

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Mariah Buck (owner) c/o David Russell (applicant)
P.O. Box 1989
Eastsound, WA 98245

File No.: PCUP00-10-0009

Request: Conditional Use Permit

Parcel No: 271412003

Location: 94 Lavender Lane
Eastsound, Orcas Island

Summary of Proposal: Conditional Use Permit for medical clinic

Land Use Designation: Service and Light Industrial; Airport Overlay; Eastsound
Conservancy

Hearing Date: April 7, 2011

Application Policies and Regulations: SJCC 18.80.100(D) et. seq.

Decision: Approved.

DEVELOPMENT & PLANNING

APR 25 2011

S.J.C. COMMUNITY

1 **BEFORE THE HEARING EXAMINER FOR THE COUNTY**
2 **OF SAN JUAN**

3 Phil Olbrechts, Hearing Examiner

4 RE: David Russell 5 6 Conditional Use Permit (PCUP00-10-0009)	7 FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION S.J.C. COMMUNITY APR 25 2011
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8 **INTRODUCTION**

DEVELOPMENT & PLANNING

9 The Applicant has applied for a conditional use permit to change the occupancy of the
10 ground floor of an existing building from a woodworking shop to a medical clinic.
The application is approved subject to conditions.

11 **TESTIMONY**

12 The Examiner asked whether run off from the addition of impervious surface would
13 adversely affect the adjoining wetland. Mr. Query, the Applicant's representative,
14 noted that the site plan references best management practice T5.12 from the
15 stormwater manual, which requires gravel dispersal strip at edge of parking area that
16 attenuates stormwater energy and collects pollutants. A 25 foot vegetative flow path
17 is also placed along the edge to filter stormwater because a buffer to a Category II
18 wetland is not allowed to treat stormwater. Drainage will also be reviewed at the
19 time of building permit review as noted in the conditions of approval. Mr. Query
20 also questioned the mitigation recommended by the public works department in
21 Exhibit 3. He noted that the swale trail has been in place for 15 years and the need
22 for crossing and vehicle warning signs has never been an issue before. In response
23 to questions from the Examiner, Mr. Query noted that the only place to park is on-
24 site unless you park at a nearby fire station. He acknowledged that it would be
25 possible to walk to the clinic from the Village by using the trail. He noted that the
Applicant would investigate the suggested fence modifications, but pointed out that
this building has been used for several years and that the fence requirement be
optional. As to the driveway apron, the Applicant is willing to address it. Mr.
Query noted that exterior lighting is not required and should be an optional
requirement. As to the suggestion for a 20 foot entrance, Mr. Query noted that code
only requires a 16 foot entrance and the Applicant is willing to make it 16 feet.

In response to questions from the Examiner, Ms. McEnery noted that the concerns
of the building and public works department identified in recommended condition
No. 4 are listed in Exhibits 3 and 6.

EXHIBITS

All exhibits identified in the "Exhibit List" of the March 11, 2011 staff report, in addition to the staff report itself, are admitted into evidence.

FINDINGS OF FACT

Procedural:

1. Applicant. The Applicant is David Russell. Mr. Russell will be a tenant of the property. The owner of the property, Mariah Buck, has signed off on the application.

2. Hearing. The Hearing Examiner conducted a hearing on the subject application on April 7, 2011.

Substantive:

3. Site and Proposal Description. The proposal is to change the occupancy of the ground floor of a two story building from a woodworking shop to a medical clinic. Few changes to the outside of the building are proposed or necessary. Four parking spaces would be added on the north side of the building. Interior spaces would be remodeled to suit the nature of the proposal. Clients would be on the site for fairly limited amounts of time, as with any professional use.

The existing building has two stories. It has a 1,000 square foot accessory dwelling unit on the second floor along with 500 square feet of storage. Existing parking is located on the south side of the building. The west, north and south sides of the building are screened by existing vegetation. The entrance driveway is at the south end of Lavender Lane, a subdivision road that is shared by the fire station. The building and parking area are behind a wood fence on Lavender Lane.

4. Characteristics of the Area. The surrounding parcels to the west, northwest and northeast are within the Service and Light Industrial land use district and contain a mix of commercial and residential uses. East of the property across Lavender Lane is Village Residential, where the fire station is located. Directly north of the property is Eastsound Airport District and the airport is across Mount Baker Road, further north.

