

# CITY OF MARYSVILLE

## Hearing Examiner

### Findings, Conclusions and Decision

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**APPLICANT:** Sunnyside Village Co-Housing

**CASE NO.:** PA 22-042

**LOCATION:** 3121 66<sup>th</sup> Avenue NE, Marysville, WA 98271

**APPLICATION:** Preliminary Subdivision with Conditional Use Permit for the construction of a 32-lot cottage housing development. The proposed development would include 32-detached single family cottages, that range from 1,000 sq. ft. to 1,200 sq. ft., along with a 2,779 sq. ft. community house that includes, a community kitchen, dining hall, and accessory rooms. The property would include common areas with amenities such as a community garden, orchard, open space areas.

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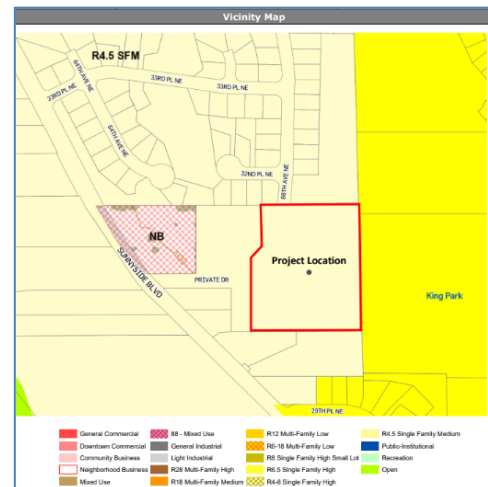
#### SUMMARY OF RECOMMENDATION

**Staff Recommendation:** Approve the Preliminary Subdivision and Conditional Use Permit request to create 32 detached cottage unit lots for a cottage housing development.

**Hearing Examiner Decision:** Approve the Preliminary Subdivision and Conditional Use Permit request to create 32 detached cottage unit lots for a cottage housing development, with 14 conditions of approval listed in this Hearing Examiner Decision, Section C, Conditions 1-14 dated April 14, 2023.

#### PUBLIC HEARING

After reviewing the official file, that included the Marysville Community Development Department Staff Recommendation; the Hearing Examiner conducted a public hearing on the request from Sunnyside Village. The hearing was opened at 6:00 p.m., April 12, 2023, and closed at 6:26 p.m.. The public hearing took place in hybrid format, both in-person in Marysville City Hall and by Zoom teleconference. The Hearing Examiner, City staff and the property owner attended in-person, and the applicant’s representative attended and participated remotely. Members of the public attended both in-person and on Zoom. The persons who provided oral testimony are listed in this report, together with a summary of their testimony, and are documented in the minutes of the hearing.



Vicinity Map for Sunnyside Village Co-Housing

A recording of the hearing and summary minutes are available from the Community Development Department. A list of exhibits offered and entered into the record at the hearing and a list of parties of record are included at the end of this report.

### **HEARING COMMENTS AND TESTIMONY**

The Hearing Examiner opened the public hearing, admitted Exhibits 1-49 into the public record, and outlined the procedures for the hearing. The Hearing Examiner summarized the request for Preliminary Subdivision and Conditional Use approval that includes 32 lots for cottage housing, a community house, and a Native Growth Protection Area.

Testimony was provided by city of Marysville Community Development Department staff. Representatives of the applicant were present and introduced themselves and provided brief testimony in support of the proposal. A summary of the testimony is as follows:

#### **City of Marysville, Community Development Department**

Emily Morgan, Senior Planner reviewed the proposal for the Sunnyside Village Co-Housing and noted that the proposal includes 32 lots, 64 parking spaces and one community house. Ms. Morgan noted that the proposal is consistent with all requirements of the Marysville Municipal Code, and that staff recommends approval with the conditions listed in the Staff Recommendation, plus one new condition that reads as follows: "All buildings within the proposed development shall be equipped with automatic fire sprinkler systems". Ms. Morgan responded to several clarifying questions from the hearing examiner.

