

**CITY OF TUMWATER
HEARING EXAMINER STAFF REPORT
Hearing Date: May 31, 2023**

Project Name: Kingswood Commercial Preliminary Binding Site Plan and Variance

Case Numbers: TUM-22-1731 and TUM-22-1732

Owner: Kingswood Capital, Inc.
701 W Georgia Street Suite 520 IBM Tower, Vancouver, CA V7Y1A1

**Project Proponent/
Representative:** Tyrell Bradley LDC Corp.
1411 Slate Ave NE, Suite 200, Olympia, WA 98506

Type of Action Requested: The project proponent is requesting approvals of a Preliminary Binding Site Plan (TUM-22-1732) and Variance (TUM-22-1731) from required zoning setbacks along a portion of Littlerock Road. The applications would subdivide an approximately 9-acre parcel into a new seven lot commercial binding site plan with associated infrastructure, parking and open space.

Project Location: The property is located at 1401 and 1551 Kingswood Drive. SW, Tumwater, WA 98512 at the corner of Littlerock Road and Kingswood Drive further defined as Thurston County Tax Parcel Nos. 12703240404 & 12703240403.

Project Permit: The following have been issued for the project:

1. Notice of Application issued on December 15, 2022 (Exhibit 4).
2. Pursuant to the State Environmental Policy Act (SEPA), the City of Tumwater Community Development Department, after review of a SEPA environmental checklist and other information, issued a Mitigated Determination of Non-Significance on March 16, 2023 (TUM-22-1724) (Exhibit 5).

Public Notification: Public notification for the June 28, 2023 public hearing was mailed to property owners within 300 feet of the subject property and various agencies, posted on-site and published in *The Olympian* on June 16, 2023, in conformance with Tumwater Municipal Code (TMC) 14.06 (Exhibit 6).

Staff Recommendation: Approval, subject to conditions identified at the end of the

staff report in Section IV *Recommendation*.

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I. BACKGROUND INFORMATION

A. Application and Review Process

The development application was submitted for Site Plan Review (TUM-22-0234) on February 23, 2022 and reviewed the Feasibility Site Plan on March 3, 2022. Staff and the applicant subsequently reviewed the application two additional times: Preliminary Site Plan Review on June 16, 2022 and Formal Site Plan Review on October 27, 2022.

A Preliminary Binding Site Plan (TUM-22-1732) approval is requested to allow for a seven lot commercial development with associated open space, parking, landscaping and infrastructure. A Variance (TUM-22-1731) is requested from required zoning setbacks along a portion of Littlerock Road.

The Preliminary Binding Site Plan (TUM-22-1732) and Variance (TUM-22-1731) applications were submitted on November 29, 2022.

The Preliminary Binding Site Plan (TUM-22-1732) and Variance (TUM-22-1731) applications were deemed complete on December 8, 2022.

Under TMC 2.58.090, review authority for Variance applications fall under the purview of the Hearing Examiner and under 14.08.020.A the Preliminary Binding Site Plan shall also be considered by the Hearing Examiner.

B. Existing Conditions

The property is vacant with the exception of BPA stanchions on the western portion of the property and existing vegetation and trees (Exhibit 3).

The topography of the property is mostly flat with some small changes in topography.

C. Project Description

The proposal is to subdivide two parcels which total approximately 9-acres into a seven lot commercial development with associated open space, parking and infrastructure.

Improvements will include drive aisles, sidewalks, parking, landscaping, stormwater,

open space, related infrastructure on-site and mitigation of impacts as stated within the MDNS.

II. REGULATORY FRAMEWORK

The proposal is subject to the following policies and regulations:

A. Tumwater Comprehensive Plan:

The project site is located in the Littlerock Neighborhood as designated by the Land Use Element of the City's Comprehensive Plan. The land use designation for the approximately 9-acre site is General Commercial (GC) and Utilities (UT) (Exhibit 26).

Section 2.6 *General Commercial* in the Land Use Element of the Comprehensive Plan states:

"The intent of the General Commercial designation is to support and implement the goals of the Tumwater Economic Development Element, which was adopted in 1990. Among these goals are the establishment of a new commercial center for Tumwater, the preservation of areas for commercial facilities, which make use of the close proximity to Interstate 5, and minimizing the undesirable impacts of such uses on the residential neighborhoods, which they serve."

Section 5.8 *General Commercial (GC)* in the Littlerock Neighborhood section of the Neighborhood Appendix of the Land Use Element of the Comprehensive Plan states:

"The areas along the west side of I-5 from the vicinity of the Trospen Road/Littlerock Road intersection to south of Tumwater Boulevard are designated General Commercial. These areas are characterized by the exposure to the freeway and the northern portion of this area already has intense commercial development including a Costco, Fred Meyer, Home Depot, Albertsons, Wal-Mart and a number of other smaller businesses."

"As commercial uses locate in this neighborhood, they should be designed to create as little impact as possible to residential uses on the west side of Littlerock Road. Please refer to the Littlerock Road Subarea Plan for recommendations regarding mitigation of commercial impacts on residential uses."

Section 2.12 *Utilities* in the Land Use Element section of the Comprehensive Plan discusses areas where utility corridors and other land uses overlap:

"The Utilities designation includes those areas of land devoted to the transport

and provision of utilities such as electricity, natural gas, telephone, and other utilities. Most of the areas receiving this designation in Tumwater are electrical utility easements. Utilities such as natural gas, telephone, and other utilities can be provided within areas designated for other land uses in ways that are compatible with other land uses. Utilities areas are also often compatible with path and trail connections. The Tumwater Utilities Element should be referenced for specific recommendations and information on utility provision in Tumwater.”

Staff Response and Recommended Finding:

The goals stated in the Comprehensive Plan to encourage the development of a freeway commercial business district consisting of retail/commercial and professional land uses is consistent with the proposed development.

