

CITY OF MARYSVILLE
Hearing Examiner
Findings, Conclusions and Decision

APPLICANT: 104th Street LLC, Dell’s Nursery Rezone
CASE NO.: PA 22-041
LOCATION: 4131 104th Street NE, Marysville, WA 98271
APPLICATION: Site Plan Approval and Concurrent Rezone from Medium Density, Single-family (R-4.5) to General Commercial (GC) in order to construct two single story office/warehouse buildings totaling approximately 30,600 SF.

SUMMARY OF RECOMMENDATION

Staff Recommendation: Approve the preliminary Commercial Site Plan and Concurrent Rezone from Medium Density, Single-family (R-4.5) to General Commercial (GC) in order to construct two single story office/warehouse buildings totaling approximately 30,600 SF.

Hearing Examiner Decision: Approve the preliminary Commercial Site Plan and Concurrent Rezone from Medium Density, Single-family (R-4.5) to General Commercial (GC) in order to construct two single story office/warehouse buildings totaling approximately 30,600 SF, with 9 conditions of approval listed in the Staff Recommendation dated September 19, 2023, and including the 6 mitigation measures outlined in the SEPA MDNS issued July 21, 2023.

PUBLIC HEARING

After reviewing the official file, that included the Marysville Community Development Department Staff Recommendation, and after viewing the site, the Hearing Examiner conducted a public hearing on the request from 104th Street LLC (applicant). The hearing was opened at 6:18 p.m., September 28, 2023, and closed at 7:20 p.m.. The public hearing took place in hybrid format, both in-person and by Zoom teleconference. The Hearing Examiner and City staff attended in-person, as did the applicant. Several members of the public attended, some in person and some remotely. Participants who provided testimony at the public hearing are listed in this report, together with a summary of their testimony, and



they are also documented in the minutes of the hearing. A verbatim 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 participants at the hearing are included at the end of this report.

HEARING COMMENTS AND TESTIMONY

The Hearing Examiner opened the public hearing, admitted Exhibits 1-53 into the public record, and outlined the procedures for the hearing. The Hearing Examiner summarized the request for a preliminary Commercial Site Plan and Concurrent Rezone from Medium Density, Single-family (R-4.5) to General Commercial (GC) in order to construct two single story office/warehouse buildings totaling approximately 30,600 SF.

A summary of the testimony offered at the hearing is as follows:

City of Marysville, Community Development Department

Chris Holland, Planning Manager reviewed the proposal for the Dell's Nursery preliminary Commercial Site Plan and Concurrent Rezone and confirmed that the application meets the site plan and rezone criteria. Mr. Holland noted prior public comments and staff responses related to the train tracks crossing and the single neighborhood access point across the tracks, traffic and safety, and critical areas.

Applicant

Merle Ash of Land Technologies, representing the applicant, concurred with the staff recommendations and the conditions of approval. Mr. Ash noted that the traffic generated under a residential site plan would be greater than that generated by the proposed office use.

Public Testimony

Robert Hernon, suggested that the applicant build houses on the site, and expressed concern over the removal of trees and the resulting impacts to the stream and to wildlife.

Margaret Natterstad, thanked staff for providing good information, but noted that it is probably outdated. There are safety concerns related to the speed and volume of traffic. A sidewalk into the neighborhood would be appreciated.

Cal Rutherford, assumed the role of neighborhood spokesperson and as such was granted additional time for testimony. On behalf of several neighbors who were present at the hearing and who yielded their time to him, Mr. Rutherford addressed several issues:

- Traffic into and out of the neighborhood
- A second vehicular route is needed for ingress/egress
- Critical areas buffers should be based on springtime water level
- Trees provide a noise barrier and filter coal dust
- Commercial uses on the site will inspire other commercial uses to develop
- On-site stormwater management is inadequate as designed
- Public interest is not advanced by this proposal

Sherry Young, commented that trees and wildlife habitat are at risk, property values will be reduced, homeless people will establish encampments on the site, and traffic will increase.

