



Notice of Hearing Examiner Decision

08/29/2023

To: Interested Parties and Parties of Record

RE: Project Name: Druliner Zoning Variance (Type III / Hearing Examiner)
Applicant: Michael Wishkoski
10987 Point Vashon Dr SW
Vashon, WA 98070
Application Type: Zoning Variance (ZVAR-HE)
Permit Number: 22-04815

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #22-04815 Druliner Zoning Variance (Type III / Hearing Examiner)**, 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.

CC: Applicant: Michael Wishkoski, michael_wishkoski@comcast.net
Owner: Mary Druliner, 11501 GREENWOOD AVE N APT 401 SEATTLE, WA 98133-8659
Health District
Public Works
Parks
Navy
DSE / PEP
Kitsap Transit
North Kitsap Fire District

North Kitsap School District
Puget Sound Energy
Water Purveyor
Sewer Purveyor
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA Dept of Transportation/Aviation
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Wetland Review
WA State Dept of Transportation
Interested Parties: None

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

In the Matter of the Application of)	No. 22-04815
)	
Mary Jeannine Druliner)	Druliner Setback Variances
)	
)	FINDINGS, CONCLUSIONS,
<u>For a Zoning Variance</u>)	AND DECISION

SUMMARY OF DECISION

The request for approval of zoning variances from the setback requirements of Chapter 17.420 of the Kitsap County Code—to reduce the required front setback from 20 feet to 7.5 feet and the required rear setback from 10 feet to 5 feet—to allow construction of a new single-family residence, on a 0.11-acre lot located near the intersection of NE Harris Avenue and Division Street NE, in the Indianola area of unincorporated Kitsap County, 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 August 10, 2023.

Testimony:

Darren Gurnee, County Planner

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated August 3, 2023
2. Authorization Form, dated May 16, 2022
3. Applicant Explanation for Additional, received October 31, 2022
4. East and South Exterior Elevations, dated May 10, 2022
5. North and West Exterior Elevations, dated May 10, 2022
6. Level 1 Floor Plan, dated May 10, 2022
7. Level 2 Floor Plan, dated May 10, 2022
8. Site Plan, revised September 9, 2022
9. Area Survey, dated February 23, 2021
10. Permit Application/Submission Form, dated September 29, 2022
11. Notice of Application, dated February 16, 2023
12. Notice of Public Hearing, dated July 26, 2023
13. Certification of Public Notice, dated August 3, 2023
14. Staff Presentation

*Findings, Conclusions, and Decision
Kitsap County Hearing Examiner
Druliner Single-Family Residential Proposal
No. 22-04815*

15. Hearing Sign-in Sheet

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. Mary Jeannine Druliner (Applicant) requests approval of zoning variances from the setback requirements of Chapter 17.420 of the Kitsap County Code (KCC) to reduce the required front setback from 20 feet to 7.5 feet and reduce the required rear setback from 10 to 5 feet. The Applicant requests the variances to allow construction of a new single-family residence and associated improvements, including a driveway, carport and septic drainfield. The property is located near the intersection of NE Harris Avenue and Division Street NE, in the Indianola area of unincorporated Kitsap County.¹ *Exhibit 1, Staff Report, pages 1 and 2; Exhibits 2 through 8.*
2. Kitsap County (County) determined the application was complete on October 31, 2022. On February 16, 2023, 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 County's notice materials stated that written comments on the proposal should be submitted at least seven days before the date of the open record hearing associated with the application. On July 26, 2023, the County provided notice of the open record hearing associated with the application by publishing notice in the County's publishing newspaper of record, mailing notice to property owners within 800 feet of the site, and posting notice on the property. The County did not receive any comments on the proposal in response to its notice materials. *Exhibit 1, Staff Report, page 1; Exhibits 11 through 13.*

State Environmental Policy Act

3. 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 (RCW). Under Washington Administrative Code (WAC) 197-11-800(6)(e), 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.*

¹ The property is identified by Kitsap County Assessor's Tax Account No. 4360-006-017-0004. *Exhibit 1, Staff Report, page 1.*

Comprehensive Plan and Zoning

4. The property is designated “Rural Residential” by the County Comprehensive Plan. County staff identified the following Comprehensive Plan policies as relevant to the proposal:

- Limit the designated rural area to low residential densities that can be sustained by minimal infrastructure improvements, [that] cause minimal environmental degradation, and that will not cumulatively create the future necessity or expectation of urban levels of service. [Land Use Policy 50]
- Permit residential uses in rural areas consistent with the planned rural character of the surrounding area. [Land Use Policy 51]
- Outside of the Type III Limited Area of More Intensive Rural Development (LAMIRD), limit development only to that which serves rural residential or resource needs and does not draw population from Urban Growth Areas. This policy is implemented through Comprehensive Plan Land Use designations, zoning designations, and zoning code provisions. [Land Use Policy 53]
- In accordance with RCW 36.70A.070(5)(c):
 - to preserve rural character of the County, emphasize controlling rural development; assuring visual compatibility of rural development with the surrounding rural area,
 - reduce the inappropriate conversion of undeveloped land into sprawling, low density development in the rural area,
 - protect critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources, and,
 - protect against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.This policy is implemented through Comprehensive Plan Land Use designations, zoning designations, and zoning code provisions. [Land Use Policy 54]
- Encourage development practices and design standards for the rural area, such as minimizing changes in grade from pre-development site conditions in order to maximize native vegetation retention. [Land Use Policy 55]

Exhibit 1, Staff Report, pages 2 through 4.

5. The subject property and all surrounding properties zoned “Rural Residential” (RR). The RR zone “promotes low-density residential development consistent with rural character. It is applied to areas that are relatively unconstrained by environmentally sensitive areas or other significant landscape features. These areas are provided with limited public services.” *KCC 17.130.010*. Development of detached single-family residential dwellings and accessory structures are permitted uses within the RR zoning district. *KCC 17.410.042*. *Exhibit 1, Staff Report, pages 1, 2, and 13; Exhibit 8.*

6. KCC 17.420.060A.42.b provides that
Any single-family residential lot of record as defined in Chapter 17.110 that has a smaller width or lot depth than that required by this title, or is less than one acre, may use that residential zoning classification that most closely corresponds to the dimension or dimensions of the lot of record, for the purpose of establishing setbacks from the property lines.

County staff determined that the 0.11-acre property is a legally existing, non-conforming lot with a minimum lot size, lot width, and lot depth below the standards for a lot located in the RR zoning district. Accordingly, the subject property must comply with development standards applicable to the Urban Restricted (UR) zoning district. The UR zoning district requires 20-foot front setbacks, 5-foot side setbacks, and 10-foot rear setbacks. *KCC 17.420.052*. As noted above, the Applicant requests variances to reduce the front setback to 7 feet, 6 inches and the rear setback to 5 feet. *Exhibit 1, Staff Report, pages 1 through 3; Exhibit 8; Exhibit 10*.

Existing Property and Proposed Development

7. The 0.11-acre corner property is rectangular and relatively flat. The property is currently undeveloped and is vegetated with trees, shrubs, and grasses. The property does not contain any critical areas. All surrounding properties are developed with single-family residences. *Exhibit 1, Staff Report, pages 2 and 3*.
8. As noted above, the Applicant proposes to develop the property with a single-family residence, driveway, carport, and drain field. Water services would be provided by the Indianola water system. Sewer services would be provided by an on-site septic system. Access to the property would be provided by Division Street NE. *Exhibit 1, Staff Report, pages 2, 3, and 9; Exhibit 8*.

Variance Requests

9. The purpose of a zoning variance is to provide property owners with relief from the numerical standards of the zoning code, excluding housing density standards, when unusual circumstances relating to the property cause an undue hardship. *KCC 17.560.010*. KCC 17.560.010 authorizes the Hearing Examiner to grant a variance from the numerical standards of the zoning code only when certain criteria are met. The Applicant submitted a project narrative asserting that the proposal would satisfy these criteria, noting:
- A site survey was completed by AES Consultants Inc, in February of 2021. The property is a corner property, bounded by Harris Street to the south and Division Street to the east. An existing, significant cedar tree exists on the west property line. Allied Septic drilled the first septic percolation test pits in April of 2020 and produced an on-site septic, drain field, and reserve area

to fit within the site and maintain required septic design setbacks, thus establishing the limits of construction.

