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**THE HEARING EXAMINER OF THE CITY OF BELLINGHAM
WHATCOM COUNTY, WASHINGTON**

| | |
|---|---|
| IN RE: Garden Street Investment, LLC Applicants 1125-1127 N. Garden Street | HE-14-PL-030 FINDINGS, CONCLUSIONS, AND DECISION |
| CUP2014-00006 / Conditional Use Permit to Expand a Legally Nonconforming Service Care Facility | SHARON A. RICE HEARING EXAMINER PRO TEM |

SUMMARY OF DECISION

The requested conditional use permit to expand an existing nonconforming service care facility at 1127 N. Garden Street into a new building on the same site is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Garden Street Investments (Applicant) requested approval of a conditional use permit to expand an existing nonconforming service care facility at 1127 N. Garden Street into a new building adjacent to the existing facility.

Hearing Date:

The Bellingham Hearing Examiner conducted an open record hearing on the request on August 13, 2014. At the conclusion of proceedings and during deliberations, the record was held open as follows:

Post-Hearing Submission Schedule:

At the close of the hearing, the record was held open until August 20th for responses from the City on the Dannon Traxler legal argument in *Exhibit 1, Attachment C* and for response to the Applicant's letter at *Exhibit 5*.

The record was also held open until August 27th for Applicant responses to the following: the Dannon Traxler legal argument in *Exhibit 1, Attachment C*; Applicant

1 business records, if any, and a brief cover letter explaining any records in the possession
2 of Bellingham Work Release in which the City acknowledged the facility has housed 25
3 people for many years; and a written response to the City's August 20th submittal.

4 Finally, because the record was already being held open for other matters, Ms. Traxler
5 requested the opportunity to submit a correction to her comments in the record at
6 *Attachment C* to the staff report by the end of the week. Her request was granted.

7 After the hearing, on August 20, 2014, the City requested until August 27th to submit
8 the items noted above, stating that the Applicant did not object so long as their deadline
9 was extended through September 5th. The request was granted and both deadlines were
10 pushed back one week.

11 At the conclusion of the proceedings, the Applicant agreed to a 15-day business day
12 decision deadline and the due date was announced as September 17, 2014. Due to the
13 Labor Day holiday, the post-hearing order noted a corrected decision due date of
14 September 18, 2014. However, due to the post-hearing submission deadlines being
15 pushed back and to the volume and complexity of the material, the Examiner pushed
16 back the decision deadline to September 25, 2014.

17 **Testimony:**

18 At the hearing the following individuals presented testimony under oath:

19 Ali Taysi, Applicant Representative
20 Mike Hays, Applicant/Property Owner
21 Karen Stoos, Bellingham Work Release Program Director
22 Jackie Lynch, Bellingham Planner II
23 Kurt Nabbefeld, Bellingham Senior Planner
24 William Fleming
25 Virginia Wright
26 Joe Kirkman
27 Jim McLaughlin
28 Chene Harding
29 Troy Bach
30 Debra Hauley
Julia Poland
Cynthia Bach
Dannon Traxler
Sherry Jubilo
Jean Hamilton

1 Jay Adams

2 Simi Jain, Attorney, represented the Applicant.

3 Dannon Traxler, Attorney, represented Troy and Cynthia Bach.

4 **Exhibits:**

5 At the open record hearing, the following exhibits were admitted in the record:

6 Exhibit 1 Staff Report by Jackie Lynch, Planner II with the following attachments:

7 Attachment A Application, dated May 5, 2014, with attachments:

- 8 1. Applicant's Project Narrative (15 pages)
- 9 2. Pre-Applicant Meeting Comments to Applicant from Staff, dated
- 10 March 17, 2014 (12 pages)
- 11 3. Email from Karen Stoos, dated March 12, 2014
- 12 4. Mike Hays email (with chain including Kathy Bell), dated
- 13 November 18, 2013
- 14 5. Copy of City record of nonconforming use certificate issued
- 15 December 8, 1972 (hand corrected to 1982)
- 16 6. Sun Community Service letter of inquiry, dated October 7, 1980
- 17 (regarding use of building at 1127 N Garden Street as a half
- 18 way/3/4 way house for recovering mentally ill adults)
- 19 7. Letter from Mark McElwain, City Planner, dated December 8,
- 20 1980
- 21 8. Fire Drill/Emergency Plan for existing use (5 pages)
- 22 9. Map of Town of New Whatcom, 1883, Whatcom County,
- 23 Washington Territory
- 24 10. Letter to Staff from Ali Taysi, dated July 7, 2014 (3 pages)
- 25 11. Letter to Staff from Simi Jain, dated July 7, 2014 (7 pages)
- 26 12. Applicant response to public comment (5 pages)
- 27 13. Email from Karen Stoos, dated June 24, 2014
- 28 14. "Does Participation in Washington's Work Release Facilities
- 29 Reduce Recidivism?", a paper by Washington State Institute for
- 30 Public Policy, November 2007 (16 pages inc. appendices)

- 1 15. Bellingham Police Department Crime Statistics (4 pages)
- 2 16. Declaration of Michael Hays, dated July 8, 2014
- 3 17. Letter from Simi Jain, July 10, 2014
- 4 18. Declaration of Karen Stoos, July 10, 2014 (5 pages)
- 5 19. Press Release: Bellingham Work Release Awarded National
- 6 Accreditation
- 7 20. Bellingham Work Release Point to Point Pass
- 8 21. Bellingham Work Release Job Search Pass
- 9 22. Bellingham Work Release Request and Agreement for Social
- 10 Outing
- 11 23. Department of Corrections Prison Sanctioning Guidelines (8
- 12 pages)
- 13 24. Site Plans, elevations, and landscape plans (larger 11x17 plan set
- 14 provided, not listed separately)
- 15 Attachment B Excerpts of the Bellingham Municipal Code
- 16 Attachment C Public Comments (86 comments; see cover sheet)
- 17 Attachment D Comprehensive Plan Citations
- 18 Attachment E Dellinger House Historic Property Inventory Report
- 19 Attachment F Police Department E-mails (3 pages)
- 20 Attachment G Bellingham Work Release Orientation Handbook
- 21 Attachment H Notice of Public Hearing
- 22 Attachment I Neighborhood Meeting Notice
- 23 Attachment J Notice of Application
- 24 Attachment K Aerial Site Photographs (4 photos, viewing the site from
- 25 all four directions)
- 26 Exhibit 2 Applicant's PowerPoint Presentation (29 slides)
- 27 Exhibit 3 Declaration of Detective Monson, dated 8/13/14 (submitted by Applicant)
- 28 Exhibit 4 Work Training Release Shift Logs showing facility calls to Bellingham
- 29 Police Department, various dates (submitted by Applicant)
- 30 Exhibit 5 Applicant's Response to the Staff Report dated 8/13/14

- 1 Exhibit 6 Letter from Community Food Co-op, undated (submitted by Applicant)
2 Exhibit 7 Summary of Bellingham Work Release Statistics (submitted by Applicant)
3 Exhibit 8 Comment letter from Troy Bach, dated 8/13/14
4 Exhibit 9 Comment letter from Cynthia Bach, dated 8/13/14
5 Exhibit 10 Comment letter from Cynthia Bach, dated 8/12/14
6 Exhibit 11 Comment letter from Cynthia Bach, dated 8/13/14
7 Exhibit 12 Correction comment (email) submitted by Dannon Traxler as permitted on
8 the record, submitted August 14, 2014
9 Exhibit 13 Bellingham Work Release business records submitted pursuant to the post-
10 hearing order by Karen Stoos, submitted August 18, 2014
11 Exhibit 14 City's response per the Post-Hearing Submission Schedule, timely
12 submitted August 27, 2014 with attachments:
13 1. Neighborhood meeting notice
14 2. Notice of Application
15 Exhibit 15 Applicant's response per the Post-Hearing Submission schedule, timely
16 submitted September 5, 2014, as follows:
17 a. Cover letter dated September 5, 2014
18 b. Legal Memorandum, dated September 5, 2014 with attachments:
19 1. Copy of City card noting record of nonconforming use certificate
20 issued December 8, 1972 (handwritten note corrects to 1982)
21 2. City of Bellingham Ordinance 9024
22 3. Declaration of Michael Hays, Applicant, with attachment showing
23 location of properties he owns in the vicinity

24 Also included in the record of this matter are the following:

- 25 • Order Setting Post-Hearing Submission Schedule, issued August 15, 2014
26 • Post-hearing request (email) for extension of submission schedule, submitted by
27 the City August 20, 2014

28 Upon consideration of the testimony and exhibits submitted, the Hearing Examiner
29 enters the following findings and conclusions:
30

Findings, Conclusions, and Decision

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H:/DATA/HEARING EXAMINER/DECISIONS/Work Release CUP 1125-1127 N. Garden St.

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

FINDINGS

1. The Applicant requested approval of a conditional use permit to expand an existing legally nonconforming service care facility at 1127 N. Garden Street into a new building. The 12,500 square foot subject property is comprised of two parcels: Lots 15 and 16 of Block 79, New Whatcom. The existing service care facility is on Lot 16 (addressed as 1127 N. Garden Street). The proposed new 6,600-square foot building would be built on Lot 15. Addressed as 1125 N. Garden Street, Lot 15 is currently vacant except for a detached carriage house/garage used for offices and storage, and landscaping including at least two mature evergreen trees.¹ *Exhibit 1; Exhibit 1, Attachment A.*
2. The existing building at 1127 N. Garden Street was built in 1906 as a single-family residence. Known as the Dellinger House, it is an historic building potentially eligible for inclusion in the National Historic Register of Historic Places. *Exhibit 1, Attachment E.* There are no critical areas on or in the vicinity of the subject property, and there are no natural, scenic, or historic features in the vicinity that would be impacted by the proposal. Located at the corner of N. Garden Street and E. Chestnut Street, the site is within walking distance of downtown jobs and services. *Exhibit 1, page 4; Taysi Testimony; Exhibit 2.*
3. The site is located in Area 2 of the Sehome Neighborhood. The underlying zoning is Residential Multi/Multiple, requiring a density of 1,000 square feet of lot area per unit. *Exhibit 1.* The purpose of the Residential Multi (RM) zone is to accommodate the highest concentrations of people within the city. The regulations found within this chapter are intended to provide a framework for a desirable living environment for the people living within and adjacent to areas designated RM. *Bellingham Municipal Code (BMC) 20.32.020.* Planning Staff identified applicable City of Bellingham Comprehensive Plans and Policies in Attachment D to the Staff Report, which are incorporated by reference in this finding. *Exhibit 1, Attachment D.*
4. Surrounding development includes single-family and multifamily residential uses, some of which are rentals, many inhabited by students from the nearby colleges. *Hays Testimony; Exhibit 1, Attachment A.16.*
5. City records contain the following information about the historic use of the subject property. On August 2, 1950, the Planning Commission approved a use

¹ The legal description of the subject property is New Whatcom Lots 15-16 Block 79, Whatcom County, WA.; also known as Parcel # 370201307470. *Exhibit 1.*

1 conversion for the Dellinger House from a single-family residence to a duplex.
2 On April 2, 1972, the City obtained information indicating that the building was
3 being used as a 'rooming house with 20 occupants, not including owner or
4 manager, not an Apartment House'. On December 8, 1972, a certificate of
5 nonconforming use (#147) was issued acknowledging use of the Dellinger
6 House as a boarding and rooming house for 20 people plus managers, providing
7 three off-street parking spaces. The certificate itself is missing, but the City has
8 a copy of a business record indicating its contents. *Exhibit 1, Attachment A.5;*
9 *Lynch Testimony*. In September 1977, a requested variance to convert duplex to
10 triplex was denied. An October 8, 1980 letter from the Planning Division stated
11 that the underlying 'Residential High Density Zone' allows boarding and
12 rooming houses. A file note dated March 1, 1980 states: "This site is used for
13 work release. The Police Department determined it was a 30-person rooming
14 house. No formal complaints or enforcement actions are in the record." *Exhibit*
15 *1, pages 3-4; Lynch Testimony*.

12 6. On April 27, 1982, the City adopted Ordinance 9024, which made "boarding and
13 rooming houses" and "service care facilities" conditional uses in the zone which
14 by the time was applicable to the site, its current Residential Multi/Multiple.²
15 The then-existing legally nonconforming boarding and rooming house use of the
16 site became allowed in the zone by conditional use. Most recently, the City
17 adopted Ordinance 2006-03-018 on March 10, 2006, which further modified the
18 "service care" use definition. *Exhibit 1, page 4; Exhibit 14*.

18 7. Since 1982, the Dellinger House has been occupied by the Bellingham Work
19 Release Program, which has been operated by the Community Work Training
20 Association (CWTA) for approximately 30 years. According to long time staff,
21 the facility has housed up to 25 work release participants at a time since
22 occupying the building. The facility is one of only two work release programs
23 operating in Whatcom County. *Exhibit 1; Exhibit 1, Attachment A.16; Stoos*
24 *Testimony; Exhibit 2*. The use meets the definition of a service care facility.³
25 *Bellingham Municipal Code (BMC) 20.08.010*.

25 ²"Boarding and rooming house" means a structure used for the purpose of providing lodging or lodging
26 and meals, for persons other than those under the "family" definition. This terms includes dormitories,
27 cooperative housing and similar establishments but does not include hotels, motels, medical care facilities
or bed and breakfast facilities. (*BMC 20.08.010*)

28 ³ "Service care" means a group residence licensed by the state operated with full-time supervision for
29 housing resident persons who, by reasons of their mental or physical disability, addiction to drugs or
alcohol or family and social adjustment problems, require a transitional nonmedical treatment program

- 1 8. The proposal would construct a new service care building serving 25 additional
2 work release program participants. The new building would have 16
3 "bedrooms", some of which would be singly or doubly occupied by program
4 participants, while others would be used as quarters for staff, conference rooms,
5 or office space. The new building would have its own communal kitchen,
6 staffing, and security equipment; common meals would still be served in the
7 Dellinger House. Additional improvements would include five new parking
8 spaces on the alley, a delivery pull out on N. Garden Street, and useable garden
9 space. The project would remove a previously-built addition to the Dellinger
10 House and remove the carriage house. No expansion or other change to the
11 exterior of the existing Dellinger House is proposed. A stormwater detention
12 vault would be provided on-site to address runoff from new impervious surface
13 areas. The improvements would be ADA accessible. *Exhibit 1, Attachment A;*
14 *Exhibit 2; Taysi Testimony.*
- 15 9. The new building would be placed as close to the Dellinger House as possible to
16 provide the maximum setback from the off-site residential use to the southwest.
17 A six-foot fence would be placed along the site perimeter, and native shrubs and
18 groundcover are proposed between the new building and the fence. Behind the
19 new structure, 1,256 square feet of garden space is proposed, to include one
20 small shed. The two large evergreen trees on-site would be removed to allow
21 construction of the building. Two new trees would be planted to replace them,
22 along with additional native plantings along the front of both lots. *Exhibit 1,*
23 *Attachment A.24.*
- 24 10. The Applicant proposes to construct the new building with roughed in kitchens
25 and other building code requirements in place in order to facilitate any potential
26 future conversion in use of the new structure from service care to multifamily
27 residential. *Exhibit 5; Hays Testimony.*

28 for rehabilitation and social readjustment. For the purposes of this title, a nonmedical treatment program
29 consists of counseling, vocational guidance, training, group therapy and other similar rehabilitative
30 services but does not include drug and/or alcohol detoxification. Monitoring the taking of prescription
medication shall be permitted. The use of medication by any resident shall be incidental to that person's
residence in the facility and shall not be a criterion for residence in the facility. Programs providing
alternatives to imprisonment, including prerelease, work-release and probationary programs which are
under the supervision of a court, state or local agency are included in this definition. Residences occupied
by persons qualifying under the definition of "family" and "secure community transition facilities" are
excluded from this definition. (*BMC 20.08.010*, emphasis added)

