



# CITY OF EDMONDS

121 5TH AVENUE NORTH • Edmonds, WA 98020 • (425) 771-0220 • FAX (425) 771-0221  
HEARING EXAMINER

GARY HAAKENSON  
MAYOR

|                                     |   |                        |
|-------------------------------------|---|------------------------|
| In the Matter of the Application of | ) | NO. CU-2010-25         |
|                                     | ) |                        |
| <b>Olympic View Montessori</b>      | ) |                        |
|                                     | ) | FINDINGS, CONCLUSIONS, |
|                                     | ) | AND DECISION           |
| For a Conditional Use Permit        | ) |                        |
| _____                               | ) |                        |

### SUMMARY OF DECISION

The request for a conditional use permit (CUP) to operate a day care center and preschool for up to 40 children in a portion of a converted commercial building at 18530 - 76th Avenue West in Edmonds is **GRANTED**, subject to conditions.

### SUMMARY OF RECORD

Request:

Kathleen Graham, owner of Olympic View Montessori (Applicant), requested a CUP to operate a day care center and preschool for up to 40 children in a portion of a converted commercial building at 18530 - 76th Avenue West in Edmonds.

Hearing Date:

The City of Edmonds Hearing Examiner conducted an open record hearing on the request on June 3, 2010.

Testimony:

At the open record hearing, the following individuals presented testimony under oath:

1. Jen Machuga, Planner, City of Edmonds
2. Kathleen Graham, Applicant
3. Alvin Rutledge

Exhibits:

At the open record hearing the following exhibits were admitted into the record:

Exhibit 1 City of Edmonds Planning Division Staff Report, dated May 25, 2010, with the following attachments:

1. Land Use Application
2. Zoning and Vicinity Map
3. Applicant's Criteria Statement

*Findings, Conclusions, and Decision*  
City of Edmonds Hearing Examiner  
Olympic View Montessori CUP, No. CU-2010-25

4. Site Plan – Received 4/16/10
5. Photographs Submitted by Applicant
6. Enrollment Contract
7. Traffic Impact Analysis
8. Updated Site Plan and Building Plan – Received 5/14/10
9. Letter of Completeness and Requesting Additional Information
10. Applicant’s Response to Request for Additional Information
11. Notice of Application and Public Hearing
12. Affidavits of Posting, Mailing, and Publication for Notice of Application and Hearing
13. Adjacent Property Owners List
14. U.S. Postal Service Certificates of Mailing
15. Parks and Recreation Department Comments
16. Public Works Department Comments
17. Fire Department Comments
18. Building Division Comments
19. Engineering Division Comments and Memo

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following findings and conclusions:

### FINDINGS

1. The Applicant requested a CUP to operate a day care center and preschool for up to 40 children in a portion of a converted commercial building at 18530 - 76th Avenue West in Edmonds.<sup>1</sup> If approved for CUP use, a portion of the existing commercial building would be converted to satisfy City and State standards for child care facilities, while a portion would be retained in its present use as a janitorial supply storage facility. *Exhibit 1, page 2; Exhibit 1, Attachment 3.*
2. Olympic View Montessori has been a Montessori preschool and kindergarten serving the Perrinville neighborhood for five and half years. Across the street in unincorporated Snohomish County, the existing facility provides daycare and/or early childhood education for 13 or more children from local families, caring for children ages 2.5 to 12 years. The Applicant wishes to relocate to the existing building across the street in Edmonds because it affords the opportunity for an indoor play area and additional classroom space. *Exhibit 1, Attachment 3; Graham Testimony.*
3. The CUP application was submitted on April 16, 2010 and deemed complete on May 14, 2010. Additional information subsequently requested by the City of Edmonds Development Services Department Planning Staff (Staff) was timely submitted by the Applicant. *Exhibit 1, page 2; Exhibit 1, Attachments 8 through 10.*

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<sup>1</sup> The subject property is known as Tax Parcel Number 00434600010704. *Exhibit 1, page 2.*

4. The site is located near the intersection of 76th Avenue West and Olympic View Drive. It has a Neighborhood Business zoning designation. Surrounding parcels are zoned Single-Family Residential (RS-8 and RS-12), Multiple Family Residential (RM-3), Neighborhood Business (BN), and Community Business (BC); they are developed with residential and commercial uses. *Exhibit 1, pages 3-4; Exhibit 1, Attachment A3; Site Visit.*
5. In 1994, a critical areas checklist was submitted during review of the proposal for the existing on-site structure and it was determined that the site contains or is adjacent to a steep slope. The City's critical areas ordinance (CAO) was amended in 2005 and the site was required to be reevaluated in association with the instant application. The recent study confirmed that the western portion of the site contains and/or is adjacent to a steep slope that satisfies the City's current definition of a landslide hazard area. Any outdoor changes to the site would require review for compliance with CAO requirements. The eastern portion of the site is relatively flat. The southern and eastern portions of the site contain trees, shrubs, and groundcover. *Exhibit 1, page 3.*
6. As of the public hearing, the school had 22 students enrolled for the 2010/2011 school year and intended to enroll eight more, for a total of 30 students. Proposed hours of operation for the 2010/2011 school year are Monday through Thursday, 8:45 am through 3:30 pm. The business would not be open on Fridays. Families have the option of half day (morning or afternoon) or full day, three or four days per week. The plan for this school year would be to have no more than 20 children on-site at a time. Morning drop offs would occur from 8:45 to 9:00 am. Mid-day drop offs and pickups would occur from 11:45 am to noon. Afternoon pickups would typically run from 3:15 to 3:30 pm. The two employees working during this school year would typically arrive and leave within half an hour of drop off and pickup times. The school is usually locked for the night by 4:00 pm. *Exhibit 1, Attachments 3, 6, and 7; Graham Testimony.*
7. Starting in 2011/2012, the Applicant intends to add a second classroom and a third staff member. The maximum number of children on-site at a time would be 30, with a total enrollment of 40 kids. *Graham Testimony.*
8. Planned site improvements include: conversion of the existing structure to meet the requirements for child care facilities; reconfigured on-site parking; additional landscaping; and installation of both indoor and outdoor play equipment. *Exhibit 1, page 5; Exhibit 1, Attachment 8; Graham Testimony.* All physical changes made to the site, including modifications to the structure, parking, and landscaping, would be reviewed during the building permit and design review processes. The instant matter is limited in scope to the question of conditional use permission. *Exhibit 1, page 1; Machuga Testimony.*
9. Daycare centers are required to provide parking at a rate of one space per 300 square feet, or one space per employee plus one space per five children, whichever is greater. With 30

children on-site at a time and three staff members, the daycare center would need nine parking spaces.<sup>2</sup> *Exhibit 1, pages 5-6; ECDC 17.50.020.C.8.*

10. The Applicant's business would share parking with the janitorial supply storage facility also housed on-site. According to information submitted by the Applicant, the janitorial business has two employees and 1,344 square feet of space. Based on these numbers, it requires two parking spaces. The business is an evening janitorial service and its employees park on-site during the evening. *Exhibit 1, page 6; ECDC 17.50.020.B.18.*
11. The Applicant's May 14, 2010 site plan (Attachment 8) shows a total of nine parking spaces. Because of their respective parking requirements and hours of operation, the daycare center and janitorial service appear to be able to operate under a joint use parking agreement pursuant to the provisions of ECDC 20.30.030.C. The Applicant would be required to file a covenant with the City for joint-use of parking during review of the building permit application. *Exhibit 1, page 6; Machuga Testimony.*
12. The City's Technical Committee, comprised of the Engineering Division, the Building Division, and the Fire, Parks and Recreation, and Public Works Departments, reviewed the proposal. Parks and Recreation and City Public Works indicated that the proposal would not affect their departments. *Exhibit 1, page 3; Exhibit 1, Attachments 15 and 16.* The Fire Marshall submitted comments indicating that he is in ongoing dialogue with the Applicant about prescriptive formats and would remain involved during building permit review. *Exhibit 1, Attachment 17.* The Building Official also acknowledged future review for compliance with buildings codes, during building permit review. *Exhibit 1, Attachment 18.* The Engineering Division will review the traffic impact analysis concurrently with the building permit review process. *Exhibit 1, Attachment 19.*
13. The site takes access from 76th Avenue West, which is a main arterial. The daycare center is not expected to change traffic volumes on smaller local access streets, because trips will enter the site from 76th Avenue. In addition, a significant percentage of the anticipated site traffic is already coming to the vicinity to reach the existing daycare center across the street. *Exhibit 1, page 5; Machuga Testimony.*
14. Planning Division Staff submitted that the proposal would provide a local neighborhood service that would act as a harmonious transition between the adjacent residential and commercial uses. *Exhibit 1, page 5; Machuga Testimony.* Staff recommended approval, subject to conditions. The Applicant concurred with the City's analysis and agreed to the recommended conditions of approval. *Exhibit 1, page 8; Machuga Testimony; Graham Testimony.*
15. The Applicant requested that the CUP, if approved, be personal rather than be allowed to run with the land. *Exhibit 1, Attachment 10.*

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<sup>2</sup> Site plans show a total area of 2,237 square feet, which would require seven parking spaces based on area. *Exhibit 1, page 6; Exhibit 1, Attachment 8.*

16. The Comprehensive Plan designation for the subject site is “Neighborhood Commercial.” The 2009 City of Edmonds Comprehensive Plan's vision for commercial development includes the following goals and policies:

D. Goals for Neighborhood Commercial Areas. Neighborhood commercial areas are intended to provide a mix of services, shopping, gathering places, office space, and housing for local neighborhoods. The scale of development and intensity of uses should provide a middle ground between the more intense commercial uses of the Highway 99 Corridor/ Medical area and the Downtown Activity Area.

