



Hearing Examiner Staff Report and Recommendation

Report Date: October 1, 2020
Hearing Date: October 8, 2020

Application Submittal Date: April 29, 2020
Application Complete Date: June 16, 2020

Project Name: BENHAM - Hearing Examiner Zoning Variance (Setbacks)
Type of Application: ZVAR-HE - Hearing Examiner Zoning Variance
Permit Number: 20-01758

Project Location

8828 NE POINT NO POINT RD
HANSVILLE, WA 98340
COMMISSIONER DISTRICT 1

Assessor's Account

222802-2-016-2004

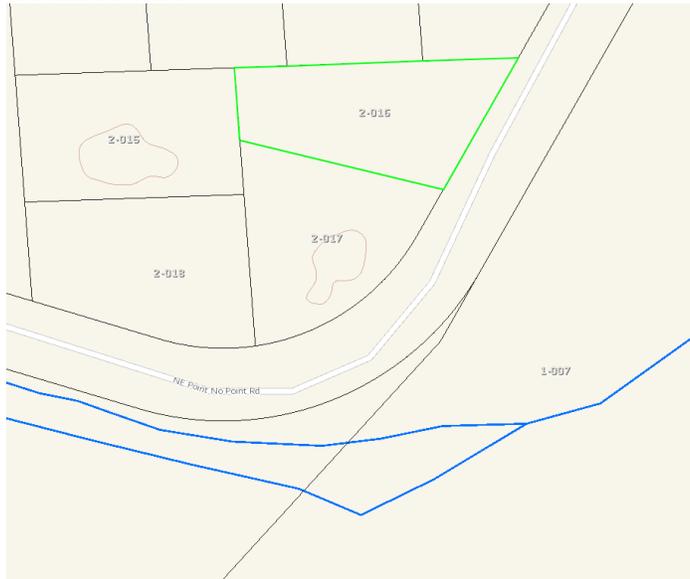
Applicant/Owner of Record

CHRISTOPHER J & OANH D BENHAM
12700 WOLFF ST
BROOMFIELD CO, 80020

Recommendation Summary

Approved subject to conditions listed under Section 13 of this report.

VICINITY MAP



1. Background

The applicant is proposing to develop the subject site with an approximately 1600 square foot, 2-bedroom, single-family residence. There is an existing 18-foot private access easement along the northern (front) property line (Exhibit 13). This easement serves a total of five lots; therefore, meets the definition of a street per KCC 17.110.695. Setbacks are measured from the edge of said easement. Half of the easement area extends onto the site, effectively increasing the required front setback by 9 feet.

The project has received approval for a 3.5-foot front yard administrative variance under permit 19-04213 for the location of the home. The additional variance is requested to accommodate an entryway stairs, deck, and covered porch.

2. Project Request

The applicant is requesting a 9.5-foot (or 47.5%) variance to the required 20-foot front yard setback. The proposed single-family residence will be setback 10.5 feet at the

closest point to the access easement along the north property line. Per KCC 21.04.100, this constitutes a Type III Hearing Examiner's Zoning variance, for variances greater than 25%.

3. SEPA (State Environmental Policy Act)

The project is SEPA Exempt under KCC 18.04 State Environmental Policy Act.

4. Physical Characteristics

The subject site is 0.18 acres (approximately 7,841 square feet). The site is vacant and largely undeveloped except for the portion of private road along the northern property line. There is a private easement along the northern (front) property line that serves as access to this parcel and four additional parcels addressed as 8836, 8844, 8850 and 8856 NE Point No Point Road. The eastern property line (2nd front) abuts NE Point No Point Rd, a Kitsap County Right of Way. The northern and eastern properties abut streets and are both defined as front property lines; therefore, the southern and western property lines are side property lines. The site topography is relatively level. The site is within a FEMA Flood Hazard Area and Moderate Seismic Hazard Area; both are explained further in the Environmental Analysis of this report (Section 10).

