

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF LANGLEY**

In the Matter of the Application of	)	No. BSP-20-003
	)	
<b>Larry Kwarsick, Sound Planning Services, on behalf of Wharfstreet, LLC</b>	)	
	)	
For a Binding Site Plan	)	FINDINGS, CONCLUSIONS, AND DECISION

**SUMMARY OF DECISION**

The request for approval of a preliminary binding site plan to allow conversion of a four-building, 10-unit hotel to a multi-family condominium with 10 one-bedroom dwelling units at 200 Wharf Street is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the request on June 21, 2021, using remote access technology. The record was left open for the City of Langley to provide additional information. The record closed on June 22, 2021.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Brigid Reynolds, City Director of Community Planning  
Larry Kwarsick, Applicant Representative  
Roger Katz  
Charles Pancerczewski

Exhibits:

The following exhibits were admitted into the record:

1. Master Planning Permit Application, undated, with the following attachment:
  - a. Land Use Narrative, undated
2. Preliminary Site Plan, dated June 12, 2018
3. Waterline Easement Plan, June 12, 2021
4. Land Use Designation Map
5. Overlay Map
6. Notice of Application, dated January 13, 2021, with the following attachments:
  - a. Classified Proof – *South Whidbey Record*, published January 23, 2021
  - b. Environmental Checklist, prepared November 15, 2020

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- c. Final Determination of Nonsignificance, issued June 22, 2021
7. Summary of Comments from January 22, 2021, Meeting, with the following attachments:
  - a. Email Comments:
    - Comment from Charles Pancerzewski, dated January 25, 2021
    - Comment from Bob LeClair, dated January 25, 2021
    - Comment from Tom Felvey, dated January 23, 2021
    - Comment from Bob LeClair, dated January 22, 2021
    - Comment from Bob LeClair, dated January 20, 2021
    - Comment from Bob LeClair, dated January 19, 2021
    - Comment from Nancy Opfer, dated January 18, 2021
    - Comment from Bob LeClair, dated January 17, 2021
    - Comment from Bob LeClair, dated January 17, 2021
    - Comment from Stan Reeves, dated January 19, 2021
  - b. Comment from Department of Ecology, dated January 27, 2021
8. Notice of Public Hearing, with the following attachment:
  - a. Classified Proof – *South Whidbey Record*, published June 12, 2021
9. Parking Analysis, *Transportation Engineering NorthWest*, dated March 17, 2021
10. Proposed Parking Plan, dated March 9, 2021
11. Staff Report

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

## **FINDINGS**

### Application and Notice

1. Larry Kwarsick, Sound Planning Services, on behalf of Wharfstreet, LLC (Applicant), requests approval of a preliminary binding site plan (BSP) to allow conversion of an existing four-building, 10-unit hotel, the “Boatyard Inn,” into a multi-family condominium with 10 one-bedroom dwelling units. The proposal would provide 12 off-street parking spaces for condominium residents and guests, which would be owned and maintained by a Condominium Owner’s Association (COA). Eight off-street parking stalls, including one ADA-compliant stall, would be provided on-site, and four stalls would be provided on adjacent properties through perpetual easements. The proposed conversion of the hotel to a multi-family condominium use would not require any physical development, apart from minor utility modifications that would include installation of a new water line and water meter. The property is located at 200 Wharf Street.<sup>1</sup> *Exhibit 1; Exhibit 2; Exhibit 3; Exhibit 10; Exhibit 11, Staff Report, pages 1 through 4; Testimony of Brigid Reynolds; Testimony of Larry Kwarsick; Testimony of Roger Katz.*

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<sup>1</sup> The property is identified by Tax Parcel No. R33034-100-4100. *Exhibit 11, Staff Report, page 1.*

