



Notice of Hearing Examiner Decision

11/02/2020

To: Interested Parties and Parties of Record

RE: Project Name: Benham Zoning Variance
 Applicant: Christopher & Oanh Benham
 12700 Wolff St
 Broomfield, CO 80020
 Application: Zoning Variance (ZVAR)
 Permit Number: 20-01758

The Kitsap County Hearing Examiner has **APPROVED** the land use application for Permit # **20-01758: Benham Zoning Variance**, 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://spf.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 at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Help@Kitsap1.com or (360) 337-5777.

CC: Owner: Christopher & Oanh Benham, chris.benham@gmail.com
Authorized Representative: Kurt Russell, acsitemanagement@gmail.com
DCD
DSE
Point No Point Treaty Council
Suquamish Tribe
Kitsap County Public Works
Kitsap County Parks & Recreation
Kitsap Public Health District

Kitsap Transit
Kitsap County Humane Society
North Kitsap Fire District
North Kitsap School District
Puget Sound Energy
Water Purveyor
Port Gamble S'Klallam Tribe
Skokomish Tribe
Squaxin Island Tribe
Puyallup Tribe
Wetland Review
WA State Dept of Fish & Wildlife
WA State Dept of Transportation
WA State Dept of Transportation-Aviation
Interested Parties: None

**KITSAP COUNTY HEARING EXAMINER
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**Zoning Variance, ZVAR 20-01758
(Benham)**

October 29, 2020

1. FINDINGS OF FACT

1.1 Proposal. The Applicant requests a 9.5 foot (47.5%) variance to the required 20 foot front yard setback to accommodate an elevated entryway, stairs, deck, and covered porch on a new single-family residence.

Applicant/Property Owner: Christopher and Oanh Benham, 12700 Wolff Street, Broomfield, CO 80020.

Location: 8828 NE Point No Point Road, Hansville, WA 98340. Assessor No. 222802-2-016-2004.

1.2 Hearing. An open record public hearing was held October 8, 2020. Due to COVID-19 restrictions, the hearing was conducted remotely, with the Examiner, Kitsap County Department of Community Development (“DCD”), and Applicant calling in. Access information was provided to the public to allow citizens to join via either a video link or telephone call-in. There were no reported technical difficulties during the call or afterwards. However, in case any citizens who wished to comment had difficulty calling in, the record was kept open for a week, through October 15.¹ No comment was received following the hearing. At the hearing, DCD, through Ms. Santos, described the project. DCD found it consistent with requirements, and recommended approval with conditions. The Applicant confirmed there were no concerns with DCD's proposed conditions. No member of the public indicated a wish to speak.

1.3 Administrative Record. The Hearing Examiner admitted Exhibits 1-28, which included the Staff Report, application materials, documentation of agency consultation and public notice, and DCD Power Point presentation.

1.4 SEPA. The proposal is exempt from SEPA.²

1.5 Public Notice and Comment. Hearing and application notice was provided consistent with KCC requirements.³ A comment letter (petition) signed by four neighbors residing along Point No Point Road was submitted supporting variance approval.⁴

¹ Temporary Emergency Rule to Address COVID-19 Situation (April 1, 2020).

² Exhibit 27 (Staff Report), p. 2; KCC Title 18.04.

³ Exhibit 27 (Staff Report), p. 6; Exhibits 17, 19, and 20; KCC 21.04.080, .210.

⁴ Exhibit 10.

1.6 Agency Comment. The proposal was circulated within the County. Comment was received from Sam Phillips, an Environmental Scientist with the Port Gamble S’Klallam Tribe, inquiring about any impacts and/or mitigation measures to wetland buffers.⁵ Staff responded that there is a mapped wetland to the east across Point No Point Road. The wetland and buffer are interrupted by the existing road and there is no indication that wetlands extend on-site. All development activity is contained on-site, and no wetland impacts are anticipated.⁶ Within the County, there were no objections to approval, as long as requirements are met.

1.7 Zoning/Plan Designations. The Comprehensive Plan and zoning designations are Rural Residential, which allow one dwelling unit per five acres.⁷

1.8 Variance Request. The project proposal is a two-bedroom single-family residence, three parking spaces, and a septic system. The 0.18 acre level site is vacant except for the portion of private road along the northern (front) property line. The private 18-foot easement provides access to this parcel and four additional parcels. The eastern property line (second front) abuts NE Point No Point Road, a County right of way. The standard front setback is 20 feet.⁸

Setbacks are measured from the edge of the easement. Half of the easement area extends onto the site, effectively increasing the required front setback by nine feet. The project has received approval for a 3.5 foot front yard administrative variance under permit 19-04213 for the location of the home. The additional variance is requested to accommodate an elevated entryway, stairs, deck, and covered porch, as required by KCC Title 15 due to the project’s location within a mapped Flood Hazard Area (see Section 1.12 below). The proposed single-family residence will be set back 10.5 feet at the closest point to the access easement along the property line.

1.9 Surrounding Zoning and Use. Properties to the north, south, and west are zoned RR and developed with single-family homes. Property to the east is zoned Park (P) and is in public right of way and County park use.

