

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEDRO-WOOLLEY**

In the Matter of the Application of)	Nos. ZV-2020-052 and SP-2020-053
)	
Jon Kvernmo, on behalf of)	Ivarsen Holdings Short Plat and Variance
Ivarsen Holdings, LLC)	
)	
For Approval of a Short Plan and)	FINDINGS, CONCLUSIONS,
<u>Zoning Variances</u>)	AND DECISION

SUMMARY OF DECISION

The requests for a short plat to subdivide an approximately 0.62-acre lot into three separate residential lots, and for zoning variances to reduce the lot width for two front lots and reduce the minimum lot size for one of the front lots to allow for a shared access easement, at 523 Ball Street is **APPROVED**. Conditions are necessary to address specific impacts of the proposed project.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on October 5, 2020, using remote technology due to the COVID-19 pandemic. The Hearing Examiner left the record open until October 7, 2020, to allow the Applicant to respond to the testimony and additional written comments admitted at the hearing.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Katherine Weir, City Assistant Planner
Jon Kvernmo, Applicant Representative
William Baker
Iva Ewing

Exhibits:

The following exhibits were admitted into the record:

- A. Staff Report
- B. Short Plat Application, received February 28, 2020
- C. Notice of Development Application, published in the *Skagit Valley Herald*, April 6, 2020, with proposed short plat drawing
- D. Zoning Variance Application, dated August 31, 2020

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- E. Variance Request Narrative, undated
- F. Proposed Variance and Short Plat drawing, dated April 27, 2020
- G. Comment from Mary Jan Vandegrift, dated April 17, 2020
- H. Comment from Iva Ewing, dated April 8, 2020
- I. Comment from Eron Berg, dated April 8, 2020
- J. Comment from Robert Melder, dated April 8, 2020
- K. Comment from Shawn O'neil, dated April 8, 2020
- L. Comment from Bill Soren, dated March 13, 2020
- M. Notice of Public Hearing, published September 24, 2020
- N. Applicant Response to Public Comments, received October 5, 2020
- O. Comment from Glenn Taylor, undated
- P. Applicant Response to Comment from Glenn Taylor, dated October 7, 2020

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Jon Kvernmo, on behalf of Ivarsen Holdings, LLC (Applicant), requests a short plat to subdivide an approximately 0.62-acre lot containing two legally nonconforming single-family homes into three separate residential lots. The property is located at 523 Ball Street.¹ Proposed Lots 1 and 2 would be located along Ball Street and would contain the existing homes on the property. Proposed Lot 3 would be located behind Lots 1 and 2, with access from Ball Street provided by a shared access easement on Lot 2. To allow for the proposed subdivision, the Applicant requests variances from zoning code requirements for minimum lot widths and lot areas. Specifically, the Applicant requests a variance from the 40-foot minimum lot width requirement of Sedro-Woolley Municipal Code (SWMC) 17.12.030.B to reduce the lot width of proposed Lot 1 to 39.25 feet and to reduce the lot width of proposed Lot 2 to approximately 30.7 feet. The Applicant also requests a variance from the 6,000 square foot minimum lot area requirement of SWMC 17.12.030.A to reduce the lot area of proposed Lot 2 to 4,700 square feet. *Exhibit A, Staff Report, pages 1, 2, and 6; Exhibit B; Exhibit D; Exhibit E; Exhibit F.*

2. On October 16, 2019, the City of Sedro-Woolley (City) held a pre-application meeting with the Applicant, at which City staff determined that the proposed short plat would require zoning variances. The Applicant later submitted its short plat and variance applications, which the City deemed complete on April 2, 2020. The same day, the City mailed notice of the applications to residents and property owners within 500 feet of the

¹ The subject property is identified by Tax Assessor Parcel No. P77102. *Exhibit A, Staff Report, page 1.* A legal description of the property is included with the proposed variance and short plat drawing. *Exhibit F.*

subject property. On April 6, 2020, the City published notice of the applications in the *Skagit Valley Herald* and posted notice on-site. The Applicant subsequently submitted revised application materials at the request of the City, including a revised variance application and short plat drawing on August 31, 2020, and a revised project narrative on September 8, 2020. The City provided notice of the open record hearing associated with the applications by posting notice on-site on September 22, 2020; mailing notice to parties of interest and to property owners within 500 feet of the property on September 23, 2020; and by publishing notice in the *Skagit Valley Herald* on September 24, 2020. *Exhibit A, Staff Report, pages 1, 3, and 4; Exhibits B through F; Exhibit M.*

