

**TUMWATER HEARING EXAMINER
MINUTES OF VIRTUAL MEETING
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CONVENE: 7:00 p.m.

CASE NUMBER: **Craft District II, LLC Variance & Site Plan Review (TUM-22-0070 and TUM-21-0460)**

DESCRIPTION OF PROPOSAL: The project proponent is requesting approval of a variance from sections of Title 18 TMC in regards to building design and open space requirements.

PROJECT NAME: Craft District II, LLC Apartments Variance and Site Plan Review Approval

APPLICANT: **Craft District II, LLC**
John Peters
2840 Black Lake Blvd. SW, #C
Tumwater, WA 98512

**Project Proponent/
Representative:** Ferguson Architecture
Megan Johnson
1916 Jefferson Avenue
Tacoma, WA 98402

PUBLIC HEARING: Hearing Examiner Andrew Reeves with Sound Law Center convened the public hearing at 7:00 p.m. to consider several variances and site plan review approval to allow for development of a 96-unit apartment complex with associated parking and other improvements on a 3.47-acre vacant lot at 4300 Capitol Boulevard SE.

Examiner Reeves reported the purpose of the hearing is to collect evidence in the form of exhibits and testimony to determine whether the proposal complies with the City's Comprehensive Plan, zoning ordinances, Critical Areas Ordinances, and the specific requirements for approval of variances under Chapter 18.58 of the Tumwater Municipal Code (TMC), and whether the proposal complies with the requirements for approval of site plan review under the code.

Examiner Reeves reported that prior to the public hearing he received and reviewed the following 13 exhibits. Exhibits 14 through 17 were added during the public hearing:

1. Staff Report Dated 04-20-2022
2. Application and Variance Narrative 02-07-2022
3. Aerial Map
4. Comprehensive Plan Map

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5. Public Notice Certification
6. Notice of Application 01-28-2022
7. NOA Comments
8. Determination of Nonsignificance 03-10-2022
9. SEPA Comments
10. Cultural Resource Assessment 04-13-2022
11. Tree Survey 01-07-2022
12. Preliminary Civil Plans 01-07-2022
13. Trail Alignment 04-15-2022
14. Preliminary Civil Plans dated January 7, 2022
15. Copy of Development Agreement
16. Copy of Letter from DAHP in support
17. Language of the Notice of Hearing

Examiner Reeves noted that the list of exhibits did not include Preliminary Civil Plans although listed as an exhibit. The City received several comments on the proposal with one from a community member conveying concerns about traffic and the type of housing proposed. A response was provided to the community member and that individual does not appear to be participating in the public hearing. The Squaxin Island Tribe requested a cultural resources survey, which was completed and included within the exhibits.

Examiner Reeves admitted the 13 exhibits into the record.

Examiner Reeves reported all testimony will be under oath or affirmation because if the decision should be appealed under the State Land Use Petition Act, the audio recording of the hearing, admitted exhibits, and the decision would serve as the foundation for an appeal. The order of testimony begins with the City of Tumwater providing an overview of the proposal and any recommendations, testimony by the Applicant to present any additional information, testimony from the public, and closing arguments by the City of Tumwater and the Applicant.

CITY TESTIMONY:

Examiner Reeves administered the oath to Tumwater Permit Manager Tami Merriman.

Examiner Reeves noted that the exhibits are not accurately reflected as listed on the Staff Report. Exhibit 10 was listed as the Cultural Resources Assessment. However, the material he received was a Transportation Concurrency Memo as Exhibit 10. Exhibit 12 is the Cultural Resources Assessment and not Preliminary Civil Plans as listed on the Staff Report. He recommended adding Preliminary Civil Plans as Exhibit 14 from January 17, 2022 with Exhibit 14 transmitted

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electronically to his office following the public hearing.

Manager Merriman noted she has several other documents that are not on the exhibit list that will be referenced during her report. Examiner Reeves recommended identifying the documents for inclusion as an exhibit. Manager Merriman said one document is a Development Agreement between the City of Tumwater and Craft District II, LLC, as it speaks to right-of-way vacation and frontage improvements. The second document is a letter the City received from the Department of Archaeology and Historic Preservation (DAHP) concurring with the results of the Cultural Resources Assessment.

Examiner Reeves admitted Preliminary Civil Plans of January 7, 2022 as Exhibit 14, the Development Agreement between the City of Tumwater and Craft District II, LLC as Exhibit 15, and the letter from DAHP as Exhibit 16.

