



## COMMUNITY DEVELOPMENT COMMITTEE

### MINUTES

4:00 PM January 4, 2023  
2<sup>nd</sup> Floor Conference Room, City Hall

#### 1. ROLL CALL

**City Council Members:** Brent Lenssen, Gary Bode, Mayor Scott Korthuis

**City Staff:** Heidi Gudde, Dave Timmer, John Williams

**Community Members:** Gary Vis, Dale Assink, Stephanie Rogers, Beck Straussner

#### 2. APPROVAL OF MINUTES

Community Development Committee Meeting Minutes of 11/16/22 delayed until the next meeting.

#### 3. **Unscheduled Item: Enclosure of Patios**

Dale Assink, a local contractor joined the meeting to discuss a pending violation of work without a permit and encroachment of a rear property setback.

Gudde provided the Committee with context on this issue. Code currently allows outdoor patios to encroach within 18 feet of the rear setback and be roofed but must remain open on 3 sides. Rear setback to living space is typically 30 feet as is the case in this scenario. Assink completed a building permit to cover a patio at 950 Captain Bay Court. After finalization of that permit Assink enclosed all three sides of the patio with glass panels and two overhead doors which was not part of the approved permit. This after-permit work was cited as a violation a work without a permit and encroachment into a rear setback. (Opportunities to appeal the decision were declined.) The violation was not corrected within the allotted time and is currently being assessed a daily fine.

Council members expressed an interest in revising code to allow this violation to become conforming.

Lenssen discussed what the code meant by “open” using various examples. Gudde noted that the code has been updated to say that a patio cannot be “enclosed in any way”. Some on the Committee felt that overhead doors provided a degree of openness. Gudde disagreed saying that any

permanently door or window in a home could be considered open. Timmer noted that the provisions are simply intended only to provide a roof over an outdoor space. Gudde and Timmer both confirmed that there was not confusion about the definition of “open on three sides” and the original permit submitted and constructed by Assink was in conformance. Additionally, staff has not seen any confusion among contractors on this issue.

Timmer also explained to the Committee that enclosing a patio can essentially equate to an addition to a home as the space becomes more living space than outdoor space. If reduced rear setbacks are desired, then the Council may choose to enact changes in this way rather than trying to determine a degree of openness needed when enclosing a patio which could be very difficult to enforce.

Williams gave the Committee a brief summary of concerns related to the meeting of the energy code, fire code, and life safety concerns related to the use of grills or propane heaters within enclosed spaces especially when attached to primary living quarters.

Bode expressed the desire to allow property owners to utilize more lot area especially in light of smaller lots.

The Committee discussed options for enclosing patios which are more varied than in previous years to include louvered walls, powered screens, and various folding or raising glass / transparent doors and walls.

Assink asked for clarification as to why the open patio provisions are needed and why can't patios be enclosed.

Staff noted that living spaces are separated by setbacks to provide buffers between neighbors, yard space, aesthetics, and managing stormwater.

Assink noted that a detached structure could be added within the rear setback. Staff confirmed this is true but these structures are not considered living spaces unless they are approved ADUs which have their own setback requirements.

Vis expressed that he preferred to see homes maintain some open yard space – one of the reason why he liked to see larger lots.

Vis asked if patios should simply be included in the building setbacks. This is how the code used to read. Staff noted that builders typically built homes to the full extent of the building envelop and it was often later homeowners that sought to cover portions of the rear yard – and were not able to because

encroachment into the setback was not allowed. Staff expressed concern that if the building envelop was expanded then homes would simply grow to use the entire area and outdoor living spaces would, again, be uncovered.

Temporary vs permanent enclosures were also discussed as well as conditioned vs. non-conditioned spaces, and if it would be possible to include in the code a path to partially enclosure which would maintain the patio space as outdoor living vs. an expansion of the home.

The Committee discussed the nature of an enclosed patio that is connected to living space – often called a sunroom, 3 season, or Florida room and the potential to limit the scale of these types of additions to a home.

Assink requested that the accruing fine be paused while options for code revision be discussed. Timmer asked what level of effort it would take to come into compliance and stop the fine. Assink indicated that the enclosure was a significant investment, and he didn't want to remove it. Williams stated that he would ask legal to review the issue an outline a process by which a pause in the fine could be explored.

**Conclusions:** Staff was asked to return to the January 18<sup>th</sup> CDC with follow-up on this issue regarding the handling of violations and fines.

#### **4. Community Residential Facilities and Short-Term Rentals**

Gudde explained that Ord 1654 had been drafted, had gone to public hearing before the Planning Commission and is currently being reviewed by the Department of Commerce. The Commission has recommended approval of the ordinance which encompasses a new section on Community Residential Facilities. This topic has been discussed multiple times in multiple committees however additional portions of the ordinance had not and these were the points that staff wanted to bring to the attention of the CDC.

Section 19.49 of the Lynden Municipal Code (LMC) is being vacated to become the new location of the ordinance on Community Residential Facilities. The current contents of LMC 19.49 include provisions for Conditional Use Permit and, embedded within that code, regulations related to Bed and Breakfasts.

Staff is proposing that the existing content of LMC 19.49 be added to LMC 19.57 which is the code for Home Occupation Permits. This amendment is an opportunity to make some clarifications or edits to the shifting sections of code. Specifically that additional language be added to the Bed and

Breakfast section to include short term rentals (vacation rentals) which have become very popular through platforms like AirBNB and Verbo.

To date short term rentals (STRs) in Lynden have been regulated according to the current Bed and Breakfast code. Gudde pointed out that a few policy changes are proposed within the draft and have received Planning Commission recommendation for approval.

1. That STRs not require that the property owner be on site.
2. A conditional use permit is currently required for a STR. The draft code proposes a process which could be slightly less arduous in that of Home Occupation Permit.
3. That the definition of transient accommodation be modified to be stays of less than 30 days rather than 2 weeks or less to be consistent with the State's definition.

Gudde noted that there is overlap between this topic and the Community Residential Facilities topic as the State has taken a stance that transitional housing must be allowed where every lodging is permitted. The Council should keep in mind that STRs, as a form of lodging, and the approval process for an STR could be compared to emergency housing. Gudde also pointed out that, as currently drafted, Ord 1654 does not permit Community Residential Facilities that are transient in nature (stays of less than 30 days) to be located in single-family zoning categories.

Vis expressed his concern about short term rentals because of the competition they create for local hotels but without the costs of commercial construction. He also expressed concern as to the impact to housing availability and the disruption transitory stays can have on residential neighborhoods

The Committee discussed the currently requirement of securing a Conditional Use permit (CUP) for an STR. Staff noted that this is a rather arduous process for a homeowner to undertake. Some, about 4, have done so and been successful. Neighborhood concerns usually relate to traffic, privacy, potential noise, and the addition of strangers coming and going from their neighborhood. The City currently has some vacation rental listings that have clearly not been through the CUP process. Timmer detailed examples of a few complaints and reactive enforcement actions.

The Committee expressed support for potential limits to the number that can occur within the City or perhaps limits per sub-area.

The group discussed examples from other cities that included issues related to neighborhood hostility toward renters, the use of signs to identify STRs that include a contact phone number, but also the benefits of staying in an STR as most people in the room had utilized these as a lodging option.

After hearing discussion and the concern related to STRs, Timmer suggested that the code remain as written, that owner occupancy be required. The group also discussed the possibility of having a more arduous approval process for facilities that would not be owner occupied and an easier process for facilities that would be owner occupied.

Straussner suggested that the City be careful to define what “owner occupancy” means.

**Conclusions:** The Committee asked staff to review the policies of other cities to explore options for limits on STRs and comparable approval processes.

## **5. Beck with Pioneer Ford Property**

Beck Straussner, the owner of the property commonly called the “Pioneer Ford” property located at the Guide Meridian gateway to the City joined the meeting after being encouraged to do so at the January 3<sup>rd</sup> City Council meeting. He is interested in learning more about what the City is hoping to see develop on the property.

He had heard that the code had been updated to provide additional mixed-use opportunities.

Staff noted that the property is likely affected by some floodplain and it likely falls within the shoreline jurisdiction. The group also discussed access, potential connections for sewer, and a potential use for the existing building.

**Conclusions:** Straussner was encouraged to connect with Planning staff to discuss options for the property.

**Next Meeting Date: January 18, 2023**