:
- Andrea Dolan-Potter wrote the City with concerns over the Applicant's prior track record involving violations of health and human safety standards, bad faith conduct, poor housing management, and violations of environmental laws.

*Findings, Conclusions, and Decision
City of Bremerton Hearing Examiner
Frances Haddon Morgan Adaptive Reuse, CUP
No. BP18-00094*

- A group called the “Residents and Stakeholders of the Marion/Burwell Area” also wrote the City with concerns over the proposal. Specifically, the group expressed concern over the scale and density of the proposed development, site topography, environmental impacts, impacts on traffic, the need for mixed-income housing in the area, the need for more thorough analysis of sustainability, and concerns over the past practices of the Applicant.

*Exhibit 5.*³

15. The City provided a response to the public comment letters. The response notes that the City “does not have the regulatory power to reject an applicant based on past practices” but that City staff would “continue to work diligently in order to ensure all development standards are met.” The Applicant also provided a response to the public comment letters. The Applicant’s response stressed:

- The proposed would not increase the current scale, height, or area of the buildings at the project site. The visual scale of the buildings would be reduced through demolition of a breezeway connecting two buildings and demolition of a portion of the building currently being used as a commercial kitchen. The proposal would meet density requirements. In addition, the proposal would provide a variety of housing units and sizes to accommodate housing opportunities for families of differing size and income ranges.
- There is no change proposed to the existing site geography or grading.
- No large trees are expected to be removed, except as needed for utility and infrastructure improvements and safety.
- The proposed multi-family residential use is a less intense use than currently exists on-site.
- The proposal would provide market rate housing and is not intended to concentrate low-income housing in the area.
- The Applicant would pay appropriate impact fees to account for impacts to area schools.
- The property abuts one of the City’s largest urban parks. Additionally, approximately 2.5-acres of the site would be left as open space.
- The City does not have the regulatory power to reject an Applicant based on past practices. The Applicant regrets its past mistake and intends on proceeding with the current proposal in an ethical and professional manner.

Exhibit 5.

³ The City received an additional comment letter from Cathryn Mueller. This letter, however, presumed the project site would be used to house clients of Kitsap Mental Health. Staff informed the commenter that the proposal would involve market rate housing. *Exhibit 12.*

Testimony

16. City Planner Garret Jackson testified generally about the application and how the proposal would comply with the requirements for a conditional use permit. Mr. Jackson stressed that, as an adaptive reuse, the proposal would not involve changing the building footprint of the existing structures and that the proposed use as multi-family residential would have fewer impacts than previous and current uses of the site. *Testimony of Mr. Jackson.*
17. Area resident Andrea Dolan-Potter testified about her concerns with the proposal. Specifically, Ms. Dolan-Potter testified that there was not enough neighborhood engagement on the proposal in advance of the hearing and that better outcomes often occur when more opportunities for neighborhood engagement are provided. She also noted that the suitability analysis prepared by City staff was thorough but there are infrastructure problems that exist in the neighborhood. Drug use and loitering on the project site and in the area, for instance, are a major concern. Finally, Ms. Dolan-Potter stressed that, in light of past problems associated with the Applicant's track record, additional protections should be required to ensure that similar problems do not occur with this project. *Testimony of Ms. Dolan-Potter.*
18. Mr. Jackson responded to Ms. Dolan-Potter's testimony. He noted that additional analysis of the proposal, including analysis of traffic impacts, occurred in light of public comments received. Limited staff resources, however, limit the opportunity for additional public engagement on proposals beyond what is required by the municipal code. Mr. Jackson noted, however, that CUPs are usually dealt with administratively but, in this instance, DCD determined it would be appropriate to have this matter heard by the Hearing Examiner so that additional public engagement would be possible. Finally, Mr. Jackson reiterated that there are laws and regulations in place to ensure that the health and safety of the community are protected and that the City lacks authority to reject an application based on past issues associated with an Applicant. *Testimony of Mr. Jackson.*
19. Applicant Representative Stanley Xu testified that the Applicant has worked with the police department to ensure the property is maintained and to solve problems on the property associated with loitering and drug use. He stressed that, when the building is occupied by residents, these problems should no longer be an issue. Mr. Xu also noted that the Applicant has learned from its past mistakes and would comply with all municipal requirements and regulations to ensure that the proposal is an asset to the community. *Testimony of Mr. Xu.*

Staff Recommendation

20. Mr. Jackson testified that City staff reviewed the proposal and determined that, with conditions, the proposal would comply with the City's Comprehensive Plan, Critical Areas Ordinances, and development standards and recommends approval of the CUP

with conditions. Mr. Xu testified that the Applicant understands and would adhere to the proposed conditions. *Testimony of Mr. Jackson; Testimony of Mr. Xu.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is authorized to hold a hearing on conditional use permit applications; to consider all evidence presented at the hearing; and, based on that evidence, to approve, approve with conditions, or disapprove the conditional use permit. *BMC 2.13.070; BMC 20.02.040(c); BMC 20.58.020(c).*

Criteria for Review

The Hearing Examiner shall approve a conditional use permit only upon finding the following:

- (1) The use is consistent with the Comprehensive Plan goals and policies;
- (2) The use complies with all applicable zoning and development standards and requirements;
- (3) The use satisfies all of the conditional use approval criteria specified in the zone in which the use is located;
- (4) The design of the proposal and conditions of approval have mitigated all identifiable adverse impacts;
- (5) The use is compatible with nearby land uses and the surrounding neighborhood in terms of the level of light and glare, noise and parking demand, hours of operation and air quality; and
- (6) Stipulations are made for the availability of adequate water, sewer, storm water, utilities and urban governmental services.

BMC 20.58.020(d).

Conclusions Based on Findings

1. **The proposed use would be consistent with Comprehensive Plan goals and policies.** The proposal would involve adapting an existing facility from commercial use to use for multi-family residential housing. The project site is designated Low Density Residential under the City's Comprehensive Plan. The adaptive reuse of structures is encouraged in Low Density Residential areas under the Comprehensive Plan. In addition, the proposal would satisfy several goals and policies of the Comprehensive Plan, including: planning for the City's population and employment growth; encouraging economic development within the City; combating chronic vacancy in select areas through adaptive reuse of buildings; supporting flexible development regulations; encouraging the development of a variety of housing options and densities within the City; supporting the private sector's efforts to provide a full range of housing options; and stimulating growth through infill development by providing opportunities for the production of new housing for all incomes, ages, and family types. *Findings 1, 5, 9 – 20.*

*Findings, Conclusions, and Decision
City of Bremerton Hearing Examiner
Frances Haddon Morgan Adaptive Reuse, CUP
No. BP18-00094*

2. **With conditions, the proposed use would comply with all applicable zoning and development standards and requirements.** The property is located within the R-10 zoning district. Adaptive reuse of existing buildings is allowed in the R-10 zoning district with a conditional use permit. In addition, BMC 20.46.070 provides requirements that must be met for the adaptive reuse of commercial buildings in the R-10 zone. Specifically, traffic must be accommodated within existing levels of service, adequate off-street parking must be provided, the use must not generate noise that exceeds City standards for residential zones, adequate street trees and landscaping must be incorporated, and no new floor area must be constructed. Here, the proposal would meet density requirements for the R-10 zone and would comply with the specific requirements of BMC 20.46.070. The Applicant submitted a traffic memorandum that determined the proposed use would have fewer impacts on area traffic than former and current uses of the property. Adequate off-street parking is available for the project site and further analysis of parking would occur when building permits are submitted. Use of the site for residential development is not expected to generate noise that exceeds City standards. Adequate landscaping and buffering would be provided and the Applicant would submit a final landscape plan prior to site development. No expansion of the existing building footprint is proposed.

Conditions are necessary to ensure: the parcels are aggregated prior to building permits being issued; the Applicant demonstrates that minimum parking requirements have been met during the building permit review phase; the allowed parking reduction for the 37 stalls on 6th Street shall be voided if, at any point in the future, the stalls are made unavailable; the 37 stalls on 6th Street shall be maintained throughout the life of the project; a 4-foot sight-obscuring fence is installed to screen parking areas adjacent to Marion Avenue; the Applicant submits a formal landscaping plan; a geotechnical report is provided, or an assessment addressing why such a report is unnecessary, if development is proposed on areas within required buffer zones for geologically hazardous areas; all requirements of the municipal ordinances shall be met; all appropriate building permits must be obtained prior to construction; all work shall comply with requirements of the International Building Code and fire safety requirements; all necessary inspections must occur and special reports must be submitted, including inspections and reports related to asbestos and lead-based paint; all contractors are appropriately registered; impact fees are paid to the Bremerton School District; an architectural historian submits a Historic Property Inventory form to DAHP; and construction proceeds in a timely manner. *Exhibits 1, 5 – 20.*

