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# STAFF REPORT

**TOWN OF LA CONNER**  
*Planning Department*

## **REPORT TO THE HEARING EXAMINER**

### **SHORELINE MASTER PROGRAM PERMIT**

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#### **A. SUMMARY AND PURPOSE OF REQUEST:**

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*Public Hearing Date:* November 29, 2016

*Project Name:* The Galleria

*Applicant/Address:* Michael Girdner

*Owner/Address:* Grupa Fiducia LLC

*File Number:* LU16-46SH, 16-47CU, 16-48V, 16-49HDR      *Project Manager:* Mike Underwood

*Project Description:*

The applicant is proposing to redevelop the former Palmer's Restaurant property to accommodate mixed commercial retail, office and residential uses. The existing 7,325 footprint will be expanded to 9,447 square feet. The project includes 6,075 square feet of retail space and parking on the ground floor (5 spaces on the south side and 13 spaces on the north side), with 3 residential units totaling 3,267 square feet and four office units totaling 1,841 square feet on the upper floor.

The overall project requires a Historic Design Review Permit, Shoreline Master Program Substantial Development Permit, and Conditional Use for Shoreline and LCMC Zone Permits has been submitted for the second floor residential units.

The applicant is also requesting a variance for building height to accommodate the retention and relocation of a historic feature of the building. The historic lighthouse feature will be relocated close to the original location but elevated to be prominent.

*Project Location:* 512 S. First Street, La Conner, WA

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#### **B. GENERAL INFORMATION:**

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1. *Owner of Record:* Grupa Fiducia LLC
2. *Zoning / SMP Designation:* Commercial, HPD/ Urban Historic Commercial Environment
3. *Comprehensive Plan Land Use Designation:* Commercial/HPD
4. *Existing Site Use:* Restaurant and Commercial Retail
5. *Neighborhood Characteristics*
  - North:* Commercial/HPD
  - East:* Commercial/HPD
  - South:* Commercial/HPD
  - West:* Marine/Recreation
6. *Access:* Hwy20 to La Conner-Whitney Rd; to Morris Street to S. First Street

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7.	Site Area:	18,727 sq ft	
8.	Project Data:	Area (sqft)	comments
	Existing Building Area:	7,325	
	New Building Area:	7,230	This includes both 1 <sup>st</sup> and 2 <sup>nd</sup> floor additions
	Total Building Area:	14,555	

**C. APPLICABLE SECTIONS OF THE LA CONNER MUNICIPAL CODE:**

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|---|--|
| 1. Commercial Zone LCMC §15.35                      | 7. Determination of consistency LCMC §15.135.120 |
| 2. Historic Preservation District LCMC §15.50       |  |
| 3. Floodplain Management LCMC §15.70                |  |
| 4. Off-Street Parking LCMC §15.90                   |  |
| 5. Variance LCMC §15.125.040                        |  |
| 6. Criteria for Conditional Use Permits §15.135.190 |  |

**D. APPLICABLE SECTIONS OF THE COMPREHENSIVE PLAN:**

- Land Use Element
- Housing Element

**E. APPLICABLE SECTIONS OF THE SHORELINE MASTER PROGRAM:**

1. Chapter 5 - Designation
2. Chapter 6 - Policy, Standards and Use Regulations
3. Chapter 7 - Administrative Procedures

**F. DEPARTMENT ANALYSIS:**

**1. PROJECT DESCRIPTION/BACKGROUND**

Built in the early 1900's, the building was originally from Bellingham. It was known originally as the Bloedel-Donovan Commissary. Later, it was used by the Coast Guard during WWII. The Bellingham Yacht Club purchased it in the late 1940's and renovated it for their use. In the early 1960's, the Yacht Club relocated, and the building was sold to a La Conner restaurateur. It was again renovated to add a water view area and a bar to become the Lighthouse restaurant. The building has been repurposed and renovated several times in the last 100 years.

In 1972, the Town established the La Conner Historic Preservation District (HPD) with an inventory of properties that were designated as Historic Landmarks. The adoption of the HPD code also established criteria and a pathway for additional properties to become Historic Landmarks. While the "Lighthouse" is located within the HPD, it was not listed in the original inventory nor was it added to the inventory by subsequent owners at a later date. The current owner is proposing to renovate and repurpose the

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building once again. The application proposes to reallocate the first floor to retail shops; add a second floor with office and residential units.

**2. ENVIRONMENTAL REVIEW**

**A. Notice of Application**

The SEPA review was conducted under the Optional MDNS process in WAC 197-11-355. This process calls for a single 14-day comment period following the publication of the Notice of Application on October 12, 2016. Appropriate SEPA Agencies were notified by direct mail.

**B. Threshold Determination**

Thirty-three written comments were received during the comment period. A Mitigated Determination of Non-Significance (MDNS) was issued on November 4, 2016.

Mitigation:

- Fire SEPA Mitigation Fee - As per Appendix A - Mitigation Fee Formulas By Land Use, of Resolution No. 293 – Fire Mitigation Fee Policy, this proposed development will be assessed \$156 per unit for the residential development and \$0.30 per square foot for added commercial development.
- School Impact Fee – Per Ordinance 694 and subsequent capital cost adjustments, the multifamily Impact Fee is \$252 per unit.
- Construction Work Hours - Weekdays 8am to 5pm, No weekend work.

**C. Appeal Period**

A 10-day appeal period follows the MDNS publication. The appeal period ends November 14, 2016. Any appeals will be heard on November 29, 2016 prior to the public hearing before the Hearing Examiner.

**3. STAFF FINDINGS AND CONCLUSIONS**

**A. Uniform Development Code**

**Determination of consistency LCMC §15.135.120**

When the town receives a project permit application, consistency between the proposed project and the applicable regulations and comprehensive plan shall be determined through the process in this chapter and in the town’s adopted SEPA procedures and policies. Applicable development regulations may include, but are not limited to, flood plain management regulations; shoreline master program goals, policies and regulations; state and federal statutes and regulations; and sewer, water and storm water management plans.

**i. Development Regulations**

*Commercial Zone LCMC §15.35*

*§15.35.010 Purpose.*

The purpose of the Commercial Zoning District is to allow for a variety of commercial activities and facilities necessary to serve the needs of the residents and visitors.

