

BEFORE THE CITY OF LAKEWOOD HEARINGS EXAMINER

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| IN RE: |) | APPLICATION NO. 3426 |
| |) | PROJECT ID: 1965 |
| LBA OR DEVELOPMENT COMPANY II, |) | FINDINGS OF FACT, |
| LLC, |) | CONCLUSIONS OF LAW |
| |) | AND DECISION DENYING APPEAL |
| Appellant. |) | |

APPLICANT: LBA OR Development Company II, LLC
P. O. Box 847
Carlsbad, California 92018

APPELLANT: LBA OR Development Company II, LLC
P. O. Box 847
Carlsbad, California 92018

APPELLANT'S REPRESENTATIVE: Reuben Schutz
Gordon, Thomas, Honeywell, LLP
1201 Pacific Avenue, Suite 2100
Tacoma, Washington 98403

LOCATION OF PROPOSAL:
3515 82nd Street South, Lakewood, Washington.

SUMMARY OF REQUEST:
Appellant appeals the December 7, 2022, Determination by the City of Lakewood's Development Director (the "Director Determination") under Lakewood Municipal Code 1.36 and 18A.20.070. The effect of the Director's Determination is to deny Appellant the use of the project site as an allowed trailer storage facility as part of the operation of its warehouse facility immediately south of the project site on the opposite side of 82nd Street.

SUMMARY OF DECISION:
The appeal is **denied**.

1 **BACKGROUND**

2 LBA OR Development Company II, LLC (the "Appellant" or the "Applicant") is the
3 owner of property located at 3515 82nd Street South in Lakewood (the "Project Site"). The
4 Appellant is also the owner of property located on the opposite (southern) side of 82nd Street at
5 8327 South Tacoma Way on which a warehouse facility has been constructed pursuant to a
6 Conditional Use Permit granted February 27, 2019, Conditional Use Permit LU-18-00222. The
7 Appellant wishes to develop the Project Site as a trailer storage facility in order to more
8 efficiently manage the handling of trailers associated with the warehouse across 82nd Street.

9 On August 18, 2022, the Appellant submitted a "Director's Determination Application" to
10 Lakewood wherein the Applicant sought a Determination by the Director that the Appellant's
11 proposed trailer parking use was an allowed use, either as a stand-alone "parking facility" or as a
12 "accessory commercial use" in conjunction with the warehouse activities across the street.

13 Alternatively, the Appellant asked the Director to exercise his discretion and permit the use on
14 the basis that it is consistent with the principal uses of the C2 zone. LMC 18A.10.070.B.

15 By written Decision dated December 7, 2022, the Director issued his Determination that
16 the proposed use was not allowed in the C2 zone. Among other things, the Director concluded
17 that the proposed use was not allowed as a stand-alone trailer parking lot facility and, separately,
18 that it was not allowed as a commercial accessory use as it was not located on the same lot as the
19 warehouse.

20 The Appellant timely appealed the Director's Determination.

21 On January 17, 2023, the Hearing Examiner issued his Pre-Hearing Order establishing a
22 hearing on March 22, 2023, and requiring the parties to abide by a schedule for the disclose of
23 witnesses and exhibits and the presentation of briefing. Pursuant to this Order, the parties
24 presented their exhibits, anticipated witnesses, and briefing in advance of the hearing.

1 The matter came on for hearing before the Hearing Examiner on Wednesday, March 22,
2 2023, at 1:30 p.m. The hearing occurred remotely utilizing the Zoom platform with the City
3 serving as the host. The Appellant appeared through Grant Middleton and was represented by
4 Reuben Schutz. The City appeared through David Burgher, Director, and was represented by
5 Eileen McKain, Assistant City Attorney. The Hearing Examiner inquired of both parties as to
6 whether they were willing to allow admission of the other parties' proposed exhibits and both
7 parties agreed. Thus, the City's Exhibits 1-16 and the Appellant's Exhibits 1-7 are admitted. The
8 Hearing Examiner then noted that the parties' briefing suggested little or no factual disagreement
9 and asked if the parties wished to present testimony. The parties concurred that there are no
10 material facts in dispute but, nonetheless, both wished to present some additional testimony to
11 supplement the written record.

12 The Appellant presented the testimony of Grant Middleton and Christian Mattson. Mr.
13 Middleton serves as the project engineer while Mr. Mattson assists with shipping logistics. Mr.
14 Middleton explained that the Project Site would be used for overflow parking of trailers
15 associated with the warehouse. The site would be paved, landscaped and used solely to assist the
16 adjoining warehouse and would not be used to store trailers for any other project. Mr. Middleton
17 explained that trailers would travel 165 feet along 82nd Street when being moved to and from the
18 storage area and warehouse facility. Mr. Middleton added that during his conversations with
19 City Staff he felt that the City was encouraging the proposed use, either as an allowed use or
20 under an Unusual Use Permit (UUP), and was surprised to learn that the City is expressing
21 opposition to a UUP.

22 Mr. Mattson testified as to how the offsite storage of trailers becomes increasingly
23 important as the warehouse approaches full capacity. As the warehouse nears capacity, the
24 storage of trailers onsite creates increasingly restricted internal movement, resulting in both in
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1 efficiency and safety issues. One remedy is to transport the empty containers to other facilities
2 elsewhere but this requires the use of semis and considerably greater trailer movement. The
3 proposed trailer storage facility on the Project Site would allow for empty trailers to be
4 temporarily taken to the site for storage, thus allowing trailers to be used independently of the
5 semis hauling them. Once trucks/trailers arrive at the warehouse, trailers would be disconnected
6 from the trucks and thereafter moved around by "yard goats" or "tugs" which can operate much
7 more easily than semis. The disconnected trucks would be used to haul away other empty
8 containers while the full container they transported was being unloaded. It is believed that this
9 system would significantly reduce truck trips while also providing greater efficiency and safety.
10 Trailers taken across the street to the Project Site would be held there for only brief periods (no
11 more than 3 days) as the trailers are required to be kept in constant use.

12 At the conclusion of testimony by the Appellant's witnesses, the City presented the
13 testimony of the Community Economic Development Director, David Burgher, (the "Director")
14 as well as Andrea Bell, Associate Planner involved with this project. Mr. Burgher began his
15 testimony by noting that the Conditional Use Permit granted in February 2019 for the Warehouse
16 across the street was on the express condition that the project not use 82nd Street for truck/trailer
17 traffic. Although Mr. Burgher did not cite to this fact in his Director's Determination, he
18 regarded it as an additional reason why the requested use was not allowed. Mr. Burgher then
19 reviewed his earlier Director's Determination and its reasoning and added his concerns about the
20 various negative impacts offsite trailer storage may have both with respect to this project and
21 more generally in the City. On cross-examination, Mr. Burgher conceded that the City's
22 decisions relating to offsite trailer storage have not been entirely consistent and, indeed, if asked
23 to reexamine some of its earlier decisions the City might likely come to different results. Andrea
24 Bell's testimony was consistent with Mr. Burgher's and reiterated the City's position that the

1 proposed use is not allowed in the C2 zone and would also be a violation of express conditions
2 imposed as part of the Conditional Use Permit granted for the warehouse. She acknowledged,
3 however, that the Conditional Use Permit could be amended to allow for use of 82nd Street
4 which, if this occurred, would give the Appellant an improved position with respect to an
5 Unusual Use Permit.

6 The parties' briefing, exhibits and testimony have reshaped the initial issues on appeal, at
7 least to some degree: While the City still maintains the Director's Determination based upon the
8 reasons found in that Decision, it further supports his Decision on the basis that the proposed use
9 would violate the express condition of the warehouse's Conditional Use Permit that it not use
10 82nd Street for truck/trailer traffic. The City also suggests that although it has not yet ruled on
11 the Appellant's application for an Unusual Use Permit, the application arguably does not fall
12 within the allowed purposes for such permits. Conversely, the Appellant maintains its arguments
13 as to why the proposed use is an allowed use but also expands its arguments to note that the City
14 has recently had two nearly identical projects before it in which the City's positions were the
15 opposite of its position on this project: (1) Application LU-21-00142, issued September 28,
16 2021, allowing a site to be used as a storage facility for semitruck trailers at 7802 150th Street
17 SW even though the project site was not within or adjacent to the related warehouse facility
18 (Appellant's Exhibit 4); and (2) Unusual Use Permit No. 118 issued January 21, 2022, in which
19 the City supported an Unusual Use Permit for an offsite trailer parking facility .4 miles from the
20 affiliated warehouse at 7530 150th Street SW (Appellant's Exhibit 6). Appellant argues that, at a
21 minimum, these conflicting decisions deny the City's current interpretation to be given deference
22 and, separately, support consideration of the Applicant's application for an Unusual Use Permit.

