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

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| <b>IN RE:</b><br><br><b>JANE DIEVENEY-HINKLE, Applicant</b><br><br><b>4205 Padden Hills Court</b><br><br><b>VAR2023-0009 / Variance from Front Yard Setback</b> | <b>HE-23-PL-011</b><br><br><b>FINDINGS, CONCLUSIONS, AND DECISION</b><br><br><b>SHARON A. RICE</b><br><b>HEARING EXAMINER</b> |
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**SUMMARY OF DECISION**

The request for a front yard setback variance to authorize construction of a three-story single-family residence at 4205 Padden Hills Court in Bellingham, Washington is **APPROVED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Jane Dieveney-Hinkle (Applicant/Owner) requested approval of a variance from the required front yard setback to allow construction of a three-story single-family residence at 4205 Padden Hills Court in Bellingham, Washington. The proposal would reduce the 20-foot front yard setback to 10 feet in order to preserve building area while minimizing wetland buffer impacts associated with construction of the new home.

**Hearing Date:**

The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request on August 23, 2023. The record was held open two business days to allow for public comment, with additional time for responses by the parties. No post-hearing comment was submitted, and the record closed on August 25, 2023.

1 **Testimony:**

2 At the hearing the following individuals presented testimony under oath:<sup>1</sup>

3 Jim Bishop, Applicant Agent

4 Jane Dieveney-Hinkle, Applicant/Property Owner

5 Ryan Nelson, Planner II, City of Bellingham

6 Richard Grube

7 Valerie Grube

8 **Exhibits:**

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

10 Exhibit 1 Staff Report to the Examiner, dated August 23, 2023, with the following  
11 attachments:

12 A. Site, Floor, and Elevation Plans

13 B. Vicinity map

14 C. Zoning and Comprehensive Plan Designation Map

15 D. Land use application materials

16 1. Land Use Variance Application

17 2. Response to Variance Criteria

18 E. Notice of Application mailing list and Notice of Public Hearing

19 F. Aerial map

20 G. Public comments:

21 1. David Wilson email, dated August 13, 2023

22 2. Alice and Charles Gustafson letter, dated July 18, 2023

23 3. Richard and Valerie Grube email, dated July 17, 2023

24 4. John and Terry Maxwell letter, dated July 18, 2023

25 5. Elizabeth Gossett email, dated July 18, 2023

26 6. Jeff Thayer email, dated July 18, 2023

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29 <sup>1</sup> Three additional members of the public attended the hearing but declined the opportunity to testify.

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H. Critical Areas Permit (CAP2023-0021), dated August 15, 2023, with the following exhibits:

- a. Critical Areas Assessment prepared by Northwest Ecological Services, dated December 2022
- b. Impact Assessment and Mitigation Plan prepared by Northwest Ecological Services, dated April 2023
- c. Native Growth Protection Area Sign

Exhibit 2 Hydrology Analysis performed by Brian Liming, dated August 20, 2023

Exhibit 3 Draft Stormwater Evaluation by Sound Geology, dated December 15, 2022

Exhibit 4 Updated Hydrology Analysis by Brian Liming, dated August 22, 2023

Exhibit 5 Padden Lake Hills Home Showcase (two-page brochure) developed by Muljat Group Realtors, and two photographs of the streetscape submitted by Valerie Grube

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

**FINDINGS**

1. Jane Dieveney-Hinkle (Applicant/Owner) requested approval of a zoning variance from the required 20-foot front yard setback to allow construction of a three-story single-family residence at 4205 Padden Hills Court in Bellingham, Washington to be 10 feet from the front property line.<sup>2</sup> *Exhibits 1 and 1.D.*
2. The subject property is located in the Samish Neighborhood Area 5 and has a Residential-Single, Detached, Cluster zoning designation, requiring 20,000 square foot minimum detached lot size overall density. The Comprehensive Plan land use designation of the subject site is Residential Single, Low Density. *Exhibit 1; Bellingham Municipal Code (BMC) 20.00.150.* The Residential Single zone requires a front yard setback of 20 feet. *BMC 20.30.040.*
3. The application was submitted May 25, 2023 and deemed complete June 2, 2023. *Exhibits 1 and 1.D.*

<sup>2</sup> The legal description of the property is: Padden Lake Hills Lot 15; also known as Assessor's parcel number: 370308-082362-0000. *Exhibit 1.*

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4. The approximately 9,147 square foot subject property is a legal lot of record (Lot 15) created by the Padden Lake Hills Plat. It is irregularly shaped because it fronts on the cul-de-sac at the east end of Padden Hills Court. Currently undeveloped and occupied by lawn, shrubs, and trees along its west, south, and north lot lines, the subject parcel is in common ownership with the adjacent parcel to the north, the residents of which have used the subject property as extended yard area for decades. Topographically, the site slopes down from east to west with approximately 20 feet elevation difference over its width. *Exhibits 1, 1.A (site plan), and 1.F; Google Maps site view; Jane Dieveney-Hinkle Testimony.*
5. Surrounding parcels to the west, south, and east are also within the plat, share the same zoning, and are developed with single-family residential uses. There is a vacant, heavily forested parcel at the tip of the cul-de-sac. Adjacent to the north of the subject property are two densely forested City open space parcels. Parkhurst Creek flows north/south through residential yards approximately 400 feet to the west. Lake Padden is less than half of one mile to the south. *Exhibits 1, 1.A, and 1.H (see Attachment D); Google Maps site view.*
6. The Applicant commissioned a critical areas study of the subject property by a qualified professional which revealed that there is a category IV wetland on the parcel to the north that extends into the center of the northern lot line of the subject property. This wetland has a moderate water quality function, a low hydrologic function potential, and a low potential to provide habitat functions. Pursuant to the Bellingham critical areas ordinance, this wetland requires a 50-foot no disturb buffer. *BMC Table 16.55.340(A)*. The on-site portion of the wetland and its 50-foot buffer occupy more than half of the subject parcel. No other wetlands were identified within 150 feet of the subject parcel's boundaries. *Exhibit 1.H; see Exhibit 1.H, Exhibit B, Figure 3, .pdf page 91.*
7. Pursuant to BMC 16.55.340.C.2, wetland buffers can be reduced by 50% or 25 feet (whichever is greater) if specific criteria are satisfied. Pursuant to BMC 16.55.340.G, the required building setback of 15 feet can be reduced to five feet because no trees have critical root zones within the reduced building setback that need to be protected. The Applicant applied for a critical area permit (CAP2023-0021) to reduce the wetland buffer to 25 feet with a five-foot building setback from the reduced buffer edge. The proposal included 1:1 mitigation for the resulting 1,720 square feet of impacted buffer, and Staff determined that the mitigation plan satisfies the criteria for administrative

1 reduction of the buffer. City Planning Staff administratively reviewed and  
2 approved the critical area permit subject to conditions. The conditions of CAP  
3 approval require the Applicant to seek and obtain approval of a front setback  
4 variance, or to amend the proposal and obtain approval of an amended CAP.  
5 The conditions also require the Applicant to record a conservation easement  
6 over the enhanced reduced buffer and the installation of fencing and signage at  
7 the buffer boundary that would ensure its permanent protection from further  
8 development. Other conditions require the following: posting a bond for the  
9 cost of proposed mitigation; that clearing limits be marked in the field prior to  
10 earthwork; no disturbance of the reduced buffer area after enhancement is  
11 completed; compliance with the approved mitigation plan; annual monitoring  
12 reports for five years documenting enhancement success; and maintenance of  
13 the enhancement plantings, among other items. *Exhibits 1 and 1.H.*

11 8. Even with the approval of the reduced wetland buffer and building setback, the  
12 Residential Single zone's 20-foot front setback, required pursuant to BMC  
13 20.30.040, results in a building envelope that is shallow. The entire portion of  
14 the property that would be rear yard is occupied by the reduced wetland buffer /  
15 on-site wetland and cannot be used as yard. Therefore, the Applicant has  
16 requested a variance that would reduce the front setback from 20 to 10 feet. The  
17 proposal contemplates a new three-story single-family residence with an  
18 approximately 1,522 square foot building footprint, a 390 square foot patio on  
19 the east end of the residence, and a 524 square foot driveway accessing Padden  
20 Hills Court. The proposed configuration would allow for side yards of useable  
21 width to the east and west of the house. Improvements also include a 39-foot  
22 retaining wall (oriented north/south) along the east edge of the proposed patio  
23 due to topography. *Exhibits 1, 1.A (site plan), and 1.D; Jane Dieveney-Hinkle  
24 Testimony.*

22 9. In support of the zoning variance request, the Applicant asserted that the  
23 presence of the wetland and its buffer force the building envelope towards the  
24 front lot line. Planning Staff agreed, noting that the presence of the wetland and  
25 its regulatory buffer are circumstances that are not the result of the Applicant's  
26 actions and that deprive the Applicant of the right of placing a residence  
27 centrally in the lot, as neighbors who developed in the 1990s have done. Staff  
28 noted that the residences built at 4201 and 4111 Padden Hills Court would not  
29 be approved in their current locations without variances due to the wetland  
30 buffers currently in effect. *Exhibits 1 and 1.D; Google Maps site view.* Also of  
note, the residence at 4201 Padden Hills Court appears to be located mere feet

1 from the wetland itself, and the 50-foot buffer covers more than half of that  
2 residence, as shown in the wetland delineation map in the record. *Exhibit 1.H,*  
3 *Figure 3, .pdf page 91.*

- 4 10. In addition to the wetland, another feature inherent in the land that reduces the  
5 depth of the buildable area resulting from application of the front setback is the  
6 fact that the lot is on the cul-de-sac bulb, such that the front lot line curves in  
7 significantly rather than being a straight line parallel to the street. This  
8 curvature pushes the front setback line farther into the parcel than the setback at  
9 4201 Padden Hills Court. *Exhibit 1.F.* Planning Staff submitted that the  
10 purpose of setbacks is to ensure appropriate distance between structures, to  
11 ensure adequate separation between a travel lane and a structure, and to allow  
12 areas for possibly needed future roadway expansion. Staff noted that Padden  
13 Hills Court is a dead-end road serving 20 residences and that there is no  
14 foreseeable need for future road expansion. *Exhibit 1; Ryan Nelson Testimony.*
- 15 11. In her testimony, the Applicant explained that she plans to move into this  
16 residence and to age in place there, and she had originally designed a one-story  
17 home. In order to provide greater setbacks, the footprint of the residence was  
18 reduced across multiple iterations to the presently proposed three-story design,  
19 which includes an elevator to allow ease of access in the event that she (or any  
20 other future resident) becomes mobility limited. *Exhibits 1 and 1.D; Jane*  
21 *Dieveney-Hinkle Testimony.* Planning Staff submitted that the proposed  
22 footprint is modest and reasonable in light of the development on comparable  
23 parcels in the area. *Exhibit 1; Ryan Nelson Testimony.*
- 24 12. The Applicant submitted, and Planning Staff agreed, that due to its location at  
25 the end of the street with no residences beyond it, due to topography that slopes  
26 down to the west, and because views in the neighborhood are towards the west  
27 or south, the proposed front setback reduction would not impact the views  
28 enjoyed by the existing residences in the neighborhood. In terms of the view up  
29 the street to the east, the proposed 10-foot front setback would place the front  
30 wall of the residence generally in line with that of the residence at 4201 Padden  
Hills Court. Additionally, the residence directly across the street from the  
subject property has its front wall placed approximately 10 feet back from the  
front lot line. Thus, Staff submitted that the reduced setback would not be  
inconsistent with the appearance of the existing block face, nor would it be  
inconsistent with single-family detached structures on cul-de-sacs, noting that  
BMC 20.30.040.F(1) establishes 10-foot side yards for lots on a flanking street

1 abutting a cul-de-sac. While this provision applies to corner lots, Staff  
2 submitted that it shows a 10-foot setback from a cul-de-sac is allowed in some  
3 circumstances. *Exhibits 1, 1.A, and 1.F; Testimony of Jane Dieveney-Hinkle  
and Ryan Nelson.*

4 13. The proposal for construction of a single-family residence is exempt from State  
5 Environmental Policy Act (SEPA) review, pursuant to City code and state law.  
6 *Exhibit 1; BMC 16.20.090.A; Washington Administrative Code (WAC) 197-11-  
7 800(1).*

8 14. Planning Staff submitted that the requested variance would be consistent with the  
9 following applicable policies of the Bellingham Comprehensive Plan:

10 Policy CD-7 Ensure that new development is of a type, scale,  
11 orientation, and design that maintains or improves the  
12 character, aesthetics, and livability of neighborhoods.  
13 While compatibility is more of an issue in established  
14 neighborhoods, new development needs to take into  
account the context of the area and should result in an  
improvement to the surrounding neighborhood.

15 Policy CD-35 Allow flexible setback, parking and lot coverage  
16 requirements in older neighborhoods with established lots,  
17 so that infill housing can conform to the existing  
18 neighborhood structures. In established neighborhoods, for  
example, new buildings should be the same distance from  
the street as neighboring buildings.

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

21 Policy H-24 Continue streamlining the regulatory review and building  
22 permit process and reviewing the cost of infrastructure  
23 improvements and their impact on housing costs.

24 Staff submitted that approval of the variance would further the goals and policies  
25 of the Comprehensive Plan by promoting an infill development opportunity where  
26 existing infrastructure and services are already provided to the parcel.  
*Exhibit 1.*

27 15. Notice of application and public hearing was issued by mail to owners of  
28 surrounding properties, parties of record, The Bellingham Herald, and three  
29 representatives of the Mayor's Neighborhood Advisory Commission (Samish) on

1 July 11, 2023. Notice of the hybrid hearing and participation/registration  
2 information was issued to the same parties on August 9, 2023. *Exhibit 1.E.*

3 16. Six public comments were received from neighboring property owners  
4 expressing their concerns about the following: impacts to the wetland and to  
5 wildlife; impacts to neighborhood character from having the house 10 feet closer  
6 to the street; concern about decreased property values; concern about whether the  
7 proposal can comply with the Plat of Padden Hills covenants, conditions, and  
8 restrictions (CC&Rs); and impacts related to stormwater management, height of  
9 the proposed residence, and tree removal. One commenter asserted that there are  
10 other options for development within the footprint allowed by the standard  
11 setbacks that would not necessitate a variance. *Exhibit 1.G.1 through 1.G.6.* At  
12 hearing, two members of the public submitted concerns including the assertion  
13 that the fact that regulations do not require stormwater study if impervious  
14 surface area is under 5,000 square feet does not prevent neighboring property  
15 owners from having problems with runoff resulting from the proposal. One  
16 commenter felt that the Applicant had known of the setbacks and that it was an  
17 odd shaped lot when she purchased the property and should be held accountable  
18 for compliance with regulations because she had a duty to know her building  
19 envelope would be limited by these factors. He submitted that any number of  
20 other building configurations would be able to be placed within applicable  
21 setbacks without resorting to a variance. Another member of the public  
22 commented that the reduced front setback would be inconsistent with the existing  
23 streetscape and would stand out jarringly when looking down the street as  
24 compared to other residences. This commenter offered in evidence a brochure  
25 from the original developer of the subdivision, asserting that the intended “street  
26 of dreams” effect would be harmed by reducing the front setback on the subject  
27 property, which would disappoint those who purchased homes here due to the  
28 orderly, consistent appearance of the neighborhood. *Testimony of Richard*  
29 *Grube and Valerie Grube; Exhibit 5.*

30 17. In response to public comment, Planning Staff submitted the following. With  
approval of the critical area permit, the proposal complies with all applicable  
environmental protection regulations. In permanently protecting the reduced  
wetland buffer contiguous to the adjacent City-owned open space and complying  
with the other 11 conditions of CAP approval, the project would not adversely  
impact the wetland and associated functions. The proposed reduced front  
setback would place the front of the proposed residence in line with the  
placement of two existing residences in the immediate vicinity, including the  
structure adjacent to the west (4201, same side of the street) and the structure  
directly across the street (4206), which parcel is also on the cul-de-sac bulb.



1 These similarities cause Staff to find the proposed setback consistent with  
2 immediately surrounding development. The residence at 4210 Padden Hills  
3 Court (also on the cul-de-sac bulb) appears to be three stories similar to the  
4 proposal, meaning the proposed apparent height would not be out of character.  
5 During the building permit process, the Applicant would be required to  
6 demonstrate compliance with maximum height limitations of the zone. While  
7 the City has no jurisdiction over the subdivision's private covenants, conditions,  
8 and restrictions, and as a policy doesn't review projects for compliance with such  
9 private regulations, Staff noted that the project would be reviewed by the plat's  
10 homeowners association architectural review committee for consistency with the  
11 intended appearance of the plat. City Code does not require a project proponent  
12 to obtain approval from an HOA as to compliance with CC&Rs prior to City  
13 land use approval issuance. City Public Works staff determined that there is an  
14 existing stormwater utility connection for the subject property that was installed  
15 at time of subdivision. The proposed impervious surface does not exceed the  
16 threshold established in City regulations for requiring a stormwater plan  
17 developed by a licensed civil engineer. During the building permit review, all  
18 earthwork and construction would be reviewed for compliance with the  
19 applicable stormwater management requirements in BMC 15.42. It is likely the  
20 project would tightline the roof downspouts and driveway drainage to the  
21 existing stormwater main located in the street. It may be possible to design a  
22 residence without a variance to the front yard setback; however, in Staff's  
23 opinion, approval of the variance would result in a development footprint that  
24 would be more consistent with the established character of the neighborhood and  
25 would afford the future residents the use of side yards, which are of heightened  
26 importance because the back yard would be occupied by a permanent  
27 conservation easement. Impacts to property values are not reviewed under the  
28 City's variance criteria; however, Staff submitted the position that the proposal  
29 would not significantly negatively impact property values in the vicinity, because  
30 the resulting residence appears to be similar in design and scale to surrounding  
development; however, neighbors may contact the Whatcom County Assessor if  
they believe their property values have been negatively impacted by the  
proposal. *Exhibit 1; Ryan Nelson Testimony.*

18. In response to public comment, the Applicant agreed with Staff's comments and submitted that the proposed scale and style of the residence would not be unreasonable and would be consistent with existing homes on the street. The Applicant is aware that, if the variance is approved, she would have to work with the homeowners association and obtain its approval. Addressing the comments that suggested a residence could be built without a front setback variance, the Applicant's consultant submitted that the building envelope would be limited to a

1 long rectangle and make the residence look more like a mobile home, as well as  
2 making it necessary to go through one room to get to another, and it would likely  
3 reduce her ability to have a view out of kitchen and living room windows.  
4 Useable yard is a consideration, as the Applicant has grandchildren. In response  
5 to neighbor comments early in the process, the proposal was redesigned to move  
6 the house further from the neighbor who expressed drainage concerns. As now  
7 proposed, the new house would be 20 feet from that neighbor's retaining wall  
8 rather than the eight feet originally proposed. The Applicant currently lives in  
9 the multi-story residence to the east (4209 Padden Hills Court), which is the only  
10 residence whose "view" the proposal would affect, because views in the  
11 neighborhood are to the west. *Testimony of Jim Bishop and Jane Dieveney-  
12 Hinkle.*

- 13 19. Planning Staff submitted that aside from the front setback variance request, the  
14 Proposal is consistent with current zoning regulations and noted that approval  
15 would not excuse the Applicant from complying with all applicable federal, state,  
16 and local regulations. Having heard all testimony and considered all written  
17 materials related to the instant proposal, Staff maintained their recommendation  
18 for approval subject to conditions. *Exhibit 1; Ryan Nelson Testimony.* The  
19 Applicant waived objection to the recommended conditions. *Testimony of Jim  
20 Bishop and Jane Dieveney-Hinkle.*

## 21 CONCLUSIONS

### 22 Jurisdiction:

23 The Hearing Examiner is granted authority to hold hearings and make decisions on  
24 variance permit applications, pursuant to BMC 20.18.020.A and BMC 16.55.120.A.

### 25 Criteria for Review:

26 Pursuant to Bellingham Municipal Code 20.18.020, a variance can be granted by the  
27 Hearing Examiner if the applicant proves to the Hearing Examiner that the following  
28 criteria are satisfied:

- 29 A. Because of special circumstances, not the result of the owner's action, applicable  
30 to the subject property (including size, shape, topography, location, or  
surroundings), the strict application of the provisions of this title is found to  
deprive the property of rights and privileges enjoyed by other property in the  
area and under the identical land use classification; and
- B. The granting of the 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.

1 C. The subject property cannot be reasonably used under the regulations as written.

2 **Conclusions Based on Findings:**

- 3 1. Due to the encumbrance of the rear of the site by wetland and buffer and to the  
4 irregular shape of the front lot line resulting from the cul-de-sac bulb, the  
5 building envelope available on the subject parcel is constrained to a shallow  
6 depth. The shape of the parcel, adjacent wetland, and encumbrance by wetland  
7 buffer are not the result of the Applicant's actions. Requiring construction  
8 within the resulting shallow space would result in a rectangular house with a  
9 difficult internal room layout and limited yards. The two lots adjacent to the  
10 west were built before current critical area regulations were in place and enjoy  
11 both structures and yards within what is now critical area buffer. To restrict the  
12 Applicant to a shallow rectangle-shaped home with no yards would be  
13 inconsistent with the rights and privileges afforded generally to lots in the  
14 Residential Single zone and to lots on the same street. *Findings 2, 4, 5, 6, 7, 8, 9,*  
15 *10, 12, 1, 17, 18, and 19.*
- 16 2. The placement of the proposed front wall of the residence would be essentially in  
17 line with the placement of the residence next door, and not substantially closer to  
18 the cul-de-sac bulb than the residence directly across the street. Topography  
19 places the proposed residence higher than most or all homes on the street except  
20 for the adjacent residence at 4209 Padden Hills Court, which the Applicant also  
21 owns; that property would be the only one with its view (views are to the west)  
22 impacted by the proposal, but because the front wall of the proposed residence  
23 would be in line with the front wall of the structure at 4201, it would not be a  
24 significant impact. The Applicant would be required to obtain approval of the  
25 design for compliance with applicable CC&Rs from the homeowners  
26 association. Considering all evidence of impacts to neighborhood character in  
27 the record, the undersigned is not persuaded that the requested reduction in  
28 setback would result in detriment to any surrounding property, particularly not  
29 the properties towards the west end of Padden Hills Court. *Findings 9, 10, 12,*  
30 *16, 17, 18, and 19.*
3. With no back yard available, to require the Applicant to design a wide, shallow  
rectangular structure that would reduce the useability of side yards would be  
unreasonable, especially in light of the placements of at least two nearby  
residences in approximately the same line/distance from street. *Findings 7, 8, 9,*  
*10, 11, 12, 16, 17, 18, and 19.*

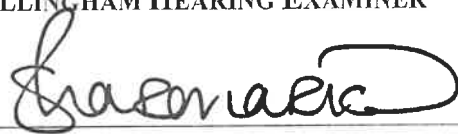
**DECISION**

1 Based on the preceding findings and conclusions, the requested front yard setback  
2 variance from 20 feet to 10 feet for construction of a three-story single-family residence  
3 at 4205 Padden Hills Court is **APPROVED** subject to the following conditions:

- 4 1. New construction shall comply with all other applicable code requirements and  
5 shall substantially conform to the plans, specifications, drawings, and  
6 representations submitted in support of the proposal unless otherwise specified  
7 for compliance with building and fire code requirements.

8 DECIDED this 11<sup>th</sup> day of September 2023.  
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10 **BELLINGHAM HEARING EXAMINER**

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