



Kitsap County Department of Community Development

Notice of Hearing Examiner Decision

01/11/2023

To: Interested Parties and Parties of Record

RE: Project Name: Jochimsen/Conner - 50% front Setback Zoning Variance
Applicant: Diane Jochimsen & Michael Conner
10404 124TH ST NE
ARLINGTON, WA 98223
Application: Zoning Variance (ZVAR)
Permit Number: #21-05876

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #21-05876 Jochimsen/Conner - 50% front Setback Zoning Variance (ZVAR)**, 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://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 by contacting the Department of Community Development; if you wish to view the case file or have other questions, please contact help@kitsap1.com or (360) 337-5777.

CC: Owner/Applicant: Diane Jochimsen & Michael Conner, r_wikiup@frontier.com
Architect: Tom Kuniholm Architects, tom@tomkuniholmarchitects.com
Health District
Public Works
Parks
Navy
Kitsap Transit
DSE
North Kitsap Fire District

Kitsap County Fire Protection District No. 18 (Poulsbo Fire Department)
North Kitsap School District
Puget Sound Energy
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Shoreline
WA State Dept of Transportation
Interested Parties: Duane Delong, drdelong43@gmail.com; Richard Sardarov, richsardarov@gmail.com; Calvin E Graden Jr., calvin.graden@lumen.com
Beverly Higgins, 1720 NW SECLUSION COVE WAY POULSBO, WA 98370

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

In the Matter of the Application of)	No. 21-05876
)	
Diane Jochimsen and Michael Conner)	Jochimsen-Conner Variance
)	
)	
)	FINDINGS, CONCLUSIONS,
<u>For a Zoning Variance</u>)	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 minimum front setback from 50 feet to 17 feet 7 inches, to allow construction of an approximately 2,000 square foot single-family dwelling and detached garage, on a 3.26-acre lot located near the intersection of Ansell Road and NW Seclusion Cove Way, in the Lofall 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 December 8, 2022, utilizing a hybrid approach allowing for participation in person or through remote access technology. The record was left open until December 15, 2022, to allow any member of the public having difficulty participating at the hearing through remote access to provide written comments in lieu of live testimony. No additional comments were submitted and, accordingly, the record closed on December 15, 2022.

Testimony:

Darren Gurnee, County Planner
Alison Dennison, Applicant Engineering Geologist
Diane Jochimsen, Applicant
Michael Conner, Applicant
Duane DeLong
Beverly Higgins
Rose Berg
Calvin E. Graden, Jr.

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated December 1, 2022

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2. Building Elevations and Floor Plans Submittal Waiver, undated
3. Permit Questionnaire – Zoning Variance, dated November 19, 2021
4. County Parcel Map with Landslide Description, undated
5. Building Elevations and Floor Plans Submittal Waiver, undated
6. Notice of Application, dated April 12, 2022
7. Comment from Beverly Higgins, dated April 18, 2022
8. Comment from Duane DeLong, dated April 24, 2022
9. Comment from Rich Sardarov, dated April 26, 2022
10. Project Narrative, undated
11. Site Plan (revised), dated September 6, 2022
12. Geotechnical Report, Aspect Consulting, LLC, dated July 27, 2022
13. Notice of Public Hearing, dated November 2, 2022; Notice of Cancellation of Public Hearing, dated November 15, 2022; Revised Notice of public Hearing, dated November 23, 2022
14. Certification of Public Notice, dated December 1, 2022
15. Staff Presentation
16. 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. Diane Jochimsen and Michael Conner (Applicant) request approval of a zoning variance from the setback requirements of Kitsap County Code (KCC) 17.560.010 to reduce the required minimum front setback from 50 feet to 17 feet 7 inches. The Applicant requests the variance to allow construction of an approximately 2,000 square foot single-family dwelling unit and detached garage on a 3.26-acre property. A landslide occurred on, and immediately west of, the property in January 2021,¹ and the parcel is constrained by critical areas, including steep slopes and landslide hazard areas, as discussed in further detail below. The zoning variance would allow the Applicant to locate the single-family residence in the southeast corner of the property, as far from the landslide hazard area as possible. Access to the site is provided by NW Seclusion Cove Way, a private easement that connects to Ansell Road NW, a County-maintained road. The Applicant proposes to construct a driveway from the access easement along the southern property line. The single-family residence would be served by a private well and an on-site septic system.