Joel Greenwell, expressed skepticism with the traffic analysis, and that an accounting was not done for pick-up and delivery activity, along with concerns about wastewater.

Amy Wagner, wanted more consideration for protecting trees and wildlife habitat.

Abbey Lewis, noted that deer and coyote that live in the neighborhood would be displaced.

Goldie Barnes, expressed concern about increasing traffic.

Staff Response to Public Comments

Chris Holland, Planning Manager provided brief responses to a range of public comments many of which are also addressed in Section 7 the Staff Recommendation (Exhibit 53)

- Applicant will install a sidewalk along the development frontage, not into the neighborhood
- Applicant has aligned driveway to provide for vehicular access and parking
- Critical Area buffers are established based on the ordinary high water mark, and a final critical areas plan will be prepared prior to development activity
- The development proposed is consistent with the development regulations for the 138,000 square foot lot
- Trees within the buffer will be retained
- A five-year performance bond will be retained to ensure long-term survival of the landscaping
- Retained critical areas and buffers are the only mechanism the city has to protect wildlife on private property
- Stormwater management will be done in accordance with the 2019 Department of Ecology Stormwater Manual

Jesse Hannahs, PE, Traffic Engineering Manager, addressing transportation concerns, noted that a traffic signal at State Street would not meet warrants, and that the city did not require a full traffic impact analysis because the new trips generated did not meet the 25 PM peak hour trips threshold. Trip generation calculations have taken into account all traffic, including pick-ups and deliveries.

Applicant Response to Public Comments

Merle Ash, Land Technologies expressed that professional engineers have prepared and reviewed all components of this project and that compliance with all required codes and manuals is assured.

WRITTEN COMMENTS

Additional written materials provided by Cal Rutherford were entered into the record at the hearing as Exhibit 54.

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 53) 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 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 has demonstrated 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 12 of the city of Marysville Staff Recommendation (Exhibit 53).
4. The applicant has provided evidence and has demonstrated that the request for a Comprehensive Plan Rezone meets all the criteria in accordance with MMC Section 22G.010.440(1)(a-d) as documented in Section 13 of the city of Marysville Staff Recommendation (Exhibit 53).
5. The applicant has provided evidence and has demonstrated that the request for a Rezone at the Edge of a Land Use District meets all the criteria in accordance with MMC Section 22G.010.440(2)(a-c) as documented in Section 14 of the city of Marysville Staff Recommendation (Exhibit 53).
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

The Comprehensive Plan designation for the subject property is Medium Density, Single-family (R-4.5). The applicant has proposed a Project Action Rezone to change the zoning designation to General Commercial (GC). If the rezone were approved, 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 Marysville Municipal Code, as conditioned herein.

Hearing Examiner Finding

Concur with the staff response. This criterion is met upon the approval of the proposed and appropriate rezone from Medium Density, Single-family (R-4.5) to General Commercial (GC).

- 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

Based on a review of the Critical Area Report (Exhibit 006), Buffer Averaging Report (Exhibits 020 & 031), Preliminary Critical Areas Buffer Mitigation Plan (Exhibit 032), Environmental Checklist (Exhibit 008), Geotechnical Report (Exhibits 009 & 033), Stormwater Report (Exhibits 010 & 034), Stormwater Pollution and Prevention Plan (Exhibits 011 & 035), Traffic Impact Analysis (Exhibit 012) and Preliminary Civil Construction Plan (Exhibit 039), if the Project Action Rezone were approved, future development would make 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. The applicable components of this criterion are met. There are no transit facilities proposed, nor is there a proposed site for a school. The nearest transit service is available on State Avenue and while a sidewalk is a planned frontage improvement on 104th Avenue NE, a direct walking path across the railroad tracks to State Avenue is not currently a component of this project (although consideration of such a pedestrian connection is called for in SEPA MDNS mitigation measure #3). Provisions for impacts to schools are not applicable as the proposal would generate no students.

