

**CITY OF BLAINE
OFFICE OF THE HEARING EXAMINER**

re: The application of **Billy Brown** for a conditional use permit at the northwest corner of Peace Portal Drive and Mitchell Avenue for a 6-Unit multifamily development

CUP #2022-080

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

**SUMMARY OF APPLICATION AND
DECISION**

Application: The Applicant requests approval for a 6-unit multifamily development with access off of Mitchell Avenue. The proposed access drive and required rear yard landscaping will be located within a private easement on the neighboring properties to the North.

Decision: The requested Conditional Use Permit (CUP) is granted, subject to conditions.

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearings, in which opportunity was afforded to interested parties to object, comment, or bring information forward.

FINDINGS OF FACT

I. PRELIMINARY INFORMATION

Applicant: Billy Brown

Property Owners: TS West Coast Realty LLC, a Delaware limited liability company

Property Location: Northwest corner of Peace Portal Drive and Mitchell Avenue

Assessor's Parcel Number(s):

1. 4001061582000000, and a portion of

- 400106150212000; and
 2. 400106166212000 (Off-site improvements include a portion of the drive aisle and landscaping).

Adjacent Water Body: N/A

Shoreline Designation: N/A

Statewide Significance: N/A

Notice Information:

Application Submitted:	8/25/2022
Notice of Application:	
~Publication:	8/31/2022
~Mailing:	8/30/2022
~Posting:	8/30/2022
Comment Period Ending:	9/14/2022
Notice of SEPA determination:	Exempt
Notice of Hearing:	
~Publication:	12/2/2022
~Mailing:	11/30/2022
~Posting:	12/1/2022

SEPA Review: Determined to be Categorically Exempt per WAC 197-11-800(6).

Zoning: Residential Office

Geographic Subarea: Central Blaine

Total Area: 15,003 sq. ft.

Roads: Peace Portal Drive and Mitchell Avenue

Sewage Disposal: Public Sewer System

Fire Protection: North Whatcom Fire and Rescue (Whatcom County Fire Protection District #21)

Law Enforcement: Blaine Police Department

Public Schools: Blaine School District 503

Topography: Slopes down from North to South

Vegetation: Urban residential with no significant vegetation

Adjacent Land Uses: North: Multi-family, Commercial - Residential Office
East: Mitchell Avenue, Commercial - Residential Office
South: Peace Portal Drive, Commercial - Residential Office
West: Single Family Holmes, Commercial - Residential Office.

Easements: Associated access and utility easements as well as parking

Authorizing Codes, Policies, Plans, and Programs, including but not limited to:

- RCW 36.70B Local Project Review
- RCW 43.21C State Environmental Policy Act (SEPA)
- WAC 197-11 State Environmental Policy Act Rules
- BMC 2.54 Unified Code Enforcement
- BMC 2.58 Hearing Examiner
- BMC 13 Public Services
- BMC 17 – Land use & Development, *including but not limited to:*
 - BMC 17.02 Administrative Responsibilities
 - BMC 17.05 Transportation
 - BMC 17.06 Project Review and Approval Procedures
 - BMC 17.07 Site Plan Review
 - BMC 17.26 Residential/Office Zoning District
 - BMC 17.80 SEPA Guidelines
 - BMC 17.82 Critical Areas Management
 - BMC 17.84 Land Disturbance
 - BMC 17.92 Conditional Use Permits
 - BMC 17.124 Parking and Loading
 - BMC 17.126 Landscaping
- City of Blaine Comprehensive Plan (“Comprehensive Plan”), adopted by City Council pursuant to BMC 16.02 on June 27, 2016.
- Rules of Procedure for Proceedings Before The Hearing Examiner of The City of Blaine (RPPBHE), adopted by City Council pursuant to BMC 2.58.080, on January 10, 2022.

Parties of Record

Allison Tompkins, Community Planner
City of Blaine - Community Development Services Department
435 Martin St.
Blaine, WA 98230

Stacie Pratchner - Community Development Director
City of Blaine - Community Development Services Department
435 Martin St.

