



Planning and Community Development Department

210 Lottie Street, Bellingham, WA 98225

Phone: (360) 778-8300 Fax: (360) 778-8301 TTY: (360) 778-8382

Email: planning@cob.org Web: www.cob.org

CONSOLIDATED PERMIT FOR DESIGN REVIEW PERMIT AND CRITICAL AREAS

DR2023-0018 and CAP2023-0026

4193 Northwest Avenue

Type II

I. SUMMARY OF DECISION

Project Name:

Proposal:

20 lot infill toolkit cluster subdivision on an approximately sized 2.24-acre property abutting Arctic and Mahogany Ave's to the west, Northwest Ave to the east, and undeveloped Division Road to the north. The existing single-family residence (SFR) is proposed to be retained and incorporated into the subdivision and an accessory dwelling unit (ADU) is proposed above a new detached garage for the SFR. A total of 19 infill townhomes are proposed to be developed in accordance with BMC 20.28.140 on the other 19 lots.

Due to the presence of a wetland bisecting the subject property, the subdivision is configured as two separate east/west development areas fronting Arctic/Mahogany Ave's and Northwest Ave respectively. Stormwater from the eastern portion of the site will be coordinated with the abutting property to the south (4185 Northwest Ave) and discharged into the wetland buffer, and stormwater from the western portion of the site will discharge to the City of Bellingham North End Regional Pond (NERP).

As analyzed by the project biologist, Miller Environmental Services LLC., wetland buffer impacts have been minimized as feasible; however, the development necessitates wetland buffer reduction and impacts totaling approximately 9,613 square feet (sf). Compensation for wetland buffer impacts includes onsite wetland buffer enhancement totaling more than 9,636 sf of buffer area currently rated as having a low habitat function.

A shared access lane with the southern neighbor (4185 Northwest Ave) will be provided off Northwest Ave and the existing driveway will be decommissioned. A Public Works administrative variance has been approved in accordance with BMC 13.52.120 for secondary access off Mahogany Ave. The applicant is requesting a subdivision variance from improving the abutting Division Road right-of-way (SUB2023-0031). A privately constructed and maintained trail with a public access easement is proposed through the west development area connecting Mahogany Ave to the southern property at 4197 Dover Street.

This Consolidated Permit includes review of the design, infill housing, and critical areas applications. Multifamily design review is required per BMC 20.25.020(B). A critical area permit is required per BMC 16.55.070(A). The project underwent SEPA environmental review per BMC 16.20.090(D) and the WAC 197-11-800 and a DNS was issued on 4/23/24. The associated 20-lot

preliminary cluster subdivision and subdivision variance (SUB2023-0031) to not improve Division Road per BMC 23.16.010(A) and BMC 23.48.040 are under concurrent review through the Type III review process with a final decision issued by the hearing examiner.

Project Location: 4193 Northwest Ave. Meridian Neighborhood, Area 2, zoned Residential Single Planned/Mixed, 3,600 square feet (sf) per unit for Infill Development Consistent with BMC 20.28. Single family detached cluster lots require a minimum lot size of 4,000 sf pursuant to BMC 23.08.050(A)(3).

Applicant: Ali Taysi, AVT Consulting, 1708 F Street, Bellingham WA 98225

Property Owner: Victor and Galina Shintar, 4193 Northwest Ave Bellingham WA 98226

Decision: Approval with Conditions.

Date: June 26, 2024

II. PROPERTY DESCRIPTION

Abbreviated Legal Description: NORTHWEST BAKER VIEW TRACTS LOT 8-EXC PTN TO CITY FOR RD DESC AF 2017-0401662

Whatcom County Assessor ID#: Parent Parcel No. 3802114351250000

III. PERMIT PLANS AND EXHIBITS

This approval includes the following documents, subject to any modifications and conditions contained in **Section V** of this permit:

Exhibit A – Design Review and Critical Area Permit Land Use Applications

Exhibit B – Project Plans Set updated May 31, 2024

Exhibit C – Applicant Narrative updated December 17, 2023

Exhibit D - Revised Critical Area Report prepared by Miller Environmental Services, LLC, dated May 31, 2024

Exhibit E - Revised Wetland Buffer Exhibit prepared by Freeland & Associated, dated May 28, 2024

Exhibit F – City Request for Information Letters (July 27, 2024, and February 2, 2024)

Exhibit G – Applicant Response to RFIs (December 12, 2023, March 19, 2024, April 24, 2024, and May 31, 2024)

