

4. Physical Characteristics

The subject site is an undeveloped 0.52-acre property. The site is vegetated and slopes to the south, with a slight depression in the center of the site. A wetland certification dated September 16, 2021 noted there are no wetlands on site. The property is within a high erosion zone.

Table 1 - Comprehensive Plan Designation and Zoning

Comprehensive Plan: Rural Residential Zone: Rural Residential (RR)	Standard	Proposed
Minimum Density	NA	NA
Maximum Density	1 DU/ 5 acres	
Minimum Lot Size	5 acres	0.52 acres (existing)
Maximum Lot Size	NA	NA
Minimum Lot Width	140 feet	Approx. 130 feet (existing)
Minimum Lot Depth	140 feet	Approx. 200 feet (existing)
Maximum Height	35 feet	NA; Reviewed with building permit
Maximum Impervious Surface Coverage	NA	NA
Maximum Lot Coverage	NA	NA

Table 2 - Setback for Zoning District

	Standard	Proposed
Front (East)	50 feet	30 feet
Side (North)	20 feet	80 feet
Side (South)	20 feet	25 feet
Rear (West)	100 feet	75 feet (proposed 25% reduction)

Applicable footnotes:

17.120.060.29 - One-hundred-foot setback required for single-family buildings abutting FRL or RW zones.

Staff Comment: The need for a variance is based on the above footnote requiring a 100-foot setback to the RW zoned property to the West.

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	Single-Family Residence	Rural Residential (RR)
West	Forest Land	Rural Wooded (RW)

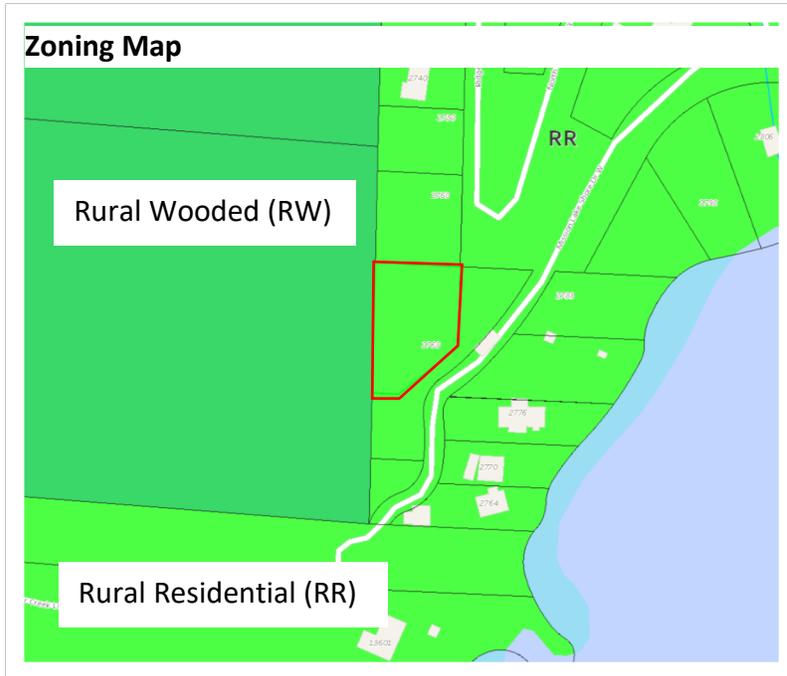


Table 4 - Public Utilities and Services

	Provider
Water	Private
Power	Puget Sound Energy
Sewer	Private System
Police	Kitsap County Sheriff
Fire	Central Kitsap Fire and Rescue
School	Central Kitsap School District #400

5. Access

Access will be from a new private driveway connecting to Mission Lake Shore Drive West from the northeast. The driveway approach will serve only the proposed residence.

6. Site Design

The proposed site plan includes a three-bedroom single-family residence, parking area, driveway, and a septic system with primary and reserve drain fields.

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 30, 2016 and amended April 27, 2020.

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

Land Use Goal 13: Protect Kitsap County's unique rural character.

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.

Land Use Policy 55: 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.