Blaine, WA 98230

Stacy Clauson, Project Planner
City of Blaine - Community Development Services Department
435 Martin St.
Blaine, WA 98230

Sukhpreet Dhaliwal, Civil Engineer
City of Blaine - Public Works
435 Martin St.
Blaine, WA 98230

Billy Brown
8621 Cowichan Road
Blaine, WA 98230

Gary Gideon
G+R Architecture+design, LLC
104 Front St.
Lynden, WA 98264

Dennis Olason;
PO Box 2308
Blaine, WA 98231-2308

Jason Friend
1526 Peace Portal Drive
Blaine, WA 98230-8026

Doug Fink
1440 Garfield Avenue
Blaine, WA 98230-8008

Laura Fairchild
1460 Mitchell venue
Blaine, WA 98230-8035

Admitted Exhibits:

1. Land Use Master Invoice, *received* August 25, 2022
2. Conditional Use Permit Application, *received* August 25, 2022
3. Owner Consent Form, *received* August 25, 2022
4. Verification of Signatory Authority, *received* August 25, 2022
5. Proposed Plan Set, *received* August 25, 2022
6. Peace Portal Exhibit A, *received* August 25, 2022
7. Abutting Property Land Use, *received* August 25, 2022
8. Location of Public Facilities and Parks, *received* August 25, 2022

9. Peace Portal Title Guarantee, *received* August 25, 2022
10. Statutory Warranty Deed (AFN 2021-1202435), *received* August 25, 2022
11. Record of Survey for Slotman Enterprises Inc. (AFN 2030904378), *received* August 25, 2022
12. Lookout On Mitchell Boundary Line Adjustment (AFN 2017-0901993), *received* August 25, 2022
13. Easement for Parking and Utility (AFN 2017-0700362), *received* August 25, 2022
14. Quit Claim Deed Part of Lot Line Adjustment (AFN 2017-1000356), *received* August 25, 2022
15. Utility Easement (AFN 2017-0700363), *received* August 25, 2022
16. Georgia Mitchell Short Plat (AFN 2022-0601259), *received* August 25, 2022
17. Notice of Complete Application, *dated* August 26, 2022
18. Notice of Application and Public Hearing
19. Affidavit of Posting, *dated* August 30, 2022
20. Affidavit of Mailing, *dated* August 30, 2022
21. Affidavit of Publication, *dated* August 31, 2022
22. Correspondence from Dennis Olason, *dated* August 31, 2022
23. Correspondence from Jason Friend, *dated* September 1, 2022
24. North Whatcom Fire and Rescue comments, *dated* November 30, 2022
25. Public Works Department comments, *dated* November 28, 2022
26. Vicinity Map
27. Summary of Key Standards for Residential Office Zoning
28. Ordinance 06-2628, *passed* May 8, 2006
29. Admin Policy: Conditional Use Permit Expiration and Associated Permits, *dated* June 19, 2017
30. Notice of Public Hearing
31. Mailing list, *dated* November 30, 2022
32. Notice Sign, photo *dated* December 1, 2022
33. Publication Confirmation, *dated* November 29, 2022
34. Staff Report and Recommendations, *dated* December 1, 2022
35. Notice of Application, Copies of Certified Mailings, *received* August 30, 2022
36. Fire Department Memo *dated* December 21, 2022
37. Public Works Department Memo *dated* December 19, 2022
38. City of Blaine Office of the Hearing Examiner, Order of Continuation, *dated* December 15, 2022
39. Affidavit of Publication, Notice of Public Hearing, *dated* December 2, 2022
40. Correspondence from Doug Fink, *dated* December 6, 2022
41. Notice to Parties of Record of Continuance of Public Hearing, *dated* December 15, 2022
42. Amended Staff Report and Recommendations, *updated* December 16, 2022
43. Submitted during Public Testimony on December 29, 2022: Map Showing Existing Curb Cut marked by Dennis Olason

II.

The City of Blaine Planning Commission previously approved a Conditional Use

Permit (CUP-1-16) on May 12, 2016, for 15 multi-family residential dwelling units. The city did not receive subsequent development plans for the properties and the CUP expired on May 12, 2017.

