

1. Conditional Use Permit Application, with the following attachments:
 - a. Conditional Use Permit Application, dated received February 4, 2008
 - b. Site Plan, dated received February 4, 2008
 - c. Legal Description, Tax ID #022301-2-005-2007
 - d. Mailing List
 - e. Site Photographs, dated received February 4, 2008
 - f. Project Narrative
 - g. Representation Letter from Amber Keehn, dated February 2, 2008
2. Kitsap County Parcel Search, Tax ID #022301-2-005-2007, dated February 11, 2008
3. Application Transmittal Letter, City of Port Orchard, prepared February 11, 2008
4. Determination of Completeness – Notice to Applicant, dated February 20, 2008
5. Notice of Application, dated February 23, 2008
6. Affidavit of Notice of Application Publication, *Port Orchard Independent*, dated February 23, 2008
7. Facsimile cover sheet, from City of Port Orchard to Sharon, dated March 5, 2008
8. Letter from Michele McFadden, Attorney for Amber Keehn, to Tom Bonsell, Assistant Planner, City of Port Orchard, dated March 5, 2008, with attached Representation Letter
9. Public Comment, dated received March 8, 2008, with the following attachments:
 - a. Declaration of Kudante Cruz, 473 Flower Meadows Street, Port Orchard
 - b. Declaration of Valerie White, 2250 S Flower Avenue, Port Orchard
 - c. Declaration of Todd Raulp, 2329 Carnation Court, Port Orchard
 - d. Declaration of Brandon Danielson and Meghan Danielson, 260 Foxglove Court, Port Orchard
 - e. Declaration of Dave and Penny Hollar, 2397 S Flower Avenue, Port Orchard
 - f. Declaration of Sheila Cronan, 250 Flower Meadows Street, Port Orchard, including City of Port Orchard Building Permit 0700254; Construction Permit Application, dated received August 30, 2007; Site Diagram, dated received August 30, 2007; Stop Work Order, dated January 10, 2008; Photograph, undated and unlabeled; Excerpt from RCW 18.16.175; Washington Department of Licensing License Query for Amber Keehn, dated February 18, 2008; Excerpt from RCW 18.16.175; City of Port Orchard Resolution No. 2060, adopted March 22, 2004; Project Narrative, dated received February 4, 2008; Site Plan, dated received February 4, 2008
10. Letter from Tom Bonsell, City Assistant Planner, to Sheila Cronan, dated March 10, 2008
11. 21 copies of a letter from Amber Keehn, dated February 24, 2008, signed by the following Port Orchard residents:
 - a. A. Bartlett and J. Bartlett, 2330 Carnation Court, Port Orchard (2 copies)
 - b. Brian Moller, 346 Goldenrod Street, Port Orchard
 - c. Resident, 330 Flower Meadows Street, Port Orchard
 - d. Judy Conkle and Robert Conkle, 2362 S Flower Avenue, Port Orchard
 - e. Samantha Klein, 2310 Carnation Court, Port Orchard
 - f. S. Darnell and Gary Darnell, 2374 S Flower Avenue, Port Orchard
 - g. Charles Johnson, 2386 S Flower Avenue, Port Orchard
 - h. Glenn Kincaid, 270 Flower Meadows Street, Port Orchard

- i. Lauren Keehn, 300 Flower Meadows Street, Port Orchard
 - j. Lucas Wills, 315 Flower Meadows Street, Port Orchard
 - k. Resident, 2349 Garden Drive, Port Orchard
 - l. Cheryl Aarness, 2369 Garden Drive, Port Orchard
 - m. Resident, 2378 Garden Drive, Port Orchard
 - n. Resident, 223 Fireweed Lane, Port Orchard
 - o. Thomas Prendiville and Kathleen Prendiville, 260 Flower Meadows Street, Port Orchard
 - p. Kimberly Shaw, 300 Flower Meadows Street, Port Orchard
 - q. Resident, 2316 Carnation Court, Port Orchard
 - r. Kim Reed, 461 Flower Meadows Street, Port Orchard
 - s. Vicky Munson, 2344 S Flower Avenue, Port Orchard
 - t. Resident, 288 Goldenrod Street, Port Orchard
- 12. Site Plan, dated received March 19, 2008
 - 13. Notice of Public Hearing mailing, dated March 29, 2008
 - 14. Notice of Public Hearing, *Port Orchard Independent*, dated March 29, 2008
 - 15. Aerial Site Photograph, submitted February 4, 2008
 - 16. City Staff Report and Recommendation to the Hearing Examiner, CUP029-08
 - 17. Letter from Rachel J. Rosas, dated April 11, 2008
 - 18. Mapquest Area Map of Vicinity, printed March 20, 2008
 - 19. South Kitsap School District Bus Route Listing, printed April 10, 2008

