November 4, 2013

Dawn Sturwold
Hearing Examiner
City of Bellingham
210 Lottie St.
Bellingham, WA 98225

RE: Motion for Reconsideration
Ambling University Development, Applicant
4413 Consolidation Ave.
Planned Development for University Ridge

Dear Madam Hearing Examiner:

Please find attached the Applicant’s Motion for Reconsideration (the “Motion”).

In order to notify the neighbors of the Motion, please post this on the City’s University Ridge webpage.

Please contact us regarding how you wish to proceed with this Motion.

Very truly yours,

BELCHER SWANSON LAW FIRM

BRADLEY D. SWANSON
Attorney at Law

BDS:he
Enc.
Cc: Jeff Thomas, City of Bellingham Planning Director
Kathy Bell, City of Bellingham Planning Department
Alan Marriner, City of Bellingham City Attorney
Property Owner
I. INTRODUCTION

The Applicant, Ambling Development University Group, proposes to construct the University Ridge Development (the "Project") at 4413 Consolidation Avenue in Bellingham (the "Property"). The Hearing Examiner issued its decision on the Project (the "Decision") on October 23, 2013. The Applicant studied the Decision and evaluated its impact on the Project and the Property. The Applicant agrees with the Decision in almost every facet. However, the Applicant requests the Hearing Examiner reconsider and/or clarify two minor points of the Decision. If these changes and/or clarifications are granted the Applicant will be able to construct the Project within a smaller footprint and less intrusive manner causing the Project to better fit the neighborhood character.

The Applicant moves for reconsideration (the "Motion") of the Decision on the following two issues:

(1) The Project is restricted to no more than three bedrooms per unit.
(2) The peaks and ridgelines of the Project’s upper buildings cannot extend above the centerline elevation of Puget Street.

The Applicant requests that (1) the three bedrooms per unit restriction be removed and (2) the height restriction be clarified or modified.
II. RESTRICTION ON UNITS WITH MORE THAN THREE BEDROOMS PER UNIT

A. Appropriate Intensity

In Conclusion of Law 4, the Hearing Examiner held that the Project, as proposed with 576 beds, is an unpermitted increase in the density allowed at the Property and that this density will create a level of intensity with the Project that is not compatible with the essential character of the neighborhood. Conclusion of Law 5 summarizes this by stating “[t]he proposed Boarding and Rooming House use at the proposed level of intensity is not appropriate for the site.” It is clear from the Decision that the Hearing Examiner held that the Project as proposed will contain too many beds (576) such that it is too intense for the Property and neighborhood.

In the Decision, the Hearing Examiner ultimately held that 528 beds or less yields an intensity that is appropriate for the Property and neighborhood. The Decision sets forth that three bedrooms per unit is the maximum number of bedrooms per unit. The Decision then sets forth that 176 units is the maximum number of units allowed on the Property. Thus, 176 three-bedroom units equals 528 beds.

The Applicant is not challenging this total reduction in beds. While it is 48 beds less than originally proposed, the Applicant believes that it can make that number of beds work for the Project. However, through this Motion, the Applicant seeks some much-needed flexibility in the way this lesser number of beds is configured, in order to ensure the project’s financial feasibility.

The Applicant requests reconsideration to allow it to construct the Project with a majority of two (2) and four (4) bedroom units. The flexibility with the design and construction of the buildings with two bedroom and four bedroom units fosters a comfortable environment for students, creates a better site plan, and still allows for conversion to a traditional multi-family project, if necessary, in the future.

1 See Order Paragraph 1, Decision pg. 53.
2 See Order Paragraph 2, Decision pg. 53.
3 This paragraph establishes the criteria to determine the maximum number of dwelling units. Based on the Applicant’s review of these criteria, the Applicant determined that 176 units is the maximum number of units the Property will support.
4 The product of 3 and 176 is 528.
5 The Applicant is entertaining the use of studio (one bedroom) units and three bedroom units in designing the buildings, but does not intend to exceed 528 beds in any scenario.
B. Better Student Environment

Two bedroom units and four bedroom units are the industry standard in purpose-built student housing because students typically room with a buddy. Two buddies can share a two bedroom unit. Two pairs of buddies can share a four bedroom unit. Practically speaking, if the students are comfortable they are happy. This makes for a stronger development, which is more likely to succeed and be a productive element in the neighborhood.

C. Improved Site Plan

The Applicant reviewed several two/four bedroom unit scenario with 528 beds. The Applicant believes that it can work within the remaining components of the Decision to craft the Project so that it will be even less intrusive on the neighborhood than was presented in the application and at the hearing.\(^6\) The Applicant believes that the flexibility with two/four bedroom units allows the Applicant to minimize the Project’s footprint while maximizing its using the buildings as efficiently as possible.

The flexibility in design makes for numerous possible combinations of two and four bedroom units.\(^7\) As long as the total number of units and beds does not exceed 176 and 528, respectively, the Project’s intensity will be appropriate for the Property and the neighborhood.

The decrease in the intensity of the Project (576 beds to 528 beds) as prescribed in the Decision certainly causes the impact on the Property and neighborhood to decrease. The required number of parking stalls, which is yet undetermined,\(^8\) will remain the same or decrease. The amount of traffic generated by the project will remain the same or decrease. Impervious surface area, stormwater infrastructure, retaining wall heights, clearing limits, and grading areas could all remain the same or decrease. This trickle effect goes on so that the total site disturbance will likely decrease. The flexibility of the two/four bedroom combination may make these decreases even more pronounced. Granting reconsideration to

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\(^6\) Subject to the clarification of the height limitation, which is discussed below.

\(^7\) The Applicant is considering studio units and three bedroom units for the Project. See footnote 5, above.

\(^8\) Parking is based on Order Paragraphs 4 and 9.
allow for the two/four bedroom combination increases the financial feasibility of the Project and also makes the Project a better development for the neighborhood.

D. Conversion to Traditional Multi-Family Use

The Applicant considered the discussion in the Decision about possible conversion of the Project to a non-student, multi-family use in the future. The Applicant analyzed the Project with that in mind. First, allowing the Applicant to have four bedroom units makes the Project more likely to be successful. That fact, on its own, mitigates substantially the possibility that the Project will be converted to multifamily units in the future. Second, if four bedroom units were converted to a multi-family use, there are simple non-destructive methods to ensure compliance with the City’s definition of “family”. For instance, a fourth bedroom could be created into an office, den, family room, or other “non-bedroom” use. Strict in-house enforcement could be utilized to ensure that the non-family tenants did not violate the definition of “family”.

The Applicant is confident that Project will not be converted to a traditional multi-family use in the future. However, in the unfortunate and unlikely scenario where the Project is converted to a traditional multi-family use, the potential problem with enforcing the definition of “family” against non-family tenants will be effectively addressed.

E. Re-Characterize the Use

It is highly unlikely that the students residing at the Project will meet the definition of “family”. As a result, characterizing the Project as a “multi-family” use (just like a standard apartment building) almost necessitates the three bedrooms per unit maximum because the Bellingham Municipal Code (“BMC”) requires a “family” to reside in a multi-family unit. On the other hand, characterizing the Project as a “boarding and rooming house” use does not trigger this same requirement.

There is no basis in the BMC to limit the characterization of the Project to “multi-family” use. The Applicant applied for a “boarding and rooming house” use and the City

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9 The definition of “family” at BMC 20.08.020 limits the maximum number of unrelated persons in one unit to three persons.
10 The definition of “boarding and rooming house” contained in BMC 20.08.020 specifically exempts this use from complying with the definition of “family”.

MOTION FOR RECONSIDERATION - 4

Belcher | Swanson
900 DU PONT STREET, BELLINGHAM, WASHINGTON 98225
TELEPHONE 360.734.6390 FAX 360.671.0753
www.belcherlawfirm.com
Staff recommended approval of that use. Yet, the Hearing Examiner removes the Project from the “boarding and rooming house” use because the Project if converted to a multi-family use in the future, it would not comply with the definition of “family”. The Hearing Examiner does this by imposing the conditional use criteria to the Project.

Even though the “boarding and rooming house” use is a conditional use in other zones, the conditional use criteria are irrelevant here because the “boarding and rooming house” use is a permitted use in the Residential Planned zone. The “Planned” zone requires a much more robust analysis and review of every project proposing a permitted use than permitted uses in other zones. This analysis and review is very similar to the conditional use process. As a result, the Bellingham City Council made the legislative decision that it was acceptable to make conditional uses in other zones permitted uses in the “Planned” zone.

Characterizing the use as a “boarding and rooming house” under the BMC does nothing more than allow the flexibility four bedroom units. The maximum number of beds (528) stays the same. The maximum number of units (176) stays the same. The maximum number of buildings (4) stays the same. The necessary infrastructure will likely decrease, which results in a less intrusive site plan. The students will be happier because they can more readily room with their buddies. The viability of the Project increases. On the whole, the Project will be better for the neighborhood.

The Applicant respectfully requests that the Hearing Examiner reconsider its ruling in Findings of Fact 56 through 99, Conclusions of Law 3 through 6, and Order Paragraphs 1 through 3 and characterize the Project as a “boarding and rooming house” use and allow four bedroom units.

III. PUGET CENTERLINE HEIGHT RESTRICTION

A. Remove the Restriction

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11 See Findings of Fact 98 and 99, Decision pg. 28. See also Conclusions of Law 4, 5, and 6, Decision pgs. 50 and 51.
12 See Findings of Fact 64, 65, 66, and 67, Decision pgs. 18, 19, and 20. See also Conclusion of Law 3, Decision pg. 50.
13 See BMC 20.38.050(B)(2)(i).
Restricting the height of the Buildings 1 and 2 to the elevation of the Puget Street centerline is difficult to navigate.\textsuperscript{14} The elevation of the Puget Street centerline increases to the south (i.e. up the hill). The elevation of the Puget Street centerline at the north end of Building 1 is 411', but it is 450' at the south end of Building 2. Buildings 1 and 2 follow a contour on the site and retain a common elevation at the ridgeline. As proposed in the application and presented at the hearing, the elevation of the ridgeline of Buildings 1 and 2 is approximately 428'. As a result, depending on where the elevation of the Puget Street centerline is measured, the Buildings may or may not comply with the restriction. For example, if the relevant elevation of the Puget Street centerline is at the south end of Building 2, the Buildings can be constructed as proposed. If the relevant elevation of the Puget Street centerline is at the north end of Building 1, the Buildings cannot be constructed as proposed.\textsuperscript{15}

The variation in the elevation of the Puget Street centerline makes analysis of the height restriction and subsequent site and building design very difficult. The difference between the elevation of the Puget Street centerline at the south end of Building 2 and the north end of Building 1 is 39'. Compliance with this moving target makes designing these buildings very difficult.

Moreover, the elevation of the Puget Street centerline is not an appropriate datum point from which to measure a height restriction for Buildings 1 and 2. Instead, the proper datum would be the finished floor elevations of the houses on the opposite side of Puget Street, because they directly relate to eye height of a person standing in the living room. All the homes on the east side of Puget Street are two stories with steep driveways.\textsuperscript{16} This results in living space at an elevation substantially higher than the elevation of the Puget Street centerline. A person standing in the window on the first floor will be 5 to 6 feet above the floor at eye height. Even a sitting person will be 4' above finished floor elevation. As a result, even if built out to the maximum allowable height under the zoning

\textsuperscript{14} Please find attached Exhibits A and B, which are part of the record. Exhibit A shows the site layout with the locations of cross-sections. Exhibit B shows the cross-sections. Building numbers used in this document correlate to the building numbers assigned on Exhibit A.

\textsuperscript{15} Interestingly, this restriction completely disregards the 58' height limit (based on height definition #1 contained in BMC 20.08.020). Thus, even if the building complies with the 58' height limit, the building may not be constructible at that height due to this added restriction.

\textsuperscript{16} This is, in some part, due to topography, but most likely it is to create a better view from the living room.
code of 58’, a the views from the homes on the east side of Puget Street will not be 
obstructed or negatively impacted by Buildings 1 and 2. The residents on Puget Street will 
continue to enjoy the view from their living rooms, looking over the cars travelling up Puget 
Street as well as the roofs of Buildings 1 and 2.

If the four bedroom units are allowed, the Applicant believes that, due to greater 
flexibility in site and building design, more natural vegetation retention and additional 
landscaping could be possible on the east side of the site to further screen the tops of the 
Buildings 1 and 2. However, not removing this height restriction will force the Applicant to 
design around the height restriction. This could result in less attractive buildings or 
built with larger footprints, which results in a greater disturbance of the site.

Considering these factors, the heights of Buildings 1 and 2 will not be unduly 
detrimental to the views from these single family properties and the restriction on building 
height imposed in Finding of Fact 107, Conclusion of Law 12, and Order Paragraph 31 
should be removed.

B. In the Alternative: Modify the Restriction

Alternatively, if the Hearing Examiner is not inclined to remove the restriction, the 
Applicant requests that the additional height requirement for Buildings 1 and 2 be modified 
so that it has a nexus to the view being protected, is easier to understand, and is less 
restrictive.

The Applicant proposes that the Hearing Examiner establish a separate datum for 
this restriction for each building based on the lowest approximate finished floor elevation of 
the floor containing the view windows of certain homes on the east side of and abutting 
Puget Street that directly overlook one of the buildings.17 For Building 1, the relevant 
approximate finished floor elevation shall be the lowest of the following houses: 824 Puget 
Street, 820 Puget Street, and 816 Puget Street. For Building 2, the relevant approximate 
finished floor elevation shall be the lowest of the following houses: 810 Puget Street, 808 
Puget Street, and 804 Puget Street.

17 Determining the approximate finished floor elevation does not require entrance into the homes or the 
property. A survey from the street level can measure and record these elevations.
The Applicant respectfully requests that the Hearing Examiner completely remove
the height restriction requiring the ridgelines of Buildings 1 and 2 to be at or below the
elevation of the Puget Street centerline. Alternatively, the Applicant respectfully requests
that the Hearing Examiner modify the height restriction to reference the approximate
finished floor elevation of the addresses listed above.

