

BEFORE THE CITY OF TUMWATER HEARINGS EXAMINER

IN RE:) HEARING NO. TUM-24-0928
)
)
THREE LAKES CROSSING - FENCE) FINDINGS OF FACT,
VARIANCE.) CONCLUSIONS OF LAW AND
) DECISION

APPLICANT: Copper Ridge, LLC
P.O. Box 73790
Puyallup, Washington 98373

OWNER'S REPRESENTATIVES: Evan Mann
Kurt Wilson

APPLICANT'S REQUEST: Applicant seeks a variance from fence height regulations in order to construct a solid panel fence 72 inches tall within a corner lot setback.

PROJECT LOCATION: 1157 68th Avenue SE, Tumwater, Lot 29.

SUMMARY OF DECISION: The requested variance is **denied**.

DATE OF DECISION: October 2, 2024.

BACKGROUND

The Applicant, Copper Ridge, LLC, has obtained final plat approval to construct the subdivision known as "Three Lakes Crossing" at the intersection of 68th Avenue SE and Henderson Blvd. in Tumwater. Lot 29 of the Three Lakes Crossing subdivision is located at the southwest corner of 68th Avenue SE and Henderson Blvd. and is a "corner lot" as defined by City regulations.

At or about the time the Applicant obtained final plat approval, it began constructing a 72-inch, solid panel fencing along the subdivision's boundaries, including along the outer boundaries of Lot 29. The Applicant was notified by City Staff that, as Lot 29 is a corner lot, it is subject to restricted fence heights within corner lot setbacks. More specifically, TMC

1 18.46.030 imposes a maximum fence height of 36 inches on corner lots for a distance of 15 feet
2 from the intersection of the property lines abutting the streets, and 42 inches in height for the
3 remainder of the front yards facing both streets. City regulations allow an exception which
4 permits a maximum fence height of 78 inches if the portion above 36 inches is composed of open
5 work such that 80% of it can be seen through by oncoming traffic and pedestrians.

6 The Applicant prefers a 72-inch solid panel fence rather than the 78-inch open panel
7 alternative available under the City's regulations. It therefore seeks a variance from the fence
8 height standards to allow a uniform, solid panel fence 72 inches in height along the perimeter of
9 the subdivision, including Lot 29.

10 While this issue was pending the Applicant also sought building permit approval for a
11 residence at Lot 29. That approval has been granted. Construction of the desired fence has been
12 stayed pending resolution of this issue.

13 PUBLIC HEARING

14 The public hearing commenced at 4:00 p.m. on Wednesday, September 25, 2024. The
15 hearing occurred in a hybrid format allowing for both in person participation as well as remote
16 participation utilizing the Zoom platform with the City serving as host. The City appeared
17 through Alex Baruch, Senior Planner, and Michael Matlock, Director. The Applicant, Copper
18 Ridge, owners of the Three Lakes Crossing Subdivision, appeared through Evan Mann and Kurt
19 Wilson. There were no members of the public present. All testimony was taken under oath and
20 a verbatim recording of the proceedings was maintained. Evidence considered at the time of the
21 hearing was the Staff Report prepared by Mr. Baruch, together with all attachments as follows:

- 22 1. Staff Report
- 23 2. Public Hearing Notice 09-13-2024
- 24 3. Three Lakes Crossing - Sight Distance Exhibit 04-17-2024
- 25 4. Chapter 18.46 FENCING
5. Three Lakes Crossing - Fence Variance Letter of Intent

- 1 6. Exhibit 6. Photo Fence Panels Removed 06-17-2024
- 2 7. Public Notice Certification
- 3 8. Percy Lane Photos
- 4 9. Full Height Fence Site Plan Example
- 5 10. Three Lakes Crossing Lot 30 Example
- 6 11. Ordinance #883 07-01-1984
- 7 12. Request for Variance 06-11-2024
- 8 13. Three Lakes Sight Distance Exhibit 07-18-2024

9 An additional exhibit was presented during the hearing by the Applicant (Exhibit 14). It
10 was a PowerPoint presentation which included photos of various corner lot fences throughout the
11 City currently in violation of fence height restrictions. It also included diagrams and other
12 evidence supporting the Applicant's justification for the requested variance.

