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**THE HEARING EXAMINER OF THE CITY OF BELLINGHAM
WHATCOM COUNTY, WASHINGTON**

IN RE:	HE-23-PL-006
RKS DEVELOPMENT INC., Applicant	FINDINGS, CONCLUSIONS, AND DECISIONS
530 38th Street	
SUB2023-0012 and VAR2023-0005 / Short Subdivision and Variance from Street Improvements	SHARON A. RICE HEARING EXAMINER

SUMMARY OF DECISIONS

The requested two-lot short subdivision and associated subdivision variance from street construction improvements for a residential development proposal on the property at 530 38th Street, Bellingham are **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Trent Slusher of Slusher Luxury Homes, on behalf of RKS Development Inc. (Applicant), requested approval of a short subdivision of two lots for the future development of two single-family residences and a related variance from the requirement established in BMC 23.08.070.B to improve Adams Avenue and the abutting alley of the property located at 530 38th Street, Bellingham.

Hearing Date:

The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request on June 14, 2023. The record was held open two business days to allow for post-hearing public comment from people who may have had technology problems that prevented their participating in the hearing, with time scheduled for responses by the parties. No post-hearing comments were submitted, and the record closed on June 16, 2023.

1 No in-person site visit was conducted, but the Examiner viewed the subject property on
2 Google Maps.

3 **Testimony:**

4 At the hearing, the following individuals presented testimony under oath:

5 Trent Slusher, Slusher Luxury Homes, Applicant's Representative
6 Ryan Nelson, Planner II

7 **Exhibits:**

8 At the open record hearing, the following exhibits were admitted in the record:

9 Exhibit 1 Planning and Community Development Department Staff Report, dated June
10 14, 2023 including the following attachments:

- 11 A. Short Plat Maps
- 12 B. Vicinity Map
- 13 C. Zoning Map and Comprehensive Plan Designations
- 14 D. Land Use Application Materials
 - 15 1. Land Use Application, dated March 1, 2023
 - 16 2. Project Narrative
- 17 E. Request for Information, dated March 21, 2023
- 18 F. Notice of Application/Mailing List, issued April 25, 2023
- 19 G. Public Comment
 - 20 1. Rebecca Langholz email, dated May 9, 2023
 - 21 2. Julie Steele email, dated April 27, 2023
 - 22 3. Mike and Jackie Mullavey letter, dated May 6, 2023
 - 23 4. Kathleen Weisel letter, dated May 6, 2023
- 24 H. Limited Geotechnical Engineering Report by GeoTest, dated March 1,
25 2023
- 26 I. Preliminary Stormwater Report by Cascade Engineering Group dated
27 March 28, 2023
- 28 J. Aerial Map

29 Exhibit 2 Notice of Hybrid Public Hearing, issued May 30, 2023

30 Exhibit 3 City Department Comments including:

Findings, Conclusions, and Decisions

Page 2 of 15

H:/DATA/HEARING EXAMINER/DECISIONS/RKS Dev. 530 38th St. SUB VAR Decision

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

1 A. Brent Baldwin, Development Manager, City of Bellingham Public Works
2 Department memorandum to Hearing Examiner, dated May 25, 2023

3 B. Shawn Linville, Division Chief/Fire Marshal, Bellingham Fire
4 Department memorandum, dated June 7, 2023

5 Exhibit 4 Additional Public Comment:

6 1. Brad and Kristy McKay email, dated June 4, 2023

7 2. Greg Herrling email, dated June 3, 2023

8 No in-person site visit was conducted, but the Examiner viewed the subject property on
9 Google Maps.

10 After considering the testimony and exhibits submitted, the Hearing Examiner enters the
11 following findings and conclusions:

12 **FINDINGS**

13 1. Trent Slusher of Slusher Luxury Homes, on behalf of RKS Development Inc.
14 (Applicant), requested approval to subdivide a 30,993 square foot parcel into two
15 lots for future construction of two single-family residences and a variance from
16 the requirement to improve Adams Avenue and the alley abutting the subject
17 property for access to the future residences.¹ The subject property is currently
18 addressed as 530 38th Street, Bellingham; the existing residence would be
19 demolished.² *Exhibits 1, 1.A, and 1.D.*

20 2. The subject property is in Area 4 of the Samish Neighborhood and zoned
21 Residential, Single requiring a 12,000 square foot density. Area 4 has special

22 ¹ The undersigned notes that the staff report refers to the subject property both as being 30,993 and
23 38,984 square feet in area; this discrepancy was not clarified in testimony. The application materials state
24 the site is 0.72 acres, which would be 31,363 square feet. Seeking to clarify the accurate site size, the
25 undersigned reviewed the parcel on the County Assessor's page, which states it is 0.71 acres in area,
26 which would be 30,927.6 square feet. The site plan calls out two lots totaling 30,993 square feet.
27 *Exhibits 1 and 1.A; Whatcom County Assessor Parcel Look up.* It is presumed that 38,984 square feet
28 stated on page 4 of the staff report is a typo and that the 30,993 total area shown on the site plan is the
29 result of a survey, which would typically be more accurate than the information on the Assessor's page if
30 it is not based on a survey; however, the Examiner notes that even at 30,927.6, the site contains more than
the minimum area required for two lots in the underlying zone.

² The full legal description of the subject property is: Lot 2 Luna Short Plat as Rec AF 2041201643. It is
also known as Assessor's parcel number 370306-487445-0000. *Exhibit 1.*

1 conditions for traffic, view, and clearing. *Exhibit 1; Bellingham Municipal Code*
2 *(BMC) 20.00.150.*

3 3. The subject property abuts a residential parcel to the north, 38th Street to the east,
4 unimproved Adams Avenue to the south, and an unimproved alley to the west.
5 Along the subject block, 38th Street has 60 feet right-of-way width and is
6 improved to minimum standards with two paved travel lanes and gravel
7 shoulders, but no curb, gutter, or sidewalk. The adjacent alley dead-ends (at its
8 south end) into Adams Avenue; it is unimproved and fairly heavily vegetated for
9 the whole length of the subject block. The 30-foot-wide Adams Avenue right-
10 of-way extends west from 38th Street. It is cleared for the entire width of the
11 subject property's southern boundary; from 38th Street, approximately half the
12 length of the southern boundary of the site Adams is graveled; it has a grassy
13 surface west of the graveled section. Adams Avenue is unopened/ unimproved
14 west of the alley; there is a residential structure in the Adams right-of-way just
15 west of the alley. Adams is also unimproved east of 38th Street. *Exhibits 1 and*
16 *1.J; Google Maps site view.*

17 4. Surrounding parcels in all directions share the subject property's Residential,
18 Single zoning and are developed with single-family detached residential uses.
19 While there appears to be one undeveloped lot across the alley at the northern
20 terminus of improved 37th Street, that lot has access from 37th Street. There does
21 not appear to be additional development potential in the area capable of being
22 served by a potential extension of Adams Avenue or the unimproved alley.
23 *Exhibits 1, 1.C, and 1.J; Google Maps site view.*

24 5. There are no bus stops in the area; the nearest Whatcom Transit Authority
25 service is at Samish Way. There is an existing neighborhood park approximately
26 900 feet south of the subject property on 38th Street, but as noted above, no
27 sidewalks connect the site to the park. According to the Bellingham Parks,
28 Recreation, and Open Space Plan, there are no proposed parks or schools on or
29 adjacent to the subject property. *Exhibit 1.*

30 6. The proposed subdivision would create two roughly square (or rectangular) lots,
including 17,687 square foot Lot A and 13,306 square foot Lot B. Both lots
would front on / have driveway access from 38th Street; driveway design would
be reviewed for compliance with subdivision design standards through the
building permit process. The lots would each be approximately 148 feet deep.
Lot A would be approximately 120 feet wide, and Lot B would be approximately
90 feet wide. Each appears to be capable of providing the required 60- by 60-
foot building envelope. Establishment of the building envelopes would require

1 removal of only one significant tree; the proposal seeks to retain as much
2 existing tree and other vegetation cover as possible. Each lot would be provided
3 with a driveway connected to 38th Street at least 40 feet deep and apparently
4 connecting to an attached garage in each residence. Residences on both lots
5 would be served by existing water, sewer, and stormwater utilities located in 38th
6 Street. The application materials included a professionally prepared preliminary
7 stormwater report. Stormwater management for future residences designed, and
8 reviewed by the City, for compliance with City stormwater management
standards established in BMC Chapter 15.42 at the time of building permit; a
final stormwater report would be required prior to final plat approval. *Exhibits 1,
1.A, and 1.D2.*