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

City of Marysville Staff Response:

After reviewing the application materials (Exhibits 001 – 050) and reviewing to ensure compliance with the applicable provisions outlined in the Marysville Comprehensive Plan and MMC, if the rezone were approved, future development would be beneficial to the public health, safety and welfare and would be in the public interest as the development would be designed in accordance with applicable MMC requirements.

Hearing Examiner Finding

Concur with the staff response. This criterion is met through the strict adherence to the Marysville Municipal Code development requirements, and through the intended provision of new jobs in the city.

- 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:

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 will serve to mitigate adverse impacts. Park impacts are not identified and mitigation is not required. This criterion is met as conditioned. Staff Recommendation Condition #9 refers to the SEPA MDNS issued on July 21, 2023 (Exhibit 45), and cites the six mitigation measures. MDNS mitigations #4 - #6 are applicable to this criterion, possibly #3 as it relates to the future determination of potential railroad crossing improvements.

- 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

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. Commercial use of this site is appropriate and the proposed site development plans are consistent with applicable provisions of Marysville Municipal Code.

B. CONCLUSIONS

The Hearing Examiner concludes that the applicant has demonstrated that the request is consistent with the provisions for a Commercial Site Plan and Concurrent Rezone required by the Marysville Municipal Code. Responses to each of the Application Review criteria in MMC 22E.010.140(3)(a-d), the Comprehensive Plan Rezone Criteria in MMC 22G.010.440.1(a-d), the Rezone Criterial at the Edge of a Land Use District MMC.22G.010.449.2(a-c) are deemed to be satisfactory with respect to their intent. The proposal complies with the Hearing Examiner-Required Findings in MMC 22G.010.170(3)(a-e).

Consideration should be given to provide a pedestrian connection across the railroad tracks between the new sidewalk on State Avenue and the sidewalk planned as part of the frontage improvements along 104th Avenue NE, per SEPA MDNS mitigation condition #3, and condition 9.3 below.



C. DECISION

Based upon the foregoing findings of fact and conclusions, the Hearing Examiner approves the request for site Plan Approval and Concurrent Rezone from Medium Density, Single-family (R-4.5) to General Commercial (GC) in order to construct two single story office/warehouse buildings totaling approximately 30,600 SF., with the 9 conditions detailed in the Staff Recommendation (Exhibit 53) dated September 19, 2023 (listed below), and including the 6 mitigation measures defined in the SEPA MDNS issued July 21, 2023 (Exhibit 45):

1. The preliminary site plan received by the Community Development Department (Exhibit 38) shall be the approved preliminary site plan layout.
2. All necessary power lines, telephones wires, television cables, fire alarm systems and other communication wires, cables or lines 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.120.270.
3. Pedestrian pathways that traverse a parking area or drive-aisle are required to be constructed with concrete pavers or decorative colored, or stamped concrete clearly denoting the pedestrian pathway. This detail shall be provided on the civil construction plans.
4. Prior to civil construction plan approval, a FINAL Landscape Plan shall be approved and designed in accordance with the applicable landscaping standards outlined in MMC Chapter 22C.120 Landscaping and Screening, including:
 - 4.1. A 20', Type L1 landscape buffer, plus a 6-foot sight-obscuring fence or wall, between the commercial uses and all properties designated single-family by the Marysville Comprehensive Plan.
5. Prior to civil construction plan approval, an illumination plan shall be designed and approved in accordance with applicable lighting standards outlined in MMC 22C.130.050(3)(d).
6. Prior to building permit issuance, the applicant shall be required to demonstrate all mechanical equipment located on the roof, façade or external portions of a building are architecturally screened so as not to be visible from adjacent properties at street level or

the public street. Mechanical equipment shall be screened by a primary building element or structure.