Historically, many of the neighborhood commercial areas in Edmonds have developed as classically auto-oriented commercial “strip malls” with one- and two-story developments primarily including retail and service uses. Throughout the region, neighborhood commercial areas are departing from this historical model by being redeveloped as appealing mixed-use clusters, providing attractive new pedestrian-oriented development that expands the uses and services available to local residents.

The neighborhood commercial areas share several [pertinent] common goals:

- D.1. Neighborhood commercial development should be located at major arterial intersections and should be designed to minimize interference with through traffic.
- D.2. Permit uses in neighborhood commercial areas that are intended to serve the local neighborhood. Mixed use development should be encouraged within neighborhood commercial areas.

No goals or policies are provided within the Comprehensive Plan specific to the Perrinville neighborhood. *2009 Comprehensive Plan, pages 72-73.*

17. Notice of Application and Public Hearing was mailed to neighboring property owners within 300 feet by the Applicant on May 19, 2010. Notice was posted and published in The Herald on May 20, 2010, consistent with the notice provisions of ECDC 20.91. *Exhibit 1, page 2; Exhibit 1, Attachments 11, 12, 13, and 14; Machuga Testimony.*
18. At hearing, public comment was offered encouraging the Applicant to follow the crime watch reports for the area, for the safety of the proposed operation. *Rutledge Testimony.*

## CONCLUSIONS

### Jurisdiction:

The Hearing Examiner has jurisdiction to hear and decide CUP requests pursuant to ECDC 20.100.010.A.3 and 20.05.010.

### Criteria for Review:

Pursuant to ECDC 20.05.010, the Hearing Examiner may not approve a CUP unless the following findings can be made:

- A. That the proposed use is consistent with the comprehensive plan;

- B. Zoning Ordinance. That the proposed use, and its location, is consistent with the purposes of the zoning ordinance and the purposes of the zoning district in which the use is to be located, and that the proposed use will meet all applicable requirements of the zoning ordinance;
- C. Not Detrimental. That the use, as approved or conditionally approved, will not be significantly detrimental to the public health, safety and welfare, and to nearby private property or improvements unless the use is a public necessity; and
- D. Transferability. The hearing examiner shall determine whether the conditional use permit shall run with the land or shall be personal.

Conclusions Based on Findings:

1. The proposed daycare center would function as a transition between the less intensive residential land uses to the west and the more intensive commercial uses across 76th Avenue to the east. The use would provide a necessary service to residents and people who work in the local area. There would not be significant impacts to neighborhood streets, because the use is accessed from the arterial. As conditioned, the use would be consistent with applicable City of Edmonds Comprehensive Plan goals and policies. *Findings 4, 14, and 16.*
2. The purposes of the BN zone are to reserve areas for those retail stores, offices, retail service establishments which offer goods and services needed on an everyday basis by residents of a neighborhood area; and to ensure compact, convenient development patterns by allowing uses that are operated chiefly within buildings. *Edmonds Community Development Code (ECDC) 16.45.000.* Daycare centers are permitted in the BN zone upon conditional use permit approval. *ECDC 16.53.010.C.7.* Compliance bulk/dimensional zoning requirements would be assured through building permit and design review. As conditioned, the use would be consistent with the requirements of the BN zone. *Findings 12 and 14.*
3. With conditions, the proposal would not be detrimental to the public health, safety, or welfare, and would not have adverse impacts on surrounding uses. Any increase in traffic to the site would be reviewed and mitigated by the payment of traffic impact fees, if any, at time of building permit review. The use would not increase congestion on local residential streets. Existing and proposed landscaping, reviewed for code compliance at time of building permit, would buffer adjacent uses from the minimal impacts of a daycare center open four days a week during business hours. Conditions of approval would ensure that the proposed facility operates in compliance with City and State regulations for the safety of the families it serves. Compliance with parking and landscaping requirements, and building and fire codes, would be assured during building permit review. *Findings 2, 6, 7, 8, 9, 10, 11, 12, 13, and 14.*
4. On the Applicant's request, the CUP would not be transferable to future owners of the subject property. *Finding 15.*

### DECISION

Based on the preceding findings and conclusions, the request for CUP to operate a day care center and preschool for up to 30 children in a portion of a converted commercial building at 18530 - 76th Avenue West in Edmonds is **GRANTED**, subject to the following conditions:

1. The permit shall be personal to Olympic View Montessori and shall not be transferable to future operators.
2. The Applicant shall obtain all necessary building permit approvals and inspections prior to commencement of operations.
3. The Applicant is responsible for obtaining all local, state, and/or federal permits or approvals applicable to the proposal.
4. This application is subject to the applicable requirements contained in the Edmonds Community Development Code (ECDC) and it is the responsibility of the Applicant to ensure compliance with the various provisions contained in these ordinances.

**DECIDED** this 17th day of June 2010.

Toweill Rice Taylor LLC  
City of Edmonds Hearing Examiners  
By:



Sharon A. Rice



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## RECONSIDERATION AND APPEAL

The following is a summary of the deadlines and procedures for filing requests for reconsideration and appeals. Any person wishing to file or respond to a request for reconsideration or an appeal should consult the relevant ordinances and/or contact the Planning Division of the Development Services Department for further procedural information.

## REQUEST FOR RECONSIDERATION

ECDC 20.06.010 contains the procedures for requesting reconsideration of a Hearing Examiner decision. Requests for reconsideration must be filed with the City Planning Director within 10 calendar days of the Hearing Examiner's decision no later than 4:30 p.m. on the last business day of the reconsideration period. Only parties of record (i.e., the applicant, any person who testified at the open record hearing on the application, any person who individually submitted written comments on the application, or the City of Edmonds) may file a request for reconsideration. The grounds for reconsideration are limited to errors of procedure, errors of law or fact, errors of judgment, or the discovery of new evidence that was not known and could not in the exercise of reasonable diligence have been discovered. Reconsideration requests must contain the information specified in ECDC 20.06.010(D) and be accompanied by the required filing fee.

## APPEALS

Pursuant to ECDC 17.50.090(A)(3) and ECDC 20.19.050, appeals may be taken from the hearing examiner's decision to the city council under the provisions of Chapter 20.07 ECDC. An appeal must be filed within 14 days after the issuance of the hearing body's written decision. The city council's decision on appeal shall be final. A request for reconsideration is not a condition precedent to an appeal. Judicial appeals must be filed within 21 days from the date of the city's final decision in a given matter pursuant to the procedures established in the Land Use Petition Act.

## EFFECT OF REQUEST FOR RECONSIDERATION ON APPEAL DEADLINE

The timely filing of a request for reconsideration stays the Hearing Examiner's decision until such time that the Hearing Examiner issues a decision on reconsideration, and the appeal period commences on the date of issuance of the decision on reconsideration.

## LAPSE OF APPROVAL

ECDC 20.05.020(C) states: "Time Limit. Unless the owner obtains a building permit, or if no building permit is required, substantially commences the use allowed within one year from the date of approval, the conditional use permit shall expire and be null and void, unless the owner files an application for an extension of the time before the expiration date."

## NOTICE TO COUNTY ASSESSOR

The property owner may, as a result of the decision rendered by the Hearing Examiner, request a change in the valuation of the property by the Snohomish County Assessor's Office.



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HEARING EXAMINER

GARY HAAKENSON  
MAYOR

## OFFICE OF THE HEARING EXAMINER CITY OF EDMONDS, WASHINGTON

|                                      |   |                               |
|--------------------------------------|---|-------------------------------|
| Applicant                            | ) |                               |
|                                      | ) |                               |
| <b>Kathleen Graham, on behalf of</b> | ) | Case No. CU-2010-25           |
| <b>Olympic View Montessori</b>       | ) |                               |
|                                      | ) |                               |
| For a Conditional Use Permit         | ) | <b>DECLARATION OF SERVICE</b> |

I, Sharon A. Rice, the undersigned, do hereby declare:

- That I am a partner in the firm of Toweill Rice Taylor LLC, which maintains a professional services agreement with the City of Edmonds, Washington for the provision of Hearing Examiner services, and make this declaration in that capacity; and that I am now and at all times herein mentioned have been a citizen of the United States, a resident of the State of Washington, over the age of eighteen (18), and competent to be a witness and make service herein; and that on June 16, 2010 I served a copy of the decision in case CU-2010-25 upon the following individuals at the addresses below by first class US Mail:

Kathleen Graham  
18220 - 8th Place West  
Lynnwood, WA 98037

City of Edmonds Planning Division  
121 Fifth Avenue North, First Floor  
Edmonds, WA 98020

Clerk of the Edmonds City Council  
121 Fifth Avenue North, First Floor  
Edmonds, WA 98020

Myrth LLC  
PO Box 1534  
Lynnwood, WA98046

Alvin Rutledge  
7101 Lake Ballinger Way  
Edmonds, WA 98026

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, this 16th day of June 2010 at Edmonds, Washington.

Sharon A. Rice, Toweill Rice Taylor LLC