

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

In the Matter of the Application of	)	No. CUP 2023-001
	)	
<b>Shelly Henderson, on behalf of</b>	)	<b>Mukilteo Elementary CUP</b>
<b>Mukilteo School District No. 6</b>	)	
	)	
	)	FINDINGS, CONCLUSIONS,
<u>For a Conditional Use Permit</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a conditional use permit to allow for development of a two-story classroom addition, on an 18.19-acre property at 2600 and 2601 Mukilteo Speedway, with landscaping and other improvements, is **APPROVED**. Conditions are necessary to address specific impacts of the proposed use.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the request on March 18, 2024. The record was left open until March 25, 2024, to allow any member of the public having difficulty connecting to the remote hearing to submit written comments in lieu of live testimony or to request that the hearing be reopened. No comments or requests for reopening the hearing were submitted and, accordingly, the record closed on March 25, 2024.

Testimony:

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

Shawn Edghill, Associate City Planner  
Joseph Reyes, City Clerk  
Laura Brent, Planning Consultant for Mukilteo School District  
Stephen Murakami, Project Manager for Hutteball and Oremus Architecture

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated March 11, 2024, and Revised Staff Report, dated March 11, 2024
2. Site Plan, dated September 22, 2023
3. Building Plans and Elevations, dated September 22, 2023
4. Stormwater Pollution Prevention Plan, dated December 8, 2023
5. Civil Plans, dated January 17, 2024
6. Landscape Plan, dated January 17, 2024
7. Wetland and Stream Assessment, The Watershed Company, dated September 26, 2022

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8. Determination of Completeness, issued November 14, 2023
9. Notice of Application, dated November 22, 2023
10. Public Comment, dated November 29, 2023
11. Letter from Shelly Henderson, Mukilteo School District, dated October 2, 2023
12. Determination of Nonsignificance, issued December 15, 2023
13. Staff PowerPoint Presentation, dated March 18, 2024
14. Notice of Public Hearing, dated March 6, 2024
15. SEPA Environmental Checklist, dated October 30, 2023
16. Zoning Code Summary and Building Plans, dated September 22, 2023
17. Notice of Hearing Extension, dated March 18, 2024

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

## **FINDINGS**

### Application and Notice

1. Shelly Henderson, on behalf of Mukilteo School District No. 6 (Applicant), requests a conditional use permit (CUP) to allow development of a two-story classroom addition to Mukilteo Elementary School on an 18.19-acre property at 2600 and 2601 Mukilteo Speedway. The proposed addition is part of the first phase of the Applicant's plan to replace the entire school. The building would be 19,973 square feet in size and would accommodate ten classrooms. Ten existing classrooms would be converted into storage spaces. The proposed development would not increase student or staff capacity at the school. Associated improvements include new play areas, fire lane improvements, and new utility services, including a storm detention system. In conjunction with the CUP request, the Applicant requested a lot line adjustment (LLA-2023-002) to ensure that the properties would comply with maximum hard surface coverage regulations. The lot line adjustment was approved on December 5, 2023. *Exhibit 1, Revised Staff Report, pages 1 and 2; Exhibit 2; Exhibit 3; Exhibit 5.*
2. The Applicant submitted the CUP application on October 30, 2023. The Department of Community Development (DCD) determined that the application was complete on November 22, 2023. The Notice of Application was mailed to property owners within 300 feet of the subject property and published in the *Everett Daily Herald* newspaper. The public notice gave a comment period ending on December 6, 2023. On March 6, 2024, the City published notice of the public hearing in the *Everett Herald* newspaper. Notice of the public hearing was sent to property owners within 300 feet and posted online. *Exhibit 1, Revised Staff Report, pages 2 and 3; Exhibit 8; Exhibit 9; Testimony of Joseph Reyes.*
3. The City of Mukilteo (City) received one public comment letter. The writer argued that the scope and notice of the project was overly broad. The writer also argued that the

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State Environmental Policy Act (SEPA) checklist should include information on and evaluate potential environmental impacts for all phases of the multi-phase project. Finally, the writer argued that the SEPA exemption cited for the project, Washington Administrative Code (WAC) 197-11-800(1)(d), is not applicable, because the SEPA checklist states that the proposed development would require 5,167 cubic yards of fill, which exceeds the 1,000 cubic yard limit of the exemption. *Exhibit 10*.

