

**BEFORE the HEARING EXAMINER for the
CITY of LYNNWOOD**

DECISION

FILE NUMBER: VAR-24-0004

APPLICANT: ¹ Frater Properties, LLC
P.O. Box 82554
Kenmore, WA 98028

AGENT: Taylor Nordby

TYPE OF CASE: Zoning Variance to allow installation of a replacement pole sign in the CC-C zone

STAFF RECOMMENDATION: Approve variance from LMC 21.60.475(A)(1) subject to conditions

EXAMINER DECISION: GRANT variances from any and all LMC sign regulations impeding erection of the proposed pole sign, subject to conditions

DATE OF DECISION: July 15, 2025

INTRODUCTION ²

Frater Properties, LLC (“Frater”) seeks a Variance from Lynnwood Municipal Code (“LMC”) ³ sign regulations to allow a pole sign to be erected on City Center-Core (CC-C) zoned property as a replacement for a pole sign that was removed during the construction of Sound Transit’s light rail 1-Line Lynnwood City Center Station.

Frater filed the Variance application on November 13, 2024. (Exhibits 1, PDF 2; 2 ⁴) The Lynnwood Development and Business Services Department, Community Planning Division (“Planning”), deemed

¹ Applicant’s mailing address not in hearing record. Mailing address obtained from Snohomish County on-line Assessor’s Records.

² Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

³ The City recently adopted a major reorganization of its land use regulations, creating Title 8, Unified Development Code, in the process. Title 8 LMC became effective on June 30, 2025. (Testimony) However, Title 8 LMC has not yet been codified. Both Planning and the Examiner have used pre-Title 8 LMC code citations in this case.

⁴ Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. Citations to exhibits that are available electronically in PDF use PDF page numbers, not source document page numbers. While the Examiner considers all relevant

the application to be complete on March 26, 2025. (Exhibit 3) Planning issued a Notice of Application on April 11, 2025. (Exhibit 17)

The subject property (the “Alley”) is located about 162 feet east of 44th Avenue W on the south side of Alderwood Mall Boulevard (“AMB”). The Alley’s Assessor’s Parcel Number is 00372600702105. A related parcel (the “VSC Parcel”) is located about 20-feet south of the south end of the Alley, with frontage on 44th Avenue W. The VSC Parcel’s Assessor’s Parcel Number is 00372600702301.⁵ (Exhibits 1, PDF 1; 11)

The Lynnwood Hearing Examiner (“Examiner”) viewed the subject property via Google Earth imagery: Overhead imagery captured on May 26, 2025; Street View imagery captured in August 2023 (the panhandle between the Alley and the VSC Parcel) and April 2025 (44th Avenue W and AMB). The Examiner also viewed Google Earth historic overhead imagery.

The Examiner held a hybrid open record hearing on July 10, 2025: In-person participation was available at the City Hall; remote participation was available through the “Zoom” platform. Planning gave notice of the hearing as required by the LMC. (Exhibit 18)

The following exhibits were entered into the hearing record during the hearing:

Exhibits 1 - 18: As enumerated in Exhibit 1, the Planning Staff Report

Section 1.35.025 LMC requires that decisions on project permit applications be issued within 120 calendar days after the application is found to be complete; subsection 1.35.025(A) LMC lists four exclusions from the 120-day count, one of which is an extension mutually agreed upon by Planning and the applicant. The open record hearing was held on or about day 65. (Exhibit 1, PDF 3)

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner’s knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. This case involves properties located in the southeast quadrant of the 44th Avenue W/AMB⁶ intersection. Sound Transit selected the southwest quadrant of the intersection as the location for the Lynnwood City Center Station of its 1-Line light rail system. The station, which has only recently opened, consists of an elevated guideway arriving at the station from the southwest, the station and associated infrastructure (the “Lynnwood City Center Station”) in the southwest

documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record.

⁵ Distances obtained from Google Earth’s measurement tool.