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**§15.35.020 Permitted uses.**

The following uses and structures are permitted in the Commercial Zone by certificate of authorization:

- (15) Professional offices, such as law, realty, architecture, engineering, therapists, counselors, consulting;
- (20) Retail sales of nonperishable goods, such as clothing stores, shoe stores, bookstores, gift shops, pharmacies, hardware stores, and antique shops;

**§15.35.030 Conditional Uses**

- (2) Dwelling units, attached or unattached, are not to exceed 49 percent of the square footage of the building(s), for all uses, of the properties of a development;

**§15.35.040 Dimensional standards.**

- (1) Minimum lot size – None.
- (2) Maximum lot size within the Morris Street Commercial District is 10,000 square feet.
- (3) Maximum lot coverage for buildings and impervious surfaces shall be 80 percent. Additional lot coverage requirements are found in Chapter [15.50](#) LCMC, Historic Preservation District.
- (4) Minimum landscaping area – 20 percent of the lot area.
- (5) Minimum Building Setback.
  - (a) The provisions of LCMC [15.50.120](#) notwithstanding, if the commercial use is adjacent to an RD Zone, the side yard setback shall be 10 feet and the rear yard setback shall be 25 feet.
  - (b) In the commercial HPD area, setbacks should conform to existing structures to preserve and enhance the storefront character of the street where possible. The historic planar relationship of the facade should be maintained.
  - (c) Access to the rear or secondary points of buildings along the front elevation should be avoided in the HPD. Such access or entry points, if constructed, should enhance the building and street to maintain the continuity of the street scene.
- (6) Setbacks from agricultural land shall be a minimum of 25 feet from any property line bordering agricultural lands.
- (7) Maximum floor area shall be no more than two times the property area.
- (8) Maximum building height – 30 feet above the average lot grade determined by averaging the lowest and highest existing elevation points on the lot to the highest point on the roof; except, for structures built within the 100-year floodplain, the height shall be measured from one foot above the base flood elevation to the highest point on the building. Roof access must be approved by the fire chief.
- (9) Awning/Canopies. Awnings and canopies shall be subject to the standard outlined in the latest adopted edition of the Uniform Building Codes and may require a building permit and inspection. Awnings/canopies shall have a minimum of eight feet clearance from the ground.

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Staff Comment

Most of the commercial zone dimensional standards are preempted by the HPD District/Neighborhood provisions of LCMC §15.50.120. As cited in LCMC 15.35.040 (5)b – “In the commercial HPD area, setbacks should conform to existing structures to preserve and enhance the storefront character of the street where possible. The historic planar relationship of the facade should be maintained.” The height limit and floor area lot coverage are the two primary provisions that come forward from LCMC §15.35.040. The overall peaks of the building comply with the height dimensional standard and are one foot below the actual height limit. The height allowance is 30 feet from one foot above the base flood elevation (BFE) level. The proposed building height is 29 feet above that mark.

The “lighthouse motif” from the original restaurant is proposed to be retained, relocated and elevated for prominence. The applicant is proposing to elevate it approximately 2.3 feet from its current height. This would make it 4 feet higher than the height limit. The applicant is requesting a variance for the new location. This will be addressed further in the variance section of this report.

The overall building proposed square footage is 78% of the total lot square footage.

*Historic Preservation District LCMC 15.50***Article II. Criteria for Design Review of New Construction, Preservation, Rehabilitation, Restoration or Reconstruction Within the Historic Preservation District**

## 15.50.080 General requirements.

- (1) Applicants shall conform to the principles of the Secretary of the Interior’s Standards for the Treatment of Historic Properties, including guidelines for preservation, rehabilitation, restoration and reconstruction.
- (2) The design shall respect and preserve the important features and qualities of the La Conner Historic Preservation District as outlined in the Design Evaluation Checklist in LCMC §15.50.170. The proposal shall relate to, and not diminish any physical or visual aspect of the site, neighborhood, and community.
- (3) Exception. Cases where reconstruction work is proposed for a building of a distinct style, but which is different from that which was typical of the “historic period.” In these cases the appropriate design choice should be to respect the distinct style which is significant in its own right and seek to retain the building’s particular architectural character, especially in terms of unique form, scale, proportion, rhythm, modeling and massing.
- (4) In those instances not covered by the criteria outlined in this code, the Secretary of Interior’s standards apply.

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*LCMC §15.50.170 Historic Design Review Criteria Checklist – From Planning Commission*

	<b>Design Criteria</b>	<b>Project Includes</b>	<b>Meets Code</b>	<b>Approved</b>	<b>Not Approved</b>
1.	General	✓			
	Exception	✓			
2.	Building exterior	✓			
	Masonry				
	Wood	✓			
	Architectural metals				
	Drainage	✓			
	Design – Missing features				
	Windows and trim	✓			
	Roofs, canopies, awnings	✓			
	Entrances and porches				
	Storefront	✓			
	Ornamentation	✓			
	Materials	✓			
	Paint and color	✓			
3.	Building interior	NA			
	Structural system				
	Spaces, features, finishes				
4.	Building site				
	Site features				

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	Design Criteria	Project Includes	Meets Code	Approved	Not Approved
	Landscape	✓			
	Critical area				
5.	District/neighborhood	✓			
	Setbacks				
	Size and scale	✓			
6.	Health/safety code	✓			
7.	Energy retrofitting	NA			
8.	New addition – HPD building	NA			
9.	Accessory structure	NA			

§15.50.120 District/neighborhood

- (3) First Street Commercial District. The compact fabric and consistent rhythm created by the incremental construction of small to medium size buildings on the originally platted 25-foot by 100-foot lots shall be maintained. Typical details include one-story gable roof structures, false fronts, cornices and multi-paned windows.
  - (a) Buildings, storefronts, entrances, and variations in height, modulation, color, and building material should occur at 25-foot intervals.
  - (b) Buildings over 3,000 square feet gross floor area shall be designed to have the appearance of multiple buildings typically found in the district, including separate entrances, storefronts, and variation in height.
  - (c) On the upland side of First Street, minimum rear yard setback: 10 feet. On the waterfront side of First Street, rear yard access must be approved by the fire chief for fire safety. The decision of the fire chief is non-appealable.
  - (d) The side yard setback may be zero clearance consistent with the setbacks of adjoining properties; provided, that the materials, access and applications are approved by the fire chief.
  - (e) Landscaping, at maturity, within a view corridor shall not exceed four feet in height.

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Staff Comment

Several of the public comments presume that this building is a Historic Landmark. The Lighthouse building was not included in the original inventory of the Historic District designation nor was the designation applied for by subsequent owners. There is no other mechanism that would establish this building as a Historic Landmark by our code or the state. Prior to arriving in La Conner the building was renovated and repurposed three times. In La Conner, it received three additions. There is no particular architectural style or period associated with the building.

This office has conferred with the Washington Department of Archeology and Historic Preservation (DAHP) regarding this issue and they concur. Further, Nicholas Vann, an architect of DAHP, was asked to review the project. The following is a quote from his response:

...“Overall, I believe the project is successful in employing many of the character defining features found in downtown La Conner. The project as proposed, in my opinion, meets the *Secretary of the Interior’s Standards for the Treatment of Historic Properties* although there are no specific Standards for infill development in a Historic District. The proposed redevelopment includes extensive façade rehabilitation of the existing structure as well as second floor addition and small additions that fill in the space fronting the sidewalk where the building currently recedes into the site. By filling in these recesses, the building allows for better pedestrian access and sidewalk presence. The upper floor is kept in scale with other two story buildings in town. The proposed shiplap and bevel siding appears to match many downtown buildings. The simple belly bands separating first from second floor, and simple cornices appear to interpret La Conner’s fantastic cornice lines without mimicking them or competing with the historic. The scale, massing, and size of the proposed redevelopment clearly represent the architectural language found in the Historic District and appears to be sensitive to its context and appropriately designed for downtown La Conner.”...

Response to comments received:

- One of the commenters claims that the project should require an EIS due to its size and location within the Historic District. This proposal has a similar size impact as at least three previous projects in the same neighborhood of the Historic District ( MoNA, Seaport Landing and the La Conner Brewery). In fact, the code anticipated future development and larger structures. The scope and scale of this project is entirely within the guidance framework of LCMC 15.50.120 3(b).
- Throughout Section 15.50 – Historic Preservation District, there are sections that are intended for buildings listed on the Historic Register. In particular, sections 15.50.070 Historic Properties, 15.50.100 Building Interior and 15.50.150 Additions to Historic Buildings apply to buildings that are listed, but these sections do not apply to other buildings within the HPD that are not listed.

This means that non-landmark buildings must apply the principals of the standards as prescribed in the code to preserve the integrity the district, but not the prescriptions that apply to historic landmarks.

- In response to a Public Records Request email correspondence, a commenter expressed concern about a “phased project” and assurances. This department has not and does not give assurances regarding pending applications. The project was resubmitted as a complete project, not a phased project.
- There is a consistent perception by several commenters that the proposed project is not compliant with the HPD guidelines (LCMC 15.50.090). Per the Washington State Department of Archeology and Historic Preservation comments above, this project does

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comply with the intent of the La Conner LCMC and the principles of the Secretary of the Department of Interior treatment of historic district properties.

- The listing of this building on the historic walking tour of La Conner does not qualify the building as a Historic Landmark. There are 162 structures listed on the Tour. Most are not historic landmarks and are outside the Historic District.
- One commenter cites the *Swoboda vs the Town of La Conner*, 97 Wn.App. 613, 987 P.2d 103 (1999) as relevant to this application. However, neither the Town nor the applicant is contending that the project is exempt from the HPD code as was Swoboda's claim. In fact, the applicant specifically intends to comply with the La Conner Historic Preservation code.
- Several commenters felt that the historic view corridors include private property surrounding a building not designated as a historic landmark. View corridors are public rights-of-way, public parking and open public space. Private property view corridors are defined by setbacks, height limits and, in the Historic District, streetscape. The proposed plan complies with all the elements pertaining to view corridors.
- Regarding the "faux historic" label cited by some of the commenters. The proposed redevelopment has used the guidelines provided in the LCMC 15.50.090 and 15.50.120. The review comment from DAHP indicates that, in fact, the applicant has correctly interpreted the Secretary of Interiors standards and preserved the historic content of the neighborhood without creating a "faux historic" structure.
- Regarding demolition citation: The proposed project is not a demolition. It is a redevelopment addition. There are no architectural features of the original building. It was a simple rectangular structure with no distinctive features. The current features of the building were added upon its arrival in La Conner in the 1960's, and again in the 1970's, 1980's and 1990's. None of the current exterior features of the building are original or relate to any period or architectural style.

Per Article II, the project must comply with the principals of the Secretary of the Department of Interior, but not the prescriptions for Historic Landmarks. Those principals are outlined in Section 15.50.090 and the Checklist in Section 15.50.170 to preserve the historic context to the neighborhood.

*Historic Design Criteria Checklist:*

Ultimately, the Planning Commission must decide element by element whether or not the project complies with the Design Guidelines in Article II and make a recommendation to the Hearing Examiner.

Staff reviewed the following checked elements:

## 1. General

*Exception – The building has been remodeled in several different eras with no distinct architectural style of note. The applicant is using the design guidelines to add elements to the structure to comply with the scale, proportion and rhythm of the streetscape. The "lighthouse" motif is being retained.*

## 2. Exterior

*Wood – the proposed design calls for cedar and fir horizontal siding with variation from module to module of 4" and 6" spacing.*

*Drainage – the north parking lot drains directly into the Town's stormwater system at Washington Street. The majority of the site is impervious surface with run-off from the roofs and*

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*decks. Non-leaching roofing and decking materials will be allowed to drain to the Swinomish Channel.*

*Windows and Trim – Windows painted fiberglass with wood trim.*

*Roof, canopies and awnings – flat roofs will be film, sloped roofs will be fiberglass laminate, Presidential grade, or metal roofing.*

*Storefront – the new façade is modulated per the guidelines. The main entrance is unchanged.*