2. The City of Langley (City) determined that the application was complete on December 22, 2020. On January 13, 2021, the City provided notice of the application by mailing notice to property owners within 500 feet of the property and by posting notice on the property and the City website. On January 23, 2021, the City published notice of the application in the *South Whidbey Record*. The City's notice materials provided a comment deadline of January 27, 2021. *Exhibit 6; Exhibit 11, Staff Report, page 2.*
3. The City received several comments from members of the public in response to its notice materials. The comments generally raised concerns about the parking impacts of the proposal, specifically:
  - Charles Pancerzewski submitted a comment stating that the proposed residential use would require more parking stalls than the existing hotel use, noting that people who own condominium units typically own more than one vehicle and have visitor parking needs. He raised concerns that the proposal would not provide sufficient off-street parking to meet the parking demands of future condominium residents and guests. He also raised concerns that leasing additional off-site parking spaces would provide only a temporary solution to the parking demands of the proposal.
  - Bob LeClair submitted several comments raising concerns about the proposal's parking impacts and requesting additional information about the availability of off-site parking spaces that could serve the condominium. He also raised concerns that the proposal would exacerbate current vehicular and pedestrian safety issues in the vicinity of the property. Mr. LeClair requested that the City consider installing a stop sign at the bottom of Wharf Street and repairing and restriping the right-of-way.
  - Tom Felvey submitted a comment asking whether the Washington State Condominium Act, Chapter 64.34 Revised Code of Washington (RCW), applied to the proposal.
  - Nancy Opfer submitted a comment raising concerns about the parking impacts of the proposal.
  - Stan Reeves, Executive Director of the Port of South Whidbey, submitted a comment, noting that the Port owns property adjacent to the subject property and requesting additional information about the proposal to secure off-site parking spaces to serve the condominium.

*Exhibit 7; Exhibit 11, Staff Report, pages 4 and 6.*

#### State Environmental Policy Act

4. The City acted as lead agency and analyzed the environmental impacts of the proposal as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. The City, using the optional process provided for by Washington Administrative Code (WAC) 197-11-355, provided notice of the SEPA comment period with the notice of application. The City's notice materials stated that the City expected to issue a

Determination of Nonsignificance (DNS) for the proposal and provided a SEPA comment deadline of January 27, 2021. The City received one comment specific to SEPA from the Washington State Department of Ecology (DOE). DOE noted that there are two active cleanup sites within 750 feet of the project and stated that the Applicant should be aware of the potential to encounter contaminated material during any excavation activity. The City reviewed the Applicant's Environmental Checklist and information on file and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a final DNS on June 22, 2021, which may be appealed to the City planning official within 10 days of issuance of this decision. *Langley Municipal Code (LMC) 16.04.150. Exhibit 6; Exhibit 7.b; Exhibit 11, Staff Report, pages 2, 3, and 6.*

#### Comprehensive Plan and Zoning

5. The property is designated "Commercial" under the City Comprehensive Plan. The Commercial designation "includes land zoned for retail and wholesale trade, offices, hotels, motels, restaurants, services outlets, and related services." *City Comprehensive Plan – Land Use Element at 8. Exhibit 4; Exhibit 11, Staff Report, page 2.*
6. The property is located within 200 feet of the ordinary high water mark of Puget Sound, and is therefore within the shoreline jurisdiction of the State Shoreline Management Act (SMA) and the Langley Shoreline Master Program (City SMP). *RCW 90.58.030(2)(f); City SMP at 3 and 4.* The City SMP designates the property as being within the "Urban" shoreline environment. *City SMP at 21.* "The purpose of the Urban Designation is to provide for commercial and recreational uses, limited residential, mixed use, transient uses and public land uses, while seeking opportunities for protection and restoration of ecological functions." *City SMP at 17.* Multi-family uses are permitted outright in the Urban shoreline environment. *City SMP at 45.* City Director of Community Planning Brigid Reynolds testified at the hearing that the proposal to convert the existing hotel to a multi-family condominium would not involve any physical development apart from minor utility work and, therefore, would not require a shoreline development permit. Ms. Reynolds further testified that she confirmed with DOE that the proposal would not require any specific shoreline permits. *Exhibit 4; Exhibit 11, Staff Report, page 2; Testimony of Ms. Reynolds.*
7. The property is zoned Central Business (CB). Multi-family dwelling units are permitted only as a secondary use in the CB zone. *LMC 18.16.010.* LMC 18.31.010 provides, however, that regulations under the City SMP take precedence when there is conflict with the zoning code, and, as noted above, multi-family uses are permitted outright in the Urban shoreline environment. Accordingly, the proposed multi-family condominium use is allowed on the property. The property is also within the "Wharf Street Overlay District." The purpose of the Wharf Street Overlay District is to "establish context-sensitive regulations that are intended to compliment those regulations already in place in

