

**CITY OF ELLENSBURG
LAND USE HEARING EXAMINER**

IN THE MATTER OF

P 22-131

Winco Grocery Distribution Center

) **FINDINGS OF FACT,**
) **CONCLUSIONS OF LAW,**
) **DECISION AND CONDITION**
) **OF APPROVAL**
)

THIS MATTER having come on for hearing in front of the City of Ellensburg Hearing Examiner on May 11, 2023. The Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, and Decision and Condition of Approval as follows:

I. FINDINGS OF FACT

1. The applicant is requesting a Variance for relief from the 35-foot (35') height maximum in the Light Industrial (I-L) zone. The applicant is requesting to increase portions of the proposed buildings to a total height of 115 feet which will require an 80-foot (80') variance in the building height in order to construct a viable mechanized warehouse automation system grocery distribution center facility structure.
2. The applicant/owner is Brandon Johnson, JSA Civils, Agent for MTA Holdings, property owner.
3. The existing five parcels totaling approximately 108 acres located west of Anderson Road and east of Interstate 90 in the western portion of the City of Ellensburg, in Kittitas County, Washington, are shown as Assessor's tax parcel ID#'s 158133, 916833, 698633, 708633, & 528633. The site is mostly flat, generally sloping from the northwest to southeast at 1-2% towards Anderson Road and currently contains a gravel employee parking area, haystack area, and hayfield. The existing site improvements will be removed/demolished as part of the proposed development.
4. A boundary line adjustment is proposed and will be required in order to combine the five existing parcels into one. The parcel merger will allow the construction of the proposed building without placement crossing over the existing lot lines.
5. Site History: On April 27, 2022 an official Pre-Application meeting was held in which all City departments provided guidance and first initial comments to the applicant's team for the proposed project. On May 18, 2022 the formal Pre-Application report with all departmental and outside agency comments was signed by the applicant as agent for the property owner which thereby acknowledged their review and acceptance of the compiled report. The signed report was then entered into the permit tracking system in order for the next permit process applications to be submitted accordingly.
6. The applicants have chosen this City of Ellensburg site, within the center of the state for their efficient state of the art grocery distribution center facility. This project proposes construction of a new grocery distribution center facility on 108.24 acres in the City of Ellensburg, Washington. The distribution center proposes to include a new 1,116,220 sq. ft. grocery distribution warehouse, 47,894 sq. ft. truck returns warehouse, 800 sq. ft. driver waiting building, and 377 sq. ft. check-in building. The distribution warehouse will include

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segregated storage of dry goods, frozen foods, and refrigerated foods for distribution to WinCo Foods stores throughout the Pacific Northwest. Goods stored within the facility will be sorted and conveyed by a mechanized warehouse automation system. Additional site improvements include an on-site truck refueling area, tractor-trailer and auto parking areas, interior drive aisles, stormwater facilities, and underground utilities to serve the proposed development.

7. The project has been designed to comply with City setback requirements in the I-L zone. The distribution center warehouse building will need a height variance to permit a proposed building height in excess of the 35-foot maximum allowed under City Code. The distribution center warehouse will include portions of the building at a maximum height of 115 feet. The architectural design plans for the distribution center building include varied roof heights to provide clearance for interior equipment, modern automated operating systems, and framing to provide adequate roof pitch and snow load capacity.
8. WinCo has conducted detailed analysis research to ensure that the grocery distribution center facility is able to serve as a hub for the center of the state. The grocery distribution center facility building will need a height variance because the Light Industrial (I-L) zoning district use table in Ellensburg City Code (ECC) 15.320.040 "Building setback and intensity standards table – Nonresidential zones," indicates the maximum building height in the I-L zone is 35 feet. Portions of the proposed grocery distribution facility will be approximately 115 feet high above finished grade. Please refer to the application and narrative provided by the applicant for additional details about the variance request.
9. Zoning of Surrounding Properties: A zoning map of the parcel and surrounding properties is provided in Exhibit 2. The property is zoned as Industrial Light (I-L). A "grocery distribution center facility" falls within the category of "regional distribution center," a use which is permitted in the Light Industrial (I-L) zone.
10. The zoning of the surrounding properties is stated below.
 - 10.1 North: Property to the north includes Public Reserve (P-R) zoned land which includes the City of Ellensburg Rotary Park, and Urban Residential land with a single-family residence located within an Unincorporated Island of County Jurisdiction.
 - 10.2 South: Unincorporated County Jurisdictional land zoned General Industrial owned and operated by Anderson Hay & Grain, and unincorporated undeveloped Urban Residential zoned land lies south of the project site. Further south is an unincorporated Urban Residential parcel with a single-family residence.
 - 10.3 East: Property to the east consists of Light Industrially developed parcels within the City limits including a woodworking shop, and a storage unit facility within the Industrial Light (I-L) zone.
 - 10.4 West: To the west, the property borders the Interstate 90 Corridor along the City Limit boundary.
11. Site Characteristics: The site is mostly flat, generally sloping from the northwest to southeast at 1-2% towards Anderson Road. The existing site improvements will be removed/demolished as part of the proposed development. The majority of the site topography is relatively flat, with a slight slope to the south which occurs along the property line between the existing two tax parcels. The general types of soils consist of gravel, silt and sand units with cobbles and boulders, soils that trend denser with depth.

12. Access: Access to the facility is proposed by two (2) driveways from Anderson Road which is a designated truck route. The existing site driveway will be improved to serve as the primary truck access for the distribution center and a new northern auto driveway will be added to access the administrative offices. On-site parking is proposed to accommodate combination truck and trailers, tractor-trailer storage, and autos. Frontage improvements are proposed along the project's Anderson Road frontage including curb, gutter, and sidewalk along the site and new asphalt pavement within the travel lanes.
13. Zoning and Development Standards, ECC Title 15 - Land Uses: ECC 15.310.040 – The Grocery Distribution Center Facility falls into the category of Light Industrial Uses as a regional distribution center. As per ECC 15.130.120, "Light Industry" refers to a category of uses that accommodate limited intensity levels of manufacturing and assembly activities, storage, warehousing, services, associated offices and similar uses. This use category includes, but is not limited to, contractors, call centers, textiles, wood products, printing, pharmaceuticals, machinery manufacturing, research and development, regional distribution, and crematories. The Grocery Distribution Center Facility is considered a Permitted Use in the Light Industrial zone as identified in Table 15.310.40, as depicted below: Non-Residential Uses.

Use	R-S	R-L	R-M	R-H	R-O	C-N	C-T	C-H	C-C	C-C II	I-L	I-H	P-R
Light Industry									P2,11	P2,11	P	P	

14. Development Standards: ECC 15.320.040: The height limit in the Light Industrial (I-L) zone is 35 feet.
15. Comprehensive Plan - The future land use designation for these parcels is Industrial Heavy and Industrial Light, as shown in Exhibit 3. Ellensburg's early industrial development centered in this area along the railroad tracks to the west of the existing central commercial area. The Comprehensive Plan Update in 2006 identified the need for additional industrial zoned land, and slated Dolarway Road which meanders into Railroad Avenue and then ultimately Anderson Road to be developed as Ellensburg's primary industrial district corridor. The proposed grocery distribution center facility distribution facility site makes sense to be located along the truck route and industrial corridor of Anderson Road.
16. A SEPA Mitigated Determination of Non-Significance (MDNS) was issued on April 11, 2023, for the project.
17. Environmental Review - The applicant submitted the required SEPA checklist for review, which was processed as follows:

SEPA Checklist Submitted:	12/19/22
Determination of Completeness:	01/11/23
Notice to Property owners:	02/9/23
SEPA Threshold Determination	04/11/23

18. Agency/Department Comments: The Public Works and Utilities Departments and the Fire Marshall commented during the overall project Pre-Application and SEPA reviews. Upon further review, the Fire Marshall submitted an updated comment in relation to the request for additional building height allowances. However, the other departments had no specific comments pertaining to this height variance application.

19. Public Comments: Notice of the variance application was mailed to property owners within 300 feet of the proposed site on Wednesday, April 20, 2023. Notice of the Public Hearing was also published in the legal section of the Daily Record on Thursday, April 20, 2023, and the site was posted with a land use action sign on April 27, 2023. No comments from the public have been received.

Application Submitted:	12/29/23 (Reliant on SEPA)
Determination of Completeness:	1/11/23
Notice of Application:	04/19/23
Notice of Public Hearing:	4/20/23
Public Hearing:	5/11/23

20. In review of this proposal, it is important to consider the goals and policies of the comprehensive plan, applicable City Code, as well as public and agency comments. Before approving the variance, the Hearings Examiner must find that the application is in compliance with decision criteria in ECC 15.250.050. The applicant has submitted an application with a narrative addressing the following variance criteria:

- 20.1 The variance is necessary because of the unique size, shape, topography, or location of the subject property:

20.1.1 Applicant narrative and supporting application materials: Site constraints are present due to the existing on-site wetlands, buffers, and groundwater depths. These constraints render design alternatives such as a larger building footprint to reduce roof height and/or below-grade construction of the facility infeasible.

20.1.2 The Hearing Examiner agrees with the applicant that site constraints are a contributing factor, and the additional height variance is necessary to accommodate the most efficient and safe operations of a modern automated grocery distribution center facility.

- 20.2 The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner.

20.2.1 Applicant narrative and supporting application materials: Strict enforcement would create an unnecessary hardship because the property could not accommodate the proposed distribution center use without a building to include freight handling and automated storage equipment, refrigerated/frozen storage facilities, and the electronic monitoring and management systems necessary for operation. Design alternatives to reduce the building and roof height were reviewed but proved to be infeasible. Options such as increasing the building footprint, adjusting the ratios of on-site parking areas and drive aisles, and/or constructing below-grade freight handling facilities were explored; however, due to site constraints from existing conditions, these methods were determined to be infeasible. The project site contains critical areas (wetlands and streams) which require protective on-site buffers and restrictive setbacks, thereby reducing the

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available development envelope and available area for storage and treatment of site-generated storm runoff. Reducing the on-site parking and drive aisle areas to accommodate a larger building footprint would limit capacity and volume of the distribution facility, rendering the project operationally unsuccessful. Below-grade facilities are also infeasible due to groundwater depths at the site, which prohibit installation of electronically automated handling systems and warehousing equipment under damp or wet conditions. The building has been designed to utilize the lowest roof heights practicable for installation, use, and maintenance of the distribution systems proposed by the facility.

- 20.2.2 The Hearing Examiner agrees with the applicant that a height limit of 35 feet would unnecessarily deprive the owners of the ability to maximize the use of their property to build a viable, efficient grocery distribution center facility within the constraints of the zoning code and critical areas regulations. The strict enforcement of the height code for the I-L zone would limit the building to 35 feet.
- 20.3 The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone, however, the existence of similar nonconforming uses of neighboring lands, structures, or buildings in the same zone shall not be considered grounds for the issuance of a variance.
 - 20.3.1 Applicant narrative and supporting application materials: Previous building height variances have been approved for the Kittitas County Transfer Station and Continental Cold projects, which are conforming uses within the City's Light Industrial zone. Specifically, the Kittitas County Transfer Station received a 15 ft. variance for an overall building height of 50 ft., and the Continental Cold project obtained a 20 ft. variance for an overall building height of 55 ft. There are no known buildings exceeding a 35-foot maximum height on neighboring parcels.
 - 20.3.2 The Hearing Examiner agrees with the applicant that there are no similar nonconforming uses on neighboring lands, and finds that the unique requirements for the grocery distribution facility being sited on the subject property is unnecessarily deprived by the provisions of this title of the full and efficient use of the land that is permitted in the Light Industrial Zone by the height limit.
- 20.4 The need for the variance is not the result of deliberate actions of the applicant or property owner, including any past owner of the same property.
 - 20.4.1 Applicant narrative and supporting application materials: There were no deliberate actions by the applicant or property owner resulting in the need for a variance. Site constraints are present from existing on-site wetlands, critical area buffers, and groundwater depths which have resulted in the need for an increased building height to meet the demand of the distribution facility. Design alternatives such as expanding the building footprint and reducing the proposed building height are infeasible due to existing site conditions.
 - 20.4.2 No deliberate action by the property owner or past property owners necessitated the need for this variance. The owner seeks to use the property

in a way that is permitted in the zoning ordinance and is consistent with the Comprehensive Plan.

20.5 The variance is compatible with the comprehensive plan.

20.5.1 Applicant narrative and supporting application materials: The Future Land Use Map within the City's comprehensive plan identifies the majority of the site as Heavy Industrial and the remainder as Light Industrial. Regional distribution centers and their accessory uses are permitted uses within the City's Light and Heavy Industrial zoning designations. Based on Table 15.320.040. of the Ellensburg Land Development Code, there are no building height maximums within the I-H – Heavy Industrial zone. Therefore, the proposed project is compatible with future land use projections in the comprehensive plan.

