

Plain text = existing code with no changes

~~Strikethrough~~ = existing code to be deleted

Underlined = new code to be added

~~Double Strikethrough~~ = existing code moved to another location

Double Underline = existing code moved from another location

Italics = instructions to code reviser

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Chapter 17.02 - GENERAL PROVISIONS

17.02.050 Administrative responsibilities.

A. Director.

1. The director shall have the responsibility for administering the provisions of this title including the interpretation and application of its provisions;
2. The director shall make final decisions on all permits and approvals not explicitly delegated to another decision-making body;
3. The director shall act as a coordinating agent to ensure that the regulatory process is expeditious. All departments of city government shall cooperate with the director in the exercise of his or her duties relative to land use controls and regulations;
4. ~~The director shall establish a city of Blaine technical review committee (TRC) with the director serving as chairperson; and~~
5. ~~The director shall serve as the secretary of the review authority.~~

B. ~~Technical Review Committee (TRC).~~

1. ~~In addition to the director, the TRC shall be made up of the director of public works or his or her designee, and the building official or his or her designee. The director may expand the membership of the committee to include other city staff members with particular expertise in the matter under consideration;~~
2. ~~The TRC shall convene to review and make recommendations on the following applications prior to their approval by the approving authority:~~
 - a. ~~Applications for short and long subdivision;~~
 - b. ~~Applications for rezones and comprehensive plan amendments;~~
 - c. ~~Applications for annexations; and~~
 - d. ~~Such other applications or matters as the director may choose to bring before the committee for their consideration;~~
3. ~~The role of the TRC is advisory only. The final decision on any matter brought before the TRC rests with the approving authority. The interpretation and the application of a particular statute, code, rule or policy rests with the administrative official charged with the responsibility for~~

administering that statute, code, rule or policy and is not subject to review by the TRC unless such review is requested by the responsible director.

C. Hearing Examiner (HE).

1. The hearing examiner shall conduct open record hearings and prepare a record thereof, and make a final decision upon the following matters except as provided in subsection (C)(2) of this section:

a. Applications for zoning conditional use permits;

b. Applications for shoreline management substantial development permits;

c. Applications for shoreline management program conditional use permits;

d. Project permits that require a variance request;

e. Applications for short plat approval when a short plat variance is being requested;

h. Applications for zoning or shoreline variances which accompany any of the applications listed in this subsection;

i. Appeals from any orders, requirements, permits, decisions or determinations made by the director in the administration of BMC Titles 16 and 17~~except as provided in subsection (D)(1)(i) of this section;~~

j. Appeals from SEPA determinations of significance, determinations of nonsignificance, and mitigated determinations of nonsignificance; and

k. Revocation proceedings involving all project proposals requiring an open record hearing.

2. The hearing examiner shall conduct an open record hearing and prepare a record thereof, and make recommendations to the city council for approval or disapproval of applications made for the project permits listed below:

a. Planned unit development permits;

b. Applications for long subdivision approval;

c. Applications for general binding site plan approval and

d. An application for any of the project permits for which the hearing examiner would normally make a final decision as provided in subsection (C)(1) of this section, when associated with a long subdivision or a planned unit development. The decision on these permit applications shall instead be in the form of a recommendation to be forwarded to the city council for final approval.

D. **Planning Commission.**

~~1. The **planning commission** shall conduct open record hearings and prepare a record thereof, and make a final decision upon the following matters except as provided in subsection (D)(2) of this section:~~

~~a. Applications for zoning conditional use permits;~~

~~b. Applications for shoreline management substantial development permits;~~

~~c. Applications for shoreline management program conditional use permits;~~

~~d. Repealed by Ord. 2811;~~

~~e. Project permits that require a variance request;~~

~~f. Applications for short plat approval when a short plat variance is being requested;~~

~~g. Repealed by Ord. 2811;~~

~~h. Applications for zoning or shoreline variances which accompany any of the applications listed in this subsection (D)(1); and~~

~~i. Appeals of administrative decisions made by the director in the administration of the design guidelines and sign review regulations.~~

~~2. The **planning commission** shall conduct an open record hearing and prepare a record thereof, and make recommendations to the city council for approval or disapproval of applications made for the project permits listed below:~~

~~a. Repealed by Ord. 2879;~~

~~b. Planned unit development permits;~~

~~c. Applications for long subdivision approval;~~

~~d. Applications for general binding site plan approval; and~~

~~e. An application for any of the project permits for which the **planning commission** would normally make a final decision as provided in subsection (D)(1) of this section, when associated with a long subdivision or a planned unit development. The decision on these permit applications shall instead be in the form of a recommendation to be forwarded to the city council for final approval.~~

1. The **planning commission** shall review and make recommendations to the city council on proposed amendments to the land use and development code and on proposed new regulations thereunder.

Chapter 17.06 - PROJECT REVIEW AND APPROVAL PROCEDURES

17.06.040 Land use final decisions and land use decision types.

A. Land Use Decision Categories. Project applications and final decisions shall be categorized as Type I-ADM, Type II-HE, ~~Type II-PC~~, Type II-CC or Type III-LEG, and are defined as follows:

1. Type I-ADM. Type I-ADM final decisions are administrative decisions, rulings, and code interpretations made by the director as authorized under the Blaine land use and development code;

2. Type II. Type II final decisions are quasi-judicial decisions and fall under one of ~~three~~ two categories as listed and described below. Wherever the term “Type II” is used by itself it shall be construed to include any or all three categories of Type II final decisions.

a. Type II-HE. Type II-HE final decisions are quasi-judicial decisions made by the hearing examiner following an open record hearing and can include project permit approvals and appeals of administrative final decisions;

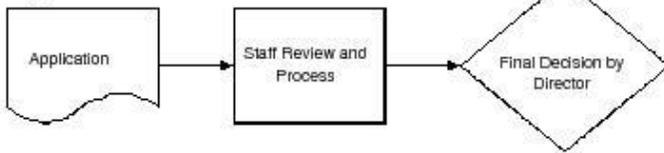
~~b. Type II-PC. Type II-PC final decisions are quasi-judicial decisions made by the~~ planning commission ~~following an open record hearing;~~

b. Type II-CC. Type II-CC final decisions are quasi-judicial decisions made by the city council. With few exceptions, Type II-CC final decisions are closed record decisions based on the record developed at an open record hearing held either by the planning commission ~~or~~ hearing examiner. Type II-CC final decisions include, but are not limited to, decisions regarding land use appeals and on certain types of land use approvals;

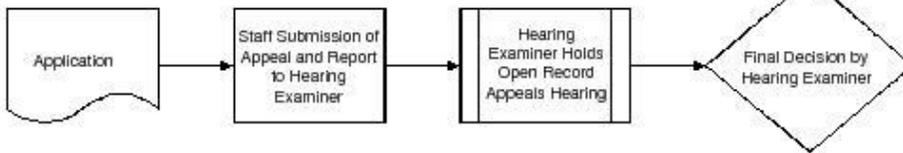
3. Type III-LEG. Type III-LEG final decisions are legislative decisions made by city council and are not subject to the review procedures outlined in this chapter. Type III-LEG final decisions for amendments to Blaine’s comprehensive plan are outlined in Chapter 16.04 BMC. Type III-LEG final decisions for amendments to the land use and development code are outlined in Chapter 17.04 BMC.

B. The four flow charts below provide summary information about the characteristics of Type I and Type II decisions, noting, among other things, who makes the final decision and whether an open record hearing is required.

