



Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36
http://www.kitsapgov.com/dcd/lu_env/he/
337-4925

PORT ORCHARD WASHINGTON 98366-4682
(360) 337-7181 FAX (360)

kashcraf@co.kitsap.wa.us

NOTICE OF HEARING EXAMINER DECISION

October 21, 2008

To: Interested Parties and Parties of Record

RE: Project Name: Van Beynum – Reasonable Use Exception
Applicant: Reinout Van Beynum
P.O. Box 308
Keyport, WA 98345
Central Kitsap County, Commissioner District #3
Application: Reasonable Use Exception
Case Number: 080925 – 074 (302502-3-040-2005) LIS#08 54018

Enclosed is the Decision issued by the Kitsap County Hearing Examiner in the above-referenced matter.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS APPEALED TO THE KITSAP COUNTY BOARD OF COMMISSIONERS, AS PROVIDED BY SECTION 120 OF THE KITSAP COUNTY LAND USE AND DEVELOPMENT PROCEDURES. **ANY APPEAL MUST BE FILED ON OR BEFORE THE CLOSE OF BUSINESS ON NOVEMBER 4, 2008.**

Pursuant to the Kitsap County Land Use and Development Procedures, (KCC 21.04.120) an appeal may be filed objecting to the Hearing Examiner's Decision. An appeal must be made in writing, and filed with both the Department of Community Development (DCD) and the Board of County Commissioners (BCC) offices. At the time of filing the appeal, the appellant shall pay the sum of **five hundred dollars (\$500.00)**. This fee is non-refundable and subject to change. Make check payable to Kitsap County Department of Community Development (DCD).

The written appeal shall be made on or attached to an appeal form provided by DCD, and shall contain the following information.

1. The project name, project applicant, application type, and case number designated by the County:
2. The name, address, and signature of each appellant. If multiple parties file a single appeal, the appeal document shall designate, in writing, one party as the contract representative for all contact with the DCD Director and BCC. All contact between the County and the appellants regarding the appeal, including notices, shall be through this contact representative; and

**NOTICE OF HEARING EXAMINER DECISION – VAN BEYNUM – REASONABLE
USE EXCEPTION**

October 21, 2008

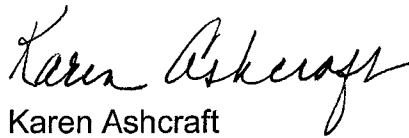
Page 2

3. A written statement of the specific aspects(s) of the Decision and/or SEPA determination being appealed, the reasons why each is in error as a matter of fact or law, and the evidence relied upon to prove the error.

The complete case file will be available for review at the Department of Community Development, Monday through Friday, except holidays, 8:15 a.m. to 4:00 p.m.

If you have questions, please contact me at (360) 337-4487. If you have procedural questions regarding the appeal hearing before the Board of County Commissioners, please contact the Clerk of the Board at (360) 337-7146.

Sincerely,



Karen Ashcraft
Clerk of the Examiner

Enclosure

See attached transmittal

RECEIVED

OCT 20 2008

KITSAP COUNTY DEPT. OF
COMMUNITY DEVELOPMENT

BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY

In the Matter of the Application of)	No. 080925-074
)	
Reinout van Beynum)	
)	
For Approval of a Reasonable Use Exception)	FINDINGS, CONCLUSIONS
<u>from Critical Areas Ordinances</u>)	AND DECISION

SUMMARY OF DECISION

The request for a reasonable use exception from critical areas ordinances to construct a single-family residence and driveway on property located at 3280 NE McWilliams Road, in unincorporated east Bremerton, Washington, is **DENIED**, without prejudice.

SUMMARY OF RECORD

Request:

Reinout van Beynum requests a reasonable use exception from critical areas ordinances to allow the construction of a single-family residence and driveway on property located at 3280 NE McWilliams Road, in unincorporated east Bremerton, Washington.

Hearing Date:

The Hearing Examiner held an open record hearing on the request on September 25, 2008. The Hearing Examiner kept the record open until October 2, 2008, to allow neighboring residents to submit critical drainage area studies. The clerk of the hearing examiner received a critical area drainage report prior to the close of the record on October 2, 2008.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

- Cindy Patten
- Patty Charnas, County Planner
- Reinout van Beynum, Applicant
- Jim Aho
- Thor Ranlum
- Marvin Sieck
- Judith Krigsman
- Rebecca Hall
- Jeff Smith, County Planner

Findings, Conclusions, and Decision
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Van Beynum Reasonable Use Exception, No. 080925-074

Exhibits:

The following exhibits were admitted into the record:

1. Wetland Delineation and Analysis Report, dated September 25, 2007
2. Proposed site plan map for Assessor's Tax Account Number 302502-3-041-2004, received May 2, 2008
3. Access and Surrounding Parcels Plan, depicting Lot 026, 029, 035, 036, 037, 038, 039, 040, and 041
4. Geo- and Environmental Consulting Wetlands Report – ESC, dated May 2008
5. Notice of Complete Application, dated May 13, 2008
6. KC Building Permit Application, with attachments, dated May 16, 2008
7. Email message from David Greetham, with attachments, dated May 23, 2008
8. GIS Aerial Photo, dated May 28, 2008
9. Revised Landscaping Plan
10. Email message from Christina Kereki, with attachments, dated June 2, 2008
11. Reasonable Use Exception Application, received June 6, 2008
12. North Perry Water District Binding Water Availability Letter, May 16, 2008
13. Notice of Application, dated August 1, 2008
14. Affidavit of Mailing – Notice of Application, dated August 1, 2008
15. Letter from Walter & Rebecca Hall, dated August 18, 2008
16. Memorandum from Nathan D. Holburn, Kitsap County Health District, dated August 19, 2008
17. GIS Zoning map, dated August 2008
18. Letter from Walter & Rebecca Hall, undated
19. Notice of Public Hearing, dated September 8, 2008
20. Affidavit of Mailing – Notice Public Hearing, dated September 8, 2008
21. Email from Alison O'Sullivan Suquamish Tribe, with response, dated August 27, 2008
22. Affidavit of Posting, dated September 10, 2008
23. Memorandum from Shawn Alire, County Development Engineering, dated September 15, 2008
24. County Staff Report, dated September 17, 2008
25. Notice of Application – Publication, August 23, 2008
26. Letter from Mike Munro, dated September 16, 2008
27. Reasonable Use Exception PowerPoint Presentation, dated September 25, 2008
28. Post Card, entitled "What Does Your Illahee Look Like?", dated September 25, 2008
29. 2005 and 2006 Illahee Area Zoning Maps, dated September 25, 2008
30. Photograph, dated September 9, 2008
31. Photographs (2), Posting of Property, dated September 25, 2008
32. Photographs (2), dated December 6, 2007
33. Photograph, dated September 21, 2008
34. Judith Krigsman presentation, dated September 25, 2008

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35. Kitsap County Code Urban Residential Zones Use Table
36. Email message from Judith Krigsman, dated October 2, 2008
37. Letter from James Aho, dated October 2, 2008, with CD containing *Illahee Creek Watershed Surface Water Management Plan*, dated September 2008

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

1. Reinout van Beynum (Applicant), requests approval of a reasonable use exception from critical areas ordinances to construct a single-family residence and driveway on 0.23-acres of property located at 3280 NE McWilliams Road, in unincorporated east Bremerton, Washington.¹ *Exhibit 11; Exhibit 24, Staff Report, page 1.*
2. Kitsap County (County) staff determined the reasonable use exception application to be complete on May 13, 2008. *Exhibit 12.* On August 14, 2008, County staff mailed notice of the application to owners of property within 400 feet of the property subject to the application. *Exhibit 13; Exhibit 14.* On August 23, 2008, County staff published notice of the application. *Exhibit 25.* County staff mailed notice of the open record hearing associated with the application to owners of property within 400 feet of the subject property on September 8, 2008, and posted notice of the hearing on the subject property on September 10, 2008. *Exhibit 19; Exhibit 20; Exhibit 22.*
3. Kitsap County Code (KCC) 19.150.570 defines "reasonable use exception" as "an exception to the standards of [KCC Title 19] that allows for the use of a property which cannot otherwise conform to the requirements set forth in [KCC Title 19], including the variance criteria." Washington Administrative Code (WAC) 197-11-800(6)(b) exempts variance requests based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density, from review under the State Environmental Policy Act (SEPA). *Washington Administrative Code (WAC) 197-11-800(6)(b).*
4. The subject property is designated Urban Low Residential by the Kitsap County Comprehensive Plan. *Kitsap County Comprehensive Plan Land Use Map, Figure 2-1.* The designation focuses on single-family dwellings. The designation also includes regulated environmentally critical areas within the County's Urban Growth Area (UGA). The designation is implemented by the County's Urban Low Residential (UL) zoning district, which allows a development density of four to nine dwelling

¹ Assessor's Tax Account Number 302502-3-040-2005 identifies the property subject to the reasonable use exception application. The application includes a legal description of the property. *Exhibit 11.* The Hearing Examiner made a virtual site visit to the subject property through *Google Earth* technology during the week prior to the open record hearing on the application.

units per acre (du/acre). *Kitsap County Comprehensive Plan, pages 2-20 – 2-21 (December 2006).*

5. The subject property is located within the County's UL zoning district. *Exhibit 24, Staff Report, page 2.* The district is intended to recognize, maintain, and protect urban low density residential areas and establish urban densities where a full range of community services and facilities are present or will be present at the time of development in accordance with the urban growth areas as depicted on the Comprehensive Plan. The district is also intended to create energy-efficient residential areas that are capable of allowing the provision of community services in a more economical manner; and provide for additional related uses such as schools, parks, and utility uses necessary to serve immediate residential areas. *KCC 17.330.010.*
6. Construction of a single-family detached dwelling is an allowed use within the UL zoning district, as are other uses.² *KCC 17.330.020; KCC Table 17.381.040(A); Exhibit 35.* Minimum development density within the UL zone is four du/acre; maximum development density is 9 du/acre. Development on lots within the UL zoning district must include a 20-foot wide front yard setback, and a five-foot wide side and rear yard setback. *KCC 17.330.060.*
7. The parcel adjacent to the east of the subject property contains a Category III slope-depressional wetland.³ Category III wetlands are protected by a minimum 50-foot wide buffer and a 15-foot wide building setback from the edge of the buffer. According to the buffer adjustments described within *KCC Table 19.200.220(D)*, the buffer is increased by 10-feet, for a total 60-foot wide buffer. *KCC 19.200.220.A; KCC Table 19.200.220(D); Exhibit 1.*
8. The Category III wetland consists of a forested community with an overstory of red alder and western red cedar. The Category III wetland is seasonally-ponded year-

² The uses allowed within the UL zoning district are set forth in *KCC Table 17.381.040(A)*, and generally include residential, commercial/business, recreational/cultural, institutional, industrial, and resource land uses. *KCC Table 17.381.040(A).*

³ "Wetlands" are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. *KCC 19.150.685; KCC 19.200.210.A.1.* Category III wetlands 1) have a moderate level of functions (score between 30 and 50 points out of 100 on the questions related to functions in the *Washington State Wetland Rating System for Western Washington, Revised 2004*, and are interdunal wetlands between 0.1-acres and one-acre in size; or 2) wetlands scoring between 30 to 50 points, have generally been disturbed in some ways, and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands. *Chapter 19.800 KCC, Appendix A.C.* The wetland on the parcel adjacent to the east of the subject property scored 43 points out of 100 points. *Exhibit 1.*

round over an area less than one-quarter the entire wetland area, and has a holding capacity that allows water to percolate into the ground. Water sources include surface water runoff from adjacent slopes, stormwater runoff, and a perched water table due to heavy rainfall. Category III wetland boundaries extend to the west lot line of the parcel adjacent to the subject property. The Category III wetland buffer extends over the subject property, which is 64-feet wide. Only a portion approximately four-feet wide by 155-feet long on the subject property is not covered by the wetland buffer. According to the County staff report, the subject property is almost entirely within the wetland buffer. With application of the 15-foot wide building setback, there would be no buildable area for a single-family residence on the subject property.⁴ *Exhibit 1; Exhibit 4; Exhibit 24, Staff Report, page 3.*

9. Patty Charnas, County Planner, testified that the subject property is currently vacant. The west half of the subject property consists of mowed grass; the east half of the property is forested. The County staff report states that no endangered species have been identified in the vicinity of the subject property. *Exhibit 4; Exhibit 24, page 4; Testimony of Ms. Charnas.*
10. The Applicant testified that his development proposal for the subject property includes construction of a three-bedroom single-family residence and driveway. The driveway would extend north from NE McWilliams Road. Kitsap County would provide the proposed residence with sewer service, and the North Perry Water District would provide the residence with water service. *Exhibit 16; Testimony of Mr. Van Beynum.*
11. Construction of the proposed residence and driveway would result in 2,922-square feet of impact to the on site wetland buffer. Figure 2 of the Applicant's proposed Wetland Mitigation Plan depicts the proposed residence with a 1,672-square foot footprint, and the proposed driveway with a 1,250-square foot footprint.⁵ According to the Applicant's proposed Wetland Mitigation Plan, wetland buffer impacts would be mitigated by positioning the proposed residence in the northwest portion of the property as far from the adjacent wetland as possible, within the mowed grass portion

