

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BAINBRIDGE ISLAND**

In The Matter of the Application of)	No. PLN-51139 RUE
)	
Mercury Michael)	
)	
For Approval of a Reasonable Use)	FINDINGS, CONCLUSIONS,
<u>Exception</u>)	AND DECISION

SUMMARY OF DECISION

The request for a reasonable use exception to allow the construction of a single-family residence, with associated appurtenances, on a vacant lot encumbered by critical areas, off of Euclid Avenue NE, is **APPROVED**. 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 April 11, 2019.

Testimony:

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

Annie Hillier, City Planner
Rik Langendoen, Applicant Representative
Mercury Michael, Applicant
Steve Christensen
Danielle Gordon

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated April 11, 2019
2. Master Land Use Application, dated December 19, 2018
3. Owner/Agent Agreement, dated January 25, 2018
4. Letter from Annie Hillier to Mercury Michael, dated May 15, 2018; Memorandum from Peter Corelis, P.E., to Annie Hillier, dated May 8, 2018; Site Assessment Review, dated May 8, 2018; Letter of Transmittal, dated May 8, 2018; Chronological Control Sheet, dated May 7, 2018
5. Notice of Incomplete Application, dated September 7, 2018;
6. Applicant Response to Notice of Incomplete Application, received December 19, 2018
7. Revised Project Narrative, with Project Plans, dated December 19, 2018

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8. Site Plan (Figure 3), revised November 28, 2018
9. Wetland Delineation, AquaTerra, LLC, dated April 16, 2018
10. Wetland Mitigation Plan, AquaTerra, LLC, dated October 9, 2018
11. Email from Annie Hillier to Rik Langendoen, dated December 20, 2018, with email string
12. Notice of Complete Application, dated January 2, 2019
13. Notice of Application, undated
14. Affidavit of Publication, *Bainbridge Island Review*, dated January 11, 2019; Classified Proof, published January 11, 2019; Certificate of Posting, dated January 13, 2019
15. Technical Memorandum from Rik Langendoen, dated January 21, 2019
16. Email from Andrew Fiscus to the Planning and Community Development Department, dated January 31, 2019
17. Memorandum from Peter Corelis, P.E., to Annie Hillier, dated March 19, 2019
18. Comment Memorandum from Todd Cunningham, dated February 5, 2019
19. Staff PowerPoint Presentation, dated April 11, 2019
20. Comments from Danielle Gordon, dated April 11, 2019

The Hearing Examiner enters the following findings and conclusions based on the testimony and exhibits:

FINDINGS

Application and Notice

1. Mercury Michael (Applicant) requests approval of a reasonable use exception (RUEX) to allow construction of a single-family residence and associated improvements, including a driveway and septic facilities, on a vacant lot containing a wetland and an associated wetland buffer. The unaddressed property is off of Euclid Avenue NE, between NE Endicott Street and NE Lafayette Avenue.¹ The RUEX would allow for development of a single-family residence, not to exceed 1,200 square feet, with a reduced wetland buffer of 25 feet and a 15-foot construction setback. As mitigation for the proposal, the Applicant would remove invasive species throughout the site and would install a variety of native vegetation in a 1,800 square foot mitigation area within the remaining wetland buffer. *Exhibit 1, Staff Report, pages 1 and 7 through 9; Exhibit 7; Exhibit 9; Exhibit 10; Exhibit 19.*

2. The City of Bainbridge Island (City) determined that the application was complete on January 2, 2019. On January 11, 2019, the City provided notice of the application and the associated open record hearing by mailing or emailing notice to property owners within 500 feet of the subject property and to reviewing government departments and agencies, and by publishing notice in the *Bainbridge Island Review*. On January 13, 2019, notice of the application and associated hearing was also posted at the project site.

¹ The property is identified by tax parcel number 41670000240003. *Exhibit 1, Staff Report, page 3.* A legal description of the property is included with the project plans. *Exhibit 7.*

The City received one public comment in response to its notice materials: Andrew Fiscus, who lives at the adjacent property to the south, expressed concern that the location of the proposed residence would create privacy concerns and that allowing development of a residence on a property with a protected wetland that drains into the Port Madison Water Company's property, or the Puget Sound, is ecologically insensitive. Mr. Fiscus suggested that the septic drainfield be sited close to the south property line to allow an increased setback between his residence and the proposed residence. *Exhibit 1, Staff Report, page 4; Exhibit 12; Exhibit 13; Exhibit 14; Exhibit 16.*

State Environmental Policy Act

3. The City determined that the proposal is exempt from review under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW), and Washington Administrative Code (WAC) 197-11-800(1)(b)(i), because it would involve minor new construction. *Exhibit 1, Staff Report, page 1.*

Comprehensive Plan, Zoning, and Surrounding Property

4. The property is designated "Residential District-2" under the City Comprehensive Plan. The purpose of the City's Residential District designation is to provide for less intensive residential development and a variety of agricultural and forestry uses. *City Comprehensive Plan, LU-22.* City staff analyzed the proposal for consistency with the Comprehensive Plan and identified goals and policies applicable to the proposal, including:

- Using mitigation sequencing to develop properties adjacent to or adjoining critical areas to account for the present and future need to reduce the potential for personal injury, loss of life, or property damage due to flooding, erosion, landslides, seismic events, climate change, or soil subsidence.
- Employing conservation design methods and principles such as low-impact development techniques for managing stormwater and wastewater, and using green building materials and high-efficiency heating and lighting systems.
- Protecting wetlands and riparian areas.²

Exhibit 1, Staff Report, pages 5 and 6.

5. The 0.37-acre property is within the "Residential 2" (R-2) zoning district. The purpose of the R-2 zoning district is to "provide residential neighborhoods in an environment with special Island character consistent with other land uses such as agriculture and forestry, and the preservation of natural systems and open space, at a somewhat higher density than the R-1 district." *Bainbridge Island Municipal Code (BIMC) 18.06.020.C. Single-*

² City staff specifically identified the following goals and policies of the Comprehensive Plan as relevant to the proposal: Environmental Element Policies EN-1.2, EN-4.1, and EN-5.6; Land Use Element Policy LU-14.1. *Exhibit 1, Staff Report, pages 5 and 6.*

family dwellings are a permitted use in the R-2 zone. *BIMC Table 18.09.020. Exhibit 1, Staff Report, page 6.*

6. Within the R-2 zoning district, certain dimensional standards apply. Specifically: a required minimum lot area of 20,000 square feet per dwelling unit; minimum lot depth and width of 80 feet; and maximum lot coverage of 20 percent. *BIMC Table 18.12.020-2.* Setback requirements include: front yard setbacks of 25 feet; side yard setbacks of 5 feet (minimum) and 15 feet (total); and rear setbacks of 15 feet. *BIMC 18.12.020.* Two parking spaces are required for each primary dwelling. *BIMC 18.15.020. Exhibit 1, Staff Report, pages 6 and 7.*
7. Project plans show that the proposed single-family residence would meet the parking requirements and the minimum width and depth requirements, as well as the minimum setback requirements. The maximum lot coverage allowed on the 16,117 square foot property would be approximately 3,223 square feet. Because a RUEX is proposed, however, lot coverage would be limited to 1,200 square feet, as required by BIMC 16.20.080.F. As noted above, at approximately 16,117 square feet, the property is smaller than the minimum lot size allowed in the R-2 zoning district. Under BIMC 18.30.050, however, nonconforming lots that were lawfully created and recorded with the county auditor's office, as occurred here, may be used for permitted purposes notwithstanding the minimum lot area, width, or depth requirements of the municipal code. *Exhibit 1, Staff Report, pages 2 and 6.*
8. The property is bounded to the west by Euclid Avenue NE and surrounding properties to the north, south, and east are also zoned for residential development and generally contain single-family residences. In addition, the Port Madison Water Company owns several nearby properties. *Exhibit 1, Staff Report, page 2; Exhibit 7.*

