

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

In the Matter of the Application of	)	No. BP12-00019
	)	
<b>American Baptist Homes of the West</b>	)	
	)	FINDINGS, CONCLUSIONS,
<u>For a Conditional Use Permit</u>	)	AND DECISION

**SUMMARY**

The request for a conditional use permit to construct a senior housing complex on approximately 2.16 acres with 81 one-bedroom units, one two-bedroom unit, and common area space; associated parking; 62,000 cubic yards of grading; and landscaping located to the southwest of the intersection of Russell Road and Oyster Bay Avenue West in the Bay Vista Community, Bremerton, Washington, is **APPROVED**. Conditions of approval are necessary to mitigate specific project impacts.

**SUMMARY OF RECORD**

Request:

American Baptist Homes of the West requests a conditional use permit to construct a senior housing complex and associated parking. The project would be located to the southwest of the intersection of Russell Road and Oyster Bay Avenue West in the Bay Vista Community, Bremerton, Washington.

Hearing Date:

The City of Bremerton Hearing Examiner held an open record hearing on the request on June 18, 2012.

Testimony:

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

Allison Daniels, City Planner  
Roger Tucker, Architect, for Applicant  
Scott Barkan, for Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Conditional Use Permit Application and Project Summary, received April 3, 2012
2. Proposed Site Plan
  - a. Site Info – Code Info (Sheet T1.1), dated April 2, 2012

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- b. Building Height Calculations (Sheet T1.2), dated April 2, 2012
- c. Site Plan (Sheet A1.0), dated April 2, 2012
- d. Floor Plans (Sheet A2.0), dated April 2, 2012
- 3. Bay Vista Figure B-2 Frontage Occupancy (Portion of Map), undated
- 4. Preliminary Plans for Public Works, dated March 30, 2012
- 5. Determination of Completeness, dated May 1, 2012
- 6. Notice of Application, undated; Affidavits of Mailing, Posting, and Publication, dated May 3, 2012
- 7. Comment email from Kitsap Public Health District, dated May 3 District, dated May 3, 2012
- 8. Comment letter from Low Income Housing Institute, dated May 1, 2012
- 9. Comment letter from Bremerton Housing Authority, dated May 16, 2012
- 10. Adoption of Existing Environmental Document, dated May 22, 2012
- 11. Notice of Public Hearing, undated; Affidavits of Mailing, Posting, and Publication, dated June 6, 2012
- 12. Staff Report, dated June 8, 2012
- 13. Affidavit of Publication, for publication in *Kitsap Sun* June 6, 2012

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

#### FINDINGS

- 1. American Baptist Homes of the West (ABHOW) (Applicant) requests a conditional use permit (CUP) to construct a senior housing complex on approximately 2.16 acres with 81 one-bedroom units, one two-bedroom unit, and common area space; 62,000 cubic yards of grading; landscaping; and associated parking. The proposed project is located to the southwest of the intersection of Russell Road and Oyster Bay Avenue West in the Bay Vista Community, Bremerton, Washington.<sup>1</sup> *Exhibit 1; Exhibit 2; Exhibit 12, Staff Report, page 1.*
- 2. The City of Bremerton (City) determined the application was complete on May 1, 2012. *Exhibit 5.* The City provided notice of the application by mailing notice to owners of surrounding property and interested parties; posting notice on-site; and publishing notice in the *Kitsap Sun* on May 3, 2012. *Exhibit 6.* The City provided notice of the open record hearing associated with the CUP request by posting notice on-site, mailing notice to owners of surrounding property, and publishing notice in the *Kitsap Sun* on June 6, 2012. *Exhibit 5; Exhibit 11; Exhibit 13.*

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<sup>1</sup> The property is identified by tax parcel number 5580-000-024-0009. *Exhibit 1.* A legal description is included on the CUP Application and Revised Site Plan and in the Staff Report. *Exhibit 1; Exhibit 12, Staff Report, page 1.*

