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BEFORE THE HEARING EXAMINER FOR THE CITY OF LAKEWOOD

RE: Ellenda Wulfestieg)	
)	
Shoreline Variance and Conditional)	FINDINGS OF FACT, CONCLUSIONS OF
Use Permit)	LAW AND FINAL DECISION
)	
LU1800232)	

Summary

The applicant has applied for a shoreline conditional use permit and variance to construct a single-family home proposed to encroach 15-50 feet within the 150ft shoreline buffer of Chambers Creek imposed by the City of Lakewood Shoreline Master Program. The project site is located at the dead end of 75th St. SW. The proposal is approved subject to conditions.

Testimony

Note: The following is a summary of testimony provided for the convenience of the reader only and should not be construed as containing any findings of fact or conclusions of law. The focus upon or exclusion of any particular testimony or hearing evidence in this summary is not reflective of the priority or probative content of any particular hearing evidence and no assurance is made as to accuracy.

Andrea Bell, City of Lakewood Associate Planner, summarized the staff report. In response to examiner questions, Ms. Bell noted that staff had not discussed geotechnical issues raised in comment letters with the applicant’s geotechnical engineer. Ms. Bell also clarified that a portion of the back side of the house slightly goes into the slope, but for the most part the only thing overhanging the

1 slope is going to be a portion of the deck. Deck pilings will also be built into the slope. Ms. Bell also
2 responded that most houses surrounding the home are likely of a similar size.

3 James Guerrero, the project's architect, spoke on behalf of the applicant. Ms. Wulfestieg, the property
4 owner, hired Mr. Guerrero three years ago to work on this project. Mr. Guerrero described the house
5 as very small. During the house's construction they will have to remove several trees. Mr. Guerrero
6 said that they intend to be delicate with the landscape when constructing the project, there is clear
7 intent, in this regard, to respect the native habitat as much as possible. The creek edge has been one
8 area that they have had to mitigate as a team. Several invasive species live along the creek edge and
9 they propose to remove this vegetation and plant more appropriate native plants that will restore the
10 creek to historic condition.

11 In response to examiner questions, Mr. Guerrero noted that if the portion of the house encroaching
12 into the slope were to be removed that the house would be reduced from a two-bedroom home to a
13 one bedroom home. After reviewing aerial photographs of the home, Mr. Guerrero noted that the
14 proposed home is smaller than most houses in the area and would likely be the smallest in the area.

15 Edward Fruitrich, neighbor, testified his residence is located across the creek from the project site.
16 He had concerns about the project's impact on wildlife and the creek and also impacts the project may
17 have on the course of the creek, potentially brining the creek closer to this home. Mr. Fruitrich also
18 had concerns with sloughing in the area, which he said was shared by other residents of the area. He
19 showed a photograph from the creek depicting how the creek had been, in his opinion, significantly
20 impacted by 'sluffing'. Mr. Fruitrich believes the site meets the criteria to be considered a landslide
21 hazard. He further believes that the map provided by the architect shows the project connected with
22 the steepest part of the slope contrary to the staff report. Also, Mr. Fruitrich does not believe the
23 geotechnical report is accurate in saying there have not been previous slippages or slides in the area.
24 He stated there is more wildlife living in the area than was reported and that the change to the buffer
25 area shouldn't be characterized as a slight change.

26 Cynthia Kennedy, attorney, represents neighbors Art & Ling Goldstein. The Goldstein's are
concerned as they reside adjacent to the applicant's property. Ms. Kennedy wanted to remind
everyone that both properties are part of the Willard Estates Community and are subject to its
CC&Rs. The Goldstein's wanted to formally request the examiner deny that this project continue.
The Goldstein's believe the project will irreparably harm the character, aesthetics, and value of the
Goldstein's property and their community. Most importantly it will strip them of their privacy and
quiet enjoyment of their home. Ms. Wulfestieg seeks variances to shoehorn development onto a lot
that is no longer buildable under current legal requirements. The proposal therefore relies upon
variances of virtually all the spatial buffers, setbacks, and design requirements that have been put in
place to protect the nature and character of this community. The result is a proposal that will be
jarringly out of character and scale with the rest of Willard's Estates. A significantly smaller home
that is too close to natural features, too close to the private street and far too close to her neighbors.
With regard to Shorelines, the 150ft Shoreline buffer for chambers creek, a conservancy shoreline, is
being decreased by one-third. The additional setback from the edge of the shoreline buffer is

