

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Variance) VAR2018-0002
Application for)
Jason Heutink) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Variance Permit to reduce the front yard setback from 45-ft to 27-ft in order to accommodate construction of a new single-family residence.

Decision: The requested Zoning Variance Permit is approved, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

I.

Applicants: Jason and Malarie Heutink

Property Address: '0' Bay Road
Blaine, Washington 98230

Assessor's Parcel Number: 400132 393006

Zoning: Rural [R10A]

Comprehensive Plan: Rural

Subarea: Birch Bay Subarea

Lot Size: 3500 sq. ft.

Roads: Public

Water and Sewer Supply: Public Water and On-Site Sewage System [OSS]

Fire Protection: Fire District No. 18

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: School District No. 502

Topography: Generally Flat

Vegetation: Partially Forested

Adjacent Land Uses:

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| North: | R10A- Forestry |
| East: | R10A - Residential |
| South: | R10A – Bay Road / Residential |
| West: | R10A - Forested |

Authorizing Codes, Policies, Plans, and Programs

Revised Code of Washington [RCW] Chapters 36.70A Growth Management and 58.17
Whatcom County Comprehensive Plan

Whatcom County Code, Title 2, Chapter 2.33-Permit Review Procedures

Whatcom County Code Chapter 12.08, Development Standards

Whatcom County Code Chapter 15, Building Code/Fire Code

State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11,

Whatcom County Environmental Policy Administration Chapter 16.08

Whatcom County Code Chapter 16.16, Environment - Critical Areas

Whatcom County Code, Title 14, Use of Natural Resources

Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance

Whatcom County Code, Title 17, Flood Damage Prevention Code

Whatcom County Code, Title 23, Shoreline Management Program

Whatcom County Code Title 24, Health Regulations

Legal Notices: Posted – Notice of Public Hearing, July 3, 2018

Mailed – Notice of Application, May 15, 2018
Notice of Public Hearing, June 29, 2018

Published – Notice of Public Hearing, July 5, 2018

Hearing Date: July 18, 2018

Parties of Record

Jason and Malarie Heutink
8755 Vedder View Lane
Sumas, WA 98295

Jaime White
Whatcom Land Use Consulting, LLC
222 Grand Avenue, Suite E
Bellingham, WA 98225

Charles Sullivan, Planner
Planning and Development Services

Exhibits

- 1 Zoning Variance Application, with attachments
 - 1-1 Fee Responsibility
 - 1-2 Agent Authorization
 - 1-3 Revocable Encroachment Permit Application, April 24, 2018
 - 1-4 Preliminary Stormwater Proposal
 - 1-5 Preliminary Traffic & Concurrency Information
 - 1-6 On-Site Sewage System Permit Application
 - 1-7 Water Availability Form –Public Water System
 - 1-8 Statutory Warranty Deed
 - 1-9 Puget Power Easement: Easement Agreement for Septic & Drain Field System
 - 1-10 Customer Receipt, April 4, 2018
 - 1-11 PDS Notice of Application, Comment Form Letter, May 15, 2018
 - 1-12 Certificate of Mailing, Notice of Application, May 15, 2018, with attached Property Owners Mailing Labels

- 2 Staff Report, dated July 3, 2018

- 3 Site Plan, with Parcel Summary Report

- 4 Enlarged copy of Site Plan

- 5 Certificate of Mailing Notice of Public Hearing, June 29, 2018

- 6 Bellingham Herald Affidavit of Legal Notice of Public Hearing, July 5, 2018

- 7 Agency Comments
 - * Critical Areas, June 5, 2018
 - * Fire Marshal, April 25, 2018
 - * Routing Memorandum to Technical Review Committee, April 24, 2018
 - * Engineering Services, May 11, 2018
 - * Plans Examiner, Building Services, May 3, 2018

- 8 Certificate of Posting, Notice of Public Hearing, July 3rd, 2018

II.

The Applicant seeks a Zoning Variance to reduce the front yard setback from the required 45-feet to 27-feet in order to allow the construction of a new single-family residence. The Variance is requested due to the small size of the lot, which is 70-ft. deep and 50-ft. wide. The Applicant has secured an easement on a neighboring parcel to house the on-site sewage drain field.

