



PLANNING COMMISSION MEETING MINUTES

7:00 PM March 9, 2023

City Hall Annex

1. CALL TO ORDER

2. ROLL CALL

Present: Tim Faber, Blair Scott, Jim Kaemingk, Darren Johnson, and Hollie Lyons.

Absent: Khush Brar with notice

Staff Present: Gudde, Planning Director and Samec, Planner

3. APPROVAL OF MINUTES

A. December 15, 2022, Kaemingk / Scott / 2nd 5-0

4. DECLARATION OF CONFLICT

None of the Commissioners reported any ex-parte contact or conflict of interest.

5. PUBLIC HEARING

A. RZ #23-01, Klinton and Marissa Moa, 1181, 1183 and 1185 E Grover Street, Lynden

Gudde addressed the Commission and gave a brief overview of the proposed application.

The Moa's are requesting to change the zoning of three parcels that they own from Single Family Residential to Multi-Family Residential. It would specifically change the zoning of the subject parcels from Residential Single Family (RS-100) to Multi-Family Residential (RM-1).

The subject property was acquired by the applicant, Mr. Moa, as a single lot with an existing home. At the time Moa inquired as to a potential rezone of the property to a multi-family zoning such as RM-3. Staff expressed concerns about a rezone at this location. Primarily because such action would only affect one lot (less than an acre in size) which was surrounded by large lot single-family residential use on three sides. A zoning of RM-3 could allow as many as 13 units.

The location, on the curve of East Grover Street, is also a relatively dangerous intersection to introduce significantly more traffic and staff could not offer a recommendation for a shift of this nature. Subsequently, Moa did not pursue a rezone but instead processed a short plat which divided the property into three single family lots. This short plat was finalized in early 2021.

Moa has since constructed a new single-family home with an ADU. Staff also believes that Moa has improved the existing house to include a basement accessory dwelling unit (ADU).

Construction of single-family homes with accessory dwelling units is permitted, however, per LMC 19.20.020(J) the primary residence or the ADU must be owner occupied. A perpetual covenant against the property must be recorded which specifies this requirement. Although Moa was aware of the requirement, he retained ownership of both the existing and newly constructed home and made efforts to rent out both the primary homes and the ADU's as four separate units. This is in violation of the city code and the covenant he and his wife signed.

Rental housing is a need in every city, but its primary beneficiary is the investor. In contrast, the City of Lynden's ADU standards with an owner-occupying requirement has been developed with home ownership in mind. It is intended to provide opportunities for affordability as homeowners supplement their income by renting one unit or encouraging multi-generational living as frequently young buyers are priced out of the market or older family members need assistance. The owner-occupied requirement encourages a homeownership development model rather than a landlord development model.

The application being considered at this time requests a zone of RM-1 which limits the structures to duplexes and is relatively low density. The primary difference between the existing zoning of RS-100 and the requested zoning of RM-1 is that if rezoned, each of the existing structures and a potential future structure on Lot B could operate as duplexes and be rented to six different entities, under current ownership. If the property is not rezoned, Mr. Moa must treat the property as any other single-family residence. That is, he could sell the lots, or he could rent each lot, along with its ADU, to three users, and not six different users.

Lyons asked, when the parcel was subdivided what was the City's understanding? Staff replied, the parcel was divided into 3 lots under single family zoning. Single family homes could be built. ADU's are permitted with an owner-occupied requirement.

Faber opened the Public Hearing

In opposition

Two letters of opposition were received: Opposition letters are included in the PC packet.

- February 21, 2023, Mary Gillies, 1173 E Grover Street.
- February 23 ,2023, John and Marie Gillies, 208 S Garden Drive, Lynden

Klinton Moa, 5124 Ranchos Road, Bellingham

Moa addressed the Commission. Moa acquired the house in April 2020 located at 1179 E Grover Street. The original home was being operated as an illegal duplex under previous ownership. Moa stated that once he purchased the property, he did nothing but apply for an ADU covenant to make it a legal two-unit building. Moa stated that he originally requested a rezone of the entire parcel to RM-4 so that he could construct units for his family members who will need care in the future. Moa stated that selling these units is not an option. Originally when I wanted to rezone, Staff was very opposed to the idea because of safety concerns with traffic at the corner.

Moa stated that he then had a meeting with a Council member who told him, you have over 30,000 square feet of property, you could subdivide the property into three 10,000 square foot lots and build homes with ADU's. The City just changed their ADU covenant rules, and you do not need to do any rezoning, and with some creative loopholes could get the units you want for your family members. You could just do a quit -claim to add them to the title.

Moa stated that's when I decided to short plat the property and started construction of the units. Last December when this become a problem, I was only advertising the ADU units. I already have a family member who lives in the main house.

Moa stated that he is requesting the rezone as a clerical fix. The construction and infrastructure improvements have already been done. I have everything sized and set up correctly for additional units. There is ample onsite parking for each unit. All this does is enable me to rent out each unit separately (6 tenants instead of 3 tenants), recoup my cost until family members need care. I am trying to provide for the future.

Scott asked, you indicated that your purpose to build the ADU's was to provide care for your family, but now, you want to rent out all of the units? Moa replied, currently my family does not need fulltime care, however, in the meantime I would like to rezone to RM-1 to rent as duplexes to recoup the cost until family needs care.

Kaemingk asked, does the applicant have plans to build on the vacant lot? Moa replied, yes, will build a duplex so we can do the same thing on that lot as well. There is no negative impact since all of my units are built like custom homes with the amenities of a single family home, close to school and a more affordable housing situation.

Lyons asked, what are the plans if the rezone is not approved. Moa stated, we will build on the vacant lot and rent out each home and the ADU's will not be utilized.

Moa said that currently both ADU's are vacant. Faber asked, who lives in the main house? Moa's brother lives in one and another tenant lives in the other.

Could Moa rent the units to someone and then the renter sub-lease the ADU? Staff replied, no, the owner must reside in one of the units.

Moa brought up current legislation that he says was just passed regarding House Bill 1110 on Monday through the House of Representatives. If this Bill passes with Senate on March 17th, this decision will be taken out of the City's hands. It requires all Cities with a population of at least 6000 to allow duplexes on all single-family lots. This sort of scenario is coming down the pipe to take care of zoning issues.

Faber asked Moa to expand on his conversation with a Councilmember regarding doing a quit-claim to add a family member as an owner. Moa stated that there are a lot of loopholes to the ADU covenant legality wise. If I wanted to quit-claim 50% ownership to a family member and put them as the legal resident I can. There is nothing legally that you can do to stop that. Faber, isn't that still an option for you then?

Faber addressed Moa and stated, you need to see what kind of situation you are putting the City in with trying to rezone after the homes have been built, in an area where the property has always been single family. Now, after the fact, they are all going to become rentals. It puts the City in a bind to approve something like this. Moa replied, that is the same as saying that the neighbors cannot rent their homes out. Who's to say what homes become rentals.

Kaemingk stated that this puts the City in a tough spot. Spot rezoning is not something we want to do. A rezone is a big deal. The State may solve this issue for us.

Moa, when considering, please consider the community view as a whole. Our goal is to make the community better and help with the housing crisis.

Narissa Moa, 5124 Ranchos Road, Bellingham

N. Moa stated that my whole family lives in Lynden, that is why we chose Lynden. We love this town. We are not people from Bellingham wanting to come to Lynden to build big apartment buildings. Our heart is in Lynden. I don't want to see anymore farmland taken from Lynden. We love the small-town feel.

We do not want to get the Council member we spoke with in trouble because we work with him professionally. N Moa said that we have never done ADU's before, we apologize, and we ask for grace. We know what we did and in hindsight we don't feel good about it.

N. Moa also stated that of 150 letters sent to neighbors only 2 neighbors are here tonight, the two that have opposed us from the beginning because we sub-divided the property. One of the neighbors we have a police case with and one just does not like us even after reaching out to make amends.

N. Moa stated that she hopes the Commission hears hearts and knows where we are at?

Tom Miles 1177 E Grover Street

I don't know anything about active police cases. Miles purchased his home in June 2021. Friend who works for the Moa's stated they are planning on building duplexes. When the construction started it seemed quite close to my house so I went to the Planning Department and was told no duplexes, however, ADU's would be okay as long as they lived in the house.

Miles noted several civil concerns as well as concerns with building setbacks significant property damage, wandering kids, parking and the Moa's general theme of their attitude. Saying that Miles was opposed since day one is not accurate. There have been interesting rental situations to say the least. The Moa's asking for grace is not true. When they put the mailboxes up, they did so identifying all three boxes having A & B units. This was three or four months ago. Whether they own or rent is not my concern, I just want to know what is going on around me.

