

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

'AUG - 8 2012

RECEIVED

In the Matter of the Application of)	No. TUM-12-0552
)	No. TUM-12-0554
)	
Robyn Sederberg, on behalf of)	Thurston County Accountability and
Thurston County)	Restitution Center Work Release Unit and
)	Flex Housing Unit
)	
)	
<u>For a Conditional Use Permit and Variance</u>)	FINDINGS, CONCLUSIONS, AND DECISIONS

SUMMARY OF DECISIONS

The request for a conditional use permit to remodel an existing industrial building to house the Thurston County Accountability and Restitution Center (ARC) Work Release Unit and to construct a new building to house the ARC Flex Housing Unit is **APPROVED**. The related request for a variance from Tumwater Municipal Code 18.56.250.B.2.b and 18.56.250.2.c.ii for location of the ARC Work Release Unit is **APPROVED**. Conditions of approval are necessary to address specific impacts of the proposed use.

SUMMARY OF RECORD

Request:

Robyn Sederberg, on behalf of Thurston County, requests a conditional use permit (CUP) to remodel an existing industrial building to house the Thurston County Accountability and Restitution Center (ARC) Work Release Unit and to construct a new building to house the ARC Flex Housing Unit. Ms. Sederberg also requests a variance from Tumwater Municipal Code 18.56.250.B.2.b and 18.56.250.B.2.c.ii for location of the ARC Work Release Unit. The property is located at 3013 Ferguson Lane SW, in Tumwater, Washington.

Hearing Date:

The Hearing Examiner held an open record hearing on the request on July 25, 2012. The Hearing Examiner kept the record open until close of business July 27, 2012, to receive a copy of a Final Environmental Impact Statement (FEIS) on the proposal and a consolidated list of proposed conditions from City staff.

Testimony:

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

Chris Carlson, City Permit Manager

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Terry McCann, Blumen Consulting Group, Applicant Representative
Don Krupp, Thurston County Manager, Applicant Representative
Robyn Sederberg, Thurston County Project Manager, Applicant Representative
Jon Pettit
Aaron Starks
Eric Campbell

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated July 18, 2012
2. Conditional Use Permit Application, dated June 25, 2012
3. Variance Application, dated June 25, 2012
4. Site Plan, dated June 25, 2012
5. Vicinity Map
6. Comprehensive Plan Map
7. Zoning Map
8. TMC 18.24 – Light Industrial Zone District
9. TMC 18.39 – Aquifer Protection Overlay District
10. Transportation Concurrency Application, dated June 25, 2012
11. Transportation Concurrency Ruling, dated July 18, 2012
12. Water and Sewer Availability Ruling, dated July 9, 2012
13. TMC 18.04.203 – Essential Public Facilities Definition
14. TMC 14.04.010 – Determination of Consistency
15. TMC 18.56.010 – Conditional Use Permits Intent
16. TMC 18.56.040 – Conditional Use Permits Imposition of Conditions
17. TMC 18.56.090 – Conditional Use Permits Minimum Conditions
18. TMC 18.56.260 – Essential Public Facilities
19. TMC 18.56.250 – Work Release Facilities
20. TMC 18.58.010 – Variances Intent
21. SEPA FEIS Addendum, dated June 19, 2012
22. Thurston County 90-Day Notice, dated March 16, 2012
23. Thurston County Public Information Meeting Notice, dated May 2, 2012
24. Public Information Meeting Questions and Answers
25. Notice of Application, dated June 27, 2012
26. Public Hearing Notice, dated July 13, 2012
27. Formal Site Plan approval letter, dated May 21, 2012
28. Department of Ecology letter, dated July 12, 2012
29. Department of Corrections letter, dated April 17, 2012
30. Department of Ecology letter, dated July 25, 2012
31. PowerPoint Presentation Slides, dated July 25, 2012
32. Final Environmental Impact Statement (FEIS), dated June 29, 2007
33. City Consolidated Proposed Conditions and Applicant Response, dated July 26, 2012

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

FINDINGS

Application and Notice

1. Robyn Sederberg, on behalf of Thurston County (Applicant), requests a conditional use permit (CUP) to remodel an existing industrial building to house the Thurston County Accountability and Restitution Center (ARC) Work Release Unit and to construct a new building to house the ARC Flex Housing Unit. Ms. Sederberg also requests a variance from Tumwater Municipal Code 18.56.250.B.2.b and 18.56.250.B.2.c.ii for location of the ARC Work Release Unit. The property is 27.63 acres in size and is located at 3013 Ferguson Lane SW, in Tumwater, Washington.¹ The property currently contains the existing ARC building and two additional buildings. *Exhibit 1, Staff Report, page 2; Exhibit 2; Exhibit 3.*

2. Chris Carlson, City Permit Manager, testified that the City of Tumwater (City) determined the applications were complete on June 25, 2012. *Exhibit 25; Testimony of Mr. Carlson.* The City mailed notice of the applications to the Applicant, Applicant Representative, agencies, interested parties, and owners of property within 1,400 feet of the subject property on June 27, 2012.² The City posted notice on the subject property on June 27, 2012, and published notice in *The Olympian* on June 29, 2012. *Exhibit 1, Staff Report, pages 14 to 15; Exhibit 25.* On July 13, 2012, the City mailed notice of the open record hearing associated with the applications to the Applicant, Applicant Representative, agencies, interested parties, and owners of property within 1,400 feet of the subject property; posted notice on the subject property; and published notice in *The Olympian.* *Exhibit 1, Staff Report, pages 14 to 15; Exhibit 26.*

State Environmental Policy Act (SEPA) Review

3. Thurston County (County) acted as lead agency and analyzed the environmental impact of the proposed Thurston County ARC as required by the State Environmental Policy Act (SEPA), Ch. 43.21C RCW. The County determined the proposal would have probable significant adverse impacts, and issued a Determination of Significance (DS) and Notice