⁶ Alderwood Mall Boulevard west of 44th Avenue W is known as 200th Street SW.

quadrant, and an elevated guideway extending across 44th Avenue W to a temporary terminus along the south edge of AMB just west of the Alley. (Exhibit 6; Google Earth Overhead imagery)

2. The parcel configuration in the southeast quadrant of the intersection consists of two rectangular parcels fronting 44th Avenue W (the “Corner Parcels”), bordered on the north by AMB, on their west by 44th Avenue W, on their east by a 23 foot wide, privately-owned north-south parcel (the “Alley”),⁷ and on the south by an east-west panhandle connecting the La Quinta parcel (east of the Alley, fronting on AMB) to 44th Avenue W. The Alley and the La Quinta panhandle intersect. South of the La Quinta panhandle is another rectangular parcel fronting on 44th Avenue W (the “VSC Parcel”). (Exhibit 6, PDF 1)
3. Prior to development of Sound Transit’s Lynnwood City Center Station, the Corner Parcels each contained a commercial building with parking on the north and west; the VSC parcel contained a multi-use commercial building with parking on all four of its sides. Frater acquired the VSC Parcel in 2000; by in or around 2003 that building had been converted into a veterinary clinic (the Veterinary Specialty Center of Seattle, thus the VSC acronym used herein) and VSC had taken over as sole occupant. (Testimony) VSC has two points of vehicular access to its building: A shared driveway within the La Quinta panhandle accessing 44th Avenue W and the Alley accessing AMB (via the La Quinta panhandle). Frater also owns the Alley. (Exhibits 6; 16; historic Google Earth imagery; testimony) The date of Frater’s acquisition of the Alley is not in the record.
4. Prior to development of Sound Transit’s Lynnwood City Center Station, direct access to VSC from 44th Avenue W was possible for both north- and south-bound traffic: There was no raised center median on 44th Avenue W blocking south-bound left turns. Access to VSC from AMB was also available via the Alley and the La Quinta panhandle. But VSC was not readily visible from AMB, so VSC had obtained a permit from the City to install a pole sign within the Alley near the northeast corner of the northern Corner building. That sign was approximately 5’ x 5’, affixed to a 30’ pole, and was located about 40 feet south of the southern AMB curb.⁸ That pole sign is visible on Google Earth Overhead imagery as early as 2011.⁹ (Exhibit 16; historic Google Earth Overhead imagery)
5. The subject area was included in the City Center – Core (CC-C) areawide rezone in 2005, long after VSC’s pole sign had been erected. (Testimony) Pole signs are prohibited in the CC-C zone. [LMC 21.60.475 (A)(1)] VSC’s pole sign became nonconforming as a result of the 2005 rezone.
6. Sound Transit acquired both right-of way and construction easements through purchase and/or eminent domain for development of Lynnwood City Center Station. The northernmost of the Corner Parcels was acquired, the building on it was demolished, the pole sign was removed, and the AMB right-of way was widened along its south side. Construction work associated with

⁷ Some record documents and testimony say that the alley is 25 feet wide. Exhibit 6, a Sound Transit survey, calls out the Alley as 23 feet wide. (Exhibit 6, PDF 3) The Examiner elects to rely on that call-out.

⁸ Distance from AMB curb determined from the Google Earth measurement tool.

⁹ The resolution of earlier Google Earth Overhead imagery is too poor to identify a sign.

Lynnwood City Center Station included adding a second west-bound left-turn lane on AMB at the 44th Avenue W intersection and installing a raised center median on 44th Avenue W that effectively prevents southbound left turns into the La Quinta driveway. The elevated guideway currently ends at a large concrete pedestal located just west of the north end of the Alley. (Exhibits 13 – 15; Google Earth Overhead and Street View imagery)

