



**Kitsap County Hearing Examiner**

**MARK E. HURDELBRINK**

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**OFFICE OF THE HEARING EXAMINER**

**KITSAP COUNTY**

**REPORT AND DECISION**

**CASE NO.:** 080110-003  
BROWN REASONABLE USE EXCEPTION

**APPLICANT/  
OWNER:** Chad Brown  
Points West, Inc. DBA American Dream Homes  
P.O. Box 4805  
South Colby, WA 98384

**PROJECT REPRESENTATIVE:** William M. Palmer  
W.M. Palmer Consultants  
P.O. Box 6  
Port Orchard, WA 98366

**SUMMARY OF REQUEST:**

The applicant has applied for a Reasonable Use Exception pursuant to Kitsap County Code (KCC) 19.100.140 to allow construction of a single-family residence within the required 50 foot Category III wetland buffer. The proposed two-story structure has a footprint of approximately 1500 square feet and includes a garage. A limited yard area is also proposed within the wetland buffer.

**PROJECT LOCATION:**

The project is located at the west side of Alaska Avenue East, approximately 75 feet north of its intersection with East Leola Lane, Manchester, South Kitsap County, Commissioner District #2.

**SUMMARY OF DECISION:**

Request granted subject to conditions

**PUBLIC HEARING:**

After reviewing Department of Community Development Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was conducted in the chambers of the Kitsap County Board of Commissioners on January 10, 2008.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

ITEM NO.	DOC. TYPE/SUBJECT	DATED	DATE REC'D.
1	Critical Areas Wetlands Report	1/25/07	3/5/07
2	Reasonable Use Exception Report	2/10/07	No Rec'd Date
3	Reasonable Use Exception Application	2/27/07	3/5/07
4	Notice of Complete Application	11/28/07	N/A
5	Notice of Application	11/29/07	N/A
6	Affidavit of Mailing – NOA	11/29/07	N/A
7	Notice of Public Hearing	12/20/07	N/A
8	Affidavit of Mailing – NPH	12/24/07	N/A
9	Letter from William T Fairgrieve	No Date	11/28/07
10	Letter from Bill & Carol Malmquist	12/20/07	12/24/07
11	Affidavit of Posting	12/26/07	N/A
12	Letter from David & Catherine Knoelke	12/27/07	1/2/08
13	GIS Building Limitations Map	12/31/07	N/A
14	GIS Zoning Map	12/31/07	N/A
15	Staff Report	12/31/07	N/A
16	Letter from Charles Young	1/3/08	1/7/08
17	Aerial Photo	1/10/08	1/10/08

Appearing was DAVE GREETHAM who presented the Kitsap County Department of Community Development Staff Report. Exhibits 1 through 16 were entered into the record.

Exhibit 17, an aerial photograph of the site, was also submitted. The site is located on Alaska Ave. in Manchester. It is located on a plateau. There are wetlands to the south and west of the site. The site plan was shown. This area is within a residential zone. There is

an existing residence to the north that was just built last year. A Category III wetland constrains the site. The buffers to the wetland almost totally constrain the site, which would not allow construction of a building at all. Initially, Kitsap County Staff examined whether a variance to the wetland and wetland buffer would be available. It was determined that the variance criteria could not be satisfied because it could not be said that there would be no impact on critical areas. Therefore, a reasonable use exception was next examined. The site to the north received a building permit. A stop work order was issued when it was found that some of the wetland or wetland buffer was being filled or graded. This issue was resolved. The applicant will be required to enhance the buffer area pursuant to this request. The county has received several comment letters. These comments relate to impacts to the wetland and the stormwater issue. Water flows south to north and west to east. The conditions of approval ensure that there will be limited impact as a result of allowing construction. The buffer area will have to be restored. A split rail fence will be required. Planning staff recommends an additional condition related to the stormwater issue. The berm that is located to the south of the southeast corner of this site, adjacent to Alaska Avenue, shall be removed because it is impeding the flow of water. The stormwater design will have to satisfy all requirements. This will be done at the building permit stage.

