



## PLANNING COMMISSION AGENDA

7:30 PM December 10, 2020  
Microsoft Teams Meeting

### 1. CALL TO ORDER

### 2. ROLL CALL

Commissioners Present: Bryan Korthuis, Blair Scott, Diane Veltkamp, Gerald Veltkamp, Tim Faber, Karen Timmer and Nikki Turner.

Commissioners Absent with Notice: None

Staff: Mike Martin, Heidi Gudde and Korene Samec

### 3. APPROVAL OF THE MINUTES OF November 12, 2020

Faber approved as presented. Turner seconded.

### 4. DECLARATION OF CONFLICT

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

### 5. PUBLIC HEARINGS TO CONSIDER:

#### A. Dillard Conditional Use Permit #20-03, 422 Woodcreek Drive

Gudde summarized the proposed Conditional Use Permit Application. The City of Lynden's zoning code provides residents, who meet specific performance criteria, the opportunity to use their homes as short-term vacation rentals. These are regulated per the City's code section on Bed and Breakfast Establishments.

Prior to operation, the homeowner must be granted a Conditional Use Permit (CUP) as a short-term rental may have an impact on the surrounding properties. The CUP process includes notifying property owners within 300 feet and demonstrating that the property will meet the criteria outlined in LMC 19.49.020 and can meet the operational regulations of LMC 19.49.030 (attached).

The pending CUP application has been submitted by David and Kathleen Dillard; who's property is located at 422 Woodcreek Drive. The attached application includes an aerial map of the neighborhood and a floor plan of the residence. The Dillard's already have a legal Accessory Dwelling Unit, located in the basement floor of their residence. This ADU has been used for both long-term and short-term rentals. With this CUP proposal they are seeking to make the short-term rental option legal. They are not proposing to make physical changes to the home. Consistent with code, the property owner is intending to remain onsite when the property is being used as a short-term rental. The property will provide adequate on-site

parking and landscape buffers/fence are in place to reduce impacts to others. The request is also consistent with similar requests approved elsewhere within the City.

Staff has received concerns regarding increased parking impacts due to the fact that the Dillard's have two driveways off of Woodcreek Drive and about the approved building permit that allows the Dillard's to construct a shop in the rear yard. Gudde noted that the conditions in the Staff Report for the CUP specifically state that the ADU / Air B&B can only be located within the approved ADU not the proposed detached shop. Gudde also mentioned the possibility of installing a privacy fence along the northern property line to provide a buffer.

### **Public Comment**

Dave Dillard, applicant spoke and stated that the proposed shop, currently under construction will help relieve some of the parking concerns as some vehicles will be parked inside the shop which will move parking off of the street.

Dillard stated that for the last three years we have rented the unit as a full-time rental which had a vehicle in driveway all of the time. The parking will actually be reduced as there will no longer be someone residing in the unit fulltime.

Linda Sharp, 450 Woodcreek Drive. Sharp asked if the CUP states that the ADU will be located in the existing home and will not be in the proposed shop. Gudde replied, yes. Sharp also asked about a privacy fence constructed on the Dillard's property line. D. Veltkamp stated, that was a recommendation from Staff.

### **Questions or Comments from the Commissioners**

- Faber asked what is the time frame for the construction of the shop? Dillard replied, next summer.
- K Timmer asked if the shop will be completed next summer or just in the process of being completed? Dillard replied, completed.
- Faber asked about screening on the property lines. Gudde replied, that the south side of property appears to be adequately screened, however, screening on the north property line is recommended. Faber questioned the screening on the north side as the ADU exists on the other side of the property. Gudde stated that the recommendation came out of discussions regarding privacy and parking concerns with the neighbor.
- Linda Sharp stated that there is a lot of traffic generated from the Dillard family and the Sharps would like some additional privacy between the properties and to better designate the property lines. In addition, the Dillard's park a freightliner in the driveway between the two homes. along the northern property line.

- The Dillard's state that the driveway on the northside has never been used by renters. It is a private driveway only.
- Timmer asked if the north driveway is currently used? The Dillard's replied, yes, it is our private driveway.

**Scott motion to close the public portion of the hearing. Seconded by Korthuis and the motion passed 6-0**

The Commission had no concerns with the CUP criteria. The buffering issue is not due to the CUP request.

K Timmer stated that a nightly rental can have more impact than a monthly rental. The City needs to tread carefully. Maybe a buffer is not out of the question as the neighbors could be negatively impacted.