*Ornamentation – the plan proposes to retain the “lighthouse” motif*

*Materials – all exterior finish materials to be wood or wood-like composites.*

*Paint and color – colors and paints are selected from the Benjamin Moore historic collection.*

**5. District/Neighborhood**

*Size and Scale – the project must meet the First Street Commercial district streetscape design and modulation. First Street has a mix of single and two story buildings (both new and historic). The two historic buildings to the north and south are two stories. The modulation and second floor addition appear consistent with the adjacent streetscape and design guidelines.*

**6. Health/Safety Code – building is to have automatic fire sprinklers throughout. The IBC health and safety requirements apply to the final building design.**

Planning Commission Findings:

Planning Commission Recommendation to the Hearing Examiner:

LCMC §15.70 Floodplain Management

This property is within the Special Flood Hazard Area (SFHA) A1 Zone of the 1985 Flood Insurance Study. The base flood elevation (BFE) is 8 feet (NGVD 29 reference) above average sea level. The building has a Flood Elevation Certificate that establishes the lowest finished floor level at 9.6 feet. All new and substantially improved buildings within the SFHA must be at or above 9 feet.

Staff Comment

*The current structure and proposed additions comply with the elevation requirements of the Town’s Floodplain Management code.*

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LCMC §15.90 Off-Street Parking and Loading

The current facility has 5 parking spaces that are accessed through the Benton Street End, and 13 spaces in the north side parking lot. The former use of the building was a restaurant and lounge. The proposed new uses are retail, office and residential.

The use intensity and parking demands are different than past uses. The new parking load calculation for the building is 23 spaces (20 commercial and 3 residential). Per the parking ordinance §15.90, property owners may pay an "in-lieu" fee for commercial spaces for up to 50% of the parking requirement per §15.90.030(3).

Staff Comment:

*The proposed parking allocation is 18 spaces. The demand is 23 spaces. The owner may pay "in-lieu" fees for 5 commercial spaces not provided. The "in-lieu" fee is \$4,800 per space. The total for the spaces not provided is \$24,000.*

Response to comments received:

- *Benton Street end is primarily for vehicle access to two properties adjacent to the street end and the Town moorage. A small portion of the street end is used as a park area adjacent to the waterfront. The Parks Commission has plans to redevelop the entire street end for as a park feature, but that plan is not scheduled or funded. The Town has no plans to change the current configuration of the street end in the near future.*

*The 5 parking spaces were specifically allocated to the Lighthouse as a requirement of the 1984 remodel which added the café to the South First Street side of the building.*

- *The street access to the parking for the building is unchanged and is comparable to any parking access off of any of the Town's rights-of-way. There seems to be some confusion with the previous application that altered the configuration.*
- *There are no other phases of development being proposed by the applicant.*

LCMC §15.125.040 Variances

## (1) Authority and Applicability.

- (a) Hearing Examiner Variances (Type IV Permit). The hearing examiner shall have the authority to grant variances from the provisions of this code.
- (b) Administrative Variances (Type II Permit). The planning director shall have the authority to grant variances from the following development standards when no other permit or approval requires hearing examiner review:
  - (i) Residential Land Uses. Lot dimensions, setbacks and allowed projections into setbacks; and
  - (ii) Commercial and Industrial Land Uses. Screening of surface and roof mounted equipment and landscaping requirements; and
  - (iii) Parking. Landscaping and screening requirements.
- (c) Filing of Application. A property owner, or his duly authorized agent, may be required to file an application for a variance, which application shall set forth fully the grounds therefore and the facts deemed to justify the granting of such variance.

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- (d) Submittal Requirements and Application Fees. Shall be as listed in LCMC [15.135.070](#), Application for permit; and fees as approved by Council Resolution 236.
- (e) Public Notice Requirements. Notice of the application shall be given pursuant to LCMC [15.135.110](#), Public notice requirements.
- (2) Decision Criteria. The reviewing official shall have authority to grant a variance upon making a determination in writing that the conditions specified below have been found to exist. Under no circumstances shall the reviewing official grant a variance to allow a use not permissible under the terms of this code in the district involved on any use expressly, or by implication, prohibited by the terms of this code in said district. Variances shall only be granted when the applicant demonstrates that all of the following conditions are met:
- (a) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
- (b) That literal interpretation of the provisions of this code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this code;
- (c) That the special conditions and circumstances do not result from the actions of the applicant;
- (d) That granting of the variance requested will not confer on the applicant any special privilege that is denied by this code to other lands, structures, or buildings in the same district;
- (e) That the granting of the variance will be in harmony with the general purpose and intent of this code will not be injurious to the neighborhood, or otherwise detrimental to public welfare.
- (3) Findings by the Reviewing Official. The reviewing official shall grant a variance only upon finding that the application satisfies all the foregoing criteria.

**Staff Comment**

*The applicant is proposing to relocate a feature (lighthouse motif) with historic context to the property, and elevate the "lighthouse" approximately 2 feet above its existing elevation. The proposed new location height is 4 feet above the maximum height allowance.*

**Criteria:**

- (a) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;

*The "lighthouse" motif is unique to the building and has historic content and context to the building and district.*

- (b) That literal interpretation of the provisions of this code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this code;

*The adherence to the height limits would not deprive the property owner of rights commonly enjoyed by other property owners.*

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- (c) That the special conditions and circumstances do not result from the actions of the applicant;

*This condition and circumstance is a result of redevelopment actions by the applicant.*

- (d) That granting of the variance requested will not confer on the applicant any special privilege that is denied by this code to other lands, structures, or buildings in the same district;

*If the rationale for the variance is to maintain historic context of the building, then other structures in the district could qualify for the same variance under similar circumstances.*

- (e) That the granting of the variance will be in harmony with the general purpose and intent of this code will not be injurious to the neighborhood, or otherwise detrimental to public welfare.

