



July 12, 2023

To: City Council

RE: Enclosing Patios

Dear City Council,

This memo is written to provide you with background information related to a recent proposal to amend Chapter 19 of the Lynden Municipal Code related to the screening or enclosing of patios that are located within the rear yard of a single-family home. The reason this issue has come forward relates solely to one violation of the standard which was done knowingly at 950 Captain Bay Court. The current code has been utilized well and is clearly understood by staff, homeowners, and contractors in the city. The current standard is clear and compliance has not been an issue. The property owner at 950 Captain Bay Court and her contractor, Dale Assink, rather than come into compliance, have requested that the code be modified to allow unconditioned (non-heated) additions to homes within the rear setback.

Planning, Building, and Fire Dept staff have raised concerns about a potential change to the standard that would allow the addition of unconditioned spaces and/or the enclosure of patio areas that are attached to primary living areas. This is why the amendment presented to Council on June 19th was written as a clarification of the current standard rather than a modification that allowed enclosure. Concerns about enclosure focus on three topics:

1. Life safety.
2. Enforcement and the potential for ad-hoc living spaces that violate building code.
3. Maintaining outdoor areas and separation of living spaces in single-family residential zones.

Life safety concerns relate to dangers associated with carbon monoxide poisoning, increased fire risk, and egress. Outdoor grilling on patio spaces is common and with the rising popularity of smokeless fire pits even campfires have moved to patio spaces. In addition, a wide variety of patio heaters are available for consumers to extend the usability of their patio spaces. While all of these amenities make outdoor living spaces more enjoyable, they can become dangerous when used in an enclosed area. The example cited by Mr. Assink of the property at 950 Captain Bay Court (shown here) includes a gas grill inside a patio. This patio was fully enclosed with glass and overhead glass-paneled doors after a building permit for covering the patio was approved and finalized.

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Grilling in and heating enclosed spaces that are attached to a living space exposes the inhabitants of the house to serious dangers. Gas leaks, carbon monoxide poisoning, and



fires are concerning when the space is connected to the home and sleeping quarters. Even ash from a previous fire can quickly become a house fire when located in or near a residence.

Additionally, retrofitted enclosed patios may create access concerns. In the Captain Bay Court example, the patio does not have a man-door but only overhead doors as a means of egress. If the door connecting to the home was inadvertently locked and an individual or child is not able to open an overhead door, then the patio becomes a space without an exit.

Ad-hoc living areas becomes likely when patios are enclosed. Although unconditioned spaces such as garages and enclosed porches are not designed for living area, they are often the first spaces to be converted when a home's inhabitants are looking for additional room. The City of Lynden code accommodates the reality of garage conversions by requiring outdoor parking areas and including attached garages within a building envelope. Similarly, if the city allowed unconditioned enclosed patio spaces the stage is set for an expansion of living area and a reduction of yard space. A quick internet search shows many do-it-yourself examples of converting your covered patio to become an extension of your home. If a patio or porch is allowed to be enclosed as unconditioned space, then it's quite natural for it to evolve to heated (conditioned) space even if it was not constructed with this intent. The result is a space which is not built to code,



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likely not meet the energy code, and may be a liability to the owner and future owners of the home.



Before: Exterior view of an example of a covered patio as currently permitted within a rear yard.



After: The same patio after enclosure. View from the interior after a conversion to an extension of living space.

Yard area is compromised when outdoor spaces are enclosed. One of the benefits of traditional single-family zoning is open yard area associated with each home. Yards are created by minimum required setbacks associated with the primary residence. These limit how much of the lot can be covered by the primary structure. In most zones in the City of Lynden a rear yard setback is 30 feet with the setback for a covered, but open, patio set at 18 feet. These setbacks serve to maintain open area for recreational uses but also to create separation between living units.



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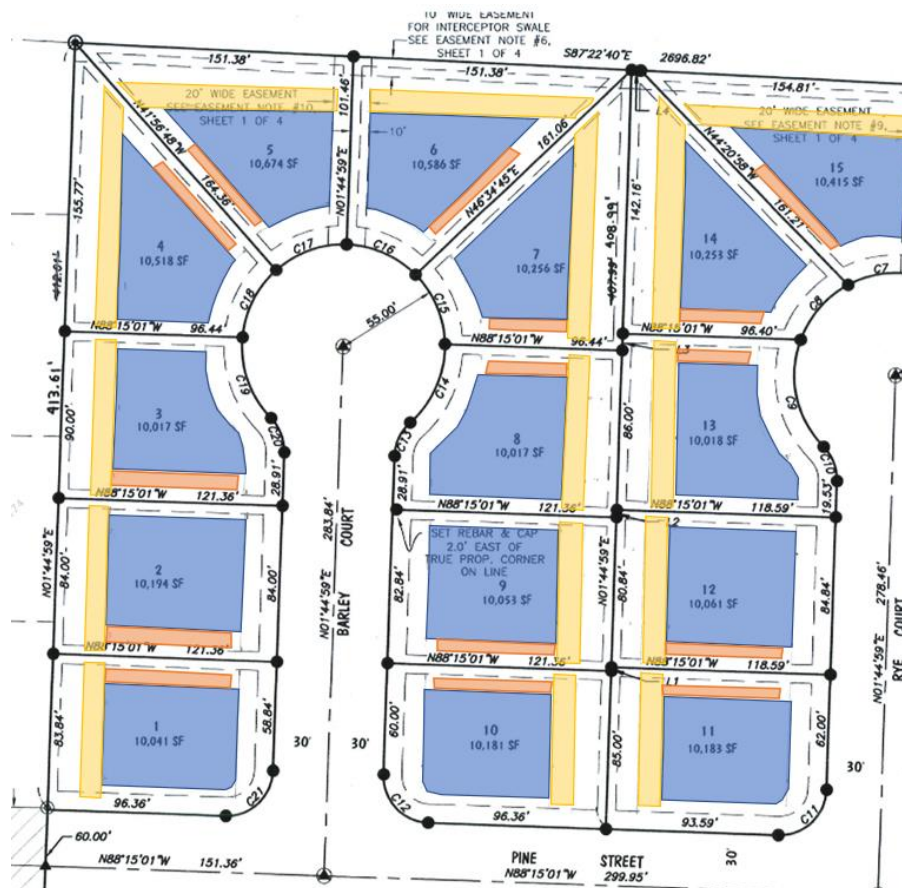
The City of Lynden has continually placed children and families as a top priority. Maintaining private and safe outdoor spaces for play, gardening, trees and plants for existing and future families is part of this legacy and becomes even more important when lots sizes are reduced due to development costs.

Unlike building codes and fire codes the setbacks associated with zoning are based somewhat on aesthetics but are not completely arbitrary as they consider typical lot sizes and the area remaining. If rear yards are compromised by enclosed extensions of the living space then open space is reduced. The map below shows the building envelope in blue and the area for potential encroachment (currently allowed as open covered patios) in yellow.

The orange area shows the permitted encroachment of garages into side yards. If the standard is changed to allow for enclosed space to cover both the blue and yellow areas you can see that a majority of the lot becomes built out.

- Current Home Envelope
- Permitted Garage Encroachment
- Permitted Covered but Open Patio Encroachment

Outdoor patio space is desirable and it is likely that after this homeowner completes their patio enclosure they will look to add additional covered but open patio space to their yard and continue to expand the built-out area on their lot. In other words, the first patio becomes enclosed and then a second, open patio, is attached to the first. This is essentially what is playing out with this request. In 2018, the City updated the code to allow “covered” patio space into the rear setback. Many people



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have since used this update and built their patios according to code. At the time of that update, there was significant discussion on how people would use the covered patio space and whether they would then start pushing to enclose that space. Five years later, this contractor is now pushing to enclose that space and reduce the rear setback.

At the June 19th meeting Mr. Assink noted that rear yards can include accessory structures which reduce open space. He showed the Council a sketch of an accessory structure which could cover the majority of his rear yard. Unfortunately, while this structure was shown with accurate setbacks the portrayal that it was a permitted structure was inaccurate. Accessory structures must meet height, lot coverage, and design standards. He is correct, that while aesthetically a detached accessory structure does fill up a property's open space, by code they are intended to be smaller, less imposing structures than the primary building.

Accessory structures can be constructed within rear yards, and these may include enclosed sheds or shops, greenhouses, or gazebos with open or glass walls. There is a demand for those types of separated, detached structure within the city. However, the character of a resident's activity in a detached accessory structure is different because these spaces are not an extension of the home. It is intentionally separate space that is used as an accessory to the living area rather than an expansion of the living area. As a result, if a fire danger or carbon monoxide risk is created in an enclosed accessory structure it does not pose the same threat to sleeping inhabitants as it would if connected immediately to living areas.



Accessory structures are usually added to a property after the initial build is completed and most additions are modest. If, however, the rear setback is modified to allow unconditioned spaces to expand from the primary structure then it is likely the new construction will include full build-out of this space as contractors take full advantage of the building envelope and build homes as large as they can be permitted – regularly bumping up against each edge of the building envelope. The result will be larger homes and neighborhood with less open yard space.

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We trust that this memo responds to the questions raised by Mr. Assink at the June 19th meeting. These issues were discussed at length at multiple Community Development Committee meetings as well as at the Planning Commission hearing – all of which Mr. Assink attended.

Although this issue may seem relatively minor when compared to larger land use issues, staff is concerned that it will have a significant impact on the character of the City's single-family neighborhoods. As a result, staff and the Planning Commission continue to recommend that the patios encroaching into rear yards remain open, outdoor spaces and not become enclosed extensions of the primary residence.

Sincerely,

Heidi Gudde, Community Development Director

Ted Brouwer, Building Official

Mark Billmire, Fire Department Chief