

**ORDINANCE NO. 733**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON APPROVING A SITE-SPECIFIC REZONE AT 11918 & 11920 NYANZA ROAD SW KNOWN AS THE DURR REZONE.**

**FINDINGS**

**WHEREAS**, the Washington State Legislature, through Chapter 36.70A RCW, the State Growth Management Act (GMA), intends that local planning be a continuous and ongoing process; and

**WHEREAS**, on March 4, 2019 the Lakewood City Council adopted Ordinance No. 704 delegating the quasi-judicial review of site specific rezones to the examiner; affording an appeal to the City Council; and then, once past any appeal periods, adopting any approved changes in an ordinance amending the zoning map; and

**WHEREAS**, on June 27, 2019 Daniel Durr applied for a Site Specific Rezone (LU-19-00145) and SEPA Checklist application (LU-19-00144) to rezone the properties located at 11918 & 11920 Nyanza Road SW from Residential 1 (R1) to Residential (R2); and

**WHEREAS**, a combined Notice of Application with a fourteen day comment period was published on July 19, 2019; and

**WHEREAS**, on August 27, 2019 the SEPA Official issued a Determination of Non-significance (DNS); and

**WHEREAS**, no appeals were filed against the SEPA threshold determination; and

**WHEREAS**, a public hearing notice with fourteen day comment period was published on August 11, 2019; and

**WHEREAS**, on September 11, 2019 a public hearing was held to evaluate the rezone proposal; and

**WHEREAS**, on September 25, 2019, the Lakewood Hearing Examiner issued a determination approving the Durr Site Specific Rezone; and

**WHEREAS**, no appeals were filed against the Hearing Examiner's September 25, 2019 decision; and

**WHEREAS**, the Lakewood City Council has considered the required findings as related to each independent zoning map amendment as listed below are satisfied:

1. The proposed amendment is consistent with the Comprehensive Plan;
2. The proposed amendment and subsequent development of the site would be compatible with development in the vicinity;
3. The proposed amendment will not unduly burden the transportation system in the vicinity of the property with significant adverse impacts which cannot be mitigated;
4. The proposed amendment will not unduly burden the public services and facilities serving the property with significant adverse impacts which cannot be mitigated;
5. The proposed amendment will not adversely impact the public health, safety, and general welfare of the citizens of the city;
6. The entire range of permitted uses in the requested zoning classification is more appropriate than the entire range of permitted uses in the existing zoning classification, regardless of any representations made by the petitioner as to the intended use of the subject property;
7. Circumstances have changed substantially since the establishment of the current zoning map or zoning district to warrant the proposed amendment; and
8. The negative impacts of the proposed change on the surrounding neighborhood and area are largely outweighed by the advantages to the city and community in general, other than those to the individual petitioner; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD,  
WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1. Adoption of Hearing Examiner's Findings.**

The Findings of the Hearing Examiner are adopted as part of this Ordinance.


**Section 2. Adoption of Amendments.** The City Council approves the site- specific rezone (LU-19-00145) rezone the properties located at 11918 & 11920 Nyanza Road SW from Residential 1 (R1) to Residential (R2).

**Section 3. Severability.** If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances shall not be affected.

**Section 4. Effective Date.** This Ordinance shall be in full force and effect thirty (30) days after final passage.

**ADOPTED** by the City Council of the City of Lakewood this 20<sup>th</sup> day of April, 2020.

CITY OF LAKEWOOD

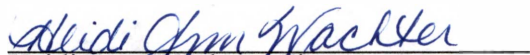


Don Anderson, Mayor

Attest:

  
Briana Schumacher, City Clerk

Approved as to Form:

  
Heidi Ann Wachter, City Attorney



1 the scale for approval. First, the rezone area is contiguous to several nonconforming lots that are  
2 approximately of the same relatively small sized lots that would be made possible by the rezone.  
3 Consequently, approval would not create a development pattern out of character with surrounding  
4 uses. Second, until very recently one of the two rezone lots was occupied by a dangerous building  
5 that was subject to multiple break-ins. The other lot accommodates a duplex, which is a  
6 nonconforming use. The Applicant's plans to replat the two rezone lots, remove the duplex and then  
7 build four new single-family homes will result in development that is more compatible and in  
8 character with surrounding development.