1 completely eliminated. With regard to critical areas, the landslide hazard area buffer is reduced to
2 allow for construction in the steep slope itself. The customary setback from a top of the steep slope is
3 eliminated altogether. The 25-foot setback from the top of the slope that is recommended in the
4 applicant's own geotechnical report is not being applied. These buffer and setback requirements from
5 the creek and from the landslide hazard area were enacted to protect and to preserve the natural
6 environment... but for this proposal each one of these buffers is being reduced.

7 Ms. Kennedy also noted the proposal seeks reduction of zoning code setbacks to the street setback.
8 The zoning code setbacks preserve the uniformity of the neighborhood, minimize potential traffic
9 problems, and assure safe movement of cars. The setbacks also protect views and preserve privacy.
10 These seem, in her opinion, to be being overlooked in this case. The CC&Rs are also being varied for
11 this project which she believes to be problematic. Essentially, there are too many variances needed to
12 shoehorn this proposal onto this lot. Overall, she believes that this project will have a substantial
13 detrimental impact on the Willard Estates community and that one individual's property should not
14 be given such special treatment while the rest of the properties must abide by rules and regulations.
15 When Ms. Wulfestieg purchased the home, she should have known that the property was no longer
16 buildable under the current regulations.

17 Ms. Kennedy further stated that variances need to be credible and based on reason, not speculation.
18 She stated that variances are designed to level the playing field and provide equal development
19 opportunities, not to grant a special privilege to one property owner at the expense of others.
20 Variances are expressly not supposed to be granted when they will have a substantial detrimental
21 impact on the surrounding community as this proposal will have here.

22 Although her client hopes this project is denied, Ms. Kennedy stated that if it is approved, they hope
23 that every effort be made to minimize construction impacts. She believes that this includes
24 construction noise, limiting hours of construction, hold the applicant accountable for any construction
25 damages or costs, and minimize construction impacts on traffic through the community. Ms. Kennedy
26 outlined these aspects as additional proposed conditions of the project in a letter that was entered as
Exhibit 5.

Ms. Teresa Fruitridge, neighbor, expressed concerns over the impact to an area in the creek where
salmon spawn that she believes could be adversely impacted. Ms. Fruitridge asked questions
wondering how the project will maneuver the steep geography of the space in their attempts to build
near the creek. She particularly wondered what type of equipment would be needed to do this
considering the steep slope. Ms. Fruitridge inquired about what would happen if there's a slide as it
would affect the value of her home.

Ms. Bell was able to pull up the size of homes in the general vicinity. To the north she identified three
homes (2000 gross-square-ft.; 3,490 gross-square-ft.; 3059 gross-square-ft.) and three homes to the
south of the project (2,998 square-ft.; 1,850 square-ft.; 4,102 square-ft.). To the west Ms. Bell
identified two homes (3,135 square-ft.; 1,878 square-ft) and to the east she identified two homes
(2,176 square-ft.; 2,806 square-ft.).

1
2 Ms. Bell noted that Ms. Wulfestieg purchased the property in August of 2014. At that time the City of
3 Lakewood was operating under the Pierce County Shoreline Master Program. The City of Lakewood
4 did not develop its own SMP until March or May of 2015. Ms. Bell noted that The Department of
Ecology visited the site one or two times.

5 Ms. Bell also stated that she is not the only person who has looked at this proposal. The project
6 proposal has also been looked at by the community development director and the city's planning
7 manager. Ms. Bell wanted to clarify that she believes the city is abiding by codes and giving Ms.
Wulfestieg the opportunity to apply for variance. Ms. Bell further stated that the City believes the
project meets the current zoning code setbacks and all other applicable development standards.

