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

<b>IN RE:</b>	<b>HE-24-PL-012</b>
<b>BRANNON FINNEY, Applicant</b> <b>2933 Lindbergh Avenue</b>	<b>FINDINGS, CONCLUSIONS, AND DECISION</b>
<b>SUB2024-0008 / One and One-half Rule Short Subdivision for the Finney Short Plat</b>	<b>SHARON A. RICE</b> <b>HEARING EXAMINER</b>

**SUMMARY OF DECISION**

The request to subdivide a 11,059 square foot parcel at 2933 Lindbergh Avenue into two lots pursuant to the One and One-half Rule established in BMC 23.08.040.D(2) is **APPROVED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Alex Chose of Jepson and Associates, on behalf of Brannon Finney (Applicant), requested a short subdivision utilizing the One and One-half Rule to subdivide a 11,059 square foot parcel into two lots. The subject property is located at 2933 Lindbergh Avenue, in Bellingham.

**Hearing Date:**

The City's Hearing Examiner conducted a hybrid open record hearing on the request on June 26, 2024. The record was held open for two business days to allow post-hearing public comment by people who were unable to participate due to technology problems, with additional days for responses by the parties. No post-hearing comments were submitted, and the record closed on June 28, 2024.

*Findings, Conclusions, and Decision*

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CITY OF BELLINGHAM  
210 LOTTIE STREET  
BELLINGHAM, WA 98225  
(360) 778-8399

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

3 **Testimony:**

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

- 5 Alex Chose, Jepson and Associates, Applicant's representative  
6 Ryan Nelson, City of Bellingham Planner II

7 **Exhibits:**

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

9 Exhibit 1 Planning and Community Development Department Staff memorandum  
10 including the following attachments:

- 11 A. Short Plat Map  
12 B. Vicinity Map  
13 C. Zoning and Comprehensive Plan Designation Map  
14 D. Land use application materials:  
15 1. Short Plat Land Use Application  
16 2. Response to Subdivision Performance and Decision Criteria and One  
17 and One-Half Rule Subdivision Rounding Criteria and Departure  
18 Request  
19 E. Notices  
20 F. Aerial Map  
21 G. School Map  
22 H. Coal Mine Hazard Evaluation, Sound Geology, dated May 1, 2024

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

25 **FINDINGS**

- 26 1. Alex Chose of Jepson and Associates, on behalf of Brannon Finney (Applicant),  
27 requested a short subdivision (known as the Finney Short Plat) utilizing the One  
28 and One-half Rule established in Bellingham Municipal Code (BMC)  
29 23.08.040.D(2) to subdivide a 11,059 square foot parcel into two lots. The

30 *Findings, Conclusions, and Decision*

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1 subject property is located 2933 Lindbergh Avenue, Bellingham, Washington.<sup>1</sup>  
2 *Exhibit 1.*

3 2. The subject property is located in Area 16 of the Birchwood Neighborhood. It  
4 has a Residential Single, Detached zoning designation requiring a 7,200 square  
5 foot minimum detached lot size. All abutting properties to the east, west, and  
6 south share the subject parcel's zoning. The property to the north across  
7 Lindbergh Avenue is in Area 13 and is zoned Public. The City of Bellingham  
8 Comprehensive Plan land use map designates the site as being within a Single  
9 Family Residential, Low Density land use designation. *Exhibits 1 and 1.C.*

10 3. The subject parcel is 11,059 square feet in area and is developed with a single-  
11 family residence and a detached garage. The parcel abuts Lindbergh Avenue to  
12 the north and a platted alley to the south, with driveway access to the existing  
13 garage from Lindbergh Avenue.<sup>2</sup> The Applicant proposes to retain the existing  
14 residence within proposed Lot 1 and demolish the garage. *Exhibits 1, 1.A, and*  
15 *1.F.*

16 4. Development on surrounding parcels consists of single-family residences to the  
17 east, west, and south and Bellingham Technical College across Lindbergh  
18 Avenue to the north. Little Squalicum Park is also in the project vicinity, which  
19 provides recreational amenities and public shoreline access. There are multiple  
20 existing legal lots on the same block as the subject property that are  
21 approximately 6,000 square feet in area. *Exhibits 1, 1.C, and 1.F.*

22 5. The Applicant proposes to divide the subject parcel into two lots through the  
23 One and One-half Rule established at BMC 23.08.040.D(2). The number of lots  
24 that can be created through this process is determined by dividing the site area  
25 by the specified neighborhood density. Proposals with a fraction equal to at  
26 least one-half and less than three-fourths may be rounded to the next higher  
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28 <sup>1</sup> The subject property is legally described as: Per Bargain & Sale Deed No. 2018-1003038, the westerly  
29 9 feet of Lot 13, all of Lot 12, and Lot 11, except the westerly 21 feet, Block 3, Eldridge Donation Claim  
30 Addition Supplemental, Whatcom County, Washington, as per the map thereof, recorded in Book 7 of  
Plats, page 17, in the Auditor's office of said County and State. *Exhibit 1.A.* The Tax Assessor Parcel  
Number is 3802235191140000. *Exhibit 1.* The City considers the lot to be legal lot of record that was  
created prior to adoption of the City's subdivision regulations. *Exhibit 1; Ryan Nelson Testimony.*

<sup>2</sup> In this decision, consistent with the directional notations in the property legal description and the  
orientation of the preliminary short plat map, Lindbergh Avenue will be identified as the north property  
line, the alley will be identified as the south property line, and the lot lines perpendicular to these lines  
will be identified as the west and east property lines. *Exhibit 1.A.*

1 whole number upon site plan approval by the hearing examiner. The subject  
2 property is 11,059 square feet in size and when divided by the minimum lot size  
3 of 7,200 square feet for Area 16 of the Birchwood Neighborhood, the result is  
4 1.53 units, making the project eligible for a One and One-half Rule subdivision.  
5 Proposed Lot 1 would be approximately 5,915 square feet in area and would  
6 comprise roughly the west half of the subject property) and Proposed Lot 2  
would be approximately 5,142 square feet in area and would comprise roughly  
the east half of the subject property). *Exhibits 1 and 1.A.*

- 7 6. Consistent with BMC 23.08.060.A, the proposed lots would be designed with  
8 logical boundaries, in that the side lot lines would be at right angles to the  
9 abutting street. Only a minor jog is proposed in the interior lot line, which is  
10 needed to ensure adequate width at the south end of Lot 1 for the existing  
11 residence and required building setbacks from the interior lot line, while  
12 providing adequate width at the north end of Lot 2 to meet the building envelope  
13 requirement of BMC 23.08.060.D, as modified per the departure process of  
14 BMC 23.48.030.C(2)(b). *Exhibits 1, 1.A, and 1.D2.*
- 15 7. BMC 23.08.060.D requires a minimum building envelope of 50 feet by 50 feet  
16 for single-family lots with a density requirement of less than 10,000 square feet  
17 and greater than or equal to 5,000 square feet. This envelope may be reduced to  
18 40 feet by 50 feet when vehicular access is provided from an alley. Proposed  
19 Lot 1 would be accessed from the alley and would have a building envelope of  
20 approximately 49 feet by 80 feet deep for the existing residence. With respect to  
21 Lot 2, the Applicant requested a 10% departure from the building envelope  
22 requirement per BMC 23.48.030.C (2)(b) to provide a 45- by 45-foot building  
23 envelope, which would be accessed from the street via the existing driveway.  
24 The departure minimizes the extent of the jog in the interior lot line, allows the  
25 Applicant to retain the existing driveway access (thereby reducing the amount of  
26 site disturbance required), and maintains the yard in front of Lot 1. The  
27 Planning Director administratively approved the departure. *Exhibits 1, 1.A, and  
28 1.D2.*
- 29 8. Both lots would be served by municipal water and sewer utilities. The lots abut  
30 a water main in Lindbergh Avenue and a sewer main in the alley. *Exhibit 1.*
9. There is an existing stormwater main that abuts the northwest corner of the  
property, adjacent to proposed Lot 1.<sup>3</sup> The Applicant proposes a private

<sup>3</sup> The Staff Report indicates this service is at the northeast site corner, but the undersigned interprets the site orientation differently. See Footnote 2.

1 stormwater utility easement across the front of Lot 1 to provide abutment for Lot  
2 2 (per BMC 23.08.060.E) in case a lateral service line is required to connect to  
3 the stormwater main. Full compliance with the City's stormwater regulations  
4 would be evaluated during building permit review for a new residence on Lot 2.  
*Exhibits 1, 1.A, and 1.D2; Testimony of Alex Chose and Ryan Nelson.*

5 10. Both lots would have frontage on Lindbergh Avenue and the alley. There is an  
6 existing sidewalk on the north side of Lindbergh Avenue in front of Bellingham  
7 Technical College. No right-of-way dedication or additional street  
8 improvements are required in conjunction with the proposed short plat. *Exhibits  
1 and 1.F.*

9 11. Consistent with BMC 23.08.060.C(2), a pedestrian walkway would be provided  
10 between the existing residence and Lindbergh Avenue. Compliance with the  
11 walkway requirement for the future residence on Lot 2 would be determined at  
12 the time of building permit. *Exhibits 1 and 1.D2.*

13 12. BMC 20.30.060 requires two off-street parking spaces for each single-family  
14 dwelling unit, with each space having 22 feet of maneuvering room behind it.  
15 Because the garage serving the existing residence (Lot 1) would no longer be  
16 available to it after subdivision, the Applicant proposes to construct a new two-  
17 car parking pad behind the residence, which would be accessed from the alley.  
18 Alley access is required for Lot 1 to meet the minimum building envelope width  
19 required by BMC Table 23.08.060. *Exhibits 1 and 1.A; Ryan Nelson Testimony.*  
20 While the parking pad shown on the submitted preliminary short plat map does  
21 not provide 22 feet of maneuvering space, it would be possible for the Applicant  
22 to move the parking pad northward on the site (occupying the area depicted as  
23 patio) to comply with the parking standard. Planning Staff recommended that  
24 compliance be demonstrated prior to final short plat approval. *Testimony of  
25 Alex Chose and Ryan Nelson; Exhibit 1.*

26 13. Lot 2 would be accessed from Lindbergh Avenue via the existing driveway, and  
27 a parking pad for two vehicles would be provided in front of the new residence.  
28 Although the City code generally requires alley access when available, Planning  
29 Staff is in favor of retaining the driveway for Lot 2 for the following reasons:  
30 the driveway on proposed Lot 2 is existing, driveway access from Lindbergh  
Avenue is typical for the neighborhood, and Lindbergh Avenue does not carry a  
high volume of traffic. *Exhibits 1, 1.D2, and 1.F; Ryan Nelson Testimony.*

14. The subject property is within a coal mine hazard area. BMC 16.55.460 restricts  
the subdivision of land within 200 feet of a mine hazard area with severe

1 potential for subsidence. In this case, the site has been evaluated by a licensed  
2 engineering geologist, who concluded that the potential for subsidence is low  
3 and that subdivision and future development of the site would be feasible. A  
4 critical area permit would be required prior to building permit issuance for  
5 future development of proposed Lot 2. *Exhibits 1 and 1.H; Ryan Nelson  
Testimony.*

6 15. There are no natural, scenic, or historic features of major consequence that  
7 would be impacted by the development. *Exhibit 1.* There are several existing  
8 trees at the north end of the subject property, which screen the property from  
9 Lindbergh Avenue. All of the existing trees would be retained. *Exhibit 1.A;  
Alex Chose Testimony.* Scenic views towards Bellingham Bay (to southwest of  
10 subject property) would not be impacted by development of Lot 2. Any  
11 development of Lot 2 would be required to comply with the height limitations of  
12 the zone, and the property immediately across Lindbergh Avenue from the  
subject property is developed as a surface parking lot. *Exhibits 1 and 1.F.*

13 16. The subject property is within the attendance area of Birchwood Elementary  
14 School, Shuksan Middle School, and Bellingham High School. School impacts  
15 would be mitigated through payment of school impact fees pursuant to BMC  
Chapter 19.08. *Exhibits 1 and 1.G.*

16 17. Planning Staff submitted that the project is consistent with the following  
17 Comprehensive Plan goals and policies:

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

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

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

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

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

29 *Exhibit 1.*

1 18. Notice of the application and public hearing was issued on May 3, 2024 and  
2 mailed to surrounding property owners. There was no public comment on the  
3 application. *Exhibits 1 and 1.E; Ryan Nelson Testimony.*

4 19. At the conclusion of the hearing, having heard all testimony, Planning Staff  
5 maintained their recommendation for approval subject to the conditions in the  
6 staff report. *Exhibit; Ryan Nelson Testimony.* The Applicant waived objection  
7 to the recommended conditions. *Alex Chose Testimony.*

## 8 CONCLUSIONS

### 9 Jurisdiction:

10 The Hearing Examiner is granted authority to hold hearings and make decisions on  
11 short subdivisions utilizing the rounding provisions under BMC 23.08.040.D(2).

### 12 Criteria for Review

#### 13 *Short Subdivision*

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

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

1 and may exercise the powers and authority set forth in Chapter 58.17 RCW, as  
2 amended.

3 *One and One-Half Rule Subdivision*

4 In accordance with BMC 23.08.040.D.2, the proposal must meet the following criteria:

- 5 a. It is consistent with the general policies and specific objectives of the  
6 comprehensive plan;
- 7 b. It enables the continued orderly and reasonable use of adjacent properties by  
8 providing a means for expansion of public roads, utilities, and services;
- 9 c. It is designed to be compatible with the essential character of the neighborhood;
- 10 d. It is adequately served by public facilities and utilities including storm water  
11 provisions; and
- 12 e. It will not result in the destruction, loss, or damage to any natural, scenic, or  
13 historic feature of major consequence.

13 **Conclusions Based on Findings:**

14 A. As conditioned, the criteria for a One and One-half Rule subdivision are satisfied.

- 15 1. The proposed short subdivision is consistent with the Comprehensive Plan, in  
16 that it represents infill development on underutilized property in an area that is  
17 well-served by public facilities and services. *Findings 4, 8, 9, 10, 17, and 19.*
- 18 2. The proposed short subdivision enables the continued orderly and reasonable  
19 use of adjacent properties. The surrounding lots are already developed, and the  
20 proposed additional lot would be served by existing utility infrastructure.  
21 *Findings 4, 8, and 9.*
- 22 3. The proposed short subdivision is designed to be compatible with the essential  
23 character of the neighborhood. The lot sizes resulting from the short plat would  
24 be compatible with those already existing in the neighborhood, and screening  
25 vegetation would be retained. *Findings 4, 5, and 15.*
- 26 4. As conditioned to require a private utility easement for stormwater for Lot 2, the  
27 proposed short subdivision would be adequately served by public facilities and  
28 utilities. *Findings 8, 9, 10, and 19.*
- 29 5. The proposed short subdivision would not result in the destruction, loss, or  
30 damage to any natural, scenic, or historic feature of major consequence. All  
trees would be retained. *Finding 15.*



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B. As conditioned, the criteria for short subdivision approval are satisfied.

1. As conditioned, the proposal is consistent with the applicable provisions of BMC Title 23, the Bellingham Comprehensive Plan, and the Bellingham Municipal Code. The density of the subdivision would be consistent with the One and One-half Rule. The total area of the subdivision would be evenly distributed between the lots, which have logical boundaries and, with the previously approved departure, would have building envelopes consistent with BMC 23.08.060.D. The new access to Lot 1 would be from the alley, and a pedestrian path would be provided to the street. Both lots would abut required utilities and would have sufficient area to provide off-street parking. The proposal was evaluated by a qualified professional for coal mine hazards consistent with the critical areas ordinance, and the hazard was determined to be low. The conditions of approval require the Applicant to provide code-compliant parking for Lot 1 and a pedestrian path to Lindbergh Avenue prior to final plat approval and require payment of impact fees. *Findings 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 17, and 19.*
2. As conditioned, the proposal is consistent with the applicable provisions of BMC 23.08. Natural features, which in this case are the existing trees, would be retained on site, and the project would not adversely impact, nor be adversely impacted by, the underlying coal mine hazard area. As concluded above, the proposed density, the distribution of parent parcel area evenly between the proposed lots, the boundaries establishing the two lots, and, as administratively approved through the departure process, the proposed building envelopes all satisfy BMC 23.08.060.D. The new access to Lot 1 would be from the alley, and a pedestrian path would be provided to the street. The lots would abut required utilities. No right-of-way dedication or street improvements are required. The conditions of approval require the Applicant to provide code-compliant parking for Lot 1 and a pedestrian path to Lindbergh Avenue prior to final plat approval. *Findings 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, and 19.*
3. As conditioned, the division of land provides for coordinated development with adjoining properties or future development of adjoining properties by its location adjacent to existing utilities. A utility easement for stormwater would be provided for Lot 2. *Findings 8 and 9.*
4. As conditioned, each lot in the proposal can reasonably be developed in conformance with applicable provisions of the BMC, including critical areas, setbacks, and parking, without requiring a variance. *Findings 6, 12, 13, and 14.*

1 5. As conditioned, the proposal makes adequate provision for open spaces,  
2 drainage ways, rights-of-way, sidewalks, and other planning features that assure  
3 safe walking conditions for pedestrians, including students who walk to and  
4 from school, easements, water supplies, sanitary waste, fire protection, power  
5 service, parks, playgrounds, and schools. Lindbergh Avenue is already  
6 improved with a sidewalk. Public parks are available in the project vicinity. As  
7 conditioned, utilities are available to and would fully abut both proposed lots.  
8 The conditions of approval require payment of transportation, park, and school  
9 impact fees, and address easement requirements. *Findings 4, 8, 9, 10, 16, and*  
10 *19.*

11 6. As conditioned, the proposed subdivision serves the public use and interest and  
12 is consistent with the public health, safety, and welfare. The public interest is  
13 served by the proposal's consistency with applicable development standards and  
14 the Comprehensive Plan, by its compatibility with existing surrounding  
15 development, and by the additional of one fee simple lot on under-utilized  
16 property near the technical college. With respect to public safety, the proposal  
17 was evaluated for coal mine hazards consistent with the critical areas ordinance,  
18 and the hazard was determined to be low. *Findings 2, 3, 4, 5, 14, 15, and 17.*

### 16 DECISION

17 Based on the preceding findings and conclusions, the short subdivision utilizing the One  
18 and One-half Rule for a parcel located 2933 Lindbergh Avenue, Bellingham,  
19 Washington is **APPROVED** subject to the following conditions:

#### 19 A. General Requirements

- 20 1. The plat shall be developed generally consistent with the lot layout on Exhibit  
21 1.A as conditioned below.
- 22 2. Modifications to this decision shall be processed in accordance with BMC  
23 23.12.080.
- 24 3. Development of the property shall be consistent with the provisions of BMC  
25 Title 23, and with the description of the Proposal, except as otherwise provided  
26 herein.
- 27 4. Impact fees for transportation, schools and parks shall be paid in accordance  
28 with applicable BMC requirements.
- 29 5. Preliminary short plat approval shall expire as provided in BMC 23.12.070.

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B. Conditions For Final Plat Approval

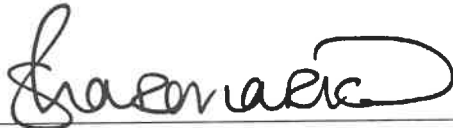
The Applicant shall obtain all necessary permits and/or approvals from the City necessary to satisfy the following conditions prior to final plat approval pursuant to Chapter 23.12 BMC.

1. 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 Hearing Examiner Order, and as may be amended in accordance with the municipal code.
  - c. The Applicant shall be required to provide code compliant on-site parking for two vehicles accessed from the existing alley for proposed Lot 1 prior to final short plat approval.
  - d. Pursuant to BMC 23.08.060.C.2, the Applicant shall be required to provide a pedestrian path from the existing residence to Lindbergh Ave. prior to final plat approval.
  - e. The Applicant shall be required to obtain a demolition permit and final building inspection for the demolition of the existing detached accessory building on proposed Lot 2 or obtain an assignment of funds approved by the City for 150% of the cost to demolish the building prior to final plat approval.
  - f. The Applicant shall be required to submit a private utility access easement for City approval to provide the required stormwater main abutment for proposed Lot 2 located in Lindbergh Ave. The easement shall be required to be recorded prior to or concurrently with the final short plat and shall include provisions for maintenance and legal description and map exhibits prepared by a licensed surveyor.
  - g. Future construction on proposed Lot 2 shall be required to obtain a critical areas permit documenting compliance with BMC 16.55 for coal mine geologically hazardous areas.
  - h. Stormwater limitations.

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DECIDED July 15, 2024.

**BELLINGHAM HEARING EXAMINER**



Sharon A. Rice