G Veltkamp has concerns regarding forcing the Dillard's to put up a fence. A fence or buffering is not required for the shop building. The screening on the north property line is a separate issue.

Faber agrees with G. Veltkamp and stated that the parties involved need to work together for a solution. The fence is a different issue than the CUP request. Faber has no concerns with the CUP criteria.

Brief discussion regarding annual review of the CUP.

**Faber made a motion to recommend to the City Council the approval of the proposed Dillard Conditional Use Permit to allow short-term rentals as proposed at their property at 422 Woodcreek Drive, subject to annual review as written in code. Seconded by Blair Scott and the motion passed 6-0.**

## B. KODA Rezone #20-03, 295 S BC Avenue

Gudde summarized the request. The property owner is seeking to rezone this property from Multi-Family Residential (RM-4) to Multi-Family (RM-2). The subject property has unique characteristics that have led to the owner's decision to pursue a down zone.

The Planning Department is tasked with keeping up to date on Growth Management Policies and staying on task with City's Comprehensive Plan goal to seek / maintain higher density opportunities. This is especially important for those located relatively near commercial services such as shopping and the downtown core.

It should be noted that constraints of the critical areas support the need for medium to higher density housing to more thoroughly utilize building areas. Additionally, higher density development would not be out of character for the neighborhood as multi-family buildings, the relatively large scale of the New Hope Center, and cluster developments are all located in close proximity to this property. Considering these factors, the request to downzone this area should be considered carefully in light of the City's growth management goals.

While the applicant has expressed an openness to an RM-3 zoning the primary reason that RM-2 was pursued was because the smaller setbacks associated with RM-2 were a better fit for the housing types they have planned for the property. Staff also recognizes that parking requirement and building height limits within the City's development code may also restrict the actual achievable density on this property. For these reasons, and other described in the TRC report, staff supports the property owners request to rezone to an RM-2 designation

### Public Comment

Roger Anderson and Ray Kornelis, applicants spoke. Anderson and Kornelis are joint partners in the proposed rezone. Plans include making two lots on-site for single family homes. We could build a home under RM-4, however, achieving the setbacks in that zone is a bit more difficult than in RM-2. We have no intent of building multi-family.

### Questions or Comments from the Commissioners

- D Veltkamp asked about the access point to the property. Would additional property be needed if it was zoned RM-2? Gudde stated that the size really depends on the density, not necessarily the zoning.
- Discussion about buffer / buildable area. Building would need to be in front of the 50-foot buffer shown on the map in the packet. Questions on the validity of the map with regards to buffer lines etc.
- Anderson stated that the map is correct, and the buffer zone is accurate. Northwest Ecological prepared the wetland study in 2019.

- Faber asked how much acreage would be left outside of the wetlands. Roger said just over an acre up on the ridge of which we have plans to divide into two lots.
- Turner asked how the property would be divided? Heidi stated that there is not a subdivision plan submitted at this point. One lot would be close to the existing barn with the second lot being south of that area. As you head east, the property is not buildable.
- K Timmer confirmed that the future plan is to create two additional lots, correct?. Yes, 2 new lots for a total of three.

**K. Timmer motion to close the public portion of the hearing. Seconded by G. Veltkamp and the motion passed 6-0**

**Other Commissioner Comments:**

- The Commission agreed that it is a reasonable request.
- Faber stated that the access does not lend itself to multi-family development.
- Korthuis stated that the crunch of the wetland does not make sense for multi-family development.

The Commission reviewed the criteria associated with a site-specific rezone and agreed that things have changed in the area since the current zoning was established and at that time, the rezone did not take in consideration the topography of the land / wetland which would greatly limit the density of units allowed.

In addition, other properties in the area are zoned RM-2.

**Faber made a motion to recommend to the City Council the approval of the KODA Rezone request from an RM-4 to an RM-2 designation, Application #20-03, According to the Staff Report dated December 1, 2020. Seconded by Bryan Korthuis. Motion passed unanimously.**

### C. Zoning Text Amendment – Hearing Examiner

Planning Commission met with the Community Development Committee several months ago to discuss the introduction of a hearing examiner.

Gudde gave an overview of the amendment. In 2018 the City of Lynden began researching the use of a hearing examiner after several costly and time-consuming administrative appeals were defended. Use of a hearing examiner, typically an experienced land use attorney, could provide multiple benefits to the City. These include an expediency in processing applications, the unbiased opinion of a professional, removing social/political influence from the process, reducing the City's liability, and decreasing the obligations placed on volunteer boards.