¹ The Hearing Examiner notes that the record contains inconsistent dates for the occurrence of the landslide. The staff report indicates that the landslide occurred on January 4, 2021. A comment from Rich Sardarov indicates that the landslide occurred on January 5, 2021. The Geotechnical Report provided by Aspect Consulting, LLC, indicates that the landslide occurred on January 6, 2021. *Exhibit 1, Staff Report, page 1; Exhibit 9; Exhibit 12.*

The property is located near the intersection of Ansell Road and NW Seclusion Cove Way, in the Lofall area of unincorporated Kitsap County.² *Exhibit 1, Staff Report, pages 1 through 3, and 12; Exhibit 3; Exhibit 4; Exhibit 10; Exhibit 11.*

2. Kitsap County (County) determined that the application was complete on January 27, 2022. On or around April 12, 2022, 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 November 2, 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 scheduled hearing was later canceled, and the County provided notice of the cancellation on November 15, 2022. On November 23, 2022, the County provided notice of the rescheduled open record hearing 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. *Exhibit 1, Staff Report, page 6; Exhibit 6; Exhibit 13; Exhibit 14.*
3. The County received the following comments on the proposal from members of the public in response to its notice materials:
 - Beverly Higgins expressed concerns about landslides on the property. She requested clarification about the meaning of a 50 percent setback variance.
 - Duane DeLong raised concerns about the impact of the proposed development on adjacent landowners. He noted that there has been slide activity on the property associated with the removal of vegetation, trees, stumps, and ground cover, and he stated that, without mitigation measures, there could be further weakening of the slide area. He commented that the delineation of critical slope areas in the geological survey were incorrect.
 - Rich Sardarov commented that he lives across the road from the subject property and did not receive notice of the application. He echoed concerns about the landslide hazards and stated that his property had been impacted by land movement on the subject property. Mr. Sardarov stated that he spoke with a geologist working with the Applicant who said that the fir trees near the stress cracks should not be removed. He noted that ospreys utilize the fir trees.

Exhibit 7; Exhibit 8; Exhibit 9.

² The property is identified by Kitsap County Assessor's Tax Account No. 282701-1-048-2004. *Exhibit 1, Staff Report, page 1.*

4. The County provided the following responses to comments from members of the public:
- **Notice:** The notice of application was sent to property owners within 800 feet of the subject property.
 - **Opposition to the Variance:** The proposal complies with the criteria for a variance under KCC 17.560.010.
 - **Geological Hazards:** Chapter 17.410 KCC allows for construction of detached single-family dwelling units. The County recognizes the geological hazards and would require that the Applicant implement all mitigation measures proposed in the geotechnical report.
 - **Tree and Brush Removal, Slope Stability, and Wildlife:** Tree and brush removal must comply with Chapter 19 KCC (Critical Areas Ordinance) and Chapter 22 KCC (Shoreline Management Program). In critical areas, including shorelines, tree removal can only occur through danger tree removal performed by a certified arborist. In advance of removal, the County conducts a site evaluation to confirm danger trees meet the definition under KCC 19.150.230.³

Exhibit 1, Staff Report, pages 6 and 7.

State Environmental Policy Act

5. 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 exempt from SEPA environmental review.⁴ *Exhibit 1, Staff Report, page 2.*

Comprehensive Plan and Zoning

6. 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].

³ *Danger trees* means:

any tree of any height, dead or alive, that presents a hazard to the public, public utility, or permanent structure because of rot; root, stem or limb damage; lean; or any other observable condition created by natural process or manmade activity determined by a certified arborist, or by the Department through a danger tree site evaluation permit.

KCC 19.150.230.

⁴ The County adopts WAC 197-11-800 by reference in KCC 18.04.240.

- 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].
 - In accordance with RCW 36.70A.070(5)(c):
 - to preserve rural character of the County, emphasize controlling rural development; assuring visual compatibility of rural development with the surrounding area,
 - reduce the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area,
 - protect critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources, and,
 - protect against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170
- This policy is implemented through Comprehensive Plan Land Use designations, zoning designations, and zoning code provisions. [Land Use Policy 54].
- Encourage development practices and design standards for the rural area, such as minimizing changes in grade from pre-development site conditions in order to maximize native vegetation retention. [Land Use Policy 55].

