



Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36
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OFFICE OF THE HEARING EXAMINER

KITSAP COUNTY

REPORT AND DECISION

CASE NO.: 080508-031
EAGLE HOMES
REASONABLE USE EXCEPTION

**APPLICANT/
OWNER:** Don Vandusen
Eagle Homes
7624 Ray Nash Drive NW
Gig Harbor, WA 98335

SUMMARY OF REQUEST:

The applicant is requesting a Reasonable Use Exception to allow construction of a single-family residence within 27 feet of a Category II wetland, pursuant to the Reasonable Use Exemption criteria in Kitsap County Code Section 19.100.140 (Critical Areas Ordinance - Reasonable Use Exceptions). The zoning designation is Rural Protection (RP). To accommodate for construction on this constrained parcel, the proposed wetland buffer will be reduced to 19.5 feet at its closest point to the eastern wetland boundary, with an additional minimum building setback of 7.5 feet.

PROJECT LOCATION:

Lot 17
Delta Long Lake Acre Tracts Subdivision
Long Lake Road SE, Port Orchard, 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 **May 8, 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	Water Availability Letter – KCHD	5/5/06	1/22/08
2	Wetland Analysis Report	10/22/07	11/28/07
3	KC Building Permit Application	No Date	11/26/07
4	Building Site Application KCHD	11/4/07	No Rec'd Date
5	GIS Building Limitations Map	11/26/07	N/A
6	LIS Submittal Information	No Date	11/28/07
7	GIS Aerial Photo	11/29/07	N/A
8	GIS Critical Areas Topo	11/29/07	N/A
9	Letter from Patty Charnas	1/9/08	N/A
10	Request to Waiver Pre-Application Meeting	1/17/08	1/22/08
11	Hearing Examiner Variance Application	1/16/08	1/22/08
12	Notice of Complete Application	2/19/08	N/A
13	Notice of Application	3/4/08	N/A
14	Affidavit of Mailing – NOA	3/6/08	N/A
15	Memo from Tim Quayle KCHD	3/13/08	N/A
16	Memo from Shawn Alire	3/13/08	N/A
17	Letter from Steve Carpenter	3/21/08	No Rec'd Date
18	Notice of Application – Publication	3/26/08	3/26/08
19	Notice of Public Hearing	4/21/08	N/A
20	Affidavit of Mailing – NPH	4/21/08	N/A
21	Fax Transmission Sheet	4/22/08	N/A
22	Reasonable Use Exception Application	4/22/08	4/22/08
23	Affidavit of Posting	4/23/08	N/A

ITEM NO.	DOC. TYPE/SUBJECT	DATED	DATE REC'D.
24	Staff Report	4/30/08	N/A
25	Power Point Presentation	5/8/08	5/8/08

DAVID GREETHAM appeared, presented the Department of Community Development Staff Report, and introduced Exhibits “1” through “25”. The lot was created by a 1982 plat known as Delta Long Lake which predated either the Critical Areas Ordinance or the RP zone classification. It is a legal lot of record which drives the reasonable use exception. The applicant cannot meet the variance criteria because staff cannot say that the project will not impact critical areas. The wetland is part of a large system which feeds Long Lake. The site plan shows a 2,304 square foot footprint, but the structure will only have 1,600 square feet. The north corner of the site is the only place where soils will support an on-site septic system. The Examiner previously approved a similar project on a parcel to the southeast. Surrounding uses include undeveloped property to the south and some developed lots farther south. Development to the north is single family residential. He received three phone calls plus a letter advising of a potential property line issue. However, most of the concerns relate to clearing of the lot. One caller was a local builder who just wanted to see that the County is doing its job. The third letter is from a homeowners association which expressed concern that in the previous variance the owner flipped the parcel. They are satisfied with the plans and conditions. Staff finds that the proposal meets the criteria for a RUE as it will have limited impacts on the critical area. He recommended an additional condition that the building footprint not exceed 1,600 square feet.

