



Notice of Hearing Examiner Decision

07/01/2022

To: Interested Parties and Parties of Record

RE: Project Name: Olsen – Type III Stream Buffer Reduction Variance
 Applicant: Crosby Olsen
 2222 Belfair Ave NE
 Bainbridge Island, WA 98110
 Application: Critical Area Variance (CVAR)
 Permit Number: 21-04994

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #21-04994 Olsen – Type III Stream Buffer Reduction Variance – Critical Area Variance (CVAR)**, 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. Please note DCD is open Monday to Friday from 8:00am to 12:00pm except holidays.

CC: Owner/Applicant: Crosby Olsen & Amy Butler, AEWBuilders@gmail.com
 Biologist: Christy Christensen, Christy@c3habitat.com
 Engineer: David Bannon, bannoneng1@comcast.net
 DSE
 Health District
 Public Works
 Parks
 Navy

DSE

North Kitsap Fire District

North Kitsap School District

Puget Sound Energy

PUBLIC UTILITY DIST NO 1

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-Wetland Review

Interested Parties: Deborah Meyer, debmeyer12@hotmail.com; UPTON DANIEL C & LAURA D, lauraupton@centurytel.net; Fernandez, Viagnehy, viagnehyf@gmail.com; HERNANDEZ MADELIENE RAE, madeliene.hernandez@gmail.com

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

In the Matter of the Application of)	No. 20-04994
)	
Crosby Olsen, AEW Builders, LLC)	Olsen Critical Areas Variance
)	
)	FINDINGS, CONCLUSIONS,
<u>For a Critical Areas Variance</u>)	AND DECISION

SUMMARY OF DECISION

The request for approval of a Critical Areas Variance to reduce the standard buffer associated with an on-site fish-bearing stream by approximately 80 percent, from 150 feet to a variable buffer width of 30 to 45 feet, and to reduce the standard building setback from the reduced buffer edge from 15 feet to 5 feet, to allow for the construction of a single-family residence and associated appurtenances on a 0.22-acre property at 24495 South Kingston Road NE, in the Kingston 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 June 9, 2022, utilizing a hybrid approach allowing for live participation or participation by remote access technology. The record was left open until June 16, 2022, to allow any member of the public having difficulty connecting to the hearing to submit written comments in lieu of live testimony. No additional comments were submitted, and, accordingly, the record closed on June 16, 2022.

Testimony:

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

Steve Heacock, County Senior Environmental Planner
Crosby Olsen, Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated June 2, 2022
2. Notice of Complete Application, mailed October 28, 2021
3. Application Submission Information, updated September 15, 2021
4. Habitat Management Plan, C3 Habitat, dated September 1, 2021
5. Site Plan, received October 19, 2021
6. Variance Criteria Narrative, received October 19, 2021
7. County Development Services and Engineering Memorandum, dated December 21, 2021

*Findings, Conclusions, and Decision
Kitsap County Hearing Examiner
Olsen Critical Areas Variance
No. 20-04994*

8. Kitsap Public Health District Building Site Application Approval, received January 4, 2022
9. Notice of Application, dated February 22, 2022
10. Public Comments:
 - a. Comment from Deborah Meyer, dated February 28, 2022
 - b. Comment from Dan Upton, dated March 8, 2022
 - c. Comments from Madeliene Hernandez, dated June 1, 2022
11. Notice of Public Hearing, published May 25, 2022
12. Certification of Public Notice, dated May 25, 2022
13. County Staff Presentation
14. Hearing Sign-in Sheet
15. Applicant Comments:
 - a. Comment re: Staff Report, dated June 2, 2022
 - b. Comment re: Recommended Conditions, dated June 5, 2022
 - c. Comment re: Updated Site Plan, dated November 5, 2021
 - d. Comment re: Concurrency Test, dated June 6, 2022
 - e. Comment re: Hydraulic Project Approval, dated June 6, 2022, with attached Letter from Washington State Department of Fish and Wildlife, dated June 6, 2022
 - f. Comment re: Site Development Activity Permit (SDAP), dated June 6, 2022, with SDAP Project Narrative, dated June 6, 2022

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. Crosby Olsen, of AEW Builders, LLC (Applicant), requests a Critical Areas Variance from Kitsap County Code (KCC) 19.300.315.A to reduce the standard buffer associated with an on-site Type F fish-bearing stream by approximately 80 percent, from 150 feet to a variable buffer width of 30 to 45 feet, and to reduce the standard building setback from the reduced buffer edge from 15 feet to 5 feet. The Applicant requests the variance to allow for the development of a two-story, 1,600 square foot single-family residence on a 0.22-acre lot that is entirely covered by a Type F stream and its associated 150-foot buffer. To mitigate for impacts from the reduced buffer area, the Applicant would enhance the remaining buffer area by removing invasive species and planting native vegetation. The property is located at 24495 South Kingston Road NE.¹ *Exhibit 1, Staff Report, pages 1, 2, and 8 through 10; Exhibits 3 through 6.*

¹ The subject property is identified by Kitsap County Assessors Tax Account No. 4334-000-034-0009. *Exhibit 1, Staff Report, page 1.*

2. Kitsap County (County) determined that the application was complete on October 19, 2021. On February 22, 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 notice materials stated that the comment period would remain open until seven days before the date of the open record hearing. On May 25, 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, posting notice at the subject property, and mailing notice to interested parties and to property owners within 800 feet of the site. *Exhibit 1, Staff Report, pages 1 and 5; Exhibit 2; Exhibit 9; Exhibit 11; Exhibit 12.*
3. The County received comments on the proposal from three members of the public in response to its notice materials:
 - Deborah Meyer raised concerns about the proposal's impacts to the on-site stream. She stated that the property has been vacant for a long time and inquired about whether the property owner had prior knowledge of the site's development constraints.
 - Dan Upton noted that a large tree on the lot provides refuge for golden eagles and bald eagles. He also raised concerns about potential impacts to the stream and associated wildlife habitat from any use of chemicals on the property.
 - Madeliene Hernandez stated that she did not have any concerns about the proposal but provided feedback on the County's notice procedures. She stated that the public notice sign for the proposal was placed in front of her property rather than the subject property. The County responded that it had moved the public notice sign to the correct location.

County staff provided a response to concerns about the proposal's potential impacts to eagle habitat and to the Type F stream. County staff notes that the project biologist completed a thorough investigation and concluded that there are no bald eagle nesting sites in the vicinity. County staff further notes that occasional perching uses are not subject to required tree protection and retention requirements. Regarding concerns about impacts to the on-site stream, County staff recommends that proposed invasive species removal be accomplished by hand or mechanical means without the use of chemical treatment systems. Applicant Crosby Olsen testified at the hearing that invasive species outside of the development area would be removed by hand or mechanical means and without the use of chemicals. *Exhibit 1, Staff Report, pages 5 and 6; Exhibit 4; Exhibit 10; Testimony of Mr. Olsen.*

State Environmental Policy Act

4. 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

*Findings, Conclusions, and Decision
Kitsap County Hearing Examiner
Olsen Critical Areas Variance
No. 20-04994*

(RCW), in accord with Washington Administrative Code (WAC) 197-11-800(6)(e). WAC 197-11-800(6)(e) provides that 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. *Exhibit 1, Staff Report, page 2.*

Comprehensive Plan and Zoning

5. The property is designated “Urban Low-Density Residential” by the County Comprehensive Plan. County staff identified the following Comprehensive Plan policies as relevant to the proposal:

- Focus current and future planning on infill development of existing Urban Growth Areas. [Land Use Goal 1]
- Support innovative, high quality infill development and redevelopment in existing developed areas within the Urban Growth Areas. [Land Use Policy 2]
- Integrate affordable housing and human services planning with transportation, workforce development, and economic development efforts. [Housing and Human Services Goal 6]
- Promote housing preservation and development in areas that are already well-served by schools, public transportation, commercial facilities, and have adequate infrastructure to support alternative modes of transportation. [Housing and Human Services Policy 23]
- Provide a safe and reliable multi-modal transportation system for people of all ages and abilities. [Transportation Goal 1]
- Approve site design that is supportive of transit service and its patrons. [Transportation Policy 2]
- Use the best scientific information available to direct how functions and values of critical areas are preserved and enhanced. [Environment Policy 13]

Exhibit 1, Staff Report, pages 2, 4, and 5.

6. The subject property and all surrounding properties are zoned “Urban Low Residential” (UL). The intent of the UL zone is to “recognize, maintain, and encourage urban low density residential areas by including a full range of urban services and facilities that are adequate at the time of development.” *KCC 17.200.010*. This UL zone is also intended to “create cost-efficient residential areas which are capable of allowing the provision of community services in a more economical manner.” *KCC 17.200.010*. Detached single-family residential dwellings with associated appurtenances are a permitted use within the UL zoning district. *KCC 17.410.042*. The Applicant’s site plan indicates that the proposed single-family residence would comply with UL zoning requirements for minimum front, side, and rear setbacks. *KCC 17.420.052*. The site plan also shows that three off-street parking spaces would be provided within a proposed driveway, in

accordance with the off-street parking requirements of KCC 17.490.030. Single-family residential development is exempt from design standards and development standards related to exterior lighting and landscaping. The County would conduct further review of the proposal at the site development permit stage to ensure compliance with applicable development regulations. *Exhibit 1, Staff Report, pages 2 through 4, and 6 through 8; Exhibit 5.*

Existing Property and Proposed Development

7. The 0.22-acre subject property is currently undeveloped. Vegetation on the property currently consists of big leaf maple and cedar trees with an understory dominated by English ivy, Himalayan blackberry, sword fern, salmonberry, Indian plum, and lesser amounts of stinging nettle. As discussed further below, a Type F stream is located at the southeast corner of the property, with a standard 150-foot protective buffer that extends over the entire property. Access to the property would be provided from South Kingston Road NE, which bounds the property to the east. County staff determined that the proposal would not require street frontage improvements but that any work within the South Kingston Road right-of-way would require a permit from the County Public Works Department. Adjacent properties to the north and south are currently undeveloped. Properties to the east, across South Kingston Road NE, and to the west are developed with single-family residences. The Applicant proposes to construct a two-story, 1,600 square foot single-family residence with an associated septic system and primary and reserve drainfields, all of which would be located as far from the on-site stream as feasible. Kitsap Public Health District reviewed and approved the Applicant's proposed septic system. *Exhibit 1, Staff Report, pages 2 and 3; Exhibits 4 through 6; Exhibit 8.*
8. The County Development Services and Engineering Department reviewed the Applicant's conceptual stormwater management proposal and determined that the concept would be supportable in its approach to civil site development. Runoff from rooftop areas would be conveyed to downspouts and would then sheet flow to the stream buffer area. Runoff from the driveway would sheet flow east through a vegetated flow path. The Development Services and Engineering Department provided a memorandum recommending conditions related to stormwater management and other aspects of the proposed development, which have been incorporated into County staff's recommended conditions of approval. *Exhibit 1, Staff Report, pages 8, 12, and 13; Exhibit 7.*

Critical Areas

9. C3 Habitat prepared a Habitat Management Plan for the Applicant, dated September 1, 2021. The report identified the unnamed on-site stream as a Type F fish-bearing stream with a standard 150-foot protective buffer and an additional 15-foot building and impervious surface setback from the edge of the buffer. The stream flows offsite to a deeper ravine that meanders through neighboring properties where it eventually outfalls into Apple Tree Cove. The report notes that the stream is not inventoried on the

Department of Natural Resources Forest Practices Online Mapping Tool but that it meets minimum channel width requirements and gradient and substrate requirements to conclude that it has the potential for fish presence. The report further notes that, according to the Washington State Department of Fish and Wildlife Priority Habitat and Species mapping resource, no state candidate, priority, threatened, or endangered species are located within close proximity to the site. The report determined that the proposed project would result in approximately 5,500 square feet of permanent impacts to the on-site stream buffer that could not be avoided due to the buffer area extending over the entire property. The report further determined that the proposal would minimize impacts to the stream buffer by constructing the house and associated improvements as far from the stream as feasible and without manicured lawn or other outbuildings typically associated with such development. To mitigate for the 5,500 square feet of permanent impacts to the on-site stream buffer, the Applicant would enhance 5,500 square feet of remaining buffer area through the removal of invasive species and planting of native vegetation. No other critical areas were identified on-site. *Exhibit 1, Staff Report, pages 9 through 12; Exhibit 4.*

Critical Areas Variance

10. Type F streams are classified as fish and wildlife habitat conservation areas that are required to be protected with a standard 150-foot buffer and an additional 15-foot building setback from the buffer edge. *KCC 19.300.310; KCC Table 19.300.315.* As noted above, the Applicant is requesting a Critical Areas Variance to reduce the standard stream buffer by approximately 80 percent, from 150 feet to a variable buffer width of 30 to 45 feet, and to reduce the standard building setback from the reduced buffer edge from 15 feet to 5 feet, to accommodate the residential structure and associated improvements. *Exhibit 1, Staff Report, pages 1 and 2; Exhibits 3 through 6.*

11. The Applicant provided a narrative addressing the requirements for a Critical Areas Variance under KCC 19.100.135.A, which asserts:
 - The property is 100 percent encumbered by a 150-foot buffer associated with a Type F stream that crosses the southeast corner of the parcel. The property is unbuildable without a variance.
 - The stream is naturally occurring and follows the low ground across the property and into a culvert under South Kingston Road NE. The stream and associated buffer are not the result of the actions of the current or previous property owners.
 - The granting of this variance would be a net gain to buffer function on this parcel. The increased buffer function would be achieved through removal of invasive plant species and replacement with native plant species. This project would not have a substantial detrimental impact to this critical area or to the public welfare and would not be injurious to the property or improvements in the vicinity and area in which the property is situated.

- The proposed variance is the minimum necessary to accommodate the permitted detached, single-family residential use. The primary driving factor for this project's proposed site plan was placement of the septic drainfield. The municipal code requires septic drainfields be located at least 100 feet from any surface waters, including streams. The only area on the property that meets this requirement is on the western side of the parcel. Once the septic system placement and footprint had been determined in the site plan, the home site was placed as far as possible from the stream, while maintaining building setbacks from the septic system and lot lines. Because the stream crosses the southeast corner of the parcel, the home site was pushed as far to the west and uphill as possible against the septic system. A two-story home design was selected to decrease the home's footprint to the minimum necessary, further reducing the project's impacts. The selected home plan was originally designed with a two-car garage in a daylight basement, with the garage doors facing to the east and downhill toward South Kingston Road NE. The garage was removed from the project because the required parking apron would have had a greater encroachment on the stream buffer than placing the parking spaces uphill of the house to run perpendicular to the stream. The driveway is pushed against the north lot line to site it as far as possible from the stream, which would further reduce impacts to the stream.
- No other practicable or reasonable alternatives exist for development on the property.
- A mitigation plan has been submitted for review by the County.

Exhibit 6.

12. County staff analyzed the proposal and determined that, with conditions, it would meet the specific criteria for a Critical Areas Variance under KCC 19.100.135.A, noting:
- The subject site was platted in 1968 prior to stream buffer requirements and, therefore, the stream was never considered as a constraint to the plat or property. The Type-F stream buffer of 150 feet encompasses the entire property. Due to the size of the property, location of critical areas, and standard buffer requirements, strict application of Title 19 KCC would result in no possibility to develop the legally established, platted parcel. In addition, other properties in the immediate vicinity are also built very near, or at a similar distance from, this stream feature.
 - The circumstances restricting development of the property without a critical areas variance are not the result of the actions of the current or previous property owners. The lot is a legal lot of record created by way of a plat in 1968.
 - The Applicant provided a habitat management plan and no net loss report that adequately demonstrates that this proposal, with mitigation, would not result in substantial detrimental impacts. The report recommends enhancement of the stream corridor with infill of native trees and shrubs, as well as the eradication of invasive Himalayan blackberry and English ivy from the established stream

*Findings, Conclusions, and Decision
Kitsap County Hearing Examiner
Olsen Critical Areas Variance
No. 20-04994*

corridor. The report also outlines a five-year monitoring plan. County staff recommends that hand and mechanized eradication methods be deployed due to the proximity of the creek to Apple Tree Cove.

- The granting of the variance would be the minimum necessary to accommodate the reasonably sized, 1,600 square foot single-family residence and supporting facilities. Siting the proposed structure in any other location on the property would result in impacts to the required zoning setbacks or cause further critical area buffer encroachment. The Applicant's environmental consultant determined, and County staff agrees, that the requested buffer reduction would be the minimum necessary to establish a setback around the residence while optimizing the stream buffer function.
- KCC 19.150.510 defines reasonable alternative as "an activity that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation." Alternative locations for the proposed residence would require encroaching into other required setbacks.
- The Applicant has submitted a mitigation plan that meets the goals and standards outlined in Chapter 19.300 KCC, and the project would be required to follow the recommendations of that report, including recommendations related to mitigation and five-year monitoring.

Exhibit 1, Staff Report, pages 9 and 10.

Testimony

13. County Senior Environmental Planner Steve Heacock testified generally about the proposal and how it would meet the requirements for a Critical Areas Variance. He noted that the Applicant recently submitted an application for the Site Development Activity Permit that would be required for the proposed development. Mr. Heacock explained that the property was platted in 1968 and is one of several properties in the vicinity that remains undeveloped, likely due to their proximity to South Kingston Road NE or due to critical area constraints. He noted that an unnamed stream flows across the southeast corner of the property and into a culvert under South Kingston Road NE that essentially prevents fish passage. Mr. Heacock explained that the portion of the stream on the property meets the criteria for a Type F stream based on bank width and other factors, noting that it has the potential for fish passage should the culvert be reconstructed. He stated that surrounding development consists of single-family residences that were built in the late 1960s and early 1970s, several of which are located in a proximity to the stream similar to that of the proposed residence. Mr. Heacock stated that the residence would be sited as far as possible from the stream while meeting Kitsap Public Health District requirements for the location of a septic system and drainfield that would serve the residence. He explained that vegetation on the property is dominated by invasive species that would be removed as part of the proposed mitigation and noted that the remaining buffer area would be further enhanced through the planning of native vegetation. Mr. Heacock stated that the Washington State Department of Fish and

Wildlife recently confirmed that Hydraulic Project Approval would not be required for the proposed development. *Testimony of Mr. Heacock.*

14. Applicant Crosby Olsen testified that he agrees with County staff's analysis of the proposal as provided in the staff report and Mr. Heacock's testimony. He stated that all invasive species removal outside of the development area would be accomplished by hand or mechanical means without the use of herbicides. Mr. Olsen noted that he sought and received clarification from County staff about the aspects of the staff report and County staff's recommended conditions and that, after receiving the clarification, he understands and would comply with the recommend conditions. *Testimony of Mr. Olsen.*

Staff Recommendation

15. County staff recommends approval of the Critical Areas Variance, with conditions. *Exhibit 1, Staff Report, pages 11 through 13.*

CONCLUSIONS

Jurisdiction

The Kitsap County Hearing Examiner is authorized to hear and decide requests for a Critical Areas Variance. *KCC 2.10.070; KCC 19.100.135.B; KCC 21.04.080; KCC Table 21.04.100.*

Criteria for Review

The Hearing Examiner may grant a variance from the regulations or standards of the County's critical areas ordinance to a particular piece of property when the application meets all of the following criteria:

1. Because of special circumstances applicable to the subject property, including size, shape, or topography, the strict application of this title is found to deprive the subject property of rights and privileges enjoyed by other properties in the vicinity; provided, however, the fact that those surrounding properties have been developed under regulations in force prior to the adoption of this ordinance shall not be the sole basis for the granting of a variance;
2. The special circumstances referred to in subsection [1 above] are not the result of the actions of the current or previous owner;
3. The granting of the variance will not result in substantial detrimental impacts to the critical area, public welfare or injurious to property or improvements in the vicinity and area in which the property is situated or contrary to the goals, policies and purpose of [the County's critical areas ordinance];
4. The granting of the variance is the minimum necessary to accommodate the permitted use;

5. No other practicable or reasonable alternative exists (See Definitions, Chapter 19.150); and
6. A mitigation plan (where required) has been submitted and is approved for the proposed use of the critical area.

KCC 19.100.135.A.

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

With conditions, the proposal would meet the specific criteria for approval of a Critical Areas Variance under KCC 19.100.135.A. A Critical Areas Variance is required due to the location of a Type F fish bearing stream that flows through the southeast corner of the site, which has an associated 150-foot buffer and an additional 15-foot building and impervious surface setback that extends over the entire 0.22-acre property. No other critical areas were identified on or near the property. The property was platted in 1968, prior to stream buffer requirements, and the special circumstances preventing development on the site without a variance are not the result of any action by the Applicant or the previous property owner.

The County provided reasonable notice and opportunity to comment on the proposal. The County received comments on the proposal from members of the public that raised concerns about the proposal's impacts to the on-site stream, impacts to the stream and associated wildlife from the use of chemicals to remove invasive species, and impacts to eagles from the potential removal of a tree used by eagles for perching. C3 Habitat prepared a Habitat Management Plan for the proposal, which determined that impacts to the on-site stream buffer could not be avoided because it extends over the entire property and that the proposal would minimize impacts by constructing the residence and associated improvements as far from the stream as feasible and by avoiding development of outbuildings or a manicured lawn area typically associated with residential properties. The Applicant would mitigate for impacts from the buffer reduction by enhancing the remaining buffer area through the removal of invasive species and the planting of native vegetation. The Applicant would not utilize chemicals to facilitate the removal of invasive species and, instead, would remove invasive species by hand or through mechanical means. The Applicant's project biologist determined that there are no bald eagle nesting sites in the vicinity of the property, and occasional perching uses are not regulated by the County's tree protection and retention ordinance.

The County determined that the proposal is categorically exempt from SEPA environmental review, in accord with WAC 197-11-800(6)(e). The property is designated Urban Low-Density Residential by the County Comprehensive Plan, and the proposal would be consistent with

*Findings, Conclusions, and Decision
Kitsap County Hearing Examiner
Olsen Critical Areas Variance
No. 20-04994*

several goals and policies of the County Comprehensive Plan that promote infill development on undeveloped properties in appropriate areas adequately served by existing infrastructure, while preserving and enhancing critical areas. Detached, single-family residential dwellings are a permitted use in the UL zoning district, and the proposal would comply with all applicable zoning code requirements. The County would further review the proposed development to ensure that it would comply with all applicable development regulations with the site development permit application. The proposed variance is the minimum necessary to allow the Applicant to construct a reasonably sized 1,600 square foot residence and associated improvement on the property, a right enjoyed by other property owners in the vicinity and in the UL zoning district. Other existing residential structures in the vicinity are located a similar distance from the stream.

As conditioned, the proposed variance would not result in substantial detrimental impacts to critical areas or the public welfare, would not be injurious to surrounding residential properties, and would be consistent with the purpose of the County's critical areas ordinance. Conditions, as detailed below, are necessary to ensure that the Applicant obtains all necessary permits for the proposed development; develops the property consistent with the submitted plans; complies with all applicable development regulations; adheres to the recommendations of the Habitat Management Plan; performs invasive plant species removal without the use of chemical herbicides, pesticides and fertilizers; and complies with all other applicable requirements of the County code. *Findings 1 – 15.*

DECISION

Based upon the preceding findings and conclusions, the request for approval of a Critical Areas Variance to reduce the standard buffer associated with an on-site fish-bearing stream by approximately 80 percent, from 150 feet to a variable buffer width of 30 to 45 feet, and to reduce the standard building setback from the reduced buffer edge from 15 feet to 5 feet, to allow for the construction of a single-family residence and associated appurtenances on a 0.22-acre property at 24495 South Kingston Road NE, is **GRANTED**, subject to the following conditions:²

1. Permit approval is subject to the conditions in this Hearing Examiner's decision.
2. The proposal shall comply with the applicable zoning standards of the Urban Low Residential (UL) zoning district.
3. At the time of Site Development Activity Permit (SDAP) submittal, the site plan shall show all current easements to ensure that the project does not encroach on required setbacks or easements.

² This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by the County code.

4. Construction plans and profiles for all roads, storm drainage facilities, and appurtenances prepared by the developer's engineer shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to said plan acceptance.
5. The information provided demonstrates that, due to the proximity of critical areas, this proposal will require a SDAP from Development Services and Engineering.
6. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with Title 12 Kitsap County Code effective at the time of development permit application. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of SDAP application.
7. The Washington State Department of Fish and Wildlife may require a Hydraulic Project Approval for the work required near the stream.
8. If the project proposal is modified from that shown on the submitted site plan accepted for review on October 19, 2021, Development Services and Engineering will require additional review, potentially new conditions, and potentially a revision to this decision.
9. The proposal shall follow the recommendations and the five-year monitoring plan outlined in the Habitat Management Plan dated September 1, 2021, by C3 Habitat.
10. Recommended noxious weed management shall be performed by hand and mechanical means. The use of chemical herbicides, pesticides, and fertilizers is not recommended due to the proximity of the creek.
11. Hydraulic Project Approval (HPA) may be required for the proposed dispersion facility. Prior to SDAP approval, the Applicant shall submit an approved HPA from the Washington State Department of Fish and Wildlife (WDFW) or documentation from WDFW specifying that an HPA is not required.
12. The Applicant shall submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the Kitsap County Code. The KCPW 1601 form reserves road capacity for the project.
13. The required SDAP application shall include documentation of rights of use of the access easement indicated as providing access to this parcel.
14. The required SDAP shall include plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with county

Findings, Conclusions, and Decision
Kitsap County Hearing Examiner
Olsen Critical Areas Variance
No. 20-04994

rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter 11.22 of the Kitsap County Code. Existing approaches may need to be improved to meet current standards.

15. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the SDAP process (or building permit if no SDAP is required). The need for and scope of bonding will be determined at that time.
16. An approved Building Site Application (BSA) shall be submitted at the time of building permit application.

DECIDED this 1st day of July 2022



ANDREW M. REEVES
Hearing Examiner
Sound Law Center