

## MEMORANDUM

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**TO:** David Lowell, Esq., Hearing Examiner  
**FROM:** Michael Davolio, AICP, Planning Director  
**SUBJECT:** 306 Center Street Development; Additional Points of Reference  
**DATE:** April 6, 2022

The purpose of this memorandum is to clarify some of the issues raised during the recent public hearing on the above-referenced development. The goal is to ensure that the staff's positions on issues related to this development are fully consistent with local, county, and state regulations, as well as with case law as set forth in various jurisdictions.

### **SEPA**

There has been some misunderstanding of how the State Environmental Policy Act has been applied to this project. The timeline is as follows:

- October 25, 2021: Original SEPA Checklist submitted by applicant
- November 9, 2021: Preliminary Mitigated Determination of Non-Significance posted
- November 16, 2021: Preliminary MDNS published
- January 8, 2022: Revised SEPA Checklist submitted by applicant
- February 28, 2022: Final MDNS issued
- March 2, 2022: Final MDNS published

Shortly after the time of the initial decision on the preliminary MDNS, the staff learned that the subject property was previously a part of a larger property that had been the subject of Department of Ecology action related to spilled or leaking gasoline. Because we lacked information on that issue, we immediately contacted the applicant to advise him that we would consider his application incomplete until additional information was provided. At that point in time, the town had two options to pursue this information: (1) we could require the applicant to submit a full Environmental Impact Statement; or (2) we could require the submittal of specific studies to address the environmental concerns. We opted to pursue the second option, at which time the applicant agreed to provide thorough geological testing which was submitted as part of a revised SEPA Checklist. Based upon the findings of that geological test data, the staff was comfortable in proceeding forward with the project, with additional conditions which you will note in our original staff report.

In summary, the SEPA process followed by the town is in full compliance with local and state requirements.

### **Conditional Use Requirements**

As noted in earlier communications, "Conditional Use" is defined in our municipal code as "a use addressing a limited or specific need but, due to a potential adverse effect upon permitted uses or public services and facilities, is only allowed subject to review by the hearing examiner, of the use standards of the district, and the certain criteria in this code." Some individuals argue that the proposed development will have a "potential adverse effect" upon the surrounding properties. The subject property is surrounded on the south and the west by commercial

properties. To the north and east, properties are single-family residential uses. The staff has determined that it would be difficult to argue that a proposed residential use would have significant adverse effect on other residential properties. Even if the proposal “feels too big,” as some have argued, it meets all of the dimensional requirements set forth by the town. The development is not higher than the 30-foot height restriction. The development has exceeded the town’s parking requirements on site, and is also improving ten public parking spaces located on Center Street and Fourth Street. These public parking spaces provide an added benefit to the neighborhood.

*REQUIRED PARKING:*

Based upon unit size, 1 space per unit – 20 total

*PROVIDED PARKING:*

- 24 total parking stalls
- 8 compact parking stalls
- 2 stalls for disabled
- 10 additional public parking spaces on Center Street and 4<sup>th</sup> Street

In terms of the use of public facilities and services, the applicant has come to agreement with the town’s Public Works Department regarding the installation of water and sewer pipes of sufficient size to accommodate the development.

Some have argued that the subject property is already being used by abutting commercial properties for parking, and that there will be a significant impact on the neighborhood if this parking is removed. In essence, this argument suggests that the property owner should be deprived of the use of his property because abutters are already using it for their own benefit. The staff does not find this to be a credible argument.

The issue then comes down to traffic. The staff has determined that both Center Street and Fourth Street have the capacity to accommodate the anticipated traffic from the proposed development. Street access to the site from Fourth Street (with no vehicular access from Center Street) helps to minimize potential traffic on Center Street, as Morris Street will likely provide a more useful access.

As a final note on this subject, the question that the staff considered is this: Is the impact of the proposed residential use greater than the potential impact of a permitted commercial use? Upon consideration, our answer is no.

**Other Code Requirements**

Several individuals have noted that the proposed development is inconsistent with the regulations set forth in the town’s Morris Street Commercial zone.<sup>1</sup> It should be noted that this property is not located within that zone. Similarly, many individuals have complained that the project is not consistent with the regulations set forth in the town’s Historic Preservation

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<sup>1</sup> The town received today a “photo tour” of the area, again claiming inconsistency with the Morris Street Commercial Zone, which does not apply to this project.

District. While this property abuts that district, it is not located within it. There are no requirements in our code that would require that a property abutting the Historic Preservation District must create a buffer between that district and other properties. For those who claim that the project will impact the “historic nature” of the surrounding residential homes, it must be noted that properties in the residential zone are not located within the town’s Historic Preservation District.

Some have argued that the town’s code is confusing, and should be revised. In some ways, this is a strong argument. The staff is looking forward to working with the community to address this issue. However, in the case of the current proposal, case law specifies that when a regulation can be interpreted in more than one way, the applicant is legally entitled to the interpretation that benefits him.

In addition to Development Code regulations, the staff has also taken into consideration the land use and housing goals as set forth in the La Conner Comprehensive Plan. We note that the proposed development will assist the town in meeting those goals.

### **Type of Use**

Concern has been raised regarding the use of the long-term residences as apartments or condominiums. As originally proposed by the applicants, these units would be apartments. However, during the development process, the applicant has now decided that these units would be sold as condominiums. Nowhere in the town’s municipal code is there any mention of regulating the type of ownership of a property. There is significant case law on this matter which prohibits the regulation of ownership type.

It may also be argued that the creation of a homeowner’s association for the condominium development could have a positive impact on regulating the future uses of the units, including the short-term residential units.

### **Revised Plans**

In response to concerns raised at the Planning Commission’s public meeting, the applicants submitted a revised plan. This revision takes advantage of the staff’s determination that site setbacks could be revised because the subject property is a corner lot. The revised plan results in improved setbacks and landscaping, thus further minimizing potential impacts to the neighborhood.

### **In Summary**

The staff takes seriously the concerns of the neighborhood, and understands their fears that the proposed development will change the dynamic of their neighborhood. However, we have an obligation to balance those fears against the right of the property owner to develop the property in a manner consistent with the town’s regulations. We can find no regulation within the town’s Development Code that would form the basis of a denial of this project.