Exhibit 1, Staff Report, pages 4 and 5.

7. The subject property and all surrounding properties are 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, 20-foot rear and side setbacks for primary structures, and 5-foot rear and side setbacks for accessory structures. *KCC 17.420.052*.⁵ The Applicant’s site plan demonstrates that the proposed development

⁵ KCC 17.420.060.A.48 is also applicable to the proposal and provides in relevant part:
Properties constrained by critical areas are subject to Title 19 and may have additional buffers and setbacks requirements not listed in the density and dimension tables.
Cornices, canopies, eaves, belt courses, sills, bay windows, fireplaces or other similar cantilevered features may extend up to twenty-four inches into any required yard area. In

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 single-family residence to be located 17 feet 7 inches from the NW Seclusion Cove Way access easement located at the front, southern portion of the property. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 11.*

Existing Property and Proposed Development

8. The 3.26-acre property is generally rectangular and undeveloped except for a water well and pump house located in the southwest corner of the property and a boathouse that is currently being reconstructed along the shoreline after being damaged by the landslide and destroyed by a fire. Properties to the south, east, and west of the subject property are developed with single-family residences. The property borders Hood Canal to the north. As noted above, in early January 2021, after a period of high-intensity precipitation, a landslide occurred along the northwest-facing waterfront slope. As a result of the landslide, approximately 75 percent of the property currently slopes down from the southeast to the ordinary high water mark (OHWM) of Hood Canal with about 150 feet of elevation loss. The height of the slope along the shoreline is approximately 140 feet. The southeast corner of the property slopes slightly downward to the northwest for approximately 255 feet, with approximately 15 feet of elevation loss. The proposed residence would be built in the southeast corner of the property. Landslide debris, including soil, mud, vegetation, and trees, were deposited adjacent to and partially leaning on a garage on a property directly west of the subject property. Removal of the landslide debris began in early June 2022 after the Applicant received a grading permit. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 12; Testimony of Ms. Jochimsen.*
9. Aspect Consulting, LLC, prepared a geotechnical report on behalf of the Applicant, dated July 27, 2022. The report estimates that the current landslide area extends approximately 550 feet east-to-west and 100 feet north-to-south and covers approximately three acres. A review of aerial photographs of the surrounding area from 1951 to 2018 demonstrates that land movement has been ongoing, and the report determines that landslide movements would likely propagate further to the south. The report identifies bare soil, tension cracks, and scarps on the property north of the location of the proposed residence. The report also notes that a portion of NW Seclusion Cove Way was undermined because of the failure of the material below and that the road has been affected by ongoing landslide activity over the last few decades. The report also identifies evidence of

no case shall a habitable area be considered for encroachment into a required yard through any land use process. Additionally, fire escapes, open/uncovered porches, balconies, landing places or outside stairways may extend up to twenty-four inches into any required side or rear yards. Open/uncovered porches, balconies, landing places, or outside stairways shall not extend more than six feet into any required front yard and shall be a minimum of five feet from the front property line.

Exhibit 1, Staff Report, page 3.

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landslide movement on properties directly west of the subject property. The geotechnical engineer observed significant water flow on the surface of the landslide area during a site visit on January 11, 2021, but noted that water flow decreased to no flow on subsequent site visits. The report notes that the property is located within the Puget Lowland physiographic province, an area of active seismicity that is subject to earthquakes on shallow crustal faults and deeper subduction zone earthquakes, and that the County designates the shoreline slope as a high erosion hazard and designates the area extending approximately 135 feet west as a moderate erosion hazard. The report determines that the soils would have a low to moderate erosion potential when exposed during construction, with the erosion risk increasing on sloped areas. The report further determines that the erosion hazards could be addressed through standard temporary erosion and sedimentation control and best management practices during construction. *Exhibit 12.*

10. The slope north of the proposed residence is approximately 125 feet tall. The standard buffer and building setbacks associated with a high landslide hazard area with a 125-foot slope are 125 feet and 42 feet, respectively, for a total setback of 167 feet. *KCC 19.400.435(A)(2)(a)*. The residence would be located south of the property boundary with these setbacks. KCC 19.400.435(A)(2) provides:

All development activities or actions that require project permits or clearing in erosion and landslide hazard areas shall provide native vegetation from the toe of the slope to twenty-five feet beyond the top of slope, with an additional minimum fifteen-foot building and impervious surface setback, unless otherwise allowed through a geologic assessment.