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 17	Zoning
Title 19	Critical Areas Ordinance
Chapter 18.04	State Environmental Policy Act (SEPA)
Chapter 20.04	Transportation Facilities Concurrency Ordinance
Chapter 21.04	Land Use and Development Procedures

8. Documents Consulted in the Analysis

Applicant Submittals

BSA Mission Lake Shore

Floor Plan Mission Lake

Limited Geological Sites Assessment

Email from WA DNR

Dated or date stamped

December 27, 2018

February 19, 2021

June 30, 2021

July 16, 2021

Staff Report: 21-04078 Zall Zoning Variance
October 18, 2021

Updated Variance Site Plan	July 19, 2021
Zoning Variance Permit Questionnaire	August 4, 2021
Notice of Application	September 1, 2021
Single-Family Wetland Certification	September 16, 2021
Response to Information Request	October 6, 2021

<u>Staff Communication</u>	<u>Dated</u>
None	N/A

9. Public Outreach and Comments

The department sent a Notice of Application on September 1, 2021 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. No comments were received.

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 easement to the east (See Tables 1 and 2). The requested 25-foot (25%) setback variance can be approved through the Type II 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.

Applicant Response: This lot is 130 feet wide. There is currently a setback of 100 feet on the rear of the property due to the lot adjoining RW land. There is a building setback on the front of the lot of a minimum of 20 feet. If both of these setbacks were observed there would be only 10 feet of the property left for building structures. This is not sufficient space for a building envelope. According to the geological assessment performed by Resolve Environmental on June 30, 2021 the site is 'hill and dale' with some nearly-level plateaus. Slopes are relatively steep, about 40 to 55 percent to the southeast. Slopes to the valleys vary from 25 to 40 percent. Also according to the geological assessment from Resolve Environmental: "The Single-Family Residences (SFRs) are likely to be located in areas of stable conditions. It appears obvious that the usual 100-foot setback from the clear-cut forest area will not allow for any appropriate area in which to place SFRs or other development. It is suggested that 75 feet or less be allowed for reasonable development on the sites since geologically speaking, there does not appear to be any reason to have a 100 setback from the forest/clearcut area".

Staff Analysis: The subject site is zoned RR and is located east of parcel #292401-3-006-1004 which is zoned RW and used as forest land. Per KCC 17.420.060.A.29 properties zoned RR

abutting the RW zone are required to have a 100-foot setback from the adjacent RW parcel. The subject site is constrained by the standard setbacks of 100-foot from the RW zoning to the west, the 20-foot front to the east, and the steep slopes to the southeast. These are conditions which were not created by the applicant, but these setbacks would apply to other properties in the same vicinity and 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.

Applicant Response: There is only one area of nearly-level plateau on the property that would be suitable for placing the proposed home and septic system. If the location of this building envelope was to be changed large retaining walls and fill material would need to be utilized to make an appropriate building site. This would be detrimental to the site as it would require much more land and vegetation disturbance. This would also impact stormwater runoff.

There are other existing properties in the neighborhood that abut the same parcel of Rural Wooded land. None of these properties observe the 100-foot special setback. The largest setback that was observed is 35 feet from the RW zoned land. The following parcels are listed for reference. All measurements are approximate and were obtained using the mapping feature of the Kitsap County Assessor's website.

*4593-000-003-0002: 30 foot setback from RW
4593-000-005-0000: 35 foot setback from RW
4593-000-007-0008: 30 foot setback from RW
4593-000-008-0007: 20 foot setback from RW*

Staff Analysis: The standard setbacks for this lot would restrict the buildable area to a 10-foot-wide strip, limiting the ability of the owner to build the permitted single-family dwelling. The applicant referenced several other properties developed with single-family dwellings built from 20 to 35 feet from the boundary with the RW zone. The referenced parcels with reduced setbacks were constructed between 1961 and 1963: 4593-000-003-0002, single-family home and carport constructed in 1963; 4593-000-005-0000, single-family home constructed in 1962; 4593-000-007-0008, single-family home constructed in 1962; 4593-000-008-0007, single-family home, sheds, and carport constructed in 1961. These property owners enjoy the residential use of their property which would be limited by the strict enforcement of the setbacks on the subject site.