#### State Environmental Policy Act

4. The City's analysis determined that the proposal was categorically exempt from SEPA review under WAC 197-11-800(1)(d) and Mukilteo Municipal Code (MMC) 17.84.070.D, because a school building under 30,000 square feet is proposed. The Mukilteo School District, however, decided to proceed with SEPA review of the proposal. Mukilteo School District acted as lead agency for purposes of SEPA, chapter 43.21C Revised Code of Washington (RCW).<sup>1</sup> Mukilteo School District completed an environmental checklist and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, Mukilteo School District issued a Determination of Nonsignificance (DNS) on December 15, 2023, with a comment deadline of December 28, 2023. The School District did not receive any comments, and the DNS was not appealed. *Exhibit 1, Revised Staff Report, page 2; Exhibit 12; Exhibit 15; Testimony of Laura Brent*.

#### Comprehensive Plan

5. The subject property is designated in the Comprehensive Plan as Single-Family Residential—High Density. The Comprehensive Plan specifies a maximum density of 6 lots per acre in this High Density land use. The implementing zoning districts for the Single-Family Residential—High Density land use are the RD 7.5 zone and the RD 7.2 zone. Comprehensive Plan Goal CF5 states that “[t]he most recent version of the Capital Facilities Plan of Mukilteo School District No. 6 is expressly incorporated into this Capital Facilities Element of the City of Mukilteo Comprehensive Plan as the basis for imposing school impact mitigation fees as provided for by the [Growth Management Act].” *Comprehensive Plan, pages 15 and 61; Exhibit 1, Revised Staff Report, pages 1 through 3*.

#### Zoning

6. The subject property is zoned RD 7.5. The RD 7.5 zone is established as a “Single-family residential district, [with] 7,500 square feet minimum lot area.” *Mukilteo Municipal Code (MMC) 17.12.010*. K through 12 schools and preschools are permitted in the RD 7.5 zone with approval of a CUP. *MMC 17.16.040*. Buildings in the RD 7.5 zone are limited to a maximum height of 30 feet; a maximum lot coverage of 35 percent;

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<sup>1</sup> When an agency initiates a proposal, it is the lead agency for that proposal. *WAC 197-11-926(1)*.

and a maximum hard surface coverage of 55 percent. Schools must be set back 35 feet from all external property lines. *MMC 17.20.020; MMC 17.20.028; MMC 17.20.070(N)(1). Exhibit 1, Revised Staff Report, pages 2, 3, and 5.*

7. For landscaping:
- A sight-obscuring fence or vegetative screen must be installed where nonresidential or multifamily residential uses are adjacent to single-family residential zones in accordance with MMC 17.58.047.
  - Existing vegetation may satisfy screening requirements, provided that the width and density of the vegetation provides a sight-obscuring screen.
  - Vegetative screens must be kept free of weeds and debris, and the vegetation is to be maintained in a healthy condition.
  - Vegetative screens must not grow to a height or width that would obstruct vision of an intersecting street.
  - All fences or vegetative screens shall be maintained in perpetuity.
  - Modifications to screening requirements may only be made if a zoning change eliminates the nonresidential or multifamily use next to a single-family residential zone.
- MMC 17.58.070.*
8. For parking, schools are required to have one space per 12 seats in the auditorium or assembly room, plus one space for each employee. Schools are also required to provide sufficient off-street space for safe loading and unloading of students from school buses. *MMC 17.56.040.*

Existing Property, Surrounding Uses and Critical Areas

9. The subject property has an area of approximately 18.19 acres across three parcels. The entire Mukilteo Elementary School site is 29.18 acres in area across four parcels. The property slopes to the west with an elevation change of approximately 55 vertical feet. The site is currently developed with three one-story buildings, a parking lot, bus loading and unloading areas, fields and play areas, and five portable structures. A stormwater detention feature is located in the northwest corner of the property, which is forested. Access to the property is off M E Ave. *Exhibit 1, Revised Staff Report, pages 1 and 2; Exhibit 2; Exhibit 4; Exhibit 5; Exhibit 7.*
10. The property is surrounded by residential development in all directions. All properties to the north, south, and west are zoned RD 7.5 and are developed with single-family houses. To the east are several parcels zoned RD 9.6 (Single-family residential district, 9,600 square feet minimum lot area). The Applicant submitted a wetland and stream assessment. The assessment, prepared by The Watershed Company, determined that there are no jurisdictional wetlands or streams found within or directly adjacent to the project area. The assessment noted that the stormwater feature in the northwest corner of

the property was intentionally created from non-wetland areas to detain stormwater from adjacent school properties and does not meet the City's definition of a regulatory wetland. *Exhibit 1, Revised Staff Report, pages 1, 2, 6, and 7; Exhibit 2; Exhibit 7.*

#### Landscaping

11. City staff reviewed the Applicant's landscaping plan, and determined the following:
- There is no sight-obscuring fence around the perimeter of the property, so all screening would be provided by landscaping.
  - The proposed building is more than 250 feet from the east property line and more than 75 feet from the northern property line.
  - Ten feet of sight-obscuring landscaping along the northern property line is proposed, except where an existing pathway connects to the surrounding neighborhood and limits space available for plantings to three feet.
  - Landscaping potential along the eastern property line is limited by existing utility easements and infrastructure. Six feet of landscaping is proposed to maximize screening in this area without creating utility conflicts. Several properties on the eastern property line are positioned above the site with rockeries, retaining walls, and/or sight-obscuring fencing or hedges, which helps with screening between uses.
  - In addition to perimeter landscaping, 6 to 30 feet of landscaping is proposed surrounding the new building.
  - The landscape enhancements are reasonable and meet the buffering requirements for non-residential uses adjacent to single-family residential zones.
- Staff believed these features were sufficient to demonstrate compliance with the landscaping requirements for nonresidential uses adjacent to single-family residential zones. *Exhibit 1, Revised Staff Report, pages 6 and 7; Exhibit 6.*

#### Coverage and Design

12. Reviewing the Applicant's plans, City staff calculated that the total building coverage would be approximately 14 percent of the lot, with the approved lot line adjustment. The total hard surface coverage would be approximately 38 percent of the lot. These levels of coverage were compliant with the code for the RD 7.5 zone. *Exhibit 1, Revised Staff Report, pages 5 and 6; Exhibit 2; Exhibit 5.*
13. Staff determined that there would be no changes to the existing 599-foot front setback. The rear setback would be approximately 263 feet. The building would be set back approximately 76 feet from the northern lot line and, with the approved lot line adjustment, and 170 feet from the southern property line. The setbacks were compliant with the code for the RD 7.5 zone. The maximum building height would be approximately 28 feet, in compliance with the maximum building height for the RD 7.5 zone. *Exhibit 1, Revised Staff Report, pages 5 and 6; Exhibit 2; Exhibit 3; Exhibit 5.*

#### Parking and Access

14. City staff determined that additional parking would not be required, because neither the number of assembly room seats nor the number of employees would change as a result of the proposed development. Staff determined that existing parking is sufficient. *Exhibit 1, Revised Staff Report, page 6; Exhibit 11.*
15. The City Fire Department noted that existing drop-off zones conflict with reliable and clear access for emergency responders and that a policy or innovative solution to the conflict is needed. Staff recommended a condition that the City Fire Department must sign-off on either a reconfigured drop off zone or other policy implementation to ensure fire access is accessible prior to the issuance of a certificate of occupancy. *Exhibit 1, Revised Staff Report, pages 2 and 9.*