1.10 Utility and Public Services.

- **Water:** North Peninsula
- **Power:** Puget Sound Energy
- **Sewer:** On-Site Septic (proposed)
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire & Rescue
- **Schools:** North Kitsap School District #400

⁵ Exhibit 18.

⁶ Exhibit 27 (Staff Report), p. 6.

⁷ Exhibits 24 and 26; Exhibit 27 (Staff Report), p. 2; KCC 17.130.010 (the zone "promotes low-density residential development ... consistent with rural character.").

⁸ Exhibit 27 (Staff Report), pp. 2-3.

1.11 Access, Traffic and Roads. Access is from a shared private access easement along the northern property line that connects to Point No Point Road, a County maintained right of way. No adverse traffic or road impacts are likely. No new access off NE Point No Point Road is allowed (Condition 1).

1.12 Environmental. The site is within a Flood Hazard Area.⁹ A Flood Certification and FEMA Habitat Assessment/Wetland Report prepared by GBE Environmental have been submitted, and indicate that there are no wetlands on site.¹⁰ There is a mapped wetland to the east across NE Point No Point Road. The developed right of way interrupts the wetland buffer and the buffer ends at the edge of the road.

The site is within a Geological Hazard Area (Seismic Hazard). A geotechnical report prepared by Resolve Environmental and Geotechnical concluded that the project is feasible provided the report's recommendations are followed (Condition 7).¹¹

A portion of the property is within the Rural Conservancy Shoreline Jurisdiction. Per KCC Title 22.400.120, a standard buffer of 130 feet is required in this jurisdiction. However, the buffer is interrupted by NE Point No Point Road so it ends at the edge of the road.

1.13 Conditions. DCD's proposed conditions ensure project development consistent with code and these findings, and should be included without substantive revision. Except as modified, DCD's Staff Report is incorporated by reference.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Jurisdiction. The Hearing Examiner has authority to hear and decide this zoning variance request.¹² The Hearing Examiner may approve, approve with conditions, or deny a zoning variance.

2.2 Variance Criteria. A variance may be granted when an Applicant shows these criteria are met:

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;
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;

⁹ Exhibit 25.

¹⁰ Exhibits 8 and 9.

¹¹ Exhibit 11.

¹² KCC 21.04.100(32).

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

4. The variance is the minimum necessary to grant relief to the applicant.¹³

Due to project location within a mapped Flood Hazard Area, the existing legal lot being undersized to current code requirements, and the easement on the north property line further constraining development, special circumstances are present. Strict application of the standard building setback deprives the property owner of the rights and privileges of use common to the nearby properties. The Applicant did not create or exacerbate these conditions. As conditioned, the variance would not be detrimental to the public welfare or to nearby properties and improvements. Given the limited buildable area, the setback reduction is the minimum necessary to accommodate the project. There are no practical or reasonable alternatives present. As the variance criteria are met, the variance should be granted.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested Zoning Variance, provided these conditions are adhered to.

Planning/Zoning

1. The site shall be accessed from the existing private access easement along the northern property line. No additional access shall be allowed off NE Point No Point Road.

2. The decision set forth herein is based upon representations made and exhibits contained in the project application 20-01758. 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.

3. 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.

4. This Hearing Examiner's Zoning Variance approval shall automatically become void if no development permit application is accepted as complete by DCD within four years of the Notice of Decision date or the resolution of any appeals.

¹³ KCC 17.560.010.

5. Any violation of the conditions of approval shall be grounds to initiate revocation of this Hearing Examiner's Zoning Variance.

6. Applicant shall submit and obtain approval of a revision to building permit 19-03492, depicting the addition of the porch and deck. The revision shall address any changes to the storm drainage plans resulting from the additional hard surface area/disturbed area.

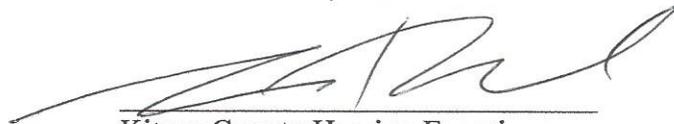
Development Engineering and Environmental

7. This project shall follow the Geotechnical Engineering Investigation Report by Resolve Environmental & Geotechnical, Inc., dated May 24, 2019.

8. This project is located within a flood hazard area as determined by KCC Section 15.04.040. All construction shall be in accordance with the flood resistant requirements of KCC Title 15. Upon completion of the project, the owner shall provide to DCD a flood elevation certificate completed by a Washington State licensed land surveyor, identifying the elevation of the lowest floor in relation to the base flood elevation as determined by the Flood Insurance Rate Map (FIRM) for the subject parcel. The flood elevation certificate shall be submitted to DCD prior to requesting a final inspection. A certificate of occupancy will not be issued until the flood elevation certificate is received and approved by DCD.

Absent a timely appeal, this Decision is final.¹⁴

DECISION entered October 29, 2020.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond

¹⁴ See Ch. 36.70C RCW (any appeal to be filed within 21 days to superior court).