

# PNW INVESTORS L.L.C.

Real Property Investment & Development

August 7, 2023

Via E-mail to [cholland@marysvillewa.gov](mailto:cholland@marysvillewa.gov); Original Via First Class Mail

Mr. Chris Holland  
Planning Manager  
Community Development Department  
City of Marysville  
501 Delta Avenue  
Marysville, WA 98270

RE: 87<sup>th</sup> & 40<sup>th</sup> PRD  
PA22-040

Dear Mr. Holland;

Thank you for the time from your schedule on August 2, 2023 to meet with myself and Ben Madeo of Core Design to discuss the status of the 87<sup>th</sup> & 40<sup>th</sup> PRD resubmittal; specifically, a) our request for credits against Bonus Dwelling Units as compensation for construction of the portion of 40<sup>th</sup> Street NE CIP that goes through the project; and b) the status of revisions to the Stevens Ridge PRD (adjacent to the west) site plan and road interfaces.

This correspondence is written to address item #b) above.

More than a year ago, we began participating in meetings and dialogue with City staff and the representatives of the Stevens Ridge PRD for the purposes of seeking to create mutually acceptable road and pedestrian inter-connectivity between the Stevens Ridge PRD and the 87<sup>th</sup> & 40<sup>th</sup> PRD. Resulting from said meeting, the representatives of both projects were instructed to revise their site plans to provide road and pedestrian interfaces between the two projects as follows:

- Create a North-South half road at the NW corner of the Stevens Ridge PRD and along the 87<sup>th</sup> & 40<sup>th</sup> PRD project's western boundary ("85<sup>th</sup> Avenue NE") to promote future road and pedestrian connectivity between the 87<sup>th</sup> & 40<sup>th</sup> PRD, the Stevens Ridge PRD and the future development of Tax Parcels #005907000-21100 and -21101.

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- Provide necessary East-West road interfaces between the two projects to facilitate vehicular and pedestrian traffic, while meeting all of the City's other code and design criteria and providing appropriate emergency vehicle access.
- Avoid road connectivity to 40<sup>th</sup> Street NE Arterial, due to lack of appropriate intersection spacing for a primary arterial between 83<sup>rd</sup> Avenue NE and 87<sup>th</sup> Avenue NE

As the result of this meeting, the 87<sup>th</sup> & 40<sup>th</sup> PRD's site plan was revised, reviewed and deemed acceptable to the City. We understand from our discussion that the 87<sup>th</sup> & 40<sup>th</sup> PRD site plan (as revised) remains consistent with codes and regulations.

During 1Q 2023, we met again with City staff and the representatives of the Stevens Ridge PRD for the basis of considering changes to the Stevens Ridge PRD's site plans, despite the fact that the revised 87<sup>th</sup> & 40<sup>th</sup> PRD was deemed acceptable. On a number of occasions, revised site plans have been submitted to the City by the Stevens Ridge PRD proponent for consideration, each of which were deemed not to be consistent with City code and design criteria, and continued to be reliant upon a variance to the maximum number of housing units allowed for an auto court (i.e., 6 housing units).

At this meeting, the City expressed its preference to have the issue of road connectivity between the two projects be resolved mutually between the project representatives, rather than dictated by the City, and requested that neither party re-submit absent such good faith effort, to which we agreed in good faith.

In response to this, a meeting was again held between the parties at City Hall on 6/16/2023, at which time we tendered to all parties (including City staff, Fire Marshall and Stevens Ridge advocates) an alternative site plan for the Stevens Ridge PRD which demonstrates that the Stevens Ridge PRD can indeed be designed in a manner to comply with the City's design criteria, codes and engineering requirements without the need for a variance to expand the maximum number of units allowed for auto courts.

The Stevens Ridge PRD's advocate however, tendered yet another revised site plan at this meeting that was deemed inconsistent with City codes, design standards and reliant upon a variance to exceed auto court use loading standards. The advocate was again advised by City staff that the site design was not acceptable.

As of this writing, we continue to receive site plan revisions to the Stevens Ridge PRD by the Stevens Ridge PRD's proponent; said site plan revisions continue to not be in compliance with the City's codes, engineering designs, subarea and site design criteria; and continue to be predicated upon approval of a variance request to the City's Engineering Standards for more than 6 housing units to be accessed from an auto court.

In our respectful opinion, the Stevens Ridge proponent's request for a variance to auto court standards does not meet any of the criteria for approval and lacks all merit, including but not limited to the following reasons:

- The Stevens Ridge PRD property is unconstrained and without unusual shape, dimensions, critical areas, slopes or other physical features which may be considered unusual, a special circumstance or hardship conditions that would otherwise justify a variance to City codes.
- The request for variance to allow more than 6 housing units on an auto-court is rendered unnecessary through proper site design; specifically, the location of a public East-West road through the southern portion of site, which connects the dead-end road at the SW corner of the revised 87<sup>th</sup> & 40<sup>th</sup> Site Plan (see attached).
- Where there is a site design alternative that avoids the need for a variance to road standards (such as the current case regarding the Stevens Ridge PRD) and otherwise meets the requirements of the City's codes and design standards, the granting of a variance is not justified, as no special circumstance exists and there is no deprivation of rights. Granting of unjustified and unwarranted variance requests opens the City to inconsistent application and interpretation of its codes.

To the best of our knowledge, no justification has been provided by the Stevens Ridge PRD advocate for the requested variance. Therefore, it is appropriate to assess the Stevens Ridge PRD advocate's request for variance against the City's regulations.

- a. We first review the City's definition of the word "variance", as set forth in MMC 22A.020.230, which is repeated verbatim as follows (emphasis add):

*"Variance" means the means by which an adjustment is made in the application of the specific regulations of this title to a particular piece of property, which property because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the same zone or vicinity and which adjustment remedies disparity in privileges. A variance is a form of special exception.*

The City's definition of "variance" is clear that before a variance can be issued or approved, certain pre-conditions must exist: a) a special circumstance must exist; b) the special circumstance must deprive the property of privileges commonly enjoyed by properties in the same zone or vicinity; and c) the variance adjustment granted must remedy the resulting disparity.

We note that the word "variance" is only contained in the Municipal Code and thus is the only definition to be applied.

- b. Variance criteria occur in two (2) locations in the City's regulations: (i) in the City's Engineering Design Standards (Chapter 1, Section 1.070) and (ii) in the City's municipal code (MMC 22.G.010.420).

The applicable portion of Section 1.070, sub-paragraph a. is repeated verbatim as follows:

*"Variances from these Standards may be granted by the Public Works Director or designee upon evidence that such Variances are in the public interest and the requirements for safety, function, fire protection, appearance and maintainability based upon sound engineering judgment are fully met. Detailed procedures for requesting variance and appeals (of) variance decisions are contained in the Marysville Municipal Code. Variances must be approved prior to ...."*

The language of the above-referenced paragraph is clear that a variance must not only meet the definition set forth in MMC 22A.020.230, and the additional threshold of being proven of *"...evidence, that such Variances are in the public interest, and the requirements for safety, function, fire protection, appearance and maintainability....are fully met."*

The second sentence of the subparagraph directs the processing of variance request and appeals of variance decision(s) to the Municipal Code: *"Detailed procedures for requesting variances and appeals (of) variance decisions are contained in the Marysville Municipal Code"*.

Because the Engineering Design Standards direct the decision procedures for variances to the City's Municipal Code, we must then turn to MMC 22G.010.420 (Variance) for the final remaining criteria for determining whether there is a basis for granting of a variance. The applicable portions of MMC 22G.010.420 are provided verbatim (emphasis added):

- (1) A variance shall be granted by the city *only if the applicant demonstrates all of the following:*
- (a) *The strict enforcement of the provisions of this title create an unnecessary hardship to the property owner;*
  - (b) *The variance is necessary because of the unique shape, topography, or location of the subject property;*
  - (c) *The subject property is deprived, by provision of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone;*

Note: For brevity, we have not included items (d) through (i), as they are not applicable to the analysis.

When the requirements of MMC 22G.010.420 are considered (in addition to the definitional requirements of MMC22A.020.230 and requirements of Engineering Standards Section 1-070), then all criteria of MMC 22G.010.420 (a) through (i) must be met in order to approve a variance.

The Stevens Ridge proponent has not demonstrated that: a) that an unnecessary hardship exists; b) the variance request is necessary due to shape, topography or location of the subject property and c) as a result, there is a deprivation of rights / privileges enjoyed within the Whiskey Ridge Subarea and the MR6.5-18 zone.

We see not such justification of the criteria of MMC 22G.010.420 (1) (a), (b) or (c), nor do we see any demonstration of meeting the criteria of Engineering Standards Section 1-070; specifically, as to whether “.. the Variance is in the public interest and the requirements for safety, fire protection...”

For the reasons set forth above, the request for a variance to auto court standards by the Stevens Ridge PRD proponent, when analyzed against the City’s regulation(s), is without merit:

- No unnecessary hardship is known to exist on the Stevens Ridge PRD Property that serve as the basis for the variance request.
- Where no unnecessary hardship exists, then there is no basis for a claim of a deprivation of privileges commonly enjoyed by other properties in the same zone or vicinity and thus no basis for an adjustment remedy.
- The provision of a remedy to which no special circumstance, hardship, or claim of deprivation exists is cannot be demonstrated to be “..in the public interest..”.

Absent justification, the request for a variance by the Stevens Ridge PRD’s advocate can only be viewed as a request for an unjustified grant of special privilege, which is inconsistent with the City’s regulations and applicable RCW and not “..in the public interest..”.

We understand and respect that the City must implement and apply its codes consistently across all projects, so that all applicants are treated consistently and fairly. The 87<sup>th</sup> & 40<sup>th</sup> PRD asks for no special treatment and expects to comply with the required codes. In the best interests of public health, safety and welfare, and to provide consistent application of City codes and regulations, the Stevens Ridge PRD should be held to the same standards as all other development projects in the Whiskey Ridge Subarea under the same vested codes. No justifiable need, hardship, or undue burden of any kind has been established for the requested variance, nor has the Stevens Ridge proponent demonstrated that they are harmed in any way by being required to conform to the City’s codes and adopted auto court standards.

The granting of an unjustified variance to the Stevens Ridge PRD (especially where the request for variance can be avoided and is indeed feasible), would result in negative impacts to the 87<sup>th</sup> & 40<sup>th</sup> PRD as follows: (i) further delay, (ii) additional cost, (iii) site design complications for

the 87<sup>th</sup> & 40<sup>th</sup> PRD, including the potential for seeking variances resulting from approval of the requested Stevens Ridge variance; (iv) reduction in approvable density, and (v) increases in project approval complexity, none of which are considered reasonable, supportable, or in the best interests of the City, public health, safety or welfare.

In our respectful opinion, granting an unjustified variance to the Stevens Ridge PRD Project that (in turn) causes or requires the City to grant additional otherwise unnecessary variances to adjacent projects (where none are currently necessary) simply does not make reasonable sense, especially where proper site design is feasible and no true underlying need or hardship for the variance exists in the first place. The City can, acting within its code authority, avoid these problems by requiring both the Stevens Ridge PRD and the 87<sup>th</sup> & 40<sup>th</sup> PRD projects to fully comply with the City's codes and engineering standards.

In summary, after a year of good-faith effort on our behalf (and subsequent delay), we wish to respectfully express our concern regarding further delay in the acceptance and processing of our resubmittal and approval of the 87<sup>th</sup> & 40<sup>th</sup> PRD. It is beyond our ability to influence or require the Stevens Ridge PRD's site design and resubmittal decisions.

While we empathize with the City's preference for amicable resolution of the issue, after a year of good-faith effort and delay, we no longer believe this to be achievable. We request that the postponement of the resubmittal, final review and approval of the 87<sup>th</sup> & 40<sup>th</sup> PRD (due to a third party's unwillingness to comply with the City's code and regulation as it applies to a separate, adjacent project) no longer be required.

As mentioned above, the City has deemed that the 87<sup>th</sup> & 40<sup>th</sup> PRD's revised site plan is acceptable, subject (of course) to final review of the resubmittal and any necessary red-lines and minor revisions to proceed with finalization of a Concurrency Agreement, SEPA and PRD decision.

So that the 87<sup>th</sup> & 40<sup>th</sup> PRD project is not continued to being punished for the failure or willingness of the Stevens Ridge proponent to tender a site plan that complies with City codes, design and engineering standards, we request:

- The City allow us to proceed with resubmittal of the 87<sup>th</sup> & 40<sup>th</sup> PRD, based on the attached site plan.
- The proposed locations for public road interface between the 87<sup>th</sup> & 40<sup>th</sup> PRD and the Stevens Ridge PRD (as set forth in the attached site plan) be established by the City for both party's final site planning and resubmittal purposes.

We also request by means of this correspondence that PNW Investors LLC and all property owners within the 87<sup>th</sup> & 40<sup>th</sup> PRD be established as formal "parties of record" with regard to the Stevens Ridge PRD. We also request a digital copy of all records associated with the Stevens Ridge PRD submittal, including but not limited to any application for variance and justifications

Ltr to Holland, City of Marysville  
87<sup>th</sup> & 40<sup>th</sup> PRD / Stevens Ridge PRD  
8/7/2023  
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thereto. We request that as parties of record, we be timely included in any notice of decision with regard to the Stevens Ridge PRD and any request for variance, so that we may be prepared to appeal same.

Thank you for your consideration of this correspondence.

Best,



Michael Reid  
Managing Director  
MR/mr

Attachment

cc: Jeff Laycock, City of Marysville Public Works Director  
Ken McIntyre, City of Marysville Engineer  
Jesse Birchman, City of Marysville Traffic Engineer  
Emily Morgan, City of Marysville Senior Planner  
Ben Madeo, Core Design  
Duana Kolouskova & Dean Williams, Johns Monroe Mitsunaga Kolouskova PLLC