However, for reference, several larger properties in the vicinity which were constructed more recently than the parcels referenced by the applicant have met the 100-foot setback from the RW zone: 292401-4-009-1009 approximate 146-foot setback, single-family home, garage, and carport constructed 1986-1990; 322401-2-020-1003 approximate 96-foot

setback, single-family home constructed in 1983; 292401-4-020-1004 approximate 335-foot setback, single-family home constructed in 1996.

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.

Applicant Response: Trees and vegetation between the RW property and building envelope on this site will be preserved for a windbreak. The only trees and brush that will be removed are those that are absolutely necessary to install the proposed manufactured home and septic system. The RW lot that abuts this parcel was recently logged within the last 5 years. A 35 foot clearing buffer was observed on the RW lot. This would be assumed to be continued in any future logging activities. Other properties in the neighborhood have not observed the same requirement of 100 foot setback. Other property owners in this area already enjoy a reduced setback.

Staff Analysis: The proposal is to construct a single-family dwelling, which is a permitted use in the RR zone, and will not be materially detrimental to the public welfare or injurious to property in the vicinity of the property with regard to land use. However, on July 16, 2021 Department of Community Development staff received an email from Department of Natural Resources (DNR) in response to a notice of decision for a zoning variance permitting a reduction of the setback from the RW zone in the RR zone. DNR indicated the following with regard to the reduction of these 100' setbacks:

"... We have been involved with the review of the Growth Management Act updates... pertaining to classifications and guidance for natural resource lands and, in particular, the Wildland Urban Interface and Rural Elements. One of the discussion points that was talked about at length was the problematic nature of suburban/rural residential development when it abuts commercial timber land, commercial ag lands, and/or commercial mining lands. Typical setbacks of 100 feet from commercial timber land are common with local jurisdictions including... However, variances from an already minimal 100' setback are concerning to us for a variety of reasons:

- 1) *Timber operations – people tend to buy rural property adjacent to forested areas because they like the idea of being in or around trees and they forget the fact that in working forests (such as DNR land) the trees will continue to grow and then inevitably be logged or thinned. Timber operations are noisy with lots of machinery and logging trucks and the end result is a major change in the property surrounding these residences. Maintaining minimum setbacks from adjacent commercial forest lands creates the intended buffer between these uses protecting DNR's ability to continue to manage forestlands for its beneficiaries including, but not limited to, the Common School Trust.*

- 2) *Danger trees – The closer people are allowed to build to commercial timber land, the more likely there is a chance that residents will become concerned about a tree on DNR's*

property that looks a little too close to their house/shop/garage and they call DNR requesting that the tree be removed so it doesn't fall and damage their property. Maintaining at least the minimum setback from commercial timber lands reduces the amount of calls and complaints DNR receives requesting a tree be removed because it has grown over the years and now may damage a residence or accessory building if it falls regardless of whether it is healthy or not.

3) Wildfire – This concern is an increasing reality. Maintaining setbacks between commercial timber land and residential development is crucial in this climate. Disseminating information is critical for homeowners on defensible space surrounding their homes and other structures. Wildfire is linked to 4) below, but is a significant concern for DNR. I would encourage Kitsap County to think about increasing its 30' defensible space requirement when siting homes adjacent to commercial timber land. Here is a link to DNR's fire wise information recommending a minimum 100' of defensible space around structures.

4) Insurance – We have started to receive information from our land managers that homeowners have requested DNR cut its own timber on its own land so homeowners can meet minimum setback requirements on their property set by insurance companies, mostly for wildfire and liability reasons. What we are seeing is a discrepancy between land use regulations at the local level and insurance company setback requirements in order to insure homes. This is problematic because many homeowners don't engage with insurance providers until after development has started and it is especially problematic when we couple that with variances reducing setbacks. This link is an example of what an insurance company considers defensible space <https://www.ehlinsurance.com/wp-content/uploads/2019/12/June-19.pdf>. With increasing instances and severity of wildfire, we see this issue becoming more substantial as populations increase within rural areas.

As a planner, I understand that variance criteria are specific and these issues mentioned may not specifically be addressed as part of staff review, but I wanted to bring it to your attention, or at least inform Kitsap County, that we are concerned overall about variances to setbacks adjacent to DNR timber lands. Unless a variance request clearly meets all of the Kitsap County variance requirements, the County should not be approving the request."

These concerns from DNR highlight important considerations for zoning variance applications adjacent to forestry operations, and this project in particular. The adjacent property was recently logged but will continue to grow and create the conditions for dangerous trees and wildfire risk.

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

Applicant Response: As shown by the contour lines presented on the Kitsap County Assessor's mapping website as well as the geological assessment performed by Resolve Environmental, there is no alternative building envelope for this site. This existing lot is too

small to accommodate both the RW setback as well as the building setbacks needed to comply with current code. Due to the size constraints of the lot as well as the topography explained in the geological assessment the proposed site plan is utilizing the minimum necessary zoning requirements.

Staff Analysis: While the lot is constrained by standard setbacks, there is sufficient space to place the proposed home closer to the eastern property boundary. Placing the home closer to the eastern property boundary would also require a variance, but could preserve the majority of the 100-foot setback from the RW zone.

b. Lighting

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

c. Off-Street Parking

Single-Family developments require three (3) off-street parking spaces measuring at least 9 feet by 20 feet per KCC 17.490.030. 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 per 17.420.030.A.

Table 6 - Landscaping Table

Not Applicable

f. Frontage Improvements

No frontage improvements are proposed or required.

g. Design Districts/Requirements

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

h. Development Engineering/Stormwater

Development Engineering and Stormwater Review will be conducted with the associated building permit (21-01179). No comments at this time.

i. Environmental

A wetland certification dated September 17, 2021 was performed by Eric Russell of Russell and Associates and found no wetlands on site.

j. Access, Traffic and Roads

No adverse impacts to traffic or roads are likely as the proposal includes one single-family residence. Access to the parcel is by way of a private driveway to North Mission Road West.

k. Fire Safety

Review will be completed with the associated building permit (21-01179). No comments at this time.

l. Solid Waste

No comments at this time.

m. Water/Sewer

The property will be serviced by KPUD for water and an on-site septic system requiring a private drainfield. The applicant submitted a Building Site Application dated December 27, 2018 which expired on October 26, 2021. Water and septic design will be reviewed by Kitsap Public Health District.

n. Kitsap Public Health District

The applicant submitted a Building Site Application dated December 27, 2018 which expired on October 26, 2021. Water and septic will be reviewed by Kitsap Public Health District. Any changes to the approved site plan must be approved by Kitsap Public Health District and may require a modification to the approved Administrative Variance (See Section 13, Condition a.3 of this report).

11. Review Authority

The Director has review authority for this Administrative Variance application under KCC 21.04.100. The Kitsap County Commissioners have determined that this application requires review and approval of the Director. The Director may approve, approve with conditions, or deny this application.

12. Findings

The Department of Community Development has determined that this application meets all four zoning variance criteria as outlined at KCC 17.560.010 Conditions for granting a variance. The criteria are detailed above in section 10 Analysis.

13. Decision

Based upon the analysis above and the decision criteria found in KCC 17.560.010, the Department of Community Development recommends that the Administrative Variance request for Start Variance (21-01368) be approved, subject to the following 6 conditions:

a. Planning/Zoning

1. This variance decision does not approve any site development activities including clearing or tree removal.
2. The site shall be accessed from the proposed private access easement along the east of the site. No additional access shall be allowed without prior approval.
3. The decision set forth herein is based upon representations made and exhibits contained in the project application #21-04078 Zall Zoning Variance. 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. This Administrative 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.
6. Any violation of the conditions of approval shall be grounds to initiate revocation of this Administrative Zoning Variance.

b. Development Engineering and Environmental

No comments at this time.

Staff Report: 21-04078 Zall Zoning Variance
October 18, 2021

Report prepared by:



Roxanne Robles, Staff Planner / Project Lead

October 18, 2021
Date

Report approved by:



Scott Diener, Department Manager / Supervisor

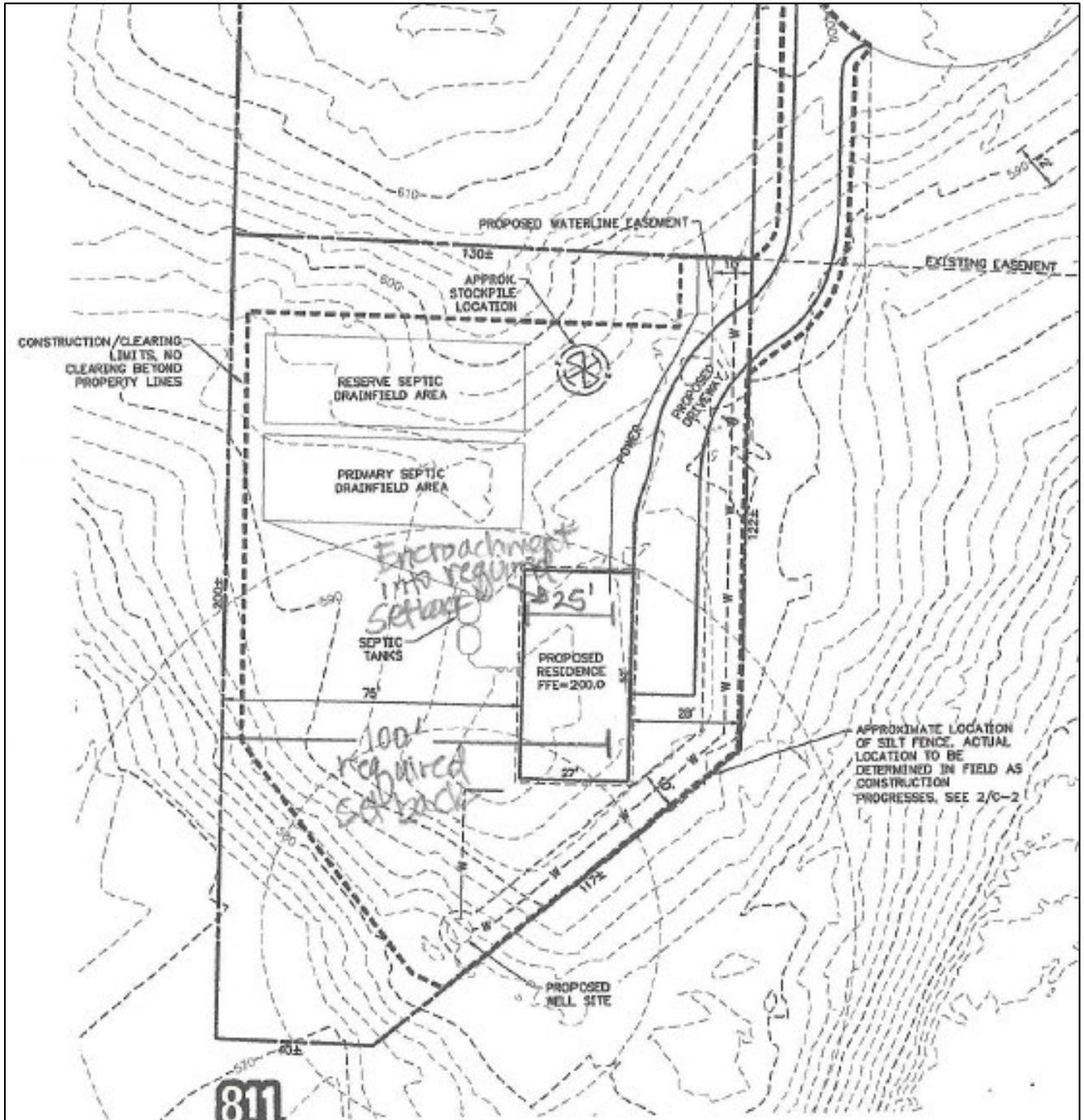
October 22, 2021
Date

Attachments:

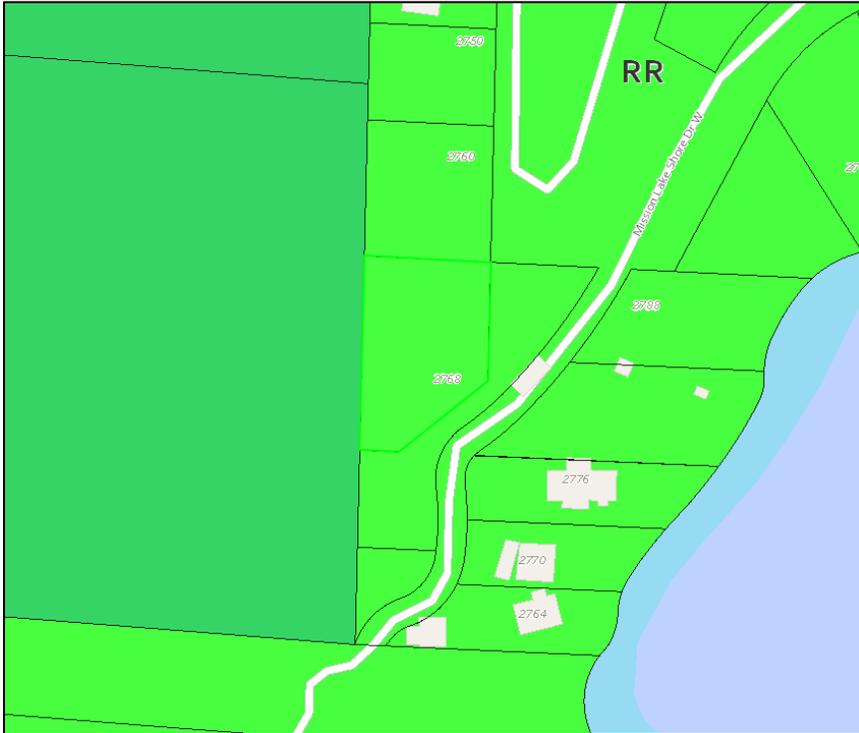
Attachment A – Zoning Map
Attachment B – Critical Areas Map

CC: Applicant/Owner: Zall Investments, LLC
Authorized Agent: Lisa Fryer
Kitsap County Health District, MS-30
Kitsap County Public Works Dept., MS-26
DCD Staff Planner: Roxanne Robles

Site Plan

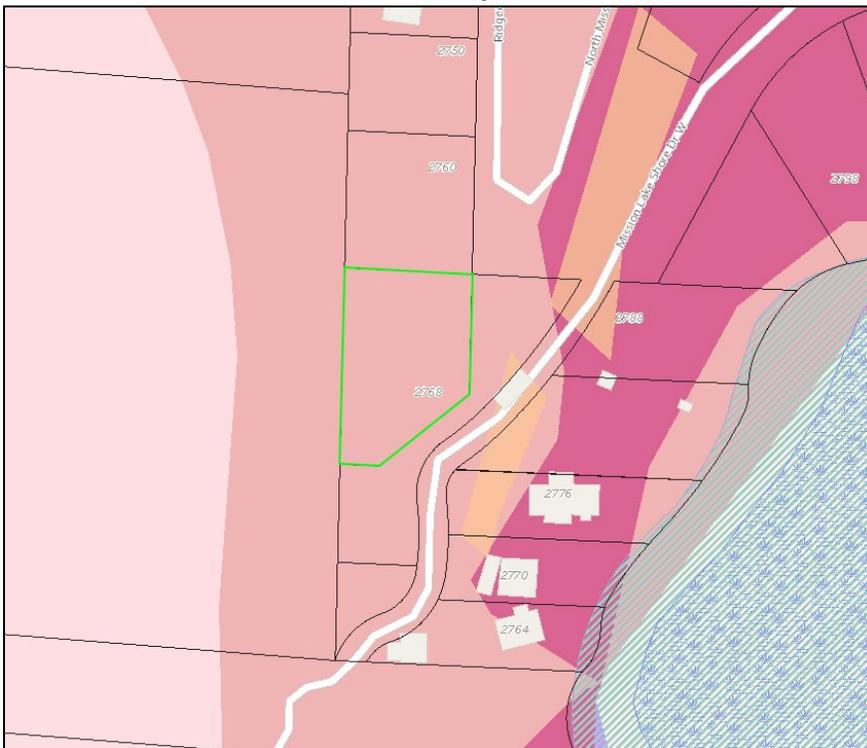


Attachment A - Zoning Map



Surrounding: Rural Residential (RR) and Rural Wooded (RW)

Attachment B - Critical Areas Map



Staff Report: 21-04078 Zall Zoning Variance
October 18, 2021

Mapped Critical Areas: High Erosion Area