

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

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

IN RE:	HE-23-PL-018
BRADLEY and KRISTINA WIDMAN, Applicants	FINDINGS, CONCLUSIONS, AND DECISION
1204 Yew Street	
SUB2023-0011 / Wellington Preliminary Plat	SHARON A. RICE HEARING EXAMINER

SUMMARY OF DECISION

The requested preliminary plat to authorize subdividing a 2.5-acre parcel into seven single-family cluster lots and three infill small lots at 1204 Yew Street in Bellingham, Washington is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:
Darcy Jones of Jones Engineering Inc., on behalf of Bradley and Kristina Widman (Applicants), requested approval of a preliminary plat to subdivide a 2.5-acre parcel into seven single-family cluster lots and three infill small lots through the Type III review process. The existing residence will be retained. The subject property is addressed as 1204 Yew Street, Bellingham, Washington.

Hearing Date:
The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request on November 29, 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

1 comment was submitted, and the record closed on December 1, 2023. No in-person site
2 visit was conducted, but the Examiner viewed the property on Google Maps.

3 **Testimony:**

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

- 5 Darcy Jones, Applicants' Representative
- 6 Brad Widman, Applicant
- 7 Kathy Bell, Senior Planner, City of Bellingham

8 **Exhibits:**

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

10 Exhibit 1 Planning and Community Development Department Staff Report including
11 the following attachments:

- 12 A. Cluster short subdivision application including:
 - 13 1. Performance & Decision Criteria, Design Review Criteria, Infill
14 Housing Application Criteria prepared by Jones Engineers, dated
15 January 2023
 - 16 2. Preliminary Plat Map
- 17 B. Whatcom Falls Zoning Map, Table and Area 7 description
- 18 C. Consolidated Permit for Design Review and Critical Areas (DR2023-
19 0008/CAP2023-0008)
- 20 D. Map of Onsite Critical Areas, prepared by Northwest Ecological
21 Services, LLC
- 22 E. Public Comment:
 - 23 1. Stephenie Burgess letter, undated
 - 24 2. Tamela S. Smart, Lummi Nation Tribal Historic Preservation Office
25 email, dated November 27, 2023
 - 26 3. Kelle and Heino Sunter email, dated November 28, 2023
 - 27 4. Kevin Gowan email, dated November 29, 2023
- 28 F. SEPA Determination of Non-Significance (DNS), issued November 21,
29 2023
- 30 G. Tree Retention Plan, dated January 2023

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

- H. Tree Inventory & Tree Protection Plan, prepared by Aubrey J. Stargell, dated October 3, 2022
- I. Bellingham School District attendance areas
- J. WTA transit routes

Exhibit 2 Notices:

- A. Notice of Complete Application, dated September 5, 2023
- B. Request for Information, dated March 23, 2023
- C. Notice of Application & Optional DNS, dated September 21, 2023
- D. Affidavit of Posting for notice of application and DNS, signed and dated September 28, 2023
- E. Transportation Concurrency Certificate, issued November 14, 2023
- F. Notice of Hybrid Public Hearing issued November 17, 2023, with Affidavit of Posting

Exhibit 3 Preliminary Stormwater Site Plan, prepared by Jones Engineers, dated July 2023

Exhibit 4 Stormwater Downstream Analysis, letter from Darcy Jones of Jones Engineers, dated September 21, 2023

Exhibit 5 Geotechnical Engineering Report, prepared by GeoTest Services, Inc., dated April 7, 2022

Exhibit 6 Critical area map submitted after the hearing by Applicants (at the request of the Examiner) showing setback proposed from building envelopes on abutting lots

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

FINDINGS

Site and Surroundings

- 1. Darcy Jones, Jones Engineering Inc., on behalf of Bradley and Kristina Widman (Applicants), requested approval of a preliminary plat to subdivide a 2.47-acre parcel into seven single-family cluster lots and three infill small lots. The

1 property subject to the application is addressed as 1204 Yew Street in
2 Bellingham.^{1,2} *Exhibits 1 and 1.A.*

