

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

In the Matter of the Application of)	No. CUP 3-23
)	
Adam Braddock, on behalf of)	Sharon Avenue Townhomes CUP
Fifteen for Two, LLC)	
)	
)	
)	FINDINGS, CONCLUSIONS,
<u>For a Conditional Use Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for a conditional use permit to allow phased construction of 54 horizontally attached townhome units and associated improvements and appurtenances, on property totaling approximately three acres at 204 East Sharon Avenue, is **APPROVED**. Conditions are necessary to address specific impacts of the proposed development.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on July 11, 2023.

Testimony:

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

Brad Johnson, City Community Development Director
Adam Braddock, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report and Recommendation, dated June 8, 2023
2. Site Plan, dated April 20, 2023
3. Zoning Map, undated
4. Aerial Photograph – Vicinity Conditions, undated
5. Building Plans, dated March 23, 2023
6. SEPA Environmental Checklist, dated March 29, 2023
7. Notice of Complete Application, dated May 1, 2023
8. Notice of Permit Application and Public Comment Period, dated May 1, 2023
9. Revised Notice of Permit Application and Public Comment Period, published May 6, 2023

*Findings, Conclusions, and Decision
City of Burlington Hearing Examiner
Sharon Avenue Townhomes CUP
No. CUP 3-23*

10. Advertising Proof (Notice of Application), dated May 4, 2023
11. Notice of Public Hearing, undated
12. Advertising Proof (Notice of Public Hearing), published June 22, 2023

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. Adam Braddock, on behalf of Fifteen for Two, LLC (Applicant), requests a conditional use permit (CUP) to allow for the phased development/construction of 54 townhome units on property totaling approximately three acres.¹ Development would involve construction of 12 buildings with four to six zero-lot line attached units (townhomes) within each building. Associated improvements would include the installation of landscaping, stormwater facilities, and utilities serving the townhomes. The properties are located at 204 East Sharon Avenue.² *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 2; Exhibit 5.*
2. The City of Burlington (City) determined that the application was complete on May 1, 2023.³ On May 4, 2023, the City provided notice of the application consistent with the requirements of BMC 14A.05.090 by mailing notice to surrounding property owners, posting notice on-site and by publishing notice in the *Skagit Valley Herald*, with a comment deadline of May 18, 2022.⁴ On June 22, 2023, the City provided notice of the open record hearing associated with the application by publishing notice in the *Skagit Valley Herald*, posting notice on-site, and by mailing notice to interested parties. The

¹ As detailed in the testimony provided during the open record hearing associated with the application, the Applicant Representative testified that the Applicant intends to develop 18 of the 54 total townhome units itself, while other applicants/investors may be involved or take the lead on development of the remaining townhome units proposed under the current application during future site development. The Applicant Representative also noted that any potential subdivision or binding site plan associated with the site would also occur through additional application(s) and review by the City in the future. *Testimony of Applicant Representative Adam Braddock.*

² The properties are identified by Skagit County Tax Parcels Nos. P72722, P72723, P133618, P133623, P133619, P133624, P133620, P133625, P133621, P133626, P133622 and P133627. *Exhibit 11.*

³ Changes to the municipal code have occurred since the application was initially deemed complete. Mr. Braddock testified, however, that the Applicant would prefer that the current proposal be reviewed under the version of the municipal code current at the time of the open record hearing on July 11, 2023, as is allowed under Washington law. *Testimony of Mr. Braddock.*

⁴ The City initially provided notice of the application on May 1, 2023, and provided a revised notice of application on May 4, 2023. *Exhibit 8; Exhibit 9.*

Findings, Conclusions, and Decision
City of Burlington Hearing Examiner
Sharon Avenue Townhomes CUP
No. CUP 3-23

City did not receive any comment on the proposal in response to its notice materials. *Exhibit 1, Staff Report, page 3; Exhibits 7 through 12.*

State Environmental Policy Act

3. 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 used the optional DNS process under WAC 197-11-355 and provided notice of the threshold determination with the notice of application on May 4, 2023. The City’s notice materials stated that the City expected to issue a Mitigated Determination of Nonsignificance (MDNS) for the proposal, but noted that the City did not expect that an Environmental Impact Statement (EIS) would be necessary. The City did not receive any comments specific to SEPA review in response to its notice materials. The City reviewed the Applicant’s Environmental Checklist, and other available information on file, and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued an MDNS on June 8, 2023. Under BMC 14A.05.190.C, any appeal of the MDNS would be considered by the City Council together with an appeal of this decision, which must be filed within 14 calendar days after the City provides written notice of this decision. *Exhibit 1, Staff Report, pages 10 through 12; Exhibit 6; Exhibit 8; Exhibit 9.*

4. The MDNS requires the Applicant to implement the following mitigation measures:
 - With the exception of the impacts identified below, all of the impacts associated with this proposal will be adequately mitigated through the application of Burlington Municipal Code requirements. Therefore, all construction, work, clearing, grading, filling, excavation, and other development activities shall be in full compliance with applicable Burlington Municipal Code requirements and the conditions identified below under the “Permit Recommendation” heading.
 - If the proposed development includes outdoor lighting it could result in glare and light impacts, both on adjacent developments and the residents of proposed development. Therefore, if exterior lighting is provided it shall be directed downwards and screened, hooded, or optically focused so the light source is not visible beyond the property boundaries and to direct light away from individual residential units. Manufacturer’s specifications shall be submitted for each type of exterior lighting fixture demonstrating compliance with this condition and documentation shall be provided demonstrating compliance with all applicable Washington State Energy Code requirements. All exterior lighting fixtures and outdoor lighting shall be consistent with the approved lighting plan. No final occupancy or final building permit inspection shall be granted until the exterior lighting has been inspected for consistency with the approved lighting plan.
 - Large multifamily developments located within walking distance of commercial services and public amenities may generate significant pedestrian traffic. Because

the proposed development can be expected to generate additional demands for pedestrian amenities the following conditions shall apply:

- The crosswalks at the intersection of East Sharon Avenue and South Alder Street shall be improved with pavement markings and signage approved by the City Engineer; and
- The crosswalks at the intersection of Cedar Street and South Alder Street shall be improved with pavement markings and signage approved by the City Engineer.
- In order to ensure stormwater impacts are mitigated to a level of non-significance the total impervious surface coverage of the proposed development shall not exceed 80 percent. For purposes of interpreting this condition the definition of “impervious surface” shall be the definition provided in Title 17 BMC.
- In order to ensure ground and surface water impacts are mitigated to a level of non-significance any existing septic systems or onsite wastewater disposal systems shall be decommissioned in accordance with Skagit County Health Department requirements. No final engineering inspection or as built drawings shall be approved until the Skagit County Health Department has verified, in writing, that all septic systems and private wastewater disposal systems have been decommissioned.

Exhibit 1, Staff Report, pages 10 through 12.

Comprehensive Plan, Zoning, and Surrounding Uses

5. The City Comprehensive Plan designates the subject property as “Mixed-Use Commercial.” The City identified the following Comprehensive Plan policies as relevant to the proposal:
- Concentrate development and increase densities in existing developed areas with good access to transportation, services, and utilities. Residential densities will be increased in areas closest to jobs, shopping, and services. A significant share of the City’s future growth will be directed to the three designated priority development areas centered along Burlington Boulevard and Fairhaven Avenue. [Land Use Element General Objectives]
 - In order to ensure land is used as efficiently as possible, and to support the City’s retail and service trades, residential growth will be directed to mixed-use areas and the intensity of development will be increased over time. [Land Use Goal 2.4.4]
 - Minimize barriers to new multiunit housing development in the RA, MUR, and MUC designations. [Land Use Policy 2.4.4.1]
 - Accommodate a robust supply of housing in a variety of types. Limit monthly household expenses related to transportation, utilities, and taxes by concentrating housing in locations close to jobs, services, shopping,

and in areas with established utilities. [Housing Element General Objectives]

