

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



In the Matter of the Application of ) No. 05-17-CUP  
)  
)  
**The Thumbnail Theater** ) **Thumbnail Theater CUP**  
)  
)  
For Approval of a Conditional Use Permit ) **FINDINGS, CONCLUSIONS,  
AND DECISION**

**SUMMARY OF DECISION**

The request for a conditional use permit to continue operating a community-based theater within an existing non-residential structure at 331 Avenue D 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 June 15, 2017.

Testimony:

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

Brooke Eidem, City Associate Planner  
Tim Noah, Applicant Representative  
Sharon Pettit, Building/Fire Official  
Lisa Utter  
Gary Ferguson  
Lindsay Douglas

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated June 7, 2017
2. Conditional Use Permit Application, received April 21, 2017
3. Letter from Tim Noah to City of Snohomish, dated January 13, 2017
4. Site Plan, received April 21, 2017
5. Additional Site Information, received April 21, 2017
6. Affidavit of Adjacent Property Owners List, dated April 19, 2017, with Project Area Map
7. Determination of Complete Application, dated May 9, 2017
8. Notice Materials:
  - a. Notice of Application/Public Hearing, dated May 19, 2017
  - b. Vicinity Map
  - c. Mailing labels

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- d. Affidavit of Notice, dated May 22, 2017
- e. Affidavit of Publication, *Everett Daily Herald*, dated May 19, 2017
- 9. Memorandum from Andrew Sics, P.E., dated May 22, 2017
- 10. Memorandum from Sharon Pettit, dated May 30, 2017
- 11. Email from Karen Guzak to Brooke Eidem, dated May 19, 2017
- 12. Email from Jason Sanders to Brooke Eidem, dated May 19, 2017, with email string
- 13. Letter from Madeline Renkens to City of Snohomish, dated June 6, 2017, with attachments
- 14. Letter from Madeline Renkens to City of Snohomish, dated June 12, 2017
- 15. Parking Radius Map, dated June 15, 2017
- 16. City Parks Blog, *Pedestrians and Park Planning: How Far Will People Walk?*, Ryan Donahue, posted May 13, 2011
- 17. Additional information on walking distance, undated

The Hearing Examiner enters the following findings and conclusions based upon the testimony and admitted exhibits:

### **FINDINGS**

#### Application and Notice

- 1. Tim Noah, on behalf of the Thumbnail Theater (Applicant), requests a conditional use permit (CUP) to continue operating a community-based theater within an existing non-residential structure at 331 Avenue D. No exterior alterations are planned for the facility, first constructed in 1930, and no significant changes to operation of the theater are proposed. Recent amendments to the municipal code, however, require that community-based theaters obtain a CUP to operate within the Single-Family residential zoning district.<sup>1</sup> *Exhibit 1, Staff Report, page 1; Exhibit 2; Exhibit 4.*
- 2. The City of Snohomish (City) determined that the CUP application was complete on May 9, 2017. On May 18, 2017, the City posted notice of the application and associated open record hearing on the property and at City Hall. The same day, the City mailed notice of the application and hearing to property owners within 300 feet of the site and applicable agencies. On May 19, 2017, the City published notice of the application and hearing in *The Everett Herald*. As discussed in detail below, the City received several written comments in response to its notice materials. *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 7; Exhibit 8; Exhibits 11 through 14.*

#### State Environmental Policy Act

- 3. City staff determined that the request is exempt from environmental review under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW), in accord with Washington Administration Code (WAC) 197-11-800(6)(b),

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<sup>1</sup> The property is identified by tax parcel number 00579501600900. A legal description is included with the staff report. *Exhibit 1, Staff Report, page 2.*

because no changes are proposed to the existing facility. *Exhibit 1, Staff Report, page 4; Exhibit 4.*

#### Comprehensive Plan and Zoning

4. The property is designated Single Family by the City Comprehensive Plan. The City identified the following Comprehensive Plan goals and policies as relevant to the proposed use:
  - Single-Family Land Use (SF) 4.4, Neighborhood Character: The predominant character of Single Family designations should be a detached single-family neighborhood. Non-residential uses, where permitted, should be designed to maintain and continue the residential character.
  - Economic Development Goals and Polices (ED) 1.5, Tourism: Encourage businesses and civic activities that will promote Snohomish as a year-round tourist destination;
  - ED 3.5, Historic Resources: Preserve and promote the historic resources of the city and continue the community character as new development occurs.
  - ED 4.5, Event Management: Partner with groups to promote civic, cultural and promotional events, while encouraging sponsoring groups to be as self-managing and self-sustaining as possible.

*Exhibit 1, Staff Report, page 3.*
5. The property is located within the Single-Family residential zoning district. The purpose of this zone is to maintain and develop single-family areas that provide suitable living environments for individuals and families and that have the following characteristics: quietness, privacy, safety, and land use stability and compatibility. *Snohomish Municipal Code (SMC) 14.205.020.* All surrounding properties are developed with single-family residences. *Exhibit 1, Staff Report, pages 2 and 3.*
6. The property is also located within the city's Historic District. The facility operated primarily as a church from 1930 until approximately 2007. The Applicant operated its theater as an allowed, accessory use to the Christian Science Church from the late 1990s until the church vacated the facility. SMC 14.225.020 encourages the rehabilitation and reuse of historic structures within the Historic District, as well as encouraging uses that attract visitors to the city. Because no alterations to the exterior structure are proposed at this time, design review is not required prior to CUP approval under SMC 14.225.060.C. *Exhibit 1, Staff Report, page 1; Exhibit 3; Exhibit 5.*
7. SMC 14.235.230 requires one off-street parking space per every four seats for theaters. Churches, synagogues, temples, and mosques have the same parking requirement, with an additional space required for every 200 square feet of non-seating area. Site plans show that only one off-street parking space is available for the facility. The church, however, pre-dated the City's adoption of its land use code (Title 14 SMC), and SMC 14.235.010 only requires the parking requirement to be satisfied for new construction or for a "change of use resulting in an increase in required parking." Because the

Applicant's activities have the potential for greater impacts on parking in the area than existed with the church, City staff has recommended that the Applicant obtain a parking agreement with another facility to mitigate impacts from the use and to ensure that adequate off-street parking is available. *Exhibit 1, Staff Report, pages 3 through 5; Exhibit 3; Exhibit 4.*

#### Conditional Use Permit

8. In 2016, the City adopted a code amendment to allow a community-based theater as a conditional use within the Single-Family residential zone if it meets certain criteria, including: the floor area of the facility is limited to 4,000 square feet, the facility is sited within the Historic District, and the facility has direct access to a street designated as a collector arterial or minor arterial. *SMC 14.207.130 Residential Land Use Table; SMC 14.207.135.8.* The facility satisfies these criteria because the theater building is 3,623 square feet, is located within the Historic District, and has direct access to Fourth Street, which is designated as a collector arterial. As a conditional use, the proposal must also satisfy the standard CUP criteria under SMC 14.65.020.B, including ensuring that adequate infrastructure serves the facility, that the facility is compatible with surrounding development, that concurrency requirements are met, and that health, safety, and general welfare have been considered in relation to the use. *Exhibit 1, Staff Report, page 5; Exhibit 2; Exhibit 5.*
9. The City's Engineering Department reviewed the proposal and determined that the southeast corner of 4th Street and Avenue D is developed with curb, gutter, and sidewalk, and that no additional improvements would be required. The property is served by City water and sewer facilities, and the Engineering Department determined that no upgrades are needed. No changes to the building footprint, site plan, or building exterior are proposed. The Engineering Department determined that the site meets the minimum stormwater requirements and that no stormwater improvements would be required. The Engineering Department determined that no adjacent roadway or intersection would be reduced below the adopted traffic level of service standard as a direct result of the proposal, that no mitigation or traffic impact fee would be required, and that traffic concurrency would be met. *Exhibit 9.*
10. Building/Fire Official Sharon Pettit reviewed the application and determined that, with conditions, the proposed use would be consistent with the 2015 International Building Code. The Applicant would be required to install a UL-Listed, monitored fire alarm system and strictly adhere to allowed occupant loads for the facility. Based on the size of the theater, the allowed seated occupancy for the main theater space would be 102 adults. *Exhibit 10.*

#### Written Comments

11. The City received written comments from three area residents in response to its notice materials. Karen Guzak and Jason Sanders both wrote expressing support for the proposal, noting that the theater is a cultural asset that enriches the community. Madeline

Renkens, who operates a home business nearby, wrote the City with concerns about the proposal. Specifically, Ms. Renkens expressed concern that:

- Tim Noah, rather than the Thumbnail Theater, is listed as the Applicant for the proposal. Any permit that is granted should only be granted to a 501(c)3 non-profit organization.
- The CUP should be expressly limited to the Thumbnail Theater and not run with the land.
- The Applicant should be required to meet all building codes and occupancy limits.
- The Applicant should be required to meet the off-street parking requirements of SMC 14.235.230. Parking has been an issue in the area for many years, and some residents feel that the Applicant has not responded to their concerns over parking impacts from its many events. Residents should be entitled to designated street parking in front of their residence on publicly maintained streets.
- The theater should not be allowed to rent out its facility for other activities.
- Events should end no later than 11 PM because Mr. Noah has agreed to this in the past, and consideration should be given to limiting the number of events allowed at the facility per week.

*Exhibits 11 through 14.*

12. City staff provided responses to Ms. Renkens' concerns in the staff report. Specifically, staff noted:

- The Thumbnail Theater would be the name associated with any required permits. The Applicant has a current business license, and annual documentation of its 501(c)3 status would be required.
- CUP approvals typically run with the land as long as the use is not abandoned for 12 months or more, or characteristics of the approved use do not change. The City would not oppose limiting approval specifically to the Applicant.
- Following installation of a fire alarm, the building would comply with all building codes. The Applicant would also be required to comply with all occupancy limits.
- Additional off-street parking is not required under SMC 14.235.010. The City recommends, however, that the Applicant be required to obtain a parking agreement with another nearby facility to mitigate neighborhood parking impacts. That said, public rights-of-way are open to the public (subject to posted restrictions) and cannot be reserved or dedicated to any one party: residents do not enjoy a special entitlement to use of the publicly maintained streets fronting their properties.
- The facility should not be rented for private uses that do not satisfy the mission and intent of a community-based theater.
- The City would support conditions of approval related to when events must end and how many events would be allowed per week but defers to the Hearing Examiner to determine whether such conditions are necessary.

*Exhibit 1, Staff Report, pages 3 and 4.*

### Testimony

13. City Associate Planner Brooke Eidem testified generally about the application and the history of the property. She explained that the theater has been operating as a non-conforming use since the church vacated the facility but that the recent amendment to the municipal code allowing for community-based theaters in the Single-Family residential zone would allow for the Applicant to continue operations with a CUP. Ms. Eidem noted that code enforcement within the city is complaint-based and that, because no written complaints about the use were received, the City did not initiate code enforcement action to stop or suspend the Applicant's non-conforming use of the facility. She also stressed that the municipal code would not require the Applicant to provide additional off-street parking, but the City believes a condition requiring the Applicant to obtain an agreement for off-street parking with another facility would be appropriate. *Testimony of Ms. Eidem.*
14. Applicant Representative Tim Noah testified that the Applicant would limit occupancy to 85 adults and that it is rare for the theater to operate at full capacity. For children's events, the Applicant would like the option to have a somewhat higher occupancy because children require less space and produce fewer impacts on area parking. He noted that 40 to 50 people, on average, attend the Applicant's events and requested that average occupancy be considered when determining what kind of parking agreement would be appropriate. Mr. Noah stated that the Applicant has been working to obtain a parking agreement but thinks it could take up to 90 days for an agreement to be put in place. He also stated that, were a conditional use permit to be granted, it would be appropriate for the permit to run with the land. Although the Applicant has no plans to sell the theater, if such a sale were to occur, the Applicant would prefer that the facility continue to be used as a community-based theater in the future. *Testimony of Mr. Noah.*
15. Lisa Utter, a board member of the Thumbnail Theater, testified that she has been researching parking options in the area. She noted that there are very few options for parking in the immediate vicinity but that, within 1/4 to 1/3 of a mile from the facility, there are several options. *Testimony of Ms. Utter.*
16. Gary Ferguson, another theater board member, testified that he is concerned that a community resource like the Thumbnail Theater might be closed because of concerns over parking. He stated that the Applicant has not yet approached Snohomish High School—approximately 1/5 mile from the facility—about a potential parking agreement, but he worries that the school would not be supportive because of the emphasis on sports in the community. He noted, however, that there is another church facility and a Masonic lodge near the school that could provide needed off-street parking. *Testimony of Mr. Ferguson.*
17. Board member Lindsay Douglas testified that, typically, there are 5 to 6 events each year that fill the theater to capacity. She also noted that, although the Applicant has rented the

facility for some private events, such events typically have been in line with the mission of a community-based theater. *Testimony of Ms. Douglas.*

18. City Building/Fire Official Sharon Pettit testified that she is in favor of the Applicant's proposal to limit building occupancy to 85 adults, rather than the 102 adults allowed by the building and fire codes. She also noted that the City understands that occupancy limits are designed to address adults, not children, and that some flexibility would be warranted in considering occupancy limits for children's events. *Testimony of Ms. Pettit.*
19. In response to Ms. Pettit's comments, Mr. Noah explained that the Applicant has, over time, grown more capable of addressing concerns like occupancy limits and wants to ensure that theater-goers do not feel too cramped within the facility. *Testimony of Mr. Noah.*

#### Staff Recommendation

20. Ms. Eidem testified that the City recommends approval of the CUP, with conditions. *Exhibit 1, Staff Report, page 7; Testimony of Ms. Eidem.*

### **CONCLUSIONS**

#### Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide requests for conditional use permits. *Snohomish Municipal Code (SMC) 2.33.080; 14.50.060; SMC 14.95.010.*

#### Criteria for Review

The Snohomish City Code provides that the Hearing Examiner shall not approve a conditional use permit unless the following criteria are satisfied:

1. Adequate streets, sidewalks, transit stops, open spaces, parks, schools, water, sewer, and stormwater facilities shall be available to the proposed development.
2. The design and appearance of the structure shall be compatible with surrounding developments that are in conformance with the land use designation.
3. The development shall be consistent with the Comprehensive Plan.
4. The development shall mitigate any significant adverse environmental impacts.
5. Concurrency requirements (SMC 14.55.030) shall be complied with.
6. The development shall be consistent with the health, safety, and general welfare.

*SMC 14.65.020.B.*

The municipal code provides for the following additional, minimum conditions related to operation of a community-based theater:

- a. The floor area of the facility is limited to 4,000 square feet.

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- b. The facility shall be located within the Historic District.
- c. The site shall have direct access to a street designated as a collector arterial or minor arterial.

*SMC 14.207.135.8.*

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

#### Conclusions Based on Findings

1. **With conditions, the proposed use would meet the conditional use permit criteria of SMC 14.65.020.** The City provided reasonable notice of the application and opportunity for public comment. The proposal would allow the continued operation of an existing community-based theater as a conforming use within the Single-Family residential zone. The City determined that the proposal is categorically exempt from SEPA review. The Comprehensive Plan encourages tourism and economic development while preserving and promoting the historic resources of the city (Policies ED.1.5 and 3.1). SMC 14.225.020 also encourages the rehabilitation and reuse of historic structures within the Historic District, as well as encouraging uses that attract visitors to the city. Because no alterations to the exterior structure are proposed at this time, design review is not required prior to CUP approval under SMC 14.225.060.C. The City's Engineering Department reviewed the proposal and determined that the proposed use would not reduce the level of service standards for traffic at adjacent roadways or intersections and would meet minimum utility requirements, and that adequate curb, gutter, and sidewalk frontage already serve the facility. The City's Building/Fire Official reviewed the proposal and determined that, with conditions, the proposal would comply with all applicable fire and safety measures. Community members generally expressed support for the proposal. One area resident expressed concerns about parking, and, to alleviate this concern, the Applicant would obtain an off-street parking agreement with another facility in the area.

Conditions are necessary to ensure that the Applicant maintains a business license and its 501(c)3 status; installs a UL-listed, monitored fire alarm system; complies with maximum occupant loads as determined by the Building/Fire Official; obtains a sign permit, if necessary; refrains from renting the facility for events outside the scope of the mission of a community-based theater; ensures that events end by 11:00 PM because the Applicant has agreed to this in the past; and complies with all applicable local, state, and federal laws. Based on an occupant load of 85 adults, 20 parking spaces would be required under SMC 14.235.230 were this a new use or a use that required significant additional parking than was necessary for the previous, primary occupant (the Christian Science Church). Because of concerns about parking, and to alleviate further neighborhood conflicts over parking, the Applicant shall obtain a parking agreement in the next 90 days with a nearby facility (or facilities) to ensure that 20 parking spaces are

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available to serve the theater and advertise to all patrons that such parking should be utilized. The Applicant is encouraged to work with Snohomish High School, the nearest large facility, to establish such an agreement as it is unclear that the High School would not be amenable to such an arrangement. The Applicant shall also ensure that vehicles do not block or inhibit access to nearby alleys or driveways and that a staff member or volunteer is readily available to address parking concerns during all theater events.

*Findings 1 – 20.*

- 2. The proposed use meets the specific community-based theater criteria under SMC 14.207.135.8.** The facility is located within the historic District, is under 4,000 square feet, and has access to Fourth Street, a designated collector arterial, satisfying the specific requirements for community-based theaters under SMC 14.207.135.8. *Finding 8.*

### **DECISION**

Based on the preceding findings and conclusions, the request for a conditional use permit to continue operating a community-based theater within an existing non-residential structure at 331 Avenue D is **APPROVED**, with the following conditions:

1. The operator of the community-based theater shall maintain a City business license, with documentation of the 501(c)3 status provided with annual renewals.
2. A shared parking agreement shall be arranged for events, for a minimum of twenty parking spaces. This agreement shall be in writing, and submitted to the City within 90 days of the Notice of Decision.
3. A UL-listed, monitored fire alarm system shall be installed in accordance with Ch. 19.04 SMC. The Applicant shall apply for the Fire Alarm Permit within 30 days of the Notice of Decision.
4. Occupant loads and use classifications shall be in accordance with the 2015 International Building and Fire Codes adopted under Ch. 19.04 SMC. The Maximum Occupancy for the facility shall be determined by the Building/Fire Official and posted at the site. The current Maximum Occupancy for adults is 85. The Applicant (or successor) shall contact the Building/Fire Official prior to increasing seating capacity to determine whether a change in Maximum Occupancy is necessary.
5. The facility shall publicize alternate off-street parking areas to all patrons via advertising materials such as its website, flyers, and brochures.
6. A sign permit, reviewed by the Design Review Board, shall be required for any proposed signage.
7. The CUP approval is limited to community-based theaters, as defined by SMC 14.100.020.

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8. The facility shall comply with all applicable local, state, and federal laws.
9. Vehicles shall not be parked in a way that blocks or inhibits access to alleys or driveways. The Applicant or successor shall ensure that a staff member or volunteer is readily available to address parking concerns during all theater events.
10. The Applicant shall not rent the facility for private events that do not relate to or further the intended mission of a community-based theater.
11. The Applicant shall ensure that events at the facility end by 11:00 PM.

Decided this 27<sup>th</sup> day of June 2017.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center