A hearing examiner could be considered as the reviewer of appeals/applications where specific legal or technical criteria are listed. Feedback regarding this initiative has led to a code amendment drafted to include some appeals and some variance requests. Decisions made by the hearing examiner would go to the City Council if appealed. This code amendment also provides an opportunity to update sections of code to current organizational structure and other improvements. In summary, the attached draft ordinance proposes:

- To remove an unusual and glaring liability found in Chapter 17.13.060(B) which allows any three property owners or three residents of the City to petition for the review of any permit issued under the development code without indicating a specific appeal period.
- That a hearing examiner would hear some administrative appeals.
- That a hearing examiner would hear variances from Chapter 19. These variance applications are currently heard by the Board of Adjustments. This change would eliminate the need for a Board of Adjustments.
- That a hearing examiner would hear appeals of the Building Official's decisions that are currently directed to the Board of Appeals (described in Chapter 15.14), which has never been created.

Previous drafts of the code amendment had shifted the review of Conditional Use Permits and Shoreline Permit to the hearing examiner as well. After feedback from the last workshop, the attached ordinance does not include these applications in the hearing examiner's scope of work. However, staff and legal counsel urge the Planning Commission and the City Council to reconsider the issue of shoreline permits. The City's Shoreline Master Plan is over 100 pages of shoreline specific code. Mitigation work and compliance is often highly dependent on work from certified biologists and the best available science related to shoreline / riparian mitigation. Staff's recommendation is to send shoreline permits to a hearing examiner for a decision. Appeal of these decisions would be heard by the State's Shoreline Hearings Board as is the current path within the City's development code.

Gudde stated, for SEPA Appeals, they would be handled first with the Hearing Examiner, and the project associated with it would come forward to the Commission after the SEPA appeal was decided on.

For Variance and Shoreline applications not associated with land use applications, they would go to the hearing examiner for a decision.

For consolidated land use applications that include Shoreline permits, they would still go before the Planning Commission.

There are two Hearing Examiner options; the structure that the City is proposing is to allow a dispute to be heard by City Council, another option would be to appeal to the Superior Court.

Mike Martin, this is his 5<sup>th</sup> City he has worked for of which many used a hearing examiner. Over the years, Martin has heard many concerns from leaders thinking that with a hearing examiner, they will lose local control. Let me assure you that local control remains with the City Council.

The need for a hearing examiner boils down to the fact that the review will be handled by an unbiased, highly trained person to review and decide on an issue.

At anytime, the City Council can revisit the hearing examiner chosen.

The City often has 4-5 attorneys working on the same issued at one time. We are trying to make this a more efficient and a less expensive process. The City has no plans to hire additional planners, we punch above our weight and make use of the people we have.

A lot of Cities use a hearing examiner for many more items than what we are proposing. This is a modest way of trying out this need. We can always add to the list as time goes on.

Faber appreciates and stands behind the proposal for a hearing examiner whole heartedly. Faber can get behind the Shoreline recommendation as well. It is very technical and having a someone who specializes in that area makes good sense. No problem at all with the hearing examiner reviewing the specific applications as proposed.

G. Veltkamp concurs with Faber. You need to trust the professionals. This is above the PC's pay grade. It is very specific and technical and it is important to have the professionals review the applications.

B Korthuis, the blue-line document is pretty much what was explained to us at our joint meeting in July, which he appreciated very much. Having a hearing examiner is definitely something that the City should acquire.

**Public Comment - None**

**Scott motioned to close the public portion of the hearing. Seconded by K. Timmer and the motion passed 6-0.**

No additional comments were brought forward from the Commissioners.

**Faber made a motion to recommend to the City Council the approval of Ord 1615 with the revision to include the hearing examiner's review of shoreline permits. Seconded by Bryan Korthuis. Motion passed unanimously.**



## D. Zoning Text Amendment #20-02 – Mobile Home Parks

Gudde addressed the text amendment. Lesa Starckenberg-Kroontje, representing her client Four 'S' Investments, has applied for a Zoning Text Amendment regarding the expansion of the nonconforming use of a mobile home park within the Commercial Services-Regional (CSR) Zoning category. The request is somewhat focused on the Duffner Mobile Home Park located on Front Street just west of the Guide Meridian. However, it is important to keep in mind that the amendment would apply to any other mobile home communities (MHCs) within the CSR zoning category. Staff believes this is limited to one other circumstance – the unit pads located at the Windmill Inn Motel located at 8022 Guide Meridian.

