

CITY OF LYNDEN  
CITY COUNCIL RESOLUTION 25-1117

**A resolution of the Council of the City of Lynden, Washington,  
to approve Conditional Use Permit 25-01 regarding DariTech Setback Allowance**

BACKGROUND

WHEREAS, DeYoung and Roosma Construction, on behalf of DNA Properties LLC, hereinafter called the "Proponent," submitted a complete application to the City of Lynden, hereinafter called "the City." The application, assigned as CUP #25-01, represents a request for a conditional use permit to allow the replacement of an existing 6,005 square foot storage building which is more than 50 years old with a new 6,341 square foot storage building with a side yard setback of 10-feet; and

WHEREAS, Lynden Municipal Code (LMC) 19.25.060 requires industrial users to meet larger side setbacks when located next to residentially zoned properties which, for the subject Industrial Business Zone (IBZ) property, is a setback of 20 feet. However, LMC 19.25.060 also includes provisions for industrial users to reduce this setback through a Conditional Use Permit (CUP); and

WHEREAS, the proposed industrial use in the proposed location is permitted outright as, in 1993, the site was identified as appropriate for industrial use under the development of the City's Comprehensive Plan; and

WHEREAS, the proposed setback request must be reviewed against the criteria for approval of a Conditional Use Permit. These criteria focus on impacts on the surrounding community and compliance with other performance standards and buffering; and

WHEREAS, other aspects of the building such as front and rear setbacks, and height, as proposed are consistent with what is permitted within the industrial zone.

PROCESS

WHEREAS, DeYoung and Roosma Construction, on behalf of DNA Properties LLC submitted a Conditional Use Permit application (CUP #25-01) which was determined to be complete on January 23, 2025; and

WHEREAS, the notice of the Conditional Use Permit application was published on February 12, 2025, which invited public comment on the proposal; and

WHEREAS, the Technical Review Committee (TRC) reviewed the application and documented their conclusions in a final TRC report dated February 28 and updated on March 6, 2025. The report recommended approval with conditions as documented in the report; and

WHEREAS, on March 13, 2025, the Lynden Planning Commission held a public hearing to accept public comment and develop a recommendation on the proposal, and

WHEREAS, the Planning Commission recommended approval of CUP #25-01 with specific conditions as documented in PC Resolution #25-02 which differed from the conditions of approval recommended by staff; and

WHEREAS, the City Council subsequently considered the proposal at the May 5, 2025, meeting which resulted in the following Findings of Fact and Conclusions of Law.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### FINDINGS OF FACT

1.01 Application. DeYoung and Roosma Construction, ("Applicant") filed a conditional use application which was accepted by the City as complete on January 9, 2025.

1.02 Location. The Property is located at 8540 Benson Road in Lynden, Whatcom Co., Washington as described above.

1.03 Ownership. DNA Properties, LLC.

1.04 Reason for Request. The request includes a conditional use permit to allow the replacement of an existing 17-foot tall, 6,005 square foot storage building with a new 6,341 square foot storage building approximately 26 foot-10 inch height while maintaining the existing side yard setback of 10 feet although LMC 19.25.060 calls for a side setback of 20 feet when located adjacent to residential property.

1.05 Compliance with Project Manual for Engineering Design and Development Standards. The application can comply with the development standards and requirements set forth in the Project Manual for Engineering Design and Development Standards, as applicable.

1.06 Critical Area Review. There were no critical areas found to be on the site.

1.07 SEPA Determination. This specific project is exempt from further SEPA review under WAC 197-11-800. Be advised that SEPA review may be required under future project activities such as fill and grade and building permits.

1.08 CUP #25-01 Site Improvement. The proposed building will comply with front and rear setbacks and its proposed height of less than 27 feet is well below the maximum permitted height of 45 feet. The proposed building replaces a structure which was originally used as a garage for service vehicles and is more than 50 years old. The new structure will be aesthetically and structurally improved while providing additional storage space for the DariTech facility. At the time of construction, the

facility will be required to update the existing stormwater system to eliminate stormwater from entering the City's Wastewater Treatment Plant which currently occurs due to the drain system of the existing wash bay.

1.09 CUP #25-01 Provides Interest. The efficient development and success of DariTech is beneficial to the public interest by supporting the agricultural sector and providing employment opportunities which strengthens the community. The subject property was used for industrial purposes, first the phone company and then DariTech, prior to the construction of the adjacent homes. Homes on both sides of the subject property were consistently developed with a continuous hedge along the rear property lines. In this way the residential properties took on the landscape buffer which, per code, is the responsibility of the more intense, industrial user. Some of these hedges have been in place for more than 30 years.

1.10 Life Safety and Building Construction Measures. CUP #25-01 will be designed to provide life safety access in accordance with International Building and Fire Codes. Provisions for life safety have been made through site access and facility design. The internal site is designed to provide access for fire apparatus and the building construction will be held to the standards of the International Building and Fire Codes.