- Encourage the construction of affordable housing types suitable for families with children such as townhomes, duplexes, and horizontally attached dwellings. [Housing Policy 3.4.3.4]
- To minimize private transportation expenses, adopt policies and regulations that facilitate and promote the construction of attached housing in areas with a dense concentration of jobs and services, particularly the Commercial Core. [Housing Policy 3.4.7.8]
- Increase the share of trips made on foot and reduce per-capita vehicle miles traveled (VMT). [Transportation Goal 8.7.3]
- Increase the number of residents who regularly engage in physically active transportation. [Transportation Goal 8.7.4]
- Provision of pedestrian crossings at regular intervals. [Transportation Policy 8.7.3.2.a]
- Incorporate direct and convenient pedestrian connections into the design of all new developments. [Transportation Policy 8.7.3.2.b]
- Demand management strategies shall be implemented to reduce or eliminate the need for expensive public infrastructure, and specifically states where possible service needs should be met by shifting demand to less costly modes. [Public Facilities and Services Policy 6.4.2.4.d]

Exhibit 1, Staff Report, pages 7 through 10.

6. The properties are zoned Mixed-Use Commercial 2 (MUC-2). Properties to the south and west are also zoned MUC-2. The property to the north of the site is zoned Residential Attached (RA-1). Property to the east is zoned Public Facilities and Transportation (PFT-1).

The purpose of the MUC-2 zoning district is to “implement the MUC comprehensive plan designation by accommodating a dense mix of large scale commercial activities and residential uses such as stores, eating and drinking establishments, and offices, and large multiunit residential buildings.” *BMC 17.50.030*. Horizontally attached dwellings are permitted outright in the MUC-2 zoning district. *BMC 17.50.050.C*. However, as noted above, the application was deemed complete (and review of the proposal began) prior to implementation of the MUC-2 zoning district. The properties were previously zoned Commercial 1 (C-1). Multifamily developments without a commercial component required a conditional use permit in the C-1 zone under former *BMC 17.50.070.A*. Accordingly, staff determined that a conditional use permit is required for the proposal, although review of the proposal will occur under the zoning criteria applicable to the MUC-2 zone, as requested by the Applicant. *Exhibit 1, Staff Report, pages 2 through 4; Exhibit 3.*

7. Development regulations specific to the MUC-2 zoning district include a maximum street setback of ten feet and a maximum building height of 45 feet. *BMC 17.50.090.D; BMC 17.50.090.E*. The proposed buildings would be setback ten feet from their respective street frontages. The highest point of the proposed buildings would be just over 26 feet, according to submitted plans. *Exhibit 1, Staff Report, pages 4 and 6; Exhibit 2; Exhibit 4*.
8. Surrounding uses include public offices, a fire station, police station, municipal court, skating rink, residences, restaurants, a bus station, contractors offices, and retailers. *Exhibit 1, Staff Report, page 2*.

Conditional Use Permit

9. As noted above, the Applicant requests a conditional use permit to allow phased construction of 54 horizontally attached townhome units and associated improvements and appurtenances, on property totaling approximately three acres. City staff analyzed the proposal and determined that it would meet the specific criteria for approval of a CUP under BMC 14A.05.140.D, noting:
 - The Applicant is proposing a residential development comprised of 12 buildings containing a total of 54 horizontally attached townhome units. The site is zoned MUC-2, which currently allows for a variety of commercial and multi-unit residential development types. The areas to the west and south of the site are also zoned MUC-2. The area to the north of the site is zoned RA-1. The RA-1 zone allows lower density multiunit residential development, such as townhomes, duplexes, and small multiunit buildings. The property to the east of the site is owned by the City and is zoned PFT-1. The PFT-1 zone allows for public facilities with a commercial or institutional character, such as offices, emergency services, and public housing. Based on the revised zoning adopted by the City Council on May 11, 2023, the proposed residential development is allowed outright in the MUC-2 zone. Similar residential development types are also permitted in the RA-1 zone. Because the proposed use is allowed outright in the MUC-2 and RA-1 zones which surround the site, the use would have similar impacts to other uses permitted in the surrounding area.
 - The proposed development is located in an existing commercial area and is within walking distance of jobs, services, and shopping. The development is within walking distance of two large retailers/grocery stores (Haggen and Fred Myers) and located next door to City Hall and public safety campus. Utilities including public water, sewer, and fiber optic communications are available adjacent to the development site. In addition, the development site is located within the Commercial Core Priority Development Area.
 - By locating infill housing in an area with a dense concentration of shopping, jobs, and services, as well as good transit access, the proposed development would help to achieve the goals and policies of the Comprehensive Plan. However, the existing pedestrian crossings at the intersections of Cedar and Alder and Sharron

and Alder are both unmarked and deficient. In addition, residential developments located in close proximity to commercial services and shopping have the potential to create significant demands for pedestrian access. In order to ensure consistency with the goals and policies of the Comprehensive Plan, crosswalk and pedestrian improvements should be required as a condition of approval.

