

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF TUMWATER**

In the Matter of the Application of)	Nos. TUM-22-0070; TUM-21-0460
)	
Megan Johnson, Ferguson Architecture,)	Craft District II, LLC Apartments
on behalf of Craft District II, LLC)	Variance and SPR
)	
)	
)	
)	
<u>For a Variance and Site Plan Review</u>)	FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The request for a variance from certain site development and design standards of the Tumwater Municipal Code, and for site plan review approval, to allow construction of 96 apartment units within four buildings, with associated improvements, on a 3.47-acre property located at 4300 Capitol Boulevard SE, is **GRANTED**. Conditions are necessary to ensure the proposal complies with the municipal code and to mitigate specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on April 27, 2022, using remote access technology. The record was left open until April 29, 2022, to allow any member of the public having difficulty connecting to the remote hearing to provide written comments in lieu of live testimony. No additional comments on the proposal were received and, accordingly, the record closed on April 29, 2022.

Testimony:

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

Tami Merriman, City Permit Manager
John Peters, Applicant Representative
Tyrell Bradley, Project Civil Engineer
Mike Matlock, City Community Development Director

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated April 20, 2022
2. Variance Application, dated January 4, 2021; Project Narrative, dated December 20,

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2021

3. Aerial Map, published April 18, 2022
4. Comprehensive Plan Map, dated March 22, 2022
5. Certification of Public Notice, dated April 13, 2022
6. Notice of Application, dated January 28, 2022
7. Notice of Application Comments:
 - a. Comment from Nisqually Indian Tribe, dated January 31, 2022
 - b. Comment from Squaxin Island Tribe, dated February 1, 2022
 - c. Comment from Jeff Sandy, dated February 8, 2022, with City staff response, dated February 8, 2022
8. Determination of Nonsignificance, dated March 10, 2022
9. SEPA Comments:
 - a. Comment from Squaxin Island Tribe, dated March 11, 2022
 - b. Comment from Washington State Department of Ecology, dated March 24, 2022
10. Transportation Concurrency Memorandum, dated March 4, 2022
11. Tree Survey, Olympia Timber Company, Inc., dated April 20, 2021
12. Cultural Resource Assessment, Antiquity Consulting, LLC, dated April 13, 2022
13. Trail Alignment, received April 15, 2022
14. Preliminary Civil Plans (11 Sheets), dated December 21, 2021, and January 3, 2022
15. Development Agreement (Resolution No. R2021-012), dated October 19, 2021
16. Comment from Washington Department of Archaeology and Historic Preservation, dated April 25, 2022
17. Notice of Public Hearing, dated April 13, 2022

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

FINDINGS

Application and Notice

1. Megan Johnson of Ferguson Architecture, on behalf of Craft District II, LLC (Applicant), requests a variance from several site development and design standards of the Tumwater Municipal Code (TMC), as well as site plan review approval, to allow construction of 96 apartment units within four buildings. Associated improvements would include a 127-stall paved parking lot, stormwater management features, landscaping, utility extensions, street frontage and other offsite improvements required under a Development Agreement¹ (DA) governing the project, and an offsite pedestrian trail that would provide a connection to a nearby jogging path and other offsite amenities. Specifically, the

¹ RCW 36.70B.170 authorizes local governments to enter into development agreements with a person having ownership or control of real property within its jurisdiction. Such development agreements must set forth the development standards and other provisions that shall apply to, and govern and vest, the development, use, and mitigation of the development of the real property for the duration specified in the agreement. *RCW 36.70B.170(1)*.

Applicant requests a variance from: (1) the requirement under TMC 18.27.080.A.5 that individual ground floor entries be provided for ground floor residential units with a street-facing building façade within ten feet of the street-facing property line; (2) the requirement under TMC 18.27.080.A.6 and TMC Table 18.27.050 that properties fronting more than one public street provide a minimum street-facing building frontage of 50 percent along both public streets; (3) the corner treatment design standards under TMC 18.27.080.B.2.d for buildings located at the corner of two streets; and (4) the requirement under TMC 18.42.130.F that at least 50 percent of required open space areas provide active recreation facilities. The property is located at 4300 Capitol Boulevard SE.² *Exhibit 1, Staff Report, pages 1, and 3 through 8; Exhibit 2; Exhibit 3; Exhibit 13; Exhibit 14.*

2. The City of Tumwater (City) determined that the application was complete on January 28, 2022. The same day, the City provided notice of the application by mailing or emailing notice to property owners within 300 feet of the site and to reviewing agencies, posting notice on-site and on the City website, and publishing notice in *The Olympian*, with a comment deadline of February 14, 2022. On April 15, 2022, the City provided notice of the open record hearing associated with the application in the same manner. *Exhibit 1, Staff Report, page 1; Exhibits 5 through 7; Exhibit 17.*
3. The City received one comment from a member of the public in response to its notice materials. Jeff Sandy requested information about whether the proposed apartment units would be market rate or subsidized, whether the proposed development would provide adequate off-street parking spaces, and whether the proposal would affect an existing entrance to the Valley Athletic Club. He also inquired about the impacts of a planned future roundabout on Capital Boulevard SE. City staff provided a response to Mr. Sandy's comment, which noted that the planned future roundabout would benefit traffic movement along Capital Boulevard SE, the apartment units would likely be market rate units, the Applicant proposes to exceed minimum off-street parking requirements by providing 127 off-street parking spaces, and the existing entrance to the Valley Athletic Club would remain. *Exhibit 1, Staff Report, page 1; Exhibit 7.c.*
4. The City also received comments from two reviewing agencies in response to its notice materials. The Nisqually Indian Tribe noted that it did not have any specific cultural resource concerns about the proposal. The Squaxin Island Tribe noted that the project area has a high potential for the location of cultural resources and recommended that a cultural resources survey and report be completed for the project. The Applicant later submitted a cultural resource assessment for the project prepared by Antiquity Consulting, LLC, dated April 13, 2022. The report noted that no archaeological materials or historic properties were observed during a thorough survey of the project area and