Type I-ADM Land Use Decision



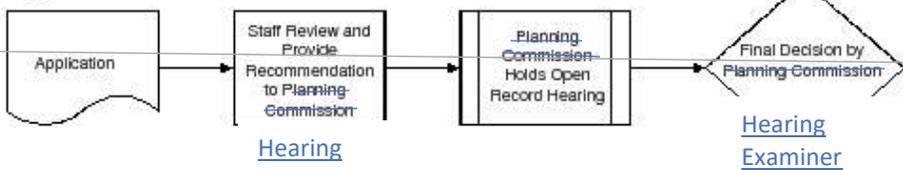
Type II-HE Land Use Appeal Decision



HE

Hearing Examiner

Type II-PC Land Use Decision

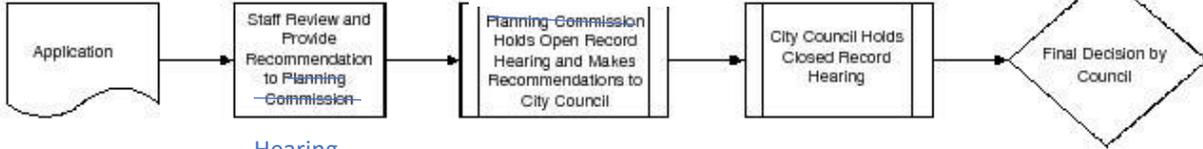


Hearing Examiner

Hearing Examiner

Hearing Examiner

Type II-CC Land Use Decision



Hearing Examiner

C. Hierarchy of Land Use Decision Types. Land use decision types shall be ranked in order of authority from lowest level to highest as follows: Type I-ADM, Type II-HE, ~~Type II-PC~~, Type II-CC and Type III-LEG.

D. In the event of uncertainty as to the applicable decision type for a specific permit or approval, the director shall make the final decision.

E. Consolidated Review – Applicable Decision Type. Land use proposals undergoing consolidated review pursuant to BMC [17.06.150](#) where more than one decision type applies shall be processed under the highest level land use decision type applicable to the proposal.

F. Determination of Land Use Decision Type. Land use decision types shall be assigned to land use permits and approvals [as depicted in Table 17.06.A](#) ~~within each chapter of this title.~~ (Ord. 2554 § 3, 2003)

	<u>Type I-ADM</u>	<u>Type II HE</u>	<u>Type II-CC</u>
Division 1			
<u>Building permit (compliance with Title 17 development standards)</u>	<u>X</u>		
<u>Administrative interpretations</u>	<u>X</u>		
<u>Concurrency review</u>	<u>X</u>		
<u>Site Plan Review</u>	<u>X</u>		
<u>Building Variance</u>		<u>X</u>	
Division 3			
<u>Food truck on private property</u>	<u>X</u>		
Division 4			
<u>Boundary Line Adjustment</u>	<u>X</u>		
<u>Lot Consolidation</u>	<u>X</u>		
<u>Short Subdivision</u>	<u>X</u>		
<u>Preliminary Plat</u>			<u>X</u>
<u>Final Plat</u>			<u>X</u>
<u>Plat Variance</u>		<u>X</u> ¹	<u>X</u> ²
<u>General Binding Site Plan</u>			<u>X</u>
<u>Specific Binding Site Plan</u>	<u>X</u>		
<u>Planned Unit Development (PUD)</u>			<u>X</u>
<u>PUD Master Plan</u>	<u>X</u>		
<u>PUD Modification</u>	<u>X</u>		
<u>PUD Amendment</u>			<u>X</u>
Division 5			

¹ When associated with a boundary line adjustment, short subdivision, or specific binding site plan

² When associated with a preliminary plat or general binding site plan

	<u>Type I-ADM</u>	<u>Type II HE</u>	<u>Type II-CC</u>
SEPA Exemption	<u>X</u>		
SEPA threshold determinations	<u>X</u>		
Shoreline exemptions	<u>X</u>		
Shoreline Substantial Development Permit		<u>X</u>	
Shoreline Conditional Use Permit		<u>X</u>	
Shoreline Variance Permit		<u>X</u>	
Critical Areas Review	<u>X³</u>	<u>X⁴</u>	
Land Disturbance Permit	<u>X</u>		
Flood Development Permit	<u>X</u>		
<u>Division 6</u>			
Conditional Use Permit		<u>X</u>	
Nonconformance Decisions	<u>X</u>		
Home Occupations	<u>X</u>		
Bed and Breakfast Business License	<u>X</u>		
In-Home Child of Adult Care Business License	<u>X</u>		
Accessory Dwelling Units	<u>X⁵</u>	<u>X⁵</u>	
Accessory Structure Setbacks	<u>X</u>		
Public Utilities (excluding those in public rights-of-way)		<u>X</u>	
Wireless telecommunication facilities	<u>X⁶</u>	<u>X⁶</u>	

³ For critical areas determination, exceptions and activities allowed in critical areas and their associated buffers, and buffer reduction or averaging of > 25% of standard buffer width

⁴ For buffer reduction < 25% of standard buffer width, critical areas variance or reasonable use exception

⁵ Determined by the district regulations and pursuant to BMC 17.102.030.

⁶ Determined by facilities type and location, see BMC 17.106.030

	<u>Type I-ADM</u>	<u>Type II HE</u>	<u>Type II-CC</u>
Essential Public Facilities		X	
Manufactured Home Subdivisions			X
Manufactured Home Parks	X ⁷		X ⁸
Division 7			
Design Review	X		
Sign Permit	X	X ⁹	
Temporary storage container permit	X		

17.06.100 Notice of application requirements.

A. The director shall ensure that a notice of application is published or posted for each of the land use decision types in accordance with this section. The applicant shall post notice of application and meet other notification requirements as determined by the director. Table A provides a summary of notice requirements.

Table A

Notice of Application Requirements

Notice Requirements	Type I ADM w/SEPA	Type II PC, HE and CC
Required Timing of Notification		
Within 14 days of the determination of completeness	X	X
At least 14 days prior to a hearing		X
Required Methods		
Post notice at City Hall	X	O
Post notice on city's website	X	O

⁷ For [Specific Binding Site Plan](#)

⁸ For [General Binding Site Plan](#)

⁹ For [conditional sign approval under BMC 17.122.050 or variance under BMC 17.122.060](#)

Table A

Notice of Application Requirements

Notice Requirements	Type I ADM w/SEPA	Type II PC, HE and CC
Erect sign(s) on subject property		X
Published in newspaper designated by city council		X
Mail notice to adjacent owners (within 300 feet)		X
Required Contents		
Applicant name	X	X
Date of application	X	X
Brief description of proposed project	X	X
Date of the notice of application		X
List of project permits or other required approvals		X
List of studies requested by the city		X
Deadline for filing comments		X
Requesting a notice of any required hearings		X
Date, time, place and type of hearing		X
Requesting a notice of final decision		X
Notice of the right to appeal and to whom		X
Optional determination of nonsignificance		<input type="checkbox"/>

X – Required O – Optional – Only if applicable

17.06.170 Variances.

A. The **planning commission** [hearing examiner](#) shall have the power and duty to authorize a variance from the terms of the area and dimensional regulations of this title when the request is consistent with

the public interest and where, due to special conditions, literal enforcement of the provisions of this code would result in unnecessary hardship.

B. A variance from the terms of this title shall be granted by the ~~planning commission~~ [hearing examiner](#) when a written application for a variance is submitted demonstrating all of the following:

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district;
2. That literal interpretation of the provisions of this division would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this division;
3. That the special conditions and circumstances do not result from the actions of the applicant; and
4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this division to the other lands, structures or buildings in the same district.

C. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts, shall be considered grounds for the issuance of a variance.