3. The City received several public comments in response to its notice materials. Neighboring residents and property owners Eron Berg, Robert Melder, Shawn O'neil, and Bill Soren submitted comments in support of the proposal, noting that the Applicant's management of the existing homes on the property has improved the neighborhood. Mary Jan Vandegrift submitted a comment opposing the project, raising concerns about the proposed lot area and lot widths, and requesting that subdivision of the property be limited to two lots. Neighboring resident Iva Ewing submitted a comment opposing the project, raising concerns about the location of the proposed shared access driveway near her property line. Glenn Taylor submitted a comment opposing the project, raising concerns about the location of the existing houses on the property, emergency fire access, and the adverse impacts of developing more rental properties in the area. *Exhibit A, Staff Report, page 4; Exhibits G through L; Exhibit O.*

State Environmental Policy Act

4. The short plat and variance requests are exempt from environmental review under the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, in accord with Washington Administration Code (WAC) 197-11-800(6)(d) and (e).² The property does not contain any critical areas. *Exhibit A, Staff Report, page 8; Testimony of Katherine Weir.*

Comprehensive Plan and Zoning

5. The property is designated Residential 7 (R-7) by the City Comprehensive Plan. The R-7 designation allows single lot developments to a maximum density of seven units per acre, with a minimum lot size of 6,000 square feet, and allows duplexes on appropriately sized lots, with a minimum duplex lot size of 9,000 square feet. *City Comprehensive Plan at*

² WAC 197-11-800(6)(d) provides that, "except upon lands covered by water, the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060," is exempt from SEPA review. And WAC 197-11-800(6)(e) provides that land use decisions granting variances "based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density," are exempt from SEPA review.

31 and 32. City staff identified the following Comprehensive Plan policies as relevant to the proposal:

- Recognize the rights of property owners to freely use and develop private property consistent with city regulations. [Policy LU5.7]
- Encourage affordable housing for all household types, including seasonal workers, single parents, extended families, and group homes. [Policy H2.3]

City staff reviewed the proposal and determined that, with conditions, it would conform to the City Comprehensive Plan. Specifically, City staff noted that the proposal would meet the intent of the R-7 designation, would be consistent with City regulations, and would provide housing rental opportunities in a single-family neighborhood.

Exhibit A, Staff Report, pages 4 and 5.

6. The property is zoned R-7. The R-7 zone is intended to encourage a continuation of the traditional grid street system and small lot character established in the R-7 zone when it was platted over a hundred years ago. *SWMC 17.12.005*. City staff reviewed the Applicant's proposed short plat map and determined that the proposal would meet bulk restrictions for development in the R-7 zone, including restrictions applicable to minimum setbacks and maximum building height. The minimum lot size in the R-7 zone is 6,000 square feet. *SWMC 17.12.030.A*. The minimum lot width in the R-7 zone is 40 feet. *SWMC 17.12.030.B*. As noted above, and as discussed in detail below, the Applicant requests variances from *SWMC 17.12.030.A* and *.B* to allow for reduced lot widths for proposed Lots 1 and 2 and to allow for a reduced lot area for proposed Lot 2. *Exhibit A, Staff Report, page 6.*
7. The Applicant would be required to provide at least two off-street parking spaces per dwelling unit. *SWMC 17.36.030*. City staff reviewed the Applicant's short plat drawing and determined that the off-street parking requirement would be met. The proposed shared access driveway serving proposed Lots 2 and 3 would run along the south property line of Lot 2, extending to an emergency fire access turnaround area on Lot 3. The City would provide sewer, garbage, stormwater, police, and emergency fire services to the property. Skagit County PUD #1 would provide water service. Puget Sound Energy would provide electricity service. Cascade Natural Gas would provide natural gas service. The property would be served by the Sedro-Woolley School District. Surrounding properties to the north, south, and east of the subject property are zoned R-7 and are developed with single-family residences. Properties to the east are zoned R-15 and are developed with multi-family residences. *Exhibit A, Staff Report, pages 2 and 3.*

Variance Requests

8. The Applicant submitted a project narrative addressing the variance requests, which notes:
 - If the minimum lot width of 40 feet is maintained for proposed Lot 1, it would result in the existing home on proposed Lot 2 encroaching on its required 5-foot

setback from the shared lot line. Granting a variance to allow a 39.25-foot lot width for proposed Lot 1 would allow for the required 5-foot side setback for proposed Lot 2. The required minimum lot area for Lot 1 would be met by increasing the depth of the lot.