Appearing was WILLIAM PALMER, who is the land use planning consultant for the applicant. He agrees with most of staff's presentation. He showed how the 50 foot buffer requirement constrains this site. There is no room for a residence. Some relief is necessary. He initially looked at a Variance, but thought that the Reasonable Use Exception alternative was better. There are really not any alternative uses. This area could not be used for agricultural purposes. Since the early 1900s it has been part of a plat. The site has been expected to be used as a residence. The applicant has met the criteria.

Appearing was ANTHONY AGOLLO, who is a neighboring property owner. He noticed the land use sign. He was wondering about the property to the north. Is there a well or septic system on that site? It has been for sale for quite awhile. There was a wetland issue with that house also. He is concerned because it appears that this proposal is just to make a quick buck. He is a developer himself. He has issues when intruding upon wetlands. This hurts the wetland. He doesn't believe that this site is appropriate for a residence. He is also worried about sewer and who is going to provide that.

Re-appearing was WILLIAM PALMER who testified that water and sewer are provided to the site to the north and will also be provided to this site. The property to the north went through all of the necessary permit processes. The wetland issues on this site were not located on that property. Reasonable Use Exceptions are necessary because people would be denied all use of their property if exceptions were not allowed. Kitsap County would have to purchase sites because they would be taking people's property. This is a way for a property owner to make use of his property. They will have to enhance the buffer area. This will help protect the wetland.

Re-appearing was DAVE GREETHAM, who stated that this is a very constrained site. It qualifies for a Reasonable Use Exception. The site to the north only required administrative

review. There is a hand dug well on this site that will have to be dealt with. Likely, it will have to be filled with pea gravel.

No one spoke further in this matter and so the Examiner took the request under advisement.

**NOTE:** A complete record of this hearing is available in the office of Kitsap County Department of Community Development.

### **FINDINGS, CONCLUSIONS AND DECISION:**

#### **FINDINGS:**

1. The Hearing Examiner has admitted documentary evidence into the record, viewed the property, heard testimony, and taken this matter under advisement.
2. Appropriate notice was provided pursuant to the Kitsap County Code.
3. Pursuant to WAC 197-11-800(6)(b) the proposal is SEPA exempt.
4. The applicant is requesting a reasonable use exception to allow construction of a single-family residence within the required 50 foot Category III wetland buffer. The proposal is for a two story structure that has a footprint of approximately 1500 square feet that includes a garage. There is a proposed limited yard area, which will also be within the wetland buffer. The project is located on the west side of Alaska Ave. E. approximately 75 feet north of its intersection with East Leola Lane in Manchester. The site is currently vacant. It is a .24 acre parcel. This parcel and the abutting parcel to the north are being developed by the applicant. These lots were previously reconfigured from former lots 1-4, Block 43, plat of Manchester Heights. These lots were designated for single-family residences.
5. A Category III wetland is located to the southerly and westerly areas of the site. A 50 foot wetland buffer is required from this wetland. There is very little area on this site that is not constrained by the wetland buffer. No construction could take place absent allowance of the Reasonable Use Exception. The surrounding area is developed with single-family residences. It is zoned Manchester Village Low Residential (MVLRL). This is a legally established lot with a single-family residence as its primary use.
6. Kitsap County Code (KCC) 19.100.140 discusses Reasonable Use Exceptions. A Variance request was not made because the applicant could not show that there would be no substantial detrimental impacts to the critical areas. The buffer area will be intruded upon by both the residence and the small yard that is proposed. Therefore, the next request would be for a Reasonable Use Exception.