The overall commercial development is proposed to be screened by perimeter landscaping with a higher screening requirement applied to any drive-through uses. Impacts to residential zoning should be minimal as the only residential zoned property are located across Littlerock Road adjacent to the southwest portion of the project. The use on that property is Tumwater Middle School, which is currently screened by the trees in the median within Littlerock Road and will be screened with additional perimeter landscaping planted with the development.

Other residential uses adjacent to the property include single-family residential uses located adjacent to this proposed development across Littlerock Road and a multifamily apartment building located south of the private access road for this development to the west of the proposed tree tract. Both of those properties are currently zoned General Commercial and the uses are pre-existing uses that were constructed under different zoning designations.

Additionally, staff has proposed a condition to ensure the Bonneville Power Administration (BPA), which owns an easement over a portion of the property has an opportunity to review the development plan and requires a land use agreement or approval prior to issuance of site development grading permit.

Staff finds that the project is consistent with the Comprehensive Land Use Plan with the proposed conditions.

B. Tumwater Transportation Plan: The Transportation Plan includes language speaking to regional consistency and coordination to address both motorized and non-motorized transportation links and corridor.

Staff Response and Recommended Finding: *Goal and policy excerpts from the Transportation Plan relevant to the project are as follows:*

Goal 9. Streets, Roads, and Bridges: Establish a street and road network that provides for the safe and efficient movement of people and goods while supporting adopted land use goals.

Policy 9.a: Design and construct multimodal, context-sensitive, complete streets and roads.

[...]

Policy 9.d Develop an interconnected grid of local streets and roads to increase individual travel options and neighborhood connectivity, while improving efficient use of the overall transportation system.

[...]

Policy 9.g: Ensure that street, road, and bridge projects are integrated with pedestrian amenities in districts and neighborhoods, and add lasting value to the community.

[...]

Policy 9.j: Meet pm peak Level of Service (LOS) standards:

- LOS E or better in Urban Core Areas [where these areas overlap with Strategy Corridors the LOS may exceed adopted standards].*
- LOS D or better elsewhere inside the City limits.*

A Transportation Concurrency Application along with a Trip Distribution Diagram was submitted for review by the Transportation Manager and Transportation and Engineering Director and was incorporated as a part of the Transportation Concurrency (Exhibit 15) and SEPA Review Mitigated Determination of Non-Significance (Exhibit 5). The transportation concurrency ruling indicating that traffic generated from the project will cause the level of service at Kingswood Drive and Tyee Drive to fall below the City's level of service standard and required mitigation through the construction of a compact roundabout at that intersection prior to issuance of the first CO within the development (Exhibit 15). Additionally, trips are proposed to be sent through the Tumwater Blvd – I-5 Interchange which will also require payment of mitigation fees or construction of the required interchange improvements and construction of a temporary signal prior to issuance of each building permit (Exhibit 5).

Staff finds that with the required mitigation proposed in the Transportation

Concurrency and MDNS this project will not adversely affect level of service standards and that the project is consistent with the Tumwater Transportation Plan.

- C. **Sustainable Development Plan for Thurston Region:** The Plan indicates that the regional community has set a target to reduce vehicle miles traveled and to preserve sensitive areas, farmland, forestland, prairies, and rural lands.

To implement the goal in the Plan to reduce vehicle miles traveled strategies are stated including connecting streets, sidewalks and trails to provide multiple safe travel routes and shorter distances for all travel modes and encouraging a multimodal transportation system that includes walk, bike, bus, carpool, vanpool, telework, car, truck, and rail transportation systems.

With the extension of sidewalks into the project and by providing bike parking throughout the development the project is contributing to the goal in the Plan of reducing vehicle miles traveled.

Staff finds that the project is not in conflict with the Sustainable Development Plan for Thurston Region.

- D. **Thurston Regional Trail Plan:** The City of Tumwater is a participating member of the Thurston Regional Planning Council (TRPC). TRPC adopted the Thurston Regional Trail Plan in December 2007.

The Regional Trails Plan defines a trail network blueprint and a set of guidelines and recommendations for all of Thurston County and its cities, towns and communities. The Goals and Policies section of the Plan serves to link local trail planning efforts within the broader context of planning the regional transportation network. The plan charts a systematic path creating interconnected corridors that improve access to community destinations.

Staff Response and Recommended Finding: *The project site is not affected by the regional trail network outlined in the Thurston Regional Trail Plan.*

Staff finds that approval of the project will not affect implementation of the Thurston Regional Trail Plan.

- E. **Hearing Examiner – TMC 2.58.090 and 14.08.020.A:** The Hearing Examiner has authority to review Variance requests.

Staff Response and Recommended Finding: *Variances require a public hearing and decision by the Tumwater Hearing Examiner. The Preliminary Binding Site Plan is being reviewed concurrently so both applications need to be considered by the Hearing Examiner per 14.08.020.A.*

Final Binding Site Plan approval authority is administrative and will be completed by City of Tumwater staff.

- F. Public Notice Requirements –TMC Chapter 14.06:** TMC Chapter 14.06 requires the City to provide public notification of certain application types by issuing a Notice of Application (TMC 14.06.010) and a Notice of Open Record Hearing (TMC 14.06.070).

Staff Response and Recommended Finding: *The Preliminary Binding Site Plan and Variance applications were deemed complete on December 8, 2022.*

Public notice for the Preliminary Binding Site Plan and Variance applications indicating that the applications were submitted and deemed complete was mailed to property owners within 300 feet of the subject property, affected agencies and posted on-site December 15, 2022; and published in the Olympian on December 15, 2022 (Exhibit 4).

- G. State Environmental Policy Act – TMC 16.04:** The City of Tumwater Community Development Department reviewed a SEPA Environmental Checklist and other information submitted by the project proponent and issued a Mitigated Determination of Non-Significance on May 19, 2023.

Staff Response and Recommended Finding: *The City of Tumwater Community Development Department, as lead agency, has completed environmental review in accordance with TMC 16.04, RCW 43-21C and WAC 197-11.*

The City's SEPA threshold determination (TUM-22-1724) was issued on May 19, 2023 (Exhibit 5).

- H. Tree Protection and Replacement Ordinance – TMC 16.08:** TMC Chapter 16.08 regulates the removal and preservation of existing trees on a site to be developed.

Staff Response and Recommended Finding: *A professional forester's report, tree inventory, and tree protection plan that complied with TMC Chapter 16.08 were submitted. A total of 75 trees were located on site. Of the 75 trees 58 were considered in good health and counted as "trees within the site". Of the 58 trees 31 are proposed to be retained. 16.08.070.R.4 states that in situations where a parcel of land to be developed does not meet the retention standards in an undeveloped state, the applicant shall be required to reforest the site to meet the applicable standard at a 1:1 ration as a condition of project approval. The required amount of tree retention is 12 trees/acre which would require the retention of 108 trees which is more than the amount of trees on site in pre-development conditions. With the proposed development, 31 of the 58 trees are proposed to be retained which will require the replanting of at*

least 77 trees on site.

Staff finds that the proposed preliminary binding site plan and preliminary landscape plan are consistent with TMC 16.08.

I. General Binding Site Plan Design Standards – TMC 17.12:

The subdivision is required to comply with the following standards of design and development as required by TMC 17.12.010.

- 1) **TMC 17.12.020 – Future Subdivision and Access:** All land divisions shall be designed to accommodate the future land division of adjoining land by providing for adequate future access and utility service. Pedestrian and bicycle access to schools, parks, shorelines, recreation areas, and open space shall be provided by walkway where street access is unsafe or inadequate.

Staff Response and Recommended Finding: *Part of the future access is to create internal vehicle connections so that patrons can get from one business to another without going out onto main roads. A connection is provided to the south that meets this requirement.*

Pedestrian access elements are required throughout the site and must be connected to the public sidewalk on Kingswood Drive and Littlerock Road.

With these conditions, Staff finds that the preliminary binding site plan is consistent with TMC 17.12.020.

- 2) **TMC 17.12.030 – Blocks:** Blocks in non-residential zones shall be dimensioned to accommodate the intended purpose of the land. All blocks shall be arranged so as to minimize the number of intersections and access points on arterial streets.

Staff Response and Recommended Finding: *The proposed subdivision is in the General Commercial (GC) zone district. Three public access points into the project are proposed, one from Kingswood Drive and two limited access points from Littlerock Road.*

Staff finds that the preliminary binding site plan is consistent with TMC 17.12.030.

- 3) **TMC 17.12.040 – Minimum Lot Size:** Lots or tracts shall conform to the size set forth in the zoning district unless dedicated or restricted by covenant for open space, park, recreational or other community or public use. In subdivisions intended for single family dwelling units or townhouse/row house development, a separate lot or tract shall be provided for each

dwelling unit, not including accessory dwelling units. If the land division is submitted in phases/divisions of development, each phase/division submitted for approval shall meet all provisions of this section.

Staff Response and Recommended Finding: *There is not a minimum or maximum lot size in the General Commercial (GC) zone district.*

There is one separate open space/stormwater tract located on the property intended to serve as the project storm drainage and open space requirements. The storm drainage and open space tracts must be restricted by covenant to tie maintenance responsibilities to the commercial association (Exhibit 2). There is also an access/utility easement connecting all of the lots throughout the site along with on-lot stormwater infrastructure that will connect to the larger storm tract (Exhibit 2).

The intended use for the lots within the proposed subdivision is as follows: Lot 1: Fast Food Restaurant, Lot 2: Oil Change Service Station; Lot 3: Fast Food Restaurant and Seated Restaurant; Lot 4: Retail/Office; Lot 5: Fast Food Restaurant; Lot 6: Hotel and Lot 7: Car Charging Station. The intended use for the open space tract is to meet the project storm drainage and open space requirements.

The proposed preliminary binding site plan is not large enough to qualify for phasing as allowed for by TMC 17.14.090.

Staff finds that the preliminary binding site plan is consistent with TMC 17.12.040.

- 4) **TMC 17.12.060 – Residential Lot Building Sites:** Each residential lot in low density residential zones shall have a building site no less than 1,600 square feet in area within which a suitable building can be built and served by utilities and vehicular access unless dedicated or restricted by covenant for open space, park, recreation or other public use. The building site area herein required shall not exceed a 25% cross slope or include any very severe development limitation areas. Such building sites shall be indicated on the face of the preliminary land division.

Staff Response and Recommended Finding: *The proposed project is not in a low-density residential zone.*

Staff finds this section is not applicable to the project.

- 5) **TMC 17.12.070 – Natural Vegetation and Features:** Natural vegetation and features such as trees, streams, wetlands, and wildlife habitat shall be preserved to the greatest extent possible and in accordance with the requirements of Title 16 TMC and Chapter 18.47 TMC.

Staff Response and Recommended Finding: *A professional forester's report, tree inventory, and tree protection plan that complies with TMC Chapter 16.08 was submitted, reviewed, and is recommended for approval with the proposed preliminary binding site plan.*

Staff finds that the preliminary binding site plan is consistent with TMC 17.12.070.

- 6) **TMC 17.12.080 – Clearing and Grading:** Proposed clearing and grading should be minimized by the use of shared access driveways and careful location of streets and building sites.

Staff Response and Recommended Finding: *The proposed development shows trees #19-47 being retained in the tree tract within the southern portion of the project retaining the larger accumulation of trees that exist on the site in pre-developed conditions.*

Staff finds that the preliminary binding site plan is consistent with TMC 17.12.080.

- 7) **TMC 17.12.090 – Wetlands and Drainage:** Wetlands and natural drainage ways shall be subject to review under Chapters 16.28 (Wetlands) and 16.32 (Fish and Wildlife Conservation Areas), of this code.

Staff Response and Recommended Finding: *There are no wetlands or natural drainage ways on the property regulated by TMC Chapter 16 (Environment)*

Staff finds that the preliminary binding site plan is consistent with TMC 17.12.090.

- 8) **TMC 17.12.100 – Hazards:** Where land division and development of land may pose a hazard to the land division and nearby properties because of steep slopes, unstable soils, excessive stormwater runoff or soil erosion, the land divider shall have the burden of presenting the evidence satisfactory to the City of hazard mitigation. In the absence of such evidence, division of such land shall be denied.

Staff Response and Recommended Finding: *A preliminary geotechnical report addressing all the applicable requirements in TMC 16.20.050 was reviewed as part of this project and final versions will be approved concurrent with the site development grading permits.*

Staff finds that the preliminary binding site plan is consistent with TMC 17.12.100.

- 9) **TMC 17.12.110 – Streets:** The size of streets and their associated rights-of-way shall be as shown on the street standards chart for the class of street, which is appropriate to serve the land division, and anticipated community

traffic, existing and potential. In areas where the division is adjacent to an existing street, right-of-way dedications shall be made to the existing street centerline.

Staff Response and Recommended Finding: *The proposed internal driveways will be built to private road standards and provide access through an access easement to each lot. The internal driveways shall be maintained by the commercial association to the standards approved during site development grading permit review. The internal driveways and related infrastructure shall be constructed as shown within the shaded limits (Proposed Site Development Grading Pavement) of Exhibit 2 prior to the issuance of any building permit within the development.*

With these conditions, Staff finds that the preliminary binding site plan is consistent with TMC 17.12.110.

- 10) **TMC 17.12.120 – Driving Surfaces and Rights-of-Ways:** All roads shall be designed and constructed in accordance with the adopted “Development Standards for the City of Tumwater” in effect at the date of acceptance of the preliminary land division.

Staff Response and Recommended Finding: *As part of the site development/grading permit review, all roads shall be constructed pursuant to the specifications outlined in the City of Tumwater Development Guide. Approval of the Preliminary Binding Site Plan application (TUM-22-1732) is required for the internal driveway.*

Staff finds that the preliminary binding site plan is consistent with TMC 17.12.120 with the proposed conditions.

- 11) **TMC 17.12.130 – Cul-de-sacs:** All cul-de-sacs shall be designed in accordance with the adopted “Development Standards for the City of Tumwater” in effect at the date of acceptance of the preliminary land division. Parking is prohibited in the cul-de-sac turnarounds and shall be posted. An improved pathway for pedestrian and bicycle use shall be dedicated to the public to connect cul-de-sac streets to nearby areas where such a pathway is necessary to provide convenient access to schools, parks, public transit stops, shopping centers, other cul-de-sacs or pathways, and other community services, or as otherwise necessary for public convenience and safety. Such pathways shall be designed to maintain the safety of pedestrians and bicyclists and owners of properties adjacent to the pathway.

Staff Response and Recommended Finding: *The proposed project does not include cul-de-sacs.*

Staff finds this section is not applicable to the project.

- 12) TMC 17.12.140 – Street Signs: Street signs shall be installed by the subdivider as specified by the Community Development Department.

Staff Response and Recommended Finding: *No street signs are anticipated to be required with this development as the internal driveway will not be named. The development is anticipated to include commercial signage as permitted by the sign code (18.44).*

Staff finds that the preliminary binding site plan is consistent with TMC 17.12.140.

- 13) TMC 17.12.150 – Topography: All streets should be designed to conform to the topography of the site, in order to reduce street grades and minimize the need for cuts and fills.

Staff Response and Recommended Finding: *Streets are proposed to be designed to conform to the topography of the site which is generally level with a few mounds proposed to be graded flat.*

Staff finds that the preliminary binding site plan is consistent with TMC 17.12.150.

- 14) TMC 17.12.160 – Maximum street grades: Maximum street grades shall be in accordance with the adopted “Development Standards for the City of Tumwater”.

Staff Response and Recommended Finding: *All proposed street grades shall be designed in accordance with the adopted standards.*

Staff finds that the preliminary binding site plan is consistent with TMC 17.12.160.

- 15) TMC 17.12.170 – Street Names: All streets shall be named or numbered as specified by the City. The land divider is encouraged to submit requested street names to the City for its consideration.

Staff Response and Recommended Finding: *The street names and addresses for the preliminary binding site plan have been assigned by the City of Tumwater Building Official. Staff finds that the plat is consistent with TMC 17.12.170.*

- 16) TMC 17.12.180 – Lot Access: Each lot shall have a minimum of 10 feet of unobstructed access to a street, directly or by access easement.

Staff Response and Recommended Finding: *An access easement is proposed throughout the site that provides a minimum of 10’ of access. Staff finds that the*

preliminary binding site plan is consistent with TMC 17.12.180.

- 17) TMC 17.12.190 – Private Streets: Private streets shall be constructed to meet or exceed the design standards established on the street standards chart for the City. Public access to developments or parts of developments containing private streets shall not be limited by the use of gates or other measures.

Staff Response and Recommended Finding: *The proposed drive aisles shall be built to private road standards in accordance with the requirements outlined in the Tumwater Development Guide. The requirement is shown on the preliminary binding site plan (Exhibit 2) and varies in different portions of the development.*

With these conditions, Staff finds that the preliminary binding site plan is consistent with TMC 17.12.190.

- 18) TMC 17.12.200 – Underground Utilities: Electrical power, telephone, cable television, fiber optics and other transmission lines shall be installed underground.

Staff Response and Recommended Finding: *In accordance with TMC 17.12.200 and Section 3.14 of the Tumwater Development Guide, all utilities associated with this project shall be underground.*

With these conditions, Staff finds that the preliminary binding site plan is consistent with TMC 17.12.200.

- 19) TMC 17.12.210 –Park and open space area standards for divisions of land.

[...]

D. For new commercial or industrial binding site plans, short plats, and subdivisions of ten acres or more, a minimum of five percent of the gross site area shall be set aside for park and open space area. A commercial or industrial binding site plan, short plat, or subdivision that includes a master plan that provides for a park or open space area meeting the intent of this provision shall be considered to have fulfilled this requirement.

[...]

E. For the purpose of calculation of the park and open space area, the park and open space area shall be separate and distinct from required yards, setbacks, and landscaped areas.

[...]

L. Maintenance of park and open space areas shall be provided for as described in TMC Chapter 17.22.

Staff Response and Recommended Finding: *The preliminary binding site plan is 8.96 acres. Section D only requires that new commercial binding site plans of 10 acres or more provide open space. The commercial design guidelines still require open space totaling 1% of the ground floor non-residential building footprint plus 1% of the site area.*

Staff finds that the requirement of 17.12.210.D does not apply to this preliminary binding site plan. The design guideline open space requirements still apply and shall be shown on the site development grading permit.

J. Preliminary Land Division – TMC 17.14 and RCW 58.17: TMC 17.14 and RCW 58.17 regulate the submission, review criteria, and consideration of proposed divisions of land.

Staff Response and Recommended Finding: *The project proponent completed the pre-submission process described in TMC 17.14.020.*

The application submission requirements listed in TMC 17.14.030 have been met.

TMC 17.14.040 and RCW 58.17.110 require the Hearing Examiner to inquire into the public use and interest proposed to be served by the establishment of the proposed land division and any public dedications associated with a project.

Criteria to be considered include if appropriate provisions are made for, but not limited to, the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, other grounds, transit stops, potable water supplies, sanitary wastes, parks and recreation playgrounds, schools and school grounds, fire protection and other public facilities, and shall consider all other relevant facts, including the physical characteristics of the site, and determine whether the public interest will be served by the land division and dedication. Further, consideration shall be given for sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school.

Staff concludes that adequate provisions will be made for public health, safety, and general welfare as follows:

1. *New private drive aisles that comply with the City's current Development Guide are proposed to be constructed and maintained by the commercial association. In addition, fee-in-lieu payments will be paid for work that has*

been completed by the City along Littlerock Road.

2. *A storm drainage system complying with the City of Tumwater's 2021 Drainage Design and Erosion Control Manual will be constructed for the site. A preliminary storm drainage report, including a geotechnical investigation was submitted to support the preliminary design and will be approved as a part of the Site Development/Grading Permit.*
3. *The City of Tumwater Water Resources and Sustainability Department has issued a water and sewer availability ruling indicating that the City has the ability to serve the preliminary binding site plan with water and sewer connections (Exhibit 19).*
4. *Intercity Transit currently has a route that serves the site.*
5. *The site is not currently being considered by the Tumwater School District for their future needs.*
6. *Current City of Tumwater Fire Department facilities are adequate to service the proposed project.*

K. Tumwater Zoning Code – TMC Title 18:

1. GC General Commercial Zone District TMC 18.22 – Permitted Uses and Development Standards

Staff Response and Recommended Finding: *The project site is located in the General Commercial (GC) zone district (Exhibit 11).*

TMC 18.22.020 lists general retail sales (B), general offices (C), restaurants (H), automobile service stations including car washes (I), motels, hotels (K) and electric vehicle infrastructure (HH) as permitted uses in the General Commercial (GC) zone district.

The maximum impervious surface in the General Commercial (GC) zone district according to TMC 18.22.050(B) is 85% of the lot area.

The maximum building height in the General Commercial (GC) zone district according to TMC 18.22.050(C) is 65 feet.

The minimum required setbacks for the General Commercial (GC) zone district for the perimeter of the property and the proposed lots according to TMC 18.22.050(D) are provided below.

The minimum required setbacks for the General Commercial (GC) zone district around the perimeter of the property are as follows:

- a. *Zero feet along all public street frontages except where any structures or portions of structures are adjacent to any residential zoning district, the minimum structural setback shall be 20'. Where structures are constructed over one story, the setback of the structure from the adjacent property line or lines shall be increased by ten feet for every story above the ground level story of the proposed new building, and shall be screened from view in accordance with TMC Chapter 18.47.*
- b. *0 feet along the other boundaries.*

The project proponent filed a Variance application (TUM-22-1731) from the Single-Family Low-Density Residential (SFL) zone district setback requirements that necessitate that the project provide a 20-foot minimum setback along the portion of the boundary that abuts a Single-Family Low-Density Residential (SFL) zone district.

The project site is in the General Commercial (GC) zone district with the adjacent Tumwater Middle School, a Tumwater School District property, in the Single-Family Low-Density Residential (SFL) zone district. The school property borders the subject property to the southwest of the site across Littlerock Road. The current use of the school property land is a parking lot and it is not used for single-family residences. Littlerock Road separates the parcels with over 60' of right-of-way which includes a landscaped median in the middle of the road (Exhibit 10).

The project proponent has applied for a variance to reduce the required setback adjacent to the Single-Family Low-Density Residential (SFL) zone district. See the discussion in Section II.K.4 Tumwater Zoning Code – TMC Title 18, Variances – TMC 18.58 below.

With the approval of the Variance, Staff finds that the preliminary binding site plan is consistent with the external property setback requirements of TMC 18.22.050(D).

2. Aquifer Protection Overlay (AQP) zone district - TMC 18.39 – Restricted Land Uses

Staff Response and Recommended Finding: *The intent of the aquifer protection (AQP) overlay zone district is to identify, classify, and protect vulnerable and/or critical aquifer recharge areas within the City and urban growth area. Protection is to be accomplished by controlling the use and handling of hazardous substances.*

The uses proposed with the preliminary binding site plan are not restricted land uses in the aquifer protection (AQP) overlay zone district.

3. Binding Site Plans – TMC 17.08

Staff Response and Recommended Finding: *A Preliminary Binding Site Plan application accompanied the Variance application for this project on November 29, 2022. The application was submitted to provide for a more flexible method for subdividing commercial zoned property. The application was deemed complete on December 8, 2022 (Exhibit 4).*

17.08.010 states that the intent of the binding site plan section is to provide an alternative method of land division for the sale or lease of commercial or industrial zoned properties, condominiums and manufactured home parks that is more flexible than traditional land division procedures. Binding site plans allow for shared access, parking, streets and other required aspects of development such as park and open space areas. Binding site plans promote orderly and efficient growth and expedite the land use review process.

Elements of this project that utilize the more flexible nature of a preliminary binding site plan process include drive aisles built to private road standards, shared parking, shared infrastructure and uses approved on each lot.

Under TMC 14.08.020.A, review authority for projects being reviewed concurrently with a variance shall be considered by the Hearing Examiner.

As discussed above, Staff finds that:

- *This proposal is in conformance with the Tumwater Comprehensive Plan.*
- *This proposal is consistent with the surrounding area.*
- *This proposal complies with the uses allowed in the General Commercial (GC) zone district.*

4. Variances – TMC 18.58:

Staff Response and Recommended Finding: *An application for a Variance accompanied the Preliminary Binding Site Plan application for this project and the application was submitted on November 29, 2022 (Exhibit 8). The application was deemed complete on December 8, 2022 (Exhibits 4). Under TMC 2.58.090, review authority for Variance applications fall under the purview of the Hearing Examiner.*

The project proponent is requesting approval of a Variance (TUM-22-1731) from zoning setbacks (TMC 18.22.050(D)).

In accordance with TMC 18.58.040, a variance may be granted, after investigation, provided all of the following findings of fact exist:

- 1. That special conditions exist which are peculiar to the land, such as size, shape, topography, or location, not applicable to other lands in the same district, and that literal interpretation of the provisions of this title would deprive the property owners of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title;*
- 2. That the special conditions and circumstances are not the result of actions of the applicant;*
- 3. That the granting of the variance requested will not confer a special privilege to the property that is denied other lands in the same district;*
- 4. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements of the vicinity and zone in which the subject property is situated; and*
- 5. That the reasons set forth in the application justify the granting of the variance, and that the variance, if granted, would be the minimum variance that will make possible the reasonable use of the land.*

In no event may a variance be granted if it would permit a use that would not be permitted as a primary, accessory or conditional use in the district involved.

Staff findings:

- 1. That special conditions exist which are peculiar to the land, such as size, shape, topography, or location, not applicable to other lands in the same district, and that literal interpretation of the provisions of this title would deprive the property owners of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title.*

Setbacks:

The intent of the code regarding setbacks (TMC 18.22.050(D)) is to provide additional separation between single-family residences and commercial buildings that are taller. In this case, proposed Lots 3 through 5 of the Preliminary Binding Site Plan are adjacent to the Single Family Low Density Residential (SFL) zone district to the west. This property is owned by the Tumwater School District and it contains a parking lot for the Tumwater Middle School, but has no single-family residences.

In addition, Littlerock Road separates the properties with at least 60' of right-of-way

which provides ample setback from the proposed commercial uses as the maximum permitted height in the General Commercial (GC) zone district is 65'. If a building were proposed at the maximum height, the required setback from a residential district would be 80' (20' for the initial story and 60' for the remaining 55' in height). Lot 3 is proposed to be closest to the property line and achieves approximately 70' from the proposed building footprint to the back of sidewalk on the west side of Littlerock Road adjacent to the SFL zone district.

Due to the special conditions of this project, staff finds that allowing for this variance is justified.

2. *That the special conditions and circumstances are not the result of actions of the applicant.*

Setbacks:

The special circumstances regarding the proximity of the General Commercial property adjacent to the Single Family Low Density zone district is not the result of actions by the applicant. The 20-foot setback from residential zone districts is achieved through the right-of-way and is not necessary on the subject property.

Due to the special conditions of this project, staff finds that allowing for this variance is justified.

3. *That the granting of the variance requested will not confer a special privilege to the property that is denied other lands in the same district.*

Setbacks:

Based on previous statements about the project, the intent of the code is met regarding setbacks complying with City standards, therefore not conferring any special privilege on this property.

4. *That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property of improvements of the vicinity and zone in which the subject property is situated.*

Setbacks:

The intent of the code is met with this proposal and granting this variance will not be materially detrimental to the public welfare or injurious to the surrounding properties.

5. *That the reasons set forth in the application justify the granting of the variance, and that the variance, if granted, would be the minimum variance that will make possible the reasonable use of the land.*

The issues as stated above relating to setback is the only item that needs to be addressed for the Preliminary Binding Site Plan to make reasonable use of the land. If the variance is granted, the proposal can continue forward through the development process.

Staff recommends approval of this Variance for the project. If approved, Staff finds that the Preliminary Binding Site Plan development is consistent with the Tumwater Municipal Code with the attached conditions.

5. Signs – TMC 18.44

Staff Response and Recommended Finding: *The project intends to use the provisions in 18.44.155 to allow for additional signage within a multiple building complex/multiple tenant building. Permits are required and height restrictions apply depending on the location of the sign(s).*

III. PUBLIC COMMENT

Three emails were received during the public noticing for the project application: one email from the Washington State Department of Ecology, Nisqually Indian Tribe and the Squaxin Island Tribe (Exhibits 13 and 14).

Exhibit 13. Nisqually Indian Tribe Comments, dated December 13, 2022

Exhibit 13. Squaxin Island Tribe Comments, dated December 14, 2022

Exhibit 14. Washington State Department of Ecology Comments, dated March 30, 2022

IV. RECOMMENDATION

Pursuant to TMC 2.58.110, staff recommends approval of the Preliminary Binding Site Plan and Variance requests described herein with the following conditions:

1. Conditions listed in the DRC Formal Site Plan Review Letter dated November 22, 2022 (Exhibit 23).
2. Prior to any ground disturbance work or site development grading permit issuance a cultural resource study shall be reviewed and approved by the Department Archeological and Historic Preservation, Squaxin Island Tribe and Nisqually Indian Tribe.
 - A. The project proponent shall follow the procedures in the City of Tumwater Standard Inadvertent Archaeological and Historic

Resources Discovery Plan.

- B. If any archaeological or cultural resources are uncovered during construction, the project proponent shall stop work in the area of discovery; follow the procedures in TMC 18.40.065 *Inadvertent Discovery of Archaeological and Cultural Resources*; and contact the City of Tumwater, the Washington State Department of Archaeology and Historic Preservation, and the Squaxin Island Tribe's Archaeologist, Shaun Dinubilo via email at sdinubilo@squaxin.us.
- C. Should archeological artifacts be encountered during construction, all of the following shall apply:
 - i. Construction activity shall be immediately suspended;
 - ii. The contractor shall immediately notify the City of Tumwater Community Development Department;
 - iii. The contractor shall immediately notify the Washington State Department of Archeology and Historic Preservation; and
 - iv. The contractor shall immediately notify potentially affected tribal nations including, but not limited, to the Squaxin Island Tribe, Chehalis Tribe, and Nisqually Tribe.
- 3. Conditions listed in the Mitigated Determination of Non-Significance dated March 16, 2023 (Exhibit 5).
- 4. Should contaminated soils be encountered during construction, all of the following shall apply:
 - A. Construction activity shall be immediately suspended;
 - B. The contractor shall immediately notify the Washington State Department of Ecology;
 - C. Contaminated materials shall be properly handled, characterized, and disposed of consistent with applicable regulations.
- 5. All grading and filling of land must utilize only clean fill. All other materials may be considered solid waste and permit approval may be required from the local jurisdictional health department prior to filling. All removed debris resulting from this project must be disposed of at an approved site. Contact the

Thurston County Health Department for proper management of these materials.

6. If contamination is suspected, discovered, or occurs during construction of the proposed project, testing of the potentially contaminated media must be conducted. If contamination of soil or groundwater is readily apparent, or is revealed by testing, Ecology must be notified. Contact the Environmental Report Tracking System Coordinator for the Southwest Regional Office (SWRO) for the Washington State Department of Ecology at (360) 407-6300. For assistance and information about subsequent cleanup and to identify the type of testing that will be required, contact Thomas Middleton with the SWRO, Toxics Cleanup Program at (360) 407-7263.
7. Disposal of construction debris and overburden associated with construction and grading activity that is not suitable for fill is required to be disposed of at an approved location.
8. The project proponent shall follow the requirements of the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit issued for the project by the Washington State Department of Ecology.
9. The City's water and sewer utilities shall be extended to serve the needs of the development. The utility extensions shall be in accordance with the Tumwater Development Guide requirements in place at the time the preliminary binding site plan application was vested. All necessary right-of-way and/or easement will need to be dedicated to the City of Tumwater.
10. The project proponent shall be responsible for providing the City with all costs associated with the installation of water, sewer, street, and storm drainage systems that are dedicated to the City of Tumwater.
11. The engineering plans shall show all existing and proposed utilities and easements including streetlights, street trees, water, sewer, storm, gas, cable, power, telephone, signage, and striping. Provide street sections showing dimensions of existing and proposed improvements. Include the line sizes on the water and sewer mains and services.
12. All engineering designs and construction shall be in accordance with the City of Tumwater's Development Guide and WSDOT standards.
13. All street construction, utility installation and storm drainage work requires engineered plans certified by a professional engineer licensed to practice in the State of Washington. The plans shall be submitted for review and approval by the City.

14. The project proponent shall be responsible for all plan check, inspection, and connection fees.
15. Any public or private utility relocation necessary to construct the project shall be the sole responsibility of the project proponent.
16. The project proponent shall be responsible for the maintenance and timely repair of all public improvements for a period of 30 months following final certification by the City and shall submit a surety for maintenance equal in value to fifteen (15) percent of the total value of the required public improvements certified by the Transportation and Engineering Director. Please refer to Chapter 3 of the Development Guide for further clarification.
17. All legal descriptions on documents submitted to the City must be accompanied with an appropriate drawing that the City can use to verify the legal description. All engineered drawings and legal exhibits shall be made available in PDF format with 300 DPI or greater. The documents shall conform to requirements for proper recording as established by Thurston County and the City of Tumwater.
18. The owner or owner's representative is also responsible for furnishing the City with electronic files, compatible with release 2017 or newer Auto-CAD format. Provide individual drawings independent of x-refs. Include all non-standard font files and plot files. Also, please furnish PDF files printed from the Auto-CAD files 300 DPI or greater. A storm water maintenance agreement, utility maintenance agreement, easements and bills-of-sale will also be required.
19. The City vertical and horizontal control datum is NGVD 29 and NAD 83(HARN) / Washington South U.S. Survey Feet respectively.
20. A note shall be added on the site plan that the Professional Land Surveyor responsible for the surveying of the project must obtain a permit from the Washington State Department of Natural Resources before any existing survey monuments are disturbed.
21. The project proponent shall provide a cover page with all dedication and easement language.
22. Any water main extension will require a minimum of an eight-inch system. The main size will depend on the fire flow requirements for this project. The system shall be designed for a maximum velocity of eight feet per second.
23. All sanitary sewer mains must be TV'd. The project proponent shall provide a

tape of the sanitary sewer line prior to recording the final binding site plan.

24. A drainage design and erosion control plan will be required according to City of Tumwater's 2021 Drainage Design and Erosion Manual.
25. Maintenance of the on-site stormwater system will be the responsibility of the project proponent, their successors, or assigns. A stormwater maintenance agreement must be recorded against the property prior to recording the Final Binding Site Plan.
26. Fire hydrants shall be provided as shown on the preliminary binding site plan.
27. All water wells on site shall be abandoned in accordance with the Washington State Department of Ecology requirements. A permit from the Washington State Department of Ecology shall be obtained for each well to be abandoned.
28. If applicable, on and off-site well locations within 200 feet of the proposed development shall be shown on the Final Binding Site Plan with the associated 100-foot protective radii.
29. All septic systems on the property shall be abandoned in accordance with the Thurston County Environmental Health requirements. A permit shall be obtained from Thurston County Environmental Health for each separate system to be abandoned.
30. Impact fees for traffic will be assessed to each lot in the preliminary binding site plan as Building Permits are issued. The impact fees will be in accordance with the most current fee resolution adopted by the City at the time of vesting of the Building Permit applications.
31. Dumpsters are required to be gated and screened with masonry walls and/or sight-obscuring fence with landscaping.
32. Dumpsters and containers with an individual capacity of 1.5 cubic yards or more shall not be stored in buildings or placed within five feet of combustible walls, openings or combustible roof eaves lines unless the area is protected by an approved automatic sprinkler system per IFC Section 304.3.3.
33. The project proponent must maintain a current Plat Name Reservation Certificate approved by the Thurston County Auditor.
34. If required by the Thurston County, property taxes must be paid in full for the current year, including any advance and delinquent taxes, before a Final Binding Site Plan can be recorded.

35. A Commercial Association is required to be formed for the project. Prior to recording the Final Binding Site Plan, the project proponent shall supply the City with copies of the grantee organization's articles of incorporation and bylaws, and with evidence of a binding commitment to convey. The articles of incorporation shall provide that membership in the organization shall be appurtenant to ownership of land in the land division; that the corporation is empowered to assess such land for costs of construction and maintenance of the improvements and property owned by the corporation, and that such assessments shall be a lien upon the land.
36. If required by USPS, consolidated postal drop off facilities shall be provided for the site. The location of the facilities must be coordinated and approved by the U.S. Postal Service.
37. The building designs shall conform to the City of Tumwater's Citywide Design Guidelines. Architectural elevation drawings of each building-type and narrative description stating how the design guideline requirements are being met shall be submitted for review and approval prior to issuance of Building Permits.
38. Exterior walls are required to be of one-hour fire-rated construction when less than ten feet to the property line. Protected openings are required when less than five feet to the property line. No openings are permitted less than three feet to the property line.
39. Water cross connection control shall be provided in accordance with the provision of the Plumbing Code. Cross connection control devices or assemblies must be models approved under WAC 246-290-490.
40. If water pressure at the meter exceeds 80 psi, a pressure-reducing valve will be required to be installed on the private side of the water line.
41. Backwater valves shall be installed for each structure when the sewer is lower than the street manhole.
42. Automatic sprinkler systems shall be provided throughout all buildings in this project.
43. Fire alarm systems shall be required to be installed in all buildings in this project.
44. The project proponent must coordinate with the City of Tumwater Building Safety Official on the location of the City of Tumwater Fire Department connection, post indicator valve, remote annunciator panel, and Knox box's. The locations of the fire suppression equipment must be approved by the City of

Tumwater Building Safety Official.

45. Any dead-end fire access roads that are in excess of 150 feet in length shall be provided with an approved turnaround.
46. Fire lane signs and yellow striping shall be provided on-site to identify the City of Tumwater Fire Department access roads and prohibit the obstruction thereof.
47. When any portion of a building constructed on the site is in excess of 150 feet from a water supply on a public street, as measured by an approved route around the exterior of the building, there shall be provided on the site fire hydrants capable of supplying the required fire flow. Placement of the hydrants shall be coordinated with the City of Tumwater Building Safety Official.
48. The water main shall be looped around the entire site, extend to adjacent properties for future connection, and connect to existing stubs on adjacent properties extended by previous projects.
49. Building plans and specifications shall be prepared and stamped by an architect or an engineer licensed to practice in the State of Washington.
50. Building Permit applications shall include architectural, structural, plumbing, mechanical, and energy plans, and specifications. Fire sprinkler and fire alarm permit applications and plans may be submitted separately from the main permit application.
51. All new building projects are required to provide for the storage of recycled materials and solid waste. The storage area shall be designed to meet the needs of the occupancy, efficiency of pick-up, and shall be available to occupants and haulers.
52. The Development Plan shall be reviewed by Bonneville Power Administration (BPA). A Letter of Approval from BPA, or a Land Use Agreement which assures the right to construct and maintain the improvements shown on the Development Plans shall be submitted to the City of Tumwater prior to site development grading permit issuance.

**Submitted on Behalf
Of the City of
Tumwater
Community
Development**

Department by/

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Report Issue Date: June 16, 2023

List of Exhibits:

1. Staff Report
2. Preliminary Binding Site Plan Preliminary Development Plans
3. Vicinity Map
4. Notice of Application
5. MDNS with SEPA Checklist (TUM-22-1724)
6. Public Hearing Notice 06-16-2023
7. Preliminary Binding Site Plan Application
8. Variance Application
9. Variance Narrative - Applicant
10. Variance Request Exhibit
11. Zoning Map
12. Public Notice Certification
13. Notice of Application Comments
14. MDNS Comments
15. Transportation Concurrency Determination 03-01-2023
16. Drainage Report
17. Geotechnical and Stormwater Evaluation
18. Traffic Impact Analysis with Exhibits 05-25-2022
19. Tumwater Water and Sewer Availability Certificate
20. Mazama Pocket Gopher Studies
21. Foresters Report
22. Preliminary Landscape Plan
23. Formal Site Plan Review Letter (TUM-22-0234)
24. Home Depot Approval Letter
25. Title Report