### 7 Testimony

8 Ramon Rodriquez, City of Lakewood Assistant Planner, summarized the staff report. In response to  
9 examiner questions, Mr. Rodriquez noted that Nyanza Road SW does not have any congestion issues;  
10 that Mr. Durr owns both parcels; and the parcels don't include the Randall Johnson parcel referenced  
11 in Ex. 8.

12 Daniel Durr, Applicant, noted he and his wife in association with his brother and his brother's wife  
13 purchased the rezone lots three or four months ago. He and the other purchasers have lived in the  
14 Gravelly Lake/ Nyanza Road area for over 25 years. He and the other purchasers have a very intense  
15 desire to improve the neighborhood. One parcel contains a duplex and the other was the former site  
16 of an abandoned home that recently burned down. The home had been boarded for ten years. Even  
17 in the short time that they owned the abandoned home, it was subject to numerous break ins and  
18 police calls. The buyers contracted to have the abandoned house torn down and one day before  
19 demolition it burned down. It's since been cleaned up. The motivation isn't directly economic, and  
20 some family members have now chosen to move back to the area in which they grew up. The plan is  
21 to take down the duplex as well and then replat the lots. The duplex lot is 23,000 square feet. The  
22 other lot is 1.05 acres. The lots are larger than those in the surrounding area. The two lots will be  
23 replated into four lots of about 17,000 square feet.

24 James Gonzales, neighbor, noted he and his wife live in a house across from the subject property. He  
25 supports the rezone for three rezones. Number one, empty and unoccupied structures are magnets for  
26 the homeless. Two, an increase in residential occupancy will make the neighborhood safer. Three,  
property values will increase eventually, increasing the tax base.

Ed Sparks stated he lives across the street from the proposal. He strongly encourages approval of the  
rezone. He's known Mr. Durr for years and he looks forward to seeing the lots developed

Anthony Evans, neighbor, noted he and his wife are PLU professors and have lived in the  
neighborhood since 2002. He wanted to thank the Durrs and City for providing information about the  
project. He first became interested in his residence at the suggestion of a friend that he look at the  
property. Upon first visiting the property he and his wife were struck by the quiet and peacefulness  
of the property and neighborhood. The property was well located in relation to the City and the  
interstate. He and his wife are concerned about rezoning the property to a higher density. There have  
been concerns about the property over the past decade. The property was originally owned by

1 someone from out of state and was occupied by Japanese exchange students. Mr. Evans had  
2 someone at one of his parties tell him that he must enjoy the peacefulness and seclusion of what was  
3 essentially an English country home. The quiet and seclusion of his home is more appropriately  
4 associated with the country lifestyle of his Welsh background. He appreciates the thoughtfulness  
5 behind the rezone, but he and his wife are concerned about the ramifications of the rezone. They are  
6 concerned about the precedent the rezone would set, as the area has been historically zoned R1.

7 In closing, Mr. Durr noted that as a result of the rezone, the 5,500 square foot home has been  
8 removed and the duplex with its two 1,100 square foot units will be gone. The total number of  
9 dwelling units will only increase from three to four. In terms of square footage, the change will also  
10 be nominal.

### 11 Exhibits

12 Exhibits 1-8 as identified at page 7 of the September 11, 2019 staff report were admitted into the  
13 record during the September 11, 2019 hearing. A letter from Anthony Evans was admitted as Ex. 9.

## 14 FINDINGS OF FACT

### 15 Procedural:

- 16 1. Applicant. Daniel Durr.
- 17 2. Hearing. A hearing was held on the subject application on September 11, 2019 in the  
18 Lakewood City Hall Council Chambers.

### 19 Substantive:

20 3. Project Description. The Applicant has applied for a site-specific rezone to rezone two  
21 parcels from Residential 1 (R1) to Residential 2 (R2) located at 11918 & 11920 Nyanza Road SW.  
22 The subject properties are approximately 500 feet away from Gravelly Lake, separated by three lots  
23 from the shoreline. The rezone would increase the allowed density from 1.45 to 2.2 dwelling units  
24 per acre. Both properties have been developed. The 11918 Nyanza Road SW property had a  
25 detached single-family residence which was being monitored by the City of Lakewood as a  
26 dangerous building. The single-family residence recently burnt to the ground with all debris  
removed by the Applicant. The 11920 Nyanza Road SW property has a duplex which is considered a  
legal nonconforming use in the R1 and R2 zoning districts. The Applicant plans on removing the  
duplex and re-platting the two lots into four lots.

4. Surrounding Area. The project site is surrounded by single-family development with a wide  
range of lot sizes. The surrounding area west of Nyanza Road is zoned R-1 and the area east of  
Nyanza Road is zoned R-3. There are five lots that are contiguous to the two rezone lots. Using the  
data from Ex. 5, the five contiguous lots range in size from 12,084 square feet to 32,612 square feet

1 with an average lot size of 19,165 square feet. The four lots authorized by the rezone would have an  
2 average lot size of 17,352 square feet, which is a larger lot size than two of the five contiguous lots.

3 5. Adverse Impacts. There are no significant adverse impacts associated with the project. Staff  
4 testified that Nyanza Road is not congested and has the capacity to accommodate the extra traffic,  
5 which would be limited to that generated by the one additional single-family home made possible by  
6 the rezone (four lots replacing a duplex and single-family home). The modest increase in density  
7 would also have negligible noise impacts. Given that some existing adjoining lots are even smaller  
8 than those enabled by the rezone and that overall the possible lot sizes are similar to adjoining lot  
9 sizes, the proposed R-2 zoning designation serves as an appropriate transitional zone between the  
10 higher density R-3 zoning across Nyanza Road and the R-1 zone on the west side of the road.

11 Mr. Evans' concern over setting a precedent is well placed, as one neighbor is already requesting a  
12 rezone to R-2 and there are several large lots in the vicinity from 45,000 to 179,000 square feet that  
13 could squeeze in some extra lots under a subdivision with an associated R-2 upzone. As shown in the  
14 City's zoning map, there are also only four lots separating the subject lots west of Nyanza Road from  
15 a large section of R2 zoned waterfront lots to the south. The City would be hard pressed to deny a  
16 similar upzone to these four lots given their proximity to R-2 zoning on either side if the requested  
17 upzone is approved. Overall, however, an increase of 0.75 homes per acre does not appear to be  
18 transformational to neighborhood character, especially given the R-3 zoning just across the street.  
19 For the property subject to the rezone, approval also helps improve neighborhood compatibility by  
20 facilitating the removal of the currently existing nonconforming duplex and replacing it and the  
21 vacant rezone lot with single-family homes.

### 22 **Conclusions of Law**

23 1. Authority. LMC 18A.2.502 Table 3 classifies conditional use permits as a Process III  
24 application subject to hearing examiner review.

25 2. Zoning Designations. Residential 1 (R1) Zoning District.

26 3. Review Criteria. LMC 18A.02.415 requires findings to be made for any amendment to  
the City's zoning code, including its zoning map. The required findings are quoted below in italics  
and applied via corresponding conclusions of law.

**LMC 18A.02.415A:** *The proposed amendment is consistent with the comprehensive plan.*

4. The criterion is met. The proposal is consistent with comprehensive plan policies that  
encourage higher income development along the City's lake fronts.

The staff report, which quotes from the Applicant on responses to the LMC 18A.02.415 rezone  
criteria, asserts that comprehensive plan policies are met by the proposal because the upzone meets  
affordable housing goals and helps address Lakewood growth. However, most of the City's land is  
already devoted to much higher density development and the City's Comprehensive Plan further

1 identifies that the City has ample capacity to accommodate future growth. See Comp Plan, Section  
2 3.2.6.

3 More pertinent to the subject application are policies that address lake view properties. As  
4 recognized in Section 3.0 of the Comp Plan, the “*opportunity to build higher valued homes in a*  
5 *desirable setting on the City’s lakes has provided Lakewood with its share of higher-income families,*  
6 *and some of its oldest, most established neighborhoods.*” To this end, Comp Plan Policy LU-2.4  
7 encourages “*larger lots on parcels with physical amenity features of the land, such as views,*  
8 *significant vegetation, or steep slopes.*” Further, Policy LU-2.3 encourages low density designations  
9 to provide opportunities for “*upper-income development.*” From these types of policies, it is evident  
10 that the City seeks to use its lake front properties as a means of maintaining its upper income segment  
11 of housing capacity and that the City sees large lot sizes as furthering this strategy. As is further  
12 evident from the City’s zoning map, the Gravelly Lake shoreline has been assigned the lowest density  
13 zoning of the City’s lakes. Most zoning along the Gravelly Lake shoreline is R1, whereas, most  
14 zoning along American and Steilacoom lakes is R2 and R3. This evidences an intent to assign the  
15 City’s highest income housing to the shores of Gravelly Lake. However, site specific circumstances  
16 marginally tip the balance in favor of the requested rezone. As outlined in Finding of Fact No. 4, the  
17 proposed rezone is consistent with the lot size of surrounding contiguous lots and as noted in Finding  
18 of Fact No. 5, the proposal will also facilitate the replacement of the existing duplex with single-  
19 family homes, at least in regard to the development plans of the current lot owner. It also must be  
20 recognized that the upzone is very modest and is consistent with the zones authorized by the  
21 Comprehensive Plan’s future land use map. Given all these factors and the staff’s finding of  
22 Comprehensive Plan consistency, the proposal is found to be consistent with the comprehensive plan.

23 **LMC 18A.02.415B:** *The proposed amendment and subsequent development of the site would be*  
24 *compatible with development in the vicinity.*

25 5. The criterion is met. As identified in Finding of Fact No. 4, the proposed lot size is consistent  
26 with the five lots contiguous to the rezone area. As identified in Finding of Fact No. 5, the proposal  
will not create any significant adverse impacts and will facilitate the replacement of a duplex with  
single-family homes, which is more consistent with surrounding neighborhood character.

**LMC 18A.02.415C:** *The proposed amendment will not unduly burden the transportation system in*  
*the vicinity of the property with significant adverse impacts which cannot be mitigated.*

6. The criterion is met. As noted in Finding of Fact No. 5, staff testified that Nayanza Road has  
the capacity to accommodate the traffic generated by the proposal. Given that the proposal will only  
result in the addition of one single-family home, it is anticipated that the added trip generation would  
have a negligible impact upon transportation facilities.

**LMC 18A.02.415D:** *The proposed amendment will not unduly burden the public services and*  
*facilities serving the property with significant adverse impacts which cannot be mitigated.*



1 7. The criterion is met. As previously noted, the proposal will only result in the addition of one  
2 dwelling unit to a fully developed neighborhood. The addition of one dwelling unit is not anticipated  
3 to exceed the capacity of utilities currently serving the neighborhood to provide public services.

4 **LMC 18A.02.415E:** *The proposed amendment will not adversely affect the public health, safety and  
5 general welfare of the citizens of the City.*

6 8. The criterion is met. As determined in Finding of Fact No. 5 there are no significant adverse  
7 impacts associated with the proposal and it will result in the replacement of a duplex with single-  
8 family homes and will also develop the vacant rezone parcel, which is more consistent with the  
9 residential character of the neighborhood. Given the negligible increase in density, there are no  
10 reasonably ascertainable material adverse impacts to public health, safety and welfare.

11 **LMC 18A.02.415F:** *The entire range of permitted uses in the requested zoning classification is  
12 more appropriate than the entire range of permitted uses in the existing zoning classification,  
13 regardless of any representations made by the petitioner as to the intended use of subject property.*

14 9. The criterion is met. According to LMC 18A.131.30, the primary permitted, administrative  
15 and conditional uses allowed for the current R1 zoning and proposed R2 zoning are the same. The  
16 17,000 square foot lots enabled by the rezone is more consistent with the 19,000 square foot average  
17 lot size of adjoining lots than the 25,000 square foot minimum authorized by the R1 zone.