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

FINDINGS

1. Amber Keehn (Applicant) requests approval of a conditional use permit (CUP) to operate a home occupation within an existing single-family residence. The subject property is 0.19 acre in size and located at 2363 S Flower Avenue, Port Orchard, Washington.¹ *Exhibit 1; Exhibit 16, Staff Report, page 1.*
2. The City of Port Orchard (City) determined the CUP application was complete on February 20, 2008. Thomas Bonsell, City Planner, testified that he mailed notice of the application to owners of property within 300 feet of the subject property and posted notice on the subject property. On February 23, 2008, the City published notice of the application in the *Port Orchard Independent*. The City published notice of the public hearing associated with the application on March 29, 2008 in the *Port Orchard Independent*. Mr. Bonsell testified that the City also mailed notice of the public hearing to owners of property within 300 feet of the subject property on March 26, 2008, and

¹ The subject property is identified by Tax Assessor's Parcel Number 022301-2-005-2007. The subject property's legal description is included with the CUP application. *Exhibit 1.*

posted notice on the subject property. *Exhibit 4; Exhibit 5; Exhibit 6; Exhibit 13; Exhibit 14; Testimony of Mr. Bonsell.*

3. The City Staff Report states that the CUP application is exempt from review under the State Environmental Policy Act (SEPA) according to Washington Administrative Code (WAC) 197-11-355 (Minor Projects). The notice of public hearing published by the City in the *Port Orchard Independent* states that the application is exempt from review under SEPA according to WAC 197-11-800(6) (Minor Land Use Permits).² *Exhibit 14; Exhibit 14, Staff Report, page 7.*
4. The subject property is designated Medium Density Residential by the City's Comprehensive Plan. Property surrounding the subject property is also designated Medium Density Residential by the City's Comprehensive Plan. *City of Port Orchard Comprehensive Plan Land Use Map, dated January 13, 2003.* The subject property is currently located in an area of single-family residences within the City. *Exhibit 15; Exhibit 16, Staff Report, pages 1-2.*
5. The subject property lies within the City's R4.5 single family detached zoning district. *Exhibit 16, Staff Report, page 1.* The purpose of the City's R4.5 zone is to provide for an urban residential environment consistent with the traditional image of the Port Orchard area and to implement comprehensive plan goals and policies, which is accomplished by providing for a mix of predominantly single family detached housing types and allowing only those accessory and complementary nonresidential uses compatible with single family residential communities. *Port Orchard Municipal Code (POMC) 16.13.120.*³
6. City Ordinance No. 026-07 amended City Zoning Ordinance No. 1748, Part B3 Residential Land Uses Table Accessory Uses, to provide that all home occupations shall

² WAC 197-11-355 provides for an optional Determination of Nonsignificance (DNS) process, which is an integrated project review process and comment period to obtain comments on the notice of application and the likely DNS threshold determination for the proposal. *WAC 197-11-355.* WAC 197-11-800(6) provides that approval of short plats and short subdivisions; granting of variances; classifications of land for current use taxation under RCW Chapter 84.34, and classification and grading of forest land under RCW Chapter 84.33 is exempt from SEPA review. *WAC 197-11-800(6).* WAC 197-11-890 permits agencies to create additional exemptions from SEPA review upon Washington Department of Ecology (DOE) approval. The City adopted WAC 197-11-355, WAC 197-11-800, and WAC 197-11-890 by reference. *Port Orchard Municipal Code (POMC) 14.04.060; POMC 14.04.080.* Although WAC 197-11-800(6) does not specifically exempt CUP applications and there is no evidence that the City successfully petitioned DOE to establish additional exemptions, no one at the open record hearing challenged the City's exemption determination for this CUP application. It may be advisable for the City to reference a code section or agreement with Ecology to support this claim of exemption for future applications.