III.

The Land Use Services Division of Whatcom County Planning and Development Services has recommended approval of the requested Zoning Variance Permit in the Staff Report, Exhibit 2, dated July 3, 2018, subject to conditions. The Findings of Fact and Conclusions of Law set forth in the Staff Report, Exhibit No. 2, a copy of which is attached hereto, are incorporated herein by this reference. The Applicant has indicated that there are no factual inaccuracies in Staff's factual findings and no objection to the Conditions of Approval requested by Staff. There was no public comment on the application at the public hearing.

The Findings of Fact in the Staff Report are hereby adopted by the Hearing Examiner as the Findings of Fact herein.

IV.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

The request to reduce the front yard setback from 45-feet to 27-feet for the construction of a new single-family residence can be granted only if the request is consistent with the

Zoning Variance Criteria of WCC 20.84.120 (1 through 3). Subject to Conditions of Approval, this Zoning Variance will be consistent with the applicable Variance Criteria. The requested Variance should be granted subject to conditions.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

A Zoning Variance Permit is hereby granted to Jason and Malarie Heutink to reduce the front yard setback from 45-feet to 27-feet to accommodate the construction of a new single-family residence, located on Assessor's Parcel No.400132 393006, addressed as 'O' Bay Road, Blaine, Washington, subject to the following conditions:

1. The use and location on site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. The Applicant shall ensure that all development complies with Whatcom County Development Standards (WCDS), Chapter 12.08.
3. Inadvertent Discovery: If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907) LNTHPO (384-2280) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and Lummi Sche'lan"en Department (384-2312) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
4. Once the Zoning Variance is granted, the Applicant is required to obtain a Building Permit from Whatcom County Building Services.
5. The Applicant shall obtain an approved Water Availability notification Form from the County Environmental Health Department at the time of building permit application.
6. All permits for this property shall require further critical areas review.

7. Submittal of a building permit application requires a prescreening of the project. The Applicant should refer to the *Residential Structures and Detached Accessory Structures-Permit Application Packet* for additional information and a description of the submittal documents required for a building permit.
8. The Applicant shall obtain a Revocable Encroachment Permit from the Division of Engineering prior to creating a new access for the lot. Proposed access shall be paved and shall meet current sight distance criteria, as per Development Standards.

NOTICE

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.


NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

DATED this 20th day of July 2018.



Michael Bobbink, Hearing Examiner

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



Mark Personius, AICP
Director

**WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT**

Date: July 3, 2018
Hearing Date: July 18, 2018

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| The application of Jason & Malarie Heutink for a Zoning Variance | VAR2018-00002 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS |
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I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Summary: The applicants are requesting a variance to reduce the required 45 foot front yard setback from Bay Road to 27 feet for the construction of a single family residence.

Recommendation: The Technical Review Committee recommends approval based on the following report.

II. PRELIMINARY INFORMATION

EXHIBIT

A. BACKGROUND INFORMATION

Applicant/Agent: Jamie White
222 Grand Avenue, Suite E
Bellingham, WA 98225

2

Owner: Jason & Malarie Heutink
8755 Vedder View Lane
Sumas, WA 98295

Site Location/Address: '0' Bay Road
Blaine, WA 98230

Legal Description: TR 100 X 50 FT IN SE COR OF SW SE

Assessor's Parcel Number: 400132393006

Zoning: Rural (R10A)

Comprehensive Plan: Rural

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|----------------------------------|--|
| <u>Subarea:</u> | Birch Bay |
| <u>Lot Size:</u> | 3,500 Square Feet |
| <u>Roads:</u> | Public |
| <u>Water & Sewer Supply:</u> | Public Water & On-site Septic |
| <u>Fire Protection:</u> | Fire District #18 |
| <u>Law Enforcement:</u> | Whatcom County Sheriff's Office |
| <u>Public Schools:</u> | School District # 502 |
| <u>Topography:</u> | The subject site is generally flat. |
| <u>Vegetation:</u> | The subject site is partially forested. |
| <u>Adjacent Land Uses:</u> | North: R10A - Forested East: R10A - Residential South: R10A - Bay Road/ Residential West: R10A - Forested |

B. AUTHORIZING CODES, POLICIES, PLANS, AND PROGRAMS:

1. Revised Code of Washington (RCW) Chapter 36.70
2. Revised Code of Washington (RCW) Chapter 58.17
3. Whatcom County Comprehensive Plan
4. Whatcom County Code, Title 2, Chapter 2.33 – Permit Review Procedures
5. Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance
6. Whatcom County Code, Title 14, Use of Natural Resources
7. Whatcom County Code Chapter 12.08, Development Standards
8. Whatcom County Code Chapter 15, Building Code/Fire Code
9. State Environmental Policy Act (SEPA); Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
10. Whatcom County Code Chapter 16.16, Critical Areas
11. Whatcom County Code, Title 17 – Flood Damage Prevention Code
12. Whatcom County Code, Title 23 – Shoreline Management Program
13. Whatcom County Code Title 24, Health Regulations

III. APPLICATION PROPOSAL

The applicant, Jason Heutink, is requesting a reduction in front yard setback from 45 feet to Bay Road to 27 feet. The reduction is required to allow for the construction of a single family residence on the lot. The reduction in setback will allow for a home to be constructed that has a footprint of approximately 1,100 square feet with a 15 foot

backyard and 5 foot side yard setbacks.

The variance is being requested due to the small size of the lot. The lot is 70 feet deep and 50 feet wide. The applicant has secured an easement on a neighboring parcel to house the on-site sewage drain field. Without a variance there would only be an 800 square foot area that the applicant could potentially build on outside of setbacks.

IV. SITE DESCRIPTION

The subject site is a 70'x50' (3500 square foot) parcel located at '0' Bay Road, Blaine, WA Section 32, Township 40 North, Range 01 East W.M., Whatcom County, WA.

The site accesses off of Bay road. The site is currently undeveloped with a mix of shrubs and trees. There is a driveway due east of the parcel adjacent to railroad tracks.

The surrounding properties are zoned Rural (R10A) to the North and R5A in all other directions. The surrounding lots are primarily larger lots. The surrounding uses include single family residences and forestry uses.

V. PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in Chapter 2.33 WCC.

Notice of Application: The Notice of Application for this proposal was published on May 18, 2018. The fifteen (15) day comment period ended on June 2, 2018. A notice of application was sent to 21 owners of property within 1,000 feet on May 15, 2018. The site was posted on May 15, 2018.

Notice of Public Hearing: The Notice of Public Hearing for this application was published in a one-time newspaper publication in the Bellingham Herald.

Public Comment: During the public comment period for the Notice of Application, Whatcom County Planning & Development Services Department received one comment., asking where the building was proposed so that they could ask for he same variance. Staff has responded by sending a site plan to the party of record.

The Technical Review Committee finds that public comment submitted during the 15 day public period have been adequately addressed in the above discussion.

VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment unless the proposal is categorically exempt from SEPA threshold review.

Pursuant to WCC 16.08 and WAC 197-11-800 (6)(b), minor land use decisions such as the granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location and/or surrounding are categorically exempt.

VII. CONSISTENCY WITH REGULATIONS, FINDINGS OF FACT

Zoning Variance - Applicable Policies and Regulations

In order for a variance to be approved it must satisfy the criteria of WCC 20.84.120 (1) through (3). In summary, these criteria state that any variance granted shall not constitute a grant of special privilege, be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for pecuniary reasons alone, but be granted because of special circumstances applicable to the subject property, including size, shape, topography, location or surrounding, and when the strict application of the zoning ordinance is found to cause a hardship and deprive the subject property of a use or improvement otherwise allowed in the identical zoning classification.

Aesthetic considerations or design preferences without reference to restrictions based upon the physical characteristics of the property do not constitute sufficient hardship under this section, and the granting of this variance shall not be materially detrimental to the public welfare, or injurious to the property or improvement in the vicinity and zone in which the subject is situated.

The following circumstances, pursuant to WCC 20.84.120 (1)-(3), shall be found to apply in order to grant a variance:

- 1. That any variance granted shall not constitute a grant of special privilege, be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for pecuniary reasons alone.**

Staff has no reason to believe that this variance has been requested for financial reasons, is based upon reasons of hardship caused by previous actions or is for pecuniary reasons. The subject site is limited in size. In order for there to be a reasonable footprint for the home a variance is required.

- 2. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surrounding, the strict application of the zoning ordinance is found to cause a hardship and deprive the subject property of a use or improvement otherwise allowed in the identical zone classification. Aesthetic considerations or design preferences without reference to restrictions based upon the physical characteristics of the property do not constitute sufficient hardship under this section.**

The subject parcel is 70 feet deep and 50 feet wide. The front setback from Bay road is 45 feet. The rear setback is 5 feet. Without granting a variance the maximum house footprint would be 30 feet by 40 feet, totaling 1200 square feet. For comparison, Whatcom County allows for 2500 square feet for a parcel fully encumbered by critical areas through reasonable use. This proposal only asks for less than half of that building size.

The applicant has secured an easement to put the on-site sewage system on a neighboring lot to provide the maximum building area. That building area will be less than half of what is allowed under reasonable use.

3. The granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the vicinity and zone in which the subject is situated.

Setbacks to roads are required for safety and aesthetic reasons. Given the vegetation within the proposed non-conforming setback neither the aesthetics nor public safety is likely to be impacted by the requested variance.

The variance application was routed to Whatcom County Public Works. The Public Works department has reviewed the proposal. They support granting the variance.

The Technical Review Committee finds that the requested variance meets all of the three requirements of WCC 20.84.120.

A. WCC Chapter 12.08 – Roads and Bridges

WCC Chapter 12.08 adopts and gives authorization for development standards for development within Whatcom County. Whatcom County shall establish uniform, comprehensive and distinct requirements which shall be applied to all developments. These requirements shall be established as "Whatcom County development standards" and shall exist to provide clear development guidelines for all construction activity within the county. These standards shall establish administrative and technical requirements for the implementation of land use regulations and shall provide the basis by which developments are evaluated to ensure compliance with county regulations.

The Whatcom County Public Works Department Division of Engineering reviewed the proposal and submitted a revised memo dated May 11, 2018 recommending approval with conditions and the following comments:

Applicant has submitted a variance request to reduce their front setback from the Right-of-Way to 27' from 45' for the construction of an SFR. Subject site is located off Bay Road, a Rural Major Collector.

Based on the applicant's submittal and conversation with ROW inspectors, Engineering Services recommends the approval of this variance.

The Technical Review Committee has determined that the proposed variance meets the requirements of WCC Chapter 12.08.

B. WCC Title 15 – Buildings & Construction

Building Code: WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County Planning and Development Services Department.

The Plans examiner's office submitted a memo dated May 3, 2018 recommending approval with conditions.

The Technical Review Committee has determined that as conditioned, the variance would meet the requirements of WCC Title 15.

C. WCC Title 16 – Whatcom County Critical Areas Ordinance

WCC Chapter 16.16 contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County's critical areas and to enhance and restore degraded resources such as wetlands, riparian stream corridors or habitat, where possible. The Whatcom County **Natural Resources** department has reviewed the application pursuant to WCC Title 16 – Environment. In a memo dated June 5, 2018 Joshua Fleishmann, Planner II, provided a memo recommending approval with conditions:

The above-listed application packet was routed to Critical Areas staff to review.

The applicant is seeking a variance from the front yard/road setback off of bay road from 45 feet down to 27 feet. The variance is necessary for the construction of a single family residence and associated appurtenances.

Staff conducted a sit visit and determined that the proposed setback would not result in greater impacts to regulated critical areas than would result from a standard setback.

Staff recommends approval of the variance.

Approval of the variance is not an approval of a building site. Any future development will require a Natural Resource Assessment.

The Technical Review Committee has determined that the proposed variance will meet the requirements of WCC Chapter 16.16.

D. WCC Title 20 – Official Whatcom County Zoning Ordinance

WCC 20.36.350 – Building Setback Criteria:

Building setbacks shall be administered pursuant to WCC 20.80.210 and 20.80.230 (3).

WCC 20.80.210 (R) states minimum building setbacks of 20 feet from the front property line and 5 feet from the rear and side property lines. For corner lots, the owner/builder has the option of selecting the front yard setback if both roads are classified as Local Access streets. Yards on the other flanking streets may be considered side yards; pursuant to WCC 20.80.230 (3).

Discussion: The subject variance is for a reduction of the 45 foot setback from the property line fronting Park Road to 27 feet to the property line fronting Bay Road. Due to the size of the lot the 45 foot setback creates an almost unbuildable lot. Twenty seven feet should be sufficient to protect the public's safety and site distance has been found to be sufficient by Whatcom County Public Works.

The Technical Review Committee finds that the proposed development, besides the reduction in the front yard setback, will conform to the applicable building setback requirements.

WCC 20.36.400 – Height Limitations:

Maximum height shall be limited to 35 feet. Height of structures shall also conform, where applicable, to the general requirements of WCC 20.80.675.

Discussion: The proposed expansion conforms to this requirement.

WCC 20.36.450 – Lot Coverage:

No structure or combination of structures, including accessory buildings, shall occupy or cover more than 5,000 square feet or 20 percent, whichever is greater of the total area.

Discussion: As conditioned, the total structural coverage will be less than the maximum allowable coverage.

WCC Chapter 20.78 Transportation Concurrency

WCC Chapter 20.78 gives authority to ensure adequate transportation facilities are available or provided concurrent with development.

Public Works Engineering Services reviewed the Preliminary Traffic and Concurrency information submitted at the time of application. Based on the information submitted, a determination was made indicating that there are no further requirements for this proposal.

Discussion: The Technical Review Committee has determined that the proposal conforms to the requirements of WCC Chapter 20.78.

Fire Protection

WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County planning and development services department.

The Whatcom County Fire Marshal's Office submitted a memo dated December 19, 2017 recommending approval with no conditions.

The Technical Review Committee has determined that as conditioned, the variance would meet the requirements of WCC Title 15

E. Health Code (Title 24)

The purpose of Title 24 is to provide minimum standards to safeguard public health and welfare.

The Whatcom County Health Department (WCHD) reviewed the application and submitted a memo dated April 26, 2018 recommending approval with conditions and the following discussion:

The Whatcom County Health Department (WCHD) has reviewed the proposed project referenced above in accordance with WCC 24.05 On-Site Sewage Regulations and WCC 24.11 Drinking Water. The Whatcom County Health Department (WCHD) has reviewed the variance referenced above and has the following comments.

Water Supply

An approved Water Availability Notification Form will be required at the time of building permit application.

Sewage Disposal

The applicant has an approved on-site sewage system design for a proposed 3 bedroom house.

WCHD has no objections to the variance.

The Technical Review Committee has determined that as conditioned the project meets the requirements of WCC Title 24.

VIII. RECOMMENDATION

The Technical Review Committee recommends that the Whatcom County Hearing Examiner **approve** the applicant's variance request to allow an reduction in the front yard setback 45 feet to 27 feet.

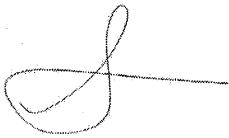
IX. CONDITIONS OF APPROVAL

1. Permit Changes or Modifications: The use and location on site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. Chapter 5 Development Standards: The development shall comply with the Whatcom County Development Standards.
3. Inadvertent Discovery: If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907) LNTHPO (384-2280) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and Lummi Sche'lan"en Department (384-2312) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
4. Building Permit: If variance is granted then the project will require a building permit.
5. Health Department: An approved Water Availability Notification Form will be required at the time of building permit application.
6. All permits for this property shall require further critical areas review.
7. Submittal of a building permit application requires a prescreening of the project. Refer to the *Residential Structures and Detached Accessory Structures - Permit Application Packet* for additional information and a

description of the submittal documents required to apply for a building permit.

8. All development shall comply with the Whatcom County Development Standards (WCDS).
9. The applicant shall obtain a Revocable Encroachment Permit from Engineering prior to creating a new access for the lot. Proposed access shall be paved and meet current sight distance criteria, as per Development Standards.

Report prepared for the Technical Review Committee by:

A handwritten signature in black ink, appearing to be 'Charles Sullivan', written in a cursive style.

Charles Sullivan
Planner II