² The property is identified by Thurston County tax parcel number 33870000400. *Exhibit 1, Staff Report, page 1.*

recommended only that the project comply with a standard inadvertent discovery plan during ground disturbing activities. The Washington State Department of Archaeology and Historic Preservation (DAHP) reviewed the cultural resource assessment, concurred with its findings, and agreed with the recommendation that the project comply with a standard inadvertent discovery plan. In accord with this recommendation, the Applicant would be required to submit an inadvertent discovery plan with the site development and grading permit application. *Exhibit 1, Staff Report, pages 1, 14, and 21; Exhibit 7; Exhibit 12; Exhibit 16.*

Environmental Review

5. The City of Tumwater Community Development Department (CDD) acted as lead agency and analyzed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington RCW (RCW). CDD reviewed the Applicant's environmental checklist and other information on file and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, CDD issued a Determination of Nonsignificance (DNS) for the proposal on March 10, 2022, with a comment deadline of March 24, 2022, and an appeal deadline of March 30, 2022. CDD received two comments specific to the environmental review of the proposal from reviewing agencies. The Squaxin Island Tribe reiterated its cultural resource concerns. As noted above, these concerns were later addressed by the cultural resource assessment prepared for the project, which was approved by DAHP. The Washington State Department of Ecology (DOE) provided general comments about the following: the requirement that all grading and filling of land must utilize only clean fill; the required testing and notification procedures for any potential toxic contamination suspected, discovered, or occurring on-site; the required erosion control measures; and the potential requirement for a Construction Stormwater General Permit. The DNS was not appealed. *Exhibit 1, Staff Report, pages 2 and 14; Exhibit 8; Exhibit 9; Exhibit 12; Exhibit 16.*

Comprehensive Plan and Zoning

6. The subject property is within an area designated as the "Brewery District" under the City Comprehensive Plan. The intent of the Brewery District designation is to "create a multi-modal activity center" that creates "a stronger sense of place by facilitating pedestrian access, establishing gathering places for residents, and fostering a distinct District identity," improves "transportation option, safety, and access within and across the District," and improves "the function and appearance of the built environment." *Tumwater Comprehensive Plan, Land Use Element, page 44. Exhibit 4.*
7. The property is located within the Deschutes Subdistrict of the Brewery District (BD) zone. The purpose of the BD zone is to "provide design and development standards to transform the brewery district from a largely auto-oriented commercial node into a lively, walkable, and economically vibrant neighborhood center with a mixture of housing and

neighborhood-serving businesses in accordance with the goals and objectives of the brewery district plan.” *TMC 18.27.010*. The Deschutes Subdistrict is expected to experience increased development pressure because it “benefits from excellent freeway access as well as high volumes of pass-by traffic.” *TMC 18.27.020.E*. Design and development standards for the Deschutes Subdistrict are intended to “improve the character of development in this area and improve the appearance of this important gateway into the brewery district, with a focus on decreasing the visibility of surface parking areas and improving building frontage conditions along key rights-of-way.” *TMC 18.27.010*. Residential uses are allowed in all subdistricts of the BD zone. *TMC Table 18.27.040*. *Exhibit 1, Staff Report, page 8*.

Existing Site and Proposed Development

8. The 3.47-acre subject property fronts Capitol Boulevard SE to the east and a future realignment of Tumwater Valley Drive to the north that would be constructed pursuant to the DA governing the proposal and other neighboring development. The western portion of the property is generally flat, but the eastern portion of the property contains a wooded steep slope and a wetland buffer that restrict development of approximately 30 percent of the site, resulting in a relatively narrow developable area along Capitol Boulevard SE. The Applicant proposes to construct 96 apartment units within four buildings that would front Capitol Boulevard SE, with the corner building also fronting Tumwater Valley Drive. A paved parking lot would be located behind the proposed buildings and would provide access to the apartment unit entrances at the rear of the buildings. Access to the parking lot would be provided from Tumwater Valley Drive. Pedestrian paths would be constructed between the buildings to provide connections from the rear of the buildings to the sidewalk along Capitol Boulevard SE. The Applicant would preserve a large portion of the eastern portion of the site for passive open space and would provide a small active open space area. The Applicant would also construct a 500- to 700-foot-long offsite pedestrian trail through the mature forested wetland buffer to provide access to a nearby jogging trail network and other amenities on neighboring parcels. *Exhibit 1, Staff Report, pages 1, and 3 through 8; Exhibits 2 through 4; Exhibits 13 through 15*.

Site Plan Review

9. Development projects within the BD zone are required to comply with the general development standards of *TMC 18.27.060*, and development projects within the Deschutes Subdistrict of the BD zone are further subject to the specific site development and design standards of *TMC 18.27.080*. The City Development Review Committee (DRC) provides preliminary and formal site plan review at the preapplication stage to evaluate whether the site plan demonstrates compliance with applicable development regulations. *Chapter 14.02 BMC; BMC 14.08.010.B*. *Exhibit 1, Staff Report, pages 2, and 8 through 14*.