- 3 2. The subject property is located in Area 7 of the Whatcom Falls Neighborhood
4 and has a Residential Single, Detached, Cluster, which requires a 10,000 square
5 foot density for standard subdivision and 7,200 square foot minimum lot size for
6 cluster subdivisions. This zoning designation allows residential uses including
7 infill housing units pursuant to Bellingham Municipal Code (BMC) 20.28.020.
8 Pursuant to BMC 20.00.230, Area 7 of the Whatcom Falls Neighborhood
9 contains special conditions for clearing and access considerations, but it does not
10 have any prerequisite considerations or special regulations. *Exhibits 1 and 1.B.*
- 11 3. Currently, the subject property is improved with one single-family residence
12 situated near the east end of the parcel surrounded by landscaping comprised of
13 typical trees, shrubs, and grasses. The property is otherwise vegetated with
14 many large, mature trees and well-developed understory vegetation. There is an
15 elevation gain of approximately 50 feet from Yew Street to the residence. There
16 is a wetland on site between the existing residence and the eastern property line,
17 discussed in more detail below. *Exhibits 1, 1.A, and 1.D; Google Maps site
18 view.*
- 19 4. The west end of the property abuts Yew Street, an arterial improved with public
20 water, sewer, and stormwater mains. Properties adjacent to the north, south and
21 east share the subject parcel's zoning and are developed with single-family
22 residences. Alvarado Street is nearby to the south of the site; it connects with
23 Yew Street a short distance south of the subject property's site entrance from
24 Yew Street. *Exhibits 1 and 1.A2; Google Maps site view.*
- 25 5. The overall proposal includes the preliminary plat under consideration in the
26 instant decision document and Type I land use applications including design
27 review and critical areas applications. Consistent with BMC 21.10.050, the
28 Applicants did not elect to consolidate the review of the Type I applications with
29 the plat. The design review and critical area permit were reviewed concurrently
30

1 The legal description of the property is Lot 2, as delineated on the Alvarado Lot Line Adjustment, according to the plat thereof recorded in Volume Two of Short Plats page 89, under Auditor's File Number 901204069, Records of Whatcom County, Washington, Situate in Whatcom County, Washington. Also known as Assessor's Parcel Number 380333 0384410000. *Exhibits 1 and 1.A2.*

2 The Staff report calls out a 2.5-acre and a 2.47-acre subject site. The project narrative calls out a 2.51-acre site. *Exhibits 1 and 1.A.* These findings assume the smallest site size is accurate, because doing so provides the most conservative review.

1 through a Type I process and on November 22, 2023, were approved in a single
2 consolidated permit (DR2023-0008/CAP2023-0008) that granted approval
3 design review for the small lots consistent with BMC Chapters 20.25 and 20.28
4 and granted critical areas permit approval consistent with to BMC 16.55.
Exhibits 1, 1.A, and 1.C.

- 5 6. With respect to the critical area permit, it addressed one Category III wetland
6 with a low habitat score on the far eastern end of the site, which pursuant to
7 BMC 16.55.340 requires an 80-foot no disturb buffer. Of note, construction of
8 the existing residence predated the City's adoption of its critical areas ordinance,
9 and the footprint of the existing residence and an attached accessory structure is
10 approximately 40 feet from the nearest point of the wetland. Offsite residences
11 to the east are also within fewer than 80 feet of the wetland edge. The Type I
12 applications sought permission to impact approximately 600 square feet of
13 wetland buffer in exchange for 5,900 square feet of compensatory mitigation in
14 the form buffer enhancement through on-site native planting between the
15 existing residence / proposed additional development and the wetland. The
16 mitigation would exceed impacts at a far greater than 1:1 ratio and is expected to
17 result in functional uplift to existing low quality wetland buffer conditions. A
18 split rail wood fence is proposed to be installed by the Applicants that would
19 separate the usable portions of Lots 3 (already improved) and 4 (to be improved)
20 from the reduced retained wetland buffer. On Lot 3, the usable portion
21 including driveway would be 19 feet, 10 inches from the wetland edge at the
22 closest point. For proposed Lot 4, the wood fence would create a buffer width
23 of 60 feet, two inches. *Exhibits 1, 1.C, and 6.*

19 *Proposal*

- 20 7. The Applicants propose to subdivide the subject property into seven clustered
21 single-family residential lots for detached residences, three Infill Toolkit small
22 lots for detached dwelling units, and three tracts. Pursuant to BMC 23.16.010.C,
23 the cluster provisions may be utilized for residential-single zoned areas
24 containing a cluster use qualifier, which is noted to be the case for the subject
25 property in Finding 2 above. Consistent with BMC 23.08.040, the subject
26 property's area (107,453 square feet) yields a maximum of 10 units, which are
27 proposed. *Exhibits 1, 1.A, and 1.A2.*
- 28 8. Pursuant to BMC 23.08.050.A(6), lot averaging provisions allow the creation of
29 lots that are not less than 90% of the minimum lot size requirement when the
30 designated zoning is 10,000 square feet. The Residential Single, Detached,
Cluster zone is therefore eligible to use lot averaging. The minimum clustered
lot size is 7,200 square feet, 90% of which would be 6,480. The Infill Toolkit

1 provisions apply to the proposed “small lots” and supplant the minimum lot size
2 of the underlying zoning when approved for construction. Small lots are
3 required to be not larger than 5,000 square feet in area. *BMC 20.28.070.B(1)*.
4 The seven clustered lots would range in area from 6,563 to 10,131 square feet
5 (averaging just over 8,274 square feet). The three small lots (Lots 5A, 5B, and
6 5C) would range from 3,944 to 4,734 square feet. The existing residence would
7 be retained within proposed Lot 3. Lots 1-2 and 4-8 would each be developed
8 with a detached dwelling unit. As proposed, each lot would be able to satisfy the
9 minimum setbacks for clustered lots established in BMC Table 20.30.045: 15
10 feet front, 10 feet rear, 10 feet side flanking street, and five feet side setback.
11 The clustered lots would each provide a minimum 40- by 40-foot building
12 envelope. The small lots are exempted from this minimum building envelop per
13 *BMC 20.28.050.C. Exhibits 1, 1.A1, and 1.A2.*

14 9. The plat site entrance would be located in the far northwest corner of the site at
15 Yew Street. A new internal road would end in a cul-de-sac in the western half of
16 the site. Within the plat, there would be four driveways connecting to the cul-de-
17 sac: a single use driveway each for proposed Lots 1 and 8 and two shared
18 accesses. A private road qualified emergency access consistent with BMC Title
19 17 would extend 106 feet to the east of Yew Street, which between Lots 2 and
20 5C would transition to a shared driveway serving Lots 3 and 4, putting the
21 smallest possible road classification/access close to the wetland. A second
22 private road would extend due south from the cul-de-sac bulb and would serve
23 Lots 5A and 5B by rear entrances and provide driveway connections to Lots 6
24 and 7. Each private road would serve not more than four lots with access and
25 utility abutment consistent with BMC 23.08.060.E(2).³ No alleys are proposed.
26 Planning Staff noted that separate access and utility easements would be required
27 for the proposed accesses to Lots 2 through 7, and Staff recommended condition
28 B.6 to ensure the City would review the necessary legal documents as to form
29 and content as necessary to ensure each lot’s abutment on public infrastructure,
30 including street, water, sewer, and stormwater. *Exhibits 1, 1.A1, and 1.A2.*

10. The proposed street design includes sidewalks on both side of the internal public
road and private walkways along the private road segments, all of which would
connect to the Yew Street sidewalk on the south side of the proposed public
road. While the City requested that the sidewalk be setback five feet from, the
curb along the internal public road, the Applicants indicated that due to the need
to provide adequate separation between the site entrance and nearby Alvarado

³ The private road serving Lots 5A, 5B, 6, and 7 is not required to satisfy emergency access standards and it is consistent with the standards at BMC 23.08.070.E(3). *Exhibits 1 and 1.A2.*

1 Street, such a design is infeasible. The proposed sidewalks would abut the street.
2 This design also contains the roadway grading within the right-of-way,
3 minimizing impacts to the existing Grand Fir trees along the northern property
4 line. Finally, placing the road along the northern site boundary would allow the
5 parcel to the north to share this proposed access in case of its future
6 redevelopment. The record includes discussion of the possibility of a late
7 comers agreement to which the owner of the property to the north could
8 contribute and also that dedication of a 10-foot utility easement on the north side
9 of the currently proposed road would be adequate to provide future lots to the
10 north with abutment to a full standard public street in the future. *Exhibits 1, 1.A,*
11 *and 1.A2.*

11 11. The City issued a multimodal transportation concurrency certificate and
12 multimodal transportation impact fee determination on November 14, 2023. The
13 Applicants were not required to obtain a professional prepared traffic impact
14 assessment because the proposed nine new lots are not anticipated to generate 50
15 or more peak hour trips. This certificate notes on its face that the Applicants
16 would be required to bring the site's frontage on Yew Street into full compliance
17 with applicable arterial development standards, should its current configuration
18 fall short of current standard. Multimodal transportation impact fees would be
19 assessed at the time of building permit. The fee currently in effect is \$2,508/per
20 person trip. *Exhibit 2.E.*

21 12. City water and sewer mains would be extended into the proposed public cul de
22 sac and to each proposed lot from Yew Street via the private access roads.
23 *Exhibits 1, 1.A, and 1.A2.*

24 13. The cluster subdivision regulations require lot size transition to be provided and
25 prohibit the creation of new lots that are more than 10% smaller than the
26 minimum lot size allowed in the zone for areas abutting existing residential lots.
27 *BMC 23.08.060.F(1)*. The proposed small lots are placed centrally in the site,
28 separated from existing standard-sized off-site residential lots by Lots 1, 2, 4,
29 and 6, none of which would be more than 10% smaller than the minimum lot size
30 allowed in the zone. *Exhibits 1 and 1.A2.*

14. Cluster subdivision provisions also require a minimum of 15% of the overall
property to be set aside as open space for use either as active recreation or to
preserve sensitive critical areas. *BMC 2308.060.F(2)*. The unnamed tract
comprising the entire east end of the site, which encompasses the on-site
wetland, retained reduced buffer (as permitted in the approved Type I critical

1 area permit) and all proposed mitigation plantings is 23,091 square feet or 20.6%
2 of the parent parcel's total area. *Exhibits 1 and 1.A2.*

3 15. The proposal would involve site grading, access improvements, construction of
4 on-site stormwater management facilities, and utility infrastructure
5 improvements. A single underground vault system would be built at the west
6 end of the plat in proposed Tract A to manage stormwater runoff. A stormwater
7 filter cartridge system is proposed to provide treatment for runoff. *Exhibits 1.A2*
8 *and 3.* The Applicants commissioned a geotechnical engineering report to assess
9 the site's soils and suitability for the proposed development. Based on their site
10 assessment, the geotechnical consultant concluded that construction of the
11 proposed single-family residences and associated infrastructure on the subject
12 property is feasible and can be conducted in accordance with required
13 protections for the onsite wetland established in BMC 16.55.450.A. The
14 geotechnical consultant opined that, if built consistent with geotechnical
15 recommendations, the proposed improvements would not increase surface water
16 discharge or sedimentation to adjacent properties beyond predevelopment
17 conditions, would not adversely impact other critical areas, would be safe as
18 designed under static conditions and normal use, and would not decrease slope
19 stability on adjacent properties. *Exhibits 3 and 5.* The proposed stormwater
20 vault is setback at least 10 feet from the edge of the internal right-of-way.
21 *Exhibit 1.A.* City Staff determined that the submitted materials demonstrate that
22 the preliminary plat can be designed to comply with applicable standards
23 regarding stormwater management, erosion control, and critical areas protection.
24 *Exhibit 1; Kathy Bell Testimony.*

25 16. Planning Staff noted that the Parks, Recreation and Open Space (PRO) Plan does
26 not identify future public recreation facilities on site. The Applicants submitted
27 there are no nearby trails that could be provided with a connection through the
28 site. Planning Staff noted that the surrounding single-family residential
29 development is improved with sidewalks, and that while there are no parks in the
30 vicinity, the majority of parks in the wider area are served by public streets
improved with sidewalks. The developer would be required to pay park impact
fees at the time of building permit issuance. *Exhibits 1 and 1.A.* The Applicants
are in discussions with the City regarding what recreation uses the stormwater
tract may be able to be put to, such as potential community gardens. *Kathy Bell*
Testimony.

17. The Applicants submitted a tree inventory & tree protection plan report, prepared
by a qualified arborist professional, that identified and surveyed the locations of
132 significant trees on site, many of which are regulated under BMC

1 16.60.080.B(4). There are 49 trees proposed for removal, which would be
2 replaced at the ratio specified by the city. All remaining trees on site, including
3 all trees within the proposed critical area tract at the east end of the site, would
4 be preserved. The site's grading plan was designed to save two large-diameter
5 trees, one on Lot 8 and one on Lot 4. The submitted materials included a tree
6 retention plan that identified the methods that to be used during construction to
7 protect the trees. The arborist consultant also prepared a tree retention plan as
8 part of the critical areas assessment and mitigation plan. Both tree plans are
9 based on a previous iteration of the plat design and would need to be updated to
10 reflect the current plat layout. *Exhibits 1, 1.A, 1.G, and 1.H.*

11 18. The Applicants indicated that street trees would be provided consistent with City
12 standards and would be placed to avoid conflict with utilities, noting that the
13 required street tree permit and landscape plan would be submitted with the public
14 facility contract application, assuming preliminary plat approval. *Exhibit 1.A.*

15 19. School aged residents of the plat would attend Wade King Elementary, Kulshan
16 Middle School, and Sehome High School. Planning Staff submitted that the City
17 has been working with the Bellingham School District (District) on capital
18 development, and that Staff can attest that the District is aware of the
19 development potential of the vicinity. While the middle school may be within
20 one mile of the subject property, Staff indicated that school aged residents of the
21 plat would rely on school district transportation. There is a school bus stop on
22 nearby Alvarado Drive. Staff also confirmed that there are continuous sidewalks
23 to the middle school. There are also public transit stops on Yew Street within
24 one-quarter mile of the plat entrance, which are connected to the site by a
25 continuous sidewalk. School impacts fees would be payable at the time of
26 building permit issuance. *Exhibits 1, 1.I, and 1.J; Kathy Bell Testimony.*

27 20. Adequate emergency access was considered in the design on the project's
28 internal public road and the private access easements. Fire apparatus access
29 would be provided via the cul-de-sac, which would serve the purpose of a fire
30 truck turnaround. The northern private driveway would be constructed with a
20-foot unobstructed width just past the property line separating Lots 5A and 5B
approximately the first 50 feet of the private access, after which point the
unobstructed width would be allowed to be reduced to 12 feet so long as this
portion of the access road is no longer than 150 feet. The project narrative notes
that the 20-foot unobstructed width section of the northern private access would
be "within one hose-pull" of the proposed building pad on Lot 2. The
application material acknowledged that buildings on any lot accessed by a

1 driveway that is with a grade greater than 12% would be required to be provided
2 with an NFPA 13D sprinkler permit. *Exhibits 1, 1.A, and 1.A2.*

- 3 21. The City of Bellingham Comprehensive Plan land use map designates the subject
4 property as Multi Family Residential, High Density. Planning Staff submitted
5 that the following goals and policies of the Bellingham Comprehensive Plan are
6 applicable:

6 Land Use

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

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

11 Housing

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

13 Capital Facilities and Utilities

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

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

20 Policy EV-23 Protect habitat and habitat corridors used by wildlife, fish, and
21 pollinators from the impacts of development, where feasible.

22 Policy EV-26 Limit public and pet access and their impacts to the most sensitive
23 and unique habitats and employ measures to minimize impacts
24 from public access.

25 Policy EV-27 Minimize light and noise impacts on fish and wildlife habitat.

26 Staff submitted that the project would be consistent with the intent of the land
27 use, housing, and capital facilities chapters of the Comprehensive Plan by
28 furthering the listed goals and policies, especially in creating urban infill
29 development in an area already served by municipal utilities. *Exhibit 1.*

1 *Procedural Findings*

2 22. The preliminary plat application (together with the associated Type I and II
3 applications) was submitted on February 15, 2023, and determined to be
complete on September 5, 2023. *Exhibits 1, 1.A, and 2.A.*

4 23. Bellingham's Planning and Community Development Department assumed the
5 role of lead Agency for review of the project's impacts pursuant to the State
6 Environmental Policy Act (SEPA). Following review of the completed
7 environmental checklist and all submitted application materials, Planning Staff
8 issued a notice of application and optional determination of non-significance
9 (DNS) on September 21, 2023. The final SEPA DNS was issued November 21,
2023. *Exhibits 1, 1.F, and 2.C.*

10 24. Notice of open record hybrid public hearing was issued November 17, 2023.
11 *Exhibit 2.F.* The City received public comment on the project expressing the
12 following concerns: concern that tree canopy removal would adversely impact
13 West Cemetery Creek, which as identified in the Whatcom Falls Neighborhood
14 Plan serves protection as an environmentally sensitive area, open space, and
15 natural drainage; concern that the removal of trees along the property boundary
16 and Lots 4 and 5 would remove an existing wind break and local habitat
17 resource; urging to retain as many mature trees as possible for climate and
18 habitat protection; and challenge to the adequacy of the information in the
19 project's environmental checklist regarding animals, trees, and climate issues.
20 *Exhibit 1.E1.* The City received two comments in support of the proposal,
complementing the creative infill design. *Exhibits 1.E3 and 1.E4.*
Representatives of the Lummi Nation submitted requested additional conditions
regarding inadvertent discovery procedures. *Exhibit 1.E2.* There was no public
comment submitted at hearing.

21 25. In response to the issues concerns raised in public comment about clearing,
22 grading, tree retention, and loss of habitat letter, Planning Staff noted that the
23 project proposes to retain a significant percentage of the site's significant trees
24 and to enhance habitat in the location of the wetland to a point that function
25 should be improved. Staff recommended conditions that addressing grading and
26 maximum retention of the significant trees. Planning Staff requested that the
Lummi Nation's additional conditions be added if the plat is approved. *Exhibit*
1; Kathy Bell Testimony.

27 26. Having reviewed the complete materials and heard all testimony at hearing,
28 Planning Staff maintained their recommendation for preliminary plat approval
29 subject to the conditions in the staff report. *Exhibit 1; Kathy Bell Testimony.*

1 The Applicants waived objection to the recommended conditions. *Testimony of*
2 *Darcy Jones and Brad Widman.*

3 CONCLUSIONS

4 Jurisdiction

5 The Hearing Examiner is granted authority to hold hearings and make decisions on
6 preliminary plat applications pursuant to BMC 2.56.050.A(1 and 2) and BMC
7 23.16.101.A.

8 Criteria for Review

9 Pursuant to Bellingham Municipal Code 23.16.030.A, preliminary plats shall be given
10 approval, including preliminary plat approval subject to conditions, upon finding by the
11 hearing examiner that all of the following have been satisfied:

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

27 Conclusions Based on Findings

- 28 1. As conditioned, the proposal is consistent with the applicable provisions of this
29 title, the Bellingham Comprehensive Plan, and the Bellingham Municipal Code.

1 The subdivision regulations in BMC Title 23 underwent review for compliance
2 with SEPA and the City's Comprehensive Plan at the time of their adoption. In
3 this case, approval of the consolidated permit prior to plat hearing demonstrated
4 that development of the proposed lots can be achieved in compliance with the
5 applicable regulations. The Area 7 special conditions that apply to the site's
6 Residential, Single, Detached, Cluster zoning have been addressed through
7 access management onto Yew Street and through the approved critical areas
8 permit. The proposal fulfills the intent of the land use, housing, capital facilities
and utilities and environmental chapters of the comprehensive plan by
establishing infill residential development in an area served with adequate
municipal utilities and infrastructure. *Findings 2 - 21, 24, 25, and 26.*

9 2. As conditioned, the proposal would be consistent with the applicable provisions
10 of BMC Chapter 23.08. The proposal adds infill development to a neighborhood
11 that contains walkable streets that connect to adjacent residential neighborhoods
12 and recreational facilities in the area. The project would efficiently use the land
13 to maximize the unit yield while preserving and incorporating the site's natural
14 features, including wetland, mature trees, and slopes, to the maximum extent
15 feasible. The proposed density is allowed in the zone without application of any
16 bonus. All 10 proposed lots comport with applicable lot minimum/maximum
17 sizes, and as shown in the approved design review permit, all can be reasonably
18 developed as proposed. The seven clustered lots provide the minimum 40- by
19 40-foot building envelope. Through public road connection to the Yew Street
20 arterial, through careful design of private access lanes serving four lots each, and
21 with extension of the utilities to each dwelling unit, the proposal provides the
22 required abutment to street and utilities. The proposed open space exceeds the
23 minimum required and would serve as a permanent conservation easement for
24 the wetland and retained, reduced, enhanced buffer width. A preliminary
stormwater report successfully demonstrated that the project can meet
stormwater management, erosion control, and critical area protection
requirements with respect to management of runoff from all proposed
impervious surfaces. As conditioned, all required easements and final landscape
plans would be reviewed in future review processes. *Findings 2, 7 - 20, 24, 25,
and 26.*

25 3. As proposed, the plat layout shows forethought and careful consideration of
26 potential future development opportunities on the less developed parcel abutting
27 the north, by placing the project's internal roadway at the shared boundary. This
28 arrangement not only moves the plat access as far north from Alvarado as
29 possible, but it also provides the possibility that future development fronting
Yew Street could share this project's access point, reducing entrance points onto

1 the arterial. The proposed design also cleverly places three small lots in the
2 interior of the narrow, rectangular parent parcel such that the full-size cluster lots
3 proposed provide the lot transition required by code. *Findings 4, 7, 9, 10, and*
4 *14.*

4 4. Approval of the consolidated Type I permit successfully demonstrated that each
5 lot can be developed in conformance with applicable regulations pertaining to
6 critical areas, zoning setbacks, and parking without requiring a variance. Of
7 note, retention of the existing residence although it is located in a standard
8 wetland buffer (which has been approved in the Type I permit) contributes to the
9 overall affordability of the project and conserves resources. *Findings 3, 4, 5, 6,*
10 *7, 8, 9, 24, 25, and 26.*

10 5. As concluded above, the proposed open space exceeds the code minimum
11 requirement. Additionally, there may be the possibility of passive or active
12 recreation use above the underground stormwater vault in Tract A. Sidewalks
13 and pathways along the private lanes will connect to existing offsite pedestrian
14 facilities that connect to school and public transit stops in the near vicinity. Each
15 lot would connect to public water, sewer, and storm sewer facilities in the
16 abutting rights-of-way. School, park, and transportation impact fees would be
17 paid on a per lot basis at time of building permit. *Findings 7 - 20.*

16 6. The record contains no information that succeeds in showing the project cannot
17 comply with all applicable standards and policies of the City meant to preserve
18 the public health, safety, and welfare. The public and private access routes to
19 each unit were reviewed by the Fire Marshal and the plat has been designed to
20 comply with emergency access standards. The project was reviewed for
21 compliance with SEPA and a DNS was issued. The public interest would be
22 served by the creation of the proposed lots. *Findings 2 - 26.*

22 DECISION

23 Based on the preceding findings and conclusions, the requested preliminary plat from to
24 subdivide a 2.47-acre parcel into seven clustered single-family detached residential lots
25 and three infill small lots at 1204 Yew Street in Bellingham, Washington is
26 **APPROVED** subject to the following conditions:

27 A. General Requirements

28 1. The plat shall be developed generally consistent with the application materials
29 and lot layout as shown in Exhibit 1.A.

- 1 2. Preliminary plat approval is subject to the approved consolidated permit (Exhibit
2 1.C) and all conditions of that permit shall be deemed conditions of approval of
3 this preliminary plat approval.
- 4 3. Modifications to this decision shall be processed in accordance with BMC
5 23.16.090.
- 6 4. A clearing and grading plan for the property, including rights-of-way, shall be
7 submitted for review and approval by the Planning and Public Works
8 Departments concurrent with review of civil drawings for the infrastructure.
9 The clearing and grading limits shall demonstrate maximum retention of the
10 onsite significant trees and comply with the following condition of the
11 consolidation permit:
- 12 *Clearing and Tree Retention*
13 The Applicant shall submit to the City for review and approval a revised
14 Tree Retention Plan and arborist report prepared by an International
15 Society of Arboriculture (ISA)-certified arborist that demonstrates
16 maximum retention and protection of the onsite significant trees and
17 identifies appropriate mitigation ratios for trees proposed for removal.
18 This plan shall be submitted for concurrent review with the engineered
19 drawings through the Public Facilities Construction Agreement review
20 process. The Tree Retention Plan shall maximize retention of the site's
21 significant trees by identifying buildable areas within each proposed lot
22 that result in the maximum retention of existing significant trees, unless
23 determined by the arborist that replacement is warranted.
- 24 When tree replacement is warranted, significant trees shall be replaced at
25 a ratio no less than 1:1. The arborist shall recommend in the revised
26 report the species and location of the replacement trees based on the
27 site's physical characteristics.
- 28 5. Development of the property shall be consistent with the provisions of Title 23
29 BMC.
- 30 6. Heavy equipment and construction work shall be compliant with Chapter 10.24
BMC, except that no exterior work shall occur after 7:00 p.m.
7. Impact fees for transportation, schools and parks shall be paid in accordance
with applicable BMC requirements.
8. Preliminary plat approval shall expire as provided in BMC 23.16.080.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

9. Inadvertent Discovery of Archeological Resources: Should archeological resources (e.g., shell midden, animal remains, stone tools, etc.) be observed during project activities, all work in the immediate vicinity shall stop and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (DAHP, Stephanie Jolivette, Local Government Archeologist, 360-628-2755) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO, 360-961-7752; Tamela Smart, Deputy THPO, 360-927-2944) shall be contacted immediately in order to assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archeological resources is required.

10. Inadvertent Discovery of Human Skeletal Remains on Non-Federal and Non-Tribal Land in the State of Washington (RCW 68.50.645, 27.44.055, and 68.60.055): If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the County Medical Examiner/Coroner and local law enforcement in the most expeditious manner possible. The remains will not be moved, touched, or further disturbed. The County Medical Examiner/Coroner will assume jurisdiction over the human skeletal remains and will make a determination whether those remains are forensic or non-forensic. If the County Medical Examiner/Coroner determines the remains are no forensic, then they will report that findings to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and all affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

B. Conditions for Final Plat Approval

The Applicants 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 23.20 BMC.

- 1. Fifty feet (50') of land shall be dedicated to the City for right-of-way purposes for the proposed cul-de-sac in a location generally as shown on the approved preliminary plat map, Exhibit 1.A1.

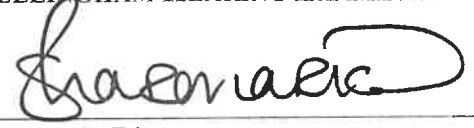
- 1 2. The newly dedicated right-of-way shall be constructed to full-standard of a
2 residential street.
- 3 3. The extension of public water and sewer mains to serve each lot shall be
4 installed as determined necessary by the City Engineer through a public
5 facilities construction agreement.
- 6 4. Stormwater management shall be provided in accordance with Chapter 15.42
7 BMC and all stormwater facilities shall be dedicated to the City unless
8 determined otherwise by the City Engineer.
- 9 5. Street trees shall be installed pursuant to BMC 23.08.080(G)(5) and
10 23.08.080(C).
- 11 6. All required public and private easement documents as required by this approval
12 and the Consolidated Permit shall be submitted to the City concurrently with
13 checkprints for review and approval by the City departments and the Office of
14 the City Attorney and recorded concurrently with the final plat. Required
15 easements include, but are not limited to, private access, parking, and public
16 utilities.
- 17 7. The Applicants shall provide evidence to demonstrate compliance with BMC
18 23.08.070 (E and F).
- 19 8. Mailboxes shall be installed as approved by the United States Postal Service.
- 20 9. Monumentation shall be as required in BMC 18.28.180.
- 21 10. The following shall be shown on the final plat, as applicable:
 - 22 a. All existing and required easements.
 - 23 b. A ten-foot-wide easement adjacent to public rights-of-way reserved for
24 utility purposes, as determined necessary by the utility providers.
 - 25 c. A note stating that all lots are subject to those conditions set forth in this
26 Order, and as may be amended in accordance with the municipal code.
 - 27 d. A note referencing any private covenants specific to the proposed lots.
 - 28 e. A note stating Lots 5A, 5B, and 5C are limited to development under
29 Chapter 20.28 BMC, as may be amended.
 - 30 f. Stormwater limitations.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

11. Private covenants shall be recorded with the plat to specifically define the common, limited common, and private elements of the proposal. The covenants shall also include maintenance obligation of these elements and a cost sharing mechanism for each.

DECIDED December 19, 2023.

BELLINGHAM HEARING EXAMINER



Sharon A. Rice