#### **Applicant, Sunnyside Village**

Miles Cook, Schemata Design described the good working relationship with City staff and the community. Mr. Cook expressed that the applicant concurs with all conditions of approval, including the new condition related to fire sprinklers.

#### **Community Testimony**

Dean Smith introduced himself as the founder of Sunnyside Village and described the 10-year process to get to this point, including prior related approvals from the Planning Commission and the City Council. When complete, Sunnyside Village will be the first co-housing development in Marysville, the third co-housing development in Snohomish County, and the 170<sup>th</sup> such development in the United States.

Jennie Lindberg expressed thanks to city of Marysville staff for the processing of this application, and noted that most people in the audience are members of the future co-housing community.

### **WRITTEN COMMENTS**

Emily Morgan, Senior Planner provided three items of correspondence and requested these be entered into the record at the hearing.

- Exhibit 50. E-mail correspondence from Guy Laclair, 4/11/23. Concerns about degraded property values as a result of the proposal.

- Exhibit 51. E-mail correspondence from Matt Edmunds, 4/11/23. Concerns regarding the transparency of the prior planning process that allowed for this co-housing proposal.
- Exhibit 52. E-mail correspondence from Rosa Shurtz, 4/12/23. Concerns about traffic and neighborhood compatibility.

## **FINDINGS, CONCLUSIONS AND DECISION**

Having considered the entire record in this matter, the Hearing Examiner now makes and enters the following:

### **A. FINDINGS**

1. The Hearing Examiner finds that the information provided in the Marysville Community Development Department Staff Recommendation (Exhibit 49) is supported by the evidence presented during the hearing and does by this reference adopt the Staff Recommendation as portion of the Hearing Examiner's findings and conclusions. A copy of the Staff Recommendation (Exhibit 49) is available from the Marysville Community Development Department.
2. The minutes of the hearing accurately summarize the testimony offered at the hearing and are by this reference entered into the official record.
3. The applicant has provided evidence and staff has determined that the request meets all of the Application Review criteria in accordance with MMC Section 22G.010.140(3)(a-d) as documented in Section 15 of the city of Marysville Staff Recommendation (Exhibit 49).
4. Staff has documented the basis for approval of a Conditional Use Permit in accordance with MMC 22G.010.430 in Section 16 of the city of Marysville Staff Recommendation (Exhibit 49).
5. Staff has documented the basis for approval of a Preliminary Subdivision in accordance with MMC 22G.090.130(a-i) in Section 18 of the city of Marysville Staff Recommendation (Exhibit 49).
6. MMC 22G.010.170(3)(a-e) requires that the Hearing Examiner not approve a proposed development without first making the following findings and conclusions:
  - a. The development is consistent with the Comprehensive Plan and meets the requirements and intent of the Marysville Municipal Code.

#### City of Marysville Staff Response. (Section 17 of the staff recommendation)

The Comprehensive Plan designation for the subject property is Single Family Medium Density. The proposed development and subsequent use of the property would be consistent with the pertinent development policies outlined in the Marysville Comprehensive Plan and the intent of the Marysville Municipal Code, as conditioned herein.

#### Hearing Examiner Finding

Concur with the staff response.

- b. The development makes adequate provisions for open space, environmentally sensitive areas, drainage, streets and other public ways, transit stops, water supply, sanitary wastes, public utilities and infrastructure, parks and recreation facilities, playgrounds, sites for schools and school grounds.

City of Marysville Staff Response (Section 17 of the staff recommendation)

Based on a review of the preliminary plat map and application materials, the development makes adequate provisions for open space, environmentally sensitive areas, drainage, streets and other public ways, transit stops, water supply, sanitary wastes, public utilities and infrastructure, parks and recreation facilities, playgrounds, sites for schools and school grounds

Hearing Examiner Finding

Concur with the staff response, with a note that a provision for transit stops is not applicable as there is no nearby transit service.

- c. The development is beneficial to the public health, safety and welfare and is in the public interest.

City of Marysville Staff Response (Section 17 of the staff recommendation)

Per Finding 16.5 of the city of Marysville Staff Recommendation, the proposed subdivision would be beneficial to the public health, safety and welfare and would be in the public interest as the subdivision has been designed in accordance with applicable Marysville Municipal Code requirements.

Hearing Examiner Finding

Concur with the staff response. The proposal is beneficial to the public in that the new 2 and 3-bedroom housing, with all necessary supportive infrastructure, provides a housing supply within the Marysville urban growth area and is consistent with the Marysville Comprehensive Plan.

- d. The development does not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established within the comprehensive plan. If the development results in a level of service lower than those set forth in the comprehensive plan, the development may be approved if improvements or strategies to raise the level of service above the minimum standard are made concurrent with the development. For the purpose of this section, "concurrent with the development" is defined as the required improvements or strategies in place at the time of occupancy, or a financial commitment is in place to complete the improvements or strategies within six years of approval of the development.

City of Marysville Staff Response (Section 17 of the staff recommendation)

As conditioned, the development would not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established within the comprehensive plan.

### Hearing Examiner Finding

Concur with the staff response. Impact fees charged for transportation, schools and parks will serve to mitigate adverse impacts and to meet the intent of the Comprehensive Plan. This criterion is met as conditioned (Staff Recommendation Condition #9 refers to the SEPA MDNS Conditions).

- e. The area, location and features of land proposed for dedication are a direct result of the development proposal, are reasonably needed to mitigate the effects of the development and are proportional to the impacts created by the development.

### City of Marysville Staff Response (Section 17 of the staff recommendation)

As conditioned, the area, location and features of land proposed for dedication are a direct result of the development proposal, are reasonably needed to mitigate the effects of the development, and are proportional to the impacts created by the development.

### Hearing Examiner Finding

Concur with the staff response. Proposed wetland buffer within a fenced and signed Native Growth Protection Area Tract will protect environmentally critical areas. Small open spaces between cottage clusters will provide common open space that is usable by residents, including a vegetable garden, pedestrian pathways, and a small orchard area.

## **B. CONCLUSIONS**

The Hearing Examiner concludes that the applicant has demonstrated that the request complies with the provisions for a Conditional Use Permit and Preliminary Subdivision. Responses to each of following Marysville Municipal Code provisions are satisfactory with respect to their regulatory intent:

- Application Review criteria in MMC 22E.010.140(3)(a-d);
- Conditional Use Permit criteria in MMC Section 22G.010.430(1)(a-d);
- Preliminary Subdivision criteria in MMC 22G.090.130(a-i).

The proposal therefore, complies with MMC 22G.010.170(3)(a-e) which is necessary for the Hearing Examiner to approve a proposed development.

## **C. DECISION**

Based upon the foregoing findings of fact and conclusions, the Hearing Examiner approves the request for a Preliminary Subdivision and Conditional Use Permit for the Sunnyside Village Co-Housing proposal, with the 13 conditions detailed in the Staff Recommendation (Exhibit 49) dated April 4, 2023 (listed below), plus the new condition related to fire sprinklers introduced at the hearing (Condition #14), and the 14 conditions of approval outlined in the SEPA MDNS issued February 28, 2023 (These are incorporated by reference in Condition 9 below):

1. The preliminary subdivision configuration (Exhibit 45) shall be the approved plat configuration. The final subdivision shall be processed in strict compliance with the

provisions of Article III Final Subdivision Review and Article V Land Division Requirements of MMC 22G.090