¹ The subject property is identified by Tax Assessor Parcel No. 12828320000. *Exhibit 2; Exhibit 3.* The subject property's legal description is found within the City staff report. *Exhibit 1, Staff Report, page 2.*

² Tumwater Municipal Code (TMC) 18.56.250.C.1 requires that owners within 1,400 feet of the subject property receive notice of a public hearing on an application concerning a work release facility use. TMC 18.56.260.B.2.a requires that a prospective applicant notify the affected public and jurisdictions at least 90 days before submitting an application for a type two essential public facility of the general type and nature of the proposal, sites under consideration for accommodating the proposed facility, and identify opportunities to comment on the proposal. The Applicant published notice of the proposal in *The Nisqually Valley News* and in *The Olympian* on March 16, 2012. *Exhibit 22.*

of Scoping for the proposal on July 14, 2006. The County reissued the DS and Notice on July 22, 2006. The County considered available information and comments received during the scoping process and prepared a Draft Environmental Impact Statement (DEIS), dated April 24, 2007. The DEIS analyzes and compares the probable significant impacts of three alternatives for ARC construction: a preferred alternative that would locate the proposed use on the Mottman Industrial Park site, within which the subject property is located;³ an alternative that would locate the use on the site of the existing County Jail at 2000 Lakeridge Drive SW, Olympia, WA; and a no action alternative. Following a public notice and comment period, the County issued a Final Environmental Impact Statement (FEIS) on June 29, 2007. The FEIS included DEIS clarifications and corrections and applicant responses to comments received on the DEIS. *Exhibit 1, Staff Report, pages 3 to 4; Exhibit 21.*

4. Following receipt of the CUP and variance applications for the proposed use, the County acted as lead agency, adopted the FEIS issued for the ARC under WAC 197-11-630 and Ch. 17.09 Tumwater Municipal Code (TMC), and issued a FEIS Addendum, dated June 19, 2012. The purpose of the Addendum is to provide information concerning site-specific development proposed as part of the Work Release Unit, Flex Housing Unit, and ARC housing modifications for consideration in the City permit review process. The Addendum provides additional analysis, but states it does not substantially change the analysis of significant environmental impacts and alternatives evaluated in the FEIS. *Exhibit 21.*
5. The FEIS Addendum states more project-specific analysis and mitigation is necessary relative to potential transportation, parking and public safety impacts of the proposed use. The proposed use would generate 20 daily vehicle trips and 7 P.M. peak hour trips. The proposed use would require 142 parking spaces, which would be accommodated within the existing 156 staff and visitor parking spaces and 17 official vehicle parking spaces currently present on the ARC site. No significant traffic or parking impacts of the proposed use were identified that were not already identified within the EIS. As a result, the FEIS Addendum states no additional mitigation was proposed. Based on studies of other work release programs currently operating in Washington State, no significant increase in crime or associated impacts to public safety would be expected with

³ Under the preferred alternative analyzed in the DEIS, the ARC would be located on the Mottman Industrial Park site and contain up to 1,381 jail beds, 20 court rooms, and related offices at full build-out, which would occur within 20 years. Under this alternative, the ARC would be constructed in multiple phases; Phase 1 would include an approximately 104,000-square foot facility with 352 beds and parking for 120 vehicles. The City approved the CUP (TCUA #307) that authorized construction of Phase 1 of the ARC on the Mottman Industrial park site in September 2007. As part of the CUP decision, further expansion of the ARC facility, including future phases identified in the EIS, would require issuance of a new CUP. Several conditions were placed on approval of the CUP authorizing Phase 1, including conditions outlined in the final formal site plan review by the City and conditions for mitigating environmental impacts listed within the EIS. The County completed ARC building construction in 2010. *Exhibit 2; Exhibit 21.*

development of the proposed work release facility, which would contain increased staffing and security measures compared to the existing ARC. As a result, the FEIS Addendum states no additional mitigation measures are required. Flex Housing Unit staffing levels would increase compared to staffing levels for the existing ARC, consistent with County standards. As a result, the FEIS Addendum states no significant impacts to public safety would be expected. No new square footage would be added to the existing ARC housing building, which would contain numerous security features. As a result, the FEIS Addendum states no significant impacts to public safety would be anticipated. *Exhibit 21.*

6. The Addendum proposes the following mitigation measures to minimize potential public safety impacts that could occur: include video security surveillance cameras throughout all new development; require staff to monitor inmates housed throughout the ARC, including the proposed Work Release Unit and Flex Housing Unit, with periodic telephone and road checks of work release inmates; provide security fencing for the Work Release Unit outdoor yard areas at the west edge of the building with sight barrier features; and expand security lighting to the Work Release Unit and Flex Housing Unit. Mr. Carlson testified that neither the FEIS nor FEIS Addendum was appealed. Mr. Carlson also testified that no additional conditions from the FEIS Addendum need to be incorporated into conditions of permit approval because the FEIS Addendum identified no additional probable significant adverse impacts of the proposed use. *Exhibit 21; Testimony of Mr. Carlson.*

Comprehensive Plan and Zoning

7. The subject property is designated Light Industry under the City Comprehensive Plan. *Exhibit 6.* Surrounding property to the north is also designated Light Industry. Property to the west and south is designated Single-Family Low Density; property to the east is designated Single-Family Medium Density. Light industrial uses should be buffered from adjacent residential development using required setbacks, landscaping, walls, or other appropriate means, with the intent to ensure residential areas are not adversely affected by noise, light, dust, traffic, or other impacts that may be associated with industrial development. *City Comprehensive Plan, Land Use Plan Chapter 7, page 105 (updated 2010).*
8. The City Comprehensive Plan, Lands for Public Purposes Plan Element concerns designation and siting policies for Essential Public Facilities (EPFs). Under the Plan Element, EPFs are public facilities and privately owned or operated facilities serving a public purpose that are typically difficult to site. Prisons, jails, and other correctional facilities are identified under the Plan Element as EPFs. The Plan Element identifies Type Two EPFs as local or inter-local facilities serving or potentially affecting residents or property in more than one jurisdiction, including county jails. According to the Plan Element, EPFs shall not have any probable significant adverse impact on critical areas or resource lands, except for lineal facilities, such as highways, where no feasible alternative

exists, and the proposed project shall comply with all applicable provisions of the Comprehensive Plan, Zoning Ordinance, and other City regulations. The Plan Element states that no element of the Comprehensive Plan may preclude the siting of listed EPFs, but under the Growth Management Act, the City has discretion to indicate where these types of uses are appropriately sited.⁴ *City Comprehensive Plan, Lands for Public Purposes Plan Element, pages 19 to 26 (2004).*

9. The subject property is located within the City's Light Industrial (LI) zoning district with Aquifer Protection Overlay.⁵ *Exhibit 7.* The intent of the LI zoning district is to establish and preserve areas for industrial and other uses of such a nature that they do not create serious problems of compatibility with other kinds of land uses; to make provisions for certain kinds of commercial uses which are most appropriately located as neighbors of industrial uses, or which are necessary to service immediate needs of people in these areas; to ensure that retail commercial areas are encouraged within one quarter mile of the 93rd Avenue SW/Interstate 5 intersection; to provide pedestrian and transit orientation in these commercial areas to provide an alternative to driving a private automobile; and to encourage the preservation and provision of open space in industrial areas to ensure a desirable quality of life. *TMC 18.24.010.*
10. An EPF consisting of a work release facility, jail, prison or pre-release facility is allowed as a conditional use within the LI zoning district. *TMC 18.24.040.C.* Property to the north, south and east of the subject property is also located within the LI zoning district. Property to the west contains Burlington Northern railroad right-of-way; property further west across the right-of-way is located in the LI and Green Belt zoning districts. The Containers Northwest Company (CNC), a light industrial use, is located adjacent to the north. Light industrial uses to the south include: Pioneer Roofing Supply; the Thurston County Coroner's Office; Capitol Electric; and Temtco Steel. The County Juvenile Detention and Family Court facility is located adjacent to the northeast. The Ferguson Lane SW/Ferguson Street SW intersection is located at the northeast corner of the ARC site. Properties west of the Burlington Northern railroad right-of-way are vacant except for a storm drainage pond associated with the Mottman Business Park subdivision. *Exhibit 1, Staff Report, page 2; Exhibit 4; Exhibit 7.*
11. There is no minimum site area or maximum lot coverage within the LI zoning district but adequate space must be provided for required parking, yards, and landscaping. *TMC 18.24.050.A and .050.B.* Structures shall be a maximum of 50-feet high and shall

⁴ The State Growth Management Act (GMA), Chapter 36.70A RCW, requires local comprehensive plans to include a process for identifying and siting EPFs. *RCW 36.70A.200(1).* Classification as an EPF affects how a county or city is allowed to regulate the use. While a county or city may impose reasonable permitting requirements and require mitigation of adverse effects of an EPF, a city or county land use review process cannot deny the EPF or impose regulations or conditions that make EPF siting, development or operation impossible or impractical. *WAC 365-196-550(6)(e); WAC 365-196-550(3)(b); WAC 365-196-550(6)(d).*

⁵ The proposed use is not a use prohibited within the Aquifer Protection Overlay. *TMC 18.39.040.*

maintain 20-foot wide minimum front yard setbacks on street frontages. *TMC 18.24.050.D.1*. The City staff report states other setback standards found within *TMC 18.24.050.D* are not applicable to the proposal. *Exhibit 1, Staff Report, page 5*.

Proposed Use

12. The ARC Flex Housing Unit would be constructed on undeveloped and vegetated property within the ARC site. The Flex Housing Unit site is bounded by the existing ARC building to the east, south, and west, and by surface parking and the proposed Work Release Unit site to the north. The Flex Housing Unit would be one story tall with mezzanine, would include approximately 21,000 square feet of building space, and would house approximately 116 beds. The Flex Housing Unit would provide a variety of housing types to serve the existing ARC building, including maximum security housing, dormitory housing, and special-offender housing. Construction is dependent on funding; if funding is secured, construction would occur after completion of the proposed Work Release Unit. *Exhibit 2*.
13. The proposed Work Release Unit would be housed within an existing office/warehouse building located in the northeast corner of the ARC site. The proposed Work Release Unit site is bounded by Ferguson Lane SW to the north; an existing fire lane extending south from Ferguson Lane SW, an office building, and Ferguson Street SW to the east; the existing ARC building to the south; and surface parking to the west. Work Release Unit staff parking would be available within surface parking to the west. Parking spaces would be set aside adjacent to the east of the Work Release Unit for unit use; bicycle storage spaces would be set aside adjacent to the south. *Exhibit 2*.
14. To house the proposed Work Release Unit, the existing office/warehouse building would be remodeled and expanded slightly to provide approximately 7,700 square feet of building space, with additional covered storage areas adjacent to the south of the building. Approximately 100 beds and associated living facilities, video visitation area, and staff work areas would be located within the building. In addition, approximately 40 more beds would be added to the existing ARC building as part of the project, though no new square footage would be added to the existing building. Remodeling work to create the Work Release Unit would begin in September 2012, with occupancy by late 2012 or early 2013. *Exhibit 2*.
15. *TMC 18.56.250.B.2.b* requires work release facilities to be set back at least 75 feet from public rights-of-way and property lines. The existing building that would be utilized for the Work Release Unit is located approximately 36 feet from the north property line. According to the Applicant's variance application, an industrial/warehouse building is located north of the building that would be utilized for the Work Release Unit, across Ferguson Lane SW. There would be 92 total feet of separation between the industrial/warehouse building and the proposed Work Release Unit building, including