13 CITY'S TESTIMONY

14 The hearing began with the testimony of Alex Baruch, Planner and author of the City
15 Staff Report. Mr. Baruch's testimony followed closely the information contained in his Staff
16 Report. He explained that the Applicant seeks a variance in order to establish a uniform, solid
17 panel, 72-inch-tall fence along the perimeter of the Three Lakes Crossing Subdivision, including
18 along the perimeter of Lot 29, at the intersection of Henderson Blvd. and 68th Avenue SE. Mr.
19 Baruch then explained why this lot is defined as a "corner lot" and, as such, is restricted in its
20 fence height near the intersection of Henderson Blvd. and 68th. TMC 18.46.030 restricts the
21 height of fences at corner lots to 36 inches in height for a distance of 15 feet from the
22 intersection, and to 42 inches for the remainder of the front yard facing both streets. The
23 developer may increase fence height to 78 inches if the portion above 36 inches is composed of
24 open work which allows 80% of that portion to be seen through by oncoming traffic and
25 pedestrians.

Mr. Baruch then explained the history of this project, including the present status of
subdivision construction as well as construction of the house on Lot 29. Despite this variance

1 request, the Applicant was granted a building permit to construct the house while the fence issue
2 is being resolved. Mr. Baruch noted that the Applicant has been responsive and cooperative
3 throughout the process.

4 Mr. Baruch's testimony then turned to the statutory requirements for granting a variance
5 found at TMC 18.58.010. Mr. Baruch noted that in order to be approved a variance must satisfy
6 all five requirements set forth in the ordinance, with the Applicant bearing the burden of proving
7 that each requirement has been met. Mr. Baruch and the remaining City Staff believe that the
8 Applicant has failed to meet requirements 1, 2, 3 and 5, although it does satisfy requirement 4.

9 More specifically:

10 ● City Staff finds that there are no special conditions peculiar to the site that are not
11 applicable to other properties such that denying the variance would deprive the owner of rights
12 enjoyed by other properties similarly situated.

13 ● City Staff finds that the site conditions are the result of actions of the Applicant;
14 that the Applicant could be allowed a taller fence if it simply agreed to have the upper portion be
15 more open; and that the Applicant was aware of this issue at the time of subdivision approval.
16 For example, Lot 30, on the opposite side of 68th Avenue was designed so as to not be a "corner
17 lot" and thus not subject to this height restriction. Lot 29 could have been designed in the same
18 fashion and have avoided the problem.

19 ● Staff believes that granting the requested variance would confer a special
20 privilege. The City has been uniformly enforcing its fence height restrictions recently and offers
21 the example of a nearly identical issue just a short distance away at a development at the
22 intersection of Percy Lane and Henderson Blvd. (Susan Lake Estates) where the developer was
23 required to reduce the height of fencing on its corner lot in an identical manner to what is being
24 asked of the Applicant.

1 • The City agrees with the Applicant that the variance would not be materially
2 detrimental to the public or injurious to nearby properties.

3 • City Staff does not believe that the requested variance is necessary for reasonable
4 use of the land. A building permit has been approved for the project without the requested fence
5 being an issue. Denying the variance does not prevent constructing a residence on the property
6 or making reasonable use of the lot, and the lot is otherwise fully functional as a residential lot.

7 APPLICANT'S TESTIMONY

8 The Applicant appeared through Evan Mann followed by Kurt Wilson. Mr. Mann
9 submitted a PowerPoint presentation (Exhibit 14) to assist in demonstrating why he believes the
10 application to be well supported and why all requirements for a variance have been satisfied.

11 Mr. Mann began his testimony by citing to the City's declared intent for its fencing
12 requirements, found at TMC 18.46.010:

13 "The intent of this chapter is to establish minimum requirements and standards for
14 fencing where needed to promote safety, provide screening to safeguard privacy
15 and to protect the aesthetic assets of the community in general."

15 Mr. Mann asserts that the current fence restriction fails to achieve any of the declared
16 purposes of the fencing ordinance; it does not improve transportation safety; it does not
17 safeguard individual home privacy; and it lessens the aesthetic of the subdivision. Mr. Mann
18 noted that the intersection has been carefully examined and that it has been confirmed by traffic
19 experts that a higher fence would not impair the line-of-sight visibility at the intersection. A
20 lower fence therefore does not "promote safety" as intended by TMC 18.46.010. He then noted
21 that Lot 29 sits below the grade of the interaction and that its residence is therefore more visible
22 to the public. The required lower fence fails to aid the lot's privacy, while the requested fence
23 would assist in increasing privacy to the homeowner as intended by Chapter 18.46. Mr. Mann
24 then noted that the required lower fence would have an awkward look relative to the uniform 72-
25

1 inch-tall fencing surrounding the remainder of the subdivision, reducing the project's aesthetics
2 in a manner inconsistent with the intent of the fencing ordinance. This not only affects the value
3 of Lot 29 but of surrounding lots as well.

4 Mr. Mann then turned to diagrams to help explain the original intent of the fencing
5 ordinance and how that intent is no longer being met. He referred to diagrams found in the
6 fencing ordinance demonstrating corner lots with 90-degree angles. Corner lots having these
7 angles do create sight visibility issues and justify lower fences at corners, but for some time the
8 City has required more rounded corner lots such that the design of the lot itself avoids sight
9 visibility issues without need for reducing the height of fences at the corners. In other words, the
10 City's fencing ordinances have simply not kept up with its subdivision and land use regulations
11 and are badly outdated. The requested variance would achieve the goals of safety, privacy and
12 aesthetics denied by an outdated fencing regulation.

13 Mr. Mann then turned to the City's historic application of the fencing regulations and
14 identified numerous current violations of the same corner lot restriction. He presented photos of
15 fencing at corner lots located at 4914 Lambskin Street SW; 4842 Lambskin Street SW; 4804
16 Lambskin Street SW; 6805 Kirsop Road SW; 7014 Mirasett Street SW; 6934 Southwick Court
17 SW; and 7056 Southwick Court SW, all of which have 72 inch high fencing rather than the
18 required 36 inch/42 inch fences for corner lots as imposed by TMC 18.46.030. Mr. Mann asserts
19 that, except for the recent enforcement of the height restriction in the Sunset Lakes Development,
20 the City has demonstrated indifference to this height requirement until the current application.

21 Mr. Mann concluded his testimony by noting that the fencing ordinance is 40 years old,
22 badly outdated, and no longer serving its intended purpose. He believes that the requested
23 variance will more effectively carry out the intent of the fencing ordinance than what is
24 accomplished by the current corner lot restrictions.

1 Mr. Mann's testimony was followed by that of Kurt Wilson. He began by explaining that
2 the way in which the house is oriented to the street, including its lower elevation relative to the
3 street, resulting in vehicle headlights penetrating into the property over the required low fence.
4 The requested higher fence would resolve this problem while providing greater sight security. It
5 would also enhance the site's general use, allowing for greater yard use by children and pets,
6 while increasing their safety as well.

7 Mr. Wilson then returned to the same issues brought up by Mr. Mann, that the City's
8 application of its fencing regulations have not been uniform and, to the contrary, have been
9 generally ignored - even with other subdivisions undertaken by the Applicant where the very
10 same corner lot requirements were not imposed in identical situations. Mr. Wilson asserts that
11 the current application is arbitrary and capricious and is prejudicial to both the development and
12 the owner of Lot 29, with no public benefit achieved by the restriction's enforcement.

13 CITY'S RESPONSE

14 Mr. Baruch and Mike Matlock responded to the Applicant's testimony by noting that their
15 stated goals of increased privacy, safety and aesthetics can all be achieved under the current
16 regulations, without a variance, by constructing the requested taller fence but with greater
17 transparency in its upper portions, all as allowed by TMC 18.46.030. Mr. Baruch then confirmed
18 that the City may not have been uniform in its enforcement of fencing regulations at times in the
19 past, but that for the past several years it has worked to achieve such uniformity as evidenced by
20 having imposed the same requirements recently on the Sunset Lake Subdivision. The City asserts
21 that historic deviation is not justification for allowing this variance, and reiterates that the
22 Applicant's request fails to meet all of the requirements of TMC 18.58.010.

23 ANALYSIS

24 The Applicant has submitted an articulate, intelligent and compelling argument as to why
25 the requested fence is a significant improvement over the one imposed by TMC 18.46.030, and

1 how their proposed fence does a better job of complying with the declared intent of the fencing
2 ordinance. Applicant makes a persuasive argument that the City's fencing regulations have
3 simply failed to keep up with its other land use regulations; is badly outdated; and is
4 counterproductive.

5 Unfortunately, though, these types of arguments are not supportive of a variance.
6 Grounds upon which the Hearing Examiner can grant a variance are limited to those situations in
7 which enforcement of the City's regulations would impose a severe and unusual hardship on the
8 use of the property. The Hearing Examiner is not granted authority to second guess the wisdom
9 of the enacted regulations. I concur with the Applicant that the proposed variance would make a
10 *better* use of the site but I also conclude that the currently allowed use is *sufficient*, and that the
11 Applicant has not been denied a *reasonable use* by the denial of the variance. I therefore
12 conclude - somewhat reluctantly - that the Applicant has not met its burden of demonstrating that
13 all five requirements of TMC 18.58.010 have been satisfied. To the contrary, I concur with City
14 Staff that requirements 1, 2, 3 and 5 have not been met even though, again, the requested
15 variance might otherwise be beneficial to the lot and to the subdivision.

16 Consistent with this analysis, I make the following:

17 **FINDINGS OF FACT**

18 General Findings.

19 1. The Applicant, Copper Ridge, LLC seeks a variance from the height restrictions
20 imposed on fencing at corner lots. At corner lots, TMC 18.46.030 imposes a fencing height limit
21 of 36 inches for a distance of 15 feet from the intersection of the property lines abutting the
22 street, and 42 inches for the remainder of the front yards facing both streets. The Applicant
23 seeks a variance to construct a solid panel fence 72 inches in height on Lot 29 of Three Lakes
24 Crossing Subdivision, a corner lot.

1 2. Any Findings of Fact contained in the foregoing Background, Public Hearing and
2 Analysis Sections are incorporated herein by reference and adopted by the Hearing Examiner as
3 his Findings of Fact.

4 3. TMC 18.46.030.A.1 allows for corner lot fencing to increase to a maximum
5 height of 78 inches if the portion above 36 inches is composed of open work in such a manner
6 that 80% of that portion can be seen through by oncoming traffic and pedestrians. The Applicant
7 does not wish to utilize this option and instead requests a variance in order to construct solid
8 panel fencing 72 inches in height.

9 4. The project location is 1157 68th Avenue SE. It is Lot 29 of the Three Lakes
10 Crossing Subdivision, Tax Parcel 79620002900.

11 5. As noted in earlier Findings, Lot 29 is a "corner lot" as defined by City
12 regulations, being located at the southwest corner of the intersection of Henderson Blvd. and
13 68th Avenue SE.

14 6. If the variance is approved, the Applicant's perimeter fencing for the Three Lakes
15 Crossing Subdivision would be of a uniform 72-inch height.

16 7. The requested variance would not cause any problems with sight distances at the
17 Henderson Blvd./68th Avenue SE intersection. A Sight Distance Analysis has been undertaken
18 and confirms that the requested variance would not impair required visibility at the intersection
19 (Exhibit 13). City Staff concurs with this analysis.

20 8. Lot 29 has a sunken grade such that the streets and sidewalks bordering it are at a
21 higher elevation than the foundation of the house. The Applicant asserts that, if the corner lot
22 height restrictions are imposed, the headlights from nearby vehicles will be able to shine into the
23 windows of the residence of Lot 29. The yard of the lot will also be more visible and have less
24 privacy. The Hearing Examiner concurs with these assertions.

1 9. The Applicant further asserts that the City has not uniformly or rigorously
2 enforced its corner lot height restrictions,. The Applicant has presented several examples of
3 current corner lot fencing in the City which violates the height restrictions (Exhibit 14).

4 10. City Staff acknowledges that it has not always been rigorous in its enforcement of
5 fencing requirements but that it has attempted to do so for the past several years and, most
6 recently, imposed the same corner lot fence restrictions in the Sunset Lakes Subdivision in close
7 proximity to the Three Lakes Crossing Subdivision. The Hearing Examiner finds that there are
8 several violations of the corner lot fence height restrictions within the City but that the City is
9 currently attempting to uniformly apply its height restrictions and that their current application to
10 this project is not arbitrary or capricious.

11 11. The Applicant asserts that the corner lot fence height restrictions found in
12 18.46.030.A.1 are forty years old, antiquated, and no longer necessary as the shape of new corner
13 lots are more rounded at the corner to ensure proper visibility, no matter what height the fence
14 may be.

15 12. The project site, Lot 29 of Three Lakes Crossing, is located on the south side of
16 68th Avenue SE. Immediately across 68th Avenue SE, on its north side, is Lot 30 of the
17 subdivision. Lot 30 was established with a landscape tract between it and the road such that Lot
18 30 is not considered a corner lot and, therefore, not subject to the same corner lot fence
19 restrictions. The Applicant did not seek to establish a similar landscape tract between Lot 29 and
20 the road. Had they done so, Lot 29 would not have been subject to the corner lot fence height
21 restrictions.

22 13. The application is categorically exempt from SEPA. WAC 197-11-800(6(e)).

23 14. Notice of the hearing was mailed to property owners within 300 feet of the subject
24 property, to various agencies, posted onsite, and published in The Olympian on September 13,
25 2024, in conformance with Chapter 14.06 TMC.

1 15. The subject property is within the Single-Family Low Density (SFL) and Single-
2 Family Medium Density (SFM) zoning districts. The project site is a residential lot subject to
3 the fencing restrictions set forth in TMC 18.46.030, including those for corner lots within
4 residential developments.

5 16. No public comments have been received in response to the requested variance.
6 Findings Relating to Application's Compliance with Chapter 18.58 TMC: Variances.

7 17. Variances are regulated by Chapter 18.58 TMC. Where difficulties exist
8 rendering compliance with the zoning ordinance impractical and such compliance would create
9 unnecessary hardship to the owners or users of lands or buildings, the Hearing Examiner may
10 grant a variance. This applies to the height of fencing. TMC 18.58.010.

11 18. In order to approve the variance it must be demonstrated that all requirements of
12 TMC 18.58.040(1-5) have been met. It is the Applicant's burden to prove that each of these
13 elements has been satisfied.

14 19. Pursuant to TMC 18.58.040.1, it must be demonstrated that special conditions
15 exist which are peculiar to the land, such as size, shape, topography or location, not applicable to
16 other lands in the same district, and that literal interpretation of the provisions of the fence
17 regulations would deprive the property owners of rights commonly enjoyed by properties
18 similarly situated in the same zoning district.

19 20. The Applicant asserts that the required lower fence would reduce privacy and
20 security and yet would not provide any benefit to visibility at the intersection. The Applicant
21 also notes that all other lots within the subdivision enjoy the right to a 72-inch, solid panel fence
22 and that only Lot 29 is denied this benefit.

23 21. City Staff finds that there are no special conditions peculiar to the site such that
24 denying the variance would deprive the owner of rights commonly enjoyed by other properties.
25 City Staff is currently enforcing the corner lot fence restrictions in a uniform fashion and has

1 recently imposed the same requirements on nearby corner lots in the Susan Lake Estates
2 Subdivision. Staff further finds that the Applicant's goals of increased security and privacy could
3 be achieved without the variance by simply allowing the upper portion of the fence to have
4 greater transparency as permitted by TMC 18.46.030. Staff also notes that the lot is set behind a
5 large retaining wall which aids in the lot's privacy.

6 22. The Hearing Examiner concurs with the City Staff that there are no peculiar
7 conditions to the site, including its size, shape, topography or location, which are not Applicable
8 to other lots in the same zone and for which literal interpretation of the fencing regulations would
9 deprive the owner of rights enjoyed by other properties similarly situated. While some
10 additional privacy might be achieved by the requested 72-inch solid panel fencing, the lot is fully
11 functional as a residential lot without the variance and, further, the desired privacy can be
12 achieved through other means.

13 23. Pursuant to TMC 18.58.040.2, the Applicant must demonstrate that special
14 conditions or circumstances are not the result of actions of the Applicant.

15 24. The Applicant asserts that the current corner lot fence restrictions are antiquated
16 and that the current design for corner lots in subdivisions no longer requires restrictions. The
17 Applicant therefore asserts that the circumstances are the result of the City's failure to modernize
18 its regulations and are not the result of the Applicant's actions.

19 25. City Staff finds that there are no special conditions or circumstances that are not
20 the result of the Applicant's actions. This is a recently approved subdivision undertaken by the
21 Applicant. The Applicant's purposely designed Lot 30, across the street, so as to avoid it being
22 designated as a "corner lot" subject to these fence restrictions. The same could have been done
23 for the project site. Staff also notes that the proposed fence would be allowed if Applicant
24 simply installed it outside of the required setback area.

1 26. The Hearing Examiner concurs with the Staff's Findings that the conditions and
2 circumstances are the result of actions of the Applicant, including the manner in which it
3 designed the subdivision; its preferred location for the fence; and its unwillingness to utilize the
4 option of a more transparent upper portion of the fence in return for greater height.

5 27. Pursuant to TMC 18.58.040.3, the Applicant must demonstrate that granting the
6 variance will not confer a special privilege to the property that is denied other lands in the same
7 district.