3. The City Department of Community Development (DCD) acted as the lead agency in reviewing the proposal for environmental impacts, pursuant to the State Environmental Policy Act (SEPA). On May 22, 2012, the City DCD adopted the May 2007 Final Bay Vista (previously West Park) Environmental Impact Statement and the January 2008 Bay Vista Environmental Impact Statement Addendum. The City DCD determined that the existing EIS and addendum adequately examines the impacts of the overall project and that no new or significantly different impacts to the environment would occur. *Exhibit 8; Exhibit 10; Exhibit 12, Staff Report, page 10.*
4. City Planner Allison Daniels testified that the Bremerton Housing Authority (BHA) is redeveloping an 83-acre site for a mixed-use, mixed-income pedestrian oriented urban community. A preliminary subdivision was approved in 2009.<sup>2</sup> The proposed three-story senior apartment project would be located on an approximately 2.16-acre site in the northeast portion of the Bay Vista Community. Senior housing was not included as part of the Bay Vista Master Plan. The City's land use regulations allow senior apartment complexes in any non-industrial zone, subject to obtaining a CUP and holding an open record hearing. *Bremerton Municipal Code (BMC) 20.46.090. Exhibit 1; Exhibit 2; Exhibit 12, Staff Report, pages 2 and 3; Testimony of Ms. Daniels.*
5. The proposed site is currently vacant and would be re-graded. Property to the north is developed with Russell Road, a 72-unit Bay Vista Commons with assisted living and memory care, and a 60-unit Firs Apartment building. A new West Road would be constructed to the west and an alley to the south. An existing parcel, containing a detention pond, lies to the east between the site and Oyster Bay Avenue West. Other property to the south and west of the site remain undeveloped. *Exhibit 2; Exhibit 12, Staff Report, page 2.*
6. The City Comprehensive Plan designates the property as a Public Sector Redevelopment Site. The City of Bremerton adopted its Comprehensive Plan pursuant to the Growth Management Act (GMA), RCW 36.70A. *City Comprehensive Plan, Intro-4.* Several of the City's Comprehensive Plan goals and policies are relevant to this application. The Community Character goal is to assure that new development relates to surrounding uses and provides for urban livability. Land Use Element goals and policies promote design elements that compliment the designated purpose and scale of the neighborhood, promote neighborhood interaction and support community wide access to amenities and services. Housing Element goals and policies promote the production of a variety of housing types, including housing opportunities for seniors and the elderly and promote access to quality

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<sup>2</sup> Findings, Conclusions, and Decision, City of Bremerton Hearing Examiner, Bay Vista Preliminary Plat, No. BP09-00029, July 2009.

affordable homes for all Bremerton residents.<sup>3</sup> *City Comprehensive Plan, Community Character Element, page CC-18; Land Use Element, pages LU-27 – LU-30, and LU-35; Housing Element, pages HS-13 and HS-15. Exhibit 12, pages 2 to 3.*

7. The Bay Vista Sub-Area Plan regulates development within the Bay Vista Community. *BMC 20.80.010; BMC 20.80.080.* The Plan divides the Bay Vista Sub-Area property into different zones for the purpose of development, including Low, Medium, and High Density Residential; Mixed-Use 1 (MU-1); Mixed-Use 2 (MU-2); Village Commercial; Commercial; and Open Space. Each zone includes specific standards for building orientation, density, and design elements. *Bay Vista Sub-Area, IV Zoning & Development Regulations (adopted February 18, 2009).* Specific uses shall be determined through a Sub-Area planning process. *BMC 20.80.050.* City Planner Ms. Daniels testified that the Bay Vista Sub-Area Plan was adopted by the City Council on February 18, 2009, and that the subject property is zoned Bay Vista Medium Density Residential. *BMC 20.80.080(a). Testimony of Ms. Daniels.*
8. Kitsap Way, a main arterial, runs east/west along the north Bay Vista Sub-Area property line. Oyster Bay Avenue West, an arterial, runs north/south along the east Bay Vista Sub-Area property line. Russell Road (formerly Sinclair Drive) runs west and then curves south into the Bay Vista Sub-Area from Oyster Bay Avenue West. The proposed project site would be accessed from a new 32-foot wide West Road running north/south along the west side of the project site. The proposed apartment building would form a “J” with a courtyard entrance from West Road. West Road would include curb, gutter, a six-foot wide planting strip, and a five-foot wide sidewalk. A new 24-foot wide alley would be constructed along the south side of the project site. *Exhibit 2.c.* Traffic impacts were evaluated as part of a previous preliminary subdivision approval. A traffic impact analysis is not required. *BMC 11.12.060.* Frontage improvements would be required pursuant to *BMC 11.12.110.* Detailed construction plans would be required prior to building permit approval. All driveways would meet City Standards pursuant to *BMC 11.12.150* and all private and public road work would be required to meet Chapter 11.02 BMC right-of-way requirements. *Exhibit 2; Exhibit 12, Staff Report, page 8.*
9. The City Staff reviewed the proposed project and determined that it would meet *BMC 20.46.090* senior housing complex standards. The site would have access to Oyster Bay Avenue West, an arterial street, via Russell Road and a proposed West Road within the Bay Vista Sub-Area. The site area exceeds two acres. The Bay Vista Sub-Area requires 75 percent minimum to 85 percent maximum frontage occupancy to meet a 15-foot wide maximum front yard setback. As designed, approximately 40 percent of the proposed