5. Adverse Impacts. As conditioned, the project has no significant adverse impacts. Impacts are more specifically addressed as follows:

A. Pedestrian Safety. In Exhibit 3, the public works department recommends that the Applicant place pedestrian crossing and warning signs along points that an apparent swale trail crosses the driveway of the project. At hearing the Applicant disputed the nexus for this requirement. The record does not

1 contain any specific information on the location of the trail, except the
2 implication that the trail crosses the driveway entrance onto Lavender Lane.
3 The Applicant's representative, Bob Query, acknowledged during the hearing
4 that the trail could be used for pedestrian access to the facility from the
5 Eastsound village area. The Applicant proposes to change the use from
6 industrial to professional service, which will increase vehicular traffic to the
7 site as corroborated by the increase in parking requirements. The public works
8 department, with expertise in such matters, has determined that this vehicular
9 traffic poses a danger to pedestrian users of the trail. There is nothing in the
10 record to suggest otherwise. The signage requested by public works is
11 necessary to mitigate against the dangers to pedestrians created by the project.
12 Sufficient nexus exists for the requirement.

13 B. *Screening.* In Exhibit 3 the public works department also recommends that
14 portions of the fence along the south parking area be removed to improve
15 visibility between trail users and vehicles entering and exiting the property.
16 For the reasons discussed above on signage, this mitigation is supported by
17 the record in order to mitigate against the dangers to pedestrians created by
18 the project.

19 C. *Lighting.* In Exhibit 3 the public works department requires lighting in the
20 parking area for parking and turning movements. This requirement is based
21 upon the expertise of the public works department as necessary for safe use of
22 the parking areas. There is no evidence in the record to suggest this judgment
23 is in error and the requirement will be imposed as necessary to mitigate the
24 impacts of the project.

25 D. *Road Access Width.* In Exhibit 3 the public works department wants
confirmation that the existing 15 feet width for the vehicular access point to
the property is sufficient for two way traffic, as opposed to the 20 feet that is
more commonly used for commercial projects. At hearing Mr. Query stated
that the Applicant would be willing to increase the width to 16 feet as required
by code. Mr. Query did not identify the code provision that requires 16 feet.
If such a code provision does exist, it would set the standard for access width
and the width requirement could only be increased through the conditional use
process if the record shows unusual circumstances that necessitate an increase
in width. No such unusual circumstances are suggested in the record and the
project will be conditioned on compliance with the 16 foot requirement. If
there is no specific requirement for access width, the expertise of the public
works department will prevail on this issue and their suggestions on the issue
in Exhibit 3 will apply.

E. *Wetland.* The addition of parking adjacent to a Category II wetland raises the
concern of stormwater pollutants discharging into the wetland. At hearing Mr.
Query provided compelling testimony that best management practices that
will be required in conjunction with drainage plans are designed to address the
issue. The County's stormwater regulations adequately address stormwater
impacts to the wetland.

1 F. *Aquifer*. The project will be conditioned to assure the proper disposal of all
2 pharmaceuticals and other chemicals that could harm the water quality of the
3 aquifer.

4 CONCLUSIONS OF LAW

5 **Procedural:**

6 1. Authority of Hearing Examiner. The hearing examiner is authorized to
7 conduct hearings and issue final decisions on conditional use permit applications.
8 San Juan County Code (“SJCC”) 18.80.020 Table 8.1.

9 **Substantive:**

10 2. Zoning Designations. The subject property is designated as Service and
11 Light Industrial (as part of the Eastsound Subarea Plan), Eastsound Conservancy and
12 Orcas Island Airport Overlay.

13 3. Permit Review Criteria. SJCC 16.55.230(B) provides that uses not
14 identified as permitted or prohibited in its subsection may be allowed subject to a
15 conditional use permit. SJCC 16.55.230(B) does not identify medical clinics, so it is
16 allowed if it meets the criteria for conditional use permit approval. Those criteria are
17 quoted in italics below and applied with corresponding conclusions of law.

18 **SJCC 18.80.100(D)(1):** *The proposed use will not be contrary to the intent or*
19 *purposes and regulations of this code or the Comprehensive Plan;*

20 4. Pertinent code provisions are addressed below:

21 A. Drainage. SJCC 16.55.150(B) requires the County to adopt a stormwater
22 management plan and also requires on-site surface water runoff detention and
23 filtration during construction and provide permanent drainage control facilities
24 to filter sediments and maintain runoff rates at pre-project levels. SJCC
25 18.60.060(B)(7) requires drainage controls to regulate impacts to water
quality. The record does not contain any information on whether the project
site drains into the Eastsound swale. However, the County has adopted a
stormwater manual that contains rigorous standards that meet the objectives of
both SJCC 16.55.150(B) and SJCC 18.60.060(B)(7), as at least partially
referenced by Mr. Query during his testimony. The conditions of approval
expressly require a drainage plan, which will have to comply with the
County’s stormwater standards for approval.

