

SUB2023-0012 & VAR2023-0005: List of Attachments

EXHIBIT 1 Planning and Community Development Department Staff Report including the following Attachments:

- Attachment A Short Plat Maps
- Attachment B Vicinity Map
- Attachment C Zoning and Comprehensive Plan Designation Map
- Attachment D Land Use Application materials
 - D1 Land Use Application
 - D2 Response to Variance Criteria, Subdivision Performance & Decision Criteria
- Attachment E Request for Information
- Attachment F Notice of Application/Mailing List
- Attachment G Public Comment
- Attachment H Limited Geotechnical Engineering Report for the proposed development by GeoTest dated 3/1/23
- Attachment I Preliminary Stormwater Report from Cascade Engineering Group dated 3/28/23
- Attachment J Aerial Map

CITY OF BELLINGHAM

PLANNING AND COMMUNITY DEVELOPMENT
STAFF REPORT

HEARING EXAMINER

June 14, 2023

PROJECT NO.: Alteration to Lot 2 of Luna Short Plat & Variance (SUB2023-0012 & VAR2023-0005)

APPLICANT/OWNER: Trent Slusher, 512 40th St., Bellingham WA 98229

I. OVERVIEW

A. PROPOSAL - Attachment A

The Proposal includes a request to subdivide a 30,993 square foot (sf) lot into two lots for future construction of two single family residences (**Attachment A**). There is an existing single family residence located at 530 38th St. which the applicant has proposed to demolish to accommodate future development. Following staff consultation with the Washington State Department of Archaeology & Historic Preservation, State Environmental Policy Act (SEPA) review is not required for the demolition of the existing residence. Both proposed lots will have access provided from 38th St. The applicant is requesting a variance from the requirement to improve Adams Ave. and the alley abutting the subject property. Pursuant to BMC 23.08.070.B, the short subdivision requires all rights-of-way within and abutting a land division to be improved in accordance with BMC 13. BMC 13.08.030.B.2 requires Adams Ave. adjacent to the proposal to be improved to a minimum standard street. Pursuant to BMC 23.08.060.C.2, development of newly created lots abutting an alley shall also provide required parking from the alley and a pedestrian pathway to the fronting street and vehicular access from the street shall be restricted. Under the BMC the applicant is also required to improve the abutting alley to the minimum alley standard or obtain a variance in accordance with BMC 23.48. All of the surrounding properties abutting Adams Ave. and the subject alley are developed with single family residences and there does not appear to be additional development potential benefiting from the extension of Adams Ave. or the abutting alley.

The City has no plans for extending Adams Ave. or the alley in the vicinity of the subject property and following consultation with the Public Works and Fire Departments the development of the abutting rights of way are not needed for transportation circulation purposes.

The future development of the proposed single family residences will be served by existing water, sewer and stormwater utilities located in 38th St.

Stormwater management for the future single family residence will be reviewed for compliance with 15.42 of the BMC prior to final plat approval and at the time of Building Permit.

LOCATION

530 38th St., Bellingham WA 98229. Area 4, Samish Neighborhood, Residential Single Detached zoning with a 12,000 sf density. (**Attachment B**).

Assessor's parcel number: 370306-487445-0000

Land use and comprehensive plan designations: Land use: Residential-Single; Comprehensive plan: Residential Single, Low Density. (**Attachment C**)

II. STAFF RECOMMENDATION

Approve the Alteration to Lot 2 of Luna Short Plat application and associated variance (**Attachment D1 & D2**) with the recommended conditions in Section XI of this report.

III. JURISDICTION

The Hearing Examiner is granted authority to hold hearings and make decisions on variances to the Land Division Ordinance pursuant BMC 23.08.040.

IV. BACKGROUND

A pre-application meeting waiver and neighborhood meeting waiver was approved by staff on 3/9/23.

The subject property is a legal lot of record created by the Luna Short Plat.

3/15/23: A Short Subdivision Application (SUB2020-0001) and Variance (VAR2020-0020) was submitted.

3/21/23: Staff issued a Request for Information (**Attachment E**).

4/6/23: The applicant provided the requested information which was determined adequate by staff.

4/25/23: A Notice of Application and Notice of Public Hearing was issued (**Attachment F**). Four public comments were received regarding the proposal as of the date of writing this staff report 5/18/23) (**Attachment G**). Comments received expressed concerns regarding tree preservation, noise from the freeway, maintaining access to Adams Ave. during construction, stormwater drainage, privacy, support for improvements to Adams Ave. for access to existing properties, hazard tree removal, and installation of sidewalks in front of the subject property.

Staff response: *The proposal includes the removal of one 30" fir tree and retention of the remaining 23 trees. The applicant will be required to provide 3 replacement native trees for the removed tree. Removal of one tree and construction of two residences should not impact noise associated with the freeway. The applicant has not proposed utilization of Adams Ave. or the alley for the project. Construction access will be from 38th St. through the two proposed driveways. The proposed development will require a stormwater management plan prepared by a licensed civil engineer to ensure compliance with BMC 15.42 and ultimately that the proposed*

development will not negatively impact stormwater management beyond pre-existing conditions. The proposed tree preservation plan should ensure adequate privacy between existing residences. The applicant has requested a variance from the requirement to improve Adams Ave. or the abutting alley. The proposal will have driveway access from 38th St. along with all the other surrounding residences which have access from the primary fronting streets. Although some of the properties utilize Adams Ave. for access this appears to be for secondary access and the existing alley is not developed to the City's minimum alley standard nor recognized as a maintained alley by the City of Bellingham. A two lot short plat does not require installation of sidewalks under the BMC and there are no schools within walking distance of the subject property. Furthermore, due to the lack of sidewalks on 38th St. in the vicinity and the lack of additional development potential an island of sidewalk in front of the subject property would provide minimal public benefit.

V. EXISTING SITE CHARACTERISTICS

A. LAND USE AND ZONING DESIGNATION

The property is located in Area 4 of the Samish Neighborhood and zoned Residential-Single with a 12,000 sf density. The land use designation of the subject site is Residential Single, Low Density.

Area 4 of the Samish Neighborhood (BMC 20.00.150) contains special conditions for traffic, view, and clearing. Staff has recommended conditions of approval for the Hearing Examiner's consideration to reflect the special conditions under the Table of Zoning.

B. EXISTING CONDITIONS

The Proposal includes a request to subdivide a 38,984 square foot (sf) lot into two lots for future construction of a single family residence (**Attachment A**).

The property to the north, east, south and west are located in Area 4 of the Samish Neighborhood and zoned residential single with 12,000 sf density.

The closest Whatcom Transit Authority bus service is Samish Way which is not in the immediate vicinity.

Public water and sewer mains are located in 38th St. The subject property does not fully abut a water and sewer main in 38th St. Following review of the existing developed nature of the surrounding properties and the current utility infrastructure in place the Public Works Department has administratively granted last lot served for water and sewer service because the extension of the water and sewer main would not serve a public benefit as the proposed and future residences can be served by existing infrastructure.

VI. CRITICAL AREAS

The site contains slopes which meet the definition of geologically hazardous areas and therefore are regulated under the Critical Areas Ordinance. Development within 50' of a landslide or erosion geologically hazardous area requires a Critical Area Permit. As proposed the development of the future single family residence on Lot A (526 38th St.) will require a Critical Area Permit prior to issuance of a Building Permit.

The applicant submitted a Critical Area Report for a Limited Geotechnical Engineering Report for the proposed development by GeoTest dated 3/1/23 (**Attachment G**). Based on the conclusions and recommendations from the qualified professional the subsurface conditions at the site are suitable for the proposed development provided best management practices are implemented during construction.

VII. APPLICATION

Please refer to **Attachment D** for the submitted land use application.

VIII. SHORT SUBDIVISION – Chapter 23.12 BMC

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.

Pursuant to BMC 23.08, short subdivisions shall be given approval, upon finding by the Hearing Examiner that all of the following have been satisfied:

23.08.030 Performance standards

Staff analysis: Staff concurs with the applicant's analysis and would like to add the following information to the record. The following is staff's code compliance review of Chapter 23.08 BMC.

The proposed design incorporates two new single family residences in a low density zone, which is consistent with the surrounding neighborhood character.

Given the existing pattern of development and low density zoning there would not be a public benefit associated with the construction of Adams Ave. or the abutting alley due to the existing developed nature of the surrounding properties. The alley development would result in privacy impacts on existing residences, additional tree removal and development of impervious surfaces in geologically hazardous areas without a clear benefit for transportation circulation in the vicinity.

23.08.040 Maximum number of lots:

The density for the site allows one unit per 12,000 sf. The proposal includes 2 units on a 30,993 lot which is consistent with underlying density. The proposed future single family residences are an allowed use in this location.

23.08.050 Minimum lot size:

The smallest proposed lot size is 13,306 sf which is above the minimum lot size.

23.08.060 Lot design standards:

(A & B) Logical Boundaries/Reasonable Use. The proposal provides logical boundaries and accommodates reasonable use of the property.

(C) Alley Access. The Proposal abuts Adams Ave. which is a 30' right of way segment and 20' wide platted alley both of which are undeveloped to City standards. Pursuant to BMC 23.08.070.B, the short subdivision requires all rights-of-way within and abutting a land division to be improved in accordance with BMC 13. BMC 13.08.030.B.2 requires Adams Ave. adjacent to the proposal to be improved to a minimum standard street. Pursuant to BMC 23.08.060.C.2, development of newly created lots abutting an alley shall also provide required parking from the alley and a pedestrian pathway to the fronting street and vehicular access from the street shall be restricted. Under the BMC the applicant is also required to improve the abutting alley to the minimum alley standard or obtain a variance in accordance with BMC 23.48.

(D) Building Envelope. All proposed lots meet the minimum building envelopment requirement of 60'x 60'.

(E) Abutment – Public Infrastructure. The Public Works Department has administratively granted last lot served for water and sewer service because the extension of the water and sewer main would not serve a public benefit as the proposed and future residences can be served by existing infrastructure.

23.08.070 Public infrastructure, dedications and improvement requirements:

(A) Dedication. The Proposal is located adjacent to the existing platted right-of-way in 38th St., Adams Ave. and the alley. 38th St. has a right of way width of 60 feet and is developed to the minimum street standard. The City has no plans to improve Adams Ave. which is only 30 feet wide in the vicinity due to the existing pattern of development. All the surrounding properties are developed and the alley is not needed for access or circulation purposes.

(B) Following review of the existing development and platted right of way in the vicinity, staff has determined no additional right-of-way is required to be dedicated associated with this short plat.

(B) Street standards. The proposed residences will be served by 38th St. Both the alley and Adams Ave. abutting the subject property are not improved.

(C) Access. Future development of a single family residence will be reviewed for compliance with Public Works Department access requirements at the time of Building Permit.

(D) Water, Sewer and Stormwater management. Public water, sewer and stormwater mains are located within 38th St. and the Public Works Department has determined utility main extensions are not required to service the proposed two lot short plat. The applicant provided a Preliminary Stormwater Report from Cascade Engineering Group dated 3/28/23 (**Attachment H**) for the proposed development which was reviewed by City staff. The applicant is required to provide a Final Stormwater Report identifying compliance with BMC 15.42 for Public Works review and approval prior to final plat approval.

(G) Parks and Recreation. There is an existing neighborhood park located approximately 900 feet to the south of the property on 38th St. There are no sidewalks on 38th St. abutting the subject property or north to the intersection with Fielding Ave. There are no

proposed public amenities on or adjacent to the subject property in the adopted Bellingham Parks, Recreation and Open Space Plan.

23.08.080 Landscaping and design of infrastructure:

The proposed single family construction does not require landscaping and stormwater associated infrastructure.

23.12.30 Short Plat Decision Criteria

Staff analysis: The following is staff's code compliance review of Chapter 23.12 BMC.

1. The Proposal satisfies the intent of the land use, housing, capital facilities and utilities, environmental and economic development chapters of the comprehensive plan by furthering the following goals and policies:

Land Use

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

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

Housing

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

Capital Facilities and Utilities

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

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

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

2. The proposal is consistent with the applicable provisions of BMC 23.08 as identified above.
3. The division of land provides for coordinated development with adjoining properties or future development of adjoining properties through, where appropriate, the extension of public infrastructure, shared vehicular and pedestrian access, and abutment of utilities.

Applicant's response: **See Attachment D2.**

Staff analysis: Based on staff's review of the existing pattern of development there does not appear to be additional development potential for the adjacent properties that would benefit from additional infrastructure improvements in Adams Ave. or the abutting alley.

4. Each lot in the proposal can reasonably be developed in conformance with applicable provisions of the BMC, including but not limited to critical areas, setbacks, and parking, without requiring a variance that is not processed concurrently with the subdivision application pursuant to Chapter 23.48 BMC.

Applicant's response: **See Attachment D2.**

Staff analysis: The application materials provide sufficient information to conclude this provision is met and development of the proposed lots will not require approval of future variances not included in the subject application.

5. There are adequate provisions for open spaces, drainage ways, rights-of-way, sidewalks, and other planning features that assure safe walking conditions for pedestrians, including students who walk to and from school, easements, water supplies, sanitary waste, fire protection, power service, parks, playgrounds, and schools; and

Applicant's response: **See Attachment D2.**

Staff analysis: The proposal is located adjacent to a minimum standard street and the Public Works Department has granted last lot served for water and sewer services.

There are no schools within close proximity to the subject property. The proposal is within the School District boundary for Happy Valley Elementary which is located on the other side of I-5. The proposal is a two lot short plat which does not require installation of sidewalks.

6. It will serve the public use and interest and is consistent with the public health, safety, and welfare. The director shall be guided by the policy and standards and may exercise the powers and authority set forth in Chapter 58.17 RCW, as amended.

Applicant's response: **See Attachment D2.**

Staff analysis: Compliance with the current zoning and the City's subdivision regulations for short plats ensures that appropriate provisions are made for open spaces, drainage ways, streets and alleys, potable water supplies, and sanitary wastes.

Staff finds that the provisions of RCW 58.17 are met and the public's use and interest will be served by the proposal with the recommended conditions through the addition one infill housing unit.

IX. VARIANCE EVALUATION

23.48.040 Subdivision Variance

A. 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. Because of unusual shape, the location of preexisting improvements, other extraordinary situation or condition, or physical limitation including, but not limited to, exceptional topographic conditions, geological problems, or environmental constraints, in connection with a specific piece of property, the literal enforcement of this title would involve difficulties, result in an undesirable land division or preclude a proposal from achieving zoned density; **or**
- 1.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

Applicant's response: **See Attachment D2.**

Staff analysis: Staff agrees with the applicant's response. Construction of the abutting alley to provide access to the subject property would result in significant construction activity in the geologically hazardous area including retaining walls and associated stormwater infrastructure. Additionally, given the existing pattern of development requiring alley construction would serve little to no public benefit and impact privacy of the abutting properties. Alley construction including Adams Ave. would result in additional tree removal in an area which has a clearing special condition. The subject and abutting properties are adequately served by existing infrastructure and there appear to be greater negative impacts than positive community benefits associated with the alley improvements. Finally, all the existing surrounding residences have primary driveway access from the abutting street and the variance allowing driveways from 38th St. will be consistent with existing neighborhood design and character (**Attachment J**).

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

Applicant's response: **See Attachment D3.**

Staff analysis: Staff agrees with the applicant's response. Based on the public comment received there appears to be support for tree preservation, minimizing privacy impacts and alternatively for improvements to Adams Ave. to benefit the surrounding properties. All the surrounding properties have primary access through driveways from the fronting developed streets. The applicant is proposing access driveways from the fronting streets which is consistent with the existing development pattern and neighborhood character. The existing residence appears to have three informal driveways from 38th St. while the proposed redevelopment of the property will result in only two driveways from 38th St. There does not appear to be significant additional development potential in the vicinity that would benefit from the alley construction under the current regulations. Requiring alley construction could negatively impact the existing

pattern of development, privacy, trees, and increase impervious surfaces in a regulated geologically hazardous area.

Preserving the open space, trees and privacy between neighbors is in the best interests of the public welfare based on the applicable goals and policies and public comment received. Requiring construction of Adams Ave. and the abutting alley would result in an unduly detrimental impact on the public welfare and be injurious to the property or improvements in the vicinity and subarea in which the property is located.

X. CONCLUSION

Based upon staff's analysis of the short subdivision and associated variance application and all supporting materials referenced in this staff report, staff finds the short plat application and variance compliant with the municipal code if properly conditioned and recommends the Hearing Examiner issue an approval, with conditions.

The Proposal furthers the goals and policies of the Comprehensive Plan by providing an infill development opportunity in an area where existing infrastructure and services can be adequately provided to service the proposal. The Proposal is consistent with the current zoning and associated special regulations. An approval would not excuse the applicant from complying with any other federal, state or local statutes, ordinances or regulations that may be applicable to this project.

XI. CONDITIONS

Based upon staff's analysis above, staff recommends the Hearing Examiner approve the short plat and associated variance for the Proposal as described herein and as provided in **Attachments A through D**, subject to the following conditions:

A. GENERAL REQUIREMENTS

1. The plat shall be developed generally consistent with the lot layout on **Attachment A** as conditioned.
2. Modifications to this decision shall be processed in accordance with BMC 23.12.080.
3. Development of the property shall be consistent with the provisions of BMC Title 23, and with the description of the Proposal, except as otherwise provided herein.
4. Impact fees for transportation, schools and parks shall be paid in accordance with applicable BMC requirements.
5. Preliminary short plat approval shall expire as provided in BMC 23.12.070.
6. Development on the subject property shall be required to comply with the Critical Areas Ordinance which as proposed requires a Critical Area Permit prior to issuance of a Building Permit. Note: The applicant will be required to provide three native replacement trees for the proposed removal of the 30" fir tree within the 50' geologically hazardous area buffer.

B. CONDITIONS FOR FINAL PLAT APPROVAL

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

1. Area 4 of the Samish Neighborhood has a clearing special condition, therefore a clearing plan is required to identify proposed preserved, removed and replaced trees on the subject property associated with the future construction of the single family residences. The applicant shall be required to provide a clearing plan for development of the subject

property at the time of Building Permit submittal that accommodates reasonable tree preservation and/or replanting.

2. The following shall be shown on the face of the plat, as applicable:
 - a. All existing, required, and proposed easements.
 - b. A note stating that all lots are subject to those conditions set forth in this Order, and as may be amended in accordance with the municipal code.
 - c. A note referencing any existing private covenants and any covenants specific to the proposed lots.
 - d. The applicant shall be required to provide a final stormwater report prepared by a qualified professional identifying compliance with BMC 15.42 for Public Works Department review and approval prior to final plat approval.
 - e. The proposal is required to provide street trees for every 50' of street frontage. Preserved existing trees near the public street can be used to meet the street tree requirement.

Prepared By:



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