Exhibit H – Public Comment

Exhibit I - DNS

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

BACKGROUND / CHRONOLOGY

1. The subject property is 96,184 square feet (sf) (2.24 acres) according to Whatcom County Assessor's information and developed with a single-family residence and two detached accessory buildings.
2. The subject property is in Area 2 of the Meridian Neighborhood, zoned residential single Planned/Mixed. The base density for the property is 3,600 square feet per unit when developed with infill housing pursuant to BMC 20.28.050(B) and BMC 20.00.100. The maximum allowed density for the subject property is 27 units.
3. Per BMC 23.08.050(A)(3), single family detached cluster lots are required to be a minimum 4,000 square feet.
4. The Proposal includes two housing types: infill toolkit townhomes on fee simple lots (Lots 1-19) and a single family detached cluster lot (Lot 20). The proposed 20 lot infill toolkit cluster subdivision complies with the maximum allowed overall density and the minimum single family detached cluster lot size. Retention of the existing single-family residence requires preliminary subdivision approval for the creation of the proposed single family detached cluster lot, Lot 20.
5. The property is legally described as Lot 8 of the Northwest Baker View Tracts except for the portion dedicated to the City identified in Auditor's File No. 2017-0401662.
6. Properties immediately south are in the same subarea. Preliminary plat approval has been granted (HE-23-PL-022) for 4185 Northwest Ave for nine (9) shared court infill toolkit units and ten (10) infill toolkit townhomes. As of the writing of this decision, land use applications have not been submitted for the southern undeveloped property at 4179 Dover Street. Properties north of the subject site are developed with single family residential uses, are in Area 20 of the Cordata Neighborhood, and zoned residential single detached, cluster, cluster attached, and cluster detached and mixed limited duplex and multifamily. Property to the east across Northwest Ave is developed with an electric substation, is in Area 19 of the Cordata Neighborhood, and zoned Commercial, Planned. Property to the west across Arctic Avenue is developed with Costco, is in Area 5 of the Meridian Neighborhood, and zoned Industrial/Commercial Planned, mixed.
7. The Proposal is exempt from having to obtain planned development approval per BMC 20.28.030(B) provided the requested 20-lot preliminary subdivision (SUB2023-0031) is approved. A planned development application was not submitted for this proposal as it relies on approval of the preliminary subdivision application. Additionally, infill housing is allowed in single-family zoned areas only when each unit is placed on a separate fee simple lot. This consolidated permit decision can only be approved if appropriately conditioned that the associated preliminary cluster subdivision application is approved, and this permit decision is subject to the terms and conditions of the Hearing Examiner's decision for the preliminary cluster subdivision.
8. Chapter 23.08 BMC includes provisions for plat design, lot standards, and improvements standards. BMC 20.28.050(D) includes additional regulations for infill subdivision. This consolidated design review and critical area permit decision shall be contingent upon Hearing Examiner approval of preliminary plat and variance from street improvements (SUB2023-0031).
9. Per BMC 20.25.020(B)(1)(d), all infill housing development pursuant to Chapter 20.28 BMC requires multifamily design review and consistency with the provisions of the adopted multifamily residential design handbook.
10. On 11/23/2021, the applicant completed a pre-application conference with City staff (PRE2021-0112).