- 1 11. Bellingham Work Release residents are not allowed to drive or have
2 automobiles on-site. However, parking is needed for staff. *Exhibit 1,*
3 *Attachment A.* The BMC requires off-street parking for service care uses as
4 follows: "One for each staff person working at any time. Provisions shall be
5 made for an adequate drop off area located off the street." *BMC 20.12.010(f)iii.*
6 However, BMC 20.16.020L.2.c.ii. provides for hearing examiner discretion
7 regarding the required number of off-street parking spaces for a service care
8 conditional use permit. The on-site manager indicated that the new building and
9 the existing facility would generate a daily demand for six parking stalls for
10 regular employees, and intermittent staff would generate an additional parking
11 demand for five more parking spaces. Planning Staff noted that year 2002 -
12 2013 aerial photos available on the City IQ system show three vehicles in the
13 existing spaces off the Forest/Garden alley, verifying the on-site manager's
14 analysis. Visitors park on the street or in the facility's stalls after business hours.
15 *Exhibit 1, pages 4-5; Exhibit 1, Attachment A; Stoos Testimony.*
- 16 12. Streets fronting the site are fully developed to the applicable full City road
17 standards. Vehicular access is off the alley. The existing service care facility
18 has six parking stalls that back out onto the Forest/Chestnut alley, the southern
19 most of which extends across the shared boundary into adjacent Lot 15. There
20 is an approximately 11-foot wide vegetated setback between the existing parking
21 area and the Chestnut Street sidewalk. The proposal would add five more full
22 parking stalls along the rear boundary of Lot 15, for a total of 11 stalls, and
23 allow a partial stall abutting the required five-foot side setback the southwest
24 property line. Planning Staff recommended that this number of parking stalls
25 satisfied the code requirements. *Exhibit 1, Attachment A, Site Plans; Exhibit 1,*
26 *pages 4-5; BMC 20.12.010.D.4.*
- 27 13. Because the existing legally nonconforming use occupies both Lots 15 and
28 16, Planning Staff determined that the proposed new service care building on
29 Lot 15 would not constitute an expansion beyond the original site. Both Lots
30 are identified on the certificate of nonconforming use. Nor does Staff
consider the proposed new structure an increase in "units" for the purposes of
BMC 20.14.020.E.1. In its present state, the Dellinger House and the
carriage house are nonconforming with regard to some setbacks. Removal of
the enclosed stairwell addition that straddles the boundary between Lots 15
and 16 (*see Exhibit 1, Attachment K*) and demolition of the carriage house
would decrease the existing nonconformities as to setbacks. *Lynch*
Testimony; Exhibit 1, page 6; Exhibit 1, Attachment A.5.

- 1 14. In their analysis of the application, Planning Staff identified multiple proposed
2 increases in the intensity of the existing legally nonconforming use. Reducing
3 the open space on-site to place the new building, and removal of the existing
4 mature evergreens trees and their screening, would increase the intensity of the
5 buildings' presence as experienced by surrounding parcels. Adding residents,
6 staff, and parking would be an increase in intensity. However, the existing use
7 appears to be operating successfully. Removing the enclosed stairwell addition
8 from the historic building should restore the historic character of building. Staff
9 submitted the position that the location is well suited to an expansion of the
10 service care use and that no other location in Bellingham would be better.
11 *Nabbefeld Testimony; Lynch Testimony; Exhibit 1, page 6.*
- 12 15. Planning Staff also submitted that it represented an increase in intensity of the
13 existing use that the 1972 certificate acknowledging the nonconforming use
14 identified only 20 residents, while the work release program has 25 residents in
15 the Dellinger House and intends to keep that number. Staff asserted that the five
16 additional residents had never been approved and that conditional use approval
17 is necessary to officially increase the number of allowed residents in the existing
18 facility. Staff contended that this did not require a separate conditional use
19 permit application or process, but that the instant requested permit to expand the
20 use should address the "increase" in residents in the Dellinger House. *Exhibit 1,*
21 *page 5; Lynch Testimony; Nabbefeld Testimony.*
- 22 16. No actual increase in the number of residents in the Dellinger House is
23 proposed. *Exhibit 1, Attachment A; Stoos Testimony.*
- 24 17. As of August 1, 2014, staff and residents are not allowed to smoke on-site.
25 *Hays Testimony; Stoos Testimony.*
- 26 18. Work release program residents are not allowed to leave the facility without a
27 purpose. Procedures in place require them to check out and in at specific
28 times and they are under video surveillance while on-site. No overnight trips
29 are allowed. Residents are required to work and are subject to employer
30 reporting, as well as unannounced work release program personnel visits to
job sites. Visitors are subject to approval prior to visiting the facility,
including a criminal background check, and they must provide valid ID,
present all possessions for search and inspection, and sign in and out at each
visit. Visitors who appear to be under the influence are denied entry. Visits
occur only in authorized portions of the facility and visitors are not allowed
into residents' rooms. Residents in the existing and the proposed facilities

1 would be required to comply with all applicable provisions of the Bellingham
2 Work Release Orientation Handbook. This book contains detailed sections
3 on (and not limited to) the following: dress standards; hygiene; room rules
4 and inspections; property; searches/contraband; substance abuse testing;
5 mandatory meetings; safety and emergency procedures; telephone use; access
6 to counsel (attorneys); recreation; religious freedom; mail; visitation; banking
7 (withdrawals); grievance procedures; the disciplinary system; minor and
8 major infractions; escape/escape proceedings; community access;
9 employment opportunities; work sites; passes (to leave the property);
10 transportation; graduated community; social outings; and medical/dental
11 appointments. *Stoos Testimony; Exhibit 1, Attachment G.*

12 19. Karen Stoos, Director of the Bellingham Work Release Program for the last 32
13 years, provided testimony at the hearing as well as sworn written statements.
14 Ms. Stoos noted that CWTA partners with DOC to run the work release program
15 and would continue to do so for the life of the program on-site. She testified
16 that for her tenure, there have always been 25 residents in the existing facility.
17 She stated that to her knowledge there have been no complaints from neighbors
18 regarding program participants during her tenure. She stated that in order to be
19 eligible for work release, applicants must be in the last six months of their
20 sentence, require the minimum custody, have a record of good behavior, and be
21 in good health. The facility's screening committee is comprised of a local
22 citizen unaffiliated with the program, a BPD representative, a state supervisor, a
23 CWTA counselor, the program secretary, and Ms. Stoos herself. She stated that
24 additional staffing at the same levels would be provided in the new building,
25 which would be subject to the same rules, video surveillance, and procedures as
26 the existing facility has been. Also during her tenure, there have been no
27 residents sent back to prison for crimes committed in the community during
28 program participation, but rather for violation of program rules and a couple for
29 violations of no contact orders. *Stoos Testimony; Exhibit 1, Attachment A.18.*

30 20. Mike Hays is a member and 50% owner of Garden Street Investments, LLC. He
has been a licensed real estate broker for 28 years, and is a general contractor
and investor. In his written and verbal statements in the record, he indicated that
he had bought the property in 2012 with the intention to develop the lots for
multifamily development; however, in researching the existing use on-site, he
came to understand the benefits of the facility and he and his partners decided to
extend the work release program's lease. Mr. Hays indicated that through
various entities he manages 109 rental units in 35 buildings in an eight-block
radius around the site. He owns and/or manages the properties addressed as

1 1200 N. Garden Street (directly across the street), 1204 N. Garden Street, 1130
2 N. Garden Street, 508 Chestnut Street, and 1216/1218 Indian Street. Mr. Hays
3 stated that from these and several other properties he owns and manages in the
4 vicinity, he has never been made aware of a single tenant complaint about the
5 work release facility. Regarding the alleged impact on property values, he noted
6 that multiple nearby parcels he purchased from 2001 forward have sold for
7 prices resulting in profits to his businesses, and that rental values remain high
8 surrounding the site. *Exhibit 15.b.3; Mike Hays Testimony; Exhibit 1,*
9 *Attachment A.16.*

10 21. Bellingham Police Department (BPD) Detective Sergeant Jason Monson
11 submitted a sworn statement (he was unable to attend the hearing). His
12 statement indicated that he has worked for BPD for 24 years and has been
13 serving on the Bellingham Work Release Program screening committee for two
14 years (as of August 2014). According to his statement: The screening
15 committee meets once per month to review applications for acceptance into the
16 program. The committee reviews the applicants' plans, which are to address
17 employment, family support, and friends in the community. Detective Monson
18 possesses additional information regarding the applicants' offenses, whether
19 there is the potential for foreseeable conflicts with other residents in the facility,
20 and whether there are victims in the community that could present a safety
21 concern. The detective indicated that all members of the screening committee
22 provide input and a decision is reached by consensus; generally the committee
23 agrees on admission decisions. To his knowledge, there have been no level 3
24 sex offenders in the Bellingham Work Release program. The detective
25 researched calls to the BPD regarding the facility from 2001 forward (limit of
26 range of specific records), and 99% of calls to BPD from the facility resulted
27 from a resident violating terms of stay and needing to be escorted back to prison.
28 No calls resulted from crimes against persons outside the facility. One call was
29 due to graffiti and one from a theft from the site by a nonresident. BPD has
30 records of every person released from Department of Corrections into the City
of Bellingham. They know where every released person resides, at the facility
or not. In the detective sergeant's opinion, BPD and the Work Release Program
have a good working relationship. He noted that the facility has assisted BPD in
some cases. *Exhibit 3.*

26 22. The work release program submitted its records regarding interactions with BPD
27 since 2005. Five calls to BPD were noted in that time regarding: a drunk visitor
28 to the facility (escorted off-site by BPD, 2005); apparent attempted bike theft
29 from the site (2011); apparently drunk girl on the Chestnut sidewalk (2012);

1 apparent bike theft from the site (2013); and a man down on Garden Street
2 (2014). *Exhibit 4; Stoos Testimony.*

3 23. The Applicant submitted a summary of statistics from the existing facility
4 covering the ten years from 2004 through 2013. Most residents are successful in
5 completing the program. The total number of residents per year ranged from 77
6 to 92. The lowest number released (successfully completing program) in a
7 given year was 63 out of 81, while the highest number of releases was 79 out of
8 92. In 2013, 72 of 77 participants were released. The greatest number of
9 participants terminated occurred in 2011, with 16 out of 81, and the least
10 number of those terminated was in 2013, with five of 77 terminated.
11 Terminations in all years resulted from breaking program rules and/or positive
12 urine analysis, alcohol or marijuana possession, job loss, being out of bounds,
13 unaccounted time, refusal to work, unauthorized location, operating a motor
14 vehicle, or possession of a cell phone. *Exhibit 7; Stoos Testimony.*

15 24. Currently there is a waiting list for entry into the Bellingham Work Release
16 program. *Exhibit 1, Attachment A.18.*

17 25. Regarding conditional use criteria that require proposed conditional uses to
18 promote the public health safety and welfare, the Applicant offered the
19 following. Work release assists persons released from incarceration, who would
20 otherwise arrive in the community with no transition, to obtain employment, to
21 re-establish relations with family and friends, and to gain skills training and
22 counseling prior to independent living, reducing the chance that a participant
23 will reoffend. According to a November 2007 study prepared by the
24 Washington State Institute for Public Policy, work release participation lowers
25 total recidivism by 2.8%, has a marginal effect on felony recidivism at 1.8% and
26 has no effect on violent felony recidivism. According to costs calculated in the
27 study, participation generates \$3.82 of benefit per dollar of cost, or around
28 \$2,300.00 per participant. Staff monitors all residents on-site 24 hours per day.
29 Neighboring property owners have complimented the program on improvements
30 to the property. Program Staff has assisted BPD with various off-site incidents
 through the years. *Exhibit 1, Attachments A, A.1, A.11, A.14, A.16, A.18; Stoos
 Testimony; Hays Testimony.*

26 26. Due to the site's proximity to Western Washington University, a common
27 multifamily residential use in the vicinity is student housing. The Applicant
28 submitted that because the intended residents of the proposed new structure
29 are not allowed to drive or have vehicles on-site, must have passes to leave

1 the site, and are supervised in all their activities with the penalty of returning
2 to prison for breaking any rule of the program, the proposed use would result
3 in fewer impacts to the neighborhood than additional student housing or
4 standard multifamily apartments. *Taysi Testimony; Exhibit 1, Attachment A; Exhibit 2.*

5 27. The proposal is categorically exempt from review for compliance with the State
6 Environmental Policy Act (SEPA) pursuant to BMC 16.20.090. The City
7 Code's adopted categorical exemptions include: "minor new construction". As
8 established under WAC 197-11-800(1)A, minor new construction includes
9 "[t]he construction or location of any residential structures of up to nine
10 dwelling units. ..." and E, "[w]hen located anywhere except the CBD
11 neighborhood, the construction of a parking lot designed for up to 20
12 automobiles." As defined in the BMC, the proposal is for one dwelling unit and
13 six new parking spaces. *Exhibit 1, page 4.*

14 28. Residential-Multiple Design Review (RMDR) is required for new residential
15 development of three or more dwelling units. The City Code defines a
16 dwelling unit as a single unit providing complete, independent living facilities
17 for one family including permanent provisions for living, sleeping, eating,
18 cooking, and sanitation. *BMC 20.08.020.* Service care facilities are
19 considered a single "dwelling unit" because they share one communal
20 kitchen; they are exempt from RMDR. The Applicant desires to build the
21 new structure such that with minimal renovation it could be converted to
22 multifamily dwelling units in the event that the work release program
23 relocates or is discontinued. The Applicant has voluntarily applied for
24 RMDR for the new building. The RMDR request, which would be
25 administratively decided and is not necessary to the decision in the
26 conditional use permit request, is being processed by Staff. *Exhibit 1, page 4; Lynch Testimony.*

27 29. Neighborhood meetings are a requirement of project applicants established at
28 BMC 21.10.120.B and 21.10.180. The February 7, 2014 notice of
29 neighborhood meeting circulated by the Applicant stated:

30
NOTICE TO ADJACENT PROPERTY OWNERS,
NEIGHBORHOOD REPS. AND OTHERS. We will be conducting a
neighborhood meeting at [...]. On Tuesday February 18, 2014 at 6:00
p.m. a neighborhood meeting will be held for a new residential project
in your neighborhood. The proposal is to remove a garage and

1 construct a new 3 story four unit rooming house at 1125 N. Garden
2 Street. The applicant intends to apply for a conditional use permit. ...
3 The meeting is intended to present preliminary design concepts and
4 gather information from the neighbors and the public prior to filing the
land use applications.

5 *Exhibit I, Attachment I.*

6
7 30. The City's June 12, 2014 notice of application described the proposed project as:

8 To construct a sixteen bedroom Service Care facility for Work
9 Release, housing male and female offenders in a closely supervised
10 program.

11 *Exhibit I, Attachment J.*

12 31. The City received voluminous public comment on the proposal, in the record at
13 *Exhibit I, Attachment C.* In addition to written comments, many members of the
14 public provided comment at the hearing. The following findings summarize and
15 paraphrase both support for and opposition to the proposal. Those who wrote or
provided testimony in support of the proposal addressed the following issues:

- 16 • Several comments cited the societal need for work release opportunities for
17 those being released from prison. Testimony from successful program
18 participants and those who work with them in professional capacities indicated
19 that the program facilitates the transition back to life outside prison, helping
20 participants find and keep gainful employment, and helping families to
21 reestablish relations. People are only eligible for work release in the last six
22 months of their sentences; they have already paid their debt to society.
23 Program participants have gone on to gainful employment, higher education,
24 and successful careers (including a comment submitted by a former participant
25 who went on to work as an IT Administrator for a mortgage company and
another who went on to work as a volunteer and/or board member of several
community organizations). Some spoke of the high demand for additional
beds in work release facilities.
- 26 • Several comments noted that the subject property is well maintained.
27 Neighbors and residents in the area testified that they'd had no issues with the
28 work release program during its more than 30 years of operation on site.
29 Several neighbors stated they had never seen any problems at the site, or heard

1 any commotion. One neighbor indicated she didn't know it was a work release
2 program until the neighborhood meeting. A counselor from Whatcom
3 Community College testified that she had never heard of any complaints from
4 female students living in the area about inappropriate behavior from facility
5 residents. One local construction business owner indicated that program
6 participants had proven themselves to be reliable workers in his business,
7 showing up on time and ready to work every day, with no absences; he has
8 hired some participants who have been long time employees. Some stated that
9 behavior from the heavy student population in the area is of much greater
10 impact, and that the proposal seemed like a better use of space than additional
11 student housing.

- 12 • Some comments noted that the program has been helpful to the community by
13 observing activities in the vicinity and calling the BPD when appropriate.
14 Other comments noted a lack of criminal activity or other conflicts on-site. A
15 comment from a real estate broker indicated that after researching the vicinity
16 multiple times for clients, they found evidence of fewer incidences with the
17 existing facility than with surrounding student rentals. While empathizing
18 with the neighboring property owners in their concerns about safety and
19 impacts to property values, those in favor of the proposal generally felt that the
20 proposed changes were manageable on-site.

21 *Testimony of: Virginia Wright; Joe Kirkman; Jim McLaughlin; Chene Harding;*
22 *Deborah Hauley; Sherry Jubilo; Jan Adams; and Jean Hamilton; Exhibit 1,*
23 *Attachment C; Exhibit 6.*

24 32. Those who wrote or testified in opposition to the expansion noted the following
25 issues:

- 26 • Neighbors opposed to the proposal generally felt that it was not appropriate to
27 increase the existing impacts of having a work release program on the
28 surrounding residential neighborhood that houses many families with children
29 and many young college students. Some asserted that a smaller half way
30 house was better for their property values and their enjoyment of the homes.
Some argued that property values have not gone up in the vicinity of the site as
much as they should have given increases in other parts of the City. They felt
there is less impact from student residents because they have not been
convicted of crimes. Others commented that it is not fair to the existing
residents to bring in new people expressly competing for local jobs.

- 1 • Some comments expressed support for the idea and practice of work release
2 programs but felt that this is an inappropriate location. Neighbors felt that the
3 Sehome neighborhood is already bearing the brunt of impacts of a work
4 release facility and that it is not fair to double the capacity of the existing
5 facility instead of placing new capacity in some other community.
- 6 • Some comments indicated that people feel compelled to avoid the front porch
7 area of the existing facility due to feeling uncomfortable with people lounging
8 there, and some have experienced stares or "cat call" types of comments from
9 porch occupants. One person noted being "creeped out" by walking past the
10 facility.
- 11 • Several comments asserted a concern about increased risk of crime,
12 particularly against females, students, and the inebriated who can be expected
13 to pass this address. Some noted that the area already experiences a higher
14 rate of crime, drug problems, and homelessness than other Bellingham
15 neighborhoods and that adding more criminal residents was not warranted.
16 Some expressed concerns that particular types of crimes did not render
17 individual program applicants ineligible. Several comments expressed the
18 desire to prohibit an increase in the number of convicted felons in the
19 neighborhood.
- 20 • Some comments from property owners and real estate professionals asserted
21 that the existing facility adversely affects the values of the surrounding
22 properties. Some alleged that the work release program has had a chilling
23 effect on their ability to rent their properties.
- 24 • Comments questioned whether adequate notice of the proposal had been
25 given.

26 *Testimony of William Fleming and Julia Poland; Exhibit 1, Attachment C.*

- 27 33. Neighboring property owners Troy and Cynthia Bach own the parcel adjacent to
28 the southeast at 1123 N. Garden Street. They contended that the proposal
29 negatively affects the livability, walk-ability, and desirability of the
30 neighborhood and gives an increased perception of a crime problem. They
stated that they always disclose the work release program's presence when
showing their duplex to prospective tenants, and have had potential renters
decline to live there based on its presence next door. They personally have
experienced, or stated they have heard tenants and neighbors of the facility

1 complain of, harassing comments from participants, cat calls, parking
2 congestion, delivery vehicle obstruction issues, smoking, noise, visitor trespass
3 in their parking and on their parcel, and other concerns. They expressed the
4 concern that when the proposed building no longer serves as a service care
5 facility and is converted to multifamily housing, there would be insufficient
6 parking. They asserted that the record contains no evidence of a need for
7 expanded work release facilities at this location. *Exhibits 8, 9, 10, and 11;*
8 *Testimony of Troy Bach and Cynthia Bach.*

7 34. The Bachs and their attorney representative contended that notice of the
8 neighborhood meeting was inadequate and misleading because it advertised
9 expansion of the existing "rooming and boarding house" use, rather than
10 specifying that the proposal would expand a prison work release facility. In
11 response to the notice provided, the Bachs went door to door, claiming to have
12 knocked on more than 550 doors, distributing an informational flyer. They
13 stated that more than 160 people they spoke with expressed opposition, while
14 only five expressed support. They contended that many were upset that only
15 property owners within 500 feet of the site had received notice, rather than the
16 resident tenants or a wider circle of parcels. They asked that the project be
17 remanded back to the beginning for more complete neighborhood meeting
18 notice. They challenged the use categorization of "service care" and asserted
19 that "correctional facility" is more accurate, and correctional facilities are not
20 allowed in the Residential Multi zone. They noted that work release has been
21 shown to reduce recidivism by only 1.8% in the general population and not at all
22 among violent felons and therefore questioned whether it promotes public
23 welfare. *Exhibits 8, 9, 10, and 11; Exhibit 1, Attachment C, Traxler Letter*
24 *February 18, 2014; Testimony of Troy Bach, Cynthia Bach, and Dannon*
25 *Traxler.*

21 35. The flyer handed out by Troy and Cynthia Bach in their door-to-door efforts to
22 solicit input from neighbors stated (among other items) that: without written
23 opposition, the project would likely be approved; the proposal would allow 32 to
24 80 additional felons to reside on-site; statistics show that 20% of work release
25 participants fail and return to prison, most due to burglary/theft; the proposal
26 was originally presented in a neighborhood informational meeting as a rooming
27 house, but it is actually a prison service facility; some neighbors never received
28 notification of the informal meeting held in February 2014; the developer is only
29 obligated to inform property owners within 500 feet; and there may not be 24
30 hour supervision in the new building. *Exhibit 1, Attachment C. Cynthia Bach*

1 clarified that the information in their flyer was obtained, in part, from
2 conversations with Mr. Hays. *Exhibit 11.*

3 36. In her public comment, Ms. Traxler asserted on behalf of the Bachs the
4 following arguments: 1) that the Applicant's notice of neighborhood meeting
5 was inadequate for failure to identify the service care use and failure to note that
6 approval was sought for additional numbers of residents in the existing facility;
7 2) that the City's notice of application was inadequate for failing to note that the
8 requested expansion included approval of 25 residents at the existing facility,
9 where only 20 were approved by the 1972 nonconforming use certificate; 3) that
10 for these procedural failures, the application must be denied; 4) that CUP
11 approval of the new building and nonconforming use expansion CUP approval
12 to increase allowed occupancy at Dellinger House from 20 to 25 cannot be
13 approved in a single permit proceeding; they require separate permits; and 5) in
14 the alternative, if not denied on procedural grounds, the application must be
15 denied for failure to satisfy applicable criteria for approval as follows. Ms.
16 Traxler asserted that the record fails to demonstrate: how the proposal would
17 promote public health, safety, and welfare; how smoking will be handled if
18 approved; whether adequate supervision would be provided; whether adequate
19 parking is provided; whether recidivism would be reduced⁴; whether property
20 values would be impacted; and whether violent offenders would be brought into
21 the community. *Traxler Testimony/Argument; Exhibit 1, Attachment C, Traxler
22 letter August 13, 2014.*

18 37. In response to public comment, the Applicant contended as follows: In no
19 instance has BPD been called to address crimes committed by program
20 participants against any resident of the community. In 2013, the existing work
21 release program produced only seven of the 1,690 total calls from the Sehome
22 Neighborhood to the BPD, and none of the seven was for harassment, assault,

23 ⁴ Ms. Traxler submitted two documents in support of her assertion that the record fails to demonstrate that
24 work release programs reduce recidivism. One of Ms. Traxler's documents was a December 1996 report
25 from the National Institute of Justice that reviewed Washington State's work release program. Key
26 findings of this report concluded that the results of the study were mostly positive; that nearly a quarter of
27 all prisoners released in Washington made a successful transition to the community through work release;
28 that less than five percent of work releasees committed new crimes while on work release, 99% of which
29 were less serious property offenses such as forgery and theft; and that a quarter returned to prison from
30 work release. The second document provided by Ms. Traxler was a January 2000 article from the
Cincinnati Enquirer addressing work releasees in Warren County, Ohio containing anecdotal information.
Exhibit 1, Attachment C, Traxler June 27, 2014 letter with attachments.

1 public nuisance, or violent crime. The record contains no evidence, aside from
2 opponent assertion, that any tenant in any surrounding property terminated a
3 lease or negotiated lower rents due to the presence of the program. Aside from
4 general assertions by real estate professionals who did not appear at hearing and
5 were not available to answer questions, there is no evidence of adverse effects to
property values. *Exhibit 1, Attachment A.11; Exhibit 15b.*

6 38. The original 1972 certificate of nonconforming use approved a "boarding &
7 rooming house for 20 people plus managers". *Exhibit 1, Attachment A.5.* At
8 some time in the early 1980s the number of occupants was established at 25.
9 This discrepancy came to light during processing of the application. The City
10 asserted that this increase did not receive City approval and can now only occur
11 by approval of the Hearing Examiner. Thus, for the instant hearing, the City
12 announced that proposed increases in intensity included increasing the number
of residents allowed in the existing work release program facility from 20 to 25.
Exhibit 1, page 5; Exhibit 14.

13 39. The Applicant disputed that a CUP is required to address this apparent
14 discrepancy between the 1972 record of nonconforming use and the occupancy
15 rate that has existed on-site for approximately 30 years. The Applicant argued
16 that the 20 people noted on the index card does not function as a maximum. By
17 ordinance, boarding and rooming houses require 250 square feet of ground area
18 per occupant. *BMC 20.16.020.3.c.* Lot 16's 125-foot by 55-foot dimensions
19 would permit an occupancy of up to 27 persons. The number of actual residents
20 is not proposed to increase; neighbors would not experience any increased
intensity from continued use of the structure at its longtime occupancy level.
The Applicant asserted that the City has long known of the 25-occupant level at
the house.⁵ *Stoos Testimony; Exhibit 15b.*

21 40. Planning Staff submitted the position that both the notice of neighborhood
22 meeting and notice of application provided satisfied the requirements of the City
23 Code. Neighborhood meeting notice is required early in the process by design
24 and is not intended to identify the proposal with specificity; it is common for
25 projects to be refined and even changed after the neighborhood meeting, without
26 triggering any requirement for subsequent additional neighborhood meeting or
notice. The City further asserted that projects continue to evolved through the

27
28 ⁵ With their post-hearing submittals, the Applicant offered two documents as former business records
29 intended to show the City was aware that the number of residents at the facility was 25. However, neither
document addresses number of residents as allowed or in fact. *Exhibit 13.*

1 review process and that changes between notice of application and notice of
2 hearing do not render notice of application invalid if there has been a good faith
3 effort to fully notify of the proposal. *Exhibit 14; Lynch Testimony.*

4 41. In addition to the notice of neighborhood meeting that the Applicant circulated
5 in attempted compliance with BMC 21.10.180, Mr. Hays also conducted a
6 second neighborhood meeting with the Sehome Community Association. Mr.
7 Hays testified that City Planning Staff instructed him to identify the proposed
8 use as a rooming and boarding house use based on the use listed on the existing
9 City records regarding the 1972 certificate of nonconforming use. *Hays*
10 *Testimony; Exhibit 1, Attachment M.5.* These instructions were verified by the
11 Planner. *Lynch Testimony.* The Applicant representative objected to public
12 comment characterizing the notice of neighborhood meeting provided as the
13 "absolute minimum necessary". *Taysi Testimony.* The Applicant seconded the
14 City's position regarding adequacy of notice, and asserted that any deficiency in
15 either notice constituted a minor deficiency that did not invalidate the notice, per
16 BMC 21.10.180 and 21.10.200. *Exhibit 15.b.*

17 42. City Staff asserted that the existing legally nonconforming use only remains
18 nonconforming because no conditional use permit has been applied for; now
19 service care facilities are allowed in the RM zone with conditional use review.
20 The City contended that with issuance of the requested conditional use permit,
21 the legally nonconforming use reflected in certificate #147 would be
22 extinguished and the use would no longer be nonconforming, but would be a
23 purely conditional use. *Exhibit 14.* The Applicant disputed the notion that
24 approval would extinguish the nonconforming status of the existing boarding
25 and rooming house, stating that there is no intention to abandon the use and the
26 application to expand the nonconforming use should not be considered an overt
27 act consistent with abandonment. *Exhibit 15b.*

28 43. City Staff asserted that the two platted lots underlying this proposal (Lots 15 and
29 16) were consolidated by an addition built onto the Dellinger House in the past
30 that crosses the central shared lot line. *Exhibit 1.* The Applicant requested
specific findings relating to the separate or consolidated status of Lots 15 and
16, and relating to whether the Applicant may discontinue the service care use in
the structure on either lot without abandoning its existing vested legal
nonconforming use on Lot 16. *Exhibit 5; Jain Argument; Exhibit 15b.*

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CONCLUSIONS

Jurisdiction:

The Hearing Examiner is granted authority to hold hearings and make decisions on conditional use permit applications that would expand, enlarge, or increase the intensity of an existing legally nonconforming use pursuant to BMC 20.14.020.E and 20.16.010.D.

Criteria for Review

Pursuant to Bellingham Municipal Code 20.14.020.E, the hearing examiner may grant a conditional use permit allowing a nonconforming use to expand, enlarge, or increase in intensity; provided, that:

1. The use may not expand beyond the site, lot, or parcel as defined by the legal description on the certificate of occupancy for a nonconforming use, or as owned or leased by the nonconforming use as of the date it became nonconforming in the event there is no certificate of occupancy;
2. Uses which are nonconforming due to the number of residential units may not add additional units;
3. The proposed modification will not result in further infringement of the provisions of this title; modifications shall comply with all regulations (other than use restrictions) including but not limited to lot coverage, yard, height, open space, density provisions, or parking requirements unless waived by the hearing examiner through variance as provided by this title;
4. The nonconforming use must be a permitted use within at least one of the general use types; and
5. The use must not be an industrial use in a residential single or residential multi duplex district. For the purpose of this section, "industrial use" shall mean any use which is permitted only in industrial general use type districts.

Pursuant to Bellingham Municipal Code 20.16.010.B, conditional use permits may be granted by the hearing examiner if the record demonstrates the following:

1. The proposed use will promote the health, safety, and general welfare of the community.
2. The proposed use will satisfy the purpose and intent of the general use type in which it is located.
3. The proposed use will not be detrimental to the surrounding neighborhood.

1 Pursuant to BMC 20.16.010.C, in applying the standards set forth in subsection
2 B(above), the hearing examiner shall consider the following factors as to whether the
3 proposed use will:

- 4 1. Be harmonious with the general policies and specific objectives of the
5 comprehensive plan.
- 6 2. Enable the continued orderly and reasonable use of adjacent properties by
7 providing a means for expansion of public roads, utilities, and services.
- 8 3. Be designed so as to be compatible with the essential character of the
9 neighborhood.
- 10 4. Be adequately served by public facilities and utilities including drainage
11 provisions.
- 12 5. Not create excessive vehicular congestion on neighborhood collector or
13 residential access streets.
- 14 6. Not create a hazard to life, limb, or property resulting from the proposed use, or
15 by the structures used therefor, or by the inaccessibility of the property or
16 structures thereon.
- 17 7. Not create influences substantially detrimental to neighboring uses. "Influences"
18 shall include, but not necessarily be limited to: noise, odor, smoke, light,
19 electrical interference, and/or mechanical vibrations.
- 20 8. Not result in the destruction, loss, or damage to any natural, scenic, or historic
21 feature of major consequence.

19 **Other Applicable Code Provisions**

20 *BMC 21.10.180 , Pre-application Neighborhood Meeting*

- 21 A. The purpose of the neighborhood meeting is to:
 - 22 1. Inform citizens about the potential project at an early stage; and
 - 23 2. Foster communication between the applicant and interested citizens
24 regarding potential issues and opportunities for solutions related to the
25 project.
- 26 B. An applicant is required to conduct a neighborhood meeting prior to the
27 submittal of an application and after any required pre-application
28 conference. The director may provide standard notice formats and
29 guidelines for conducting the meeting. The notice shall include a brief
30 description of the project, date, time and location of the neighborhood
meeting and name and phone number of the applicant or their representative.

1 The applicant shall mail the notice at least 10 days prior to the meeting to:

2 ...

- 3 C. The applicant shall also post the notice on the project site at least 14 days
4 prior to the meeting for a Type VI application and at least seven days prior
5 to the meeting for all other applications.
6 D. The proceeding is not invalid if there are minor deficiencies in the mailed or
7 posted notice as required in this section as long as there was a good faith
8 attempt to comply with the notice requirements.

7 *BMC 21.10.200, Notice of Application*

- 8 A. This section applies to applications requiring a Type II, III-A, III-B or VII
9 process.
10 B. Within 14 days after the city has made a determination of completeness for a
11 permit application, the city shall issue a notice of application. The date of
12 notice shall be the date of mailing. ...
13 C. The notice of application shall include:
14 1. The date of the application, the date the application was determined to
15 be complete and the date of the notice of application;
16 2. The name of the applicant;
17 3. The description and location of the project;
18 4. The requested actions and/or permits and any other required permits
19 known by the city;
20 5. A list of any required studies;
21 6. The date, time, place and purpose of any required public meeting or
22 hearing, if it has been scheduled;
23 7. Identification of environmental documents that evaluate the project;
24 8. A statement of the minimum public comment period;
25 9. A statement of the right of any person to comment on the application,
26 to receive notice of and participate in any hearings, to request a copy
27 of the decision once made, and a statement specifying any appeal
28 rights;
29 10. A statement of the preliminary determination of consistency, if one has
30 been made at the time of notice, of those development regulations that
will be used for project mitigation and of consistency as provided in
RCW 36.70B.040;
11. The location where the application and other listed materials can be
viewed;
12. The city staff contact and phone number; and
13. Any other information determined appropriate by the city.
D. Mailed Notice.

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- 1. ...
- 2. The director may increase the notification radius or notification method for any specific application. The validity of the notice procedure shall not be affected by whether the director uses this option.
- 3. The planning and community development department, or applicant if authorized under this section, shall mail notice of application to:
 - a. The applicant;
 - b. The owner of the property as listed on the application;
 - c. Owners of property within 500 feet (100 feet for home occupations) of the site boundary of the subject property as listed by the Whatcom County assessor records;
 - d. The mayor's neighborhood advisory commission representative and any neighborhood association registered with the planning and community development department for the neighborhood in which the project is proposed, and for any neighborhood within 500 feet of the project site boundary; and
 - e. Any person or organization that has filed a written request for notice with the planning and community development department.
- 4. No proceeding shall be invalid due to minor deficiencies in the mailed notice as required in this section as long as the other method(s) of notice has met its respective requirements and there was a good faith attempt to comply with the mailed notice requirements.
- ...

Conclusions Based on Findings:

- 1. The existing legally nonconforming use may be expanded in conformance with BMC 20.14.020.E. The proposal would not expand the use beyond the site as described in the 1972 certificate of nonconforming use. The City Code does not establish a unit number restriction for service care uses. No variance to applicable requirements is requested or required for approval of the proposal. The proposed service care use is in fact permitted in the RM zone; the legal nonconforming status predates zoning amendments that established service care as a use permitted by conditional use review in the zone. The proposal is not for an industrial use. *Findings 3, 5, 7, 8, 9, 11, 12, and 13.*
- 2. As conditioned, the proposal would promote the health, safety, and general welfare of the community. The record demonstrates that work release programs

1 reduce recidivism while at the same time providing needed transitional
2 supervision and assistance to eligible incarcerated persons who, without work
3 release, would be sent back into the community at large without formal skills-
4 based assistance and with less structured supervision. Evidence shows that work
5 release participants are better suited to become contributing members of society
6 and to reintegrate into the work force and social circles. Work release also
7 benefits the families and friends of incarcerated persons by providing the
8 supports spelled out in the findings. The record demonstrates that the existing
9 work release program has peacefully, productively occurred among the other
10 surrounding residential uses for at least 30 years with no increased crime from
11 the property, no record of crime against any non-resident by program
12 participants, and with minimal intrusion into the residential character of the
13 neighborhood. There is a waiting list for admission into the existing program.
14 Expanding the program's capacity on-site would benefit the community as a
15 whole by providing these services to twice as many people. Incidentally, the
16 record demonstrates that the existing program has on multiple occasions
17 provided assistance to the Bellingham Police Department regarding potential
18 crimes or persons in need of assistance around the site. Conditions would
19 address any potential impacts to the public health, safety, and welfare. *Findings*
20 *5, 6, 7, 8, 9, 11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 31, 32, 33, and 37.*

- 16 3. With conditions, the proposal is consistent with the purpose and intent of the
17 general use type in which it is located. As conditioned, the proposal would
18 accommodate a higher concentration of people within the site while maintaining
19 a desirable living environment for the people living in the vicinity. Evidence in
20 the record demonstrates the proposal's consistency with applicable
21 Comprehensive Plan goals and policies in the following ways: it emphasizes
22 infill development; it promotes rehabilitation of a significant historic building; it
23 would provide an innovative housing type for an underserved segment of society
24 with particular social needs; it would not change the character or 30+ year
25 historic use of the site; it would not require any additional urban facilities or
26 services; the use is allowed in the underlying zone; and it provides parking
27 consistent with use-specific standards identified in the code. All fronting roads
28 are fully developed, and all proposed improvements would occur on-site; none
29 of the proposed improvements would interfere with the continued orderly and
30 reasonable use of adjacent properties. The new building would be designed to
be consistent with existing site development. With connections to utilities that
comply with municipal requirements and the provision of a stormwater
detention facilities, the proposal would be adequately served by existing public
utilities and services. Southwest facing windows would be located so as not to

1 look directly into the windows on adjacent multifamily use. Residents are not
2 allowed to drive or park cars at the facility. The proposed building and
3 associated improvements would not create a hazard to life, limb, or render any
4 adjacent use inaccessible. There would be no smoking allowed on-site.
5 Residents are not allowed to leave the site without permission and would not be
6 allowed to smoke adjacent to the site. Conditions would address lighting
7 impacts. There are no natural, scenic, or historic features of major consequence
8 in vicinity. *Findings 5, 6, 7, 8, 9, 11, 12, 13, 14, 16, 17, 18, and 19.*

7 4. As conditioned, the proposal would not be detrimental to the surrounding
8 neighborhood. There is no evidence in the record of any crimes committed by
9 program participants against members of the community, or excessive police
10 activity relating to the site. Aside from opponent assertions, the record contains
11 no evidence that any tenant in any surrounding properties ever terminated a
12 lease or negotiated lower rents due to the presence of the work release program.
13 Aside from unsupported assertions by real estate professionals who did not
14 appear at hearing, there is no evidence of adverse effects to property values.
15 Testimony regarding negative impacts to property values was contradicted by at
16 least one written comment from a real estate broker unrelated to the project as
17 well as by extensive information submitted by the Applicant, who while
18 interested in the outcome, is also owner or manager of a large percentage of
19 rental properties in the immediate vicinity and has extensive knowledge and
20 experience with the values of real property in the vicinity of the site. Without
21 supporting evidence, concerns regarding increases in crime and negative impacts
22 to property values amount to fears based on stereotypes and popular prejudices.
23 Such unsubstantiated fears have been specifically addressed by Washington
24 courts with regard to proposals for similar uses and were determined to be
25 insufficient grounds to justify zoning-based restrictions. *Sunderland Family
26 Treatment Services v. City of Pasco, 127 Wn.2d 782, 785 (1995); Washington
27 State Department of Corrections v. City of Kennewick, 86 Wash.App. 521
28 (1997).* While the opposition of the community may be given substantial
29 weight, it cannot alone justify a local land use decision. *Sunderland at 797.* As
30 conditioned, the proposal would not result in a detriment to the surrounding
neighborhood. *Findings 5, 6, 7, 8, 9, 11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24,
25, 31, 32, 33, and 37.*

26 5. Both the neighborhood meeting notice provided by the Applicant and the notice
27 of application provided by the City satisfy the requirements established in the
28 City Code. The owners of the property at 1123 N. Garden Street not only
29 attended the neighborhood meeting, commented extensively on the notice of
30

1 application, and attended the public hearing on the proposal providing additional
2 written and verbal comments, but they were also represented by counsel at every
3 step of the process. The Bachs received adequate notice. Regarding notice to
4 others, the record is replete with comments from surrounding property owners
5 and residents outside the 500 foot notice radius required by Code. Adequate
6 notice was provided at both the neighborhood meeting and notice of application
7 steps of the process. There was no challenge lodged to the adequacy of notice of
8 hearing. *Findings 29, 30, 31, 32, 33, 34, 35, 36, 40, and 41.*

9 6. Approval of the CUP does not address or affect the legal status of the two legal
10 lots of record comprising the subject property. Legal lot determinations are not
11 within the scope of the instant hearing body's authority. *Chaussee v. Snohomish
12 County Council, 38 Wn. App. 630 (1984).*

13 7. No nonconforming use expansion is required to formally acknowledge or
14 authorize an occupancy level of 25 residents in the existing work release
15 program at 1127 N. Garden Street. Undisputed evidence in the record
16 establishes that the use has operated continuously with 25 residents since at least
17 1982. City records indicate that the City had knowledge of up to 30 residents
18 not later than 1981. The City has failed to show adequate evidence that the note
19 in the record at *Attachment A.5* referring to "20 people plus managers" was
20 intended to function as a maximum capacity, especially in light of the fact that
21 both boarding/rooming houses and service care uses have been allowed in the
22 zone since the early 1980s. On its own, Lot 16 contains more than the 250
23 square feet per resident required of boarding and rooming house uses. The
24 proposal would not in fact increase the number of residents in the existing
25 facility. No CUP approval is required for the City to formally acknowledge the
26 use on-site as housing 25 residents; this acknowledgement does not constitute an
27 expansion of the existing use. *Findings 5, 15, 16, 38, and 39.*

28 8. The instant approval of the requested CUP to allow expansion of the legally
29 nonconforming use does not attempt to extinguish the vested nonconforming
30 use. That said, the request for expansion of the legally nonconforming use
requires analysis of impacts to public health, safety, and welfare, and
demonstration of lack of detrimental impact to surrounding uses. Expansion
into another building, occupying nearly all open space available on the site that
for 30+ years has been available to the use and as a buffer to adjoining parcels,
removal of mature screening vegetation, occupying nearly all the open space
that would be available for the development of off-street parking for a
multifamily use - these increases in use intensity do require that affirmative

1 limits on total facility occupancy be established. Based on the record provided,
2 the service care use can be expanded up to a total of 50 residents occupying both
3 structures without resulting in detrimental impacts to surrounding properties.
4 Approval of the expansion will incorporate this total occupancy limit by a
5 condition that requires the use of both structures on-site to allow full occupancy
6 at 50 residents. Should either building be proposed for conversion to any other
7 use, the building retained in service care use would be restricted to a maximum
8 of 25 residents. Any such future use conversion of either building would be
9 required to undergo review compliance with all applicable regulations and
10 development standards, including parking. If the Dellinger House is proposed
11 for a change in use, the proposal would be reviewed against the existing vested
12 legally nonconforming use as well as any applicable regulations and
13 development standards. *Findings 5, 6, 7, 8, 9, 11, 12, 14, 16, 17, 18, 19, 20, 21,*
14 *22, 23, 24, 25, 31, 32, 33, 37, and 42.*

- 15 9. Any arguments or positions not addressed are respectfully deemed not
16 persuasive and/or relevant to the decision on the instant application.

17 **DECISION**

18 Based upon the preceding findings and conclusions, the requested conditional use
19 permit to expand the existing legally nonconforming service care facility at 1127 N.
20 Garden Street into a new building at 1125 N. Garden Street, Bellingham, Washington is
21 **APPROVED** subject to the following conditions:

- 22 1. Approval of the expanded legally nonconforming use is granted to the
23 proposal as a whole and requires construction of the proposed building with
24 operation of both structures as work release service care facilities. The total
25 number of residents allowed in both structures is 50. If either building is
26 converted to another use at any time, the remaining structure shall be
27 restricted to 25 maximum residents while retained in service care use.
- 28 2. The Applicant shall submit for and the Hearing Examiner shall conduct a
29 hearing to review this proposal no more than five year after the new 1125 N.
30 Garden Street building receives its certificate of occupancy. At the future
proceeding, the Hearing Examiner may amend and add new conditions based
on public comments and the conditional use criteria.
3. The Applicant and/or operator of the service care facility shall minimize
and/or eliminate the effects of this facility on the surrounding area to the

1 greatest extent possible. The goal of these conditions is to ensure
2 compatibility between the full service care facility and the neighborhood:

3 a. The program operators shall provide an anti-harassment program
4 acceptable to the Planning Division and Police Department that eliminates
5 front porch users' whistling, cat calls, requests for beer, inappropriate
6 banter, or other harassment of passersby. Program participants' noise
shall not leave the site.

7 b. The site managers shall insure compliance with rules of the Bellingham
8 Work Release Orientation Handbook (*Attachment G*).

9 c. The site manager shall post a contact telephone number for complaints on
10 permanent signs visible from the alley and from Garden Street.

11 d. The current level of program participant supervision shall be maintained
12 with the expanded use. Identical levels of supervision/ratios of staff to
13 residents shall be provided in the new structure and shall be continued in
14 the existing structure.

15 e. The total number of residents on site at any one time shall be limited to 50
16 for both buildings and no more than 25 residents in the new building.

17 4. Design: In order for these buildings to be compatible with the essential
18 character of the neighborhood:

19 a. Changes to the exterior of the Dellinger House should meet the National
20 Parks Service Secretary's Standards for Rehabilitation, available at
21 <http://www2.cr.nps.gov/tps/standards/rehabilitation.htm>.

22 b. If the new building to the south is the subject of a future use change request,
23 it would be required to meet the standards of Residential Multiple Design
24 Review (Bellingham Municipal Code 20.25) and be compatible with the
historic design of the Dellinger House to its north.

25 c. Windows in the new building shall not look directly down on and/or directly
26 into the windows of the building to the southwest.

27 d. The project shall provide a minimum of 11 parking spaces along the alley
28 adjacent to both Lots 15 and 16 and shall place a fence along the south
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property line adjacent to the alley. The landscaped/historic stone wall near Chestnut Street should be preserved.

- e. The historic stone wall along Garden and Chestnut Streets shall be maintained except for an opening for the new building.
- f. The proposal shall substantially conform to the plans and drawings submitted by the Applicant in support of the proposal unless modified by this decision, building or fire codes, the design review approval, or by the CPTED review required by this decision.
- g. If the large evergreen trees on this site cannot be retained due to construction in compliance with the submitted plans, they shall be replaced with a similar species.
- h. Street trees shall be maintained or if lost, replanted at the rate of one street tree for each 50 feet of frontage.
- i. The proposed loading and ADA parking abutting 1125 N. Garden Street shall be located in a manner to preserve existing street trees unless the location is deemed unsafe by the Public Works Department. If a street tree must be removed to accommodate the parking area, it shall be replaced through approval of a street tree permit.
- j. Lighting from this site shall be shielded to minimize glare offsite.

5. Police/CPTED:

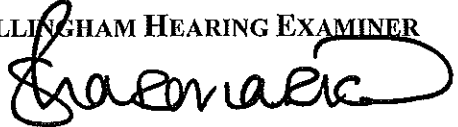
- a. Prior to building permit issuance, the Applicant shall submit the final building plans to the Bellingham Police Department for a Crime Prevention Through Environmental Design (CPTED) review. The Police Department will review the plans and prepare a recommendation to the Planning and Community Development Department for review and approval. CPTED strategies shall be incorporated into the design of the building and associated parking areas to the greatest extent feasible, as determined by the Director.
- b. The Applicant shall provide a lighting plan that creates a safe glare-free level of lighting on and off site.
- c. The Bellingham Police Department shall be a member of the screening committee for all work release applicants residing at 1125 or 1127 N. Garden

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Street. Substantial weight shall be given to the police representative recommendation on all applications.

- d. The program shall supply secure bicycle parking at the rate of one bicycle per two residents. Bicycle parking stalls shall be visible from a building and placed along a commonly-used internal walkway.
- e. The facilities at 1125 and 1127 N. Garden Street shall receive and maintain ongoing approval by the State of Washington through a license, contract, or other legally binding written approval document. Copies of this approval shall be submitted to the Planning and Community Development Department.

DECIDED September 24, 2014.

BELLINGHAM HEARING EXAMINER


Sharon A. Rice, *Pro Tem*