³ On December 19, 2007, the Port Orchard City Council passed and the Port Orchard Mayor signed City Ordinance No. 046-07, repealing POMC Chapters 13.08, 15.16, and 16.04 and adding a new Title 16 entitled "Land Use Regulatory Code." *City Ordinance No. 046-07.* The City has not yet codified the new Title 16.

be conditional uses and all shall be subject to the provisions of POMC Chapter 5.99.⁴ City Ordinance No. 026-07 also added a new chapter to the Code, Chapter 5.99 (Home Businesses). The City Council passed and the City Mayor signed City Ordinance No. 026-07 on December 19, 2007. *POMC 16.30.080 Table 6; City of Port Orchard Ordinance No. 026-07.*

7. POMC 16.08.366 defines “home occupation” as “a limited-scale activity undertaken for financial gain with some on-site sales or service, which occurs in a dwelling unit or accessory building and is subordinate to the primary use of the premises as a residence in accordance with the provisions of POMC Chapter 5.99.” *POMC 16.08.366.* POMC 5.99.040, as amended by City Ordinance No. 026-07, provides that home businesses are permitted in a residential dwelling unit subject to the City’s zoning code and nine criteria, POMC 5.99.040(a) – (i). *City Ordinance No. 026-07.*
8. The purpose of POMC Section 16.35.010 (Conditional Uses) is to allow certain uses deemed necessary to the public convenience but possessing characteristics not easily identified with any particular zone classification. The conditional use permit is a mechanism by which special conditions may be placed on development or to ensure that designated uses or activities are compatible with other uses in the vicinity. *POMC 16.35.010(1); POMC 16.35.010(2).*
9. The Applicant proposes to operate a single-chair hair salon out of the existing single-family residence on the subject property. The Applicant testified that she would offer perms, color, and haircutting services within the salon, and that providing services to clients would take approximately one to three hours per client. The Applicant added that she would offer services to two to eight people per day, or an average of five people per day. Michelle McFadden, the Applicant’s attorney, stated that the Applicant would restrict the days of operation of the proposed conditional use to Monday through Friday. *Exhibit 1; Testimony of Ms. Keehn; Statement of Ms. McFadden.*
10. The Applicant testified that she has lived in the existing residence on the subject property since September 2007. According to the CUP application, the subject property is an 8,250 square foot lot located on the northeast corner of S Flower Avenue and Flower Meadow Street. The Applicant converted the single-car garage of the existing residence into a laundry room, bathroom, and hair salon room. According to the revised site plan for the proposed conditional use, the hair salon room would be approximately seventeen feet by twelve feet, or approximately 357 square feet. The hair salon room would contain one styling chair and one shampooing sink, and would be accessed by an access door on

⁴ Mr. Bonsell testified that the City Council enacted a moratorium on establishment of home occupations within the City, but the moratorium expired in September 2007 prior to receipt of the CUP application by the City. Mr. Bonsell also testified that the amendments, repeals, and additions to City Code made by City Ordinance No. 026-07 had not yet been codified. *Testimony of Mr. Bonsell.*

the south side of the converted garage. The door would not be used to access the residential are of the house. The Applicant testified that she would not place a sign on the exterior of the residence advertising the hair salon as her customers are ones who know of her services and make appointments with her. She would have no 'walk in' customers. *Exhibit 1; Exhibit 12; Testimony of Ms. Keehn.*

11. Sheila Cronan, a resident of the neighborhood with property that overlooks the proposed use, testified to her concern over the size of the proposed conditional use compared to the size of the existing residence. Ms. Cronan questioned the size of the existing residence. David Hollar, a neighborhood resident one block south of the existing residence for the past 15 years, also questioned the size of the existing residence. *Testimony of Ms. Cronan; Testimony of Mr. Hollar.*
12. A revised site plan for the proposed conditional use depicts the existing residence as 52 feet by 30 feet, or approximately 1,560 square feet. *Exhibit 12.* Mr. Bonsell testified that the existing residence is 1,560 square feet, and that City code restricts the size of the proposed conditional use within the existing residence to no more than 40 percent of the size of the existing residence or 1,000 square feet, whichever is less. As the proposed hair salon would occupy 357 square feet of the existing residence, the hair salon would comprise 23 percent of the 1,560 square feet within the existing residence. *Exhibit 12; Testimony of Mr. Bonsell.*
13. According to the CUP application, the subject property contains a driveway adjacent to the existing residence that is sufficient in size to park two vehicles. The revised site plan for the proposed conditional use depicts a paved area adjacent to the corner of S Flower Avenue and Flower Meadow Street that is sufficient in size to contain three, 10 foot by 20 foot vehicle parking spaces. The City Staff Report states that overall, the subject property contains five off-street parking spaces available for use at the residence, two for the residence and three for potential clients. *Exhibit 1; Exhibit 12; Exhibit 16, Staff Report, pages 6 - 7.*
14. The revised site plan for the proposed conditional use depicts a row of landscaping to be planted along the border of the subject property and Flower Meadow Street. The City Staff Report states that landscaping or sight-obscuring fencing would be required adjacent to Flower Meadows Street in the paved parking area to mitigate visual impact of vehicles parked on the property. *Exhibit 12; Exhibit 16, Staff Report, page 6.*
15. Ms. Cronan testified to her concern over traffic that would be generated by the proposed conditional use. Ms. Cronan explained that her residence overlooks the subject property, and from that vantage point she saw 18 visitors to the subject property in one day in November. Ms. Cronan testified that she has noted an increase in traffic over time associated with the subject property, and expressed her concern that there would be an increase in noise generated by the proposed conditional use associated with car doors

slamming from an additional 18 vehicles per day on the subject property. To limit impacts of the proposed conditional use, Ms. Cronan requested restricting business hours of the use from 10am to 4pm, and recommended that the use be closed to clients on holidays. *Testimony of Ms. Cronan.*

16. Tom Prendiville, a neighbor who lives across the street from the subject property, testified that he has seen only four to five vehicles a day visit the subject property. Kathy Lipka, a neighborhood resident for the past 10 years, testified that there are currently approximately 200 vehicle trips per day through the neighborhood. Mr. Bonsell explained that the City reviewed the proposed conditional use for traffic impact on the neighborhood, and determined that traffic generated by the proposed use would not have a significant impact on existing neighborhood traffic. Mr. Bonsell testified that existing traffic along Flower Meadow Street and S Flower Avenue is relatively low, and that traffic generated by the proposed conditional use would not be an unreasonable burden on surrounding streets if the proposed use is visited by one client each one-half hour. Mr. Bonsell explained that such traffic would be comparable to the traffic generated by a household with teenagers. The City Staff Report states that the vehicle trips generated by the proposed use would average two trips per hour. *Exhibit 16, Staff Report, page 7; Testimony of Mr. Prendiville; Testimony of Ms. Lipka; Testimony of Mr. Bonsell.*
17. Ms. Cronan testified to her concern about schoolchildren in the neighborhood who use school buses for transport and who play in neighborhood streets. Ms. Cronan testified that there are three buses that drop off children at a street corner in the vicinity of the subject property in the afternoon. Christine Sanders also testified to her concern about school buses transporting students to and from the area, including her three children at Sydney Glen Elementary and other middle school students who walk to and from bus stops in the vicinity of the subject property. Ms. Lipka testified that the hours of darkness in the winter added to her concern about pedestrian safety in the neighborhood, should traffic generated by the proposed conditional use increase vehicle trips through the neighborhood. Jaimie Cross, a resident at 2363 S Flower Avenue, testified that there is a streetlight located on a street corner in the vicinity of the subject property. *Testimony of Ms. Cronan; Testimony of Ms. Sanders; Testimony of Ms. Lipka; Testimony of Ms. Cross.*
18. Ms. Cronan submitted six declarations of residents owning property within the vicinity of the subject property that recommended denial of the CUP application and immediate termination of activity associated with the proposed conditional use on the subject property. *Exhibit 9a; Exhibit 9b; Exhibit 9c; Exhibit 9d; Exhibit 9e; Exhibit 9f.* The declaration of Kudante Cruz expressed opposition to the proposed conditional use due to a concern about the safety of child pedestrians within the neighborhood. According to the Cruz declaration, the residential neighborhood of S Flower Avenue/Goldenrod Street/Fireweed Road has poorly paved streets and no sidewalks, and children stand on roadsides waiting for school bus pick up. According to the Cruz declaration, new development within other areas of the neighborhood has already increased traffic in the

neighborhood. The declarations of Valerie White, Todd Raulp, and Brandon Danielson and Meghan Danielson expressed similar concerns. *Exhibit 9a; Exhibit 9b; Exhibit 9c; Exhibit 9d.*

19. The Applicant testified that school buses pick up and drop off children within the neighborhood, and that the closest stop to the subject property is four houses down the street. Attorney McFadden stated for the Applicant that there a few school buses that travel through the neighborhood, but overall fewer than five school buses per day. The Applicant submitted a South Kitsap School District bus route listing dated April 10, 2008, which listed three morning and three afternoon routes. The morning routes pick up at the intersections of Goldenrod Street and Flower Avenue, at Morgan Mobile Manor and S Flower Avenue, and at S Flower Avenue and Fireweed Street, at 8:41am, 8:40am, and 8:38am, respectively. The afternoon routes pick up at the intersections of Goldenrod Street and Flower Avenue, Morgan Mobile Manor and S Flower Avenue, and S Flower Avenue and Fireweed Lane, at 4:09pm, 4:08pm, and 4:06pm, respectively. *Exhibit 19; Testimony of Ms. Keehn; Statement of Ms. McFadden.*
20. Ms. Sanders also testified to her concern that granting the proposed CUP application would lead to negative impacts on the existing quiet, residential neighborhood. Ms. Sanders testified that in her view, allowing the proposed use would lead to many more businesses in the neighborhood, which may attract undesirable and dangerous customers. *Testimony of Ms. Sanders.*
21. The declaration of Dave and Penny Hollar recommended that the City “strongly consider the negative impacts and future consequences of issuing a conditional use permit for 2363 S Flower Ave[nue],” due to the poorly paved streets and lack of formal curbs and off-street parking within the neighborhood, and the possibility that granting the CUP application would lead to a change in the residential character of the neighborhood to a commercial character. According to the Hollar declaration, commercial use such as the proposed use would increase neighborhood traffic over time, and would create greater demand for City utility service, City maintenance, and City monitoring of the use. *Exhibit 9e.*
22. Mr. Hollar testified to his concern about enforcement of CUP conditions, should a CUP be granted to allow the proposed use on the subject property. Ms. Cronan also testified to her concern about enforcement of CUP conditions, recommending that the City conduct a follow-up hearing on the Applicant’s compliance with CUP conditions, should a CUP be granted to the Applicant. Mr. Hollar proposed conditions that would limit business hours of the use to between 9am and 4pm, that would prohibit any sign on the subject property advertising the business, and that the sink used in conjunction with the proposed use should be hooked up to a sewer line rather than routed to the subject property’s septic system. Ms. Cross testified that the proposed conditional use would include a sink

dedicated to use in the business. *Testimony of Mr. Hollar; Testimony of Ms. Cronan; Testimony of Ms. Cross.*

23. Ms. Lipka testified to her concern that neighborhood residents, including children, would be exposed to toxic chemicals used in the course of operating the proposed conditional use. Ms. Lipka explained that the chemicals would be routed to the subject property's existing septic system. Ms. Lipka proposed a condition of CUP approval that the subject property's septic system should be pumped out at least once every six months to remove toxic chemicals. *Testimony of Ms. Lipka.*
24. Mr. Keehn, the Applicant's father, testified that at the prior location of the hair salon, the Applicant received no complaints, the operation of the Applicant's business posed no safety concerns, and the hair salon was serviced by a septic system. Mr. Keehn testified that the chemicals that were used at the previous location of the Applicant's hair salon and that would be used in the course of operating the proposed conditional use are used in all homes. *Testimony of Mr. Keehn.*
25. The City and Applicant Attorney agreed that the proposed use of the existing septic system may be considered a public health issue, and recommended a condition of CUP approval that the Kitsap County Health District review and approve use of the existing septic system by the proposed use prior to operation of the proposed use, and if necessary, should place conditions on use of the septic system by the proposed hair salon. *Testimony of Mr. Bonsell; Statement of Ms. McFadden.*
26. The declaration of Sheila Cronan recommended denial of the CUP application and immediate termination of activity associated with the proposed conditional use on the subject property. The declaration expressed concern that the Applicant operated the proposed conditional use on the subject property before the Applicant submitted a CUP application to the City, and expressed the view that such operation is illegal under City code. Ms. Cronan's declaration states that she first noticed the Applicant was operating a beauty salon in her home on November 18, 2007. Ms. Cronan's declaration references a January 10, 2008 Stop Work Order issued by the City to the Applicant for failure to obtain a Certificate of Occupancy, and directing the Applicant to cease all business activity on the subject property until the Applicant obtained a CUP, Business License, and Certificate of Occupancy. The declaration also expressed concern that the poor condition of roads in the neighborhood, lack of sidewalks, and increased traffic attributable to operation of the proposed use would negatively impact the safety of schoolchildren waiting for buses in the neighborhood. In addition, the declaration expressed concern that the proposed use would be operated in violation of RCW 8.16.175(1),⁵ and that granting the CUP application would be inconsistent with the City's previous decision on CUP application 012-03.⁶ *Exhibit 9f.*

