



Department of Planning and community development

Staff Report

Date: April 12, 2017
To: Stafford Smith, Hearing Examiner
From: Heather Beckmann Wright, Senior Planner
Project: Rural Day America Reasonable Use Exception (3) & Major Variance (3)
File #: PLN15354RUE & VAR

I. INTRODUCTION

Applicant: Rural American Properties, Inc

Request: Three Reasonable Use Exceptions (RUE) and three major zoning variances to reduce the front yard setback from 25' to 5' and to construct three single-family residences, each not to exceed 1,200 square feet (Exhibits 1 & 3) on three, adjoining vacant lots encumbered by a Category III wetland (Exhibit 21) and an associated 150' buffer.

Location: 2075 Soundview Drive NE, 2105 Soundview Drive NE and 2137 Soundview Drive NE, being portions of Sect. 10, T 24N, R 02E; having tax parcel #'s 4146-004-002-0007 (Lot 2), 4146-004-003-0006 (Lot 3), 4146-004-004-0005 (Lot 4)

Designation: R-2, Two residential units per acre

Comprehensive Plan Designation: OSR-2, Open Space Residential, two residential units per acre.

Environmental Review: A Mitigated Determination of Non-significance, in accordance with the State Environmental Policy Act (SEPA) WAC 197-11-355, was published on February 27, 2017 with the appeal period ending on March 13, 2017. No appeal was filed.

Hearing Examiner Review. The hearing examiner shall review the Reasonable Use Exception (RUE) and Major Variance applications and conduct a public hearing pursuant to the provisions of BIMC 2.16.100. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's compliance with all of the RUE and Major Variance review criteria in subsection G of this section.

RECOMMENDATION

Approval of the RUE and Major Variance applications for each lot with the following conditions:

SEPA CONDITIONS:

1. In order to protect the ground water and the wetland flora and fauna from the proposed development, the roofing shall be of a non-leaching material that is not harmful to wetlands. Examples of non-leaching materials are, but not limited to, metal and tile roofs. Asphalt may be allowed if an alternative method to treat the run off is proposed by the applicant. An alternative method must address BIMC water quality standards, Chapter 13.24 and to assure that wetland flora and fauna functions and values are maintained/enhanced. An Alternative method may include rain gardens as found in the [Rain Garden Handbook for Western Washington](#), June 2013; provided, that a Washington State Department of Ecology and the Washington Stormwater Center LID Design and LID Operation and Maintenance certified practitioner, or equivalent, approves the rain garden design and maintenance provisions, and the City grants final approval.
2. Prior to commencing any construction activity, the applicant shall have the wetland buffer temporarily fenced between the areas of construction activity, a maximum of 15 feet from the proposed residence. The fence shall be made of durable material and shall be highly visible. The fence shall be inspected as part of the building permit. 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 15' setback from the single family home. The fence may contain gates to access the restoration area and shall provide a clear distinction between native vegetation buffer area and any future landscaped area. 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 of the building permit.
4. Prior to issuing a final on a building permit for a single family residence, a minimum of two signs per lot indicating the presence of a protected wetland buffer shall be placed on the fence. Signs shall be made of metal or similar durable material and shall be between 64 and 144 square inches in size.
5. The applicant has indicated that they will provide buffer enhancement as mitigation. The proposal shall be modified to provide a minimum of 1:1 buffer enhancement for the buffer impacted. Enhanced equivalent areas or alternative, conservation easements or mitigation banking may be considered as appropriate mitigation; provided, that areas equivalent to those altered are achieved and approved by the City.
6. With the first building permit, the applicant shall submit a stormwater management plan that meets the minimum requirements 1-9 of the 2012 SWMMWW, BIMC 15.20.
7. With the submittal of the building permit application, the applicant shall provide a discussion of applicable and utilized Low Impact Development Best Management Practices.
8. Prior to final building inspection, the applicant shall submit a revised wetland mitigation plan including mitigation goals and objectives, performance standards, maintenance and monitoring measures and contingency actions. The mitigation plan shall be in substantial compliance with BIMC 16.20.110 – Mitigation Plan Requirements – and may incorporate previously completed

reports for the subject property and use guidance provided in [Wetland Mitigation in Washington State: Part 2 - Developing Mitigation Plans](#) (Version 1, March 2006, Publication #06-06-011b). The mitigation plan shall provide sufficient information, clarity and detail to demonstrate the proposed mitigation actions and maintenance and monitoring measures are adequate to achieve established mitigation goals and objectives. The Department of Planning and Community Development shall approve the revised wetland mitigation plan as part of the building permit review and plantings shall be installed prior to final building permit inspection.

9. The applicant shall submit a maintenance and monitoring plan with their building permit application and shall submit an annual monitoring report for up to seven years, as applicable.
10. To reduce the impacts on the wetland, the applicant shall limit the amount of lighting on the exterior of the residence to the minimum necessary, shall install motion sensor lights to the rear of the house facing the wetland, plant dense vegetation around the buffer and record a covenant to limit the use of pesticides.

PROJECT CONDITIONS:

11. The proposed residence shall meet the setback and height requirements for the R-.2 zoning district, with the exception of the twenty-five foot front yard setback. To ensure the 5' foot front yard setback is met, the applicant shall have the setback marked and inspected by planning staff prior to commencing construction.
12. The applicant shall revised their building permit plans and mitigation plan to provide the continuation of the wetland buffer between the three lots. The buffer between the lots shall also include a fence and signage as indicated in Conditions 2-4 above.
13. The applicant shall record a notice to title of the presence of the wetland and the mitigation plan prior to the issuance of the building permit.
14. The proposed single-family residences are subject to the Fort Ward Overlay design guidelines and shall be reviewed for compliance with the guidelines at building permit submittal.

Staff Analysis

II. FINDINGS OF FACT

A. Site Characteristics

1. Assessor's Record Information:
 - a. Tax Lot Numbers: 4146-004-002-0007 (Lot 2), 4146-004-003-0006 (Lot 3), 4146-004-004-0005 (Lot 4)
 - b. Owners of record: Rural American Properties Inc.
 - c. Lot sizes: .188 ac (Lot 2), .202 ac (Lot 3), .202 ac (Lot 4)
 - d. Land use: Vacant
2. TERRAIN:

The properties are relatively flat, with a five foot contour change across the property.
3. SITE DEVELOPMENT:

The sites are undeveloped.

4. ACCESS:

Vehicular access to the site is from Soundview.

5. PUBLIC SERVICES:

- a. Police: Bainbridge Island Police Department.
- b. Fire: Bainbridge Island Fire District.
- c. Septic: Sewer District 7

6. SURROUNDING USES:

- a. North: Undeveloped
- b. East: Single Family Residential
- c. South: Undeveloped
- d. West: Single Family Residential

7. EXISTING ZONING:

The site is zoned R-2, two units per acre.

8. SURROUNDING ZONING:

The surrounding vicinity is zoned R-2, two units per acre.

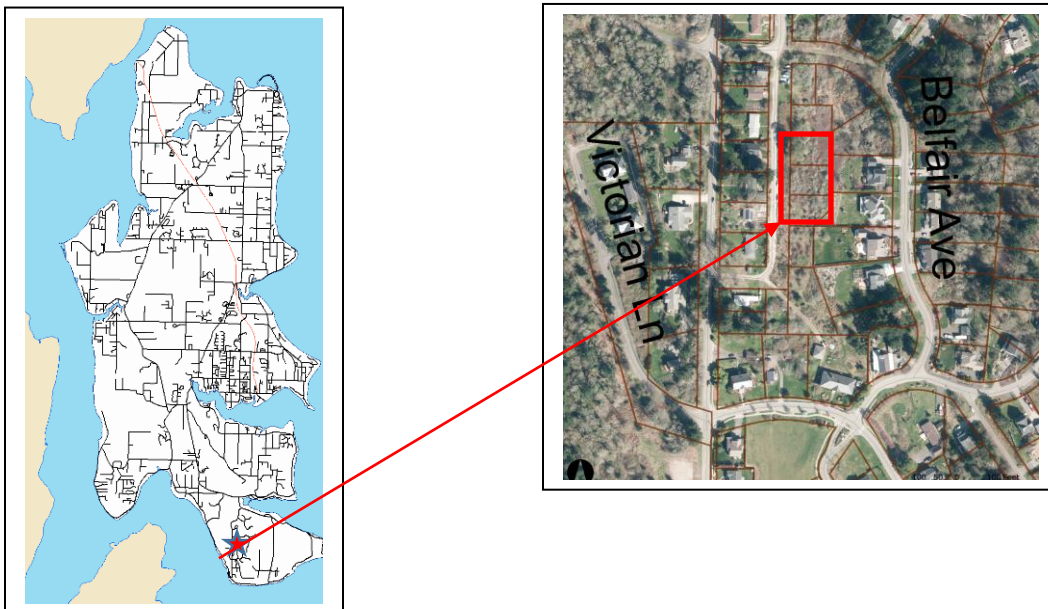
9. EXISTING COMPREHENSIVE PLAN DESIGNATION:

The City Comprehensive Plan Land Use Map designates the site Open Space Residential two units per acres (OSR-2).

10. SURROUNDING COMPREHENSIVE PLAN DESIGNATION:

The City Comprehensive Plan Land Use Map designates the site Open Space Residential two units per acres (OSR-2).

11. VICINITY MAP & AERIAL IMAGE, Figure 1



B. History

1. The applicant submitted for a pre-application conference on October 1, 2015 (Exhibit 6).
2. A pre-application conference was held on October 20, 2015.
3. The applicant applied for a Reasonable Use Exception and Variance applications (Exhibits 1 & 3) on June 7, 2016.
4. Staff issued a notice of incomplete letter on July 5, 2016 (Exhibit 12).
5. On July 20, 2016 the applicant submitted an appeal of the incomplete letter (Exhibit 13). The appeal was stayed and the applicant proceeded with providing the information as requested by staff.
6. On October 5 and 6, 2016, the applicant submitted all information requested in the July 5, 2016 letter (Exhibit 14 & 15)
7. On November 25, 2016, the Notice of Application/SEPA comment period commenced.
8. Public comments were received during the comment period (Exhibit 19).
9. The planner (Exhibit 20) requested additional information from the wetland biologist (Exhibit 21 & 22) that was received on December 12, 2016.
10. The City issued a SEPA Mitigation Determination of Non-significance on February 27, 2017. No appeals were filed.

C. Comments (Public and Agency)

Public Comments (Exhibit 19)

Cumulative Impact on Wetland: Comments voiced concern about the reduction or elimination of the wetland and buffer on the property and in the area. They are concerned that other wetlands have been compromised or eliminated based on development in the area. **Staff finds that the development will impact the wetland as indicated by the commenter, but that the Code allows the development to occur through a reasonable use exception with mitigation.**

Soundview: They are also concerned that Soundview should be 15' to the east. They are concerned about the location of construction vehicles and increased traffic on Soundview. **Staff finds that the variance request reduces the impact to the wetland and that the developed area of Soundview provides a greater, visual setback to the developed road than that required by the zoning code.**

Agency

Fire Marshal: The Fire Marshal submitted a letter stating he had no concerns with the proposals and that the building permits shall meet all fire codes (Exhibit 11).

Development Engineer: The Development Engineer submitted suggested conditions of approval on January 4, 2017 (Exhibit 23). Planning Staff discussed conditions 1-4 with the applicant prior to drafting the SEPA conditions. Conditions 1 & 3 were included in the SEPA determination, but suggested conditions 2 & 4 were not following a discussion with the applicant. The applicant provided staff with draft site plans demonstrating that a shared drive would actually increase the amount of impervious surface. The applicant also discussed with staff that the existing gravel road is covered in native vegetation and that its removal would be more negatively impactful to the wetland rather than leaving it as is.

D. Comprehensive Plan Analysis

Environmental Element, Aquatic Resources, Goal 1: Preserve and protect the Island's remaining aquatic resources' functions and values.

AQ 1.1 Achieve no overall net loss of the City's remaining, regulated, aquatic resources.

AQ 1.2 Development shall not be approved in regulated wetlands, streams or buffer areas unless a property owner would be denied all reasonable use of property.

AQ 1.3 Require that vegetated buffers be maintained between proposed development and the aquatic resource in order to protect the functions and values of such systems. Degraded buffers should be restored to enhance their function. Reductions in vegetated buffers should be allowed only in areas where such reductions, if consistently applied, would not result in significant cumulative impacts to aquatic resources and fish and wildlife habitat.

AQ 1.4 Require that buffer be retained in their natural condition wherever possible, while allowing for appropriate maintenance. Where buffer disturbance has occurred, require revegetation with appropriate species, with a preference for native species to restore the buffers' protective values.

AQ 1.5 Ensure that development activities are conducted so that aquatic resources and natural drainage systems are maintained and water quality is protected.

AQ 1.6 Prior to any clearing, grading or construction on a site, all wetlands, streams and buffer areas should be specifically identified and accurately located in the field in order to protect these areas during development. After construction, permanent visual markers should be placed around the buffer areas.

AQ 1.8 Herbicides and pesticides should not be used in wetlands, streams, and buffer areas, and should be discouraged in the areas that drain into them.

AQ 1.11 Restoration, creation or enhancement of wetlands, streams, and their buffers shall be required in order to offset the impacts of alteration of a wetland/stream or buffer area. Compensation for loss of aquatic resources should be determined according to function, acreage, type, location, time factors, and an ability to be self-sustaining.

AQ 1.12 Maintain the Island's wetland in their natural state by: Preservation of native vegetation in and next to the wetlands. Restoration of areas that have already been degraded. Protection of areas that have not been disturbed.

AQ 1.13 The City should make every effort to purchase or obtain conservation easements for significant wetlands and areas of the shoreline critical to natural habitat.

The city uses the Department of Ecology's (DOE's) Washington State Wetland Rating System for Western Washington for the purposes of establishing wetland buffer widths, wetland uses and replacement ratios for wetlands. This system consists of four wetland categories, with Category I representing those with the highest level of function and Category IV as the lowest function. Buffers to the wetland depend on the category of the wetland and the impact of the use.

The wetland on the properties is Category III. Both the wetland and its buffer encumber the three lots and result in no area outside of the wetland and buffer. The project is recommended for approval, with the maximum amount of relief available under a reasonable use exception (1,200 square feet of lot coverage per lot).

In accordance with the guiding principles of the Comprehensive Plan, the property owner would be denied all reasonable use of the property without a Reasonable Use Exception. The applicant is proposing and the project is conditioned to restore and enhance a wetland buffer. The project is conditioned to identify the buffers in the field prior to any construction activities and the project is conditioned to provide fencing and restrict herbicide and pesticide use to ensure long term protection of the wetlands after the introduction of the residential use (Conditions 5 & 8).

