

**BEFORE the HEARING EXAMINER for the
CITY of GOLD BAR**

DECISION

FILE NUMBER: LS-002-23

APPLICANT: Russell Haney
P.O. Box 716
Gold Bar, WA 98251

TYPE OF CASE: Conditional Use Permit to establish a travel trailer court

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: January 22, 2024

INTRODUCTION¹

Russell Haney (“Haney”) seeks a Conditional Use Permit (“CUP”) to establish a travel trailer court on the parcel which houses Rico’s Pizza.

Haney filed an application for a CUP on November 8, 2023. (Exhibits 1; 2; 6²) The Gold Bar Public Works Director (“Director”) deemed the application to be complete on November 28, 2023.³ (Exhibits 5; 6) A Notice of Application was issued on November 28, 2023. (Exhibit 6)

The subject property occupies the northwest quadrant of the 17th Street/U.S. 2 (SR 2) intersection.⁴ Its postal address is 40709 SR 2, Gold Bar. Its Assessor’s Parcel Number is 0053400100103 (“Parcel 001”). (Exhibit 1; Google Earth overhead imagery)

The Gold Bar Hearing Examiner (“Examiner”) viewed the subject property via Google Earth imagery: Overhead imagery dated July 23, 2018; Street View imagery dated July, 2023.⁵

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. 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.
³ The Director has the lead City staff responsibility for processing land use applications. [Gold Bar Municipal Code (GBMC) 19.05.020]
⁴ To simplify directional references, this Decision uses a convention in which U.S. 2 lies on an east-west alignment and 17th Street lies on a north-south alignment.
⁵ Google Earth Street View imagery is available only along U.S. 2 west of 17th Street.

The Examiner held a hybrid open record hearing on January 17, 2024: In-person participation was available at the City Hall; remote participation was available through the “Zoom” platform. ⁶ The Director gave notice of the hearing as required by the Gold Bar Municipal Code (“GBMC”). (Exhibits 7; 9)

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

Exhibits 1 - 12: As enumerated in Exhibit 1, the Staff Report

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. Haney desires to legalize a travel trailer court – of sorts – located on the north end of Parcel 001, the Rico’s Pizza property. Essentially, Haney wants to keep and use two travel trailers near the north end of Parcel 001.

No CUP site plan was submitted; no analysis of future traffic impacts was submitted. The only drawings of the site that were submitted are Snohomish County Health Department (“SCHD”) “On-Site Sewage System (OSS) As-Built” plan sheets. ⁷ Those sheets do not depict 17th Street or surrounding land uses nor terrain or vegetation on Parcel 001. (Exhibit 3) Two overhead aerial photographs of Parcel 001 and its immediate surroundings and a ground photograph of two travel trailers on the north end of Parcel 001 were submitted. (Exhibit 4)

2. Parcel 001 is an irregular, somewhat triangular shaped parcel. It has about 100 feet of frontage on the north side of U.S. 2 and about 435 feet of frontage on the west side of 17th Street. (Exhibit 3) The size of Parcel 001 is not stated in any record document. Snohomish County on-line records list Parcel 001 as containing 1.02 acres. [<https://scopi.snoco.org/Html5Viewer/Index.html?configBase=https://scopi.snoco.org/Geocortex/Essentials/REST/sites/SCOPI/viewers/SCOPI/virtualdirectory/Resources/Config/Default>, last visited January 20, 2024]
3. U.S. 2 is a two-lane major highway with a center two-way-left-turn lane west of 17th Street; the two-way-left-turn lane ends at 17th Street. 17th Street is a two lane local access street. Approximately the south 400 feet of 17th Street (between U.S. 2 on the south and Amanda Avenue on the north) is a boulevard with a landscaped median separating the two lanes. [Google Earth overhead imagery]
4. Parcel 001 and parcels to its immediate west are zoned General Commercial (“GC”). The parcel on the east side of 17th Street south of Amanda Avenue is zoned Public Spaces and Parks (“PS&P”).

⁶ A power outage occurred in the Creekside neighborhood near the end of the hearing, limiting at least one person’s ability to participate in the full hearing.

⁷ Until recently the SCHD was an independent agency known as the Snohomish Health District (“SHD”).

The neighborhood to the north and northeast is zoned Residential 12,500 (“R 12,500”). [Official notice, <https://cityofgoldbar.us/wp-content/uploads/2022/07/Zoning-Map-2022.pdf>, last visited January 20, 2024]

“Because of their size or impact upon surrounding properties,” the GC zone allows travel trailer courts only upon issuance of a CUP. [GBMC 17.48.040] Required setbacks in the GC zone are 25 feet front, 10 feet side, and 15 feet rear. [GBMC 17.48.070] The following standard applies to all commercially-zoned properties: “There shall be no visible storage from adjacent right-of-way of motor vehicles, trailers, airplanes, boats, recreational vehicles, or their composite parts; loose rubbish, garbage, junk, or their receptacles; tents; equipment; or building materials in any portion of a lot. No storage shall occur on any vacant parcel.” [GBMC 17.30.030(A)(1)]

Landscaping is required for travel trailer courts. Section 17.60.080 GBMC, Table 17.60B, requires Type I landscaping along the perimeter of GC-zoned property abutting R-zoned property and Type III landscaping along GC-zoned street frontages. Type I landscaping is a 20-foot wide densely planted strip of trees or, as an alternative, a 10-foot strip of trees backed by a 6-foot tall solid, sight-obscuring fence. [GBMC 17.60.090(A)] Type III landscaping is a 3-foot wide strip of spaced trees with shrub/groundcover beneath. [17.60.090(C)]

5. In addition to Rico’s Pizza, Parcel 001 contains a single-family residence. (Exhibit 3) The GC-zoned property to the west appears to be used as an auto salvage/recycling yard. Between the salvage yard and Parcel 001 is apparently another parcel which appears to contain a single-family residence.⁸ The PS&P-zoned property on the east side of 17th Street is a mown tract with scattered, mature overstory vegetation. The R-12.500-zoned area to the north is “Creekside,” a single-family residential subdivision. (Exhibit 11; Google Earth imagery) A wooded, Native Growth Protection Area (“NGPA”) of unspecified dimensions abuts some portion of the north boundary of Parcel 001; the purpose for which the NGPA was established is not stated in the record. (Exhibits 4; 12, p. 6, Recommended Conditions 5 & 6)
6. Based on Google Earth Street View imagery, it appears that the north portion of Parcel 001 is roughly 6 – 8 feet higher than the elevation at U.S. 2. 17th Street, at least as far north as Amanda Avenue, has curbs, gutters, and sidewalks and rises in elevation along with Parcel 001. A curb cut located about 100 feet north of the U.S. 2/17th Street corner provides vehicular ingress/egress to the Rico’s Pizza parking area on southbound 17th Street. (The median would prevent use of that curb cut by northbound traffic.) A fence runs along the back side of the sidewalk on the west side of 17th Street from that curb cut northerly to a point about 100 feet south of Amanda Avenue. [Google Earth imagery]
7. Haney is a long-time resident of Gold Bar. He has owned Parcel 001 for about 30 years; he has operated Rico’s Pizza for about the last 15 years. Haney splits his time between Gold Bar and Arizona. He wants to be able to stay in a travel trailer on Parcel 001 whenever he is in Gold Bar.

⁸ Haney testified that he owned the abutting property to the west. His ownership may be the “in between” parcel.

Haney presently has two travel trailers on Parcel 001: One that he stays in when in Gold Bar and one currently being used for storage. (Testimony)

8. The GBMC defines a “travel trailer” as

a vehicle with or without motive power primarily designed as temporary living quarters for recreational, camping or travel use, and in which the plumbing, heating and electrical systems contained therein may be operated without connection to outside utilities, being of such size or weight as not to require a special highway movement permit. The term shall include recreational vehicles, motor homes and truck campers.

[GBMC 17.08.1430] The GBMC defines a “travel trailer court” as

land under single ownership or control designed and improved to accommodate the temporary parking of two (2) or more travel trailers, as defined. The term shall include campgrounds when designed to accommodate travel trailers, but does not include land zoned and used for the display or sale of travel trailers. For the purpose of this definition, "temporary parking" shall mean placement of a travel trailer on a single site for one hundred eighty (180) days or less in any twelve (12) month period.

[GBMC 17.08.1440]

9. About three years ago neighbors complained to the City about two travel trailers located on the north end of Parcel 001 that were seemingly occupied full-time. The Director contacted Haney and explained GBMC requirements. Haney has installed an OSS and electrical service for two travel trailers; both approved by the respective agencies. He has decommissioned an old well on the property. (Testimony)
10. As Haney tells it, what he really wants is just two travel trailer spaces that he can occupy whenever he wants. He is willing to plant trees as necessary to screen the two travel trailer spaces. If occupancy limits come into play, he says that he can move one or more travel trailers onto his abutting property. (Testimony)
11. The Director testified that a property owner may store one or two travel trailers on their lot so long as they are unoccupied. A permit may be obtained for a once-per-year, 30 day occupancy permit for one travel trailer. The City will approve a one-time 20-day extension, for a maximum occupancy of 50 days in any calendar year. (Testimony)

12. Neighbors are concerned about the lack of a specific site plan demonstrating compliance with GBMC requirements. They worry about noise and traffic problems, especially if the spaces are used by transient users.⁹ (Exhibit 11; and testimony)
13. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK¹⁰

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

Authority

A CUP is a Type III 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. [GBMC 2.26.120, .125, and .140; GBMC 19.01.030; and GBMC 19.06.060]

The examiner's decision may

grant, deny, or grant with such conditions, modifications, and restrictions as the examiner finds reasonable to make the application or appeal compatible with its environment, the Gold Bar Municipal Code, the Gold Bar Comprehensive Plan, other official policies and objectives, and land use regulatory enactments. Examples of the kinds of conditions, modifications, and restrictions that may be imposed include, but are not limited to, additional setbacks, screenings in the form of fencing or landscaping, easements, dedications, or additional right-of-way and performance bonds[.]

[GBMC 2.26.120(B)]

Review Criteria

The GBMC does not specify review criteria for CUPs. However, several code sections provide guidance. In addition to GBMC 2.26.120(B), quoted immediately above, GBMC 17.72.060 and GBMC 19.04.010(B) are particularly relevant:

When considering an application for a conditional use permit or special use permit, the [Examiner] shall consider the applicable standards, criteria, and policies established by this title as they pertain to the proposed use and may impose specific conditions precedent to establishing the use in order to satisfy the criteria of this chapter. The conditions may:

⁹ The Examiner intends no pejorative meaning for the adjective "transient." According to the Merriam-Webster on-line dictionary, "transient" as an adjective has three meanings, one of which is specifically applicable here: "passing through or by a place with only a brief stay or sojourn | *transient* visitors". [<https://www.merriam-webster.com/dictionary/transient>, last visited January 20, 2024; italics in original]

¹⁰ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

- A. Increase requirements in the standards, criteria, or policies established by this title;
- B. Stipulate the exact locations and means of minimizing hazards to life, limb, property damage, erosion, landslides, or traffic;
- C. Require structural features or equipment essential to serve the same purpose set forth in subsection (B) of this section,
- D. Impose conditions similar to those set forth in subsections (B) and (C) of this section as deemed necessary to establish parity with uses permitted in the same zone and their freedom from nuisance generating features and matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters; provided, the [Examiner] may not, in connection with action on a conditional use permit or special use permit, reduce the requirements specified by this title as pertaining to any use nor otherwise reduce the requirements of this title in matters for which a variance is the remedy provided;
- E. Assure that the degree of compatibility with the purpose of this title shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses within the general area in which the use is proposed to be located;
- F. Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibrations, odors, and hazards or public need;
- G. Require the posting of construction and maintenance bonds or other securities sufficient to secure to the city the estimated costs of construction and/or installation and/or maintenance of required improvements.

[GBMC 17.72.060]

During project permit application review, [Gold Bar] shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project. In the absence of applicable development regulations, [Gold Bar] shall determine whether the items listed in this subsection are defined in [Gold Bar's] adopted comprehensive plan. This determination of consistency shall include the following:

1. The type of land use permitted at the site, including uses that may be allowed under certain circumstances, if the criteria for their approval have been satisfied;
2. The level of development, such as units per acre, density of residential development in urban growth areas, or other measures of density; and
3. Availability and adequacy of infrastructure and public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by RCW Chapter 36.70A; and
4. Character of the development, such as development standards.

[GBMC 19.04.010(B)]

Vested Rights

The City has no vesting regulations. “Vesting” serves to “fix” the regulations against which a development application is judged. [*Potala Village Kirkland, LLC v. City of Kirkland*, __ Wn. App. __ (Div. I, 2014)]

In the 1950s, the [state] supreme court first adopted the common law vested rights doctrine [for building permit applications]. ... In cases that followed, Washington courts applied the vested rights doctrine to permit applications other than building permit applications. They included conditional use permit applications, grading permit applications, shoreline substantial development permit applications, and septic permit applications.

In 1987, the legislature enacted legislation regarding the vested rights doctrine. The session laws added ... RCW 19.27.095(1) and RCW 58.17.033(1) respectively ... [which] only refer to building permit applications and subdivision applications. ...

Most recently, in *Town of Woodway v. Snohomish County*, the [state] supreme court reiterated that "[w]hile it originated at common law, the vested rights doctrine is now statutory."

[*Potala*, Slip Opinion 6 – 8 and 11] “With these points in mind, [the *Potala* court held] that the filing of [an] application for [a] shoreline substantial development permit, without filing an application for a building permit, [does] not vest rights to zoning or other land use control ordinances.” [*Potala*, Slip Opinion at 12] The *Potala* court “express[ed] no opinion on whether or to what extent the vested rights doctrine applies to permits other than shoreline substantial development permits. These questions [were] not before [it].” [*Potala*, Slip Opinion at 25] Therefore, whether the vested rights doctrine still applies to CUPs is debatable.

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

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [GBMC 19.05.060]

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 simple reality is that the GBMC does not allow Haney to do what he really wants to do. Based on his sworn testimony, he really doesn't want to operate a traditional travel trailer court where travelers can park their travel trailers for a night or two and then continue their trip. (With only two spaces, such a use would likely be financially unworkable in any event.)

What Haney wants is to be able to keep two travel trailers on the Rico's Pizza property (Parcel 001) and occupy them as often and as long as he wants during the year. But the GBMC says that units in a travel trailer court cannot be occupied for more than 180 days in any calendar year. If he doesn't go the travel trailer court route, he can park two travel trailers on his property, but he can't occupy more than one for a maximum of 50 days in any given calendar year.

2. If Haney wanted to establish a traditional travel trailer court for transient guests, the Examiner would have to deny the application or remand it to City staff for development of substantial additional information. A decent site plan depicting setbacks, buffers, circulation, pad locations and sizes, landscaping, etc. would be necessary. So, too, would be a traffic analysis to address the volume of traffic expected to be generated by such a use and ingress/egress considerations.

The Staff's Recommended Conditions defer all such information to a later, administrative point in time when no public review would be available. It essentially asks the Examiner to sign a blank slate, waiving all of his quasi-judicial authority. The Examiner has never done such a thing and would not start now.

3. A two-space travel trailer court, not operated as a commercial transient accommodation, would give Haney much of what he says he really wants: A place to stay during his time in Gold Bar while away from Arizona. He would have to face the 180-day per calendar year limit, but there is nothing the Examiner can do about that as that limit is set in code.
4. The evidence does not demonstrate compliance with required setbacks (especially from the north property line) nor the buffer and landscape requirements applicable to developments in the GC zone. Those requirements must be met. Since this has been going on for several years, a time limit needs to be set for compliance. Planting vegetation in the dead of winter is not prudent (even if the ground isn't frozen). A reasonable deadline would be June 1, 2024.
5. Since this is not going to be advertised for transient use, the circulation issues can be overlooked given the sparse amount of traffic that will be generated.
6. Based upon the Google Earth imagery, it would seem that totally screening the two travel trailers from all off-site view would be well nigh impossible. Vegetating and respecting the required north property line buffer is necessary. It would also be appropriate to plant screening vegetation, such as Arbor vitae, along the northern end of the east property line from the northeast property corner south to a point about 30 feet north of the end of the eastern fence, thus leaving an ingress/egress passage with adequate sight distance.
7. The above conclusions address those decision considerations appropriate for the small scale of this "travel trailer court." If it ever grows beyond this scale, then a new application with proper supporting documentation would be required.
8. One witness disputed Haney's claim that a well on Parcel 001 had been legally decommissioned. Decommissioning water wells in Washington State is regulated by the Department of Ecology

(“Ecology”). [https://ecology.wa.gov/Water-Shorelines/Water-supply/Wells/Information-for-drillers/Abandoned-wells#:~:text=To%20decommission%20a%20well%20on%20your%20property%3A%201,pay%20online%20Decommissioning%20a%20water%20well%20is%20%2450, last visited January 20, 2024] Since there is no evidence either way in the record, a condition requiring submittal to the City of proof of decommissioning from Ecology will be added. (It is entirely possible that there never was a well on Parcel 001. If that is the case, then Ecology should be able to confirm that fact.)

9. 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 for a two-space travel trailer court **SUBJECT TO THE ATTACHED CONDITIONS**.

Decision issued January 22, 2024.

\s\ John E. Galt (Signed original in official file)
John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ¹¹

Russell Haney
Deanna Guay
Leigh Anne Barr
Sonia Bartosek
Jon Newbom
Julia Palekha

Rich Norris
Chuck Lei
Timothy Nichols
Shawn Haney
Kenneth Bartosek

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file a written request for reconsideration within seven (7) calendar days of the date this Decision was mailed to the parties. See GBMC 2.26.125 for additional information and requirements regarding reconsideration.

¹¹ The official Parties of Record register is maintained by the City’s Hearing Clerk.

NOTICE of RIGHT of APPEAL

This Decision is final subject to the right of a party of record with standing, as provided in RCW 36.70C.060, to file a land use petition in Superior Court in accordance with the procedures of GBMC 2.26.140 and 19.06.060. Any appeal must be filed within 21 days following the issuance of this Decision unless reconsideration has been requested. See GBMC 2.26.140 and 19.06.060 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.”
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CONDITIONS OF APPROVAL
LS-002-23
Haney Travel Trailer Court

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

1. This permit authorizes a two-space travel trailer court to be located on Assessor's Parcel Number 00534400100103 subject to the conditions listed herein.
2. This permit does not authorize a travel trailer court advertised and operated for transient visitors with high turnover expected. It is, as explained by the applicant during the hearing, intended to serve his personal needs. All code-required occupancy limitations shall apply.
3. Prior to June 1, 2024:
 - a. The two travel trailer pads shall be delineated in some permanent fashion on the ground and located so as to meet the 15-foot required setback from the north property line and any required setback from the east and west property lines.
 - b. Type I landscaping shall be installed along the north property line. A row of Arbor vitae, or the equivalent, shall be installed along the northern end of the east property line from the northeast property corner south to a point about 30 feet north of the end of the eastern fence, thus leaving an ingress/egress passage with adequate sight distance.
 - c. Type III landscaping shall be installed along the remainder of the street frontage south to the curb cut, excluding the area south of the southern curb cut.
 - d. Proof of decommissioning of an on-site well from Ecology shall be submitted to the City. (It is entirely possible that there never was a well on Parcel 001. If that is the case, then Ecology should be able to confirm that fact in lieu of proof of decommissioning.)
 - e. Fencing, minimum split rail, shall be installed along the western portion of the north property line adjacent to the NGPA on the abutting property.
 - f. NGPA notification signs shall be placed every fifty (50) feet along the property line adjacent to the abutting NGPA.