⁵ RCW 8.16.175(1) provides that a salon/shop or mobile unit shall meet the following minimum requirements:

27. The City Staff Report states that after City code enforcement staff notified the Applicant of the need to obtain a CUP to operate a hair salon out of her residence. City staff met with Ms. Keehn on January 28, 2008 to discuss the conditional use permitting process. Mr. Bonsell testified that CUP application 012-03 is not relevant to the Applicant's CUP application because the property at issue for CUP application 012-03 is located in a different City neighborhood. The City Staff Report also states that the City Council intended to allow the operation of home businesses in residential neighborhoods when it passed City Ordinance No. 026-07 on December 19, 2007, adding POMC Chapter 5.99. The City Staff Report explains that City Code does not prohibit operation of home occupations due to street paving conditions or the existence of sidewalks. The City Staff Report states that with proposed conditions of CUP approval, operation of the business to serve one client at one time would not create traffic safety problems or safety issues for pedestrians in the immediate vicinity of the subject property. The City Staff Report also states that there would be no use of electrical or mechanical equipment that would change the fire rating of the structure housing the business, create interference in radio or television receivers, or cause changes in line voltage outside the structure. *Exhibit 16, Staff Report, pages 2, 4, and 6; Testimony of Mr. Bonsell.*
28. The Applicant submitted 21 copies of letters of support from neighborhood residents for operating a single-chair hair salon in her home for friends and family. The letters of support are dated February 24, 2008, and state that the Applicant has a business license and a state cosmetology license. Rachel Rosas, 310 Flower Meadows Street, also submitted a letter of support for operation of the hair salon from the Applicant's residence; stating she has not noticed excessive traffic near the subject property, has not heard noise from the subject property, and has not noticed that the subject property has the appearance of a hair shop or salon. *Exhibits 11a – 11t; Exhibit 17.*

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- (a) Maintain an outside entrance separate from any rooms used for sleeping or residential purposes;
 - (b) Provide and maintain for the use of its customers adequate toilet facilities located within or adjacent to the salon/shop or mobile unit;
 - (c) Any room used wholly or in part as a salon/shop or mobile unit shall not be used for residential purposes, except that toilet facilities may be used jointly for residential and business purposes;
 - (d) Meet the zoning requirements of the county, city, or town, as appropriate;
 - (e) Provide for safe storage and labeling of chemicals used in the practices under this chapter;
 - (f) Meet all applicable local and state fire codes; and
 - (g) Certify that the salon/shop or mobile unit is covered by a public liability insurance policy in an amount not less than one hundred thousand dollars for combined bodily injury and property damage liability.

⁶ On March 22, 2004, the City Council passed Resolution No. 2060, which denied CUP application 012-03 of David Z. Levine, D.O. to use his single family residence at 1396 Cedar Canyon Place, Port Orchard, on an interim basis for operation of a part-time physician's office. *Exhibit 9f.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner for the City of Port Orchard has jurisdiction to hold a hearing on the conditional use permit application. Based on the evidence in the record, the Hearing Examiner may grant, grant with conditions, or deny the application. The Hearing Examiner has authority to impose conditions on a proposal consistent with federal, state, and local law. *Port Orchard Municipal Code (POMC) 2.76.080; POMC 2.76.100; POMC 2.76.110; POMC 16.01.021(3)*.⁷

