



DEPARTMENT OF COMMUNITY DEVELOPMENT

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NOTIFICATION OF HEARING EXAMINER'S DECISION

May 24, 2017

On May 22, 2017, the City of Yakima Hearing Examiner rendered his decision on CL2#020-16, ADJ#020-16, SEPA#027-16, and REF#001-17. The application submitted by Yakima Neighborhood Health Services is a proposal to convert the existing commercial building at 201 S. 6th St. into a multi-family residential development with five dwelling units (no more than 40 residents), café/deli, and laundromat and an Administrative Adjustment of the parking standard from 36 parking stalls to 15. The application was reviewed at an open record public hearing held on May 1, 2017. The record was kept open until May 8, 2017 to allow additional written comment from parties of record in attendance at the open record public hearing.

Enclosed is a copy of the Hearing Examiner's Findings and Decision. Any part of the Hearing Examiner's decision may be appealed to the Yakima City Council. Appeals shall be filed within fourteen (14) days following the date of mailing of this notice and shall be in writing on forms provided by the Planning Division. The appeal fee of \$340 must accompany the appeal application.

For further information or assistance you may contact Joseph Calhoun, Planning Manager, at (509) 575-6042, or email joseph.calhoun@yakimawa.gov

A handwritten signature in black ink, appearing to be "JC", written over a horizontal line.

Joseph Calhoun
Planning Manager

Date of Mailing: May 24, 2017

Appeal period ends: June 7, 2017 at 5:00 pm.

Enclosures: Hearing Examiner's Decision

**City of Yakima, Washington
Office of the Hearing Examiner**

Type (3) Review of Combined Applications)	File Nos.: CL2#020-16, ADJ#020-16
By Yakima Neighborhood Health Services)	
For a Class (2) Multi-family Residential Use, Accessory Class (1) Café/Deli and Laundromat Uses and Administrative Adjustment in the Small Commercial Center Zoning District at 201 S. 6th Street.)	Hearing Examiner Decision

I. INTRODUCTION.

A. APPLICATION BACKGROUND.

Yakima Neighborhood Health Services (YNHS) has submitted an application for Type 2 Review for the conversion of an existing commercial building into a multi-family residential development with five dwelling units (housing no more than 40 residents), cafe/deli, and laundromat, along with an Administrative Adjustment of the parking standard from 36 parking stalls to 15 stalls.

The property is the former home of Roy’s Market, a neighborhood grocery store no longer in business. The adjoining properties are residential in nature and regularly have homeless spending the night on porches or yards in the vicinity according to YNHS and others. The proposed use is intended to give a safe, comfortable place for homeless to live where they are not creating a burden on neighborhood residents. YNHS believes that the homeless will benefit directly through a facility that will keep them from freezing in the winter and from having to sleep or live in dangerous situations in the community. Residents of the proposed development would have the benefit of a consistent place to reside and indoor and outdoor amenity space in which to live during the day, away from business, and neighboring homes.

The property has been the subject of earlier land use applications submitted by YNHS that have entailed substantial administrative processes and litigation. The current application represents a new set of proposed uses—uses different from those uses addressed in earlier applications. The current project plans for residential occupancy and accessory uses rather than temporary shelter and clinical services. The proposed uses continue to be based on YNHS’s “Continuum of Care” approach to address problems associated with homelessness that was the impetus for the earlier applications. The Continuum of Care approach to homelessness offers multiple ports of entry to stable housing and a full spectrum of services to address an individual’s needs according to

YNHS. The approach focuses on first finding stable housing for residents so that it can then help improve their health, increase their income and employment capacity, build their community connections, and ultimately improve their overall satisfaction. The housing first model of service for homeless populations is purported to save taxpayer money and mitigate many of the dangers homeless individuals face by living on the streets.

B. HEARING PROCEEDING.

Consistent with both a September 21, 2016 settlement agreement between the City of Yakima and YNHS and the provisions of YMC 15.14.020.A, the City determined that the current project would be reviewed under Type (3) review procedures. The Hearing Examiner visited the property prior to the hearing. The Hearing Examiner also conducted a pre-hearing conference with counsel for the City of Yakima and YNHS at the request of Kenneth Harper of Menke Jackson Beyer LLP, who represents the City. The purpose of the conference was to discuss the order of proceedings during the hearing. At the hearing held on May 1, 2017, the applicants were represented by attorney H. Richard Hill of McCullough Hill Leary PS. Mr. Hill submitted a pre-hearing brief on behalf of YNHS. The City of Yakima was represented at the hearing by Mr. Harper and City Planning Manager Joseph Calhoun. Mr. Harper also submitted a pre-hearing brief for the record. No other parties were represented by counsel.

At the hearing, Mr. Calhoun presented the staff report and recommendation on the application review. Mr. Hill presented testimony on behalf of YNHS and adduced evidence concerning the nature and scope of the proposal from several witnesses by direct examination. After the YNHS testimony, numerous comments were provided members of the public in attendance. Comments addressed challenges presented by homelessness both for homeless individuals and for residents and businesses concerned about property values, neighborhood character and business operations. Commenters also described benefits from homeless programs and options for dealing with issues arising out of interactions between homeless individuals and neighborhood residents and businesses. One commenter sought the opportunity to provide additional exhibit materials, and without objection from any other parties, the record was held open until May 8, 2017 for those persons in attendance at the hearing to provide additional information.

Additional materials were submitted by Benine McDonnell, Earl Hall, and Maud Scott, all of whom attended the hearing. Mr. Hill also submitted additional information in response to the hearing examiner's request concerning YNHS policies for client contributions of income as rent for occupancy of YNHS residential facilities. The record was closed on May 8, 2017.

C. SUMMARY OF DECISION.

Yakima Neighborhood Health Service's master application for approval of a Class (2) multifamily dwelling, accessory Class (1) uses for a café/deli use and laundromat use, and an Administrative Adjustment of off-site parking standards under City of Yakima File Nos. CL2#020-16 and ADJ#020-16 is approved, subject to conditions to assure compliance with development standards, avoid adverse impacts to the neighborhood surrounding the subject

property, and preserve neighborhood character.

II. FINDINGS.

Based on the staff report and exhibits, the viewing of the site, comments received at the open record hearings and during the extension of the open record period, and after a review of the City of Yakima Urban Area Comprehensive Plan (YUACP) and Zoning Ordinance, the Hearing Examiner makes the following Findings.

