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

IN RE: NICHOLAS BROWN and BRENDA BEEHLER, Applicants 2460 Lakeway Drive USE2023-0028 and ADU2023-0042 / Conditional Use Permit for an Over-sized Detached Accessory Dwelling Unit, D-ADU	HE-23-PL-023 FINDINGS, CONCLUSIONS, AND DECISION SHARON RICE HEARING EXAMINER
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SUMMARY OF DECISION

The request for conditional use permit and accessory dwelling unit permit to allow a combined 1,612 square foot detached accessory dwelling unit and garage at 2460 Lakeway Drive is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Nicholas Brown and Brenda Beehler (Applicants) requested a conditional use permit (CUP) and an accessory dwelling unit permit to construct a combined 1,612 square foot detached accessory dwelling unit (D-ADU) and garage. The subject property is addressed as 2460 Lakeway Drive in Bellingham, Washington.

Hearing Date:

The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request on January 24, 2024. The record was held open two business days to allow for post-hearing written public comment from members of the public who experienced difficulty joining the virtual hearing and, if any post-hearing comment was received, additional days for responses by the parties. No post-hearing public comment was received and the record closed on January 26, 2024. No in-person site visit was conducted, but the Examiner viewed the site and vicinity on Google Maps.

1 **Testimony:**

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

3 Taylor Webb, Planner II, City of Bellingham

4 Nicholas Brown, Applicant

5 Dean Longwell

6 **Exhibits:**

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

8 Exhibit 1 Planning and Community Development Department Staff Report including
9 the following attachments:

10 A1. Application for Conditional Use Permit and Applicant Response to
11 CUP Criteria (USE2023-0017)

12 A2. Accessory Dwelling Unit Application (ADU2023-0042)

13 A3. Site Plan, Floor Plans, Building Elevations

14 A4. Revised Site Plan

15 B. Pre-application Neighborhood Meeting Waiver Request (PRE2023-
16 0097)

17 C. Notice of Complete Application (NOCA) and Request for Information
18 (RFI)

19 D. Notice of Application and Public Hearing

20 E. Certificate of Posting

21 F. Public Comments

22 G. Zoning Table

23 Exhibit 2 Email from Dean Longwell dated December 19, 2024, with attachments

24 After considering the testimony and exhibits submitted, the Hearing Examiner enters
25 the following findings and conclusions:

26 **FINDINGS**

27 1. Nicholas Brown and Brenda Beehler (Applicants) requested a conditional use
28 permit (CUP) and an accessory dwelling unit permit to construct a combined
29 1,612 square foot detached accessory dwelling unit (D-ADU) and garage. The

30 *Findings, Conclusions, and Decision*

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CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

1 subject property is addressed as 2460 Lakeway Drive in Bellingham,
2 Washington.¹ *Exhibits 1, 1.A1, 1.A2, 1.A3, and 1.A4.*

- 3 2. The subject property is in Area 7 of the Whatcom Falls Neighborhood. It is
4 zoned Residential Single, with Detached and Cluster Detached use qualifiers.
5 The minimum lot area in the zone is 10,000 square feet, or 7,200 square feet for
6 cluster lots. *Exhibit 1; Bellingham Municipal Code (BMC) 20.00.230.* In the
7 Residential, Single zone, D-ADUs are an allowed use subject to the procedures
8 and requirements of BMC 20.10.036. *BMC 20.30.030.* When a D-ADU in
9 proposed in a structure with ancillary space (such as a garage) that exceeds
10 1,000 square feet in area, CUP review and approval is required. *BMC*
11 *20.10.036.B.6.*
- 12 3. The subject property is approximately 11,502 square feet in area and contains an
13 existing 1,225 square foot single-family residence and attached carport. The
14 Applicant proposes to remove the carport in conjunction with development of
15 the D-ADU. Residential utilities are available and currently serve the property.
16 *Exhibit 1; Google Maps site view.*
- 17 4. The subject property is at the corner of Lisa Lane, classified as a 50-foot
18 residential street, and Lakeway Drive, which is classified as an 80-foot arterial
19 street. Current access to the property is from Lisa Lane. Access to the proposed
20 D-ADU would be from Lisa Lane via the existing driveway. *Exhibits 1 and*
21 *1.A4; Google Maps site view.*
- 22 5. All adjacent properties share the subject property's zoning designation and are
23 developed with single-family residential uses. The site is in close proximity to
24 commercial services, schools, parks, and civic center amenities. *Exhibit 1;*
25 *Google Maps site view.*
- 26 6. Transit service is available to the site. The nearest Whatcom Transit bus stop is
27 approximately 300 feet from the subject property at the intersection of Lakeway
28 Drive and Woburn Street. *Exhibit 1; Google Maps site view.*

29 ¹ Because access to the property is from Lisa Lane and not Lakeway Drive, the owners have agreed to
30 change the address of the primary residence to 2300 Lisa Lane effective March 1, 2024. The legal
description of the property is Lot 1 of Walden Short Plat as recorded in Book 3 of Short Plats, page 31.
Exhibit 1.

- 1 7. The proposed D-ADU/garage would be constructed northwest of the existing
2 residence and would be connected to the residence by a covered walkway. The
3 two-story structure would provide a garage bay, laundry room, and bathroom on
4 the first floor and an ADU consisting of a bedroom, bathroom, kitchen, and
5 living/dining space on the second floor. Each floor would be 806 square feet in
6 area. A five-foot-wide covered deck would extend from the back of the
7 building. An exterior staircase would provide access to the second floor.
8 Consistent with BMC 20.10.036.B.8, which restricts D-ADU building height to
9 24 feet (per definition no. 1), the proposed building height would be
10 approximately 22 feet, 11 inches. Proposed impervious surface coverage is 961
11 square feet. As proposed, the architectural style of the new structure would be
12 consistent with that of the existing residence. *Exhibits 1, 1.A3 and 1.A4.*
- 13 8. Consistent with BMC 20.10.036.B.6(c)(iii) and (a), the floor area of the D-ADU
14 excluding ancillary space would not exceed 1,000 square feet. *Exhibits 1 and*
15 *1.A3.*
- 16 9. The minimum building setbacks for a D-ADU when the vehicular entrance to an
17 attached garage faces a street are 25 feet from the front property line, 10 feet
18 from a side flanking property line, and five feet from the rear and side property
19 lines. The minimum required distance between the primary dwelling unit and a
20 D-ADU is six feet. *BMC 20.10.036.B.7.* The garage entrance to the proposed
21 D-ADU would face Lisa Lane, and the setback from the street would be 25 feet.
22 The setback from Lakeway Drive (which abuts the parcel's northwest side
23 boundary) would be 23.7 feet. The setback from the opposite side property line
24 would exceed 50 feet, and the setback from the rear property line would be 33.2
25 feet. The proposed distance between the primary residence and the D-ADU is
26 16 feet. *Exhibit 1.A4.*
- 27 10. The D-ADU is exempt from the parking requirement of BMC 20.10.036.B.9
28 (one on-site parking stall) because improved public street parking is available on
29 at least one side of the block facing the D-ADU. *Exhibit 1.* At least three
30 parking spaces would be available on site for the primary residence, including
one in the proposed garage and two uncovered nine- by 18-foot parking stalls
between the residence and the garage. There would be additional driveway
space that could be used for parking, but it cannot count towards the parking
requirement because it would not be outside of required setbacks. *Exhibits 1*
and 1.A4; Nick Brown Testimony.
11. The subject property does not contain regulated critical areas. Construction of
the D-ADU would not require removal of mature trees. There are no known

- 1 natural, scenic, or historic features of major consequence on site or in the
2 immediate vicinity. *Exhibit 1.*
- 3 12. Owner-occupancy of either the primary residence or the ADU is required to
4 obtain ADU approval. *BMC 20.10.036.B.4.* Staff recommended a condition of
5 approval requiring the Applicant to submit an affidavit acknowledging the
6 owner occupancy requirement. *Exhibit 1.*
- 7 13. The proposal would address the privacy standard of BMC 20.10.036.B.10 by
8 providing side and rear building setbacks that exceed the minimum requirements
9 of the zoning ordinance. The existing residence would be between the D-ADU
10 and the existing residence to the southeast along Lisa Lane. A 33-foot setback
11 would be provided between the D-ADU and the property to the southwest. In
12 addition, existing vegetation would be retained. *Exhibits 1 and 1.A4.*
- 13 14. During the building permit review process, the D-ADU would be reviewed for
14 compliance with applicable provisions of the International Building Code,
15 International Residential Code, Uniform Plumbing Code, National Electrical
16 Code, International Mechanical Code, International Fire Code, and Washington
17 State Energy Code as each code is adopted by the City. A preliminary review by
18 a City Plans Examiner has found consistency. Compliance with the utility
19 requirements of BMC 20.10.036.B.12 would also be determined during building
20 permit review. *Exhibit 1.*
- 21 15. No deviations from the standards of BMC 20.10.036 were requested to facilitate
22 accessibility, as authorized by BMC 20.10.036.B.14. *Exhibit 1.*
- 23 16. Planning Staff submitted that the proposal would be consistent with
24 Comprehensive Plan policies encouraging infill development and high-quality
25 design that is compatible with the character of established neighborhoods.
26 *Exhibit 1; Taylor Webb Testimony.*
- 27 17. The Applicant obtained City approval of a waiver of the pre-application meeting
28 requirement on October 12, 2023. The Applicants met with immediate
29 neighbors and obtained the signatures of 21 neighbors on Lisa Lane, Xenia
Street, and Lakeway Drive indicating approval of the proposal. *Exhibits 1 and
1.B.*
- 30 18. The CUP application was submitted on November 21, 2023. The City issued a
notice of complete application and a request for information on December 13,
2013. After the requested information was submitted, the City issued a notice of

1 application and public hearing on December 22, 2023. The notice was posted
2 on site on December 27, 2023. The City mailed notice of the hearing and re-
3 posted the site on January 9, 2024. *Exhibits 1, 1.C, 1.D, and 1.E.*

4 19. Pursuant to BMC 16.20.090.A and Washington Administrative Code (WAC)
5 197-11-800(6)(a), the proposal is exempt from State Environmental Policy Act
6 (SEPA) review. *Exhibit 1; BMC 16.20.090.A; (WAC) 197-11-800(6)(a).*

7 20. Public comment was received expressing concern regarding traffic safety at the
8 intersection of Lakeway Drive and Lisa Lane, due to a curve in Lakeway Drive
9 at the intersection, and suggesting that the proposal is too large for the lot and
10 incompatible with the neighborhood. *Exhibit 1.F.* In response to public
11 comment, the Applicant and Planning Staff submitted that the traffic from the
12 proposed D-ADU would not be significant. The Applicant submitted that the lot
13 is oversized, and that proposed design would be compatible with surrounding
14 residences and would provide a sound buffer from Lakeway Drive. *Exhibits 1
15 and 1.B; Nick Brown Testimony.*

16 21. In addition, an argument was made during public comment that the burden of
17 proof for permit issuance has not been satisfied because the Applicant has not
18 submitted a title report to prove that there are not restrictive covenants
19 preventing the proposed development. The commenter did not identify any
20 covenants that might apply to the property and did not otherwise provide facts
21 suggesting that the criteria for permit approval have not been satisfied. *Dean
22 Longwell Testimony; see also Exhibit 2.* The Applicant testified that he
23 purchased the property in 2014 and that there are no private restrictive
24 covenants. *Nick Brown Testimony.*

25 22. After hearing all testimony and reviewing the application materials, Planning
26 Staff submitted that the proposal, with the recommended conditions as set forth
27 in the Staff Report, would comply with all criteria of CUP and ADU permit
28 approval. *Exhibit 1; Taylor Webb Testimony.* The Applicants waived objection
29 to the recommended conditions. *Nick Brown Testimony.*

30 CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted authority to hold hearings and make decisions on conditional use permit applications pursuant to BMC 20.16.010.D and on accessory dwelling unit permit applications pursuant to BMC 20.10.036.

1 **Conditional Use Permit Criteria for Review**

2 Pursuant to BMC 20.16.010.B, conditional use permits for conditional uses allowed in
3 the general use type may be granted by the hearing examiner if the record demonstrates
4 the following:

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

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

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

30 **Accessory Dwelling Unit (ADU) Permit Criteria for Review**

Pursuant to BMC 20.10.036, the Hearing Examiner may approve a detached accessory
dwelling unit (D-ADU) if the record demonstrates the proposal is consistent with the
following standards:

Findings, Conclusions, and Decision

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BMC 20.10.036

A. Purpose and Authority

- 1. It is the purpose of this legislation to implement policy provisions of the city’s comprehensive plan promoting increased housing options and innovation that will help meet the needs of the many sectors of the community, including smaller households, students, millennials, baby boomers, people with disabilities, and low-income families; make more efficient use of public infrastructure and services; are within walking distance to shops, jobs, and amenities; encourage well-designed infill development; and improve the economic and social well-being of the community.
- 2. The director shall have the authority to approve accessory dwelling units (ADUs) which are consistent with single-family neighborhood character and the regulations and provisions herein. It is not the intent of these regulations to provide for ADUs on every residential property and they shall not be deemed to create a right or privilege to establish or maintain an ADU which is not strictly in compliance with these regulations.
- 3. *Enforcement.* The city retains the right (with reasonable notice) to inspect the ADU for compliance with this section.

B. Standards and Criteria.

- 1. Accessory dwelling units (ADUs) may be allowed in general use types where listed as a permitted use if they comply with the requirements listed in this section, except on property regulated by Chapter 16.80 BMC, Lake Whatcom Reservoir Regulatory Provisions.
- 2. An ADU shall comply with all zoning code provisions for the primary dwelling unit, including height, setbacks, floor area, accessory buildings and open space, except as provided in this section. This provision shall also apply to ancillary structures attached to a D-ADU such as garages, carports, garden sheds and workshops.
- 3. Applicants may request minor modifications to the development and design standards for ADUs. A minor modification is a request by the applicant to meet or exceed a particular ADU standard through the use of a technique or alternative standard not otherwise listed under the applicable requirement. Minor modifications are not variances and are not required to meet all of the criteria typically associated with a variance application. The director may grant a minor modification if the following criteria are met:
 - a. The site is physically constrained due to, but not limited to, unusual shape, topography, easements, existing development on site, or critical areas; or

- b. The granting of the modification will not result in a development that is less compatible with adjacent neighborhood land uses; and
- c. The granting of the modification will not be materially detrimental to the public welfare or injurious to other land or improvements in the vicinity and district in which the property is situated; and
- d. The granting of the modification is consistent with the purpose and intent of this section; and
- e. All reasonable mitigation measures for the modification have been implemented or assured.

4. *Ownership and Occupancy.*

- a. The land on which the ADU is located shall not be subdivided from the land on which the primary dwelling unit is located, but the ADU may be segregated in ownership from the primary dwelling unit.
- b. Owner occupancy is required for properties that include an ADU (or ADUs) in areas zoned residential single until occupancy requirements are preempted by the state law. Prior to implementation of state law, the following applies. The property owner shall submit an affidavit, approved by the director, acknowledging the owner occupancy requirement for as long as the ADU is maintained on the property or until owner occupancy requirements are preempted by the implementation of state law. The property owner shall submit the affidavit to the city prior to issuance of the building permit. The affidavit shall specify the requirements for owner occupancy and purchaser registration as follows:
 - i. An owner of the subject property shall reside on the premises, whether in the primary or accessory dwelling; provided, that:
 - (A) In the event of illness, death or other unforeseeable event which prevents the owner's continued occupancy of the premises, the director may, upon a finding that discontinuance of the ADU would cause a hardship on the owner and/or tenants, grant a temporary suspension of this owner-occupancy requirement for a period of one year. The director may grant an extension of such suspension for one additional year, upon a finding of continued hardship.
 - (B) In the case of bringing an unpermitted ADU into compliance with this section, if the property on which the ADU is located complies with all of the requirements of this section except owner-occupancy, the property may continue without occupancy

1 by the owner for the remainder of the lease(s) on the property,
2 not to exceed one year. Thereafter, the property shall be occupied
3 by the owner, or transferred to a different owner who will reside
4 on the premises.

- 5 ii. Purchasers of homes with an ADU shall register with the planning
6 and community development department within 30 days of purchase.

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5. *Site Requirements.*

- a. No more than two ADUs shall be permitted in conjunction with the primary dwelling unit on a single lot of record. The lot may not contain more than one primary dwelling unit. The ADUs are exempt from density limitations and may be in any configuration of attached or detached units.
- b. The ADU main entrance shall have direct access to a street via a lighted pedestrian path, driveway or alley.

6. *ADU Size.*

- a. *Attached and Detached ADUs.* An ADU shall not exceed 1,000 square feet.
- b. *Attached ADUs (A-ADU).* The maximum floor area in subsection (B)(6)(a) of this section does not apply when the basement of a primary dwelling unit is converted to an A-ADU and the primary dwelling unit has been on the site for at least five years.
- c. *Detached ADUs (D-ADU).* The floor area for D-ADUs shall be calculated to include all attached ancillary space (garage, workshop, garden shed, etc.). Maximum allowed floor area limits are as follows:
- i. A D-ADU with ancillary space may exceed 1,000 square feet when approved by the hearing examiner by conditional use permit pursuant to Chapter 20.16 BMC.
- ii. When an oversized detached accessory building approved by conditional use permit has been on site for at least five years, conversion of said building to a D-ADU may occur without subsequent conditional use permit approval.
- iii. For subsections (B)(6)(c)(i) and (ii) of this section, the floor area of the D-ADU, sans ancillary space, shall not exceed that specified in subsection (B)(6)(a) of this section.

7. *Minimum Yards for D-ADUs.*

- a. Front and side-flanking yards shall comply with the zoning code provisions for the primary dwelling unit except that when the vehicular entrance to an

1 attached garage or carport faces a street, the entrance shall be set back a
2 minimum of 25 feet from the front property line, and 10 feet from a side
flanking property line.

3 b. A five-foot side and rear yard setback shall be provided, measured from the
4 property line to the foundation of the structure, except as follows:

5 i. When abutting an alley, there is no required side or rear yard setback
6 from the alley.

7 ii. A D-ADU may be located in a rear yard and in the rear 22 feet of an
interior side yard, provided:

8 (A) If a D-ADU is to be located less than five feet from any common
9 property line, a joint agreement with the adjoining property owner(s)
10 must be executed and recorded with the Whatcom County auditor's
11 office and thereafter filed with the city prior to issuance of building
permit; or

12 (B) If site characteristics warrant such that, in the opinion of the director,
13 impacts to abutting property would be negligible due to, but not
14 limited to, one or more of the following:

15 (1) The existing use and development pattern on abutting property.

16 (2) Minimal disruption of solar access to outdoor recreation or
17 garden space on abutting property compared to what may
18 otherwise occur with the application of standard development
regulations.

19 (3) Site characteristics such as building a D-ADU downslope from
abutting property.

20 (4) Conversion of a detached accessory building that is at least five
21 years old and has had no additions within the required side or rear
22 yard within that time period.

23 (5) Any minor modification from standard development regulations
24 requested pursuant to this subsection (B)(7)(b)(ii) shall be
25 processed as a request for minor modification pursuant to
subsection (B)(3) of this section.

26 c. A minimum six feet of separation is required between the primary dwelling
27 unit and a D-ADU.

28 8. *Building Height for D-ADUs.* A D-ADU shall be no higher than 24 feet under
29 BMC 20.08.020, height definition No. 1 or 12 feet under height definition No. 2.

- 1 9. *Parking.* Parking required for an ADU is in addition to that required for the
 2 primary dwelling unit.
 3 a. One on-site parking stall is required for an ADU, except as follows:
 4 i. No parking is required when improved public street parking is available
 5 on at least one side of the block face whereon the ADU is proposed, on-
 6 street parking is constructed, or the ADU is within one-half mile walking
 7 distance to a major transit route.
 8 ii. The director may waive parking based on the applicant's demonstration
 9 of site-specific factors that justify a lower standard. Any request for a
 10 parking waiver shall be processed as a request for minor modification
 11 pursuant to subsection (B)(3) of this section.
 12 b. Parking stalls shall be at least nine feet by 18 feet.
 13 c. Parking shall not be located in required front or side street setbacks. Parking
 14 in the front portion of the lot shall be discouraged.
 15 d. If the lot abuts an alley or private access easement, parking shall be accessed
 16 from said facility except when the director determines that such access is
 17 impractical or environmentally constrained. Any request to forgo alley
 18 access shall be processed as a request for minor modification pursuant to
 19 subsection (B)(3) of this section.
 20 e. Parking accessed from a street or lane shall be limited to one driveway per
 21 frontage with a maximum width of 20 feet.
 22 10. *Privacy.* Where practical, locate and design the ADU to minimize disruption of
 23 privacy and outdoor activities on adjacent properties. Strategies to accomplish
 24 this include, but are not limited to:
 25 a. Stagger windows and doors to not align with such features on abutting
 26 properties.
 27 b. Avoid upper level windows, entries and decks that face common property
 28 lines to reduce overlook of a neighboring property.
 29 c. Install landscaping as necessary to provide for the privacy and screening of
 30 abutting property.
11. *Repealed by Ord. 2023-08-022.*
12. *Utilities.*
- a. *Water, Sewer, Storm.* A primary dwelling unit and ADU(s) may have a shared water service to a water system, a shared sewer service to a sewer system and a shared storm service to a stormwater management system, in

1 which case the primary dwelling unit will be responsible for all billing and
2 maintenance of the services. Separate and independent services from each
3 building may be required to meet the city's adopted plumbing code. In all
4 cases, the water service shutoff must be accessible to occupants of all units.

- 4 b. *Electrical.* A primary dwelling unit and ADU(s) are permitted to have one
5 shared electrical service if a single building or separate electrical services if
6 separate buildings. A separate meter is permitted to serve an ADU, subject to
7 compliance with the city's adopted electrical code. A single main service
8 panel may be allowed; provided, that occupants of all dwelling units have
9 access to the overcurrent devices supplying their occupancy.
- 10 c. *Gas.* A primary dwelling unit and ADU(s) may share natural gas services.
11 An accessible shut-off valve must be upstream of the gas meter, on the
12 exterior of the structure(s).
- 13 d. Any utility lines being installed or altered must have their connections
14 inspected as part of the building permit process.

15 13. *Compliance With Applicable Codes.* ADUs shall comply with all standards for
16 health and life safety as set forth in the International Building Code,
17 International Residential Code, Uniform Plumbing Code, National Electrical
18 Code, International Mechanical Code, International Fire Code, and Washington
19 State Energy Code as each code is adopted by the city; and any other applicable
20 codes or regulations, except as provided in this section.

21 14. *Accessibility.* To encourage the development of housing units for people with
22 disabilities, the director may allow reasonable deviation from the stated
23 requirements to install features that facilitate accessibility. Such facilities shall
24 be in conformance with the city adopted building code.

25 C. Existing Illegal Units.

- 26 1. Application may be made for any accessory dwelling unit existing prior to
27 January 1, 1995, to become legally permitted, pursuant to the provisions of this
28 section. Whether an ADU permit is approved or denied, the owner of any
29 nonpermitted unit shall be subject to the penalties provided in this code.
- 30 2. An application to legalize an existing ADU shall include an application for an
ADU permit and a building permit application, showing changes made to the
main residence or detached accessory building to accommodate the ADU.
Approval shall be consistent with the ADU regulations and process outlined in
this section. The ADU shall be reviewed using the current editions of building
codes in place at the time its owner brings the unit forward for permit.

- 1 3. Nothing in this section shall require that the city permit existing ADUs that are
2 determined to be dangerous.

3 **Conclusions Based on Findings**

- 4 1. Addressing the CUP criteria established in BMC 20.16.010.B, the following
5 conclusions are entered.
- 6 a. As conditioned, the proposed D-ADU would promote the health, safety, and
7 general welfare of the community. The general welfare would be served by
8 an additional housing unit in an area served by transit and other services.
9 Although concern was expressed that the proposed development is too big
10 for the lot, based on the submitted plans, the proposal is modest in scale as
11 compared to the lot area, which at 11,502 square feet far exceeds the
12 minimum for the zone. Potential privacy impacts would be addressed
13 through building placement, wide building setbacks, and tree retention.
14 Compliance with City building, fire, and other codes would be reviewed and
15 ensured during the building permit process. *Findings 3, 5, 6, 7, 8, 9, 13, 14,*
16 *16, 20, and 22.*
- 17 b. The D-ADU use is consistent with the purpose and intent of the Residential,
18 Single use type in that D-ADUs are an allowed use and applicable height
19 and setback standards would be satisfied. *Findings 2, 7, and 9.*
- 20 c. As conditioned, the use would not be detrimental to the surrounding
21 neighborhood. The conditions of approval require the owner to reside on
22 site, to register with the City if one of the dwelling units is to be used as a
23 rental, and to limit construction hours to 7:00 am to 7:00 pm. As described
24 previously, potential privacy impacts would be addressed through wide
25 building setbacks and tree retention. *Findings 12 and 13.*
- 26 2. Addressing the CUP criteria established in BMC 20.16.010.C, the following
27 conclusions are entered.
- 28 a. Development of the D-ADU would be harmonious with the Comprehensive
29 Plan. *Findings 3, 5, 7, and 16.*
- 30 b. Surrounding parcels are already developed and served by streets and
utilities, and the proposed D-ADU would not prevent continued use of
surrounding parcels. *Findings 3, 4, and 5.*
- c. The proposal would be compatible with the essential character of the
existing neighborhood. The D-ADU would be a residential use. The lot is
large enough to accommodate the proposed D-ADU while providing

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building setbacks that far exceed code minimums. The design would be consistent with the existing structure on the site. *Findings 2, 3, 5, 7, and 9.*

- d. The project would be adequately served by public facilities and utilities. *Findings 3 and 14.*
- e. The project would not create excessive vehicular congestion. *Findings 10 and 20.*
- f. As conditioned, the proposal would not create a hazard to life, limb, or property. Compliance with the City’s building, fire, and other codes would be determined during building permit review. *Findings 14 and 22.*
- g. As conditioned, the use would not create influences substantially detrimental to neighboring uses. The proposed D-ADU would not generate impacts that are different from the existing residential use. The conditions of approval limit construction hours. *Findings 5, 7, and 22.*
- h. The use would not result in the destruction, loss, or damage to any natural, scenic, or historic feature of major consequence. *Finding 11.*

3. As conditioned, the proposal is consistent with the applicable standards and criteria for an ADU set forth in BMC 20.10.016.B. Specifically, the use is permitted by the Residential Single use type, would comply with applicable zoning standards, would have direct access to a street, would meet or exceed or all required yard/setback and building separation standards, would comply with the 24-foot height limitation, and would be located to minimize disruption to privacy. The ownership and occupancy standards are addressed through conditions of approval. The utility and building code requirements would be addressed during building permit review. The proposal is exempt from the parking standard for ADUs due to the availability of street parking. The overall D-ADU size, which exceeds 1,000 square feet including ancillary space, has been addressed by the CUP. Consistent with BMC 20.10.016.B.6.c.iii, the D-ADU portion of the combined structure would not exceed 1,000 square feet. *Findings 2, 4, 7, 8, 9, 10, 12, 13, 14, 15, and 22.*

4. Addressing issues raised in public comment relating to private covenants, the Hearing Examiner concludes from the evidence submitted that the criteria for CUP and ADU permit approval are satisfied. These criteria do not require submittal of a title report. The Applicant testified under oath that there are no restrictive covenants that would prevent the development proposed, and, based on the record as a whole, the Hearing Examiner has no reason to disbelieve this testimony. *Finding 21.*

DECISION

1 Based on the preceding findings and conclusions, the requested conditional use permit
2 and accessory dwelling unit permit are **APPROVED** subject to the following
3 conditions.

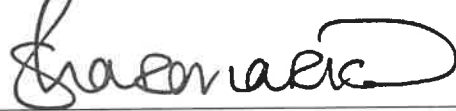
- 4 1. The owner shall reside in either the main residence or the ADU and is
5 required to submit an affidavit approved by the Planning and Community
6 Development Department (PCDD) Director acknowledging the owner
7 occupancy requirement for as long as the ADU is maintained on the property
8 or until owner occupancy requirements are preempted by the implementation
9 of state law.
- 10 2. If either the main residence or the ADU will be used as a rental unit, the
11 subject rental unit is required to be registered with the Rental Registration &
12 Safety Inspection Program per Bellingham Municipal Code 6.15.040.
- 13 3. The address of the primary residence shall be changed to 2300 Lisa Lane, and
14 the address of the D-ADU shall be 2300 Lisa Lane #201.
- 15 4. Land on which the D-ADU is located shall not be subdivided from the
16 primary residence.
- 17 5. Purchasers of homes with an ADU shall register with the Planning and
18 Community Development Department within 30 days of purchase.
- 19 6. The Applicant shall obtain all necessary permits for the proposal, and final
20 inspection on these permits prior to any occupancy. The permits shall be
21 generally consistent with the information and materials submitted with the
22 CUP (as specified in Exhibits 1.A1 – 1.A4), except as modified by this
23 approval, and all other conditions contained in this approval.
- 24 7. Construction hours shall be limited to between 7:00 a.m. and 7:00 p.m.
- 25 8. A phasing and construction staging plan shall be submitted and reviewed with
26 the building permit to determine sequence of construction activities, parking
27 of construction vehicles, and construction staging locations for equipment and
28 materials. Said plan shall be available to the public upon request.
- 29 9. The CUP and ADU approval does not excuse the Applicant from compliance
30 with any other federal, state or local statutes, ordinances or regulations that
may be applicable to this project.

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10. In the event the owner/Applicant fails to comply with the terms of the conditions herein, the permit(s) may be rescinded. All work must be completed according to these permits.

DECIDED February 14, 2024.

BELLINGHAM HEARING EXAMINER



Sharon A. Rice