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<sup>3</sup> The City identified the following Comprehensive Plan goals and policies as particularly relevant to this application: Community Character Goal; Land Use Goals LU1, LU3, and LU12; Housing Goals H3 and H5. *Exhibit 12, Staff Report, pages 2 to 3.*

building along the proposed West Road would meet this requirement. The Applicant proposes to install a covered trellis gateway and additional landscaping to meet the intent of the frontage occupancy along West Road for a strong, pedestrian friendly street edge. The proposed project would meet the three-foot wide side yard and five-foot wide rear yard setback requirements. The proposed project would meet the Bay Vista Sub-Area Plan Medium Density Residence Density of 38 dwelling units per acre.<sup>4</sup> City staff reviewed the Applicant's drawings and determined that the building height, as measured from the average finished grade at the façade to the midpoint of the sloping surface of a pitched roof would comply with the maximum height of 30 feet. The proposed project would not exceed the maximum 90 percent lot coverage. The Applicant would incorporate porous pavement for the parking area, reducing the impervious lot coverage to 35 percent. The Applicant would provide 23 compact and 58 standard parking spaces, consistent with the one off-street parking space per unit requirement for the proposed 81 units. The parking areas would be lighted and the Applicant would submit a photometric plan with a building permit submittal. The Applicant would provide nine bicycle parking spaces. No accessory uses are proposed other than a community building/clubhouse. All dwelling units would be rental units. Kitsap Transit provides public transportation on Russell Road. A use restriction with the Covenants, Conditions & Restrictions (CCR's) would restrict use to senior housing. Detailed landscaping, including parking lot, 28 street trees, and shielded outdoor storage included garbage dumpsters would be reviewed as part of building permit submittal. *BMC 20.46.090; Chapter 20.50 BMC; BMC 20.58.020; Bay Vista Sub-Area, IV Zoning & Development Regulations (adopted February 18, 2009); Exhibit 1; Exhibit 2; Exhibit 4; Exhibit 12, Staff Report, pages 3 to 7.*

10. Water and sewer service is available along the Russell Road frontage. Detailed water and sewer plans would be submitted for review and approval prior to final building permit issuance. All proposed water, wastewater and stormwater construction drawings would be submitted for City review prior to building permit issuance. *Exhibit 12, Staff Report, page 8.*
11. The Building Official and Fire Department submitted comments on the proposal. Conditions are included requiring fire sprinklers to be installed prior to building occupancy and three fire hydrants to be installed in locations approved by the Fire Marshal. *Exhibit 12, Staff Report, pages 10 to 12.*
12. Stormwater would infiltrate on-site from porous asphalt parking paving. Other stormwater would be collected and piped to an existing storm water main at Oyster Bay Avenue West. Stormwater quantity and quality mitigation is required prior to issuance of building permits. The Applicant would submit a final storm drainage report and plans to

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<sup>4</sup> The Bay Vista Sub-Area Plan Medium Density Residential zone allows up to 38 dwelling units per acre. 2.16 acres x 38 units = 82.08. 81 units are proposed. *Exhibit 12, Staff Report, page 5.*

the City for review and approval prior to final building permit approval. *Exhibit 1, Project Summary, page 2; Exhibit 4; Exhibit 12, Staff Report, pages 7 and 8.*

13. The City staff determined that the proposed project does not require limitations on hours of operation. The proposed project would be required to meet Chapter 6.32 BMC that specifies noise level restrictions. No air quality impacts were identified. *Exhibit 12, Staff Report, page 10.*
14. Scott Barkan testified for the Applicant and expressed concerns about proposed condition No. 3, requiring recording of an agreement to maintain the property as senior housing. The Applicant and City agree on a modified condition requiring such an agreement to be included with the Covenants, Conditions & Restrictions (CCR's). *Testimony of Mr. Barkan.* Roger Tucker, Architect, testified for the Applicant that the proposed project would be compatible with the surrounding development, including single-family residences that are proposed for development to the west. He agreed with the proposed conditions. *Testimony of Mr. Tucker.*
15. City staff reviewed the application and concluded that, with conditions, the proposal would comply with the Comprehensive Plan and City Code development and recommended approval of the CUP. *Exhibit 1, Staff Report, page 11.*

## **CONCLUSIONS**

### Jurisdiction

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

### Criteria for Review

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

- (1) The use is consistent with the Comprehensive Plan goals and policies;
- (2) The use complies with all applicable zoning and development standards and requirements;
- (3) The use satisfies all of the conditional use approval criteria specified in the zone in which the use is located;
- (4) The design of the proposal and conditions of approval has mitigated all identifiable adverse impacts;

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- (5) The use is compatible with nearby land uses and the surrounding neighborhood in terms of the level of light and glare, noise and parking demand, hours of operation and air quality; and
- (6) Stipulations are made for the availability of adequate water, sewer, storm water, utilities and urban governmental services.

*BMC 20.58.020(d).*

#### Conclusions Based on Findings

1. **With conditions, the proposed use is consistent with Comprehensive Plan goals and policies.** Construction of the proposed 81-unit Senior Housing Complex would result in quality affordable homes for Bremerton residents. While a Senior Housing Complex is not a specified use within the Bay Vista Sub-Area, the City Code allows such a facility in any non-industrial zone with a conditional use permit and after an open record hearing. Conditions are necessary to ensure that the Applicant provides additional landscaping along the proposed West Road; and that final storm drainage report and plans, water and sewer plans, street lighting and driveway approach plans are reviewed and approved by the City prior to final building permit approval. *Findings 1, 6, 7, and 12.*
2. **With conditions, the proposed use complies with all applicable zoning and development standards and requirements.** The proposed Senior Housing Complex is not listed as a use within the Bay Vista Sub-Area Plan. The City Code allows such a facility in any non-industrial zone with a conditional use permit and after an open record hearing. The City provided notice of the conditional use permit request and opportunity for comment. The City reviewed the proposal for environmental impacts, and adopted the existing 2007 Final Environmental Impact Statement for the West Park Sub-Area Plan (revised as Bay Vista Sub-Area Plan) and 2009 supplemental EIS. The City issued an Adoption of Existing Environmental Document on May 22, 2012. The proposed development would feature setbacks consistent with the Bay Vista Medium Density Residential zone. The development would include street frontage improvements, landscaping, and stormwater runoff conveyances. Conditions are necessary to ensure that the Applicant provides additional landscaping along the proposed West Road; and that final storm drainage report and plans, water and sewer plans, street lighting and driveway approach plans are reviewed and approved by the City prior to final building permit approval. *Findings 1-5, 8-15.*
3. **With conditions, the proposed use satisfies all of the conditional use approval criteria specified in the zone in which the use is located.** The proposed Senior Housing Complex is not listed as a permitted use within the Bay Vista Sub-Area Plan. However, the City Code allows such a facility in any non-industrial zone with a conditional use permit and after an open record hearing. The proposed project would meet BMC 20.46.090 senior housing complex standards, including access, size, setbacks,

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density, height, lot coverage, parking and landscaping. Conditions are necessary to ensure that the Applicant provide additional landscaping along the proposed West Road; and that final storm drainage report and plans, water and sewer plans, street lighting and driveway approach plans are reviewed and approved by the City prior to final building permit approval. *Findings 1, 8-15.*