D. The following steps are required for consideration of a variance:

1. Notice of public hearing shall be given consistent with the timelines established in this chapter;
2. The ~~planning commission~~ [hearing examiner](#) shall hold an open record hearing addressing the variance request in conjunction with related permit applications or project proposals;
3. The ~~planning commission~~ [hearing examiner](#) shall make findings that all of the requirements of subsections (B)(1) through (4) of this section are met;
4. The ~~planning commission~~ [hearing examiner](#) shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; and
5. The ~~planning commission~~ [hearing examiner](#) shall further make a finding that the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

E. *Repealed by 2692.*

F. In granting any variance, the ~~planning commission~~ [hearing examiner](#) shall set the expiration date at 12 months from issuance. If establishment or construction of the variance conditions has not commenced within this 12-month period, the applicant may reapply for a new variance permit. The ~~planning commission~~ [hearing examiner](#) may extend the expiration date by one six-month period upon written request and evidence that the applicant intends to activate the permit within that time limit.

G. Under no circumstances shall the ~~planning commission~~ [hearing examiner](#) grant a variance to allow a use not permitted under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this division in the district. Variances shall be limited to the area and dimension requirements of this division. (Ord. 2728 § 2 (Exh. A), 2009; Ord. 2692 § 3(3), 2008; Ord. 2554 § 3, 2003)

17.06.180 Appeals.

A. Type I-ADM Final Decisions. Type I final decisions, when provided in writing, shall be final and conclusive unless a statement of appeal is filed by the applicant, a department of the city, or any aggrieved person in the manner set forth below:

1. A statement of appeal shall be in writing and include a brief statement of the matter being appealed and the basis for the appeal;
2. The statement shall be submitted to the director, filed with the appropriate city hearing body and shall be accompanied by a fee pursuant to the city's unified fee schedule within 14 days of the issuance of the formal written decision. The appropriate hearing body shall be determined by the director based on the matter under appeal;
3. The applicant may choose to submit a more comprehensive statement setting forth in detail alleged errors and/or the basis for appeal. This statement must be submitted by the appealing person within 30 days following the issuance of the final decision;
4. The appeal of a Type I decision shall be an open record appeal.

B. Type II Final Decisions – Hearing Examiner ~~of Planning Commission~~. Type II final decisions made by the hearing examiner ~~of planning commission~~ shall be final and conclusive [unless a timely judicial appeal is filed with the superior court of Whatcom County pursuant to BMC 17.06.190](#), ~~within 14 days following the mailing of such decision a written statement of appeal is filed with the city council by the~~

~~applicant, a department of the city, or party of record, who is also an aggrieved person. The statement shall set forth any alleged errors and/or the basis for appeal and shall be accompanied by a fee pursuant to the unified fee schedule; provided, that such appeal fee shall not be charged to a department of the city or to other than the first appellant. The appeal of a Type II decision shall be a closed record appeal.~~

C. Type II Final Decisions – City Council. Type II final decisions made by the city council shall be final and conclusive unless a timely judicial appeal is filed with the superior court of Whatcom County pursuant to BMC [17.06.190](#).

D. The timely filing of an administrative appeal shall stay the effective date of the decision until such time as the appeal is heard and decided or is withdrawn. The burden of proof regarding modification or reversal shall rest with the appellant.

E. Within seven days following the timely filing of an [administrative](#) appeal, notice thereof and of the date, time, and place for the open record appeal hearing or closed record appeal action, as appropriate, shall be mailed to the applicant, the appellant, and to all other parties of record. Such notice shall provide a general description of the appeal and of the property location, and shall additionally indicate whether written and/or oral testimony will be accepted or whether the appeal is a closed record appeal.

F. A final decision on the [administrative](#) appeal shall be rendered no later than 90 days after the timely filing of an appeal.

G. Type II-HE ~~and Type II-PC~~ final decisions on shoreline substantial development permits, [shoreline](#) conditional use permits and [shoreline](#) variances are appealable pursuant to Chapter [90.58](#) RCW and Chapter ~~17.92~~ [17.81](#) BMC and not as provided in this chapter. (Ord. 2554 § 3, 2003)

17.06.190 Appeals to the Whatcom County superior court.

A. Appeals from the final decision of the [hearing examiner or](#) city council on a land use decision shall be made to Whatcom County superior court within ~~10~~ [21](#) days of the date the decision or action became final by filing both a petition for review in the Whatcom County superior court and serving the petition on all necessary parties in conformity with the requirements of the State Land Use Petition Act, Chapter [36.70C](#) RCW.

B. Notice of the appeal and any other pleadings required to be filed with the court shall be served to the city clerk, the director, and city attorney within the applicable time period. This requirement is jurisdictional.

C. The cost of transcribing and preparing all records ordered, certified by the court or desired by the appellant for such appeal shall be borne by the appellant. The appellant shall post with the city clerk prior to the preparation of any records an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant.

D. No land use decision shall be deemed a final decision by the city and subject to judicial appeal until all available administrative appeals of the decision allowed by city code have been completed. Failure of a person to timely file an administrative appeal, if such is available, of a land use decision shall preclude further administrative or judicial review of the decision. (Ord. 2554 § 3, 2003)

Chapter 17.07 - SITE PLAN REVIEW

17.07.040 Site plan review and approval procedures.

After issuance of written approval by the city, the site plan is intended to establish the spatial relationships between all the various elements of a development project. All subsequent plans or requests for approval submitted to the city subsequent to site plan approval, including but not limited to landscape plans, civil construction drawings, and/or building plans, must be consistent with the approved site plan, or an amendment to the site plan review approval must be filed. Any issuance of a building permit that is not based upon an approved site plan shall be deemed invalid. For these reasons, while associated construction drawings may be submitted concurrently with a site plan review application, they are generally not reviewed prior to approval of the site plan. The site plan review and approval procedures include:

A. Submittal of a complete site plan review application consistent with the provisions of BMC [17.07.030](#).

B. All site plan review applications shall be submitted concurrently with or prior to the submittal of building permit or land disturbance permit applications. Site plan review shall be coordinated with the review of associated development applications to the extent practicable.

C. Following the submittal of a complete site plan review application, [the community development services department shall circulate the materials to pertinent city departments and public agencies](#) the [technical review committee](#) shall place the application on the next available agenda for review by the committee. The TRC [pertinent city departments and public agencies](#) shall review the application for compliance with city zoning, environmental review requirements, and development policies, plans, and regulations that may be applicable to the proposed project.

D. The [community development services department](#) may conduct preapplication review upon request. Such preapplication requests shall be submitted on forms provided by the community development services department, and scheduled for review in the same manner as complete site plan review applications.

E. Following each TRC meeting, minutes shall be prepared by the city which summarize the meeting content. Minutes shall be provided to applicants upon request, and are meant to augment and not replace the applicant's responsibility for taking notes or otherwise recording the information provided by the TRC during the meeting.

F. After considering ~~TRC minutes and~~ comments [from pertinent city departments and public agencies](#), the approving authority shall complete a site plan review response letter indicating any revisions and/or additions to the site plan that are necessary in order to achieve compliance with city standards and requirements. In addition, the site plan review response letter shall clearly indicate which conditions of approval must be completed prior to issuance of building permits, and which conditions of approval must be completed prior to issuance of occupancy certificates. The letter shall be mailed to the applicant.

G. The applicant shall make any required revisions and/or additions to the site plan, including right-of-way improvements and nonmotorized transportation improvements identified through the ~~TRC or~~ review process and return it to the community development services department for final approval and stamping.

H. The community development director shall approve the site plan when it is determined that the plan is consistent with the Blaine comprehensive plan, zoning, and development regulations [by issuing a Notice of Decision pursuant to BMC 17.06.120](#). The director shall distribute stamped approved copies of the site plan to the applicant, public works department, building division, fire district, and other persons, departments, or agencies as appropriate.