E. Land Use Code Analysis

BIMC Title 18 Zoning

1. 18.06.020 Purpose

The purpose of the R-2 zone 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.18.09.020 Permitted Uses. **The proposal is for the construction of modest homes and the preservation of the wetland and buffer outside of the area impacted by the development and as conditioned by the project (Condition 12).**

Single-family dwellings, and accessory uses and buildings to single family residences, are permitted uses in this zone. **The request is for the construction of a single-family residence, a permitted use in this zoning district.**

2. 18.12.020 Dimensional Standards

Maximum Density & Minimum Lot Dimensions. The base density is 20,000 square feet, with a minimum lot depth and width at 80 feet. **The lots are below the minimum lot width and exceed the depth. In addition to not meeting the width, the lots are below the minimum lot size and are therefore nonconforming. However, pursuant to 18.30.050, any nonconforming single lot, tract or parcel of land that was lawfully created and recorded with the county auditor's office may be used for the purposes permitted by this title notwithstanding the minimum lot area, lot width and lot depth required.**

Maximum Lot Coverage. The maximum allowed lot coverage is 20%, the zoning supports a maximum footprint of 1,616 (Lot 2) and 1,792 (Lots 3 & 4) square feet. **The maximum footprint allowed with an RUE is less than that allowed by the zoning designation.**

Setbacks. Front yard setbacks are 25 feet, and is the subject of a variance. The side setbacks are 5 feet and 15 feet combined and the rear setback is 15 feet. With the exception of the front yard, the proposed single –family-homes meet the side yard and exceed the rear yard setbacks, due to the presence of the wetland.

3. 18.15.020 Parking and Loading

No building permit shall be issued until the applicant has submitted satisfactory plans demonstrating that required parking facilities will be provided and maintained. Single family homes require a minimum of two parking spaces. **The applicant is proposing a garage for each residence that provides two parking spaces.**

4. 18.18.030 Fort Ward Overlay District.

The lots are located in the Fort Ward Overlay District. The proposed single-family homes shall be subject to the Fort Ward Design Guidelines (Condition 14).

F. BIMC Title 16, Environment

The BIMC Chapter 16.20.160 specifies buffers based on wetland category, scores for habitat functions on the rating form, and the intensity of the proposed land use in accordance with the 2004 wetland rating system. The BIMC has not been revised to meet the 2014 rating system scores so does not reflect the new point totals for determining the buffer widths based on habitat scores. However, Ecology has developed guidance for converting 2004 wetland rating system habitat scores to the 2014 wetland rating system habitat scores. Water quality buffers are required for all wetlands and habitat buffer widths are required for wetlands scoring moderate to high habitat functions on the rating form. Wetland A is a Category III wetland that received a moderate score for habitat function. Because these lots are less than 1 acre in size, development is considered high intensity land use, which increases the width of the water quality and habitat buffers. BIMC requires an 80-foot water quality buffer and a 70-foot habitat buffer because of the moderate habitat score and the high intensity land use proposal. The 150-foot buffer extends across all three lots to the improved portion of Soundview Drive because buffers do not extend beyond improved

roads. Therefore, the buffer width for Wetland A extends only to Soundview Drive. The total buffer width provided to Wetland A is 110 feet between the wetland boundary and the improved portion of Soundview Drive. A 15-foot building and impervious surface setback is also required from the edge of the critical area buffers.

1. BIMC 16.20.080(I)(4) Reasonable Use Exception Decision Criteria.

Per BIMC 16.20.080.A, the applicant may request an RUE if they can demonstrate that 1) the property is encumbered to such an extent by critical areas and/or water quality buffers that application of the Critical Areas chapter would deny all reasonable use of the subject property and 2) reasonable use cannot be achieved through buffer averaging, a habitat management plan, or a variance. Per BIMC 16.20.160.D, a water quality buffer can only be varied through a reasonable use exception (whereas a habitat buffer can be varied through a variance, buffer averaging, or habitat management plan). **As shown in the Wetland Analysis Report, the wetland and its buffers encompass the entire property.**

A reasonable use exception may be approved or approved with modifications if without the reasonable use exception the applicant would be deprived of any reasonable use of the property and:

a. The application of this chapter would deny all reasonable use of the property; **The property is constrained due to the following factors; nonconforming lot size (between 8,008 and 8,796 square feet in a 20,000 square feet zoning district), and a wetland with a 150 foot buffer. Each lot does not have area outside of the wetland and their buffer to construct a 1,200 square foot single-family residence.**

b. There is no reasonable alternative to the proposal; **The wetland and buffer completely encumber the lots. The applicants would have no reasonable use of the properties without the requested exception.**

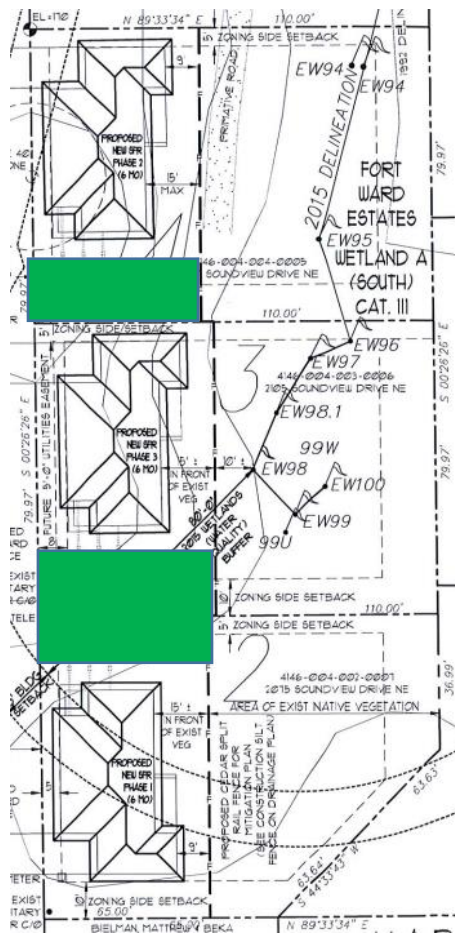
One of the reasonable use exception criteria has found that a footprint of 1,200 square feet is reasonable. With a lot area of 8,008 and 8,796 square feet, and a maximum lot coverage of 20% for R-2 zoning, the zoning supports a maximum footprint of 1,616 (Lot 2) and 1,792 (Lots 3 & 4) square feet.


There is no space available on each lot outside of the the wetland and buffer to develop a single family residence. To lessen the impact on the buffer, the applicant has requested a reduction in the front yard setback from 25' to 5' to locate the proposed homes further away from the buffer.

c. The proposed impact to the critical area is the minimum necessary to allow reasonable use of the property; The applicant is proposing a 1,200 square foot footprint, and a minimal driveway, within the wetland buffer. **The total amount of disturbed area for the three lots is 11,291 square feet, where the maximum amount of lot coverage allowed is 3,600 square feet. The difference between amount of lot coverage and amount of disturbance is 7,691 square feet; or twice as much as the lot coverage.**

The applicant is proposing to impact all the area opposite of the proposed fence, with the majority of the area proposed for impacts between the residential side yards. Staff finds that the impact to the critical area is not the minimum necessary and that the plans shall be revised to reduce the area impacted between residences, as suggested below. This should result in a reduction in the amount impacted and the amount necessary for mitigation.

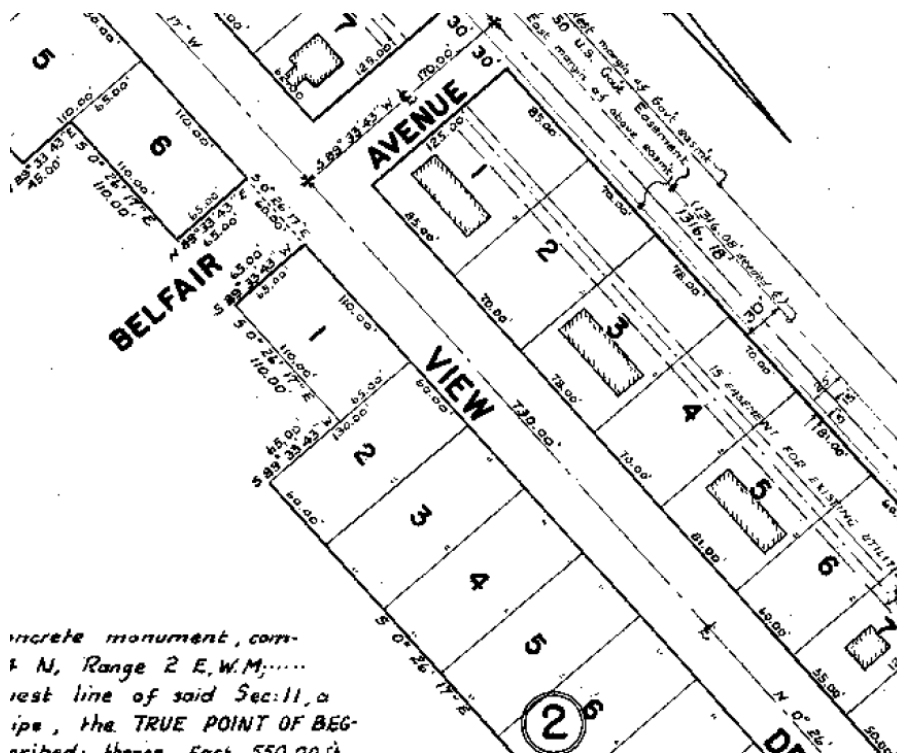
Figure 2: Suggested Mitigation



 = Additional buffer recommended for no disturbance to meet 'minimum necessary' impact criteria.

d. 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; **The inability of the applicant to derive reasonable use of the property is not the result of actions taken by the applicant, or of the applicant's predecessor, that occurred after February 20, 1992. The land was approved for division ion June 23, 1960 as part of the Fort Ward Estates Division 1 Plat.**

Figure 3: Fort Ward Estates Division 1 Plat, 1960



e. The proposed total lot coverage does not exceed 1,200 square feet; Pursuant to BIMC 18.12.050, Rules of Measurement, lot coverage means that portion of the total lot area covered by buildings, excluding up to 24 inches of eaves on each side of the building, any building or portion of building located below predevelopment and finished grade. The applicant submitted a site plan that contains a proposed single family home footprint that does not exceed 1,200 square feet per lot (Condition 4).

f. Any net loss of critical area functions and values, as determined by a qualified consultant through the application of best available science, will be mitigated on-site to the extent feasible if off-site options are not available. If off-site options, such as fee in lieu or mitigation banking program, are available, the mix of on-site and off-site mitigation should be based on recommendations of the consultant; The applicant provided a proposed mitigation plan that stated that “there is also little opportunity on the lots to improve buffer conditions because it is so densely vegetated with Nootka rose and hawthorn trees. Therefore, the mitigation focuses on creating a physical barrier at the buffer edge by planting lower growing conifer trees (shore pine) and installing a split-rail fence along the buffer boundary”.

The mitigation requirements for this chapter are a minimum acreage replacement of 1:1 for buffer impacts. Staff finds that the proposed split rail fence and the installation of conifer trees is not sufficient mitigation for the impacts of development. Staff recommends that the applicant combine on-site and off-site mitigation to meet no net loss of wetland. Staff recommends this be accomplished by limiting the impacts on the buffer on each lot to the homesite (1,200 square feet) and the driveways and the area opposite of the homes, towards the street. The areas between the homesites shall be restored to provide continuous connection of the buffer between the homes, rather than as proposed to provide no connection between the buffer and the homes (as suggested in Figure 2 above). The applicant has indicated that they are interested in providing off-site mitigation as well. The building permits for the single family

residences shall not be issued until a mitigation plan is submitted that meets the requirements of BIMC 16.20.160 is submitted and approved.

g. A habitat management plan has been prepared pursuant to BIMC 16.20.060, unless it is determined through the applicable review process that such a plan is unnecessary; **A habitat management plan is used as a means to reduce the habitat buffer. The applicant is proposing construction within the water quality buffer, and therefore this plan is not necessary.**

h. The proposal is consistent with other applicable regulations and standards; **The proposal is consistent with other applicable regulations and standards of the Code, with the exception of the variance request to the front yard setback, which is also recommended for approval. Analysis of these regulations and standards is provided below.**

2. BIMC 16.20.110 Mitigation Plan Requirements

A mitigation plan is required to address impacts to the wetland and associated buffer. A monitoring report shall be submitted annually, for a period of at least two years. A restoration maintenance assurance device shall be submitted and accepted prior to the completion of the restoration and shall be held during the seven year monitoring period pursuant to BIMC 16.20.180 (performance and maintenance surety). **The proposed mitigation plan shall meet these requirements, including the maintenance assurity, prior to the issuance of a building permit for these lots.**

3. BIMC 16.20.160 Wetlands

Purpose. Preserve, protect, restore, and improve wetland functions and values. Achieve no net loss and increase the quality of wetland acreage, functions, and values within the city. Mitigation measures, as conditions of permits, must have a reasonable expectation of success. Under the conditions of this section, the director may deny development proposals that would irreparably impact regulated wetlands.

Buffers. Buffers shall remain undisturbed natural vegetation areas except where the buffer can be enhanced to improve its functional attributes. Any buffer enhancement and/or limited view clearing activity must be reviewed and approved by the director. **The applicant is proposing to impact the buffer with the addition of single-family homes, and portions of the driveway. In addition to reducing the impact to the buffer by decreasing the area proposed for impact, the project is also conditioned to ensure a minimum of a 1:1 replacement ratio for the impacts to the buffer.**

Development Standards. The following table provides examples of measures that might be provided in a reasonable use exception (BIMC 16.20.080) to minimize impacts of certain activities.

Table 1: Examples of Measures to Minimize Impacts to Wetlands from Different Types of Activities

Examples of Disturbance	Examples of Measures to Minimize Impacts	Activities that Cause the Disturbance
Lights	Direct lights away from wetland.	Parking lots, warehouses, manufacturing, residential
Noise	Locate activity that generates noise away from wetland.	Manufacturing, residential
Toxic runoff*	Route all new runoff away from wetland. Establish covenants limiting use of pesticides within 150 ft. of wetland. Apply integrated pest management.	Parking lots, roads, manufacturing, residential areas, application of agricultural pesticides, landscaping
Change in water regime	Infiltrate or treat, detain, and disperse new runoff into buffer.	Impermeable surfaces, lawns, tilling
Pets	Plant dense vegetation around buffer, such as rose, hawthorn, etc.	Residential areas
Human disturbance	Plant buffer with impenetrable natural vegetation appropriate for region.	Residential areas
Dust	Utilize best management practices to control dust.	Tilled fields

To meet these recommended mitigation measures, the project is conditioned to: to limit the amount of lighting and to provide motion sensor lights to the rear of the property to limit the amount of light intrusion from the rear of the house into the wetland; to plant dense vegetation around the buffer to reduce the potential impact of pets; to install fencing to establish the buffer and limit intrusion into the wetland; and to record a covenant to limit the use of pesticides (Condition 8).

Fencing and Signs. Wetland buffers shall be temporarily fenced or otherwise suitably marked, as required by the director, between the area where the construction activity occurs and the buffer. Fences shall be made of a durable protective barrier and shall be highly visible. Silt fences and plastic construction fences may be used to prevent encroachment on wetlands or their buffers by construction. Temporary fencing shall be removed after the site work has been completed and the site is fully stabilized per city approval. **The project is conditioned to provide temporary fencing prior to commencing construction and to maintain the fencing until the work is complete and the site is fully stabilized (Condition 5).**

The director may require that permanent signs and/or fencing be placed on the common boundary between a wetland buffer and the adjacent land. Such signs will identify the wetland buffer. The director may approve an alternate method of wetland and buffer identification, if it provides adequate protection to the wetland and buffer (Condition 2).

4. BIMC 16.20.180 Performance and Maintenance Surety

The director shall decide when a performance surety is required. A performance surety shall not be required when the actual cost of performance is less than \$1,000. **The City is requesting the mitigation plan be revised at building permit submittal (Condition 6), and for it to include maintenance and monitoring. A performance surety may not be required, however, to ensure the planting occurs, the plantings shall be installed or an assurance device secured prior to the issuance of a final on the single-family-residential building permit (Condition 6).**

The applicant shall submit an annual report monitoring any mitigated to ensure the plants survivability for a period of seven years after the plant installation. Any plants found to not survive shall be replanted (Condition 7).

5. BIMC 16.20.190 Notice of title

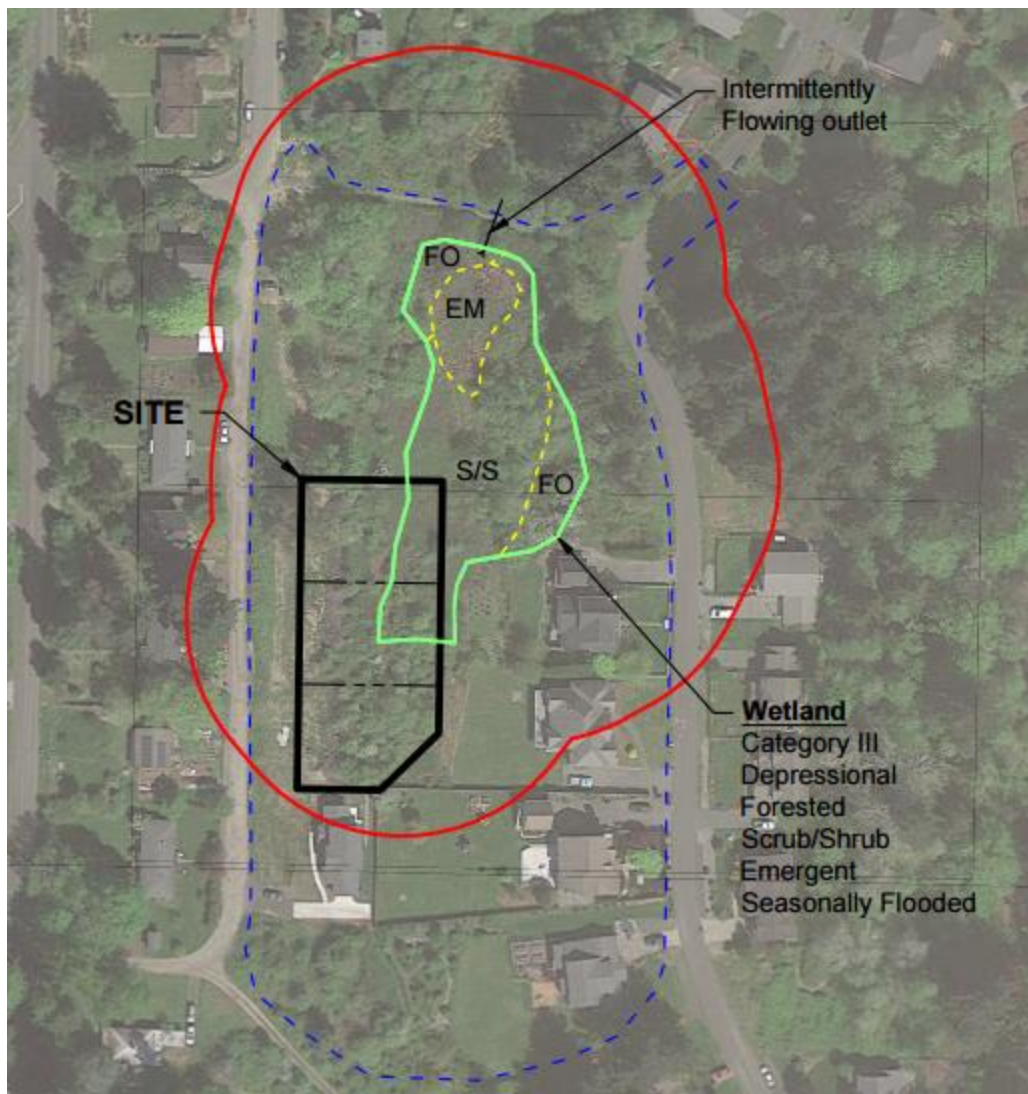
The owner of any property with field-verified presence of critical area or buffer on which a development proposal is submitted shall file for record with the Kitsap County auditor a notice approved by the director in a form substantially as set forth in subsection B of this section. Such notice shall provide notice in the public record of the presence of a critical area and buffer, the application of this chapter to the property, and that limitations on actions in or affecting such areas may exist. **The applicant shall submit a recorded notice to title prior to the issuance of the building permit (Condition 13).**

G. BIMC Title 2, Land Use Procedures

1. BIMC 2.16.060, Major Variances

Variances are the mechanism by which the city may grant relief from the provisions of the zoning ordinance where practical difficulty renders compliance with certain provisions of the code an unnecessary hardship, where the hardship is a result of the physical characteristics of the subject property and where the purpose of the comprehensive plan is fulfilled. **The hardship is the presence of a wetland and buffer that are located in the rear yard. To minimize the impacts to this wetland, a reduced front yard setback lessens the impact on the wetland buffer. Additionally, the property abuts a 60' right-of-way, that is constructed with a 20' roadway.**

Figure 4: Subject Wetland (without buffer overlay)



LEGEND:

- Wetland Unit Boundary
- - - Vegetation Class Division
- - - Contributing Basin
- 150' Wetland Offset

Applicability.

a. The major variance process may be used for deviations from zoning standards in BIMC Title 18 that exceeds a minor deviation. Minor projects should be limited to: (1) projects that are exempt from review under SEPA, or (2) proposals for less than a 25% encroachment in required yards or (3) proposals of less than a 25% increase in lot coverage. **The proposal is for a major project that is subject to SEPA and will encroach greater than 25% into the required front yard (25' required, 5' requested).**

b. This procedure is not available to obtain variances from subdivision standards in BIMC Title 17 or to obtain variances from BIMC Title 18 zoning standards cross-referenced in BIMC Title 17 as part of a short subdivision, long subdivision, or large lot subdivision approval or amendment

process. **This setback was not imposed due to a subdivision standard. The subdivision of these lots occurred prior to the regulation of wetlands.**

c. This procedure is not available to allow the siting for an accessory dwelling unit where it would not otherwise be permitted. **The request is for the development of a primary single family residence on each lot, and is unrelated to an accessory dwelling unit.**

d. A variance shall not be granted solely because of the presence of nonconformities in the vicinity of the subject site. **This request is not due to a presence of nonconformities in the vicinity of the subject property.**

e. The provisions of this section 2.16.060 shall supplement those of BIMC 2.16.020 and 2.16.030. In the event of a conflict between the provisions of BIMC 2.16.020 or 2.16.030 and 2.16.060, the provisions of this section shall govern. **These sections are analyzed below.**

Decision Criteria.

1. A major variance may be approved or approved with conditions if:

- a. The variance is consistent with all other provisions of this code, except those provisions that are subject to the variance, and is in accord with the comprehensive plan;
- b. The need for a variance has not arisen from previous actions taken or proposed by the applicant; **The lots were created in 1960, prior to the enactment of the critical areas ordinance. The wetlands are on the eastern side of the property, and the variance request is for the western border of the property, or the front yard. By reducing the setback, the proposed single family residences will be located further rather than closer to the wetlands.**
- c. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone, but that is denied to the property in question because of special circumstances on the property in question, and will not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties in the vicinity in which the property is located; **the property is denied use of the property without a reasonable use exception because of the presence of the wetland. The variance will be used to allow minimal intrusion into the wetland buffers by locating the proposed single-family-residences towards the street, within the standard 25' setback, rather than constructing the homes deeper within the wetland buffer.**
- d. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is located; **By denying the variance, the impacts on the wetland will be increased. Additionally, the right-of-way for Sound View is 60' wide, and the developed portion of the road is approximately 20' wide and located on the western edge of the 60' right-of-way. Therefore, despite the reduced front yard variance, the future single family residences will be located approximately 40' from the developed portion of Sound View Drive. Even with the reduced setback, the existing conditions provide a physical separation that exceeds the 25' setback requirement, despite the 20' variance reduction request. The City does not have any immediate (within their 6 year Capital Improvement Plan) plans to widen the Sound View Road.**
- e. The variance is requested because of special circumstances related to the size, shape, topography, trees, groundcover, location or surroundings of the subject property, or factors necessary for the successful installation of a solar energy system such as a particular orientation of a building for the purposes of providing solar access; **The**

variance is requested because of the critical area and buffer on the subject property. Due to the width (60') of the Sound View right-of-way and the developed portion of the road (20'), the proposed homes will still be setback 40' from the developed road area; thus providing a 40' physical separation from the homes and the street.

2. If no reasonable conditions can be imposed that ensure the application meets the decision criteria of subsection 1, then the application shall be denied. (Ord. 2011-02 § 2 (Exh. A), 2011) **The applications are properly conditioned to ensure the project meets the decision criteria.**

III. CONCLUSION

A. Site Characteristics

The properties have a Category III wetland and a 150' buffer that encumbers all of the lots.

B. History

Appropriate notice of the application and SEPA environmental review was published. The SEPA decision was noticed on February 27, 2017 with the appeal period ending on March 13, 2017. The application is properly before the Hearing Examiner.

C. Comprehensive Plan Analysis

The proposed Reasonable Use Exception request is consistent with the goals and policies of the Comprehensive Plan.

D. Land Use Code Analysis

With appropriate conditions, the proposed Reasonable Use Exception and Variance requests conform to all applicable regulations in the Bainbridge Island Municipal Code.

IV. APPEAL PROCEDURES

Any decision of the Hearing Examiner may be appealed in accordance with BIMC Chapter 2.16.130.

V. EXHIBIT LIST

ATTACHED