7. Frater, on behalf of VSC, wants to re-establish a business identification/directional sign within the Alley to guide clients to VSC, as did the prior pole sign. The problem is that pole signs are not allowed in the CC-C zone, a monument sign would create sight distance problems at the Alley's AMB intersection, the Alley is too narrow to allow a sign to meet required setback standards, and a sign in the location of the former pole sign would have very limited visibility due to the elevated guideway pedestals. (Exhibits 13 – 15; testimony) Thus, a variance from at least one LMC regulation is required to place any type of functional sign in the Alley.
8. Frater's initial concept was to place a monument sign at the north end of the Alley, thus avoiding the CC-C zone's pole sign prohibition. City Public Works asked Frater not to pursue that option because of the sight distance problems it would create at the entrance to the Alley. Frater subsequently modified its application to the pole sign configuration now proposed. The bottom of the proposed sign would be 7-feet above grade, thus preserving sight distance at the Alley/AMB intersection. The sign itself would be approximately 9-feet wide by 4-feet high, thus not conflicting with the Sound Transit guideway structure. The proposed location would be at the northeast corner of the Alley right-of-way and located so as to not interfere with any underground utilities. (Exhibit 5; testimony)
9. The code section listed as the subject of the Variance request is LMC 21.60.475(A)(1), the code provision which prohibits pole signs in the CC-C zone. (Exhibit 8, PDF 1)
10. Signs are not treated as uses by the adopted zoning code. The tables listing permitted, conditional, and prohibited uses in the several zones do not list signs at all. [Chapters 21.42, .43, .44, .46, .48, .50, etc. LMC] Rather, signs are regulated in a separate chapter, Chapter 21.16 LMC. The only exception to this pattern is the CC-C zone which specifically prohibits pole signs. [LMC 21.60.475(A)(1)]
11. The Frater variance application is categorically exempt from the State Environmental Policy Act ("SEPA") threshold determination process pursuant to WAC 197-11-800. (Exhibit 1, PDF 3)
12. No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application.
13. Planning recommends approval of the variance request from LMC 21.60.475(A)(1) subject to three conditions. (Exhibit 12, PDF 8 & 9)

14. Frater seeks clarification of Recommended Condition 2: “A survey will be required at time of sign permit submittal to ensure accurate placement of the proposed sign.” (Exhibit 1, PDF 9) Frater asks that an existing Sound Transit survey be determined to be acceptable. (Testimony)

Planning indicated that the purpose of Recommended Condition 2 is to ensure that the sign will be erected on private property and not conflict with utilities in the vicinity of the sign. (Testimony)

15. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK¹⁰

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

A Variance is a Process I application which is subject to an open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [LMC 1.35.100, .168, and .175]

Review Criteria

The review criteria for Variances are set forth at LMC 21.26.350:

- A. The variance for the subject property will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and the zone in which the property is located; and
- B. The variance is necessary because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the land use zone in which the subject property is located; and
- C. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is located; and
- D. The special circumstances of the subject property make the strict enforcement of the provisions of this code an unnecessary hardship to the property owner; and
- E. The special circumstances of the subject property are not the result of the actions of the applicant or a predecessor in interest; and
- F. The variance is the minimum necessary to fulfill the purpose of a variance and the need of the applicant; and
- G. The variance is consistent with the purpose and intent of the zoning code; and
- H. The variance is in accord with the comprehensive plan.

¹⁰ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

A “consistency determination” is also required for all “land use and development applications.” [LMC 1.35.070] A variance is not *per se* a land use or development application; it is a request to relax development regulations to facilitate a subsequent land use or development application. The consistency determination does not apply to variance applications.

Vested Rights

“Vesting” serves to “fix” the regulations against which a development application is judged. [*Potala Village Kirkland, LLC v. City of Kirkland*, 183 Wn. App. 191 (2014), *review denied*, 182 Wn.2d 1004, 342 P.3d (2015)]

In 2014 the State Supreme Court flatly declared: “While it originated at common law, the vested rights doctrine is now statutory.” [*Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 173, 322 P.3d 1219 (2014)] The *Potala* court rejected a contention that the filing of a complete shoreline substantial development permit application vested development rights because no statutory provision established vested rights for shoreline permits. [*Supra*, at 196-206]

Variances are not the subject of any state vesting statute. If Lynnwood had a local vesting ordinance applicable to land use applications, the Examiner would be obliged to follow it as enacted. [*Erickson & Associates v. McLerran*, 123 Wn.2d 864, 872 P.2d 1090 (1994); *Abbey Rd. Grp., LLC v. City of Bonney Lake*, 167 Wn.2d 242, 250, 218 P.3d 180 (2009)] But the City has no such local ordinance. Thus, the Examiner must follow the most current case law.

Under the most current case law, there is no vesting for Variance applications because there is no statutory provision providing vesting for such applications.