IV. RELIEF REQUESTED

A. Grounds to Grant Relief

The Hearing Examiner may grant a motion for reconsideration on any of five
grounds. This Motion is based on subsections four and five, which are: (4) clear mistake
as to a material fact and (5) clear error as to the law, which should be corrected in the
interests of justice.

B. Basis to Reconsider the Restriction on Bedrooms per Unit

The clear mistake of fact is that limiting the Project to three-bedroom units reduces
the impacts of the development. Four bedroom units are appropriate and will allow for
greater flexibility and an overall better development. So long as the Applicant stays under
the threshold for number of students (528) and number of units (176), four bedroom units
are appropriate at the Project.

The clear error of law in the Decision is the Hearing Examiner’s characterization of
the Project as “multi-family,” rather than as a “boarding and rooming house.” The latter
designation of “boarding and rooming house” was proposed by the Applicant and
recommended by Staff. There is no basis in the BMC to justify characterizing the Project as
multi-family.

As long as the number of units and the number of beds remains at or below the
thresholds established in the Decision and which the Applicant does not challenge here, the
boarding and rooming house designation is an appropriate use with the appropriate intensity
at the Property and fits within the character of the neighborhood.

18 Hearing Examiner Rule (HE Rule) 2: 28(a)1 – 5.
C. Basis to Reconsider the Height Restriction

The clear mistake of fact is that, limiting the height of Buildings 1 and 2 by
referencing the centerline elevation of Puget Street has no rational relationship to protecting
the views of those homes on the east side of Puget Street. Views from the neighboring
property on the east side of Puget Street are well above the centerline of Puget Street. As a
result, even if Buildings 1 and 2 are built to the maximum allowable height under the
variance (i.e. 58’), they will not impair those views. Further, the flexibility in design gained
by permitting four bedroom units will allow the buildings to be redesigned such that there is
even less intrusion on these views than was anticipated in the original application and
presented at the hearing.

The clear error of law is that Buildings 1 and 2 as proposed will be unduly
detrimental to the public welfare and to the properties across Puget Street. As discussed
above, Puget Street is not the correct datum to determine the height of Buildings 1 and 2.
Instead it is approximate finished floor height of the houses on Puget Street. Thus, allowing
the height of these structures to exceed the centerline of Puget Street does not affect the
views and therefore, is not unduly detrimental to the public welfare or the relevant
properties. Lastly, using the centerline elevation of Puget Street imposes a confusing
standard, which is difficult to enforce. In the interest of justice, this should be corrected.

V. CONCLUSION

Based on the foregoing, the Applicant respectfully requests that the Hearing
Examiner grant this Motion, reconsider its decision, and make the changes to the Decision
as set forth herein.

RESPECTFULLY SUBMITTED this 4th day of November 2013.

BELCHER SWANSON LAW FIRM, PLLC

BRADLEY D. SWANSON, WSBA #37157
Attorney for Applicant
EXHIBIT

"A"
EXHIBIT

"B"
THE HEARING EXAMINER OF THE CITY OF BELLINGHAM
WHATCOM COUNTY, WASHINGTON

IN RE:

AMBLING UNIVERSITY
DEVELOPMENT, Applicant
4413 Consolidation Avenue

PDC2013-00002, VAR 2013-00001,
DRC2013-00008 & CAP2013-00019/
Planned Development for University Ridge

DECLARATION OF SERVICE

DAWN STURWOLD, HEARING EXAMINER

I, Heather Calloway, hereby certify as follows:

I am employed in the County of Whatcom, State of Washington. I am over the age of 18 and not a party to the within action. My business and place of employment is Belcher Swanson Law Firm, PLLC, 900 Dupont Street, Bellingham, Washington 98225.

On the date set forth below, I served the following documents on the interested parties in this action in the manner described below and addressed as follows:

<table>
<thead>
<tr>
<th>PARTY/COUNSEL</th>
<th>DELIVERY INSTRUCTIONS</th>
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<tbody>
<tr>
<td>Dawn Sturwold</td>
<td>☒ By Hand Delivery</td>
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<tr>
<td>Hearing Examiner, City of Bellingham 210 Lottie St. Bellingham, WA 98225</td>
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<tr>
<td>Jeff Thomas</td>
<td>☒ By Hand Delivery</td>
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<tr>
<td>City of Bellingham Planning Director 210 Lottie St. Bellingham, WA 98225</td>
<td>☒ By Electronic Mail</td>
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<tr>
<td>Kathy Bell</td>
<td>☒ By Hand Delivery</td>
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<tr>
<td>City of Bellingham Planning Department 210 Lottie St. Bellingham, WA 98225</td>
<td>☒ By Electronic Mail</td>
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1. **Motion for Reconsideration**

2. **Declaration of Service**

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 4th day of November 2013 at Bellingham, Washington

[Signature]

HEATHER CALLOWAY