Manager Merriman identified the Applicant and representatives of the Applicant. The Applicant has requested a variance from certain sections of Title 18 regarding building design and open space requirements.

Manager Merriman shared an illustration of the project site located at 4300 Capitol Boulevard in Tumwater. A notice of application indicating the application was submitted and deemed complete was mailed to property owners within 300 feet of the subject property, affected agencies, posted on-site, and published in *The Olympian* on January 28, 2022.

Comments were received from Nisqually Indian Tribe stating no concerns. Comments from the Squaxin Island Tribe recommended a cultural resources survey and report. A local citizen contacted the City with questions regarding development standards. Manager Merriman said she responded to the citizen via an email but did not receive a response.

The City of Tumwater issued a Determination of Nonsignificance on March 10, 2022. Comments received from the Squaxin Island Tribe recommended a cultural resources survey and report. The Applicant completed a cultural resources survey that resulted in negative results for any presence of cultural artifacts. The City also received comments from the Washington State Department of Ecology. The Department of Ecology provided guidance on existing regulations and advised that a construction stormwater general permit may be required.

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Public notification for the April 27, 2022, public hearing was mailed to property owners within 300 feet of the subject property and various agencies, posted on-site, and published in *The Olympian* on Friday, April 15, 2022.

Manager Merriman displayed Preliminary Civil Plans and explained how the Craft District represents more than an apartment complex as the Craft District has developed other projects as part of the City's Brewery District. Existing development on the site includes the Heritage Distillery and South Puget Sound Community College. Under construction is a market building and other commercial projects planned on the site to include an amphitheater. While all the projects are separate applications, they all support development within the same area.

The Development Agreement also addresses frontage improvements required for all development on the site as well as the redevelopment and reconfiguration of Tumwater Valley Drive. The Development Agreement includes details on frontage improvements to include some specific conditions and timing factors for those improvements. One example is a condition for the completion of a portion of Tumwater Valley Drive at a specific time to ensure completion of the project's driveway. Although the Development Agreement covers the entire redevelopment and reconfiguration of Tumwater Valley Drive, this project is responsible for the segment directly affecting the project.

Examiner Reeves noted that the Staff Report includes a recommendation of over 60 conditions. He asked whether any issues exist with respect to the conditions and whether any could be eliminated with respect to the requirements included within the Development Agreement. Manager Merriman advised that three conditions would require some changes. One condition for frontage improvements requires a correction as the condition was stated inaccurately.

Examiner Reeves said he does not recall being involved in the drafting or reviewing of the Development Agreement but is aware of the larger context of the project and any development agreement that could potentially supersede some requirements of the zoning code if the Development Agreement covers those requirements as well as other requirements. He wants to ensure that the proposal and any conditions included are in alignment with the Development Agreement. Manager Merriman explained that she did not realize the Development Agreement was completed with respect to the requirements for right-of-way vacation and frontage improvements. She followed up with the Applicant and with the City's Transportation and Engineering Director who provided

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confirmation of the executed Development Agreement.

Examiner Reeves asked whether the standards for the variances have been superseded by the Development Agreement. Manager Merriman affirmed the standards are applicable to the variance requests. Examiner Reeves said he understand the variances are for consideration but the site plan review is normally an administrative process by the City. He asked whether the site plan review is considered within the other variances for consideration or whether City staff would render an administrative decision on the site plan review. Manager Merriman explained that the site plan review approval is an administrative process; however, in order to issue an approval, the variance must be approved by the Hearing Examiner. The conditions in the Staff Report cite the approval of four different areas, as well as the vacation of right-of-way. Her previous history has dictated that only one open record hearing is allowed for a development and that since the public hearing has been scheduled, the variances and the entire project would be considered, as the site plan approval is dependent upon the Hearing Examiner's decision.

Examiner Reeves agreed consolidation of issues during the open record public hearing for one hearing ruling often relates to a SEPA appeal or another administrative decision whereby the open record public hearing is a consolidated process allowed under state law and under the TMC that enables an applicant or the City to essentially consolidate the proposals into one process with the administrative portions determined by the hearing examiner rather than the City. He asked whether there was an expectation he would produce a decision on the variances as well as a decision on the site review plan. If that is the case, there would be no additional administrative site plan review process. Manager Merriman affirmed that was the City's intent of the public hearing.

Manager Merriman reported the project proponent attended both a preliminary and formal site plan review conference for the project. The site plan review approval is an administrative approval, however the project proponent has requested a variance from some requirements of Title 18 TMC for building architecture, frontage and corner treatments, and minimum open space requirement. The project approval is subject to approval of those variances.

The site is approximately 3.47 acres, and is vacant. The site is relatively flat to the west, has a steep slope on the east, and has some trees.

The proposal is to construct 96 apartment units with associated parking. The project proponent requests a variance from the strict interpretation of

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the City of Tumwater Municipal Code Sections 18.27.050 Development Standards, 18.27.080(A)(5) Ground Floor Residential Units, 18.27.080(A)(6) Building Frontage, 18.27.080(B)(2)(d) Corner Treatments, and 18.42.130(A) Open Space. Chapter 18.58 TMC provides guidance and requires findings for the granting of a variance. The five findings for the variances are the same:

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 of 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.

A variance cannot be granted if it would permit a use that would not be permitted as a primary, accessory or conditional use in the district involved.

Section 18.27.080.A.5 TMC Ground Floor Residential Units: When ground floor residential units are provided on a street-facing building facade within ten feet of the street-facing property line, ground floor entries to individual units must be provided. On Capitol Boulevard with the right-of-way vacation, the building would be more than 10 feet from the property line on the street-facing side. The Applicant is not required to provide the unit entries; however, the Applicant is providing sidewalk connections from Capitol Boulevard. As Capitol Boulevard is a very heavily traveled corridor, no on-street parking is available and individual units facing Capitol Boulevard would not be conducive. On the side of Tumwater Valley Drive, no parking is allowed on the street and since the area is in the location of an intersection, staff believes individual entries were unnecessary. The City supported not requiring individual entries on

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the ground floor of the building for each unit.

Examiner Reeves asked whether the vacation on Capitol Boulevard would result in the code no longer applicable to the requirement to provide individual entries on the ground floor. Manager Merriman said she believes the variance request was not applicable to Capitol Boulevard but only to Tumwater Valley Drive because the building façade is within 10 feet of the street-facing property line. However, because of the right-of-way vacation, the building is more than 12 feet from the property line along Capitol Boulevard.

Examiner Reeves asked for confirmation as to the applicability of the variance applying only to one portion of one building with residential units fronting Tumwater Valley Drive not having individual access to the ground floor units. Manager Merriman confirmed his interpretation of the applicability of the variance.

Manager Merriman said the second variance applies to building frontage. In Section 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 so doing must locate the building in the corner of the property within the maximum street-facing setback of both streets. The Deschutes Subdistrict requires minimum street-facing building frontage of 50%. The Applicant requests a variance to reduce the street facing building frontage on Tumwater Valley Drive to 30% due to the ingress/egress location and steep slope on the east property line. The Applicant meets the requirement on the Capitol Boulevard side.

In Section 18.27.080.B.2.d TMC Corner Treatments, buildings located at the corner of two streets shall locate the primary building entry at or within twenty feet of the corner of the building. In addition, these buildings shall address the corner through one of several methods. The Applicant requests a variance to required corner treatments due to the residential use having no primary entrance and the limited amount of commercial space. Staff finds that the building use is multi-family that does not provide a primary entry. The leasing office is located at the corner of the building and provides a covered entry, similar to the required courtyard. Not reducing the building setback on the full height of the building prevents reducing the site of the units located there.

Manager Merriman referred to the requirements in Section 18.42.130.A TMC Open Space. For new residential developments in which the majority of the dwelling units will be multifamily dwellings or rooming houses, or five or more dwelling units as rowhouses or townhomes, and

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the land is not being divided, a minimum of fifteen percent of the gross site area shall be set aside for park and open space area, with 50% active and 50% passive recreation. Open space areas are required to be separate from required yards, setbacks, and landscaping areas. The requirement is challenging and staff believes the recommendation is a good outcome. The challenge was fitting open space on such a narrow lot after deducting for infrastructure and other requirements. Different ideas were discussed with the Applicant proposing to provide a corner area for an active play area. The Applicant proposed providing a connection to a jogging path located off the property along Tumwater Valley Drive. With the new creation of Tumwater Valley Drive, a sidewalk will be added to provide another safe pathway to a different area along Tumwater Valley Drive creating a loop system. Additionally, with the amphitheater planned on the adjacent lot and other buildings and uses proposed for area, the area will offer many activities for residents within walking distance. Staff supports the variance for open space requirements based on the proposal.

Examiner Reeves asked whether the difficulty pertains to not meeting the 50% active space as part of the 15%. Manager Merriman affirmed that was the reason for the variance request.

Manager Merriman reported that following reviews by staff of each variance, findings for each variance were provided citing special conditions existing on the property due to the shape and topography. The property is rectangular and encumbered by a steep slope and wetland buffer on the east property line creating a hardship for meeting some of the strict standards. In terms of site plan review findings, the project is located within the Deschutes Subdistrict of the Brewery Zoning District and is subject to Brewery District design guidelines. Some specific design standards are applicable and through the preliminary and formal site plan reviews, staff worked with the Applicant to develop a plan that meets all the requirements of the zoning districts with several exceptions. The first exception is the building setbacks, which are required to be a minimum of five feet. The requirement is satisfied with the vacation of right-of-way as part of the Development Agreement. Ground floor residential entries and building frontage would be satisfied with the approval of the variance. The Applicant proposes a refuse enclosure abutting Capitol Boulevard. The conceptual site plan does not meet the requirement where the trash enclosure is located adjacent to Capitol Boulevard unless additional screening is provided. Buildings located at the corner of two streets shall locate the primary building entry at or within twenty feet of the corner of the building. The conceptual site plan meets this requirement with the approval of the variance. Only 15% of

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the designated parking stalls can be assigned for compact vehicles. The Applicant proposes a maximum of 22 stalls to be designated as compact parking, which is more than the authorized amount and can be addressed during site development and grading. Wheel stops are required for parking stalls, which can be confirmed during the site development and grading process.

The proposal includes specific sign permit requirements within the Brewery District zone district. Sign permits are reviewed under a separate permit process. The open space requirement can be met with the approval of the variance. A transportation concurrency review was completed and issued by the City's Transportation Manager on March 4, 2022. The Tree Report requires the retention of 41 trees. The report documents the retention of 40 to 42 trees to meet the minimum requirements; however, additional onsite parking and landscaping tree plantings will exceed the minimum requirements. The cultural resources assessment submitted to the City suggested preparation of an Inadvertent Discovery Plan with the site development/grading plan. That plan is a standard requirement for the City's development and grading plan. The City also received a concurrency letter from DAHP.

Findings for the building will be focused on fire, fire flow, meeting fire codes, and ADA access. The conditions of approval reflect all the requirements as being in compliance.

The Staff Report also refers to the Development Agreement between the City of Tumwater and Craft District II, LLC as under draft. The findings are based on that assumption; however, the Development Agreement has been executed between the parties. The findings reflect how the Development Agreement defines the timing of when required improvements will be completed.

Examiner Reeves said he received a copy of the language for the Notice of Application and the public notice certification; however, he lacks the Notice of Hearing. As several individuals experienced some challenges signing on to the hearing, it would be important to have a copy of the Notice of Hearing included as Exhibit 17. Based on challenges associated with several individuals having trouble in joining the meeting, he has some concern that if there was an issue with the Notice of Hearing it might create other issues. He suggested leaving the record open for some period to enable individuals to contact the City to submit comments. Additionally, leaving the record open for additional time affords time for staff to complete a revised or redlined Staff Report highlighting changes to any conditions and how the Development

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Agreement aligns with some of the conditions or prepare a supplemental memorandum explaining how the Development Agreement affects specific conditions.

Manager Merriman agreed with the recommendation to extend the record but was unsure as to the length of time. Examiner Reeves said he does not anticipate a major delay, as he would prefer not learning that a citizen indicated they did not have an opportunity to participate in the hearing and filed an appeal. He recommended leaving the record open for one week.

Manager Merriman explained that the information for accessing the virtual meeting was included on the Public Hearing Notice. The only individuals encountering difficulty in accessing the meeting were the panelists. Examiner Reeves asked that staff provide a copy of the Public Hearing Notice and a memorandum that addresses changes to the conditions. He prefers to have a set of conditions that are clear and concise.

Manager Merriman advised that the main list of conditions include standard conditions required as part of the site development/grading/building plan submittals. The requirements involving the vacation request and additional screening around the refuse area and number of compact stalls are included in the conditions. She reviewed three conditions that should be amended with an offer to follow up with written documentation following the public hearing. The first finding is Condition #31: "The water main shall be "looped" through the site. Fire protection shall be from parking area not Capitol Boulevard." Manager Merriman said she reviewed the requirement with the City's Building Official and will defer to the Applicant as to whether the condition should remain. However, based on their conversation, hydrants along Capitol Boulevard are pulled and relocated onto the site covering all buildings with an appropriate hydrant. Fire protection would be provided from the parking area rather than from Capitol Boulevard. Additionally the looping of the water main through the site for fire flow is important but the situation could require a small looping between hydrants as opposed to looping the entire water system, which is why the Building Official retained the condition. The Applicant proposes small looping between hydrants rather than a full looped system as long as the project meets fire flow.