18 **LMC 18A.02.415G:** *Circumstances have changed substantially since the establishment of the  
19 current zoning map or zoning district to warrant the proposed amendment.*

20 10. The criterion is met. Criminal activity and neglect are a change in circumstance that warrant  
21 the approval of the rezone to eliminate the current blighted use of the property.

22 The Applicant's response in the staff report asserts that the change in circumstance is an increased  
23 need for affordable housing. There is no data to support this position. Affordable housing is  
24 certainly a problem in the Puget Sound region, but it is questionable whether it's a problem that needs  
25 to be further addressed in the City of Lakewood. As shown in Table 3.4 of the Comprehensive Plan,  
26 the City of Lakewood has a greater percentage of multifamily housing than any other city in Pierce  
County. As noted at page 46 of the Comprehensive Plan, the City has developed numerous  
affordable housing programs. Further, as outlined in Conclusion of Law No. 4, the Comprehensive  
Plan does not contemplate affordable housing for its lakefront properties, but rather encourages the  
City's upper income housing to be located on view properties to maintain a diversity in economic  
housing choices. Finally, in the absence of any additional information, it is difficult to see how the  
proposed upzone would produce property that would be considered "affordable" given the proximity  
of the property to Gravelly Lake. Given this background, it is questionable whether a need for  
affordable housing "warrants" the proposed amendment.

More pertinent is testimony from Mr. Evans and Mr. Gonzales regarding the multiple break ins of the  
abandoned (and now removed) single-family on one of the subject lots as comments in the staff

1 report that the single-family home was monitored by the City as a dangerous building. These  
2 conditions more likely than not occurred after designation of the parcels as R1, given Mr. Evans'  
3 reference to the fact that the single-family home was occupied by an authorized tenant when Mr.  
4 Evans purchases his property in 2002. Although the single-family home has been removed, the  
5 vulnerability of the property to criminal activity was a concern expressed by several people at the  
6 hearing. This criminal activity is a change in circumstance that can be rectified by development of  
7 the property into single-family homes. The proposed rezone serves as a development incentive to  
8 achieve that development objective.

9 **LMC 18A.02.415H:** *The negative impacts of the proposed change on the surrounding*  
10 *neighborhood and area are largely outweighed by the advantages to the City and community in*  
11 *general, other than those to the individual petitioner.*

12 11. The criterion is met. The proposed rezone only represents a modest increase in density with  
13 no significant adverse impacts as outlined in Finding of Fact No. 5. As noted in Conclusion of Law  
14 No. 10, the corresponding benefit is redevelopment of at least one parcel with a history of criminal  
15 activity and neglect.

## 16 **DECISION**

17 Rezone Application No. LU1900145 satisfies all rezone criteria as determined in the Conclusions  
18 of Law of this decision and is therefore approved subject to the following conditions:

19 1. Pursuant to the City of Lakewood Site Development Regulations, Section 12.04.040, a Site  
20 Development Permit, Drainage Review and erosion control plan shall be approved by the City  
21 Engineer Prior to issuance of building permits for future development.


22 2. Subdivisions associated with the subject property shall comply with the requirements  
23 outlined in LMC 17.22.

24 3. No development or demolition may occur without the approval of the associated permits.

25 4. Any future development will be subject to Tree Preservation standards as outlined in LMC  
26 18A.50.300, as now or hereafter amended.

DATED this 25th day of September 2019.

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Phil A. Olbrechts

Hearing Examiner for Lakewood

**Appeal Right and Valuation Notices**

LMC 18A.02.502 Table 3 provides that the final decision of the Hearing Examiner for site specific zoning map amendments is subject to appeal to the City Council. Pursuant to LMC 1.36.280, appeals must be filed with the Planning Department within ten working days of the final decision.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.



179,903 SF

69,300 SF

R-1

81,022 SF

R-3

23,939 SF

Subject Site

18,295 SF

32,612 SF

15,000 SF

21,280 SF

12,084 SF

45,888 SF

45,000 SF

21,500 SF

12,600 SF

23,522 SF

20,909 SF

17,424 SF

63,696 SF

96,000 SF

11808

11804

11805

6406

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118TH. ST. CT. SW

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6402

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120TH. ST. SW

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DRUM LN SW