2. The final subdivision shall be approved and recorded within 5 years of the date of preliminary approval. A 2-year extension may be granted in accordance with MMC 22G.090.170.
3. Prior to final subdivision approval, the applicant shall submit to the City for its approval, covenants, deed restrictions, homeowners' association bylaws, and other documents providing for preservation and maintenance of all common open space, parking areas, walkways, landscaping, signs, lights, roads, and community facilities consistent with MMC 22G.090.240. All common areas and facilities shall be continuously maintained at a minimum standard at least equal to that required by the City, and shall be approved by the City at the time of initial occupancy. Said restrictive covenants shall also include provisions to address parking enforcement and a statement from a private attorney as to the adequacy of the covenants to fulfill the requirement of the subdivision.
4. The proposed community building shall be designed and conform to the standards of MMC 22C.010.280(4)(a).
5. Prior to building permit issuance, compliance with MMC 22C.010.280(7)-(9) shall be demonstrated for the individual cottage building permits.
6. Pursuant to MMC 22C.010.280(14), the following modifications to the general parameters and design standards for cottage housing developments shall be allowed:
  - 6.1. Each proposed cottage lot shall allow for a maximum of 45% building coverage.
  - 6.2. When determining total cottage floor area, measurements shall be taken from inside of the finished walls (the enclosed interior space).
7. A final landscape plan shall be required to be approved, prior to civil construction plan approval, and designed to comply with the applicable provisions outlined in MMC 22C.120, Landscaping and Screening and MMC 22G.090.570.
  - 7.1. All required landscaping shall be bonded prior to final plat approval per MMC 22C.120.060.
8. The proposed development shall adhere to the recommendations and conclusions provided in the Critical Areas Assessment Report, dated March 16, 2020, prepared by GeoEngineers, or as amended and approved by the Community Development Department.
  - 8.1. The required compensatory mitigation measures for direct and indirect impacts to the on-site wetlands shall follow the Wetland Mitigation Bank Use Plan, dated August 22, 2022, prepared by GeoEngineers, and shall be implemented prior to final plat approval.
9. The proposed development is subject to the fourteen (14) mitigation measures outlined in the Mitigated Determination of Non-Significance and Traffic Concurrency Determination issued on February 28, 2023 (Exhibit 41).

- 9.1. Prior to civil construction plan approval, the applicant shall be required to submit a FINAL Geotechnical Assessment, prepared by a Professional Engineer registered in the State of Washington. Additionally, the applicant/contractor shall be required to adhere to the recommendations of the FINAL Geotechnical Assessment. Prior to granting occupancy permits, the applicant shall provide a letter from the project engineer to verify that final project grading has been completed consistent with the approved grading plans; that all recommendations outlined in the Geotechnical Assessment and subsequent amendments have been followed; and that all fill has been properly placed.
- 9.2. If at any time during construction archaeological resources are observed in the project area, work shall be temporarily suspended at that location and a professional archaeologist shall document and assess the discovery. The Department of Archaeology and Historic Preservation (DAHP) and all concerned tribes shall be contacted for any issues involving Native American sites. If project activities expose human remains, either in the form of burials or isolated bones or teeth, or other mortuary items, work in that area shall be stopped immediately. Local law enforcement, DAHP, and affected tribes shall be immediately contacted. No additional excavation shall be undertaken until a process has been agreed upon by these parties, and no exposed human remains should be left unattended.
- 9.3. The applicant shall be required to construct frontage improvements along 66th Avenue NE consistent with Engineering Design and Development Standards (EDDS) Standard Plan 3-202-002, Local Access Street, prior to final plat approval. Roadway improvements, channelization, site access and lighting plans shall be required to be reviewed and approved by the City Engineer, prior to construction plan approval.
- 9.4. The applicant shall be required to dedicate public right-of-way for the extension of 66th Avenue NE in accordance with MMC 12.02A.110(1)(c), Dedication of Road right-of-way – Required setbacks. Right-of-way widths and required dedication shall be determined by the City Engineer. The extension of 66th Ave. NE requires a 50 ft. dedication, which is currently shown on the supplied documents.
- 9.5. In order to mitigate impacts upon the future capacity of the road system, the applicant shall be required to submit payment to the City of Marysville, on a proportionate share cost of the future capacity improvements as set forth in MMC 22D.030.070(3), for the development. Traffic impact fees shall be vested at a rate of \$6,300.00 per PMPHT. A credit will apply for the existing house which will be demolished; said credit shall be applied to lot 1.
- 9.6. Based on the TIA, approximately 18 percent of the project trips are anticipated to impact the roundabout intersection of Soper Hill Road at 87th Avenue NE. Therefore, the applicant shall be required to pay the proportionate share of the impact fee for the Soper Hill Road and 87th Avenue NE roundabout estimated at \$9,520.00 (\$1,700.00 x 5.6 PMPHT).

- 9.7. Per the approved EDDS variance, dated February 16, 2023, Ken McIntyre, Assistant City Engineer, accepted the justification for allowing a hammerhead style turnaround rather than a temporary cul-de-sac for the extension of 66th Avenue NE. As a condition to allow the variance, automatic fire sprinkler systems will be required for buildings situated beyond the turnaround. Any lots requiring sprinklers shall be identified during civil plan review. (Note this MDNS requirement for fire sprinklers is amended by new Condition 14 as recommended by Marysville staff at the hearing on April 12, 2023)
- 9.8. The onsite wetland and buffer area that will be retained must be placed in a separate Native Growth Protection Area (NGPA) tract. The boundary of the tract shall be delineated by the installation of split rail fencing and signage.
- 9.9. Prior to issuing any ground disturbing activity permits, proof of purchase for Skykomish Habitat Wetland Mitigation Bank credits shall be provided to the City of Marysville to mitigate for direct and indirect wetland impacts.
- 9.10. Prior to issuing any ground disturbing activity permits, the applicant is required to obtain all necessary permits and approvals from Federal, State and local agencies for the proposed critical areas impacts.
- 9.11. Prior to any ground disturbing activities, all wetland buffer areas shall be temporarily fenced between the construction activity and the buffer area with highly visible and durable protective barrier(s). Said barriers shall be retained during construction to prevent access and sedimentation from disturbed areas from entering the wetland or its buffer.
- 9.12. Based on correspondence with the applicant and environmental consultant, the subject property may have a bald eagle nest in the vicinity. A Bald Eagle Nest Assessment Field Report, prepared by GeoEngineers dated February 17, 2023 was provided; said report concluded that the historic eagle nest is no longer present, but that continued monitoring is proposed as the possibility of the damaged nest rebuilding could begin or a new nest may be built in the near vicinity. Per MMC 22E.010, an updated report on the status of the potential nest location must be submitted prior to ground disturbing activities to ensure the bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules of WAC 232-12-292.
- 9.13. Prior to civil construction plan approval, the on-site septic system shall be decommissioned in accordance with WAC 246-272A-0300. Documentation demonstrating that the septic system has been decommissioned shall be submitted prior to final plat approval.
- 9.14. Prior to civil construction plan approval, all trees identified to be retained per Tree Evaluation, prepared by Zsofia Pasztor, dated January 2020, shall be clearly identified on the grading plans. Prior to commencement of ground disturbing activities, all retained trees shall be protected and marked in the field.



10. Pursuant to MMC 22D.030.070(6)(a)(ii), the traffic concurrency determination and the project's impacts and mitigation obligations shall expire upon expiration of the subdivision.
11. All necessary power lines, telephones wires, television cables, fire alarm systems and other communication wires, cables or shall be placed in underground location either by direct burial or by means of conduit or duct. All such underground installations or systems shall be approved by the appropriate utility company and shall adhere to all governing applicable regulations including, but not limited to, the applicable City and State regulations and specific requirements of the appropriate utility pursuant to MMC 22G.090.710(1).
12. The applicant shall submit payment to the City of Marysville for park impacts caused by the development in accordance with MMC Chapter 22D.020, Parks, Recreation, Open Space and Trail Impact Fees and Mitigation. Park mitigation fees will be based on the fee schedules in effect at the time an individual building permit application is accepted by the City, and will be required to be paid prior to building permit issuance unless deferred until a time preceding final building inspections being granted.
13. The applicant shall submit payment to Marysville School District for school impacts caused by the development in accordance with MMC Chapter 22D.040, School Impact Fees and Mitigation. School mitigation fees will be based on the fee schedules in effect at the time an individual building permit application is accepted by the City, and will be required to be paid prior to building permit issuance unless deferred until a time preceding final building inspections being granted.
14. All buildings within the proposed development shall be equipped with automatic fire sprinkler systems.

Dated this 14<sup>th</sup> day of April, 2023.

A handwritten signature in black ink that reads "Kevin D. McDonald". The signature is written in a cursive, slightly slanted style.