Examiner Reeves asked whether the intent of Condition 31 would essentially entail fire protection for the site meeting fire flow requirements as determined by the City's Building Official and Fire

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Marshal. Manager Merriman replied that to meet fire flow requirements, the Applicant may need to loop between the fire hydrants. Examiner Reeves recommended revising the condition to reflect, "Fire protection shall be designed such that fire flow requirements are met as determined by the Building Official/Fire Marshal. Manager Merriman added that in addition, Condition 58 stating that the project must meet minimum fire flow requirements could be deleted.

The next condition is Condition 51 stating, "Proponent's traffic engineer shall verify the access location on Tumwater Valley Drive is far enough from the intersection as to not create any issues at Capitol Boulevard." Condition 51 was previously addressed during formal site plan review and the location proposed by the Applicant is acceptable. The condition has been satisfied.

The last condition is Condition 54: "Frontage improvements are required" should be deleted as it was included by error.

Examiner Reeves said based on the explanations, he recommends deleting the requirements within Conditions 31, 51, and 54 and retaining the numbering sequence of all conditions.

Examiner Reeves said the Development Agreement governs the right-of-way vacation on Capitol Boulevard, which eliminates the scope to some degree of the first variance request (individual entry to units from Capitol Boulevard). The remaining provisions within the Development Agreement do not speak to any other impacts for the purposes of his review.

APPLICANT TESTIMONY:

Examiner Reeves administered the oath to John Peters.

John Peters reported he is the owner/Applicant of the property. He shared that the difficulty he encountered in joining the meeting was of his doing as he was running late.

Examiner Reeves said he only suggested extending the public hearing as it could evolve into a larger issue. However, based on Manager Merriman's testimony, he does not believe there is a need to extend the public hearing unless the Applicant prefers leaving the record open for several days to enable submittal of written comments in lieu of public testimony. Mr. Peters recommended leaving the record open until close of business on Friday, April 29, 2022.

Examiner Reeves agreed to leave the record open until Friday, April 29,

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2022.

Mr. Peters thanked the City and Examiner Reeves for taking time to consider the proposal. The proposal has completed three preliminary reviews and one formal development review. The project team and the City have discussed the conditions and have narrowed the list to what makes sense for the site given the unique nature of some of the requirements.

Examiner Reeves said he clarified his decision-making with staff and understands he would render decisions on the variances and the site plan review. Typically, the Applicant is involved in the decision-making process. Mr. Peters agreed with the Examiner's recommendation to assist in streamlining the process.

Examiner Reeves administered the oath to Tyrell Bradley.

Tyrell Bradley reported he is the Civil Engineer for the project. He supported the site plan review variance decision by the Examiner on behalf of the Applicant given his history with Examiner Reeves as the City's Examiner because it would afford the quickest path. He supported the removal of three conditions especially the looping of the water main, which could entail an additional several hundred thousand dollars to the project cost. He believes the project can meet fire flow with the current configuration.

Megan Johnson, Project Architect, Ferguson Architecture, did not offer additional testimony.

**PUBLIC
TESTIMONY:**

There was no public testimony.

**CITY
TESTIMONY:**

Examiner Reeves asked Community Development Director Michael Matlock to speak to the consolidation/decisional process and the provisions within the Development Agreement.

He administered the oath to Director Matlock.

Director Matlock advised that he has served as the City's Community Development Director for approximately 12 years. He affirmed the Examiner's interpretation of the decisional process for the variance requests and the site review plan.

Director Matlock added that the Examiner was not involved in the

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Development Agreement between Craft District II, LLC, and the City of Tumwater. Examiner Reeves noted that in some jurisdictions, development agreements are reviewed by the hearing examiner.

Examiner Reeves reviewed outstanding items to be provided to his office:

- Preliminary Civil Plans dated January 2022 (Exhibit 14)
- Copy of Development Agreement (Exhibit 15)
- Copy of Letter from DAHP in support (Exhibit 16)
- Language of the Notice of Hearing (Exhibit 17)

The record will remain open until the close of business on Friday, April 29, 2022. On Monday, May 2, 2022, staff will advise his office of any communications received from the public. Within 10 business days of April 29, 2022, the Applicant should receive the decision on the proposal. Examiner Reeves thanked everyone for attending.

ADJOURNMENT: Examiner Reeves adjourned the public hearing at 8:08 p.m.

Prepared by Valerie L. Gow, President
Puget Sound Meeting Services, psmsoly@earthlink.net