11. On 3/31/2022, the applicant held a virtual pre-application neighborhood meeting (PRE2022-0029). The land use consultant and City project planner were in attendance and no members of the public attended the meeting.
12. On 6/29/2023, the applicant submitted applications for Preliminary Subdivision, Subdivision Variance from street improvements, Design Review, Critical Areas, and SEPA checklist **(Exhibit A-D)**.
13. On 7/27/2023, city staff issued a Notice of Complete in accordance with Title 21 BMC.
14. On 7/27/2023, city staff also issued a Request for Information (RFI) Letter **(Exhibit F)**. Requested information pertained to fire addressing, stormwater regulations, revisions to the critical area report and mitigation plan to depict buffer impacts and comply with the 15' building setback from buffer, notification of required ADU permit approval concurrently with the consolidated permit or with the future building permit, revisions to the Narrative to explain the preliminary cluster subdivision request, density regulations, and remove reference to the invalid minor modification request from BMC 20.28.050G.1. and BMC 20.28.140.F.1 because the proposal fronts all units on either a lane or street, revisions to the project to incorporate a pedestrian connection to the south neighboring property, provision of street and lane trees, recommendations on townhouse orientation, reduction of driveway widths, provision of landscape beds near garages, required minor modification for setback reduction from lanes, designing modulating units, information on refuse storage, and information on heat pump locations and screening.
15. On 12/19/2023, the applicant submitted revised materials in response to the 7/27/23 RFI **(Exhibit G)**.
16. On 1/19/2024, city staff issued a Notice of Application and Optional Determination of Non-Significance and mailed notice was provided in accordance with Title 21 BMC.
17. One request for information was received during the public comment period **(Exhibit H)**. The commentor requested a PDF copy of the plans set to review. Staff provided the document and the commentor had no further questions or opinions. All correspondence was forwarded to the applicant.
18. On 2/2/2024, city staff issued a second RFI Letter **(Exhibit F)**. Requested information pertained to revisions to the mitigation plan to account for buffer impact related to the proposed trail construction and provision of a tree survey. Design related revisions included changes to the four-unit townhouse building along Northwest Ave to orient to the street, provide entrances along the pedestrian corridor, provide modulation, and emphasize front porches. Other design related revisions pertained to the provision of windows on the three-unit townhome buildings to resolve blank walls as well as define the programming in the proposed common usable space between the three-packs.
19. On 3/19/2024, the applicant submitted revised materials in response to the 2/2/24 RFI.
20. On 4/22/2024, the applicant and city staff held a meeting to discuss minor code compliance items and design options pertaining to the location of lane trees, landscaping near garages, provision of windows, and orientation of the pedestrian pathways.
21. On 4/23/2024, a Determination of Non-significance was issued for the project (SEP2023-0024) **(Exhibit I)**.
22. On 4/24/2024, the applicant submitted updated plans in response to the 4/22/24 meeting. Staff found the revisions adequately addressed the previous code compliance items except for the location of lane trees. The revised plan did not provide enough information to conclude whether planting beds are large enough for lane trees to survive.
23. On 5/31/24, the applicant submitted a narrative, a revised site plan **(Exhibit B)**, and a revised critical area report **(Exhibit D)** denoting changes to the stormwater plan for the eastern portion of the development. The narrative explained that coordination with the southern neighbor's contracted civil engineer regarding the proposed shared stormwater infrastructure resulted in changes to site plan layout and wetland impacts. Stormwater infrastructure was proposed to

be closer to the subject site and south of the proposed two-unit townhouse. Infrastructure includes a stormwater vault located on the property line between the two projects and a stormwater outfall to the wetland located in the center of the subject property. To meet the required setbacks from the stormwater vault and outfall, the two-unit townhouse was shifted north and rotated slightly to achieve a 10-foot setback from the detention vault wall. The outfall extends northwest from the vault and in order to catch grade, the outfall pipe extends a short distance into the buffer (the minimum necessary). These changes resulted in small additional wetland impacts as shown in the updated mitigation plan and on the updated site plan. The shift in the duplex townhouse to the north did not generate additional buffer impacts, was generally consistent with previous modification requests, and the overall development maintains compliance with development regulations including floor area ratio requirements. Staff found the viability of lane trees was still not adequately supported by **Exhibit B**. This permit should be properly conditioned to require additional evidence and/or changes to the landscape plan at time of building permit, demonstrating that required lane trees can be planted in the locations identified in **Exhibit B**. PCDD should have discretion to require lane trees be relocated, impervious surface area be reduced, and/or landscape beds be increased in size to accommodate required lane trees specifically next to the garages of the Arctic Ave townhomes, on the west side of the southwest 3-pack townhome, between the garages of the 2-pack townhome, and between the entrance and garages of the Northwest Ave fronting 4-pack townhouse building.

24. Staff reviewed the proposed changes and determined them consistent with previous analysis and the DNS.
25. Any Findings of Fact that should be denominated a Conclusion of Law shall be deemed to be a Conclusion of Law.

INFILL TOOLKIT

1. BMC 20.28 establishes development standards and additional design standards for Infill Housing. Infill Toolkit Townhouse standards are BMC 20.28.140.
2. The project generally complies with the general and specific townhouse standards in BMC 20.28 with the exception of four (4) modification requests. It should be noted that units which only front the proposed lanes are subject to lane regulations regarding setbacks, driveway width, and garage proportionality. Units fronting Arctic Ave, Mahogany Ave, and the pedestrian corridor perpendicular to Northwest Ave utilize the lane as an alley and are exempt from compliance with associated lane standards.
3. BMC 20.28.010(C) establishes that “larger scale projects and green field development may necessitate unique design solutions and exceptions to standards that were not specifically contemplated by this chapter. This may include increased allowance in height, floor area, and other standards, especially when creating entirely new neighborhoods.”
4. Modifications to development and design standards may be requested in accordance with BMC 20.28.030(B) and approved if determine the modification criteria pursuant to BMC 20.28.030(B)(1 and 2) are met.
 - 1a. The site is constrained due to unusual shape, topography, easements, sensitive areas, the location of pre-existing improvements, or other extraordinary situation or condition, or
 - 1b. The granting of the modification establishes a better development pattern found to be compatible with adjacent development (existing and anticipated) including, but not limited to, pedestrian-oriented development, setbacks, lot orientation, or other contextual elements associated with the proposed development; and
 2. The modification is consistent with the purpose and intent of this chapter.