20.5.2 The Hearing Examiner agrees with the applicant that the request is compatible with the City's comprehensive plan and further finds that the project will enhance the Anderson Road industrial corridor. Ellensburg is located in the center of the state, and the project site location is near interstate access with direct frontage along one of the City's major truck routes. Ideal location of this grocery distribution facility will fulfill Land Use, Transportation and Economic Development Goals of the Comprehensive Plan, including:

20.5.2.1 Goal LU-5: Plan for commercial and industrial areas that serve the community, are attractive, and have long-term economic vitality.

20.5.2.2 Policy A: Provide a diversity of commercial and industrial lands to provide an array of businesses and development opportunities that serve the community.

20.5.2.3 Program 1: Land designated or zoned industrial in the City and UGA should be reserved for industrial and appropriate accessory uses.

20.5.2.4 Program 2: Access high-traffic generating land uses from arterials whenever possible. If this is not possible, provide mitigation to address access impacts.

20.5.2.5 Goal T-2: Prioritize connections with state highway routes and removal of bottlenecks that delay the movement of people and goods.

20.5.2.6 Policy G: Focus industrial growth along specific transportation corridors that are designed to accommodate heavy vehicles and other industrial users.

20.5.2.7 Goal ED-2: Stimulate and diversify Ellensburg's economy.

20.5.2.8 Policy A: Encourage growth that will provide goods and services to the local and regional community.

20.5.2.9 Program 1: Market to a variety of business – both large and small – that provide goods and services to local and regional populations.

- 20.5.2.10 Program 2: Promote economic activity to diversify sources of revenue and expand the employment base.
 - 20.5.2.11 Policy D: Encourage development of light industrial uses within the City of Ellensburg
 - 20.5.2.12 Furthermore, as described in the Comprehensive Plan, the industrial land use designations provide for the creation of local jobs and other local economic activity in a manner consistent with the character of the community. Industrial land typically includes businesses that manufacture, process, or otherwise generate products sold to commercial businesses later. Industrial land needs good transportation access, preferably with access to truck routes, for transport of products as well as for workers. These areas provide a range of intensities including heavy and light industrial uses
- 20.6 The variance does not create a health or safety hazard.
- 20.6.1 Applicant narrative and supporting application materials: The variance will not create a health or safety hazard. The roof areas proposed are the minimum heights necessary to allow safe operation and maintenance of the distribution systems proposed within the structure and to provide structural framing suitable for snow and wind loads within the geographic location of the project.
 - 20.6.2 The Applicant will be required to undergo all necessary building permits, Public Works, and Utilities permit reviews, and will be required to comply with all adopted codes and standards. In addition, the proposed height of the grocery distribution facility building does not create a condition that would exceed the capabilities of local fire and rescue services.
- 20.7 The granting of the variance will not be materially detrimental to the public welfare or injurious to:
- 20.7.1 The property or improvements in the vicinity, or
 - 20.7.2 The zone in which the subject property is located;
 - 20.7.3 Applicant narrative and supporting application materials: The variance will not create a health or safety hazard. The roof areas proposed are the minimum heights necessary to allow safe operation and maintenance of the distribution systems proposed within the structure and to provide structural framing suitable for snow and wind loads within the geographic location of the project.
 - 20.7.4 The Hearing Examiner agrees with the applicant in that the granting of the height variance will not be materially detrimental to the general public welfare, nor result in the deleterious obstruction of any views from surrounding properties. The Applicant has done an excellent job of providing transparency throughout their rigorous SEPA review process. Staff finds that the new facility on the proposed site serves the interest of the citizens and property owners of the City by providing a modern, state of the art, highly efficient grocery distribution facility in an ideal location for safe storage and efficient regional distribution of food products.