- A variance to allow an approximate 30.7-foot lot width for proposed Lot 2 is necessary to install the proposed shared access easement. Under City zoning ordinances, the 20-foot width of the proposed access easement is not included in the lot width calculation for Lot 2.
- A variance to allow a 4,700 square foot lot area for proposed Lot 2 is necessary to install the proposed shared access easement. Under City zoning ordinances, the area of the proposed access easement is not included in the lot area calculation for Lot 2.
- Granting the variances would not result in a detriment to neighboring properties or the public in general because both houses on the property have been in their locations for over 75 years. Granting the variances would not have a negative impact on the intent of the new development regulations.
- The two existing houses on the property were built without regard to potential changes to zoning and development ordinances. The changes to zoning and development ordinances make it difficult or impossible for the existing houses to comply with setback and lot width requirements.
- The possibility of demolishing one of the existing houses to facilitate compliance with current ordinances would contradict the City's mission of promoting habitation.
- The relative positions of the existing homes have been static for many years, and recent changes to zoning and development conditions have resulted in negative impacts to proposed new lots on the property. Granting the variances would allow for additional residential units on the property and would promote the purpose and intent of the City's zoning code to promote habitation, consistent with City and state standards.

Exhibit E.

9. City staff reviewed the Applicant's variance requests and determined that the proposal would meet the variance criteria of SWMC 17.60.050. Specifically, City staff notes:
 - As part of the zoning variance request, the Applicant chose to prioritize the setback requirement for proposed Lot 2 over the lot width requirement for Lot 1. City staff supports the proposal because the setback requirement is for fire safety and should be prioritized.
 - Although proposed Lot 2 would have a gross lot area of 7,755 square feet and a gross lot width of 50.71 square feet, the 20-foot wide access easement proposed over Lot 2 would not count toward the lot width and lot area calculations under SWMC 17.04.030. Therefore, installation of the proposed access easement would

result in Lot 2 having a net lot area of approximately 4,700 square feet and net lot width of approximately 30.7 feet.

- No detriment to neighbors or the public in general would result if the variance requests are approved. The reason for the variances is to preserve the existing rental homes on the property. If the homes were removed, the property could be subdivided as a short plat without a variance consistent with code requirements.
- The new development that would likely occur from granting the variances would be located behind existing houses and not plainly visible from the street.
- The only change to the existing conditions of the property along the street would be paving of existing driveways. The driveway serving the house on the south would be elongated to serve the back parcel. Property owners are allowed to pave or lengthen existing driveways at any time without short plat or variance approval.
- There are special circumstances that are not common to other similarly restricted properties. There are two existing homes on the same lot, which are classified as legally nonconforming because they were built prior to current zoning regulations. The existing homes are on a property that has a width that can accommodate two homes on their own lot per the current R-7 zoning regulations. However, there is also a large amount of space in the eastern portion of the property that is not utilized. The subdivision would result in the existing homes being placed on separate, conforming lots and would allow the eastern portion of the property to be developed with a new single-family or duplex residence.

Exhibit A, Staff Report, pages 6 through 8.

Testimony

10. City Assistant Planner Katherine Weir testified that City staff reviewed the short plat and variance applications against the applicable criteria and recommends approval, with two conditions. Ms. Weir explained that the recommended conditions would require the Applicant to provide a maintenance agreement for the shared access driveway and to construct parking spaces meeting City development regulations on Lots 1 and 2 prior to final short plat approval. She noted that the short plat and variance requests did not trigger SEPA environmental review under WAC 197-11-800. *Testimony of Ms. Weir*
11. Applicant Representative Jon Kvernmo testified that he and his wife moved to Skagit County 12 years ago. He noted that several neighbors support the proposed subdivision and variance requests while others have expressed legitimate concerns about the proposal. Mr. Kvernmo stated that he would continue to manage the existing rental units on the property and that he intends to move into one of the duplex units when the duplex is constructed on the property. He noted that the existing houses on the property had a bad reputation in the neighborhood when he acquired them approximately five years ago. Mr. Kvernmo described how, in cooperation with City officials and police, he was able to make tenant changes and physical improvements to the property that garnered positive

comments from neighbors. He acknowledged that neighbors would be temporarily inconvenienced by construction activity but stated that the neighborhood would benefit from improvements to the property that could increase nearby property values. Mr. Kvernmo requested approval of the short plat and variance applications, noting that he understands and would comply with the City-recommended conditions. *Testimony of Mr. Kvernmo.*

12. William Baker testified about two of the written public comments that expressed support for the proposal. He stated that Eron Berg no longer lives in the area and, therefore, the Hearing Examiner should not consider his comment. Mr. Baker also stated that Bill Soren told him he had called the City to revise his written comment. He read into the record written comments provided by area resident Glenn Taylor, which raised concerns about the location of the existing houses on the property, emergency fire access, and the adverse impacts of developing more rental properties in the area. Mr. Baker noted that his Aunt, Iva Ewing, opposes the project because the proposed shared access driveway would be located below her bedroom window and because the project would decrease her property value. *Testimony of Mr. Baker*
13. Iva Ewing testified that she opposes the project, expressing frustration that she was not approached by the Applicant about the proposal and that the project would lower her property value. She said that she agreed with the written comments submitted by Mary Vandegrift. *Testimony of Iva Ewing.*
14. In response to concerns raised at the hearing, Mr. Kvernmo requested that he have an opportunity to review and respond to the written comments from Glenn Taylor. *Testimony of Mr. Kvernmo.*
15. In response to Mr. Baker's testimony, Ms. Weir stated that she spoke with Mr. Soren and requested that he submit revised written comments to the City. She noted that the City has not received any additional comments from Mr. Soren. *Testimony of Ms. Weir.*

Additional Materials

16. At the hearing, the Hearing Examiner admitted a letter from Mr. Kvernmo, which mirrors his testimony at the hearing, and written comments from Glenn Taylor, which were read into the record by Mr. Baker. The Hearing Examiner left the record open until October 7, 2020, to allow the Applicant to respond to the additional written comments admitted at the hearing. The Applicant submitted a response to Mr. Taylor's written comments, which notes:
 - The existing houses on the property have been in their respective locations for over 75 years. There has been no previous objection to their placement. The residents who live in the houses do not agree that the houses are too close to each other and are thankful to have clean and safe places to live.

- The Applicant intends to build and live in a duplex unit in proposed Lot 3. There are other duplex units in the area.
- Adequate fire department access would be provided as required for short plat development.
- There are no further development plans for the property.
- The Applicant has a proven track record of conscientious property management resulting in neighborhood improvements. More rental units of the kind and quality planned would further enhance the neighborhood and increase surrounding property values.

Exhibit N; Exhibit O; Exhibit P.

Staff Recommendation

17. Ms. Weir testified that City staff recommends approval of the short plat and zoning variance applications, with conditions. As noted above, Mr. Kvernmo testified that he concurs with the City’s recommendation and would comply with the recommended conditions of approval. *Exhibit A, Staff Report, page 8; Testimony of Ms. Weir; Testimony of Mr. Kvernmo.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to review and decide variance applications. *Chapter 2.34 SWMC; SWMC 2.90.060.F; SWMC 2.90.070.G.1; SWMC 17.60.030.* The Hearing Examiner is also granted jurisdiction to grant, grant with conditions, or deny a short plat application through the City’s consolidated permit procedures. *SWMC 2.90.060.H; SWMC 16.12.045.*

Criteria for Review

Variance

No variance shall be issued by the hearing body unless it finds that:

- A. No detriment will result to neighbors or the public in general;
- B. The reason the regulation from which relief is requested is unnecessary in this case is that special circumstances exist here which are not common to other similarly restricted properties. (These circumstances may include physical features of the subject property, nature of surrounding improvements and uses, or proposed design elements that will meet the same purpose as the regulation from which relief is requested. The special circumstance(s) shall be specified in the findings); and
- C. The special circumstances are sufficiently unique that the cumulative effect of such variances will not undermine the purpose and intent of this title.

SWMC 17.60.050.

Variations shall become void if substantial progress is not made toward construction of improvements within two years, or if construction has not been completed within five years, which periods may be extended by the hearing examiner for good cause.

SWMC 17.60.040.

Short Plat

The following criteria are applicable to the determination of whether to grant, grant with conditions, or deny a short plat:

1. Conformance to the applicable comprehensive plan policies and zoning code provisions;
2. Adequacy of access for vehicles, utilities and fire protection as provided in Section 16.12.035;
3. Adequacy of drainage, stormwater facilities, water supply and connection to the Sedro-Woolley sanitary sewer system;
4. Whether the public use and interests are served by permitting the proposed division of land.

SWMC 16.12.045.A.

The state subdivision criteria are as follows:

A proposed subdivision and dedication shall not be approved unless the city, town, or county legislature body makes written findings that: (a) appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that [ensure] safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication.

RCW 58.17.110(2).

The criteria for short plat approval as set forth in the City code reflect the requirements under RCW 58.17.110(2).

The criteria for review adopted by the City Council are designed to implement the requirement of chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

- 1. The proposal would meet the variance criteria of SWMC 17.60.050.** The Applicant requests a variance from the 40-foot minimum lot width requirement of SWMC

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17.12.030.B to reduce the lot width of proposed Lot 1 to 39.25 feet and to reduce the lot width of proposed Lot 2 to approximately 30.7 feet. The Applicant also requests a variance from the 6,000 square foot minimum lot area requirement of SWMC 17.12.030.A to reduce the lot area of proposed Lot 2 to 4,700 square feet. The City provided reasonable notice and opportunity to comment on the variance request. The City received several written comments supporting and opposing the variance request. Comments in opposition to the proposal expressed concerns about the proposed lot widths and areas, the proposed location of a shared access driveway, and emergency fire access. The Hearing Examiner concurs with City staff's determination that the variance requests would not result in a detriment to neighbors or the public in general. Of particular note, there is already an existing driveway along the south property line that the Applicant would have the right to extend without additional permitting. Through the permitting process, however, the Applicant would pave the driveway, reducing impacts to the property owner to the south. The variance requests are necessary to preserve two existing legally nonconforming houses on the property in a manner that would prioritize meeting the setback requirement for proposed Lot 2 and providing adequate access and emergency turnaround space necessary to serve proposed Lot 3. Impacts to property adjacent to the proposed shared access driveway would be minimal because the driveway would serve only one additional duplex unit and, thus, would not generate a significant increase in traffic. Granting the variance requests would also result in minimal visual impacts to the neighborhood. The Applicant requests only a 0.75-foot reduction in the minimum lot width of proposed Lot 1 to accommodate setback requirements for the existing house on proposed Lot 2. The requested variances from minimum lot width and lot area requirements for proposed Lot 2 are necessary to install a shared access driveway serving proposed Lots 2 and 3. The proposed shared access driveway is not included in the lot width and lot area calculations for proposed Lot 2. Including the area and width of the proposed driveway on proposed Lot 2 would result in a lot width of 50.71 feet and a lot area of 7,755 square feet. Accordingly, granting the variance requests would not result in visually narrow lots that would be inconsistent with neighborhood characteristics. Therefore, the Hearing Examiner concludes that special circumstances of the property justify granting the requested variances, that the cumulative effect of the variances would not undermine the purpose and intent of the City's zoning regulations, and that granting the variances would not result in a detriment to neighbors or the public in general. *Findings 1 – 17.*

- 2. With conditions, the proposal meets the criteria for short plat approval.** The property is designated Residential 7 (R-7) by the City Comprehensive Plan. City staff determined that, with conditions, the proposed short plat would be consistent with the City Comprehensive Plan. Specifically, City staff determined that the proposal would further Comprehensive Plan policies related to the free use and development of private property consistent with City regulations and to the provision of affordable housing opportunities. The Hearing Examiner concurs with City staff's determination. The

property is in the R-7 zoning district. The Applicant's submitted plans show that, with the approved variances, the proposed subdivision would meet all applicable regulations for development in the R-7 zone. There are no identified critical areas on-site, and the proposal is exempt from SEPA environmental review. The Applicant's submitted plans ensure that, as proposed, the short plat would provide adequate vehicle, utility, and fire protection access to the proposed lots. The proposed lots would also be adequately served by sewer, garbage, stormwater, police, and emergency fire services provided by the City; water service provided by Skagit County PUD #1; electricity service provided by Cascade Natural Gas; and school services provided by the Sedro-Woolley School District. The proposed subdivision would be compatible with surrounding residential development, and the public use and interests would be served by approving the short plat.

Conditions are necessary to ensure that the Applicant provides a maintenance agreement for the shared access driveway serving Lots 2 and 3 and to ensure that the Applicant constructs parking spaces consistent with development regulations on Lots 1 and 2 prior to final short plat approval. *Findings 1 – 17.*

DECISION

The requests for a short plat to subdivide an approximately 0.62-acre lot into three separate residential lots, and for zoning variances to reduce the lot width for the two front lots and to reduce the minimum lot size for one of the front lots to allow for a shared access easement, at 523 Ball Street are **APPROVED**, with the following conditions:

1. Provide a maintenance agreement for the shared driveway that serves Lots 2 and 3 to be reviewed and approved with the final plat.
2. Construct parking spaces that meet Sedro-Woolley development regulations on proposed Lots 1 and 2 before final short plat approval.

DECIDED this 21st day of October 2020.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center