- The proposal complies with all applicable code requirements or can comply with all applicable code requirements through the application of reasonable conditions of approval.
- Under the City's revised zoning regulations, the proposed use would be permitted outright on the site and similar uses are permitted in the surrounding area. As such the use is consistent with the existing and intended character of the area.
- This proposal would have little or no impact on public infrastructure. Existing utilities are located in the street adjacent to the site, the development is located next door to the City's public safety facilities and is within walking distance of jobs and commercial services thereby minimizing transportation impacts.

Exhibit 1, Staff Report, pages 7 through 10.

Landscaping

10. Ten percent of the site must be landscaped. *BMC 17.80.070*. To comply with this requirement, the proposed development must provide a minimum of 13,068 square feet of landscaping for the 130,680 development site. The Applicant proposes to install landscaping buffers around the perimeter of the site, in front of individual townhouse units, and between groups of buildings. The proposed development would provide a total of more than 32,050 square feet of landscaping. Street frontage landscaping along Cedar Street and Sharon Avenue would consist of a ten-foot-wide strip planted with street trees at intervals of 30 feet, in compliance with *BMC 17.80.080.B*. The Applicant would be required to preserve existing established trees wherever possible under *BMC 17.80.060.B*.

Landscaping strips along interior lot lines would have a minimum width of five feet. The perimeter landscaping buffer strips would be approximately 15 feet wide along the western property boundary and approximately 20 feet wide along the eastern property line. Landscaping strips would be planted with a mix of trees and shrubs. The Applicant would be required to provide a tree every 30 feet of perimeter landscaping. *BMC 17.80.090.A; BMC 17.80.090.C*. No parking lot is proposed. Accordingly, no parking lot landscaping is required. The Applicant would be required to provide specifications for a complete irrigation system in compliance with *BMC 17.80.060.H*. The Applicant would be required to provide a final landscaping plan prepared by a licensed landscape architect that demonstrates full compliance with all applicable landscaping requirements as a condition of approval for the application. *Exhibit 1, Staff Report, pages 4 and 5; Exhibit 2.*

Stormwater

11. Low impact development (LID) techniques, such as rain gardens, permeable pavements, and bio-retention, must be incorporated into the design of all new development unless demonstrated to be infeasible through an engineering analysis. *BMC 17.70.135.C; BMC 17.85.140.E*. Landscaped areas must be used to the maximum extent possible to treat, store, or infiltrate stormwater runoff. *BMC 17.80.060.K*. Parking and circulation areas must also incorporate LID measures such as permeable pavement, rain gardens, and bio-retention. *BMC 17.85.100.B; BMC 17.85.100.C*. The Applicant must provide final plans that demonstrate how LID measures have been incorporated in compliance with applicable stormwater requirements. *Exhibit 1, Staff Report, pages 5 and 6*.

Access and Parking

12. The Applicant currently proposes to provide multiple residential units on each of the lots comprising the site. However, the Applicant has indicated that they would likely create individual zero-lot-line units through a future land division process and that they would like to ensure the development is designed in compliance with any requirements applicable to zero-lot-line development in order to make this option feasible. All newly created lots must have frontage on a public or private street unless a shared driveway is authorized under Title 17 BMC. *BMC 16.40.060.B*. Shared driveways can serve a maximum of four dwelling unit. *BMC 17.01.050*. Accordingly, the Applicant must provide a new public or private street to provide access to the individual units. City staff indicated that the proposed roadway section depicted on the preliminary plans does not comply with the City's requirements for private streets. The proposed development would be required to comply with the standard criteria for private streets under BMC 17.85.140 or the alternative street design standards under BMC 17.85.150. The Applicant would be required to submit civil engineering plans demonstrating compliance with either BMC 17.85.140 or BMC 17.85.150 as a conditional of approval for the application. Existing streets adjoining the property are constructed to City standards, with full width paving, curbing, and sidewalks.

One parking space must be provided for each two-bedroom townhome unit and two parking spaces are required for each townhome unit containing three or more bedrooms. *BMC 17.85.060*. Tandem parking arrangements may be used to meet parking requirements for townhome units. *BMC 17.85.050.E*. The preliminary plans provided by the Applicant demonstrate that each two bedroom floor plan would have one garage parking space and one driveway parking space for a total of two parking spaces for each unit, in excess of the City's minimum parking requirements. *Exhibit 1, Staff Report, pages 1, 6, and 7; Exhibit 2*.

Utilities and Services

13. Skagit County Health Department has indicated that there is a septic system located on the property despite the availability of public sewer service. Use of a private wastewater

disposal system is not permitted where public sewer service is available. *BMC 13.04.020*. The MDNS requires all existing septic systems to be decommissioned. The proposed development would be served by the public sewer service. The Applicant must specify where and how garbage would be collected. Garbage may be collected from individual units in a full screened exterior space, or the proposed development could provide consolidated waste collection with screening that complies with applicable code requirements. *Exhibit 1, Staff Report, pages 2, 6, and 12*.

Lighting

14. Outdoor lighting must be provided for common areas, including parking lots, access streets, and pedestrian paths in multifamily developments located in the MUC-2 zoning district. *BMC 17.25.070.A*. All outdoor lighting fixtures must be fully hooded, screened, and directed downwards to prevent glare on adjoining properties, public rights-of-way, or in individual apartment units. *BMC 17.85.115.G; BMC 17.70.110.A; BMC 17.25.050.A.7*. The Applicant would be required to provide a detailed lighting plan demonstrating compliance with all applicable lighting requirements as a condition of approval for the application. *Exhibit 1, Staff Report, page 6*.

Testimony

15. City Community Development Director Brad Johnson testified generally about the proposal and how, with conditions, it would comply with the City Comprehensive Plan and zoning ordinances and would satisfy the specific criteria for approval of a CUP. He explained that the application was deemed complete prior to the adoption of new regulations but that the application is permitted to be reviewed under the new municipal code such that the Applicant need not resubmit the application. He noted that the City always allows the Applicant to take advantage of new code provisions unless there is an extreme countervailing public policy consideration. He stated that City Council expressed interest in seeing the new code provisions put to use. Mr. Johnson explained that the new code created allowances for zero-lot-line development that are applicable to the proposed development, including elimination of the previous density limitation and requirements for commercial development as part of mixed-use development on non-arterial streets. He noted that neither of the streets adjoining the development are arterial streets. Mr. Johnson explained that the proposed development would be required to comply with applicable requirements for private streets, which would be reviewed for compliance during the civil plan review process. He explained that any proposal for creation of separate lots would be reviewed through a separate land division application process in the future. *Testimony of Mr. Johnson*.
16. Applicant Representative Adam Braddock explained that the Applicant prefers that the application be reviewed under the new code regulations. He stated that the Applicant intends on developing 18 of the 54 total townhome units that are currently being proposed but is seeking approval for phased development of the entire site. Other

applicants/investors may become involved in the future and take the lead in developing later phases of the project. Mr. Braddock explained that the Applicant is currently working with the fire marshal to develop the private road in compliance with the recommendations of the fire marshal and the private road requirements under the City code. *Testimony of Mr. Braddock.*

Staff Recommendation

17. City staff reviewed the proposal and determined that, with conditions, it would comply with all applicable code requirements and would meet the specific criteria for CUP approval. *Exhibit 1, Staff Report, pages 12 through 15.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is vested with the duty and authority to hold public hearings and render decisions on Type III land use decisions, including conditional use permit requests. *BMC 14A.05.060.C.7; BMC 14A.05.140; BMC 17.120.120.*

Criteria for Review

The Hearing Examiner shall only approve a request for a conditional use permit if it is consistent with the following criteria:

1. The use will have no more adverse effect on the health, safety or comfort of persons living or working in the area, and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area, than would any use generally permitted in the district. Among matters to be considered are traffic flow and control, access to and circulation within the property, off-street parking and loading, refuse and service areas, utilities, screening and buffering, signs, yards and other open spaces, height, bulk and location of structures, location of proposed open space uses, hours and manner of operation, and noise, lights, dust, odor, fumes and vibration; and
2. The proposal is in accordance with the goals, policies and objectives of the comprehensive plan; and
3. The proposal complies with all the requirements of this title; and
4. The proposal can be constructed and maintained so as to be harmonious and appropriate in design, character, and appearance with the existing or intended character of the general vicinity and provides a high quality of development; and
5. The proposal will not adversely affect the public infrastructure.

BMC 14A.05.140.D.

The criteria for review adopted by the 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

*Findings, Conclusions, and Decision
City of Burlington Hearing Examiner
Sharon Avenue Townhomes CUP
No. CUP 3-23*

development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040*.

Conclusions Based on Findings

- 1. With conditions, the use would have no more adverse effect on the health, safety or comfort of persons living or working in the area, and would be no more injurious, economically or otherwise, to property or improvements in the surrounding area, than would any use generally permitted in the MUC-2 zoning district.** The City provided reasonable notice and opportunity to comment on the proposal. The City did not receive any comment on the proposal in response to its notice materials. The City issued an MDNS for the proposal, and did not receive any comments specific to the MDNS. The MDNS may be appealed with this decision, consistent with the municipal code.

The proposed development would include construction of 54 horizontally attached townhome units on 12 parcels totaling three acres. The proposed development would be located in the MUC-2 zoning district. Horizontally attached dwellings are permitted outright in the MUC-2 zoning district. *BMC 17.50.050.C*. Because the application was deemed complete and review began prior to implementation of the MUC-2 zoning district—and the subject properties were previously zoned C-1, which required a conditional use permit for multifamily developments without a commercial component—City staff determined that a CUP would be required. Essentially, the need for a CUP is a procedural vestige at this point but both the City and the Applicant agree that it is appropriate to review the proposal under the newly adopted MUC-2 zoning district requirements. Because the proposed development would be permitted outright in the MUC-2 zoning district, the proposal would not have any more adverse effect on the health, safety or comfort of persons living or working in the area, and would be no more injurious, economically or otherwise, to property or improvements in the surrounding area, than would any use generally permitted in the MUC-2 zoning district.

The proposed development would have no more impact on public infrastructure than uses permitted in the MUC-2 zoning district or existing uses in the surrounding area, which include public offices, a fire station, police station, municipal court, skating rink, residences, restaurants, a bus station, contractors offices, and retailers. The proposed development would be served by the public sewer services. Utilities, including public water, sewer, and fiber optic communications, are available adjacent to the development site. Conditions are necessary to ensure that the Applicant completes the development in a timely manner and complies with the approved plans, requirements of the municipal code, and all applicable building, fire, and safety code requirements. *Findings 1 – 17*.

- 2. The proposal would be in accord with the goals, policies, and objectives of the City's Comprehensive Plan.** The Comprehensive Plan designates the subject properties as

Mixed-Use Commercial. The proposed development would be consistent with the goals and policies of the Comprehensive Plan promoting the concentration of development and increased densities in existing developed areas with good access to transportation, services, and utilities; residential growth in mixed-use areas; the minimization of barriers to new multiunit housing development; the accommodation of a robust supply of housing in a variety of types; the construction of affordable housing types suitable to families with children; the minimization of private transportation expenses; the increase of the share of trips made on foot; the increase of the number of residents regularly engaging in physically active transportation; provision of pedestrian crossings at regular intervals; the incorporation of direct and convenient pedestrian connections; implementation of management strategies to eliminate the need for expensive public infrastructure.

Findings 1, 5, and 9.

3. **With conditions, the proposal would comply with all the requirements of the municipal code.** As conditioned, the proposed development would meet all development standards applicable to the MUC-2 zoning district, including standards related to parking, landscaping, stormwater, lighting, and access. The Applicant would provide more than double the 13,068 square feet of landscaping required on the 130,680 development site, in accordance with the ten percent landscaping requirement under BMC 17.80.070. Street frontage landscaping along Cedar Street and Sharon Avenue would consist of a ten-foot-wide strip planted with street trees at intervals of 30 feet, in compliance with BMC 17.80.080.B. The Applicant would be required to provide a tree every 30 feet of perimeter landscaping in accordance with BMC 17.80.090. The Applicant would be required to provide a final landscaping plan prepared by a licensed landscape architect that demonstrates full compliance with all applicable landscaping requirements.

The Applicant would also be required to provide final plans that demonstrate how LID measures, including rain gardens, permeable pavements, and bio-retention, have been incorporated into stormwater management, landscape design, and parking and circulation areas, in compliance with applicable stormwater requirements. The Applicant would be required to submit civil engineering plans demonstrating compliance with the road standards under either BMC 17.85.140 or BMC 17.85.150 for the road providing access to the individual lots. Existing streets adjoining the property are constructed to City standards, with full width paving, curbing, and sidewalks. The proposed development would provide two parking spaces per unit, in compliance with Chapter 17.85 BMC. Each unit would have one garage parking space and one driveway space for a total of two parking spaces per unit. The Applicant would be required to provide a detailed lighting plan demonstrating compliance with all applicable lighting requirements, including requirements for outdoor lighting in common areas and shielding of outdoor lights to prevent glare on adjoining properties. Conditions are necessary to ensure the proposal complies with all applicable requirements of the municipal code. *Findings 1 – 17.*

4. **The proposal would be constructed and maintained so as to be harmonious and appropriate in design, character, and appearance with the existing or intended character of the general vicinity and would provide a high quality of development.** The area surrounding the subject property is characterized by wide range of uses and building types. The proposed development would also provide perimeter landscaping buffer strips of approximately 15 feet along the western property boundary and approximately 20 feet wide along the eastern property line. *Findings 1, 5 – 17.*
5. **The proposal would not adversely affect the public infrastructure.** The proposed development would not adversely affect the public infrastructure as compared to the uses permitted outright in the MUC-2 zoning district. As addressed above in Conclusion 1, the proposed development would be permitted outright in the MUC-2 zoning district were the Applicant to apply for an identical project today. The proposed development would be located in an existing commercial area and is within walking distance of jobs, services, public transit, and shopping. *1, 5 – 17.*

DECISION

Based on the preceding findings and conclusions, the request for a conditional use permit to allow phased construction of 54 horizontally attached townhome units and associated improvements on 12 parcels totaling approximately three acres, located at 204 East Sharon Avenue, is **APPROVED**, with the following conditions:

1. This approval shall not be construed to authorize any development or site modifications beyond those described in the application and shown on the approved plans. The approved plans shall be the plans and other project documents attached to, or referenced in, this decision.
2. Except as otherwise required by the conditions of approval identified in this decision and the associated SEPA threshold determination, all work, construction, and development activities shall conform to the approved plans. The approved plans shall be the plans and other project documents attached to, or referenced in, this decision. Minor modifications necessary to implement any changes requested by the Building Official, Fire Marshall, or City Engineer are permitted when necessary to ensure compliance with established regulatory requirements.
3. This approval shall expire two years from the date of approval. The date of approval for this decision shall be the date the Hearing Examiner's decision is signed.
4. This permit does not authorize the location, design, construction or installation of any signs. No signs may be installed unless authorized by a sign permit.

5. The property owner, developer, and all contractors shall be responsible for complying with all applicable laws and regulations pertaining to erosion control and water quality, including obtaining a Washington State Department of Ecology Construction Storm-Water General Permit. Any additional erosion control or construction management practices prescribed by the City Engineer or Building Official shall be immediately implemented.
6. A grading permit is required prior to beginning any clearing, filling, excavation, building, construction, or other site development work.
7. Prior to the issuance of a grading permit civil engineering plans shall be submitted to, and reviewed by, the City Engineer for compliance with applicable stormwater, site development, and engineering requirements. A storm-water plan shall be included with the civil plans and the plans shall include LID measures. The civil engineering plans must include the following specific information:
 - a. Vicinity map legal description, survey notes, sheet index, legend, list of contacts, and signature blocks.
 - b. Existing conditions, construction entrance, demolition and TESC plans.
 - c. Details sheet depicting ADA compliant ramps, aprons, and sidewalks.
 - d. Waterline plan and profile.
 - e. Sanitary sewer plan and profile.
 - f. Site grading and drainage plan.
 - g. Waterline specifications.
 - h. Fiber optic conduit and vaults along all street frontages, connecting to any adjacent fiber optic conduit and vaults, and connecting to each building.
 - i. Pedestrian access paths and crosswalks consistent with the SEPA MDNS conditions.
 - j. Cross section drawings for the proposed private street demonstrating compliance with either the standard requirements for private streets under BMC 17.85.140 or the alternative private street standards in BMC 17.85.150.
 - k. Any fire access requirements identified by Burlington Fire Marshal.