- The buildable site area of this corner property is restricted by as much as 780 square feet or nearly 17 percent of site area in comparison to those setbacks when applied to an adjacent, similar-sized internal property with single street frontage. The buildable site area is reduced by 1,017 square feet or 22 percent of the total site area to preserve and protect the health of the existing, significant cedar tree. Forty-eight percent of the total site area is required for the proposed on-site septic system, located downhill of the proposed residence to allow gravity feed to the drain field. In an approximately 50-foot wide site, a 20 foot front setback along Division Street and a 10 foot rear setback from the west property line constrict the building footprint to a 20 foot maximum width. To fit within these constraints, the proposed residence would require a two-story façade the length of the west property line minus 10 feet of side yard setbacks. This configuration would have a negative impact on the existing neighboring house to the west and is less likely to enhance the desired rural village character of Indianola. The position and scale of the proposed residence respects the scale and position of the neighboring residence locating the single story south façade of the proposed residence in close alignment with the existing residence facade on the abutting lot facing Harris Street. The proposed 7.5-foot setback from the east property line begins 10 feet south of the north property corner and will have little impact on access to daylight by the existing neighboring residence to the north. Access to light from Division Street may be enhanced due to the removal of street trees as needed for proposed driveway access to the proposed residence.
- Preserving the health of cedar tree to remain after the proposed residence is constructed would continue to provide habitat for wildlife as well as privacy/screening for the existing neighboring house to the west. Multiple, mature, multi-trunked trees exist in and along the Division Street right-of-way. These trees would effectively screen and visually separate the 39 foot long façade of the proposed residence from Division Street. There are no structures opposite the proposed residence across Division Street. The property is an open space reserved for a septic drain field for an existing residence to the north. If the 90 foot long property line along Division Street must be considered the front setback, the minimum required setback area is 1,800 square feet of setback area along Division Street. The proposed site plan, with a 7.5 foot setback for 39 feet of the proposed façade along Division Street, provides more than 2,830 square feet of setback area along Division Street or an additional 1,030 square feet of setback area than the minimum requirement. The proposed residence is designed to address the practical site constraints, to complement and enhance the desired

character and quality of the rural village that is Indianola, and to respect the placement and scale of existing neighboring residences. The design addresses these by considerate placement on its site, modulating the scale of the building with both single and two-story elements, and the use of quality, natural exterior building materials such as cedar, stone, and copper.

Exhibit 10.

10. County staff analyzed the proposal and determined that, with conditions, it would meet the specific criteria for a zoning variance under KCC 17.560.010, noting:
 - The size of the parcel and zoning requirements severely restrict the developable area of the subject property.
 - Reduced front and rear setbacks allow the Applicant to construct a single family detached dwelling and garage, which is an allowed use in the Rural Residential zoning designation. Adjacent properties are also developed with single family detached residences and garages. Therefore, these variances allow development consistent with owners of other properties in the vicinity.
 - The reduced setback for this use reduces the potential hazards to public welfare or other property in the vicinity.
 - The variance requests to reduce the zoning setbacks is the minimum necessary to construct the proposed single family detached dwelling. The property is severely restricted by parcel size.

Exhibit 1, Staff Report, pages 6 through 8.

Testimony

11. County Planner Darren Gurnee testified generally about the proposal and how it would meet the specific requirements for approval of zoning variances to allow construction of a single-family residence and associated improvements. Mr. Gurnee described the existing conditions of the property, consistent with the findings above. He noted that the proposed single-family residence is an allowed use in the RR zone. He explained that setbacks specific to the Urban Restricted zoning district are applicable to the subject property because of its size and dimensions, which are legally nonconforming. Mr. Gurnee stated that the size and shape of the lot, together with the on-site septic primary and reserve drainfields, constitute special circumstances justifying the grant of a zoning variance. He noted that an on-site septic system was required for residential development on the property. He also commented that the Applicant would be restricted from having vehicle access from Harris Street. *Testimony of Mr. Gurnee.*

Staff Recommendation

12. Mr. Gurnee testified that County staff recommends approval of the zoning variance, with conditions. *Exhibit 1, Staff Report, page 10; Testimony of Mr. Gurnee.*

CONCLUSIONS

Jurisdiction

The Kitsap County Hearing Examiner is authorized to hear and decide requests for a zoning variance. *KCC 2.10.070; Chapter 17.560 KCC; KCC 21.04.080; KCC Table 21.04.100.*

Criteria for Review

The Hearing Examiner may grant a variance from numerical standards of the County's zoning code, excluding housing density, only when unusual circumstances relating to the property cause undue hardship in the application of the zoning code. The granting of a zoning variance shall be in the public interest and shall only be made when all the following conditions and facts exist:

- A. There are special circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, that were not created by the Applicant and do not apply generally to other property in the same vicinity or zone;
- B. Such variance is necessary for the preservation and enjoyment of a substantial property right or use of the Applicant possessed by owners of other properties in the same vicinity or zone;
- C. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located; and
- D. The variance is the minimum necessary to grant relief to the Applicant.