Now the applicant is seeking approval for a CUP for a 6-unit multifamily development with access off of Mitchell Avenue. The proposed access drive and required rear yard landscaping will be located within a private easement on the neighboring properties to the North.

The site is located within the Residential Office Zoning District that is part of Central Blaine, and is less than 1 acre in size (lot size is approximately 15,003 sq. ft.). This zoning district is situated along Drayton Harbor and Peace Portal Drive and serves as the entry point to the Central Business District. It is also bordered by Mitchell Avenue.

III.

RPPBHE §26(B) allows the Hearing Examiner to issue subpoenas and compel attendance of witnesses— but in this case no party requested the Hearing Examiner to compel a witness or any public comment provider to appear in person and be cross examined by the parties.

IV.

There was public comment at the Hearing primarily concerning: view obstruction and existing trees on city property and not on the application site; stormwater capacity; public services infrastructure for new and existing residents; and traffic patterns and thresholds needed to require traffic infrastructure revision and increased signage or crosswalk markings. Written public comments were also received by the Hearing Examiner, concerning both the location and nature of the development and whether appropriate environmental safeguards were being required. See Exhibits 22 and 23.

IV.

Testimony was given by the City's witness, Sukhpreet Dhaliwal, that the peak PM trips generated by this project would be 3, far less than 50, which is the point at which a traffic impact study would be required.

The application as proposed and conditioned would conform to the City of Blaine Public Works Development Guidelines, City of Blaine Comprehensive Plan, City Traffic

improvement Plan, City of Blaine Water System Plan, Washington State Department of Health, American Water Works Associations Standards, Western Washington Stormwater Management Manual, and all other related governing design and standards documents that could be identified as relevant by City of Blaine Public Works. See Exhibit 25.

V.

Hearing Examiner Rules §32 grants parties the right to object to evidence and for the Hearing Examiner to rule on such objections. In the case at hand, with full knowledge of the evidence being admitted by the Hearing Examiner, no objection was made by any party to any of the exhibits that were admitted into the record.

Admitted Exhibit 1-43 are deemed to be relevant regarding the facts represented therein and were admitted.

VI.

The City of Blaine's Community Development Services Department ("CDSD") made a written specific recommendation to approve the permits in Exhibit 42 and did also review and reference the applicable facts and laws with proposed necessary conditions, in an amended report entitled "Staff Report and Recommendation to Hearing Examiner," *dated* December 16, 2022 (herein "Staff Report").

The Applicant has indicated that the Staff Report is factually correct and agreed with all the recommended conditions put forward by the CDSD.

The findings of fact as set forth in the Staff Report are supported by the record as a whole. Any factual findings set forth in the Staff Report, a copy of which is attached hereto, that are not contradicted by specific findings made in this decision are hereby adopted as findings of fact by the Hearing Examiner and incorporated herein by this reference.

VII.

Any Conclusion of Law made below which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

The proposed project site is in the Residential Office Zoning District, and the standards for development in this zone are established in BMC 17.26. Approved uses are Single-family dwellings and offices designed to blend with the historic character of the area. Under BMC 17.26.040(C), multi-family dwellings are an authorized conditional use.

Setting aside the issue of conditional uses, BMC 17.26.050 conditionally permits units at a rate of 24 units per acre. The project site is 15,003 sq. ft. and so the maximum density that could be achieved on the property is 8 units. As the applicant is proposing 6 units, it would be an allowable use if a conditional use permit was granted.

Further, the project, as conditioned, is consistent with the development standards for the Residential Office District zoning district contained in BMC 17.26 and the applicable development standards for multi-family development.

The proposed application for a CUP permit is necessary for the development as proposed by the applicant. Given that it meets the other zoning standards, a CUP permit should be approved by the Hearing Examiner if it is consistent with the CUP criteria.

II.

The proposed Application for the Conditional Use Permit can be approved if consistent with the standards and criteria for granting conditional use permits of BMC 17.92.050 (A through H):

- A. Will be harmonious and in accordance with the general and specific objectives of the city of Blaine comprehensive plan and zoning regulations.
- B. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area.
- C. Will not be hazardous or disturbing to existing or future neighboring uses.
- D. Will be serviced adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the

proposed use shall be able to provide adequately any such services.

