

CITY OF LYNDEN
LYNDEN CITY COUNCIL

IN RE THE DEVELOPMENT
STANDARDS VARIANCE REQUEST
OF Badger South, LLC., Petitioner

NO. 19-02

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Owners of the premises known as:

THE EAST 285 FEET OF THE NORTHEAST QUARTER OF THE
NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION
15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M. WHATCOM
COUNTY, WASHINGTON; EXCEPT STATE HIGHWAY NO. 546 (EAST
BADGER ROAD).

COMMONLY DESCRIBED AS: 1583 E Badger Road, Lynden

Having made application for a for a Development Standards Variance requesting to allow the construction of a public access street at the private street minimum standards.

The Lynden City Council held a public hearing on November 18, 2019 and December 16, 2019 and considered the consistency of the application under LMC 17.17.040 and has determined that the application meets the criteria for granting a development standards variance to the findings, conditions and recommendations of the Technical Review Committee Report dated November 27, 2019.

Said request having returned before the Lynden City Council on December 16, 2019, and the Lynden City Council having fully and duly considered the development standards variance request, hereby makes the following:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1.01 Application. Badger South LLC, (“Applicant”) filed a development standards variance application which was accepted by the City as complete on October 18, 2019.

1.02 Location. The Property is located at 1583 E Badger Road in Lynden, Whatcom Co., Washington as described above.

1.03 Ownership. Badger South LLC are the Property Owners.

1.04 Reason for Request. To allow the construction of a public access street at the private street minimum standards and reduce the associated dedicated right-of-way on the property.

1.05 Compliance with Criteria for Granting a Development Standards Variance. The application as presented during the public hearing complies with the criteria listed within Section 17.17.040 of the Lynden Municipal Code.

1.06 Compliance with Project Manual for Engineering Design and Development Standards. The application proposes compliance with an alternate development standard and associated requirements set forth in the Project Manual for Engineering Design and Development Standards, as applicable.

1.07 Appropriate Provisions for Promoting Health, Safety and General Welfare. The application makes appropriate provisions for public health, safety and general welfare.

1.08 Open Spaces, Streets, Roads, Sidewalks and Alleys. The application makes appropriate provisions for public open spaces, roads, streets, sidewalks and alleys.

1.09 Potable Water Supplies, Sanitary Wastes and Drainage Ways. The application makes appropriate provisions for public drainage ways, potable water supplies and sanitary wastes.

1.10 Public Interest. The application is consistent with the City's comprehensive plan and the Growth Management Act. The public interest will be served by the approval of the application.

1.11 Critical Area Review. Critical areas will be addressed during project development.

1.12 SEPA Determination. A determination will be made in association with the future development.

The foregoing Findings of Fact and Conclusions of Law are not labeled. Those sections which are most properly considered Findings of Fact are hereby designated as such. Those sections which are most properly considered Conclusions of Law are also designated as such. From the foregoing Findings of Fact and Conclusions of Law, the Director establishes the following conditions:

II. CONDITIONS

The applicant is requesting a variance to LMC 18.14.030-Right-of-Way Requirements and the corresponding design found in Table 4-1 (Figure 4-3A) of the Engineering Design and Development Standards. The variance would allow the construction of a public access street within a 41-foot right-of-way as depicted within the City's "private street standard".

LMC 17.17.040 states, where there are unnecessary hardships and practical difficulties which render it difficult to carry out the provisions of the development standards, the City Council shall have power to grant a variance in harmony with the general purpose and intent of the provisions contained therein. Such variances may vary the rules, regulations or provisions of the development

standards so that the spirit of those standards will be observed; public safety secured; and substantial justice done. However, the City Council shall not vary any of the rules, regulations or provisions of those development standards unless it shall approve findings that all of the following conditions exist in each case:

- A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity in which the property on behalf of which the application was filed is located;
- B. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with rights and privileges permitted to other properties in the vicinity in which the subject property is located;
- C. That the granting of such a variance will not be materially detrimental to the public health, safety and general welfare; and
- D. That the granting of such a variance will not be injurious to the property or improvements in the vicinity and zone in which the subject property is located.
- E. That the variance request is based on sound engineering judgement and includes additional mitigation sufficient to offset adverse impacts to the public interest likely to result from granting the variance.”

Variance Application Comments from the Technical Review Committee:

Planning and Development

- 1. *Variance Justification:* The applicant has provided a response to each of the development standards variance criteria. See attached
- 2. *Alternate Design Analysis:* The applicant has provided a response to each of the development standards variance criteria. See attached
- 3. *Variance Justification:* Staff acknowledges that the applicant has provided a response to each of the development standards variance criteria.
- 4. *Alternate Design Analysis:* Staff acknowledges that the applicant has provided a response to each of the development standards variance criteria.
- 5. *Application:* Applicant to revise the “Variance Request” portion of the application form submitted to the Planning Department to reference not only the engineering standard of Division 4 of the Engineering Design and Development Standards but also the section of the Lynden Municipal Code from which the applicant seeks relief. This is the section related to property dedication, LMC 18.14.030 – Right-of-Way Requirements.

6. *Parking:* Staff has concerns related to parking and the potential impact to surrounding properties.

All development on the subject property will be required to provide the minimum number of on-site parking spaces as dictated by LMC 19.51. Additional guest parking is not required per code as on-street parking accommodates this need.

However, due to the reduced street standard, only one side of the street will provide parking and it is anticipated parking capacity will be significantly reduced by driveway cuts. As such, staff support of the variance is conditioned on future development providing 20% more on-site parking than code requires to accommodate the on-street parking which will be lost. This means, for example, that 12 residential units which would typically be required to provide 24 spaces would be required to provide 29 on-site spaces.

Public Works

7. Applicant will be required to submit an Applicant Checklist and Agreement to Construct (Division 2 and 10 of City of Lynden Engineering Design and Development Standards) as part of future application requests.
8. Be advised, applicant must make provisions for access and utilities to the west end of the property in subsequent applications.
9. Be advised, in subsequent applications the proposed utility and access easement to lot 4 will need to be 30-feet in width to accommodate for both public water and sewer.
10. *Water:* At the time of development, water needs to be extended to the west property line of either lot 1 or 2, to the north and west property lines of lot 4 with the ability for future extension to the east. Easements will be needed and must be marked on the face of the plat.
11. *Sewer:* At the time of development, sewer will be required to extend west and north to meet the service area as identified in the sewer comprehensive plan and the City's Engineering Design and Development Standards. Easements will be needed and must be marked on the face of the plat.
12. *Stormwater:* Be advised, all improvements and development must meet the City of Lynden and current Department of Ecology requirements for stormwater/drainage management
13. *Bonding:* Be advised, a post construction maintenance bond for 10% of the public facility construction costs will be required prior to final plat

approval. A 150% performance bond is required for all work in the City's right-of-way or on city owned property.

14. *Review Deposit.* Be advised, there is a review deposit of \$200 per lot, \$2,000 minimum, to review the construction plans and a plat construction inspection deposit of \$350 per lot, \$5,000 minimum, due prior to review and construction respectively.

Fire Department

15. *Turn-Around.* Be advised, a vehicular turn-around, designed to City standards, will be required at the time of plat and development. This may be located at the terminus of the new street or in another location which meets Fire Department approval. The turn-around may require an easement which could be dissolved when through access is created on the neighboring property.

III. DECISION

Petitioner's application to for a Development Standards Variance to allow the construction of a public access street within a 41-foot right-of-way as depicted within the City's "private street standard" and reduce the corresponding right-of-way dedication, on the property described herein is hereby **Approved**.

DATED: _____

Scott Korthuis, Mayor