KCC 17.560.010.

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

1. **There are special circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, that were not created by the Applicant and do not apply generally to other property in the same vicinity or zone.** Zoning requirements and the size of the 0.11-acre corner property severely limit the developable area of the property. The Applicant provided information explaining that the buildable site area of the corner property is restricted by as much as 780 square feet or nearly 17 percent of site area in comparison to when the same setbacks are applied to an adjacent, similar-sized internal property with single street frontage. The reduced setbacks would allow the property to accommodate the single-family residence, vehicular access, primary and reserved septic drainfields, and the preservation of a significant cedar tree on-site. The proposed setbacks would also allow the proposed single-family residence to

be constructed consistent with surrounding single-family residential development. The Hearing Examiner concludes that these circumstances, which are unique to the property and are not caused by the Applicant, justify the grant of variances to allow development of a detached garage structure. *Findings 1, 4 – 12.*

2. **The variances are necessary for the preservation and enjoyment of a substantial property right or use by the Applicant that is possessed by owners of other properties in the same vicinity or zone.** Single-family residences are permitted outright in the Rural Residential (RR) zone. The requested variances to reduce the required front setback from 20 feet to 7.5 feet and rear setback from 10 to 5 feet would allow the Applicant to construct the proposed residence and associated improvements in the only feasible area for development on the property, consistent with the development rights enjoyed by property owners in the vicinity and RR zoning district. *Findings 1, 4 – 12.*
3. **With conditions, authorization of the variances would not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which the subject property is located.** The proposal is exempt from SEPA environmental review, in accord with WAC 197-11-800(6)(e). The County provided reasonable notice and opportunity to comment on the proposal and did not receive any comments on the proposed variances from members of the public or reviewing departments or agencies in response to its notice materials. The requested variances would allow the Applicant to construct a single-family residence on the 0.11-acre property. The Hearing Examiner concludes that granting the variances would not be materially detrimental to the public welfare or injurious to property in the vicinity and RR zone. Conditions, as detailed below, are necessary to ensure that the Applicant obtains all required permits, completes the project within a reasonable amount of time and in accordance with the submitted application materials, and complies with all other applicable federal, state, and local regulations. *Findings 1 – 12.*
4. **The variances are the minimum necessary to grant relief to the Applicant.** As discussed above in Conclusions 1 and 2, the subject property is severely restricted from development due to the size of the property, its corner lot status, on-site septic drainfields that are required, and the protection of an on-site cedar tree; and that the proposed location for the single-family residence and associated improvements is the only feasible area for construction of a home. The Applicant does not request any other deviations from applicable development standards. *Findings 1, 4 – 12.*

DECISION

Based upon the preceding findings and conclusions, the request for approval of zoning variances from the setback requirements of Chapter 17.420 KCC—to reduce the required front setback from 20 feet to 7.5 feet and the required rear setback from 10 feet to 5 feet—to allow construction of a new single-family residence, on a 0.11-acre lot located near the intersection of

NE Harris Avenue and Division Street NE, in the Indianola area of unincorporated Kitsap County, is **APPROVED**, subject to the following conditions:

1. All required permits shall be obtained prior to commencement of land clearing, construction, and/or occupancy.
2. This variance approval shall automatically become void if no building permit application is accepted as complete by the DCD within four years of the notice of decision date or the resolution of any appeals.
3. The decision set forth herein is based upon representations made and exhibits contained in the project application. Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.
4. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the Applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the Applicant agrees to promptly bring such development or activities into compliance.
5. Harris Avenue shall not be used for access to the parcel.

DECIDED this 29th day of August 2023.



ANDREW M. REEVES
Hearing Examiner
Kitsap County