5. The project includes the following minor modification requests:
- a. BMC 20.28.140(B)(2), Front yard setback. Per this section, front yard setbacks are required to be between 10' and 20' in depth from the fronting street. BMC 20.28.050(G)(2) requires that lanes "shall be considered streets for frontage, setback and design purposes".

Request: Increase the front yard setback from the lane to the interior two-unit townhomes to approximately 42' and 34'. Also, decrease the front yard setback for the southern three-unit townhomes to approximately 5' from the building wall and 2' from the front porches.

Analysis: The applicant's justification for the requested modification is outlined in **Exhibit C**. Staff agree with the stated justification and find the criteria in BMC 20.28.030(B)(1a) and (2) can be met when properly conditioned. The site is physically constrained due to the long narrow shape of the property and presence of wetlands bisecting the property. To comply with the purpose and intent of the infill chapter (BMC 20.28) regarding enhancement of the pedestrian realm and de-emphasizing parking, approval of this modification should be on the condition that the driveways leading to the two-unit townhomes be finished with a textured material distinct from the lane and pedestrian pathway surface. Also, a landscape bed should be configured between the garages to break up the hard surface.

- b. BMC 20.28.140(B)(2), Rear yard setback. Per this section, rear yard setbacks are required to be a minimum of 10' when not abutting an alley.

Request: Reduce the rear yard setbacks for the southernmost unit of the two-unit townhomes to approximately 7' and reduce the rear yard setback for the southern three-unit townhomes to approximately 5' with upper-level deck 3' from rear property line.

Analysis: Staff find the criteria in BMC 20.28.030(B)(1a) and (2) can be met when properly conditioned. The site is physically constrained due to the long narrow shape of the property and presence of wetlands bisecting the property. The proposal complies with the purpose and intent of the infill chapter (BMC 20.28) by optimizing density and development of an underutilized property near urban services. Considering the three-unit townhomes do not have doors leading to the rear yards, access and maintenance to these yards is not possible without crossing proposed property lines. To ensure these yards are accessible for use and maintenance, this modification should be approved on the condition that doors be configured in the garages of the three-unit townhomes, or a private easement be recorded allowing cross access through the subject rear yards by and for all property owners of the southern three-unit townhomes. Additionally, the building permit should comply with building code regulations regarding fire rated construction for the proposed decks within 3' of the rear property line.

- c. BMC 20.28.050(A)(4)(b), Driveway width. Per this section, "The maximum width of a driveway serving an individual unit that crosses a pedestrian facility associated with a street or lane shall not be more than 12 feet."

Request: Increase the width of the driveways leading to the interior two-unit townhomes to approximately 18.5' and 20' at their widest and tapering down to 13' as depicted on the revised landscape plan (**Exhibit B**).

Analysis: Staff find the criteria in BMC 20.28.030(B)(1a) and (2) can be met when properly conditioned. The site is physically constrained due to the long narrow shape of the property and presence of wetlands bisecting the property. To comply with the purpose and intent of the infill chapter (BMC 20.28) regarding enhancement of the pedestrian realm and de-emphasizing parking, approval of this modification should be on the condition that the driveways leading to the two-unit townhomes be finished with a textured material distinct from the lane and pedestrian pathway surface. Also, a landscape bed should be configured between the garages to break up the hard surface.

- d. BMC 20.28.140(B)(2). Garage setback. Per this section, garages and carports shall be set back at least four feet from the street face of residential buildings (excluding front porches).

Request: Waive the garage setback requirement for the interior two-unit townhouse and southern three-unit townhomes as the garages extend beyond the front planes of the units.

Analysis: Staff find the criteria in BMC 20.28.030(B)(1a) and (2) are met. The site is physically constrained due to the long narrow shape of the property and presence of wetlands bisecting the property. The proposal complies with the purpose and intent of the infill chapter (BMC 20.28) by optimizing density and development of an underutilized property near urban services. The proposed townhome designs otherwise comply with infill design standards regarding provision of front porches and garage widths less than 50% of the unit width.