4. **With conditions, the design of the proposal and conditions of approval will mitigate all identifiable adverse impacts.** The City reviewed the proposal for environmental impacts, and adopted the existing 2007 Final Environmental Impact Statement for the West Park Sub-Area Plan (revised as Bay Vista Sub-Area Plan) and 2009 supplemental EIS. The City issued an Adoption of Existing Environmental Document on May 22, 2012. The City provided adequate opportunity for public comment. The project design would be compatible with the surrounding neighborhood. Traffic impacts were analyzed previously as part of a past preliminary subdivision approval. Conditions are necessary to ensure that the Applicant provide additional landscaping along the proposed West Road; and that final storm drainage report and plans, water and sewer plans, street lighting and driveway approach plans are reviewed and approved by the City prior to final building permit approval. *Findings 1, 3, 8-15.*
5. **With a condition, the use is compatible with nearby land uses and the surrounding neighborhood in terms of the level of light and glare, noise and parking demand, hours of operation and air quality.** The proposed Senior Housing Complex is a residential use, surrounded by primarily residential uses. The Applicant would submit a photometric plan with a building permit submittal for City review. The proposed project is required to comply with Chapter 6.32 BMC, Noise Level regulations. The Applicant has demonstrated that the proposed number of parking spaces would not result in parking spilling onto surrounding neighborhoods, consistent with City code requirements. No limitations on hours of operation are proposed. No air quality impacts were identified. A condition is necessary to ensure that final street lighting plans are reviewed and approved by the City prior to final building permit approval. *Findings 1, 3, 8-15.*
6. **With conditions, stipulations will be made for the availability of adequate water, sewer, storm water, utilities and urban governmental services.** The property would be connected to City water and sewer services. Conditions are necessary to ensure that final storm drainage report and plans, water and sewer plans, and street lighting are reviewed and approved by the City prior to final building permit approval. *Findings 10, 11, and 12.*

## DECISION

Based on the preceding Findings and Conclusions, a conditional use permit to construct a senior housing complex on approximately 2.16 acres with 81 one-bedroom units, one two-bedroom

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unit, and common area space; associated parking; 62,000 cubic yards of grading; and landscaping located to the southwest of the intersection of the southwest of the intersection of Russell Road and Oyster Bay Avenue West in the Bay Vista Community, in Bremerton, Washington, is **APPROVED**, subject to conditions:<sup>5</sup>

1. To meet the intent of the frontage occupancy along West Road, a covered trellis as a gateway to the courtyard, fencing and landscaping within the 15' maximum setback shall be shown on the landscaping plans at the point of building permit submittal and shall be installed prior to the building's occupancy. The landscaping plan shall also include all setback areas, interior landscaping within parking lot, and a total of 28 street trees are required along Russell Road and West Road (18 trees along Russell Road and 10 trees along West Road).
2. A photometric plan pursuant to BMC 20.44.110 shall be required to be submitted with the building permit application to confirm compliance with the lighting requirements.
3. The Applicant shall include a use restriction with the Covenants, Conditions & Restrictions (CCR's) that restricts use to senior housing, in accord with public funding requirements, with no change in use without further City review.
4. A detailed landscaping plan shall be submitted with the building permit application to demonstrate compliance with the front yard setback along West Road and Russell Road; interior landscaping within parking lot; and a total of 28 street trees shall be required, 18 along Russell Road and 10 along West Road.
5. Final Storm Drainage report and plans, water and sewer plans, street lighting and commercial driveway approach plans shall be reviewed and approved prior to final building permit approval.
6. A storm drainage maintenance agreement shall be recorded against the property prior to occupancy approval of the proposed building.
7. Frontage Improvements shall be required along all existing and proposed street frontages (Russell Road, West Road and alley) prior to building permit approval.
8. Fire sprinklers shall be installed prior to building occupancy.
9. Three fire hydrants shall be provided in locations approved by the Fire Marshal, with at least

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<sup>5</sup> Conditions include both legal requirements applicable to all developments and provisions to mitigate the specific impacts of this development.

one located within 50 feet of the fire department connection.

Decided this 2<sup>nd</sup> day of June 2012.

  
THEODORE PAUL HUNTER  
Hearing Examiner  
Sound Law Center