

**BEFORE the HEARING EXAMINER for the
CITY of LYNNWOOD**

DECISION

FILE NUMBER: CUP-24-0001

APPLICANT: Latino Educational Training Institute
6605 202nd Street SW
Lynnwood, WA 98036

AGENT: HURAA Architecture, P.C.
ATTN: Grant Seaman
600 1st Avenue, Suite 102
PMB 2115
Seattle, WA 98104

TYPE OF CASE: Conditional Use Permit to establish a child daycare facility within an existing building

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: August 9, 2024

INTRODUCTION ¹

Latino Educational Training Institute (“LETI”) seeks a Conditional Use Permit (“CUP”) to to establish a child daycare facility within an existing building.

LETI filed the CUP application on May 3, 2024. (Exhibit 5 ²) The Lynnwood Development and Business Services Department, Community Planning Division (“Planning”), deemed the application to be complete as of May 6, 2024. (Exhibit 1, PDF 2) Planning issued a Notice of Application on May 6, 2024. (Exhibit 6)

The subject property is located at 6605 202nd Street SW. Its Assessor’s Parcel Number is 00515400000709 (“Parcel 007”). (Exhibit 4, PDF 5)

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.
² Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. Citations to exhibits that are available electronically in PDF use PDF page numbers, not source document page numbers. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record.

The Lynnwood Hearing Examiner (“Examiner”) viewed the subject property via Google Earth imagery: Overhead imagery captured August 23, 2022; Street View imagery captured May 2019.

The Examiner held a hybrid open record hearing on August 8, 2024: In-person participation was available at the City Hall; remote participation was available through the “Zoom” platform. Planning gave notice of the hearing as required by the Lynnwood Municipal Code (“LMC”). (Exhibit 7)

The following exhibits were entered into the hearing record during the hearing:

- Exhibits 1 - 7: As enumerated in Exhibit 1, the Planning Staff Report
- Exhibit 8: LETI’s PowerPoint presentation
- Exhibit 9: Letter of support from clients

Section 1.35.025 LMC requires that decisions on project permit applications be issued within 120 calendar days after the application is found to be complete; subsection 1.35.025(A) LMC lists four exclusions from the 120-day count, one of which is an extension mutually agreed upon by Planning and the applicant. The open record hearing was held on net review day 44. (Exhibit 1, PDF 2)

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner’s knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. LETI, a not-for-profit corporation, owns the two-story plus partial daylight basement building on the northeast corner of 66th Place W/202nd Street SW. A retail business occupies the basement; LETI offices occupy the two upper floors. LETI desires to start a child daycare facility, primarily for low income families. The daycare will occupy the first floor; the office personnel that LETI currently has on that floor will move to a different location. (Exhibits 3; 4; 8; testimony)
2. The building has a footprint of approximately 1,400 square feet (“SF”) with current on-site parking for 18 vehicles. LETI’s proposal is to have a facility licensed for up to 20 children in age groups 0-1, 2-3, and 3-5. Approximately 800 SF of outside play area will be fenced on the north side of the building. No more than 10 children will be in the play area at any one time. One additional on-site parking stall will be added for a total of 19. (Exhibits 2; 8)
3. Parcel 007 is located in the College District Mixed Use (CDM) zone. (Exhibit 1) Daycare centers are a Conditional Use in the CDM zone. [LMC 21.57.300(A)(10); cross-reference to LMC 21.42.110(E)(2)] Multi-family housing is located north, west, and southwest of Parcel 007; a new car dealership is located to the south/southeast; a single-family residence abuts Parcel 007 to the east. Edmonds College is located west of 68th Avenue W, about two blocks west of Parcel 007. (Exhibit 8, PDF 2)

4. LETI submitted a detailed analysis of CUP requirements and a plan set depicting the mostly interior (the exterior fenced play area will be added) changes that will be made to the building. (Exhibits 3 and 2, respectively; see also Exhibit 8)
5. Planning analyzed the proposal's conformance with the LMC. It found the proposal to comply with applicable requirements. (Exhibit 1)
6. LETI's proposal is categorically exempt from State Environmental Policy Act ("SEPA") threshold determination requirements. (Exhibit 1, PDF 2)
7. Planning recommends approval of LETI's CUP application subject to four conditions. (Exhibit 1, PDF 9)
8. LETI has no objection to any of Planning's recommended conditions. (Testimony)
9. No testimony or evidence was entered into the record by the general public in opposition to the application. A statement in support of the proposed daycare from parents was read into the record. (Exhibit 9)
10. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ³

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

A CUP is a Process I application which is subject to an open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [LMC 1.35.100, .168, and .175 and 21.24.050]

Review Criteria

The review criteria for CUPs are set forth at LMC 21.24.100 and .150:

... In considering any conditional use permit, the hearing examiner shall prescribe any conditions that he/she deems to be necessary to or desirable for the public interest, and where appropriate may stipulate that the permit is temporary and establish an expiration date. However, no conditional use permit shall be granted unless it is found:

A. That the use for which such a permit is sought will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and

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B. Will be in harmony with the general purpose of [the zoning code].

The hearing examiner may allow relaxation of the development standards of this title if he/she finds that alternative amenities, improvements, proposed location of uses or structures, or other features incorporated into the proposal are in harmony with the general purpose of this title and would provide equal or better protection to the public interest than would the standards proposed to be relaxed.

[LMC 21.24.100]

In determining findings, the hearing examiner shall take into account the character and use of adjoining buildings and those in the vicinity, the number of persons residing or working in such buildings or upon such land, traffic conditions in the vicinity, compliance with any special conditional use criteria for that specific use set forth in [Chapter 21.24 LMC] and all factors relevant to the public interest.

[LMC 21.24.150]

A “consistency determination” is also required for every project application. A consistency determination follows four steps set forth at LMC 1.35.070. Consistency criteria are:

1. Type of land use permitted at the site, including uses that may be allowed under certain circumstances if decision criteria are met;
2. Density of residential development (if applicable); and,
3. Availability and adequacy of public facilities (for those facilities identified in the comprehensive plan, if the plan or the city’s development regulations provide for funding of these facilities).

[LMC 1.35.070(A)]

Vested Rights

“Vesting” serves to “fix” the regulations against which a development application is judged. [*Potala Village Kirkland, LLC v. City of Kirkland*, 183 Wn. App. 191 (2014), *review denied*, 182 Wn.2d 1004, 342 P.3d (2015)]

In 2014 the State Supreme Court flatly declared: “While it originated at common law, the vested rights doctrine is now statutory.” [*Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 173, 322 P.3d 1219 (2014)] The *Potala* court rejected a contention that the filing of a complete shoreline substantial development permit application vested development rights because no statutory provision established vested rights for shoreline permits. [*Supra*, at 196-206]

CUPs are not the subject of any state vesting statute. If Lynnwood had a local vesting ordinance applicable to land use applications, the Examiner would be obliged to follow it as enacted. [*Erickson & Associates v. McLerran*, 123 Wn.2d 864, 872 P.2d 1090 (1994); *Abbey Rd. Grp., LLC v. City of Bonney Lake*, 167 Wn.2d 242, 250, 218 P.3d 180 (2009)] But the City has no such local ordinance. Thus, the Examiner must follow the most current case law.

Under the most current case law, there is no vesting for CUP applications because there is no statutory provision providing vesting for such applications.

Vesting is not particularly important in this case as the City has made no development regulations changes between the time the application was filed and this date.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [LMC 1.35.155]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. The request complies with CUP criterion LMC 21.24.100(A). A daycare at this location will support parents who might otherwise not be able to attend Edmonds College classes. It will also support families living in the surrounding area.
2. The request complies with CUP criterion LMC 21.24.100(B). The “general purpose of the zoning code” is to

avoid[] or abat[e] public nuisances. This title also intends to promote the protection and promotion of the quality of the natural environment and the health, safety, morals, and other aspects of the general welfare of present and future inhabitants of the city of Lynnwood in accordance with the comprehensive plan and state law, judicial decisions, and Central Puget Sound Growth Management Hearings Board decisions regarding land use regulations. To these ends, it is the intent of these regulations to implement the city of Lynnwood comprehensive plan and the future land use plan map.

[LMC 21.04.015] A daycare will support the mixed-use concept planned for the CDM zone.

3. The request complies with CUP criterion LMC 21.24.150. The existing building has been a fixture in the community for many years. Establishing a daycare on one of its floors (instead of an office) is

unlikely to adversely affect traffic or noise conditions in the neighborhood. The very fact that no one spoke or wrote against its approval is a testament to a lack of opposition in the neighborhood.

4. The proposal passes the “consistency” test: A daycare center is permitted as a Conditional Use in the CDM zone; density is not applicable as this is not a residential use; and adequate utilities are available to serve the daycare.
5. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
 - A. Recommended Condition 1. The plan set’s exhibit number will replace it’s date of preparation.
 - B. The word “applicant” in Recommended Condition 3 will be replaced with “permittee.” A land use approval, including a CUP, “runs with the land.” That means that the approval remains valid regardless of whether the land is subsequently sold. Many people interpret the word “applicant” to refer only to the party which initially sought the approval. In order to ensure that no confusion occurs in the future, a word which means the holder of the approval will be substituted for the word “applicant.”
 - C. The grammatical structure of Recommended Condition 4 is awkward: As written it sounds like a sign must apply for and get the required permit. The grammar will be revised.
6. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner’s site view, the Examiner **GRANTS** the requested Conditional Use Permit to establish a child daycare facility within an existing building **SUBJECT TO THE ATTACHED CONDITIONS**.

Decision issued August 9, 2024.

John E. Galt

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁴

Grant Seaman
Rene Acevedo

Brian Kirk
Rosario Reyes

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Lynnwood Development and Business Services Department a written request for reconsideration within seven calendar days following the issuance of this Decision in accordance with the procedures of LMC 1.35.168. Any request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner which forms the basis of the request. See LMC 1.35.168 for additional information and requirements regarding reconsideration.

NOTICE of RIGHT of APPEAL

This Decision is final subject to the right of a party of record (See LMC 1.35.148.) with standing, as provided in RCW 36.70C.060, to file a land use petition in Superior Court in accordance with the procedures of LMC 1.35.175 and the Land Use Petition Act [Chapter 36.70C RCW]. See LMC 1.35.175 for additional information and requirements regarding judicial appeals.

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”

⁴ The official Parties of Record register is maintained by the City’s Hearing Clerk.

**CONDITIONS OF APPROVAL
LETI DAYCARE CENTER
CUP-24-0001**

This Conditional Use Permit is subject to compliance with all applicable provisions, requirements, and standards of the Lynnwood Municipal Code, standards adopted pursuant thereto, and the following special conditions:

1. Exhibit 2 is the approved site development plan for this Conditional Use Permit. Revisions to approved site plans are subject to the provisions of LMC 1.35.180.
2. Building improvement or repairs must not exceed 10 percent of the assessed value or appraised value, whichever is greater, of the building.
3. The permittee must obtain all applicable state licenses prior to operation of the daycare.
4. The permittee must obtain a sign permit prior to installation of any new sign for the daycare center.⁵

⁵ Sign permits are generally required for all signs, but this CUP may only impose conditions related directly to the CUP. Thus, the limiting wording.