8 In closing, Mr. Guerrero acknowledged that it was probably the applicant's fault that all of the
9 wildlife was not recognized in the application, to which he apologized. Regarding the Goldstein's
10 attorney, Ms. Kennedy, Mr. Guerrero believes the original intent of the subdivision was to allow this
11 property to be developed with a home. Mr. Guerrero thinks that the negative impacts suggested by
12 Ms. Kennedy are farfetched. Mr. Guerrero stated that he believes the proposed home is small and is
13 intended not to be overly imposing on the neighborhood. Mr. Guerrero suggested that the Goldstein's
14 complaints about what someone else should do with their property are unwarranted. Mr. Guerrero
15 believes that the lot belongs to Ms. Wulfestieg and she should thus, within reason, respectfully be
16 able to develop it. Mr. Guerrero does not believe that Ms. Wulfestieg is not receiving special
17 privileges—which seemed to have been suggested by Ms. Kennedy – she just wants to build a single-
18 family home for her lot, the same privilege granted to all other lots owners in the area. Mr. Guerrero
19 clarified that Ms. Wulfestieg intends to live in the home she hopes to build on her property. Mr.
20 Guerrero would be open to abiding to the additional conditions established by Ms. Kennedy. Mr.
21 Guerrero clarified that 'invasive species' means "a type of plant that takes over very rapidly" which
22 can impact the diversity of species in the area. Mr. Guerrero stated that getting rid of these species
23 and putting in native plants in the space can actually help sustain the environment. Mr. Guerrero is
24 not sure yet about equipment, but stated that most work involving replacing plants will be done by
25 hand. Some equipment may be needed to remove the concrete slab they are hoping to remove.
26 Overall, they hope to follow Department of Ecology guidelines on any action that they take in
engaging with the plant or wildlife in the area.

21 Ms. Wulfestieg noted that she is an ambassador for the nature conservancy and is aware of the salmon
22 in the creek. She assured that she will do nothing that will impact the creek and that she would like to
23 have one of the nature conservancy scientists come down to the property and evaluate how to protect
24 and improve the rivers for salmon.

24 **Exhibits**

25 The following exhibits were admitted during the September 21, 2018 hearing and the written
26 comment period following the hearing:

- 1 - Staff Report and Attachments A-Z
- 2 – Letter 4-22-2017 from Willard Estates Architectural Committee
- 3 – Letter 12-28-2017 from Willard Estates Architectural Committee
- 4 – Fruitrich Photograph of slide area
- 5 – September 28, 2018 letter from Cynthia Kennedy.
- 6 - Supplemental Geotech Report from Georesources dated October 2, 2018
- 7 - October 15, 2018 response to Supplemental Report from Cynthia Kennedy
- 8 - Undated Response to Supplemental Report from Fruitrichs
- 9 - October 13 2018 Response to Supplemental Report from Jacksons
- 10 – October 22, 2018 Reply from Applicant Georesources

FINDINGS OF FACT

Procedural:

1. Applicant. Ellenda Wulfestieg, represented by her architect Joseph Guerrero, 11150 Gravelly Lake Dr. SW, Lakewood, WA 98499
- 2.
3. Hearing. A hearing was held on the subject application on September 28, 2018 in the Lakewood City Hall Council Chambers. The record was left open through October 22, 2018 for the submission of a supplemental geotechnical report and an opportunity for public response and applicant reply.

Substantive:

3. Project Description. The applicant has applied for a shoreline conditional use permit and variance to construct a single-family home proposed to encroach 15-50 feet within the 150ft shoreline buffer of Chambers Creek imposed by the City of Lakewood Shoreline Master Program. The project site is located at the dead end of 75th St. SW. The 0.68 acre site has 145 of frontage along Chambers Creek and has lot dimensions of 204' x 165' when measured along the south property line to the southeast corner, then north. The eastern portion of the lot abutting 68th Ave W is relatively flat to gently sloping but begins to slope significantly towards the creek at inclinations of 10 to 65 percent. The lot is currently vacant.

The scope of work for this project includes the construction of a new one-story, 1,344sf single family residence with an attached 595sf garage, associated 714sf uncovered deck and 888sf driveway. Portions of the home will be built between 15-50 feet into the 150ft Chambers Creek buffer. The residence is proposed to be located on the flattest part of the property but will slightly extend into a portion of the slope. The sections of the residence which will extend out into/over the slope will be supported by pin-piles and the main portion of the residence on flat ground will utilize concrete footings for a foundation.