DON VANDUSEN representing Eagle Homes appeared and testified that he understands and has no problems with conditions of approval. The 48 by 48 footprint is what they work with for septic design. They will install a 1,980 square foot home plus a garage which would equal a 1,600 square foot footprint. He talked with the homeowners association and walked the lot with them. They expressed concerns and he wants to limit the tree removal. He can't tell which ones he will need to remove now, but will limit the tree cutting to the ones needed. He had the lot surveyed and found that the parcel to the north encroaches onto his property. The homeowner knows it and it is not a big deal to resolve it.

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, 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 has a possessory ownership interest in a rectangular, unimproved, .72 acre parcel of property abutting the south side of Long Lake Road approximately one half mile north of its intersection with Mullenix Road in incorporated south Kitsap County. The applicant requests a reasonable use exception (RUE) pursuant to the Kitsap County Critical Areas Ordinance to allow construction of a single family residential home on the parcel.
5. The parcel abuts the south side of Long Lake Road for 113 feet and measures 250 feet in depth. The site plan (Exhibit "3") shows a Category II wetland located in the southeastern portion of the parcel and that the buildable area is limited to the northwest corner. The applicant must also locate the on-site septic drainfield in the northwest corner adjacent to Long Lake Road. Such pushes the proposed single family residential home into the west-central portion of the parcel.
6. The vegetation on the site is dominated by red alder forest and moderately thick shrub layer. However, a Douglas fir upland forest with a thick herbaceous layer is located in the northwest corner at the site of the septic drainfield. The topography slopes gently to moderately down from the northwest corner to the south and east. The wetland on the site is associated with the wetlands at the south end of Long Lake. Off-site drainages and streams flow through the wetland system toward a large, open water, ponded area south of the parcel and east of Long Lake. Wiltermood Associates, Inc., categorized the wetland as a forested, sloping, Category II system that requires a 110 foot wide buffer plus 15 foot building and impervious surface setback.
7. The applicant proposes to reduce the wetland buffer to 19.5 feet and maintain a 7.5 foot wide building and impervious surface setback to accommodate the home. The southeast corner of the structure/impervious area will measure 27 feet from the wetland boundary. The closeness of the developed area of the lot to the wetland development will impact the wetland and therefore the applicant cannot meet the criteria for a wetland variance. The applicant has therefore requested a reasonable use exception.
8. The site is located within the Rural Protection (RP) designation of the Kitsap County Comprehensive Plan and the RP zone classification of the Kitsap County Code (KCC). Section 17.305.010 KCC provides that the RP zone promotes low density rural development consistent with the rural character and protects environmental features such as wetlands. Table 17.382.100 KCC requires a minimum lot size of ten acres for newly created lots in the RP classification and also requires setbacks of 50 feet from the front yard and 20 feet from the side and rear yards for principal

structures. However, this lot was created as part of the Long Lake Acre tracts in 1982 and is therefore a vested building site. Furthermore, because it contains less than one acre, the minimum setbacks are reduced to 20 feet front yard and five feet side and rear yard. The site plan shows the structure meeting all required setbacks.

9. Prior to obtaining a RUE the applicant must show that the request satisfies the criteria set forth in Section 19.100.140 KCC. Findings on each criteria are hereby made as follows:
 - A. Application of the Critical Areas Ordinance and its 110 foot buffer and 15 foot setback would eliminate the parcel as a building site. Thus, the applicant could realize no reasonable return on the property or make any productive use of the parcel. Similarly sized lots in the vicinity along Long Lake Road SE are currently improved with single family residential homes. The applicant's proposed impervious area footprint and 1,600 square foot structure constitute a reasonable use of the parcel.
 - B. No other reasonable use would result in less impact on the Category II wetland. Due to on-site septic constraints the west-central portion of the lot is the only potential building site. No other allowed use in the RP classification would have less impact than a single family residential home. The applicant proposes a two story structure to provide a reasonable amount of square footage.
 - C. The home does not pose an unreasonable threat to the public health, safety, or welfare on the parcel itself or to abutting parcels, is consistent with the general purposes of Title 19 KCC, and does not conflict with the Endangered Species Act or other relevant state or federal laws. The house will not impact steep slopes or other critical areas nor will it impact abutting parcels which have similar development. The site development activity permit (SDAP) process will protect the wetland from impacts created by development of the site. The applicant has located the drainfield in the best soils available at the northwest corner of the parcel and as far away from the wetland as possible. Neither the State nor the County know of any endangered or priority species in the project vicinity.
 - D. The applicant proposes no alterations to the critical area. However, due to the destruction of wetland buffer, the applicant has proposed a split rail fence to provide a delineation of the remaining buffer.