7. Prior to a Reasonable Use Exception being granted, the applicant must show that the criteria outlined in KCC 19.100.140 is satisfied. Findings on these criteria are as follows:
  - A. *The application of this title would deny all reasonable use of the property.* A reasonable use has been defined in KCC 19.150.565 as "a property that is deprived of all reasonable use when the owner can realize no reasonable return on the property or make any productive use of the property. Reasonable return does not mean a reduction in value of the land, or a lack of a profit on the purchase and sale of the property, but rather, where there can be no beneficial use of the property; and which is attributable to the implementation of the Critical Areas Ordinance". This area has long ago been designated for single-family residential use. There is no other viable use for this property. It is a legally established lot. It is clear that applying a 50 foot wetland buffer would allow no use for this property.
  - B. *There is no other reasonable use which would result in less impact on the critical area.* As noted above, there is no other reasonable use for this property. This area has been determined to be appropriate for residential use.
  - C. *The proposed development does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site and is consistent with the general purposes of this title and the public interest, and does not conflict with Endangered Species Act or other relevant state or federal laws;* Though there is no doubt that this proposal will have some effect on the wetland buffer, the overall effect would be minimal given the requirement that the existing buffer be enhanced by the applicant. There was discussion about stormwater issues on the site. A stormwater plan has to be approved by Kitsap County staff representatives. A condition of approval requires that the berm located to the south of the southeast corner of the site be removed. This will allow a more natural flow into the ditch.
  - D. *Any alterations permitted to the critical area shall be the minimum necessary to allow for reasonable use of the property.* The 1500 square foot footprint is a reasonably sized house for this location. A small yard is being allowed. A split-rail fence will be required to be constructed along the boundaries of the wetland buffer. As noted above, there are buffer enhancements also required.

## **CONCLUSIONS:**

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.

2. The applicant has shown that the proposal satisfies the criteria for a wetland Reasonable Use Exception under KCC 19.100.140, therefore, the proposal is approved subject to the following conditions:
  1. Site development shall conform to the site plan prepared by William M. Palmer and submitted with the Reasonable Use Exception application received by Kitsap County DCD. Any proposed alterations to the building footprint shall be reviewed and approved by Kitsap County staff, and shall not exceed the footprint size indicated on the site plan.
  2. Buffer enhancement shall occur pursuant to the February 10, 2007 buffer enhancement plan prepared by B & A, Inc. Enhancement shall include plantings as specified in the plant list (Table 1), and removal of blackberry plants and fill within the designated buffer area.
  3. The final planting schedule and monitoring plan shall be conditions of future building permit approval. Written confirmation of fill removal shall be submitted to Kitsap County DCD, by the applicant's wetland consultant prior to building permit issuance.
  4. A split rail fence shall be installed along the perimeter of the replanted buffer area prior to final occupancy, as indicated on the site plan. Wetland buffer signs (available from the Department) shall be installed at 50 foot intervals along the fence.
  5. The applicant will be required to remove the berm that is located to the south of the southeast corner of the site adjacent to Alaska Ave.
  6. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.
  7. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

**DECISION:**

The Reasonable Use Exception to allow construction of a single-family residence with a footprint of approximately 1500 square feet, garage and limited yard within the required 50 foot Category III wetland buffer is approved

**ORDERED** this 8<sup>th</sup> day of February, 2008

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MARK E. HURDELBRINK  
Deputy Hearing Examiner

**TRANSMITTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2008, to the following:

**APPLICANT/ OWNER:**            **Chad Brown**  
Points West, Inc. DBA American Dream Homes  
P.O. Box 4805  
South Colby, WA 98384

**REPRESENTATIVE:**           **William M. Palmer**  
William M. Palmer Consultants  
P.O. Box 6  
Port Orchard, WA 98366

**OTHERS:**

**FROM INTERESTED PARTIES ROSTER/SIGN UP SHEET**

William T. Fairgrieve 2552 Alaska Ave. E. Port Orchard, WA 98366	David and Catherine Knoelke 8009 E. Barsay Ln. Port Orchard, WA 98336
Bill and Carol Malmquist 8008 E. Barsay Ln. Port Orchard, WA 98366	Fred Kubasak 6408 E. Leola Ln. Port Orchard, WA 98366
Charles Young City Sights II P.O. Box 803 Manchester, WA 98353	Resident 284 Alaska Ave. Port Orchard, WA

Kitsap County Board of Commissioners  
Kitsap County Department of Community Development  
Kitsap County Department of Public Works  
Kitsap County Prosecutor – Civil Division  
Kitsap County Department of Parks and Recreation

Bremerton-Kitsap County Health Department  
The Sun Newspaper

Pursuant to Kitsap County Code Section 21.04.120 and the Land Use Hearing Examiner Rules of Procedure, an OBJECTION to the Examiner's Decision may be filed, in this matter, in writing, with the Clerk of the Board of County Commissioners, on or before \_\_\_\_\_, 2008. Prior to the filing of an Objection, the objector shall pay the sum of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) to the Department of Community Development.