



Town of La Conner

REQUEST FOR RECONSIDERATION

(Staff Use Only)

File No:
LU21-5601

Date
Received: 5-12-22

This Request for Reconsideration form is for Town of La Conner Hearing Examiner decisions and recommendations only. Any person who participated in the hearing or submitted comments for the record (Party of Record) may file a written request with the Hearing Examiner for reconsideration.

The request must be filed within 5 business days of the date of service of the Hearing Examiner's decision or recommendation, and shall explicitly set forth alleged errors of law or fact. No new evidence may be submitted.

Requests for Reconsideration may be delivered to the Office of the Town Clerk/Finance Director by mail or personal delivery before 4:00 p.m. on the last day of the reconsideration period. There is no fee for a Request for Reconsideration.

Town of La Conner Office of the Town Clerk/Finance Director Contact Information:

Mailing Address:

Office of the Town Clerk
P.O. Box 400
La Conner, WA 98257

Personal Delivery:

Town Hall
204 Douglas Street
La Conner, WA
(360) 466-3125

Section A. General Information

Name of Requestor: Michael Davolio, AICP

Address: 204 Douglas St.

City: La Conner State: WA Zip: 98257

Email: planner@townoflaconner.org

Phone: (home) _____ (work) 360-466-3125 (cell) _____

Name of project: Atkinson/KSA residential development

Date of Hearing Examiner decision/recommendation: 5/11/2022

Expiration date of reconsideration period: 5/18/2022

Section B. Basis for Request for Reconsideration

Please fill out items 1-4 below. Reference all applicable City Code citations and attach additional sheets if necessary.

1. Please indicate whether this request for reconsideration addresses an error in

_____, LAW _____ and/or an error in FACT _____.

2. Please provide a concise statement identifying each alleged error; identify the specific factual or legal errors or misinterpretations; and/or identify the specific laws, code sections or plan policies that have been misapplied, misinterpreted or violated: _____

No error in law or in fact has been identified. The request is for reconsideration of an interpretation. _____

3. Please state the specific relief requested: _____

1. ___Setbacks. Our municipal code provides that corner lots can be considered to have two front yard setbacks and two side yard setbacks. By using this interpretation, the 25-foot rear yard setback would be eliminated, and the applicant would have more flexibility in providing landscaping in wider front yards. We ask that this be permitted.

2. Long-term residential use. The proposed development shows no long-term residential use on the first floor of their proposed building, even though our Municipal Code allows that up to 49% of the first floor could be allocated to such use in our Commercial zone. We would like to clarify that the applicant, if he chooses to do so, could change up to 49% of the building's first floor from short-term to long-term residential use. This proposed change would have no impact on any other aspect of the development.

Danielle Freiburger

From: Michael Davolio <planner@townoflaconner.org>
Sent: Thursday, May 12, 2022 2:42 PM
To: David Lowell; Danielle Freiburger; Scott Thomas
Cc: mayor
Subject: RE: Atkinson - Center Street project

Mr. Lowell,

As provided in the La Conner Municipal Code, I hereby request your reconsideration of your decision related to the proposed development at 306 Center Street. Said reconsideration would focus on two issues:

- Setbacks. Our municipal code provides that corner lots can be considered to have two front yard setbacks and two side yard setbacks. By using this interpretation, the 25-foot rear yard setback would be eliminated, and the applicant would have more flexibility in providing landscaping in wider front yards. We ask that this be permitted.
- Long-term residential use. The proposed development shows no long-term residential use on the first floor of their proposed building, even though our Municipal Code allows that up to 49% of the first floor could be allocated to such use in our Commercial zone. We would like to clarify that the applicant, if he chooses to do so, could change up to 49% of the building's first floor from short-term to long-term residential use. This proposed change would have no impact on any other aspect of the development.

Thank you for your consideration of these matters.

Best regards,

Michael Davolio, AICP
Planning Director



Town of La Conner
PO Box 400
204 Douglas Street
La Conner, WA 98257

PHONE: (360) 466-3125 | WEB: www.townoflaconner.org

WARNING: Please be advised the Town of La Conner is required to comply with Chapter 42.56 RCW, Public Records Act. This means that information you submit to the Town via email (including personal information) is likely subject to disclosure as a public record.

