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

<b>IN RE:</b>	<b>HE-23-PL-015</b>
<b>SKEERS CONSTRUCTION LLC, Applicant</b>	<b>FINDINGS, CONCLUSIONS, AND DECISIONS</b>
<b>1909 and 1915 36<sup>th</sup> Street</b>	
<b>SUB2024-0023 and VAR2024-0003 / Lot Line Adjustment and Variance from Street Improvements</b>	<b>SHARON A. RICE HEARING EXAMINER</b>

**SUMMARY OF DECISION**

The requested lot line adjustment of two legal lots addressed as 1909 and 1915 36<sup>th</sup> Street, Bellingham and the associated subdivision variance from requirements to improve an adjacent alley and Lindsay Avenue are **APPROVED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Jeremy Disch of PowerTek Surveying, on behalf of Skeers Construction LLC (Applicant), requested approval of a lot line adjustment (LLA) of two legal lots of record for future construction of single-family residences, as well as approval of an associated subdivision variance from BMC 23.08.070.B, which would require improving an adjacent alley and Lindsay Avenue. The subject parcels are addressed as 1909 and 1915 36<sup>th</sup> Street, Bellingham, Washington.

**Hearing Date:**

The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request on July 24, 2024. The record was held open two business days to allow for post-hearing public comment from people who had technology or access barriers to

1 participation, with time scheduled for responses by the parties. No post-hearing  
2 comments were submitted, and the record closed on July 26, 2024.  
3 No in-person site visit was conducted, but the Examiner viewed the subject property on  
4 Google Maps.

4 **Testimony:**

5 At the hearing, the following individuals presented testimony under oath:

6 Jeremy Disch, PowerTek Surveying, Applicant Representative

7 Ryan Nelson, Planner II

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. Lot Line Adjustment Maps

13 B. Vicinity Map

14 C. Zoning and Comprehensive Plan Designation Map

15 D. Land Use Application materials

16 1. Land Use Application

17 2. Response to Variance Criteria, Subdivision Performance & Decision  
18 Criteria

19 E. Legal Lot Determination (LLD2005-00026)

20 F. Critical Area Permit (CAP24-0029)

21 G. Notice of Application/Mailing List/Affidavit of Mailing

22 H. Public Comment – Email from Douglas and Mary-Ann Kolozsy, dated  
23 June 24, 2024

24 I. Aerial Map

25 J. Map of Schools

26 K. Tree Inventory and Tree Protection Plan, Aubrey Stargell, dated March  
27 27, 2024

28 Exhibit 2 Site Plan, dated June 20, 2024

29 Exhibit 3 Hearing Notice

30 *Findings, Conclusions, and Decisions*

*Page 2 of 9*

H:/DATA/HEARING EXAMINER/DECISIONS/Skeers Construction 1909 36<sup>th</sup> St LLA VAR Decision BELLINGHAM, WA 98225

**OFFICE OF THE HEARING EXAMINER**

CITY OF BELLINGHAM

210 LOTTIE STREET

BELLINGHAM, WA 98225

(360) 778-8399

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

3  
4 **FINDINGS**

- 5 1. Jeremy Disch of PowerTek Surveying, on behalf of Skeers Construction LLC  
6 (Applicant), requested approval of a lot line adjustment (LLA) of two legal lots  
7 of record for future construction of single-family residences, and also requested  
8 approval of an associated subdivision variance from Bellingham Municipal Code  
9 (BMC) 23.08.070.B, which would require improving an adjacent alley and  
10 Lindsay Avenue to current minimum standards. The subject parcels are  
11 addressed as 1909 and 1915 36<sup>th</sup> Street, Bellingham, Washington. *Exhibits 1,*  
12 *1.A, 1.D1, and 1.D2.*
- 13 2. The subject property is comprised of two undeveloped legal lots of record in  
14 Area 4 of the Samish Neighborhood and is zoned Residential Single, Detached,  
15 Cluster Detached with a 12,000 square foot minimum detached lot size.  
16 Development in Area 4 is subject to special conditions for traffic, view, clearing,  
17 Connelly/34th/Harrison arterial route, and a buffer from Interstate-5. *Exhibits 1,*  
18 *1.C, and 1.E; BMC 20.00.150.*
- 19 3. Parcel No. 370307-462459 (existing Lot A)<sup>1</sup> is 12,366 square feet in area.  
20 Existing Lot A abuts 36<sup>th</sup> Street to the west, an unimproved alley to the north,  
21 unimproved Lindsay Avenue to the south, and existing Lot B of the requested  
22 LLA to the east. Adjacent 36<sup>th</sup> Street is an improved right-of-way that meets the  
23 City's minimum street standards and is improved with water, sewer, and  
24 stormwater infrastructure. Landslide hazard area slopes and their buffers  
25 encroach slightly over the northeast corner and the southern boundary of existing  
26 Lot A. *Exhibits 1, 1.A, and 1.I.*
- 27 4. Parcel No. 370307-465459 (existing Lot B)<sup>2</sup> is 6,184 square feet in area.  
28 Existing Lot B does not abut an improved street; it abuts the unimproved alley to  
29 the north, unimproved Lindsay Avenue to the south, existing Lot A of the  
30 requested LLA to the west, and a developed parcel to the east. of the majority of  
existing Lot B is encumbered by landslide hazard area slopes or their buffers.  
*Exhibit 1.A.*

<sup>1</sup> Lots 1 through 4 of Block 8, Fairhaven Addition to Fairhaven. *Exhibit 1.A.*

<sup>2</sup> Lots 5 and 6 of Block 8, Fairhaven Addition to Fairhaven. *Exhibits 1.A and 1.E.*

- 1 5. With the requested LLA, the Applicant proposes to rotate the existing north-  
2 south common boundary between existing Lots A and B so that it becomes an  
3 east-west boundary. Proposed Lot A would be the northern lot and Proposed Lot  
4 B would be the southern lot. Each lot would be 9,275 square feet in area and  
5 have approximately 62.35 feet of frontage on 36<sup>th</sup> Street. Consistent with BMC  
6 23.08.060.D and BMC 23.06.020, each lot would have a 60- by 60-foot building  
7 envelope outside of critical areas and buffers. Each lot would have direct access  
8 from 36<sup>th</sup> Street, which as noted above meets the City's minimum street standard,  
9 from a single shared driveway. *Exhibits 1, 1.A, 1.F, and 2.*
- 10 6. Pursuant to BMC 23.08.050.A(2), lots adjusted through a lot line adjustment  
11 may be reduced below the minimum area of the zone as long as they are no  
12 smaller than the smallest nonconforming lot. Each of the proposed lots would be  
13 at least as large as existing Lot B. *Exhibits 1 and 1.A.*
- 14 7. The proposal is dependent upon approval of a variance from BMC 23.08.070.B,  
15 which requires all right-of-way within and abutting a land division (or LLA) to  
16 be improved in accordance with BMC Title 13. The Applicant requested the  
17 variance to be relieved of the requirement to improve the alley and Lindsay  
18 Avenue. *Exhibits 1 and 1.D2.*
- 19 8. The segments of Lindsay Avenue and the alley that abut the subject property are  
20 encumbered by landslide hazard area slopes. Development of these rights-of-  
21 way is not needed to provide access or utilities to surrounding residential lots.  
22 The Public Works Department has granted the Applicant "last lot served" status  
23 pursuant to BMC 15.12.070, meaning that requirements to extend water and  
24 sewer mains through Lindsay Avenue have been waived. Planning Staff  
25 submitted that denying the variance – thus requiring the two lots to keep their  
26 current orientations when developed – would result in significant tree removal  
27 and impacts to critical areas and would result in no public benefit, whereas  
28 approving the variance would result in a better lot design and avoid unnecessary  
29 infrastructure. Street access to the lots – instead of alley access – would be  
30 consistent with the existing development pattern in the neighborhood. Through  
the notice of application process, the owner of one of the parcels on the opposite  
side of the alley requested that the alley be left in a natural condition. There  
was no other public comment on the request. *Exhibits 1, 1.A, 1.D1, 1.D2, and  
1.H; Ryan Nelson Testimony; Google Maps site view.*
9. The City approved a Type 1 critical areas ordinance permit for construction of  
single-family residences on the future lots. This administrative approval was  
based on review of a geologic hazard analysis prepared by a licensed geologist,

1 which established the extent of landslide and erosion hazards and their buffers on  
2 the parcels and determined there would be adequate buildable area outside of the  
3 geologic hazards and recommended 10-foot buffers for construction of single-  
family residences. *Exhibit 1.F.*

- 4 10. The subject parcels are forested, containing a total of 62 trees that are six inches  
5 or more in diameter at breast height, most of which are Douglas fir. *Exhibit 1.K.*  
6 Despite statements in the staff report that appear to suggest otherwise, future  
7 development of the proposed lots would be reviewed for compliance with the  
8 City’s recently adopted Emergency Landmark Tree Ordinance. Development of  
9 the lots would also be subject to the “clearing” special condition of Area 4 of the  
10 Samish Neighborhood and the performance standards of the critical areas  
11 ordinance, which generally prohibit the removal of vegetation from landslide  
12 hazard areas and buffers. *Ryan Nelson Testimony; Exhibit 1; BMC 20.00.150;*  
13 *BMC 16.55460.A.4.* To ensure compliance with these requirements, Planning  
14 Staff recommended as a condition of LLA approval that, in conjunction with  
15 building permit review, the Applicant obtain approval of a reasonable tree  
16 preservation and replacement plan. *Exhibit 1; Ryan Nelson Testimony.*
- 17 11. Public water and sewer are available to serve the two lots through mains located  
18 in 36<sup>th</sup> Street. *Exhibits 1 and 1.A; Ryan Nelson Testimony.*
- 19 12. There is an existing stormwater ditch in 36<sup>th</sup> Street along the subject property  
20 frontage. Whether additional stormwater management is required would be  
21 evaluated at the time of building permit review for each lot. Planning Staff’s  
22 recommended conditions of approval require submittal of a stormwater plan  
23 demonstrating compliance with BMC Chapter 15.42. *Exhibit 1; Ryan Nelson*  
24 *Testimony.*
- 25 13. The City of Bellingham’s Comprehensive Plan land use map designates the  
26 subject property as Residential Single, Low Density. Planning Staff submitted  
27 that the proposal furthers the goals and policies of the Comprehensive Plan by  
28 providing an infill development opportunity in an area with adequate existing  
29 infrastructure and public services. *Exhibit 1*
- 30 14. The application was submitted on May 8, 2024 and determined to be complete  
on May 20, 2024. *Exhibits 1 and 1.G*
15. The City issued a notice of application on June 13, 2024, and a notice of hybrid  
public hearing on July 9, 2024. *Exhibits 1.G and 3.* The only public comment  
received was addressed above (requesting the alley not be improved).

1 16. The City recommended approval of the LLA and variance, subject to the  
2 conditions set forth in the Staff Report. The Applicant waived objection to the  
3 recommended conditions. *Exhibit 1; Testimony of Ryan Nelson and Jeremy*  
4 *Disch.*

## 6 CONCLUSIONS

### 7 **Jurisdiction:**

8 Pursuant to BMC 21.10.040.B(9), lot line adjustments are decided through a Type I  
9 administrative review process with a decision by the Planning Director. Pursuant to  
10 23.48.040.A, the Hearing Examiner is the decision maker authorized to hear and decide  
11 applications for subdivision variance. Pursuant to BMC 21.10.060, consolidated Type I,  
12 II and III permits shall be reviewed under the process required for the permit with the  
highest process type number, and thus both the LLA and the subdivision variance are  
decided by the Hearing Examiner in the instant Type IIIA review process.

### 13 **Criteria for Review:**

14 Pursuant to BMC 23.10.030.A, lot line adjustments shall be given preliminary approval,  
15 including preliminary approval subject to conditions, upon finding ... that all of the  
16 following have been satisfied:

- 17 1. The lot line adjustment will not result in the creation of any additional lot, tract  
or parcel; and
- 18 2. All resulting lots meet minimum zoning requirements in BMC Title 20 and the  
19 minimum lot design standards as specified in Chapter 23.08 BMC or, if already  
20 nonconforming to either of these provisions, the adjustment may not increase the  
21 level of nonconformity unless the director approves a departure pursuant to BMC  
23.48.030; and
- 22 3. The lot line adjustment improves or maintains the overall function and utility of  
23 the existing lots; and
- 24 4. The lot line adjustment would not change the requirement to install public  
25 improvements that would otherwise be associated with the development of any  
of the existing lots resulting from the issuance of a building permit.

26 Pursuant to BMC 23.48.040.A, subdivision variance, the hearing examiner may grant a  
27 variance from any term of this title, except minimum lot size, if it is shown that the  
28 proposal is consistent with the following criteria:

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- a. Because of unusual shape, the location of preexisting improvements, other extraordinary situation or condition, or physical limitation including, but not limited to, exceptional topographic conditions, geological problems, or environmental constraints, in connection with a specific piece of property, the literal enforcement of this title would involve difficulties, result in an undesirable land division or preclude a proposal from achieving zoned density; or
  - b. The granting of the variance will establish a better lot design resulting in a development pattern found to be consistent with the neighborhood character including, but not limited to, development orientation to the street, setbacks, lot orientation, or other contextual element associated with the proposed development; and
2. The granting of any variance will not be unduly detrimental to the public welfare nor injurious to the property or improvements in the vicinity and subarea in which the subject property is located.

**Conclusions Based on Findings:**

1. Addressing the lot line adjustment criteria for approval established in BMC 23.10.030.A, the following conclusions are entered:
- a. As both existing lots are legal lots, the lot line adjustment would not result in the creation of any additional lot, tract, or parcel. *Findings 2, 3, 4, and 5.*
  - b. The existing lots are nonconforming with respect to the minimum lot area of the zone. The proposed LLA would not increase the level of nonconformity. Consistent with BMC 23.08.050.A(2), each of the adjusted lots would be larger than the smallest of the existing lots. Consistent with the lot design standards of BMC 23.08.060, the adjusted lots would have logical boundaries, allow for reasonable use, have sufficient building envelopes, and abut public infrastructure. *Findings 2, 3, 4, 5, 6, 11, and 12.*
  - c. The LLA would improve the overall function and utility of the existing lots. With the current lot configuration, existing Lot B is roughly half the minimum lot size of the zone, is largely encumbered by critical areas, and does not abut an improved street. The LLA would rotate the shared property line such that both lots would be equal in area, have code-compliant building envelopes outside of critical areas, and abut an improved street. Utilities would be available to both lots. *Findings 4, 5, 9, 11, and 12.*
  - d. Approval of the LLA would not, itself, change requirements to install public improvements; however, relief from public infrastructure improvement

1 requirements is accomplished through the subdivision variance, which is  
2 approved as described below. *Finding 7.*

3 2. Addressing the subdivision variance criteria for approval established in BMC  
4 23.48.040.A, the following conclusions are entered:

5 a. Because of physical limitations resulting from exceptional topography, geologic  
6 problems, and environmental constraints, literal enforcement of the street  
7 improvement requirement would involve difficulties and result in an undesirable  
8 land division. *Findings 3, 4, 5, 8, and 16.*

9 b. Granting the variance would not be materially detrimental to the public welfare  
10 or injurious to the property or improvements in the vicinity. Surrounding  
11 properties have adequate access to streets and utilities without improvements to  
12 the alley or Lindsay Avenue. *Findings 3, 4, 5, and 8.*

### 12 DECISIONS

13 Based on the preceding findings and conclusions, the requested lot line adjustment of  
14 two legal lots addressed as 1909 and 1915 36<sup>th</sup> Street, Bellingham and the associated  
15 subdivision variance from requirements to improve an adjacent alley and Lindsay  
16 Avenue are **APPROVED** subject to the conditions below.

#### 16 A. General Requirements

17 1. The lot line adjustment shall be developed generally consistent with the lot  
18 layout on **Exhibit 1.A**.

19 2. Modifications to this decision shall be processed in accordance with BMC  
20 23.12.080.

21 3. Development of the property shall be consistent with the provisions of  
22 Chapter 20.30 BMC, and with the description of the Proposal, except as  
23 otherwise provided herein.

24 4. Construction of single-family residences shall be required to document  
25 compliance with the recommendations and conclusions within the Critical  
26 Area Report for geologically hazardous areas on-site (**Exhibit 1.F**) at the  
27 time of Building Permit submittal.

28 5. The proposed development, including driveway and utility location and  
29 house placement, shall incorporate reasonable tree preservation and tree  
30 replacement which shall be determined by staff at the time of Building



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Permit submittal.

- 6. The proposed development shall be required to incorporate the recommendations within **Exhibit 1.K** in the Building Permit submittal.
- 7. The proposed development shall be required to retain and/or install one street tree for every 50feet of right of way frontage at the time of Building Permit submittal.
- 8. The Applicant shall be required to provide a stormwater plan that identifies compliance with BMC 15.42 at the time of Building Permit submittal.
- 9. Impact fees for transportation, schools and parks shall be paid in accordance with applicable BMC requirements.
- 10. Preliminary lot line adjustment approval shall expire as provided in BMC 23.10.050.


**B. Conditions For Final Lot Line Adjustment Approval**

The Applicant shall obtain all necessary permits and/or approvals from the City necessary to satisfy the following conditions prior to final lot line adjustment approval pursuant to Chapter 23.10 BMC.

- 1. The following shall be shown on the lot line adjustment map exhibit, 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 Order, and as may be amended in accordance with the municipal code.
  - c. A note referencing any existing private covenants and any covenants specific to the proposed lots.
  - d. Stormwater limitations.

DECIDED August 9, 2024.

**BELLINGHAM HEARING EXAMINER**



Sharon A. Rice