

KCLT – Birchwood (LaFreniere Court)

Public Comment Response – 10.01.24

At the public hearing conducted on September 25th, 2024, for the LaFreniere Court project (SUB2024-0006/USE2024-0012) there were three individuals who raised concerns about the project during the public comment. At the Hearing there were also five individuals who expressed support for the project during oral testimony. One of the individuals who expressed concerns provided lengthy oral testimony and made reference to various City of Bellingham and State regulations/codes, which the Applicant was not prepared to respond to in the moment. The City collected the written materials from this commenter and provided them to the Applicant so that a response could be prepared. Please accept this document as a formal response to the public comment received in oral testimony at the Hearing and also to the written materials provided by commenters at the Hearing. This does not include a response to the comments received in support of the project. In addition, a single comment was provided to the Applicant via email today which was deemed admissible due to technological issues. This document provides response to that comment as well.

- JoAnn Padgett expressed several concerns:
 - o The design of the project, indicating that it was too large in scale for the neighborhood.
 - o The parking for the project, indicating that it was inadequate.
 - o The sewer main in Birchwood, indicating that it was too old and could not accommodate the flows (the line is from 1959).
 - o Impacts to wildlife through loss of open space.
 - o The inadequacy of the coal mine report and the conclusions in the report, with reference to “tetra-tech”.

- Applicant Response:
- The project has been designed to fit into the character of the neighborhood and limit impacts on adjacent neighbors. This is accomplished by limiting the size and height of the proposed structures and their location on the site. Each primary residence and ADU is 2 stories in height (ADA units are 1 story in height). Each primary residence and ADU is small in size, with primary residences less than 1,500 square feet in total size and each ADU less than 1,000 square feet in size. The structures are setback from adjacent property lines greater than the minimum required setback of 5’ in order to create space between the units and neighboring properties. Landscaping is provided around units and the perimeter of the site. Lighting will be down shielded. Units are oriented to central common courtyards/corridors. It should be noted that the underlying Residential Single zoning allows a 35’ height limit and up to 5,500 square feet of floor area per home (before a Conditional Use Permit is required), as well as 5’ setbacks from property lines. The project as designed is tasteful, low scale, and fits into the character of the neighborhood.
- The project provides 27 parking stalls, which is the amount of parking required by code for the residential units. The Farm will share this parking due to the limited number of employees and intermittent, daytime only use.

- The Public Works Department has expressed no concerns about the quality or capacity of the sewer line in Birchwood. There are many similarly sized and aged sewer lines throughout Bellingham that accommodate similar flows and there is no evidence that this line is or will be inadequate to serve the development.
- The project incorporates significant open space, including preservation of the farm and a large area in the northeast portion of the site that is not proposed for development at this time. This area will be retained in natural vegetation, including preservation of existing mature trees. The developed portion of the site will be landscaped, and each group of structures will provide adequate space around units for wildlife to pass through. It should be noted that wildlife (deer, birds, raccoons, etc...) currently navigate the neighborhood, and all neighborhoods in Bellingham, including those developed at a much higher density, without noticeable concern.
- The comments related to the Coal Mine Report seem to be derived from confusion about the report contents and conclusions. The comments made reference to the “tetra-tech” report and the lack of physical site visit; however, the report was prepared by a local consultant, Sound Geology, and included a site visit in September of 2022. The “tetra-tech” report was a prior, broader, study conducted in 1984 for the entire neighborhood (unrelated to the specific project) that evaluated coal mine hazards at a high level. The Sound Geology report included a review of the specific property, and the specific project plans (including subdivision and building plans) and reached the conclusion that *“Based on the results of our evaluation, it is our opinion that there appears to be a low potential for subsidence from the Bellingham No. 1 Coal Mine to adversely affect the proposed improvements.”* (page 3 of 7 in the referenced report). And that, *“Due to the relatively low potential for subsidence to occur from the Bellingham No. 1 Coal Mine, it is our option that mitigation is not needed for structural damage from potential coal mine hazards for the project.”* (page 5 of 7 in the referenced report). The report includes other supporting conclusions and recommendations that make it clear the site-specific analysis by a qualified professional raised no concerns about the project.
- Heather Richendrfer expressed several concerns:
 - o A general concern about change in the neighborhood and a feeling of being “threatened” by the changes occurring with the development, and that City’s should have “stable zoning”.
 - o That the buildings are too tall and will look down into her yard.
 - o That the project is a “spot rezone”.
 - o Impacts to wildlife.
 - o Questions about the overflow parking and whether it is temporary or permanent.
- Applicant Response:
- Mrs. Richendrfer shared many similar concerns to Mrs. Padgett, related to wildlife, scale and mass, and parking, which are addressed above. It was noted at the Hearing that the parking overflow area is temporary for construction and that the City does not view it as a permanent parking lot.