Ferguson Lane SW right-of-way. The rear of the industrial/warehouse building faces the proposed Work Release Unit building, and all operations and access to the industrial/warehouse building would be located away from the Work Release Unit building. Mr. Carlson testified that the rear of the industrial/warehouse building is a blank wall with no doors or windows. Terry McCann, Applicant Representative, testified that no comments on the CUP or variance applications have been received from the owner of the industrial/warehouse building. *Exhibit 3; Testimony of Mr. Carlson.*

16. The CUP application states that the existing building that would be utilized for the Work Release Unit was constructed by the prior owner in accord with setbacks approved at the time of construction. Jon Pettit testified that the variance proposal does not meet TMC 18.58.040.A.2,⁶ as a previously approved CUP designated the building for some uses related to the corrections facility, but not for the proposed uses. Mr. Pettit testified that the building was constructed before the prior CUP use designation. *Exhibit 2; Testimony of Mr. Pettit.*
17. Eric Campbell testified to inquire whether a fence would be constructed around the Work Release Unit site and around the ARC site as a whole. TMC 18.56.250.B.2.c.ii requires installation of an eight-foot-high fence in character with the neighborhood between the facilities and all property boundaries, with the exception of the landscaped street frontage, which effectively screens the site from adjacent properties. Under TMC 18.56.250.B.2.c.ii, the hearing examiner may waive or lessen this requirement if the hearing examiner determines that, due to existing site features or the type of character of adjoining uses, the privacy and security of the occupants of adjoining properties can be maintained in the absence of a fence or with a lower fence. According to the variance application, the proposed Work Release Unit building is screened by existing buildings and parking areas to the west, east, and south. Ferguson Lane SW is located adjacent to the north, and the rear of an existing industrial/warehouse building is located across Ferguson Lane SW to the north. Robyn Sederberg, Applicant Representative, testified that the intent of the City code fence requirement is for visual screening, not for security, and that a private road like the one between the two properties does not exist in other areas. Ms. Sederberg testified that there is no need for a fence as ARC staff monitors inmates 24 hours, 7 days a week. Mr. McCann testified that the variance is requested to re-use an existing building, and that the variance requested is the minimum needed to re-use the building. *Testimony of Mr. Campbell; Testimony of Mr. McCann; Testimony of Ms. Sederberg.*
18. Mr. Campbell also testified to request that the County be required to pay the City for public services related to the proposed use, such as emergency response and traffic mitigation. Don Krupp, Applicant Representative, testified that cost sharing exists

⁶ TMC 18.58.040.A.2 is one of five criteria for granting a variance. This criterion provides that a variance may be granted, if “the special conditions and circumstances are not the result of actions of the applicant.” TMC 18.58.040.A.2.

between the County and City, that the County contracted for emergency services from the City, and that the County paid City traffic impact fees. The County Sheriff's Office would provide law enforcement services at the ARC site. *Testimony of Mr. Campbell; Testimony of Mr. Krupp.*

19. Aaron Starks testified to express concern about traffic and safety due to the narrow roadways, traffic volumes, and use by children. Mr. Carlson testified that traffic studies were performed in conjunction with the EIS that address traffic impacts of the proposed use, and that streets and roads surrounding the ARC site meet applicable traffic volume standards. *Testimony of Mr. Starks; Testimony of Mr. Carlson.*
20. There are no critical areas or designated resource lands on the subject property. Intercity Transit Route 42 provides transit service to the ARC site. The ARC site is located within 1/3 mile of 32nd Avenue SW and R.W. Johnson Boulevard SW, designated as Industrial Collector roadways. R.W. Johnson Boulevard SW intersects with Mottman Road SW approximately 1/2 mile north of the R.W. Johnson Boulevard SW/32nd Avenue SW intersection. Mottman Road SW is also designated an Industrial Collector roadway. The City staff report states R.W. Johnson Boulevard SW and Mottman Road SW are major transportation corridors. *Exhibit 1, Staff Report, pages 8 to 9.*
21. Two vehicle entrances to the ARC site are located along Ferguson Street SW. The ARC site is currently served by an existing underground water detention system, detention pond, shared waste and recycling area, and vehicle and bicycle parking areas. A tree tract easement benefitting the City is located north and southwest of the ARC site. *Exhibit 4.*
22. The Applicant's proposed site plan depicts landscaping installed within Work Release Unit property frontage along Ferguson Lane SW. The CUP application states that an approximately 25 foot wide landscape buffer would be established along the north side of the Work Release Unit, adjacent to Ferguson Lane SW. Landscaped planting areas are also proposed on the east side of the building adjacent to the building entrance and along the west side of the building adjacent to outdoor yard areas. Grass and lawn areas would be provided along the south side of the building. Plantings would be consistent with Type 2 landscaping identified in TMC 18.47.050.B. According to the CUP application, Type 1 landscaping consistent with TMC 18.47.050.C.2 would not be included because the thick, dense vegetation could present a security risk for the Work Release Unit. *Exhibit 2; Exhibit 4.*
23. The City would provide water and sewer service to the proposed use. The City staff report states that the proposed work release unit would not be located closer than 500 feet from the boundary of a district in which the use is not allowed as a conditional use, in accord with TMC 18.56.250. TMC exterior illumination regulations require all exterior light fixtures to be fully shielded to reduce light impacts on adjacent properties. A site

lighting plan and a binding landscaping plan shall be submitted to the City with the building permit application. *Exhibit 1, Staff Report, page 11; Exhibit 12.*

24. TMC 18.56.250 requires that an applicant provide verification from the Department of Corrections (DOC) that the proposed facility is in compliance with DOC standards and applicable state and local regulations. A DOC letter dated April 17, 2012, states that the DOC does not have standards applicable to work release facilities being constructed by local government; DOC has not exercised oversight authority on these types of projects; and DOC does not expect to do so in the time frame applicable to the Thurston County project. The letter also states that DOC does not provide verification that local government facilities are in compliance with other applicable state and local regulations. *Exhibit 29.*
25. Mr. Carlson testified that City staff recommends approval of the CUP and variance requests with one condition of approval: that the Applicant be bound by conditions of approval of the formal site plan review letter issued by the City (Ex. 27), dated May 21, 2012. Mr. Carlson added that staff recommends the CUP be granted for a period of five years. Mr. Carlson submitted a consolidated list of conditions from the May 21, 2012 formal site plan review letter as proposed conditions of permit approval. The consolidated list omits from the conditions information in the May 21, 2012 letter that had either already been completed by the Applicant or that could be characterized as commentary rather than a condition. An email from Ms. Sederberg dated July 26, 2012, states that the Applicant agrees with the consolidated list of conditions as proposed conditions of permit approval. *Exhibit 27; Exhibit 33; Testimony of Mr. Carlson.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has authority to hear and decide conditional use permit and variance requests. *Tumwater Municipal Code (TMC) Table 14.08.030; TMC 18.56.030; TMC 18.58.030.*

Criteria for Review

Conditional Use Permit

Certain uses, because of their special requirements, infrequent occurrence, possible safety hazards, or detrimental effects on surrounding properties, and other reasons, shall be permitted only upon the approval of the hearing examiner, after due notice and public hearing, and a finding that it is consistent with the intent of the comprehensive plan and the requirements of TMC Title 18. *TMC 18.56.010.* Permits for conditional uses shall stipulate restrictions or conditions which may include a definite time limit, provisions for front, side or rear yards greater than the minimum requirements of this title, suitable landscaping, off-street parking, and any other restrictions, conditions or safeguards that would uphold the spirit and intent of this title and mitigate any adverse effect upon neighborhood properties. *TMC 18.56.040.* Any conditional use shall meet the density regulations of the zone in which it is located, as well as the minimum conditions listed in the applicable sections of this chapter. The hearing examiner may impose any

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additional conditions deemed necessary to ensure the protection of adjacent uses, health, safety and general welfare. *TMC 18.56.090.*

Essential public facilities identified as conditional uses in a zoning district shall be subject, at a minimum, to the early notification and citizen involvement requirements set forth within TMC 18.56.260.B.2; shall be consistent with the intent of the underlying zoning of the proposed site; shall not have a probable significant adverse impact on critical areas or resource lands; should be sited near major transportation corridors if a major public facility generating substantial traffic; and shall comply with all applicable provisions of the comprehensive plan, zoning ordinance, and other City regulations. *TMC 18.56.260.B.2.*

Variance

Where difficulties exist rendering compliance with the zoning ordinance impractical and such compliance would create unnecessary hardship to the owners or users of land or buildings, the hearing examiner may grant a variance after due notice and a public hearing. *TMC 18.58.010.*

A variance may be granted, after investigation, provided all of the following findings of fact exist:

1. That special conditions exist which are peculiar to the land, such as size, shape, topography, or location, not applicable to other lands in the same district, and that literal interpretation of the provisions of this title would deprive the property owners of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title;
2. That the special conditions and circumstances are not the result of actions of the applicant;
3. That the granting of the variance requested will not confer a special privilege to the property that is denied other lands in the same district;
4. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property of improvements of the vicinity and zone in which the subject property is situated; and
5. That the reasons set forth in the application justify the granting of the variance, and that the variance, if granted, would be the minimum variance that will make possible the reasonable use of the land.

TMC 18.58.040.A.

In no event may a variance be granted if it would permit a use that would not be permitted as a primary, accessory or conditional use in the district involved. *TMC 18.58.040.B.*

The criteria for review adopted by the Tumwater City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

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Conclusions Based on Findings

Conditional Use Permit

1. **With conditions, the proposed use is consistent with the intent of the City Comprehensive Plan, density regulations and other requirements of the Light Industrial zoning district, and TMC Title 18 requirements.** Prisons, jails, and other correctional facilities are identified under the Comprehensive Plan as EPFs. The Plan identifies Type Two EPFs as local or inter-local facilities serving or potentially affecting residents or property in more than one jurisdiction, including county jails. No element of the Comprehensive Plan may preclude the siting of listed EPFs, but under the Growth Management Act, the City has discretion to indicate where these types of uses are appropriately sited. Consistent with the Comprehensive Plan, the proposed work release unit and Flex Housing Unit uses would be buffered from surrounding uses by other existing buildings and parking lots. The proposed work release unit would be buffered from an industrial/warehouse use by the width of a private road and associated right-of-way.

An EPF consisting of a work release facility, jail, prison or pre-release facility is allowed as a conditional use within the LI zoning district. The Applicant provided notice of the proposal in accord with TMC 18.56.250.C.1 and TMC 18.56.260.B.2.a notice requirements. The City provided adequate notice of the CUP and variance applications and opportunity to comment. Density regulations within the LI zoning district govern site area, lot coverage, structure height, and required setbacks. *TMC 18.24.050*. With a variance from TMC 18.56.250.B.2.b, the proposed work release unit would be consistent with setback requirements for work release facilities, and the hearing examiner may waive the TMC 18.56.250.B.2.c.ii fencing requirement if screening can be maintained in the absence of a fence. The proposed Flex Housing Unit and work release unit would be buffered from adjacent uses by the existing buildings and parking lots of the ARC site; the portion of the work release unit facing away from existing buildings and parking lots would face a blank wall with no doors or windows, reducing the screening needs of the site. The proposed work release unit would not be located closer than 500 feet from the boundary of a zoning district in which the use is not allowed as a conditional use, in accord with TMC 18.56.250. Landscaping would be installed within Work Release Unit property frontage along Ferguson Lane SW, along the east side of the building adjacent to the building entrance, and along the west side of the building adjacent to outdoor yard areas. TMC exterior illumination regulations require all exterior light fixtures to be fully shielded to reduce light impacts on adjacent properties. A site lighting plan and a binding landscaping plan shall be submitted to the City with the building permit application. There are no DOC standards applicable to the proposed development. Conditions are necessary to ensure submittal of a detailed landscape/irrigation plan and completion of landscaping and irrigation and compliance with lighting and building height requirements. *Findings 1, 2, 7 – 15, 18 – 25.*

2. **The proposed use would not have a probable significant adverse impact on critical areas or resource lands, and any adverse impact upon neighborhood properties has been mitigated.** There are no critical areas or resource lands on the subject property. The FEIS Addendum does not identify any additional probable significant adverse impacts of the proposed use beyond those already identified within the FEIS. Conditions placed on City approval of CUP TCUA #307, which authorized Phase 1 of ARC construction, included conditions for mitigating environmental impacts identified within the FEIS. The proposed Flex Housing Unit would be surrounded on all sides by ARC site buildings and parking. The proposed Work Release Unit building would be screened on three sides by existing buildings and parking within the ARC site; the north side of the proposed building would face the rear of an existing industrial/warehouse building located across Ferguson Lane SW. All entrances and operations of the existing industrial/warehouse building would be directed away from the proposed Work Release Unit. The City received no comment on the proposal by the owner of the existing industrial/warehouse building. Traffic and emergency services cost sharing exists between the City and County; the County has paid City traffic impact fees; and the County would provide law enforcement services at the ARC site. *Findings 1, 3 – 6, 12 – 15, 17 - 20.*

Variance

1. **Special conditions exist that are peculiar to the land, such as size, shape, topography, or location, not applicable to other lands in the same district, and that literal interpretation of the provisions of this title would deprive the property owners of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title.** Unlike other properties in the area, the building that would house the proposed work release unit is adjacent to existing buildings and parking lots on three sides and a private street on the fourth. A blank wall faces the proposed work release unit across the private street. The blank wall combined with other existing buildings and parking lots within the existing ARC site provide adequate screening for the proposed use, consistent with the intent of TMC 18.56.250.B.2.c.ii. The building was constructed in compliance with setback requirements in effect at the time of construction. There would be 92 total feet of separation between the industrial/warehouse building and the proposed Work Release Unit building, including Ferguson Lane SW right-of-way. Literal interpretation of the provisions of Title 18 would deprive the property owner of the right to re-use an existing building on the property for a use allowed in the zoning district with a conditional use permit. *Exhibit 1, 8, 10, 12 – 15.*
2. **The special conditions and circumstances are not the result of actions of the applicant.** The existing building that would house the work release unit was constructed in compliance with setback requirements in effect at the time of construction. *Findings 15 and 16.*

3. **The granting of the variance requested will not confer a special privilege to the property that is denied other lands in the same district.** Uses allowed with a CUP within the LI zoning district are also allowed on other properties within the LI zoning district. An EPF consisting of a work release facility, jail, prison or pre-release facility is allowed as a conditional use within the LI zoning district. *Findings 1, 9, 10.*

4. **With conditions, the granting of the variance will not be materially detrimental to the public welfare or injurious to the property of improvements of the vicinity and zone in which the subject property is situated.** The Applicant provided notice of the proposal in accord with TMC 18.56.250.C.1 and TMC 18.56.260.B.2.a notice requirements. The City provided adequate notice of the CUP and variance applications and opportunity to comment. Conditions placed on City approval of CUP TCUA #307, which authorized Phase 1 of ARC construction, included conditions for mitigating environmental impacts identified within the FEIS. The blank wall across the private street combined with other existing buildings and parking lots within the existing ARC site provide adequate screening for the proposed use, consistent with the intent of TMC 18.56.250.B.2.c.ii. There would be 92 total feet of separation between the industrial/warehouse building and the proposed Work Release Unit building, including Ferguson Lane SW right-of-way. The City received no comment on the proposed use from the owner of the building across the private street. Traffic associated with the use is accommodated within the surrounding road system; the site is served by transit; and there is adequate vehicle and bicycle parking on site to serve the use. The ARC site is currently served by an existing underground water detention system, detention pond, shared waste and recycling area, and vehicle and bicycle parking areas. The City would provide water and sewer service to the proposed use. Conditions are necessary to ensure that on-site lighting is directed away from surrounding properties. *Findings 1 – 6, 10, 12 – 15, 17, 18, 20, 21, 23, 25.*

5. **The reasons set forth in the application justify the granting of the variance, and that the variance, if granted, would be the minimum variance that will make possible the reasonable use of the land.** The proposed work release unit would be housed within an existing building. Locating the proposed use within the existing building would likely result in lesser impacts than demolishing the existing building and constructing a new building in its place to comply with setbacks currently in effect, or of locating the use on another site. Thus, the variance to house the use within an existing building, if granted, is the minimum that will make possible the re-use of the building, which is a reasonable use of the land. *Findings 1, 13 - 15, 17.*

DECISIONS

Based on the preceding Findings and Conclusions, the request for a conditional use permit to remodel an existing industrial building to house the Thurston County Accountability and Restitution Center (ARC) Work Release Unit and to construct a new building to house the ARC Flex Housing Unit; and the request for a variance from Tumwater Municipal Code

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18.56.250.B.2.b and 18.56.250.B.2.c.ii for location of the Work Release Unit, on property located at 3013 Ferguson Lane SW, in Tumwater, Washington, is **APPROVED**, with the following conditions:⁷

1. A detailed landscape plan/irrigation plan shall be submitted for review and approval.

Irrigation of all non-native landscaping (lawn areas and ornamental trees and shrubs) is required (TMC 18.47.020.J). If the irrigation is to be design/built, a note on the landscape plans must be provided indicating so. Copies of the as-built irrigation plans shall be submitted prior to final inspection request for the project.

All landscaping and irrigation shall be completed or bonded for prior to the issuance of a Certificate of Occupancy.

2. The Light Industrial (LI) Zone allows a total of 200 square feet on all faces of all freestanding signs for the site. Building mounted signs are limited to 20 percent of the public facades of the proposed building or 100 square feet, whichever is less. Permits are required and height restrictions apply depending on the location of the sign. If located within the front ten feet of the property along any street, the sign can only be 42 inches high. If it is located beyond the 10-foot setback area, the sign can be as high as the proposed buildings or 30 feet; whichever is less (Chapter 18.44 TMC).

3. The parking areas associated with the facility is required to be lighted. Site lighting shall be directed downward and inward, or other techniques may be utilized to minimize impacts on off-site uses. Light standards shall be limited to 24 feet in height.

A basic lighting plan must be submitted with the building permit application for review and approval. The plan shall include the location and fixture type of both freestanding and building mounted lighting.

A plan review and inspection fees will be assessed at the time of building permit and basic lighting plan submittal.

4. Building height is limited to 50 feet. Building height is defined as the vertical distance from average grade level to the highest point of a building or structure excluding any chimney, antenna or other uninhabitable vertical appurtenances.
5. Traffic impact fees will be collected at the time of building permit issuance.

⁷ This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by City Code.

6. A minimum of 1 barrier free parking stalls and 1 van accessible barrier free parking stalls shall be provided for the work release center. No additional barrier free stalls are required for the flex unit addition.
- Accessible parking spaces shall be not less than 96 inches in width and shall have an adjacent access aisle not less than 60 inches in width. Van accessible parking spaces shall be not less than 96 inches in width and have an adjacent access aisle not less than 96 inches in width. Where two adjacent spaces are provided, the access aisle may be shared between the two spaces. Boundaries of access aisles shall be marked so that the aisles will not be used as parking space.
 - Where accessible parking spaces are required for vans, the vertical clearance shall be not less than 98 inches at the parking space and along at least one vehicle access route to such spaces from site entrances and exits.
 - Barrier free parking spaces and access aisles shall slope not more than 1 in 48, and shall be firm, stable and slip resistant.
 - All barrier free parking stalls shall be identified by a sign at the head of the parking space, 60 inches minimum above grade measured to the bottom of the sign. The sign shall be marked with the international symbol of access and shall bear the words: "State Disabled Parking Permit Required." Van stalls shall also state "VAN."
7. The building and site are required to be accessible. An accessible route of travel shall be provided to all portions of the building, to accessible building entrances, and connecting the building and the public way. The accessible route of travel shall be shown on the site plan.
8. A site development permit will be required for this site. The permit application shall be accompanied by the application checklist and three sets of plans and specifications, and supporting data consisting of a soils engineering report and engineering geology report prepared and signed by a licensed soils engineer. This project will be considered "engineered grading." Special hazards may include steep slopes, terracing with rockeries or multiple retaining walls. Inspection of the grading shall be provided by the civil engineer and Geotechnical engineer. In addition, special inspectors approved by the building official, shall perform inspections of fill placement, compaction testing, and blasting. All special inspections are to be performed by WABO registered labs and inspectors who have expertise in grading and earthwork.

When the grading work is complete and ready for final inspection the civil engineer of record is responsible for providing a final inspection report which will include the

geotechnical engineers and special inspector's reports. In addition as-built drawings for the site will be submitted in a PDF format.

9. Special inspectors may be required for the following types of work: concrete, bolts installed in concrete, special moment-resisting concrete, reinforcing steel and pre-stressing steel tendons, structural welding, high strength bolting, structural masonry, reinforced gypsum concrete, insulating concrete fill, spray-applied fireproofing, piling, drilled piers and caissons, shot-crete, special (engineered) grading, excavation and filling, soils compaction testing, retaining walls and smoke-control systems. All special inspections are to be performed by WABO registered inspectors and at the expense of the owner.
10. The proposed building(s) are required to have a fire sprinkler system installed. The fire sprinklers in the female housing unit will be tied to the existing fire sprinkler system. The work-release unit will be considered a separate building and use and therefore it will need a stand-alone fire sprinkler system.
11. Water cross connection control shall be provided in accordance with the provision of the Plumbing Code. Cross connection control devices or assemblies must be models approved under WAC 246-290-490.
12. If water pressure at the meter exceeds 80 psi, a pressure-reducing valve will be required to be installed on the private side of the water line.
13. The addition and the work-release building are required to have a fire alarm system installed. The fire alarm system in the female housing unit will be tied to the existing fire alarm system. The work-release unit will be considered a separate building and use and therefore it will need a stand-alone fire alarm system.
14. The Applicant will need to coordinate with the Building Safety Official on the location of the fire department connection, post indicator valve, remote annunciator panel and key box for the work-release building. Placement of this equipment shall be a minimum of 25 feet from the building and is also required to be within 10 feet of a hydrant. This information shall be included on the site and landscape plans.
15. The required fire flow for this building is derived from Appendix III-A of the International Fire Code. Buildings of this size are required to have a fire flow of 2,500 gallons per minute at 20 psi. However, based on the approval of the Fire Chief, a reduction for fully sprinkled buildings allowed in Section 5.2 will be allowed for this site. Therefore, the required fire flow will be 1,500 gallons per minute at 20 psi.
16. Any buildings constructed on site that are more than 150 feet from an approved Fire Department vehicle access point shall be provided with asphalt, concrete or turf-stone

