

LIST OF ATTACHMENTS

Exhibit 1: Planning and Community Development Department Staff Report including the following Attachments:

Attachment A1	Application for a Conditional Use Permit and Applicant Responses to CUP Criteria (USE2023-0017)
Attachment A2	Accessory Dwelling Unit Application (ADU2023-0042)
Attachment A3	Site Plan, Floor Plans, Building Elevations
Attachment A4	Revised Site Plan
Attachment B	Pre-application Neighborhood Meeting Waiver Request (PRE2023-0097)
Attachment C	Notice of Complete Application (NOCA) and Request for Information (RFI)
Attachment D	Notice of Application & Public Hearing
Attachment E	Certificate of Posting
Attachment F	Public Comments
Attachment G	Zoning Table

**CITY OF BELLINGHAM PLANNING AND COMMUNITY DEVELOPMENT
STAFF REPORT**

HEARING EXAMINER

January 24, 2024

PROJECT NOS: USE2023-0028 CONDITIONAL USE PERMIT & ADU2023-0042 ACCESSORY DWELLING UNIT

APPLICANT: Nicholas C Brown & Brenda Beehler JT, 2460 Lakeway Dr Bellingham, WA 98229

OWNER: Nicholas C Brown & Brenda Beehler JT, 2460 Lakeway Dr Bellingham, WA 98229

I. OVERVIEW

A. PROPOSAL

Proposed construction of an approximately 1,612 square foot (sf), two-story, detached accessory dwelling unit (D-ADU) with attached garage. The ground floor of the proposed structure (806sf) is comprised of the garage, a laundry room, and a bathroom for use by the owners of the single-family residence (SFR). The ADU is on the second story of the building (806sf) and has one (1) bedroom and one (1) bathroom. The building meets the required height in the ADU development standards in Chapter 20.10.036 of the Bellingham Municipal Code (BMC) and is approximately 22'10 3/4" as measured by Height Definition No. 1 (BMC 20.08.020).

The existing SFR is approximately 1,225sf and has four (4) bedrooms and two (2) bathrooms. Access to the property is from Lisa Lane to the Northeast and is abutting Lakeway Drive to the West. Please note that because access is from Lisa Lane, the property owners have agreed to change the address of the primary residence from 2460 Lakeway Drive to 2300 Lisa Lane with an effective date of March 1, 2024.

A Conditional Use Permit (CUP) is required pursuant to BMC 20.10.036(B)(6)(c)(i) because the proposed D-ADU with ancillary space exceeds the maximum allowed floor area of 1,000sf. In accordance with Chapter 20.16 BMC, CUPs are decided upon by the Hearing Examiner following a public meeting and review of the proposal's compliance with the CUP approval criteria enumerated in BMC 20.16.010.

The proposal is categorically exempt from SEPA review pursuant to BMC 16.20 and WAC 197- 11-800.

B. GENERAL INFORMATION

i. Location: 2460 Lakeway Dr Bellingham, WA 98229

2460 Lakeway Drive / USE2023-0028 & ADU2023-0042

- ii. **Legal Description:** LOT 1 WALDEN SHORT PLAT AS REC BOOK 3 SHORT PLATS PG 31
- iii. **Tax Parcel Number:** 3803330145340000
- iv. **Zoning:** Whatcom Falls Neighborhood, Area 7, Residential Single, Detached, Cluster detached, 10,000 square feet (sf) minimum detached lot size or 1 lot/10,00sf average overall cluster density, Minimum cluster lot size 7,200sf

II. STAFF RECOMMENDATION

Approve the CUP and ADU applications (**Attachments A1-4**) with the recommended conditions in Section XII of this report.

III. JURISDICTION

The Hearing Examiner is granted authority to hold hearings and make decisions on accessory dwelling units that exceed 1,000 square feet (sf) through issuance of a CUP, as per Bellingham Municipal Code (BMC) 20.10.036(B)(6)(c)(i).

IV. BACKGROUND

A. APPLICATION AND NOTICE CHRONOLOGY

On 10/12/2023, the applicant submitted a waiver for a pre-application neighborhood meeting (PRE2023-0097, **Attachment B**). The waiver request was approved on 10/12/2023 as the project did not appear to have significant land use issues and surrounding neighbors will have additional opportunities to express their support or concerns during the notice of application and hearing. The applicant's explanation for the waiver request is the following: *I have met with neighbors and received verbal approval of the project. Due to the location of the lot adjacent to Lakeway Drive, this proposed building will provide additional sound and sight buffer to a busy intersection. All neighbors were very supportive of the project as designed.*

The submittal included signatures from 21 neighbors within the vicinity. The request met the criteria in BMC 21.10.120(B) and was approved. Additionally, neighbors had two other opportunities to participate in the review process.

On 11/21/2023, the applicant submitted an application for a Conditional Use Permit for an oversized accessory building with an accessory dwelling unit (USE2023-0028 and ADU2023-0042, **Attachment A1, A2, and A3**).

On 12/13/2023, the City issued a Notice of Complete and Request for Information (RFI) (**Attachment C**). The requested information included adhering to front yard setback requirements in accordance with BMC 20.10.036(B)(3).

On 12/18/2023, the applicant submitted a revised site plan which showed compliance with front yard setbacks (**Attachment A4**).

On 12/22/2023, the City issued a Notice of Application (NOA) & Public Hearing (**Attachment D**).

On 12/24/2023, the applicant installed the public notice sign and sent the Certificate of Posting (**Attachment E**).

On 1/09/2024, the Hearing Examiner's department staff issued and mailed a notice of the Public Hearing in accordance with BMC 21.10.200(D). The site was reposted in accordance with Title 21.

B. PUBLIC COMMENT

As of the publishing of this staff report (1/17/2024), two public comments have been received (**Attachment F**). The public comments were forwarded to the applicant and Hearing Examiner staff.

The first comment was submitted on 12/26/2023 from a resident at 1219 Clearwater Place. They expressed support for the proposed development of the subject property and encouraged approval of the CUP to increase housing in Bellingham.

The second comment was submitted on 12/30/2023 from a neighbor at 1240 Yew Street. The commentor expressed concern regarding the busy traffic intersection of Lakeway Drive and Yew Street which has had several accidents. They also expressed concerns regarding the size of the proposed development which they feel would disrupt the look and feel of the neighborhood.

Staff Response:

Concern regarding dangerous traffic activity at the corner of Lakeway Drive and Yew Street is understandable considering there have been accidents in the intersection over the years. However, vehicular access to the proposed residence will be off Lisa Lane rather than Lakeway Drive and the added traffic from one ADU is insignificant considering daily traffic counts. Additionally, the proposed development meets all setback requirements and will be over 23' from the property line that borders Lakeway Drive providing distance from the intersection.

Staff finds that the proposed development will not disrupt the look and feel of the neighborhood. BMC 20.10.036 does not regulate design criteria for the development of ADUs and does not require design review nor does the city have adopted design standards for single family development. The proposed D-ADU meets all code requirements in BMC 20.10.036. The neighborhood has a mix of architectural styles. The architectural style of the proposed development is consistent with the existing residence and will be similar in height and size to other homes in the neighborhood.

V. EXISTING SITE CHARACTERISTICS

A. LAND USE AND ZONING DESIGNATION (Attachment G)

Residential Single, Detached, Cluster detached, 10,000 square feet (sf) minimum detached lot size or 1 lot/10,00sf average overall cluster density, Minimum cluster lot size 7,200sf.

The land use designation of the subject site is Residential Single, Low Density.

B. EXISTING CONDITIONS

The subject property is 11,502 square feet (sf) (0.37 acres) and is currently developed with a 1,225sf single-family residence (SFR) with an attached carport. The carport is proposed to be removed. The site is over the minimum site area required (10,000sf) for a SFR in this neighborhood. The property is on the corner of Lisa Lane and Lakeway Drive with access taken from Lisa Lane. Lakeway Drive is a 80' arterial road while Lisa Lane is a 50' residential street.

The property has a very gradual slope to the west. The existing SFR is situated toward the front of the property on the northeastern corner. A gravel driveway starts from the northern portion of the property and extends to the proposed detached garage and parking area.

All properties adjacent to the site are in the same zoning designation, are similarly set back from the street, and are developed with single family residences.

The nearest Whatcom Transit Stop is approximately 300ft away at the intersection of Lakeway Drive and Woburn Street (Stop ID 3103).

VI. ENVIRONMENTAL EVALUATION

Per BMC 16.20.090(A) and Washington Administrative Code (WAC) 197-11-800(6)(a), the subject project is categorically exempt from State Environmental Policy Act (SEPA) review.

The proposed detached garage and accessory dwelling unit is a permitted use in the Whatcom Falls Neighborhood, Area 7. Additionally, the proposed development meets all ADU development standards in BMC 20.10.036.

The subject property does not contain any critical areas. The property has a very gradual slope to the west with less than 10' of grade change. The proposed development has less than 5,000sf of proposed impervious surface, and therefore does not require an engineered stormwater site plan. Additionally, no mature trees or foliage are proposed to be removed for the new development.

VII. APPLICATION

Please refer to **Attachments A1-4** for the land use applications, as amended by the applicant's responses to the City's requests for information.

VIII. APPLICABLE REGULATORY SECTIONS OF THE BELLINGHAM MUNICIPAL CODE AND PLANS

- Bellingham Municipal Code (BMC):
 - Section 20.00.230: Table of Zoning Regulations – Whatcom Falls Neighborhood
 - Chapter 20.30: Single Family Residential Development Standards
 - Chapter 20.16: Conditional Use Requirements and Procedures
 - Chapter 20.10.036: Accessory Dwelling Units
 - Title 21: Procedures and Administration
- Whatcom Falls Neighborhood Plan

- Bellingham Comprehensive Plan

IX. CONDITIONAL USE PERMIT REVIEW CRITERIA USE2023-0028 (Oversized D-ADU with attached garage)

A CUP request requires the applicant to provide a response to the following questions, in **bold** below. The applicant's responses are also provided in **Attachment A1**.

The Hearing Examiner may grant a CUP provided the proposal clearly meets **the following criteria**:

BMC 20.16.010 - B. Certain uses may be allowed in certain General Use Types by a CUP granted by the Hearing Examiner provided such use is specified under the Conditional Use subsection of the appropriate General Use Type Handbook and it is clearly shown that:

1) The proposed use will promote the health, safety, and general welfare of the community.

Applicant Response: *By adding additional living space in the form of an ADU while also providing garage space for shared laundry and co-working space.*

Staff Response: *The proposal will create an additional housing unit in an area with adequate infrastructure and services. The subject property is located in close proximity to commercial services, schools, public parks and civic center amenities, and WTA bus stops. ADUs are encouraged as an infill strategy for providing additional housing opportunities throughout the city. The proposed D-ADU will promote the health and safety of the community by complying with all required Building, Public Works, Planning and Fire Department requirements.*

Staff finds the applicant's proposal 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.

Applicant Response: *Single family zoning with additional ADU housing to aid the city in densifying its neighborhoods.*

Staff Response: *The proposed use is permitted in the residential single general use type. The proposed development meets the required front, side, and backyard setback requirements. The subject property is a corner lot and the placement of the D-ADU will be to the west of the existing primary residence away from the neighboring property to the east. In addition, the structure is architecturally consistent with the primary residence.*

Staff finds that the applicant's proposed accessory use will be compatible with the adjacent primary residence.

3) The proposed use will not be detrimental to the surrounding neighborhood.

Applicant Response: *This property is a corner lot on a busy arterial. It will improve the neighborhood by blocking traffic noise/ line of sight.*

Staff Response: *The underlying residential single zoning allows both attached and detached accessory dwelling units, consistent with procedures and requirements outlined in BMC 20.10.036. Use of the garage as an accessory dwelling unit provides housing for the community, while still requiring the property owner to live on the property (BMC 20.10.036).*

The size and architectural style of the proposed development is consistent with the primary residence and other residences in the neighborhood. Access to the proposed residence will be off Lisa Lane. The proposed development meets all setback requirements and will be over 23' from the property line that borders Lakeway Drive providing distance from the intersection.

As conditioned, near and long-term potential impacts related to the proposal should be mitigated by limiting construction hours to between 7am and 7pm and implementing a construction phasing and staging plan.

Based on the project scope, and operational conditions recommended, staff finds the proposal is not detrimental to the surrounding neighborhood.

In addition to the criteria above, the Hearing Examiner shall also consider the following factors in granting a conditional use permit:

- (1) Be harmonious with the general policies and specific objectives of the Comprehensive Plan.

Applicant Response: *Increasing housing opportunities while minimizing increase of impervious surfaces.*

Staff Response: *The proposal is consistent with the goals and policies established in the Comprehensive Plan to “encourage well-designed infill development on vacant or underutilized properties” (Housing Chapter Policy H-3) and also to “promote high-quality design that is compatible with the overall style and character of established neighborhoods” (Policy H-31). The proposed D-ADU supports the City’s goals by providing additional housing and maximizing the use of existing infrastructure without compromising the character of the neighborhood.*

The proposed development is consistent with the architectural style and size of the existing residence and is located close to services and public amenities.

Staff finds that the proposal supports the City’s goals of accommodating growth, encouraging infill and property renovations. Staff finds the proposal is harmonious with the goals and policies of the Bellingham Comprehensive Plan and the Whatcom Falls Neighborhood Plan.

- (2) Enable the continued orderly and reasonable use of adjacent properties by providing a means for expansion of public roads, utilities, and services.

Applicant Response: *Proposed footprint is well within the required setbacks.*

Staff Response: Staff finds this proposal will not interfere with expansion of roads, utilities, or services. In addition, the applicant intends to change their address from 2460 Lakeway Drive to 2300 Lisa Lane since access is taken off the residential street, Lisa Lane.

- (3) Be designed so as to be compatible with the essential character of the neighborhood.

Applicant Response: The design matches the existing home and neighboring designs.

Staff Response: BMC 20.10.036 does not regulate design criteria for the development of ADUs and does not require design review. The proposed D-ADU meets all code requirements in BMC 20.10.036.

The neighborhood has a mix of architectural styles. The architectural style of the proposed development is consistent with the existing residence and will be similar in height and size to other homes in the neighborhood. The city of Bellingham currently does not regulate single family design allowing for a wide variety of housing styles throughout the community.

Staff finds that the proposal is compatible with and reinforces the character of Area 7 of the Whatcom Falls Neighborhood.

- (4) Be adequately served by public facilities and utilities including drainage provisions.

Applicant Response: Located on a major bus line, existing utilities will serve new building, and stormwater is to be buffered by vegetation.

Staff Response: The subject property is currently served by public facilities intended for the proposed single-family residential use. The proposed D-ADU does not conflict with any existing public or private easements on the property.

Staff finds that the proposal will be adequately served by public facilities and utilities.

- (5) Not create excessive vehicular congestion on neighborhood collector or residential access streets.

Applicant Response: Providing two parking spaces for existing home and garage space. Ample street parking exists as well.

Staff Response: Per BMC 20.10.036(B)(9)(a), one on-site parking stall is required for an ADU except when improved public street parking is available on at least one side of the block face whereon the ADU is proposed, on-street parking is constructed, or the ADU is within one-half mile walking distance to a major transit route.

Improved public street parking is available on Lisa Lane, and therefore the applicant is not providing off-street parking for the D-ADU. The parking in the garage attached to the D-ADU will be for the primary residence. There are also two additional unstructured parking stalls for the primary residence provided on-site. The proposal is not anticipated to result in any adverse spillover effects of parking on nearby streets.

Staff finds that the scale and intensity of the proposal as conditioned herein, will not create excessive vehicular congestion on neighborhood collector or residential access streets.

(6) Not create a hazard to life, limb, or property resulting from the proposed use, or by the structures used therefore, or by the inaccessibility of the property or structures thereon.

Applicant Response: *Access to new building and ADU will be visible from street, clearly marked and doesn't impact existing structure.*

Staff Response: *The proposed development will not increase any hazard level or inaccessibility for the property. The subject property will continue to be accessible to private and emergency vehicles. This proposal will be reviewed under the International Residential Building Code and the Fire Code at time of building permit submittal.*

Staff finds that this proposal will not create any safety hazards, nor will it increase property or structure inaccessibility.

(7) Not create influences substantially detrimental to neighboring uses. "Influences" shall include, but not necessarily be limited to: noise, odor, smoke, light, electrical interference, and/or mechanical vibrations.

Applicant Response: *None of these are anticipated.*

Staff Response: *The proposed D-ADU will have similar accessory influences common of single-family residences, therefore, staff does not anticipate any such new detrimental influences as a result of this proposal. Owner-occupancy is required to minimize off-site impacts. Due to the location of the proposed D-ADU, shade will not be cast on neighboring properties and the City will require submittal of an exterior lighting plan for review and approval by the City concurrent with the building permit application for the proposal. Building and site lighting fixtures shall be designed and located to avoid adverse impacts and spillover onto adjacent properties. This includes requirements for downlit, shielded, and low-intensity lighting fixtures.*

(8) Not result in the destruction, loss, or damage to any natural, scenic, or historic feature of major consequence.

Applicant Response: *Replacing an existing carport and driveway mostly, no other negative impacts to factors above.*

Staff Response:

Natural Features: *As described in Section V & VI of this report, the subject property does not contain any critical areas. The property has a very gradual slope to the west with less than 10' of grade change. The building will be constructed and engineered in accordance with International Building Code and as conditioned. No mature trees or foliage are proposed to be removed for the new development.*

Staff finds the proposal will not result in the destruction, loss, or damage to any natural features.

Historic Features: Aside from the removal of the carport, no alterations to the existing primary residence is proposed.

Scenic Features: This site is within Area 7 of the Whatcom Falls Neighborhood, which does not include a "view" special condition.

Staff finds that this proposal will not damage any natural, scenic, or historic feature and that it complies with the requirements of BMC 20.16.020(M)(4) to "not cause significant adverse impacts on views from other properties".

X. ADU REVIEW CRITERIA

The Hearing Examiner may grant such Permit if the applicant demonstrates that the proposal is consistent with these standards:

Per BMC 20.10.036 Accessory Dwelling Units, “(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.”

Staff Response: This proposal will promote increased housing options and make more efficient use of public infrastructure and services. It is within walking, biking, and transit distance to shops, jobs, parks, schools and amenities. The proposal encourages well-designed infill development within a single-family neighborhood.

The Hearing Examiner may grant such ADU Permit if the applicant demonstrates that the proposal is consistent with the Standards and Criteria of BMC 20.10.036(B)(1-14).

The applicant’s justification for approval of a D-ADU with attached garage is provided in **Attachments A1**.

BMC 20.10.036(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.”

Staff Response: This proposal is a permitted use under BMC 20.30, the Residential-Single Land Use Code. This proposal is not in the Lake Whatcom Watershed.

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.”

Staff Response: *This proposal complies with all of the standards in BMC 20.30, save for the accessory building’s exceedance of allowed floor area, being reviewed under this Conditional Use Permit Request.*

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.”

Staff Response: *This proposal does not include minor modification requests.*

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

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

Staff Response: *As a condition of approval, the owner shall reside in either the main residence or the ADU and is required to submit an affidavit approved by the PCDD 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.*

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.”

Staff Response: *This proposal is for one D-ADU on a single lot of record with no more than one primary dwelling unit. As shown in the plan set (Attachment A3 and A4), the D-ADU is connected to Lisa Lane via a gravel driveway.*

6. “ADU Size.

- a. Attached and Detached ADUs. An ADU shall not exceed 1,000 square feet.
- b. 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.”

Staff Response: *The proposed 1,616sf D-ADU with attached garage requires this Conditional Use Permit per BMC 20.10.036(B)(6)(c)(i) because the D-ADU with ancillary space exceeds 1,000sf.*

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 attached garage or carport faces a street, the entrance shall be set back a minimum of 25 feet from the front property line, and 10 feet from a side flanking property line.
- b. A five-foot side and rear yard setback shall be provided, measured from the property line to the foundation of the structure, except as follows:
 - i. When abutting an alley, there is no required side or rear yard setback from the alley.
 - ii. A D-ADU may be located in a rear yard and in the rear 22 feet of an interior side yard, provided:
 - (A) If a D-ADU is to be located less than five feet from any common property line, a joint agreement with the adjoining property owner(s) must be executed and recorded with the Whatcom County auditor’s office and thereafter filed with the city prior to issuance of building permit; or
 - (B) If site characteristics warrant such that, in the opinion of the director, impacts to abutting property would be negligible due to, but not limited to, one or more of the following:
 - (1) The existing use and development pattern on abutting property.
 - (2) Minimal disruption of solar access to outdoor recreation or garden space on abutting property compared to what may otherwise occur with the application of standard development regulations.
 - (3) Site characteristics such as building a D-ADU downslope from abutting property.
 - (4) Conversion of a detached accessory building that is at least five years old and has had no additions within the required side or rear yard within that time period.
 - (5) Conversion of a detached accessory building that is at least five years old and has had no additions within the required side or rear yard within that time period.
- c. A minimum six feet of separation is required between the primary dwelling unit and a D-ADU.”

Staff Response: *The proposed D-ADU meets all setback requirements.*

- The front yard (Lakeway Drive) setback (20’ from property line required, 23.7’ provided)
- The side yard on a flanking street (Lisa Lane) setback (25’ required per BMC 20.10.036(B)(7)(a), 25’ provided)
- The interior side yard (southwestern property line) setback (5’ required, 33.2’ provided)
- The rear yard (southeastern property line) setback (10ft required, 46’ provided)
- The primary residence and the D-ADU are separated by approximately 16’ (6’ required)

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

Staff Response: *The proposed D-ADU meets building height requirements and is approximately 22'10 3/4" tall.*

9. **“Parking.** Parking required for an ADU is in addition to that required for the primary dwelling unit.
- a. One on-site parking stall is required for an ADU, except as follows:
 - i. No parking is required when improved public street parking is available on at least one side of the block face whereon the ADU is proposed, on-street parking is constructed, or the ADU is within one-half mile walking distance to a major transit route.
 - ii. The director may waive parking based on the applicant’s demonstration of site-specific factors that justify a lower standard. Any request for a parking waiver shall be processed as a request for minor modification pursuant to subsection (B)(3) of this section.
 - b. Parking stalls shall be at least nine feet by 18 feet.
 - c. Parking shall not be located in required front or side street setbacks. Parking in the front portion of the lot shall be discouraged.
 - d. If the lot abuts an alley or private access easement, parking shall be accessed from said facility except when the director determines that such access is impractical or environmentally constrained. Any request to forgo alley access shall be processed as a request for minor modification pursuant to subsection (B)(3) of this section.
 - e. Parking accessed from a street or lane shall be limited to one driveway per frontage with a maximum width of 20 feet.”

Staff Response: *The proposed development meets parking requirements. Per BMC 20.10.036(B)(9)(a)(i), no parking is required for an ADU when improved public street parking is available on at least one side of the block face whereon the ADU is proposed. Improved public street parking is available on Lisa Lane, and therefore the applicant is not providing off-street parking for the D-ADU. The parking in the garage attached to the D-ADU will be for the primary residence. There are also two additional unstructured parking stalls for the primary residence provided on-site.*

10. **“Privacy.** Where practical, locate and design the ADU to minimize disruption of privacy and outdoor activities on adjacent properties. Strategies to accomplish this include, but are not limited to:
- a. Stagger windows and doors to not align with such features on abutting properties.
 - b. Avoid upper level windows, entries and decks that face common property lines to reduce overlook of a neighboring property.
 - c. Install landscaping as necessary to provide for the privacy and screening of abutting property.”

Staff Response: *The subject property is a corner lot and the placement of the D-ADU will be to the west of the existing primary residence away from the neighboring property to the east. Additionally, the D-ADU is located over 33' from the rear of the property creating distance from the neighboring property to the southwest.*

Staff finds the proposal mitigates privacy impacts by setting the building well away from neighboring property lines and neighboring yards, and by maintaining existing foliage and landscaping.

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 which case the primary dwelling unit will be responsible for all billing and maintenance of the services. Separate and independent services from each building may be required to meet the city’s adopted plumbing code. In all cases, the water service shutoff must be accessible to occupants of all units.
- b. *Electrical.* A primary dwelling unit and ADU(s) are permitted to have one shared electrical service if a single building or separate electrical services if separate buildings. A separate meter is permitted to serve an ADU, subject to compliance with the city’s adopted electrical code. A single main service panel may be allowed; provided, that occupants of all dwelling units have access to the overcurrent devices supplying their occupancy.
- c. *Gas.* A primary dwelling unit and ADU(s) may share natural gas services. An accessible shut-off valve must be upstream of the gas meter, on the exterior of the structure(s).
- d. Any utility lines being installed or altered must have their connections inspected as part of the building permit process.”

Staff Response: *City of Bellingham staff from applicable departments will review the D-ADU utility layout under the Building Permit for compliance with applicable BMC.*

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

Staff Response: *The ADU will meet all standards for health and life safety as set forth in the International Building Code, International Residential Code, Uniform Plumbing Code, National Electrical Code, International Mechanical Code, International Fire Code, and Washington State Energy Code as each code is adopted by the City; and any other applicable codes or regulations. A City of Bellingham Plans Examiner has performed a preliminary review of the project and determined it is generally consistent with applicable building codes. A 1-hour fire separation in accordance with ASTM E119 or UL263 is required between the ADU and garage. A formal compliance review will occur under the building permit.*

- 14. “Accessibility.** To encourage the development of housing units for people with disabilities, the director may allow reasonable deviation from the stated requirements to

install features that facilitate accessibility. Such facilities shall be in conformance with the city adopted building code.”

Staff Response: *Access to persons with disabilities is not required. Persons with non-ambulatory disabilities should be able to use this D-ADU.*

XI. CONCLUSION

Following a review of the applicant’s submittal materials, and consideration of the site context and history, staff believes the proposal, if conditioned properly, will comply with the applicable goals, policies, and regulations - including but not limited to Titles 20 and 21 BMC - and therefore recommends approval of a CUP for the construction of an oversized ADU with attached garage, subject to the conditions below.

XII. DEPARTMENT RECOMMENDATION

Should the Hearing Examiner find that the proposal described herein and as provided in **Attachments A1-4** meets the criteria, staff recommends the following conditions:

A. Recommended Conditions:

1. The owner shall reside in either the main residence or the ADU and is required to submit an affidavit approved by the PCDD 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.
2. If either the main residence or the ADU will be used as a rental unit, the subject rental unit is required to be registered with the Rental Registration & Safety Inspection Program per Bellingham Municipal Code 6.15.040.
3. The address of the primary residence shall be changed to 2300 Lisa Lane, and the address of the D-ADU shall be 2300 Lisa Lane #201.
4. Land on which the D-ADU is located shall not be subdivided from the primary residence.
5. Purchasers of homes with an ADU shall register with the Planning and Community Development Department within 30 days of purchase.
6. The applicant shall obtain all necessary permits for the proposal, and final inspection on these permits prior to any occupancy. The permits shall be generally consistent with the information and materials submitted with the CUP (as specified in **Attachments A1-4**), except as modified by this approval, and all other conditions contained in this approval.
7. Construction hours shall be limited to be between 7am and 7pm.
8. A phasing and construction staging plan shall be submitted and reviewed with the building permit to determine sequence of construction activities, parking of construction vehicles, and construction staging locations for equipment and materials. Said plan shall be available to the public upon request.
9. The CUP and ADU approval does not excuse the applicant from compliance with any other federal, state or local statutes, ordinances or regulations that may be applicable to this project.

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.

Prepared By



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Approved for Submittal By



Kurt Nabbefeld, Development Services Manager
Planning and Community Development Department