I. No final certificate of occupancy shall be issued for any building until such time as all required conditions of approval have been completed, except that temporary certificates of occupancy may be issued upon the posting of a bond or other suitable financial surety adequate to insure the completion of all required conditions of approval. (Ord. 2787 § 2 (Exh. A), 2011)

Chapter 17.12 - GATEWAY ZONING DISTRICT

17.12.030 ~~Uses subject to a public hearing and planning commission approval~~ Conditional uses.

The following uses require a conditional use permit pursuant to BMC 17.92 and final approval from the planning commission:

A. A use or facility other than a gas station or truck stop in which handling or transport of toxic or volatile materials is a primary component of the use or facility, provided:

1. Underground storage limits shall comply with Sections 3404.2.9.5.1 and 3406.2.4.4 of the International Fire Code;
2. The storage of explosives and blasting agents is not allowed, except for temporary storage and use as specifically defined in Section 3304 of the International Fire Code;
3. The storage of liquefied petroleum gases shall be limited in compliance with Section 3804.2 of the International Fire Code restricting the storage of liquefied petroleum gases (the aggregate capacity for liquefied petroleum gases of any one installation shall not exceed a water capacity of 2,000 gallons (7,570 L));

B. Recreational vehicle parks as described in BMC 17.108.060. (Ord. 2692 § 3(1), 2008)

Chapter 17.14 - MANUFACTURING ZONING DISTRICT

17.14.210 Performance standard enforcement.

A. If, in the opinion of the director, a violation of performance standards (BMC [17.14.120](#) through [17.14.200](#)) has occurred, the director shall send written notice of the violation by certified mail to the owners of the property and the manager of the operation involved. The manager or responsible person shall have 30 days to correct the violation, unless in the opinion of the director there is imminent peril to the life and/or property of persons adjacent to the alleged violation, in which case the violation shall be corrected immediately.

B. Where determinations of violation can be made by the director, using equipment normally available to the city or obtainable without additional expenditure to the city, such determination shall be made before notice of violation is issued.

C. When technical complexity or expense makes it prohibitive for the city to maintain the personnel or equipment necessary to make the determination of violation, then the city shall retain appropriately qualified specialists to make the determination. If these findings indicate a violation of the performance standards, the cost of the determination shall be assessed against the properties or persons responsible for the violation, in addition to other penalties prescribed by this division. If no violation is found, the cost of determination shall be paid by the city.

D. Prior to approval of zoning, subdivision or building permits for potentially hazardous uses, the approval authority shall require submission of statements and plans indicating the manner in which potentially dangerous and/or objectionable elements are to be eliminated or reduced to acceptable limits and tolerances.

~~E. For those nuisances which are subjectively perceived beyond the district, and not readily susceptible to technical or quantitative measure (glare, odor, other), the **planning commission** chairperson, upon receipt of a formal written complaint defining the nuisance and identifying the source and signed by three registered voters, shall appoint a committee to inspect the site of the alleged nuisance and report their recommendations to the director. The committee shall total five persons and consist of one person representing the complaint side, one representing the side being complained against, and three persons from the city council and **planning commission** membership. The **planning commission** chairperson shall appoint one of the latter three members to chair the committee and submit a written report to the director. (Ord. 2900 § 1 (Exh. A), 2017; Ord. 2673 § 2, 2007; Ord. 2554 § 3, 2003)~~

Chapter 17.22 - CENTRAL BUSINESS ZONING DISTRICT

17.22.130 Mobile food services.

- A. Food trucks or other mobile food services are permitted to occupy legal public parking spaces in the right-of-way.
- B. Unless granted a conditional use permit by the [planning commission](#), all food trucks and mobile food services must comply with the following:
1. Food trucks or other mobile food services are prohibited from operating on the right-of-way within 100 feet of the front entrance of an operating and open-for-business eating and drinking establishment.
 2. Food trucks or other mobile food services may not remain stationary for more than five hours in the public right-of-way. Relocation must be to a site at least 1,000 feet away from the prior location.
- C. The [planning commission](#) [hearing examiner](#) may grant a conditional use permit to food trucks and mobile food services to operate in a fixed location for more than five hours, to operate within 100 feet of an operating and open-for-business eating and drinking establishment, and/or:
1. In a public plaza or park subject to a recommendation of approval by the park and cemetery board; or
 2. On the public right-of-way subject to issuance of a right-of-way obstruction permit.
- E. Food trucks and mobile food services for city-authorized special events are exempted from subsection (B) of this section.
- F. As an accessory use operating in conjunction with a legally permitted use, a food truck or mobile food service may operate on private property for up to eight hours in one day. No permanent utility connections may be constructed to accommodate the food truck or mobile food service. (Ord. 2912 § 1 (Exh. A), 2018)

17.22.140 Use of public right-of-way.

- A. The use of public right-of-way adjacent to a business location is permitted by the on-site business within the following limits:

1. An unobstructed walkway at least six feet wide must be maintained on the sidewalk. This shall take into consideration street fixtures such as trees, benches, and fire hydrants.
2. The use of the sidewalk shall not be for an unsightly use.
3. Any reserved space shall be defined by an anchored decorative steel fence subject to administrative design review and shall meet the requirements of BMC [17.128.010](#)(C) and (D).
4. A right-of-way obstruction permit is required for any sidewalk obstructions except for temporary and fully portable uses such as display of merchandise for sale during business open hours.

B. Use of the public right-of-way is not synonymous with use of the waterview boardwalk easement.

C. Use of a public plaza, such as G Street or H Street, is subject to the restrictions in subsection (A) of this section.

~~1. Such use shall obtain a conditional use permit from the [planning commission](#). Such use shall obtain approval of a Plaza Use Agreement under BMC 12.27.~~

~~2. Under no circumstance shall such use extend more than 12 feet into the plaza as measured from the face of the building. (Ord. 2912 § 1 (Exh. A), 2018)~~

17.22.180 Definitions.

The definitions contained herein apply only to this chapter and Chapters [17.23](#), [17.119](#), and [17.120](#) BMC.

...

D. “Conditional uses” are not allowed by right and are subject to [planning commission hearing examiner](#) review.

...

Chapter 17.50 - GENERAL PROVISIONS

17.50.060 Administering authority.

A. Authority to administer project review is as depicted in Table ~~17.50.A.~~ [17.06.A.](#)

The **planning commission** serves an advisory role holding a public hearing and making a recommendation on all Type II-CC decisions listed in Table ~~17.50.A.~~

	Type I ADM	Type II-PC	Type II-CC
Boundary Line Adjustment	✗		
Lot Consolidation	✗		
Short Subdivision	✗		
Preliminary Plat			✗
Final Plat			✗
Plat Variance		✗	
General Binding Site Plan			✗
Specific Binding Site Plan	✗		
Planned Unit Development			✗
Major Development			✗

B. Pursuant to Chapter 17.70 BMC, Major Development, any project shall be subject to review by the city council through a Type II-CC process as determined by action of the city council.

C. The community development director or designee shall review Type I-ADM applications and make the decision whether to approve, approve with conditions or deny.

D. The community development director or designee shall ensure the review of all ~~Type II-PC~~ [Type II HE](#) applications by appropriate city departments. Based upon the staff review,

the ~~planning commission~~ [hearing examiner](#) shall hold a public hearing on all ~~Type II-PC~~ [Type II HE](#) applications and make the decision whether to approve, approve with conditions or deny.

