

**SUPERIOR COURT OF WASHINGTON
COUNTY OF WHATCOM**

KATHRYN AND PATRICK SUTTON, <p style="text-align:right">Petitioners,</p> v. THE CITY OF BELLINGHAM, <p style="text-align:right">Respondent.</p>	No. 24-2-00836-37 COURT’S RULING ON APPEAL OF HEARING EXAMINERS’S ORDER
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Ruling

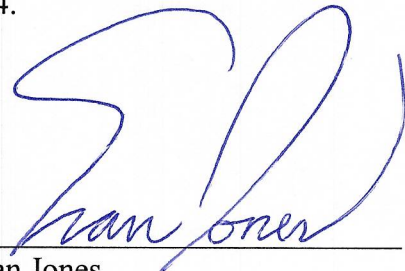
This matter came before the Court on Petitioners appeal under the Land Use Petition Act following a decision of the City of Bellingham Hearing Examiner’s order dated April 24, 2024. The Hearing Examiner’s order dismissed Petitioner’s variance application for lack of jurisdiction, finding itself without authority to consider a request to allow a use not generally permitted in the general use type under BMC 20.18.010(B)(1). The Court has now considered the record, the filings of the parties, and oral argument offered on October 4, 2024. After such consideration, the Court finds that the appeal is meritorious in part and should be GRANTED consistent with the following opinion.

The Superior Court has authority to hear this appeal under RCW 36.70C.130, which sets out the standards that govern this review. After applying these standards, including allowing such deference as is due the construction of a law by a local jurisdiction with expertise, this Court concludes that the land use decision of the Hearing Examiner was an erroneous

interpretation of BMC 20.18.010(B)(1). Under the Bellingham Municipal Code, short-term rentals are a generally permitted use, either as a principal or conditional use, in the general use type (Residential single) in which the Petitioner's property is located. The more particular code prohibition (BMC 20.10.037(B)(5)(c)) on using a "detached" accessory dwelling unit to serve as a short-term rental is a specific -not general- prohibition on the use itself and is thus within the Hearing Examiner's authority to consider under the procedures in BMC 20.18. And, given the type of decision at issue, the Hearing Examiner is the appropriate body to hear the application.

While the Petitioner seeks additional relief, the Court finds the threshold question regarding jurisdiction dispositive for the purpose of this appeal and therefore does not rule on the remaining requests. The Petitioner's appeal of the decision of the Hearing Examiner of April 24, 2024 if GRANTED in part, the Hearing Examiner's decision is REVERSED, and the case is REMANDED to the Hearing Examiner for further proceedings consistent with the foregoing.

Signed this 18TH day of DECEMBER, 2024.



Judge Evan Jones
Whatcom County Superior Court, Dept. 2