From: David Lowell [<mailto:david@lowell-law.com>]
Sent: Thursday, May 12, 2022 2:16 PM
To: Michael Davolio (planner@townoflaconner.org); Danielle Freiburger; Scott Thomas
Subject: Atkinson - Center Street project

Mr. Davolio:

Consistent with LCMC 15.12.010 I can classify from your email yesterday regarding the side yards, as a request for reconsideration. Please confirm this was your intent. If this was your intent I'll wait five days and will render a revised decision.

Thank you,

Thank you for your time and attention to this matter.

LOWELL LAW OFFICE (Established 1995)

DAVID D. LOWELL, Attorney at Law

Physical address: 606 East Fairhaven Avenue, Burlington, WA 98233

Mailing address: PO Box 1346, Burlington, WA 98233

email: david@lowell-law.com

fax: 360.547.6549

office phone: 360.755.0111

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This message and/or document(s) accompanying this electronic transmission may contain privileged and confidential information intended only for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this transmission is prohibited. If you have received this communication in error, please, notify us by telephone, mail, electronic mail and destroy this communication.

*****MEMBER OF NATIONAL ASSOCIATION OF DISTINGUISHED COUNSEL***

(Awarded to top 1% of attorneys in America)



BEFORE THE HEARING EXAMINER FOR THE TOWN OF
LA CONNER, WASHINGTON

David Lowell, Hearing Examiner

RE: Atkinson Development / KSA
Investments CUP

Case No: LU21-56CU

Conditional Use Permit

REQUEST FOR RECONSIDERATION
LCMC 15.12.100

NOW COMES Linda Talman, a party of record (Decision, page 2, line 27) who disagrees with the decision of the examiner and makes written request for reconsideration by the examiner within five days of the date of service of the written decision (May 11, 2022).

The party of record, Linda Talman, alleges the following specific error of fact in the decision. Finding of Fact #5, Zoning, finds that the site has a zoning designation of Commercial.

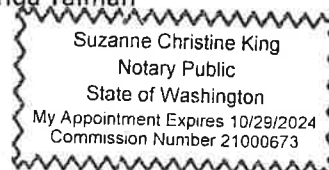
Attached as Exhibit 1 is a copy of the Contract Rezone entered into between the Town of La Conner and the owners of the subject property, Gerald and Donna Blades. To It recites that the site, prior to the contract rezone was residential. In exchange for the Town changing the zoning of the site to commercial the owners agreed that if they sought to improve the site application to approve the plan would require the site to be treated as if it were located within the Historical Preservation District. Any violation or failure to comply with this would cause the site to revert to residential. The parties agreed that this agreement shall become an encumbrance upon the land.

Failure of the Town to provide this Contract Rezone document to the Hearing Examiner is error and denies procedural due process and appearance of fairness to the parties in this matter (LCMC 15.12.010 (2)).

The examiner should reconsider his decision and issue a revised decision (LCMC 15.12.100).

Respectfully submitted this 13th day of May 2022.

Linda Talman



REQUEST FOR RECONSIDERATION - 1

State of Washington
County of Skagit
Suzanne Christine King
Suzanne Christine King
Expires: 10/29/24

Section A. General Information

Name of Requestor: Linda Talman
Address: 202 N 5th
City: LaConner State: WA Zip: 98257
Email: Linda.talman@gmail.com
Phone: (home) 360 840 1714 (work) _____ (cell) _____
Name of project: 306 Center/Centre KSA Atkinson
Date of Hearing Examiner decision/recommendation: May 11, 2022
Expiration date of reconsideration period: _____

Section B. Basis for Request for Reconsideration

Please fill out items 1-4 below. Reference all applicable City Code citations and attach additional sheets if necessary.

1. Please indicate whether this request for reconsideration addresses an error in

_____, LAW _____ and/or an error in FACT _____. Attached

2. Please provide a concise statement identifying each alleged error; identify the specific factual or legal errors or misinterpretations; and/or identify the specific laws, code sections or plan policies that have been misapplied, misinterpreted or violated:

Attached

3. Please state the specific relief requested:

Attached

May 13, 2022

Re Appearance of Fairness

For the Reconsideration re 306 Center.

