



City of Tacoma
Hearing Examiner

August 23, 2019

Northwest Vintage Homes LLC
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(Electronic & Interoffice Mail Delivery)

Re: HEX2019-019 (LU19-0053)

Applicant: Northwest Vintage Homes LLC

Dear Parties,

In regard to the above reference matter, please find enclosed a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Decision entered on August 23, 2019.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1): Findings, Conclusions, and Decision

Cc: Electronic Mail Delivery

Pierce County Assessor-Treasurer, Commercial Dept./Darci Brandvold (dbrandv@co.pierce.wa.us)
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Tacoma-Pierce County Health Department/Chrissy Cooley (ccooley@tpchd.org)
Eastside Neighborhood Council/Lynette Scheidt (enact@live.com)

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

PRELIMINARY PLAT DECISION

APPLICANT:

Northwest Vintage Homes LLC, a Washington limited liability company (the “Applicant” or “NVH”), as the current record owner of the Subject Property (defined below), is the applicant for the present preliminary plat request (the “Plat”). NVH was represented at the hearing by Contour Engineering LLC, through Stephen Bridgefurd, acting as agent for NVH. For purposes of this Decision, the defined terms “NVH” and “Applicant” also include any employees, agents, and/or contractors of the Applicant in regard to conditions and compliance issues set forth below.

FILE NO.: HEX 2019-019 (LU19-0053)

SUMMARY OF REQUEST:

A request to subdivide four parcels of real property totaling approximately 1.88 acres into fourteen (14) single-family residential lots, with private roadways, and utilities. Thirteen (13) of the lots will be small-lot single-family lots with accompanying regulatory design standards.¹

LOCATION:

The proposed Plat is located in East Tacoma generally at the address of 1315 East 52nd Street — and is comprised of Pierce County Tax Parcel Nos. 0320222090, 2965000050, 0320226037 and 0320226037 (collectively the “Subject Property” or the “Site”). The Site is currently zoned R-2 Single-Family Dwelling District.

DECISION:

The Plat is approved subject to conditions contained herein.

PUBLIC HEARING:

After reviewing the Planning and Development Services Department’s (“PDS”) Preliminary Report (the “PDS Report”) on the Plat, and examining available information on file with the

¹ Small-lot single-family residential lots are those that are allowed in the R-2 District that do not meet standard minimums for lot width (50 foot average) and/or lot area (5,000 square feet). New Small Lots that are smaller than the applicable standard minimum lot dimensions in Section 13.06.100.D, shall be allowed, without variance, in the R-1, R-2, R-2SRD, HMR-SRD, R-3, R-4, R-4-L and R-5 Districts, subject to the Small Lot standards of that section, and provided that all new dwellings meet the design standards in Section 13.06.145.E. R-2 District Small-lots are between 5,000 and 4,500 square feet and/or between 50 and 35 feet in width and are subject to the design requirements found in Section 13.06.145.E. The small-lots proposed in the Plat fall within those ranges. *Harrington Testimony; Tacoma Municipal Code (“TMC”) 13.06.145.*

ORIGINAL

application, the Hearing Examiner conducted a public hearing on the application on July 25, 2019. The hearing record closed the same day when the City's corrected Staff Report (Ex. C-1) and the pre-application scoping notes (Ex. C-10) were filed with the Hearing Examiner's office.

TESTIMONY:

For the City:

John Harrington, Principal Planner, PDS

For the Applicant:

Stephen Bridgeford of Contour Engineering for NVH
Ralph Cook of NVH.

No members of the public testified at the hearing.

FINDINGS, CONCLUSIONS, AND DECISION:

FINDINGS OF FACT:

1. Contour Engineering LLC, on behalf of NVH, filed an application for approval of a preliminary plat for a residential subdivision (again, the "Plat" or also "Cooks Landing") which would divide the Subject Property into fourteen (14) single family dwelling lots, ranging in size from just over 4,600 square feet to 7,885 square feet. Thirteen (13) of the proposed residential lots will average 4,773 square feet in size, achieving a net density in the Plat of approximately 7.34 dwelling units per acre. *Harrington Testimony; Ex. C-1, Ex. C-2, Ex. C-9.*

2. Five of the new lots² will front on East 52nd Street (Lots 9~13). The remaining proposed new home Sites (Lots 1~8) will front on Tract A—a private access road and utility corridor. All lots will have access off of a new 20-foot wide alley tract that is paved and curves to the north at its west end and connects with a newly created Tract A private access road forming a horseshoe loop from East N Street. There will be no parking on the north side of the Tract A access road, and signage is required to reflect the same in order for emergency vehicle access and solid waste vehicle access to be preserved into Cooks Landing. East 52nd Street and East N Street, on the perimeter of the Plat, will be required to be improved with 28-foot-wide paved surface and curb, gutter and sidewalk. The darker shaded areas in the Utility Plans (*Ex. C-3 and Ex. C-9*) on the existing streets are where the new asphalt improvements will be required. *Harrington Testimony; Ex. C-1~ Ex. C-3, Ex. C-9.*