10. DRC reviewed the Applicant's conceptual site plans as part of the administrative site plan review process and determined that, with conditions and approval of the requested variances, the site plans demonstrate compliance with the applicable BD zone and Deschutes Subdistrict development and design standards, as well as all other applicable development regulations of the municipal code. These applicable development regulations and standards are listed below, together with City staff's analysis (in italics):
- Under TMC Table 18.27.050 and TMC 18.27.080.A.11, residential developments in the Deschutes Subdistrict must provide a minimum net residential density of 20 dwelling units per acre. *The conceptual site plan meets this requirement. The Applicant would provide a net residential density of 39.7 units per acre.*
 - Under TMC Table 18.27.050 and TMC 18.27.080.A.1, the maximum building height in the Deschutes Subdistrict is 55 feet, and street-facing ground floors must be a minimum of 12 feet in height. *The conceptual site plan meets this requirement. The proposed buildings would have a maximum height of 44 feet 3 inches and the street-facing ground floors would be 12 feet in height.*
 - Under TMC Table 18.27.050 and TMC 18.27.080.A.2, buildings facing Capitol Boulevard in the Deschutes Subdistrict must be set back a minimum of five feet from Capitol Boulevard. *The conceptual site plan shows buildings within the Capitol Boulevard SE right-of-way. A Development Agreement governing the proposed development, however, provides that a portion of the right-of-way would be vacated in a manner ensuring compliance with the setback requirement. A recommended condition requiring this right-of-way vacation would further ensure compliance with this requirement.*
 - Under TMC 18.27.080.A.3.a, all buildings must provide at least one building entrance that faces the street and is directly connected to the public sideway via a hardscape pathway measuring a minimum of six feet wide. Under TMC 18.27.080.A.3.b, all street-facing building entrances must either be covered by an awning or canopy and/or be recessed behind the front building façade such that it is tucked under the second floor. *The conceptual site plan meets this requirement.*
 - Under TMC 18.27.080.A.5, individual ground floor entries must be provided for ground floor residential units with a street-facing building façade within ten feet of the street-facing property line. *The Applicant requests a variance from this requirement.*
 - Under TMC 18.27.080.A.6, properties fronting more than one public street are required to meet the minimum building frontage requirements along both street frontages and, in doing so, must locate the building in the corner of the property within the maximum street-facing setback of both streets. *The Applicant requests a variance from this requirement.*
 - Under TMC 18.27.080.A.9, surface parking areas abutting a public right-of-way must be screened from view by a landscaped buffer. *The conceptual site plan meets this requirement.*

- Citywide design guidelines require that service areas be located to avoid negative visual, auditory, olfactory, or physical impacts on the street environment. *A condition requiring additional screening for a proposed trash enclosure located adjacent to Capitol Boulevard would ensure compliance with this requirement.*
- Under TMC 18.27.080.B.1.a.i, transparent ground floor windows must be provided along a minimum of 60 percent of the ground floor, street-facing façade area. *The conceptual site plan meets this requirement.*
- Under TMC 18.27.080.B.2.a, all building facades must be articulated such that a change in building material and/or a horizontal change in building plane measuring a minimum of four feet is provided a minimum of every 30 feet. A change in plane may be provided through projecting bays, building recesses, upper-level balconies (projecting or recessed), recessed building entries, and/or building stepbacks. *The conceptual site plan meets this requirement.*
- Under TMC 18.27.080.B.2.d, buildings located at the corner of two streets must locate the primary building entry at or within 20 feet of the corner of the building. *The Applicant requests a variance from this requirement.*
- Under TMC 18.27.060.D, development within the BD zone must comply with the parking requirements of Chapter 18.50 TMC. *Conditions requiring that the Applicant provide: a maximum of 20 compact parking stalls; wheel stops on parking spaces to prevent vehicle overhang of a sidewalk, walkway, or planter bed with a tree within three feet of the curb; details for bicycle storage facilities with the site development and grading plan or building permit application; a photometric lighting plan with the building permit application; and a detailed landscape plan showing proposed planting, tree types and heights, and other vegetation with the site development and grading plans would ensure compliance with the applicable parking requirements of Chapter 18.50 TMC.*
- Chapter 18.44 TMC provides signage regulations for the BD district. *A condition requiring the Applicant to obtain required sign permits would ensure compliance with the signage regulation of Chapter 18.44 TMC.*
- Under TMC 18.42.130, new residential developments must provide a minimum of 15 percent of the gross site area to be set aside for park and open space area, with at least 50 percent of the park and open space area to be set aside for active recreation. *The conceptual site plan shows that the proposed development would meet the minimum 15 percent open space requirement, and the Applicant requests a variance from the minimum active open space requirement.*

Exhibit 1, Staff Report, pages 8 through 14; Exhibit 2; Exhibit 11; Exhibits 13 through 16.

11. In addition to the analysis above, City staff analyzed the proposal for compliance with the transportation concurrency and tree protection and replacement requirements of the municipal code. The City Transportation Manager reviewed a Trip Generation Diagram and Traffic Scoping Analysis submitted for the proposed development and, on March 4,

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2022, issued a transportation concurrency memorandum, which determined that the project would meet transportation concurrency requirements, provided that the Applicant pays transportation impact fees and constructs transportation improvements shown on the site plans. Transportation impact fees would be assessed at the time of building permit issuance. When land clearing is performed in conjunction with a specific development proposal, not less than 20 percent of the trees, or not less than 12 trees per acre (whichever is greater), must be retained. *TMC 16.08.070.R*. Olympia Timber Company, Inc., prepared a tree survey report for the proposal, dated April 20, 2021. The report analyzed the 1.82-acre area of the property proposed to be developed and determined that this area contains 79 to 84 existing trees. Approximately 41 to 45 trees, two of which are currently dead, would be removed to facilitate the proposed development, and approximately 40 to 42 trees would be retained. City staff reviewed the report and determined that, although it is unclear whether the survey included trees located in on undevelopable steep slope area, the conceptual site plan meets applicable tree retention requirements. The City's building, fire, and public works departments reviewed the proposal and provided several recommended conditions, which have been incorporated as appropriate into City's staff recommended conditions of approval. *Exhibit 1, Staff Report, pages 14 and 25; Exhibit 10; Exhibit 11; Exhibit 14.*

Proposed Variances

12. As noted above, the Applicant requests a variance from several site development and design standards to facilitate the proposed development. The Applicant first requests a variance from the requirement under TMC 18.27.080.A.5 that individual ground floor entries be provided for ground floor residential units with a street-facing building façade within ten feet of the street-facing property line. City Permit Manager Tami Merriman explained at the hearing that the variance would only be required for the building proposed to be located at the corner of Capitol Boulevard SE and Tumwater Valley Drive because, with the Capitol Boulevard SE right-of-way vacation required under the DA, buildings fronting Capital Boulevard SE would be located more than 10 feet from the street-facing property line. The Applicant requests the variance to allow all unit entrances to be located at the rear of the buildings, noting that neither Capitol Boulevard SE nor Tumwater Valley Drive provides on-street parking and that courtyard paths between the buildings would provide pedestrian access to the sidewalk along Capitol Boulevard SE.

City staff reviewed this variance request and determined that it would meet the specific criteria for a variance under TMC 18.58.040.A, noting:

- The property is rectangular in shape and is encumbered by a steep slope and wetland buffer on the east property line.
- Capitol Boulevard has existing infrastructure that requires a greater setback between the buildings and sidewalks in most areas. There is no on-street parking on or near the site that would require pedestrian access from the street.

- The relocation of residential entrances would not be a special privilege that would be denied to others with the same or similar circumstances.
- The steep slope and wetland buffer provide challenges to achieve required development standards for parking, landscaping, and stormwater treatment. The variance would allow a reasonable use of the property for development and would provide a convenience for future residents.

Exhibit 1, Staff Report, pages 3 through 5; Exhibit 2; Exhibit 14.

13. Next, the Applicant requests a variance from the requirement under TMC 18.27.080.A.6 and TMC Table 18.27.050 that properties fronting more than one public street provide a minimum street-facing building frontage of 50 percent along both public streets to allow a building frontage of 30 percent along Tumwater Valley Drive. The proposed development would meet the street-facing building frontage requirement with respect to Capitol Boulevard SE. The Applicant asserts that the variance is necessary to meet off-street parking requirements, noting that a large portion of the property behind the proposed buildings contains steep slopes that cannot accommodate additional parking space.

City staff reviewed this variance request and determined that it would meet the specific criteria for a variance under TMC 18.58.040.A, noting:

- The rectangular property shape and on-site steep slope areas restrict the building and parking configuration and the resulting location of ingress and egress on Tumwater Valley Drive.
- The location of access and parking would not be a special privilege that would be denied to others with the same or similar circumstances.
- The location of ingress/egress was based on public safety for vehicular and pedestrian movement and is not detrimental to public welfare.
- The variance would allow a reasonable use of the property for development and would provide safety for access and parking.

Exhibit 1, Staff Report, pages 3, 5, and 6; Exhibit 2; Exhibit 14.

14. Next, the Applicant requests a variance from corner treatment design standards under TMC 18.27.080.B.2.d for buildings located at the corner of two streets. These standards require that corner buildings locate the primary building entry within 20 feet of the corner of the building. In addition, the standards require that the corner building address the corner through one of following three methods: (1) set back the corner of the building, such that it creates a plaza or forecourt space in front of the building entrance; (2) provide a chamfered (or forty-five-degree “cut”) corner, or a rounded building corner; or (3) provide increased building height (and associated roof forms) at or within twenty feet of the corner of the building. The Applicant asserts that the corner building design standards would inhibit the overall building design and rhythm along Capitol Boulevard SE, noting that strict adherence to the design standard should not apply to a residential

apartment complex with a leasing office as the only commercial space. In lieu of full compliance with the corner treatment standards, the Applicant proposes to provide a cut back and full storefront on the first floor for the leasing office, which would be covered and have a clear path to the leasing office entry to differentiate it from the residential portions of the buildings.

City staff reviewed this variance request and determined that it would meet the specific criteria for a variance under TMC 18.58.040.A, noting:

- The property is rectangular in shape and is encumbered by a steep slope and wetland buffer on the east property line.
- The proposed use is multi-family residential and does not include a primary entrance. The corner treatments described in TMC 18.27.080 are more conducive to commercial or mixed-use buildings. The project proponent proposes to deviate from the requirement by providing a covered entry to the leasing office, similar to the required courtyard, which would be located at the corner of the building.
- Reducing the building setback and full height corner treatment would not create a special privilege and would not be materially detrimental to the public welfare or injurious to properties in the vicinity because the standards are intended to apply more to commercial/mixed use structures.

Exhibit 1, Staff Report, pages 3, 6, and 7; Exhibit 2; Exhibit 14.

15. Finally, the Applicant requests a variance from the requirement under TMC 18.42.130.F that at least 50 percent of required open space areas provide active recreation facilities. The Applicant would provide the required amount of open space on-site but indicates that it is not feasible to provide active recreation facilities within 50 percent of the required open space because approximately 30 percent of the site contains steep slope areas and a wetland buffer. The Applicant would install a small active play area at the central eastern portion of the property and would construct an offsite pedestrian trail to provide a connection to a nearby jogging trail and other offsite public amenities in the area.

City staff reviewed this variance request and determined that it would meet the specific criteria for a variance under TMC 18.58.040A, noting:

- The property is rectangular in shape and is encumbered by a steep slope and wetland buffer on the east property line. Thirty percent of the site is designated as open space due to critical areas protection.
- The minimum development requirements of parking, landscaping, stormwater treatment, and critical areas on-site create a hardship in providing the required active open space. The Applicant proposes to provide an active play area on-site, as well as pathways that would join the site to the wetland trail system at the bottom of the hillside, with access at both the north and south, creating a looped trail system.

- The deviation of active open space would not be a special privilege and would be a creative solution that would benefit the area by creating a looped trail system.
- Providing access to a public trail system, as well as an on-site play area for the residents, would not be detrimental to public welfare or injurious to the property
- This variance would allow the project to meet the development requirements on a parcel subject to unique conditions and would provide both active and passive recreational opportunities for residents.

Exhibit 1, Staff Report, pages 3, 7, and 8; Exhibit 2; Exhibit 14.

Testimony

16. City Permit Manager Tami Merriman testified generally about the proposal and how, with conditions, it would meet the specific criteria for a variance under TMC 18.58.040.A. She stated that site plan review is generally an administrative process but that the Hearing Examiner would conduct site plan review through the City’s consolidated permit procedures. Ms. Merriman noted that frontage improvements required for the proposed development would be governed by a DA. She stressed, however, that the DA would not impact the Hearing Examiner’s analysis of the variance request apart from reducing the scope of the requested variance from the ground floor entry requirements of TMC 18.27.080.A.5. She explained that this variance would only be required for the corner building proposed to be located at the intersection of Capitol Boulevard SE and Tumwater Valley Drive because the right-of-way vacation required under the DA would result in all four buildings being located more than 10 feet from the Capitol Boulevard SE street-facing property line. Ms. Merriman stated that it would not make sense to require individual street-facing ground floor entries at this location because of it being on an intersection lacking on-street parking and because the project would include pedestrian walkways between the proposed buildings, which would provide a pedestrian connection from sidewalks along Capitol Boulevard SE to the entries at the rear of the buildings.

Regarding the Applicant’s request for a variance from the requirement that properties fronting more than one public street provide a minimum street-facing building frontage of 50 percent along both public streets, she noted that the Applicant would be unable to meet this requirement with respect to Tumwater Valley Drive due to the necessary location for the driveway entrance from Tumwater Valley Drive and due to steep slopes that limit the amount of available space for required off-street parking areas. Regarding the request for a variance from the design standards for corner buildings, Ms. Merriman explained that the standards were generally designed for commercial buildings where a plaza attracting pedestrians would be desirable at the building’s corner. She noted that the proposal is for a solely residential development and, therefore, relief should be granted from the strict application of these corner building design standards but explained that the Applicant would attempt to meet the intent of the design standards by locating the leasing office with a covered entryway at the building’s corner.

Finally, regarding the request for a variance from open space requirements, Ms. Merriman stressed that the project would provide the required minimum area of open space on-site but that it would not be feasible to provide the minimum required 50 percent of open space for active recreation due to the narrow shape of the lot, required parking spaces, and other site constraints, such as steep slopes. She explained, however, that the project would include an active play area and would provide offsite pedestrian connections to an existing jogging path to the east of the site and to other nearby public amenities in the BD zone. Ms. Merriman also detailed how City staff reviewed the Applicant's site plan and determined that it would meet all applicable site development design standards for the Deschutes subdistrict of the BD zone, as well as all other applicable development regulations of the municipal code, with a few exceptions that would be addressed through subsequent permitting requirements, requirements under the DA, and City staff's recommended conditions of approval. *Testimony of Ms. Merriman.*

17. Applicant Representative John Peters, of Craft District II, LLC, thanked City staff and testified that he agrees with the analysis of the proposal as detailed in the staff report and Ms. Merriman's testimony. He stated that the record could be left open (until April 29, 2022) to ensure that any member of the public having difficulty connecting to the remote hearing would have the opportunity to provide written comments on the proposal in lieu of live testimony. Mr. Peters agreed that the Hearing Examiner's decision should address site plan review, as allowed through the City's consolidated permit procedures. *Testimony of Mr. Peters.*
18. Project Civil Engineer Tyrell Bradley testified that the project should be able to meet all applicable fire flow requirements. He agreed that the Hearing Examiner's decision should address site plan review. *Testimony of Mr. Bradley.*
19. City Community Development Director Mike Matlock confirmed that site plan review could be performed either administratively following the Hearing Examiner's decision on the variance request or as part of the Hearing Examiner's decision through the City's consolidated permit process. *Testimony of Mr. Matlock.*

Staff Recommendation

20. Ms. Merriman and Mr. Peters both testified in agreement that certain conditions recommended by City staff should be eliminated. Ms. Merriman testified that City staff recommends approval of the variances and site plan review, with the remaining conditions. Mr. Peters testified that the Applicant understands and would comply with City staff's remaining recommended conditions. *Exhibit 1, Staff Report, pages 21 through 25; Testimony of Ms. Merriman; Testimony of Mr. Peters.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has authority to hear and decide variance requests and, though the City's consolidated permit process, for Site Plan Review approval. *TMC 2.58.090.A.2; TMC 14.08.030; TMC Table 14.08.030; TMC 18.58.030.*

Criteria for Review

Site Plan Review

Formal site plan review consists of an evaluation of a development proposal to determine suitability for submittal of the project permit application. *TMC 14.02.020.J; Chapter 14.02 TMC.* Accordingly, this process entails review an applicant's site plan to determine whether it demonstrates conformance with applicable development regulations of the municipal code.

Variance

Where difficulties exist that render compliance with the zoning ordinance impractical and such compliance would create unnecessary hardship to the owners or users of land or buildings, the Hearing Examiner may grant a variance after due notice and a public hearing. *TMC 18.58.010.* A variance may be granted, after investigation, provided all of the following findings of fact exist:

1. That special conditions exist which are peculiar to the land, such as size, shape, topography, or location, not applicable to other lands in the same district, and that literal interpretation of the provisions of this title would deprive the property owners of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title;
2. That the special conditions and circumstances are not the result of actions of the applicant;
3. That the granting of the variance requested will not confer a special privilege to the property that is denied other lands in the same district;
4. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements of the vicinity and zone in which the subject property is situated; and
5. That the reasons set forth in the application justify the granting of the variance, and that the variance, if granted, would be the minimum variance that will make possible the reasonable use of the land.

TMC 18.58.040.A.

In no event may a variance be granted if it would permit a use that would not be permitted as a primary, accessory, or conditional use in the district involved. *TMC 18.58.040.B.*

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The criteria for review adopted by the Tumwater 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

Variance Requests

- 1. With conditions, the proposal would meet the specific criteria for approval of the requested variances under TMC 18.58.040.A.** The City provided reasonable notice and opportunity to comment on the proposal. The City received a comment from a member of the public, Jeff Sandy, who requested additional information about the proposal but did not raise any specific concerns. Following City staff's response to his inquiries about the proposal, Mr. Sandy did not provide any additional comments or raise any concerns about the project. The City also received a comment from the Squaxin Island Tribe that raised concerns about the potential presence of cultural artifacts on the property. In response to these concerns, the Applicant later submitted a cultural resource assessment report prepared by Antiquity Consulting, LCC, which noted that no archaeological materials were observed during a survey of the project area and recommended that the project comply with a standard inadvertent discovery plan during ground disturbing activities. DAHP reviewed the report and concurred with its findings and recommendation. The Applicant would be required to submit an inadvertent discovery plan with the site development and grading permit application. CDD analyzed the environmental impacts of the proposal, determined that it would not have a probable adverse impact on the environment, and issued a Determination of Nonsignificance, which was not appealed.

The 3.47-acre subject property is designated Brewery District under the City Comprehensive Plan and is within the Deschutes Subdistrict of the Brewery District (BD) zone. Residential uses are allowed outright in the Deschutes Subdistrict of the BD zone, subject to the general development regulations of the BD zone and the site development and design standards specific to the Deschutes Subdistrict. Approximately 30 percent of the rectangular shaped property at the eastern portion of the site is restricted from development due to the presence of steep slopes and a wetland buffer. In light of this and other constraints that were not the result of the Applicant's actions, the Applicant requests a variance from certain development and design standards to facilitate development of the site with 96 apartment units within four buildings and associated improvements. As addressed in Conclusion 2 below, the proposal, with conditions, would meet all other applicable development regulations of the municipal code.

The Applicant's request for a variance from the requirement under TMC 18.27.080.A.5, that individual ground floor entries be provided for ground floor residential units with a street-facing building façade within ten feet of the street-facing property line, is necessary to allow for the corner building at the intersection of Capitol Boulevard SE and Tumwater Valley Drive to provide apartment unit entrances at the rear of the building. Granting the variance would allow the corner building to provide rear apartment unit entrances consistent with the other buildings along Capitol Boulevard SE that are not subject to this requirement because they would be located more than 10 feet from the street-facing property line following a right-of-way vacation required under the DA. Tumwater Valley Drive would not provide on-street parking space, and safe access to the apartment units would be provided from the parking lot located behind the complex. Granting the variance to allow for the relocation of the residential entrances would not confer a special privilege and would allow for a reasonable use of the property.

The Applicant's request for a variance from the requirement under TMC 18.27.080.A.6 and TMC Table 18.27.050, that properties fronting more than one public street provide a minimum street-facing building frontage of 50 percent along both public streets to allow a building frontage of 30 percent along Tumwater Valley Drive, is necessary to accommodate required off-street parking space due to the presence of steep slopes and a wetland buffer, as well as to accommodate the access location to the property from Tumwater Valley Drive. Granting the variance to accommodate the location for access and parking would not confer a special privilege and would allow for a reasonable use of the property.

The Applicant's request for a variance from corner treatment design standards under TMC 18.27.080.B.2.d for buildings located at the corner of two streets is necessary to allow for the corner building to maintain a design similar to the other residential apartment buildings. City staff indicates that the corner treatment design standards are generally intended to apply to commercial or mixed-use buildings providing ground level commercial space. Here, the proposed development would include only a residential apartment complex without a mixed-use commercial element. To meet the intent of the corner treatment design standards, the Applicant would provide a cut back and full storefront on the first floor for the leasing office, which would be covered and have a clear path to the leasing office entry to differentiate it from the residential portions of the buildings. Granting the variance, to allow a deviation from the corner treatment design standards that are generally intended to apply to commercial or mixed-use building types, would not confer a special privilege and would allow for a reasonable use of the property.

Finally, the Applicant's request for a variance from the requirement under TMC 18.42.130.F, that at least 50 percent of required open space areas provide active recreation facilities, is necessary due to the presence of on-site steep slopes and a wetland buffer, as well as the requirements for parking and other development features that restrict the Applicant's ability to provide the minimum amount of required active open

space. The proposed development would exceed the minimum amount of open space required to be set aside on the site but would provide only a small active play area in light of these constraints. Although the proposal would not provide this minimum amount of active open space on-site, the project would provide residents with access to active recreational opportunities near the property by installing a pedestrian trail system connecting to an existing jogging trail and other offsite public amenities. Granting the variance would not confer a special privilege, would benefit the public and the surrounding area through the creation of a pedestrian trail system, and would allow for a reasonable use of the property.

The Hearing Examiner concludes that, with conditions, the requested variances would not be materially detrimental to the public welfare or injurious to properties or improvements in the vicinity and BD zone. Conditions, as detailed below, are necessary to ensure that the proposal satisfies the specific criteria for a variance and complies with all other municipal code requirements. *Findings 1 – 20.*

Site Plan Review

2. **With conditions, the proposal would meet the requirements for site plan review approval.** DRC reviewed the Applicant’s conceptual site plans as part of the administrative site plan review process and determined that, with conditions and approval of the requested variances, the site plans demonstrate compliance with the applicable BD zone and Deschutes subdistrict development and design standards, as well as all other applicable development regulations of the municipal code. The Hearing Examiner concurs with this assessment. The proposed development would: exceed the minimum net density requirement of 20 units per acre by providing a net residential density of 39.7 units per acre; comply with maximum building height requirements and, following the right-of-way vacation required under the DA, with minimum building setback requirements; provide landscape screening for the portion of the proposed parking area abutting a public right-of-way; provide required ground-floor windows along the street facing façade; and provide an articulated building design. In addition, the proposal would meet City transportation concurrency requirements through the payment of traffic impact fees and street improvements required under the DA and would comply with the City’s tree protection, retention, and replacement ordinance. Conditions, as detailed below, are necessary to ensure that the Applicant provides required screening for a proposed trash enclosure located adjacent to Capital Boulevard SE, complies with all applicable parking requirements under Chapter 18.50 TMC, obtains necessary sign permits, and meets all other requirements for site plan review approval. *Findings 1, 3, 4, 7 – 20.*

DECISION

Based on the preceding findings and conclusions, the request for a variance from several site development and design standards of the Tumwater Municipal Code, and for site plan review approval, to allow construction of 96 apartment units within four buildings, with associated

Findings, Conclusions, and Decision
City of Tumwater Hearing Examiner
Craft District II, LLC Apartments Variance and SPR
Nos. TUM-22-0070; TUM-21-0460

improvements, on a 3.47-acre property located at 4300 Capitol Boulevard SE, is **GRANTED**, with the following conditions:³

1. Vacation of right-of-way is required in order to meet building setbacks.
2. The trash enclosure located adjacent to Capitol Boulevard requires additional screening.
3. A maximum of 15 percent of total parking are allowed to be compact stalls.
4. Parking stalls are required to have wheel stops to prevent overhang of sidewalks, or planter bed where a tree is within three feet of the curb.
5. Details for Class I and Class II bicycle storage facilities are required as part of site development and grading plan or building plan submittal.
6. A photometric plan is required as part of building permit submittal.
7. An inadvertent discovery plan shall be submitted with site development and grading permit application.
8. A detailed landscape plan is required as part of site development and grading plan submittal.
9. Consolidated postal drop off facilities shall be provided for the site. The location of the facilities must be coordinated and approved by the U.S. Postal Service.
10. A school bus pad may be required along one of the exterior streets and will be dictated by the Tumwater School District. The project proponent must contact the District to coordinate the bus pad location.
11. The building designs shall conform to the City of Tumwater's Citywide Design Guidelines. Architectural elevation drawings of each building-type shall be submitted for review and approval prior to issuance of Building Permits.
12. Impact fees for traffic, community parks, and schools will be assessed to each dwelling unit in the subdivision as Building Permits are issued. The impact fees will be in accordance with the most current fee resolution adopted by the City at the time of vesting of the Building Permit applications.

³ This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by City Code.

13. Any signage will require a separate sign permit.
14. A minimum of (4) barrier free parking stalls and (2) van accessible barrier free parking stalls and one garage parking space shall be provided for this site.
15. An accessible route of travel shall be provided to all portions of the building, to accessible building entrances, and connecting the building and the public way. The accessible route of travel shall be shown on the engineering plans.
16. A site development/grading permit will be required for this site. Engineers shall reference and design to the Geo-tech along with the slope setbacks established by the Geo-tech.
17. Special inspectors may be required. All special inspections are to be performed by WABO registered inspectors and at the expense of the owner.
18. Buildings are required to be protected with NFPA 13R fire sprinkler systems.
19. Exterior walls are required to be of 1-hour fire-rated construction when less than 10 feet to the property line. Protected openings are required when less than 5 feet to the property line. No openings are permitted less than 3 feet to the property line.
20. Water cross connection control shall be provided in accordance with the provision of the Plumbing Code.
21. If water pressure at the meter exceeds 80 psi, a pressure-reducing valve will be required to be installed on the private side of the water line.
22. Automatic fire alarm systems, including pull stations, are required.
23. Fire Department connection, post indicator valve, remote annunciator panel and key box locations shall be shown on the engineering plans. Ductile iron pipe is required from the fire apparatus into the structures.
24. Required fire flow will be 2,000 gallons per minute at 20 psi.
25. Any buildings constructed on site that are more than 150 feet from an approved Fire Department vehicle access point shall be provided with asphalt, concrete, or turf-stone paved access roads a minimum of 20 feet wide. Any dead end fire access roads that are in excess of 150 feet in length shall be provided with an approved turnaround.

26. Group R-2 occupancies containing more than 10 dwelling units or sleeping units, at least 5 percent but not less than one of the units shall be a Type A unit. All Group R-2 units on a site shall be considered to determine the total number of units and the required number of Type A units. Type A units shall be dispersed among the various classes of units. Where the sleeping units are grouped into suites, only one sleeping unit in each suite shall count towards the number of required Type A units.
27. Any gates blocking access to the site for fire department equipment shall be provided with an Opticom security control.
28. Fire lane signs and yellow striping shall be provided on-site to identify Fire Department access roads and prohibit the obstruction thereof. Fire lanes shall be identified on the engineering plans.
29. When any portion of a building constructed on site is in excess of 150 feet from a water supply on a public street, as measured by an approved route around the exterior of the building, there shall be provided on site fire hydrants capable of supplying the required fire flow.
30. Placement of the hydrants shall be coordinated with the Building Safety Official. Fire hydrant locations shall be shown on the engineering and landscape plans.
31. [Eliminated].
32. Fire hydrants and paved access roads shall be installed, tested for fire flow by the Fire Department, and made serviceable by the Public Works Department prior to any vertical or combustible construction.
33. Building plans and specifications shall be prepared and stamped by an architect and engineer licensed to practice in the State of Washington.
34. All building permit applications shall include architectural, structural, plumbing, mechanical, and energy plans and specifications. No exceptions, and no deferrals. Fire sprinkler and fire alarm permits and plans may be submitted separately from the main permit application but must be submitted before the main building permit will be issued.
35. This project is required to provide for the storage of recycled materials and solid waste. The storage area shall be designed to meet the needs of the occupancy, efficiency of pick-up, and shall be available to occupants and haulers. The location of this facility shall be shown on the site plan.