Criteria for Review

To decide a conditional use permit application, the Hearing Examiner shall make the following findings:

POMC Section 5.99.040 – Home Business Requirements

Home businesses are permitted in a residential dwelling unit subject to the provisions of the City's Zoning Ordinance and if all of the following criteria are met:

- (a) The home business shall clearly be subordinate to the use of the dwelling unit for residential purposes. The burden of establishing that the home business is subordinate to the primary residential use is upon the applicant for a business license;
- (b) The home business shall be owned or conducted by a resident of the dwelling unit. If the applicant for the business license is a resident but does not own the dwelling unit, the applicant shall obtain written approval of the proposed Home Business from the owner. The burden of establishing that the home business is owned or conducted by a resident of the dwelling unit is upon the applicant for a business license;
- (c) No more than two persons shall be employed in the home business without obtaining a conditional use permit;
- (d) Each home business conducted within any single dwelling unit, including accessory structures, shall obtain a separate conditional use permit when otherwise required by the provisions of this chapter or the City's Zoning Ordinance;
- (e) The residential character of the building shall be maintained and the business shall be wholly situated indoors. There shall be no exterior display, alteration of the property, expansion of parking, storage or other exterior indication of the existence of the home business, except as may be allowed by the underlying zone or under POMC 15.16.090;
- (f) Home business shall not involve the use of more than 40 percent or 1,000 square feet, whichever is less, of the combined gross floor area of the principal residential building, garage, and the living area of any accessory structure;

⁷ On December 19, 2007, the Port Orchard City Council passed and the Port Orchard Mayor signed City Ordinance No. 047-07, repealing POMC 2.20.040 in its entirety and adding a new POMC Chapter 2.76 (Hearing Examiner). The City has not yet codified POMC Chapter 2.76.

- (g) A home business shall not include the following uses: commercial instruction with four or more students, commercial stable, kennel, restaurant, medical clinic, vehicle detailing, and minor or major vehicle repair;
- (h) The home business shall not infringe upon the right of neighboring residents to enjoy the peaceful occupancy of their homes. No offensive noise, vibration, smoke, dust, odor, heat, glare or unusual or excessive traffic to and from the premises shall be produced or generated by the home business; and
- (i) There is no use of electrical or mechanical equipment which would change the fire rating of the structure or which would create visible or audible interference in radio or television receivers or which would cause fluctuations in line voltage outside the dwelling.

POMC 5.99.040.

POMC Section 16.35.010 – Conditional Uses

A conditional use permit shall be granted only if the applicant demonstrates that the use:

- (a) Will be designed in a manner which is compatible with the character and appearance with the existing, or proposed development in the vicinity of the subject property;
- (b) Will not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties due to the location, size, and height of buildings, structures, walls and fences, and screening vegetation of the proposed use;
- (c) Will be designed in a manner that is compatible with the physical characteristics of the subject property;
- (d) Will mitigate impacts in a manner equal to or greater than the standards of this code;
- (e) Will not conflict with the health and safety of the community;
- (f) Will not create pedestrian and vehicular traffic that will be hazardous or conflict with existing and anticipated traffic in the neighborhood; and
- (g) Will provide adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities.

POMC 16.35.010(3).

Conclusions

1. **With conditions, the proposed home occupation would comply with POMC Section 5.99.040 Home Business Requirements.** The proposed hair salon would be subordinate to the use of the dwelling unit on the subject property for residential purposes. The

*Findings, Conclusions, and Decision
City of Port Orchard Hearing Examiner
Keehn CUP028-08*

Applicant would continue to reside within the dwelling unit upon operation of the proposed use, and the proposed use would occupy 23 percent of the existing residence gross floor area. The existing structure features an entrance for the hair salon separate from the residential living area entrances. The proposed hair salon would be owned and operated by the Applicant, and would be located entirely within the existing residence. There would be no electrical or mechanical equipment used in operation of the proposed use that would change the fire rating of the structure or which would create interference with radio or television receivers or cause fluctuations in line voltage outside the existing dwelling. Landscaping would be planted along the border of the subject property and Flower Meadow Street to mitigate visual impact of vehicles parked on the property. The Applicant would operate her business from Monday through Friday, and would serve two to eight people per day, or an average of five people per day, with one to three hours spent per client.