23 I concur with the City and the Director's Determination that the proposed use of the
24 Project Site for trailer storage is not an allowed use either as a stand-alone "parking area" or as
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1 an accessory commercial use. I also conclude that the proposed use would violate the express
2 conditions contained in the Conditional Use Permit for the associated warehouse across 82nd
3 Street. I therefor conclude that the appeal should be denied. Nonetheless, I recognize the
4 Appellant's frustrations with the City's inconsistent policies with respect to offsite trailer storage
5 and agree with the Appellant's position that its application for an Unusual Use Permit should be
6 given the same consideration as was given to the recent Maersk Unusual Use Permit No. 118 for
7 property at 7530 150th Street SW. I therefore make the following:

8 **FINDINGS OF FACT**

9 1. Any Findings of Fact contained in the foregoing Background Section are
10 incorporated herein by reference and adopted by the Hearing Examiner as his Findings of Fact.

11 2. Appellant is the owner of property at 8327 South Tacoma Way on which a
12 warehouse has recently been constructed in accordance with a Conditional Use Permit granted
13 by the City Hearing Examiner on February 27, 2019, LU-18-00222 (the "Warehouse Conditional
14 Use Permit").

15 3. An aerial photograph of the warehouse is found as Appellant's Exhibit 2.

16 4. The Warehouse Conditional Use Permit was approved subject to several
17 conditions including Condition No. 4 "The Applicant shall abide by all conditions of approval set
18 forth in the Revised Public Works Engineering Department Memorandum dated February 6,
19 2018 (provided as Exhibit J)."

20 5. The Public Works Memorandum referred to in Condition No. 4 requires that "No
21 commercial traffic will be allowed on 82nd Street South. Signage must be installed to prohibit
22 trucks from entering or exiting 82nd Street South from the property." The Warehouse
23 Conditional Use Permit is therefore conditioned upon there being no movement of trucks on
24 82nd Street.

1 6. Appellant is concerned that when the warehouse achieves full capacity the
2 movement of semitrucks and trailers will become inefficient and unsafe, as there is insufficient
3 storage area for trailers that have been emptied and are awaiting reuse. The storage of these
4 trailers onsite will result in constricted trafficways, less efficiency, and possible safety issues.

5 7. Appellant believes that these problems would be remedied by nearby offsite
6 trailer storage.

7 8. In addition to owning the warehouse site, Appellant also owns the property at
8 3515 82nd Street South in Lakewood (the "Project Site"). The Project Site is across 82nd Street
9 from the warehouse as demonstrated in Appellant's Exhibit 3.

10 9. The Appellant proposes to use the Project Site for temporary trailer storage
11 associated with the warehouse. Its proposed site plan for use of the Project Site for trailer
12 storage is shown as City's Exhibit 10.

13 10. As proposed, semitruck/trailers arriving at the warehouse would have the trailer
14 disconnected from the truck. The truck would then be free to be connected to another, empty,
15 contained to be driven away. Meanwhile, the container would be taken by "yard goat" to an
16 unloading bay. Once unloaded, the yard goat would then take the empty container away from
17 the warehouse and across 82nd Street to the Project Site for temporary storage. Once another
18 truck was available, the yard goat would return the container to be connected to the truck and
19 driven away.

20 11. The warehouse lot and the Project Site are disconnected from each other by the
21 width of 82nd Street. The proposed use would involve an entry point into the warehouse property
22 located 165 feet east of the entry into the Project Site, resulting in the hauling of trailers along
23 82nd Street to and from the two properties entrances a distance of 165 feet.

24 12. On August 18, 2022, the Appellant submitted a "Director's Determination
25 Application" to the City, requesting a Director's Determination that the Appellant's proposed

1 trailer parking on the Project Site was allowed. The Appellant's specific request to the City was:
2 "Should the proposed trailer parking be allowed in the C2 District when it fits the description of
3 one of the outright allowed uses in the zone and when it is consistent with the principal uses of
4 the district under LMC 18A.10.070.B?" (the "Request for Director's Determination", City's
5 Exhibit 11).

6 13. The Request for Director's Determination asserted that there were three bases
7 upon which the proposed use was allowed in the C2 zone: (1) that it was permitted outright as a
8 "parking facility" pursuant to LMC 18A.10.180; (2) that it was an "accessory commercial use"
9 used "in conjunction with" the warehouse across the street pursuant to LMC 18A.40.040.B.5.h;
10 and (3) in the alternative, that the Director should exercise his discretion and permit the use on
11 the basis that it is consistent with the principal uses of the C2 zone. LMC 18A.10.070.B.

12 14. Concurrently, but by separate application, Appellant submitted a Petition to the
13 City that the proposed use be allowed by means of an "Unusual Use Permit" or "UUP" pursuant
14 to Chapter 18A.30 LMC (the "Unusual Use Permit Application").

15 15. The Director provided his response to the Request for Director's Determination by
16 written Decision dated December 7, 2022 (the "Director's Determination") (City's Exhibit 13).

17 16. The Director's Determination concludes that the proposed use is not an allowed
18 use of the Project Site. In reaching this determination, the Director first determined that the
19 proposed use - trailer parking - is not listed in any of the land use tables but is most similar to
20 commercial vehicle storage. The Director then determined that this type of use is only allowed as
21 an accessory commercial use. The Director then concluded that accessory uses, including
22 commercial accessory use, are only allowed on the same lot as the principal use per LMC
23 18A.10.180. The proposed use is on a separate lot from the principal use (the warehouse) and
24 therefore does not meet the requirements for an accessory commercial use.
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1 17. The Director separately determined that the proposed use did not quality as a
2 "parking lot" pursuant to LMC 18A.10.180 as the City has interpreted this as the parking of
3 motor vehicles, not the storage of trailers. In his oral testimony the Director added that the City
4 does not allow stand-alone parking of any kind in the C2 zone.

5 18. The Director's Determination does not expressly respond to the Appellant's
6 request for the Director to exercise discretion and find that the proposed use is consistent with
7 the principal uses of the district in which it is located. LMC 18A.10.070.B. Nonetheless, it is
8 evident from the Director's Determination, together with the Director's testimony during the
9 hearing, that due consideration was given to this request, and that the Director determined that
10 the proposed use should not be granted on a discretionary basis. To the contrary, the Director
11 testified that offsite storage of trailers in the City is becoming problematic.

12 19. The Director's Determination does not separately address the Appellant's
13 application for an Unusual Use Permit. To date, the City has not responded to this application.

14 20. The Appellant timely appealed the Director's Determination. As the City has not
15 yet responded to the Appellant's application for an Unusual Use Permit, the Appeal applies only
16 to the Director's Determination and not to the application for an Unusual Use Permit.
17 Nonetheless, the City's Pre-Hearing Brief at page 11, suggests that the City does not believe the
18 proposed use to be a proper basis for an Unusual Use Permit.

19 21. The Director's Determination does not mention the Conditional Use Permit for the
20 warehouse and does not suggest that the Decision is based, at least in part, on the fact that the
21 proposed use would be a violation of the express conditions of the Conditional Use Permit, but
22 the Director's testimony and the City's brief make clear that the City considers this as an
23 additional reason why the proposed use is not allowed on the Project Site.

24 22. The Appellant disagrees with the Director's Determination that "commercial
25 accessory uses" can only be allowed on the same lot. Appellant acknowledges that LMC

1 18A.10.180 defines "accessory uses" as being located on the same lot as the principal use but
2 nonetheless argues that LMC 18A.40.040.B.5 allows "commercial accessory uses" to be located
3 offsite so long as they are used "in conjunction with" commercial, industrial or transportation
4 uses.

5 23. Appellant also argues that the City's interpretation is inconsistent with its past
6 interpretations, citing to the Director's September 28, 2021 Determination that offsite container
7 storage proposed by IPT Lakewood Logistics Center at 7802 150th Street SW qualified as a
8 "commercial accessory use" even though the storage container site was not located within the
9 same lot or an adjacent lot to the principal use. [The Director approved the use on the basis that
10 both parcels had at one time been part of a larger commonly owned parcel, thus meeting the
11 requirement for the commercial accessory use to be within the same lot.] *In Re IPT Lakewood*
12 *Logistics Center IV, LLC*, Application No. LU-21-00142. (Appellant's Exhibit 4)

13 24. Appellant also argues that the Director's conclusion that the proposed use does not
14 qualify as a "parking lot" imposes an unnecessarily restrictive interpretation of what a parking lot
15 may consist of, and that the Director is imposing restrictions on the definition of "parking lot"
16 not found in the City's Regulations.

17 25. Although the status of the application for an Unusual Use Permit is not part of this
18 appeal, the Appellant expresses surprise at the City's willingness to address that separate
19 application in the City's Pre-Hearing Brief and demonstrates hostility toward it when no decision
20 has yet been reached, and when the Applicant submitted the separate application of the UUP on
21 the belief that the City was encouraging it to do so. In addition, the Appellant cites to the recent
22 application for an Unusual Use Permit submitted by Maersk for temporary offsite trailer parking
23 associated with an industrial warehouse located .4 miles away. (*In Re Temporary Trailer*
24 *Parking*, Conditional Use Permit No. 118, Appellant's Exhibit 5). In a situation with a nearly
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1 identical set of facts, the Director not only found the circumstances to be appropriate for
2 consideration of an Unusual Use Permit but also recommended approval of the permit to the
3 Hearing Examiner (who granted the requested permit).

4 **ANALYSIS**

5 The Appellant understandably feels frustration over recent inconsistencies in the City's
6 interpretation of land use regulations affecting offsite storage of trailers utilized by nearby
7 warehouses. The Director's Determination that "commercial accessory uses" must be on the
8 same lot as the principal use cannot be fully reconciled with the Director's Determination in IPT
9 Lakewood Logistics Center IV, LLC, Application No. LU-21-00142. Similarly, the suggestion
10 in the City's Pre-Hearing Brief that this situation is not appropriate for an Unusual Use Permit
11 (even though that issue is not before the Hearing Examiner) appears to be directly in conflict
12 with the position taken by the City in response to a similar request by Maersk only a year ago,
13 Conditional Use Permit No. 118, where the City not only found the circumstances to be
14 appropriate for consideration of a UUP but supported the request before the Hearing Examiner.
15 These inconsistencies cause an unfortunate clouding of issues and lessen the deference that
16 would otherwise be given to the City's interpretation of its own regulations.

17 But despite these inconsistencies, the City's position is well supported. I concur with the
18 City that: (1) the proposed use does not meet the requirements for a "commercial accessory
19 use"; (2) the proposed use would be a violation of the conditions imposed on the warehouse's
20 Conditional Use Permit; (3) the use of the site for storage of cargo containers does not constitute
21 a "parking lot"; (4) the Director has exercise his discretion and has decided that the proposed use
22 is not consistent with the principal uses of the district per LMC 18A.10.070.B. The following is
23 a slightly expanded discussion of each of these conclusions:

24 Commercial Accessory Use. The Director has determined that the proposed use of the
25 site for the storage or cargo containers could qualify as a "commercial accessory use" except that

1 all accessory uses, including commercial accessory uses, must be located on the same lot as the
2 principal use. LMC 18A.10.180. The Appellant argues that "commercial accessory uses" are
3 defined more broadly than other "accessory uses" and are allowed at any location so long as they
4 are used "in conjunction with" commercial, industrial, and transportation uses, per LMC
5 18A.40.040.B.5.h. I respectfully disagree with the Appellant's argument and concur with the
6 City's position. The definition of "commercial accessory use" as found in LMC 18A.40.040
7 must be harmonized with the definition for *all* accessory uses found in LMC 18A.10.180,
8 including its limitation that accessory uses must be located on the same lot as the principal use.
9 Stated slightly differently, there is nothing in LMC 18A.40.040.B.5.h expressly stating that
10 offsite accessory uses are allowed and, therefore, the restriction to onsite uses-only found in
11 LMC 18A.10.180 applies.

12 Violation of the Conditional Use Permit. I conclude that even if the City's regulations
13 allowed offsite storage of cargo containers as a commercial accessory use, the proposed use
14 would still fail to qualify as an allowed commercial accessory use due to the express condition of
15 the warehouse's Conditional Use Permit that no truck/trailer activity occur on 82nd Street. LMC
16 18A.40.040.B.5.h requires "commercial accessory uses" to not only be used "in conjunction
17 with" commercial, industrial and transportation uses but to be "integral" to the principal use. The
18 proposed use is not "integral" to the warehouse since the Conditional Use Permit expressly
19 forbids the transportation of trailers on 82nd Street.

20 The Storage of Cargo Containers is not a "parking lot". The Director has determined that
21 trailer storage cannot be allowed as a "parking lot", as parking lots have a well defined meaning
22 involving the parking of motor vehicles associated with adjoining uses. Further, the City does
23 not allow stand-alone parking lots within the C2 zone. The Appellant argues that the Director's
24 interpretation is unduly restrictive and not fully justified by the language of the ordinance which
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1 suggests other possible, more expansive, definitions of parking. Again, I respectfully disagree.
2 The Director's interpretation is reasonable, consistent with the City's practices, and is entitled to
3 deference.

4 The Use is Not Consistent with Principal Uses of the District. Although the Director's
5 Determination did not expressly respond to the Appellant's request for consideration of the use
6 on the basis that it is consistent with the principal uses of the district per LMC 18A.10.070.B, the
7 Director's Determination, and the Director's testimony, make clear that the Director has
8 considered this possibility and has decided that his discretion should not be used to grant the use.
9 To the contrary, the Director has expressed legitimate concerns that offsite trailer storage is a
10 growing problem and is *inconsistent* with the principal uses of the C2 zone.

11 To summarize, I conclude that the Appellant has not met its burden of proving that the
12 Director's Determination is in error. Having reached this conclusion, my decision would
13 otherwise be at an end except that the City has injected the issue of the outstanding application
14 for an Unusual Use Permit into its legal arguments and, having done so, has suggested that the
15 proposed use is not an appropriate consideration for a UUP. The Appellant has responded to this
16 suggestion by citing to the recent Maersk UUP (Exhibit 6) wherein only a year ago the City
17 accepted and supported a temporary UUP request under virtually identical circumstances. I join
18 with the Appellant in failing to understand any distinction between these two applications for a
19 UUP. I bring this to the parties' attention only because the parties have raised the issue and
20 judicial economy encourages its resolution. My ruling does not, of course, suggest that the
21 Appellant's requested UUP should be granted but merely that it should be given the same
22 consideration that the Maersk request was given. Whether the requested UUP will be granted
23 will be determined by careful consideration of all of the SEPA, traffic, safety and other issues
24 associated with the proposed use.


1 But unless/until the Warehouse Conditional Use Permit is amended to allow truck/trailer
2 activity along 82nd Street the application for a UUP has no purpose. It therefore appears
3 reasonable to have both issues addressed concurrently to the extent possible.

4 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

5 **CONCLUSIONS OF LAW**

- 6 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.
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8 2. Any Conclusions of Law contained in the foregoing Background section or
9 contained in the foregoing Findings of Fact and Analysis are hereby incorporated by reference
10 and adopted by the Hearing Examiner as his Conclusions of Law.
11
12 3. The Appellant has not met its burden of proving that the Director's Determination
13 was in error.
14
15 4. The Director's Determination is not clearly erroneous.
16
17 5. The proposed use does not constitute a "parking lot" in the C2 zone.
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19 6. The proposed use does not constitute a "commercial accessory use" for the
20 reasons that: (1) it is not located on the same lot as the principal use (the warehouse); and (2) the
21 Conditional Use Permit for the warehouse prohibits truck traffic along 82nd Street and,
22 therefore, the proposed use is not "integral" to the use of the warehouse. LMC 18A.10.180;
23 LMC 18A.40.040.B.5.h.
24
25 7. The Director properly exercised his discretion in determining that the proposed
use is not an allowed use in the C2 zone.

DATED this 29 day of March, 2023.



Mark C. Scheibmeir
City of Lakewood Hearing Examiner