B. Landscaping and Screening. SJCC 16.55.230(E)(6) requires landscape
buffers along the street frontage of new development and screening between
existing residential uses and new nonresidential development. The staff report
concludes that screening is required for this project because the site is
bounded on the east by Village Residential. However, that residential

1 development is separated by Lavender Lane. As recently discussed in the
2 *Pearson* conditional use decision (PCUP00-10-0011), the screening
3 requirement does not apply to uses separated by a road and screening may be
4 required on a case by case basis for projects subject to conditional use review.
5 The *Pearson* ruling works to the advantage of the County in this case, since its
6 public works department is recommending the partial removal of screening to
7 provide for pedestrian safety at the driveway entrance to the project. The
8 public works department can work with the Applicant to the extent the
9 Applicant wishes to use the removal as an opportunity for “curb side”
10 advertising of its business operations. Since the business will have sufficient
11 exposure on the south side of the property, full screening is appropriate for the
12 north parking area.

13 C. Eastsound Swale. Pages 3-4 of the staff report address SJCC 16.55.250(2),
14 which imposes various requirements on development adjacent to the
15 Eastsound swale. There is nothing in the record to suggest that the project is
16 anywhere near the swale. Since the staff report finds compliance with the
17 swale requirement, the issue is largely moot.

18 D. Hazardous Waste/Aquifer. SJCC 18.30.140© governs storage and disposal of
19 chemicals that could be a health hazard in drinking water. The staff report
20 notes that the medical clinic will use pharmaceuticals, which are stored in leak
21 proof containers and disposed of as hazardous waste. The staff report also
22 notes that the County’s Pollution Prevention Officer visited the current
23 location of the clinic in May 2009 and “mentioned that pharmaceutical
24 disposal should be consistent with state law but placed no corrective
25 requirements on the operation”. The project will be conditioned to ensure that
the pharmaceuticals will be disposed of in a manner that does not jeopardize
drinking water.

26 E. Parking. The staff report provides a breakout of the parking required for the
27 proposed use in its application of SJCC 16.55.300. However, as noted in the
28 report from the Eastsound Planning and Review Committee, Exhibit 4, the
29 area devoted to each proposed use in the building is necessary to verify that
30 parking standards are met. Since the staff findings are uncontested on parking
31 they will be taken as sufficient for purposes of this decision. For future
32 reference, information on how parking was computed would be helpful.

33 F. Airport Overlay. The staff report provides an analysis of compliance with
34 airport overlay requirements, SJCC 18.40.030-32. Those findings and
35 conclusions are adopted by reference as if set out in full.

36 G. Other. Except to the extent inconsistent with this decision, all other
37 findings and conclusions of the staff report are adopted and incorporated by
38 this reference as if set forth in full.

39 **SJCC 18.80.100(D)(2):** *The proposal is appropriate in design, character and*
40 *appearance with the goals and policies for the land use designation in which the*
41 *proposed use is located;*

1 5. The proposal will create a nominal change in exterior appearance by the
2 addition of parking and other minor improvements. The additional parking will be
3 fully screened to ensure compatibility with residential uses located across the street.
4 Some of the existing screening for the south parking will be removed to provide for
5 enhanced pedestrian safety as discussed in the Findings of Fact. This removal will be
6 mitigated by landscaping to mitigate aesthetic impacts.

7 **SJCC 18.80.100(D)(3):** *The proposed use will not cause significant adverse impacts*
8 *on the human or natural environments that cannot be mitigated by conditions of*
9 *approval;*

10 6. As discussed in the findings of fact, all adverse impacts are sufficiently
11 mitigated to prevent any significant adverse impacts.

12 **SJCC 18.80.100(D)(4):** *The cumulative impact of additional requests for like actions*
13 *(the total of the conditional uses over time or space) will not produce significant*
14 *adverse effects to the environment that cannot be mitigated by conditions of approval;*

15 7. The proposal is only to make modest changes to an existing structure and
16 all impacts are fully mitigated. Under these circumstances no significant cumulative
17 impacts are anticipated.

18 **SJCC 18.80.100(D)(5):** *The proposal will be served by adequate facilities including*
19 *access, fire protection, water, stormwater control, and sewage disposal facilities;*

20 8. The staff report notes that all necessary facilities exist and are adequate,
21 which is consistent with the fact that the Applicants only propose a change in use that
22 is of similar intensity to the existing use.