9 7. Although the existing residence is served by municipal utilities, the subject
10 property does not fully abut water and sewer mains in its 38th Street frontage.
11 Regarding the requirement established in BMC 23.08.060.E requiring newly
12 created lots to fully abut public infrastructure, the Public Works Department
13 reviewed the existing development pattern in the vicinity and existing utility
14 infrastructure in place and determined that extension of the water and sewer
15 mains would not benefit any surrounding properties. Public Works Staff
16 administratively granted last lot served status to the subject property for water
17 and sewer service, because the proposed residences can be served by existing
18 infrastructure and all surrounding properties already have service. City Staff
also determined that no right-of-way dedications and no frontage improvements
on 38th Street are required of the proposed short subdivision. *Exhibits 1 and
1.D2.*

19 8. Proposed Lot A contains slopes that meet the definition of geologically
20 hazardous areas regulated pursuant to the City's critical areas ordinance. An
21 erosion hazard area was delineated traversing the northwest corner of the site.
22 *See Exhibit 1.A.* Planning Staff submitted that a critical area permit is required
23 for development within 50 feet of an erosion hazard area. The site depicts a 27-
24 foot setback between the erosion hazard and the proposed residence on Lot A.
25 The Applicant submitted a professionally prepared limited geotechnical
26 engineering report addressing the requirements of BMC 16.55.440-.460. Based
27 on the qualified professional's review of site conditions, subsurface conditions
28 at the site are suitable for the proposed development provided best management
29 practices are implemented during construction. Planning Staff noted that a
30 critical area permit would be required to be approved prior to building permit
issuance. *Exhibits 1, 1.A, and 1.H.*

- 1 9. BMC 23.08.060.C requires any lot abutting an alley to maintain access from and
2 parking off of the alley. BMC 23.08.070.B requires all rights-of-way abutting
3 land to be subdivided to be brought up to minimum City standards consistent
4 with BMC Title 13, which at BMC 13.08.030.B.2 requires Adams Avenue
5 adjacent to the proposal to be improved to a minimum street standard. Given the
6 circumstances of the neighborhood and consistent with BMC 23.48, the
7 Applicant applied for a variance from the requirement to improve Adams
8 Avenue and the alley abutting the subject property. *Exhibits 1, 1.A, 1.D1, and*
9 *1.D2.*
- 10 10. Given the erosion hazard area in the northwest corner of the site, the Applicant
11 submitted that development of the alley abutting the west property line would
12 potentially result in impacts to adjacent properties from development in the
13 erosion hazard. The Applicant also noted that a number of significant trees are
14 located in the alley right-of-way, the removal of which would adversely impact
15 the privacy and existing vegetated appearance of adjacent parcels. There are also
16 trees and fencing in the Adams Avenue right-of-way, and removing these would
17 impact adjacent properties. Because all surrounding properties currently access
18 from street frontages rather than the alley, allowing the alley to remain
19 unimproved and the proposed lots to access from 38th Street would maintain
20 existing neighborhood character. *Exhibits 1.D2 and 1.J; Trent Slusher*
21 *Testimony.*
- 22 11. Planning Staff submitted that the City has no plans that involve extending
23 Adams Avenue or improving the alley west of the subject property. Having
24 consulted with both the Public Works and Fire Departments, Staff indicated that
25 improvement of the abutting rights-of-way is not needed for transportation
26 circulation, utility, or emergency access purposes. Considering the existing
27 pattern of development and existing infrastructure access for all surrounding
28 parcels, Staff submitted there would not be a public benefit resulting from
29 construction of Adams Avenue or the abutting alley due. Staff agreed with the
30 Applicant that improving the alley would result in privacy impacts to existing
residences, as well as unnecessary tree removal and impervious surface area in a
geologically hazardous area without a public benefit. *Exhibits 1, 3.A, and 3.B;*
Ryan Nelson Testimony.
12. The subject property is within the service areas of Happy Valley Elementary,
Fairhaven Middle, and Sehome High Schools, all three of which are on the
opposite side of Interstate-5 and more than one mile away by road. The
Applicant submitted that students would be bussed to schools at all levels.
Exhibit 1.D2.

1 13. The subject property is designated as Residential Single, Low Density by the
2 City of Bellingham Comprehensive Plan. Planning Staff submitted that the
3 proposal meets the intent of the Comprehensive Plan in furthering the following
4 goals and policies:

5 Land Use

6 GOAL LU-5 Support the Growth Management Act's goal to encourage growth
in urban areas.

7 Policy LU-66 Encourage design flexibility (e.g. clustering and low impact
8 development) to preserve existing site features, including trees,
wetlands, streams, natural topography, and similar features.

9 Housing

10 Policy H-3 Encourage well-designed infill development on vacant or
11 underutilized properties.

12 Capital Facilities and Utilities

13 GOAL CF-8 Promote the delivery of adequate utilities and encourage the
14 design and siting of private utility facilities in a manner that
minimizes impacts on adjacent land uses and the environment.

15 Policy CF-3 Encourage and support development in areas where adequate
16 public facilities and services exist or can be provided in an
efficient manner.

17 Policy CF-4 Protect public health, enhance environmental quality, and
18 promote conservation of natural resources through appropriate
19 design and installation of new public facilities.

20 *Exhibit 1.*

21 14. The Applicant submitted that the proposed design adding two new single-family
22 residences in the underlying low density zone would be consistent with the
23 character of the surrounding neighborhood and would forward the City's goals
24 of bringing infill to areas already served by urban infrastructure. *Exhibit 1.D2;*
Trent Slusher Testimony.

25 15. Notice of application and public hearing was issued on April 25, 2023, along
26 with mailing to adjacent property owners. *Exhibits 1 and 1.F.*

27 16. The City received public comments expressing concerns about tree preservation,
28 hazard tree removal, ensuring access to Adams Avenue during construction,
29 stormwater management, privacy impacts, improvements used to access to

1 adjacent parcels, installation of sidewalks in front of the subject property, and
2 freeway noise. The comments generally opposed improvement of the alley and
3 universally requested retention of trees in the alley and on the subject property.
4 *Exhibits 1.G, 4.A, and 4.B.* No public comment was offered at the open record
5 hearing.

6 17. In response to public comment, Planning Staff offered the following. The
7 proposal would remove one 30-inch fir tree and would retain the remaining 23
8 trees. The Applicant will be required to provide three replacement trees of a
9 native species to replace the removed tree. Staff submitted that removal of one
10 tree and construction of two residences should not impact freeway noise
11 experienced by surrounding properties. The project does not include any
12 improvements to, or access by, the Adams Avenue right-of-way; construction
13 access would be from 38th Street via the proposed driveways. Stormwater
14 management would be required to be designed and built by a licensed civil
15 engineer to ensure compliance with BMC 15.42. Because of this, Staff
16 submitted that the proposed development would not adversely impact stormwater
17 management on surrounding properties. The proposed tree preservation is
18 expected to protect the existing privacy of the off-site residences. The Applicant
19 has asked to be excused from the requirement imposed by City Code to improve
20 the alley and Adams Avenue where they abut the site. If the variance is
21 approved, the two residences would access via 38th Street. The proposed two-lot
22 short subdivision does not trigger installation of sidewalks under the BMC.
23 There are no schools within walking distance of the subject property, and since
24 there are no sidewalks in the vicinity, installation of sidewalk along the
25 property's frontage would provide minimal public benefit. *Exhibit 1; Ryan
26 Nelson Testimony.*

27 18. The Applicant representative agreed with Staff's response, noting that the two
28 proposed development envelopes would be as far from existing trees as possible
29 and that only one tree is expected to be removed. *Trent Slusher Testimony.*

30 19. Having heard all testimony, Planning Staff maintained their recommendation for
approval of the short subdivision and subdivision variance subject to the
conditions in the staff report. *Exhibit 1; Ryan Nelson Testimony.* The Applicant
waived objection to the recommended conditions. *Trent Slusher Testimony.*

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CONCLUSIONS

Jurisdiction:

The Examiner is granted authority to decide applications for Type III-A short subdivision pursuant to BMC 23.12.040.³ The Examiner is granted authority to hear and decide applications for variances associated with subdivisions pursuant to BMC 23.48.020.C and BMC 20.10.120.

Criteria for Review:

Pursuant to BMC 23.12.030.A, a short subdivision application shall be granted preliminary plat approval if all of the following criteria are satisfied.

³ Although the subdivision variance is clearly at Type III-A decision pursuant to BMC 21.10.040.D(7), during deliberation, the undersigned was unable to discern why the instant two-lot short plat was determined to be a Type III-A short plat. It would seem to meet the Type I land use indicated by BMC 21.10.040.B(14) as being within the authority of the Director, because it is not a cluster short subdivision and does not rely on rounding provisions, and no SEPA review was conducted. BMC 21.10.040.D(6) assigns jurisdiction over short plats that rely on rounding provisions to the Examiner, and BMC 2.56.050.A(2) assigns jurisdiction over cluster short subdivisions proposing density bonuses to the Examiner. While the Applicant has the option pursuant to BMC 21.10.060 to consolidate Type I and Type III-A permits into a single process, this provision was not cited. Apparently addressing the determination that the short plat is a Type III-A decision, the staff report (at page 5) states the following:

Pursuant to BMC 23.48.010, any action which will result in the short subdivision of any lot, tract, parcel, or plot of land including a request to modify a requirement of Title 23 shall be processed as an administrative departure or variance under BMC 23.48 subject to a Type IIIA process.

This language does not mirror, and can be read to mean something different from, the language of BMC 23.40.010, which actually says:

Any request to modify a requirement of this title or any requirement of BMC Title 20 that is considered concurrently with a request for a lot line adjustment or land division shall be processed as an administrative departure or variance under the provisions of this chapter.

The quoted code language immediately above makes the “the request to modify a requirement of BMC Title 20” the subject of the sentence (rather than the associated short plat), which shall be processed as an administrative departure or variance. However, while the reasoning for processing the subject short subdivision via a Type III-A process, an Applicant request for consolidation of the permits, or a Director determination that a Type III-A process was required pursuant to BMC 23.12.020.A(1) is not evident in the record, it is clear that Staff intended the instant decision to include consideration of and approval or denial of the short subdivision in addition to the variance, and it is equally clear that the Code intends the Examiner to have jurisdiction to hear and decide Type I and Type III-A short subdivisions. Thus, the instant document includes conclusions and a decision on the short subdivision and the associated subdivision variance.

- 1 1. It is consistent with the applicable provisions of this title, the Bellingham
2 comprehensive plan and the Bellingham Municipal Code;
- 3 2. It is consistent with the applicable provisions of Chapter 23.08 BMC;
- 4 3. The division of land provides for coordinated development with adjoining
5 properties or future development of adjoining properties through, where
6 appropriate, the extension of public infrastructure, shared vehicular and
7 pedestrian access, and abutment of utilities;
- 8 4. Each lot in the proposal can reasonably be developed in conformance with
9 applicable provisions of the BMC, including but not limited to critical areas,
10 setbacks, and parking, without requiring a variance that is not processed
11 concurrently with the subdivision application pursuant to Chapter 23.48 BMC;
- 12 5. There are adequate provisions for open spaces, drainage ways, rights-of-way,
13 sidewalks, and other planning features that assure safe walking conditions for
14 pedestrians, including students who walk to and from school, easements, water
15 supplies, sanitary waste, fire protection, power service, parks, playgrounds, and
16 schools;
- 17 6. It will serve the public use and interest and is consistent with the public health,
18 safety, and welfare. The director shall be guided by the policy and standards and
19 may exercise the powers and authority set forth in Chapter 58.17 RCW, as
20 amended.

21 Pursuant to BMC 23.48.040.A, Subdivision variance, the hearing examiner may grant a
22 variance from any term of this title, except minimum lot size, if it is shown that the
23 proposal is consistent with the following criteria:

- 24 1.
 - 25 a. Because of unusual shape, the location of preexisting improvements, other
26 extraordinary situation or condition, or physical limitation including, but not
27 limited to, exceptional topographic conditions, geological problems, or
28 environmental constraints, in connection with a specific piece of property, the
29 literal enforcement of this title would involve difficulties, result in an undesirable
30 land division or preclude a proposal from achieving zoned density; or
 - b. The granting of the variance will establish a better lot design resulting in a
development pattern found to be consistent with the neighborhood character
including, but not limited to, development orientation to the street, setbacks, lot
orientation, or other contextual element associated with the proposed
development; and

- 1 2. The granting of any variance will not be unduly detrimental to the public welfare nor
2 injurious to the property or improvements in the vicinity and subarea in which the
3 subject property is located.

4 **Conclusions Based on Findings:**

5 A. Addressing the short subdivision criteria for approval established in BMC
6 23.12.030.A, the following conclusions are entered.

- 7 1. The proposal was handled in a manner that is consistent with the applicable
8 procedural provisions of BMC Chapter 23.12 and would result in development
9 that comports with the uses, density, and dimensional standards of the underlying
10 Residential, Single zone. The proposed residential lots would further land use,
11 housing, capital facilities and utilities, environmental, and economic
12 development chapters of the City's Comprehensive Plan by furthering the goals
13 and policies cited in findings. *Findings 2, 3, 4, 6, 8, 11, 13, 14, 16, and 17.*
- 14 2. The proposed subdivision satisfies the applicable provisions of BMC Chapter
15 23.08 as follows. The proposed lots would comply with the Area 4 Samish Hill
16 Neighborhood special conditions related to traffic, view, and clearing, in
17 generating only vehicle trips consistent with density, in complying with building
18 height limit, and in removing only one significant tree, to be replaced by three
19 native species trees. The property was assessed by a qualified geotechnical
20 professional and the proposed development incorporates the recommendations of
21 that professional report; a critical area permit process would be required prior to
22 development of Lot A. Clearing and grading requirements would be
23 implemented through earthwork and building permit processes. The City
24 declined dedication of any additional right-of-way. Both lots would be
25 adequately served by public streets and utilities and based on Public Works'
26 approval of last lot served status, the Applicant is not required to extend the
27 utility mains along the entire 38th Street frontage. The two lot subdivision does
28 not trigger requirement to add frontage improvements, which if installed would
29 be an "island" of improvements not connected on either side. Abutting 38th
30 Street is improved to minimum City street standards, and the Applicant's request
for variance from the requirement to improve abutting Adams Avenue and the
unnamed alley are addressed in Conclusion B below. The number of lots is
consistent with density; each is larger than the 12,000 square foot minimum.
The lots are rectangular (or square) and directly access 38th Street. Each
provides the minimum 60- by 60-foot building envelope. Aside from the
Applicant's requested variance seeking to be excused from improving Adams
and the alley, no other variances would be needed to develop both lots. *Findings*
2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, and 14.

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- 3. The proposed subdivision would not impede coordinated development with adjoining properties or future development of adjoining properties. Again, the Public Works Department determined that all surrounding parcels currently enjoy access to public streets and utilities, and utility extension along the entire frontage is not required. *Findings 3, 4, 5, 6, 7, and 19.*
 - 4. The provided preliminary site plan depicts adequate building area outside the minimum required critical area setback as indicated in the Applicant's professional consultant report. Each lot contains a marked building envelope capable of supporting a residence in compliance with required setbacks. Each lot would contain a driveway capable of parking two off-street vehicles, in addition to presumed parking within attached garages. No subsequent variances appear to be needed. *Findings 3, 6, 7, 8, 9, and 19.*
 - 5. As proposed and conditioned, the subdivision would make adequate provisions for features necessary at time of subdivision. Fronting 38th Street currently satisfies minimum standard and lacks sidewalks. Schoolchildren at all three grade levels would be bussed. Each lot contains open space in which existing mature vegetation would be retained to the maximum extent possible. A final engineered stormwater plan would be required and reviewed for compliance with BMC Chapter 15.42 through the building permit process. Each lot would be served by public water and sewer from the mains located in 38th Street. *Findings 3, 4, 5, 6, 7, 12, and 19.*
 - 6. As conditioned, the proposed subdivision would serve the public use and interest and would be consistent with the public health, safety, and welfare. Compliance with current zoning and regulations governing the creation of short subdivisions would be ensured through subsequent processes, including critical areas permit and building permit review. The addition of one infill lot on underutilized property consistent with zoning would be in the public interest. *Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 17, 18, and 19.*
- B. Pursuant to BMC 23.48.040.A, Subdivision variance, the hearing examiner may grant a variance from any term of this title, except minimum lot size, if it is shown that the proposal is consistent with the following criteria:
- 1. A regulated erosion hazard area encumbers the northwest portion of the subject property. Improvement of the alley along the parcel's west boundary would necessarily impact this critical area and potentially result in erosion concerns on adjacent properties. Equally if not more significant is the fact that the subject

1 parcel contains the last undeveloped "lot" abutting Adams Avenue and the
2 unimproved alley segment west of the site; all other parcels already have
3 frontage on public streets and abutment to public utilities. Because no other
4 property needs the access or utility extension that would be created if Adams
5 Avenue and the alley were improved to minimum standard, the improvement of
6 these rights-of-way is unnecessary. As heard in public comment, it is also
7 undesired by surrounding property owners, who prefer to retain the mature trees
8 in the alley and Adams Avenue rights-of-way for privacy, greenery, and
9 environmental purposes. Approval of the variance is warranted both because of
10 need to avoid impacts to and unnecessary impervious surface development
11 adjacent to the erosion hazard area and because it would establish a better lot
12 design and a development pattern that would be consistent with existing
13 neighborhood character. *Findings 6, 8, 9, 10, 11, 16, 17, 18, and 19.*

- 14
- 15 2. As proposed and conditioned, approval of the variance would not be detrimental
16 to the public welfare nor injurious to the property or improvements in the
17 vicinity. There is public support from adjacent and most affected neighbors for
18 tree preservation and minimizing privacy impacts that would result from creating
19 an improved alley along rear lots lines. In order to improve the alley, the Adams
20 Avenue right-of-way would also have to be improved. All of the resulting
21 impervious surface would be unnecessary, because all surrounding properties
22 have primary access through driveways from the improved fronting streets.
23 Denial of the variance would result in an unduly detrimental impact on the public
24 welfare and be injurious to the property or improvements in the vicinity.
25 *Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 17, 18, and 19.*

26 DECISIONS

27 Based on the preceding findings and conclusions, the requested short plat and associated
28 subdivision variance from street and alley improvement standards as described herein at
29 580 38th Street, Bellingham for a residential development proposal, as described herein,
30 are **APPROVED** subject to the conditions below.

31 A. General Requirements

- 32 1. The plat shall be developed generally consistent with the lot layout on Exhibit
33 1.A as conditioned.
- 34 2. Modifications to this decision shall be processed in accordance with BMC
35 23.12.080.

- 1 3. Development of the property shall be consistent with the provisions of BMC
2 Title 23, and with the description of the proposal, except as otherwise provided
3 herein.
- 4 4. Impact fees for transportation, schools and parks shall be paid in accordance with
5 applicable BMC requirements.
- 6 5. Preliminary short plat approval shall expire as provided in BMC 23.12.070.
- 7 6. Development on the subject property shall be required to comply with the
8 Critical Areas Ordinance which as proposed requires a critical area permit prior
9 to issuance of a building permit. Note: The Applicant will be required to
10 provide three native replacement trees for the proposed removal of the 30-inch
11 fir tree within the 50-foot geologically hazardous area buffer.

11 **B. For Final Plat Approval**

12 The Applicant shall obtain all necessary permits and/or approvals from the City
13 necessary to satisfy the following conditions prior to final plat approval pursuant to
14 Chapter 23.12 BMC.

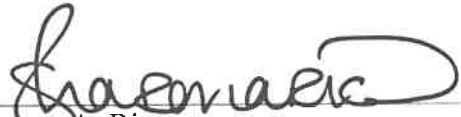
- 15 1. Area 4 of the Samish Neighborhood has a clearing special condition; therefore a
16 clearing plan is required to identify proposed preserved, removed and replaced
17 trees on the subject property associated with the future construction of the single
18 family residences. The Applicant shall be required to provide a clearing plan for
19 development of the subject property at the time of building permit submittal that
20 accommodates reasonable tree preservation and/or replanting.
- 21 2. The following shall be shown on the face of the plat, as applicable:
 - 22 a. All existing, required, and proposed easements.
 - 23 b. A note stating that all lots are subject to those conditions set forth in this
24 Order, and as may be amended in accordance with the municipal code.
 - 25 c. A note referencing any existing private covenants and any covenants specific
26 to the proposed lots.
 - 27 d. The Applicant shall be required to provide a final stormwater report prepared
28 by a qualified professional identifying compliance with BMC 15.42 for
29 Public Works Department review and approval prior to final plat approval.
 - 30 e. The proposal is required to provide street trees for every 50 feet of street

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frontage. Preserved existing trees near the public street can be used to meet the street tree requirement.

DECIDED July 6, 2023.

BELLINGHAM HEARING EXAMINER


Sharon A. Rice