Critical Areas

9. The site is undeveloped, and site topography generally slopes to the north and east. AquaTerra, LLC (AquaTerra), prepared a Wetland Delineation, dated April 16, 2018, addressing on-site critical areas. The wetland delineation was based on fieldwork conducted on February 5, 2018. AquaTerra identified a Category IV depressional wetland in the northern portion of the property, consisting of forested canopy with emergent vegetation made up of red alder, English ivy, lady fern, salmonberry, sword fern, and Indian plum. A seasonal stream flows east out of the ponding area of the wetland. No signs of recent disturbance were noted. AquaTerra determined that the Category IV wetland would, in normal circumstances, require a 40-foot buffer, with an additional 15-foot building setback. *BIMC 16.20.140.1.4, Table 6. Exhibit 9.*
10. The wetland and associated buffer cover approximately two-thirds of the subject property. During the pre-development and application process, the Applicant contended

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that development of a single-family residence on the property would not be possible with strict application of a 40-foot wetland buffer or through buffer modification, which would allow the wetland buffer to be reduced by 25 percent under BIMC 16.20.110. Reducing the wetland buffer by 25 percent would still result in insufficient space being available to construct a single-family residence with necessary infrastructure, including an on-site septic system, stormwater system, and space for off-street parking, especially when accounting for the required 15-foot building setback from the edge of the wetland buffer. City staff assessed the site through the site assessment review process, as required by BIMC 16.20.080.A, and concurred that developing the property with a single-family residence would only be possible through the reasonable use exception process. *Exhibit 1, Staff Report, page 8; Exhibit 4; Exhibit 11.*

11. The City code identifies aquifer recharge protection areas (ARPAs) as critical areas that must be protected. BIMC 16.20.100.E.1 requires any proposed development or activity requiring a site assessment review located within the R-2 zone to designate an ARPA. The City determined, however, that only 3,617 square feet of the site would be required to be retained in an ARPA and that the wetland and proposed buffer (which must be maintained in perpetuity) already occupy a greater area than this. Accordingly, City staff determined that designating an ARPA on-site would be unnecessary. *Exhibit 1, Staff Report, page 13.*

Reasonable Use Exception

12. The City code provides for a reasonable use exception (RUEX) where the City's critical areas ordinance (Chapter 16.20 BIMC) would deny all reasonable use of the property; where there are no reasonable alternatives with less impact to the critical area or its required buffer; where the proposal minimizes the impact through mitigation sequencing; where the proposed impact is the minimum necessary; where the inability to derive reasonable use of the property is not the result of actions by the Applicant; where the proposed total lot coverage does not exceed 1,200 square feet for residential development; where the proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the property; and where any alterations are mitigated. *BIMC 16.20.080.*
13. The Applicant proposes construction of a 1,200 square foot, single-family residence with a 500 square foot driveway and on-site septic system. To minimize adverse impacts to the wetland and buffer, the residence would be constructed in the southwestern corner of the parcel. Low Impact Development (LID) techniques would be employed to minimize ground disturbance activity and excavation, especially within the wetland buffer. Specifically, pin piles or piers would provide foundation support for the residence (as opposed to slab-on-grade construction), resulting in minimal excavation and/or ground disturbance within the wetland buffer. This would result in much of the residence being

cantilevered above the ground by 10 to 12 feet over the wetland buffer.³ No stairway or direct access to the proposed wetland mitigation area, wetland buffer, or wetland would be provided from the residence. Because the property is not located within the City's sewer service area, an on-site septic system would be installed south of the residence, along with a septic drainfield, which would be installed in the southeast corner of the property. The 16-foot "alley" where the septic system would be installed, between the residence and the southern property line, would remain undeveloped to allow future access to the septic drainfield. This site configuration would also allow for a staging area along the southern property line during construction of the residence, and provide additional privacy for the residence sited on the property to the south. As proposed, the site layout would result in a reduction of the required wetland buffer from 40 to 25 feet. As noted, however, much of the residence would actually be cantilevered above the impacted buffer, minimizing buffer impacts. *Exhibit 1, Staff Report, pages 9 and 10; Exhibit 7; Exhibit 15; Exhibit 19.*