Non-conforming uses are addressed in LMC 19.35. A use, like the Duffner Mobile Home Park, which is brought into the City that does not match the permitted uses of its zoning category is considered a legal nonconforming use. This is referred to as times as a use that is “grandfathered”. Although a legal nonconforming use can continue to operate, it is not permitted to expand.

The Duffner Mobile Home Park was recently able to connect to City sewer services and decommission aging septic systems. This available connection has also initiated the applicant opportunity to request additional housing units be placed on the property as each would be able to connect to sewer services.

In the attached applicant explores the potential benefits that additional stock of affordable housing can provide to the City. Staff review can be found in two TRC reports – the final report dated December 4, 2020.

Staff review, with the assistance of the City’s legal counsel, has concluded with a recommendation to approve the expansion of MHCs in the City’s CSR zones only as a conditional use and subject to appropriate setback and buffering requirements that may result as a review of the conditional use permit application. To be consistent with State Statues, staff also recommends that the City’s definitions related to MHCs in Chapter 17 be updated as attached and the corresponding text amendments to Chapters 18 and 19 be made in accordance with these updates.

### Public Comment

Lesla Starckenburg, Agent for Applicant, spoke. Starckenburg stated that she is speaking on behalf of the owners of the Duffner Mobile Home Park. This request ended up being more work than originally thought. That was not the intent in the beginning, so thank you to Staff for the hard work. Starckenburg stated that many inconsistencies were found once the process was started.

Allowing this amendment would provide more affordable housing in the City as well as the use of surplus land. It allows for continued property income while the owners wait for the commercial development to take off in the area. The concept originally came up a year ago in

a council committee meeting where we were discussing the property and its connections to the sewer line. The idea for a ZTA was brought forward as her client's property is considered a non-conforming use as it is not allowed to intensify. Council members at that time indicated that a text amendment was a good idea.

### **Commissioner Comments**

- Scott, the request sounds reasonable, however, when I think of the concept of a manufactured home it seems like something with more permanence, not an RV. Concern if we open this up. Starckenburg stated, at this location we are looking to add 4-5 units in the middle of the property. This ZTA would only apply to a couple of parcels in town. The impact would be minimal and it would require a conditional use permit approval and building permit. Bringing in units would require compliance with the code.
- G Veltkamp agrees that it is affordable housing. What would stop someone from placing 4 mobile homes and then renting them out for rental income? Lesa stated that there is a separate landlord CCR's that need to be met. K Timmer stated that she cannot see an investor buying and renting it for income.
- Timmer stated that this is another form of affordable housing which is really needed in Lynden.
- Veltkamp asked, if they added 4 units, would they be held to meeting development standards for streets similar to houses. Gudde stated that it would be unreasonable to make them meet street standards, they would however, need to apply for a CUP which would come before the Planning Commission and the City Council. The Fire Department would also have the opportunity to weigh in. Staff would recommend buffering, site lighting and that the parking code is met.
- Faber, how many additional units can fit on this specific property? Lesa stated about 4-5. Can multiple units be brought in under one CUP? Lesa does not see why not. A site plan can show the delineated area and associated buffering etc. under one CUP. After that each unit would require its own building permit.
- Gudde stated that a distinguishing difference between this property and the Windmill is that sewer is at this site and there are no flood plain concerns. At the windmill, there is no sewer and there are considerable flood plain issues that would need to be dealt with.

**Scott motioned to close the public portion of the hearing. Seconded by G. Veltkamp and the motion passed 6-0.**

Scott has no objections as any additional units would need to come before the Commission through a conditional use permit. Korthuis stated that it seems like an over-do amendment that needs to be cleaned up.

Faber likes the checks and balances for review.

**Faber made a Motion to recommend to the City Council the approval of the proposed zoning text amendment, ZTA 20-02 as conditioned by staff. The amendment would allow nonconforming mobile / manufactured home communities, through the approval of a conditional use permit, to expand by adding additional pads / units within existing community boundaries. And further recommend to Council the approval of code updates to applicable definitions and affected code sections within Chapters 17, 18 and 19. Seconded by Bryan Korthuis and the motion passed 6-0.**

The Commission thanked Lesa Starkenburg and Staff for their work on this amendment.

## **6. ADJOURNMENT**

**Motion to adjourn by Scott at 9:35 pm. Seconded by Turner.**