

SUB2024-0023/VAR2024-0003/CAP2024-0029: List of Attachments

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

- Attachment A Lot Line Adjustment Maps
- Attachment B Vicinity Map
- Attachment C Zoning and Comprehensive Plan Designation Map
- Attachment D Land Use Application materials
 - D1 Land Use Application
 - D2 Response to Variance Criteria, Subdivision Performance & Decision Criteria
- Attachment E Legal Lot Determination (LLD2005-00026)
- Attachment F Critical Area Permit (CAP24-0029)
- Attachment G Notice of Application/Mailing List/Affidavit of Mailing
- Attachment H Public Comment
- Attachment I Aerial Map
- Attachment J School Map
- Attachment K Tree Inventory and Tree Protection Plan prepared by Aubrey Stargell dated 3/27/24

CITY OF BELLINGHAM

PLANNING AND COMMUNITY DEVELOPMENT
STAFF REPORT

HEARING EXAMINER

July 24, 2024

PROJECT NO.: 36th & Lindsay Lot Line Adjustment (LLA) & Variance (SUB2024-0026 & VAR2024-0003)

APPLICANT: Jeremy Disch, PowerTek Surveying, 5426 Barrett Rd. #104, Ferndale WA 98248

OWNER: Skeers Construction - Brandon Priest, 1249 Birch Falls Dr., Bellingham WA 98229

I. OVERVIEW

A. PROPOSAL - Attachment A

The Proposal includes a request for a lot line adjustment of two legal lots of record for future construction of two single family residences (**Attachment A**). The applicant is requesting a variance from street improvements to Lindsay Ave. and the abutting alley, both of which are undeveloped. The variance to BMC 23 is a Type IIIA decision which must be decided by the Hearing Examiner following a public hearing.

Both lots are undeveloped and contain landslide and erosion geologically hazardous areas and associated buffers regulated under the Critical Areas Ordinance on site. The subject property abuts a water and sewer main in 36th St.

The future development of single family residences is proposed to be served by the existing minimum standard street and water and sewer mains located in 36th St.

The Public Works Department has agreed to grant the applicant last lot served from the requirement to install a sewer and water main in Lindsay Ave. abutting the subject property in accordance with BMC 15.12.070. Following a review of the existing development and utilities and potential future development there does not appear to be a public benefit from requiring installation of a water and sewer main abutting the subject property in Lindsay Ave.

Stormwater management for the future single family residence and proposed driveway improvements will be reviewed for compliance with 15.42 of the BMC at the time of Building Permit submittal.

B. LOCATION

1909 & 1915 36th St./ Samish Neighborhood Area 4 zoned Residential Single Detached/Cluster with a 12,000 sf density (**Attachment B**).

Assessor's parcel numbers: 370307 462459 0000, 370307 465459 0000

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

II. STAFF RECOMMENDATION

Approve the 36th & Lindsay LLA application and associated variance (**Attachment D1**) with the recommended conditions in Section XI of this report.

III. JURISDICTION

The Hearing Examiner is granted authority to hold hearings and make decisions on variances to the Land Division Ordinance pursuant BMC 23.08.040.

IV. BACKGROUND

The applicant and staff held a voluntary pre-application meeting on 3/5/24 (PRE2024-0008). A neighborhood meeting is not required for a lot line adjustment with a critical area permit and variance pursuant to BMC 21.10.090.

In 2005, the city determined the subject property AP# 370307-465459 is a separate legal lot of record therefore based on the approval of LLD2005-00026 (**Attachment E**) AP# 370307-462459 is also a legal lot of record due to the prior platting prior to the City's Subdivision Ordinance and surrounding public rights of way.

Pursuant to BMC 23.08.070.B, all rights-of-way within and abutting a land division shall be improved in accordance with BMC Title 13. Pursuant to BMC 23.10.030.A.4, the lot line adjustment cannot change the requirement to install public improvements that would otherwise be associated with the development of any of the existing lots resulting from the issuance of a building permit, which would require development of Lindsay Ave. abutting the subject property to be improved to a minimum standard street and the abutting alley to be improved to meet alley standards.

The applicant has proposed a variance to the construction of Lindsay Ave. and the alley abutting the subject property.

Pursuant to BMC 23.08.060.B, single family lots with a 10,000 sf or greater density require a 60' by 60' building envelope free of critical area buffers. The proposed Lots meet the building envelope requirements and provide a sufficient buildable area consistent with the Critical Area Report provided by a qualified professional (**Attachment F**).

Due to the proposed variance to BMC 23, the proposed lot line adjustment is required to be consolidated into a Type IIIA process with a public hearing and Hearing Examiner approval. The Critical Area Permit was administratively approved by staff (**Attachment F**).

5/8/24: A Lot Line Adjustment application, Variance and Critical Areas Permit (SUB2024-0023, VAR2024-0003 & CAP2024-0029) was submitted.

5/8/24: Staff issued a Request for Information.

5/20/24: The applicant provided a response to the Request for Information.

5/20/24: A Notice of Complete Application was issued.

6/13/24: A Notice of Application and Notice of Public Hearing was issued (**Attachment G**). One comment was received which requested the alley be left in its natural state to minimize impacts from the project (**Attachment H**).

V. EXISTING SITE CHARACTERISTICS

A. LAND USE AND ZONING DESIGNATION

The property is located in the Samish Neighborhood Area 4 Residential Single zoning with a 12,000 sf density. The land use designation of the subject site is Single Family Residential, Low Density.

Area 4 of the Samish Neighborhood (BMC 20.00.150) contains special conditions related to traffic, view, clearing, Connelly/34th/Harrison arterial route, buffer Interstate 5. The subject property does not abut an arterial street. Transportation Impact Fees will be required at the time of Building Permit submittal to address transportation impacts. Future residences will be limited to building height requirements under BMC 20.30.040. As conditioned the proposal will be required to incorporate reasonable tree preservation and replanting as determined by staff at the time of Building Permit submittal.

B. EXISTING CONDITIONS

The site contains two legal lots which are undeveloped. Street and utility abutment are provided in 36th St. Access for the future single family residences will be reviewed for compliance with the BMC at the time of Building Permit submittal (**Attachment I**).

The surrounding property is all within the same residential low density zone (**Attachment C**).

Whatcom Transit Authority provides service to the site at the intersection of Lindsay Ave. and Samish Way approximately 500-feet from the subject property as the crow flies.

The subject property is not located within close proximity to schools (**Attachment J**).

Public water and sewer mains and a minimum standard street are located in 36th St.

VI. CRITICAL AREAS

Critical areas, pursuant to Chapter 16.55 BMC, are located on the subject and adjacent properties, which include landslide and erosion geologically hazardous areas and associated buffers. In order to create proposed building envelopes on the proposed lots which contain geologically hazardous areas and buffers, the applicant has applied for a Critical Area Permit which has been reviewed and approved by staff administratively (**Attachment F**).

Based on the City's records the applicant submitted completed land use applications for the proposal prior to 5/20/24. The City adopted an Emergency Landmark Tree Ordinance on the evening of 5/20/24, therefore the proposal is subject to the Clearing requirements under BMC 16.60 not the Emergency Landmark Tree Ordinance. In order to identify compliance with the Clearing and Critical Areas requirements and Samish Neighborhood table of zoning special conditions, staff as recommended as a condition of approval the proposed development incorporate reasonable tree preservation and tree replacement which shall be determined by staff at the time of Building Permit submittal. The applicant provided a Tree Inventory and Tree Protection Plan prepared by a qualified professional to assist staff with the review of the development proposal during the Building Permit submittal (**Attachment K**).

VII. APPLICATION

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

VIII. SHORT SUBDIVISION – Chapter 23.12 BMC

Pursuant to BMC 23.48.010, any action which will result in the lot line adjustment or short subdivision of any lot, tract, parcel, or plot of land including a request to modify a requirement of Title 23 shall be processed as an administrative departure or variance under BMC 23.48 subject to a Type IIIA process.

Pursuant to BMC 23.08, lot line adjustments shall be given approval, upon finding by the Hearing Examiner that all of the following have been satisfied:

Staff analysis: The following is staff's code compliance review of Chapter 23.08 BMC.

23.08.030 Performance standards: Staff concurs with the applicant's analysis and would like to add the following information to the record.

The proposed design incorporates two single family residences in a low density zone. The proposed lots abut a minimum standard street and required utility infrastructure. The subject plat is oriented north and south while the western and southern plats are oriented east to west. The orientation of the existing developed residences and future proposed residences is oriented towards the view of Bellingham Bay to the west and is conducive with the topography which slopes from west to east.

The pattern of development is not inconsistent with the developed nature of 36th St. on the subject and adjoining blocks.

23.08.040 Maximum number of lots:

The subject property has obtained a legal lot determination for two existing legal lots (**Attachment I**). The lot line adjustment does not propose to increase the number of lots.

23.08.050 Minimum lot size:

The existing eastern legal lot of record is below the minimum lot size for Area 4 of the Samish Neighborhood but has been determined to be a legal lot of record based upon ownership at the time zoning took effect. Pursuant to BMC 23.08.050.A.2, no lot within the lot line adjustment may be reduced to a size smaller than the smallest existing lot within the application. The proposal complies with this requirement.

23.08.060 Lot design standards:

(A & B) Logical Boundaries/Reasonable Use. The square footage of the proposed lots is equally divided between each other and allows reasonable use of the lots given the critical areas and associated buffers and abutment on a minimum standard street and public utilities. The proposal results in a logical design for development given the topography of the slope.

Staff finds the proposal has logical boundaries and allows for reasonable use of the proposed lots to accommodate the infill development opportunity to achieve comprehensive plans goals.

(C) Alley Access. The subject property abuts a platted alley however the alley is undeveloped, contains geologically hazardous slopes and alleys are not commonly developed in the neighborhood given the low density designation and topography. The applicant has requested a variance from the requirement to develop the platted alley.

(D) Building Envelope. Both proposed lots meet the minimum 60' by 60' building envelope requirement. Building envelope defined under BMC 23.06.020, exclude critical areas and their buffers from the required dimensional area. Pursuant to BMC 23.48.030.C, a departure not to be less than a 30'x 30' building envelope may be approved as a departure not a variance for a lot line adjustment.

Pursuant to BMC 16.55.460.A.8, land that is located wholly or partially within a landslide hazard area or its buffer may be divided; provided, that each resulting lot has sufficient buildable area outside of, and will not affect, the landslide hazard or its buffer, as determined by a qualified professional. A qualified professional has delineated geologically hazardous areas and a reduced 10' buffer from the slope in **Attachment F**. Following review of the information provided by the qualified professional in **Attachment F**, staff has determined there is an adequate building envelope on each of the lots and associated access and utilities can be reasonably provided outside of the geologically hazardous areas and associated 10' buffer. In the event a future development proposal encroaches within the geologically hazardous areas along the eastern and southern portion of the subject property and associated buffer, the applicant will be required to provide additional information from a qualified professional documenting compliance with the applicable conclusions and recommendations within **Attachment F** and BMC 16.55.

(E) Abutment – Public Infrastructure. All lots are proposed to provide abutment on a water and sewer main and minimum standard street in 36th St. The applicant has

proposed a variance to improving Lindsay Ave. and the alley and the Public Works Department has agreed to grant the applicant last lot served from the requirement to extend water and sewer mains in Lindsay Ave. in accordance with BMC 15.12.070.

23.08.070 Public infrastructure, dedications and improvement requirements:

(A) Dedication. The Proposal is located adjacent to existing platted right-of-way in 36th St., Lindsay Ave. and the abutting alley. Following review from Fire, Public Works, Planning and Parks staff, no additional right-of-way is required to be dedicated.

(B) Street standards. The proposed residences will be served by 36th St. which meets the minimum street standard.

Lindsay Ave. and the alley abutting the subject property does not meet the minimum street and alley requirements, therefore the applicant has applied for a variance to the Lindsay Ave. and alley improvements identified below.

(C) Access. Future development of single family residences accessed from Lindsay Ave. is unlikely due to the topography. The variance will allow the use of existing improvements in 36th St. Ave. Granting the variance will avoid unnecessary impacts to critical areas and minimize removal of trees within the existing undeveloped right of way.

(D) Water and Sewer mains are located in 36th St. Based on the City's records there appears to be an existing stormwater management ditch located in 36th St. abutting the subject property.

Stormwater management is proposed to comply with City code, Chapter 15.42 BMC which will be reviewed for compliance at the time of Building Permit submittal.

(G) Parks and Recreation. The Parks and Recreation Open Space Plan does not identify any improvements in the vicinity.

23.08.080 Landscaping and design of infrastructure:

Landscaping and stormwater associated infrastructure will be reviewed at the time of Public Facilities Construction Agreement and/or Building Permit submittal for consistency with applicable requirements.

Staff analysis: The following is staff's code compliance review of Chapter 23.10 BMC.

23.10.30 Lot Line Adjustment Decision Criteria

1. The lot line adjustment will not result in the creation of any additional lot, tract or parcel;
 - a. Based on the City's records the subject property is two legal lots of record. The proposal will not result in the creation of additional lots.
2. All resulting lots meet minimum zoning requirements in BMC Title 20, except for minimum lot size as may be reduced pursuant to BMC 23.08.050(A)(2), and the minimum lot design standards as specified in Chapter 23.08 BMC or, if already

nonconforming to lot design standards, the adjustment may not increase the level of nonconformity unless the director approves a departure pursuant to BMC 23.48.030;

- a. Existing Lot A (AP# 370307-462459) is 12,366 sf and Lot B (AP# 370307-465459) is 6,184 sf. Proposed Lot A is 9,275 sf and Lot B is 9,275 sf. The minimum lot size for Area 4 of the Samish Neighborhood is 12,000 sf. The proposal results in creating two lots which are more compliant with the minimum lot size and equally distributed in area. The proposal results in creating a more conforming and compliant lot. The lot line adjustment does not increase the level of nonconformity.
3. The lot line adjustment improves or maintains the overall function and utility of the existing lots; and
 - a. The lot line adjustment improves the overall function and utility of the existing lots by orienting the units towards existing developed public access and associated utilities and enables a development proposal which minimizes impact to the geologically hazardous areas and buffers on-site.
 4. The lot line adjustment would not change the requirement to install public improvements that would otherwise be associated with the development of any of the existing lots resulting from the issuance of a building permit.
 - a. Pursuant to BMC 23.08.070.B, the proposal requires development of Lindsay Ave. to a minimum street standard and the improvement of the abutting alley and extension of a water and sewer main within Lindsay Ave. to the eastern boundary of the subject property. The applicant has requested a variance from the Hearing Examiner to the requirement to improve Lindsay Ave. and the abutting alley. The Public Works Director has administratively granted last lot served from the requirement to extend water and sewer mains within Lindsay Ave. as there does not appear to be a public benefit associated with the infrastructure improvements based on the pattern of existing development and potential future redevelopment.

Staff finds that if the lot line adjustment and associated variance are properly conditioned, as necessary to determine compliance with the land division codes, the provisions of RCW 58.17 are met and the public's use and interest will be served.

IX. VARIANCE EVALUATION

23.48.040 Subdivision Variance

A. Variance. The hearing examiner may grant a variance from any term of this title, except minimum lot size, if it is shown that the proposal is consistent with the following criteria:

- 1.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**

1.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

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

Staff analysis: Staff agrees with the applicant's response. The topography of the subject property, Lindsay Ave. and the abutting alley rights of way present significant challenges to development of the street/alley infrastructure requirements under the BMC and do not appear to result in a public benefit.

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.

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

Staff analysis: Staff agrees with the applicant's response. The proposed lot design results in a better lot design in an orientation and size found throughout the existing neighborhood. The proposed lot design will allow greater tree preservation on the subject property as required under the table of zoning and as recommended by staff in the conditions of approval.

Staff did not receive opposition to the proposed variance from the surrounding property owners during the comment period during the writing of this report (7/2/24). Therefore, the proposal meets this criterion through compliance with BMC 23.48.040.A.2, above.

X. CONCLUSION

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

The Proposal furthers the goals and policies of the Comprehensive Plan by providing an infill development opportunity in an area with existing infrastructure and services adequate to service the proposal. Additionally, the Proposal is consistent with the current zoning and associated special regulations. An approval would not excuse the applicant from complying with any other federal, state or local statutes, ordinances or regulations that may be applicable to this project.

XI. CONDITIONS

Based upon staff's analysis above, staff recommends the Hearing Examiner approve the lot line adjustment and associated variance for the Proposal as described herein and as provided in **Attachments A through K**, subject to the following conditions:

A. GENERAL REQUIREMENTS

1. The lot line adjustment shall be developed generally consistent with the lot layout on

Attachment A.

2. Modifications to this decision shall be processed in accordance with BMC 23.12.080.
3. Development of the property shall be consistent with the provisions of Chapter 20.30 BMC, and with the description of the Proposal, except as otherwise provided herein.
4. Construction of single family residences shall be required to document compliance with the recommendations and conclusions within the Critical Area Report for geologically hazardous areas on-site (**Attachment F**) at the time of Building Permit submittal.
5. The proposed development, including driveway and utility location and house placement, shall incorporate reasonable tree preservation and tree replacement which shall be determined by staff at the time of Building Permit submittal.
6. The proposed development shall be required to incorporate the recommendations within **Attachment K** in the Building Permit submittal.
7. The proposed development shall be required to retain and/or install one street tree for every 50' 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.

Prepared By:



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Approved By:



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