7. Utility meters, electrical conduit, and other service utility apparatus shall be located and/or designed to minimize their visibility to the public. If such elements are mounted in a location visible from the street, pedestrian pathway, common open space, or shared auto courtyards, they shall be screened by landscaping, fences, or walls.
8. Prior to building permit issuance, the applicant shall be required to demonstrate compliance with the site and building design standards outlined in MMC 22C.020.250.
9. The applicant shall be required to comply with the six (6) mitigation measures outlined in the State Environmental Policy Act (SEPA) Mitigated Determination of Non-Significance (MDNS) issued on July 21, 2023 (Exhibit 45), listed below:
 - 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 conduct an engineering evaluation, or study, of the impacts of the proposal to determine whether the existing protection at the *railroad (KM added)* crossing will be adequate or whether improvements are warranted. If improvements are warranted, the applicant shall petition the UTC for approval of the improvements, prior to construction.
 - 9.4. The applicant shall be required to construct full street frontage improvements along 104th Street NE, prior to issuing occupancy permits. Roadway improvements, channelization, site access, channelization and lighting plans shall be required to be reviewed and approved by the City Engineer, prior to construction plan approval.

- 9.5. The applicant shall be required to dedicate public right-of-way, as needed, in order to accommodate the required frontage improvements along 104th Street 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.
- 9.6. 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 \$2,220 per PMPHT.

Dated this 10th day of October, 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
2. Project Narrative
3. Rezone Criteria Responses
4. Vicinity Map
5. Critical Areas Application
6. Critical Areas Report
7. Title Report
8. Environmental Checklist
9. Geotech Report
10. Stormwater Report
11. Stormwater Pollution & Prevention Plan (SWPPP)
12. Traffic Impact Analysis
13. ARCH Site Plan
14. ARCH 3-D Rendering
15. ARCH 104th Street Rendering
16. Landscape Plan
17. Site Plan
18. Civil Plans
19. 104th Street LLC Boundary Line Adjustment
20. Critical Areas Buffer Averaging Proposal
21. Letter of Completeness
22. Notice of Application
23. Request for Review
24. Affidavit of Publication
25. Technical Review Comments
26. Technical Review Response
27. Response to Neighbors Comments
28. Fire Flow Results
29. Snohomish County Traffic Mitigation Offer
30. Critical Areas Comment Response
31. Critical Areas Buffer Averaging Proposal
32. Critical Areas Buffer Mitigation Plan
33. Geotechnical Report
34. Drainage Report
35. Stormwater Pollution Prevention Plan (SWPPP)
36. Site Lighting Concept
37. Landscape Plan
38. Site Plan
39. Civil Plans
40. Request for Review
41. Snohomish County Traffic Offer
42. Technical Review Comments No. 2
43. Concurrency Recommendation
44. Concurrency Acceptance
45. SEPA Mitigated Determination of Non-Significance (MDNS)
46. Notice of SEPA MDNS
47. Affidavit of Publication
48. Affidavit of Publication
49. SEPA Comments
50. Response to SEPA Comments
51. Notice of Public Hearing
52. Affidavit of Publication
53. Staff Recommendation
54. Materials submitted at the hearing by Cal Rutherford

PARTIES of RECORD - PARTICIPANTS at the PUBLIC HEARING

Chris Holland, Planning Manager Marysville Community Development Department 501 Delta Avenue Marysville, WA 98270	Merle Ash Land Technologies 18820 3rd Avenue NE Arlington, WA 98223
Jesse Hannahs, Traffic Engineering Manager Marysville Public Works 80 Columbia Avenue Marysville, WA 98270	
Robert Herson 10523 38th Drive NE Marysville, WA 98271	Margaret Natterstad 10532 38th Avenue NE Marysville, WA 98271

Cal Rutherford 10614 41st Avenue NE Marysville, WA 98271	Sherry Young 10529 41st Avenue NE Marysville, WA 98271
Joel Greenwell 10607 38th Drive NE Marysville, WA 98271	Amy Wagner 10519 41st Avenue NE Marysville, WA 98271
Abbey Lewis 10512 38th Avenue NE Marysville, WA 98271	Goldie Barnes 4330 103rd Place NE Marysville, WA 98271

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.