Kevin D. McDonald, AICP  
Hearing Examiner

**EXHIBITS**

The following exhibits were offered and entered into the record:

- |                                       |                                               |
|---------------------------------------|-----------------------------------------------|
| 1) Land Use Application               | 28) Project Narrative – TR2                   |
| 2) Project Narrative                  | 29) Variance Request –TR2                     |
| 3) CUP Criteria Responses             | 30) Engineering Survey                        |
| 4) Environmental Checklist            | 31) Preliminary Site Plan – TR2               |
| 5) Critical Area Review Application   | 32) Building Plans – TR2                      |
| 6) Critical Areas Report              | 33) Fire Flow Correspondence                  |
| 7) Mitigation Bank Use Plan           | 34) SEPA Correspondence                       |
| 8) USACE Jurisdiction Determination   | 35) Preliminary Civil Plans – Revised         |
| 9) Proposed Modifications & Variances | 36) Technical Review Comments #2              |
| 10) EDDS Variance Request             | 37) EDDS Variance Approval                    |
| 11) Title Report / Legal Description  | 38) Concurrency Recommendation                |
| 12) Geotechnical Report               | 39) Critical Areas Report – Bald Eagle Report |
| 13) Drainage Report                   | 40) Concurrency Acceptance                    |
| 14) Traffic Impact Analysis           | 41) SEPA MDNS                                 |
| 15) Survey Map                        | 42) Notice of SEPA MDNS                       |
| 16) Tree Evaluation                   | 43) Civil Review Comments #1                  |
| 17) Building Elevations               | 44) Resubmittal Letter – TR3                  |
| 18) Site Plan                         | 45) Preliminary Site Plan – TR3               |
| 19) Landscape Plan                    | 46) Notice of Public Hearing                  |
| 20) Civil Street Profiles             | 47) Affidavit of Posting – NOPH               |
| 21) Preliminary Civil Plans           | 48) Correspondence - Public Comment           |
| 22) Letter of Completeness            | 49) Staff Recommendation                      |
| 23) Notice of Application             | 50) Correspondence - Public Comment           |
| 24) Request for Review                | 51) Correspondence -Public Comment            |
| 25) Affidavit of Publication          | 52) Correspondence - Public Comment           |
| 26) Technical Review Comments #1      |                                               |
| 27) Resubmittal Letter – TR2          |                                               |

**PARTIES of RECORD at the PUBLIC HEARING**

Emily Morgan Marysville Community Development Department 501 Delta Avenue Marysville, WA 98270	Miles Cook, Schemata Workshop 1720 12 <sup>th</sup> Avenue Seattle, WA 98122
Dean Smith 3007 Federal Avenue Everett, WA 98201	Jennie Lindberg 3007 Federal Avenue Everett, WA 98201

**RECONSIDERATION - MMC 22G.010.190.**

A party to a public hearing may seek reconsideration only of a final decision by filing a written request for reconsideration with the director within fourteen (14) days of the final written decision. The request shall comply with MMC 22.010.530(3). The hearing examiner shall consider the request within seven (7) days of filing the same. The request may be decided without public comment or argument by the party filing the request. If the request is denied, the previous action shall become final. If the request is granted, the hearing examiner may immediately revise and reissue the decision. Reconsideration should be granted only when a legal error has occurred, or a material factual issue has been overlooked that would change the previous decision.

**JUDICIAL APPEAL - MMC 22G.010.560.**

- (1) Appeals from the final decision of the hearing examiner, or other city board or body involving MMC Title 22 and for which all other appeals specifically authorized have been timely exhausted, shall be made to Snohomish County superior court pursuant to the Land Use Petition Act, Chapter 36.70C RCW, within 21 days of the date the decision or action became final, unless another applicable appeal process or time period is established by state law or local ordinance.
- (2) Notice of the appeal and any other pleadings required to be filed with the court shall be served as required by law within the applicable time period. This requirement is jurisdictional.
- (3) The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant. The record of the proceedings shall be prepared by the City or such qualified person as it selects. The appellant shall post with the city clerk prior to the preparation of any records an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant.