



## Hearing Examiner Staff Report and Recommendation

**Report Date:** October 6, 2021  
**Hearing Date:** October 14, 2021

**Application Submittal Date:** 12/09/2020  
**Application Complete Date:** 12/17/2020

**Project Name:** Portola Setback Variance  
**Type of Application:** Zoning Setback Variance (Type III)  
**Permit Number:** 20-05785

### Project Location

9175 SE Fragaria Road,  
Port Orchard, WA 98367  
Commissioner District 2 (South)

### Assessor's Account #

4775-000-038-0100

### Applicant/Owner of Record

Portola LLC  
11721 Olalla Valley Rd SE  
Olalla WA 98359

### Recommendation Summary

Approved subject to conditions listed under section 13 of this report.

### VICINITY MAP



### 1. Background

Portola LLC (hereafter, "the Applicant") proposes to reduce a standard front setback by 100% in order to rebuild an existing structure as a single-family home on a heavily constrained lot. The applicant also proposes to reduce the required side setback from five feet to two feet to allow for an external stairway and landing. A Zoning Variance may be granted when criteria in KCC 17.560.010 are met.

The existing structure partially occupies the Right-of-Way (approximately 4 feet). As part of the setback variance request, the applicant proposes to rebuild within the existing footprint including the area currently within Right-of-Way.

The applicant originally requested a variance to the parking requirement for three onsite parking spaces. However, the applicant subsequently proposed an alternative design that includes three parking spaces underneath the building, thus eliminating the need for a

parking variance.

**2. Project Request**

The proposal is for the review of a Zoning Variance to reduce the standard 20-foot front setback to 0-feet (100% reduction) in order to rebuild an existing structure as a single-family home on a heavily constrained lot.

A second variance is proposed to allow for an outdoor stairway and landing within the required side (north) setback area. The request is to reduce the required 5-foot setback to 2-feet. A retaining wall supports the landing and abuts the northern property line. The request is subject to a Type III process with Hearing Examiner approval.

**3. SEPA (State Environmental Policy Act)**

The project is SEPA Exempt under KCC 18.04 State Environmental Policy Act.

**4. Physical Characteristics**

The site is a narrow, 0.27-acre parcel located in a historic neighborhood of Kitsap County. The site currently contains an existing three-story structure with an adjacent concrete parking slab. A large slope with heavy vegetation ascends the slope to the west of the structure, with a grade of approximately 66%. On the opposite side of SE Fragaria Road to the east is the Puget Sound. The portion of the site containing the existing structure and proposed residence is relatively flat.

**Table 1 - Comprehensive Plan Designation and Zoning**

Comprehensive Plan: Rural Residential Zone: Rural Protection (RR)	Standard	Proposed
Minimum Density	N/A	N/A - Subject property is an existing lot.
Maximum Density	1 dwelling unit/5 acres	
Minimum Lot Size	5 acres	N/A
Maximum Lot Size	NA	N/A
Minimum Lot Width	140 feet	N/A
Minimum Lot Depth	140 feet	N/A
Maximum Height	35 feet	N/A
Maximum Impervious Surface Coverage	N/A	N/A
Maximum Lot Coverage	N/A	N/A

Applicable footnotes: None

Staff Comment: None

**Table 2 - Setback for Zoning District**

	Standard	Proposed
Front (East)	20 feet*	0 feet
Side (North)	5 feet*	2 feet**
Side (South)	5 feet *	12 feet
Rear (West)	10 feet*	Exceeds requirement

Applicable footnotes: None

*Staff Comment:* \*Per footnote 42.b 17.420.060, this RR zoned lot may use setbacks of that residential zoning classification that most closely corresponds to the dimension or dimensions of the lot of record. Due to the nonconforming width of this lot, the setbacks of the Urban Restricted (UR) zone are applied.

*Staff Comment:* \*\*The foundation of the proposed home will meet the required setback. An external aluminum stairway is proposed within the north side setback area.

