



City of Bellingham
210 Lottie Street
Bellingham, WA 98225

MEMORANDUM

TO: HEARING EXAMINER
FROM: AMY DEARBORN
CC: FILES CAP2024-0055 & VAR2024-0010)
SUBJECT: EXHIBIT 3 - SUMMARY AND STAFF RESPONSES TO PUBLIC COMMENT: 119 ASHLEY ST VARIANCE
DATE: 1/24/2025

This intent of this memo is to document and summarize the public comments received for 119 Ashley Street variance and to provide a staff response. A previous version of this document was provided for the record prior to the hearing on 1/22/25. This document contains additional comments and should replace the document dated 1/22/25.

The following over-arching staff responses to public comments are as follows:

1. Purpose and intent of 16.55.010 A is to protect, maintain and restore critical areas while allowing reasonable use of a subject property. BMC 16.55.510 (definitions) does not define 'reasonable use' nor does it provide an allowable square footage maximum. City staff review these on a case-by-case basis.
2. Purpose and intent in subsection .010 B provide direction to staff to implement goals and policies in comprehensive plan. This has been provided on page 12 of staff report.
3. Purpose and intent in subsection .010 B also direct staff to implement goals and policies of RCW 36.70A, the State's Growth Management Act. Subsection .020 (6) – specifies that private property shall not be taken for public use UNLESS compensation is provided. The City did not pursue purchase of the property. Also note that goals in GMA are not listed in a priority order, but rather, are to be balanced to achieve overall objectives.
4. Purpose and intent in subsection .010 F is not to deny an owner all reasonable economic use of the property. The subject parcel was used as an example of tree protection in Mr. Sanders' public comment during the 7/15/2024 deliberations on the City's landmark tree ordinance. Many of these same comments have been provided for this specific proposal.

At the conclusion of the landmark tree ordinance deliberations, the City Council did not provide direction to City staff to analyze the subject property for potential

purchase. In fact, at that time, the property was already owned by the current applicant and was not for sale.

5. Special conditions do exist. The City acknowledges that the current property owner acted to purchase the property. However, the property owner did not author the rules for buffer widths for Lincoln Creek. This was done by the City as a legislative action in 2005.
6. Numerous cases of granting front yard setback variances to move a development footprint away from the subject critical area have occurred since 2020. (1324 Puget Street, 2302 Alabama Street, 320 Sea Pines.)
7. City IQ is not a precise map set of various environmental layers. City OQ is used as an indicator as to whether additional environmental analysis is required, or not. The various site plans appear to have surveyed the location of the ordinary high-water mark and channel edges of Lincoln Creek. The buffer widths were drawn from this surveyed feature.
8. The Lincoln Creek setbacks for the five lots immediately to the south (upstream) were established in the Lincoln Falls LLA w a 25-foot setback.
9. The setbacks for the four lots immediately to the north (downstream) on the east side of Lincoln Creek were established in Scholes LLA w 15–25-foot setbacks.
10. BMC 16.55.220 B and BMC 21.10.190 A, allows for modifications in the submittal requirements – the floor plans were not deemed to be necessary or germane to the variance requests.
11. The ‘usable space’ allotment for the proposed home is consistent with the space allotments for other single-family residences on this reach of Lincoln Creek.

The following comments were included in the staff report prepared on January 15, 2025:

Abell – Letter Dated January 12, 2025, Received via email January 12, 2025.
Summary: The size and terrain of the site is unsuitable for home construction.

Staff analysis: The proposed homesite is on a relatively flat plateau setback from slopes and streams. A geotechnical analysis of the slope has been prepared by a qualified geologist with recommendations for development per BMC 16.55.210. The recommendations may be included as project conditions.

Murray – Letter dated January 9, 2025, Received via email January 13, 2025.

Summary: The proposed stream buffer reduction should be rejected.

Staff analysis: A habitat analysis has been prepared by a qualified biologist per BMC 16.55.210, with recommendations for development including habitat and vegetation enhancement throughout the conservation area, resulting in an anticipated functional uplift to the stream corridor.

Sanders, G – Email with PowerPoint slides, January 15, 2025.

Summary of slide topics: 1) Error in City IQ GIS map for creek, and documentation of landmark trees; 2) Lincoln Falls Conservation Area; 3) Hydrological Concerns (with Lincoln Creek) 4) Pocket Park Proposal; 5) Demographics, Privacy, and Parking; 6) Landmark Grove Nomination; 7) Crossing Federal Waters

Staff analysis: 1) The trees on the subject property have been documented by a professional arborist (Attachment G). A topographic survey is included in Attachment A. City IQ is not a survey and is used for approximation. It is also used for an indicator as to whether environmental features exist on a subject site and whether additional analysis is required. 2) The subject property is privately owned. Currently there is no permanent habitat protections on the parcel, and with this proposal approximately 5870sf of the 7911sf parcel will be protected with a conservation easement that will connect with existing conservation easements on adjacent parcels. 3) The Lincoln Creek drainage is managed by City Public Works stormwater division. The subject property itself does experience high flows but doesn't flood. High flows do occur in this reach, but flooding is result of backwatering due to inadequate culvert size as Lincoln Creek passes underneath Ashley Street. 4) The subject parcel is private property and not for sale as a park. 5) The conservation easement area will have a fence and signage and will be densely planted with vegetation. All social trails will be removed as part of mitigation. Parking for the development will be onsite. 6) A tree inventory has been prepared by a qualified arborist, and protection of most trees will be through a conservation easement. 7) The subject property is private, and trespassing is discouraged. The portion of the subject property outside of the development area will be placed in a conservation easement depicted by signage and a split rail fence and will be densely planted to enhance the stream buffer functions. There will not be a crossing approved for Lincoln Creek on the subject property. All existing and unapproved features will be removed as part of mitigation.

The following comments were not included in the staff report prepared on January 15, 2025, and are included here to add to the public record:

Bixon – Email dated January 15, 2025

Summary: The front yard setback should be like the other homes on Ashely Street, and at least 8-10 feet wide.

Staff analysis: There are 4 other single-family homes on Ashley Street, and they are all on the same side of the street as the subject property. The homes are approximately 1240sf in size and owned by the same property management company, permitted through a subdivision process between 2000 and 2005. The city critical area code was different at that time, when a smaller stream buffer was required. The front yard setback is proposed at 5 feet to allow for maximization of stream buffer. This is consistent with other single family residential variance requests that have been granted, specifically to provide as much protection of the critical area as possible by moving the footprint towards the street.

Rosenfeld – Email dated January 15, 2025

Summary: The size and terrain of the site is unsuitable for home construction. A responsible party should be designated for project supervision and enforcement.

Staff analysis: The proposed homesite is on a relatively flat plateau setback from slopes and streams. A geotechnical analysis of the slope has been prepared by a qualified geologist with recommendations for development. These recommendations may be included as project conditions. A surety is required for assured compliance. The project proponent will be responsible for the development conditions, and the City will verify project conditions are met.

Posch – Email dated January 15, 2025

Summary: There is no guarantee that any of the technical report recommendations will be followed.

Staff analysis: Project will be conditioned to assure compliance with approved project elements. The permit will be reviewed and conditioned for inspections. A financial surety will be provided to assure that the mitigation is successful.

Sanders, G (2nd) – Email PowerPoint January 16, 2025

Summary: Piliated woodpecker activity is documented in the vicinity of Lincoln Creek.

Staff analysis: Suitable habitat for Pileated woodpecker is likely present throughout the city including Lincoln Creek stream corridor and forested habitat. Woody material may be retained in the conservation easement to increase opportunity for woodpecker activity. The pileated woodpecker is not a state listed priority species.

Lloyd - Letter dated January 17, 2025, email received January 17, 2025

Summary: Stream and street setbacks are excessive. Stream buffer reduction would elevate the harm to Lincoln Creek. Driveway setback reduction would be inconsistent with adjacent properties.

Staff analysis: The stream buffer reduction is the minimum assessed by a qualified biologist to allow a suitable development site and protection of the stream zone. There are 4 other single-family homes on Ashley Street, and all were built together approximately 23 years ago. The topography and orientation of the subject parcel is unique from the 4 other homes on the street.

Schwartz – Email received January 19, 2025

Summary: Opposes both variances. Low density project with stream buffer reduction is not like other multifamily developments. Aesthetics of proposal are not like existing neighborhood.

Staff analysis: The subject property is zoned for multifamily and an exemption to the zoning has been requested due to reasonable area for development with the environmental constraints. The parcel is of a different size and orientation than other parcels in the neighborhood.

Barnett – Letter dated January 20, 2025; email received January 20, 2025

Summary: Concerns include: 1) adversity to creek and water, 2) to tree canopy and forest growth, 3) wildlife and natural habitat, and 3) urban area in small neighborhood community.

Staff analysis: 1) The geohazard report has recommendations for development of the subject parcel, and are qualified professionals as required by BMC 6.55.210. 2) A tree inventory report has been prepared by a qualified arborist and is included in Attachment G. The parcel is completely forested, and 49 trees over 6 inches dbh have been documented on site. The proposed development will remove up to 16 trees (4 of which are dead) and 45 trees are proposed to be interplanted in the remaining $\frac{3}{4}$ of the property outside of development. There is opportunity for trees to be planted on east side of creek where more light is available. 3) The proposed development will impact approximately $\frac{1}{3}$ of the subject property, while preserving the other $\frac{3}{4}$ of the site. A conservation easement is required for long term protection of the site. 4) Spatially, the standard regulated stream buffer extends beyond the subject parcel. Adjacent homes on both sides of Lincoln Creek in this square block all have reduced buffers, ranging from approximately 15 feet to 55 feet. The use of the right of way is public, and currently there is no sidewalk adjacent in the right of way adjacent to the parcel. A standard sidewalk exists on the west side of Ashley Street. Since Ashley Street angles away from the subject parcel there is more right of way in front of the subject parcel than other parcels in this block. Speculation on future uses of the subject property are beyond the view of this variance.

Feerer – Letter dated January 21, 2025, and email received January 21, 2025.

Summary: We see four major issues that are inadequately or counterproductively addressed in the application and resultant Staff Report: 1) Variance cause and effect; 2)

Building footprint and missing plans, 3) Flaws in the mitigation plan, 4) Upper alleyway access is not addressed.

Staff analysis: 1) Per BMC 16.55.120, the applicant/owner has not created the conditions or circumstances on the subject parcel, and any development would have the same issues. 2) The footprint of the proposed single-family structure and the development footprint is in Attachment A. The architecture of the single-family structure will be designed and reviewed for the building permit once the development area is approved. The adjacent homes to the south on Ashley Street that also abut Lincoln Creek have approximately 1,240 square foot home footprints plus decks, patios, and parking, with additional space on second story. The proposed home footprint is smaller than but within the average of adjacent homes. 3) The “flaws” in the mitigation plan are opinions of the commentor and may be accommodated as part of a contingency plan prepared as needed. 4) There is no development planned on the east side of the creek or near the alley as part of this project. Vacation of the landowners ½ responsibility of the alley would leave the other ½ of the alley unprotected as it is the responsibility of the adjacent landowner. NO other parcels on either side of Lincoln Creek have a vacated alleyway. There are no parcels with the opportunity for further development along the alleyway as all have conservation easements in place.

Wiley – Email received January 22, 2025

Summary: Parcel is unsuitable for development based on impacts to natural features and special circumstances. The landowner purchased the property knowing the special circumstances on site.

Staff analysis: Special circumstances exist on the subject property that compromise the potential uses of the site. These circumstances exist on the subject property regardless of ownership, and the current landowner did not create the slope, stream corridor, or land use laws that govern use of the site.

Sanders, R – Email received January 22, 2025

Summary: There is no guarantee that technical reports will be followed. There is potential for adverse changes to water quality from erosion and tree removal. Mitigation recommendation will cause adverse impacts to site. Parcel should have permanent protections.

Staff analysis: Project will be conditioned to assure compliance with approved project elements. The permit will be reviewed and conditioned for inspections. A financial surety will be provided to assure that the mitigation is successful. The proposed development will impact approximately 1/3 of the subject property, while preserving the other ¾ of the site. A conservation easement is required for long term protection of the site. There will be no public access to the private property and no access from the alley.

Paquette – Email received January 22, 2025

Summary: Tree removal will have negative impacts to noise and habitat. Tree removal may have safety concerns from public use of the site. Buffer reduction will impact runoff from the site. Property should not have been for sale with critical areas. Wetlands should not be developed.

Staff analysis: The parcel is completely forested, and 49 trees over 6 inches dbh have been documented on site. The proposed development will remove up to 16 trees (4 of which are dead) and 45 trees are proposed to be interplanted in the remaining $\frac{3}{4}$ of the property outside of development. There will be no public access to the private property and no access from the alley. The purchase and sale of private property is beyond the scope of City critical area code. Reasonable use of private property is included in local, state, and federal code. There are no wetlands or wetland buffers on this parcel or that will be impacted because of this project.

Sanders, G (3rd) – Email received January 22, 2025

Summary: Additional PowerPoint slides, 8 of which are duplicates. Topics include Lincoln Creek wildlife corridor, city conservation projects, Ashley Street silt fence, red legged frog habitat erosion at Ashley Street culvert, flooding, parking, ivy removal, sale of property, social trails, vegetation management, and public safety.

Staff analysis: The Lincoln Creek corridor will be protected with a conservation easement on the subject property that connects conservation easements on adjacent properties. The proposed mitigation will enhance the parcel by removing invasive species and stabilizing the slopes with plants. Best management practices (BMP's) will be installed and inspected throughout the project to assure no unanticipated impacts occur because of construction. Red legged frogs are a common species in western Washington, and since they are primarily an aquatic species, suitable habitat will not be significantly impacted because of this terrestrial development. Downstream flooding is a management concern for City Public Works Department, and through stormwater design using the exiting stormwater system and staff review through the building permit, contributions of stormwater from this site are expected to have minimal impact to the stream system. There will be no public access to the private property and no access from the alley. The purchase and sale of private property is beyond the scope of City critical area code.