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- paved access roads a minimum of 20 feet wide. The fire lane shall be constructed to meet minimum city street standards. The engineer shall submit drawings and details on how the fire lane is to be constructed. Any dead end fire access roads that are in excess of 150 feet in length shall be provided with an approved turnaround.
17. Gates blocking access to the site for fire department equipment shall be provided with a Knox Padlock.
 18. Fire lane signs and yellow striping shall be provided on-site to identify Fire Department access roads and prohibit the obstruction thereof. Fire lanes shall be identified on the site plan.
 19. When any portion of a building constructed on site is in excess of 150 feet from a water supply on a public street, as measured by an approved route around the exterior of the building, there shall be provided on site fire hydrants capable of supplying the required fire flow. Placement of the hydrants shall be coordinated with the Building Safety Official. Fire hydrant locations shall be shown on the site plan and the landscape plans.
 20. Fire hydrants and paved access roads shall be installed, tested for fire flow by the Fire Department and made serviceable by the Public Works Department prior to any vertical or combustible construction.
 21. Building plans and specifications shall be prepared and stamped by an architect and engineer licensed to practice in the State of Washington.
 22. The building permit applications (including shell permits) shall include architectural, structural, plumbing, mechanical and energy plans and specifications. Fire sprinkler and fire alarm permits and plans may be submitted separately from the main permit application.
 23. The Applicant is required to provide for the storage of recycled materials and solid waste for the project. The storage area shall be designed to meet the needs of the occupancy, efficiency of pick-up, and shall be available to occupants and haulers. The location of this facility shall be shown on the site plan.
 24. Dumpsters and containers with an individual capacity of 1.5 cubic yards or more shall not be stored in buildings or placed within 5 feet of combustible walls, openings or combustible roof eaves lines unless the area is protected by an approved automatic sprinkler system. IFC Section 304.3.3
 25. The Applicant shall be responsible for providing the City with all costs associated with the installation of water systems that are dedicated to the City of Tumwater.

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26. All designs/construction will need to be as according to the City of Tumwater's Development Guide and WSDOT standards.
27. The site plan shall show all existing and proposed utilities and easements including water, sewer, storm, gas, cable, power, telephone, signage and striping.
28. All main installation and storm drainage work requires engineered plans certified by a professional engineer.
29. The Applicant is responsible for all plan check, inspection and connection fees.
30. Any private or public utility relocation is the responsibility of the applicant.
31. The Applicant shall be responsible for the maintenance and timely repair of all public improvements for a period of 30 months following final certification by the City and shall submit a surety for maintenance equal in value to fifteen (15) percent of the total value of the required public improvements certified by the Public Works Director. Please refer to Chapter 3 of the Development Guide for further clarification.
32. The Applicant shall provide all easements and bills-of-sale documents with the engineered plans.
33. All legal descriptions for easements for dedications granted to the City must be accompanied with an appropriate drawing that the city surveyor can use to verify the legal description. All engineering drawings will be on 24" x 36" mylar sheets.
34. The owner or owner's representative is also responsible for furnishing the City with electronic files on CD ROM, compatible with release 2000 or newer Auto-CAD format. Drawings shall be in TCHPN (Thurston County High Precision Network) horizontal datum. Provide individual drawings independent of x-refs. Include all non-standard font files and plot files. Also, please furnish mylar reproducible record drawings (certified by the professional engineer responsible for design of the drawings), CD with PDF files, storm water maintenance agreement, utility maintenance agreement, easements and bills-of-sale.
35. A drainage design and erosion control plan will be required according to City's 2010 Drainage Design and Erosion Control Manual. The determination of thresholds for a project site shall be based on the total increase or replacement of impervious surfaces, conversion of native vegetation to landscape area or pasture that have occurred within the previous 5 years. The City will consider the cumulative impacts of all permits issued within the previous 5 years from the date of project submittal by the applicant.

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36. Maintenance of the on-site storm water system will be the responsibility of the property owner and a maintenance agreement will be recorded against the property.
37. Back flow prevention is required on all fire services and irrigation services and in accordance with the AWWA Cross Connection Control Manual. A reduced pressure backflow assembly is required on all commercial domestic services per WAC 246-290-490. Please contact Dennis Winchel at 754-4150 for more information.
38. Any water main extension will require a minimum of an 8" system. The main size will depend on the fire flow requirements for this project. The system shall be designed for a maximum velocity of 8 feet per second.
39. Water meters need to be placed in the public right-of-way or clustered on site within an easement. The professional engineer will need to provide calculations on the maximum instantaneous water demand and size of the meter for the project.
40. The conditional use permit is effective for a period of five years from issue date.

The Hearing Examiner's decision shall be final and conclusive unless reconsideration is granted in accord with TMC 2.58.135 or the decision is appealed within the applicable appeal period as set forth within TMC 2.58.150.

Decided this 7th day of August 2012.



LEE RAAEN
City of Tumwater Hearing Examiner
Sound Law Center

HEARING EXAMINER POST-DECISION PROCEDURES

The following sections of the Tumwater Municipal Code outline procedures for requesting reconsideration of a decision by the Tumwater Hearing Examiner and appealing a decision made by the Tumwater Hearing Examiner.

TMC 2.58.135 Reconsideration.

Upon the written request of a party of record filed with the city clerk within five working days of the hearing examiner's written decision, such decision may be reconsidered at the discretion of the hearing examiner. The request for reconsideration must state the grounds upon which the request is made. In the event reconsideration is granted, the hearing examiner shall have an additional ten working days to render a written final decision.

TMC 2.58.150 Appeal from examiner's decision.

- A. In cases where the examiner's jurisdictional authority is to render a decision, the decision of the examiner shall be final and conclusive unless appealed within the applicable appeal period as set forth in this section.
- B. Appeals to the city council must be filed with the city clerk by the applicant or other party of record, a department of the city, county or other agency within fourteen calendar days following rendering of such decision. Persons not in attendance at the hearing but who submit written information prior to the hearing which becomes a part of the record of the hearing shall also have appeal rights. Such appeal shall be in writing, shall contain all grounds on which error is assigned to the examiner's decision and shall be accompanied by a fee as established by resolution of the city council; provided, that such appeal fee shall not be charged to a department of the city or to other than the first appellant.
- C. In the event an apparent prevailing party files an appeal to preserve appeal rights and no opposing appeals are filed, said party may, by giving written notice thereof to the city clerk, abandon their appeal and in such event shall be refunded their filing fee.
- D. The timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated by the city council or is withdrawn.
- E. Within five days after the final day upon which an appeal may be filed, notice thereof and of the date, time and place for city council consideration shall be mailed to the applicant, to all other parties of record and anyone who submitted written information prior to the hearing. Such notice shall additionally indicate the deadline for submittal of written arguments as prescribed in TMC 2.58.160.