On March 23 I requested information from the Town re any rezone discussion of the property proposed for the development.

On March 28 I received an answer from the town administrator saying that he had the right to take five days to answer me. And he was legally correct.

On March 28 he also informed me that he would need another 10 days to get it and review it. Again he was legally correct.

But being legally right and doing the right thing are not always the same, are they? I received the documents two days after the record for submission to the Hearing Examiner closed. =

Why does it matter?

One of the documents from 1986 was a contract rezone requested by the Blades to change the project property from residential to commercial HPD. That is what the front of the property was. The condition of the contract was that it would be considered for all purposes to be in the HPD (historic preservation district) And that they would agree to have it revert to residential if they didn't abide by the condition. It also stated that this be filed and go with the property. The contract is still valid.

The town is obliged to respect it.

Respectfully,

Linda Talman



Enclosed;

Contract rezone. 1986. **A**

Application for Reconsideration **B**

\$250.

Letter from Scott Thomas **C**

Email from me to town with FOI request. **C**

1980 Zoning Map

Cover letter

DET



Town of La Conner

March 28, 2022

Linda Talman
PO Box 392
La Conner, WA 98257

SUBJECT: Public Disclosure Request

Dear Linda:

I am in receipt of your request for the production of public records, received by the Town of La Conner on March 23, 2022. Enclosed is a copy of your request, which describes the documents you have requested.

I anticipate that it will require approximately 10 days to complete a search for these records, and conduct a legal review. I therefore estimate that the records will be made available for review on or about April 8, 2022. The Town will, of course, provide you with access to those records that are not exempt from disclosure as soon as our search and review are completed.

I suggest you contact the Northwest Regional Branch of the State Archives:
https://www.sos.wa.gov/archives/archives_holdings.aspx?r=6.

Please contact me at your convenience if you have any questions or concerns.

Sincerely,

Scott Thomas
Town Administrator / Town Attorney
TOWN OF LA CONNER

204 Douglas Street, PO Box 400, La Conner, WA 98257

(360) 466-3125, Fax (360) 466-3901

Website: www.townoflaconner.org

---Original Message---

From: Linda Talman <linda.talman@gmail.com>

Sent: Wednesday, March 23, 2022 10:10 AM

To: Scott Thomas <administrator@townoflaconner.org>; Andrea Clerk

<deputyclerk@townoflaconner.org>

Cc: maggie wilder <wildermaggie@hotmail.com>; Georgia Johnson <swtcomice@aol.com>

Subject: New FOI request

As per Scott's advice that my request was too large to be accommodated in time for the hearing, I am making a simpler request.

I would like to see the zoning maps of the town over time:

The first one and the iterations that followed over time. They should be in the comp plans.

I would also like to see the rezones on the center street property. Particularly in the 80s.

The info I sent in the last request might help with the search. It is from the last Danielle when she totally organized the archives to make them searchable before she retired.

I think that the town should start recording the history of the town zoning and planning. There might be a grant for that.

Sent from my iPhone

CENTRE 306

CONTRACT REZONE

This is an agreement between the Town of La Conner, a municipal corporation of the State of Washington, hereinafter referred to as "Town", and Gerald and Donna Blades, owners of that certain property more particularly described below, hereinafter referred to as "Owner". This is a concomitant agreement between the parties which is mutually intended to benefit the citizens of the Town of La Conner and the Owner, and is intended to condition the rezone of property described below by placing a specific condition and restriction upon the Owner through this agreement. The Owner agrees to accept and fulfill the conditions set forth in this agreement in consideration of the benefit received for granting of the rezone of real property.

I. Real Property: The real property which is the subject of this agreement is owned by Gerald and Donna Blades whose address is P.O. Box 482, La Conner, WA 98257. The property which is the subject of this agreement is located in the Town of La Conner, Skagit County, Washington, and consists of Lots 3, 6 and 7 and the East 3 feet of Lot 2 in Block 9, "Calhoun Addition to the Town of La Conner", as per Plat recorded in Volume 1 of Plats, page 14, records of Skagit County, Washington.

II. Conditions of Agreement: Owner agrees to accept the following condition and restriction as an integral part of the agreement to rezone the Owners' property. This condition is as follows:

Prior to any development or improvement of the above-described real property which would, under the applicable ordinances of the Town of La Conner require the application for an issuance of a building permit,

CONTRACT REZONE
Page 1 of 3

ORIGINAL

application shall be made to the appropriate person, commission, committee or body for approval of the plan to develop or improve said property as would be required if said property were located within the Historical Preservation District of the Town of La Conner. The parties agree that Owners' property, which is the subject of this Contract Rezone, is not presently located within the Historical Preservation District, but Owner agrees to be bound by the same application and review process which applies to property located within the Historical Preservation District as if the above-described property were located within the Historical Preservation District. Owner understands that any breach, violation or failure to comply with this condition shall cause the property in question to revert back to the underlying zone in effect prior to this rezone, namely residential. Owner agrees and understands that the City Attorney of the Town shall be authorized to take any action deemed necessary to enforce this agreement.

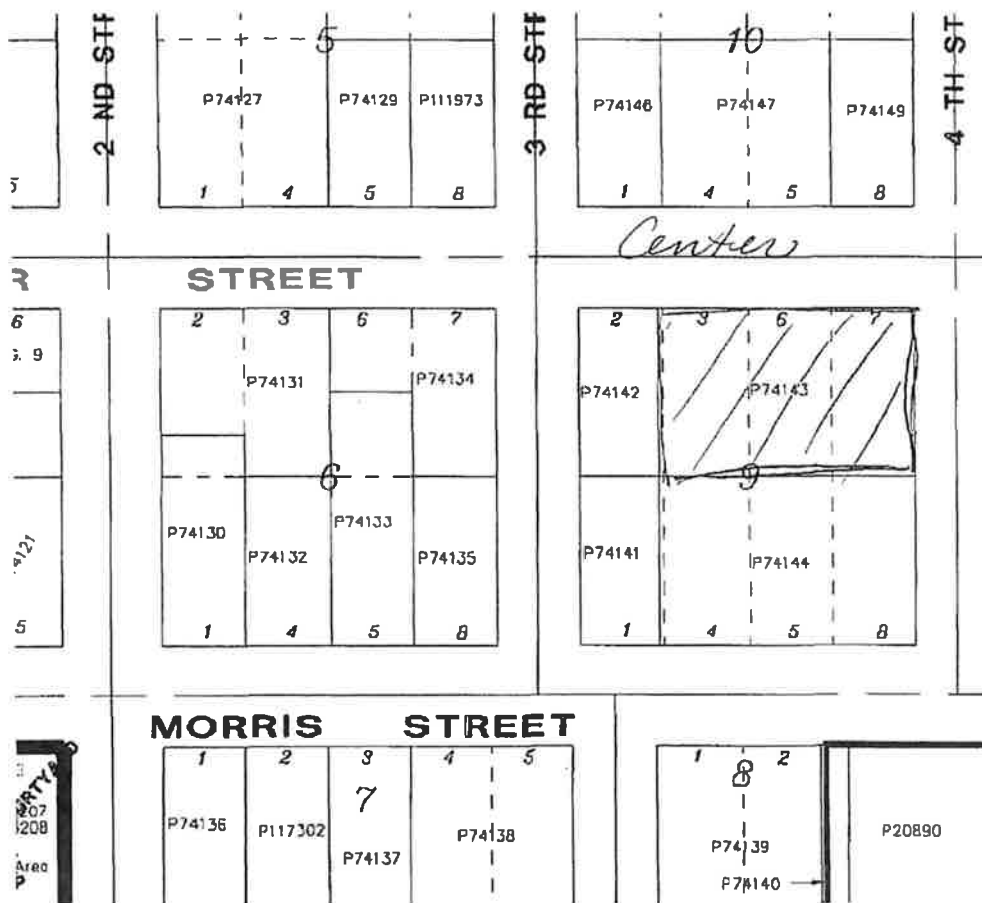
III. The Rezone: By previous action of the Town Council of the Town of La Conner, the real property which is the subject of this agreement has been changed from the previous zoning classification of residential to the rezone classification of commercial which shall become effective immediately upon the signing of this agreement. The land owner shall enjoy all use and benefits of the new zoning classification under the condition imposed by this agreement. Owner agrees and hereby authorizes Town to record the original or a copy of this agreement with the Skagit County Auditor so that this agreement will become a matter of public notice to subsequent purchasers and shall become an encumbrance upon the land.

DATED THIS 22 day of December, 1986.


GERALD BLAKES

CONTRACT REZONE
Page 2 of 3

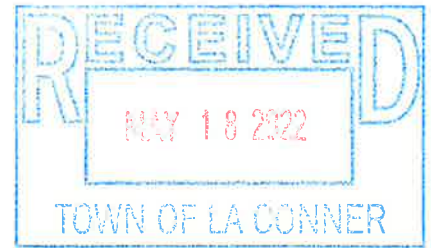
A



1980 map



D



Town of La Conner

REQUEST FOR RECONSIDERATION

(Staff Use Only)

File No:

LU21-56CU

Date

Received: 5-18-22

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P.O. Box 400
La Conner, WA 98257

Personal Delivery:

Town Hall
204 Douglas Street
La Conner, WA
(360) 466-3125

Section A. General Information

Name of Requestor: BRANDSON ATKINSON (KSA INVESTMENTS)
Address: 721 MAPLE STREET
City: LA CONNER State: WA Zip: 98257
Email: BRANDSON.KATE.ATKINSON@GMAIL.COM
Phone: (home) _____ (work) _____ (cell) 360 708 9255
Name of project: 306 CENTER STREET, P74143, LA CONNER WA
Date of Hearing Examiner decision/recommendation: MAY 11, 2022
Expiration date of reconsideration period: MAY 20, 2022

Section B. Basis for Request for Reconsideration

Please fill out items 1-4 below. Reference all applicable City Code citations and attach additional sheets if necessary.

1. Please indicate whether this request for reconsideration addresses an error in

_____, LAW ☒ and/or an error in FACT ☒.

2. Please provide a concise statement identifying each alleged error; identify the specific factual or legal errors or misinterpretations; and/or identify the specific laws, code sections or plan policies that have been misapplied, misinterpreted or violated:

WE REQUEST RECONSIDERATION OF ITEMS A AND B
ONLY OF DECISION NUMBER 9.

SEE PAGE 4 ATTACHED FOR DETAIL

3. Please state the specific relief requested:

ALLOW FOR MINIMAL HEIGHT OVERRUNS, CONSISTENT WITH IBC, FOR EQUIPMENT NEEDED TO OPERATE THE BUILDING. IN PARTICULAR THE ELEVATOR OVRUN.

SEE ATTACHED PAGE 4 FOR DETAIL

WE ALSO REQUEST THE TIME AND OPPORTUNITY TO RESPOND TO ANY OTHER REQUEST FOR RECONSIDERATION THAT MAY BE SUBMITTED.

Request for reconsideration of decision number 9 a. and b. to allow necessary overruns (no change is requested for the approval required from the fire Chief of Skagit County or for the 30 feet building height limitation) for the following reasons:

1. The requirement that mechanical and other type of equipment not exceed the 30 height limit is out of date and not realistic. Nearly all other Towns, Cities and Counties have updated to allow for necessary equipment including elevators and stairs.
2. IBC code was updated in 2018 in recognition of the need. See attached codes.
3. Example - City of Anacortes b. Exceptions The following structures may be erected above height limits established in Tables 19.42.020 and 19.42.030.
 - Roof structures housing or screening elevators, stairways, tanks, roof top wind generators, ventilating fans or similar equipment required for building operation and maintenance may exceed the height limit by;
 - a. Up to 10 feet in the R3, R3A, R4, R4a, mixed use, and industrial zones, provided the added height is limited to what is necessary to screen or enclose the use.
 - b. Up to 15 feet on buildings over four stories in height where they allow access to shared roof decks that meet the requirement of AMC 19.62.040(B)(1)