Table 1 - Comprehensive Plan Designation and Zoning

Comprehensive Plan: Rural Residential Zone: Rural Residential	Standard	Proposed
Minimum Density	NA	NA, lot is existing
Maximum Density	1 dwelling unit/5 acres	
Minimum Lot Size	5 acres	NA, lot is existing
Maximum Lot Size	NA	NA, lot is existing
Minimum Lot Width	140 feet	133 feet, existing
Minimum Lot Depth	140 feet	~60 feet average, existing
Maximum Height	35 feet	2 stories, <35 feet
Maximum Impervious Surface Coverage	NA	NA
Maximum Lot Coverage	NA	NA

Table 2 - Setback for Zoning District

	Standard	Proposed
Front (North)	20-ft minimum	10.5-ft
2 nd Front (East)	10-ft minimum	10-ft
Side (South)	5-ft minimum	6-ft
Side (West)	5-ft minimum	> 60-ft

Applicable footnotes:

17.120.060.A.42.b: Any single-family residential lot of record as defined in Chapter 17.110 that has a smaller width or lot depth than that required by this title, or is less than one acre, may use that residential zoning classification that most closely corresponds to the dimension or dimensions of the lot of record, for the purpose of establishing setbacks from the property lines.

Staff Comment: The lot is less than one acre; therefore, this footnote applies. The parcel is subject to Urban Residential (UR) setback standards, as identified on the table above.

17.120.060.A.41.d: On lots with multiple front yards, the front yard setback(s) in which the lot does not receive access may be modified by the director. Based upon topography, critical areas or other site constraints, the director may reduce these front yard setbacks to a minimum of twenty feet for properties requiring fifty feet and ten feet for properties requiring twenty feet. The director may not modify front yard setbacks from county arterials or collectors. Such reductions shall not have an adverse impact to surrounding properties.

Staff Comment: The northern and eastern property are both considered fronts. The property receives access from the northern property line and NE Point No Point Rd is not a county arterial or collector; therefore, the eastern setback may be reduced to 10 feet. There is no adverse impact to surrounding properties, as this property line abuts a right of way, and beyond the right of way is public park land.

Table 3 - Surrounding Land Use and Zoning

Surrounding Property	Land Use	Zoning
North	Single Family Residence	Rural Residential (RR)
South	Single Family Residence	Rural Residential (RR)
East	Public Right of Way, Kitsap County Park	Park (P)
West	Single Family Residence	Rural Residential (RR)

Table 4 - Public Utilities and Services

	Provider
Water	North Peninsula
Power	Puget Sound Energy
Sewer	None, private septic
Police	Kitsap County Sheriff
Fire	North Kitsap Fire & Rescue
School	North Kitsap School District #400

5. Access

The property gains access from a shared private access easement along the northern property line that connects to Kitsap County Public Right of Way (NE Point No Point Rd). The roadway was previously developed, and no modification is proposed.

6. Site Design

The proposed site design includes a 2-bedroom single-family residence, three parking spaces, and a septic system with primary and reserve drain fields (Exhibit 13).

7. Policies and Regulations Applicable to the Subject Proposal

The Growth Management Act of the State of Washington, RCW 36.70A, requires that the County adopt a Comprehensive Plan, and then implement that plan by adopting development regulations. The development regulations must be consistent with the Comprehensive Plan. The Comprehensive Plan process includes public involvement as required by law, so that those who are impacted by development regulations have an opportunity to help shape the Comprehensive Plan which is then used to prepare development regulations.

Kitsap County Comprehensive Plan, adopted June 20, 2016.

The following Comprehensive Plan goals and policies are most relevant to this application:

Land Use Policy 50

Limit the designated rural area to low residential densities that can be sustained by minimal infrastructure improvements, cause minimal environmental degradation, and that will not cumulatively create the future necessity or expectation of urban levels of service.

Land Use Policy 51

Permit residential uses in rural areas consistent with the planned rural character of the surrounding area.

Environment Goal 1

Formally treat natural environments, including forest lands, shorelines, freshwater systems, intact ecosystems, and other critical areas, as an essential asset that is planned for, managed, and invested in to meet the needs of current and future generations.

The County's development regulations are contained within the Kitsap County Code. The following development regulations are most relevant to this application:

Code Reference	Subject
Title 12	Storm Water Drainage

Title 13	Water and Sewers
Title 14	Buildings and Construction
Title 15	Flood Hazard Areas
Title 17	Zoning
Title 19	Critical Areas Ordinance
Chapter 20.04	Transportation Facilities Concurrency Ordinance
Chapter 21.04	Land Use and Development Procedures

8. Documents Consulted in the Analysis

A complete index of exhibits is located in the project file. To date, the index to the record consists of Exhibits 1-28.

Exhibit #	Document	Dated	Date Received
1	Owner's Authorization		5/1/20
2	Engineered Drainage Waiver		5/1/20
3	Soil Analysis		5/1/20
4	Site Assessment and Planning Packet		5/1/20
5	SWPPP Narrative		5/1/20
6	Concurrency Test		5/1/20
7	Construction Plans		5/1/20
8	FEMA Elevation Certificate		5/1/20
9	FEMA Habitat Assessment		5/1/20
10	Public Comment – Signed Letter from Neighbors		5/1/20
11	Geologic Assessment		5/1/20
12	Health District Approval		5/1/20
13	Site Plan – Project		6/5/20
14	Site Plan – Adjacent Structure Locations		6/5/20
15	Project Narrative		6/11/20
16	Notice of Complete	7/1/20	
17	Notice of Application	7/8/20	
18	Comment – Port Gamble S'Klallam Tribe		7/15/20
19	Notice of Public Hearing	9/23/20	
20	Certificate of Public Notice	9/28/20	
21	Aerial Map	9/28/20	
22	Aquifer Recharge Area Map	9/28/20	
23	Assessor Map	9/28/20	
24	Comprehensive Plan Map	9/28/20	
25	Critical Area Map	9/28/20	
26	Zoning Map	9/28/20	

27	Staff Report	10/1/20	
28	Staff Presentation	10/8/20	

9. Public Outreach and Comments

The department sent a Notice of Application on November 20, 2019 and the public comment period remained open for 14 days, as required in the land use permit procedures outlined in Title 21 of the Kitsap County Code. One comment was received.

Issue Ref. No.	Summary of Concern (See corresponding responses in the next table)	Comment Letter Exhibit Reference No.
1	Sam Phillips, an Environmental Scientist with the Port Gamble S'Klallam Tribe inquired about any impacts and/or mitigation measures to wetland buffers.	Exhibit 18

Issue Ref. No.	Issue	Staff Response
1	Wetland Mitigation	There is a mapped wetland to the east across Point No Point Road (Exhibit 25). The wetland and buffer are interrupted by the existing road and there is no indication that wetlands extend on-site. All development activity is contained on-site, and no wetland impacts are anticipated.

10. Analysis

a. Planning/Zoning

The proposal meets all Title 17 density, dimension, and design standards except for the required minimum front setback from the northern property line (See Tables 1 and 2). The requested 9.5-foot setback variance can be approved through the Type III variance process if the criteria outlined in KCC 17.560.010 are met. The applicant has demonstrated that the proposal meets all criteria, as follows:

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.

Staff Analysis:

The lot is an existing, legal lot that does not meet minimum lot width, depth, or area standards for Rural Residential lots per KCC 17.420.052. The lot has an average depth of approximately 60 feet, versus the standard 140 feet, limiting the buildable area of the parcel. The lot is further constrained by an existing easement along the northern property line. The lot is also within a mapped Flood Hazard Area (Exhibit 25) and is subject to the development standards in KCC Title 15, resulting in a first floor that is approximately 6 feet above the existing elevation. To provide access to the structure a raised deck and stairway is required, which are subject to setback regulations. These special circumstances were not created by applicant.

2. Such variance is necessary for the preservation and enjoyment of a substantial property right or use of the applicant possessed by the owners of other properties in the same vicinity or zone.

Staff Analysis: The application is for the development of a single-family residence, which is an allowed use in the RR zoning district. All properties abutting the site are also developed with single-family residences. An approved setback variance does not constitute a special privilege not possessed by owners of other properties in the vicinity; the adjacent properties are subject to the same variance criteria. The proposal is consistent with the character and existing development pattern of the block (Exhibit 14).

3. 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 property is located.

Staff Analysis: All development activity will be contained on site and will not be injurious to property in the nearby vicinity or zone. The access road is already developed and will not be modified or expanded as part of this proposal. The known critical areas on site have been adequately addressed by the special reports provided as part of the application. (See Section 10.i of this report).

4. The variance is the minimum necessary to grant relief to the applicant.

Staff Analysis: The project received approval for a 3.5-foot front yard administrative variance (permit 19-04213) for the location of the home. The additional variance is requested to accommodate an elevated entryway stairs, deck, and covered porch. The site is within a mapped Flood Hazard Area (Exhibit 25) and the home has been designed to meet flood hazard criteria (KCC Title 15), resulting in a first floor that is approximately 6 feet above existing grade. An at-grade entrance is not feasible.

b. Lighting

Single-family developments are exempt from lighting design standards (17.420.030.A)

c. Off-Street Parking

Single-family developments require three (3) off-street parking spaces (KCC 17.490.030), measuring at least 9 feet by 20 feet. The submitted site plan shows that the proposal meets this requirement.

Table 5 - Parking Table

Use Identified in 17.490.030	Standard	Required Spaces	Proposed Spaces/Existing Spaces
Single Family	3 per unit	3	3
Total	3	3	3

d. Signage

No signage is proposed.

e. Landscaping

Single-family developments are exempt from landscaping design standards (17.420.030.A).

Table 6 - Landscaping Table

	Required	Proposed
Required Landscaping (Sq. Ft.) 15% of Site	NA	
Required Buffer(s)		
North	NA	NA
South	NA	NA
East	NA	NA
West	NA	NA
Street Trees	NA	NA

f. Frontage Improvements

No frontage improvements are proposed or required.

g. Design Districts/Requirements

Single-family developments are exempt from general design standards (17.420.030.A). The site is not located within any district or sub-area that requires further design review.

h. Development Engineering/Stormwater

The project has been reviewed for compliance with Kitsap County's stormwater regulations and has been approved with no conditions. A geotechnical report prepared by Resolve Environmental and Geotechnical Inc, dated May 24, 2019, has been submitted. The report makes various recommendations which will be verified at the time of building permit review and a condition has been placed on the approval to address this.

i. Environmental

The site is within a Flood Hazard Area. A Flood Certification and FEMA Habitat Assessment/Wetland Report prepared by BGE Environmental LLC, dated February 4, 2019, has been submitted. The report concluded that the project is not likely to have adverse environmental effects. The structure has been designed for compliance with provisions for residential construction within Flood Hazard Areas, per KCC 15.12.090. Compliance with these standards will be verified at the time of building permit review and a condition has been placed on the approval to address this (Condition 8).

There is a mapped wetland to the east across NE Point No Point Rd. The submitted report by BGE Environmental LLC, dated February 4, 2019 indicated that there are no wetlands on site (Exhibit 9). The developed right of way interrupts the wetland buffer and the buffer ends at the edge of the road.

The site is within a Geological Hazard Area (Seismic Hazard). A geotechnical report prepared by Resolve Environmental and Geotechnical Inc, dated May 24, 2019, has been submitted. The report concluded that the project is feasible provided that the recommendations provided in said report are followed. The permit will be conditioned to follow the recommendations of the report, which will be verified at the time of building permit review. (Condition 6).

A portion of the property is within the Rural Conservancy Shoreline Jurisdiction. Per KCC Title 22.400.120, a standard buffer of 130-ft is required in this jurisdiction. However, the buffer is interrupted by NE Point No Point Road; therefore, the buffer ends at the edge of the road.

j. Access, Traffic and Roads

No adverse impacts to traffic or roads are likely. Access to the parcel is by way of a shared private access easement which has been developed with an existing roadway. No new access off NE Point No Point Road is allowed (Condition 1).

k. Fire Safety

No comments.

l. Solid Waste

No comments.

m. Water/Sewer

The site will be served by North Peninsula Water. The site is outside of the service area for Kitsap County Public Works Sewer Utility Division.

n. Kitsap Public Health District

The proposed septic design has been approved by Kitsap Public Health, as shown in the submitted building site application (BSA), dated April 11, 2019. Any changes to proposed site plan must be approved by Kitsap Public Health District and may require a modification to the approved Variance (Condition 2).

11. Review Authority

The Hearing Examiner has review authority for this Zoning Variance application under KCC, Sections 17.550.020 and 21.04.100. The Kitsap County Commissioners have determined that this application requires review and approval of the Hearing Examiner. The Hearing Examiner may approve, approve with conditions, or deny a Zoning Variance. The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision. The powers of the Hearing Examiner are at KCC, Chapter 2.10.

12. 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;
2. Such variance is necessary for the preservation and enjoyment of a substantial property right or use of the applicant possessed by the owners of other properties in the same vicinity or zone;
3. 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 property is located; and,
4. The variance is the minimum necessary to grant relief to the applicant;

13. Recommendation

Based upon the analysis above and the decision criteria found in KCC 17.560.010, the Department of Community Development recommends that the Zoning Variance request for Benham Setback Variance be **approved**, subject to the following eight (8) conditions:

a. Planning/Zoning

1. The site shall be accessed from the existing private access easement along the northern property line. No additional access shall be allowed off NE Point No Point Road.
2. The decision set forth herein is based upon representations made and exhibits contained in the project application #20-01758. 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.
3. 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.
4. This Hearing Examiner's Zoning Variance approval shall automatically become void if no development permit application is accepted as complete by the Department of Community Development within four years of the Notice of Decision date or the resolution of any appeals.
5. Any violation of the conditions of approval shall be grounds to initiate revocation of this Hearing Examiner's Zoning Variance.
6. Applicant shall submit and obtain approval of a revision to building permit #19-03492, depicting the addition of the porch and deck. The revision shall address any changes to the storm drainage plans resulting from the additional hard surface area/disturbed area.

b. Development Engineering & Environmental

7. This project shall follow the Geotechnical Engineering Investigation Report by Resolve Environmental & Geotechnical, Inc., dated 5/24/19.
8. This project is located within a flood hazard area as determined by Kitsap County Code (KCC) Section 15.04.040. All construction shall be in accordance with the flood resistant requirements of KCC Title 15. Upon completion of the project, the owner shall provide to the Department of Community Development (DCD) a flood elevation certificate completed by a Washington State licensed land surveyor, identifying the elevation of the lowest floor in relation to the base flood elevation as determined by the Flood Insurance Rate Map (FIRM) for the

subject parcel. The flood elevation certificate shall be submitted to DCD prior to requesting a final inspection. A certificate of occupancy will not be issued until the flood elevation certificate is received and approved by DCD.

c. Traffic and Roads

None

d. Fire Safety

None

e. Solid Waste

None

f. Kitsap Public Health District

None

Report prepared by:



9/30/2020

Tasha, Staff Planner / Project Lead

Date

Report approved by:



9/30/2020

Scott Diener, Department Manager

Date

Attachments:

Attachment A – Site Plan

CC:

Applicant/Owner: Chris Benham, chris.benham@gmail.com

Project Representative: Kurt Russel, acsitemanagement@gmail.com

Interested Parties: None

Kitsap County Health District, MS-30

Kitsap County Public Works Dept., MS-26

DCD Staff Planner: Tasha Santos

