



## STAFF REPORT TO HEARING EXAMINER

<b>TO:</b>	City of Milton Hearing Examiner	
<b>FROM:</b>	Brittany Port, AICP – Contract Senior Planner	
<b>DATE:</b>	February 16, 2022	
<b>PROJECT:</b>	Trinh Short Plat Variance	
<b>PROJECT NUMBER:</b>	LUA 2021-0022	
<b>APPLICANTS/PROPERTY OWNERS:</b>	Billy Trinh 3139 Oas Dr W University Place, WA 98466 <a href="mailto:billytr70@yahoo.com">billytr70@yahoo.com</a>	Tres Kirkebo 2106 S 35th St, Suite 200 Tacoma, WA 98409 <a href="mailto:kirkebo@apexengineering.net">kirkebo@apexengineering.net</a>
<b>PROPOSAL:</b>	Request a variance from the minimum lot width standard contained within MMC 17.15.010.A to facilitate the subdivision of the property into two lots. The resulting short plat would create two lots that are 8,431sf in size each with approximately 62' of frontage on 16 <sup>th</sup> Ave. A short plat has been applied for under a separate permit number (LUA2021-0021) and will be decided on administratively following a decision on this application.	
<b>LOCATION:</b>	1401 16th Ave (Pierce County parcel no. 599520-0400)	
<b>PERMITS REQUESTED:</b>	Variance	
<b>ZONING/COMPREHENSIVE PLAN DESIGNATION:</b>	Residential (RS)	
<b>DATE APPLICATION DEEMED COMPLETE:</b>	The application was received on May 28, 2021. The application was deemed complete on June 9, 2021.	
<b>PUBLIC NOTICE:</b>	Pursuant to MMC 17.72, the City advertised the Notice of Application and Notice of Neighborhood Meeting on June 25, 2021. The City published notification of the public hearing on February 15, 2022, more than fifteen days prior to the date and time of the hearing.	
<b>SEPA:</b>	This project is SEPA Exempt.	
<b>RECOMMENDATION:</b>	Staff recommends approval.	

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## I. EXHIBIT

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1. Master Application, received on May 28, 2021
2. 500 ft. Notice Mailing Labels, received on May 28, 2021
3. Certificates of Water and Power Availability, received on May 28, 2021
4. Proposed Site Plan/Short Plat, received on May 28, 2021
5. Notice of Complete Application, issued on June 9, 2021
6. Notice of Application, issued on June 25, 2021
7. Notice of Neighborhood Meeting, issued on August 6, 2021
8. 1<sup>st</sup> Substantive Review Letter, issued on October 6, 2021
9. Example Rambler Building Plans, received on October 21, 2021
10. Example Duplex Plans, received on October 25, 2021
11. Letter of Intent in Support for Variance, received on December 21, 2021
12. Variance Support Exhibits, received on December 21, 2021
13. Notice of Public Hearing, issued on February 15, 2022

## II. PARTIES OF RECORD

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Parties of record are those persons who have submitted written comments on this proposal, or have otherwise indicated that they would like to be made a party of record and receive additional information.

1. Jacki Strader  
1809 13<sup>th</sup> Ave  
Milton, WA 98354  
[Greengables@rocketmail.com](mailto:Greengables@rocketmail.com)
2. Jacquelyn Whalen  
PO Box 749  
Milton, WA 98354  
[jwhalen@cityofmilton.net](mailto:jwhalen@cityofmilton.net)
3. Rita & Bill James  
PO Box 873  
Milton, WA 98354

**III. EXISTING CONDITIONS**

**A. HISTORY**

The property is located at 1401 16<sup>th</sup> Ave, within the Residential Single Family (RS) zone. It is approximately 16,875sf and large enough to be subdivided, however would not meet the required minimum lot width for the new lots. The site is currently vacant, though a single family residential home was likely on the property and demolished with the exception of the foundation footing. The site is comprised of grasses, trees, and gravel.

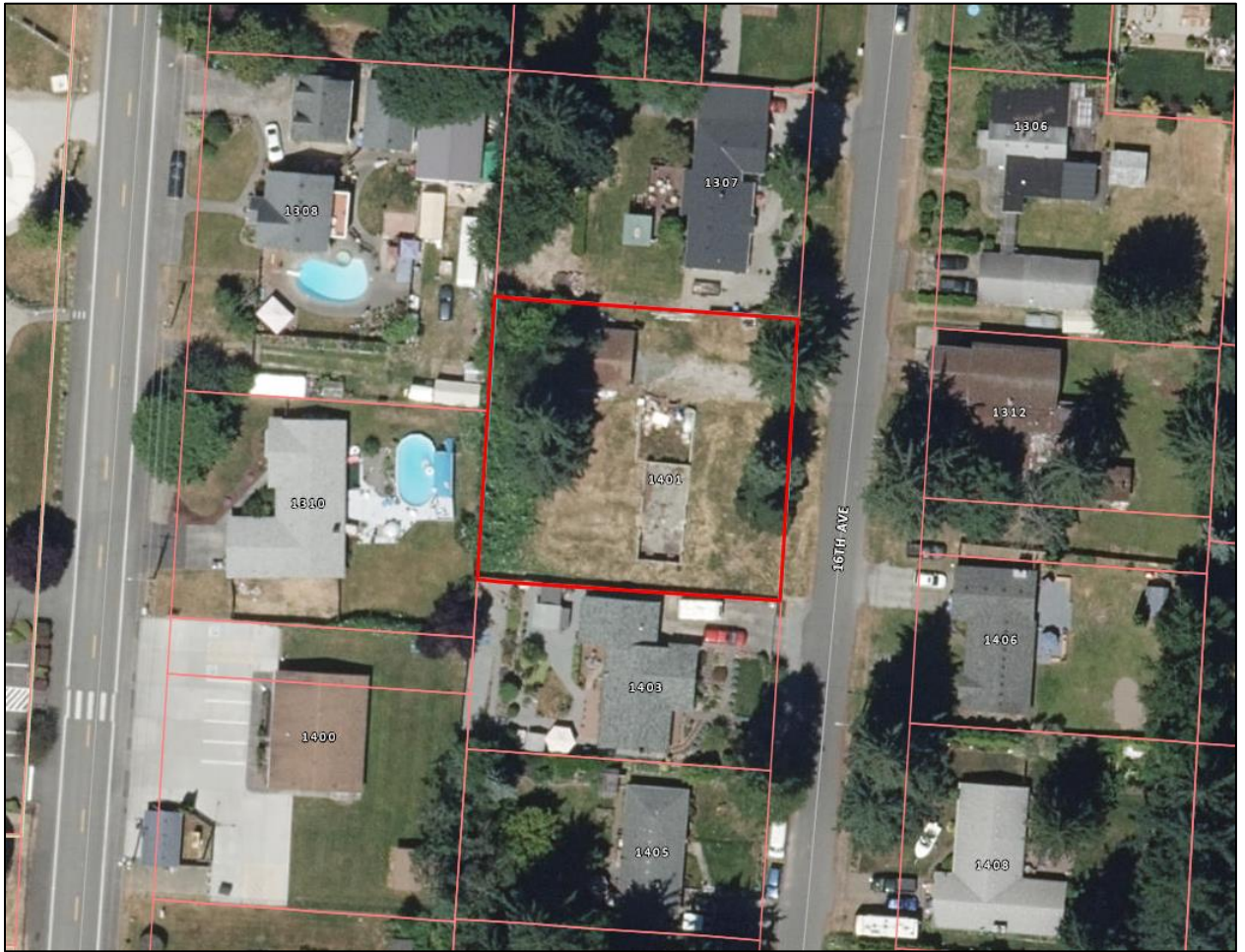
**B. CONTEXT**

The Comprehensive Plan and Zoning designations for the site are Residential (RS).

**C. SURROUNDING LAND USES**

<b>DIRECTION FROM SITE</b>	<b>ZONING/COMPREHENSIVE PLAN DESIGNATION</b>	<b>EXISTING LAND USE</b>
<b>NORTH</b>	Residential (RS)	Single-family Residence
<b>SOUTH</b>	Residential (RS)	Single-family Residence
<b>EAST</b>	Residential (RS)	Single-family Residence
<b>WEST</b>	Residential (RS)	Single-family Residence

Figure 1: Aerial Photograph





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**IV. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

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This project is exempt from SEPA review.

**V. AUTHORITY OF THE HEARING EXAMINER**

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**17.71.050 Specific – Process types.**

[...]

- 6. Decision-Maker/Criteria.
  - a. The hearing examiner is the decision-maker for a Process Type IV process application. The hearing examiner shall approve a project, or approve with modifications if the applicant has demonstrated the proposal complies with the applicable decision criteria of the Milton Municipal Code and all applicable development standards. The applicant carries the burden of proof and must demonstrate a preponderance of the evidence supports the conclusion that the application merits approval or approval with modifications. In all other cases, the hearing examiner shall deny the application.

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**VI. COMMENTS FROM THE PUBLIC ON THE PROPOSAL PRIOR TO HEARING**

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**A. NEIGHBORHOOD MEETING**

On September 1, 2021 the City held the required neighborhood meeting in the City Council Chambers. Notice was given in accordance with MMC 17.71.090. Four members of the public were in attendance other than the property owner (applicant). In attendance from the City was Brittany Port (Contract Senior Planner) and Angelie Stahlnecker (Planning Manager).

**B. WRITTEN COMMENTS**

The City did not receive any written comments on the proposed project from the public.

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**VII. CONSISTENCY WITH THE COMPREHENSIVE PLAN**

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The following comprehensive plan policies support the proposal:

**A. LAND USE ELEMENT**

- Goal RE 1      Provide a broad range of quality housing choices and levels of affordability to meet the changing needs of residents over time.
  
- Goal RE 2      Residential development where allowed should be of high quality design and should be consistent with the character of Milton.
  
- Pol. RE 2.2     The Single-Family (RS) land use designation and zoning district is intended to help preserve the City’s pattern of larger lot residential neighborhoods. Uses allowed within

this category include single-family homes, accessory dwelling units, and mobile home parks. The net density for this category shall not exceed four to six dwelling units per acre.

**B. HOUSING ELEMENT**

- Goal 2 Maintain the City’s small town character and protect existing single-family neighborhoods.
- Pol. 2.1 The city’s land use and housing plans should strive to maintain the predominantly single family residential character of Milton while ensuring adequate capacity to accommodate growth forecasts.
- Pol. 2.2 New development should be consistent with the character of existing neighborhoods.
- Pol. 2.7 New divisions of land should be laid out and designed in such a way as to preserve neighborhood cohesiveness and match the existing housing pattern.

**VIII. CONSISTENCY WITH ZONING REGULATIONS**

**A. TITLE 17 – ZONING**

**MMC 17.14.010 Table of uses.**

DESCRIPTION OF USE	RS	RMD	RM	MX	B	M-1	CF	OS
<b>Residential Use Category</b>								
Dwelling, single-family	au	au	au	au				
acc: Accessory Use au: Authorized or Permitted Use cup: Conditionally Permitted Use su1: Type I Special Use su2: Type II Special Use								

**STAFF ANALYSIS:** *Single-family dwellings are an authorized or permitted use within the Residential (RS) zone.*

**MMC 17.15A.010 Land development dimensional regulations table.**

STANDARDS	RS <sup>4</sup>	RMD <sup>4</sup>	RM <sup>4</sup>	MX <sup>4</sup>	B	M-1	OS	CF
Minimum Lot Area	<b>8,000 sq. ft.</b>	4,000 sq. ft.	8,000 sq. ft.	3,000 sq. ft.	3,000 sq. ft.	12,000 sq. ft.	0 sq. ft.	3,000 sq. ft.
For an Accessory Apartment	<b>9,600 sq. ft.</b>	8,000 sq. ft.	n/a	n/a	n/a	n/a	n/a	n/a
For a Duplex Unit	<b>12,000 sq. ft.</b>	10,000 sq. ft.	n/a	n/a	n/a	n/a	n/a	n/a
Standard Net Density for Multiple Units	n/a	12 du/ac	12 du/ac	12 du/ac	n/a	n/a	n/a	n/a
Maximum Net Density <sup>1</sup>	<b>5.45 du/ac<sup>1</sup></b>	18.00 du/ac <sup>2</sup>	18.00 du/ac <sup>2</sup>	18.00 du/ac <sup>3</sup>	n/a	n/a	n/a	n/a



Minimum Lot Width	<b>75 ft.</b>	45 ft.	60 ft.	40 ft.	40 ft.	75 ft.	n/a	20 ft.
<sup>1</sup> The net density may not be exceeded.								
<sup>2</sup> These densities can only be achieved through the development of an adult retirement community, otherwise the standard net density applies.								
<sup>3</sup> These densities can only be achieved through the development of mixed business and residential developments (in the MX zone) or the development of adult retirement community housing (in the RM or MX zones), otherwise the net standard density applies.								
<sup>4</sup> In the RS, RMD, RM and MX zones the maximum density and the minimum lot size shall be met.								

**STAFF ANALYSIS:** *Both proposed lots as a result of this variance would meet all dimensional requirements excepting the minimum lot width, of which each proposed lot would only have a lot width of 62.5'. The purpose of this variance is to reduce the minimum lot width so as to allow for the subdivision of the property into two lots. No other feasible configuration for subdividing the property exists as the property would not meet the maximum density if a panhandle were utilized.*

**MMC 17.15B.010 Building bulk table.**

STANDARDS	RS	RMD	RM	MX	B	M-1	OS	CF
Maximum Height	<b>35 ft.</b>	35 ft.	35 ft.	45 ft.	45 ft.	40 ft.	35 ft.	35 ft.
Maximum Building Coverage <sup>1</sup>	<b>n/a</b>	50%	n/a	90%	60%	60%	n/a	60%
Maximum Net or Phased Floor/Lot Ratio: Square Feet <sup>2</sup>	<b>n/a</b>	n/a	n/a	3 to 1	1 to 1	1 to 1	n/a	1 to 1
Minimum Setback from Right-of-Way <sup>3,4</sup>	<b>20 ft.</b>	20 ft.	20 ft.	0 ft.	0 ft.	10 ft.	20 ft.	10 ft.
Minimum Side Yard Setback <sup>5</sup>	<b>7.5 ft.</b>	7.5 ft.	7.5 ft.	5 ft.	0 ft.	0 ft.	5 ft.	5 ft.
Minimum Rear Yard Setback <sup>6</sup>	<b>25 ft.</b>	10 ft.	25 ft.	0 ft.	0 ft.	0 ft.	7.5 ft.	7.5 ft.
Minimum Rear Yard	<b>7.5 ft.</b>	7.5 ft.	7.5 ft.	0 ft.	0 ft.	0 ft.	7.5 ft.	7.5 ft.

**STAFF ANALYSIS:** *The proposed site plan meets the requirements found in 17.15B for setbacks. Full conformance with 17.15B will be determined upon submittal of building plans for building permit review.*

**MMC 17.65.040 Review and approval criteria.**

The hearing examiner shall have the authority to grant a variance from the bulk and dimensional provisions of this title, Zoning, when the variance is consistent with the general purpose and intent of this zoning code and all the following conditions have been found to exist:

- A. That there are special circumstances applicable to the subject property, or to the intended use, such as shape, topography, location, or surroundings, that do not apply generally to the other property or class of use in the same vicinity and zone. Special circumstances should not be

predicated upon any factor personal to the owners or the ability to make more profitable use of the property.

- B. That the variance is necessary for the preservation and enjoyment of a substantial property right or use, possessed by other property in the same vicinity and zone, but when because of special circumstances is denied to the property in question.
- C. That the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the vicinity and zone in which the subject property is located.
- D. That the granting of the variance is consistent with the comprehensive plan.
- E. No variances to use standards are allowed. Variances shall be limited to bulk and dimensional standards.
- F. The variance requested is not borne from actions of the applicant, property owner, or agents of the applicant or property owner. (Ord. 1761 § 2, 2010; Ord. 1741 § 34, 2009).

**STAFF ANALYSIS:** *Staff has reviewed the applicant's request and concurs with their assessment that the variance is necessary to provide for the property to be subdivided. The property is nearly as deep as it is wide, which does not lend itself to being subdivided, as opposed to other lots within the City that are more rectangular. The variance would provide the ability to subdivide the 16,875sf lot into two lots, which would be the same property right enjoyed if the lot were less deep and had a greater width. Single family residences are a permitted use in the RS zone, and the Comprehensive Plan provides several goals and policies regarding maintaining the existing character of the single family neighborhoods. There are no duplexes in the immediate vicinity of this property, and the property is large enough to be subdivided, so no variances from the minimum lot size or density are requested. The resultant impact on the neighborhood would be the same number of units as if the lot were sized the same but had enough frontage to be subdivided and meet the minimum lot width. Additionally, approximately 11 properties in the immediate vicinity of the site have lot widths that are less than the required 75' minimum lot width (see Exhibit 10).*

*The variance would not be detrimental to the public welfare. The homes will still be subject to the required front, side and rear yard setbacks, which will actually result in less building coverage than if the property were developed with a duplex. With a reduced minimum lot size, the structure sizes of the two single family residences would likely need to be on the smaller end of what is typically developed on an 8,000sf lot in the City, which results in smaller overall massing of structures on the site as opposed to a duplex. A duplex on the property could end up rather large as it would only be constrained by two side yard setbacks of 7.5', occupying up to 50% of the lot, whereas the proposed subdivision would require each home to have 15' of side yard setbacks. Ultimately, if subdivided, the homes that would be developed would be more in keeping with the existing homes in the neighborhood than what could be constructed if a duplex were developed on the site, consistent with Comprehensive Plan policies Pol 2.1 and Pol 2.2 and the existing character of the neighborhood.*

*The variance is limited to bulk and dimensional standards (specifically, the minimum lot size contained in MMC 17.15A.010) and is not borne from any action of the applicant or property owner as it relates to the application of a standard in the City's Zoning code and the original plat of the property which resulted in lot dimensions that do not allow it to be subdivided while meeting the City's required minimum lot width.*

## **B. TITLE 13 – PUBLIC SERVICES**

**STAFF ANALYSIS:** *Full compliance with Title 13 will be determined and approved upon review of the short plat application.*

## **C. TITLE 16 – SUBDIVISIONS**

**STAFF ANALYSIS:** *Full conformance with Title 16 will be determined upon review of the short plat application.*

## **D. TITLE 18 – ENVIRONMENT**

**STAFF ANALYSIS:** *No critical areas or their buffers are present on the site.*

## **IX. CONCURRENCY MANAGEMENT**

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Pursuant to the requirements in the State Growth Management Act, the City of Milton is required to ensure that applicable public improvements or strategies to accommodate the impacts of development are made concurrent with the development. Pursuant to MMC 17.75, the City is required to review development applications to ensure that transportation facilities and services needed to maintain minimum level of service standards are available simultaneous to, or within a reasonable time after, development occupancy or use.

**STAFF ANALYSIS:** *Full conformance with MMC 17.75 will be determined upon review of the short plat application.*

## **X. AGREEMENTS**

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No special agreements have been entered into as a part of the proposal.

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**XI. CONCLUSIONS AND FINDINGS**

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1. The applicant is the owner of the property.
2. The property is zoned Residential (RS).
3. The City received an application for a variance on May 28, 2021. The application was determined to be completed on June 9, 2021.
4. Timely notice of the application was posted in accordance with MMC 17.71.120 on June 25, 2021. A notice was mailed to surrounding property owners within 500 feet of the project site, published in The Tacoma News Tribune, and posted as a board on the site.
5. The City posted notice of a neighborhood meeting in accordance with MMC 17.71.090 on August 6, 2021. The neighborhood public meeting was held on September 1, 2021 at City Hall.
6. Notice of this public hearing was posted in accordance with MMC 17.71.130 on February 15, 2022, at least 15 calendar days prior to the date of this hearing.
7. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.

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**XII. RECOMMENDATION**

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The City hereby recommends approval of the proposal. Following the Hearing Examiners decision, the City will either approve the submitted short plat, or deny it based on the lots not meeting the minimum lot width.