#### Stormwater

16. Final permitting for the proposal's stormwater management will occur under an engineering permit. The Applicant has completed initial stormwater modeling, however, using the Western Washington Hydrological Model (WWHM), as required by the 2019 edition of the Washington State Department of Ecology Stormwater Manual. Stormwater would move through an onsite flow control system before discharging into the existing stormwater detention pond in the northwest corner of the project site. Water from the detention pond flows offsite via two discharge paths. In one route, water drains into Clover Place Creek and enters the municipal system in Clover Lane. In the second route, water drains to the municipal stormwater system in 19<sup>th</sup> Drive. The two paths converge near Mukilteo Speedway and outfall into Goat Trail Creek, which discharges into Puget Sound. *Exhibit 1, Revised Staff Report, page 2; Exhibit 4.*

#### Tree Retention

17. City staff stated that the project's plans for tree retention comply with screening and landscaping requirements. The landscaping plan shows that no significant trees would be removed, in compliance with the code's requirement for 25 percent retention.<sup>2</sup> *Exhibit 1, Revised Staff Report, pages 4 and 7; Exhibit 5.*

#### Conditional Use Permit

18. City staff analyzed the proposed school building against the conditional use permit criteria. Staff concluded that the proposal complies with the purposes of the Comprehensive Plan and the RD 7.5 zone, meeting in particular Goal CF5 of the Comprehensive Plan by providing capital facility improvements to Mukilteo School District No. 6 facilities. *Exhibit 1, Revised Staff Report, page 3.*

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<sup>2</sup> MMC 15.16.050(C), Table 1.

19. Staff determined that the proposed school building would not be injurious or detrimental to the character of the RD 7.5 zone or its abutting or adjoining neighbors. Staff noted that property has been developed with a school since the 1980s, so use of the property as a school is a known and expected use for all surrounding neighbors. Staff also noted that the proposed development would not increase the number of employees or students at the facility. *Exhibit 1, Revised Staff Report, page 4.*
20. The application adheres to the requirements of the municipal code, including landscaping, design standards, and screening from the adjacent properties, as discussed above. *Exhibit 1, Revised Staff Report, page 4.*
21. Staff determined that the project complies with the zoning code requirements for the RD 7.5 zone, including the parking, bulk, lot size and coverage, and landscape buffering requirements. *Exhibit 1, Revised Staff Report, pages 4 and 5.*
22. Staff determined that the Applicant's materials in support of the application included the required depictions of landscaping, paving, parking, access, relationship of buildings to the site, outdoor lighting, proposed fencing, topography, sections and elevations of proposed structures, a vicinity map, and provisions for sewage, storm drainage, and surface runoff. *Exhibit 1, Revised Staff Report, pages 4 and 5.*
23. Based on the foregoing review, staff concluded that further review of the proposal by the City Planning Commission was not warranted because the proposal was compliant with all zoning code requirements and the Comprehensive Plan. *Exhibit 1, Revised Staff Report, page 5.*

#### Testimony

24. Shawn Edghill, Associate City Planner, testified generally about the proposal and how, with conditions, the proposed school building development would comply with the zoning rules for schools as well as the conditional use permit approval criteria. He testified about the existing conditions on the property and surrounding residential uses. He stated that a lot line adjustment had been approved for the site and that final recording of the lot line adjustment would be required as a condition of approval.

Mr. Edghill testified that the proposed development would not be detrimental to the neighborhood, noting that the property has been developed with a school since 1980 and that many of the surrounding homes were built after the school.

He testified that existing parking capacity is sufficient because the proposed development would not increase enrollment, the number of employees, or the number of seats in the auditorium. He testified that, if the existing classrooms that are to be converted to

storage are used for instruction and the number of employees increases, the City would have to reassess the need for additional parking.