- E. Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.
- F. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors.
- G. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.
- H. Will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance.

Subject to the Conditions of Approval attached hereto, the proposed use complies with the CUP criteria, and a CUP should be granted by the Hearing Examiner with those conditions.

III.

Specific legal conclusions regarding concerns raised at the hearing:

1. Pursuant to BMC 17.05.020, projects that propose to generate more than 50 trips per peak hour must be reviewed for transportation concurrency – however, in this case this project does not meet that threshold. Further, the location and dimensions of the project meet the appropriate City of Blaine standards and locational criteria for medium to high density residential development dictates direct access to collector roadways, as is the case in this proposed development.
2. The proposed access location is determined to be consistent with the required driveway spacing standards contained in the Public Works Development Standards, Section 2.02.120.
3. All notices, postings, and mailings were done in a timely and legal manner.
4. This site will be adequately served by public facilities (see Exhibit 25).
5. The City does not regulate view preservation and the Hearing Examiner does not have the authority in this context to require the City to take action on adjacent properties. The project meets the applicable zoning standards for setback and height standards.

6. Public benefit for existing residents is not a requirement of this process, but there is a public benefit gained by development occurring within the regulations promulgated by the people of Blaine through their elected officials and ordinances; meaning the project, if approved due to its meeting of criteria is fulfilling the vision of the people of Blaine for their city.

7. In order for the project to be approved, the applicant would be required to submit and obtain approval of a Stormwater report and Stormwater Pollution Prevention Plan meeting standards contained in BMC 13.01.050 and BMC 17.84.050.

IV.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

A Conditional Use Permit are all hereby granted to Billy Brown to, as described in their application: build a 6-unit multifamily development with access off of Mitchell Avenue in Blaine, WA, and with adjacent offsite improvements, on Assessor's Parcel Nos. 4001061582000000, a portion of 400106150212000, and 400106166212000 as applicable. The permits are granted subject to the following conditions:

CONDITIONS ASSOCIATED WITH PERMIT

General Conditions

1. This application is subject to the applicable requirements contained in the Blaine Municipal Code, Public Works Design and Engineering Standards and Building and Fire Codes, including but not exclusive to those outlined in Exhibits 36 and 37, incorporated by reference herein
2. The applicant shall be responsible for complying with any other state or local statutes, ordinance, or regulations applicable to this project.
3. All design and construction of development improvements shall be in conformance with the approved Conditional Use Permit, unless otherwise modified under the

provisions in BMC 17.92.080.

4. Development fees including but not limited to water, sewer and electric connections, stormwater mitigation, and impact fees (park, traffic, and fire mitigation) shall be paid prior to issuance of building permits.

Specific Conditions:

5. Prior to issuance of a building permit the following shall be submitted and approved by Community Development Services:
 - a. Submit a Site Plan Review permit consistent with BMC 17.07.030 and demonstrating compliance with the R/O Zoning District standards contained in BMC 17.26, as well as referenced materials such as the parking standards contained in BMC 17.124 and landscaping standards contained in BMC 17.126. In addition to the submittal requirements in BMC 17.07.030, the supporting materials shall be submitted:
 - i. A Stormwater report and Stormwater Pollution Prevention Plan meeting standards contained in BMC 13.01.050 and BMC 17.84.050.
 - ii. Site Plan drawings shall include adequate fire protection infrastructure, consistent with the Fire Department conditions of approval contained in **Exhibit 36**.
 - b. The final building elevations and drawings, demonstrating compliance with the standards contained in BMC 17.26.
 - c. The applicant shall submit detailed landscaping and irrigation plans consistent with the submittal requirements of BMC 17.126.030 and addressing the installation standards contained in BMC 17.126.070. The landscaping requirements established in; BMC 17.126.050(D); 17.126.060(F1), (S1), (R1), and (SFR); and BMC 17.126.110 apply to the development on the site. Utility boxes, if proposed, shall be enclosed or screened consistent with BMC 17.126.090.
 - d. The applicant shall submit a detailed lighting plan depicting proposed exterior light fixtures consistent with the standards for lighting contained in BMC 17.26.120.
 - e. The applicant shall submit the following documents for review and approval, which shall then be recorded with the county auditor at the applicant's expense:
 - i. The property owner shall record a covenant to restrict use against the property establishing that the first-floor rec areas have not been approved as separate and/or accessory dwelling units nor for office/commercial use.
 - f. The applicant shall pay applicable impact fees and utility connection fees.

6. Prior to any land disturbance work in the right-of-way for public utilities, the following is required:
 - a. Unless otherwise exempt, submit a Land Disturbance Permit and application materials consistent with BMC 17.84.060.
 - b. Obtain a Right-of-Way Excavation Permit and/or Public Facilities Construction Agreement and post a performance bond for any work in the City right-of-way and or on City utilities and infrastructure to the satisfaction of the Public Works Director.
 - c. Improvements shall be designed and constructed in accordance with the city's development guidelines and public works standards and the appropriate utility comprehensive plans. All water, sewer, gas, electric, and other utility services shall be located underground.
7. Prior to construction of the building, the applicant shall submit and obtain approval of a Commercial/Multi-Family Residential Building Permit.
8. During development activities, the following Inadvertent Discovery Plan (IDP) shall be maintained on-site and followed should archaeological resources or human remains be encountered:
 - a. **Inadvertent Discovery of Archaeological Resources:** 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.
 - b. **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):** 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.

9. Prior to final inspection or issuance of a Certificate of Occupancy, whichever comes first the following shall be completed and approved by Community Services Development:
 - a. All required improvements shall be installed, and improved Infrastructure shall be approved by the public works department in accordance with standards of the city.
 - b. Applicant will verify finished building height prior to final inspection. Maximum building height is 35 feet from the average adjacent natural grade to the highest point of the structure excluding elements, such as chimneys, utility elements and decorative elements, or temporary occupied elements, such as cupolas and towers.
 - c. All required paved surfaces and traffic control devices such as parking strips, designated car stalls, directional arrows or signs, bull rails, curbs and other developments shall be installed and completed as shown on the approved plans. Hard-surfaced parking areas shall use paint or similar devices to delineate car stalls and direction of traffic.
 - d. Required landscaping and irrigation shall be installed, inspected and accepted, consistent with the landscape plans approved by Community Development Services. Alternatively, the developer may provide a performance security to guarantee the installation of the landscaping consistent with BMC 17.126.160.

MODIFICATION OF CONDITIONAL USE PERMIT

Any change or modification in this conditional use project in design or scope shall be immediately routed to City of Blaine Planning and Community Development staff for review. Any change in this project will require another hearing and approval by the Hearing Examiner pursuant to BMC 17.92.080, unless falling into one of the exceptions listed therein.

NOTICE OF POTENTIAL REVOCATION AND PENALTIES

This Approval is subject to all the above-stated conditions. Failure to comply with them may be cause for its revocation pursuant to BMC 17.92.060 and enforcement of code violations under BMC 2.54.

Complaints regarding a violation of the conditions of this permit should be filed with City of Blaine Planning and Community Development staff. The Hearing Examiner may not take any action to revoke this approval without further public hearing

NOTICE OF EXPIRATION

Pursuant to BMC 17.92.070 this permit shall expire within one year of the date of its approval unless construction or the establishment of the use has commenced. The director may extend the expiration date by six months upon written request and evidence that the applicant intends to activate the permit within that time limit.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE BLAINE HEARING EXAMINER

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to Whatcom Superior Court within 21 days as authorized by RCW 36.70C, BMC 2.58.160, and BMC 17.06.190; or for shoreline permit applications and revisions which are subject to appeal to the State Shoreline Hearings Board within 21 days pursuant to BMC 17.18.080, RCW 90.58.180, and WAC 461-08.

Dated this 4th day of January 2023



Rajeev Majumdar, Hearing Examiner