1.11 Noise and Odor Provisions. Historically, DariTech has been the source of periodic complaints from neighbors related to odor and, in response to this application, the impacts of security lighting. DariTech, like all industrial users, is expected to comply with all City standards including those related to noise and odor. Upon operation the use will be held to performance standards detailed in the Lynden Municipal code (LMC 19.25.040 – 050).

1.12 Public Water. Potable Water is Available on the Property. Additional water connections are not required for the proposed building.

1.13 Open Spaces, Streets, Roads, Sidewalks and Alleys. The facility is located on Benson Road which is a partially improved right-of-way that includes sidewalks along the property frontage. The expanded portion of the building will be subject to Park, Fire, and Transportation Impact Fees at the time of building permit. These fees are used by the City to mitigate impacts to services and infrastructure. Due to the development pattern which was in place when the property was added to the city, the subject property does not include the perimeter landscape buffers as required by LMC 19.61.090 which calls for a Type V landscape buffer that is 15 feet wide.

## CONCLUSIONS OF LAW

2.01 Appropriate Provisions Made for Open Spaces, Roads, Streets, Sidewalks, and Alleys. The application makes appropriate provisions for public open spaces,

roads, streets, sidewalks, and alleys and maintains an existing condition. It does not degrade or improve buffering conditions.

2.02 Potable Water Supplies, Sanitary Wastes and Drainage Ways. Water usage, waste production, and stormwater plans will be reviewed in detail prior to building permit issuance. Stormwater updates will be needed on this site in order to bring it into compliance. The proposed structure is not expected to connect to water or sewer services.

2.03 Public Interest. The application is consistent with the City's comprehensive plan and the Growth Management Act. The development and success of DariTech is beneficial to the public interest in that it contributes to the local ag economy and provides jobs in the Lynden community. The visual screen of the industrial property has been effective through the use of a residential hedge. The current proposal does not degrade or improve the buffering of the use. Loss of the existing residential hedge would significantly impact adjacent properties.

2.04 Compliance with Criteria for Granting a Conditional Use Permit. The application as presented during the public hearing complies with the criteria listed within Section 19.57.210 of the Lynden Municipal Code with conditions that address mitigation of impacts. The overarching conclusion is that the proposal neither reduces or increases impacts as the applicant seeks to replace an existing structure with minimum changes to building scale.

2.05 Appropriate Provisions for Promoting Public Health, Safety and Welfare. Based on the foregoing, CUP #25-01 is found to promote the public health, safety, and welfare and conform to the City Comprehensive Plan. The industrial use is consistent with the zoning category. The proposed building is a replacement and improvement to an existing structure. The facility will become more compliant with the City's stormwater / wastewater provisions as measures will be required to prevent stormwater from entering the city's wastewater system.

Any of the foregoing Finding of Facts which should rather have been designated Conclusions of Law, which should rather have been designated Findings of Fact, shall be validated as such and so conformed.

The foregoing recitals are a material part of this permit Decision.

**NOW THEREFORE, BE IT RESOLVED** by the Lynden City Council to approve Conditional Use Permit #25-01 for DNA Properties LLC (DariTech), requesting to maintain a 10-foot side yard setback when replacing an existing building subject to the Technical Review Committee comments within the report dated February 28 and updated March 6, 2025, but with the alternative conditions of approval as recommended by the Planning Commission (PC) in PC Resolution 25-02 and detailed below:

- 1) **DariTech shall be responsible for replanting the existing hedge on the neighboring residential properties to the north if any landscaping fails within 5 years from the date of the new building's construction. Failure, in this instance, includes death, breakage or blow down of the hedge material. Upon failure, DariTech must replace the hedge with plants of the same type and species, ensuring they are a minimum of 6 feet in height at the time of planting and spaced to form a visual barrier within 3 years. This condition will remain effective for 5 years from the date of the new building's construction.**
- 2) **No Storage – No storage be permitted north of the proposed building.**
- 3) **Shielded Lights - To minimize impacts to surrounding properties all new exterior lighting must be shielded or “dark-sky compliant” to minimize lighting impacts.**
- 4) **Mechanical Equipment – To reduce visual impacts to surrounding property owners, roof-mounted mechanical equipment is not permitted on the proposed building.**
- 5) **Prior to final occupancy, improvements must be implemented to the site's stormwater facilities to prevent the drainage of rainwater into the City's sanitary sewer system.**
- 6) **Compliance with all City code and all State and Federal laws and regulations**

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE OF \_\_\_\_\_ IN FAVOR,  
\_\_\_\_\_ AGAINST, SIGNED THIS \_\_\_\_\_ DAY OF MAY 2025.

MAYOR

\_\_\_\_\_  
Bob Carmichael, City Attorney

\_\_\_\_\_  
Scott Korthuis, Mayor

ATTEST:

\_\_\_\_\_  
Pam Brown, City Clerk  
APPROVED AS TO FORM: