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

IN RE: JEFF BRUBAKER, Applicant 2609 Patton Street	HE-24-PL-014 FINDINGS, CONCLUSIONS, AND DECISION
USE2024-0010 and ADU2024-0041 / Conditional Use Permit for an Over-sized Detached Accessory Dwelling Unit	SHARON RICE HEARING EXAMINER

SUMMARY OF DECISION

The request for a conditional use permit and an accessory dwelling unit permit to convert an existing detached garage into a two-story detached accessory dwelling unit with ancillary garage space at 2609 Patton Street in Bellingham, Washington is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:
Jeff Brubaker (Applicant) requested a conditional use permit (CUP) and an accessory dwelling unit permit to add a second floor detached accessory dwelling unit (D-ADU) to an existing detached garage D-ADU at 2609 Patton Street in Bellingham, Washington.

Hearing Date:
The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request on June 26, 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. The record closed on June 28, 2024.

No in-person site visit was conducted, but the Examiner viewed the subject property and its surroundings on Google Maps.

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Testimony:

At the hearing the following individuals presented testimony under oath:

- Ryan Nelson, Planner, City of Bellingham
- Jon Falcon, Falconworks Design, Applicant’s Representative

Exhibits:

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

1. Planning and Community Development Department Staff Report to the Examiner with the following attachments:
 - A. Application materials:
 1. Application for a Conditional Use Permit (USE2024-0010)
 2. Accessory Dwelling Unit Application (ADU2024-0041) and ADU Occupancy Certification
 3. Site Plan, Floor Plans, Building Elevations
 - B. Pre-application Neighborhood Meeting Waiver Request (PRE2024-00017)
 - C. Notice of Complete Application (NOCA) and Notice of Application and Public Hearing
 - D. Certificate of Posting
 - E. Area 14, Birchwood Neighborhood Zoning Table (BMC20.00.020)
 - F. Comprehensive Plan Goals and Policies
 - G. Stratum Group, Coal Mine Subsidence Assessment, dated April 12, 2024
 - H. Public Hearing Notice Sign Posting

Having considered the testimony and exhibits submitted, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. Jeff Brubaker (Applicant) requested a conditional use permit (CUP) and an accessory dwelling unit (ADU) permit to convert an existing one-story, 720 square foot detached garage into a detached accessory dwelling unit (D-ADU) with garage ancillary space by adding a 768-square-foot second floor to the garage and remodeling 127 square feet of the ground floor of the garage for the

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D-ADU use. The proposed improvements would result in a D-ADU area of 895 square feet, ancillary garage space for use by the property owner of 550 square feet, and a total building floor area of 1,445 square feet. The subject property is addressed as 2609 Patton Street in Bellingham, Washington.¹ *Exhibits 1, 1.A1, 1.A2, and 1.A3.*

2. The subject property is in Area 14 of the Birchwood Neighborhood. It is zoned Residential Multi, Transition, Medium Density, which requires a minimum lot area of 4,000 square feet for single-family detached residences. *Exhibits 1 and 1.E.* D-ADUs are allowed in the Residential Multi zone subject to the requirements of Bellingham Municipal Code (BMC) 20.10.036. *Exhibit 1; BMC 20.32.030.A.*
3. The subject property is approximately 5,600 square feet in area and is developed with a 1,664 square foot single-family residence and the 720 square foot detached garage, which were constructed pursuant to City permits issued in 2013 and finalized in 2014. The subject property is served by public facilities (i.e., fire and police services) and water, sewer, and stormwater utilities. Pursuant to BMC 20.10.036, a primary dwelling and an ADU may have shared water, sewer, and stormwater utilities. *Exhibits 1 and 1.A3; Ryan Nelson Testimony; Google Maps site view.*
4. The subject property abuts Patton Street to the east and an alley to the west. The detached garage faces and is accessed from the alley. Patton Street is a collector arterial street with 60 feet of right-of-way. Parking is available on the west side of the street along the property frontage. The opposite side of the street is improved with a sidewalk. Transit service is available to the subject property through a stop on Lindbergh Avenue. *Exhibits 1 and 1.A3; Ryan Nelson Testimony; Google Maps site view.*
5. Surrounding properties share the subject property's zoning designation and are developed residentially. Other land uses within the property vicinity include Bellingham Technical College and a public park. *Exhibits 1 and 1.E; Google Maps site view.*
6. The existing garage is 21 feet, seven inches tall. The proposal would be consistent with BMC 20.10.036.B.8, which restricts D-ADU building height to 24 feet (per definition number 1). The proposed second floor would not

¹ The legal description of the property is: Eldridge's 2nd Add to Bellingham Lot 2, Blk 1. The tax assessor parcel number is 380224021143. *Exhibits 1 and 1.A1.*

1 significantly alter the height of the existing garage, which has a steeply pitched
2 roof. Instead, the pitch of the roof would be modified and living space built
3 above the garage below, resulting in a building height as measured to the roof
4 peak of 21 feet, 11 inches, only four inches higher than the current structure.
5 The architectural style and materials would be consistent with the existing
6 residence and with the character of surrounding dwellings. *Exhibits 1 and 1.A3;*
7 *Jon Falcon Testimony.*

- 6 7. Consistent with BMC 20.10.036.B(6)(c)(iii) and (a), the floor area of the D-
7 ADU excluding ancillary space (i.e., the garage) would not exceed 1,000 square
8 feet. The upper floor would be created within the existing garage by adding
9 onto the existing walls and cantilevering the upper floor footprint slightly out
10 beyond the existing ground floor footprint. Only 48 new square feet of
11 impervious surfaces would be created, comprised of additional roof overhang
12 and 1.5-foot cantilever to the south to make room for the staircase. *Exhibits 1*
13 *and 1.A3; Jon Falcon Testimony.*
- 13 8. The minimum building setbacks for a D-ADU are the same as those required for
14 the primary dwelling unit with respect to the front property line and five feet
15 from the side and rear lot lines, except that no setback is required from an alley.
16 The minimum distance between the primary dwelling unit and a D-ADU is six
17 feet. *BMC 20.10.036.B(7).* The proposed D-ADU, which would occupy the
18 same footprint as the existing garage, would meet all setback requirements. The
19 garage's setback from the nearest side property line is five feet, and the distance
20 between the residence and garage is 14 feet, 10 inches. *Exhibit 1.A3.*
- 19 9. The D-ADU is exempt from the parking requirement of BMC 20.10.036.B(9)
20 (one on-site parking stall) because improved public street parking is available on
21 Patton Street. However, the Applicant proposes to provide a parking space on
22 the south side of the D-ADU that would be accessed from the alley. *Exhibits 1*
23 *and 1.A1; Ryan Nelson Testimony.*
- 23 10. Pursuant to BMC 20.30.040.H, one street tree is required for every 50 feet of
24 street frontage, which requirement applies "for all new and redeveloped
25 properties unless already installed as part of a land division process." *BMC*
26 *20.30.040.H; Exhibit 1.* In this case, there are currently no street trees along the
27 subject property's Patton Street frontage. For consistency with the ordinance
28 and Comprehensive Plan policy EV-34 (see Finding 14, below), the City
29 recommended that the Applicant plant one street tree adjacent to or within the
30 right-of-way, subject to applicable permitting requirements. *Exhibit 1.*

- 1 11. The subject property is within a coal mine hazard area. The Applicant
 2 submitted a coal mine hazard and subsidence assessment prepared by a qualified
 3 professional, which determined that the risk of surface subsidence would be
 4 negligible and not require mitigation, and that the project would not increase the
 5 risk of geologic hazards on or off the site. *Exhibits 1 and 1.H.* No other critical
 6 areas would be affected by the project, and no trees would need to be removed.
 7 *Exhibit 1.*
- 8 12. Owner-occupancy of the primary residence or the D-ADU is not required
 9 because the property is within a Residential Multi zone. *Exhibit 1; BMC*
 10 *20.10.036.B(4).*
- 11 13. Planning Staff reviewed the application and determined that, with approval of
 12 the CUP, the ADU development standards set forth in BMC 20.10.036 would be
 13 satisfied. BMC 20.10.036.B.6.c.i. requires a CUP for D-ADUs with ancillary
 14 space that together exceed 1,000 square feet in area. *Exhibit 1.*
- 15 14. Planning Staff submitted that the proposal would be consistent with many goals
 16 and Policies of the Bellingham Comprehensive Plan, including but not limited to
 17 the following:
 18 Land Use
 19 Policy LU-1: The Single-Family Residential designation permit a range of
 20 housing densities to achieve the City’s housing diversity and affordability
 21 goals. In undeveloped or infill areas, new housing may include single-family
 22 detached, single-family attached, townhouses, cottage housing, accessory
 23 dwelling units, clustered housing, and other small-scale housing forms.
 24 Accessory, public, and semipublic uses are also allowed.
 25 Policy LU-4: Protect the unique character and qualities of existing
 26 neighborhoods, while identifying opportunities for improved livability, safety,
 27 and housing affordability and diversity.
 28 Policy LU-10: To achieve a healthy mix of housing that is affordable to a wide
 29 range of incomes, implement and seek new, innovative tools, including, but
 30 not limited to: ... accessory dwelling units
 Community Design
 Policy CD-33: Encourage the construction of innovative, small-scale housing
 types that fit the context of single-family neighborhoods such as accessory
 dwelling units, cottage housing, cohousing, townhomes, zero lot line homes,
 and small lot housing.

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 therefore, 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:

1 BMC 20.10.036

2 A. Purpose and Authority

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

15 B. Standards and Criteria.

- 16 1. Accessory dwelling units (ADUs) may be allowed in general use types where
17 listed as a permitted use if they comply with the requirements listed in this
18 section, except on property regulated by Chapter 16.80 BMC, Lake Whatcom
19 Reservoir Regulatory Provisions.
- 20 2. An ADU shall comply with all zoning code provisions for the primary dwelling
21 unit, including height, setbacks, floor area, accessory buildings and open space,
22 except as provided in this section. This provision shall also apply to ancillary
23 structures attached to a D-ADU such as garages, carports, garden sheds and
24 workshops.
- 25 3. Applicants may request minor modifications to the development and design
26 standards for ADUs. A minor modification is a request by the applicant to meet
27 or exceed a particular ADU standard through the use of a technique or
28 alternative standard not otherwise listed under the applicable requirement. Minor
29 modifications are not variances and are not required to meet all of the criteria
30 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

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

4. *Ownership and Occupancy.*

- 10 a. The land on which the ADU is located shall not be subdivided from the land
11 on which the primary dwelling unit is located, but the ADU may be
12 segregated in ownership from the primary dwelling unit.
13 b. Owner occupancy is required for properties that include an ADU (or ADUs)
14 in areas zoned residential single until occupancy requirements are preempted
15 by the state law. Prior to implementation of state law, the following applies.
16 The property owner shall submit an affidavit, approved by the director,
17 acknowledging the owner occupancy requirement for as long as the ADU is
18 maintained on the property or until owner occupancy requirements are
19 preempted by the implementation of state law. The property owner shall
20 submit the affidavit to the city prior to issuance of the building permit. The
21 affidavit shall specify the requirements for owner occupancy and purchaser
22 registration as follows:
23 i. An owner of the subject property shall reside on the premises, whether in
24 the primary or accessory dwelling; provided, that:
25 (A) In the event of illness, death or other unforeseeable event which
26 prevents the owner's continued occupancy of the premises, the
27 director may, upon a finding that discontinuance of the ADU would
28 cause a hardship on the owner and/or tenants, grant a temporary
29 suspension of this owner-occupancy requirement for a period of one
30 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.

1 Thereafter, the property shall be occupied by the owner, or
2 transferred to a different owner who will reside on the premises.

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

5 5. *Site Requirements.*

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

12 6. *ADU Size.*

- 13 a. *Attached and Detached ADUs.* An ADU shall not exceed 1,000 square feet.
- 14 b. *Attached ADUs (A-ADU).* The maximum floor area in subsection
15 (B)(6)(a) of this section does not apply when the basement of a primary
16 dwelling unit is converted to an A-ADU and the primary dwelling unit has
17 been on the site for at least five years.
- 18 c. *Detached ADUs (D-ADU).* The floor area for D-ADUs shall be calculated
19 to include all attached ancillary space (garage, workshop, garden shed, etc.).
20 Maximum allowed floor area limits are as follows:
- 21 i. A D-ADU with ancillary space may exceed 1,000 square feet when
22 approved by the hearing examiner by conditional use permit pursuant to
23 Chapter 20.16 BMC.
- 24 ii. When an oversized detached accessory building approved by conditional
25 use permit has been on site for at least five years, conversion of said
26 building to a D-ADU may occur without subsequent conditional use
27 permit approval.
- 28 iii. For subsections (B)(6)(c)(i) and (ii) of this section, the floor area of the
29 D-ADU, sans ancillary space, shall not exceed that specified in
30 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
attached garage or carport faces a street, the entrance shall be set back a

1 minimum of 25 feet from the front property line, and 10 feet from a side
2 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
8 interior side yard, provided:

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

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

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

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

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

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

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

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

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.

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.

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

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

22 Conclusions Based on Findings

- 23 1. Addressing the CUP criteria established in BMC 20.16.010.B, the following
24 conclusions are entered.
- 25 a. As conditioned, the proposed D-ADU would promote the health, safety, and
26 general welfare of the community. The general welfare would be served by
27 an additional housing unit in an area served by public facilities and services
28 such as parks and transit. The project would not increase geologic hazard
29 risks. *Findings 2, 3, 4, 5, 11, and 18.*
- 30 b. The D-ADU use is consistent with the purpose and intent of the Residential,
Multi use type in that D-ADUs are an allowed use and applicable height and
setback standards would be satisfied. *Findings 2, 6, and 8.*
- c. As conditioned, the use would not be detrimental to the surrounding
neighborhood. The conditions of approval require the owner to register with
the City if one of the dwelling units is to be used as a rental, limit
construction hours to 7:00 am to 7:00 pm, and plant a street tree. The
project would not increase geologic hazard risks. Due to roof pitch of the

1 existing garage, the second floor addition would not significantly increase
2 the overall height of the building. The proposed design adds a dwelling unit
3 without appreciably increasing the size of the existing structure. *Findings 6,*
7, 11, 12, and 18.

- 4 2. Addressing the CUP criteria established in BMC 20.16.010.C, the following
5 conclusions are entered.
- 6 a. As conditioned to require planting a street tree, development of the D-ADU
7 would be harmonious with the Comprehensive Plan. *Findings 4 and 10.*
 - 8 b. Surrounding parcels are already developed and served by streets and
9 utilities, and the proposed D-ADU would not prevent continued use of
10 surrounding parcels. *Findings 3, 4, and 5.*
 - 11 c. The proposal would be compatible with the essential character of the
12 existing neighborhood. The D-ADU would be a residential use. The lot is
13 large enough to accommodate the use while providing building setbacks that
14 meet code minimums. The finished building height would not be
15 significantly taller than the current building height. The proposed design
16 and materials would be consistent with the primary residence. Provision of a
17 smaller infill dwelling unit near Bellingham Technical College is an
18 appropriate use of the property consistent with the neighborhood. *Findings*
3, 5, 6, and 8.
 - 19 d. The project would be adequately served by public facilities and utilities.
20 *Findings 3 and 4.*
 - 21 e. The project would not create excessive vehicular congestion. There would
22 be sufficient parking on site and on the street to serve both the primary
23 residence and the D-ADU, and transit is available. *Findings 1, 4, and 9.*
 - 24 f. The proposal would not create a hazard to life, limb, or property. The
25 project would not increase geologic hazard risks. Compliance with the
26 City's building, fire, and other codes would be determined during building
27 permit review. *Findings 3, 4, 5, 9, 11, and 18.*
 - 28 g. As conditioned, the use would not create influences substantially detrimental
29 to neighboring uses. The proposed D-ADU would not generate impacts that
30 are different from the existing residential use. The conditions of approval
limit construction hours. *Findings 3 and 6.*
 - h. The record does not indicate the presence of any natural, scenic, or historic
feature of major consequence in the area aside from the Coal Mine Hazard
area. The record contains credible evidence supporting a conclusion that

1 construction would not exacerbate any hazards associated with this critical
2 area. *Findings 5 and 11.*

- 3 3. As conditioned, the proposal is consistent with the applicable standards and
4 criteria for an ADU set forth in BMC 20.10.016.B. Specifically, the use is
5 permitted by the Residential Multi use type, would comply with applicable
6 zoning standards, would have direct access to a street via an alley, would meet
7 or exceed or all required yard/setback and building separation standards, and
8 would comply with the 24-foot height limitation. The subdivision limitation is
9 addressed through a condition of approval. The utility and building code
10 requirements would be addressed during building permit review. The proposal
11 is exempt from the parking standard for ADUs due to the availability of street
12 parking. The overall D-ADU size, which exceeds 1,000 square feet including
13 ancillary space, has been addressed by the CUP. Consistent with BMC
14 20.10.016.B.6.c.iii, the D-ADU portion of the combined structure would not
15 exceed 1,000 square feet. The designer and Applicant are to be commended for
16 their efficient and low impact design. *Findings 1, 2, 3, 5, 7, 8, 9, 10, 13, 14, and*
17 *18.*

15 DECISION

16 Based on the preceding findings and conclusions, the request for a conditional use
17 permit and an accessory dwelling unit permit to convert an existing detached garage
18 into a two-story detached accessory dwelling unit with ancillary garage space at 2609
19 Patton Street in Bellingham, Washington is **APPROVED** subject to the following
20 conditions:

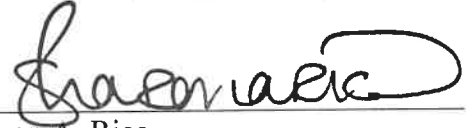
- 20 1. If either the main residence or the ADU will be used as a rental unit, the subject
21 rental unit is required to be registered with the Rental Registration & Safety
22 Inspection Program per BMC 6.15.040.
- 23 2. Land on which the D-ADU is located shall not be subdivided from the primary
24 residence unless preempted by local or state law.
- 25 3. Purchasers of homes with an ADU shall register with the Planning and
26 Community Development Department within 30 days of purchase.
- 27 4. All necessary City permits shall be obtained prior to construction.
- 28 5. The design and size of the D-ADU shall be substantially as shown in Exhibit
29 1.A3.

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- 6. Construction noise is prohibited between the hours of 10 p.m. and 7 a.m., pursuant to BMC 10.24.120.
- 7. One street tree is required to be planted adjacent to the Patton Street right-of-way within the property lines or within the Patton Street right-of-way abutting the subject property. If the street tree is planted in the public right-of-way, a street tree permit is required to be submitted and approved by the City. Street trees shall meet the standards, pursuant to BMC 20.12.030 (D).
- 8. In the event the owner/applicant fails to comply with the terms of the conditions herein, the permit(s) may be rescinded.
- 9. Pursuant to BMC 20.16.010, the Planning and Community Development Director may administratively consider and approve one-time non-accumulative additions, modifications or changes in accordance with BMC 20.16.010(I).

DECIDED July 15, 2024.

BELLINGHAM HEARING EXAMINER


Sharon A. Rice