E. The community development director or designee shall ensure the review of all Type II-CC applications by appropriate city departments. Based upon the staff review, the ~~planning commission~~ [hearing examiner](#) shall hold a public hearing on all Type II-CC applications, except final plats. The ~~planning commission~~ [hearing examiner](#) shall forward a recommendation and written findings to the city council. The city council shall conduct a closed record public meeting after which they shall approve, approve with conditions or deny the application.

F. Final plats shall be reviewed by the city council at a public meeting, wherein the decision to approve, approve with conditions, or deny shall be made. No public hearing is required for a final plat decision. (Ord. 2737 § 2 (Att. A), 2009)

17.50.065 Appeals.

The land use decisions illustrated in Table 17.50.A are subject to appeal as Type I-ADM, ~~Type II-PC~~ [Type II HE](#) or Type II-CC decisions as regulated by BMC [17.06.180](#) and [17.06.190](#), as applicable. (Ord. 2737 § 2 (Att. A), 2009)

Chapter 17.60 - LONG SUBDIVISIONS – PRELIMINARY AND FINAL PLATS

17.60.110 Referral to other offices.

A preliminary plat application, that has been deemed complete, shall be circulated by the community development services department to pertinent city departments and public agencies through the ~~technical review committee~~ review process. Each official or agency may file written recommendations with the community development services department within 14 days of the date of receipt of the technical review packet or may attend the ~~technical review committee~~ meeting to comment on the project. Refer to BMC [17.50.070](#). (Ord. 2737 § 2 (Att. A), 2009)

17.60.120 Community development services department action.

A. The community development services department may determine that a second ~~technical review committee~~ meeting be conducted to attempt to resolve major issues identified as a result of departmental agency recommendations. Such meeting shall be attended by those departments or agencies responsible for the recommendations and must include the applicant and the community development services department.

A. The preliminary plat decision is made through the Type II-CC review process. The community development services department shall assemble and transmit to the ~~planning commission~~ [hearing examiner](#) all pertinent information and departmental recommendations [at least seven \(7\) calendar days before the hearing](#) within 30 calendar days from the date of determination of a complete application, unless the applicant has agreed to an extension of this time or as otherwise determined by ~~BMC 17.06.090~~.

B. A copy of the material given to the ~~planning commission~~ [hearing examiner](#) shall be provided to the applicant, a copy shall be provided for public review in the community development services department offices, and a copy shall be made available on the city's website. (Ord. 2737 § 2 (Att. A), 2009)

17.60.130 ~~Planning commission~~ [Hearing examiner](#) action.

A. The ~~planning commission~~ [hearing examiner](#) shall hold a duly noticed public hearing pursuant to BMC [17.06.110](#). The ~~planning commission~~ [hearing examiner](#) shall review the preliminary plat, consider the community development services department recommendation, and consider public testimony and exhibits submitted at the public hearing.

B. After review and consideration of public testimony the ~~planning commission~~ [hearing examiner](#) shall recommend approval, conditional approval, or denial of the preliminary plat in a public meeting. Such decision may occur on the same date as the public hearing, or it may occur at the next regularly scheduled meeting after the public hearing. ~~The ~~planning commission~~ may hold one or more work sessions to discuss the merits of the preliminary plat between the date of the public hearing and the decision. All work sessions shall be open to the public.~~

C. Prior to making a recommendation on the preliminary plat, all applicable conditions of approval deemed necessary to fulfill the purpose of this code shall be specified by the ~~planning commission~~ [hearing examiner](#) and the ~~planning commission~~ [hearing examiner](#) shall formulate findings of fact and conclusions of law for consideration with the recommendation.

D. The ~~planning commission's~~ [hearing examiner's](#) recommendation shall be forwarded to the city council for review during a regularly scheduled meeting not more than 30 days after the adoption of the recommendation. (Ord. 2737 § 2 (Att. A), 2009)

17.60.140 City council action.

A. Upon receipt of a ~~planning commission~~ [hearing examiner](#) recommendation the city council shall consider and deliberate on the application in a closed record public meeting. The city council shall approve, conditionally approve, deny or remand the application to the ~~planning commission~~ [hearing examiner](#). An action to remand shall include specific direction on issues for the ~~planning commission~~ [hearing examiner](#) to further evaluate.

B. A notice of decision shall be processed consistent with BMC [17.06.120](#). Written findings shall be included in the notice of decision and shall be retained in the project file at the city.

C. Prior to any additional processing of development permits for the site, the applicant shall submit a revised preliminary plat that is consistent with all conditions of preliminary plat approval to the community development services department. Approval of a preliminary plat shall constitute approval for the applicant to develop construction plans and specifications for all facilities and improvements, as required, in strict conformance to the approved preliminary plat, design standards, and any special conditions required by the city council, and to prepare a land disturbance permit application. (Ord. 2737 § 2 (Att. A), 2009)

17.60.260 Deferred improvements.

A. Written Notice. A final plat shall not be approved by the city council until all required improvements are constructed in a satisfactory manner and approved by the responsible city departments, or sufficient bond in a form acceptable to the city has been satisfactorily posted in lieu of completion. In the event an

applicant wishes to defer certain on-site improvements, written notice shall be made to the community development services department.

B. Bonding. The applicant shall furnish a performance bond to the city in an amount equal to 150 percent of the estimated cost of the deferred improvements. The decision of the public works director, regarding the amount of the performance bond, shall be final and conclusive.

C. Time Limit. Such bond, to be filed with and held by the city clerk, shall list the exact work that shall be performed by the applicant and shall specify that all of the deferred improvements be completed within one year from the notice of decision of the final plat by the ~~planning commission~~ [city council](#). Extensions of this time period may be authorized by the public works director. In the event an extension is authorized, the bond shall be revised to reflect the new completion date.

D. Check in Lieu of Bond. The applicant may substitute a cashier's check, assignment of funds, or any other method of security acceptable to the city in lieu of a performance bond. Such substitution shall be made payable to the city of Blaine and shall be in the same amount and carry with it the same restrictions as the bond for which it is substituting.

E. Proceed Against Bond or Other Security. The city reserves the right, in addition to all other remedies available to it by law, to proceed against such bond or other security in lieu thereof.

F. Binding Upon Applicant. The requirement of the posting of any performance bond or other security shall be binding upon the applicant, his heirs, successors and assigns. (Ord. 2737 § 2 (Att. A), 2009)

Chapter 17.64 - BINDING SITE PLANS

17.64.070 Referral to other offices.

A general binding site plan application, that has been deemed complete, shall be circulated by the community development services department to pertinent city departments and public agencies through the ~~technical review committee~~ review process. Each official or agency may file written recommendations with the community development services department ~~within 14 days of the date of receipt of the technical review packet or may attend the~~ ~~technical review committee~~ meeting to ~~comment on the project~~. In addition, where the proposed plan abuts a state right-of-way or abuts Whatcom County jurisdiction, the State Department of Transportation and/or Whatcom County planning and development services shall be provided copies of the plan for review and comment. (Ord. 2737 § 2 (Att. A), 2009)

17.64.110 Modifications.

A. The community development director shall consider any modifications to a general or specific binding site plan. The director may allow minor modifications to the agreement without modifying the instrument after consultation with the ~~technical review committee~~ pertinent city departments and public agencies. A “minor modification” is defined as a modification that meets the following provisions:

1. The modification does not violate any provisions of this title;
2. The lot area requirements are not varied by more than 10 percent;
3. The common open space and/or usable open space is not reduced by more than 10 percent;
4. The total ground area covered by buildings is not increased more than five percent;

B. All other modifications shall require amendment to the general binding site plan agreement. An amendment shall be processed in the same manner as the original application. (Ord. 2737 § 2 (Att. A), 2009)

Chapter 17.68 - PLANNED UNIT DEVELOPMENTS (PUD)

17.68.060 Review and approval process.

A. Prospective applicants for PUD projects shall schedule a pre-application conference on the conceptual plans with the ~~technical review committee~~ Community Development Services Department prior to submittal of any applications. The community development services department shall circulate the materials to pertinent city departments and public agencies for preliminary review.

B. After preliminary review by pertinent city departments and public agencies the ~~technical review committee~~, but prior to submittal of applications, the applicant shall arrange for a community conference as described in BMC 17.68.070.

C. Once the applications have been submitted the project shall be processed as a Type II-CC decision.

D. Following a PUD approval by the city council, the applicant shall make any required revisions and submit the revised PUD site plan and revised preliminary plat or other land division tool to the city for staff review, approval, and stamping.

E. Following a PUD approval by the city council, the applicant shall prepare a final PUD master plan for review and approval by the planning commission. (Ord. 2737 § 2 (Att. A), 2009)

17.68.090 Master plan.

A. A master plan shall be developed by the applicant that incorporates the submission requirements in BMC 17.68.050 along with additional detail as necessary to clearly convey the intent of the developer and the approval of the city. The master plan shall incorporate the conditions of project approval and the contents of the CC&Rs in a manner that the master plan becomes the guiding document for development of the overall site, individual phases, building sites and structures, and public and private open space.

B. The master plan shall be submitted for review and approval by the ~~planning commission~~ community development director subsequent to PUD approval by the city council. Such submittal shall occur within 180 calendar days of the issuance of the final decision. A single 90-day extension may be granted by the ~~planning commission~~ community development director upon written request of the applicant. No development, except clearing and grading, shall be authorized in the PUD until the master plan is approved by the ~~planning commission~~ community development director.

C. The ~~planning commission~~ shall review and take action on the master plan in a regularly scheduled meeting.

C. Failure to complete the master plan in the allotted time shall constitute abandonment of the PUD by the applicant and the approval shall be nullified. (Ord. 2737 § 2 (Att. A), 2009)

17.68.100 Modifications and amendments.

An approved PUD site plan may be modified or amended upon written request of the property owner(s).

A. Modifications are minor changes to an approved PUD, subject to approval or denial as an administrative decision by the director, which do not:

1. Change the residential density more than five percent by increasing or decreasing the number of units in a PUD.
2. Change the mix of uses or significantly alter the arrangement of buildings for a commercial or industrial PUD, or increase or decrease the commercial or industrial floor area by more than 10 percent.
3. Significantly alter the amount or arrangement of open space or recreational amenities, or the treatment of environmentally sensitive areas that may exist on the site.
4. Significantly alter the approved architectural concept of the PUD master plan or PUD site plan.
5. Significantly alter the basic layout of the approved project infrastructure.
6. Require revision to the approved PUD master plan as determined by the director.

B. Amendments are major changes to an approved PUD that do not qualify as modifications.

C. Proposed PUD amendments shall be processed in the same manner as a PUD application, including noticed community conference and public hearing, ~~planning commission~~ [hearing examiner](#) review and recommendation, and review and decision by the city council. (Ord. 2737 § 2 (Att. A), 2009)

Chapter 17.80 - SEPA GUIDELINES

17.80.090 Nonjudicial appeals of SEPA determinations.

A. Appeals on SEPA procedural determinations are limited to review of a final threshold determination and final EIS. Appeals on intermediate procedural determinations under SEPA including, but not limited to, lead agency determination, scoping, and draft EIS adequacy are not allowed.

B. Except as provided in subsection (D) of this section, an allowed appeal of a procedural or substantive determination under SEPA shall be consolidated with the hearing or appeal on the underlying action in a single simultaneous hearing before a single city hearing body as determined by the land use decision type.

C. Where a SEPA administrative appeal is consolidated with an open record hearing or appeal on the underlying action and the decision of the city hearing body presiding over the open record hearing will be in the form of a recommendation to the city council for final decision by the city council at a closed record hearing, the hearing body presiding at the open record hearing shall create a record and prepare findings and a separate recommendation for the closed record SEPA administrative appeal to city council in addition to its findings and recommendation on the underlying action.

D. Appeals of the following SEPA procedural or substantive determinations are permitted separately from a hearing or appeal on the underlying city action:

1. An appeal of a determination of significance;
2. An appeal of a procedural determination made by a department when the department is a project proponent, or is funding a project, and chooses to conduct its review under SEPA, including any appeals of its procedural determinations, prior to submitting an application for a project permit. Subsequent appeals of substantive determinations by an agency with jurisdiction over the proposed project shall be allowed under the SEPA appeal procedures of the agency with jurisdiction;
3. An appeal of a procedural determination made by an agency on a nonproject action.

E. Except for permits and variances issued pursuant to Chapter [17.81](#) BMC, ~~when any proposal or action not requiring a decision of the city council is conditioned or denied on the basis of SEPA, as provided in this section, by a nonelected city official or commission, the decision may be appealed to the city council.~~ If the SEPA determination is for a proposal reviewed as a Type I land use decision, the appeal shall be an open record appeal as provided in Chapter [17.06](#) BMC. If the SEPA determination is for a

proposal reviewed as a Type II-HE or ~~Type II-PC~~ decision, the appeal shall be a closed record appeal. Appeals under this subsection shall be filed in the manner provided in Chapter [17.06](#) BMC for the type of decision being appealed.

F. An appeal of a procedural or substantive determination under SEPA shall be filed within the time limits specified below:

1. For a procedural or substantive determination under SEPA issued at the same time as the decision on a project action, an appeal of the SEPA decisions must be filed within 14 days after a notice of decision under RCW [36.70B.130](#) or after other notice that the decision has been made and is appealable; provided, that if a DNS for which a public comment period is required under SEPA is issued at the same time as the decision, the appeal period for the DNS shall be extended an additional seven days beyond the 14-day period allowed for other procedural or substantive determinations.

2. For a threshold determination issued prior to a decision on the project, an administrative appeal must be filed within 14 days after the notice of determination has been issued.

G. Procedural determinations by the responsible official shall be entitled to substantial weight by the city hearing body when such determination is under review.

H. Administrative appeal procedures, if available, must be used before anyone may initiate judicial review of any SEPA issue that could have been reviewed under city review procedures.

I. Filing Requirements. All procedural and substantive SEPA appeals provided under this section shall be initiated by filing a written notice of SEPA administrative appeal with the director, accompanied with the applicable appeal fee, pursuant to the city's unified fee schedule; provided, that no additional appellate fee shall be charged in conjunction with an available hearing on the underlying permit or approval.

1. The notice of appeal required by this section shall include, at a minimum:

- a. The name and address of the party or agency filing the appeal;

- b. An identification of the specific proposal and specific SEPA actions, omissions, conditions or determinations for which appeal is sought;

- c. A statement of the particular grounds or reasons for the appeal. (Ord. 2840 § 2 (Exh. A), 2013; Ord. 2587 § 2, 2004. Formerly 17.80.140)

Chapter 17.81 - SHORELINE MANAGEMENT PERMIT PROCEDURES*

17.81.030 Permit procedure.

A. The [planning commission hearing examiner](#) of the city of Blaine is vested with the authority to hold public hearings, make final decisions on permit applications and establish permit conditions related to shoreline management within the city of Blaine pursuant to this chapter.

The [planning commission hearing examiner](#) shall hear and decide on substantial development permits, conditional use permits, and variances regulated under the program.

B. The community development director of the city of Blaine, or his or her designee, shall be the administrator of rules and regulations pertaining to shoreline management contained in or referenced in this chapter and the program and may prepare and require the use of such forms as are essential to its administration.

C. The city council shall make final decisions on all shoreline permits that are directly related to a permit for which the city council is the final review authority, such as but not limited to preliminary plats and planned unit developments. In these instances the [planning commission hearing examiner](#) shall hold a public hearing and make a recommendation to the city council pursuant to the consolidated review process contained in Chapter [17.06](#) BMC.

D. A shoreline permit shall be applied for on forms provided by the administrator. At a minimum, such applications shall include the following information:

1. The name, address and phone number of the applicant;
2. The name, address and phone number of the applicant's representative;
3. The name, address and phone number of the property owner, if different than the applicant;
4. The address, location and legal description of the property that is the subject of the proposed development;
5. The name of the shoreline (water body) that the site of the proposed development is associated with;
6. A general description of the subject property as it now exists including its use, physical and ecological characteristics, improvements and structures;

7. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical and ecological characteristics;

8. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties;

9. A description of the proposed development, including a description of anticipated impacts to on-site vegetation, topography and natural systems and processes;

10. A site plan or plans showing the existing and proposed conditions of the property, including showing the locations of the property boundary, the ordinary high water mark, any critical areas, existing and proposed development, existing vegetation, proposed vegetation alterations and landscaping, existing and proposed site contours, and existing and proposed structures;

11. A statement describing the anticipated impacts of the proposed development on views, critical areas, and shoreline functions and processes;

12. A statement explaining how the proposed development is consistent with the policies of the Shoreline Management Act, and the applicable goals, policies and regulations of the shoreline master program;

13. The signature of the applicant and the property owner;

14. Additional information as determined necessary by the administrator;

15. The administrator may waive components of the above permit requirements with the issuance of a waiver letter based upon a written request by the applicant;

16. On all variance applications, the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

E. The applicant shall complete the application form and return the application to the community development services department along with the following:

1. A listing of the names and addresses of owners of property within 300 feet from the proposed development;

2. A completed SEPA environmental checklist, if required; and

3. Payment of the appropriate fees.

F. Upon receipt of a properly completed application, the administrator shall provide for permit processing and notification consistent with WAC [173-27-110](#) and pursuant to the permit administration procedures contained in Chapter [17.06](#) BMC.

G. At a minimum, a 30-day comment period shall be provided following notification prior to consideration of the matter and final action by the ~~planning commission~~ [hearing examiner](#).

H. Notice of the final action on a permit application, whether it is an approval, a denial or a revision, shall be provided to the applicant and all parties of record and shall be filed with the Department of Ecology in the manner set forth in WAC [173-27-120](#). (Ord. 2930 § 1 (Exh. B), 2019)

Chapter 17.82 - CRITICAL AREAS MANAGEMENT

17.82.130 Critical areas variances.

A. A variance from the dimensional requirements established in this chapter may be granted through approval of a critical areas variance in accordance with the procedural requirements established in this title.

B. The planning commission hearing examiner shall grant a variance only when they find that the applicant has demonstrated that the request is consistent with all of the following criteria:

1. Special circumstances and conditions exist which are peculiar to the land or lot (including the affected critical area), and which are not applicable to other lands or lots; and
2. The special conditions or circumstances are not the result of actions taken by the applicant; and
3. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures under similar circumstances; and
4. The granting of the variance will not create significant adverse impacts to the identified critical areas and will not be detrimental to public safety or welfare; and
5. The proposed design and use of the property results in the least amount of impact to critical areas necessary to allow the use or the development to occur; and
6. Where applicable, the proposed activity mitigates all impacts to functions and values of the affected critical area and the affected critical area buffers consistent with the requirements set forth in this chapter.

C. In granting any variance, the planning commission hearing examiner may establish such conditions and safeguards as are deemed necessary to secure adequate protection of critical areas and public health, safety and welfare, and to ensure conformity with this chapter.

D. Approval of a variance shall be accompanied by findings that justify the granting of the variance, and findings that the variance granted is the minimum necessary to allow reasonable use of the land, building or structure. (Ord. 2729 § 2 (Exh. A), 2009)

17.82.140 Reasonable use exceptions.

Nothing in this chapter is intended to preclude all reasonable economic use of property. If the application of this chapter would deny all reasonable and economically viable use of the subject

property, then the property owner may make application for a reasonable use exception pursuant to this section. This reasonable use exception process is intended to apply where a proposal does not meet the criteria for a critical area variance under BMC [17.82.130](#).

A. An application for a reasonable use exception shall be submitted to the administrator on forms prepared by the city and shall be accompanied by a critical area detailed study including a mitigation plan based upon the best available science prepared pursuant to BMC [17.82.360](#), [17.82.430](#), [17.82.480](#) or [17.82.510](#), a fee as established in the city's unified fee schedule, and any other related project documents, such as permit applications to other agencies, and SEPA documents. The city shall process an application for a reasonable use exception as a ~~Type II-PC~~ [Type II HE](#) action pursuant to the provisions of Chapter [17.06](#) BMC, which in all circumstances shall include an open record hearing on the application for a reasonable use exception conducted by the [planning commission hearing examiner](#) as set forth in Chapter [17.06](#) BMC for a ~~Type II-PC~~ [Type II HE](#) action.

B. The burden of proof shall be on the applicant to present evidence in support of the application and to provide sufficient information upon which the decision on the application can be made.

C. The administrator shall prepare a recommendation to the [planning commission hearing examiner](#) based upon review of the submitted information, a site inspection, and the proposal's ability to comply with the reasonable use exception criteria in this section.

D. The [planning commission hearing examiner](#) shall approve, or approve with modifications and/or conditions, or deny the request for a reasonable use exception based upon the proposal's ability to meet the reasonable use criteria in subsection (E) of this section, and shall base its decision only upon information in the record.

E. Criteria for Review, Approval and/or Denial of a Reasonable Use Exception. An applicant for a reasonable use exception shall satisfy all of the criteria set forth below. For the purposes of this subsection, the term "minimum" refers to the least amount of alteration or impact to the critical area or its buffer as established in a detailed study without denying all reasonable and economically viable use of the property:

1. The application of this chapter would deny all reasonable and economically viable use of the property.
2. There is no other feasible and economically viable alternative use of the property with less of an impact on the critical area(s) and/or the critical area buffers than the proposed use. Feasible

alternatives to be evaluated by the [planning commission hearing examiner](#) may include, but are not limited to:

- a. Change in use;
 - b. Reduction in size of use;
 - c. Change in timing of activity; and
 - d. Revision of project design.
3. The proposed impact to the critical area is the minimum impact necessary to allow for reasonable and economically viable use of the property.
 4. The proposal is limited to the minimum encroachment into the critical area and/or its buffer necessary to prevent the denial of all reasonable and economically viable use of the property.
 5. The proposed action will result in minimal alteration of existing contours, with a minimum impact on vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions.
 6. The proposal will result in no net loss of the critical area's functions and values consistent with the best available science. In order to satisfy this criteria, the proposal shall include a mitigation plan developed as part of a critical area detailed study that is based upon the best available science to assure that any impact to the critical area and its buffer is mitigated consistent with the requirements of BMC [17.82.360](#), [17.82.430](#), [17.82.480](#) or [17.82.510](#) such that there is no net loss to the functions and values of the affected critical area(s) and to mitigate for unavoidable impacts. Such mitigation measures may occur on-site or off-site where necessary to ensure that the measures are capable of being implemented to achieve their purpose as established in the critical area detailed study approved by the administrator.
 7. The proposal is otherwise consistent with the purpose and intent of this chapter.
 8. The proposed development does not pose a threat to public health and safety.
 9. The proposed activity will not result in unmitigated adverse effects to species listed as threatened or endangered by the federal government or the state of Washington.
 10. The proposed activity complies with all other federal, state, and local laws, including those related to erosion and sediment control.