6. To comply with, BMC 20.28.110(G)(1)(e), windows should be provided on the garage doors of all townhome units.
7. A final landscape plan for the entire proposal should be submitted for review and approval concurrently with the first building permit application for the proposal, demonstrating compliance with the tree replacement requirements in this permit, landscaping conditions in this permit, as well as open space, green factor requirements enumerated in BMC 20.28.140(D), including demonstration that required lane trees can be planted in the locations identified in **Exhibit B**. PCDD should have discretion to require lane trees be relocated, impervious surface area be reduced, and/or landscape beds be increased in size to accommodate required lane trees specifically next to the garages of the Arctic Ave townhomes, on the west side of the southwest three-unit townhome, between the garages of the interior two-unit townhome, and between the entrance and garages of the Northwest Ave fronting four-unit townhouse building.
8. Per BMC 20.28.050(I)(1), one street tree shall be required for every 40 feet of street frontage. This permit should be properly conditioned to require the applicant obtain a street tree permit for street tree installation along the property's Arctic, Mahogany, and Northwest Avenue street frontages.
9. The project does not include information regarding fence design or location. This permit should be properly conditioned to require any fencing proposed under future building permits comply with all applicable regulations in BMC 20.28. Fencing should delineate common and private usable spaces and pathways. Fencing in the front and side yards should be limited to

42 inches in height and no more than 60 percent opaque. Chain link or cyclone fencing should be prohibited.

10. For the project to comply with applicable provisions of Chapter 20.28 BMC regarding Townhouse development on fee simple lots, approval of the Design Review Application (DR2023-0018) shall be conditioned on Hearing Examiner approval of the preliminary cluster subdivision and land division variance (SUB2023-0031).
11. As conditioned herein, the proposed development complies with the General Standards in BMC 20.28.050 and BMC 20.28.140.

DESIGN REVIEW

12. Per BMC 20.25.020(B)(1)(d), the proposed infill development requires compliance with the Multi-family Design Standards.
13. The Proposal generally complies with the Multifamily Design Standards enumerated in the Multifamily Residential Handbook (BMC 20.25.020(B)(4)).
14. To comply with Section ID of the Multifamily Residential Handbook regarding preservation of significant natural features and land clearing regulations in BMC 16.60, significant trees (trees larger than 6" diameter at breast height) that must be removed should be replaced at a ratio to be determined by the PCDD. As submitted, the project scope proposes to remove 13 significant trees outside of wetland and wetland buffers. To comply with the Clearing and Grading section of the Multifamily Residential Handbook and the Clearing Chapter of the BMC (16.60), this permit should be properly conditioned to require a 1:1 replacement ratio for all removed significant trees. A tree retention plan should be submitted with the building permits. Said plan should identify all existing trees on site and in the abutting rights-of-ways, including size and species. Said plan should identify tree removal and strategies for retention of existing trees (such as installation of protective fencing). Replacement trees should be native species and a minimum one-gallon size at time of planting. A landscape plan should be submitted with the building permits identifying the location and species of 13 native trees to mitigate the removed 13 significant trees.
15. To comply with Section IG2 of the Multifamily Residential Handbook, this permit should be properly conditioned to require building and site lighting be downcast or shielded to prevent off-site glare. A photometric plan should be submitted with the first building permit application for the proposal demonstrating no footcandle spread beyond the property lines.
16. To comply with Section IF of the Multifamily Residential Handbook, the proposed common usable space area located between the southwesterly three-unit townhomes and depicted in **Exhibit B**, should be revised to include landscaping in addition to the grass lawn area to buffer the ground floor windows. Additionally, the common usable space should incorporate the 5' southern landscape buffer. Fencing should be installed at the perimeter to delineate this usable space area.
17. To comply with Section IH of the Multifamily Residential Handbook, the proposed trash enclosure should be comprised of durable materials coordinated with the project design. Chain link fencing should be prohibited.
18. To comply with Section IID of the Multifamily Residential Handbook, the four-unit townhouse building should be revised to have the northern balcony roofs connect to the façade in a finished manner.
19. To comply with Section IIE of the Multifamily Residential Handbook, the four-unit townhouse building should be revised to include windows in the second-floor kitchen and living room fronting Northwest Avenue. Windows on the Northwest Avenue façade should be vertically proportioned, a consistent size, and include window trim in addition to window frame.

20. To comply with Section IIF of the Multifamily Residential Handbook, all building foundations and retaining walls that exceed more than two feet of exposure should be architecturally treated or screened with landscaping.
21. To comply with Section II of the Multifamily Residential Handbook, exterior mechanical equipment should be located and screened from view of the street with landscaping and/or fencing. Electrical meters should be painted to match the buildings.
22. As conditioned herein the project complies with the Multifamily Residential Handbook and DR2023-0018 should be approved.

CRITICAL AREA PERMIT

23. Critical areas exist on the subject property and are therefore regulated by BMC 16.55, the City's Critical Area Ordinance.
24. The revised critical area report (CAR) by Miller Environmental dated May 31, 2024, contains the required information in BMC 16.55.210, .250, .260, .290, .340 and .350. The CAR is provided as **Exhibit D**. A revised wetland impact plan set accompanies the CAR and is provided as **Exhibit E**.
25. Table 2 of the CAR provides the details for wetlands that are on and off site consistent with the standards in BMC 16.55.340.
26. Wetlands A and B require an 80-foot buffer. Wetland F is off-site to the south and requires a 50-foot buffer.
27. Wetlands C, D and E are exempt from buffer requirements and mitigation sequencing pursuant to BMC 16.55.270(B)(1).
28. Section 6.1 of the CAR demonstrates consistency with mitigation sequencing. The proposal avoids direct impacts to all the identified wetlands. Impacts are minimized through mitigation and via utilization of existing areas on the subject site that have been previously developed.
29. BMC 16.55.130(C) allows for intensification of nonconforming areas provided that such an action will not result in impacts to the buffer. Buffer enhancement has been proposed in the remaining buffer area between the four-unit townhouse building adjacent to Northwest Ave and wetland A.
30. The four-unit townhouse building abutting Northwest Avenue is within the 60-foot reduced buffer but utilizes existing nonconforming areas on the subject site comprised of a gravel driveway loop and grassed / yard area.
31. Buffer impacts and reduction are proposed. These areas are shown in **Exhibit E** in pink.
32. Wetland F is proposed to be reduced to 25-feet. Wetland A and B are proposed to be reduced to 60-feet. Please note that most of the building footprints of the two townhomes in the middle portion of the site generally adhere to the 80-foot buffer associated with both wetland A and B. The four-unit townhouse building oriented towards Mahogany Ave and the driveway access off Mahogany Ave are located well outside of the 80-foot buffer of wetland B.
33. Buffer reduction is allowed pursuant to BMC 16.55.340(C)(2) provided that the criteria a-e can be met.
34. Section 6.2 of the CAR addresses the project impacts and demonstrates consistency with the criteria in BMC 16.55.340(C)(2).
35. BMC 16.55.340(G) requires a 15-foot building setback from a wetland buffer edge. This building setback may be reduced as determined by the director, or his designee. **Exhibit D** recommends a reduced buffer for the three-unit townhomes along the southwestern portion of the site.
36. Based on the analysis in **Exhibit D**, the requested building setback reduction is approved for the three-unit southwestern townhomes. Compliant building setbacks are generally provided for the two-unit townhouse building in the center of the site. Building setbacks are not

applicable to the four-unit townhouse building adjacent to Northwest Ave as this building area takes advantage of existing nonconformity / prior site use and development.

37. A public trail connection is proposed in the southeast corner of the western portion of the project. Public trails are not outright prohibited in wetland buffers provided that mitigation for impacts is provided (BMC 16.55.320). Trail impacts have been included in the mitigation ratio.
38. Stormwater management facilities (ponds / vaults) are not allowed in wetland buffers, but conveyance structures and flow dispersion mechanisms are. Stormwater management facilities for this site are shared with the property to the south and to maintain hydrology to wetland B, some portion of the site's stormwater will be conveyed and dispersed within its buffer. This impact has also been accounted for as reflected in **Exhibit E**.
39. Mitigation is proposed to be consistent with a 1:1 ratio pursuant to BMC 16.55.340(E)(i)(e). These mitigation areas are shown on **Exhibit E** in green. The proposed mitigation meets the 1:1 ratio. A detailed description of mitigation is provided in Section 7 of the CAR.
40. Specifically, Section 7.1 of the CAR provides mitigation goals, objectives and performance standards to be employed in order to achieve no net loss of existing wetland buffer function.
41. Sections 7.1.1 – 7.1.7 of the CAR detail the required elements of the overall mitigation; enhancement methods, schedule, monitoring and maintenance, reporting and contingency planning, site protection and financial sureties.
42. Considering the site work and grading associated with the Proposal, this decision should be conditioned to require compliance with inadvertent discovery protocols.
43. Based upon the findings above and the materials provided in **Exhibits D and E**, staff conclude that, as conditioned in **Section V**, below the proposal is consistent with the applicable regulations specified above and is expected to result in equivalent or greater functions of the existing buffer areas on the subject site.