3. **With conditions, the proposed use would satisfy all of the conditional use approval criteria specified in the zone in which the use is located.** As noted above, the project site is within the R-10 zoning district where adaptive reuse of commercial buildings is allowed with a CUP. The proposal has been designed to ensure that traffic would be

accommodated within existing levels of service, adequate off-street parking would be provided, the use would not generate noise that exceeds City standards for residential zones, adequate street trees and landscaping would be incorporated, and no new floor area would be constructed. As detailed above in Conclusion 2, conditions would ensure that the proposal meets all requirements of the municipal code and criteria required for CUP approval. *Findings 1, 5 – 20.*

4. **The design of the proposal and conditions of approval would mitigate all identifiable adverse impacts.** The City reviewed the proposal for environmental impacts, and determined that, with mitigation, the proposal would not have a probable significant adverse impact on the environment. The City's MDNS was not appealed. The project design would be compatible with the surrounding neighborhood and conditions would ensure that additional landscaping and screening is provided throughout the project site, adequate parking is provided, and buffering is provided to screen parking from adjacent residential development to the east.

The City provided reasonable notice of the application and associated public hearing. Although area residents expressed concerns over some aspects of the proposal, including concerns over traffic impacts, density, environmental impacts, and impacts on area infrastructure, these concerns would be addressed through required conditions of approval. The primary concern expressed by area residents involved the Applicant's track record related to past housing projects. City staff responded to this concern noting that the City lacks authority to reject a proposal on the basis of past performance by an Applicant. The Hearing Examiner concurs with staff's assessment. Moreover, these concerns are beyond the scope of authority granted to the Hearing Examiner under the municipal code in reviewing a project application. As detailed above in Conclusion 2, conditions would ensure that the proposal meets all requirements of the municipal code and criteria required for CUP approval. *Findings 1 – 20.*

5. **With conditions, the use would be compatible with nearby land uses and the surrounding neighborhood in terms of the level of light and glare, noise and parking demand, hours of operation and air quality.** The proposal would involve converting an existing commercial building to residential use. Primary uses in the vicinity are also residential in character although there is a public park and school facilities in the vicinity. The proposed project would comply with Chapter 6.32 BMC, Noise Level regulations and there are no anticipated impacts from levels of light and glare. The Applicant has demonstrated that adequate parking would be available for the proposal and specific parking requirements would be further addressed during the building permit phase of development. As the proposal is for residential development, there are no hours of operation associated with the proposal. Air quality impacts are not expected. As detailed above in Conclusion 2, conditions would ensure that the proposal meets all requirements of the municipal code and criteria required for CUP approval. *Findings 1, 3 – 20.*

6. **With conditions, stipulations would be made for the availability of adequate water, sewer, stormwater, utilities and urban governmental services.** The property would be connected to City water and sewer services and the Applicant would ensure that appropriate provisions are made to address stormwater on-site. As detailed above in Conclusion 2, conditions would ensure that the proposal meets all requirements of the municipal code and criteria required for CUP approval. *Findings 1, 3 – 20.*

DECISION

Based on the preceding findings and conclusions, the request for a conditional use permit for adaptive reuse of an existing public building, the Frances Haddon Morgan Center, to a 121-unit multi-family residential use with additional parking and landscaping, at 3424 Burwell Street, is **APPROVED**, subject to conditions:⁴

1. Parcels 152401-4-015-2005 & 152401-4-020-2008 shall be aggregated with the Kitsap County Auditor Recording Office prior to issuance of the building permit.
2. The Applicant shall demonstrate with any Building Permit application, that minimum parking requirements have been met for all occupied units, and units proposed for occupancy with any pending Building Permits.
3. The 37 stall parking reduction, for head-in stalls located on 6th Street, shall be voided if at any point in the future the stalls are made unavailable for any reason.
4. The 37 head-in parking stalls located on 6th Street, shall be maintained for the life of the development by the Applicant, and be used by approved on-site uses.
5. The Applicant shall install a 4-foot tall sight-obscuring fence to screen parking areas adjacent to Marion Avenue.
6. A formal landscaping plan conforming to Chapter 20.50 BMC shall be approved by the Department of Community Development, and all required landscaping shall be installed prior to any residential unit being occupied.
7. The Applicant shall supply any permit requesting new development within required buffer areas for geologically hazardous areas with either a geotechnical report in conformance with BMC 20.14.600, or an assessment prepared by a qualified professional relaying how the proposed development is exempt from BMC 20.14.600.

⁴ Conditions include both legal requirements applicable to all developments and provisions to mitigate the specific impacts of this development.

8. The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of the Washington State Building code or of any other ordinance of the City of Bremerton. Permits presuming to give authority to violate or cancel the provisions of the Washington State Building code or other ordinances of the City of Bremerton shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is also authorized to prevent occupancy or use of a structure where in violation of the Washington State Building code or of any other ordinances of the City of Bremerton.
9. Proposed renovation/remodel work requires a building permit for walls to be moved, added, or removed; the canopies; replacement or addition of plumbing fixtures; boiler replacement or HVAC work; window replacement; and any other work to the structure of the building. A permit is not required for finish work such as painting the walls, or installing carpet.
10. The interior finish shall comply with Chapter 8 of the International Building Code, and the interior finish applies to walls, ceiling, and floor finish, and to decorative materials and trim such as draperies and tapestries. The Applicant shall submit details of the flame propagation performance for any curtains, drapes, or other hanging decorative materials.
11. Egress illumination and emergency lighting shall be provided in accordance with Chapter 10 of the International Building Code (IBC). Additional life safety and fire protection requirements may apply to the project if the existing structure and systems present an unsafe or unsanitary condition, such as inadequate exiting, a fire hazard, or inadequate lighting.
12. Any structure over 4,000 square feet or residential building containing 5 or more units shall have plans stamped by the Architect or Engineer responsible for the project. Any changes to plans shall be approved before construction is performed. The architect or engineer of record shall approve the change before submitting a revision. A revision is subject to a revision fee and additional fees for plan review and inspections.
13. Special Inspection: 1704.1 General. Where application is made for construction as described in this section, the owner or the registered design professional acting as the owner's agent shall employ one or more special inspectors to provide inspections during construction on the types of work listed under Section 1704. The special inspector shall be a qualified person who shall demonstrate competence, to the satisfaction of the building official, for inspection of the particular type of construction or operation requiring special inspection.

14. Special Inspection: 1704.1.2 Report requirement. Special inspectors shall keep records of inspections. The special inspector shall furnish inspection reports to the building official, and to the registered design professional in responsible charge. Reports shall indicate that work inspected was done in conformance to approved construction documents. Discrepancies shall be brought to the immediate attention of the contractor for correction. If the discrepancies are not corrected, the discrepancies shall be brought to the attention of the building official and to the registered design professional in responsible charge prior to the completion of that phase of the work. A final report documenting required special inspections and correction of any discrepancies noted in the inspections shall be submitted at a point in time agreed upon by the permit applicant and the building official prior to the start of work.
15. Asbestos: Prior to performing any renovation or demolition work, Puget Sound Clean Air Agency and Washington Department of Labor and Industries (L&I) regulations require an asbestos survey be performed to determine whether there are asbestos-containing materials in the work area or structure. The asbestos survey must be conducted by and EPA-certified (AHERA) building inspector (except renovation or owner-occupied single family residences). For more information, please contact Clean Air Agency through their web site at www.pscleanair.org or by phone at 800-552-3565 or 206-343-8800. The L&I web site can be found at: www.lni.wa.gov/TradesLicensing/LicensingReq/Asbestos/default.asp.
16. Lead-based Paint: A contractor or person receiving compensation who is performing renovation, repairs or painting on a residential building or a child-occupied facility built before 1978, must be trained and certified by an accredited training provider, and registered as a Renovator by the Washington State Department of Commerce-Lead-Based Paint Program. For further information please contact: The Department of Commerce website at: www.commerce.wa.gov/lead, or call: (360) 586-LEAD (5323).
17. Contractor: A contractor's registration issued by Washington State Dept. of Labor & Industries is required for anyone who contracts or submits bids for construction work, including new construction, alterations, repairs, or anyone who consults or superintends, improves, demolishes, develops residential property for sale, or "flips" houses. Contact L & I at (360)415-4000 for information.
18. Occupancy for residential uses shall only be granted for entire buildings. Phasing occupancy of individual units, or sections of buildings, or requests for any Temporary Certificate of Occupancy will not be considered.
19. If the CUP is not acted on within one (1) year from the date the decision became final, it shall expire. Expiration is automatic and notice is not required. The Director may grant a

single six (6) month extension if the Applicant makes such a request in writing prior to the expiration date and can show good cause for granting the extension.

20. Prior to any Building Permit issuance, the Applicant shall provide receipt from the Bremerton School District to the Department of Community Development demonstrating that \$770.64 has been paid for each proposed unit.
21. Prior to a Building Permit being issued, the Applicant shall demonstrate that an architectural historian has submitted a Historic Property Inventory form to the Department of Archaeology & Historic Preservation (DAHP).

Decided this 11th day of March 2019.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center