1 4. Surrounding Area. The site is located in an area zoned Residential 2 (R2) and is surrounded
2 by single-family homes. There are more than 30 single family residences to the south, west and north
3 that have shoreline frontage abutting Chambers Creek. Many of these homes are also located within
4 the required 150ft Chambers Creek shoreline buffer and are located closer to the stream than
5 proposed by the applicant. As testified by Ms. Bell, the surrounding homes are almost all
6 significantly larger than that proposed by the applicant. To the north she identified three homes (2000
7 gross-square-ft.; 3,490 gross-square-ft.; 3059 gross-square-ft.) and three homes to the south of the
8 project (2,998 square-ft.; 1,850 square-ft.; 4,102 square-ft.). To the west Ms. Bell identified two
9 homes (3,135 square-ft.; 1,878 square-ft) and to the east she identified two homes (2,176 square-ft.;
10 2,806 square-ft.).

11 5. Adverse Impacts. There are no significant adverse impacts associated with the project.
12 Pertinent impacts are addressed as follows:

13 A. No Net Loss of Ecological Function. As outlined in the conclusions of law, an important
14 requirement of the City's Shoreline Master Program is that shoreline development result in no
15 net loss of ecological function. It is determined that this standard is met.

16 Assessment of impacts to ecological function is challenging because there is no habitat plan or
17 other report or other testimony from a qualified biologist or similar professional on shoreline
18 impacts. However, staff have determined that there will be no net loss of ecological function
19 based upon the fact that over 90% vegetation will remain undisturbed and the applicant
20 proposes restoration that includes native plantings, removal of an existing concrete slab on the
21 shoreline and preservation of the existing slope. The applicant's restoration plan, Ex. 1Y, is
22 limited to a site plan prepared by the applicant's architect. There is no indication that the
23 applicant's restoration plan has been reviewed by any person qualified in the biological sciences
24 and nothing to suggest that the applicant's architect has any training in this area. Ultimately,
25 given the absence of any expert evidence to the contrary, the expertise of staff in land use
26 review and the modest extent of the proposed encroachment into the shoreline jurisdiction, it
is determined that the proposal will result in no net loss of ecological function as determined by
staff.

27 B. Slope Stability. A major concern of neighbors was slope stability. It is determined that the
28 proposal will not adversely affect slope stability.

29 A geotechnical report prepared by the applicant, Ex. 1W, established that the slopes of the
30 project site qualify as a landslide hazard area protected by the City's Critical Areas Ordinance
31 due to the presence of slopes with inclinations of 15 to 65 percent on the central and western
32 portions of the site. As required by the Critical Areas Ordinance, the applicant prepared a
33 geotechnical report to assure safe development of the slope. The geotechnical report
34 recommends that the proposal utilize erosion control measures during construction and that pile
35 technology will be used for the portion of the home extending into the slope in order to limit the
36 disturbance of the existing hillside. With imposition of the geotechnical conditions, City staff

1 concluded that the site and proposal will not be adversely impacted by the site designation as a
2 landslide hazard area. The Geotech report concludes as follows:

3 *...The construction of the crawl space and installation of landscaping and drainage at the*
4 *site will improve the overall slope stability of the site and adjacent areas. No adverse*
5 *impact is expected because of the proposed site development.*

6 In her testimony, Cynthia Nixon correctly identified that the geotechnical report recommends
7 a 25 foot building setback to the steep slopes of the property. However, the report also
8 authorizes development within the setback if extensive mitigation is taken¹, including the use
9 of pilings and on-site monitoring by a Geotech during construction. Consequently, it is
10 determined that the Geotech report still finds the development to not adversely affect slopes
11 even if development is done within 25 feet of the steep slopes so long as the recommended
12 mitigation is implemented.