V. DECISION AND CONDITIONS

Based upon the Findings of Fact and Conclusions of Law, the Director of Planning and Community Development, or Designee, approves this Consolidated Permit Design Review and Critical Areas (DR2024-0018 and CAP2023-0026) in **Exhibits A-E** subject to the following conditions:

A. GENERAL

1. Development of this property shall be consistent with the project description in **Section I**, and the site and building plans in **Exhibit B** of this permit except as conditioned herein.
2. This Type II Permit is granted with the conditions specified herein pursuant to the Bellingham Municipal Code. It 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. Development is subject to all applicable Public Works Development Guidelines and code sections.
3. The City may impose additional conditions if found that sufficient information was not present with the applications to comply with the Bellingham Municipal Code.
4. In the event the owner/applicant/assigns fail to comply with the terms of the conditions herein, this permit may be rescinded. All work shall be completed according to this permit.
5. If residential rental unit(s) are desired, pursuant to BMC 6.15.040, no person shall make available for rent, lease, or let, to the public any residential housing unit without registering and maintaining registration of the rental property at which the unit is located. Registration can be completed online at <https://www.cob.org/epermits> or submitted in person at the Permit Center. Please review exemptions to ensure accurate registration.

6. Approval is contingent upon Hearing Examiner approval of preliminary cluster subdivision and subdivision variance from street improvements (SUB2023-0031) and all conditions of the preliminary plat shall be deemed conditions of this permit.
7. A separate accessory dwelling unit (ADU) permit shall be required at time of building permit for the proposed garage with ADU on the single-family lot.

B. INFILL HOUSING

1. A final landscape plan for the entire proposal shall be submitted for review and approval concurrently with the first building permit application for the proposal, demonstrating compliance with the tree replacement requirements in this permit, landscaping conditions in this permit, as well as open space, green factor requirements enumerated in BMC 20.28.140(D), including demonstration that required lane trees can be planted in the locations identified in **Exhibit B**. PCDD shall have discretion to require lane trees be relocated, impervious surface area reduced, and/or landscape beds increased in size to accommodate required lane trees specifically next to the garages of the Arctic Ave townhomes, on the west side of the southwest three-unit townhome, between the garages of the interior two-unit townhome, and between the entrance and garages of the Northwest Ave fronting four-unit townhouse building.
2. The minor modification requests are conditionally approved:
 - a. BMC 20.28.140.B.2, Front yard setback: Increase the front yard setback from the lane the interior two-unit townhomes to approximately 42' and 34'. Also decrease the front yard setback for the southern three-unit townhomes to approximately 5' from the building wall and 2' from the front porches. The driveways leading to the two-unit townhomes shall be finished with a textured material distinct from the lane and pedestrian pathway surface. Also, a landscape bed shall be configured between the garages to break up the hard surface.
 - b. BMC 20.28.140.B.2, Rear yard setback: Reduce the rear yard setbacks for the southernmost unit of the two-unit townhomes to approximately 7' and reduce the rear yard setback for the southern three-unit townhomes to approximately 5' with upper-level decks 3' from rear property line. Doors shall be configured in the garages of the three-unit townhomes, or a private easement shall be recorded allowing cross access through the subject rear yards by and for all property owners of the southern three-unit townhomes. Additionally, the building permit shall comply with building code regulations regarding fire rated construction for the proposed decks within 3' of the rear property line.
 - c. BMC 20.28.050.A.4.b, Driveway width: Increase the width of the driveways leading to the interior two-unit townhomes to approximately 18.5' and 20' at their widest and tapering down to 13' as depicted on the revised landscape plan (**Exhibit B**). The driveways leading to the two-unit townhomes shall be finished with a textured material distinct from the lane and pedestrian pathway surface. Also, a landscape bed shall be configured between the garages to break up the hard surface.
 - d. Approve BMC 20.28.140.B.2. Garage setback: Waive the garage setback requirement for the two-unit townhouse and southern three-unit townhomes.
3. Windows shall be provided on the garage doors of all townhome units.
4. Per BMC 20.28.050(I)(1), one street tree shall be required for every 40 feet of street frontage. The applicant shall obtain a street tree permit for street tree installation along the property's Arctic, Mahogany, and Northwest Ave frontages.
5. Fencing proposed under future building permits shall comply with all applicable regulations in BMC 20.28. Fencing shall delineate common and private usable spaces

and pathways. Fencing in the front and side yards should be limited to 42 inches in height and no more than 60 percent opaque. Chain link or cyclone fencing should be prohibited.