36. Dumpsters and containers with an individual capacity of 1.5 cubic yards or more shall not be stored in buildings or placed within 5 feet of combustible walls, openings, or combustible roof eaves lines unless the area is protected by an approved automatic sprinkler system.
37. The Applicant shall be responsible for providing the City with all costs associated with the installation of water, sewer, street, and storm drainage systems that are dedicated to the City of Tumwater.
38. All designs/construction shall comply with the City of Tumwater's Development Guide and WSDOT standards.
39. The site plan shall show all existing and proposed utilities and easements including streetlights, street trees, water, sewer, storm, gas, cable, power, telephone, signage, and striping. Include the line sizes on the water and sewer mains and services. All rockeries proposed shall also be shown on the site plan.
40. All street construction, main installation, and storm drainage work requires engineered plans certified by a professional engineer.
41. The Applicant is responsible for all plan check, inspection, and connection fees.
42. Any private or public utility relocation is the responsibility of the Applicant.
43. The Applicant shall be responsible for the maintenance and timely repair of all public improvements for a period of 30 months following final certification by the City and shall submit a surety for maintenance equal in value to fifteen (15) percent of the total value of the required public improvements certified by the Public Works Director. Please refer to Chapter 3 of the Development Guide for further clarification.
44. The Applicant shall provide a stormwater maintenance agreement, utility maintenance agreement, easements, and bills-of-sale documents with the engineered plans.
45. All legal descriptions must be accompanied with an appropriate drawing that the City Surveyor can use to verify the legal description.
46. The Applicant is responsible for furnishing the City with electronic files compatible with release 2014 or newer Auto-CAD format.
47. Please note on the plans that the PLS responsible for the surveying of the project must obtain a permit from DNR before any monuments are disturbed.

48. The vertical datum required to be used is NGVD29.
49. Frontage improvements are required and include historical street lighting on the east and west sides of Capitol Boulevard.
50. All access to the property will be consistent with City standards and policies. The ingress/egress access on to Tumwater Valley Drive will be restricted to a RI/RO only with curbing or other method to physically restrict the LI/LO movements.
51. [Eliminated].
52. Full lane overlays are required across the frontage on Capitol Boulevard if any cuts into the new pavement occur.
53. Please provide a Statutory Warranty Deed for the right-of-way needed for the Linwood Roundabout.
54. [Eliminated].
55. The signalized intersection at Capitol Boulevard and realigned Tumwater Valley Drive is required.
56. A drainage design and erosion control plan according to City's 2018 Drainage Design and Erosion Control Manual is required.
57. Maintenance of the on-site storm water system will be the responsibility of the property owner and a maintenance agreement will be recorded against the property.
58. The project must meet minimum fire flow requirements.
59. Back flow prevention is required on all fire services and irrigation services and in accordance with the AWWA Cross Connection Control Manual. A reduced pressure backflow assembly is required on all commercial domestic services.
60. Any water main extension will require a minimum of an 8-inch system. The main size will depend on the fire flow requirements for this project. The system shall be designed for a maximum velocity of 8 feet per second.
61. Water meters are to be placed in the public right-of-way or clustered on site within an easement.

62. The professional engineer will need to provide calculations on maximum instantaneous water demand and size of the meter for the project.

DECIDED this 13th day of May 2022.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center

HEARING EXAMINER POST-DECISION PROCEDURES

The following sections of the Tumwater Municipal Code outline procedures for requesting reconsideration of a decision by the Tumwater Hearing Examiner and appealing a decision made by the Tumwater Hearing Examiner.

TMC 2.58.135 Reconsideration.

Upon the written request of a party of record filed with the city clerk within five working days of the hearing examiner's written decision, such decision may be reconsidered at the discretion of the hearing examiner. The request for reconsideration must state the grounds upon which the request is made. In the event reconsideration is granted, the hearing examiner shall have an additional 10 working days to render a written final decision.

TMC 2.58.150 Appeal from examiner's decision.

- A. In cases where the examiner's jurisdictional authority is to render a decision, the decision of the examiner shall be final and conclusive unless appealed to superior court within the applicable appeal period as set forth in TMC 2.58.180.
- B. In cases where the hearing examiner decision is appealable to the city council, the decision of the examiner shall be final and conclusive unless appealed within the applicable appeal period as set forth in this section.
- C. Appeals to the city council must be filed with the city clerk by the applicant or other party of record, a department of the city, county or other agency within 14 calendar days following rendering of such decision. Persons not in attendance at the hearing but who submit written information prior to the hearing which becomes a part of the record of the hearing shall also have appeal rights. Such appeal shall be in writing, shall contain all grounds on which error is assigned to the examiner's decision and shall be accompanied by a fee as established by resolution of the city council; provided, that such appeal fee shall not be charged to a department of the city or to other than the first appellant.
- D. In the event an apparent prevailing party files an appeal to preserve appeal rights and no opposing appeals are filed, said party may, by giving written notice thereof to the city clerk, abandon their appeal and in such event shall be refunded their filing fee.
- E. The timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated by the city council or is withdrawn.
- F. Within five days after the final day upon which an appeal may be filed, notice thereof and of the date, time and place for city council consideration shall be mailed to the applicant, all other parties of record and anyone who submitted written information prior to the hearing. Such notice shall additionally indicate the deadline for submittal of written arguments as prescribed in TMC 2.58.160.

TMC 2.58.180 Judicial appeals.

Final decisions (after exhausting administrative remedies) may be appealed by a party of record with standing to file a land use petition in the Thurston County superior court, except shoreline permit actions which may be appealed to the shoreline hearings board. Such petition must be filed within 21 days of issuance of the decision as provided in Chapter 36.70C RCW.

Updated: June 10, 2013