- The project does not include a zoning change of any kind and is not a “spot rezone”. The proposed base density is permitted by BMC 20.30 and the Birchwood Neighborhood Zoning Map and Table for Area 1. The 50% density bonus that is proposed is pursuant to BMC 20.29.030.F.1. These zoning provisions are adopted in code and no changes in code or rezones are proposed. The current rules were adopted through an appropriate legislative process and that adopted ordinance was not appealed at the time. The application materials and staff report identify compliance with applicable requirements for the density bonus in BMC 20.29.030.F.
- In regard to general changes and stable zoning; no City in Washington State guarantees perpetual stability in zoning or land use policy. Through the Growth Management Act the State actually requires City’s to plan for growth and change and to develop Comprehensive Plans that set policies and goals for growth and change so that communities have predictability. This includes Capital Facilities Planning for adequate infrastructure for growth. Bellingham adheres to the Growth Management Act and engages in the required 20-year planning updates on an 8-year cycle and is working to adopt and incorporate recent State legislation that requires higher density and allowances for ADU’s. Change can be scary and intimidating, and concern is understandable, but no one should expect a static environment in perpetuity, and nothing in City or State regulations or policy documents implies that a static environment does or will exist.
- Mary Lou White expressed a number of concerns, which are summarized here:
 - o That the project does not meet the requirements of BMC 20.29.
 - o That the project is not consistent with Washington State laws, including various RCW’s and the State Constitution.
 - o That the SEPA is inadequate and that the project will negatively impact “microbiome, biodiversity, climate change and the mental health crisis” among other things.
 - o That the community engagement was inadequate and that she was not notified.
 - o That the project constituted a “spot rezone”.
 - o That the efforts to preserve natural features were inadequate (reference to BMC 23.08.030.C).
 - o In her written submittal at the Hearing, she included various media article references related to crime, health, mine risk, and other topics, as well as reference to Washington State nuisance laws, the universal declaration of human rights, and the Washington State constitution, in its entirety.
- Applicant Response:
- Mrs. White shared many similar concerns to Mrs. Padgett and Mrs. Richendrfer, related to wildlife, parking, spot zoning and other items, which are addressed above.
- Many of the comments expressed related to health, crime and biodiversity impacts were made with reference to the various articles included in her written testimony, however none of these comments made a factual or data supported conclusion specific to the project. They were more broad comments, asserting the potential for impacts from development in general. The City has adopted rules and regulations intended to ensure that impacts from

projects on these types of considerations are adequately addressed. The City has concluded that the project design adequately addresses these considerations. In the absence of specific evidence as to how the proposed project will negatively impact crime, health, etc.... it is difficult to respond to these assertions in further detail.

- In addition, Mrs. White focused the majority of her commentary on consistency with BMC 20.29, asserting that the project did not comply with criteria for approval (she said two specific criteria but did not identify which two), and that the project must comply with applicable Washington State laws. She provided a flow chart to this effect, referencing RCW 42.21C.20 (SEPA), RCW 7.48.130 (Public Nuisance), RCW 7.48.150 (Private Nuisance) and the WA State Constitution (Section 12), as well as spot zoning. As noted above the project does not include spot zoning. Mrs. White asserts that the process to adopt the existing BMC 20.29 regulations was flawed and that there is some nexus between that legislative process and the current proposal and spot zoning. This is inaccurate and not relevant. The current BMC 20.29 was adopted through a public process, applies to a significant portion of the City (approximately 70% of the City is zoned single family) and there was no appeal filed of that legislative process. The law is in effect and has been for many years. A project proposed pursuant to the adopted law must be shown to be consistent with the rules, which this application has done through the various application materials, reports, studies and City staff report. Whether the prior process to adopt the law was done appropriately is not relevant. Nor is the SEPA commentary relevant. As Mrs. White notes, the SEPA determination has been appealed, and any determination related to the appropriateness of the SEPA determination will be made through that appeal process.
- In regard to public and private nuisance laws, Mrs. White cites the relevant RCW and asserts that the project prioritizes affordable housing at the expense of other considerations, and therefore generates unmitigated impacts on the surrounding community, constituting a nuisance. This is a false and unsubstantiated assertion. As noted in the application materials, at the Hearing, and in response to public comment, all of the potential impacts from the project, including mass and scale, density, parking, utilities, open space, preservation of natural features, traffic, and other impacts, have been thoroughly considered and have been appropriately mitigated either through the design of the project, or through proposed conditions.
- In regard to the Washington State Constitution, Mrs. White references "Section 12" however the Constitution includes 32 Articles, many of which have a "Section 12", and as a result it is difficult to ascertain which portion of the Constitution the project violates. The Applicant believes that the project is consistent with all *applicable* Sections of the Constitution, to the degree any portion of the Constitution is directly applicable to the project at all. Without a specific reference to a specific standard, it is difficult to provide a more substantive response to this assertion by Mrs. White.
- In the flow chart provided by Mrs. White, in addition to references to State laws, there are also references to requirements to have supporting documents, to meet all other applicable development regulations, and to make all requests for regulatory modifications with the other applications. The Applicant asserts that all supporting documents, including reports, studies and plans, were included in the applications or provided in response to a Request for Information from the City. The application materials also show that the project is

