

CITY OF TUMWATER
OFFICE OF THE HEARING EXAMINER
REPORT AND DECISION

FILE NO: TCUA #1-05

APPLICANT: Triway Enterprises

SUMMARY OF REQUEST:

A request for approval of a Conditional Use Permit in order to construct a mixed-use development with some of the buildings in excess of 50 feet in height. .

LOCATION:

The project site is generally is generally located on the east side of Capitol Boulevard north of "M" Street, south of "E" Street, and west of Tumwater Valley Drive, Tumwater, Washington.

DECISION OF THE EXAMINER:

The request for a Conditional Use Permit is approved, subject to conditions.

PUBLIC HEARING:

After reviewing the City of Tumwater Development Services report and viewing the site, the Examiner conducted a public hearing on the application on February 11, 2009.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. Triway Enterprises ("Triway") is requesting a Conditional Use Permit ("CUP") in order to construct a mixed-use development with some of the buildings in excess of 50 feet in height. The project site is generally located on the east side of Capitol Boulevard north of "M" Street, south of "E" Street, and west of Tumwater Valley Drive.

2. The development proposed by Triway, referred to in this proceeding as ("Bellatorre"), would be situated on the westerly 10.81 acres of a 41.28-acre site. The area proposed for development is adjacent to Capitol Boulevard and is situated on a reasonably flat shelf which lies above the valley floor where the remainder of the site is located.

3. The mixed-use development contemplated by Triway would consist of 335 residential units, 134,900 square feet of office space, 69,900 square feet of retail space and 8,600 square feet of restaurant space. As currently planned, 7 of the 10 buildings proposed would exceed 50 feet in height. Proposed Buildings A and D, within the Phase 2 portion of the project, would be principally residential structures and are proposed to be six-story buildings constructed to a maximum height of 86 feet; proposed Buildings B and C, which, again would be within Phase 2 and also principally contain residential units, would be nine stories and be constructed to a maximum height of 116 feet; proposed Buildings H and I, located within Phase 1 of the development, are to be seven stories having a maximum height of 94 feet; and proposed Building J, within Phase 1, would be a five-story building constructed to a maximum height of 64 feet. The remaining buildings, proposed Buildings E, F and G, would be 50 feet or less in height.

4. Off-street parking for 1,239 vehicles is proposed for the project with 974 of the parking spaces located within underground parking structures, and the remaining 265 parking spaces being located within surface parking areas.

5. Vehicular access to the proposed mixed-use development would be via five access points along the Capitol Boulevard frontage of the site. The southerly most driveway would be a private driveway limited to right-in and right-out turning movement due to a landscaped median on Capitol Boulevard. Moving in a northerly direction, the next access point would be a Capitol Boulevard and Lynnwood Street signalized access; next access would be another private driveway; the next access would be a new public street with a signalized intersection on Capitol Boulevard¹; the last and most northerly access would be another private driveway.

¹ The alignment of the new public street would conform to the alignment of a new street planned by the City that would cross the Deschutes River Valley and interconnect Capitol Boulevard with Cleveland Avenue to the east.

6. The 41.28-acre project site is undeveloped except for a 7,000 square foot lodge, which Triway proposes to retain. The lodge was constructed by the former owner of the property, Pabst Brewing Company, as a guest lodge for corporate visitors to its nearby brewery facility. The property slopes eastward, from elevation 165 feet on the westerly portion of the property to the valley floor which is generally at elevation 95 feet. The property is wooded with a mixture of deciduous and evergreen trees. Triway plans to retain approximately 63% of the trees on the 41.28-acre site but acknowledges that most of the trees would be removed from the 10.81 acres proposed to be developed.

7. Two regulated wetlands are located on the property. Both are Type 3 Wetlands requiring 100-foot buffers under applicable City Critical Area regulations. Also, a Type 3 stream is located within the northerly wetland. All requirements of the City's Critical Areas regulations, including buffer averaging requirements, would be met by Triway.

8. Utility services are available and adequate to serve the proposed development.

9. Uses surrounding Triway's project site include general commercial on the south; the Tumwater Valley Athletic Club and City of Tumwater Municipal Golf Course to the southeast; the Palermo single-family residential neighborhood also to the southeast; unoccupied industrial buildings (former Olympia/Pabst Brewery) to the north and northeast; and a mix of commercial, institutional, and residential uses to the west across Capitol Boulevard and Interstate 5 Freeway. The Deschutes River, a Type 1 stream, is located east of the project site.

10. The City's Comprehensive Plan locates the Triway property within the "Deschutes Neighborhood" and recommends mixed-use development for the property.

11. The City's 2025 Transportation Improvement Program, a chapter (Chapter 8) of the City's Transportation Plan, contemplates in the future the construction of a four-lane arterial connection between Capitol Boulevard and Cleveland Avenue across the valley floor. Triway's proposed development has been designed to provide a corridor through its property for a portion of the proposed arterial connection.

12. Zoning of the Triway property is Mixed Use (MU) with an Aquifer Protection Overlay (AQP). Except for the seven buildings which exceed 50 feet in height (See Finding 3), Triway's proposed mixed use development is permitted outright under the MU zone regulations. Buildings over 50 feet in height may be permitted by a CUP subject to satisfying the four minimum standards set forth below:

- A. Drawings shall be submitted illustrating, in both plan view and elevation, the shadows that would be cast by the proposed building or structure at noon on December 21 (winter solstice). No building or structure will be permitted that is shown by these drawings to cast a shadow onto any other property that is greater than the shadow that would be cast by a hypothetical building fifty feet in height on the south line of the shaded property;
- B. Exterior walls of the proposed building shall include windows whenever possible. Where the construction of a windowless wall is necessitated by adopted building codes, the exterior facing of the wall shall be articulated on each story of the building with architectural features such as cornices or other projections, recesses, different building materials, awnings, signs, or other similar features that provide visual relief;
- C. The exterior of the buildings ground floor shall be visually separated from upper floors through the use of architectural features such as awnings, cornices, distinct but compatible façade materials or lighting or other similar methods; and
- D. The site design for the proposed building or structure shall include an outdoor plaza, park or landscaped area that shall be designed and maintained for public use.

Tumwater Municipal Code (TMC) 18.56.280.B.

13. Triway has submitted a shadow study that establishes conformity with standard A above, including shadows cast on abutting internal lots within the development². (Exhibit R-9).

14. All exterior building walls within the proposed mixed use development, as shown in conceptual drawings, would have windows and also such plan show building face articulation such as cornices, projections, recesses, varying building materials, awnings and balconies. See, e.g., Exhibit 8. At such time as final drawings are submitted to the City, the building designs would be subject to final design review in order to insure continued compliance with standard B above. The conceptual

² Triway is proposing to subdivide its development site into a number of lots by binding site plan.

building designs include features which separate the buildings' ground floors from the upper floors. *Id.* Finally, Triway's development plan proposes not only pedestrian friendly project design, but also includes a centrally located park area between Buildings D and E with a water feature and walkways.

The Hearing Examiner finds that the plans submitted and representations made by Triway establish satisfaction with the standards for permitting buildings above the height of 50 feet within MU Districts.

15. The Triway project contains no elements that would be considered restricted uses within the AQP overlay zone.

16. Triway, at the direction of the City, has undertaken several view studies to assess the view impacts of the buildings proposed to be higher than 50 feet. One study involved the use of large balloons placed at the corners of the proposed buildings and then raised to the height of each building and then photographed from various locations on Tumwater Hill across I-5 from the project site. It was determined that the area potentially most affected by the taller buildings on the project site would be along the northerly portion of Second Street on lower Tumwater Hill. (Exhibit R-6). A more-detailed use study was ordered by the City in order to more precisely determine the potential view impacts on the identified residences along a portion of Second Street. This latter study determined that the identified homes do not have views over the southerly portion of the project where the tallest buildings are proposed (Buildings B and C proposed at heights of 116 feet) and the territorial views across the valley of the Cleveland Avenue area and of Mt. Rainier would not be significantly affected, as the proposed buildings on the northerly portion of the project site, when viewed from the distance which separates the homes from the project site, would be at or below the easterly horizon. (Exhibit R-6).

17. A Level 2 Traffic Impact Analysis (TIA), along with two addendums, were prepared for the proposed development. As a result of the analyses of traffic impacts, over \$2,000,000 in traffic impact fees and actual mitigating projects have been committed to by Triway and the City. With the traffic mitigation imposed, the project meets the City's Transportation Concurrency requirements.

18. The project site (10.81 acres) is located outside the flood plain of the Deschutes River and, therefore, is not subject to the City's Flood Plain Overlay Zone requirements.

19. Likewise, the project site (10.81 acres) is not situated within shoreline jurisdiction under either *RCW 58.57, Shoreline Management Act (SMA)* or the City's *Shoreline Master Program (SMP)*. Thus, the *SMP* provisions relating to the Deschutes River do not apply.

20. Numerous conditions have been recommended for approval of the CUP requested by Triway. (Exhibit R-1 at 12 and 13). Triway concurs in the conditions recommended and agrees to comply with those conditions.

21. A number of persons appeared in writing (Exhibit R-1 at Attachments UU through MMM) or testifying at hearing. While raising numerous concerns with or objections to Triway's proposed development, none established that Triway's proposal failed to satisfy the requirements for issuance of a CUP allowing certain buildings within the proposed development to exceed 50 feet in height. Also, a number of persons appeared in support of Triway's CUP application.

22. In accordance with the *State Environmental Policy Act (SEPA)* of 1971, as amended, and Chapter 16.04 of the *TMC*, the Development Services Department has reviewed all relevant information. It is the determination of the Department that the proposal can be considered minor to the extent that significant adverse environmental impacts are not anticipated. Accordingly, a Mitigated Determination of Nonsignificance (MDNS) was issued on December 4, 2008. Based on timely comments from the applicant regarding the MDNS, the City issued a Modified MDNS on December 16, 2008 and extended the comment period to December 26, 2008 and the appeal period to January 2, 2009. An appeal of the Modified MDNS was filed by David and Cathi Read and Eric and Marcia Kjesbu on January 2, 2009. The SEPA appeal is the subject of a separate decision.

23. The report of the Development Services Department, designated as Exhibit 1, to the extent that it sets forth the issues, general findings of fact, applicable policies and provisions and departmental recommendations of this matter, is incorporated herein by reference as though fully set forth.

24. A revised Notice of Land Use Application was issued on September 26, 2008 with a 17-day comment period. The Notice of Land Use Application was posted on the site, distributed to property owners within 300 feet of the subject property and published in *The Olympian* newspaper. A notice for a public information meeting regarding the project was posted on the site and sent to property owners within 1,320 feet of the subject property on October 20, 2008.³ The public information meeting was conducted on October 29, 2008 and lasted approximately three hours.

The original MDNS was issued on December 4, 2008 and the modified MDNS was issued on December 16, 2008. The documents were posted on the site and sent to property owners within 1,320 feet of the subject property. See Footnote 3.

The public hearing notice was issued on January 29, 2009. The public hearing notice was posted on site, distributed to property owners within 1,320 feet of the subject property (See Footnote 3), and published in *The Olympian* newspaper.

³ It should be noted that the City extended the 1,320-foot notification further to include every property owner within the Palermo Neighborhood off of "M" Street.

25. Any conclusion hereinafter stated which might be deemed to be a finding herein is hereby adopted as such.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction in the matter. *TMC 18.04.135.*
2. Applications for CUP's must be found consistent with the intent of the Comprehensive Plan and zoning requirements. *TMC 18.56.010.* Additionally, the City's zoning regulations set forth specific minimum standards for approval of buildings over a height of 50 feet in MU zones. *TMC 18.56.280.B.* (See Finding 12).
3. Triway in this proceeding bears the burden of demonstrating by a preponderance of the evidence that its request for a CUP satisfies the legal standards for approval of CUP's.
4. Findings, based on substantial evidence in the hearing record, support a conclusion that the application of Triway for a CUP allowing the heights of certain buildings within the proposed development to exceed the height of 50 feet, support a conclusion that such request is consistent with the intent of the Comprehensive Plan and applicable zoning regulations, and the specific standards applicable to buildings over 50 feet in height, provided conditions set forth herein are imposed and complied with by Triway.
5. Accordingly, the requested CUP should be granted, subject to the following conditions:
 - A. Pursuant to *TMC 18.56.060*, CUP approval shall expire within 18 months unless a building permit is issued for the proposal.
 - B. The proposed conditions of approval listed in the Draft formal site plan review letter dated October 29, 2007 (Exhibit R-1 at Attachments EE) shall be met.
 - C. Prior to issuance of clear and grade permits, Triway shall secure a National Pollutant Discharge Elimination System Permit (NPDES Permit) from the Washington State Department of Ecology
 - D. Prior to issuance of clear and grade permits, Triway shall secure a Forest Practices Permit from the Washington State Department of Natural Resources.
 - E. The wetland information and notations required by code must be identified on the final binding site plan

drawing to assure that land subject to wetland deed-restrictions are guaranteed in perpetuity. In addition, wetland signage shall be provided along the buffer boundary in accordance with *TMC* 16.28.

- F. The proposal shall be subject to the conclusions and recommendations outlined in the geotechnical engineering report prepared by GeoEngineers dated July 19, 2007 or equivalent if subsequently revised.
- G. Detailed architectural elevation drawings shall be submitted by Triway for staff review to ensure the condition listed in *TMC* 18.56.280.B.3 is met.

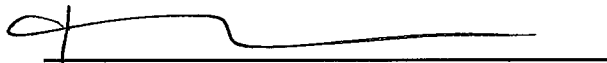
6. Any finding hereinbefore stated which might be deemed a conclusion herein is hereby adopted as such.

From these Conclusions is made the following:

DECISION:

The CUP request is hereby approved, subject to the conditions listed in Conclusion 5 herein.

DATED this 25th day of February 2009.



**RODNEY M. KERSLAKE
HEARING EXAMINER**