In addition, appellate courts historically have never applied the vested rights doctrine to applications for variances or exceptions from adopted standards.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [LMC 1.35.155]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. VSC (and Frater as VSC’s landlord) is in an awkward position not of its own making. For years VSC had a legal pole sign within the Alley providing directional guidance to its facility for customers arriving on AMB. Then came the CC-C rezone (not of VSC’s own doing) which made

VSC's pole sign nonconforming. Then came Sound Transit which acquired the rights to and demolished VSC's pole sign (also not of VSC's doing). VSC/Frater, recognizing that pole signs were no longer permitted in the area, opted for a monument sign. (They would still have needed one or more variances for setbacks.) But Public Works strongly advised against a monument sign because it would create a sight distance impediment at the AMB/Alley intersection. VSC/Frater was left with but one practical option: Apply for a variance to erect a pole sign.

2. The issue in this case, reduced to its basics, is: May VSC erect a pole sign of some magnitude within the Alley to provide directional guidance to its facility for customers arriving on AMB? Essentially, a replacement for its prior pole sign. There are numerous LMC regulations addressing signs within the City, with many of which a pole sign in the Alley would not comply. In this case, it is less important which specific regulation(s) are listed on a variance application than whether the proposal to erect a pole sign to provide directional guidance to VSC's facility for customers arriving on AMB meets the criteria for issuance of a variance.
3. The proposal to erect a pole sign within the Alley to provide directional guidance to VSC's facility for customers arriving on AMB complies with variance Criterion A. Lynnwood's Criterion A is identical to Bellevue's Criterion A (as it existed in the 1990s) except for one word: Bellevue used the word "district" instead of "zone." Bellevue's Criterion A was the subject of adjudication by the Washington State Court of Appeals. [*Hoberg v. City of Bellevue*, 76 Wn. App. 357, 884 P.2d 1339 (1994)] Decisions of the Court of Appeals establish legal precedent, especially where the ordinance language presently at issue is identical in all substantive respects with the ordinance language ruled on by the Court. The *Hoberg* court ruled as follows regarding Bellevue's version of Criterion A:

Criterion A restricts the granting of use variances. ... Relief from setback is a classic example of an area variance, as opposed to a use variance. An area variance is one which does not change the specific land use but provides relief from dimensional requirements such as setback, yard size, lot coverage, frontage or height restrictions.

...

In short, *Hoberg's* application did not propose a use variance. The Board [of Adjustment] erred in denying *Hoberg's* application as contrary to Criterion A.

[*Hoberg*, at 360 and 361] Lynnwood's Criterion A must be interpreted in a similar fashion. While at first blush it may appear that this is a use variance (which would not be allowed), it is not a use variance because the LMC does not regulate signs as uses. Therefore, VSC/Frater's request is not a use Variance and is not prohibited by Criterion A.

4. The proposal to erect a pole sign within the Alley to provide directional guidance to VSC's facility for customers arriving on AMB complies with variance Criterion B. VSC's facility suffers from access restrictions resulting from construction of Lynnwood City Center Station and improvements on 44th Avenue W south of AMB-200th Street SW. The raised meridian on 44th Avenue W prevents

legal left turns from south-bound traffic on 44th Avenue W into the La Quinta panhandle, which is VSC's only direct access onto 44th Avenue W. The location of the Sound Transit light rail Line-1 guideway support pedestal limits visibility at the north end of the Alley. The height of the guideway limits the height of any sign in its future path. The narrow width of the Alley severely limits sign placement.

5. The proposal to erect a pole sign within the Alley to provide directional guidance to VSC's facility for customers arriving on AMB complies with variance Criterion C. VSC/Frater have designed the replacement pole sign and chosen its location to minimize any adverse effect on surrounding properties and traffic movements. The sign will be placed on a single support pole, not a pair of poles. The bottom of the sign itself will be 7-feet above grade thus providing unrestricted visibility beneath the sign. The top of the sign will be 11-feet above grade, thus not interfering with future extension of the Sound Transit Line-1 guideway. And the sign will be at the northeast corner of the Alley to provide the best possible visibility to motorists on AMB.
6. The proposal to erect a pole sign within the Alley to provide directional guidance to VSC's facility for customers arriving on AMB complies with variance Criterion D. Without sign regulation relief, VSC will not be able to provide directional assistance to persons wishing to visit its facility. There is simply no other way to provide needed guidance than to erect a sign at the north end of the Alley. And there is no way to erect a workable, acceptable sign without some sign regulation relief.
7. The proposal to erect a pole sign within the Alley to provide directional guidance to VSC's facility for customers arriving on AMB complies with variance Criterion E. VSC/Frater would not be before the Examiner seeking a zoning variance were it not for the CC-C rezone (not of VSC/Frater's doing) and Sound Transit's development of Lynnwood City Center Station (also not of VSC/Frater's doing). The situation that gives rise to the variance application is not the result of any action taken by VSC/Frater.
8. The proposal to erect a pole sign within the Alley to provide directional guidance to VSC's facility for customers arriving on AMB complies with variance Criterion F. This Criterion was been discussed in several of the preceding Conclusions of Law. The discussion will not be repeated here.
9. The proposal to erect a pole sign within the Alley to provide directional guidance to VSC's facility for customers arriving on AMB complies with variance Criterion G. The purposes of the CC-C zone are:
 - A. To create a distinct, strong identity for the city center, producing a heart for Lynnwood that is surrounded by solid neighborhoods.
 - B. To provide opportunities to increase the city's tax base, thereby helping to fund public improvements and public services.