Conditions of CUP approval are necessary to ensure that there is no exterior sign display, property alteration, parking expansion, storage or other indication of the existence of the hair salon within the existing residential neighborhood. Conditions of CUP approval are also necessary to ensure pedestrian safety within the surrounding neighborhood, to ensure that there is no offensive noise or unusual or excessive traffic within the surrounding neighborhood generated by the operation of the proposed use, and to ensure that the Applicant obtains a business license. *Findings 1, 4 – 7, 9 – 22, 26 - 28.*

2. **With conditions, the proposed home occupation would comply with POMC Section 16.35.010 Conditional Use permit criteria.** The City gave adequate notice of the CUP application, and provided adequate opportunity to comment on the application. The City determined that the CUP application was exempt from review under SEPA. The proposed hair salon would be operated entirely within an existing residence that is located in a residential neighborhood. The existing residence is located within the City's R4.5 zoning district, which permits home occupations as conditional uses if they comply with POMC Chapter 5.99 provisions. The proposed use meets the definition of home occupation found within POMC 16.08.366, as the proposed hair salon would provide on-site services within the existing dwelling unit on the subject property, but would be subordinate to the use of the existing dwelling unit as the Applicant's residence. Client vehicles parked on the subject property would be screened from the surrounding neighborhood with landscaping or a fence. The revised site plan for the proposed conditional use depicts a row of landscaping to be planted along the border of the subject property and Flower Meadow Street. A paved parking area already exists on the subject property that would provide up to three client vehicle parking spaces in addition to two spaces within an adjacent driveway for the Applicant's personal use. A bathroom is located adjacent to the hair salon room to serve salon clients.

Conditions of CUP approval are necessary to ensure that no changes to the residence occur that would make the residence appear more commercial than residential in nature,

and that excessive traffic is not generated by the proposed use that would hinder neighborhood circulation or pose risk to neighborhood pedestrians. Conditions of CUP approval are also necessary to ensure that hair salon clients do not park in the right-of-way, to ensure that the proposed use complies with RCW 18.16.175(1) requirements, and to ensure that the use of the existing septic system on the subject property to serve the proposed use is reviewed and approved by the Kitsap Public Health District prior to operation of the proposed use. *Findings 1 – 28.*

DECISION

Based on the above findings and conclusions, the request for a Conditional Use Permit to locate and operate a home occupation at 2363 S Flower Avenue, in Port Orchard, Washington is **GRANTED**, subject to the following conditions:⁸

1. The Applicant must provide a copy of their State licenses to the City prior to City business license issuance.
2. The Applicant shall not be permitted to provide hair salon services to more than one client at a time, and no more than eight on any one day or an average of 25 in any one week. It can be expected however that some overlap of customers will occur in the waiting room.
3. As long as the Applicant operates a salon from the residence, no modifications to the residence will be permitted that changes the use or look of the single-family residence to be more commercial in nature in conformance with POMC 5.99.040. However clients will come and go through the existing side door.
4. If the State revokes or does not renew the cosmetology, business, or beauty salon license of the Applicant, the Conditional Use Permit will become null and void.
5. In order to minimize the number of clients parking at the residence, appointments shall be by appointment only. No walk-ins are permitted. No more than two client vehicles shall be parked on the subject property at any time.
6. No client parking shall be allowed in the street right-of-way. Clients must park on the subject property.
7. Hours shall be limited to 9 a.m. to 6 p.m., Monday through Friday.

⁸ This decision includes conditions required to reduce project impacts as well as conditions required to meet City Code standards.

8. In order to screen any business activities, the Applicant shall install a sight obscuring fence or screening vegetation adjacent to Flower Meadow Street in a manner acceptable to the Planning Department.
9. No exterior signs are allowed.
10. The City and Applicant shall coordinate contact with the Kitsap County Health District to ensure that the use of the existing septic system is reviewed and approved by the Kitsap County Health District prior to operation of the conditional use.
11. This Conditional Use Permit for the home occupation is only applicable to the current owners in conformance with POMC 5.99.040. The Conditional Use Permit does not run with the land.
12. Any violations of this permit may result in this Conditional Use permit becoming void in conformance with POMC 5.99.050.

Decided this 24th day of April 2008.


THEODORE PAUL HUNTER
Hearing Examiner