



## KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

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LARRY KEETON, DIRECTOR

# STAFF REPORT

## RECOMMENDATION TO THE HEARING EXAMINER BROWN REASONABLE USE EXCEPTION

**Date:** December 31, 2007

**Application Date:** March 5, 2007

**Project:** Brown Reasonable Use Exception

**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:** West side of Alaska Avenue East, approximately 75 feet north of its intersection with East Leola Lane, Manchester, South Kitsap County, Commissioner District #2.

**LIS #:** 07 49708

**Assessor's Account #:** 4580-043-001-0207

**Applicant and Owner of Record:**

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

**SEPA Status:** Pursuant to WAC 197-11-800(6)(b) the proposal is SEPA exempt.

**Physical Characteristics:** The vacant, 0.24-acre parcel is located immediately west of Alaska Avenue, on a plateau lying to the west of downtown Manchester. The proposed building site is generally flat and devoid of vegetation, having been re-graded to

accommodate both the proposed residence and the recently completed residence immediately to the north. A Category III wetland extends onto the southerly and westerly areas of the parcels. The wetland area south of the proposed residence primarily consists of scrub shrub vegetation, while the area extending off-site to the west transitions into a large forested wetland system.

**Project History:**

The subject parcel and the abutting parcel to the north are being developed concurrently by the applicant. The two lots are a reconfiguration of former lots 1-4, Block 43, plat of Manchester Heights (Exhibit 3). The subject parcel consists of the south half of former lots 1-4. The group of lots formerly supported one single-family residence. The applicant's wetland report includes further discussion and historic air photos of the prior residence and land use activities (Exhibit 2). According to the wetland report, a portion of the lots was also historically farmed.

Upon initial purchase, the applicant commenced site clearing and grading activities in anticipation of constructing a single-family residence on each of the two lots. As the prior residence was previously demolished and the former yard area had reverted to native vegetation, the activities resulted in a stop work order for work within a regulated critical area buffer. At the County's request, the applicant obtained a wetland report (Exhibit 1), and subsequently submitted a building permit application for the less constrained northerly parcel. Construction of the residence on the northerly parcel has since been completed (Building Permit #06 34601, September 2006).

The southerly parcel, which is the subject of this application, is more directly impacted by wetland buffers, thus leading to the request for a Reasonable Use Exception. While the wetland consultant has indicated that the initial clearing and grading activity did not directly encroach into the wetland, the clearing activity and proposed construction clearly occur within the associated buffer. As demonstrated on the site plan (Exhibit 3), the residence would encroach 31 feet into the required 50 foot wetland buffer along the southerly lot area. The proposed area of side yard encroaches an additional 10 feet, leaving a buffer of approximately 9 feet in width at the narrowest point.

**Existing Zoning:**

Manchester Village Low Residential (MVL)  
Front Yard Setback: 20 feet  
Side and Rear Yard Setback: 5 feet

**Comprehensive Plan Designation:** Limited Area of More Intense Rural Development (LAMIRD)

**Surrounding Land Use and Zoning:** The surrounding vicinity is also zoned MVL, with the exception of the area immediately to the southeast, which has the higher residential density zone designation of Manchester Village Residential (MVR). With the

exception of the constrained wetland areas, the surrounding area is developed with single family residences.

**Utilities:** The site will be served by public sewer and water.

**Policies and Regulations Applicable to the Subject Proposal:**

The proposed project has been reviewed for compliance with the following policies and regulations:

- Title 19 Kitsap County Code *Critical Areas*
- Title 21 Kitsap County Code *Land Use Procedures*

**Documents Consulted in the Analysis:**

- Applicant Materials: Reasonable Use Exception Application Materials (Exhibits 2 and 3), Wetland Report (Exhibit 1).
- Public and Agency Comments: None received to date.

**Analysis:**

Staff has reviewed the proposal and offers the following analysis of the project. Applicable Kitsap County Code citations are followed by staff comments.

**Title 19 Kitsap County Code (Critical Areas)**

***Section 19.100.140 Reasonable use exception***

*If the application of this title would deny all reasonable use of the property, the applicant may apply for a reasonable use exception pursuant to this section:*

*A. The applicant may apply for a reasonable use exception without first having applied for a variance if the requested exception includes relief from standards for which a variance cannot be granted to the provisions of the section.*

Staff Comment: Staff has determined that the application may not conform to variance standard 19.100.135(3): *The granting of the variance will not result in substantial detrimental impacts to the critical area (emphasis added), public welfare or be injurious to the property or improvements in the vicinity and area in which the property is situated or be contrary to the goals, policies and purpose of this title.* The proposed project results in a buffer of less than 25 feet along the southerly lot line. As such, the applicant has correctly applied for review under the Reasonable Use Exception provisions.

