



Notice of Hearing Examiner Decision

04/15/2022

To: Interested Parties and Parties of Record

RE: Project Name: Lovett Setback Variance
 Applicant: Janet & Dylan Lovett
 7061 Pirates Cove Ave SW
 Port Orchard, WA 98367
 Application Type: Zoning Variance (ZVAR-HE)
 Permit Number: 21-05172

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #21-05172 Lovett Setback Variance – Zoning Variance (ZVAR-HE)**, subject to the conditions outlined in this Notice and included Decision.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

<https://spf.kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Help@Kitsap1.com or (360) 337-5777.

CC: Owner/Applicant: Janet & Dylan Lovett, jlovett210@gmail.com
Health District
Public Works
Parks
Navy
DCD
DSE
Kitsap Transit
Central Kitsap Fire District

Central Kitsap School District
Puget Sound Energy
Water Purveyor
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA Dept of Transportation/Aviation
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Wetland Review
WA State Dept of Transportation
Interested Parties: None

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

| | | |
|-------------------------------------|---|--|
| In the Matter of the Application of |) | No. 21-05172 |
| |) | |
| Janet and Dylan Lovett |) | Lovett Setback Variance |
| |) | |
| |) | |
| |) | |
| <u>For a Zoning Variance</u> |) | FINDINGS, CONCLUSIONS, AND DECISION |

SUMMARY OF DECISION

The request for approval of a zoning variance from the setback requirements of Kitsap County Code 17.420.052, to reduce the required front setback from 50 feet to 25 feet, to allow construction of a 30-foot by 40-foot detached garage that would be accessory to an existing 1,892 square foot single-family dwelling, on a 4.81-acre property at 7061 Pirates Cove Avenue SW, in the Bremerton area of unincorporated Kitsap County, is **GRANTED**. Conditions are necessary to address specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on March 24, 2022, using remote access technology. The record was left open until March 31, 2022, to allow any member of the public having difficulty connecting to the remote hearing to submit written comments in lieu of live testimony. No additional comments were submitted and, accordingly, the record closed on March 31, 2022.

Testimony:

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

Darren Gurnee, County Planner
Janet Lovett, Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated March 16, 2022
2. Kitsap Public Health District Residential Building Clearance Application, approved August 20, 2021
3. Engineered Building Plans (10 Sheets), received October 6, 2021
4. Permit Questionnaire – Setback Variance, dated September 28, 2021
5. Project Narrative, with 12 annotated site photographs, received October 6, 2021
6. Site Plan (revised), dated August 20, 2021

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7. Notice of Application, dated October 13, 2021
8. Notice of Public Hearing, dated March 9, 2022
9. Certification of Public Notice, dated March 9, 2022
10. Staff Presentation
11. Hearing Sign-in Sheet

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

FINDINGS

Application and Notice

1. Janet and Dylan Lovett (Applicant) request approval of a zoning variance from the setback requirements of Kitsap County Code (KCC) 17.420.052 to reduce the required front setback from the edge of the right-of-way from 50 feet to 25 feet. The Applicant requests the variance to allow construction of a 30-foot by 40-foot detached garage on a 4.81-acre property that is currently developed with a 1,892 square foot single-family dwelling. The property is located at 7061 Pirates Cove Ave SW.¹ *Exhibit 1, Staff Report, page 1; Exhibits 4 through 6.*
2. Kitsap County (County) determined the application was complete on October 7, 2021. On or around October 13, 2021, the County provided notice of the application consistent with the requirements of KCC 21.04.210 by publishing notice in the County's publishing newspaper of record and by mailing or emailing notice to property owners within 800 feet of the site and to reviewing departments and agencies. The County's notice materials stated that written comments on the proposal should be submitted at least seven days before the date of the open record hearing associated with the application. On March 9, 2022, the County provided notice of the open record hearing associated with the application by publishing notice in the County's publishing newspaper of record, mailing notice to property owners within 800 feet of the site, and posting notice on the property. The County did not receive any comments in response to its notice materials. *Exhibit 1, Staff Report, page 1; Exhibits 7 through 9.*

State Environmental Policy Act

3. The County determined that the proposal is categorically exempt from review under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). Under Washington Administrative Code (WAC) 197-11-800(6)(e), variance applications based on special circumstances applicable to the property, such as size, shape, topography, location, or surroundings, that would not result in any change in land use or density are generally exempt from SEPA review. *Exhibit 1, Staff Report, page 2.*

¹ The property is identified by Kitsap County Assessor's Tax Account No. 132301-2-012-1007. *Exhibit 1, Staff Report, page 1.*

Comprehensive Plan and Zoning

4. The property is designated “Rural Residential” by the County Comprehensive Plan. County staff identified the following Comprehensive Plan policies as relevant to the proposal:

- Limit the designated rural area to low residential densities that can be sustained by minimal infrastructure improvements, [that] cause minimal environmental degradation, and that will not cumulatively create the future necessity or expectation of urban levels of service. [Land Use Policy 50].
- Permit residential uses in rural areas consistent with the planned rural character of the surrounding area. [Land Use Policy 51].
- Outside of the Type III Limited Area of More Intensive Rural Development (LAMIRD), limit development only to that which serves rural residential or resource needs and does not draw population from Urban Growth Areas. This policy is implemented through Comprehensive Plan Land Use designations, zoning designations, and zoning code provisions. [Land Use Policy 53].

Exhibit 1, Staff Report, pages 2 and 4.

5. The subject property is zoned “Rural Residential” (RR). The RR zone “promotes low-density residential development consistent with rural character. It is applied to areas that are relatively unconstrained by environmentally sensitive areas or other significant landscape features. These areas are provided with limited public services.” *KCC 17.130.010*. Development of detached single-family residential dwellings and accessory structures, such as a detached garage, are permitted uses within the RR zoning district. *KCC 17.410.042*. Dimensional standards applicable to properties in the RR zone typically require 50-foot front setbacks and 5-foot rear and side setbacks for accessory structures. *KCC 17.420.052*. Project plans demonstrate that the proposed garage structure would comply with the applicable rear and side setback requirements. The Applicant, however, requests relief from the 50-foot front setback requirement to allow the proposed garage structure to be located 25 feet from the edge of the 50-foot right-of-way easement (partially constructed with Pirates Cove Ave SW) located at the front, western portion of the property. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 6.*

Existing Property and Proposed Development

6. The 4.81-acre property consists of a long and narrow rectangular lot that is currently developed with a 1,892 square foot single-family residence with an attached garage, paved driveway, detached shed structure, and septic system with an associated drainfield and reserve areas. The property slopes slightly to the east toward a large wetland. The wetland and associated 150-foot buffer cover over half of the property, including the area of the existing homesite. As such, the easternmost portions of the property are

inaccessible except by canoe. The remaining developable area constituting the western portion of the property is further restricted by the 50-foot access easement (that is partially developed with Pirates Cove Ave SW) extending on to the property and by the existing septic system and its associated 10-foot “no-build” buffer.² The proposed 30-foot by 40-foot detached garage would be located to the northwest of the existing single-family residence, approximately 25 feet from the edge of the right-of-way/access easement, within the only feasible development area of the property due to these constraints. The proposed structure would be used to protect the Applicant’s personal property from weather and theft. *Exhibit 1, Staff Report, pages 1 and 2; Exhibits 4 through 6.*

7. Properties to the north and south of the subject property are zoned RR and are developed with single-family residences. Property to the east is also zoned RR but is undeveloped due to the presence of a large wetland (as noted above). Property to the west is within the City of Bremerton and is developed with the Bremerton Raceway and the Bremerton Airport. *Exhibit 1, Staff Report, page 3.*

Variance Request

8. The purpose of a zoning variance is to provide property owners with relief from the numerical standards of the zoning code, excluding housing density standards, when unusual circumstances relating to the property cause an undue hardship. *KCC 17.560.010*. *KCC 17.560.010* authorizes the Hearing Examiner to grant a variance from the numerical standards of the zoning code only when certain criteria are met. The Applicant submitted a project narrative asserting that the proposal would satisfy these criteria, noting:

- Special circumstances apply to the property that do not generally apply to other properties in the same vicinity. The property is 4.81 acres and is long, narrow, and flat. It has restricted use because of a large wetland that blocks access to the back half of the property. Enjoyment of the use of the property is further restricted because of the wetland setback buffer, easements, septic system, and reserve drainfield.
- The requested variance is necessary for the preservation and enjoyment of a substantial property right of the Applicant possessed by other property owners in the same zone and vicinity. The neighboring property has been allowed to have a

² Information in the record, including the proposed site plan, depicts a further 25-foot “NO CUT BUFFER” beyond the edge of the 50-foot access easement for Pirates Cove Ave SW. *Exhibit 6*. County Planner Darren Gurnee testified, however, that the County measures the required 50-foot front setback from the edge of the access easement and, accordingly, the additional “NO CUT BUFFER” identified on the plans is inapplicable to the current request. Applicant Janet Lovett testified that she is unsure as to the origin of the additional 25-foot buffer (despite her experience as a real estate agent) but agreed that it would not impact the current variance request. *Testimony of Mr. Gurnee; Testimony of Ms. Lovett.*

detached garage. Restricting the Applicant from constructing a detached garage would make their possessions more susceptible to theft and harm.

- The variance would not be materially detrimental to the public welfare or injurious to property in the same zone and vicinity as the subject property. The proposed construction of the detached garage would not harm the public welfare or other property in the area. The detached garage would instead help to protect the safety of the Applicant's storage of assets.
- The requested variance is the minimum necessary to grant relief to the Applicant. The majority of the 4.81-acre lot contains a wetland that blocks access to the second half of the property. The proposed location for the detached garage is the only area it can viably be placed due to the property restrictions.

Exhibit 1, Staff Report, pages 6 and 7; Exhibit 4; Exhibit 5.

9. County staff analyzed the proposal and determined that, with conditions, it would meet the specific criteria for a zoning variance under KCC 17.560.010, noting:

- The property is severely restricted in its developable areas. A wetland and its associated buffer cover over 50 percent of the property (the eastern "half" essentially), including the area of the existing homesite. The property is also impacted by a 50-foot right-of-way/access easement extending from the western edge of the site that, under the municipal code, requires a 50-foot front setback. The 4.81-acre lot is further restricted by a septic system, with its associated 10-foot no-build buffer.
- The requested variance would allow the Applicant to construct a detached garage consistent with detached garage structures enjoyed by other property owners in the vicinity and RR zone. The requested variance is consistent with the intent of the variance process and criteria.
- The reduced setback proposal would not be detrimental to public welfare or other property in the area. The Applicant's request for a secure detached garage would help protect their possessions.
- The property is largely undevelopable due to a wetland, easements, buffers, no-build areas, and critical area buffers. The Applicant's request for a zoning setback would be the minimum necessary to construct the 30-foot by 40-foot detached garage.

Exhibit 1, Staff Report, pages 6 and 7.

Testimony

10. County Planner Darren Gurnee testified generally about the proposal and how it would meet the specific requirements for a zoning variance to allow construction of a detached garage structure. He noted that the request is for a variance to reduce the required 50-foot front setback from the edge of the right-of-way access easement associated with Pirates Cove Ave SW to 25 feet to accommodate the construction of a detached garage. Mr. Gurnee noted that the variance request is reasonable because the property is

significantly restricted from development due to the presence of a large wetland, its associated buffer, the right-of-way easement, and an existing septic system. Mr. Gurnee described the existing conditions of the property, consistent with the findings above, and noted that the proposed detached garage is an allowed use in the RR zone when accessory to a primary single-family residence. He stated that the size and shape of the lot, together with the property's existing easements, critical areas, septic system, and their associated buffers and/or structure setbacks, constitute special circumstances justifying the grant of a zoning variance. Mr. Gurnee further stated that the requested variance would be the minimum necessary to allow the Applicant to construct a detached garage on the property and explained that Applicant already utilizes the area proposed for construction as a parking and storage area. He further noted that the proposed garage structure would resemble other garage structures in the vicinity and that other properties along Pirates Cove Ave SW have existing structures located closer to the roadway easement than what is being proposed here. *Testimony of Mr. Gurnee.*

11. Applicant Janet Lovett testified that, even with the requested variance to reduce the required 50-foot front setback from the edge of the access easement encumbering the property, the proposed garage structure would still be located approximately 50 feet from the improved portion of Pirates Cove Ave SW, because much of the access easement remains undeveloped. Ms. Lovett stated that she and her husband intend to utilize the proposed structure to secure and protect their personal property, noting that the area has experienced criminal activity, likely due to its location near the raceway and airport. *Testimony of Ms. Lovett.*

Staff Recommendation

12. Mr. Gurnee testified that County staff recommends approval of the zoning variance, with conditions. Ms. Lovett testified that she understands and would comply with County staff's recommended conditions. *Exhibit 1, Staff Report, page 9; Testimony of Mr. Gurnee; Testimony of Ms. Lovett.*

CONCLUSIONS

Jurisdiction

The Kitsap County Hearing Examiner is authorized to hear and decide requests for a zoning variance. *KCC 2.10.070; Chapter 17.560 KCC; KCC 21.04.080; KCC Table 21.04.100.*

Criteria for Review

The Hearing Examiner may grant a variance from numerical standards of the County's zoning code, excluding housing density, only when unusual circumstances relating to the property cause undue hardship in the application of the zoning code. The granting of a zoning variance shall be in the public interest and shall only be made when all the following conditions and facts exist:

- A. There are special circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, that were not created by the Applicant and do not apply generally to other property in the same vicinity or zone;
- B. Such variance is necessary for the preservation and enjoyment of a substantial property right or use of the Applicant possessed by owners of other properties in the same vicinity or zone;
- C. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located; and
- D. The variance is the minimum necessary to grant relief to the Applicant.

KCC 17.560.010.

The criteria for review adopted by the Kitsap County Board of Commissioners are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with County development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusion Based on Findings

1. **There are special circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, that were not created by the Applicant and do not apply generally to other property in the same vicinity or zone.** The long and narrow 4.81-acre property has several unique conditions that severely limit the developable area of the site, which were not created by the Applicant. These conditions include the presence of a large wetland and associated buffer that covers the entire eastern half of the property. Development within the western portion of the site is further restricted by an existing septic system and its associated 10-foot no-build buffer, as well as by a 50-foot access/right-of-way easement associated with Pirates Cove Ave SW. The required 50-foot front setback the Applicant seeks relief from relates to this access easement. The Hearing Examiner concludes that these circumstances, which are unique to the property and are not caused by the Applicant, justify the granting of a variance to allow development of a detached garage structure. *Findings 1, 4 – 12.*

2. **The variance is necessary for the preservation and enjoyment of a substantial property right or use by the Applicant that is possessed by owners of other properties in the same vicinity or zone.** Detached garage structures are allowed as an accessory use to a single-family residence in the Rural Residential (RR) zone. The subject property is currently developed with a 1,892 square foot single-family residence, and the proposed detached garage would be accessory to the primary residential use of the property. The requested variance to reduce the required front setback from 50 feet to 25 feet would allow the Applicant to construct the proposed accessory structure in the

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only feasible area for development on the property and would allow the Applicant to secure and protect their possessions from weather and theft, consistent with the property rights enjoyed by property owners in the vicinity and RR zoning district. *Findings 1, 4 – 12.*

3. With conditions, authorization of the variance would not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which the subject property is located. The proposal is exempt from SEPA environmental review, in accord with WAC 197-11-800(6)(e). The County provided reasonable notice and opportunity to comment on the proposal and did not receive any comments on the proposed variance in response to its notice materials. The requested variance would allow the Applicant to construct a detached garage on the property outside of the on-site wetland and its associated buffer and at least 25 feet from the access/right-of-way easement encumbering the western portion of the site. The Hearing Examiner concludes that granting the variance would not be materially detrimental to the public welfare or injurious to property in the vicinity and RR zone. Conditions, as detailed below, are necessary to ensure that the Applicant obtains all required permits, completes the project within a reasonable amount of time and in accordance with the submitted application materials, and complies with all other applicable federal, state, and local regulations. *Findings 1 – 12.*

4. The variance is the minimum necessary to grant relief to the Applicant. As discussed above in Conclusions 1 and 2, the subject property is severely restricted from development due to the presence of an on-site wetland and other site conditions, and the proposed location for the detached garage structure is the only feasible area for construction of the structure. The Applicant does not request any other deviation from applicable development standards. *Findings 1, 4 – 12.*

DECISION

Based upon the preceding findings and conclusions, the request for approval of a zoning variance from the setback requirements of Kitsap County Code 17.420.052 to reduce the required front setback from 50 feet to 25 feet, to allow construction of a 30-foot by 40-foot detached garage that would be accessory to an existing 1,892 square foot single-family dwelling, on a 4.81-acre lot located at 7061 Pirates Cove Ave SW, in the Bremerton area of unincorporated Kitsap County, is **GRANTED**, subject to the following conditions:

1. All required permits shall be obtained prior to commencement of land clearing, construction, and/or occupancy.
2. This variance approval shall automatically become void if no building permit application is accepted as complete by the DCD within four years of the notice of decision date or the resolution of any appeals.

3. The decision set forth herein is based upon representations made and exhibits contained in the project application. Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.
4. 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 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.

DECIDED this 14th day of April 2022.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center