14. The Applicant would submit a Stormwater Site Plan for review and approval prior to development. Conceptually, the Applicant intends to use full-downspout infiltration, combined with permeable pavement, in areas that support stormwater infiltration. Surface stormwater from the driveway and parking surfaces would receive pre-treatment prior to being discharged. All Hardscaping would be constructed of permeable materials or contain wide permeable jointing, where feasible, to allow infiltration. Finally, diffuse flow methods, including level spreaders, would be used to discharge bypass surface stormwater from the adjoining property to the south into the wetland, to provide for increased hydrological recharge. *Exhibit 7.*
15. Peter Corelis, the City's Development Engineer, reviewed the proposal and determined that it would be consistent with applicable stormwater regulations and that the proposal would protect the critical area functions and values consistent with the best available science as it pertains to the incorporation of LID techniques for the purpose of handling of stormwater, retaining vegetation, and mimicking natural hydrology to the maximum extent feasible. Furthermore, he determined that the site plan conforms to the City's Design and Construction Standards and Specifications. Mr. Corelis recommended that use of the minimal excavation foundation systems for portions of the structure within the wetland buffer and treatment of stormwater (as proposed) be included as conditions of approval for the RUEX. *Exhibit 18.*

³ Access to the residence would occur from the street level. The topography of the site is such that a flat shelf exists on the southern portion of the property where the driveway, entrance to the residence, garage, on-site septic system, and septic drainfield would be constructed. The topography then slopes north, at between 32 and 14 percent grade, toward the wetland. The proposed residence would be cantilevered over a portion of this slope. *Exhibit 15.*

16. Todd Cunningham, the City's Building Official, also reviewed the proposal. He noted that the project must comply with the City's construction codes, as adopted in Chapter 15.04 BMC, and that soils review would be required to ensure compliance with provisions of Chapter 4 of the International Residential Code. *Exhibit 17.*
17. AquaTerra prepared a Wetland Mitigation Plan, dated October 9, 2018, addressing impacts that would result from reducing the 40-foot wetland buffer to 25 feet and addressing the compensatory mitigation that would be necessary to ensure the integrity, function, and value of the Category IV wetland on-site and to ensure that no net loss of wetland function would result from construction of a single-family residence. The Wetland Mitigation Plan notes that much of the property, including the existing wetland buffer, consists of non-native plant species, including English ivy and dead nettle. Accordingly, to mitigate for permanent impacts to the wetland buffer from development of a 1,200 square foot residence partially within the buffer area, the Applicant would:
- Remove low-lying invasive vegetation throughout the site.
 - Add mulch to areas where invasives are removed to help prevent re-establishment of invasive species and promote the growth of native species.
 - Install appropriate sedimentation and control measures, during construction, such as silt fencing.
 - Restore 1,800 square feet of the remaining, degraded wetland buffer with native vegetation.
 - Minimize light pollution by directing lights away from the wetland.
 - Minimize noise impacts by placing noise-generating equipment away from the wetland.
 - Keep all toxic materials out of the wetland and its buffer.
 - Prevent materials and debris from entering the wetland and its buffer.
 - Keep noise and artificial light to a minimum.
 - Monitor the re-established area for no less than 7 years to ensure long-term survival of installed vegetation.

Exhibit 10.

18. The Applicant submitted a project narrative addressing the criteria for a RUEX under BIMC 16.20.080. The project narrative suggests that the proposal would meet the criteria for a RUEX because:
- The wetland and buffer encumber the majority of the property. Because of the small size of the lot, other techniques such as buffer averaging would not be sufficient to create a functional building envelope. Obtaining a RUEX is the only way to create a buildable lot.
 - The proposal would minimize impacts on the wetland and buffer through appropriate mitigation sequencing, including installation of low-impact fencing between the residence and wetland buffer; selecting native plants for the mitigation area that would provide light and noise screening; using elevated

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walkways around the single-family residence within the wetland buffer area; directing lights away from the wetland; utilizing a low-impact foundation design; establishing covenants to avoid the use of pesticides on the property; dispersing stormwater runoff from the adjacent parcel to the south into the wetland; and utilizing full-downspout infiltration combined with permeable pavement to provide on-site infiltration of stormwater.

- The impact to the critical area is the minimum necessary to allow reasonable use of the property. An alternative site design was considered that would have entailed siting the residence approximately 5 feet from the southern property line and installing the on-site septic system to the north, within the wetland buffer. This, though, would have required upwards of 700 cubic yards of fill to be placed within the wetland buffer and mitigation area (to provide a level area for the septic system) and would have significantly reduced the available size of the mitigation area. Installation of retaining walls may also have been necessary under the design alternative. In addition, no readily available construction staging area would have been possible under the alternative site design. Based on these considerations, the Applicant determined that the site layout, as proposed, would allow reasonable use of the property with fewest impacts to the wetland buffer.
- The wetland and buffer were existing conditions and not created by the Applicant or the previous property owner.
- One single-family residence would be built on the lot, and the residence would have a total building footprint of no more than 1,200 square feet. The proposed residence would be modest in scope and have the minimum necessary impacts on the wetland buffer.
- AquaTerra provided a mitigation plan that, to the maximum extent feasible, mitigates the impacts on-site. Replanting native vegetation and removing invasive vegetation would enhance the existing habitat. Implementation of the mitigation plan, along with best management practices during construction, would result in no net loss of critical area function and values.
- The proposal would not pose an unreasonable threat to public health, safety, or welfare on or off the site and would be consistent with other building and zoning regulations.
- All other adjacent parcels have been developed. No adverse cumulative impacts are anticipated from development of the site.

Exhibit 7.

19. City staff also analyzed the proposal for compliance with the RUEX criteria from BIMC 16.20.080 and generally concurred with the Applicant's assessment. Staff specifically noted:
 - The Applicant would not be able to develop the lot without the requested RUEX. Lot coverage of 1,200 square feet is considered reasonable on lots encumbered by critical areas or associated buffers.

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- Given the small lot size, site topography, and the property’s location, there do not appear to be any other reasonable alternatives to the proposed use that would achieve the same purpose for the Applicant with less impact to the critical area buffer.
- The proposal minimizes impacts on the wetland buffer in accordance with mitigation sequencing requirements under BIMC 16.20.030. Specifically: the residence would be located outside of the wetland itself and in the outermost portion of the wetland buffer; the proposal avoids the use of fill and/or retaining walls by placing the septic system on the flat, southern portion of the site; the project avoids grading within the wetland buffer by incorporating natural topography into the site design; the proposal includes a garage as part of the 1,200 square foot SFR, which would help minimize pollutant runoff; a low impact approach would be used to minimize ground disturbance and excavations; the residence would be cantilevered over the wetland buffer, minimizing impacts; fencing and signing would be provided along the wetland buffer edge, to prevent encroachment; light would be direct away from the wetland and buffer and the Applicant would establish covenants to restrict the use of pesticides on-site; invasive species would be removed from the site; enhancement of an 1,800 square foot mitigation area would be provided; and site monitoring would occur for at least 7 years.
- The proposed impact to the critical area is the minimum necessary to allow reasonable use of the property. The City considers a 1,200 square foot building envelope as reasonable when a lot is encumbered by critical areas, provided enough mitigation is proposed to adequately compensate for impacts. Site alternatives were considered and deemed infeasible.
- The inability of the Applicant to derive reasonable use of the property is not the result of actions by the Applicant or the Applicant’s predecessor.
- Proposed total lot coverage would not exceed 1,200 square feet.
- The proposal would not pose an unreasonable threat to the public health, safety, or welfare on or off the property.

Exhibit 1, Staff Report, pages 10 through 16.

Testimony

20. City Planner Annie Hillier testified generally about the property and the process of reviewing the proposal. She noted that the wetland and buffer cover the majority of the property and that the request to allow the construction of a single-family residence on the lot is consistent with the Comprehensive Plan and zoning. Ms. Hillier explained that the proposed single-family residence would be sited as far south as possible, away from the wetland on-site, while still allowing for an appropriate buffer with the residence to the south and an adequate area for an on-site septic system and septic drainfield. She also explained that a 1,200 square foot residence is equivalent to others in the area and is the maximum the BIMC allows through a RUEX. Ms. Hillier noted that the slopes on-site

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do not meet the definition for geologically hazardous or steep slopes. She also noted that a final mitigation plan must be submitted that specifically addresses the wetland functions and values and how the proposed mitigation would impact these functions and values.

Testimony of Ms. Hillier.

