



Community and Economic Development

Planning Division

18204 59th Avenue NE, Arlington, WA 98223

Notice of Decision Reserve at Arlington - PLN #556

To all parties of record:

The request for a conditional use permit for the development of a 150-unit, multi-family, affordable senior housing development, known as "Reserve at Arlington," on 2.93 acres at 74XX 204th Street NE is **APPROVED** by the City of Arlington on **August 21, 2019**. This approval was based on the Recommended Findings of Fact, Conclusions of Law, and Decision by City of Arlington Hearing Examiner Theodore Hunter, issued August 16, 2019.

This decision will become final and effective on **September 11, 2019** (at 5:00 pm) unless an appeal is filed.

The City's Decision may be appealed to the Superior Court of Snohomish County by the applicant or any Party of Record. A party of record includes the applicant and any individual who submitted written testimony during the comment period or presented oral or written testimony at the hearing.

Appeal Closing Deadline: September 11, 2019

An appellant must submit an appeal to the Superior Court of Snohomish County with 21 calendar days after the decision. Appeals are subject to AMC 20.24.

Application Submittal Date: June 14, 2019

Fully Complete Date: July 12, 2019

Days to Hearing: 24

Days to Decision: 40

Threshold Determination: MDNS issued July 18, 2019

Date of this Notice: August 21, 2019

Attachments

- Hearing Examiner Recommended Findings of Fact, Conclusions of Law, and Decision, issued August 16, 2019

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

In the Matter of the Application of)	No. PLN#556
)	
Carmel Gregory, CG Engineering, on)	Reserve at Arlington CUP
behalf of Reserve at Arlington)	
Partners, LLLP)	
)	FINDINGS, CONCLUSIONS,
<u>For a Conditional Use Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for a conditional use permit for the development of a 150-unit, multi-family, affordable senior housing development, known as “Reserve at Arlington,” on 2.93 acres at 74XX 204th Street NE is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposed use.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on August 5, 2019.

Testimony:

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

Josh Grandlienard, City Planner
Carmel Gregory, Applicant’s Project Planner
Stephanie Hahn-Wagner, Applicant’s Project Architect

Attorney Glen Amster represented the Applicant.

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, with Attachment A – Reserve at Arlington Site Plan, Attachment B – Binding Site Plan, and Attachment C – Code Requirements
2. Parties of Record
3. Certification of Public Notice, dated July 24, 2019
4. Land Use Application – Conditional Use Permit, received June 14, 2019
5. Project Narrative, CG Engineering, dated June 14, 2019
6. Design Review Narrative, dated June 14, 2019
7. Vicinity Map (Sheet DR01), dated June 14, 2019

*Findings, Conclusions, and Decision
City of Arlington Hearing Examiner
Reserve at Arlington, Conditional Use Permit No. PLN#556*

8. Water & Sewer Availability, City of Arlington, dated May 17, 2019, with Pre-App Meeting material, dated March 13, 2019
9. Traffic Impact Analysis, Gibson Traffic Consultants, Inc., dated June 2019
10. Preliminary Drainage Report, CG Engineering, dated June 14, 2019; with Geotechnical Engineering Report, PBS, dated March 22, 2019
11. Geotechnical Engineering Report, PBS, dated March 22, 2019
12. Critical Area Report, PBS, dated March 29, 2019
13. Plan and Procedures for the Unanticipated Discovery of Cultural Resources and Human Skeletal Remains, received June 14, 2019
14. Snohomish County Tax Parcels map, 500 Radius, dated May 9, 2019
15. Public notice mailing list, received June 14, 2019
16. SEPA Environmental Checklist, dated June 14, 2019
17. City of Arlington, Complete Streets Checklist, received June 14, 2019
18. Cover Sheet (Sheet DR001), dated June 14, 2019
19. Site Plan (Sheet DR002), dated June 14, 2019
20. Diagrams (Sheet DR003), dated June 14, 2019
21. Trash Enclosure Details (Sheet DR03), dated June 14, 2019
22. Building A – West and South Color Elevation (Sheet A300a), dated June 14, 2019
23. Building A – East and North Color Elevation (Sheet A301a), dated June 14, 2019
24. Building B – West and South Color Elevation (Sheet A302a), dated June 14, 2019
25. Building B – East and North Color Elevation (Sheet A303a), dated June 14, 2019
26. 3D Views (Sheet A900), dated June 14, 2019
27. 3D Views (Sheet A901), dated June 14, 2019
28. Color and Materials Board (Sheet DR04), dated June 14, 2019
29. Landscape Plan (Sheet No. L-1 of 5), dated June 14, 2019
30. Landscape Plan (Sheet No. L-2 of 5), dated June 14, 2019
31. Landscape Plan (Sheet No. L-3 of 5), dated June 14, 2019
32. Landscape Plan (Sheet No. L-4 of 5), dated June 14, 2019
33. Landscape Plan (Sheet No. L-5 of 5), dated June 14, 2019
34. Roof Plan North Mechanical (Sheet M205A), dated June 14, 2019
35. Roof Plan South Mechanical (Sheet M205B), dated June 14, 2019
36. Site Plan –Photometric (Sheet E101), dated June 14, 2019
37. Site Plan – Luminaire Cut Sheets (Sheet E102), dated June 14, 2019
38. Notice of Neighborhood Meeting, undated
39. Neighborhood Meeting Minutes for July 16, 2019, undated
40. Notice of Complete Application, dated July 12, 2019
41. SEPA Threshold Determination – Mitigated Determination of Nonsignificance, dated July 16, 2019
42. SEPA Distribution List
43. Email from Kerry Lyste, Stillaguamish Tribe of Indians, to Kristin Foster, dated July 23, 2019, with email string
44. Email from Ebert Esparza, Snohomish County Department of Public Works, to Kristin Foster, dated July 19, 2019, with email string

Findings, Conclusions, and Decision
City of Arlington Hearing Examiner
Reserve at Arlington, Conditional Use Permit No. PLN#556

45. Notice of Application, dated July 18, 2019
46. Notice of Public Hearing, undated
47. Revised Staff Report, with Attachment A – Reserve at Arlington Site Plan and Attachment B – Binding Site Plan, and Attachment C – Code Requirements¹
48. Email from Gretchen Kaehler, Snohomish County Archaeologist, to Kristin Foster, dated August 1, 2019, with email string
49. Comments from Cathy Devoir and Katelyn Devoir, received August 2, 2019
50. Applicant PowerPoint (large size - seven slides)
51. Applicant PowerPoint (small size – seven slides)
52. Memorandum from Brad Lincoln, P.E., to AVS Communities, dated April 18, 2019

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Carmel Gregory, CG Engineering, on behalf of Reserve at Arlington Partners, LLLP (Applicant), requests a conditional use permit (CUP) for the development of a 150-unit, multi-family, affordable senior housing development, known as “Reserve at Arlington.” The 2.93-acre property is located north of 204th Street NE, west of the intersection of 204th Street NE and SR-9 on Track B of the Reserve at Arlington Binding Site Plan (PLN#577).² The property is currently listed as 74XX 204th Street NE, and the building would be assigned a separate address at the time of building plan submittal.³ *Exhibits 4, 5, and 17 through 37; Exhibit 47, Staff Report, pages 1 through 3; Exhibit 50.*
2. The City of Arlington (City) determined that the CUP application was complete on July 12, 2019. On July 2, 2019, the City mailed a notice of a July 16, 2019, neighborhood meeting to property owners within 500 feet of the property, published notice in *The Herald*, and posted the notice on-site and at City Hall, Smokey Point post office, and the city library. On July 18, 2019, the City provided notice of the application and published notice in *The Herald*; mailed notice to property owners within 500 feet of the property, parties of record, and affected agencies; and posted the notice on-site and at City Hall, Smokey Point post office, and the city library, with a comment deadline of August 1, 2019. On July 19, 2019, the City mailed notice of the open-record hearing associated with

¹ City Planner Josh Grandlienard submitted a staff report (Ex. 47) with clerical corrections. *Testimony of Mr. Grandlienard.*

² Binding Site Plan PLN#577 is pending. Under the Reserve at Arlington BSP, Tract A would be dedicated to the city as a critical area; Tract B would contain the senior apartments; Tract D would contain a proposed coffee shop. *Exhibit 47, Staff Report, pages 2 and 4.*

³ The property is identified by tax ID numbers: 31051100304000 and 3105100400700. An abbreviated legal description is provided in the staff report. *Exhibit 1, Staff Report, page 3.*

the application to property owners within 500 feet of the property, parties of record, and affected agencies, posted the notice on-site and at City Hall, Smokey Point post office, and the city library, and published notice in *The Herald*. The City did not receive any comments from affected agencies to the application notice, and one public comment letter was received August 2, 2019, which was addressed at the hearing. *Exhibit 15; Exhibit 45; Exhibit 46; Exhibit 47, Staff Report, page 5; Exhibit 49.*

State Environmental Policy Act

3. The City Department of Community and Economic Development (DCED) acted as lead agency and analyzed the environmental impact of the proposal as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. DCED reviewed the Applicant's Environmental Checklist and other information on file with the City. The Applicant's Environmental Checklist listed songbirds, salmon, and trout as observed or known to be on or near the site. No threatened or endangered species were identified on or near the site. No wetlands were identified on-site. Portage Creek, a Type F stream, requiring a 100-foot stream buffer, flows west through the northern portion of the site. The City's SEPA Responsible Official, Marc Hayes, determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment.

Mr. Hayes issued a Mitigated Determination of Nonsignificance (MDNS) on July 16, 2019, with an August 1, 2019, comment period deadline. The MDNS includes mitigation measures to address impacts on earth, air, groundwater, water runoff, plants, environmental health, aesthetics, light and glare, recreation, historic and cultural preservation, transportation, and utilities. Compliance with the SEPA MDNS conditions is required by Condition 6 of this decision. The City provided notice of the SEPA threshold determination by mailing notice to property owners within 500 feet of the property and posting notice on-site and at designated city locations on July 18, 2019, and by publishing notice in *The Herald* the same day. The Stillaguamish Tribe and the Snohomish County Archaeologist submitted comments recommending a professional archaeological survey for the project site prior to development. Snohomish County Public Works commented that no mitigation fees would be required. *Exhibit 12; Exhibit 16; Exhibits 41 through 44; Exhibit 47, Staff Report, pages 5, 10, 14, and 15; Exhibit 48.*

Comprehensive Plan and Zoning

4. The property is designated General Commercial under the City Comprehensive Plan. The General Commercial designation consists primarily of a suburban commercial fabric with moderate-sized commercial, office, and professional service uses. The purpose of the General Commercial designation is to provide a setting for commercial, office, and professional service uses of a moderate sized format that rely on motor-vehicle traffic. This designation is intended to be situated along arterials and to serve as a transition area between Highway Commercial designations and residential designations. It is generally characterized as an active automobile and pedestrian environment with commercial

buildings situated toward high-volume thoroughfares with parking located to the sides of buildings. *City Comprehensive Plan (September, 2017), Sec. 5.3.* City Planner Josh Grandlienard testified that relevant Comprehensive Plan goals and policies include diverse housing and low-income housing spread through the city. Recently, the City has adopted a Mixed Use Overlay (MU) designation that is applicable to the subject property. The MU designation allows a blend of residential high-density and commercial uses subject to a regulating plan, administrative site plan review, and design review. The purpose of the MU designation is to foster development of pedestrian-oriented, mixed uses where residences are located in close proximity to retail and office facilities. The City intends the MU designation to: (a) enhance the pedestrian environment, (b) increase additional street level activity, (c) reduce automobile trips, (d) create a “sense of place,” (e) allow for the efficient use of land and resources, (f) promote economic vitality and provide for diverse housing opportunities, and (g) provide a transition between adjacent neighborhoods and commercial areas. *City Comprehensive Plan, Sec. 5.6. Exhibit 47, Staff Report, pages 2 through 4, and 7; Testimony of Mr. Grandlienard.*

5. The property is located in the City’s General Commercial (GC) zoning district. The zone is designed to accommodate commercial uses generally similar to, though more intensive than, the types permissible in an Old Town business district. It is intended that this zone be placed along arterials to cater to commuters or as a transition in some areas between a highway commercial zone and a residential zone. *Arlington Municipal Code (AMC) 20.36.020(d).* As with the Comprehensive Plan, however, the City has adopted a Mixed Use Overlay District (MU) in its zoning ordinances that is applicable to the site. The MU zone allows “for a mix of diversified residential development to co-exist within a proportionate share of the commercially zoned areas” of the city, including the GC zoning district, “where typical retail and other support services would be located, thus creating a walkable neighborhood concept.” *AMC 20.36.080.* The City determined that the project would constitute a multiple family residential use compatible with the GC zoning district. Surrounding properties are all designated and zoned General Commercial, with commercial uses to the north, east, and south, and vacant land to the west. *Exhibit 47, Staff Report, pages 3 and 4.*
6. The City adopted new mixed-use development regulations to “establish clear policies, implementation strategies, and design standards to guide public and private investment in a coordinated manner.” *AMC 20.110.012(a).* In doing this, the City has adopted an “alternative approach to conventional zoning called ‘Form Based Code,’” a concept that reinforces “walkable, sustainable mixed-use environments and development that builds upon community character.” *AMC 20.110.012(b).* The purpose of form-based codes is to “foster predictable built results and a high-quality public realm by using physical form (rather than separation of uses) as the organizing principle for the code.” *AMC 20.110.012(b).* Under Chapter 20.110 AMC, the project site is located within a “Place Type” that is designated “Mixed Use Village Center.” Under the form-based code, Place Types are further categorized by “Use Intensity Transects.” The subject project, classified

as “multi-family residential housing,” is located within the Transect T4-F (transect 4 neighborhood, Flex). *AMC 20.110.014(c)(3)*. The purpose of the T4-F transect designation is to “To provide an appropriate transition from a neighborhood main street environment into the residential areas, and to provide flexible buildings that can allow a mix of residential and walkable local serving commercial and service uses.” *AMC 20.110.014(c)(3)*. The City determined that multi-family apartments are allowed within the T4-F transect designation with a CUP. *AMC 20.16.140. Exhibit 47, Staff Report, pages 2, 3, and 7; Exhibits 18 through 37.*

7. The mixed-use development regulations (AMC 20.110.014) provide specific guidelines on appropriate building types and frontages, with specific standards related to: blocks, rights-of-way, thoroughfares, civic and open spaces, landscaping and screening, low-impact design (LID) for stormwater management, outdoor lighting, and architecture. City staff analyzed the proposal and determined that these requirements would be met, noting:
- The proposed project would be located in T4-F, which allows more intense uses and larger scale buildings to be constructed.
 - The proposed project would provide an appropriate transition from a neighborhood main street environment into the residential areas.
 - The proposed project would be located in a “Mixed Use Village Center,” which also allows more intense uses and large scale buildings to be constructed.
 - As set out in AMC 110.110.014(c) the Transect Matrix allows multiple family Large to Mid-Rise structures, with “residential uses on any floor.”
 - The “Characteristics” sought for the T4-F Place included buildings up to four stories.
 - Landscaping and critical area improvements would be located adjacent to SR-9 frontage.
 - The proposed apartment building is similar in character to a building form that is acceptable in T4-F areas. A Stacked Flat is a medium-to-large sized structure consisting of multiple dwelling units accessed from a courtyard or series of courtyards with either individual or common entries. It is appropriately scaled to fit adjacent to neighborhoods serving main streets and walkable urban neighborhoods. The Reserve at Arlington project would utilize a Stacked-Flat building type.
 - Block, right-of-way, and thoroughfare standards would be reviewed as part of the Binding Site Plan application.
 - A minimum of one parking space per 1,500 square feet is required.
 - No public civic spaces are proposed, but several outdoor amenities including a courtyard would be provided to residents.
 - The Applicant would provide a landscape buffer to provide a visual screen from parking along SR-9 frontage. The west, north, and east property lines would meet screening requirements.

- The Applicant has submitted stormwater plans that indicate that LID techniques would be employed to treat and disperse stormwater.
- The project would comply with outdoor lighting standards.
- The Reserve at Arlington senior apartments would be located on Tract B of three parcels approved under a Binding Site Plan. Tract D would have a coffee shop, and Tract A would be dedicated to the City as a critical area. Consistency and compatibility of design would be required, including four-sided design, shielding of roof top mechanical structures, and compatible materials. *Exhibit 47, Staff Report, pages 10 through 12; Exhibit 50.*

Conditional Use Permit

8. The rectangle site is relatively flat and undeveloped. Vegetation consists of grass and some clusters of trees. Portage Creek runs on-site near the northern boundary. The site slopes from west to east, with an average slope between one and two percent. Soils on-site consist of well-graded sand with cobbles from four to 10 feet below ground surface. As noted above, the Applicant seeks a CUP to allow development of multi-family affordable senior housing development for those 55 years of age and old whose income is at or below 60 percent of the area median income. Specifically, the proposal would provide for 150 units consisting of a single, 119,536 square foot, four-story building with 113 one-bedroom units, and 37 two-bedroom units. The internal courtyards would incorporate multiple amenities, including a community garden plot, covered barbeque area, a walking trail along Portage Creek, and outdoor seating areas with fire pits. Interior amenities would include a great room media lounge, game room, multipurpose room, mail room/learning center, fitness center, and spa. *Exhibit 10; Exhibit 11; Exhibit 12; Exhibit 47, Staff Report, pages 1 and 2; Exhibit 50.*
9. The property is located within Stillaguamish Water Resource Inventory Area (WRIA #5). The Applicant submitted a Preliminary Drainage Report (PDR), prepared by CG Engineering, dated June 14, 2019. The PDR identified several options to achieve full infiltration on-site, including two infiltration trenches located along the south and west boundaries of Tract B. A water quality facility is proposed to be located prior to each infiltration trench. The project would meet the applicable Western Washington Stormwater Manual and meet Ecology requirements for flow control (up to 50-year storm, with an overflow outlet for up to the 100-year storm).

PBS Engineering and Environmental, Inc. (PBS), prepared a Geotechnical Engineering Report (GER) for the Applicant, dated March 22, 2019. The GER determined that the project site is underlain by zones of medium dense, saturated, potentially liquefiable sand containing variable amounts of silt, with a low to moderate liquefaction hazard. The GER provided recommendations on geotechnical design considerations, foundation alternatives, floor slabs, retaining building walls, ground moisture, and pavement design, as well as construction recommendations. *Exhibit 10; Exhibit 11; Exhibit 12; Exhibit 47, Staff Report, pages 12 and 14.*

*Findings, Conclusions, and Decision
City of Arlington Hearing Examiner
Reserve at Arlington, Conditional Use Permit No. PLN#556*

10. PBS also prepared a Critical Areas Report (CAR) for the Applicant, dated March 29, 2019. No wetlands were identified on-site. The northern-most portion of the graded area contains a three-foot-high gravel berm, running the entire east-west width of the property, as well as Portage Creek, a Type F stream with riparian areas, requiring a 100-foot stream buffer. *AMC Table 20-93-3*. A previous boundary-line adjustment (PLN 2013-58 under AFN 201402215006) provided a 75-foot buffer, which was grandfathered for this project. The proposed development would take place outside this 75-foot buffer. The CAR determined that a restored and enhanced 75-foot buffer would greatly improve buffer function compared to the current, highly disturbed condition. The primary development would take place on Tract B. The Applicant would dedicate Tract A, covering Portage Creek and its buffer, to the City as a critical area tract. The Applicant would also construct a 12-foot-wide asphalt trail within the southern edge of Tract A. *Exhibit 5; Exhibit 12; Exhibit 19; Exhibit 47, Staff Report, page 10; Exhibit 50*.
11. Chapter 20.56 AMC provides various requirements related to streets and sidewalks. The property would be accessed from a 204th Street NE, a local collector street. This would provide adequate ingress and egress for emergency vehicles and vehicular, pedestrian, and bicycle access from 204th Street NE, as required by AMC 20.56.030. Under AMC 20.56.070, streets must be related appropriately to existing topography and designed to facilitate the drainage and stormwater runoff objectives of Chapter 20.64 AMC. The private internal driveways and access lanes, as proposed, would satisfy this requirement. In addition, the site is essentially flat. The driveways to the site would meet the requirements of AMC 20.56.120. At the time of development on the property east of Tract B, the City would require an extension of 74th Avenue NE into the property with a connection to the current project's access road as required by AMC 20.56.170.⁴ The access road serving 204th Street NE from the subject property would be restricted to right in/right out travel. *Exhibit 19; Exhibit 47, Staff Report, page 8; Exhibit 50*.
12. AMC 20.90.040 requires all developments to pay a traffic impact fee. Gibson Traffic Consultants, Inc., prepared a Traffic Impact Analysis (TIA) for the Applicant, dated June 2019. The TIA evaluated traffic impacts from a combination of 150 senior adult housing attached units and occupied in the year 2022 or earlier. The TIA estimates the 150 units would generate 555 new average daily trips, with approximately 30 new AM peak hour trips and approximately 39 new PM peak hour trips. The TIA estimated that surrounding intersections, in 2025, would operate at LOS C or better, except for the intersection of SR-9 at 204th Street NE, where the 2025 baseline, with development, would experience LOS D,

⁴ The staff report, page 8, refers to 74th Street. The Hearing Examiner assumes that 74th Avenue NE was meant. *Exhibit 47, Staff Report, page 8*.

an acceptable level of service in Arlington.⁵ The City requires a fee of \$3,355 per new PM peak hour trip, or a total of \$130,845 for the proposed project. Snohomish County and WSDOT would not require impact fees. *Exhibit 9; Exhibit 47, Staff Report, page 10.*

13. Per AMC 20.110.014(g) a minimum number of parking spaces of 1 per 1,500 square feet is required for residential uses. The Applicant would provide 151 surface parking spaces, including 8 ADA spaces, and 8 electric vehicle spaces, as well as 8 bicycle stalls. Gibson Traffic Consultants, Inc., provided a Parking Analysis on behalf of the Applicant, dated April 18, 2019, and determined that, from the Institute of Transportation *Parking Generation, 5th Edition (2018)*, based on parking demand ratio of 0.62 spaces per unit, the proposed parking supply should be considered sufficient and should not result in an overflow to surrounding parking areas. Drive aisles are included around the perimeter of the building with access points onto the panhandle access road onto 204th Street NE. An existing Community Transit bus stop is at the frontage along 204th Street NE. *Exhibit 47, Staff Report, pages 2 and 9 through 12; Exhibit 50; Exhibit 52.*
14. To ensure the security of the property and the residents using the facility, the proposed project would sufficiently illuminate the parking lot and common areas, while not unnecessarily illuminating any other lot or public right-of-way. All outdoor lights would be low sodium or similar lamp type and be down-shielded to prevent off-site light pollution. *AMC 20.60.400 to .410. Exhibit 36; Exhibit 37; Exhibit 47, Staff Report, pages 8 and 9.*
15. AMC 20.60.100 and AMC 20.60.300 require that every unit within the development be served by a sewage disposal system and water supply system. The City verified in a June 7, 2019, signed “Water & Sewer Availability” form submitted by the Applicant that the site is serviceable by the City of Arlington. *Exhibit 1, Staff Report, page 8; Exhibit 7; Exhibit 47, Staff Report, page 8.*
16. The City would provide police and fire protection, Waste Management NW would provide garbage service, Cascade Natural Gas would provide gas service, and Snohomish County PUD #1 would provide electricity. The Applicant would underground all existing, extended, and new electrical power lines. *Exhibit 47, Staff Report, pages 4 and 9.*
17. The Applicant would comply with the AMC 20.40.44 Part III performance/operation standards for noise, vibration, odors, smoke, and air pollution; disposal of liquid and hazardous wastes; water consumption; electrical disturbance or interference; lighting; and site building and maintenance. *Exhibit 47, Staff Report, pages 7 and 13.*

⁵ LOS is measured by the average delay on the worst-movement of stop-controlled intersections (LOS A through LOS F), with LOS A indicated free-flowing traffic and LOS F indicating extreme congestion and long vehicle delays. *Exhibit 9.*

18. The site is located within the City's Airport Protection Subdistrict C. *AMC 20.38.060*. The purpose of the airport protection (AP) district is to protect the viability of the Arlington Municipal Airport as a significant resource to the community by encouraging compatible land uses and densities, reducing hazards to lives and properties, and ensuring a safe and secure flying environment. *AMC 20.38.010(a)*. The Applicant would provide all disclosures required for owners within Airport Protection Sub-District C, including an avigation easement or disclosure and FAA form 7460. *Exhibit 47, Staff Report, pages 7 and 14*.
19. *AMC 20.76.050* requires the development to have Type B screening (at a five-foot depth) bordering the easterly boundary. The City determined that the Applicant's site plan meets these requirements. The Applicant's landscaping plan shows proposed trees located in the parking areas to provide the required 20 percent shading. Street trees would be installed along all new and improved streets under *AMC 20.76.110*. In addition, under *AMC 20.60.490*, screening would be provided to prevent solid waste collection dumpsters from being viewed from public streets, sidewalks, or rights-of-way. *Exhibit 19; Exhibit 21; Exhibit 29 through 33; Exhibit 47, Staff Report, pages 9 and 10*.
20. City staff determined that the Applicant would meet the Chapter 20.52 *AMC* recreational facility and open space requirements by providing 16,549 square feet of recreational facilities and 7,701 square feet of open space. The City agrees that this would meet the requirement for recreational facilities that are most likely to be suited to and used by the age bracket of persons likely to reside in the development, in lieu of "tot lots." *AMC 20.52.020(b)*. In addition, the Applicant would pay a community parks impact fee of \$224,550. No school impact fees are required. *Exhibit 19; Exhibit 47, Staff Report, pages 7, 8, and 10*.

Testimony

21. City Planner Josh Grandlienard testified generally about the application, the proposed development, and the CUP criteria, including the City's Mixed Use regulations. Carmel Gregory, Project Planner for the Applicant, testified concerning Exhibit 50, a PowerPoint presentation. She noted that Tract A, to the north, would be dedicated to the City as a critical area; Tract C has a developed Bartell Drugs store; and Tract D, to the southwest, is available for another commercial development. A public east/west trail would be located just to the north of the apartment building and south of Portage Creek. Trees would be located throughout the parking areas, and a buffer area would be provided along the eastern boundary to SR-9. Stephanie Hahn-Wagner, Project Architect, testified about the overall design of the apartment building with views of Portage Creek. The apparent scale would be broken up with articulation and landscaping. She testified about the exterior material to be used, including stone and wood siding, and that pitched roofs would be constructed. *Testimony of Mr. Grandlienard, Ms. Gregory, and Ms. Hahn-Wagner*.

22. Attorney Glen Amster appeared for the Applicant and stated that a similar project had been approved by the City about two years ago. He requested that future street connections described on page 8 (Sec. 11(f)) of the staff report be added as a condition. He also raised a question concerning Condition 6.m, as set out on page 14 of the staff report, which requires documentation to the City of any payment for proportionate share of costs for certain State projects for average daily trips from the development. Mr. Amster noted that the Applicant's Traffic Impact Analysis (Exhibit 9) determined that WSDOT traffic mitigation fees should not be required for this project. In addition, WSDOT did not provide comments on the SEPA threshold determination, and the MDNS was not appealed.⁶ He also agreed that a condition requiring an archeological study be included. The City received a comment letter on August 2, 2019, from Cathy Devoir and Katelyn Devoir (Exhibit 49) concerning the height of the building, parking, and length of time affordable housing would be offered. Mr. Amster responded, stating that the City now encourages taller buildings. He also referenced Exhibit 52, a Gibson Traffic Consultants, Inc., parking analysis, that determined that the proposed parking is adequate and should not overflow to surrounding parking areas. He noted that Bartell Drugs is located adjacent to the proposed building and would provide a walkable alternative for residents. He also stated that there would be a covenant applied to the development confirming affordable senior housing rates for at least 32 years. *Exhibit 49; Exhibit 52; Statement of Attorney Amster.*

Staff Recommendation

23. City staff determined that the proposed development would comply with the Mixed Use regulations of Chapter 20.110 AMC and with the criteria for CUP approval, and recommended approval with conditions. *Exhibit 47, Staff Report, page 13 through 15.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted the authority to hear and decide the application for a conditional use permit. *RCW 36.70.970; AMC 20.12.230(a)(2); AMC 20.16.170.*

Criteria for Review

In considering whether to approve an application for a conditional use permit, the City Council mandates that the Hearing Examiner proceed according to the following format:

- (1) The hearing examiner shall consider whether the application is complete. If no evidence is presented that the application is incomplete (specifying either the particular type of information lacking or the particular requirement with

⁶ The Hearing Examiner notes that the City's proposed Condition 6.a through .n, do not track the MDNS conditions in Exhibit 41. Nonetheless, Condition 6.a through .n are required to reduce project impacts as well as those required to meet City codes.

respect to which the application is incomplete) then this shall be taken as an affirmative finding by the hearing examiner that the application is complete.

- (2) The hearing examiner shall consider whether the application complies with all of the applicable requirements of this title. If a finding to this effect can be made, the hearing examiner need not make further findings concerning such requirements. If such a finding cannot be made then a finding shall be made that the application be found not in compliance with one or more of the requirements of this title. Such a finding shall specify the particular requirements the application fails to meet. Separate findings may be made with respect to each requirement not met by the application. It shall be conclusively presumed that the application complies with all requirements not found by the hearing examiner to be unsatisfied through this process.
- (3) If the hearing examiner concludes that the application fails to comply with one or more requirements of this title, the application shall be denied. If the hearing examiner concludes that all such requirements are met, he shall issue the permit unless he denies the application for one or more of the reasons set forth in Section 20.16.140 (Special Use Permits and Conditional Use Permits). Specific findings for such a denial must be made, based upon the evidence submitted, justifying such a conclusion.

AMC 20.16.170(e)

In addition to the guidance offered by the City Council detailed above, the City Council also directs that the Hearing Examiner shall issue the requested permit unless he concludes, based upon the information submitted at a hearing, that:

- (1) The requested permit is not within its jurisdiction according to the table of permissible uses, or
- (2) The application is incomplete, or
- (3) If completed as proposed in the application, the development will not comply with one or more requirements of this title (not including those the applicant is not required to comply with under the circumstances specified in Chapter 20.32, Nonconforming Situations), or
- (4) The proposed project has not complied with SEPA, or
- (5) The proposed project is not in conformance with the comprehensive plan, transportation plan, or other adopted plans, regulations, or policies.

AMC 20.16.140(c).

Finally, the City Council gives the following direction to the Hearing Examiner:

Even if the (hearing examiner) finds that the application complies with all other provisions of this title, he may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:

*Findings, Conclusions, and Decision
City of Arlington Hearing Examiner
Reserve at Arlington, Conditional Use Permit No. PLN#556*

- (1) Will materially endanger the public health or safety, or
- (2) Will materially harm adjoining or abutting property,
- (3) In terms of design and use will not be compatible with the area in which it is located.

AMC 20.16.140(d).

The criteria for review adopted by the Arlington City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

1. **The requested CUP would involve a use that is permissible under the City's adopted regulations.** Multi-family housing units are a permitted use with a conditional use permit in the T4-F transect designation within the Mixed Use Overlay to the General Commercial zoning district. *Findings 1, 5 and 6.*
2. **The application is complete.** The elements necessary for a complete application are defined by the City, and the City has discretion to suit the requirements to the specific project. *AMC 20.16.040.* This application was deemed complete by the City on July 12, 2019. *Finding 2.*
3. **With conditions, the proposed development would comply with identified zoning requirements.** The proposed 170-unit multi-family affordable senior housing development is an appropriate use within the T4-F transect designation within the Mixed Use Overlay to the General Commercial zoning district. The proposed use would meet all required design and performance guidelines under the City's adopted mixed-use regulations (Chapter 20.110 AMC). Conditions are necessary to ensure that the proposal complies with municipal code requirements and with all requirements of the MDNS, and to ensure the development substantially conforms to the submitted plans, appropriate water and sewer connections are implemented, and the proposal is constructed in a timely manner. *Findings 1, 3 – 23.*
4. **With mitigation measures, the proposed development would comply with the State Environmental Policy Act.** The City evaluated the environmental impact of the proposed development as required by SEPA and issued a Mitigated Determination of Nonsignificance (MDNS). The MDNS was not appealed. Compliance with the MDNS conditions has been made a condition of issuance of the CUP. *Findings 1 and 3.*
5. **With conditions, the proposed development conforms to the City Comprehensive Plan and all other applicable regulations.** The City gave reasonable notice of the application and associated open record hearing. The proposed use is permitted within the

Findings, Conclusions, and Decision
City of Arlington Hearing Examiner
Reserve at Arlington, Conditional Use Permit No. PLN#556

Mixed Use designation under the Comprehensive Plan and within the MU Overlay zoning with a conditional use permit. The proposed 150-unit, senior housing development complex would meet the City's criteria for building design, density and dimensional standards, recreational facilities and open space, streets and sidewalks, utilities, parking, and screening. As detailed in Conclusion 3, conditions are necessary to ensure that the proposal complies with code requirements. *Findings 1 – 23.*

- 6. With conditions, the proposed development would not endanger the public health or safety, would not adversely affect adjoining or abutting property, and would be compatible with the design and use of the area where it is located.** The City evaluated the environmental impact of the proposed development as required by SEPA and issued a Mitigated Determination of Nonsignificance (MDNS). The MDNS was not appealed. Compliance with the MDNS conditions has been made a condition of issuance of the CUP. As stated above in Conclusion 5, the proposed 150-unit, multi-family, affordable senior housing development would meet the City's standards. The development would not endanger the public health or safety, or adversely affect abutting properties. As detailed in Conclusion 3, conditions are necessary to ensure that the proposal complies with code requirements. *Findings 1, 3 – 23.*

DECISION

Based upon the preceding findings and conclusions, the request for a conditional use permit for the development of a 150-unit, multi-family, affordable senior housing development, known as "Reserve at Arlington," on 2.93 acres at 74XX 204th Street NE is **APPROVED**, subject to the following conditions:⁷

1. Recordation of the three-tract Binding Site Plan approved under PLN – 577, which depicts Tract B and all dedications and easements as described in this Conditional Use Permit approval.
2. All development shall be in substantial conformance with the revised site plan received June 14, 2019, subject to any conditions or modifications that may be required as part of the permit and construction plan review.
3. A 30 foot ingress, egress, and utility easement will be provided on the west side of Tract B as provided in the City's Standard Design Detail.
4. An on-site water main shall be 12" Ductile Iron and extend to the property corners and looped around the buildings.
5. The development shall meet all Title 20 AMC regulation requirements.

⁷ Conditions include those required to reduce project impacts as well as those required to meet City codes.

6. The developer shall comply with all conditions of the SEPA MDNS issued on July 18, 2019.
 - a. In order to mitigate for potential earth impacts, the Applicant shall implement Best Management Practices per Department of Ecology for Stormwater Pollution Prevention.
 - b. In order to mitigate for potential air impacts, the Applicant shall implement dust control measures to reduce fugitive dust emissions during construction.
 - c. Construction shall occur in accordance with the stormwater plan prepared by CG Engineering, June 14, 2019, including Low Impact Development, Performance Standard and BMP T5.13 of the 2014 Western Washington Stormwater Manual.
 - d. All stormwater shall remain on-site. In order to mitigate for potential impacts to ground water the Applicant shall utilize Low-Impact Design techniques to manage stormwater on-site.
 - e. The project will route all on-site stormwater to infiltration trenches to meet DOE requirements for flow control (up to 50 year storm, with an overflow outlet for up to the 100 year storm).
 - f. Pollution generating stormwater shall be treated prior to infiltration.
 - g. City of Arlington noise standards found in AMC 9.20.060 shall be complied with. Specifically, in section 9.20.060(8) noises resulting from any construction or development activity or the operation of heavy equipment from 7:00pm to 7:00am Monday through Saturday shall be prohibited UNLESS specifically permitted by the city's building official.
 - h. The Applicant will provide all instruments required of owners within Airport Protection Sub-District C, including an avigation easement or disclosure and FAA form 7460.
 - i. Design standards for the proposed development will meet the criteria for sector T4-F in the City's Mixed Use Development Regulations.
 - j. Street trees shall be installed along all new and improved streets associated with the development in accordance with AMC 20.76.110.
 - k. In order to mitigate for potential impacts to cultural resources that may exist on-site, the Applicant shall submit an *Unanticipated Discovery Plan* (UDP) to the City prior to any construction activities, and shall coordinate with the Stillaguamish Tribe to allow Tribal Monitors on-site during grading and excavation activities associated with this project.
 - l. Payment of a traffic impact fee according to the City's traffic mitigation formula, estimated in June, 2019 as \$130,845.00
 - m. The developers may be obligated to pay their proportionate share for certain State projects for those average daily trips from this development. Traffic mitigation fees, if any, shall be paid to the Washington State Department of Transportation (WSDOT), and the developers shall provide the City of Arlington with documentation of compliance with this state requirement prior to issuance of the Building Permit.

- n. Consistent with the terms of the Snohomish County Interlocal Agreement with the City of Arlington, the developers shall mitigate impacts on the capacity of the County road system by making a proportionate share mitigation payment, if any. Traffic mitigation shall be paid to the Snohomish County Department of Planning and Development Services (PDS), and the developers shall provide the City of Arlington with documentation of compliance prior to issuance of the Building Permit.
7. Pursuant to AMC 20.56.170, at the time property east of Tract B is developed, 74th Avenue NW would be extended into Tract B and would be required to connect to the subject property's access road. The access road from the subject property shall be restricted to right in/right out travel.⁸
8. The Applicant shall submit an archaeological survey and notification of field work to the Stillaguamish Tribe for the project area.
9. This CUP shall expire if less than ten percent of the total costs of the development have not been completed on-site within two years. *AMC 20.16.220.*

DECIDED this 16th day of August 2019.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center

⁸ The staff report (page 8) referred to a 74th Street extension. The Hearing Examiner assumes that 74th Avenue NE was meant. *Exhibit 14, Staff Report, page 8.*