C. DESIGN REVIEW

1. A 1:1 tree replacement ratio for all removed significant trees shall be required. A tree retention plan for the entire proposal shall be submitted for review and approval concurrently with the first building permit application for the proposal. Said plan shall identify all existing trees on site and in the abutting rights-of-ways, including size and species. Said plan shall identify tree removal and strategies for retention of existing trees (such as installation of protective fencing). Replacement trees shall be native species and a minimum one-gallon size at time of planting. A landscape plan shall be submitted with the building permits identifying the location and species of 13 native trees to mitigate the removed 13 trees.
2. Building and site lighting shall be downcast or shielded to prevent off-site glare. A photometric plan shall be submitted with the first building permit application for the proposal demonstrating no footcandle spread beyond the property lines.
3. The proposed common usable space area located between the southern three-unit townhomes and depicted in **Exhibit B**, shall be revised to include landscaping in addition to the grass lawn area to buffer from ground floor windows. Additionally, the common usable space shall incorporate the 5' southern landscape buffer. Fencing and/or landscaping shall be installed to delineate this usable space area.
4. The proposed trash enclosure shall be comprised of durable materials coordinated with the project design. Chain link fencing shall be prohibited.
5. The four-unit townhouse building shall be revised to have the northern balcony roofs connect to the façade in a finished manner.
6. The four-unit townhouse building shall be revised to include windows in the second-floor kitchen and living room fronting Northwest Avenue. Windows shall be vertically proportioned, a consistent size, and include window trim in addition to window frame.
7. All building foundations and retaining walls that exceed more than two feet of exposure shall be architecturally treated or screened with landscaping.
8. Exterior mechanical equipment shall be located and screened from view of the street with landscaping and/or fencing. Electrical meters shall be painted to match the buildings.

D. CRITICAL AREAS

1. Inadvertent Discovery of Archaeological Resources:
 - a. Should archaeological resources (e.g. shell midden, animal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Stephanie Jolivette, Local Government Archaeologist 360-628-2755) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-961-7752; Tamela Smart, Deputy THPO 360-927-2944) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.

Inadvertent Discovery of Human Skeletal Remains on Non-Federal and Non-Tribal Land in the State of Washington (RCWs 68.50.645, 27.44.055, and 68.60.055):

- b. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to

those remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

2. Prior to the issuance of any development permits on the overall site, a financial surety which may be either an assignment of funds or surety bond – shall be secured and fully executed for 150% of the cost of the mitigation elements specified in Section 7.1.7 of the mitigation plan as shown in **Exhibit D**.
3. Prior to December 31 of the calendar year that the initial impacts occur the mitigation elements specified in sections 7.1.1 through 7.1.3 of the mitigation plan in **Exhibit D** shall be fully executed. Within 60 days of completing said mitigation an as-built shall be submitted to the PCDD for review and approval. In addition, on-site mitigation shall be inspected by a representative from the PCDD prior to final sign-off. (The mitigation plan may be implemented prior to development impacts.)
4. Prior to final plat approval, a conservation easement shall be recorded with the Whatcom County Auditor that protects the associated wetlands and their associated wetland buffers identified on sheet #2 of **Exhibit E**. The conservation easement shall not include the area designated for the future public trail connection.

VI. AMENDMENTS

Amendments to this Permit may be requested by the owner and approved by the Director in writing, provided such amendments do not substantially change or alter major elements of the project.

VII. EXPIRATION

Per BMC 21.10.260(C)(3), this Consolidated Permit for design review and critical areas expires five (5) years from the date of this decision unless a completed building permit application, with the other required concurrent submittals, is submitted and determined to be complete before that date. If a complete building permit application is filed prior to the expiration of the land use permit, the vested status of the permit shall be automatically extended, and limited to the terms specified in BMC 21.10.260(C)(4).

VIII. APPEAL

Pursuant to BMC 21.10.110(K), this Consolidated Permit may be appealed within 14-days from the date of this decision to the City's Hearing Examiner. Procedures for appeal to the Hearing Examiner are contained within BMC 21.10.250. Any appeal must be filed with the Planning and

Community Development Department on the appropriate forms and be accompanied by a filing fee as established by the City Council.

Any property owner who believes they are affected by this decision may request a change in valuation for property tax purposes, notwithstanding any program of revaluation, through the Whatcom County Assessor's office.

Prepared by:



Sara Ullman, Planner II

DEPARTMENTAL APPROVAL:



Steve Sundin, Senior Planner
Planning and Community Development Department

6/26/24

Date of Approval



Kathy Bell, Senior Planner
Planning and Community Development Department

6/26/24

Date of Approval