A. STAFF REPORT FINDINGS.

Except as specifically noted elsewhere, the following findings from the staff report are supported by narrative in the staff report, representations by staff or witnesses at the hearing, or by the hearing exhibits, and are not disputed by any parties of record. These materials are adopted as findings by the Hearing Examiner accordingly, except as otherwise noted in this decision document.

1. APPLICANT/OWNER.

YHNS is the applicant and property owner.

2. LOCATION AND PARCEL NUMBER.

The subject property is located at 201 South 6th Street in Yakima. The Assessor's Parcel Number is 191319-13473.

3. APPLICATIONS.

YNHS has filed a master application for Type (2) review of a Class (2) multi-family dwelling use and an accessory Class (1) restaurant (café/deli) use and Class (1) laundromat use in the SCC zoning district. The YNHS master application also seeks an administrative adjustment to parking standards for the multifamily dwelling use.

4. PROJECT DESCRIPTION.

Yakima Neighborhood Health Services (YNHS) proposes to renovate the former Roy's Market grocery store building for a multifamily residential development. The property will be extensively landscaped with native vegetation and beautify what is today an unmaintained, and unused concrete lot. The proposed project will house no more than 40 residents, many of whom are homeless or are at risk of becoming homeless. The proposal is not intended to be utilized as a place of temporary sojourn, such a mission use as defined in the Yakima Municipal Code, or as a warming shelter.

The proposed Multi-Family Dwelling use includes a total of 5 housing units, three with 4 bedrooms each and 2 with 5 bedrooms each, for a total of 22 bedrooms. Each of the 5 housing units include common kitchen and bathroom facilities for use by those individuals residing in the particular housing unit. There are also common area amenities for use by all residents including storage, recreation, and laundry facilities. The 5 bathrooms and kitchenettes that are shared by the residents of the dwelling unit are accessed via key card. Common amenity spaces are shared by all residents.

The proposal includes an Operations Plan governing use of the property and resident conduct. The Operations Plan includes the following items:

- a. YNHS will execute a written lease with each resident at time of occupancy.
- b. Residents shall pay rent in kind.
- c. Occupancy will be by a month to month tenancy, not to exceed 24 months.
- d. Tenant or landlord may terminate the agreement with at least 20 days' notice.
- e. Destruction of property, unlawful activity, drugs, etc. are grounds for a three-day notice and departure from the facility. There is no option to stay and correct the problem.
- f. The facility will develop rules that tenants are obligated to follow as part of the terms and conditions of the lease.
- g. Residents can come and go as they please and may return to their unit each night, they should return by 10 PM each night.
- h. Residents will be assigned a storage unit to store belongings. Small, personal belongings may be stored in the resident's housing unit.
- i. Guests must register with the Resident Manager. The Manager has the right to turn away guest who are loud or are known to be currently drinking or drugging.
- j. Guests are allowed in the facility and in common areas if accompanied by a resident and must leave the facility by 10:00pm.
- k. Residents may decorate their unit but cannot paint or otherwise damage the walls or furniture without approval from the Resident Manager.
- l. Residents are permitted to use the telephone and receive calls from 9:00am - 10:00pm, and may also receive and pickup mail at the facility.
- m. Service animals are allowed.

The project will also contain a cafe and laundromat on the ground floor, which will be open to the public. Fifteen off-street parking spaces would be provided, subject to approval of an administrative adjustment to parking standards. The anticipated residents of the project typically live a car-free lifestyle and are expected to require the number of parking spaces contemplated by the Zoning Ordinance.

To improve the streetscape surrounding the project, improve stormwater management, and contribute to the residential character of the renovation, YNHS is also requesting that it be permitted to convert 2 on-street spaces along 6th Street and 3 on-street spaces along Walnut Street (5 total) to tree planting areas.

5. CURRENT ZONING, COMPREHENSIVE PLAN DESIGNATION AND LAND USE.

a. *Zoning of Subject Property:* The property's zoning is designated as Small Convenience Center (SCC). Per YMC 15.03.020.H, the zone is intended to:

- “1. Provide areas for commercial activities outside the downtown commercial district that meet community retail shopping and service needs; and
- 2. Accommodate small commercial centers, generally two to five acres in size, where most of the commercial uses have located in a coordinated manner around a common parking lot and one major commercial approach driveway.

Small convenience centers serve the day-to-day convenience shopping and service needs of the surrounding neighborhood and should be designed to minimize undesirable impacts of the center on the neighborhood it serves. Uses in this district should be retail or personal service establishments dealing directly with the consumer, the primary occupants usually being such uses as a supermarket, fast food restaurants and drug store.”

b. *Zoning and Uses of Surrounding Properties:* The surrounding properties have the following zoning and uses:

	Zoning	Use
North:	Two-Family Residential	Two-to-Four Unit
East:	Single-Family Residential	Single-Unit and Five-Plus Units
South:	Two-Family Residential	Two-to-Four Unit
West:	Two-Family Residential	Single-Unit and Two-to-Four Units

Within a 500-foot radius of the subject property, the following land uses are present:

Assessor's Land Use Type	Number of Parcels
11 - Single Unit	72 (59.5%)
12 - Two-to-Four Unit	28 (23.14%)
13 - Five-Plus Unit	10 (8.26%)
46 - Automobile Parking	6 (4.96%)
54 - Retail - Food	1 (0.83%)
91 - Undeveloped Land	4 (3.31%)
Total	121

c. *Yakima Urban Area Comprehensive Plan:* Under the Yakima Urban Area Comprehensive Plan 2025 Future Land Use Map 111-3, The subject property is designated as Neighborhood Commercial, which is characterized by "small scale, neighborhood convenience commercial uses and services primarily for residences of adjacent neighborhoods. These areas are typically located along a minor arterial, or at the intersection of a minor arterial and a collector arterial street."

6. PUBLIC NOTICE.

Pursuant to YMC § 16.05.010, a Notice of Application was sent to SEPA Agencies and adjoining property owners within 300-feet of the subject property on March 1, 2017. Three public comment letters were received during the 20-day comment period that ended on March 21, 2017.