City staff determined that this provision means that, with the support of a geotechnical report, construction can occur within areas with landslide or seismic hazards. Geotechnical reports must be prepared by a geotechnical engineer.⁶ *KCC 19.700.725(A)(1)*. The report recommends that the proposed residence be built at least 40 feet from the top of the slope and concluded that, with appropriate landslide mitigation measures, the proposed development would be feasible from a geotechnical perspective. The report also recommends that the Applicant install a soldier pile retaining wall between the proposed residence and existing landslide head scarp to increase the stability of the upland portion of the site and to halt future slope retreat and landward migration of the head scarp. The soldier pile would be located approximately 15 feet from the existing head scarp and would likely require a row of tieback anchors to bolster lateral resistance of the wall. The report also recommends that the proposed residence have shallow

⁶ *Geotechnical engineer* means “a practicing geotechnical/civil engineer licensed as a professional civil engineer with the state of Washington, with professional training and experience in geotechnical engineer, including at least four years’ professional experience in evaluating geologically hazardous areas.” *KCC 19.150.365*

foundations or spread footings and be supported by structural fill. In addition, the report recommends that the Applicant implement a monitoring program and activity plan. Finally, the report determines that the proposed septic system drain field would not decrease the stability of the property or adjacent slopes. City staff has recommended conditions of approval that would require the Applicant to comply with all recommended measures contained in the geotechnical report. *Exhibit 1, Staff Report, pages 10 through 12; Exhibit 12.*

11. The Washington State Shoreline Management Act (SMA) and the Kitsap Shoreline Master Program (SMP) govern work within 200 feet of the ordinary high water mark of Hood Canal. *KCC 22.200.100; Chapter 22.800 KCC (Appendix A); RCW 90.58.030(2)(e).* Although the property borders Hood Canal to the north, the proposed development would be located more than 200 feet from the OHWM. Accordingly, the proposed development is not under the jurisdiction of the SMP. There are no streams or wetlands within 200 feet of the proposed development. *Exhibit 1, Staff Report, pages 10 and 11.*

Variance Request

12. 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:
 - The landslide that occurred at NW Seclusion Cove Way and on the adjacent property reduced the buildable area of the subject property to approximately one-third of an acre. Prior to the slide, the property had more than three buildable acres. The property slopes down from 170 feet to 150 feet from the southeast corner of the triangle to the northwest, and the proposed residence would be built as far away from the scarp and as close to the south boundary line as possible. A geotechnical inclinometer was installed at the 164-foot topographical interval from the southeast corner of the property and has not shown any movement since it was installed. Locating the proposed residence as close to the southeast portion of the property as possible would result in a safer building and fewer foundation improvements.
 - Approval of the variance would allow the Applicant to construct a single-family residence that would fit their needs as they age-in-place after retirement. The variance would provide additional distance from the scarp. The variance would ensure the Applicant could enjoy the view from their property during their retirement and feel safe. The proposed residence would not be as grandiose as

- some of the homes in the NW Seclusion Cove Way neighborhood or as modest as others.
- Access to the property is provided by a private easement. Due to the easement, a variance allowance for the proposed building site would not be intrusive to the neighbor south of the property across the easement. The variance would not infringe on the building site of the neighbor on the northeast side.
 - A soldier pile wall would be installed in accordance with the recommendation of the geotechnical report. Without the variance, protection of the residence would require more technical expertise and engineering and would cause considerable additional cost to the Applicant. The Applicant has had several conversations with their geotechnical engineer, who has said that not being able to move the house as far from the scarp as possible would make building the house cost prohibitive. In addition, the variance would add a measure of security and peace of mind. The Applicants are currently trying to protect against additional slide problems by removing non-native blackberries and planting native plants. This requires a lot of time and effort as most of this is done by hand.
 - The property is zoned Rural Residential, which requires a 50-foot front setback for residential development. The variance request is for a 64.6 percent reduction (to a 17-foot 7-inch setback) from the property line. Side setbacks do not need to be reduced. The Applicant requests a variance after a landslide occurred on the property and the adjacent western property on January 4, 2021. The landslide reduced the buildable area on the property to one-third of an acre.

Exhibit 10.

13. 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 by critical areas, easements, and other buffers imposed by the zoning and development of the property. Approximately 75 percent of the property is encumbered by steep slopes and landslide potential. Washington State and the County prioritize maintaining critical areas with associated vegetative buffers and building setbacks over zoning setbacks. Critical areas on the project site justify the requested reduction to the front zoning setback.
 - The reduced front setback would allow the Applicant to construct a single-family detached dwelling and garage, which are allowed uses in the Rural Residential zoning district. Adjacent properties are developed with single-family detached residences and garages. The variance would allow development consistent with other properties in the vicinity.
 - The reduced setback would reduce potential hazards to public welfare or other properties in the vicinity. Without the variance, development must occur closer to areas where landslides occurred, which would increase the geological hazard risk to public welfare or other properties in the vicinity.

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- The variance request would be the minimum necessary to construct the proposed single-family residence and garage. The property is severely encumbered by easements, no-build areas, and critical area buffers.

Exhibit 1, Staff Report, pages 8 and 9.

Testimony

14. 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 single-family residence and detached garage structure. He noted that the requested front setback reduction would be an approximately 66 percent reduction. Mr. Gurnee stressed that development of a single-family residence is a use permitted outright in the Rural Residential zoning district. He noted that the variance itself would not impact adjacent properties and that locating the single-family residence within the front setback would provide additional safety. Mr. Gurnee explained that the Applicant would install piling to prevent additional slippage and would proactively develop a mitigation plan to address potential slippage during construction. He noted that the site development activity permit (SDAP) would require approval from a geotechnical engineer that sound construction practices would be used. Mr. Gurnee further noted that the SDAP process would include review of the more technical aspects of the proposed development, including stormwater management. He explained that the property is constrained by critical areas, most notably steep slopes that resulted from a landslide on the property in January 2021.

Mr. Gurnee noted that the proposed residence would be approximately 2,000 square feet in size, which is consistent with the size of existing single-family residences in the surrounding area. He stated that the proposed residence would be spread out instead of being built up to decrease top loading of the slope and to reduce risks associated with the proposed residence. Mr. Gurnee clarified that the property borders Hood Canal to the north, but that the proposed development would be located outside of the shoreline jurisdiction. He stated that the County followed the standard practice of notifying property owners within 800 feet of the subject property about the notice of application by sending postcards. Mr. Gurnee also explained that a geotechnical engineer can reduce building setbacks for steep slopes with the support of a geotechnical report and that a reduction was supported here by the recommended use of structural reinforcements, structural fill, and soldier piles. He noted that the County Health District would be required to test the well to ensure it complies with water quality standards. *Testimony of Mr. Gurnee.*

15. Applicant Engineering Geologist Alison Dennison explained that the residence would be safer the further it is built from the uppermost scarp and that engineering mechanisms, including the soldier pile wall, would prevent further propagation of the landslide. She noted that buffer setbacks associated with landslide hazards can be reduced if supported by a geotechnical report with adequate mitigation measures. *Testimony of Ms. Dennison.*

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16. Applicant Diane Jochimsen testified that the variance would allow for the planting of more native vegetation in back of the proposed residence, which would help stabilize the slope. She explained that the property has clay soil and that large trees are not very stable in clay soil. Ms. Jochimsen noted that she would plant native vegetation that would be more stable in clay soil with the assistance of an arborist. She explained that a boathouse is currently being rebuilt after being buried by the landslide and then burned. Ms. Jochimsen clarified that the proposed residence would include a basement with a second bedroom, but that the topography of the site would allow it to be designed as a daylight basement. *Testimony of Ms. Jochimsen.*
17. Applicant Michael Conner testified that a geotechnical well had been placed near where the proposed residence would be located and that it did not show any movement in the last year and a half. He noted that the boathouse was being reconstructed in the slide area and that it has not experienced any movement. Mr. Conner explained that there would not be enough room to install the soldier pile wall on the property without approval of the variance request. He noted that he purchased the property approximately four months before the January 2021 landslide. Mr. Conner stated that the proposed residence would be served by an on-site well and that the soldier pile wall would not affect use of the well. *Testimony of Mr. Conner.*
18. Duane DeLong testified that he has lived near the subject property since 1981 and has observed numerous slides on the property. He expressed concerns that a daylight basement would diminish the benefits of a residence with a sprawling footprint. Mr. DeLong also raised concerns about impacts of the proposed development on adjacent properties and noted that the property has unstable banks and leaning trees. *Testimony of Mr. DeLong.*
19. Beverly Higgins raised concerns about the stability of the soil. She stated that the size of residences on surrounding properties should not be relevant to the size of the proposed residence. Ms. Higgins requested a copy of the geotechnical report submitted for the proposal. *Testimony of Ms. Higgins.*
20. Rose Berg testified that she uses the well located on the property and expressed concerns about the impacts of the soldier pile wall on the well. She also raised concerns about soil disturbance associated with installation of the soldier pile wall. *Testimony of Ms. Berg.*
21. Calvin E. Graden Jr. testified that he lives on a property two parcels west of the property and that there is a known risk associated with living in area where land movement has occurred. *Testimony of Mr. Graden.*

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Staff Recommendation

22. Mr. Gurnee testified that County staff recommends approval of the zoning variance, with conditions. *Exhibit 1, Staff Report, page 13; Testimony of Mr. Gurnee.*

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 3.26-acre property has unique conditions that severely limit the developable area of the site, which were not created by the Applicant. After a landslide that occurred on the property in January 2021, approximately 75 percent of the property slopes down from the southeast corner of the property to the OHWM of Hood Canal, with about 150 feet of

elevation loss, and the buildable area of the property is now limited to approximately one-third of an acre in the southeast corner. The variance request would allow the Applicant to locate the proposed single-family residence further from the steep slope and to install a soldier pile wall between the scarp and the proposed residence to prevent additional land movement. The Hearing Examiner concludes that these circumstances, which are unique to the property and are not caused by the Applicant, justify the grant of a variance to allow development of a single-family residence and associated detached garage structure. *Findings 1, 6 – 22.*

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.** Single-family dwelling units are permitted outright in the Rural Residential (RR) zone. The requested variance to reduce the required front setback from 50 feet to 17 feet 7 inches would allow the Applicant to construct the proposed single-family residence in the only feasible area for development on the property, consistent with the property rights enjoyed by property owners in the vicinity and RR zoning district. *Findings 1, 6 – 22.*
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. Several members of the public submitted written comments or testified at the open record hearing. Comments from members of the public generally concerned slope stability and movement, impacts to adjacent properties, removal of vegetation, and impacts to the on-site private well.

Aspect Consulting, LLC, prepared a geotechnical report on behalf of the Applicant, which determined that the proposed development would be feasible from a geotechnical perspective. The report recommended that the Applicant install a soldier pile wall between the proposed single-family residence and the scarp to prevent further land movement, import structural fill, and develop a monitoring program and activity plan to evaluate and address potential land movement during construction. Applicant Diane Jochimsen testified that she was working with an arborist familiar with the area to plant native vegetation that would help stabilize the soil. The County Health District would regularly test the water quality of the well. Conditions, as detailed below, are necessary to ensure that the Applicant obtains all require permits; completes the project within a reasonable amount of time and in accordance with the submitted application materials; complies with all other applicable federal, state, and local regulations; and complies with the recommendations of the geotechnical report. *Findings 1 – 22.*

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 steep slopes covering approximately 75 percent of the property, and the proposed location for the single-family residence is the only feasible area for construction of the structure. The proposed residence is approximately 2,000 square feet, consistent with surrounding single-family residences. The Applicant does not request any other deviation from applicable development standards. *Findings 1, 6 – 22.*

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 17 feet 7 inches, to allow construction of an approximately 2,000 square foot single-family dwelling and detached garage, on a 3.26-acre lot located near the intersection of Ansell Road and NW Seclusion Cove Way, in the Lofall area of unincorporated Kitsap County, is **GRANTED**, subject to the following conditions:⁷

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.
5. Approval is subject to the conditions of the geotechnical report associated with this permit and on file at the Department of Community Development.

⁷ This decision includes conditions required to reduce project impacts as well as conditions required to meet County Code standards.

6. A Notice to Title shall be recorded with the Kitsap County Auditor prior to issuance of a final occupancy associated with any subsequent building permits.

DECIDED this 10th day of January 2023.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center

*Findings, Conclusions, and Decision
Kitsap County Hearing Examiner
Jochimsen-Conner Setback Variance
No. 21-05876*