C. To encourage private and public investment, attract shoppers and visitors, and appeal to existing and new residents.

D. To produce a concentration and a mixture of commercial, office, retail, residential, and civic uses within the city center.

E. To develop a city center that supports pedestrian movement and use of public transit.

F. To implement both the city's comprehensive plan and the city center subarea plan.

G. To promote attractive streetscapes and urban green spaces.

[LMC 21.60.050] A directional/identification sign for VSC will help stabilize that business as an active part of the area's business matrix.

10. The proposal to erect a pole sign within the Alley to provide directional guidance to VSC's facility for customers arriving on AMB complies with variance Criterion H. Planning addressed this Criterion in some depth in its Staff Report. (Exhibit 1, PDF 6) The Examiner incorporates that discussion by reference as if set forth in full.
11. The Examiner will break from tradition in this case by not specifying the exact LMC provisions from which a variance or variances have been granted. There are numerous sign regulations in several places in the LMC which could be argued apply in this case. The applicability of some depends upon the applicability of others. It has been clear from the beginning of this case that the intent is to allow a modest, tasteful pole sign (as depicted in Exhibit 5) to be erected in the Alley to replace the former pole sign. The Examiner's intent in this Decision is to allow the proposed pole sign, as depicted in Exhibit 5, to be erected as shown in that exhibit. All sign regulations conflicting with that intent are the subject of the variances granted herein.
12. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner **GRANTS** Variances from any and all LMC sign regulations impeding erection of the proposed pole sign as depicted on Exhibit 5 **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued July 15, 2025.

/s/ *John E. Galt*

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ¹¹

Taylor Nordby
Karl Almgren

Catherine Kato

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Lynnwood Development and Business Services Department a written request for reconsideration within seven calendar days following the issuance of this Decision in accordance with the procedures of LMC 1.35.168. Any request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner which forms the basis of the request. See LMC 1.35.168 for additional information and requirements regarding reconsideration.

NOTICE of RIGHT of APPEAL

This Decision is final subject to the right of a party of record (See LMC 1.35.148.) with standing, as provided in RCW 36.70C.060, to file a land use petition in Superior Court in accordance with the procedures of LMC 1.35.175 and the Land Use Petition Act [Chapter 36.70C RCW]. See LMC 1.35.175 for additional information and requirements regarding judicial appeals.

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”

¹¹ The official Parties of Record register is maintained by the City’s Hearing Clerk.

CONDITIONS OF APPROVAL
VAR-24-0004
VSC SIGN VARIANCES

This Variance is subject to compliance with all applicable provisions, requirements, and standards of the Lynnwood Municipal Code, standards adopted pursuant thereto, and the following special conditions:

1. This variance provides relief from any and all LMC sign regulations which would prevent the sign depicted on Exhibit 5 from being erected within Assessor's Parcel 00372600702105 as depicted on Exhibit 5. No other variance is either expressed or implied.
2. The proposed sign is to be removed if a change of use of the building occurs, or if redevelopment of the site occurs.
3. A survey will be required at time of sign permit submittal to ensure accurate placement of the proposed sign. Surveys prepared for Sound Transit's Lynnwood City Center Station project may satisfy this requirement if one or more sheets accurately depict property lines and utility services in the vicinity of the proposed sign's location.
4. The Plan Set (Exhibit 5) is subject to further review and corrections upon application for a sign permit, including approval from a Washington State Licensed Design Professional.