

CAP2024-0055 and VAR2024-0010 List of Attachments

Attachment A - Proposed Site Plan

Attachment B - Vicinity Map

Attachment C – Samish Neighborhood Zoning Map

Attachment D – CAP and Variance Application Type III

Attachment E – Miller Environmental Critical Area Report (CAR) Section 5.3 includes the critical area variance justification

Attachment F – GeoTest Geohazard and Infiltration Feasibility Report (GEO)

Attachment G – Tree Inventory

Attachment H – Landmark Tree Removal Request

Attachment I – Zoning Exemption Request

Attachment J – Notice and Posting Information

Attachment K – Public Comment

Attachment L - Mitigation Plan Site Plan

**CITY OF BELLINGHAM PLANNING AND COMMUNITY DEVELOPMENT
STAFF REPORT
CAP2024-0055 and VAR2024-0010**

HEARING EXAMINER

January 22, 2025

PROJECT NO.: 119 Ashley St, Critical area permit (CAP2024-0055), Critical Area Variance (VAR2024-0010)

APPLICANT/OWNER: Trent Slusher, RKS Development, LLC 512 40th St 360-296-1089
trent@slusherhomes.com

I. OVERVIEW

A. PROPOSAL

B. Request for two variances. A variance to the Bellingham Municipal Code (BMC) 16.55 Critical Area Ordinance (CAO) is requested for the reduction of the stream buffer for Lincoln Creek to facilitate development of one single-family home. Lincoln Creek requires a 75-foot buffer per BMC 16.55.500. which covers the entire site, this would deprive the property owners a reasonable use of the subject parcel. The proposed buffer would be approximately 23 feet on the west side of the creek. (Development is not proposed on the east side of the creek.) The overall proposed development footprint is approximately 2,043 square feet which includes the 931 SF home footprint, utilities, decking, driveway, minimum setbacks and maintenance areas around the home. An additional zoning setback variance has been requested to reduce the front yard setback from 20 feet down to 5 feet to move the home as far from Lincoln Creek as possible (Attachment A and L).

C. GENERAL INFORMATION

Location: 119 Ashley St, Bellingham WA 98229 (Attachment B)

Legal Description: Jameson's 2nd Bay View Add to Fairhaven Lots 14-16, BLK 2

Assessor Parcel No: 380332025095 0000

Lot Area: 7,911 square feet

Zoning: Samish Neighborhood, Area 3, Residential-Multi, Planned, medium density zoning (Attachment C).

II. STAFF RECOMMENDATION

Approve the critical area and land use setback variance requests with conditions specified in Section IX of this report.

III. JURISDICTION

The Hearing Examiner is granted authority to hold hearings and make decisions on variances to the Critical Areas Ordinance pursuant BMC 16.55.120 and on variances to the Land Use Ordinance pursuant to BMC 20.18. In this circumstance, the applicant has also requested that the Hearing Examiner issue a decision on the critical area permit itself.

IV. CHRONOLOGY AND PUBLIC COMMENT

A. Application and Notice Chronology

1. October 1, 2024, Pre-application application Waiver received (PRE2024-0082)
2. October 10, 2024, Pre-application Waiver approved for single family home.
3. November 12, 2024: Critical Area Permit and Variance Application received (Attachment D). The applicant submitted application materials for Critical Area Permit and Variance. This included the application itself, a Critical Area report with Mitigation (Attachment E), A Geotech/Stormwater evaluation (Attachment F), and a Tree Assessment (Attachment G).
4. November 12, 2024, the Planning and Community Development Department (PCDD) issued a Request for Information (RFI -1). Specifically, a landmark tree removal request for 1 tree and a letter of exemption for construction of a single-family residence in a multi-family zone.
5. December 13, 2024: RFI-1 materials were submitted. Landmark Tree removal request (Attachment H). Single family zoning exemption request (Attachment I).
6. January 3, 2025: The PCDD issued a Notice of Complete Application, Notice of Application, and public hearing to all property owners within 500 feet of the site, at least 15 days prior to the hearing. (CAP2024-0055 and VAR2024-0010) (Attachment J).
7. January 9, 2025: The Hearing Examiner's office issued a Notice of Hearing to all property owners within 500 feet of the site, at least 15 days prior to the hearing, which is scheduled for January 22, 2025, at 6:00 p.m. in the City Council Chambers, City Hall, 210 Lottie Street, Bellingham. Please see Attachment J.

B. Public Comment

As of the date of writing this staff report, January 15, 2025, 3 comments from the public have been received regarding the proposal and are provided on Attachment K. General sentiments in the public comments were for denial of the project based on impacts from the stream buffer reduction, increase in traffic, historic uses of the site, and changes to the hydrology of the stream. Comments will be further addressed at the Public Hearing.

V. EXISTING SITE CHARACTERISTICS

A. Existing Site Conditions

The approximately 10,065 SF subject property is a vacant parcel. The entire parcel is forested with deciduous and coniferous trees, with a shrub and herbaceous layer underneath. Topographically, the southwestern portion of the property is generally flat and at street level. The site slopes down to the east with moderate to significant slopes in the center of the property to a low point at Lincoln Creek. The eastern portion of the

site has a flat plateau just above the ordinary high-water mark of the stream. Critical areas and their buffers cover the entire property leaving no room for development without a variance.

Trees are regulated by BMC 16.60 (Clearing) and Ordinance # 2024-07-022, the Landmark Tree Ordinance. A Tree Inventory was prepared for the subject property by Aubrey Stargell on July 19, 2024 (Attachment G).

B. BMC 16.55 – Critical Area Ordinance (CAO)

Critical areas on the subject site include a fish and wildlife habitat conservation area (Lincoln Creek and its associated buffer) and a geologic erosion hazard area associated with slopes. Bellingham City IQ maps indicate a frequently flooded area associated with wetlands in the vicinity of Lincoln Creek. However, there were no wetlands identified or delineated on the subject property (Miller 2024). The stream and slope areas are regulated by BMC 16.55, Critical Areas. Critical areas are described in more detail in the Critical Area Assessment (CAR) (Attachment E) and Geotechnical and stormwater report (GEO) (Attachment F).

C. BMC 16.60 – Land Clearing and Landmark Tree Ordinance #2024-07-022

BMC 16.60 defines significant trees as any tree that is greater than 6” diameter at breast height (dbh). BMC 16.60.080 B 4 requires a tree retention plan that identifies significant trees to be removed and retained for development of a project. A tree inventory is provided on Attachment G that identifies 49 significant trees on the subject property.

In May of 2024, the City Council adopted an interim ordinance establishing regulations regarding Landmark Trees. Section 4 a. of the Landmark Tree Ordinance (LTO) specifies that any tree having a DBH of 36” or greater is a “landmark tree.” Attachment G identifies two landmark trees on the subject site; tree #9, a 42” Douglas fir and tree #31 a 42” big leaf maple. These two trees are also identified on sheet A5 of Attachment E within a red box.

D. BMC Title 20 – Land Use and Zoning Designation

The subject property is in Area 3 of the Samish Neighborhood. The zoning designation is Residential-Multi, it has a “planned” use qualifier, with a “medium” density designation. BMC Title 20.32 – Residential Multi Development includes specifications for future development.

VI. APPLICATION

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

A. APPLICABLE SECTIONS OF THE BELLINGHAM MUNICIPAL AND PLANS

Critical Areas Ordinance: BMC 16.55 and specifically BMC 16.55.120, Variances
Land Use Variance Procedures and Criteria: 20.18
Residential Single Development: BMC 20.32
Samish Neighborhood Plan and Zoning Regulations in BMC 20.00.150
Bellingham Comprehensive Plan

B. DEPARTMENT REGULATORY ANALYSIS

1. BMC Chapter 16.55 – Critical Area Ordinance (CAO)

The purpose of BMC 16.55 is enumerated in subsection .010 A which reads, *“The purpose of this chapter is to designate and classify environmentally sensitive and hazardous areas as critical areas and to protect, maintain and restore these areas and their functions and values, while also allowing for reasonable use of public and private property.”* In addition, letter F of this subsection states *“This chapter is to be administered with flexibility and attention to site-specific characteristics in the context of the watershed or other relevant ecosystem unit. It is not the intent of this chapter to make a parcel of property unusable by denying its owner all reasonable economic use of the property. It is not intended to prevent the provision of public facilities and services necessary to support existing and planned development for/by the community.”*

As specified above in the project description, the intent of this variance is to establish a reasonable development footprint, given that the future use will be a residential structure.

The applicant submitted a Critical Areas Assessment (CAR) dated September 13, 2024, by Miller Environmental Services, LLC. Miller Environmental Services, LLC. meets the definition of qualified professional in BMC 16.55.510. The CAA includes the information required by BMC 16.55.210 and 480. The CAR is provided on Attachment F.

The CAR identifies Lincoln Creek as a regulated Habitat Conservation Area on the subject property. This reach of Lincoln Creek flows northwest through the eastern portions of the subject property (Attachment A). Lincoln Creek is shown as a potential fish stream in the Washington Department of Fish and Wildlife Salmon-Scape map tool (Miller 2024). In accordance with BMC 16.55.470 – this type F stream requires a 75-foot buffer. The 75-foot buffer associated with Lincoln Creek extends across the entire property as shown on Attachment A. Attachment A also shows the extent of the administratively reduced buffer of 56.25’ per BMC 16.55.500 D 3. This reduced buffer appears to provide approximately 248 square feet of total area for development outside of administratively reduced buffer. 248 square feet is not feasible to construct a typical or even small-scale residential structure. Buffer averaging, per BMC 16.55.500 D 4 is not feasible because the total buffer square footage must be equal to that of the standard buffer. The stream buffer is proposed to be reduced from 75 feet down to 24 feet on the west side of the development.

The required 15-foot building setback pursuant to BMC 16.55.340(G) that extends from the stream buffer edge can be administratively reduced. It is proposed to be 5 feet on the east side of the development area and coincides with the top of steep slope area shown on Attachment A.

The CAR includes mitigation and is detailed in Section 9 (Miller 2024). The mitigation section includes the information required in BMC 16.55.260. Mitigation sequencing, specified in BMC 16.55.250, is the method by which an applicant “demonstrates that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas and buffers.” Staff concludes that the “7.0 - Impact Assessment” section of

the MIT Plan satisfies BMC 16.55.250, mitigation sequencing. The project *avoids* direct stream impacts. The proposed development area is outside of the recommended geohazard setback area.

Buffer impacts have been *minimized* by proposing to locate the proposed structure as far into the southwest corner as feasible. The proposed residential structure includes approximately 2043 square feet of stream buffer impact. The impact occurs as far from the stream as feasible while consolidating the development as near to Ashley Street as possible. The proposed structure is approximately 28 feet from the nearest edge of Lincoln Creek as shown in Attachment A.

Compensation for the 2043 sf of stream buffer impact is proposed in the form of on-site enhancement of approximately 5514 square feet within the Lincoln Creek buffer. This is consistent and well above the buffer mitigation ratio requirement of 1:1 per BMC 16.55.340 E.

The approximately 5 – 10 feet of space between the residential structure and the proposed split rail fence is generally consistent with the buffer setback requirement in BMC 16.55.340 G. This building setback will allow the planting and preservation of mature trees within the buffer which is consistent with BMC 16.55.340 B.

City of Bellingham City IQ maps indicate a frequently flooded area associated with Lincoln Creek. However, no FEMA special flood hazard areas are mapped in the vicinity. The frequently flooded area layer appears to be associated with the bank full width of the creek channel. No wetland areas were identified or delineated on the subject property. No further recommendations were made by the qualified biologist or the geotechnical specialist.

A Geohazard and Infiltration Feasibility Report was prepared by GeoTest on August 29, 2024, and revised September 6, 2024. This Evaluation includes the information required in BMC 16.55.430 and .440 and is provided on Attachment G.

This report identifies erosion and landslide hazard areas on the slopes above Lincoln Creek and generally outside of or along the eastern edges of the proposed development footprint. A minimum structural setback of 10 feet from the creek bank slope crest to the new foundation is recommended in this report, which may be reduced to 5 feet with an engineered retaining wall. This report determines that “Long term slope erosion must be mitigated through proper drainage and civil design. Stormwater generated from proposed impermeable surfaces should be collected and directed to a municipally acceptable location.” Attachment A shows that stormwater conveyance from the site will be directed to existing City stormwater infrastructure in Ashley Street. No other elements of the project encroach into or propose to alter the landslide hazard area.

The Geohazard and Infiltration Feasibility Report at Attachment F specify that the if the proposal is implemented per the conclusions and recommendations specified on pages 10-13 are implemented, compliance with BMC 16.55.450 and .460 A 2 will be achieved.

Staff concludes that if the variance is approved and as is further conditioned herein with regards to mitigation, the proposal is consistent with the specific requirements in BMC 16.55 regarding geologic hazard areas and fish and wildlife habitat conservation areas.

2. BMC 16.60 – Land Clearing and Landmark Tree Ordinance #2024-07-022

As specified in BMC 16.60.080 B 4, a tree inventory is required that identifies all significant trees which are defined as any tree with a diameter at breast height of 6” or greater. A tree inventory is provided on Attachment G that identifies 49 significant trees on the subject property. Pursuant to BMC 16.60.080 B 4, a retention plan is provided, generally, on Sheet A5 of Attachment E. Approximately 19 trees are shown to be removed in order to implement the proposal. The remaining 30 trees (approx.) will be retained – 4 of which are in the Ashley Street right-of-way. Subsection .080 B 4 also requires a replacement ratio. Please see refer to Table 3 on Attachment E and as referenced below. Generally, a replacement ration of 2.5 to 1 has been provided.

The City’s Landmark Tree Ordinance (LTO) was adopted in May, 2024 and refined in July, 2024. (Ordinance #2022-07-022) Section 6 of the LTO includes criteria that must be met if a landmark tree is proposed for removal. Subsection 6 a specifies:

“The removal, damage, impact, or harm is necessary to enable construction on or reasonable use of the property, and the applicant has demonstrated that all reasonable efforts have been examined with the intent to avoid and minimize the removal of the Landmark Tree. When removal is proposed, applicants shall follow the mitigation sequential order of preference below:

- i. Avoiding the impact altogether by not taking a certain action or parts of an action;
- ii. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, reducing driveways or other impervious areas, or relocating utilities, to avoid or reduce impacts; and
- iii. Compensating for the removal or impact at a ratio as determined by the director.
- iv. Mitigation for individual actions may include a combination of the above measures. Additionally, in order to preserve or minimize the impacts associated with preserving a Landmark Tree, the director shall have the authority to reduce other development standards, such as setbacks, lot coverage, open space, and minimum parking requirements, upon a finding that the reduction will not create significant impacts.”

The applicant has requested removal of tree #31. The request is provided on Attachment H and was reviewed by the City Arborist (Parks Department), Planning and Community Development Department and the Natural Resources Division of Public Works who together, comprise the Landmark Tree Committee. The Committee reviewed the request, conducted site visits and recommends removal of the tree with mitigation. The Hearing Examiner makes the final decision on the removal of this landmark tree pursuant to section 9 a. of the LTO which reads:

“No person, corporation or legal entity shall remove, prune, or construct any new building or structure, on any property that has the potential to remove, damage, or harm a landmark tree without review and approval by the Director or designee following a Type 1 process after a recommendation from the Bellingham Landmark Tree Committee. If the development proposal requires additional land use permits, then the application to remove

or prune a landmark tree shall be consolidated with and reviewed under the process required for the permit with the highest process type number in BMC Chapter 21.10.”

The Landmark Tree Committee believes that the removal of this landmark tree is consistent with the criteria above. Tree #31 is within the development footprint which has already been minimized to lessen encroachment into the buffer of Lincoln Creek. The tree inventory on Attachment G indicates that, “the site is completely forested.” . Table 3 on Attachment E specifies that 45 trees will be planted in the buffer of Lincoln Creek. This equates to a replacement ratio of approximately 2.5 new trees for each one tree removed – including this specific landmark tree. Given that the remainder of the site (post development) will be “completely forested,” this ratio is appropriate to ensure success of the replacement trees.

3. BMC Title 20 – Land Use and Zoning Designation

The subject property is in the Samish Neighborhood, in Area 3. The zoning designation is Residential-Multi, it has a Planned use qualifier, with a medium density designation. BMC Title 20.32 – Residential Multi Development section describes specifications for development. There are many housing configurations that may be developed on the subject property per the zoning code. Some sections of the zoning code have exceptions for areas with environmentally sensitive areas.

Section 20.32.020 (D) describes the planned use qualifier and is stated as not generally applicable for areas containing environmentally sensitive areas, such as the subject property. It states:

D. Planned Designation. The planned designation is intended for areas which are adaptable to flexible development and/or to provide a framework that includes flexibility in site and building design for a harmonious variety of housing choices, including manufactured homes, within an environment where more usable open space or recreational opportunities are possible beyond that which could be provided within the scope of conventional regulation.

The standard development regulations outlined in Section 20.32.040 (3)(c), provide exceptions to minimum density for sites that are wholly or substantially encumbered by a critical area or critical area buffer, such as the subject property.

3. Exceptions to Minimum Densities. An exception to the minimum density requirement may be approved with or without conditions by the director through the Type I application review process in Chapter [21.10](#) BMC if the applicant demonstrates an exception under this provision results in the highest possible density when one or more of the following are associated with the site:

c. The subject site is wholly or substantially encumbered by a critical area or critical area buffer (as defined in Chapter [16.55](#) BMC), which reduces the developable area and ability to achieve the minimum density;

Under the medium density zoning designation, the subject parcel would require a minimum of 2 multi-family units. (Parcel size of 10,065 square feet divided by a minimum density of 3,600 square feet per unit = 2.79 or 2 units.) The exception above has been requested to develop a single-family residence on the subject property (Attachment I). The exception request is a Type I decision that has not been consolidated with the review of the variances and the Planning and Community Development Department approved this request.

The proposed single-family residence appears to be compliant with all other specific dimensional requirements including height, side and rear yard setbacks and provisions for 2 parking spaces in the garage. (A front yard setback variance has been requested and is detailed below.) The applicant is required to demonstrate compliance with these specifics at the time of building permit submittal.

VII. VARIANCE EVALUATIONS

STAFF ANALYSIS OF JUSTIFICATION FOR A CRITICAL AREA VARIANCE

As specified in section B 1 above, the subject property is significantly constrained by the required buffer associated with Lincoln Creek. The entire parcel is encumbered when the standard 75-foot regulated buffer of Lincoln Creek is applied. A 25% administrative reduction of the buffer down to 56.25 feet would only provide approximately 248 square feet of area on the property, which is complicated to achieve reasonable use of the site.

The proposed footprint of the *structure* is proposed to be approximately 931 square feet. This size is significantly smaller than all other single family and multifamily developments in the Area 3 of Samish neighborhood. It is important to note that all the other parcels on the east side of Ashley Street abutting Lincoln Creek were developed prior to the current buffer requirements that were established in 2005 and therefore are non-conforming pursuant to BMC 16.55.130.

The overall footprint has been proposed as far into the southwest corner of the subject property as feasible. Please also note that this is the flattest part of the subject site. A corresponding front yard setback variance request is included for minimizing impacts to the Lincoln Creek buffer. The applicant's site plan proposal is provided on Attachment A and L.

The Hearing Examiner may grant a variance if the applicant can demonstrate the following criteria in BMC 16.55.120.B.1-7 have been met. The burden of proof is strictly placed upon the applicant as specified in subsection .120 E. The applicant's justification is provided in Section 5.3 of Exhibit E. Staff has reviewed this justification and provides additional responses to the following criteria.

1) Special conditions and circumstances exist that are peculiar to the land, the lot, or something inherent in the land, and that are not applicable to other lands in the same district:

Staff Response: Special circumstances exist on the subject property. The subject parcel is the last lot along the east side of Ashley Street in this block to be developed under the current CAO requirement for a 75-foot stream buffer for Lincoln Creek. The buffer consumes the entirety of the lot, and the remaining area is not reasonable in size to accommodate any residential development.

Prior to the adoption of BMC 16.55, the City's Wetland and Stream Ordinance (#10267) required a stream buffer of 25 - 50 feet for Lincoln Creek. All the parcels in this block between Ashley Street and Lincoln Creek required buffer modification and conservation easements for stream protection through the land use review of the platted parcels.

2) The special conditions and circumstances do not result from the actions of the applicant:

Staff Response: The circumstances on the subject property are not the result of any action by the applicant.

3) A literal interpretation of the provisions of this chapter would deprive the applicant of all reasonable economic uses permitted to other properties in the vicinity and zone of the subject property under the terms of this chapter, and the variance requested is the minimum necessary to provide the applicant with such rights:

Staff Response: Applying the 75-foot stream buffer would deprive the applicant of any reasonable economic use of the property, as would administrative reduction or averaging of the buffer. Please see mitigation plan in Attachment L. The unencumbered space on the subject property could not support a land use and building code compliant and reasonable residence that included facilities for sleeping, eating, bathing/sanitation, and safe access from Ashley Street.

Development standards and the critical areas ordinance provisions do not specify what the minimum standards are for a single-family residence nor whether building up versus building out or reducing the front yard setback to zero are required or preferred. There is no area for development outside of the 75-foot stream buffer. With administrative buffer reduction, there would be only 248 square feet outside of regulated buffer. Staff concludes that the development footprint with the administrative reduction is not reasonable and not consistent with other developed properties in the area.

4) Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings under similar circumstances:

Staff Response: Each CAO variance has its own set of circumstances regarding streams, associated buffer widths, lot size, development regulations, zoning and development proposals. Given this specific set of circumstances unique to the subject property, granting the variance to allow a development footprint less than the average of those specified above would not confer special privileges that would be denied elsewhere.

Other proposals with similar site constraints would also be required to meet the CAO. Each site has the burden to show how the requirements of this chapter are met to the best extent possible.

5) The granting of the variance is consistent with the general purpose and intent of this chapter, and will not have a significant adverse impact on functions and values of the associated critical area or otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property:

Staff Response: The purpose and intent of BMC 16.55 is clearly aimed at protecting critical areas (BMC 16.55.010.D) while administering the provisions with flexibility and attention to site-specific characteristics. The proposal will not be materially detrimental to the public or injurious to the surrounding properties.

The proposed mitigation associated with this request is provided in section 9 of the Mitigation Plan (Attachment E and Attachment L). Non-native species are proposed to be removed from the buffer area. The proposal will improve the function within the portion of the remaining buffer (between the split rail fence and the top of the bank) through implementation of the mitigation enhancement plan. Improved diversity and density of native vegetation within this area will provide additional habitat cover, cooling of the micro-climate and stormwater attenuation. Implementation of these elements helps to preserve the existing functions within Lincoln Creek which eventually flows into Whatcom Creek and then Bellingham Bay.

The purpose and intent of the CAO includes preventing cumulative adverse environmental impacts (BMC 16.55.010.D.4). Based upon the proposals intent to develop within the outer portion of the buffer and implement the mitigation plan, cumulative adverse environmental impacts are not expected. In fact, staff expect there to be a net ecological benefit to the resulting stream buffer and Lincoln Creek itself by enhancing the buffer functions.

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

Staff Response: Best available science was used in the project biologist's CAR of Lincoln Creek and the Mitigation Plan. Buffers are comprised of a vertical structure—the various heights of ground cover, shrubs, and trees—and horizontal structure—the distance between the critical area and the impact. These vertical and horizontal components, when intact, provide the needed protective measures for stream functions such as flood protection, habitat, water storage, water quality improvement, nutrient cycling and creek-bank stabilization.

The project biologist has determined that implementation of all the proposed mitigation elements specified in Section 9 of the mitigation plan in Attachment E and L will improve habitat and partially counteract potential impacts that may result from the proposed development footprint.

7) The granting of the variance is consistent with the general purpose and intent of the comprehensive plan and adopted development regulations:

Staff Response: The proposed development is supported by land use policies for infill development strategies to facilitate development on existing lots of record. The proposed development is required to comply with the CAO which ensures consistency with the comprehensive plan and adopted development regulations including protecting and restoring critical areas and incorporating best available science in critical areas management.

The following goals and policies are applicable from the Land Use (LU) and Environment (EV) chapters of the current Bellingham Comprehensive Plan.

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

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

Goal EV-3 Protect and restore ecological functions and habitat.

Policy EV-10 Incorporate sustainable land use and design elements into projects early in the planning stages to avoid impacts to critical areas (see Land Use and Community Design Chapters).

Policy EV-12 Safeguard the long-term functions and values of critical areas through effective mitigation measures when avoidance is not feasible.

One of the guidelines in the Samish Neighborhood that is advised to underlie future development and building also applies:

2) Careful consideration should be given to environmental features such as steep slopes, shallow, rocky soil with exposed sandstone, wetlands and complex drainage patterns, and difficulty of access to some areas when development is proposed.

Staff Response: The project is consistent with these goals and policies; provides one infill lot that clusters the development footprint away from the critical areas on the subject site.

STAFF ANALYSIS OF APPLICANT'S JUSTIFICATION FOR A LAND USE SETBACK ZONING VARIANCE

The Hearing Examiner may grant a variance if the applicant can demonstrate the following criteria in BMC 20.18.020 A-C have been met. The burden of proof is strictly placed upon the applicant as specified in subsection .010 A. The applicant's justification is provided on pages 2-3 of Exhibit D. Staff has reviewed this justification and provides additional responses to the following criteria.

A. Because of special circumstances, not the result of the owner's action, applicable to the subject property (including size, shape, topography, location, or surroundings), the strict application of the provisions of this title is found to deprive the property of rights and privileges enjoyed by other property in the area and under the identical land use classification; and

Staff Response: A front-yard setback variance is being requested to minimize impacts to the buffer of Lincoln Creek. The stream buffer is 75 feet from the Ordinary High-Water Mark (OHWM) which encumbers the entire property. Strict application of the required 20-foot front yard setback would preclude the opportunity to provide more stream buffer to protect Lincoln Creek.

The abutting residential structures were able to meet the 20-foot front yard setback requirement because they were constructed before the 75-foot buffer requirement was instituted.

B. The granting of the 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.

Staff Response: Elimination of 75% of the front yard setback (from 20 feet to 5 feet) will allow the applicant to enhance and improve more stream buffer which is beneficial to the ecosystem and properties in the vicinity of the project that abut the stream.

Elimination of the front-yard setback will eliminate the ability for maneuvering to occur entirely on the subject property. Vehicles will have to either back into or out of the garage onto Ashley Street. Ashley street right of way is 60 feet wide. The improved portion of the Ashley Street ROW abutting the subject property is 55 feet including a sidewalk on the west side of the street. The east side of Ashley Street does not have a sidewalk. There would be approximately 10 feet of driveway space between the garage and the curb so effectively the 10 feet that is utilized for parallel parking could be utilized to meet maneuvering requirements. Ashley Street is not a designated arterial and therefore, utilizing that street for maneuvering room is allowed.

At the time of building permit the Public Works Department will review traffic details of the project including the location of the curb cut and site distances required for this to occur pursuant to their standards in BMC 13.52, Driveways Giving Access to Arterial Steets. Please note that BMC 20.12.010 D 7 allows single-family homes to utilize the right-of-way for maneuvering and the city engineer to approve an administrative variance from the on-site maneuvering room requirement if needed.

C. The subject property cannot be reasonably used under the regulations as written.

Staff Response: The applicant has applied for a variance from the front-yard setback because there is no area of the parcel outside of the regulated stream buffer or administratively allowed buffer modification for streams (BMC16.55.500).

The inability to administratively reduce the buffer to grant enough area for development presents special circumstance that is not the result of the owner's action and the property cannot be reasonably used under the existing regulations.

VIII. CONCLUSION

Staff concludes that, as conditioned herein, and based upon the materials provided by the applicant, the two variance requests are consistent with the variance criteria in BMC 16.55.120, Critical Areas and BMC 20.18, Land Use, and should be approved. The critical area permit should also be approved because it is consistent with the applicable subsections in BMC 16.55 including but not limited to subsection .010; purpose and intent, subsection .190; protection of critical areas, subsection .140; mitigation requirements, subsection .250; mitigation sequencing, .450 and .460; development in geologic hazard areas, subsection .500; buffers of fish and wildlife habitat conservation areas because:

- ✓ It is expected to result in equal or improved function of Lincoln Creek and its buffer.
- ✓ It avoids direct impacts to Lincoln Creek and the geologic hazard areas.
- ✓ It minimizes impacts to the buffers associated with Lincoln Creek and the geologic hazard areas.
- ✓ It is consistent with the variance criteria including proposing a reasonable and comparable use of the property when compared to the other properties within 300 feet of the parcel.
- ✓ It proposes to mitigation for buffer impacts via enhancement of the buffers on the subject site by eradicating invasive species and installing a diverse mix of native groundcover, shrubs and trees.
- ✓ It includes 5-years of maintenance and monitoring of the installed mitigation and a financial surety to ensure success; and
- ✓ Includes protective measures for the installed mitigation in the form of split-rail fencing, signage, and a recorded conservation easement across the buffer area.

Staff concludes that the land use variance criteria in BMC 20.18.020 A-C for eliminating the front yard setback have been met because:

- ✓ The reduction of the front yard setback is not requested because of an action by the landowner;
- ✓ It will not be detrimental to the public welfare nor injurious to the property or improvements in the vicinity; and
- ✓ Without the front yard setback variance, a reasonable use of the subject property would not be possible.

IX. CONDITIONS

After completing an analysis of the applicable sections of the BMC and specifically BMC 16.55.120.A-E, the Samish Neighborhood Plan and the City's Comprehensive Plan staff recommends approval of the variance request and the critical area permit with the following conditions:

1. Prior to issuance of a building permit, the project shall be reviewed for compliance with Bellingham Municipal Code sections for stormwater, traffic, and fire.
2. Prior to issuance of a building permit, a tree retention and removal plan with BMP's for critical tree root protection shall be submitted for review and approved with the project plan set.
3. Prior to the issuance of a building permit, a pre-construction site visit shall be scheduled. Said site visit shall include a representative from the PCDD, a Public Works stormwater inspector, the property owner, qualified biologist, and the contractor developing the site. The purpose of the site visit is to specify the location and extent of the site work and to specify the mechanism for demarcation of the boundary between the construction area and the buffer enhancement area.
4. Prior to the issuance of a building permit, a permanent conservation easement for the prescribed stream buffer area shall be recorded with the Whatcom County Auditor. The easement area shall be shown as the stream and geohazard buffer area east of the proposed location of the split rail fence and is intended for preservation and mitigation, according to a city-approved mitigation plan. To prepare the conservation easement, a legal description of the property (labeled Exhibit A), a legal description of the

conservation easement (labeled Exhibit B), and a legal drawing of the conservation easement area (labeled Exhibit C) shall be prepared by a licensed surveyor.

5. Prior to the issuance of a building permit, a financial surety that is generally consistent with section 9.7.4 of the mitigation plan or as modified shall be fully executed. The surety (assignment of funds or surety) shall be provided on the surety form provided by the city. The party initially providing the surety shall remain responsible for maintaining the surety through the duration of the 5-year mitigation maintenance and monitoring period unless the city approves, in writing, the transfer of the responsibility for maintaining the surety to another party. The surety shall remain in place for the required five years of monitoring or until the performance standards for Year 5 are met.
6. Prior to the final building inspection, a mitigation as-built report prepared by the project wetland biologist shall be submitted within 30 days of completion of the mitigation installation, and in no case later than December 31 of the development year. The as-built report shall include color photos of the mitigation planting area, fence and NGPA signs. It shall also include the list of plants installed, the installer, and the type and source of mulch used. A site visit with the staff planner shall be scheduled by the applicant within 30 days of submittal of the as-built report. There shall be no release of financial surety for amount specified for installation until after the inspection the city finds that the mitigation was properly installed.
7. Prior to the final building inspection by the PCDD, a “native growth protection area” (NGPA) sign shall be installed in one visible location at the buffer edge.
8. Prior to the final building inspection by the PCDD, a permanent wooden split-rail fence shall be installed along the entire stream buffer/conservation easement boundary on the subject property as approved by the PCDD.
9. Annual monitoring reports from the project wetland biologist shall be submitted to the staff planner by November 30th for five consecutive years. The first monitoring report shall be submitted the year after the first full growing season that has occurred after the mitigation planting has been completed.
10. Maintenance of the mitigation areas shall be conducted in accordance with the Mitigation Plan specifics including maintenance activities, and needed corrections, both of which shall be reported in the annual monitoring report.
11. A tree management plan for retention and removal of trees in the building area pursuant to BMC 16.60.080 B 4 and the landmark tree ordinance shall be submitted with the building permit for review and approval. This shall include critical root zones for all effected trees, and BMPs for construction protection.

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