3. An example, potential development buildout footprint is shown on Lot 10 of the Preliminary Plat Map as an example. This buildout example assumes a 20-foot front yard setback, 5-foot side yard setback and a 5-foot side and rear setback for a 500 square foot garage which could include a second story detached accessory dwelling unit (DADU) that would not exceed 25 feet in height. DADUs are not counted in residential density calculations. *Harrington Testimony; Ex. C-2, Ex. C-9.*

² And the existing home that is to remain and become Lot 14

4. New street trees are required in the Plat - one in the front yard of each lot. There is a potential conflict on the planting of these trees on the lots that face the Tract A private access road where the proposed Utility Plan shows water lines and roof drains. This potential conflict will need to be resolved prior to finalization of the Plat. The Applicant has indicated to staff that the water lines and roof drains can run in non-linear lines to facilitate open areas for trees. Additionally, the Applicant indicated that pipe sleeves can possibly be used in tight areas to prevent damage from tree roots. *Harrington Testimony; Ex. C-1~Ex. C-3, Ex. C-9; TMC 13.06.06.145.*

5. The only address currently associated with the Subject Property is 1315 East 52nd Street, which is where a house currently sits in the approximate center of the Site. This house will be removed as part of development of the Plat. Significant development has taken place in and around the Subject Property over time. There are a number of subdivisions of varying vintages in the vicinity of the Site. The most recent of these is the 34-lot Rehe subdivision north of the Site which covers approximately 4.8 acres of land. The smallest lot in the Rehe Plat is 5,018 square feet and the overall net density is 7.08 units per acre. The houses in the subdivision were built in 2011-2012. The lots in Rehe Plat range from 5,300-8,300 square feet for the development of single-family residences. The proposed thirteen (13) new lots in the Plat are between 4,600 and 4,800 square feet in size with an overall net density of 7.34 units per acre. South of the Site, a new 94-lot Planned Residential Development (the Heritage Gardens PRD) with small-lot single family and townhouse lots was approved in December 2018. The PRD included a modification from R-2 to R-2 PRD. The overall net density for the Heritage Gardens PRD is 10.51 units per acre. A final plat has not yet been processed for the Heritage Gardens PRD. *Harrington Testimony; Ex. C-1, Ex. C-2, Ex. C-9.*

6. The proposed Cooks Landing subdivision is generally consistent with the existing subdivision pattern in the surrounding area, as well as with the characteristics and density for R-2 zoned property. *Harrington Testimony; Ex. C-1, Ex. C-9.*

7. The Site is comprised of four (4) mostly rectangular shaped parcels totaling 1.88 acres in area, with 160 feet of frontage on East N Street and 239 feet of frontage on East 52nd Street. The Site extends approximately 298 feet north of East 52nd Street to the south boundary of the Rehe subdivision, and extends approximately 320 west of East N Street to the east boundary of a large 33,000 square foot single-family residential lot. The existing house in the southwest corner of the Site that will remain on newly created Lot 14. The second house and outbuildings currently present at 1315 East 52nd Street, located near the center of the Site, will be removed in the development process, as mentioned above. East 52nd and East N Streets are both 60-foot wide local access roads with a paved width of 28 feet on East 52nd Street and an 18-foot wide gravel surface on East N Street. Neither street is improved with curb, gutter and sidewalk adjacent the Site at present. The Site slopes gently downhill from west to east from about 332 feet of elevation to about 320 feet at East N Street (just under 4% slope) and is covered with grasses, shrubs and trees, aside from the two existing houses. *Harrington Testimony; Ex. C-1, Ex. C-2, Ex. C-9.*

8. The Site and surrounding area were originally zoned R-2 Single-Family Dwelling District beginning in 1953. As mentioned, the Heritage Gardens PRD was rezoned to R-2 PRD in December 2018. The map in Exhibit C-1 at page 5 shows the Site outlined in red in the midst

of large yellow area zoned R-2. Property fronting East Portland Avenue to the east of the Subject Property is zoned R-3 Two-Family Dwelling District. The Salishan PRD is located east of Portland and north of East 51st Street and is zoned R-4 PRD. The proposed lot sizes for Cooks Landing, proposed residential density, and single-family dwelling land use are all permitted within the R-2 zoning as will be modified by the small-lot, single-family development regulations found at TMC 13.06.145. *Harrington Testimony; Ex. C-1, Ex. C-9.*

9. The land use designation for most of the Site under the One Tacoma Comprehensive Land Use Plan (the “Comp Plan”) is Single-Family Residential, with a small portion of the northeastern corner being in Multiple-Family (Low Density). The real property on Pipeline Road is designated as a Parks and Open Space. East of Pipeline Road is a segment of Neighborhood Commercial and Multi-Family Residential (High Density). The proposed lot sizes, residential density and single-family dwelling land uses are supported within the Comp Plan designations for the Site. *Harrington Testimony; Ex. C-1,*

10. Sanitary and storm sewer, water and power utilities run parallel to the Site in both adjacent streets. There will be extensions of the water and power lines into the new subdivision from East N Street for the lots fronting the Tract A access road. Existing power lines on East N Street are underground. The lots fronting East 52nd Street will access the lines within that right-of-way. The proposed sanitary sewer plan is to provide an east-west collector in the new alley tract for the 13 new small-lots. Storm water generated by the Plat will be conveyed to a private system. This system will have to be engineered to the approval of the City of Tacoma Planning and Development Services’ Site Development Section. The Site Development Engineer reviewing the proposal indicated that an approved plan may require the loss of a lot(s) to fit the proper drainage system in the plat. *Harrington Testimony; Ex. C-1, Ex. C-3, Ex. C-9.*

11. The nearest Pierce Transit bus stops are approximately 650 feet from the Site on East Portland Avenue for Routes 41 and 54. Route 41 provides service to the Tacoma Mall Transit Center (“TC”), 72nd Street TC, Tacoma Dome Station, and Commerce Street TC. Route 54 provides services to the 72nd Street TC and the Tacoma Mall TC via Portland Ave. and South 38th Street. The Transit Priority Network includes the East Portland Ave. arterial. *Harrington Testimony; C-1.*

12. Educational facilities that will serve K-12 students living in Cooks Landing (with distance and direction from the Site) are: Sheridan Elementary (.6 miles - West), First Creek Middle School (.3 miles - East) and Lincoln High School (2.1 miles - Northwest). Existing recreational fields and parks within approximately ½ mile of the Subject Property include: the two nearby schools, Blueberry Park, Cloverdale Park, and the new Eastside Community Center/Playground. *Harrington Testimony; C-1.*

13. The Plat, as submitted, has been prepared in accordance with the standards for new subdivisions set forth at Tacoma Municipal Code (TMC) 13.04.100. *Harrington Testimony; Ex. C-1.*

14. The Plat has been reviewed by City departments and divisions, and relevant governmental agencies, and utility providers. None objected to approving the Plat; however, numerous conditions concerning utilities, access, public safety and construction techniques have

been recommended. With minor clarifications and questions in testimony, the Applicant indicated no objection to the recommended conditions. *Harrington Testimony, Bridgeford Testimony, Cook Testimony; Ex. C-1.*

15. Public notice of the Plat application and public hearing was mailed to owners of record and/or taxpayers of record for property within 1,000 feet of the Site, and notice of the hearing was published in the News Tribune. In addition, public notice signs were posted on the Site referencing the proposed subdivision on May 17, 2019. Notice of the application was also posted on the City's Internet website. *Harrington Testimony; Ex. C-1.*

16. City staff received two comments via telephone calls. The first was a neighbor, from north of the Site with an East 51st Street address, who was concerned generally about a new subdivision and specifically about the number and size of the lots. A second neighbor, across East N Street, was concerned about the condition of East N Street and school walking routes for the children attending nearby schools (First Creek Middle School to the east and Sheridan Elementary School to the west. No members of the public testified at the hearing. *Harrington Testimony; Ex. C-1.*

17. Pursuant to the State's SEPA Rules *WAC* 197-11-800 and the City of Tacoma's Environmental Code (*TMC* 13.12), the Environmental Official has reviewed this project and determined the project is exempt from SEPA review requirements having less than 20 new residential lots proposed. *Harrington Testimony; Ex. C-1, Ex. C-9.*

18. The PDS Report, as entered into the record as Exhibit 1, accurately describes the proposal, general and specific facts about the Site, applicable sections of the Comp Plan, and applicable regulatory codes. The PDS Report is incorporated herein by reference as though fully set forth. However, to the extent that anything in the PDS Report conflicts with the contents of this Decision, this Decision shall control.

19. Any conclusion of law below, which may be more properly deemed or considered a finding of fact, is hereby adopted as such.

CONCLUSIONS OF LAW:

1. The Hearing Examiner has jurisdiction over this matter pursuant to *TMC* 1.23.050.B.1 and *TMC* 13.04.100.D. The Applicant bears the burden of proving by a preponderance of the evidence that its request for preliminary plat approval conforms to applicable requirements for approval. *TMC* 1.23.070.C.

2. The requirements of SEPA have been, or will be met, by the City's having reviewed the Plat application and determining that it is exempt from the requirements of SEPA.

3. Under *TMC* 13.04, the applicant for a preliminary plat is required to demonstrate consistency with the following criteria:³

³ Numbering of these subsections is maintained the same as in the *TMC*.

1. Appropriate provisions are made for the public health, safety, and general welfare, and for open spaces; stormwater management; streets or roads; alleys; other public ways; bicycle circulation; transit stops; potable water supplies; sanitary wastes; parks and recreation; playgrounds; schools and school grounds; and all other relevant facilities, including sidewalks and other planning features which assure safe walking conditions for students who walk to and from school and for transit patrons who walk to bus stops or commuter rail stations.
2. The public use and interest will be served by the platting of such subdivision and dedication as set forth by the Comprehensive Plan and other Adopted City Ordinances, manuals, design specifications, plans, goals, policies, and guidelines.

TMC 13.04.100.D.1-2. “Approval of the preliminary plat is a tentative approval and does not constitute final acceptance of the plat.” *TMC 13.04.100.D.2.* Much of the compliance required in granting the preliminary approval comes later through the plat finalization process, and even in the actual process of developing the Subject Property in accordance with all required conditions.

Compliance with TMC 13.04.100.D.1: “Appropriate Provisions...”:

4. The Plat’s proposed infrastructure and amenities, as augmented by the various requirements set forth in the Conditions of approval below, combined with the existing infrastructure and amenities in and around the Subject Property will be sufficient to serve the future residents of Cooks Landing. As a result, the Examiner concludes that the requirements of TMC 13.04.100.D.1 are met. *See FoF 2, 4, 7, and 10~12.*

Compliance with TMC 13.04.100.D.1: Public Use and Interest, Consistency with the Comp Plan and other Adopted City Ordinances, Manuals, Design Specifications, Plans, Goals, Policies, and Guidelines:

5. The Plat and intended development of the Subject Property are consistent with existing zoning and Comp Plan designations. Development of the Subject Property in compliance with the conditions set forth below, both during the process leading to final plat approval, and during the actual development of the Subject Property will insure that the requirements of TMC 13.04.100.D.2 are met.

Compliance with TMC 13.04.120 through .230:

6. There is a good deal of subject matter overlap in the listed items that a preliminary plat must make appropriate provisions for in TMC 13.04.100.D.1 and the requirements set forth in TMC 13.04.120 through .230. The PDS Report addresses these issues as did testimony at the hearing. Again, many of the “requirements” of these sections find the majority of their compliance in the actual development complying with the conditions of approval set forth herein below. It should also be noted here that many of these “requirements” in Sections .120-.230 are

not absolute, being conditioned with language like “In general,”⁴ “Whenever feasible,”⁵ and “In cases where...is impractical...”⁶ The Examiner concludes that, where absolute, the requirements of TMC 13.04.120 through .230 are met, or will be met, through the development proceeding as set forth in the application and the proposed Plat map, as addressed in the PDS Report, and as testified to at the hearing. In cases where there is flexibility in the “requirements” of these sections arising from the language of that section, the development of the Plat, as conditioned herein, meets the intent of the TMC sufficiently.

CONDITIONS:

“Conditions” set forth below are derived primarily from the PDS Report, other submissions in the record, and testimony from the hearing. Most of the conditions below have significantly more to do with compliance issues related to the Applicant’s intended residential development of the Subject Property after subdivision than being precursors to approving the Plat on a preliminary basis. As such, the conditions are not set forth herein as conditions precedent to *approving* the preliminary Plat, but rather are on-going *compliance* conditions of the subdivision of the Subject Property and the residential development that will follow.

As set forth at FoF 18 above, the PDS Report is incorporated herein by reference. Some of the more general language from section K. of the PDS Report (“Recommendation and Conditions of Approval”) is not repeated here. Such omission does not mean that, if the Subject Property is developed as intended, that the Applicant should not still reference helpful language from the PDS Report as guidance for its development process, and it also does not mean that some of these very general “conditions” *will not* apply to the development of the Subject Property. They are simply not made express conditions here at this preliminary stage. Many of these omissions are not worded as conditions in the PDS Report in any event, and serve more of an informational role.

To the extent that any express language in the PDS Report conflicts with the language in this Decision, this Decision shall control. Omission of language from the PDS Report in this Decision does not constitute a conflict.

Approval of the preliminary Plat does not release the Applicant from state or other permitting requirements for subsequent development of the Subject Property, nor does anything in this Decision take precedence over application of, and compliance with, the TMC. *See Usual Condition 2 below.*

Now therefore, the preliminary Plat of Cooks Landing is approved subject to the following conditions:

⁴ TMC 13.04.180

⁵ TMC 13.04.190.

⁶ TMC 13.04.160.