Mr. Edghill testified that, although there is currently space for safe loading and unloading of students from school buses on-site, drop off policies and configurations would be required to be reviewed and approved by the City Fire Department.

He testified that the Applicant has proposed buffering through the use of landscaping and that existing site features prevent consistent landscaping features. He testified that the proposed building would be 250 feet from the eastern property line, 75 feet from the northern property line, and would not be visible from Washington Avenue along the western side of the property. He testified that the Applicant is proposing 10 feet of landscaping along the northern property line, except where an existing pathway connects to the surrounding neighborhood and provides a safe walking route to the school. He testified that the Applicant proposes to provide trees along the southern side of the access route. He testified that the Applicant is proposing six feet of landscaping along the eastern property line to maximize screening without creating conflicts with existing utility easements and infrastructure.

Mr. Edghill testified that the original review was inaccurate. The original review stated that the portable units on the property are the classrooms that would be converted to storage. The 10 classrooms that would be converted to storage are in an existing permanent structure. The portable units would still be utilized.

Mr. Edghill testified that the proposal is exempt from SEPA review because the proposal is for a school building under 30,000 square feet. He stated that the proposed building and any grading and fill qualify for the exemption. *Testimony of Mr. Edghill.*

25. Joseph Reyes, City Clerk, testified that the online link to the public hearing had been corrected and that the City was going to send out an updated link to all parties of record. He stated that the City had not received any emails from members of the public who were having difficulty signing on to the public hearing.

Mr. Reyes testified that he would notify all parties of record that they could submit written comments on the proposal or request that the hearing be reopened until March 25, 2024. *Testimony of Joseph Reyes.*

26. Laura Brent, Planning Consultant for Mukilteo School District, testified that the Applicant decided to proceed with SEPA review because the amount of proposed earthwork exceeds 1,000 cubic yards. She testified that the DNS was posted on-site, published in the newspaper, and mailed to property owners within 300 feet of the property on December 15, 2024, consistent with the City's notification requirements.



Ms. Brent emphasized that the Applicant conducted significant community outreach. She noted that there are some inconsistencies between the City Comprehensive Plan and code requirements. She testified that most of the language about schools in the City Comprehensive Plan comes from the incorporation of the Capital Facilities Plan.

Ms. Brent testified that Mukilteo School District does not have any funding for additional construction on the site, and that the School District will not know what the future phases will look like until it receives funding. She testified that the School District's SEPA review is not a phased review. *Testimony of Laura Brent.*

27. Stephen Murakami, Project Manager for Hutteball and Oremus Architecture, testified that the site falls about 20 feet between residential development to the east and the existing school buildings, so that views from the east directly overtop the existing buildings. He stated that the Applicant has opted to construct the proposed building four feet below the existing elevation so that neighbors would only experience a one-story building that would not obstruct their views.

Mr. Murakami testified that the proposed development would be the first phase of a multi-phased project to replace the entire school. He emphasized that the proposed development would create the foundational pieces to support the master plan design. He stated that construction would move westward as funding becomes available. He testified that the proposed building would include the main mechanical electrical plant that would support future site improvements.

Mr. Murakami testified generally about the building features, which include classrooms, a teacher workspace, small breakout rooms, restrooms, and infrastructure for heating, electricity, data, and communications. *Testimony of Stephen Murakami.*

#### Staff Recommendation

28. Shawn Edghill testified that City staff recommends approval of the proposed expansion, with the conditions provided in the staff report. The Applicant had no objections to any of these proposed conditions. *Exhibit 1, Revised Staff Report, pages 8 and 9; Testimony of Shawn Edghill; Testimony of Laura Brent.*

### **CONCLUSIONS**

#### Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide conditional use permit applications. The Hearing Examiner may approve, approve with conditions, or deny a conditional use permit application based on the decision criteria and the evidence in the record. *Chapter 2.38 MMC; MMC 17.13.070(C), Table 6.*

### Criteria for Review

Under MMC 17.64.020, the Hearing Examiner may approve a conditional use permit when all of the following criteria are met:

- A. All conditional uses must be in accordance with the goals and objectives of the comprehensive plan and they must not violate the purpose of the district in which they will locate.
- B. It must be demonstrated that all conditional uses if located as proposed would not be injurious or detrimental to the character of the zone or to its abutting or adjoining neighbors.
- C. The conditional use must employ reasonable measures of fencing, buffering, traffic restraints, sign and light controls, and any other appropriate measures to protect the surrounding properties and adjoining districts.
- D. All conditional uses must have adequate site area to accommodate the use. The minimum site area for a conditional use is no less than that permitted in the underlying district.
- E. All conditional uses must conform to the dimensional regulations in the individual districts, except that additional restrictions may be imposed to ensure the uses are compatible within the district.
- F. All conditional uses having a site area in excess of one acre must provide a buffer of trees and shrubs around the perimeter of lots abutting a residential zone.
- G. All applications for conditional uses must be accompanied by layout and development plans drawn to an appropriate scale which show at least the following:
  - 1. Site plans showing landscaping, paving, parking, access, relationship of building to site, outdoor lighting, proposed fencing and topography;
  - 2. Sections and elevations of proposed structure;
  - 3. Vicinity map showing property, zoning and access;
  - 4. Provision for sewage disposal, storm drainage and surface runoff.
- H. All conditional uses must comply with the parking regulations in Chapter 17.56.

- I. In the course of reviewing the conditional use permit application, the city staff may request a recommendation by the planning commission on matters under its permit authority related to the conditional use permit. The matters may include but are not limited to the comprehensive plan or the nature and intent of the zone in which the conditional use permit is requested.

*MMC 17.64.020.*

The criteria for review adopted by the City of Mukilteo 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 County development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

#### Conclusions Based on Findings

**With conditions, the proposed school addition would comply with the conditional use permit approval criteria.** The Hearing Examiner agrees with City staff's analysis that the proposal is consistent with the goals and policies of the Comprehensive Plan and with the purpose of the RD 7.5 zone. A school building is allowed as a conditional use in the RD 7.5 zone and supports residential development, as the zone is intended to provide. The Applicant's plan to construct a school addition is consistent with the Comprehensive Plan goal to improve capital facilities for Mukilteo School District No. 6. The Hearing Examiner concludes, on the basis of the landscaping and tree retention plan, that there will not be any injury to adjacent properties, because they will be sufficiently buffered. The Hearing Examiner agrees with City staff's analysis of the proposal's compliance with the zoning code in all ways.

The Hearing Examiner agrees that the Applicant's landscaping plan, site plan, and architectural drawings are sufficient to conclude that the site area is adequate, all necessary landscaping and buffering are being supplied, the minimum parking requirements for a school are met, and stormwater and sewer will be adequately provided for, pending further engineering review. *Findings 1–29.*

#### **DECISION**

Based on the preceding findings and conclusions, the request for a conditional use permit to allow for development of a two-story classroom addition, on an 18.19-acre property at 2600 and 2601 Mukilteo Speedway, with landscaping and other improvements, is **APPROVED**, subject to the following conditions:

1. Prior to building permit issuance, LLA-2023-002 must be recorded.
2. Prior to building permit issuance, the Applicant must have an approved engineering permit.

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3. Prior to final inspection, a recorded maintenance/access easement for all stormwater facilities is required.
4. Prior to certificate of occupancy, landscaping must be installed consistent with the January 17, 2024, Landscaping Plan submitted by Fora Landscape Architects.
5. Prior to certificate of occupancy, the school must get sign-off from the fire department for either a reconfigured drop off zone or other policy implementation to ensure fire access always remains accessible.
6. Traffic mitigation fees will be required if storage spaces are converted back to classrooms.

Decided this 8th day of April 2024.

A handwritten signature in black ink, appearing to read "Alex Sidles", with a long horizontal flourish extending to the right.

ALEX SIDLES  
Hearing Examiner