7. ENVIRONMENTAL REVIEW UNDER THE STATE ENVIRONMENTAL POLICY ACT (SEPA).

This project underwent State Environmental Policy Act Review (SEPA) on March 1, 2017, and has been concluded on March 27, 2017, with the issuance of a Determination of Non-Significance (DNS), which was not appealed during the following 14-day appeal period that ended April 10, 2017.

8. TRANSPORTATION CONCURRENCY:

On March 13, 2017, the application was reviewed and approved for consistency with Ch. 12.08 YMC (Transportation Capacity Management Ordinance). The development will not exceed the PM peak hour capacity of the City Arterial street system and reserve capacity exists on all impacted streets. This review does not include any site development or safety issues, which may be discussed at the project level or SEPA review. The review does not address intersection level of service.

9. STAFF REPORT FINDINGS ON SITE DESIGN AND IMPROVEMENT STANDARDS.

a. Lot Coverage: Lot coverage in the SCC zoning district in accordance with YMC Ch. 15.05 Table 5-1 is limited to 85%. The subject site is currently built at 100% coverage and is therefore non-conforming. The applicant's site plan dated February 17, 2017, identifies that upon completion of site renovation and landscaping the subject property will have 75% lot coverage.

b. Structure Setbacks: YMC Ch. 15.05 Table 5-1 identifies that the subject building is required to be setback 30 ft. from the centerline of S. 6th St., 30 ft. from the centerline of E. Walnut St., and 20 ft. from the abutting alley and residential districts. The existing building and applicants' February 17, 2017, site plan meets or exceeds these standards with the exception of the east property line abutting the alley, which is considered legal non-conforming.

c. Maximum Building Height: Maximum building height in the SCC zoning district per YMC CH. 15.05 Table 5-1 is restricted to 35 feet in height. As indicated in the applicant's State Environmental Policy Act Checklist, the renovated building will be no greater than its current 24 ft. in height complying with this standard.

d. Access: In accordance with YMC § 15.05.020(H) all new development shall have a minimum of twenty feet of lot frontage upon a public road or be served by a twenty-foot access easement. The proposed development meets this standard with at least twenty feet of frontage both E. Walnut St. and S. 6th St, and existing access onto S. 6th St.

e. Sidewalks: In accordance with YMC § 15.05.020(J), sidewalks are required with new construction if one exists within two-hundred feet of the development on the same side of the street. As sidewalk exists along both streets, the applicant will be required to repair the existing sidewalk in accordance with YMC § 12.05.010 and the requirements of the City Engineer.

f. Minimum Lot Size: Although the subject developer is not proposing any subdivision of land, the proposed parcel meets the minimum lot size for the SCC zoning district of 10,000 sq. ft. for non-residential purposes with a lot size of 28,755 sq. ft. There is no minimum lot size for multi-family residential in the SCC zone. Rather, Table 5-2 states "Density may not exceed maximum number of dwelling units permitted per net residential acre." At 0.66 acres, the proposed land use of multi-family residential development: 0 - 7 dwelling units per net residential acre allows for 5 total units as a Class (2) use - $0.66 \times 7 = 4.62$, rounded up to 5 total units per YMC § 15.05.030.

g. Driveway Vision Clearance: All proposed driveways shown on the applicant's February 17, 2017, site plan meet the provisions of YMC § 15.05.040(B).

h. Dedication of Street right-of-way: The existing right-of-way along both public streets are adequate and no dedication of right-of-way is required.

i. Off-Street Parking and Loading:

(1) Parking Circulation Plan: The applicant's site plan dated February 17, 2017, shows sufficient detail to meet the provisions of YMC § 15.06.030 (E), and shall be considered the parking circulation plan for this application. Furthermore, the City of Yakima Traffic Engineer and City Engineer reviewed the subject site plan and did not identify any parking circulation issues during the City of Yakima's Development Service Team meeting for this application.

(2) Existing Parking: In accordance with YMC 15.06 Table 6-1 Table of Off-Street Parking Standards, the previous grocery store would have been required to have approximately 46 parking spaces based upon a floor area of 13,748 sq. ft., and a requirement to have one parking stall per 300 sq. ft. of gross floor area. The poor condition of the parking lot makes it difficult to determine if the required number of parking stalls were painted upon the lot; however, the lot seems to have sufficient area to accommodate them.

(3) Proposed Use Parking: Based upon the uses of multi-family residential development with five dwelling units (2 space per dwelling: $5 \text{ dwellings} \times 2 = 10$

spaces)), cafe/deli (1 space per 50 sq. ft. of indoor public floor area: (1,200 sq. ft./50 = 24 spaces)), and laundromat (1 space per 300 sq. ft. of gross floor area: 400 sq. ft. /300 = 1.3 = 2 space), the subject development would be required to provide 36 stalls for off-street parking.

j. Additional Parking Considerations:

(1) The subject property is presently bordered by adjacent on-street parking on East Walnut and South 6th Streets. The angled parking on South 6th Street can remain. The angled parking on East Walnut must be converted to parallel parking per city comments. Upon approval, the applicant shall submit an application for a street modification permit to the City of Yakima Streets and Operations Division for review and approval;

(2) The subject site has two transit stops located on the same block, and the transit center is located within 0.2 mile; and

iii. The proposed multi-family housing will provide provisions for bicycle storage.

(3) Driveway Locations: The proposed driveways meet the provisions of YMC § 15.06.065 for one-way travel and shall be signed accordingly.

(4) Landscaping of Parking Areas: The submitted site plan identifies that the parking lot will be landscaped with trees, shrubs, and groundcover at 17% in accordance with YMC § 15.06.090. The applicant will be required to submit a landscaping plan to the City of Yakima Planning Division for review and approval which meet the provisions of YMC § 15.06.090 prior to building permit issuance which incorporates any conditions of approval required by the Hearing Examiner.