21. Applicant Representative Richard Langendoen testified that the Applicant looked at several possible site configurations and determined, ultimately, that the current proposal would have the fewest impacts on the wetland and its buffer. He explained that the site layout would allow perpetual access to the septic drainfield, through the 16-foot setback between the residence and southern property line, and that the same area would provide a construction staging area and privacy for the property to the south. Mr. Langendoen stressed that low-impact development techniques would be emphasized, including cantilevering much of the single-family residence above the wetland buffer, and that best management practices would be used during construction. He also noted that hydrologic recharge would occur on-site in that diffusers would be installed to capture and divert rainwater into the wetland buffer. *Testimony of Mr. Langendoen.*
22. Area resident Steve Christensen testified that he owns property to the north and does not object to the proposal but wanted to ensure that stormwater from the proposal would not impact his own property and that discharged stormwater would be appropriately treated prior to discharge. *Testimony of Mr. Christensen.*
23. Danielle Gordon, who lives south of the property, testified that she is concerned the development will impact the privacy of her own property, based on the proposed location of the residence. She noted that the project would seem to have significant impacts on the wetland and believes developing the property would negatively impact quality of life in the neighborhood. *Testimony of Ms. Gordon.*
24. Mr. Langendoen testified in response to Mr. Christensen's concerns and stressed that stormwater from the proposal would have no additional impacts on adjoining properties because all stormwater would be infiltrated on-site and post-development conditions would mimic pre-development conditions. He further noted that discharged stormwater would likely be of higher quality than currently exists. In response to Ms. Gordon's concerns, Mr. Langendoen noted that the Applicant takes quality of life issues seriously and would take measures to ensure that impacts to the southern property are limited but impacts from construction would be temporary. He stressed, however, that protection of the wetland and buffer is considered a priority under the municipal code and that has dictated where the proposed residence would be located. Mr. Langendoen also explained that the inhabited portion of the home would be focused toward the north and that any windows on the south side of the residence, facing south, would actually be located in the garage. He noted that existing vegetation along the south property line could be retained

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but access to the septic drainfield to the east must be retained in perpetuity. *Testimony of Mr. Langendoen.*

25. Applicant Mercury Michael testified that he has no intention of impairing the privacy of adjacent property owners. He intends to build a fence between the property lines but would be happy to explore installing a vegetative buffer, such as with bamboo, instead. Mr. Michael stressed that the house is oriented toward the north (i.e., the garage is sited on the south), which would further ensure privacy between the two residences. *Testimony of Mr. Michael.*

Staff Recommendation

26. Ms. Hillier testified that City staff recommends approval of the application, with conditions. Mr. Langendoen testified that the Applicant would adhere to the conditions of approval. *Exhibit 1, Staff Report, pages 13 through 15; Testimony of Ms. Hillier; Testimony of Mr. Langendoen.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has authority to hear and approve, approve with conditions, deny, or remand a request for a reasonable use exception. *BIMC 2.14.030; BIMC 2.16.100; BIMC 16.20.080.E.*

Criteria for Review

Criteria for review and approval of reasonable use exceptions are as follows:

1. The application of this chapter would deny all reasonable use of the property;
2. There is no reasonable alternative to the proposal with less impact to the critical area or its required buffer;
3. The proposal minimizes the impact on critical areas in accordance with mitigation sequencing (BIMC 16.20.030);
4. The proposed impact to the critical area is the minimum necessary to allow reasonable use of the property;
5. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant, or of the applicant's predecessor, that occurred after February 20, 1992;
6. The proposed total lot coverage does not exceed 1,200 square feet for residential development;
7. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the property;
8. Any alterations permitted to the critical area are mitigated in accordance with mitigation requirements applicable to the critical area altered;

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9. The proposal protects the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values;
10. The proposal addresses cumulative impacts of the action; and
11. The proposal is consistent with other applicable regulations and standards.

BIMC 16.20.080.F.

The criteria for review adopted by the City of Bainbridge Island City Council 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 City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

With conditions, the proposal would comply with the reasonable use exception criteria of BIMC 16.20.080.F. The City provided reasonable notice and opportunity to comment on the application. The City determined that the proposal was exempt from SEPA review. A wetland and wetland buffer cover the majority of the Applicant's property to the extent that strict application of the City's critical areas ordinances would deny all reasonable use of the property. Neither the City nor public comments suggested any alternative uses for the property. The Applicant is proposing lot coverage of 1,200 square feet. The Applicant submitted a wetland delineation and a mitigation plan setting out mitigation sequencing that would minimize the impact on critical areas. The mitigation plan also determined that the proposal would be the minimum necessary to allow reasonable use of the property. Alternative site plans were considered but the Applicant, the Applicant's consultants, and City staff determined that the present proposal would have the fewest impacts on the wetland and its buffer. The lot was created prior to the adoption of the City's critical area ordinances and is not the result of any action of the Applicant.

The Applicant proposes construction of a 1,200 square foot, single-family residence with a 500 square foot driveway and on-site septic system. To minimize adverse impacts to the wetland and buffer, the residence would be constructed in the southwestern corner of the parcel. Low Impact Development (LID) techniques would be employed to minimize ground disturbance activity and excavation, especially within the wetland buffer. Specifically, pin piles or piers would provide foundation support for the residence (as opposed to slab-on-grade construction), resulting in minimal excavation and/or ground disturbance within the wetland buffer. This would result in much of the residence being cantilevered above the ground by 10 to 12 feet over the wetland buffer. No stairway or direct access to the proposed wetland mitigation area, wetland buffer, or wetland would be provided from the residence. Because the property is not located within the City's sewer service area, an on-site septic system would be installed south of the residence, along with a septic drainfield, which would be installed in the southeast corner of the property. The 16-foot "alley" where the septic system would be installed, between the residence and the

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southern property line, would remain undeveloped to allow future access to the septic drainfield. This site configuration would also allow for a staging area along the southern property line during construction of the residence, and provide additional privacy for the residence sited on the property to the south. As proposed, the site layout would result in a reduction of the required wetland buffer from 40 to 25 feet. As noted, however, much of the residence would actually be cantilevered above the impacted buffer, minimizing buffer impacts.

The Applicant's mitigation plan contains monitoring and contingency plans, along with enhancement of the remaining wetland buffer. The City determined that the wetland delineation and mitigation plan are based on the best available science and would result in no net loss of critical area functions and values. The mitigation plan addressed the cumulative impacts of the proposed development and determined that there would be no negative cumulative impacts if the request is approved.

Conditions are necessary, including those to ensure that work is completed in substantial compliance with submitted plans; construction limits are temporarily fenced; a split-rail fence is installed along the edge of the wetland buffer; appropriate signs are installed on the split-rail fence; a final mitigation plan is submitted for approval; all mitigation plantings are installed; that a maintenance assurance device is provided prior to the issuance of a certificate of occupancy; that the Applicant record a notice of title regarding the presence of the wetland; that no refuse is placed in the wetland buffer; that stormwater on-site is appropriately managed; and that the project complies with relevant construction, building, and fire codes. *Findings 1 – 26.*

DECISION

Based upon the preceding findings and conclusions, the request for a reasonable use exception to allow the construction of a single-family residence, with associated improvements, on a vacant unaddressed lot off of Euclid Avenue NE containing a wetland and wetland buffer, is **APPROVED**, with the following conditions:⁴

1. Work shall be completed in substantial compliance with the design and specifications included in the RUE file, including:
 - a. Utilization of a minimal excavation foundation system per the *2012 Low Impact Development Guidance Manual for Puget Sound* for the portion of the structure within the wetland buffer. Negligible fill and/or ground disturbance shall occur within the wetland buffer and building setback.
 - b. Cantilevering the portion of the SFR that is located within wetland buffer approximately 10-12 feet over the ground surface, with no stairway or other direct access to the wetland buffer.

⁴ This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by City code.

- c. Limiting the removal of significant trees to those identified in the narrative (4 red alder trees located outside of the wetland buffer) and minimizing the removal of native vegetation. Significant trees in the vicinity of the construction area shall be clearly marked on the site plan, with those proposed for removal clearly labeled.
 - d. Locating construction staging outside of the wetland buffer.
 - e. Establishing covenants to restrict the use of pesticides, as well as herbicides or fertilizers on the project site.
 - f. Implementing the proposed minimization steps included on pages 3-5 of the Revised Narrative (Exhibit 7) under “Proposed Site Development.”
2. Prior to the issuance of any permits for development, vegetation removal, land clearing, or grading, the Applicant shall have the construction limits temporarily fenced. The construction limits shall be minimized to the extent practicable within the wetland buffer. The fence shall be clearly marked on any construction or clearing plans submitted with the building permit application. The fence shall be made of durable material and shall be highly visible. The fence shall be inspected as part of the required permits. The temporary fencing shall be removed once the construction activity is complete and replaced with permanent fencing (see condition #3, below).
 3. A split-rail type fence shall be installed along the edge of the wetland buffer, a maximum of 5 feet away from the SFR. The rails shall be high enough to allow small mammals and wildlife to pass through. The fence shall be indicated on the building permit application and in place prior to final inspection on the building permit.
 4. A minimum of two signs indicating the presence of a protected wetland buffer shall be placed on the fence, prior to final inspection on the building permit. Signs shall be made of metal or a similar durable material and shall be between 64 and 144 square inches in size.
 5. A final mitigation plan shall be submitted and approved prior to the issuance of any permits for development, vegetation removal, land clearing, or grading. The final mitigation plan shall be updated to address the criteria under BIMC 16.20.180.G.3.b, Environmental Goals and Objectives, including:
 - a. Identification of functions and values; a complete description of the relationship between and among structures and functions sought;
 - b. Review of available literature and/or known like projects to date in restoring or creating the type of critical area proposed;
 - c. Likelihood of success of the proposed compensation project at duplicating the original critical area; and

- d. Likelihood of the ability of the created or restored critical area to provide the functions and values of the original critical area.
 - e. The final mitigation plan may need to be amended to meet the conditions of the City Development Engineer, if a dispersion trench is located within the buffer (Condition 12, below).
6. The mitigation plan shall clarify the area in which invasive species will be removed. Consideration shall be given to removing invasive species throughout the project site to the maximum extent practicable, to improve the likelihood of success of the mitigation plan. If this is deemed infeasible, justification must be provided and the likelihood of success must be discussed. Any bare areas after invasive species removal shall be replanted with native vegetation, in addition to the native species proposed to be planted with the 1,800 sq. ft. mitigation area. Consideration shall also be given to removing the English laurel on the site, and any other invasive species that may be present.
 7. All mitigation plantings shall be installed prior to final building permit inspection, or an assurance device shall be provided in accordance BIMC 16.20.160.
 8. The final mitigation plan shall include performance standards based on the goals and objectives identified in the revised plan. Monitoring reports shall be submitted to the City by December 31st of each monitored year, for 7 consecutive years.
 9. If the performance standards in the mitigation plan are not met, a contingency plan shall be submitted to the Department of Planning and Community Development for approval. Any additional permits or approvals necessary for contingency actions shall be obtained prior implementing the contingency plan.
 10. The Applicant shall submit a recorded notice to title prior to the issuance of the building permits, documenting the presence of the critical area onsite with the Kitsap County Auditor. Such notice shall provide notice in the public record of the presence of a critical area buffer and the application of this chapter to the property, and shall provide notice that limitations on actions in or affecting such areas may exist. The notice must be recorded prior to the issuance of the building permit.
 11. No refuse, including but not limited to household trash, yard waste and commercial/industrial refuse, shall be placed in the buffer.
 12. The Applicant shall comply with the following conditions to the satisfaction of the City Engineer:
 - a. The minimal excavation foundation system proposed shall conform to the definition as cited in the City's adopted LID manual, published as the 2012 Low Impact Development Guidance Manual For Puget Sound, and shall contain a

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combination of driven piles and connecting components at, or above grade and allow the foundation system to engage deeper load-bearing soils without having to dig out and disrupt upper soil layers.

- b. Surface stormwater from the proposed structure and from the adjacent property to the south shall discharge and disperse at a location and in a manner consistent with BMP T5.10B – Downspout Dispersion Systems. A dispersion trench is required where less than 50 feet of vegetative flow path is provided. Trenches shall be placed as far upland from the wetland as feasible, but no closer than 10 feet downgradient from the reserve on-site septic field. Individual splash blocks may be utilized where the vegetative flow path is at least 50 feet downgradient of the discharge locations.
13. The Applicant shall comply with the following conditions to the satisfaction of the City Building Official:
- a. The project shall comply with the City of Bainbridge Island construction codes as adopted by Chapter 15.04 BIMC.
 - b. A soils review is required for the project to ensure compliance with the provisions of Chapter 4 of the International Residential Code.

Decided this 25th day of April 2019.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center