23 **SJCC 18.80.100(D)(6):** *The location, size, and height of buildings, structures, walls*
24 *and fences, and screening vegetation associated with the proposed use shall not*
25 *unreasonably interfere with allowable development or use of neighboring properties;*

9. Nothing proposed will interfere with allowable development or interfere
with the use of neighboring properties.

SJCC 18.80.100(D)(7): *The pedestrian and vehicular traffic associated with the*
conditional use will not be hazardous to existing and anticipated traffic in the
neighborhood;

10. The staff report notes that the project will not generate any significant
amount of vehicular traffic and there is nothing in the record to the contrary. The
conditions recommended by the public works department adequately address safety
issues from the interaction of the driveway with the adjoining pedestrian trail as well
as providing for adequate lighting at the parking lot.

1 **SJCC 18.80.100(D)(8):** *The proposal complies with the performance standards set*
2 *forth in Chapter 18.40 SJCC;*

3 11. As noted in the staff report, for projects subject to the Eastsound subarea
4 plan the performance standards of SJCC 16.55.230(E)(and by extension, 16.55.300)
5 apply in lieu of Chapter 18.40 SJCC. As discussed in other portions of this decision
6 and the staff report, the project complies with the standards of SJCC 16.55.230(E).

7 **SJCC 18.80.100(D)(9):** *The proposal does not include any use or activity that would*
8 *result in the siting of an incompatible use adjacent to an airport or airfield (RCW*
9 *36.70.547); and*

10 12. The proposal is near, but not adjacent to an airport. The County's airport
11 overlay standards, which have been applied to this project, also assure compatibility
12 of proximate uses.

13 **SJCC 18.80.100(D)(10):** *The proposal conforms to the development standards in*
14 *Chapter 18.60 SJCC.*

15 13. The staff report notes that projects subject to the Eastsound subarea plan
16 are subject to SJCC 18.60.230(E) and 18.60.300 in lieu of Chapter 18.60 SJCC. This
17 is correct for the most part, except that SJCC 16.55.005(D) provides that other
18 development regulations such as Chapter 18.60 SJCC apply if a development issue is
19 not covered by Chapter 16.55 SJCC. There is nothing in the record to suggest that the
20 project fails to comply with any standards in Chapter 16.55 SJCC or Chapter 18.60
21 SJCC. The criterion is satisfied.

22 **DECISION**

23 The proposal complies with all conditional use criteria and is approved, subject to
24 the following conditions:

25 1. The proposal must comply with all applicable regulations in the Eastsound
Subarea Plan and the Unified Development Code.

2. A landscape plan consistent with SJCC 16.55.240 and 300 shall be required prior
to issuance of a building permit and shall be complied with. Full Screening for the
north parking lot shall be installed as required by SJCC 16.55.230(E)(5).

3. A drainage plan shall be submitted and approved prior to issuance of the change
of use/building permit.

4. Prior to issuance of building permits, the Applicant should provide evidence that
they have complied with the requirements of Public Works and the Building Official
as identified in Exhibits 3 and 6. In providing for better visibility at the driveway

1 entrance by removal of portions of the fence, the public works department shall also
2 accommodate any reasonable request by the Applicant to provide better visibility of
3 their business for purposes of advertising their business to the travelling public. Staff
4 may require landscaping to mitigate the impacts of removed fencing, provided that
5 the safety concerns of the public works department are fully addressed and
6 reasonable accommodation is provided for advertising of the business. Driveway
7 width at the entrance to the property shall be as required by code. If there are no
8 standards that govern the width, the width shall be as specified in Exhibit 3.

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11 5. Building permits and/or change of use permits shall be obtained for all applicable
12 work.

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14 6. If not done so already, Staff shall verify that pharmaceuticals are disposed of in a
15 manner that doesn't jeopardize the water quality of the aquifer and is in conformance
16 with all applicable regulations.

17 Dated this 20th day of April, 2010.

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Phil Olbrechts
County of San Juan Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology pursuant to RCW 90.58.140, WAC 173-27-130 and SJCC 18.80.110.

This land use decision is final and in accordance with Section 3.70 of the San Juan County Charter, such decisions are not subject to administrative appeal to the San Juan County Council. See also, SJCC 2.22.100

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State shorelines hearings board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service requirement may result in dismissal of the appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to

1 promptly review appeal deadlines and procedural requirements and consult with a
private attorney.

2 Affected property owners may request a change in valuation for property tax purposes
3 notwithstanding any program of revaluation.

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