

VAR2023-0009: List of Attachments

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

- Attachment A Site, Floor and Elevation Plans
- Attachment B Vicinity Map
- Attachment C Zoning and Comprehensive Plan Designation Map
- Attachment D Land Use Application materials
 - D1 Land Use Variance Application
 - D2 Response to Variance Criteria
- Attachment E Notice of Application/Mailing List
- Attachment F Aerial Map
- Attachment G Public Comment
- Attachment H Critical Area Permit and Exhibits

CITY OF BELLINGHAM

CITY OF BELLINGHAM PLANNING AND COMMUNITY DEVELOPMENT
STAFF REPORT

HEARING EXAMINER

August 23, 2023

PROJECT NO.: 4205 Padden Hills Ct. Land Use Variance (VAR2023-0009)
APPLICANT/OWNER: Jane Dieveney-Hinkle, 4209 Padden Hills Ct., Bellingham, WA
98229 jdievhink@msn.com

I. OVERVIEW

A. PROPOSAL - Attachment A

The Proposal includes a request for a land use variance reducing the required 20' front yard setback to 10' in order to minimize wetland buffer impacts associated with construction of a future three-story, single-family residence (**Attachment A**).

The subject property is located in a residential single zone and therefore required to comply with the setbacks under Bellingham Municipal Code (BMC) 20.30.040 including a 20' from property line front yard setback for abutting a cul-de-sac.

LOCATION

4205 Padden Hills Ct., Bellingham WA 98229; Samish Neighborhood, Area 5, Residential-Single, 20,000 square-foot minimum detached lot size (**Attachment B**).

Assessor's parcel number: 370308-082362-0000

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

II. STAFF RECOMMENDATION

Approve the Variance application to the required front yard setback (**Attachment D1**) 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 Use Ordinance pursuant BMC 20.18.010.

IV. BACKGROUND

A. Application and Notice Chronology

A pre-application meeting and neighborhood meeting are not required for a land use variance pursuant to BMC 21.10.090.

The subject property is a legal lot of record created by the Padden Lake Hills Plat.

5/25/23: A Variance application (VAR2023-0009) was submitted.

6/2/23: Staff determined the application was complete.

7/11/23: A Notice of Application and Notice of Public Hearing was issued (**Attachment E**). Six public comments were received regarding the proposal as of the date of writing this staff report on 8/15/23 (**Attachment G**).

B. Public Comment

Comments received expressed concerns regarding impacts to the wetland and buffers including wildlife, preservation of the character of the neighborhood, stormwater management, reasonable footprint for development without a variance, compliance with the Padden Hills HOA Board (AF# 941019025), height of the 3-story residence, tree removal and decreased property values.

*Staff response: Following review of a Critical Area Report and Mitigation Plan provided by a qualified professional, staff has determined the proposed development complies with the applicable requirements under BMC 16.55 and approved a Critical Area Permit (**Attachment H**). The Critical Areas Ordinance (BMC 16.55) contains specific regulations which allows for wetland buffer reductions provided compliance with the performance standards can be achieved. The subject property is owned by the adjacent property owner located at 4209 Padden Hills Ct. and utilized as a landscaped and maintained yard/lawn. The property north of the subject site is fully treed and contains a conservation easement and habitat for wildlife in addition to the wetland and buffer on the subject property. Staff does not believe development of the subject property will unreasonably negatively impact wildlife in the vicinity given the established development, conditions in the approved critical area permit and open space tracts abutting the subject property.*

Following review of City IQ and Google Earth street view, the existing residence located at 4206 Padden Hills Ct. appears to be setback approximately 13' from the Padden Hills Ct. cul-de-sac. Additionally, the proposed residence will be in general alignment with the existing residence located at 4201 Padden Hills Ct. not accounting for the additional right of way in the cul-de-sac. The residence located at 4210 Padden Hills Ct. appears to be 3-stories similar to the proposal on the subject property likely to take advantage of views of Bellingham Bay in the vicinity. The subject property appears to be regulated by private covenants, conditions and restrictions that require architectural review and a determination of appearance would be completed by a private entity as the city does not regulate single family design in non-historic areas.

Following review of the proposal with Public Works staff it was determined that there is an existing stormwater utility connection for the subject lot which was installed during the development of the subdivision. The proposed impervious surface on the subject site does not trigger the BMC requirement for a stormwater plan developed by a licensed civil engineer.

During the Building Permit review staff will require the project meet the applicable requirements under BMC 15.42 which will likely consist of tightlining the roof downspouts and drainage from the driveway to the existing stormwater infrastructure main located in Padden Hills Ct.

Although a residence could be built without a variance to the front yard setback, the allowance of a variance would result in a development footprint more consistent with the established character of development and not deprive the owner of use of the side yards since the back yard will be in a permanent conservation easement.

The City is not responsible for reviewing projects for compliance with private covenants conditions and restrictions. Staff recommends the applicant design the proposed development to comply with applicable private covenants, conditions and restrictions of the plat. City regulations do not require an applicant to obtain approval from an HOA for compliance with private covenants, conditions or restrictions prior to city land use approval for a Critical Area Permit or Variance.

The maximum building height allowed under BMC 20.30.040.E is 35-feet under height definition #1 or 20-feet under height definition #2. During the building permit review the applicant will be required to identify compliance with the building height definition. Following a review of the proposed development there only appear to be potential view impacts to 4205 Padden Hills Ct. which also owns the subject property. Additionally, there appears to be a 3-story building located at 4210 Padden Hills Ct.

The proposed development does not include significant tree removal. Existing significant trees on site will be preserved within a permanent conservation easement as required under the Critical Area Permit.

Staff does not believe the proposed development will significantly negatively impact property values in the vicinity as the proposal appears to be relatively similar in design and scale to surrounding residences, but neighbors may contact the Whatcom County Assessor if they believe their property values have been negatively impacted by the proposal.

V. EXISTING SITE CHARACTERISTICS

A. LAND USE AND ZONING DESIGNATION

The property is located in Area 5 of the Samish Neighborhood and zoned Residential-Single with a 20,000 sf density. The land use designation of the subject site is Residential Single, Low Density.

Area 5 of the Samish Neighborhood (BMC 20.00.150) contains special conditions for clearing, view, minimized impervious surfaces, and traffic.

B. EXISTING CONDITIONS

The Proposal includes construction of a new three-story, single family-residence with an approximately 1,522 square foot (sf) building footprint. The proposal includes a 390 sf patio and 524 sf driveway with access from Padden Hills Ct. Pursuant to BMC 20.30.040, front yard setbacks are 20' from the property line abutting a cul-de-sac. The subject property abuts Padden Hills Ct. which is a cul-de-sac.

The property to the north, south, east and west are all located in Area 5 of the Samish Neighborhood and zoned residential single with 20,000 sf density. Surrounding properties are developed with single-family residences except to the north, which is a dedicated city open space tract including the majority of the wetland.

Whatcom Transit Authority provides bus service in Samish Way approximately 940-feet from the subject property.

VI. CRITICAL AREAS

Based on the information provided by a qualified professional, there is one category IV wetland with a 50' buffer on the subject property. The applicant has applied for a Critical Area Permit (CAP2023-0021) to reduce the buffer to 25' with a 5' building setback from the buffer. Staff has administratively reviewed CAP2023-0021 and determined the proposal complies with the applicable requirements under BMC 16.55 and granted conditional approval of the Critical Area Permit (**Exhibit H**).

VII. APPLICATION

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

APPLICABLE SECTIONS OF THE BELLINGHAM MUNICIPAL LAND USE REGULATORY CODES AND PLANS

Bellingham Table of Zoning Regulations: Title 20.00.150

Bellingham Variance Procedures: Title 20.18

Bellingham Residential Single Development Regulations: Title 20.30

Samish Neighborhood Plan

Bellingham Comprehensive Plan

DEPARTMENT ANALYSIS

A. The proposed construction, which reduces the front yard setback from 20' to 10', is not permitted under BMC 20.30.040. A variance to the BMC may be granted by the Hearing Examiner if the applicant proves to the hearing examiner's satisfaction that because of the unusual shape, exceptional topographic conditions, or other extraordinary situation or condition in connection with a specific piece of property the literal enforcement of this title would involve practical difficulties and cause undue hardship unnecessary to carry out the spirit and intent of this title.

Policies – Bellingham Comprehensive Plan, Community Design Chapter, Community Image and Character

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

Policy CD-35 Allow flexible setback, parking and lot coverage requirements in older neighborhoods with established lots, so that infill housing can conform to the existing

neighborhood structures. In established neighborhoods, for example, new buildings should be the same distance from the street as neighboring buildings.

Policies – Bellingham Comprehensive Plan, Housing Chapter

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

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

VIII. VARIANCE EVALUATION

20.18.020 Land Use 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:

- A. Because of special circumstances, not the result of the owner's action, applicable 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

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

Staff analysis: Staff agrees with the applicant's response. The wetland and associated buffer create special circumstances which are not the result of the owner's action that deprive the property of rights and privileges enjoyed by other properties in the vicinity which are located within the same land use classification. The houses built at 4201 and 4111 Padden Hills Ct would not be able to be built in their current location without variances due to the wetland buffers now in place. Additionally, the driveway and retaining wall associated with 4209 Padden Hills Ct would also need variances in order to be constructed in their current location.

The subject property is irregularly shaped due to its abutment on a cul-de-sac. Following a review of City IQ the proposed development footprint appears to be significantly smaller than the abutting properties adjacent to the cul-de-sac. Additionally, the proposed building footprint is minimized by incorporation of three stories into the design to minimize impacts to the adjacent critical area.

Staff believes the proposed development has a reasonable footprint based on the existing pattern of development in the vicinity.

- 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.

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

Staff analysis: Staff agrees with the applicant's response. The proposed development will not impact views of neighbors in the vicinity. The proposed residence will generally be in alignment with the western adjacent residence located at 4201 Padden Hill Ct. while driving down the street providing the appearance of a similar block face of the residences.

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

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

Staff analysis: Based on the information provided by the applicant, the subject property cannot be reasonably used under the existing regulations due to the presence of a wetland and buffer regulated under the critical areas ordinance which do not accommodate a reasonable footprint for development consistent with the surrounding residences. A 10' setback is not an uncommon setback for residential structures on a cul-de-sac or street. BMC 20.30.040 F.1. notes that side yards on a flanking street abutting a cul-de-sac are 10'. Granted, this code applies to corner lots but it is allowed in certain circumstances so should be considered. Granting a 50% reduction to the front yard setback will accommodate reasonable development of the subject property based on the information provided by the applicant. The subject property is one of the only undeveloped lots within the subject plat.

IX. CONCLUSION

The intent behind a setback is to ensure appropriate distance between structures, to ensure adequate separation between a travel lane and to allow areas for possible future roadway expansion. Padden Hills Ct. is a dead-end road serving 20 residences with no need for future expansion or development. The proposed residence is located at the very end of the road and the proposed building alignment with the surrounding residences does not appear to negatively detract from the character of the neighborhood. The wetlands and associated buffer create unique hardships to develop the property without approval of a variance from the front yard setback.

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 with the exception of the proposed variance to the front yard setback. 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.

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

X. CONDITIONS

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

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

code requirements.

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