*Granting a variance for the architectural feature of this building should not be injurious or otherwise detrimental to the neighborhood or public.*

LCMC §15.135.190 Criteria for Conditional Use Permits

- (1) Conditional uses may or may not be permitted, depending on conformance with specific criteria. They are called conditional because they are allowed only when proper conditions exist, or when the proposal can be brought into conformance with the criteria by placing conditions on the permit. The applicant must provide evidence substantiating that all the requirements of this code relative to the proposed use are satisfied, and demonstrate that the proposed use also satisfies all of the following criteria:

- (a) The use is listed as a conditional use in the underlying district.
- (b) The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.
- (c) The site and proposed development is timely, considering the adequacy of transportation systems, public facilities and services existing or planned for the area affected by the use.
- (d) The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district.
- (e) The proposal, through findings, satisfies the goals and policies of the comprehensive plan, Shoreline Management Act, and floodplain ordinance, which apply to the proposed use, if applicable.
- (f) Setbacks or buffers proposed by applicant are shown to mitigate potential adverse impacts that might emerge from the proposed conditional use.
- (g) The use must cause no adverse effect on the surrounding area due to traffic, parking, noise, odor, air or water pollution.
- (h) Consideration shall be given to the cumulative impact of like uses within the neighborhood.

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- (2) No conditional use permit shall be approved unless the hearing examiner has made findings and/or conclusions that each of the foregoing criteria is met or is inapplicable. [Ord. 884 § 4, 2003; Ord. 743 § 6, 1999.]

Staff Comment

*Residential development is a “conditional use” in both the Commercial Zone and the Historic Commercial Shoreline Environment. The following are staff comments on each of the Conditional Use Criteria:*

- (a) The use is listed as a conditional use in the underlying district.

*Residential use is listed as a conditional use in LCMC 15.35.030(2) and in the SMP Chapter 6 Table 6-2 Permitted Use Table.*

- (b) The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.

*The property has suitable size and shape to accommodate both residential and commercial development. It is unique with regard to the DNR Harbor area splitting the building and use allowance. However, the property can accommodate the use restriction.*

- (c) The site and proposed development is timely, considering the adequacy of transportation systems, public facilities and services existing or planned for the area affected by the use.

*Town departments and staff have reviewed the proposal. An Infrastructure Improvement Agreement will be required to identify, assess and ensure that utility and safety service is adequate for the redeveloped uses. The dedicated parking is within the scope of the project.*

- (d) The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district.

*There are currently 14 businesses that house residential units (a total of 17 units) in the South First Street neighborhood. The proposed uses of the redevelopment do not appear to limit, impair or preclude primary uses of the surrounding properties.*

- (e) The proposal, through findings, satisfies the goals and policies of the Comprehensive Plan, Shoreline Management Act, and floodplain ordinance, which apply to the proposed use, if applicable.

**Comprehensive Plan:**

*Historic Preservation*

*Goal W - Protect and preserve the historic character of La Conner’s historic preservation district.*

*Policy 5w-4 – Limit the mass, size and scale of new structures and additions to historic standards addressing scale, form and proportions*

*Housing Element*

*Goal A – Strive to preserve, improve and enhance the existing housing stock, including historic structures and sites within the Historic District*

*Policy 6A-4 – Encourage adaptive reuse of appropriate structures as a method to introduce housing into non-residential areas*

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*Goal B – Implement development and design standards in a manner consistent with the Vision Statement and densification strategies while protecting individual property rights and community interests as a whole.*

*Policy 6B-3 – Encourage residential uses in the Commercial Zone to locate on the second floor. Residential uses should be discouraged on the street level in the Commercial Zone.*

*Policy B-4 - Meet allocated GMA population growth through increased unit densities.*

*Policy 6B-5 – Encourage adherence to the design standards as outlined in the Architectural and Site Design Guidelines referenced in the Introduction.*

*Policy 6B-7 – Allow the dividing of existing residential and commercial structures to provide additional living units.*

**Shoreline Master Program** – See Shoreline segment of this report

**Floodplain Management** – This proposal is compliant with the floodplain provisions of the LCMC.

- (f) Setbacks or buffers proposed by applicant are shown to mitigate potential adverse impacts that might emerge from the proposed conditional use.

*The proposed mitigation of the impact of residential use in the historic district is to locate on the second floor of the structure.*

- (g) The use must cause no adverse effect on the surrounding area due to traffic, parking, noise, odor, air or water pollution.

*The adverse impacts identified with the proposed project and uses were identified in the SEPA process and mitigations proposed should be included as conditions of this approval.*

- (h) Consideration shall be given to the cumulative impact of like uses within the neighborhood.

*This conditional use has been studied and evaluated with regard to the development of the Comprehensive Plan, Shoreline Master Program, La Conner Municipal Code and Growth Management Act planning. The accumulative impact of densification and increased residential capacity is a net positive per current planning documents within the current planning horizon to meet the Town’s GMA population projection commitment.*

General Staff Comment:

*Currently, the mixed use of residential and commercial development is a design motif of La Conner’s Historic District. On South First Street alone, there are 14 businesses with associated residences and a total of 17 residential units.*

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*Determination of Consistency LCMC §15.135.120*

**ii. Type of Land Use**

*The proposed land use is primarily commercial office space with residential conditional use. The property will also provide some parking as an accessory use.*

**iii. Level of Development**

*The residential level of development is 8 units per acre and the commercial development is 77% of the lot square footage.*

**iv. Availability of infrastructure and public facilities**

*Sewer, water and drainage facilities already serve the property.*

**v. Character of Development**

*Commercial/residential mixed use - While the building is not listed as a historic landmark, the renovations and alterations must meet the historic code guidelines of Article II in LCMC §15.50.*

**B. Conditions of the permit**

- *School Impact Fee*
- *Fire Mitigation Fee*
- *Construction Work Hour Restrictions*
- *Infrastructure Improvement Agreement*
- *In-lieu Parking Fee*

**G. SHORELINE MASTER PROGRAM**

*Designation Chapter 5.2 Historic Commercial Environment (HCE)*

**5.2.1 Purpose**

The purpose of this environment is to ensure optimum utilization of and preservation of historic significance along the Town’s marine waterfront, allowing as much public access as practicable in conjunction with a variety of water-enjoyment uses, and ensuring redevelopment is accomplished in such a way as to minimize any adverse impact on the both aquatic resources and historic environments

**5.2.2 Designation Criteria**

The historic commercial environment is defined by the commercially zoned properties upland of the OHWM within the National Historic District of La Conner in the shoreline boundary. It is also an area of high-intensity land use including public, commercial, and residential use.

**5.2.3 Location**

The historic commercial environment extends from approximately 80 feet south of Commercial Street on the south to a point 100 feet north of Morris Street between the OHWM of the Swinomish Channel on the west and a point 200 feet landward of the OHWM.

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**5.2.4 Management Guidelines**

1. Identify, preserve, protect, and restore the Town's historic buildings and sites having historic, cultural, educational or scientific values.
2. Conserve and protect the natural resources of the Town's marine shoreline including its water quality, existing vegetation, habitat, and ecological functions.

Staff Comment

*The proposal is to redevelop a non-historic structure using the Historic District guidelines to mitigate the size, scale and proportion of the structure. The redevelopment will occur over primarily impervious surfaces. Habitat and water quality impacts will be managed by the Town's stormwater utility or through temporary construction measures prescribed in the Department of Ecology's Technical Manual.*

*Regulations Chapter 6 – Shoreline Development Policies, Standards and Use Regulations***6.2.6 Historic and Cultural****A. Policies**

1. Promote the vitality of the historic preservation district by encouraging full, active use of land and structures, including multiple or spatially overlapping uses where compatible.
2. Encourage educational projects and programs that foster a greater appreciation of the importance of shoreline management, maritime activities, maritime history and environmental conservation.

**B. Regulations**

1. All shoreline permits shall contain provisions that require developers to immediately stop work and notify the Town if any phenomena of possible archaeological interest are uncovered during excavations. In such cases, the developer shall provide for a site inspection and evaluation by a professional archaeologist to ensure that all possible valuable archaeological data is properly salvaged.
2. Permits issued in areas with known potential to contain archaeological artifacts and data shall include a requirement that the developer provide for a site inspection and evaluation by an archaeologist. The developer shall provide resultant findings to the Town which shall, in conjunction with affected parties, review the project for probable adverse impacts before any work on the site begins. Significant archaeological data or artifacts shall be recovered before work resumes or begins on a project.
3. Significant archaeological and historic resources shall be permanently preserved for scientific study, education and public observation. When the Town determines that a site has significant archaeological, natural scientific or historical value, a substantial development permit shall not be issued which would pose a threat to the site. The Town and the state may require that development be postponed for a reasonable period of time in such areas to allow investigations of public acquisition potential and/or retrieval and preservation of significant artifacts.
4. In the event that unforeseen factors constituting an emergency as defined in RCW 90.58.030 necessitate rapid action to retrieve or preserve artifacts or data identified above,

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the project may be exempted from the permit requirement of these regulations. The Town shall notify appropriate agencies, such as the Swinomish Tribe, the State Department of Ecology, the State Attorney General's Office and the State Department of Archeology and Historic Preservation of such a waiver in a timely manner.

5. Archaeological sites located both in and outside the shoreline jurisdiction are subject to Chapter 27.44 RCW (Indian Graves and Records) and Chapter 27.53 RCW (Archaeological Sites and Records) and shall comply with Chapter 25-48 WAC as well as the provisions of this master program.
6. Archaeological excavations may be permitted subject to the provisions of this program.
7. Identified historical or archaeological resources shall be considered in park, open space, public access, and site planning with access to such areas designed and managed so as to give maximum protection to the resource and surrounding environment.

**Staff Comment**

*Minimal excavation should occur during this project. The area is dredge spoils from the channel and previously developed. Town public works staff has been trained in archeological identification protocols and the Town has an archeologist on call in the event of a potential artifact siting. The Swinomish Tribe was notified of the project during the SEPA notification and comment period. No comments or inquiries have been received.*

**6.2.8 View protection****A. Policies**

1. Map local and territorial views that provide orientation, convey the Town's regional context, and contribute to the Town's "sense of place."
2. Identify key vantage points, corridors and outlooks for protection and possible interpretation.
3. Recognize the open space value and potential benefits of views of the Swinomish Channel across surface parking areas.

**B. Regulations**

1. Shoreline uses and activities shall be designed and operated to provide visual access to the water and shorelines.
2. Public lands such as street ends, rights-of-way and utilities shall provide visual access to the water and shoreline in accordance with RCW 35.79.035 and 36.87.130.
3. Development on or over the water shall be constructed as far landward as possible to avoid interference with views from surrounding properties to the shoreline and adjoining waters.
4. Development on the water shall be constructed with non-reflective surface treatments to minimize glare (flat or matte finish) that are compatible in terms of color and texture with the surrounding area.
5. Visual access shall be maintained, enhanced and preserved on shoreline street ends, public utilities and rights-of-way and within the following identified "view corridors": Sherman Street end, Caledonia Street end, Commercial Street end, Calhoun Street end, Benton Street end, Washington Street end, Morris Street end, Jordan Street end, between First

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and Second Streets – the stairway at Benton Street, and Calhoun Street end on the south side of the Civic Garden Club.

**Staff Comment**

*The Benton Street and Washington Street end view corridors will remain open view areas as will the 13 space parking lot to the north of the development. The applicant has indicated that metal roofing may be used. The finish must be non-reflective, flat or matte finish. The primary view corridors are identified in Section 5 above. These are the view corridors, not the private properties adjacent to the view corridors.*

**6.3.3 Residential development****A. Policies**

1. Residential development should be permitted only where there are adequate provisions for utilities, drainage, and transportation access and circulation.
2. The overall density of development, lot coverage and height of structures should be appropriate to the physical capabilities of the site and as set forth in Chapter 15 of LCMC.

**B. Regulations**

1. No residential lots or sites shall be created for which shoreline protection structures, such as bulkheads will be required. Development on existing lots shall be sited so that no shoreline protection structures will be required.
2. All residential structures, accessory uses and facilities shall be arranged and designed so as to reasonably preserve views and vistas to and from shorelines and water bodies and be compatible with the aesthetic character of the area.
3. Storm drainage and treatment facilities shall be required by the Town for proposals involving any dwelling. Drainage facilities shall be separate from sewage disposal transport facilities and include provisions to prevent uncontrolled and untreated direct entry of surface water runoff into receiving waters.
4. Prior to issuance of a building permit, short plat or shoreline development approval, the developer shall submit adequate plans for preservation of shore vegetation and for erosion control during and after construction that would result in permanent shoreline stabilization. Such plans shall be a part of the shoreline permit.
5. Prior to issuance of a building permit, short plat or shoreline development approval, the developer shall submit adequate plans to provide for community and/or public access in conformance to local public access plans.
6. The shoreline setback for new multifamily residential development shall be a minimum of 25 feet landward of the OHWM.
7. Public access easements shall be a minimum of 12 feet in width and shall be in compliance with public access requirements and standards contained in LCMC.
8. Accessory uses that are not appurtenances shall be reasonable in size and purpose, and be compatible with on-site and adjacent structures, uses and natural features.

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9. Liveaboard vessels may be moored in the Town waterfront subject to rent/lease agreements with owners/lessees of adjacent property and consistent with all applicable local and state regulations, including health regulations pertaining to water supply and sewage disposal and the Department of Natural Resource's lease requirements. When connection to existing sewage disposal facilities is not practicable, the routine use of off-site pump-out facilities shall be required and subject to written verification. Under no circumstances shall sewage effluent from such uses be discharged into the waters of the Swinomish Channel.
10. New residential development is prohibited in the industrial environment.
11. Floating homes and houseboats are prohibited.

**Staff Comment**

*The site has access to Town utilities. Per staff comments on the proposed project, prior to building permit application, the facility must be assessed for sewer and water connection capacity. The applicant must enter into an Infrastructure Improvement Agreement with the Town agreeing to upgrade connections as necessary to meet the facility needs.*

*The second floor roof peaks for the residential and office spaces are proposed to be built one foot below the maximum height allowance. The applicant is requesting a variance for the "lighthouse" architectural feature being retained from the previous structure. The structure is generally below the allowed visual plain.*

*Sewer and storm water connections are available on site.*

*Public access is provided along the Swinomish Channel via the Town boardwalk easement granted by the property owner.*

*The second floor residential development is at least 45 feet from the OHWM.*

**6.3.4 Commercial uses and activities****A. Policies**

1. Commercial development in shoreline areas should be encouraged in descending order of preference as follows:
  - a. Water-dependent uses;
  - b. Water-related uses; and
  - c. Water-enjoyment uses.
  - d. Non-water-oriented development that is not accessory to a water-oriented use should be allowed only as a conditional use.
2. Commercial development should be prohibited over water unless the use is water-dependent.
3. Encourage new commercial development along the shoreline to locate in those areas with existing consistent commercial uses.
4. Encourage commercial development to utilize existing transportation corridors and minimize the number of access/egress points which should be designed to minimize potential conflicts.

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**B. Regulations**

The following provisions shall apply to commercial uses (those uses which are involved in wholesale, retail, service, and/or business trade). They shall not apply to residential, boating facility or other uses existing or allowed in commercial areas.

1. The Town shall require and utilize the following information in its review of commercial development proposals:
  - a. Nature of the commercial activity (e.g. water-dependent, water-related, water-enjoyment, non-water-oriented) including a breakdown of specific components;
  - b. Need for shoreline location;
  - c. Special considerations for enhancing the relationship of the activity to the shoreline;
  - d. Provisions for public visual and physical access to the shoreline; and
  - e. Provisions to ensure that the development will not cause adverse negative environmental impacts.
2. Commercial developments that are water-oriented may be permitted provided the development meets all the criteria of this shoreline master program and related zoning ordinances. Non-water-dependent commercial developments may be allowed by conditional use permit where it can be demonstrated that:
  - a. A water-oriented use is not reasonably expected to locate on the proposed site.
  - b. The proposed use does not usurp or displace land currently occupied by a water-oriented use and will not interfere with adjacent water-oriented uses.
  - c. The proposed use will be of appreciable public benefit by increasing public use, enjoyment or access to the shoreline.
  - d. Commercial development within the shoreline jurisdiction but not adjacent to the waterfront shall provide for water-enjoyment uses and satisfy public access policies by employing design elements such as walkways parallel to sidewalks, landscaping and benches.
  - e. Commercial development on the landward side of First Street, or on land which does not abut the water, which is not water-dependent or water-related shall be subject to the following requirements:
    - (i) On-site parking shall not be located waterward of buildings, and adequate street access shall be provided.
    - (ii) A landscaping plan shall be submitted with shoreline permit applications.
3. Commercial development shall be designed and maintained in a neat, orderly and environmentally compatible manner, consistent with the character and features of the surrounding area. Setbacks, height restrictions, landscaping, screening, parking, and applicable sections of the Uniform Development Code shall apply.
4. Public sidewalks and adjoining private areas open to the public should be designed to create a physically and visually continuous pedestrian route along the First Street shoreline.
5. Light industrial uses shall be allowed if approved under the provisions of LCMC 15.36.030, Transitional Commercial Zone conditional uses.

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Staff Comment

*The use profile of the property is complicated by the DNR inner harbor line coming ashore on this property and dividing the building. There is an overlap that does not usually exist and that is an upland environment overlapping the harbor area. DNR is the property owner within the harbor area. This environment within the Shoreline Master Program is the Historic Commercial Environment. Uses along the La Conner Historic Preservation District waterfront are consistent with historical uses. When the Town was established, all uses were "water-related or water dependent" since the water was the primary medium upon which all commerce and transportation took place.*

*The nature of most of the commercial development is non-water-oriented with view businesses being considered water-enjoyment. The First Street business corridor is primarily a tourist area with mixed residential use. The need for shoreline location is the general tourist appeal of the La Conner waterfront. The boardwalk was specifically sited to enhance the water connectivity of all La Conner waterfront businesses. Storm water and Town utilities and development standards are designed to ensure no adverse environmental impacts.*

*Response to commenters:*

- *The harbor area that occupies upland properties, is not an aquatic designation or environment.*
- *DNR does not prohibit offices or commercial uses in the harbor area.*
- *DNR does not restrict access through the harbor area to upland uses, including residential.*
- *In general, DNR property and lease management issues are not overseen or regulated by Town ordinances or programs. These are property management issues for DNR.*
- *This project has been reviewed by DNR and applicant has received and followed their guidance.*

**6.3.8 Parking Facilities****A. Policies**

1. Provide parking should be allowed as an accessory use to a permitted shoreline use only where it will have the least possible adverse affect on natural shoreline resources.
2. Surface parking in excess of required minimums may be appropriate if the location and configuration results in useable open space and view corridors to the Swinomish Channel.
3. Off-street parking facilities sufficient for the proposed activity should be required. In those cases where parking is not available, such as South First Street, alternate parking areas should be encouraged in upland areas.
4. Cooperative use of parking facilities should be encouraged, such as between businesses whose peak hours do not coincide.

