

**CITY OF BLAINE
HEARING EXAMINER**

re: The application of **Blaine Food Bank** for a conditional use permit and site plan at 500 C Street for a new building and parking arrangement.

CUP #2022-023, SP #2022-024

CORRECTED
FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant requests approval for a Conditional Use Permit and Site Plan for an addition of a new building at the existing Blaine Food Bank site located at 500 C Street. The new building is planned for storage and food distribution. This would include a joint parking and open space agreement with Northwood Chapel on property to the east (parking) and north (open space) of the food bank site.

Decision: The requested Conditional Use Permit (CUP) and Site Plan (SP), are each granted, subject to conditions.

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing, in which opportunity was afforded to interested parties to object, comment, or bring information forward.

FINDINGS OF FACT

I. PRELIMINARY INFORMATION

Applicant: Blaine Food Bank

Property Owners: All within City of Blaine:

1. Blaine Food Bank: Parcel Numbers 4101310802010000

and 4101310812010000; and

2. Northwood Chapel of the Christian & Missionary Office:
Parcels 4101310782150000 (open space) and
4101311032100000 (parking)

Property Location: The project is located in Blaine, WA at 500 C Street.

Assessor's Parcel Number(s):
1. 4101310802010000;
2. 4101310812010000;
3. 4101310782150000; and
4. 4101311032100000

Adjacent Water Body: N/A

Shoreline Designation: N/A

Statewide Significance: N/A

Notice Information:
Application Submitted: 5/06/2022
Notice of SEPA determination: N/A
Notice of Hearing:
~Publication: 5/18/2022
~Mailing: 5/16/2022
~Posting: 5/23/2022
Comment Period Ending: 6/01/2022

SEPA Review: Determined categorically exempt, May 18, 2022

Zoning: Residential Medium-Density

Geographic Subarea: Central Blaine

Total Acreage: 0.20 acres (Approximately 8,472 feet)

Roads: C Street

Sewage Disposal: Public Sewer System

Fire Protection: North Whatcom Fire and Rescue

Law Enforcement: Blaine Police Department

Public Schools: Blaine School District 503

Topography: unreported/no finding

Vegetation: Almost fully paved or developed, some lawn of approximately 2,372 sq. ft.

Adjacent Land Uses:

North:	Residential Medium-Density
East:	Residential Low-Density
South:	Single-Family
West:	Residential High-Density and Manufacturing

Easements: Associated access and utility easements

Authorizing Codes, Policies, Plans, and Programs:

- RCW 36.70B Local Project Review
- RCW 43.21C State Environmental Policy Act (SEPA), *determined not applicable*
- RCW 90.58 Shoreline Management Act (SMA), *determined not applicable*
- WAC 173-27 Shoreline Management Permit and Enforcement Procedures), *determined not applicable*
- WAC 197-11 State Environmental Policy Act Rules
- BMC 2.54 Unified Code Enforcement
- BMC 2.58 Hearing Examiner
- BMC 17 – Land use & Development, *including but not limited to:*
 - BMC 17.05 Transportation
 - BMC 17.06 Project Review and Approval Procedures
 - BMC 17.07 Site Plan Review
 - BMC 17.64 Binding Site Plans
 - BMC 17.80 SEPA Guidelines
 - BMC 17.82 Critical Areas Management
 - BMC 17.92 Conditional Use Permits
 - BMC 17.94 Non-conforming Uses
 - BMC 17.140 Outdoor Parking and Storage
- City of Blaine Comprehensive Plan (“Comprehensive Plan”), adopted by City Council pursuant to BMC 16.02 on June 27, 2016.
- Rules of Procedure for Proceedings Before The Hearing Examiner of The City of Blaine (RPPBHE), adopted by City Council pursuant to BMC 2.58.080, on January 10, 2022.

Parties of Record

Stacy Clauson, Project Planner
City of Blaine - Community Development Services Department
435 Martin St.
Blaine, WA 98230

Allison Tompkins, Community Planner
City of Blaine - Community Development Services Department
435 Martin St.
Blaine, WA 98230

Sally Church
9147 Stadsvold Road
Blaine WA 98230

Cliff Freeman
5934 Birch Point Road
Blaine, WA 98230

Admitted Exhibits:

1. Staff Report and Recommendation to Hearing Examiner, *dated* June 27, 2022
2. Vicinity Map, *dated* June 27, 2022
3. Application Materials
 - a. Conditional Use Permit application, signed by representatives from both the Blaine Food Bank and Northwood Chapel, *received* May 6, 2022;
 - b. Project Summary, *received* April 15, 2022;
 - c. Site Plan Drawing, *received* April 15, 2022;
 - d. Building Floor Plan and Elevation Drawings, *received* March 3, 2022;
 - e. Conditional Use Permit Exhibit A - Narrative Statement of Consistency, *received* April 15, 2022;
 - f. Site Plan Review application, signed by representatives from both the Blaine Food Bank and Northwood Chapel, *received* May 6, 2022;
 - g. Survey, *received* March 3, 2022;
 - h. Subdivision Guarantee, *received* March 3, 2022; and
 - i. Parking Agreement with Northwood Chapel, *received* April 15, 2022.
4. 1994 Prior Permit Approvals, *compiled* June 27, 2022
5. 2017 Conditional Use Permit Decision, *issued* November 29, 2017
6. 2017 Parking Agreement, *received* May 6, 2022
7. Notice of Complete Application, *issued* May 9, 2022
8. Notice of Application and Public Hearing, *issued* May 18, 2022
9. Notice Verification, *compiled* June 27, 2022
 - a. Affidavit of Publication, *dated* May 18, 2022
 - b. Certified Mailing Receipts, *received* May 19, 2022
 - c. Notice Sign, photo *dated* May 23, 2022

10. Map of Surrounding Uses, *dated* June 27, 2022
11. Summary of Key Development Standards in RM Zone, *dated* June 27, 2022
12. North Whatcom Fire and Rescue comments, *received* June 8, 2022
13. Public Works Department comments, *dated* June 24, 2022

II.

The applicant is proposing the addition of a new building at the existing Blaine Food Bank site located at 500 C Street. The new building is planned for storage and food distribution. This would include a joint parking and open space agreement with Northwood Chapel on property to the east (parking) and north (open space) of the food bank site. The proposal would add a new building for storage and food distribution. This building would replace the canopy that was authorized to be temporarily located at the site, resulting in a permanent building that would better blend in with the existing buildings on-site and with the character of the area. The usage of the space and area in terms of traffic patterns, noise, odor, or of utilities would not significantly change. The proposed development would not result in destruction, loss or damage to any features of major importance.

III.

The Blaine Food Bank is a not for profit corporation that was established in 1971 and has just passed 50 years of continual service to the community. The Blaine Food Bank provides essential services to the public at either low or no cost. This includes many senior citizens on a limited income and restricted in mobility. The facility is well situated to serve this population, conveniently located in relation to traffic routes.

The Blaine Food Bank currently serves approximately 600 families a week, which is a large increase over the course of the last two and a half years and the Covid-19 pandemic. The pandemic required the organization to move most of its services outdoors and transitory structures with open sides where their operations are subject to environmental fluctuations, including the cold, the rain, and the heat.

Increased usage has resulted in a need for increased storage capacity to meet increased demand.

IV.

RPPBHE §26(B) allows the Hearing Examiner to issue subpoenas and compel

attendance of witnesses— but in this case no party requested the Hearing Examiner to compel a witness or any public comment provider to appear in person and be cross examined by the parties. There was no public comment at the Hearing except by the applicant’s agents. Written public comments were not received by the Hearing Examiner.

V.

Hearing Examiner Rules §32 grants parties the right to object to evidence and for the Hearing Examiner to rule on such objections. In the case at hand, with full knowledge of the evidence being admitted by the Hearing Examiner, no objection was made by any party to any of the exhibits that were admitted into the record.

Admitted Exhibit 1-13 are deemed to be relevant regarding the facts represented therein.

VI.

The City of Blaine’s Community Development Services Department (“CDSD”) made a written specific recommendation to approve the SP and CUP permits in Exhibit 1 and did also review and reference the applicable facts and laws with proposed necessary conditions, in a report entitled “Staff Report and Recommendation to Hearing Examiner,” *dated* June 27, 2022 (herein “Staff Report”).

The Applicant has indicated that the Staff Report is factually correct and agreed with all the recommended conditions put forward by the CDSD.

The findings of fact as set forth in the Staff Report are supported by the record as a whole. Any factual findings set forth in the Staff Report, a copy of which is attached hereto, that are not contradicted by specific findings made in this decision are hereby adopted as findings of fact by the Hearing Examiner and incorporated herein by this reference.

VII.

Any Conclusion of Law made below which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

The proposed application for the Site Plan should be considered concurrently with

the Conditional Use Permit pursuant to BMC 17.07.020(A), and as a consequence the matter should be decided by the Hearing Examiner rather than the Director who normatively has the power pursuant to BMC 17.02.050 and BMC 17.07.040 (G).

The proposed Application for a SP and CUP permit is necessary for the development as proposed by the applicant, and should be approved by the Hearing Examiner if it is consistent with the SP and CUP criteria.

II.

The proposed Application for the Conditional Use Permit can be approved if consistent with the standards and criteria for granting conditional use permits of BMC 17.92.050 (A through H):

- A. Will be harmonious and in accordance with the general and specific objectives of the city of Blaine comprehensive plan and zoning regulations.
- B. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area.
- C. Will not be hazardous or disturbing to existing or future neighboring uses.
- D. Will be serviced adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
- E. Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.
- F. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors.
- G. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.
- H. Will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance.

Subject to the Conditions of Approval attached hereto, the proposed use complies with the CUP criteria, and a CUP should be granted by the Hearing Examiner with those conditions.

III.

The proposed application for the Site Plan can be approved if consistent with the standards and criteria for granting conditional use permits of BMC 17.07.040(G), which are that it is determined that the plan is consistent with the Blaine Comprehensive Plan, zoning, and development regulations.

Subject to the Conditions of Approval attached hereto, the proposed use complies with the criteria under BMC 17.07.040(G), and the Site Plan should be approved by the Hearing Examiner with those conditions.

IV.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

A Site Plan and Conditional Use Permit are all hereby granted to the Blaine Food Bank to, as described in their application: for an addition of a new building and expanded parking usage at the existing Blaine Food Bank site located at 500 C Street in Blaine, WA on Assessor's Parcel Nos. 4101310802010000; 4101310812010000; 4101310782150000; and 4101311032100000 as applicable. The permits are granted subject to the following conditions:

CONDITIONS ASSOCIATED WITH PERMIT

General Conditions

- 1) This application is subject to the applicable requirements contained in the Blaine Municipal Code, Public Works Design and Engineering Standards and Building and Fire Codes. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these standards and codes. Attachments 11 and 12 which are incorporated into this recommendation as conditions of approval, are provided in this report to familiarize the applicant with some of the additional development regulations.

- 2) The applicant shall be responsible for complying with any other state or local statutes, ordinance, or regulations applicable to this project.
- 3) After approval of the final site plan, all work must fall under the scope of the approved site plan. Any work outside of what has been approved shall be submitted to the department for review and approval prior to the work taking place.
- 4) Prior to construction, the applicant shall obtain a commercial building permit for the proposed construction.
- 5) The following Inadvertent Discovery Plan (IDP) shall be on-site and followed should archaeological resources or human remains be encountered.
 - a) Inadvertent Discovery of Archaeological Resources: Should archaeological resources (e.g. shell midden, animal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Stephanie Jolivette, Local Government Archaeologist 360-628-2755) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-961-7752; Tamela Smart, Deputy THPO 360-927-2944) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
 - b) Inadvertent Discovery of Human Skeletal Remains on Non-Federal and Non-Tribal Land in the State of Washington (RCWs 68.50.645, 27.44.055, and 68.60.055): If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

Specific Conditions

- 6) Prior to building permit issuance, the following is required:
 - a) The applicant shall submit a revised site plan to include a marked sidewalk connecting the parking on-site to the building.
 - b) The applicant is responsible for payment of applicable fees, including traffic impact and fire mitigation fees established under BMC 3.80.
- 7) Prior to final inspection or Certificate of Occupancy, whichever comes first, the following shall be submitted or completed:
 - a) A legal instrument conveying a parking easement or covenant which shall be recorded with the county auditor at the applicant's expense.
 - b) A legal instrument conveying an open space easement or covenant which shall be recorded with the county auditor at the applicant's expense.
 - c) The storage container shall be removed from the property and right-of-way, unless otherwise authorized under the provisions of BMC 17.140.090.
 - d) The temporary tent authorized by the Department shall be removed from the property.
 - e) The required marked sidewalk connecting the parking on-site to the building shall be installed.
- 8) Any change or modification in this conditional use project in design or scope shall be immediately routed to City of Blaine Planning and Community Development staff for review. Any change in this project will require another hearing and approval by the Hearing Examiner pursuant to BMC 17.92.080, unless falling into one of the exceptions listed therein.

NOTICE OF POTENTIAL REVOCATION AND PENALTIES

This Approval is subject to all the above-stated conditions. Failure to comply with them may be cause for its revocation pursuant to BMC 17.92.060 and enforcement of code violations under BMC 2.54.

Complaints regarding a violation of the conditions of this permit should be filed with City of Blaine Planning and Community Development staff. The Hearing Examiner may

not take any action to revoke this approval without further public hearing

NOTICE OF EXPIRATION

Pursuant to BMC 17.92.070 this permit shall expire within one year of the date of its approval unless construction or the establishment of the use has commenced. The director may extend the expiration date by six months upon written request and evidence that the applicant intends to activate the permit within that time limit.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE BLAINE HEARING EXAMINER

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to Whatcom Superior Court within 21 days as authorized by RCW 36.70C, BMC 2.58.160, and BMC 17.06.190; or for shoreline permit applications and revisions which are subject to appeal to the State Shoreline Hearings Board within 21 days pursuant to BMC 17.18.080, RCW 90.58.180, and WAC 461-08.

Dated this 20th day of July 2022



Rajeev Majumdar, Hearing Examiner