

The proposed project will serve the public use and interest and is consistent with public health, safety, and welfare. It is consistent with applicable zoning regulations, Neighborhood Plan standards, relevant Municipal codes and the City's Comprehensive Plan Goals and Policies, all as described in this application. It is designed to be safe for residents and the public and accommodating of environmental features in the vicinity. It provides the opportunity for additional residential housing in a portion of the City that has been long planned by the City and property owner for residential development and is adequately served with utilities and infrastructure.

V. Preliminary Plat Variances

As discussed above in Section IV the proposed Preliminary Plat is substantially consistent with applicable standards and regulations. However, there are several design components, all related to the public and private road infrastructure improvements, which vary from the applicable standards and regulations. As a result, the project includes a request for three variances from the standards in BMC 23.08. The following is a discussion of each variance request and the consistency of the requests with the applicable variance criteria.

Variance #1 – Maximum number of lots served by a private access easement (BMC 23.08.060.E.2).

This section of code requires that each lot in a subdivision abut either a public right of way or a Private Access Easement. Subsection a. of this section limits a private access easement to serve a maximum of four lots.

2. Abutment by Private Access Easement. A land division that proposes to create one or more lots that do not have physical abutment on a public street shall meet the following provisions:

a. A maximum of four lots may be served by a private access easement;

The proposed project design includes a private shared driveway that extends off the terminus of the East Road. This private shared driveway will be located in a private access easement and will serve 8 of the proposed lots. Lots 21, 22 and 25-30 will be served by this driveway. This exceeds the maximum allowance of 4 lots and requires a variance. *See Exhibit A.*

Variance #2 – Internal Road standard for new roads (BMC 23.08.070.B, BMC 13.04.070, and BMC 13.08.030.B.4)

This section of the subdivision code requires all rights of way within and abutting a land division to be improved in accordance with BMC Title 13.

B. Street Standards. All rights-of-way within and abutting a land division shall be

improved in accordance with BMC Title [13](#).

The relevant sections of Title 13, street improvements for land division, require that newly dedicated roads be improved to the full standard.

B. Land Division. Existing public rights-of-way and newly dedicated rights-of-way associated with the following land divisions shall be improved to the following standards:

4. Newly Dedicated Rights-of-Way. All newly dedicated streets associated with a land division shall be improved to full standard across the full frontage of the land being divided and to minimum standard to the nearest arterial street. [Ord. 2018-12-035 § 2; Ord. 10021 § 5, 1989].

The full standard for a residential street is identified in BMC 13.04.070, and requires, among other improvements, a 36' pavement width, parking both sides and sidewalk both sides.

Standards for residential access streets are as follows:

C. Driving Lanes. Thirty-six feet of side pavement with eight feet of parking on both sides; cul-de-sac pavement width may be reduced to 32 feet if cul-de-sac is less than 600 feet in length;

F. Sidewalks. Five-foot-wide minimum sidewalks on both sides;

The proposed project includes two newly dedicated public rights of way. Road improvements within these rights of way are not proposed to meet the full standard as described above. To reduce cut and fill, clearing and grading, impervious surface and environmental impacts, the two road improvements are proposed at a 28' drive lane width, with asphalt thickened edge on one side, and sidewalk one side. No on street parking is proposed. This design does not meet the standard and requires a variance. *See Exhibit K.*

Variance #3 – Frontage improvement to Viewcrest Road (BMC 23.08.070.B, BMC 13.04.070, and BMC 13.08.030.B.3)

This section of the subdivision code requires all rights of way within and abutting a land division to be improved in accordance with BMC Title 13.

B. Street Standards. All rights-of-way within and abutting a land division shall be improved in accordance with BMC Title [13](#).

The relevant sections of Title 13, street improvements for land division, require that existing frontage roads be improved to a $\frac{3}{4}$ standard.