Other Considerations

1. The primary market that is targeted with the building design is seniors wishing to downsize and live in a secure manageable home. Elevators are a priority.
2. Safety – gurney access via elevator is highly desired by fire and 911 first providers. Roof top refuge may be required in an emergency.
3. Stair access to the roof may be required by the Fire Marshall (TBD).
4. Mechanical equipment and other necessary devices are easier to conceal on roof tops.
5. La Conner has already allowed elevator and other types of mechanical devices on other building in town to exceed the 30 ' height limit. Two are in the same neighborhood as 306 Center. They are the Channel Lodge on First Street and the Retirement Apartments on Center and First Street. Both are larger than ours and the Retirement Apartments are four story including underground parking. Their elevators and other roof top overruns exceed the 30' building height limit. Based on our research the codes have not been changed since they were built. The La Conner height code 15.35.040 limits height in the Commercial Zone to 30 feet but does not restrict overruns for elevators and other necessary equipment to operate the building safely and conveniently for tenants.

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e I or II

II

[BG] 1510.1 **General.** The provisions of this section shall govern the construction of rooftop structures.

1510.1.1 Area limitation. The aggregate area of penthouses and other enclosed rooftop structures shall not exceed one-third the area of the supporting roof deck. Such penthouses and other enclosed rooftop structures shall not be required to be included in determining the building area or number of stories as regulated by Section 503.1. The area of such penthouses shall not be included in determining the fire area specified in Section 901.7.

[BG] 1510.2 **Penthouses.** Penthouses in compliance with Sections 1510.2.1 through 1510.2.5 shall be considered as a portion of the story directly below the roof deck on which such penthouses are located. Other penthouses shall be considered as an additional story of the building.

[BG] 1510.2.1 **Height above roof deck.** Penthouses constructed on buildings of other than Type I construction shall not exceed 18 feet (5486 mm) in height above the roof deck as measured to the average height of the roof of the penthouse. Penthouses located on the roof of buildings of Type I construction shall not be limited in height.

Exception: Where used to enclose tanks or elevators that travel to the roof level, penthouses shall be permitted to have a maximum height of 28 feet (8534 mm) above the roof deck.

[BG] 1510.2.2 **Use limitations.** Penthouses shall not be used for purposes other than the shelter of mechanical or electrical equipment, tanks, elevators and related machinery, or vertical shaft openings in the roof assembly.

[BG] 1510.2.3 **Weather protection.** Provisions such as louvers, louver blades or flashing shall be made to protect the mechanical and electrical equipment and the building interior from the elements.

[BG] 1510.2.4 **Type of construction.** Penthouses shall be constructed with walls, floors and roofs as required for the type of construction of the building on which such penthouses are built.

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Town of La Conner

REQUEST FOR RECONSIDERATION

(Staff Use Only)

File No:

LU21-56CU

Date

Received: 5-19-22

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Town of La Conner Office of the Town Clerk/Finance Director Contact Information:

Mailing Address:

Office of the Town Clerk
P.O. Box 400
La Conner, WA 98257

Personal Delivery:

Town Hall
204 Douglas Street
La Conner, WA
(360) 466-3125

Section A. General Information

Name of Requestor: FIRE CHIEF

Address: _____

City: _____ State: _____ Zip: _____

Email: _____

Phone: (home) _____ (work) _____ (cell) _____

Name of project: _____

Date of Hearing Examiner decision/recommendation: _____

Expiration date of reconsideration period: _____

Section B. Basis for Request for Reconsideration

Please fill out items 1-4 below. Reference all applicable City Code citations and attach additional sheets if necessary.

1. Please indicate whether this request for reconsideration addresses an error in

_____, LAW _____ and/or an error in FACT _____.

2. Please provide a concise statement identifying each alleged error; identify the specific factual or legal errors or misinterpretations; and/or identify the specific laws, code sections or plan policies that have been misapplied, misinterpreted or violated:

THE CURRENT PARKING LOT LAYOUT
FAILS TO PROVIDE ACCESS FOR FIRE
APPARATUS TO VEHICLES PARKED
WITHIN THE ON-SITE PARKING AREA.
THE DESIGN THUS FAILS TO MEET
THE CRITERIA ESTABLISHED IN
LCMC 15.35-030.

3. Please state the specific relief requested:

CONDITION OF APPROVAL NO. 9 SHOULD
BE AMENDED TO REQUIRE
COMPLIANCE W/ ACCESS REQUIREMENTS
OF THE FIRE CODE