consistent with all underlying applicable codes, except in those instances where modifications are proposed (modifications are allowed pursuant to BMC 20.29). The specific assertions from Mrs. White in the flow chart as to inconsistency all relate to lot size (cluster designation, minimum site area, etc....); lot size is a specific modification that was requested by the Applicant in the application. The project materials do use terms like “*almost entirely*” and “*reasonably compliant*”, but this is in order to make it clear that the project is requesting some modifications, which are detailed in the application, but other than those limited modifications, the project is compliant. When there is an allowance to request modifications, it is inferred that an application is not required to be “*entirely compliant*”. Mrs. White, in her comments or flow chart, does not identify any specific non-compliance with applicable regulations that the Applicant has not already addressed through a modification request.

- Mrs. White also asserts that the community engagement and notification process was inadequate. Pursuant to BMC 21.10.120B this particular project (a Type III permit) is required to conduct a single Neighborhood Meeting. The requirements for notification for this meeting are contained in BMC 21.10.180. This is the only codified requirement for community engagement. Despite this, the Applicant engaged in no less than 3 informal community engagement meetings prior to any formal process (between 2015 and 2018) whereby they presented the concept for the project to the surrounding community and solicited feedback. Mr. Welch, project architect, attested to this effort in his oral testimony at the Hearing. None of this engagement was required and as such there was no formal notification process required, although the notice of the meetings was widely disseminated in the community. Subsequently, the Applicant team conducted a formal neighborhood meeting for the project in June of 2021, and then due to delays in design and funding, chose to conduct a second formal neighborhood meeting for the project in December of 2023. Both of these meetings were properly noticed pursuant to BMC 21.10.180, including a direct mailer. A review of the mailing labels and list for each meeting, which are included in the City record, confirmed that Mary Lou White was included on the direct mailing list for each meeting. There is no evidence of inappropriate or inadequate community engagement; to the contrary, the Applicant has gone out of their way to engage with the community about this project over the course of almost a decade, including two formal neighborhood meetings when only one is required by code.
- In regard to consistency with BMC 23.08.030.C *Natural Features*, the application materials discuss compliance with this code criteria in detail. Staff have reviewed the application materials and confirmed that the project is consistent with this code criteria. This is a subjective criteria that requires natural features “*to be incorporated into the overall land division design through preservation to the extent feasible*”. The determination of “*extent feasible*” is made by City staff, who are the most qualified to adjudicate if the intent of this standard is met. In this particular instance, as noted throughout the application and in oral testimony at the Hearing, the design does consider natural features, clustering development in the center of the site in order to protect the Farm operations and existing natural vegetation in the northeast portion of the site (including a diverse stand of mature trees). If the development were not clustered or were placed in a different location on the site, it would generate more impacts from impervious surfaces, more vegetation removal

(for example to reach the north portion of the site with roads and utilities) and generally preserve less open space. It is not feasible to preserve all natural features on the site while still accomplishing reasonable development.

- Mrs. White references a statement in the SEPA application that was made implying that “*the City Sprouts community garden, which is proposed to be retained on site, is exploring grant funding to build a small outbuilding with restrooms for the visitors and students at the farm and to add a produce processing area with running water and storage spaces. This would also be permitted as a separate action*”. The inference by Mrs. White is that the statement is misleading however the statement is made in response to a specific SEPA question asking if there are any future plans for the site. It is appropriate and transparent to identify potential future actions in a SEPA in response to this question, and to acknowledge that these actions will require separate permitting, which is exactly what the Applicant did in this instance.

- On October 1st a comment was received via email from a Mr. Kronenburg. This comment expressed similar concerns to the other commenters, related to parking, traffic, open space and general redevelopment. The responses contained in this document above adequately address the majority of Mr. Kronenburg’s comments, however there are specific assertions that the 18 units will generate 60-90 new residents and 50-100 new cars, with concern about traffic. It should be noted that the proposed unit are small in size, particularly the ADU’s, and it is unlikely that this many residents or vehicles will result from the project. 60-90 residents equate to 3 to 5 residents per dwelling unit. 50-100 vehicles equate to 2.7 to 5.5 vehicles per structure. It is highly unlikely, and not supported by any data or comparable references, that 5 residents or 5+ vehicles, per unit, will be generated by the project. The City has adopted parking standards, which are based on expected demand, drawn from nationally accepted studies and reports. As designed, the project meets adopted parking standards and is not requesting a parking variation for the residential component of the project.