1. Provide a narrative showing where and how LID techniques have been incorporated into the proposal.
8. No grading permit shall be approved or issued until a final landscaping plan has been submitted to, and approved by, the Community Development Department. The final landscaping plan shall be consistent with the following:
- a. The landscaping plan shall be prepared by a landscape architect licensed in the State of Washington.
 - b. The landscaping plan shall demonstrate compliance with all applicable landscaping code requirements including but not limited to the requirements of this permit.
 - c. The landscaping plan shall include street trees along Cedar Street. At least one tree for every 30 feet of street frontage shall be provided. Street tree species shall be selected using the City's street tree selection guide.
 - d. The landscaping plan shall include provisions for the retention of the existing established street trees along the Sharon Avenue street frontage. The plan shall include measures to protect the trees and root systems from damage during construction.
 - e. Perimeter landscaping strips must be provided along the north and south site boundaries. The perimeter landscaping strips shall be at least five feet wide and include at least one tree for every 30 linear feet.
 - f. The landscaping plan must show how landscaped areas will be used to manage stormwater.
 - g. Plans and specifications for a landscape irrigation system must be included.
 - h. If a consolidated trash collection point(s) will be provided details must be included showing how the trash collection enclosure will be screened from view.
9. The following additional outdoor lighting information shall be submitted with the Building Permit application and no building permit shall be issued until the outdoor lighting information has been reviewed and approved by the Community Development Department:

- a. Manufacture’s specifications shall be provided for each proposed outdoor lighting fixture type.
 - b. All exterior lighting shall be directed downwards and fully hooded, screened, or optically focused so the light source is not directly visible beyond the property boundaries.
 - c. Lighting shall be designed and located so that light is not directed at residential units.
 - d. Freestanding light fixtures shall be limited to a maximum height of 14 feet.
 - e. Documentation shall be provided demonstrating compliance with applicable Washington State Energy Code requirements.
10. No final occupancy or final building permit inspections shall be approved for any residential unit until documentation has been provided showing the finished floor elevations of the unit is one foot or more above the base flood elevation. This documentation can be provided in the form a letter from a licensed surveyor. This is a City of Burlington requirement and not a requirement of the National Flood Insurance Program. Therefore, formal FEMA flood elevation certificates are *not* required.
 11. The landscape irrigation system and all required landscaping shall be installed. The perimeter landscaping and street frontage landscaping shall be completed prior to final occupancy of the first residential building or dwelling unit. Other landscaping requirements may be addressed as individual buildings or dwellings units are completed if necessary to avoid construction impacts.
 12. All clearing, grading, storm-water improvements, and utilities shall be consistent with the civil engineering plans approved by the City Engineer and no final occupancy shall be granted until the civil improvements have been inspected by the City Engineer.
 13. No final occupancy or final building permit inspection shall be approved until civil engineering “as-built” drawing have been submitted to, and approved by, the City Engineer. No as-built drawings will be approved until the City Engineer has inspected the site and verified compliance with the approved civil plans, the conditions of the approved grading permit, and the conditions of this permit. All infrastructure shown on the approved civil plans, including but not limited to fiber optic conduit and vaults, public and private street improvements, pedestrian access and crosswalk improvements, utilities, and storm-water management improvements.

14. All fire and life safety requirements identified by the Building Official and Fire Marshal shall be fully addressed.

DECIDED this 30th day of August 2023.



ANDREW M. REEVES
Hearing Examiner
City of Burlington