- 20.8 The variance does not relieve an applicant from:
- 20.8.1 Any of the procedural or administrative provisions of this title, or
 - 20.8.2 Any standard or provision that specifically states that no variance from such standard or provision is permitted, or
 - 20.8.3 Use or building restrictions, or
 - 20.8.4 Any provisions of the critical areas development standards except as provided in Division VI;
 - 20.8.5 Applicant narrative and supporting application materials: The project will comply with the procedural and administrative provisions of title 15.250.050 including but not limited to standards and provisions, use or building restrictions, and critical areas development standards.
 - 20.8.6 The Hearing Examiner agrees with the applicant that the granting of a height variance for this new cold storage logistics facility will not relieve the applicant from complying with the remainder of Ellensburg City Code requirements because the proposal has completed the required overall project formal Pre-Application review by all City Departments, prior to submitting this variance application. Furthermore, the project will undergo all necessary building permits, Public Works, and Utilities permit reviews, and will be required to comply with all adopted codes and standards. This combined extensive review process will ensure all necessary requirements and improvements identified will be made a part of the relevant permits issued for the project.
- 20.9 The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities;
- 20.9.1 Applicant narrative and supporting application materials: The variance from height requirements will not infringe upon or interfere with any known easements or covenant rights or responsibilities.
 - 20.9.2 The Hearing Examiner agrees with the applicant that the height variance does not infringe on, or interfere with, any setback, easement, covenant, or responsibility that encumbers the property.
- 20.10 The variance does not allow the establishment of a use that is not otherwise permitted in the zone in which the proposal is located;
- 20.10.1 Applicant narrative and supporting application materials: The height variance will not establish a use that is not otherwise permitted within the site's I-L zoning designation. No special or conditional uses are proposed by the project; a regional distribution center is a permitted use within the I-L zone under title 15.310.040. Nonresidential uses.
 - 20.10.2 The proposed use is permitted in the I-L zone. Staff would also refer to the applicant's narrative information pertaining to efficient building construction, noting that the granting of this variance will in fact allow for a more viable and practicable use as modern, highly sophisticated automated grocery distribution center facility.
- 20.11 The variance is the minimum necessary to grant relief to the applicant.

- 20.11.1 Applicant narrative and supporting application materials: The height variance requested to allow a final building height of 115-feet above finished grade is based on the distribution facility's functionality requirements and is the minimum necessary to grant relief to the applicant. No additional variances or exceptions from City Code are included with this request.
- 20.11.2 The Hearing Examiner agrees with the applicant that the height enforcement of the 35-foot maximum would limit the building by not allowing the additional height capacity needed for portions of the building for the modern design efficiency; therefore, the height variance requested is the minimum that will increase building construction efficiency and allow for a more viable grocery distribution center facility.
21. The City of Ellensburg Department of Community Development recommended approval of the requested variance subject to the conditions of approval.
22. An open record public hearing after due legal notice was held May 11, 2023, via Zoom video conference.
23. The following exhibits were admitted into the record:
 - 23.1 Ex. 1: Location Map;
 - 23.2 Ex. 2: Current Zoning Map;
 - 23.3 Ex. 3: Comprehensive Plan Land Use Designation Map;
 - 23.4 Ex. 4: Notice of Application, Area Notification Map, & 300-Foot Buffer Notification List;
 - 23.5 Ex. 5: Affidavit of Publication - Legal Notice of Open Record Public Hearing;;
 - 23.6 Ex. 6: Photo Notice of Land Use Action Sign Posted on Property
 - 23.7 Ex. 7: SEPA MDS;
 - 23.8 Ex. 8: Fire Marshal Comment Memo Dated May 1, 2023;
 - 23.9 Ex. 9: P22-131 Variance Application Materials Including:
 - Ex. 9.1 Variance Request Permit Application Form
 - Ex. 9.2 Applicant's Project Narrative
 - Ex. 9.3 Project Site Location Map
 - Ex. 9.4 Grocery Distribution Center Facility Site Plan
 - Ex. 9.5 Proposed Draft Grocery Distribution Center Facility Building Elevations
 - 23.10 Ex. 10 Staff Report.
24. Appearing and testifying on behalf of the applicant was Brandon Johnson. Mr. Johnson testified that he is the agent of the property owner and applicant. Mr. Johnson indicated that the proposed Condition of Approval was acceptable and that he agreed with the representations set forth within the staff report.
25. No member of the public testified at the hearing.
26. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this Recommended Decision.

2. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the City of Ellensburg Municipal Code and Comprehensive Plan.
3. As conditioned, the proposal will conform to the standards specified in City of Ellensburg.
4. As conditioned, the use will comply with all required performance standards as specified in City of Ellensburg Municipal Code.
5. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of either the City of Ellensburg Municipal Code or the Comprehensive Plan.
6. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
7. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the application for P22-131 is hereby **APPROVED** subject to the following Condition of Approval.

IV. CONDITION OF APPROVAL

1. The applicant shall adhere to any requirements related to any future development approvals, including meeting all requirements of utility providers, City departments, and affected districts, as outlined in adopted City Codes and other regulatory documents

Dated this 15 day of May, 2023.

CITY OF ELLENSBURG HEARING EXAMINER



ANDREW L. KOTTKAMP

ANYONE AGGRIEVED BY THIS DECISION MAY FILE AN APPEAL WITH THE ELLENSBURG CITY COUNCIL AS PROVIDED FOR IN THE ELLENSBURG CITY CODE.