the underlying zoning districts.” *LMC 18.11.010*. “Paramount considerations in establishing the Wharf Street overlay district are honoring the historic developmental footprint, protecting vital critical areas and recognizing spatial and access constraints.” *LMC 18.11.010*. The specific regulations applicable to the Wharf Street Overlay District take precedence over any conflict with the regulations applicable to the underlying CB zoning district. *LMC 18.11.020*. Surrounding uses include Nichols Brothers Boat Buildings to the north, Wharf Street access road to the west, a hotel and marina to the south, and Puget Sound to the east. *Exhibit 2; Exhibit 5; Exhibit 11, Staff Report, page 2*.

8. City staff originally determined that the Applicant would be required to provide a total of 15 parking spaces under City-wide parking regulations (as found in *LMC 18.22.130.C.2*) which require that one and one-half parking spaces be provided for every one-bedroom dwelling unit. The Applicant provided a parking analysis, prepared by Transportation Engineering NorthWest, to support a request for a variance from the parking requirements of *LMC 18.22.130.C.2*, dated March 17, 2021. The parking analysis determined that the proposed multi-family residential use would have a peak parking demand rate of 11 parking stalls and, therefore, the proposal to provide 12 parking stalls would exceed this demand. City staff later determined that the parking requirements applicable to the Wharf Street Overlay District governed the proposal, which requires only one parking space per residential unit plus one additional space for every four units within a single complex, for a total of 12 spaces to serve the proposed 10-unit condominium. *LMC 18.11.040.C.2*. *LMC 18.11.040.C* requires that applications for development proposals or for a change of use within the Wharf Street Overlay District provide a parking plan explaining how parking to serve the proposal would be accommodated. The Applicant submitted a parking plan showing that a total of 12 parking stalls would be provided to accommodate the 10 residential units, with eight off-street parking stalls provided on-site and four parking stalls provided on adjacent properties, consistent with the parking requirements for the Wharf Street Overlay District. Because the Applicant would satisfy applicable parking requirements, a variance is not required for the proposal. *Exhibit 5; Exhibit 9; Exhibit 10; Exhibit 11, Staff Report, pages 2 through 4*.
9. The property is currently served by existing sewer and water utilities. The proposal to convert the hotel use, however, would require minor modifications to the existing utilities including installation of a new water line and water meter. The Applicant would be required to submit detailed plans for the proposed utility work, prepared by a licensed engineer, for review and approval by the City engineer prior to installation. *LMC 15.01.040*. In addition, the Applicant would be required to submit change of use service applications for water and sewer and to pay applicable water and sewer participation fees. *Exhibit 3; Exhibit 11, Staff Report, pages 3 through 6*.

### Binding Site Plan

10. The Revised Code of Washington allows cities to adopt, by ordinance, procedures for the division of land by use of a binding site plan as an alternative to the procedures required by the State Subdivision Act, Chapter 58.17 RCW. As relevant here, RCW 58.17.035 allows cities to adopt binding site plan procedures for the development of condominium units. *See RCW 58.17.040(7)*. The City has elected to utilize these alternative land division procedures through LMC 18.22.220, which provides that all condominium projects, regardless of the zone in which they are located, must file a binding site plan with the City for review and approval. A *binding site plan* is defined as “a scale drawing which identifies and shows areas and locations of all streets, roads, improvements, utilities, open spaces and other information specified in [the zoning code].” *LMC 18.01.040*. Binding site plans for condominium projects are generally required to include: information required on a preliminary long plat, the location of existing and proposed structures, a detailed landscape plan, schematic plans and elevations, inscriptions or attachments setting forth limitation and conditions, and provisions ensuring that the development would be in conformance with the site plan as approved. *LMC 18.22.220*. In addition, condominium binding site plans must demonstrate compliance with the requirements of the State Condominium Act, Chapter 64.34 RCW. *LMC 18.22.220.G. Exhibit 11, Staff Report, pages 4 and 5.*
11. City staff reviewed the proposal and determined that it would meet the requirements for preliminary binding site plan approval, noting:
- The application materials include all information required for a preliminary long plat under LMC 17.04.070.
  - The preliminary site plan includes the location of existing structures, and no new structures are proposed.
  - A landscape plan is not required for the proposal because it is an existing development.
  - The application materials include survey plans for the condominium units.
  - City staff has recommended conditions for preliminary binding site plan approval, including conditions that would ensure the proposal would comply with the approved site plan.
  - The following sections of the State Condominium Act are relevant to the proposal and are applicable at final binding site plan approval:
    - RCW 64.34.200: Creation of condominium
    - RCW 64.34.216: Contents of declaration
    - RCW 64.34.224: Common element interests, votes, and expenses
    - RCW 64.34.228: Limited common elements
    - RCW 64.34.232: Survey maps and plans
    - RCW 64.34.252: Monuments as boundaries
    - RCW 64.34.260: Easement rights

*Exhibit 11, Staff Report, pages 4 and 5.*

### Testimony

12. City Director of Community Planning Brigid Reynolds testified generally about the proposal and how, with conditions, it would meet the criteria for preliminary approval of a BSP. She stated that the property and an adjacent property were originally developed with hotel buildings in the 1990s. Ms. Reynolds noted that the adjacent property currently shares utility connections with the subject property, explaining that the proposal would require minor utility work to segregate the connections and to provide a separate water meter for the new condominium. She noted that the proposed multi-family use of the property is allowed in the Urban shoreline environment under the City SMP and that a shoreline development permit would not be required for the proposal because the conversion of the existing hotel to a multi-family condominium would not involve any physical development apart from the minor utility work. Ms. Reynolds stated that the primary issue raised by members of the public was the parking impacts of the proposal, noting that the area experiences a lot of transient traffic from people accessing the marina. She explained that the Applicant's proposal to provide 12 parking spaces, both on-site and on adjacent properties, would comply with the parking requirements for the Wharf Street Overlay District. *Testimony of Ms. Reynolds.*
  
13. Applicant Representative Larry Kwarsick testified that there would not be any new development associated with the proposal to convert the hotel to a multi-family condominium apart from minor utility work. He explained that, although the CB zone allows for multi-family residential units only as a secondary use, the City SMP takes precedence over the City's zoning regulations and allows multi-family uses outright. Mr. Kwarsick also explained that the underlying CB zone does not provide density standards for residential developments. He noted that there is an existing sewer lift station serving the site, explaining that both the subject property and the adjacent property transfer waste to the sewer lift station, and, therefore, any required modifications to the existing sewer system would be minor. Mr. Kwarsick stated that proposed parking stalls would be appropriately assigned to the proposed condominium units. *Testimony of Mr. Kwarsick.*
  
14. Wharfstreet, LLC, member Roger Katz clarified that the sewer line serving the adjacent property is directly connected to the sewer lift station and, therefore, no additional sewer utility work would be required for the proposal. *Testimony of Mr. Katz.*
  
15. Charles Panczerwski testified that he and his wife own nearby property and are concerned about the parking impacts of the proposal. He stated that the proposed multi-family condominium use of the property would likely require more parking spaces than the existing hotel use. Mr. Panczerwski requested additional information on the easements that would be used to secure additional off-site stalls, raising a concern that the easements would not be permanent and could be later sold or transferred by the easement holder. *Testimony of Mr. Panczerwski.*

16. Mr. Kwarsick testified in response to Mr. Pancierzewski's parking concerns, noting that the parking analysis submitted with the proposal determined that 11 parking spaces would be sufficient to meet the parking demands of the proposal. *Testimony of Mr. Kwarsick.*
17. Mr. Katz also testified in response to Mr. Pancierzewski's parking concerns, noting that the additional off-site parking stalls would be secured through perpetual easements and that all parking stalls would be owned and maintained by a Condominium Owner's Association rather than by the individual condominium owners. He explained that, in addition to the 12 parking stalls, there are two additional parking spaces along Sunrise Lane, which are partially on the property and partially within the right-of-way, that have been used by the hotel for 20 years. Mr. Katz stated that, although the Applicant requested the City allow the proposal to utilize these two additional spaces, the City was not amenable to that request. *Testimony of Mr. Katz.*
18. Ms. Reynolds testified that, although the City has not enforced parking restrictions for the spaces along Sunrise Lane, it is not prepared to authorize use of those spaces for the proposal. She also responded to Mr. Katz's assertion that no sewer utility modifications would be required for the proposal, noting that the City utility supervisor provided a report to the Applicant to clarify what is required for sewer and water and that the City expects the Applicant to comply with these requirements. *Testimony of Ms. Reynolds.*

#### Staff Recommendation

19. Ms. Reynolds testified that City staff recommends approval of the preliminary binding site plan, with conditions. Mr. Kwarsick testified that the Applicant understands City staff's recommended conditions and would have no issue complying with the conditions. *Exhibit 11, Staff Report, page 7; Testimony of Ms. Reynolds; Testimony of Mr. Kwarsick.*

### **CONCLUSION**

#### Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide applications for a preliminary binding site plan. *LMC 18.37.070.A.2.*

#### Criteria for Review

The City of Langley Municipal Code provides that all condominium projects must file a binding site plan for review and approval, regardless of the zone in which they would be located. *LMC 18.22.220.*

A *binding site plan* means "a scale drawing which identifies and shows areas and locations of all streets, roads, improvements, utilities, open spaces and other information specified in [the zoning code]." *LMC 18.01.040.* "The binding site plan shall contain inscriptions or attachments setting

forth the limitations and conditions established by the City and the provisions for ensuring development in conformance with the site plan.” *LMC 18.01.040*.

A binding site plan for a condominium project must include the following:

- A. All information required on a preliminary long plat;
- B. The location of all existing/proposed structures;
- C. A detailed landscape plan indicating the location of existing vegetation to be retained, location of vegetation and landscaping structures to be installed, the type of vegetation by common horticultural name, and the installed and mature height of all vegetation;
- D. Schematic plans and elevations of existing/proposed buildings with samples of all exterior finish materials and colors, the type and location of all exterior lighting, signs and accessory structures;
- E. Inscriptions or attachments setting forth the limitations and conditions of development;
- F. The provisions ensuring the development will be in conformance with the site plan as approved; and
- G. Demonstrate compliance with the requirements of Chapter 64.34 RCW, Condominium Act.

*LMC 18.22.220*.

The Revised Code of Washington provides for an alternative method of land division – binding site plans:

A city, town, or county may adopt by ordinance procedures for the divisions of land by use of a binding site plan as an alternative to the procedures required by this chapter. The ordinance shall be limited and only apply to one or more of the following: (1) The use of a binding site plan to divisions for sale or lease of commercially or industrially zoned property as provided in RCW 58.17.040(4); (2) divisions of property for lease as provided for in RCW 58.17.040(5); and (3) divisions of property as provided for in RCW 58.17.040(7). Such ordinance may apply the same or different requirements and procedures to each of the three types of divisions and shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan.

*RCW 58.17.035*.

The criteria for review adopted by the Langley City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040*.

### Conclusion Based on Findings

**With conditions, the proposal would comply with the preliminary binding site plan requirements of the municipal code.** The City provided reasonable notice of the application and opportunity to comment on the proposal. The City received several comments from members of the public that raised concerns with the parking impacts of the proposal. The Applicant would provide a total of 12 parking spaces to serve the proposed condominium use, in accord with the minimum parking requirements applicable to the Wharf Street Overlay District. In addition to meeting these minimum parking requirements, the Applicant submitted a parking analysis with the application, which demonstrates that the proposed 12 parking stalls would exceed the anticipated parking demands of the proposed multi-family condominium use. The City acted as lead agency, reviewed the proposal under SEPA, and determined that the proposal would not have any probable significant adverse environmental impacts. Accordingly, the City issued a DNS, which may be appealed to the City planning official within 10 days of issuance of this decision. The proposed multi-family use is permitted outright in the Urban shoreline environment, and no shoreline development permits are required for the proposal because it would not involve any physical development apart from minor utility modifications.

Existing water and sewer utilities currently serve the hotel use and, with minor modifications, would be adequate to serve the proposed condominium use. Because the property has been previously developed with hotel facilities and because the proposal would not involve any additional development apart from minor utility modifications, adequate provisions already exist to ensure protection of the public health, safety, and general welfare, including provisions related to streets, pedestrian facilities, and stormwater management. The Applicant's preliminary site plan includes the location of existing structures on the property, as well as the plans for the condominium units that would occupy the existing structures. City staff determined that a landscape plan is not required because the proposal involves only a change of use of an existing development. The Applicant's final binding site plan would be required to demonstrate compliance with the requirements of the State Condominium Act, Chapter 64.34 RCW.

Conditions, as detailed below, are necessary to ensure that all easements and conditions of preliminary binding site plan approval are included on the face of the final binding site plan, that the Applicant obtains all necessary permits and pays all required costs associated with utility modifications, and that the Applicant designs and constructs all necessary utility modifications in accordance with City standards. *Findings 1 – 19.*

### **DECISION**

Based on the preceding findings and conclusions, the request for a preliminary binding site plan to allow conversion of a four-building, 10-unit hotel to a multi-family condominium with 10 one-bedroom dwelling units at 200 Wharf Street is **APPROVED**, with the following conditions:

1. Binding Site Plan:

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- a. All easements together with related restrictions and conditions shall be shown on the face of the final BSP as required by LMC 15.01.085.
2. Utilities:
- a. The water line and water meter plan shall be designed and constructed in accordance with City standards.
  - b. The existing water and sewer connections shall be modified and/or inspected as required by the City's Planning Department.
  - c. The developer shall be responsible for all costs associated with the installation of utilities to serve this BSP.
  - d. Applications for water services and a right of way permit shall be submitted prior to any construction work being undertaken.
  - e. All utilities shall be placed underground in accordance with LMC Section 15.01.080 Utility locations. The Applicant shall be responsible for all costs associated with undergrounding the utilities.
  - f. Appropriate easements for all utilities shall be provided by the Applicant and shown on the face of the Final Binding Site Plan.
3. Parking:
- a. All easements together with related restrictions and conditions shall be shown on the face of the final BSP as required by LMC 15.01.085.
  - b. The Condominium Owners Association rules shall clearly state that parking spaces are owned and maintained by the Association and are not owned by the individual condominium owners. Moreover, the Condominium Owners Association shall ensure that none of the parking spaces are sold or otherwise transferred in the future.

Decided this 6<sup>th</sup> day of July 2021.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center