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

IN RE:	HE-24-PL-016
VICTOR and GALINE SHINTAR, Applicants	FINDINGS, CONCLUSIONS, AND DECISIONS
4193 Northwest Avenue	
SUB2023-0031 / Cluster Subdivision utilizing the Infill Toolkit and Subdivision Variance	SHARON A. RICE HEARING EXAMINER

SUMMARY OF DECISIONS

The requested 20-lot preliminary cluster subdivision and subdivision variance to develop property at 4193 Northwest Avenue are **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Ali Taysi, AVT Consulting LLC, on behalf of Victor and Galine Shintar (Applicants), requested approval of a preliminary cluster subdivision to subdivide approximately 2.21 acres into 20 lots, including one detached single-family residential lot and 19 infill toolkit townhouse lots developed per Bellingham Municipal Code (BMC) 20.28.140, and a subdivision variance from a right-of-way improvement requirement of BMC 23.08.070.B. The subject property is located at 4193 Northwest Avenue in Bellingham, Washington.

Hearing Date:

The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request on July 10, 2024. The record was held open two business days to allow for post-hearing written public comment, with additional days for responses by the parties. No post-hearing comments were submitted, and the record closed on July 12, 2024.

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 Sara Ullman, Planner II

6 Ali Taysi, AVT Consulting LLC, Applicants' Representative

7 **Exhibits:**

8 The following exhibits were admitted in the record through the virtual hearing process.

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

11 A. Architectural and Civil Plans, including Landscaping Plans, updated
12 May 31, 2024

13 B. Consolidated Design Review and Critical Areas Permits and SEPA
14 Review (DR2023-0018 and CAP2023-0026)

15 C. Vicinity Map, School Map, and Transit Map

16 D. Zoning and Comprehensive Plan Designation Map

17 E. Land Use Application materials

18 1. Land Use Application

19 2. Applicant Narrative, updated December 17, 2023

20 F. City Request for Information letters, dated July 27, 2024 and
21 February 2, 2024

22 G. Applicant responses to RFI letters, dated December 12, 2023,
23 March 19, 2024, April 24, 2024, and May 31, 2024

24 H. Public Comment

25 I. SEPA Determination of Non-Significance, dated April 23, 2024

26 J. Public Works Memorandum

27 K. Preliminary Stormwater Report, Davis Philips, PE, Freeland &
28 Associates, Inc., dated November 29, 2023

29 L. Revised Critical Area Report, prepared by Miller Environmental
30 Services, LLC, dated May 31, 2024

M. Revised Wetland Buffer Exhibit, prepared by Freeland & Associates,

1 Inc., dated May 28, 2024

2 N. Traffic Memorandum, prepared by Kimley Horn, dated March 29, 2022

3 O. Hearing Notice sign posting pictures

4 P. Public comment submitted by Kate McDonald, President of the Cordata
5 Neighborhood Association, dated July 3, 2024

6 Exhibit 2 City PowerPoint Presentation

7 After considering the admitted testimony and exhibits, the Hearing Examiner enters the
8 following findings and conclusions.

9
10 **FINDINGS**

- 11 1. Ali Taysi, AVT Consulting LLC, on behalf of Victor and Galine Shintar
12 (Applicants), requested approval of a preliminary cluster subdivision to
13 subdivide approximately 2.21 acres into 20 lots, including one detached single-
14 family residential lot and 19 infill toolkit townhouse lots developed per
15 Bellingham Municipal Code (BMC) 20.28.140.¹ The proposal includes a
16 request for approval of a subdivision variance from a right-of-way improvement
17 requirement of BMC 23.08.070.B. The subject property is located at 4193
18 Northwest Avenue in Bellingham, Washington.² *Exhibits 1, 1.A, 1.E.1, and*
19 *1.E.2.*
- 20 2. The subject property is located in Area 2 of the Meridian Neighborhood and has
21 a Residential Single, Planned, Mixed zoning designation, allowing a base
22 density of 3,600 square feet per dwelling unit when developed with infill
23 housing pursuant to BMC 20.28.050.B and BMC 20.00.110. Single-family
24 detached cluster lots require a minimum lot size of 4,000 square feet pursuant to
25 BMC 23.08.050.A(3). *Exhibit 1.*
- 26 3. The properties to the south of the subject property have the same zoning
27 designation as the subject property. Preliminary plat approval has been granted
28 for a project at 4185 Northwest Avenue that will create 19 infill toolkit housing

29
30 ¹ Disparate figures were provided for total site area in the Applicants' narrative, staff report, and site survey. These findings assume the survey contains the most accurate total of site area, which is 96,350 square feet, or 2.21 acres. *Exhibits 1, 1.A, and 1.E.2.*

² The legal description of the property is: Lot 8 of Northwest Baker View Tracts except the portion dedicated to the City of Bellingham under Auditor's File No. 2017-0401662. *Exhibits 1 and 1.A.*

1 units, including nine shared court units and 10 townhouse units. The parcel to
2 the north, which is developed with a single-family residence, is within Area 20
3 of the Cordata neighborhood and is zoned Residential Single, with detached
4 (cluster, cluster attached, and cluster detached) and mixed (limited duplex and
5 multifamily) use qualifiers. The property to the west across Arctic Avenue is
6 within Area 5 of the Meridian Neighborhood, is zoned Commercial/Industrial,
7 and is developed with a Costco retail warehouse. The property to the east
8 across Northwest Avenue is within Area 19 of the Cordata neighborhood, is
9 zoned Commercial, and is developed with an electric substation. *Exhibits 1,*
10 *1.C, and 1.D; Google Maps site view.*

- 11 4. The subject property is 96,350 square feet (2.21 acres) in area and is developed
12 with a single-family residence and two detached accessory buildings. The
13 Applicant proposes to retain the single-family residence on proposed Lot 20,
14 which would be 41,363 square feet in area, and to divide the remainder of the
15 subject property into townhouse lots ranging from 1,066 to 7,281 square feet in
16 area. The overall project density would be one lot per 4,809 square feet,
17 consistent with the maximum density authorized in the zone. *Exhibits 1*
18 *and 1.A.*
- 19 5. The west end of the subject property abuts the southeast corner of Arctic
20 Avenue and Mahogany Avenue, and the east end of the subject property abuts
21 Northwest Avenue. Mahogany Avenue and Northwest Avenue intersect a short
22 distance north of the subject property. An unopened right-of-way known as
23 Division Road runs along the northern property line. *Exhibits 1.A and 1.C;*
24 *Google Maps site view.*
- 25 6. The subject property contains five wetlands, three of which are exempt from the
26 City's buffer and mitigation sequencing standards due to their small areas. The
27 two larger wetlands - Wetlands A and B - are Category III wetlands (habitat
28 score of 4) requiring 80-foot buffers pursuant to BMC Table 16.55.340.C.
29 Wetland A occupies the northeast corner of the subject property, and Wetland B
30 occupies the northcentral and central portions of the property. Wetland B and
its buffer bisect the subject property from north to south. In addition to these
wetlands and buffers, the subject property contains a portion of the 50-foot
buffer of an off-site Category IV wetland - Wetland F. Wetland F's buffer
extends into the southwest portion of the property. *Exhibits 1.A and 1.L.*
7. Due to the centrally located critical areas, an internal street connection cannot
be established between the western and eastern portions of the site. Each half of
the project would have its own access and utility connections. Due to the low

1 volume of traffic generated by each half of the project and the left-turn
2 channelization available on the abutting arterial streets, the two access points
3 are not expected to adversely affect traffic operations. The Applicant has
4 obtained approval of an administrative variance from the Public Works
5 Department allowing the two proposed access points onto arterial streets.
6 *Exhibits 1, 1.A, 1.E.2, 1.J, and 1.N; Sara Ullman Testimony.*

7 8. Thirteen of the townhouse lots (Lots 7 - 13) would be clustered in the west half
8 of the site, grouped in three buildings of three units and one building of four
9 units. One building would face Arctic Avenue, one building would face
10 Mahogany Avenue, and two buildings would be in the interior of the site.
11 Pedestrian walkways would be provided between the buildings and the adjacent
12 streets. Vehicular access to the lots would be from a 20-foot-wide driveway,
13 constructed to the City's "large lane" standards, extending south from
14 Mahogany Avenue. The driveway would have a 12-foot-wide asphalt travel
15 lane and two four-foot wide concrete sidewalks; it would end in a hammerhead
16 turnaround. A pedestrian trail and public access easement would be provided
17 between the eastern portion of the driveway and the adjacent property to the
18 south (currently 4179 Dover Street). The trail has been incorporated into the
19 adjacent property's development plans and would connect through the adjacent
20 property to Dover Street. *Exhibits 1, 1.A, and 1.E.2; Sara Ullman Testimony.*

21 9. Six of the townhouse lots (Lots 1 through 6) and the existing single-family
22 residence (Lot 20) would be clustered in the east half of the site, with the
23 townhouses grouped in one building of two units and one building of four units.
24 The existing accessory buildings would be removed, and a new detached garage
25 would be constructed to serve the existing single-family residence. The existing
26 residential driveway would be removed, and a new 20-foot-wide driveway
27 designed to large lane standards would be constructed along (and straddling) the
28 southern property line from Northwest Avenue to serve Lots 1 through 6 and
29 Lot 20 on the subject property and future development on the parcel to the
30 south. The driveway would have a 12-foot-wide asphalt travel lane and two
four-foot wide concrete sidewalks. *Exhibits 1.A and 1.E.2.*

10. Consistent with the applicable lot design standards of BMC 23.08.060, the
proposed lots would have logical boundaries, with most of the lot lines
approaching the adjacent lane at right angles. The Applicant has demonstrated
through the submitted plans that the lots would be buildable, and the City has
approved adjustments to required setbacks through the infill toolkit design
review process. The infill townhouse lots are exempt from the building
envelope (i.e., width and depth) requirements of BMC 23.08.060.D. Proposed

1 Lot 20, containing the existing single-family residence, would comply with the
2 40- by 40-foot building envelope requirement applicable to detached cluster
3 residences. All lots would abut public infrastructure either directly (as in the
4 case of those adjacent to Arctic Avenue, Mahogany Avenue, and Northwest
5 Avenue) or through access easements. There are water, sewer, and stormwater
6 mains in Northwest and Mahogany Avenues. *Exhibits 1, 1.A, and 1.B.*

6 11. Designated as a principal arterial street, Northwest Avenue is fully improved to
7 City standards along the property frontage, including two travel lanes, a center
8 turn lane, and a bicycle lane, curb, gutter, and sidewalk. Although no further
9 street improvements are required, the right-of-way width is substandard. The
10 Applicant is required to dedicate 10 feet of right-of-way width along Northwest
11 Avenue to satisfy City standards, as shown on the submitted preliminary plat
12 map. *Exhibits 1 and 1.A.* The City currently has no plans to improve the right-
13 of-way to its full width. The dedication area would contain landscaping and
14 access improvements only that could be modified or abandoned if the right-of-
15 way improvement occurs in the future. *Testimony of Ali Tays and Sara Ullman.*

13 12. Arctic and Mahogany Avenues, also arterial streets, are fully improved to City
14 standards along the property frontage, with each having two travel lanes, a
15 center turn lane, and a bicycle lane, curb, gutter, and sidewalk. *Exhibit 1.*

16 13. The 30-foot-wide unopened right-of-way of Division Road that transects the
17 subject property is encumbered by wetlands and buffers. The City of
18 Bellingham Public Works Department has confirmed that development of street
19 improvements within the right-of-way, as required by BMC 23.08.070.B and
20 BMC 13.52.040, is unnecessary. Access can be provided to the western portion
21 of the site from Mahogany Avenue and to the eastern portion of the site from
22 Northwest Avenue. The proposed access from Mahogany Avenue satisfies the
23 intersection spacing requirements of BMC 13.52.080. Traffic volumes on
24 Mahogany Avenue do not warrant restricting the access to right-in/right-out.
25 *Exhibits 1, 1.A, and 1.J.*

24 14. The Applicant requested a subdivision variance from BMC 23.08.070.B, which
25 requires that all rights-of-way within and abutting a land division be improved
26 in accordance with BMC Title 13. The Applicant identified the following
27 circumstances supporting approval of the variance.

27 The location of pre-existing arterial street improvements. Arctic Avenue
28 and Mahogany Avenue were developed after dedication of Division
29 Road. Existing improvements include a stop-sign controlled intersection
30 at the intersection of Arctic Avenue and Mahogany Avenue at the

1 northwest corner of the subject property and a signalized intersection at
2 the intersection of Mahogany Avenue and Northwest Avenue to the
3 north of the subject property. Due to these improvements, the
4 development of Division Road is not required for access to the subject
5 property or for vehicle circulation in the region.

6 Environmental constraints. The Division Road right-of-way is
7 encumbered by wetlands, buffers, and slopes. As noted by City staff,
8 developing the right-of-way, when alternate access is available, would
9 conflict with critical area ordinance requirements to avoid impacts.

10 *Exhibits 1, 1.A, and 1.E.2.*

11 15. With respect to the potential public welfare impacts of granting the variance,
12 Division Road is not improved elsewhere in the project vicinity, and the road is
13 not needed for redevelopment of the adjacent parcel to the north, which has
14 frontage on Mahogany Avenue and Northwest Avenue. *Exhibit 1; Sara Ullman*
15 *Testimony.* The Applicant argued that constructing Division Road would be
16 detrimental to the public welfare because the close proximity of the new
17 intersections to the existing intersections (effectively creating a five-way
18 intersection at Arctic and Mahogany) would create safety issues, the road would
19 generate long-term City maintenance costs, and the road would have
20 environmental impacts due to grading, vegetation removal, and wetland fill.
21 *Exhibit 1.E.2; Ali Taysi Testimony.*

22 16. Two off-street garage parking spaces would be provided for each lot.
23 *Exhibits 1.A and 1.B.*

24 17. Transit service is available to the subject property. Whatcom Transit Authority
25 provides bus service along Northwest Avenue, with the nearest stops
26 approximately 525 feet to the south and 1,200 feet to the north. *Exhibit 1.*

27 18. The existing single-family residence is served by an on-site septic system,
28 which would be decommissioned in conjunction with the proposed
29 redevelopment of the site. The existing residence along with the townhouses in
30 the eastern portion of the subject property would be served by a sewer main
extension from the project to the south. The townhouses in the western portion
of the property would be served by a sewer main extension from Mahogany
Avenue. *Exhibit 1.*

19. All lots would be connected to the municipal water system, with the lots in the
eastern portion of the site served by a water main extension from the project to

1 the south, and the lots in the western portion of the site served by a water main
2 extension from Mahogany Avenue. *Exhibit 1.*

3 20. The soils on-site are not suitable for infiltration. Stormwater runoff from the
4 western portion of the site would be discharged into the City of Bellingham
5 North End Regional Pond, which was designed with sufficient capacity to
6 accommodate the site's runoff. Stormwater runoff from the eastern portion of
7 the site would be discharged into a shared treatment and detention system to be
8 installed within the adjacent subdivision at 4185 Northwest Avenue. The
outfall from the stormwater detention vault on the adjacent parcel would be
within the wetland buffer on the subject property. *Exhibits 1 and 1.K.*

9 21. There would no direct impacts to wetlands as a result of the project, but 9,613
10 square feet of wetland buffer would be impacted. As mitigation for this impact,
11 9,636 square feet of buffer would be enhanced, satisfying the 1:1 mitigation
12 ratio required by BMC 16.55.340.E. The enhancement would include removal
13 of non-native invasive species, installing mulch, and planting native trees and
14 shrubs; a total of 67 trees and 318 shrubs would be planted. The wetlands and
15 buffers would be protected through a conservation easement, except for the
16 portion of the buffer containing the public trail connection to the property to the
17 south. The proposed wetland buffer impacts and mitigation have been
18 conditionally approved through the administrative critical area permit process.
19 *Exhibits 1.L, 1.M, and 1.B.*

20 22. Landscaping was reviewed during the administrative design review process.
21 The Applicant submitted a landscape plan depicting the planting of street trees
22 along all three arterial streets. The design review conditions require the
23 Applicant to obtain a street tree permit prior to installation. The design review
24 decision also addresses significant trees, requiring the 13 significant trees
25 proposed for removal to be replaced at a 1:1 ratio. The submitted tree retention
26 plan indicates tree replacement exceeding this requirement. *Exhibits 1.A*
27 *and 1.B.*

28 23. Public parks are or would be available in the vicinity of the site, including the
29 newly constructed Cordata Park, which is approximately 1.5 miles northeast of
30 the subject property, and the proposed Northern Lights Park, which would be
approximately 750 feet northwest of the subject property. The Bellingham
Parks, Recreation, and Open Space Plan does not call for public recreation
amenities on or adjacent to the subject property. However, as described
previously, a public trail would be provided within the subject property that

1 would provide a connection between development to the south and Mahogany
2 Avenue and the new park beyond. *Exhibit 1; Sara Ullman Testimony.*

3 24. The subject property is within the service area of Alderwood Elementary,
4 Shuksan Middle, and Squaticum High Schools. Students attending all three
5 schools would be bussed via School District transportation. The proposed
6 internal sidewalks and existing external sidewalks would provide a safe walking
7 route to school bus stops. *Exhibit 1.C; Sara Ullman Testimony.*

8 25. The City of Bellingham Comprehensive Plan land use map designates the
9 subject property as Residential Single, Low to Medium Density. Planning Staff
10 submitted that the following goals and policies of the Bellingham
11 Comprehensive Plan are applicable.

12 Land Use

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

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

19 Housing

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

22 Capital Facilities and Utilities

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

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

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

Policy CF-17 New development should pay its proportional share of the
cost of new public facilities that serve the subject
development.

1 31. Having reviewed the complete materials and heard all testimony at hearing,
2 Planning Staff maintained their recommendation for approval subject to the
3 conditions in the staff report. *Exhibits 1 and 2; Sara Ullman Testimony.* The
4 Applicant waived objection to the recommended conditions. *Ali Taysi*
5 *Testimony.*

6 CONCLUSIONS

7 Jurisdiction:

8 The Examiner is granted authority to hear and decide applications for preliminary plats
9 and variances from the terms of BMC Title 23 associated with preliminary plats
10 pursuant to BMC 2.56.050.A(1) and .A(3).

11 Criteria for Review:

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

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

1 58.17 RCW, as amended.

2 Pursuant to BMC 23.48.040.A, Subdivision variance, the hearing examiner may grant a
3 variance from any term of this title, except minimum lot size, if it is shown that the
4 proposal is consistent with the following criteria.

5 1. ...

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

13 b. The granting of the variance will establish a better lot design resulting in
14 a development pattern found to be consistent with the neighborhood
15 character including, but not limited to, development orientation to the
16 street, setbacks, lot orientation, or other contextual element associated
17 with the proposed development; and

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

21 **Conclusions Based on Findings:**

22 *Preliminary Plat*

23 1. As conditioned and with approval of the subdivision variance, the proposal is
24 consistent with the applicable provisions of BMC Title 23, the Bellingham
25 Comprehensive Plan, and the Bellingham Municipal Code. Many aspects of
26 compliance were addressed in the Type II Consolidated Permit, including
27 compliance with the infill development standards of BMC 20.28 and the critical
28 areas code. This decision was not appealed. The proposal is consistent with
29 Comprehensive Plan policies supporting infill development and design
flexibility, encouraging development where adequate public facilities and
services exist, and encouraging the preservation and planting of trees. *Findings*
2, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 25, 29, and 31.

30 2. As conditioned and with approval of the subdivision variance, the proposal is
consistent with the applicable provisions of BMC Chapter 23.08. Consistent
with the purposes of the chapter to encourage compact and walkable
neighborhoods and to preserve environmentally sensitive features, the proposal
would provide a pedestrian connection to adjacent development and would

1 preserve wetlands and buffers within a conservation easement. These features
2 are also consistent with the subdivision performance standards of BMC
3 23.08.030. The street layout, which proposes access to Mahogany Avenue and
4 Northwest Avenue, has been reviewed by the Public Works Department for
5 safety. Street trees would be provided. The number of lots proposed would be
6 consistent with the density limitation of Area 2 of the Meridian Neighborhood, as
7 applicable to infill development. Proposed Lot 20, containing the existing
8 single-family residence, would comply with the minimum lot size for cluster
9 subdivisions. The lots would comply with the lot design standards of BMC
10 23.08.060. The lots would abut public infrastructure, would be served by public
11 water and sewer, and would be served by a stormwater management system. As
12 described below, a variance from the requirement of BMC 23.08.070.B to
13 improve the Division Road right-of-way is approved. The conditions of approval
14 address easement requirements. *Findings 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,*
15 *15, 18, 19, 20, 21, 22, 23, and 31.*

- 12 3. As proposed, the subdivision provides for coordinated development with
13 adjoining properties through a shared driveway off Northwest Avenue, a shared
14 stormwater detention system, and a pedestrian path connection. *Findings 3, 8, 9,*
15 *and 20.*
- 16 4. Approval of the consolidated Type II permits demonstrates that each lot can be
17 developed in conformance with applicable regulations pertaining to critical areas,
18 applicable zoning setbacks and/or infill toolkit performance standards, and
19 parking without requiring a variance. Each lot would have two garage parking
20 spaces. *Findings 16, 21, and 29.*
- 21 5. As conditioned, adequate provision would be made for open spaces, drainage,
22 rights-of-way, sidewalks, safe walking conditions for pedestrians, easements,
23 water, sewer, fire protection, power, parks, playgrounds, and schools. Open
24 space would be provided in the central portion of the project for critical areas
25 protection. There are existing and planned public parks in the vicinity of the
26 property. Sidewalks would be provided along the internal lanes and are already
27 present along the fronting public streets. Public water and sewer would be
28 extended to each lot. School, park, and transportation impact fees would be paid
29 on a per lot basis at time of building permit. *Findings 7, 11, 12, 13, 17, 18, 19,*
30 *20, 21, 23, 24, and 29.*
6. As conditioned and with approval of the subdivision variance, the proposal
would serve the public use and interest and would be consistent with the public
health, safety, and welfare. The project was reviewed for compliance with

1 SEPA, and a DNS was issued. The public interest would be served by the
2 creation of the proposed infill lots where urban services are available. *Findings*
3 *1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 23, 24, 27, 28, and 31.*

4 *Subdivision Variance*

- 5 7. Because of the location of preexisting improvements, including the three fully
6 improved arterial streets that abut the subject property, and environmental
7 constraints encumbering the unimproved right-of-way, literal enforcement of
8 BMC 23.08.070.B would create difficulties and result in an undesirable street
9 layout. *Findings 11, 12, 13, 14, and 15.*
- 10 8. Granting the variance would not be detrimental to the public welfare or injurious
11 to property or improvements in the vicinity. Division Road is not needed for
12 access to any parcel, and development of the right-of-way would create potential
13 safety hazards and impact wetlands and buffers. *Findings 7, 11, 12, 13, 14,*
14 *and 15.*

15 **DECISIONS**

16 Based on the preceding findings and conclusions, the requested preliminary cluster
17 subdivision and subdivision variance are **APPROVED** subject to the conditions below.

18 **A. General Requirements**

- 19 1. The plat shall be developed generally consistent with the lot layout on Exhibit
20 1.A as conditioned.
- 21 2. Modifications to this decision shall be processed in accordance with BMC
22 23.16.090.
- 23 3. A clearing and grading plan for the property, including rights-of-way, shall be
24 submitted for review and approval by the Planning and Public Works
25 Departments concurrent with review of civil drawings for the infrastructure.
- 26 4. Development of the property shall be consistent with the provisions of BMC
27 Title 23 and with the description of the Proposal contained in the Determination
28 of Non-significance, except as otherwise provided herein.
- 29 5. Impact fees for transportation, schools, and parks shall be paid in accordance
30 with applicable BMC requirements.
6. Preliminary plat approval shall expire as provided in BMC 23.16.070.

1 7. All conditions of the Consolidated Permit (Exhibit 1.B) shall be deemed
2 conditions of this decision.

3 B. Conditions For Final Plat Approval

4 The Applicant shall obtain all necessary permits and/or approvals from the City necessary
5 to satisfy the following conditions prior to final plat approval pursuant to Chapter 23.16
6 BMC.

- 7 1. Phasing shall be allowed in accordance with BMC 23.16.010.E. A phasing plan
8 shall be submitted for review and approval by the City concurrently with the
9 public facility construction agreement for the first phase.
- 10 2. Access to the eastern site shall be provided through a shared access easement
11 within the southern abutting property to Northwest Avenue and improved to a
12 full lane standard as shown on Exhibit 1.A. The existing driveway curb cut off
13 Northwest Avenue shall be removed. The Applicant shall be required to submit
14 a shared access easement for City review and approval which shall be recorded
15 with the Whatcom County Auditor prior to final plat approval.
- 16 3. Secondary access shall be allowed and provided off Mahogany Avenue as
17 shown on Exhibit 1.A.
- 18 4. The Applicant shall be required to dedicate 10 feet of additional right-of-way
19 abutting Northwest Avenue to the City for potential future public infrastructure
20 improvements prior to final plat approval.
- 21 5. The Applicant shall be required to construct a pedestrian trail connecting to
22 4179 Dover Street and dedicate a 10-foot public access easement overtop as
23 shown in Exhibit 1.A. The easement shall indicate it is for public access and
24 privately maintained. Said easement shall be completed prior to the permitting
25 of the west phase of the project.
- 26 6. The Applicant shall be required to obtain a Public Facilities Construction
27 Agreement and obtain final approval from the City for the extension of
28 water/sewer/stormwater mains in accordance with Public Works Department
29 requirements prior to final plat approval. The public utility main extensions
30 shall be generally consistent with Exhibit 1.A and require public utility
easements reviewed and approved by the City and recorded with the Whatcom
County Auditor prior to final plat approval. The required public infrastructure
construction shall be completed and accepted by the City prior to final plat
approval.

- 1 7. The Applicant shall decommission the existing septic system on Lot 20 and
2 provide a new sewer service line for the single-family residence from the main
3 extension off Northwest Avenue as shown in Exhibit 1.A.
- 4 8. The existing garage on Lot 20 shall be demolished and replaced with a garage
5 providing at least two 9'x18' parking spaces as proposed in Exhibit 1.A or
6 replaced by two 9'x18' surface parking spaces located outside the front yard
7 setback and surfaced with no less than 3 inches crushed gravel in accordance
8 with BMC 20.30.
- 9 9. The Applicant shall provide evidence to demonstrate compliance with BMC
10 23.08.070 (.E and .F).
- 11 10. The Applicant shall be required to submit private covenants, conditions, and
12 restrictions (CC&Rs) for vehicular/pedestrian access, parking, utilities, open
13 space amenities, waste/recycling, and mail service, etc. for City review and
14 approval prior to final plat approval. The private CC&Rs shall be recorded with
15 the Whatcom County Auditor with the recording of the final preliminary plat.
- 16 11. The Applicant shall be required to submit common wall agreement(s) for all
17 townhomes in accordance with BMC 20.28.050.F for City review and approval
18 prior to final plat approval. The common wall agreement(s) shall be recorded
19 with the Whatcom County Auditor with the recording of the final preliminary
20 plat.
- 21 12. Prior to final plat approval, conservation easements required by CAP2023-0026
22 shall be recorded with the Whatcom County Auditor.
- 23 13. Mailboxes shall be installed as approved by the United States Postal Service.
- 24 14. The Applicant shall be responsible for obtaining any and all necessary Federal
25 and/or State approvals associated with the proposal.
- 26 15. The following shall be shown on the face of the plat, as applicable.
 - 27 i. Notice of the associated land use approval for Design Review and
28 Critical Area Permitting (DR2023-0018 and CAP2023-0026).
 - 29 ii. All existing, required, and proposed easements.
 - 30 iii. A ten-foot-wide easement adjacent to public rights-of-way reserved for
utility purposes, as determined necessary by the utility providers.

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- iv. A note stating that all lots are subject to those conditions set forth in this Order and as may be amended in accordance with the municipal code.
- v. A note referencing any existing private covenants and any covenants specific to the proposed lots.
- vi. Stormwater limitations.

16. Stormwater management shall be provided in accordance with Chapter 15.42 BMC, and all stormwater facilities shall be dedicated to the City unless determined otherwise by the City Engineer.

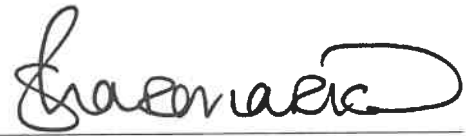
17. Street trees shall be installed pursuant to BMC 23.08.080.G(5) and 23.08.080.C.

18. Pursuant to BMC 16.60.080.A(1), no clearing is permitted on an undeveloped lot without a valid Building Permit or Public Facility Construction Agreement.

19. The Applicant shall be required to take reasonable efforts to preserve existing significant trees on-site, particularly along the perimeter boundaries of the site and within open space areas not impacted by utilities. Prior to the issuance of a building permit and/or any site disturbance, the Applicant shall schedule a site visit with the planning project manager to inspect the clearing limits and tree/critical root zone protection.

DECIDED August 5, 2024.

BELLINGHAM HEARING EXAMINER



Sharon A. Rice