



Walla Walla County Community Development Department

310 W. Poplar Street, Suite 200, Walla Walla, WA 99362 / 509-524-2610 Main

File No. CUP18-006

NOTICE OF DECISION

Date of Notice: 7/23/2019
Date of Decision: 7/8/2019
Applicant: LOPEZ, BERNARDO dba NANO ARTS
Type of Application: CUP
File Number: CUP18-006

Enclosed is the Hearing Examiner's decision from the May 24, 2019 docket.

Walla Walla County Code Section 14.11.060 allows for the reconsideration of the final decision. The request must be submitted to the administrator within ten (10) days of the final decision or action; the submittal period ends **8/2/2019**. Reconsideration of the final decision must be granted or denied by the Hearing Examiner prior to an appeal being submitted to Walla Walla County Superior Court. Pursuant to Walla Walla County Code Sections 14.11.020 and 14.11.040 the Hearing Examiner's decision may be appealed to the Walla Walla County Superior Court. The appeal must be submitted to the Walla Walla County Superior Court within twenty-one (21) days of the final decision or action date. The Hearing Examiner's decision will be considered final if no appeals are filed within the allowed time frame described in Walla Walla County Code Chapter 14.11.

Please review Chapter 14.11 for the County's appeal requirements.

The complete project file is available for inspection at the Walla Walla County Community Development Department (CDD) office during normal office hours Monday through Friday from 8 AM to 5 PM. Please contact the CDD at the phone number above to arrange for inspection.

Feel free to contact me at 509-524-2620 if you have any further questions.



Lauren Prentice,
Walla Walla County Community Development Department

Enc. CUP18-006 Findings, Conclusions and Decision

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**BEFORE THE HEARING EXAMINER
FOR WALLA WALLA COUNTY**

)
)
Application for a Conditional Use Permit)
submitted by)
BERNARDO LOPEZ DBA NANO ARTS)
)
Applicant)
)
*(Project: to expand operations of an existing art)
production facility which operates at 96 Frontage)
Road, with portions of the project extending onto)
properties to the north and south of the current)
facility).*)
_____)

File No. CUP 18-006

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION APPROVING
CONDITIONAL USE PERMIT**

I. SUMMARY OF DECISION.

The requested Conditional Use Permit, to expand operations of an existing art production facility, is approved, subject to conditions.

II. BACKGROUND and RELEVANT CODE PROVISIONS.

Nano Arts, which currently operates at 96 Frontage Road, submitted an initial application in April of 2018, to expand its art production facility and operations. *(Staff Report; Ex. 2, application materials).* The Nano Arts facility is generally located in the south end of the County, to the west of SR 125, about one mile north of the state line.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION – APPROVING CONDITIONAL USE
PERMIT FOR NANO ARTS FACILITY EXPANSION –
FILE NO. CUP18-006**

WALLA WALLA COUNTY HEARING EXAMINER
310 W. POPLAR STREET, SUITE 200
WALLA WALLA, WASHINGTON 99362

1 The applicant amended the pending application in July and again in late November
2 of 2018, to include a parking lot on property located at 130 Frontage Road, as well as an
3 addition to the back of the existing art studio at 96 Frontage Road. *Id.* The addition, of
4 about 1,000 square feet, would be used for packing and storage. *Id.*

5 Specifically, the sum of all parts of the Project addressed in this permit includes: a)
6 expansion of existing operations to include use of a newly constructed gravel parking lot to
7 the north at the southwest corner of Farmland Road and Frontage Road, on tax parcel no.
8 350611410073; b) use of a portion of an existing building and parking lot to the south of
9 current operations, located at 130 Frontage Road (APN 350611410043); and c) a newly
10 constructed addition of approximately 1,000 sq.ft. to the back of the existing building
11 occupied by the applicant at 96 Frontage Road, to be used for packing and storage. The
12 hours of operation will be 5 AM to 5 PM, according to the written statement submitted by
13 the application (*Staff Report; Exhibit 2; Exhibit 4, SEPA Checklist, on final page, response*
14 *to item 14(f)*).