CONCLUSIONS:

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

2. The applicant has shown that the request for a reasonable use exception satisfies all criteria set forth in KCC 19.100.140 and therefore the RUE should be approved subject to the following conditions:
 1. This project is located within a Critical Drainage area as defined in Title 12.28.020 of the Kitsap County Code. Therefore, Development Engineering will require a Site Development Activity Permit (SDAP) at time of building permit prior to construction activities. SDAPs shall be prepared by a Civil Engineer licensed in the State of Washington.
 2. Following land use approval, a Site Development Activity Permit (SDAP) will be required prior to construction activities. The guidelines for submitting a SDAP can be found in Chapter 2 of the Kitsap County Stormwater Design Manual.
 3. If any work is to be done below the ordinary high water mark, a Hydraulic Project Approval (HPA) permit is required from the Washington Department of Fish and Wildlife. Information regarding HPAs can be found at <http://www.wa.gov/wdfw/hab/hpaprogram.htm> or by calling the Office of Regulatory Assistance at (360) 407-7037. This permit is required prior to issuance of the SDAP.
 4. Any work within the County right-of-way will require a permit to perform work on County right-of-way and possibly a maintenance or performance bond. This application must be submitted as part of the SDAP process (or building permit if no SDAP is required). The need for and scope of bonding will be determined at that time.
 5. Vegetation removal shall be limited to that necessary for the proposed building, drainfield, and driveway envelope, as depicted on the revised site plan prepared by Cleaver Construction and received by Kitsap County Department of Community Development on May 21, 2007. No additional tree removal shall occur.
 6. Should hazard tree removal be proposed following building permit issuance, The Department of Community Development Environmental Review Division shall review and approve a buffer replanting plan pursuant to KCC 19.100.130.C.
 7. Site development shall comply with the wetland buffer requirements and mitigation recommendations of the October 22, 2007 Wetlands Analysis Report prepared by Wiltermood Associates Inc. Mitigation recommendations include a split rail fence to restrict human and motorized access to the wetland and its buffer. Site Development Activity Permit and prescriptive flow control considerations shall also be incorporated into the investigation,

design, and long-term maintenance of the property.

8. Prior to Site Development Activity Permit application, a topographic survey prepared by a professional surveyor licensed in the State of Washington shall be conducted showing two-foot contour intervals, and a site plan shall be prepared showing proposed site development features on the topographic survey map.
9. Land use approval is limited to the uses proposed by the applicant on the recommended site plan. Any modifications or expansion of the project will be subject to further review pursuant to the requirements of the appropriate sections of the Kitsap County Code.
10. Pursuant to KCC 21.04, land use approval is valid for a period of up to three (3) years from the decision date.
11. The footprint for the single family residential dwelling and attached garage shall not exceed 1,600 square feet.
12. 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.
13. 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 request for a reasonable use exception to reduce a wetland buffer to 19.5 feet and having a minimum building setback to 7.5 feet to allow construction of a single family residential home on lot 17 of the Delta Long Lake Acre Tracts subdivision on Long Lake Road SE, Port Orchard, is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 17th day of June 2008.

STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this _____ day of _____, 2008, to the following:

**APPLICANT/
OWNER:**

Don Vandusen
Eagle Homes
7624 Ray Nash Drive NW
Gig Harbor, WA 98335

OTHERS:

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.