Miles indicated that a quick search on Whatcom Land Title shows that the Moa's have several properties in Whatcom County, this is not their only avenue to be able to house family members. The Moa's originally asked to build duplexes, were told no by the City, decided to build ADU's that are not owner occupied. They have not been honest from the beginning.

Cliff Fast, 8511 Vinup Road

Started Barber Shop in 1967. Got chewed out for walking to a neighbor's house through the Moa's property and was accused of snooping. Fast indicated that he has had glaucoma for over 40 years and was walking this way carefully and not to snoop.

Fast stated, that Moa applied for an ADU permit to start and now is looking to rent out everything. If you give Moa this approval, you as a City are allowing spot zoning which is very difficult. Fast states that Moa's renters have not been good to him and have caused property damage. Renters have backed into his fence a number of times leaving Fast to repair it.

Moa stated yes, I own quite a few properties and business investments. How many I own in Whatcom County does not have any bearing on this. I am providing this opportunity for my family. These lots are large lots. I have ample parking.

With regards to Fasts comments, I don't want to be disrespectful, but there is more to the story then what he is saying. If a renter backs into a fence or does not keep track of their kid, that is not my issue.

N. Moa stated that Mr. Fast cannot come onto my property at any time. If he has bad eyesight and fell it could be a liability for us.

Personal and business are very separate for us. Alger property is for business. Lynden property is what we are choosing for family.

Lyons, for clarity you are a builder and not completely naive about the process. Is it true that you originally applied for duplexes. Moa yes, I originally submitted for a rezone to build multi-family, which was denied.

Gudde stated there was no denial. For clarification, as part of an application process a pre-application meeting is required, that is what Moa is talking about. Staff did meet with Klinton Moa to discuss his desire to rezone to RM-4. Staff did indicate concerns with support for RM-4 density. There was no rezone application submitted. A short plat was later applied for and was approved.

Scott motioned to close the public hearing. Seconded by Lyons and the motion passed, 5-0.

Criteria for Approval:

Applicant has responded to the following questions and statements with written justifications for the proposed rezone. Care should be taken to consider potential impacts to the surrounding properties and the City as a whole and mitigate as needed. See meeting packet for detailed responses.

To grant this request, the Planning Commission and City Council must find that the application satisfies each of the criteria listed within Section **17.19.050** of the Lynden Municipal Code.

- A. The current zoning was either approved in error or that a significant change in circumstances since approval of the current zoning warrants reclassification of the subject property as proposed. **No. There is still a market for single family lots. The Commission sees no error.**
- B. The proposed site-specific rezone is consistent with the city's comprehensive plan and applicable subarea plan(s); **Since 1978 the Comp Plan has identified this parcel as single family. We have looked at many comp plan / rezones and have never looked at this parcel as one that needs to be rezoned.**
- C. The project proposal is consistent with the city's development codes and regulations for the zoning proposed for the project. **As presented, yes.**
- D. The proposed site-specific rezone is compatible with existing uses and zoning in the surrounding area; **Yes, there are apartments close by as well as across the street.**

- E. The proposed site-specific rezone will promote the health, safety and general welfare of the community. **No. The Commission expressed safety concerns regarding the parcels location on East Grover Street. There was originally 1 single family home exiting the site, now there could be a potential for 6 units in a dangerous location.**

Further review of the criteria listed within Section **17.09.040 (C)** of the Lynden Municipal Code is not required as the Planning Commission found that the application did not meet the criteria listed under LMC 17.19.050.

Scott motioned to close the public hearing. Motion passed, 4-0.

No further comments from the Commission.

Kaemingk stated that rezones are not easy to approve. This application has not met the criteria required for approval.

Kaemingk motioned to recommend denial to the Lynden City Council of Rezone #23-01 for Klinton and Narissa Moa, as the request does not meet the criteria of LMC 17.09.050 A, B and E. Seconded by Scott, and the motion passed 5-0.

This recommendation will move forward to the City Council on April 3rd. No additional comments will be taken.

Faber thanked all who participated in the hearing.

Other items: Coming up is the update to the comprehensive plan which is due June 30, 2025. There will be several meetings involving the Commission as well as public participation.

There is a lot happening at the State level. The city is closely watching what is happening in Olympia. The City's Lobbyist is working on several key items.

B. ADJOURNMENT

Motion to adjourn by Scott / Second by Johnson. Meeting adjourned at 8:28 pm.