B. Land Division. Existing public rights-of-way and newly dedicated rights-of-way

associated with the following land divisions shall be improved to the following standards:

3. All Other Land Divisions Regulated by BMC Title 23, Including Land Divisions That Include More Than Four Units. All streets shall be improved to three-quarter standard across the full frontage of the land being divided and to minimum standard to the nearest arterial street.

The full standard for a residential street is identified in BMC 13.04.070, and a $\frac{3}{4}$ improvement requires the abutting half of a 36' pavement width, parking and sidewalk on one side. It should be noted that the Neighborhood Plan for Edgemoor (Circulation Policies) indicates that Viewcrest Rd should be improved to a 24' asphalt width, with thickened asphalt edge on both sides, but no pedestrian facilities.

Standards for residential access streets are as follows:

C. Driving Lanes. Thirty-six feet of side pavement with eight feet of parking on both sides; cul-de-sac pavement width may be reduced to 32 feet if cul-de-sac is less than 600 feet in length;

F. Sidewalks. Five-foot-wide minimum sidewalks on both sides;

The proposed project has frontage on Viewcrest Road. Road improvements along this frontage are not proposed to meet the $\frac{3}{4}$ standard. This road is currently improved with asphalt drive lanes at 22' of width, with thickened asphalt edge and no sidewalks on either side. The project proposes to add a setback sidewalk along the south side of Viewcrest from the proposed entry to the west property line (the frontage of the Property). This sidewalk is proposed to be setback for pedestrian safety and is proposed to be constructed from pervious concrete because the soils in this area can accommodate infiltration of runoff. No on street parking is proposed. *See Exhibit A.* This design does not meet the standard and requires a variance.

Variances from BMC 23 are permitted pursuant to BMC 23.48.040. A request for a variance pursuant to this code section must show that unique circumstances involve difficulties, result in an undesirable land division, or preclude a proposal from achieving zoned density *or* that a variance results in better lot design; *and*, that the variance will not be detrimental to the public welfare. The following is a discussion of the three variances consistency with these criteria.

A. Variance. The hearing examiner may grant a variance from any term of this title, except minimum lot size, if it is shown that the proposal is consistent with the following criteria:

- 1. a. Because of unusual shape, the location of preexisting improvements, other extraordinary situation or condition, or physical limitation including, but not limited to, exceptional topographic conditions, geological problems, or environmental constraints, in connection with a specific piece of property, the literal enforcement of this title would*

involve difficulties, result in an undesirable land division or preclude a proposal from achieving zoned density;

The Property is constrained by significant extraordinary conditions related to physical limitations, exceptional topography, geological problems and environmental constraints. There are steep slopes, exposed rock, wetlands and other environmentally sensitive areas spread across the Property. These physical constraints make construction of the full improvements required by the referenced codes (BMC 23 and 13) impractical, difficult, and will result in an undesirable land division. These variances would result in better lot design; however, it should be noted that the existing regulations without the variances do not necessarily prohibit achievement of the zoned density. If the number of lots served by private access easement is limited to 4 lots, if the internal public roads are required to be built to a full standard, and if the Viewcrest Rd frontage is required to be improved to a typical $\frac{3}{4}$ standard, then the improvements will be longer, wider, and more impactful on the site than as proposed. The result will be significantly more cut, fill, clearing, grading, vegetation removal, impervious surface, and environmental impact. Compliance with the full standards is not necessary to provide safe and reasonable access to the project, and to comply with the intent of the standards. For these reasons all three variances are consistent with this criterion and should be approved.

b. The granting of the variance will establish a better lot design resulting in a development pattern found to be consistent with the neighborhood character including, but not limited to, development orientation to the street, setbacks, lot orientation, or other contextual element associated with the proposed development;

Comment: Although a lot design variance is not requested, for the reasons expressed above, the proposed lot design with the requested variance will result in a better lot design consistent with the surrounding neighborhood.

2. *The granting of any variance will not be unduly detrimental to the public welfare nor injurious to the property or improvements in the vicinity and subarea in which the subject property is located. [Ord. 2018-12-036 § 2 (Exh. A)].*

The variance will not be unduly detrimental to the public welfare. In fact, the variance will benefit the public welfare. Literal enforcement of this title would result in an unnecessary requirement for greater impact from the project. More cut, fill, clearing, grading, vegetation removal, impervious surface and environmental impact would occur to serve the same general site layout and number of lots. Due to the unique environmental constraints on this Property and the goal of preservation of sensitive areas and mature tree canopy on this Property, it would be particularly detrimental to the public welfare to construct infrastructure improvements that are more impactful than necessary to provide safe and reasonable access to the proposed lots. Implementation of the standard improvements would add construction cost to the project and would result in greater long term maintenance cost; the latter is borne by the public. As proposed, the design incorporates appropriate pedestrian facilities, both within the site and along the frontage, resulting in increased pedestrian accessibility, that is safer for use by residents and neighbors. There is no future need for connectivity through the project

to serve neighboring properties, or for general circulation purposes. The variance will not be unduly detrimental to the public welfare nor injurious to the property or improvements in the vicinity and will, in fact, benefit the public. For these reasons all three variances are consistent with this criterion and should be approved.

VI. Shoreline Substantial Development and Conditional Use Permit

The Property has frontage along Chuckanut Bay, which is a regulated shoreline within the City of Bellingham, subject to the rules and regulations in the City's Shoreline Management Program (SMP, BMC 22). Chuckanut Bay is in Reach 19, which has a Marine, Natural designation. The SMP jurisdiction extends 200' from the OHWM of the Bay, and in Reach 19, the buffer from the shoreline also extends 200' from the OHWM. The project has been designed to avoid development and impacts within the shoreline jurisdiction to the greatest extent possible. No developable lots, roads, trails, or utility infrastructure will be located within this area, apart from a storm water outfall pipe and energy dissipator, serving a portion of the project. These are the only improvements related to the Project located within the jurisdiction of the State Shoreline Management Act and City Shoreline Management Program. As discussed in the project narrative Section III the project SSP contemplates discharge of storm water to three locations (Viewcrest, Wetland B, and Chuckanut Bay). *See Exhibit A & F.* These discharge locations are dictated by the existing topography of the site. Due to the steep slopes on the site within 300' of Chuckanut Bay, it is not possible to discharge the project storm water runoff onto the slope, outside of the shoreline jurisdiction. To avoid the risk of erosion on the steep slopes, it is necessary to extend an outfall pipe to a point near the base of the slope. This utility improvement, located within the shoreline jurisdiction, requires a Shoreline Substantial Development Permit to authorize the activity. Due to the location of the improvement within Reach 19, in a Marine Natural designated area, a Shoreline Conditional Use Permit is also required to authorize storm water facility improvements.

The storm water system within the shoreline jurisdiction will consist of a large diameter conveyance pipe, which will be anchored to the surface of the ground (to reduce clearing and grading associated with the activity), as well as the installation of an energy dissipater at the terminus of the pipe. The energy dissipater will primarily consist of gabion baskets filled with 6" – 12" quarry spall, sourced from an approved pit. The dissipater will be a rectangle approximately 15' x 12' (168 square feet) in size and will require approximately 10 cubic yards of quarry spall material to be placed within the gabion baskets. This will require excavation and fill immediately above the existing sandstone shoreline edge of the Bay, but no activity at the beach level or below the OHWM. Details on this design are provided on Sheet 5 of the Preliminary Plat plan set. *See Exhibit A.*

BMC 22.06.030 identifies the regulations applicable to all non-exempt activities within the shoreline jurisdiction. The proposed improvements within the shoreline jurisdiction do not meet the exemption criteria in BMC 22.05.020 and are therefore subject to the regulations in BMC 22.06.030. Section 030.C identifies the specific criteria that a proposal must meet in order to be approved: