

WHATCOM COUNTY HEARING EXAMINER

re: The application of **Robin Karlson** for a Zoning Variance Permit and Critical Area Reasonable Use Determination

VAR2020-0004
CA2020-0140

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 setback from 20-ft. to 15-ft. and a Zoning Variance to reduce the parking stall length for two off-street parking stalls. The Applicant seeks the Variance to build a single-family residence while minimizing the impact to a non-fish bearing stream buffer and a Category III wetland buffer. The Applicant also applied for a Reasonable Use Determination to build within the wetland and stream buffers at a reduction of said buffers greater than administratively allowable, addressed 13 & 15 Pinto Creek Lane, Bellingham, WA.

Decision: The requested Zoning Variance Permit and Critical Area Reasonable Use Determination are approved, subject to conditions.

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.

FINDINGS OF FACT

I.

Applicant: Robin Karlson

Site Address: 13 and 15 Pinto Creek Lane
Bellingham, Washington

Agent: Greg Paul, Re/Max Realty Sudden Valley

Assessor's Parcel Number: 370407-259370 & 370407-250364

Legal Description: Sudden Valley Division 24, Lot 191 & 192

Zoning: Residential Rural

Subarea: Lake Whatcom

Lot Sizes: 6,300 square feet [0.144 acres] each

Roads: Private

Water & Sewer Supply: Public Water and Sewer [Lake Whatcom Water & Sewer District]

Fire Protection: South Whatcom Fire District

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Bellingham School District No. 501

Topography: The subject sites slope toward the stream in the back of the lots [east]

Vegetation: The subject lots are undeveloped and have trees and shrubs.

Adjacent Land Uses:

North:	Preserved Land
East:	Preserved Land
South:	Residential
West:	Residential

SEPA Review: Categorically exempt from SEPA threshold review.

Authorizing Codes, Policies, Plans, And Programs:
State Environmental Policy Act (SEPA) - Washington Administrative Code, Chapter 197-11
Revised Code of Washington [RCW] 36.70B, LOCAL PROJECT REVIEW
RCW Chapter 58.17, PLATS—SUBDIVISIONS—DEDICATIONS
Whatcom County Comprehensive Land Use Plan
Whatcom County Code (WCC) 2.11, Hearing Examiner

WCC 12.08, Development Standards
WCC 14, Use of Natural Resources
WCC 15, Building Code
WCC 16.08, Whatcom County Environmental Policy Administration
WCC 16.16, Critical Areas
WCC 20, Official Whatcom County Zoning Ordinance
WCC 21, Subdivision Regulations
WCC 22, Land Use and Development Procedures
WCC 23, Shoreline Management Program
WCC 24, Health Regulations

Legal Notices: Mailed – Notice of Public Hearing, February 19, 2021
Posted – Notice of Public Hearing, March 4, 2021
Published – Notice of Public Hearing, March 4, 2021
Online Publication of Agenda and Zoom links – March 11, 2021

Hearing Date: March 17, 2021

Parties of Record

Robin Karlson, Applicant
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Greg Paul
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Robby Eckroth – Planner II – Current Planning
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Dr. David Lamb – Dr. Emily Schaller
19 Pinto Creek Lane

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Chris Vance – Megan O’Patry
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Hearing Examiner Exhibit List:

1. Revised Variance Application-
2. Revision Project Narrative-
3. Revised Reasonable Use Application -
4. Revised NRA App-
5. Revised Prelim Traffic-
6. Revised Site Plan-
7. Wetland Delineation-
8. Revised Critical Areas Report-
9. Deeds-
10. Mailing-Labels-
11. Determination of Completeness-
12. Vicinity-Map-
13. Legal Notice-
14. Notice of Application-Master-
15. TRC Routing-Memo-
16. Site Visit Photos
17. Staff Memos
18. Combined Public Comments
19. Receipt-
20. Staff Report-
21. Record of Posting Dates

II.

The Applicant is requesting a Zoning Variance to reduce the front yard setback from 20-ft. to 15-ft. and a variance to the dimensional requirements of the off-street parking stalls by decreasing the width from 10-ft to 8-ft and length from 20-ft. to 15-ft. The variance is requested in order to build a new two-story single-family residence on one Lot 192 that will be bound to the adjacent Lot 191 while minimizing wetland buffer and stream buffer impacts.

The site is accessed off of Pinto Creek Lane and is served by Lake Whatcom Water and Sewer District.

The Applicant also applied for a Reasonable Use Application as a single-family residence is proposed within a Category III wetland buffer and a non-fish bearing stream buffer mitigation.

III.

There were two comments with concerns regarding the original proposal. And three public comments on the second Notice of Application the Variance. The Technical Review Committee adequately addressed the public comments in the Staff Report and the applicant has revised their proposal to meet concerns.

Critical Areas Staff has reviewed the revised proposal for consistency with WCC 16.16. The Applicant decided to build one single-family residence rather than two residences to minimize wetland and stream buffer impacts. The Applicant has now requested a variance to reduce the front yard setback to 15-ft, rather than 10-ft, to minimize wetland and stream buffer impacts and has requested a variance to the off-street parking from 20-ft. to 15-ft. As the Applicant is now applying for one single-family residence, traffic impacts will be decreased. Public Works-Engineering reviewed the proposal for traffic impacts.

Some concerns expressed regarded the safety to the driveway and sight distance. This variance application would not have any impact on sight distance of the driveway as the variance is not related to driveway location.

IV.

The Whatcom County Technical Review Committee has recommended approval of the requested Zoning Variance Permit in the Staff Report, dated March 4, 2021 (Ex. 20), subject to conditions. The Findings of Fact and Conclusions of Law set forth in the Staff Report, dated March 4, 2021, a copy of which is attached hereto, and 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 public comment on the application at the public hearing. Those comments reflected some of the written comments and also specifically focused on the size of the

parking stalls being approved.

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

V.

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.

Generally

The request to grant a Variance can be granted only if the request is consistent with the Zoning Variance Criteria of WCC 20.84.120 (1 through 3). The Technical Review Committee concluded that the requested variance meets the three requirements. I concur. Consequently, as the Applicant's Zoning Variance meets the three requirements it should be granted, subject to the Conditions of Approval below.

There is nothing in the record which would indicate that the Conclusions of Law made by the Technical Review Committee were incorrect or failed to properly support their recommendation. The Hearing Examiner hereby adopts, by this reference, the Conclusions of Law reached by the Technical Review Committee in the Staff Report, dated March 4, 2021, Exhibit No. 20.

II.

Specifically, *in re*: Parking Space Sizes

I have reviewed WCC 20.80.500, *et. al.* regarding parking space dimensions in response to the public comments. WCC 20.80.590 directs that the Hearing Examiner is empowered to interpret regulations regarding parking spaces "where a land use permit is required." WCC 20.80.510 regulates parking space dimensions in regard to zoning and specifies that parking spaces shall not be less than 20 feet in length, but also carves out the possibility of 15 feet length spaces for "compact automobiles." Identical language exists in WCC 20.51.360 and 20.71.601, regarding the Lake Whatcom Watershed and Water

Resource Protection Districts.

The term “compact automobiles” is not defined in WCC, nor could I find a consistent definition under State or Federal Law, or even a common societal definition, to look to. Consequently, I will apply commonsense to interpret what the Whatcom County Council intended. The principle of “*noscitur a sociis*” in statutory interpretation provides that a single word in a statute should not be read in isolation, and that the meaning of words may be indicated or controlled by those with which they are associated. It is clear that if the County Council designated the size of a parking space at a smaller size for compact automobiles, they intended those automobiles to fit in the parking space. Consequently, the term “compact automobiles” shall mean vehicles of 15 feet in length or less. *See resultingly Condition 19 below.*

III.

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 Robin Karlson to a reduce the required front yard setback from 20-ft to 15-ft in order to minimize wetland and stream buffer impacts and requested a variance to the off-street parking stall length from 20-ft. to 15-ft, located on Assessor’s Parcel Nos. 370407 259370 & 370407 259364, addressed as 13 and 15 Pinto Creek Lane, Bellingham, Washington, subject to the following conditions:

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. Drainage: All development must comply with the drainage standards found in WCC 20.32.656
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. Water & Sewer: An approved Water and sewer Availability Notification Form will be required at the time of building permit application.
5. Building Permit: A building permit will be required for this project.
6. Prescreening: Submittal of a building permit application requires a prescreening of the project and a prescheduled application appointment. 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. The packet is available in our office or on-line at: www.whatcomcounty.us/pds under Quick Links > Applications/Forms.
7. Erosion and Sediment Control: SWPPP, TESC, and/or BMP's details shall be shown on the site plan for construction.
8. Stormwater System Approval: Prior to building permit issuance, a stormwater system designed to WCC 20.51.420(2)(c) or the Sudden Valley Stormwater Management and Phosphorus Mitigation Plan must be approved by staff.
9. Declaration of Covenant and Grant of Easement (Stormwater): Prior to building permit issuance, a Declaration of Covenant and Grant of Easement document must be recorded at the Whatcom County Auditor's Office.
10. Project Expiration: Project permit approval status shall expire two years from the date of approval except where a different duration of approval is authorized by Whatcom County Code, or is established by a court decision or state law, or executed by a development agreement. The decision maker may extend this period up to one year from the date of original expiration upon written request by the applicant.
11. Agreement and Covenant (Mitigation): An "Agreement and Covenant" document preserving parcel 370407259364 for mitigation purposes shall be recorded with the Whatcom County Auditor. PDS shall supply this document.
12. Covenant to Bind Properties: The mitigation parcel as well as the subject building parcels shall be combined via a "Covenant to Bind Properties" document recorded with the Whatcom County Auditor prior to building permit issuance. The Covenant shall be recorded AFTER recording the document referenced in Condition #11 (above). Such document will be supplied and approved by PDS staff prior to recording and will in effect make all subject property into a single tax parcel.

13. Silt Fencing: Clearing activity shall be limited to the portion of the site indicated on site plan within area demarcated “silt fence”.

14. Conservation Easement: A deed restriction (in the form of a conservation easement) shall be recorded with the Whatcom County Auditor for all of the subject property prior to building permit issuance, after receipt of new parcel numbers resulting from Item 2 (above). It shall encumber all of combined parcel excluding the deck and that area within 5ft of proposed home. After obtaining staff approval (via staff review and signage of document), please file the easement document with the Whatcom County Auditor and return a copy of the certified filing to Whatcom County Planning and Development Services. The document (Conservation Easement Including Compensatory Mitigation) can be found here: <http://www.whatcomcounty.us/DocumentCenter/View/2192/Conservation-Easement-Including-Mitigation-PDF>

15. Performance Standards of CA Assessment: All requirements and recommendations, to include performance standards and other measurable, as put forth in the “Critical Areas Assessment, Conceptual Mitigation Plan, & Tree Canopy Replacement Plan” prepared by Aqua-Terr Systems (November 2020) shall be followed in full, with the exception of conflict with conditions of approval, which shall supersede.

16. Construction Fencing and Silt Fencing Installation Timing: Construction fencing or properly installed silt fencing shall be installed prior to construction activities, following the fencing path put forth in the critical areas approved site plan.

17. Assignment of Savings: An assignment of savings (AOS) shall be established in the amount listed in the approved mitigation plan. This shall be completed prior to issuance of the building permit.

18. Conditions Prior to Temporary Occupancy: Prior to temporary occupancy of the proposed home, the following shall be in place:

- a. A split rail fence shall be installed on the reduced buffer edge as depicted within the approved mitigation plan. The installation shall be documented as a condition of occupancy of the building permit.
- b. Native Growth Protection Area sign (as approved by Whatcom County PDS) shall be placed upon the fence as approved by PDS.
- c. The mitigation shall be installed. An as-built plan (hard copy) shall be submitted to the County for approval within 30 days of installation. The as-built shall include photographs of the mitigation area, nursery plant receipts, a site plan showing the location of the mitigation, and a brief narrative of the installation. It shall be approved in conjunction with an on-site as-built inspection.

19. Parking Stalls: The 15 feet length parking stalls being applied for in the context of this variance application are “compact automobile parking stalls,” and consequently their use shall

be limited to vehicles that are 15 feet or less in length.

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 18th day of March 2021.



Rajeev D. Majumdar, Hearing Examiner *Pro-Tem*