13 One troubling part of the report was the observation at page 2 that “[n]o evidence of seepage,
14 landslide activity, or significant erosion was observed at the site at the time of our site visit,
15 or within 300 feet of the site.” This observation was at odds with testimony and a photograph
16 submitted into evidence by the Fruitrichs, Ex. 4, that showed the remnants of past slide
17 activity on adjoining property within 300 feet of the project site. Because of this conflicting
18 evidence, and the absence of the applicant’s geotechnical engineer at the hearing, the hearing
19 examiner left the record open for supplementation of the geotechnical report with an
20 assessment of the adjoining slope activity. The report supplement, Ex. 6, identified that the
21 adjoining slope failure was caused by stream erosion and posed no threat to adjoining homes
22 or the proposed home due to their distance from the stream.

23 In response to the supplemental Geotech report, neighbors noted that slope failure was also
24 evident at the top of slopes adjoining the project site in addition to that attributable to slope
25 failure caused by the stream. See Ex. 7. In reply the applicant’s Geotech did a site visit and
26 determined that the top slope failure was caused by runoff from the adjoining road. Ex. 10.
The geotechnical engineer still concluded that the project would improve slope stability.

In their response to the geotechnical report, the Fruitrichs inquired why development would be
allowed in an area designated a landslide and erosion hazard area. The reason is that City
regulations authorize development within such areas. Designation of an area as a landslide or
erosion area with the characteristics of the project site merely triggers the requirement for a
geotechnical report and compliance with the mitigation measures recommended in that report.
See LMC 14.146.030.

¹ Page 5 of the report references a “Figure 7” as illustrative of the type of mitigation necessary for development
within the 25 foot setback area. The report contains no Figure 7. The conditions of approval require
supplementation of the report with Figure 7.

1 Given that the applicant's geotechnical engineer has been fully apprised of the conditions of
2 the project slopes and surrounding slopes by site visits and neighborhood input, given the
3 detailed protective measures recommended in the Geotech report, given the geotechnical
4 engineer's conclusion that the proposed development will stabilize the slope and finally given
5 the absence of any expert testimony to the contrary, it is concluded that with the mitigation
6 recommended in the geotechnical report the proposal will not adversely affect slope stability.

7 C. Compatibility and Privacy. The applicant proposes a single-family home in a residentially
8 zoned area that is smaller than almost all surrounding homes. For these reasons, the proposal is
9 found to be compatible with surrounding development. Further, as shown in the aerial
10 photograph in Ex. 1Z, the location of the proposed home vis a vis adjoining property is little
11 different than the placement of other homes in the vicinity amongst neighboring homes. There
12 is no compelling reason why the privacy interests of adjoining property owners should
13 supersede the rights of the applicant to develop her property and exercise her privacy rights in a
14 similar fashion.

15 6. Necessity for Variance. The shoreline variance is necessitated by the natural development
16 constraints of the property, specifically Chambers Creek. As shown in the aerial photograph included
17 in Ex. 1Z, the applicant's lot is larger than many surrounding lots. Taking into account property
18 used for the private access road and the 150 shoreline buffer for Chambers Creek, the applicant is
19 only left with 9'-1" of buildable land along the western portion of the property where the land is flat.
20 This is clearly not enough space to build a reasonably sized home. For this reason, the need for the
21 variance is wholly attributable to the shoreline buffer associated with Chambers Creek.

22 **Conclusions of Law**

23 1. Authority. LMC 18A.02.502 Table 3 classifies shoreline conditional use and variance
24 permits as a Process III application subject to hearing examiner review.

25 2. Zoning and Shoreline Designations. Residential 2 (R2) and Conservancy.

26 3. Review Criteria. Table 1 of Chapter 4 of the City of Shoreline Master Program ("SMP")
requires a conditional use permit for single-family residences in the shoreline Conservancy
designation. Chapter 6(D)(2) of the SMP adopts the shoreline conditional use review criteria of
WAC 173-27-160. Table II of Chapter 4 of the SMP imposes a 150 foot buffer for shorelines within
the Conservancy designation and requires a variance for any encroachments within this buffer.
Chapter 6(D)(1) of Chapter 6 of the SMP adopts the shoreline variance review criteria of WAC 173-
27-170. Applicable review criteria are quoted below in italics and applied via associated conclusions
of law.

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CONDITIONAL USE

WAC 173-27-160(1): *Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:*

(a) That the proposed use is consistent with the policies of RCW 90.58.020 and the SMP;

4. The criterion is met. The proposal is consistent with the policies of the SMP for the reasons identified at page 2-3 of the staff report. Conformance to the “no net loss of ecological function” is specifically addressed in Finding of Fact No. 5 as this is perhaps the most important standard imposed by the SMP and is required in a multitude of shoreline policies such as Chapter 3, Section B4b3. RCW 90.58.020 essentially requires protection of the environmental, recreational and aesthetic resources of shorelines. That policy is achieved by the proposal as well since it involves a very modest encroachment into the shoreline jurisdiction that is compatible with surrounding development and involves no net loss of ecological function as determined in Finding of Fact No. 5.

WAC 173-27-160(1)(b): *That the proposed use will not interfere with the normal public use of public shorelines;*

5. The criterion is met. The proposal is for the development of private property and will not involve any obstruction to any areas available for public access.

WAC 173-27-160(1)(c): *That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and SMP;*

6. The criterion is met. The proposed use is compatible with surrounding development as determined in Finding of Fact No. 5(C). Both the comprehensive plan and SMP authorize residential development in the area as well. Single-family development is particularly well suited for the Conservancy designation as it is one of the least intense development options available for shoreline development.

WAC 173-27-160(1)(d): *That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and*

7. The criterion is met. As determined in Finding of Fact No. 5, the proposal will result in no net loss of ecological function and will not otherwise create any other significant adverse impacts to the shoreline environment.

WAC 173-27-160(1)(e): *That the public interest suffers no substantial detrimental effect.*

8. The criterion is met. As determined in Finding of Fact No. 5, the proposal will not create any significant adverse impacts, so the public will suffer no substantial detrimental effect.

1
2 **WAC 173-27-160(2):** *In the granting of all conditional use permits, consideration shall be given to*
3 *the cumulative impact of additional requests for like actions in the area. For example, if conditional*
4 *use permits were granted for other developments in the area where similar circumstances exist, the*
5 *total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and*
6 *shall not produce substantial adverse effects to the shoreline environment.*

7
8 9. The criterion is met. The proposal involves only a modest encroachment by a home that is
9 smaller than almost all surrounding homes. An aerial photograph of the project site shows few vacant
10 lots in the immediate vicinity. If all vacant lots were granted similar variances for similar
11 construction, the aesthetic and environmental impacts would be minimal as slope stabilization
12 measures serve to improve slope stability, there would be no net loss of ecological function and the
13 placement of additional homes would be compatible with surrounding development.

14 **VARIANCE**

15
16 **WAC 173-27-170(2):** *Variance permits for development and/or uses that will be located landward*
17 *of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(c), and/or landward of*
18 *any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can*
19 *demonstrate all of the following:*

20 *(a) That the strict application of the bulk, dimensional or performance standards set forth in the*
21 *applicable master program precludes, or significantly interferes with, reasonable use of the property;*

22 10. The criterion is met. As determined in Finding of Fact No. 6, without the variance the
23 applicant would only have a buildable area that is nine feet wide.

24 **WAC 173-27-170(2)(b):** *That the hardship described in (a) of this subsection is specifically related*
25 *to the property, and is the result of unique conditions such as irregular lot shape, size, or natural*
26 *features and the application of the master program, and not, for example, from deed restrictions or*
the applicant's own actions;

11. The criterion is met. As determined in Finding of Fact No. 6, the hardship necessitating the
variance is caused by the presence of Chamber Creek on the property.

WAC 173-27-170(2)(c): *That the design of the project is compatible with other authorized uses*
within the area and with uses planned for the area under the Comprehensive Plan and SMP and will
not cause adverse impacts to the shoreline environment;

12. The criterion is met. As previously determined in Conclusions of Law No. 4 and 6, the
proposal is compatible with surrounding uses and will causes adverse impacts to the shoreline
environment as contemplated in the standard quoted above.

1 **WAC 173-27-170(2)(d):** *That the variance will not constitute a grant of special privilege not*
2 *enjoyed by the other properties in the area;*

3 13. The criterion is met. The applicant simply seeks to build a single-family home on her
4 property, a right exercised by the property owners all around her. Especially given that the applicant
5 proposes a home smaller than almost every other home in the area as determined in Finding of Fact
6 No. 4, approval of the variance would not constitute a grant of special privilege.

6 **WAC 173-27-170(2)(e):** *That the variance requested is the minimum necessary to afford relief; and*

7 14. The criterion is met. As determined in Finding of Fact No. 4, the applicant proposes to build a
8 home that is smaller than almost every other home in the vicinity. As testified by the applicant's
9 engineer, any further material reduction in building size would reduce the home in size from a two
10 bedroom home to a one bedroom home, which would not be a reasonable requirement for the area in
11 which the home is proposed.

11 **WAC 173-27-170(2)(f):** *That the public interest will suffer no substantial detrimental effect.*

12 15. The criterion is met. As determined in Finding of Fact No. 5, the proposal will not create any
13 significant adverse impacts, so the public interest will suffer no substantial detrimental effect.

14 **DECISION**

15
16 The conditional use and variance applications meet all applicable review criteria for the reasons
17 identified in the Conclusions of Law and are thereby approved subject to the following conditions of
18 approval:

18 1. The entire project shall be constructed in substantial conformance with the site plan
19 illustrated in Exhibit B. Any substantive changes to the design, terms, or conditions of the project
20 from that which is approved in this report will require a permit revision consistent with the SMP,
21 CAO, WAC, RCW and municipal codes.

21 2. The proposal will not encroach more than 50ft into the Chambers Creek 150ft shoreline
22 buffer.

23 3. The standard mitigation measures set forth in the associated DNS as well as the comments
24 from the Department of Ecology shall be adhered to.

25 4. Pursuant to the City of Lakewood Site Development Regulations, Section 12A.04.040, a Site
26 Development Permit, drainage review and erosion control plan shall be approved by the City
27 Engineer prior to issuance of building permits. The measures called for in the plan shall be
28 implemented on site prior to and during site development.

1
2 5. Development of the new residence shall adhere to the recommendations and design criteria
3 in the geotechnical analysis prepared by GeoResources dated March 7, 2018 and included as Exhibit
4 W. The report shall be supplemented with Figure 7 as referenced in Page 5 of the report.

5 6. The proposed development shall comply with the City of Lakewood Critical Areas
6 Ordinance, specifically section 14.146.030 detailing the protection and performance standards for
7 properties located within landslide hazard areas.

8 7. Grading and landscaping shall not encroach into the area water-ward of the ordinary high
9 water mark for any reason.


10 8. Construction activities associated with these shoreline permits shall not commence until
11 expiration of the 21-day appeal period to the City of Lakewood Hearing Examiner.

12 9. Construction or substantial progress toward construction of the project shall be commenced
13 within two years of the effective date of a permit. The Examiner may authorize extensions for
14 periods not to exceed one year based on reasonable factors if a request for extension has been filed
15 before the expiration date, and notice of the extension is given to parties of record and Department
16 of Ecology.

17 10. As agreed upon by the applicant during the appeal hearing, the applicant shall conform to the
18 following two conditions requested by the Goldsteins²:

- 19 A. The applicant shall minimize noise by limiting hours of construction to regular business
20 hours on weekdays – not on evenings, weekends or Sundays.
- 21 B. The applicant shall minimize construction related traffic disruptions by requiring access
22 remain open along the private road – 68th Avenue West – throughout construction.

23 DATED this 5th day of November, 2018.

24
25 
26 Phil A. Olbrechts

Pro Tem Hearing Examiner for Lakewood

Appeal Right and Valuation Notices

² The applicant also agreed to a condition that had her assume liability for damage to 68th Avenue West. That condition is not adopted by this decision as the hearing examiner as it is not the role of the city to adjudicate and enforce liability claims.

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The applications approved by this decision are subject to further approval from the Washington State Department of Ecology as required by Chapter 90.58 RCW. Appeal of decisions made by the Washington State Department of Ecology are governed by Chapter 90.58 RCW.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.