⁴ KCC Title 19 provisions apply to all uses and activities within areas or adjacent to areas designated as regulated critical areas unless otherwise exempt, including issue of site development permits, site plan approval, and building permits. *KCC 19.100.110.B.*

⁵ The County Staff Report lists the footprint of the proposed residence as 1,049-square feet in size, and states that County staff believes the proposed buffer impacts totaling 2,922-square feet meet the minimum necessary criterion of the KCC 19.100.140 reasonable use exception criteria. *Exhibit 24, Staff Report, page 5.* Conditions of reasonable use exception approval proposed by County staff include a condition that "site development shall conform to the revised site plan submitted for the reasonable use exception application (exhibit 9)." Exhibit 9, as submitted, is Figure 2 of the Applicant's proposed Wetland Mitigation Plan, and depicts a single-family residence footprint of 1,672-square feet, and a driveway footprint of 1,250-square feet. *Exhibit 4; Exhibit 9.*

of the subject property; constructing the proposed driveway of pervious materials; and minimizing the footprint of the proposed residence as much as possible. The Applicant testified that the proposed footprint is the smallest footprint for a three-bedroom house. Ms. Charnas testified that the proposed development is the minimum necessary to allow reasonable use of the property. *Exhibit 4; Testimony of Mr. Van Beynum; Testimony of Ms. Charnas.*

12. KCC 19.200.250.A requires that wetland and buffer impacts shall first be avoided or minimized before mitigation occurs. *KCC 19.200.250.A.* Upon mitigation for wetland buffer impacts, a specific County-approved mitigation plan is required. *KCC 19.200.250.B.* KCC Table 19.200.250 provides that impacts to Category III wetlands shall be mitigated at an 8:1 enhancement-to-impact ratio.⁶ *KCC Table 19.200.250.*
13. The County staff report states that the County Critical Areas Ordinance was first adopted in 1994. The purpose of KCC Title 19 critical areas regulations is to identify and protect critical areas as required by the Growth Management Act of 1990. The goal of the critical areas regulations is to preserve beneficial functions and values of critical areas and minimize potential dangers or public costs associated within the inappropriate use of such areas, by: conserving and protecting environmental factors that add to quality of life; protecting the public against avoidable losses; identifying and protecting critical areas and their environmental functions and values; preserving habitat, water quality, and water quantity functions and values of wetlands; protecting water quality by controlling erosion and carefully locating uses and activities that can detrimentally affect stream flows or aquatic habitat quality; guiding development proposals to the most environmentally suitable and stable portion of a development site; avoiding potential damage due to geological hazards or flooding; preserving natural flood control and stormwater storage; maintaining groundwater recharge; preventing cumulative adverse environmental impacts to water, wetlands, fish and wildlife habitats, frequently flooded areas, geologically hazardous areas, and aquifer recharge areas; and pursuing restoration and enhancement of previously-impacted critical areas and their buffers whenever mitigation is required. *KCC 19.100.105; Exhibit 24, Staff Report, page 3.*
14. The Applicant would also mitigate wetland buffer impact by enhancing the on site buffer at an approximately 1:1 impact-to-enhancement ratio, for a total of 3,200-square feet of wetland enhancement area. The Applicant would remove all invasive species, allow natural re-colonization of native species, and planting native trees,

⁶ An email message from Allison O'Sullivan, Suquamish Tribe biologist, questioned whether the 1:1 mitigation ratio proposed by the Applicant could be increased. *Exhibit 10.* KCC 19.200.250.D.2 provides that the County may increase or decrease the ratio based on one-or-more listed circumstances relating to the certainty with which proposed mitigation would be successful and the resulting functions and values of proposed compensation. *KCC 19.200.250.D.2.* KCC 19.200.250.E provides options for off-site mitigation. *KCC 19.200.250.E.* No off-site mitigation is proposed. *Exhibit 4.*