

September 3, 2024

BMC 16.55.20 - Critical area Variance**RE: Variance Request Narrative for 2302 Alabama Street**

The proposed project includes construction of a single-family residence (SFR) with two attached accessory dwelling units (ADU) and associated infrastructure. The proposed site plan is detailed in Figure 2. The majority of the subject parcel is encumbered by the buffer associated with Fever Creek, as shown in Figure 3. Literal interpretation of the COB critical areas ordinance (CAO) would deprive the property owners of reasonable use of the subject parcel, therefore a variance request from the City of Bellingham critical areas ordinance is proposed. The proposed project includes the following elements:

- Residence and Attached ADUs. The proposed two-story, SFR and two attached ADUs will have a combined footprint of 1,415 square feet (sq. ft.) in total. This footprint is consistent with the average size of single-family residences within this neighborhood, and well below the average when including multifamily developments, as determined by a housing analysis described in the Critical Areas Impact Assessment and Mitigation Plan Section 3.3 (Northwest Ecological Services, 2024).
- Access and Parking. A concrete driveway is proposed off Alabama Street, providing access to the SFR and ADUs. Concrete parking with a turnaround and a covered parking area will be installed between the proposed residence and Alabama Street. A concrete pathway is proposed west of the SFR, providing access to the SFR. The cement driveway, parking, turnaround, and path have a combined footprint of approximately 1,800 sq. ft. in total.
- Building Setback. Per City staff recommendation, the proposal reduces the standard 15-ft building setback from the retained stream buffer and will have a 10-ft building setback to the south and a 5-ft setback to the east. The building setback areas will have an approximate total footprint of 940 sq. ft., will be utilized as lawn/landscaping, and will be fully mitigated.

The project adheres to the 20-ft building and 10-ft clearing setbacks from the stream, as recommended in the geotechnical assessment.

- Utilities. Utilities will connect to the City infrastructure along Alabama Street.
- Stormwater. The cement driveway will be sloped north towards Alabama street where a City stormwater catch basin exists. The remainder of the site will retain existing surface runoff flow paths to the east and south, and stormwater will be dispersed into the stream buffer.
- Stream Buffer Impact. A total of 4,020 sq. ft. of permanent stream buffer impact will result from the proposed project. This impact area includes all proposed impervious

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surfaces within the buffer as well as the retained building setback areas.

Any temporary disturbances within the buffer will be limited to areas currently existing as lawn, which are scheduled to be enhanced with native vegetation as part of the compensatory mitigation project after completion of exterior construction.

- Compensatory Mitigation. The remaining on-site stream buffer, in areas with the potential for functional uplift, will be enhanced for a total of 4,550 sq. ft. of buffer enhancement. Enhancement will include removal of noxious weeds and densely planting native trees, shrubs, and herbaceous vegetation.

Wildlife-permeable split-rail fencing and native growth protection area (NGPA) signage will be installed along the outer boundary of the mitigation area for protection, as shown in Figure 4. The retained buffer areas will be placed in a permanent conservation easement recorded with the Whatcom County auditor's office. All mitigation areas will be maintained and monitored for a period of five years per COB Code. Refer to the Critical Areas Impact Assessment and Mitigation Plan for further detail on the proposed buffer impacts and mitigation (Northwest Ecological Services, 2024).

Due to the small size of the subject parcel and extent of stream buffer over the lot, literal interpretation of the CAO would not allow for a buffer reduction sufficient for reasonable residential development on the site. Therefore, a variance from the CAO is requested in order to reduce the stream buffer beyond 75 percent of the standard 75-ft buffer required for Fever Creek [Bellingham Municipal Code (BMC) 16.55.500(D(3))]. According to the CAO, a variance may be granted if the applicant demonstrates that they can meet the criteria outlined in (BMC 16.55.120(B)). The following is a summary of the criteria and a description of how the project meets each requirement:

1) Special conditions and circumstances exist that are particular to the site.

The subject parcel is almost entirely encumbered by stream buffer, resulting in a legally-existing non-conforming lot. There is insufficient area outside of the buffer for residential development and a 25% administrative buffer reduction allowable by code [BMC 16.55.500(D)((3)(b))] would not provide sufficient area for reasonable use of the site. A 25% buffer reduction leaves only 14 feet of space between the buffer and the required 5-ft side yard setback. BMC 16.55.340 requires a 15-ft building setback from the edge of the buffer, which leaves no room for development at all. The building setback may be reduced administratively, but that would still leave less than 14 feet for a development, which is impractical and poses an undue hardship.

2) The special conditions do not result from the action of the applicant.

The subject parcel has been a legal lot of record since 1902. Fever Creek has been historically manipulated and confined within the existing channel. The timeframe for when it was ditched around the parcel boundaries occurred is unknown, however, it took place long before the applicant took ownership of the parcel in 2024.

3) A literal interpretation of the CAO would deprive the applicant of all reasonable use of the property and the requested variance is the minimum necessary to provide such rights.

There is insufficient area outside of the buffer for residential development and a 25% administrative buffer reduction allowable by code [BMC 16.55.500(D)((3)(b))] would not provide sufficient area for reasonable use of the site. A 25% buffer reduction leaves only 14 feet of space between the buffer and the required 5-ft side yard setback. BMC 16.55.340 requires a 15-ft building setback from the edge of the buffer, which leaves no room for development at all. The building setback may be reduced administratively, but that would still leave less than 14 feet for a development, which is impractical and poses an undue hardship. Therefore, the literal interpretation of the CAO would deprive the applicant of reasonable use of the property which is intended for residential use.

The intent of the proposed project is to provide housing within a medium-density residential area, as identified by the Roosevelt Neighborhood Plan. The project has undergone several design changes in order to minimize buffer impacts while also providing medium-density housing. The proposed two-story, SFR and two attached ADUs will have a combined footprint of 1,415 square feet (sq. ft.) in total. This footprint is consistent with the average size of single-family residences within this neighborhood (1,415 sf), and well below the average surrounding multifamily developments (2,587 sf). The proposed single-family design is the minimum necessary to provide reasonable use of the subject property which is zoned for multi-family residential development.

4) Granting the variance will not confer on the applicant any special privileges that are denied to other lands in similar circumstances.

A housing analysis was conducted by NES to determine the use and average footprint of residential development in the immediate vicinity (300-ft radius) of the subject parcel. A total of 30 properties were reviewed. Based on the data collected from the parcels assessed, the following was determined (data included in Appendix C):

- 57 percent of the parcels assessed are single-family residences, 43 percent are either duplex, 3plex, 4plex, or other multi-unit residential.
- The average single-family residential footprint is 1,415 sq. ft.
- The average multi-family residential footprint is 2,587 sq. ft.

The proposed single-family residence and ADUs have a combined footprint of 1,415 sq. ft. total, the average size for one home in the neighborhood. The proposed use is in line with the single and multi-family residential uses in the neighborhood.

Adjacent developments are located as close as 12 ft from the creek. The proposed residence is located 20 ft from the creek at the closest point to the east and 52.5 ft to the south.

Therefore, no special privileges are being granted to the applicant with the proposed project.

5) Granting a variance is consistent with the general purpose of CAO. It does not have a significant adverse impact on functions and values of critical areas and is not otherwise detrimental to public welfare.

The on-site buffer of Fever Creek lacks a dense, native vegetation community. The proposed development site lacks trees and shrubs and currently exists as maintained lawn with compacted soils and remnants from previous development on site. The remaining buffer areas on site either also exist as lawn or are dominated by noxious vegetation, primarily Himalayan blackberry. The existing buffer conditions are considered disturbed and provide minimal protection for the stream.

Through buffer enhancement associated with the proposed project, a net increase in buffer functions is anticipated on site. The area of development will be mitigated at a ratio greater than 1:1 with buffer enhancement. The enhancement areas will be densely planted with native trees, shrubs, and herbaceous vegetation to provide increased water quality improvement and hydrologic and habitat function. Therefore, with the proposed mitigation, the requested variance will be consistent with the CAO as no net loss of buffer functions (and potentially a net increase) is anticipated from the proposed project. The Impact Analysis in Section 3.5 of the Mitigation Plan provides greater detail on how the proposed enhancement will offset impacts to buffer functions (NES, 2024).

The proposal is not detrimental to public welfare. There is housing supply shortage in Bellingham. Increasing supply and density in residentially zoned areas is consistent with the goals of the Comprehensive Plan for this neighborhood.

6) The decision to grant the variance includes best available science and gives special consideration to conservation or protection measures to preserve or enhance fish habitat.

The impact analysis was conducted using best available science on buffer functions and how they support stream function. No in-water work will occur with the proposed project; however, the proposed buffer enhancement is anticipated to improve the water quality of runoff entering Fever Creek and will improve thermal protection of the stream overtime as the installed vegetation matures. The retained and enhanced buffer areas will be placed into a conservation easement to be

protected in perpetuity. Therefore, with the proposed mitigation, the variance will provide for preservation and enhancement of fish habitat.

7) Granting the variance is consistent with the general purpose and intent of the comprehensive plan and adopted development regulations.

The proposed project will result in increased housing density within the Roosevelt Neighborhood, an area planned for multifamily residential, medium density housing. Furthermore, the project provides ADA accessible housing, while also enhancing and permanently protecting stream habitat. Therefore, granting the variance is consistent with the general purpose and intent of the comprehensive plan and adopted neighborhood plan regulations which identifies "enhancement projects on Fever Creek are needed."

For the reasons described above, the literal interpretation of the CAO would deprive the applicant of all reasonable use of the property and the proposal meets variance criteria (BMC 16.55.120(B)).