**Table 3 - Surrounding Land Use and Zoning**

Surrounding Property	Land Use	Zoning
North	Single-family residences	Rural Residential (RR)
South	Single-family residences	Rural Residential (RR)
East	Single-family residences, Puget Sound (Coluos Passage)	Rural Residential (RR)
West	Single-family residences; steep slopes	Rural Residential (RR)

**Table 4 - Public Utilities and Services**

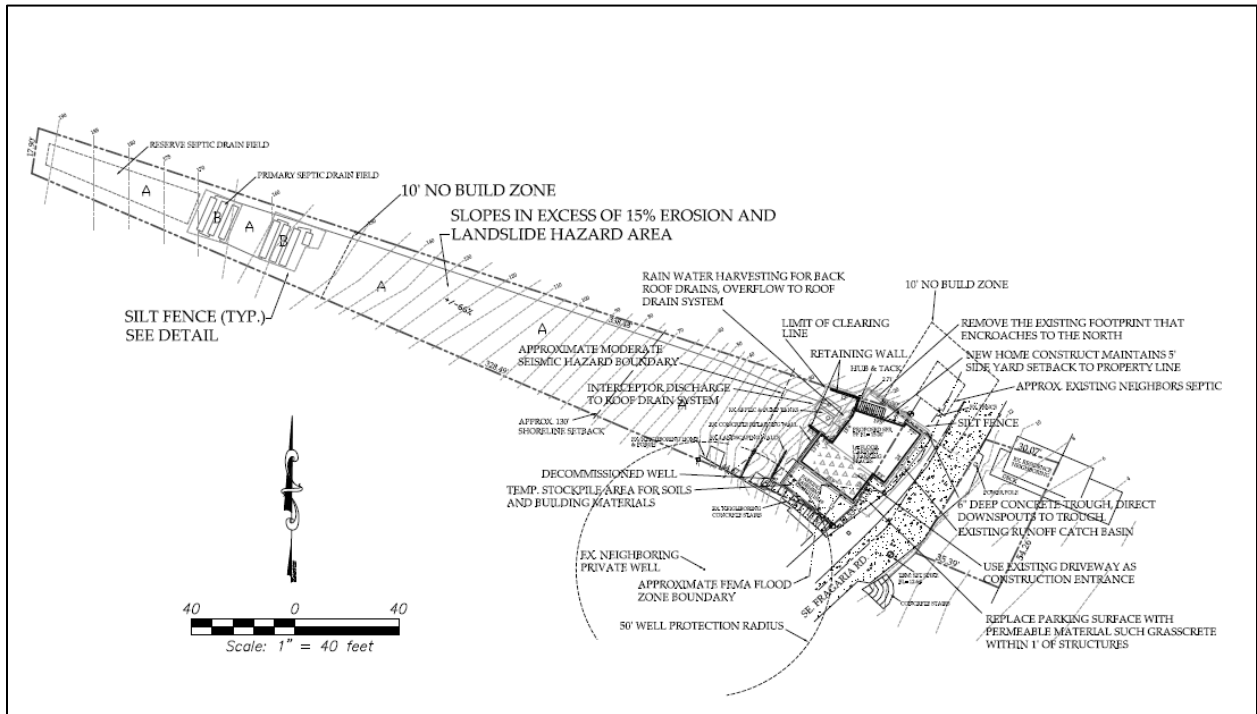
	Provider
Water	Private Well
Power	Puget Sound Energy
Sewer	Onsite system
Police	Kitsap County Sherriff
Fire	South Kitsap Fire & Rescue
School	South Kitsap School District #401

**5. Access**

The site will continue be accessed directly from SE Fragaria Rd, a County owned road.

**6. Site Design**

The site plan submitted shows the proposed single-family home in the eastern portion of the property. A parking easement is located on the parcel, used by the adjacent property to the south. A septic drainfield is proposed to be located in the far western portion of the parcel, at the top of the slope.



### 7. Policies and Regulations Applicable to the Subject Proposal

The Growth Management Act of the State of Washington, RCW 36.70A, requires that the County adopt a Comprehensive Plan, and then implement that plan by adopting development regulations. The development regulations must be consistent with the Comprehensive Plan. The Comprehensive Plan process includes public involvement as required by law, so that those who are impacted by development regulations have an opportunity to help shape the Comprehensive Plan which is then used to prepare development regulations.

Kitsap County Comprehensive Plan, adopted June 30, 2016 and amended April 27, 2020.

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

#### *Land Use Policy 50*

*Limit the designed rural area to low residential densities that can be sustained by minimal infrastructure improvements, cause minimal environmental degradation, and*

*that will not cumulatively create the future necessity or expectation of urban levels of service.*

*Land Use Policy 51*

*Permit residential uses in rural areas consistent with the planned rural character of the surrounding area.*

*Land Use Policy 53*

*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 designation, zoning designation, and zoning code provisions.*

The County's development regulations are contained within the Kitsap County Code. The following development regulations are most relevant to this application:

Code Reference	Subject
Title 12	Storm Water Drainage
Title 13	Water and Sewers
Title 14	Buildings and Construction
Title 17	Zoning
Title 19	Critical Areas
Title 22	Shoreline Master Program
Chapter 18.04	State Environmental Policy Act (SEPA)
Chapter 20.04	Transportation Facilities Concurrency Ordinance
Chapter 21.04	Land Use and Development Procedures

**8. Documents Consulted in the Analysis**

A complete index of exhibits is located in the project file. To date, the index to the record consists of the following exhibits.

Exhibit #	Document	Dated	Date Received / Accepted
1	Engineered Drainage Report		12/14/2020
2	Existing Shop Elevation		12/14/2020
3	Geotechnical Report		12/14/2020
4	HD Building Site Application		12/14/2020
5	Legal Non-Conforming Declaration		12/14/2020
6	Proposed Elevation and Floor Plan		8/11/2021

7	Request for Variance (Updated Aug2021)		8/11/2021
8	Topographic Elevation Survey		12/14/2020
9	Zoning Variance Questionnaire		12/14/2020
10	Notice of Application	2/11/2021	
11	"Exhibit A" RFI Response Variance		5/7/2021
12	Response to Zoning Variance RFI		5/7/2021
13	Recorded ROW License		8/11/2021
14	Response to RFI 27MAY2021		8/11/2021
15	Site Plan		8/11/2021
16	Notice of Public Hearing	9/30/2021	
17	Public Comments Received (Combined)		Feb 2021 – Oct 2021
18	Certification of Public Notice	10/6/2021	
19	Staff Report		
20	Staff Presentation		
21	Hearing Sign In		

**9. Public Outreach and Comments**

A Notice of Application was distributed pursuant to Title 21 land use and development procedures, which provided recipients with project information and an opportunity for public comment. Multiple comments were received by the department, with a range of concerns. All comments are included within the record. These comments are summarized below at a high level, based on the nature of the issue. Staff Responses to these concerns are provided in the second table below.

Issue	Summary of Concern (See corresponding responses in the next table)
Use of Property	<ul style="list-style-type: none"> <li>Concern that the home was never used as a house and was previously storage/garage.</li> </ul>
Shortage of Parking	<ul style="list-style-type: none"> <li>Concern about parking shortages in the area, and that the variance would cause more on-street parking. The street is very constrained and this impedes traffic.</li> </ul>
Drain field	<ul style="list-style-type: none"> <li>Concern that there was a drain field proposed on the steep hillside.</li> </ul>

Issue	Staff Response
Use of Property	<ul style="list-style-type: none"> <li>Narrative from applicant indicated this is a historic structure, which had previously been occupied. The</li> </ul>

	applicant argued that this was once a “carriage house,” built prior to Kitsap County Zoning, and therefore is a legal nonconforming use.
Shortage of Parking	<ul style="list-style-type: none"> <li>The applicant originally documented the availability of parking in the area from other permitted homes compared to their own. However, the project design was later changed to provide three parking stalls under the house, reducing pressure on street parking.</li> </ul>
Drain field	<ul style="list-style-type: none"> <li>The on-site septic drain field is proposed at the top of the hill to the west. The project has received septic approval from the Health Department.</li> </ul>

**10. Analysis**

**a. Planning/Zoning**

**Front (east) Setback Variance Criteria**

Per KCC 17.560.010, a variance may be granted to any numerical standard of this title, excluding housing density, only when unusual circumstances relating to the property cause undue hardship in the application of this title. The granting of such a variance shall be in the public interest. A variance shall be made only when all of the following conditions and facts exist:

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;

*Staff Comment: The required setbacks for this lot are 20 feet for the front, 5 feet for the sides, and 10 feet for the rear. This lot is in one of Kitsap County’s historic settlements, and is very physically constrained by slopes, giving it a flat, usable area of approximately 1250 feet. Additionally, a portion is occupied by an easement to the property directly to the south. Due to steep slopes to the west of the site area, a variance is necessary to the front setback to allow for an area with enough depth that it is possible to develop a residence.*

2. Such variance is necessary for the preservation and enjoyment of a substantial property right or use of the applicant possessed by the owners of other properties in the same vicinity or zone;

*Staff Comment: The only allowable use on this lot in the RR zone is single-family residential. Many constrained lots in the vicinity are also developed with single-*

*family structures. The applicant redesigned their structure to accommodate three parking stalls, as required by code. The applicant is requesting a variance in order to continue to occupy the front setback and a portion of the Right-of-Way to allow for an adequate footprint for a single-family dwelling. The variance request is intended to allow for a use of property similar to others in the same vicinity and zoning designation.*

3. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which property is located; and

*Staff Comment: The applicant originally proposed this setback variance, as well as a variance to the parking requirement. The County issued a Notice of Application which received significant comments from neighbors, many of which were related to concerns about parking. The applicant subsequently revised their application to meet the minimum parking requirement.*

*The setback variance would allow the applicant to maintain the existing building footprint that is already non-conforming to the front setback. Because this is a historic neighborhood, with a number of constrained lots, the variance would allow for a use that is similar to others in the vicinity. The proposal would not request an additional reduction of setbacks beyond what exists with the existing structure on this lot, and no additional detrimental impacts are expected by the proposal.*

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

*Staff Comment: The current footprint of the existing structure is non-conforming to setbacks, and the applicant does not propose to make them more non-conforming than what exists. This results in a reduction of the required front setback by 24 feet (4 feet of which are within County Right-of-Way). Given the physical constraints on this lot and the highly limited lot depth, this is the minimum necessary to accommodate the proposed use. In addition, the home must be designed to allow enough length to park cars underneath the home, which would not be possible without a front setback variance.*

**Side (north) Setback Variance Criteria**

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;



*Staff Comment: The required setbacks for this lot are 20 feet for the front, 5 feet for the sides, and 10 feet for the rear. This lot is in one of Kitsap County's historic settlements, and is very physically constrained by slopes, giving it a flat, usable area of approximately 1250 feet. Additionally, a portion is occupied by an easement to the property directly to the south. This property would be difficult or impossible to develop and meet all setback requirements. Because the depth of the lot is severely limited, the applicant has proposed a wider structure. The side setback variance is a result of the unusual shape and topography of this parcel.*

2. Such variance is necessary for the preservation and enjoyment of a substantial property right or use of the applicant possessed by the owners of other properties in the same vicinity or zone;

*Staff Comment: The only allowable use on this lot in the RR zone is single-family residential. Because of physical constraints, the applicant proposes a home design with three carport stalls underneath to meet the minimum parking requirement of the zone. Because the home must be wide enough to accommodate three vehicles, a side variance is necessary to allow for an external stairway that serves as primary access to the home. The variance request is intended to allow for a use of property similar to others in the same vicinity and zoning designation.*

3. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which property is located; and

*Staff Comment: The applicant originally proposed this setback variance, as well as a variance to the parking requirement. The County issued a Notice of Application which received significant comments from neighbors. Many of these comments received related to concerns about parking, and the applicant subsequently revised their application to meet the minimum parking requirement.*

*The current structure encroaches over the northern property line. The proposed structure remedies this encroachment. There is currently no development directly to the north of the structure, as that home is already located on the eastern side of Fragaria Road. Because this encroachment is remedied, and because the proposed variance to the side setback requirement is less than what currently exists, no additional detrimental impacts are expected by the proposal.*

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

*Staff Comment: The current footprint of the existing structure is non-conforming to setbacks, and the applicant does not propose to make them more non-conforming than what exists. The existing structure currently encroaches through the side setback, into the property to the north. The foundation of the proposed structure will conform to the required 5' setback, however, an exterior stairway and landing is proposed within the side setback area. The stairway is necessary as the primary external access to the home. Due to the physical constraints on the property, the variance is the minimum necessary to allow for a structure that can accommodate three vehicles beneath the structure, as well as an external access.*

**b. Lighting**

Lighting was not analyzed as part of this proposal.

**c. Off-Street Parking**

Per KCC 17.490.030, a single-family dwelling requires 3 parking spaces. Per County code, spaces within a garage may not be counted toward this requirement. The applicant originally requested a variance from the parking standard, however, subsequently altered the proposed design to meet the parking requirement. The proposal provides adequate parking with three carport parking spaces beneath the structure.

**Table 5 - Parking Table**

Use Identified in 17.490.030	Standard	Required Spaces	Proposed Spaces/Existing Spaces
Single-Family (attached or detached)	3 for single-family home	3	3 proposed.
Total	3	3	3

**d. Signage**

No signage is proposed or required.

**e. Landscaping**

Per KCC 17.500.010, single-family lots are exempt from landscaping requirements.

**f. Frontage Improvements**

No frontage improvements are required or proposed as part of this application.

**g. Design Districts/Requirements**

The subject property is not within a design district.

**h. Development Engineering/Stormwater**

Development Services and Engineering has reviewed the land use proposal and finds the concept supportable in its approach to civil site development. Further review will occur with associated site development or building permits.

**i. Environmental**

**Geological Hazards:**

The project area is a small, flat area currently developed with the existing structure. Behind and to the west of the proposed structure are steep slopes and a mapped erosion and landslide hazard area. A Geotechnical Report prepared by Associated Earth Sciences Incorporated, dated September 23, 2019, was submitted. Recommendations of this report will be incorporated with any review and approval of future development activity.

**Shoreline:**

To the east and across Fragaria Road is the shoreline and Colvos Passage. The project is within the Shoreline Jurisdiction and subject to the County Shoreline Master Program (SMP) regulations. Fragaria Road provides a break between the shoreline buffer and the subject site, and no impacts to vegetation are proposed. Due to this break, a shoreline variance is not required per KCC 22.200.145.A.9

**j. Access, Traffic and Roads**

The footprint of the current structure encroaches into the Right-of-Way on Fragaria Road. Kitsap County Public Works recorded a license for the use of Right-of-Way within this existing encroachment on May 21, 2021 ([exhibit x](#)). This license grants the applicant the ability to rebuild the structure within the existing encroachment. No expansion of the encroachment would be allowed or is proposed.

**k. Fire Safety**

No comments at this time.

**l. Solid Waste**

No comments at this time

**m. Water/Sewer**

No comments at this time.

**n. Kitsap Public Health District**

No comments at this time.

**11. Review Authority**

The Hearing Examiner has review authority for this Zoning Variance application under KCC Sections 17.560, and 21.04.100. The Kitsap County Commissioners have determined that this application requires review and approval of the Hearing Examiner. The Hearing Examiner may approve, approve with conditions, remand, or deny the request. The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision. The powers of the Hearing Examiner are at KCC Chapter 2.10.

**12. Findings**

1. The proposal is consistent with the Comprehensive Plan and the zoning standards for the Rural Residential (RR) zone in Title 17.
2. The proposal meets the criteria for a zoning variance in KCC 17.560.010, as analyzed in section 10.a of this report.

**13. Recommendation**

Based upon the analysis above and the decision criteria found in KCC 17.560.010, and in KCC 19.100.135, the Department of Community Development recommends that the Zoning Variance for the Portola Variance be **approved**, subject to the following conditions:

**a. Planning/Zoning**

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. 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.
3. The decision set forth herein is based upon representations made and exhibits contained in the project application Permit #20-05785. 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.

**b. Development Engineering**

4. Building permit applications are subject to Kitsap County Code Title 12 Stormwater Drainage and shall include a stormwater design in compliance with the provisions of the Kitsap County Stormwater Design Manual.

**c. Environmental**

5. Findings and Recommendations of the Geotechnical Report prepared by Associated Earth Science Incorporated will be reviewed and shall be incorporated with any future permits for development activity.

**d. Traffic and Roads**

6. None at this time.

**e. Fire Safety**

7. None at this time.

**f. Solid Waste**

8. None at this time.

**g. Kitsap Public Health District**

9. None at this time.

**Report prepared by:**



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Colin Poff / Project Lead

10-6-21  
Date

**Report approved by:**



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Scott Diener, DSE Manager

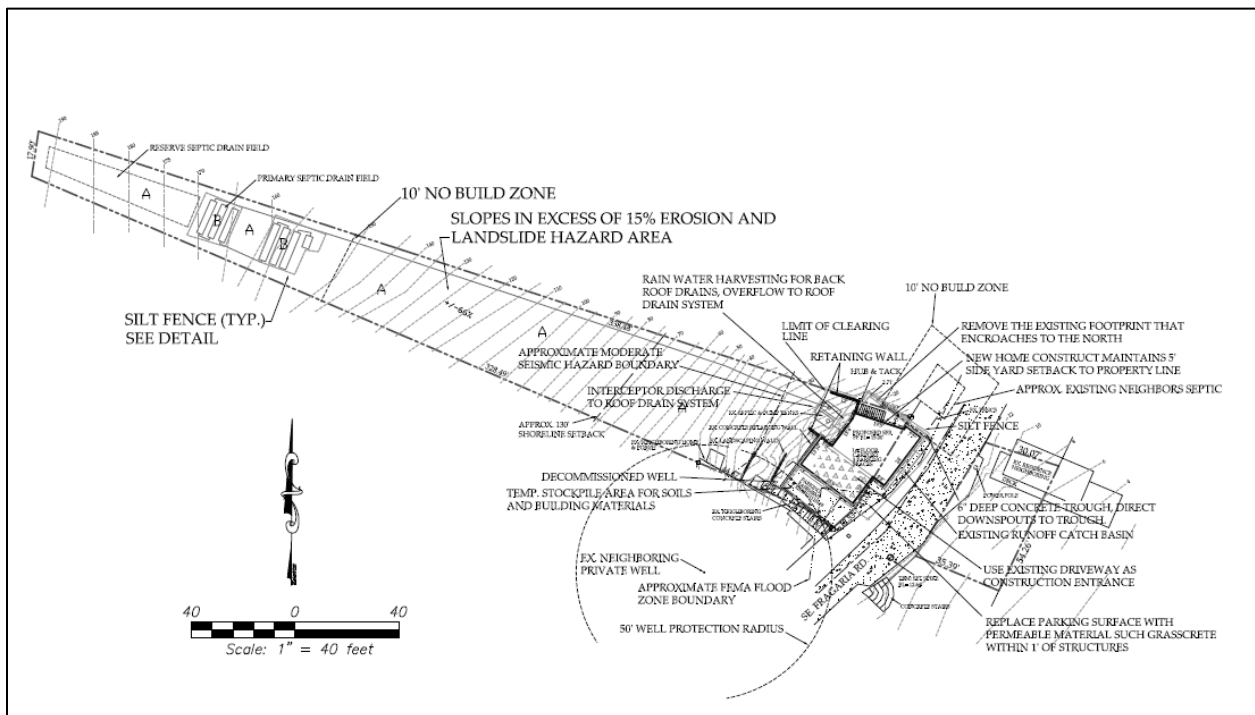
10-6-21  
Date

**Attachments:**

Attachment A – Zoning Map

CC: Portola LLC  
Kurt Smithpeters: xikurt@outlook.com  
Pacific Home Source (Architect): gabe@pacifichomesource.com  
Interested Parties  
Kitsap County Health District, MS-30  
Kitsap County Public Works Dept., MS-26  
DCD Staff Planner: Colin Poff

**Site Plan**



Attachment A – Zoning Map