15 ***Basis for Conditional Use Permit Requirement.***

16 The proposed expansion of an existing art production facility is located on land
17 zoned Rural Residential 5-acres (RR-5) and the Comprehensive Plan land use designation is
18 Rural Residential 5-acres. Under WWCC 17.16.014, ‘Art Production Facility’ is classified
19 as a conditional use in the RR-5 zoning district. “Art Production Facility” is defined in
20 WWCC 17.08.053 as “...the workshop of an artist or sculptor primarily used for onsite
21 production of unique custom goods by hand manufacturing involving the use of hand tools
22 and small-scale equipment.”

23 ***Criteria for Approval of a Conditional Use Permit.***

24 The general criteria for approval of a conditional use permit are found at WWCC
25 17.40.020. The Staff Report generally explains that final review of the proposed art
26 production facility expansion and associated improvements must comply with County
development standards and regulations. This includes compliance with applicable parking,
stormwater, utility, transportation, and other County regulatory requirements. (*Staff
Report, pages 2-4*).

Jurisdiction of Hearing Examiner:

The County Code vests the Hearing Examiner with authority to hear and issue
decisions on applications for Conditional Use Permits. See *WWCC 2.50.070(A)(3);*
14.09.020(C), and 14.09.025, Table 14-1.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

III. RECORD.

All exhibits entered into evidence as part of the record, and an audio recording of the public hearing, are maintained by the County, and may be examined or reviewed by contacting the County's public records officer.

23
24
25

Exhibits entered into evidence by the Examiner:

Exhibit 1 – Staff Report – Walla Walla County Community Development Department Report and Recommendation of Approval to the Hearing Examiner for the Nano Arts expansion of Art Production Facility Conditional Use Permit application, dated May 23, 2019, prepared by Principal Planner, Lauren Prentice (six pages), along with the following Exhibits);

Exhibit 2 – Conditional Use Permit (CUP18-006) application initially submitted in April of 2018, with initial project described in Ex. 2A; amended in July of 2018 to include additional elements, generally described in Ex. 2B; and amended again in November of 2018 to propose adding a new room to the existing structure at 96 Frontage Road, generally described in Ex. 2C. Responses by the applicant to comments are included as part of Ex. 2, including those marked Ex. 2D and 2E. Lease for parking lot area is marked as Ex. 2F.

Exhibit 3 – Site Plans and aerial photos;

Exhibit 4 – SEPA Environmental Checklist (SEPA18-014), re-submitted 08/28/2018;

Exhibit 5 – Notice of Application (ODNS) and publishing, posting and mailing affidavits, dated 10/16/2018;

Exhibit 6 – Notice of REVISED Application (ODNS) and publishing affidavit, notice dated 3/7/2019;

Exhibit 7 – Email from Joy Bader, Walla Walla County Public Works Department, dated 11/5/2018;

Exhibit 8 – Letter from Department of Ecology Eastern Regional Office, dated 11/1/2018;

Exhibit 9 – Letter from Washington State Department of Transportation, dated 10/31/2018;

Exhibit 10 – Final Determination of Non-Significance (SEPA18-014), issued 5/9/2019; and

Exhibit 11 – Notice of Public Hearing and publishing, posting, and mailing affidavits.

26
27
28
29
30
31
32

Testimony: The following persons provided testimony under oath as part of the record during the open-record hearing held on May 24, 2019:

1. Lauren Prentice, Principal Planner and primary Staff Contact for the pending application, for Walla Walla County; and
2. Adar Lommasson, Office Manager for Nano Arts, the applicant. Ms. Lommasson appeared

1 as the applicant's hearing representative and did not object to any recommended conditions
2 or analysis provided in the Staff Report.

3 **Site Visit:** The Examiner visited the area where the project is proposed, and is familiar with
4 the uses, roads and conditions in the vicinity.

5 IV. FINDINGS OF FACT.

6 Based on the record, and following consideration of all the evidence, testimony,
7 codes, policies, regulations, and other information included therein, the undersigned issues
8 the following findings of fact:

9 1. All statements of fact included in previous or following sections of this Decision,
10 including without limitation those included in the Background summary, that are deemed to
11 be findings of fact are incorporated by reference into this section as findings of fact issued
12 by the Hearing Examiner.

13 2. In the Spring of 2018, the County received the pending Conditional Use Permit
14 application to expand operations for an existing art production facility, known as Nano
15 Arts. The applicant is Bernardo Lopez, DBA Nano Arts. (*Ex. 1, Staff Report; Ex. 2,*
16 *application materials*).

17 3. As mentioned elsewhere, the applicant amended the Project at least two times,
18 necessitating new notices to comply with applicable review and public notice requirements.

19 4. Staff reviewed the application materials, and each modification, issuing a formal
20 Notice of Application in October of 2018, and a Notice of REVISED Application in March
21 of 2019. *Exhibits 5 and 6.* Ms. Prentice confirmed that proper public notices regarding the
22 pending CUP application were published, posted and mailed in accord with applicable
23 County requirements. *Testimony of Ms. Prentice; Exhibits 5 and 6.*

24 5. As noted above, the Hearing Examiner is delegated specific authority to hear,
25 consider, and decide on applications for conditional use permits. See *WWCC*
26 *2.50.070(A)(3); 14.09.020(C), and 14.09.025, Table 14-1.*

6. In accord with applicable county project review regulations, Ms. Prentice, the
County's designated Staff Contact for this matter, reviewed the application materials, and
generated a Staff Report, which was transmitted to the Examiner shortly before the public
hearing.

7. The open-record public hearing for the conditional use permit occurred on May 24,
2019, in the County's designated hearing room. At the hearing, the undersigned Examiner
presided, with county staff and an applicant representative in attendance. Throughout the

1 hearing, no one from the general public asked to speak or participate in any portion of the
2 public hearing. At the hearing, there was no opposition or challenge to the pending
3 application or the staff's recommendation of approval.

4 8. No government agencies submitted any comments in opposition to or questioning
5 the pending applications, with standard comments submitted by the Department of Ecology,
6 WSDOT, and Public Works/Stormwater staff. (*Testimony of Ms. Prentice; Exs. 7, 8, 9*).
7 There were no written comments provided by any members of the general public. Ms.
8 Lommasson appeared at the hearing on behalf of the applicant and fully supported the Staff
9 Report and its recommendation of approval and proposed conditions, without objection to
10 any portion thereof. Ms. Prentice offered credible testimony and responses to questions
11 from the Examiner, all of which support the requested permit application.

12 ***Property Information, proposal is permitted as a conditional use.***

13 9. The Staff Report, on page 2, summarizes how the proposed arts production facility
14 expansion, as conditioned, is not expected to have any adverse impacts on existing access to
15 the site and adjacent properties (via Frontage Road, off of SR 125); traffic; parking;
16 stormwater; or utilities. The proposed expansion is located on land zoned Rural Residential
17 5-acres (RR-5) and the Comprehensive Plan land use designation is Rural Residential 5-
18 acres. An "Art Production Facility" is expressly permitted as a conditional use in the RR-5
19 zoning district. See *WWCC 17.16.014*. "Art Production Facility" is defined in *WWCC*
20 *17.08.053* as "...the workshop of an artist or sculptor primarily used for onsite production
21 of unique custom goods by hand manufacturing involving the use of hand tools and small-
22 scale equipment."

23 ***SEPA***

24 10. Because this application was substantially modified by the applicant since its
25 original submission, the proposed project has been the subject of two separate SEPA notice
26 and comment periods. The first Notice of Application/Optional SEPA Determination of
Non-Significance (ODNS) with a 14-day comment period issued on October 18, 2018. (*Ex.*
5). The second notice, captioned Notice of REVISED Application/ODNS, was issued on
March 7, 2019. (*Ex. 6*). Again, no agency or member of the general public submitted any
written comments during either notice period to oppose or challenge the requested permit.

11 11. After considering the revised SEPA checklist for the project, all relevant SEPA
12 related comments and application materials included in the Record, the Director issued a
13 Final SEPA Determination of Non-Significance for this project on May 9, 2019. (*Ex. 10*).
14 No one appealed the SEPA threshold determination. (*Staff Report, page 3; Testimony of*
15 *Ms. Prentice*).

1 **Comprehensive Plan**

2 12. The Staff Report and exhibits included in the record constitute a preponderance of
3 evidence that demonstrates how the pending application is consistent with the County’s
4 Comprehensive Plan, including without limitation language addressing rural issues, like
5 Policy RL 2.3. (*Ex. 2, application materials, explanation statement; Staff Report, pages 4,*
6 *5).*

7 13. The proposed expansion of an existing art production facility is located on land
8 zoned Rural Residential 5-acres (RR-5) and the Comprehensive Plan land use designation is
9 Rural Residential 5-acres. As noted above, under WWCC 17.16.014, ‘Art Production
10 Facility’ is classified as a conditional use in the RR-5 zoning district, and the term “Art
11 Production Facility” is defined in WWCC 17.08.053 as “...*the workshop of an artist or*
12 *sculptor primarily used for onsite production of unique custom goods by hand*
13 *manufacturing involving the use of hand tools and small-scale equipment.*” The Examiner
14 finds that by meeting applicable approval criteria for the requested permit, and by designing
15 the project to conform with all specific development standards at the time of Building or
16 other required development permit reviews for any aspect of the Project, the proposal can
17 be designed and conditioned to satisfy relevant County Comprehensive Plan Goals and
18 Policies.

19 ***As Conditioned, the pending application satisfies the approval criteria for a Conditional***
20 ***Use Permit.***

21 14. Based on evidence in the record, the Examiner finds and concludes that, as
22 conditioned, the proposed Nano Arts “art production facility” expansion project satisfies all
23 of the approval criteria for a Conditional Use Permit set forth in WWCC 17.40.020(A – F).
24 Findings regarding each of the specific criteria are provided below, in italics:

25 A. That the use will not endanger the public health or safety;

26 *The proposal will have to meet all applicable local, state, and federal safety standards, as well as health, access, parking, stormwater, building, and fire codes. The Walla Walla County Public Works and Environmental Health Departments, as well as the County Fire Marshal/Building Official, all received copies of the application materials, with a request for comments. None of these officials or agencies submitted any comments or questions opposing the project or noting issues that would serve as a basis to deny the pending application.*

B. That the use will not generate significant nuisance conditions such as noise,

dust, glare, vibration;

The proposed use is subject to applicable building and zoning regulations. Staff is of the opinion that the project is not likely to generate nuisance conditions if the applicant limits outdoor lighting and constructs the new parking area in compliance with WWCC Ch. 17.20. County stormwater and access regulations will also apply to the Project for the duration of this permit, further reducing the likelihood that the proposal will generate significant nuisance conditions. Limits on the hours of business operations should help reduce the potential for nuisance complaints from surrounding properties, especially occupants of residential units in the area.

C. That the use meets all required conditions and standards set forth in the district where it proposes to locate;

The proposed use is subject to applicable building and zoning regulations. Staff review on subsequent building permit, plan review, engineering, or similar phases of the development process will ensure the proposal is fully consistent with applicable setbacks, lot coverage standards, parking requirements, and Critical Area regulations, among other things.

D. That the location and character of the use is compatible and consistent with the character of the area in which it is to be located;

The applicant explained that the proposal is consistent and in character with the surrounding agricultural and rural residential land uses. The art production facility is already in existence, and there were no comments from neighbors opposing or questioning the proposed expansion addressed in this permit. The additional floor area is relatively small, and the new parking lot should serve to alleviate and/or reduce parking concerns presented by the applicant's facility.