8 28. The Applicant asserts that granting the variance does not confer a special
9 privilege as the remainder of the subdivision enjoys the right to a higher fence that only this lot is
10 denied that right, even though it has been demonstrated that the lower fence will not result in any
11 greater site visibility, privacy or security. The Applicant further asserts that the City has been
12 arbitrary in its application of this requirement such that many other corner lots have been
13 allowed to have taller fences than allowed without any enforcement action by the City.

14 29. City Staff finds that the fencing regulations have existed for several decades and
15 have been imposed on subdivisions since 1984. Staff acknowledges that there are violations of
16 these restrictions found in various places in the City but that these regulations have been
17 uniformly enforced for the last several years, most recently in the nearby Susan Lake Estates.
18 Staff adds that the Applicant can easily construct a fence on this property of the same height as
19 all other lots in the subdivision by simply creating greater transparency in the upper portion of
20 the fence.

21 30. The Hearing Examiner finds that there have been occasions where the City has
22 failed to uniformly enforce its fence height restrictions on corner lots but further finds that its
23 enforcement has been more uniform recently, and that imposition of these restrictions on the
24 subject property is not arbitrary or capricious. The Hearing Examiner therefore finds that
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1 granting the variance would confer a special privilege to this corner lot denied similar lots in the
2 residential zoning districts.

3 31. Pursuant to TMC 18.58.040.4, it must be demonstrated that granting the variance
4 will not be materially detrimental to the public welfare or injurious to the property or
5 improvements in the vicinity. Both the Applicant and City concur that this requirement is
6 satisfied. The Hearing Examiner concurs as well.

7 32. Pursuant to TMC 18.58.040.5, it must be demonstrated that the requested variance
8 is the minimum variance needed to make possible the reasonable use of the land.

9 33. The Applicant asserts that the requested fence height is the minimum necessary to
10 achieve reasonable expectations of privacy for this lot as well as uniformity for the subdivision.
11 Without the requested variance, Lot 29 enjoys less privacy and security, while the subdivision
12 itself suffers from less uniform fencing.

13 34. City Staff finds that Lot 29 can enjoy reasonable use without the requested
14 variance; that a building permit has been approved, demonstrating that the site can be easily
15 developed with or without the requested fence; and that the goals of security, privacy and
16 subdivision uniformity can be achieved by simply constructing the upper portion of the requested
17 fence with greater transparency.

18 35. The Hearing Examiner concurs with the City that the requested variance is not
19 the minimum necessary to make possible the reasonable use of the land. To the contrary, the
20 Hearing Examiner finds that reasonable use of the land can be achieved without the requested
21 variance.

22 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

23 **CONCLUSIONS OF LAW**

24 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.

1 2. Any Conclusions of Law contained in the foregoing Background, Public Hearing
2 Analysis, or Findings of Fact Sections are hereby incorporated by reference and adopted by the
3 Hearing Examiner as his Conclusions of Law.

4 3. All notice requirements have been met.

5 4. The project is exempt from SEPA requirements.


6 5. The Applicant has the burden of proving that all requirements of TMC 18.58.040
7 are met.
8

9 6. The Applicant has demonstrated that 18.58.040(4) has been met, but has failed to
10 meet its burden of proving that the requirements of TMC 18.58.040(1, 2, 3 and 5) have been
11 satisfied.

12 **DECISION**

13 Having entered his Findings of Fact and Conclusions of Law the Hearing Examiner
14 **DENIES** the requested variance.

15 DATED this 2nd day of October, 2024.

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18 _____
19 Mark C. Scheibmeir
20 City of Tumwater Hearing Examiner

21 **HEARING EXAMINER**
22 **POST-DECISION PROCEDURES**

23 The following sections of the Tumwater Municipal Code outline procedures for requesting reconsideration of a
24 decision by the Tumwater Hearing Examiner and appealing a decision made by the Tumwater Hearing Examiner.
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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 ten working days to render a written final decision.

2.58.140 Notice of examiner's decision.

Not later than five working days following the rendering of a written decision, copies thereof shall be mailed to the applicant, other parties of record in the case, and all other persons who specifically request notice of decision by signing a register provided for such purpose at the public hearing. The original of the decision shall be transmitted to the city clerk.

2.58.150 Appeal from examiner's decision.

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.

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 twenty-one days of issuance of the decision as provided in Chapter 36.70C RCW.