(5) Lighting of Parking Lots: The submitted site plan does not identify any proposed lighting of the parking lot. As the proposed building and parking lot will be used at night, the applicant shall submit a parking lot lighting plan to the City of Yakima Planning Division for review and approval which utilizes down-shielded lights that does not create light pollution in accordance with YMC § 15.06.100.

k. Site Screening: In accordance with YMC § 15.07.050 Table 7-1, and 15.07.060, Site screening standard "A" is required along the east and west property lines. However, in an effort to create a physical separation/buffer from the proposed use and the surrounding residences, in accordance with YMC § 15.07.030 site screening standard "C" "a six-foot high, view obscuring fence, made of wood, masonry block, concrete, or slatted chain link material." is required to be installed along the south and west property lines. Site Screening standard "C" shall also be installed along the alley (east property line), excepting the area for the proposed access driveway.

l. Signs: The applicant's site plan does not identify any proposed signage. Therefore, any future signage shall comply with the provisions of YMC Ch. 15.08 for the SCC zoning district.

m. Public infrastructure/title 12 development standards:

(1) Street Improvements:

(a) E. Walnut St. is designated as a Collector Arterial Street requiring a minimum of 80 ft. of right-of-way, with curb, gutter, sidewalk, and street light.

- (b) E. Walnut St. has approximately 74 ft. of dedicated right-of-way, as well as curb, gutter sidewalk, and streetlights. However, the existing building prohibits further dedication along this street frontage; therefore, no additional right-of-way will be required to be dedicated.
 - (c) S. 6th St. is also designated as a Collector Arterial Street requiring a minimum of 80 ft. of right-of-way, with curb, gutter, sidewalk, and street light.
 - (d) S. 6th St. has approximately 96 ft. of dedicated right-of-way, as well as curb, gutter sidewalk, streetlights, and angled parking. Therefore, no additional right-of-way will be required to be dedicated.
 - (e) All driveways are required to be constructed per YMC § 8.64.
- (2) Waste Water:
- (a) The subject property is presently served by a 10-inch City of Yakima sewer main located within S. 6th St., and an 8-inch sewer main located within the alley abutting the subject property.
 - (b) A minimum sixteen-foot easement shall be maintained over all public utility lines in accordance with YMC § 12.02.010 & 020.
 - (c) Each building containing sanitary facilities shall be served by a separate private side sewer line from a public main in accordance with YMC §12.03.070.
- (3) Potable Water: The subject property is served with potable water by means of an existing looped 8-inch waterline in E. Walnut St. and a looped 6-inch waterline in S. 6th St.
- (4) Irrigation: The subject development does not lie within the City of Yakima's Irrigation area. To improve the streetscape surrounding the project, improve stormwater management, and contribute to the residential character of the renovation, YNHS also requests that it be permitted to convert 2 on-street spaces along 6th Street and 3 on-street spaces along Walnut Street (5 total) to tree planting areas.
- n. *Development Services Team Comments:*
- (1) Engineering: This project requires Title 8 and 12 improvements, including but not limited to the following:
- (a) YMC 8.64 - A new commercial driveway approach is required, which meets the requirements of this chapter and standard detail R4.
 - (b) YMC 8.67 and YMC 12.05 - Where commercial driveway is removed, new curb, gutter and sidewalk shall be installed and match width of existing sidewalk. Existing sidewalk along frontage that is unfit or unsafe shall also be repaired/replaced. New sidewalk shall be constructed per standard detail R5.
 - (c) YMC 8.72 - An excavation and street break permit shall be obtained for all work within the public right of way. N. 6th St. was part of the 2014 Grind and Overlay project. Refer to chapter for requirements. Roads less than five years old can be cut, but will cost one hundred fifty percent of restoration fee with no PCI discount.
 - (d) Walnut Street angled parking cannot be continued. The sidewalk and other public improvements, along with curbing, must be rebuilt to City standards. If

parallel parking is desired, the curb alignment will have to be proposed for change on civil engineering site plans.

(2) Traffic Engineering:

(a) The plan shows the continued use of angled parking on the 6th Street and Walnut Avenue frontages. The 6th Street parking may continue to be used as shown on the submitted concept plan. Vertical curbing or other barrier is required to separate the parking area from the sidewalk. Final design of curbing and landscaping is subject to review of the civil engineering site plans.

(b) There does not appear to be enough space between the sidewalk and the curb line to allow angled parking on Walnut Avenue. A stall depth of 19'-8" is required for 45-degree parking where this location only has 17'-1" from the building face to the curb line. The curb cut back area could be modified to allow parallel parking. Vertical curbing or other barrier is required to separate the parking area from the sidewalk. Final design of curbing and landscaping is subject to review of the civil engineering site plans.

(c) The sidewalk along the Walnut Avenue frontage is in poor condition. The entire length needs to be reconstructed to city standards. The proposed parking area is also in poor condition and should be reconstructed.

(d) The unused driveway approach on 6th Ave must be closed with new vertical curbing.

(3) Code Administration:

(a) A fire sprinkler system will need to be installed and the fire department connection (FDC) will be required to be installed within 50 feet from an approved fire hydrant.

(b) A City of Yakima General Business License is required prior to occupancy, pursuant to YMC § 5.52.

(4) Water & Irrigation:

(a) There's an existing looped 8-inch waterline in E. Walnut St. and a looped 6-inch waterline in S. 6th St. The site is in the Low Level Service Area. Static pressure range is 68 - 86 psi.

(b) There is an existing ¾-inch water service and ¾-inch meter and a 1-inch water service and 1-inch meter to the site off of S. 6th St.

(c) There's an existing fire hydrant off of the looped 6-inch waterline at the southeast corner of the intersection of E. Walnut St. and S. 6th St.

(d) All new fire hydrants or fire sprinkler requirements are to be determined by the Codes Administration Division, and Fire Department.

(e) Maximum available fire flow at the site from the looped 6-inch waterline - 1,600 gpm, 8-inch waterline - 2,800 gpm.

(f) The subject site is not located within the City of Yakima irrigation service area.

(g) The site is within the City of Yakima's Wellhead Protection Area.

(h) The site plan needs to show all existing and proposed utilities on all street frontages of the site, including the alley.

- (5) Wastewater: City Sewer Crews observed while testing the site that the internal plumbing system needs maintenance. As a condition of approval, the applicant needs to fill out the City of Yakima Pretreatment Industrial Waste Survey in order to determine if this site will be required to be placed on the pretreatment program.

B. HEARING EXAMINER ADDITIONAL FINDINGS

1. JURISDICTION.

The Hearing Examiner has jurisdiction to conduct an open record hearing and render a decision on an application for Type (3) review.

The proposed "café/deli" and "laundromat" are designated as Class (1) uses in the SCC zoning district according to YMC 15.04.030, Table 4-1. Class (1) designated uses are those that are considered compatible and are permitted on any site in the district. Class (1) uses are generally subject to review under Type (1) review procedures described in Ch. 15.13 YMC, subject to exceptions that are not relevant here.

The proposed multifamily dwelling use is a Class (2) use according to Table 4-1. Class (2) uses are subject to Type (2) review procedures in Chapter 15.14 YMC with certain exceptions. In accordance with YMC 15.14.020.A, the administrative official may require that a Class (2) use undergo a Type (3) review, when, "in the opinion of the administrative official, formal public review and comment on a proposal will assist in determining necessary and proper mitigation of impacts." In this case, YNHS has filed a master application, which also calls for an administrative adjustment to the parking standards. The master application is processed subject to the highest type of review applicable to any of the required permits or approvals. YMC 15.11.100. Since the City has determined that Type (3) is required for the multifamily residential component of the master application, the highest type of review is Type (3) for the master application.

2. REVIEW STANDARDS FOR CLASS (1) AND CLASS (2) USES.

a. In Type 3 review, the hearing examiner must prepare written findings and conclusions stating the specific reasons, and citing the specific chapters and sections of this title upon which his decision to approve, approve with conditions, or deny the issuance of a certificate of zoning review is based. The findings must demonstrate that the hearing examiner's decision complies with

- the objectives of the YUACP,
- the intent of the zoning district, and
- the provisions and standards established in Title 15 of the YMC.

See YMC 15.15.040(5). Similar standards apply in Type 2 review decisions made by the city administrative official. Further, in accordance with YMC 15.14.020.A, findings and conclusions

must support a determination of “necessary and proper mitigation of impacts” after consideration of public review and comment.

b. Contemporaneous review of Class (1) uses with other classes of uses through the master application review process in YMC 15.11.100 does not expressly change the substantive standard of review for Class (1) uses. Standard decisions on Class (1) uses are based on a determination that

- A. The proposed use is a Class (1) permitted use under YMC Chapter 15.04;
- B. That the proposed development complies with the standards and provisions of [Title 15 YMC];
- C. That the proposed development complies with other building codes in effect and administered by the administrative official;
- D. That proposed development complies with traffic engineering standards and policies established by the appropriate jurisdiction to protect the function and satisfactory level of service of arterial and collector streets; and
- E. That any new improvements or expansions of a structure comply with the standards of [Title 15 YMC]...

YMC.15.13.050. The conspicuous difference between review of Class (1) uses and other uses is that demonstration of compliance with the comprehensive plan’s policies or objectives is not required.

c. *Compliance with YUACP “objectives” or “policies.”* When the zoning code itself expressly requires that a proposed use comply with a comprehensive plan, the proposed use must satisfy both the zoning code and the comprehensive plan, so long as the ordinance and the plan are not inconsistent. *Cingular Wireless, LLC v. Thurston County*, 131 Wn.App. 756, 770-773, 129 P.3d 300, (Div. 2 2006). Development regulations provide the fundamental framework for project permit review. See RCW 36.70B.030(2)

In the present case, the ordinance calls specifically for an evaluation of compliance with the YUACP objectives or policies to assess the acceptability of a proposed use. Comprehensive plan goals are generally statements of community aspirations consistent with GMA guidance, and by their terms do not carry regulatory weight. This leads to a threshold question of whether there is any regulatory effect to particular YUACP objectives or policies above and beyond regulatory provisions in the zoning ordinance. The answer sets up the operative question of whether the proposal is inconsistent with any such provisions.

The staff report identifies following provisions of the YUACP as relevant to this proceeding:

Goal 3.4: Restore old neighborhoods and revitalize declining neighborhoods.

- Policy 3.4.1: Encourage preventive maintenance and appropriate reinvestment in older and declining neighborhoods. Improve the infrastructure including, but not limited to: park improvements, sidewalks, alleys, street maintenance, street lighting, trees and other landscaping within the right-of-way.
- Policy 3.4.3: In the residential areas where commercial and residential uses are heavily mixed, encourage the establishment of neighborhood commercial services and foster mixed uses including retail, office and apartments. This is particularly important in areas on Second Street and S. Third Street north of East Race Street. Discourage commercial uses that are non-neighborhood related.
- Policy 3.4.5: Minimize the overcrowding/over-parking issues in old neighborhoods through: " ... Encouraging development of multi-family projects as infill or redevelopment projects in old neighborhoods as a means to provide affordable housing
- Encouraging cohesiveness among neighborhood residents and community, and encourage interaction between neighborhoods and the government".

Goal 3.12: Provide small scale, neighborhood convenience commercial uses and services, primarily serving residents of adjacent neighborhoods.

- Policy 3.12.3: Neighborhood Commercial uses shall be located at the intersection of a principal arterial, minor arterial or collector arterial.
- Policy 3.12.4: Neighborhood Commercial may be allowed when water and sewer service, street improvements, traffic control devices, municipal service and other development related improvements are in place.
- Policy 3.12.5: Adequate buffering shall be provided between adjacent residential land uses.
- Policy 3.12.6: No motor vehicle to the commercial site shall be routed through residential areas.
- Policy 3.12.7: Neighborhood Commercial uses shall be located in areas that will enhance, rather than hinder, the stability of residential areas.
- Policy 3.12.8: The predominant uses of Neighborhood Commercial shall be small-scale business that will not have significant adverse impacts on adjacent neighborhoods.

Goal 3.4 and its policies are aspirational in character (based on the use of terms such as “encourage” and “discourage”) and appear to be fulfilled by the classification of uses in Table 4-1 (Permitted Land Uses) in YMC 15.04.030. Goal 3.12 policies are more regulatory in nature. However, the location of Neighborhood Commercial uses is essentially addressed through the existing zoning map, classification of various uses permissible in commercial zones, and the establishment of development standards. Nevertheless, Policy 3.12.5 (“Adequate buffering shall be provided between adjacent residential land uses.”), Policy 3.12.7 (“Neighborhood Commercial uses shall be located in areas that will enhance, rather than hinder, the stability of residential areas.”), and Policy 3.12.8 (“The predominant uses of Neighborhood Commercial shall be small-scale business that will not have significant adverse impacts on adjacent neighborhoods.”) all represent imperatives in the YUACP to protect existing residential uses, avoid significant adverse impacts to adjacent neighborhoods and stabilize residential areas. These policies have regulatory weight and compliance with them is an appropriate consideration in Type 3 Review.

3. ANALYSIS OF CLASS (1) USES PER YMC.15.13.050.

a. The café/deli and laundromat are permitted uses in the SCC zoning district per Table 4-1.

b. The adopted findings from the staff report determine these uses to be accessory uses to the multifamily dwelling use, primarily serving the tenants although open to the public as well. Regarding the parking generation rates for both the café/deli and laundromat, in accordance with YMC 15.06.020, "off-street parking and loading spaces that are not a principal use are accessory uses and shall be subject to the same procedures and review requirements of the principal use." Thus, these accessory uses do not require determinations of parking requirements in addition to the number of spaces required for the primary multifamily dwelling use. The staff report recommends that, since the applicant has not provided any hours of operation for the two uses, as a condition of approval the hours should be limited to 8:00 a.m. to 5:00 p.m. YNHS does not object to this condition.

Based on the adopted findings noting the project's general compliance with development standards other than with respect to on-site parking, the proposed development complies with the standards and provisions of the zoning ordinance. On-site parking is the subject of YNHS's request for an administrative adjustment to parking standards set out below at II.B.5.

c. Any approval of the proposed Class (1) uses is conditional on compliance with other building codes in effect and administered by the administrative official, as well as with traffic engineering standards and policies as have been described in the Development Services Team comments set forth in the staff report findings above. In addition, based on Yakima Regional Clean Air Authority comments in the record, any approval is appropriately conditional upon the following:

- i. Prior to renovating or demolishing any structures an asbestos survey must be done by a certified asbestos building inspector;
- ii. Any asbestos found must be removed by a licensed asbestos abatement contractor prior to demolition;
- iii. A Notification of Demolition and Renovation (NODR) application must be filed with YRCAA and the appropriate fee should be paid;
- iv. This project is located within Yakima's Urban Growth Area; therefore, burning is prohibited at all times; and
- v. Roads shall be maintained at all times to prevent any off-site dust transport during renovation.

4. CLASS (2) USE ANALYSIS (BASED ON II.B.2.a, above).

a. *Compliance with the intent of the SCC zoning district.* This zone is intended to:

- (1) Provide areas for commercial activities outside the downtown commercial district that meet community retail shopping and service needs; and
- (2) Accommodate small commercial centers, generally two to five acres in size, where most of the commercial uses have located in a coordinated manner around a common parking lot and one major commercial approach driveway.

Small convenience centers serve the day-to-day convenience shopping and service needs of the surrounding neighborhood and should be designed to minimize undesirable impacts of the center on the neighborhood it serves. Uses in this district should be retail or personal service establishments dealing directly with the consumer, the primary occupants usually being such uses as a supermarket, fast food restaurants and drug store.

The proposed multifamily dwelling use does not promote the prospective purpose of the SCC district of establishing areas for commercial activities that are convenience-oriented and local in scale. However, the historical use has not fully conformed to the intent statement either, given that the use was established prior to the creation of the zoning map and development standards. Rather than being prescriptive, however, district intent statements “serve as a guide for determining the appropriate location of uses; help determine appropriate conditions for development; and help the administrative official interpret the standards and provisions.” YMC 15.03.020. Multifamily dwelling uses are “generally permitted throughout the district” since they are Class (2) uses, as defined in YMC 15.02.020. The key consideration appears to be assuring that the use is “designed to minimize undesirable impacts” on the neighborhood. The proposed development is low density (less than 7 dwelling units per acre). YNHS has committed to “maintain the mid-20th Century style and massing of the existing grocery store building, but will upgrade it with 21st Century finishes and incorporate new horizontal siding to reflect the residential character of the surrounding neighborhood. The property will be extensively landscaped with native vegetation and beautify what is today an unmaintained, unused...concrete [parking] lot.” Nothing in this proposal suggests it would undermine the intent of the zoning district.

b. Compliance with Zoning Ordinance provisions and standards: If the proposed use is a multifamily dwelling unit, it is a Class (2) use in the SCC zoning district. The zoning ordinance contains pertinent definitions of “family,” “dwelling unit,” and “dwelling, multiple family” in YMC 15.02.020. “Family” means individuals, consisting of two or more persons related by blood, marriage or adoption, or a group of not more than five persons...living together as a single housekeeping unit in a dwelling unit.” Thus, unrelated persons may constitute a family for purposes of the ordinance. The term “family” expressly includes:

- (1) State-licensed adult family homes required to be recognized as residential uses pursuant to RCW 70.128.175;
- (2) State-licensed foster family homes and group care facilities as defined in RCW 74.15.180, subject to the exclusions of subsection B of this definition; and

- (3) Group homes for the disabled and consensual living arrangements equivalent to a familial setting required to be accommodated as residential uses pursuant to the Fair Housing Act and the Washington Housing Policy Act, RCW 35.63.220 and 35A.63.240, respectively.

“Dwelling Unit” means one or more rooms in a dwelling for the occupancy of one family and providing complete and independent living facilities, including permanent provisions for living, sleeping, cooking, eating and sanitation. “Dwelling, multiple-family” means a structure or structures, or portion thereof, designed for occupancy by three or more families living independently of each other and containing three or more attached dwelling units on a lot.

The project is designed to comprise 5 dwelling units that each includes provisions for sleeping, cooking, eating and sanitation available only to dwelling unit residents or their guests. Rather merely providing shelter, the units are subject to rental agreements, thus imparting the same relative permanence as any other multifamily rental unit. Rent is required to be paid in kind, or when residents have income, they are required to pay 30% of their income as rent. See also CITY OF YAKIMA’S PREHEARING BRIEF, Hearing Exhibit No. 3, establishing the status of the project’s residential units as “dwellings” and thus subject to the requirements of the Fair Housing Act. No comment has been offered to demonstrate that the proposed use does not meet the definition of a multifamily dwelling unit. On this basis of these aspects of the project, it constitutes a Class (2) multifamily dwelling in the SCC. The manner in which the project complies with relevant development standards is set out in II.A.9, above.

c. Compliance with the YUACP. As discussed above in II.B.2.c, YUACP policies direct the protection of existing residential uses, avoidance of significant adverse impacts to adjacent neighborhoods and maintenance of stable residential areas in the development of neighborhood commercial areas, such as those zoned SCC. Similarly, YMC 15.14.020.A, provides for “necessary and proper mitigation of impacts” from a proposed Class (2) use after consideration of public review and comment. These considerations are appropriately applied to the proposed use that is subject to the application.

(1) Public Comments: A substantial portion of the public comment offered during the hearing recounted adverse neighborhood impacts that commenters associate with the presence of homeless people in the area, such as trespass, property damage, drug use, other kinds of conduct otherwise prohibited by Chapter 6.55 YMC (“Offenses Against Public Decency and Morality”) and a general decline in the character of the neighborhood. One example of neighborhood decline offered in comments is the continuous loss of residential structures reflecting historical architectural styles. Commenters recounted personal experiences with these kinds of effects from interactions with (presumed) homeless people. Other comments noted the impacts to local businesses from nuisances caused by the number of homeless people present in the project vicinity and nearby East Yakima Avenue. Comments also noted that the nearby location of other facilities established by YNHS and others to provide social services to homeless people, such as the YNHS facility referred to as “The Depot” (on East Yakima Avenue and 6th Street) is correlated with an increase in the neighborhood of adverse impacts such as trespass, property

damage, drug use, etc. One commenter noted that it is the “after hours” nuisance and criminal activities near such facilities that pose the more significant problems.

The primary inferences offered by such comments are (1) that the proposed multifamily use will further attract homeless people to the neighborhood and worsen the adverse impacts neighbors have already experienced and (2) that the conversion of the YNHS-owned property to the multifamily use will foster continued neighborhood decline.

Alternatively, several comments raised the question of whether the proposed use would provide any positive benefit to the neighborhood. Others challenged effectiveness of the multifamily development in achieving YNHS “Continuum of Care” homeless program objectives, particularly to the extent that the transition from homelessness may depend on car ownership, and the proposal does not provide parking to support that aspect of transition.

Other public commenters provided testimony of the public benefits from providing programs for the homeless and the positive effects of such programs in responding to the current impacts presented by homeless people in the vicinity of the project. Comments noted that the improvements to the existing property would be beneficial to the area as long as measures were in place to prevent the property from becoming run-down or misused.

(2) *Application of YUACP considerations:*

(a) Homeless persons reportedly find their way to The Depot and other service sites with an expectation or a desire to receive services, and neighbors note a concentration and increased frequency of trespass, property damage, drug use, other kinds of objectionable conduct correlated with these facilities. Nothing in the hearing materials specifically characterizes the attributes of The Depot that might explain the potential correlation of the services and hours of operation of that facility with adverse interactions on the street. It is clear, however, that The Depot is not a dwelling. Thus, any analogy between the impacts of The Depot and those of the proposed project is a weak one. Based on the application materials and YNHS evidence presented at the hearing, the proposed multifamily use is not analogous to The Depot or other facilities in the area offering social services to client populations. As noted by both the City and YNHS, the proposed use is not a mission, or a warming shelter, or a clinic. It is a multifamily residential dwelling.

(b) It is not implausible that the presence of the multifamily dwelling could attract homeless persons to the immediate area of the project with an expectation of finding shelter or other temporary respite, rather than an opportunity to enter a rental agreement for one of the dwelling units. It is also not clear that all persons finding their way to the project would be in a position to enter into a rental agreement. Furthermore, the guests of renters will be required to leave the property, and it is not clear whether such guests might continue to abide in the vicinity of the project. This presents at least some possibility that persons attracted to the area accordingly could contribute to the trespass, property damage, drug use, other kinds of conduct public commenters have complained of. However, from the evidence in the record, there is no

stereotypical cause of homelessness or of behavior of homeless people. There is no evidence allowing a compelling inference that the people visiting the project would be likely to present adverse impacts to the neighborhood to a greater extent than other persons temporarily in the neighborhood.

(b) The project is intended to serve a specific kind of tenant, consistent with YNHS's "Continuum of Care" and "housing first" approach to homelessness. To the extent that persons come to the project and enter into rental agreement in accordance with the Operations Plan and are offered assistance in accessing YNHS and other social services facilities at other locations, there is likely to be an incremental improvement to the problem of local homelessness. This is supported by documents submitted for the record by Benine McDonnell (Hearing Exhibit 6). In addition, the proposed use presents the prospect of improvement in the lives of both the renters who might otherwise be part of the problems in the neighborhood. The basis for this prospect is described in the application materials, the staff report and YNHS evidence presented at the hearing.

(c) To the extent that adverse impacts in the neighborhood are caused by homeless persons, those impacts would be incrementally mitigated by the implementation of the YNHS approach. Residents would be prohibited from the use of illegal drugs, and would have individually assigned case managers to further the transition from homelessness. A resident manager would monitor compliance with the Operations Plan and tenant rules.

(d) The planned improvements to the property, including screened outdoor use areas for the tenants, would be harmonious with and beneficial to the residential neighborhood surrounding the property while providing a buffer between tenants and neighborhood residents, also as described in the application materials, staff report and YNHS evidence presented at the hearing. Like all property owners, YNHS would be subject to ongoing code compliance requirements, and uses of the property would have to comply with conditions of approval. Furthermore, the project provides for the preservation of the architectural style of the existing building, also consistent with goals of neighborhood preservation.

(e) In summary, incremental improvements in addressing homelessness will improve the protection of existing residential uses in the area. There is no persuasive evidence that significant adverse impacts to adjacent neighborhoods will result from the proposed multifamily residential use, so long as the property improvements and Operations Plan are effectively implemented (constituting "necessary and proper mitigation of impacts.") Finally, the planned improvements and use does not present a significant likelihood of upsetting the stability of the neighborhood, and will rather help preserve it by helping to respond to homelessness issues in the area and (although some neighbors dispute the actual value to the community) by preserving the unique architectural features of the existing building and improving landscaping and buffers. As such, the proposed multifamily residential use complies with the YUACP.

5. ADMINISTRATIVE ADJUSTMENT.

a. YNHS requested an Administrative Adjustment of the parking standards established under Ch. 15.10 YMC that would reduce the combined parking standard from 36 spaces to 15 spaces. The zoning ordinance authorizes the administrative official to administratively adjust certain standards of the zoning ordinance. (YMC 15.10.020) A particular standard may be reduced or modified so long as the reviewing official determines that the adjustment and/or reduction is consistent with the purpose of Title 15 YMC, the intent and purpose of the standard, and shall accomplish one or more of the following objectives:

1. Allow buildings to be sited in the manner which maximizes solar access;
2. Allow zero lot line or common wall construction in conformance with the provisions of this title;
3. Coordinate development with adjacent land uses and the physical features of [the area];
4. Permit flexibility in the design and placement of structures and other site improvements;
5. Allow development consistent with a specific subarea plan adopted by either the city or county.

Only Objectives 3 and 4, above, are directly relevant to this application.

b. Although YMC 15.06.040 Table 6-1 provides that the parking standard for multi-family dwellings is 2 parking stalls per dwelling unit, this standard does not account for a reduced living area, or other living arrangements provided by the definition of "family" in YMC 15.02.020. In support of the submitted Administrative Adjustment, YNHS offered the results of a study by Heffron Transportation Inc. that evaluated the parking demands for five low-income senior housing projects in the greater Seattle area. The uses at those projects were somewhat analogous to the proposed project. The study concluded that 5% of the senior population required vehicle parking. YNHS experience with homeless clients at other facilities also indicated a very low vehicle ownership rate. Based upon this information YNHS projected that the tenants at the multifamily dwelling project would likely require only one parking stall per dwelling unit.

c. As noted above, some public comment indicated concerns that the limited parking would undercut the transition from homelessness, since vehicle ownership is necessary for some employment. The Administrative Official the evaluated the proposed adjustment using the parking generation rate in the 3rd Edition Parking Generation Institute of Transportation Engineers Manual Land Use: 221 Low/Mid-Rise Apartment (Average Peak Period Parking Demand vs: Dwelling Units on a: Weekday Location: Urban). The evaluation affirmed the adequacy of the YNHS's proposed parking standard of one parking stall per dwelling unit. This standard reduces the parking requirements from ten required parking stalls to five.

d. Based upon the reduced parking standards and projected staffing rates for the project, the Administrative Official recommends that a minimum of thirteen off-street parking stalls be required for the proposed use. The YNHS's site plan provides fifteen off-street parking stalls. The application of the YMC §15.10.020 criteria is as follows:

(1). *Coordinate site features with surrounding land uses and physical features:* The proposed parking adjustment provides sufficient parking for the proposed multi-family housing use while allowing the subject parking lot to meet the 10% landscaping requirement of YMC § 15.06090, and the 85% lot coverage requirement of YMC § 15.05 Table 5-1 for the SCC zoning district. Furthermore, the Administrative Adjustment will allow YNHS to create a fenced outdoor area, which is landscaped [and] in which the occupants of the multi-family dwelling can congregate during the day[,] separate from the surrounding neighborhood. The required site screening along [the] east, west and south property lines will restrict the view of the proposed use from the surrounding single-family dwellings, and buffer potential conflicts from the occupants of the proposed use.

(2). *Flexibility of design and placement of structures and other site improvement that is the minimum adjustment necessary to accommodate the proposed structure or site improvement:* The Administrative Adjustment request is the minimum necessary to meet the City's design standards for lot coverage and landscaping of the subject parking lot while still providing enough parking stalls to meet the building's parking demand. Additionally, although the sites on-street parking cannot be used to substitute for required off-street parking stalls, there will continue to be several on-street parking stalls in the immediate vicinity to respond both to potential parking needs for the general traveling public and potential visitors the multi-family dwelling or surrounding neighborhood.

III. CONCLUSION.

For the reasons set out in the foregoing findings, the Class (1) café/deli use, Class (1) laundromat use, Class (2) multifamily dwelling and Administrative Adjustment to applicable parking standards, all as described in the completed application materials and in evidence submitted by city planning officials and YNHS representatives in the course of the public hearing process should be approved subject to conditions to assure both compliance with applicable development standard, pertinent policies in the YUACP, the intent of the SCC zoning district and necessary and proper mitigation of impacts.

From the foregoing Findings and Conclusions, the Hearing Examiner makes the following

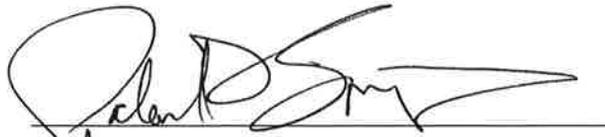
IV. DECISION

Yakima Neighborhood Health Service's master application for approval of a Class (2) multifamily dwelling, accessory Class (1) uses for a café/deli use and laundromat use, and an

Administrative Adjustment of off-site parking standards under City of Yakima File Nos. CL2#020-16 and ADJ#020-16 is APPROVED, SUBJECT TO THE FOLLOWING CONDITIONS:

1. Prior to issuance of building permits or grading permits:
 - a. The applicant shall submit building plans to the Codes Administration Division that are designed in accordance with the 2015 International Codes as applicable. If the building will contain a fire sprinkler system, a fire department connection shall be installed within 50 feet of a fire hydrant;
 - b. The applicant shall submit civil engineering plans to the City Engineer for review and approval for all frontage, street, and on-street parking improvements in accordance with YMC Title 12; and
 - c. The applicant shall submit for review and approval to the City of Yakima Planning Division a revised parking lot landscape and lighting plan which meets the requirements of YMC § 15.06.080, 090 & 100.
 - d. The applicant shall submit a Final Site Plan for approval by the Planning Division showing all requirements.
 - e. The applicant shall submit Final Operation Plan for review by the Planning Division.
 - f. The applicant shall fill out the City of Yakima Pretreatment Industrial Waste Survey and submit to the Wastewater Division to determine if the site will be required to be on the pretreatment program.
2. Prior to occupation of the proposed facility the applicant shall:
 - a. Construct, pave, stripe, light, and landscape the facilities parking lot in accordance with their approved parking lot and landscaping plans. The parking lot shall accommodate a minimum of 15 on-site parking spaces, including one van accessible ADA signed space.
3. The multifamily dwelling owner/operator shall manage and operate the facility:
 - a. In a manner that substantially conforms to the completed application materials except as may be altered by county government agency approvals in Condition 1.
 - b. In a manner that substantially conforms to provisions of the approved Final Operation Plan;

DATED THIS 22ND DAY OF MAY, 2017

A handwritten signature in black ink, appearing to read "Patrick D. Spurgin", written over a horizontal line.

PATRICK D. SPURGIN

HEARING EXAMINER PRO TEMPORE