**B. Regulations**

1. Parking within the shoreline jurisdiction shall directly serve a permitted or conditional shoreline use.
2. Parking facilities shall be designed and landscaped to minimize adverse impacts upon adjacent shoreline and abutting properties.

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3. Parking facilities serving new development on the shoreline shall not be located waterward from the principal building being served, except when the parking facility is within or beneath the structure and adequately screened, or in cases when an alternate orientation would have less adverse impact on the shoreline.
4. Parking facilities for shoreline activities shall provide safe and convenient identified pedestrian circulation within the parking area and to the shorelines.
5. Parking facilities shall provide adequate facilities to control surface water runoff to avoid contaminating water bodies using the best available technologies and maintenance programs to assure proper functioning of such facilities over time.
6. Parking facilities shall be located and designed to minimize adverse impacts including those related to stormwater run-off, water quality, visual qualities, public access, and vegetation and habitat maintenance.

**Staff Comment**

*All the parking facilities are pre-existing. The applicant is proposing new landscaping for the north parking area. No parking is located waterward of the development and additions. All parking impervious surfaces shall have run-off water directed to Town stormwater facilities.*

**Permitting Chapter 7 – Shoreline Administrative Procedures****7.7.1 Shoreline Substantial Development Permit Required**

1. Substantial development, as defined by this SMP and RCW 90.58.030, shall not be undertaken by any person on the shorelines of the state without first obtaining a substantial development permit from the Shoreline Administrator. A shoreline substantial development permit shall be required for all proposed use and development of shorelines unless the use or development is specifically identified as exempt from a substantial development permit, in which case a letter of exemption is required.
2. The Shoreline Administrator is authorized to grant a shoreline substantial development permit when all of the criteria enumerated in WAC 173-27-150 are met.
3. All new over-water developments and uses that exceed 1000 square feet, including those allowed as a substantial development, shall require a public hearing and be reviewed and approved by the Town Hearing Examiner consistent with LCMC 15.12.

**7.7.5 Shoreline Conditional Use Permit**

1. The purpose of the conditional use permit is to provide greater flexibility in varying the application of the use regulations of this SMP in a manner that will be consistent with the policies of RCW 90.58, particularly where denial of the application would thwart the policies of the Shoreline Management Act.
2. When a conditional use is requested, the Shoreline Administrator or Hearing Examiner as designated shall be the final approval authority for the Town. However, shoreline conditional uses must have approval from the state. The Department of Ecology shall be the final approval authority under the authority of WAC 173-27-200.

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3. Conditional use permits shall be authorized only when they are consistent with all of the following criteria:
  - a. The proposed use is consistent with the policies of RCW 90.58.020, WAC 173-27-160 and all provisions of this SMP;
  - b. The use will not interfere with normal public use of public shorelines;
  - c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and this SMP;
  - d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is located;
  - e. The public interest will suffer no substantial detrimental effect.
4. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
5. Other uses not specifically set forth in the SMP may be authorized through a conditional use permit if the applicant can demonstrate that other uses are consistent with the purpose of the shoreline environmental designation and compatible with existing shoreline improvements or that extraordinary circumstances preclude reasonable use of the property; however, uses specifically prohibited by this SMP shall not be authorized.
6. The Town is authorized to impose conditions and standards to enable a proposed shoreline conditional use to satisfy the conditional use criteria.

Staff Comment

Conditional Use Criteria

- a. The proposed use is consistent with the policies of RCW 90.58.020, WAC 173-27-160 and all provisions of this SMP;

*The proposed residential and commercial uses are consistent with the RCW, WAC and La Conner SMP.*

- b. The use will not interfere with normal public use of public shorelines;

*The use will not interfere or impede public access, use or enjoyment of the La Conner shorelines. The property has an easement to accommodate the Town's boardwalk the entire length of the property.*

- c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and this SMP;

*The use profile of the property is complicated by the DNR inner harbor line coming ashore on this property and dividing the building. There is an overlap that does not usually exist and that is an upland environment overlapping the harbor area. DNR is the property owner within the harbor area. This environment within the Shoreline Master Program is the Historic Commercial Environment. Uses along the La Conner Historic Preservation District*

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*waterfront are consistent with historical uses. When the Town was established, all uses were “water-related or water dependent” since the water was the primary medium upon which all commerce and transportation took place.*

*There are currently 14 businesses that house residential units (a total of 17 units) in the South First Street neighborhood.*

*The use and redevelopment is compatible and consistent with other uses in the La Conner Historic Preservation District, Comprehensive Plan and SMP.*

- d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is located;

*The proposed uses are consistent with current and planned uses of the shoreline environments and should not adversely impact the shoreline environments as proposed.*

- e. The public interest will suffer no substantial detrimental effect.

*The public interest should have no substantial detrimental effect. Proposed uses are consistent with LCMC, Comprehensive Plan and SMP which are statements of public interest and benefit by the Towns people.*

**H. RECOMMENDATION**

The Planning Director (Administrator) has reviewed the application as per Shoreline Master Program:

The administrator makes recommendations to the Hearing Examiner based upon:

1. The policies and procedures of the Shoreline Management Act of 1971 and related WAC’s as amended.
2. The La Conner Shoreline Master Program, regulations and amendments thereto.
3. The La Conner Comprehensive Plan and land use regulations and amendments thereto.
4. Applicable State Environmental Policy Act (SEPA).
5. Impact on identified areas of historical and cultural significance.
6. Findings and conclusions as a result of project review and analysis.

The Administrator recommends that the Permits LU16-46SH, 16-47CU and 16-49HDR be \_\_\_\_\_.

\_\_\_\_\_  
Planning Director

\_\_\_\_\_  
Date