E. That the use is in conformance with the Comprehensive Plan;

See Findings 12 and 13, above.

F. That the use will be supported by adequate public facilities or services.

The site does need much in the way of public facilities or services. Again, no local or state agency submitted any comments objecting to the application. No major or unusual expansions or extensions of public facilities or services

will be required to service the proposed use.

15. Again, no one submitted any comments or questions that would rebut or challenge the Staff Report’s recommendation of approval, subject to conditions.

16. Except as modified in this Decision, all Findings, and statements of fact contained in the Staff Report, are incorporated herein by reference as Findings of the undersigned hearing examiner.

17. As summarized above in previous findings, and in the un rebutted, credible Staff Report, the record contains sufficient evidence to demonstrate that the pending application meets all of the required criteria for approval, including without limitation those found in WWCC 17.40.020(Conditional Use Criteria). (See Staff Report, particularly pages 4 and 5).

V. CONCLUSIONS OF LAW.

1. As explained above, the record, particularly the County Staff’s recommendation of approval, includes sufficient evidence that the pending permit application satisfies all applicable decision criteria specified in the County’s code.

2. WWCC 17.40.020 mandates that a conditional use *shall be approved or approved with conditions* if the application meets the approval criteria set forth in WWCC 17.40.020(A) through (F). As explained in the Findings of Fact, including without limitation Finding No. 14, the applicant has satisfied its burden of proof, to demonstrate that its proposal complies with, or can be conditioned to comply with, all applicable approval criteria.

3. Any finding or other statement contained in this Decision that is deemed to be a Conclusion of Law is hereby adopted as such and incorporated by reference.

//

//

1
2 **VI. DECISION.**

3 Based upon the preceding Findings of Fact and Conclusions of Law, evidence
4 presented through the course of the open record hearing, all materials contained in the
5 contents of the record, and the examiner’s site visit, the undersigned Examiner APPROVES
6 the Conditional Use Permit, for the Nano Arts “Art Production Facility,” all as described
7 and depicted in the Staff Report, the Revised public notice, and the application materials
8 and site plan included in the Record as *Exhibit 2*, subject to the following Conditions of
9 Approval:

10 **CONDITIONS OF APPROVAL**

- 11 1. Consistent with WWCC 17.40.025, the action for which the conditional use permit
12 (CUP) is required shall commence within one year of approval unless extended for up to
13 one year by the Director. Failure to proceed with the approved use within such timeframe
14 shall void approval of the conditional use.
- 15 2. Before construction, the applicant must first obtain any Building or other associated
16 permit(s) or approval required by the County of any other government agency or regulatory
17 authority with jurisdiction over a particular aspect of the project. Any conditions of
18 approval or requirements imposed as part of such permits or approvals shall be and are
19 hereby incorporated as Conditions of Approval for this CUP. For the duration of this
20 permit, all operations and activities conducted in the facility shall be in accord with
21 applicable local, state and federal health and occupational safety regulations, which are also
22 incorporated herein as Conditions of approval for this CUP.
- 23 3. Lighting: Exterior lighting shall be directed and shielded in a manner which minimizes
24 its visibility at the site’s boundaries and prevents glare on public streets (particularly SR
25 125) and neighboring residential properties.
- 26 4. Parking: Pursuant to WWCC 17.20.110, a parking plan must be provided at the time of
building permit application, subject to review and approval by the Director. The plan shall
clearly indicate the proposed development, including location, size, shape, design, curb-
cuts, lighting, landscaping, construction details, ADA parking spaces provided, and other
features or appurtenances proposed. Parking spaces must meet the dimensional
requirements of WWCC 17.20.110B. No parking by employees or clients will be allowed
off-site or on County roads.
5. Building/Fire: Compliance with all provisions of applicable building and fire codes is
required for all construction, development and operational aspects of this project, as
currently written, or as may subsequently be amended, for the duration of this Permit.
6. Health Department: The applicant shall satisfy all requirements for water availability
and sewage disposal associated with operations and uses for any aspect of the Project.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

7. Hours: Consistent with the application materials, and to ensure that traffic, noise, and other potential impacts on the surrounding area (which includes some residential uses) are minimal, the hours of operation for the facility shall begin no earlier than 5:00 a.m. and end no later than 6:00 p.m. The Director shall have discretion and authority to issue written approval for different hours, so long as the start time is not before 5:00 a.m., and closing hours do not go beyond 8:00 p.m.

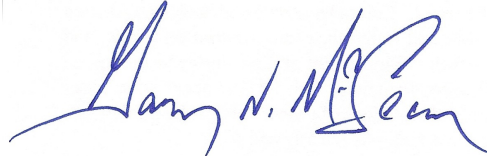
8. Prior to operation of any aspect of the art production facility-expansion addressed in this permit, the applicant shall submit written certification to the Director, verifying and explaining how all conditions of this permit have been satisfied.

9. Pursuant to WWCC 17.60.010 and other relevant authority, at any time during the life of this permit, the Director may take enforcement action against the applicant/permit holder or any property owner to mandate compliance with applicable code requirements or conditions of approval included in this permit. Such enforcement action may include a Stop Work or similar order, suspending the permit and ordering discontinuation of the conditional use on the site until corrective action occurs or the matter is adjudicated by a court or other authority with jurisdiction over the matter.

10. Pursuant to Walla Walla County Code Section 14.13.110, at any time during the life of the permit, the Walla Walla County Community Development Department Director may ask the Hearing Examiner to revoke the permit if the project is not in compliance with any of the conditions of approval and/or required permits.

11. Future changes in operations, plans, or additions will require an amendment to the CUP issued herein, which shall be processed as a Type 3 quasi-judicial review before the County's hearing examiner, consistent with applicable county codes and requirements for a new conditional use permit, as currently written or as may be subsequently amended by the Walla Walla County Board of County Commissioners and in effect as of the date of filing a complete application for an amendment to the CUP issued herein. (See WWCC 14.03.050 and Ch. 14.09 WWCC).

ISSUED this 8th Day of July, 2019



Gary N. McLean
Hearing Examiner

1 **FINALITY OF DECISION AND NOTICE OF RIGHTS OF APPEAL**

2 As provided in WWCC 2.50.070(B), *the decision of the hearing examiner on all matters is final and*
3 *conclusive, unless appealed pursuant to Chapter 14.11 of the Walla Walla County Code.*

4 WWCC 2.50.120, captioned “Reconsideration”, provides that: *An applicant or party of record to a*
5 *hearing examiner's public hearing may seek reconsideration only of a final decision by filing a written*
6 *request for reconsideration with the community development director within ten days of the final decision.*
7 *The request shall comply with Section 14.11.030 of this code. The hearing examiner shall consider the*
8 *request at the next regularly scheduled meeting, without public comment or argument by the party filing the*
9 *request. If the request is denied, the previous action shall become final as of the date of the decision on the*
10 *request for reconsideration. If the request is granted, the hearing examiner may immediately revise and*
11 *reissue its decision or may call for argument in accordance with the procedures for closed record appeals.*
12 *Reconsideration should be granted only when an obvious legal error has occurred or a material factual issue*
13 *has been overlooked that would change the previous decision.*

14 Finally, WWCC 2.50.130 addresses appeals of a hearing examiner decision, and reads as follows:
15 *The final decision by the hearing examiner on any matter within his or her jurisdiction may be appealed in*
16 *accordance with Chapter 14.11 of the Walla Walla County Code.*

17 ***NOTE:*** *The Notice provided on this page is only a short summary, and is not a complete*
18 *explanation of fees, deadlines, and other filing requirements applicable to appeals.*
19 *Individuals should confer with advisors of their choosing and review all relevant codes,*
20 *including without limitation the code provision referenced above and state law, particularly*
21 *the Land Use Petition Act (Chapter 36.70C RCW), for additional information and details*
22 *that may apply.*