*The property owner and/or applicant for a reasonable use exception has the burden of proving that the property is deprived of all reasonable uses. The examiner shall review the application and shall conduct a public hearing pursuant to the provisions of Title 21 Kitsap County Code (Land Use and Development Procedures). The examiner shall make a final decision based on the following criteria:*

*1. The application of this title would deny all reasonable use of the property.*

Staff Comment: Reasonable use is defined 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” (KCC Section 19.150.565). The term “productive use” is not further defined.

The majority of the Manchester community was platted in the early-to-mid 1900’s, predating zoning and critical area regulations. The “LAMIRD” Comprehensive Plan designation was assigned in recognition of Manchester’s historically dense lot pattern in an otherwise rural area. As such, Kitsap County has determined that it is reasonable to expect existing lots in the area to be developed with single-family homes, notwithstanding the fact that they do not conform to current rural lot size standards. Here, application of the standard 50 foot wetland buffer would deprive the parcel of this reasonable use, as demonstrated on the site plan (Exhibit 3).

*2. There is no other reasonable use which would result in less impact on the critical area;*

Staff Comment: The concept of “other reasonable use” has not been clearly defined by either local ordinance or state code. However, given that the lot occurs within a residential zone designation, it is unlikely that staff could support alternative uses that would result in less impact on the critical area. Although the land could conceivably be utilized for farming again (see Exhibit 2 for historical description of lot usage), such activity would also be subject to current wetland buffer requirements as the prior agricultural use lapsed (see *KCC 19.150.290 Existing and On-going Agriculture*). Given the limited area available for such activity, the use would not likely be considered “productive” or provide a “reasonable return” on the property.

*3. 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 the Endangered Species Act or other relevant state or federal laws;*

Staff Comment: Staff believes the project is generally consistent with this requirement. While detrimental impacts to wetland habitat may result due to the proposed buffer reduction, impacts will be partially mitigated through the buffer enhancement proposal outlined in the application materials (Exhibits 2 and 3).

With regard to the public interest, it is anticipated that the previous grading and filling of the lot will redirect some of the stormwater that previously flowed across the parcel toward the

roadside ditch on Alaska Avenue. As the building pad is now higher in elevation than the surrounding wetland area, such water will effectively remain in the wetland system until it reaches eventual outfall points to the north or the roadside ditch off-site to the south. The resultant increased flow through the wetland system may impact the future ability of surrounding lot owners to build on similarly constrained lots, although there has been no formal stormwater analysis to confirm the water storage capacity of the wetland at this time. As such stormwater increases would likely be minor, the project is not anticipated to “pose an unreasonable threat to public health, safety or welfare”.

*4. Any alterations permitted to the critical area shall be the minimum necessary to allow for reasonable use of the property.*

Staff Comment: Staff believes that the proposed building footprint of approximately 1500 square for a residence and garage meets the “minimum necessary” criteria, given that the applicant has designed a two-story house rather than a larger single-story rambler. Although the applicant could conceivably request a zoning variance to reduce the 20 foot front yard setback abutting Alaska Avenue, such variance would not result in increased wetland buffer width along the southerly lot line.

*B. Any authorized alterations of a critical area under this section shall be subject to conditions established by the examiner including, but not limited to, mitigation under an approved mitigation plan.*

Staff Comment: The proposal is consistent with this requirement. A wetland mitigation plan has been prepared, with the focus on restoring impacted buffer area to the south and west of the proposed residence (Exhibits 2 and 3).

### **Conclusions:**

1. The subject requests have been reviewed against the applicable criteria for a Reasonable Use Exception pursuant to KCC Section 19.100.140.
2. Staff concludes that the application satisfies the criteria found at KCC Section 19.100.140 to approve the request for a Reasonable Use Exception.

### **Recommendation:**

Based upon the above findings and conclusions, it is recommended that the Brown Reasonable Use Exception request be **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.

cc: Hearing Examiner  
Clerk of the Hearing Examiner  
Kitsap County DCD, Development Engineering  
Kitsap County DCD Staff Planner: David Greetham  
DCD File  
Applicant: Chad Brown  
Project Representative: William M. Palmer  
Interested Parties