11. The inability to derive reasonable economic use of the property is not the result of the actions of the applicant or the segregating or dividing of the property after the effective date of the ordinance codified in this chapter.

F. In granting any reasonable use exception, the ~~planning commission~~ [hearing examiner](#) may establish such conditions and safeguards as are deemed necessary to ensure that the proposal is consistent with the intent of this section and chapter; provided, at a minimum, they do not conflict with or compromise permit decisions or conditions of permit approval.

G. The ~~planning commission~~ [hearing examiner](#) shall make written findings of fact and conclusions of law as to each criterion for approval that establishes the factual basis and rationale for its decision to approve, modify, condition, or deny the application for a reasonable use exception.

H. In granting any reasonable use exception, the ~~planning commission~~ [hearing examiner](#) may prescribe time limits within which the action for which the reasonable use exception is requested shall commence or be completed or both. Failure to conform to any such time limits shall void the reasonable use exception unless the applicant has received an extension from the administrator.

I. The administrator may extend a timeline established by the ~~planning commission~~ [hearing examiner](#) for a period not to exceed one year if:

1. A written request is filed with the administrator prior to the expiration of the reasonable use exception; and
2. Unforeseen circumstances or conditions necessitate the extension of the reasonable use exception; and
3. Termination of the reasonable use exception would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and
4. The extension of the reasonable use exception will not cause adverse impacts to critical areas. (Ord. 2762 § 2(2), 2010; Ord. 2729 § 2 (Exh. A), 2009)

Chapter 17.92 - CONDITIONAL USE PERMITS

17.92.030 Applications for a conditional use permit.

Applications for a conditional use permit shall be submitted to the community development services department using forms provided by the department. A determination of complete application will be based on the information provided on the form as well as the information required in BMC [17.92.040](#). Conditional use permits require an open record hearing. They are processed as ~~Type II-PC~~ [Type II HE](#) decisions as provided in Chapter [17.06](#) BMC unless the provisions of BMC [17.02.050\(D\)\(2\)](#) apply, in which case they are processed as Type II-CC decisions. (Ord. 2728 § 2 (Exh. A), 2009; Ord. 2554 § 3, 2003)

Chapter 17.102 - ACCESSORY DWELLING UNITS*

17.102.030 Permit procedures.

A. The following accessory dwelling units shall be permitted accessory uses within the applicable zoning districts subject to administrative approval of a building permit.

1. Any detached accessory dwelling unit substantially compliant with ADU Templates 1 through 4 as included in “Accessory Dwelling Units, A Guide for Property Owners for ADU Development” as determined by the director.
2. Any detached accessory dwelling unit meeting the residential design standards as permitted for the main residence in the zoning district and compliant with the size standards contained in Table 17.102.A.

Table 17.102.A

If the area of the lot is:	Net floor area of accessory unit shall not exceed:
6,000 – 8,000 sq. ft.:	The lesser of 50% of the primary residence or 600 sq. ft.
8,001 – 11,000 sq. ft.:	The lesser of 50% of the primary residence or 800 sq.ft.
Greater than 11,000 sq. ft.:	The lesser of 50% of the primary residence or 1,000 sq. ft.

3. Any attached accessory dwelling unit located within the same structure as the primary residence provided it meets the size standards contained in Table 17.102.B. Such structure shall have only one front door so as to maintain the appearance of a single-family residence.

Table 17.102.B

If the area of the house is:	Net floor area of accessory unit shall not exceed:
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Under 2,000 sq. ft.:	50% of the primary residence
2,000 – 2,999 sq. ft.:	The lesser of 40% of the primary residence or 1,000 sq. ft.
3,000 – 4,999 sq. ft.:	The lesser of 30% of the primary residence or 1,200 sq.ft.
5,000 sq. ft. or more:	The lesser of 20% of the primary residence or 1,500 sq. ft.

B. The following accessory dwelling units shall be conditionally permitted accessory uses within the applicable zoning districts subject to a conditional use permit granted by the **planning commission** [hearing examiner](#).

1. Conversion of an existing accessory structure, noncompliant with the accessory structure setbacks, on an otherwise compliant lot may be conditionally permitted without a variance. Under no circumstance may the accessory structure encroach onto adjacent private or public property or exceed 1,000 square feet of living area.

2. A detached accessory dwelling unit not meeting the requirements in subsection (A) of this section shall be conditionally permitted within the zoning districts specified in BMC [17.102.020](#) provided the size does not exceed 1,000 square feet. (Ord. 2784 § 2 (Att. A), 2011)

17.102.040 Criteria for approval for conditionally permitted accessory dwelling units.

Before approval of a conditional use permit for a detached accessory dwelling unit, the **planning commission** [hearing examiner](#) shall find that:

A. Exterior design of the accessory unit is compatible with the existing residence on the lot through architectural use of building style, height, construction materials, colors, landscaping, and other methods that conform to acceptable construction practices.

B. The location and design of the accessory unit maintains a compatible relationship to adjacent properties and does not significantly impact the privacy, light, air, solar access or parking of adjacent properties.

C. The structure generally limits the stairs, decks, entry doors, and major windows to the walls facing the primary residence, or to the alley or street and away from adjacent properties where applicable.

D. Conversion of an existing accessory structure into a dwelling unit does not result in encroachment into the setback where none existed before conversion, and does not increase any existing encroachment into the setback. (Ord. 2784 § 2 (Att. A), 2011)

Chapter 17.122 - SIGNS

17.122.020 Goals.

The following nonregulatory goals shall be pursued in good faith by the community development services department:

- A. Sign permit application decisions should be issued within two weeks of receiving a completed sign permit application.
- B. Review of building permits associated with a sign permit should be done in a timely manner.
- C. The department should expedite sign permits that require review by the ~~planning commission~~ [hearing examiner](#). (Ord. 2819 § 2 (Exh. A), 2012)

17.122.050 Conditional sign approval.

If an applicant wishes to pursue approval of a type of sign that is not authorized in this chapter or does not meet the design requirements contained in this chapter, then the applicant may submit a conditional sign permit. A conditional sign permit will be processed as a ~~Type II-PC~~ [Type II HE](#) application.

The ~~planning commission~~ [hearing examiner](#) will assess the viability of such a proposal using the following criteria:

- A. The proposed sign has a unique quality that will have a positive impact on the city.
- B. The proposed sign will contribute to and enhance the district in which it is located.
- C. The strict administration of this chapter will restrict an otherwise creative and positive addition to the area immediately surrounding its location.
- D. The proposed sign will be designed, constructed, operated, and maintained so as to be compatible with the existing or intended appearance and character of the general vicinity.
- E. The proposed sign will not be hazardous to the public.
- F. The proposed sign will not be disturbing to existing or planned neighboring uses. (Ord. 2819 § 2 (Exh. A), 2012)

17.122.060 Variance request.

If an applicant wishes to pursue approval of a sign that exceeds the dimensional requirements described in this chapter, then the applicant may submit a variance application. The ~~planning commission~~ [hearing examiner](#) will assess the viability of such a proposal using the variance approval criteria defined in BMC [17.06.170](#). (Ord. 2819 § 2 (Exh. A), 2012)

17.122.090 Appeals.

A. A decision on a sign permit application, not including a conditional sign or variance application, is an administrative Type I decision and appealable pursuant to BMC [17.06.180](#), Appeals.

B. A decision on a conditional sign or variance application is a ~~Type II-PC~~ [Type II HE](#) decision and appealable pursuant to BMC [17.06.180](#), Appeals. (Ord. 2819 § 2 (Exh. A), 2012)