



DATE: August 5, 2022

RE: Structural Setback and Parking Variance Request, PZ Application No. 22-19
Environmentally Sensitive Area Reduction Request, PZ Application No. 22-21

LOCATION: 736 East 9th Street, Parcel No. 0630-0002-8440

APPLICANT: James Neiderschmidt, 719 South "E" Street, Port Angeles, WA 98363

OWNER: David Lux, 717 St. Joseph Lane, Park Hills, KY 41011-3813

PLANNER: Ben Braudrick, AICP, Senior Planner

EXHIBIT 1: STAFF REPORT

I. SUMMARY

James Neiderschmidt submitted an application for an 18 ft variance to the rear setback, 11 ft setback to the corner lot streetside setback, the elimination of off-street parking on a property zoned R7, Residential Lower Density and PBP, Public Buildings and Parks. In addition to a variance proposal, the applicant is requesting the ability to construct a residence within the Peabody Creek stream corridor, an identified local unique feature and environmentally sensitive area (ESA). The project area is identified in submitted Geotechnical and ESA reports (Exhibits 4 and 5) as being outside the Peabody Creek and ravine ESA's and their associated buffers. This report constitutes the summary of procedure, analysis, decision, conclusions, and conditions for both the Variance Permit Application (No. 22-19) and Environmentally Sensitive Area Permit Application (22-21).

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II. PROPOSAL

Variance Permit Application No. 22-19 proposes the reduction of rear setback from 20 to 2 feet and western side setback from 13 feet to 2 feet for the construction of a single housing unit on a property located on the Peabody Creek ravine, a locally unique feature regulated by “Chapter 15.20 - Environmentally Sensitive Areas” of the Port Angeles Municipal Code (PAMC). The subject site is almost entirely within the 150-ft Peabody Creek Corridor and is completely within the 200-ft ravine corridor. The development is outside of the 75-ft creek buffer and the 25-ft edge of ravine buffer (See Exhibit 5 – Critical Areas Report for more detail). The applicant is also requesting a waiver of the off-street parking requirements regulated by “Chapter 14.40 – Off-street Parking” PAMC. The reasoning for the proposal is to reduce the impact of development of a residence in the ESA by locating it as far away on private property while still allow reasonable use of the property. In addition to a variance proposal, the applicant has submitted an Environmentally Sensitive Area (ESA) Permit Application No. 22-21 requesting construction within the existing (See Figures 1 and 2).

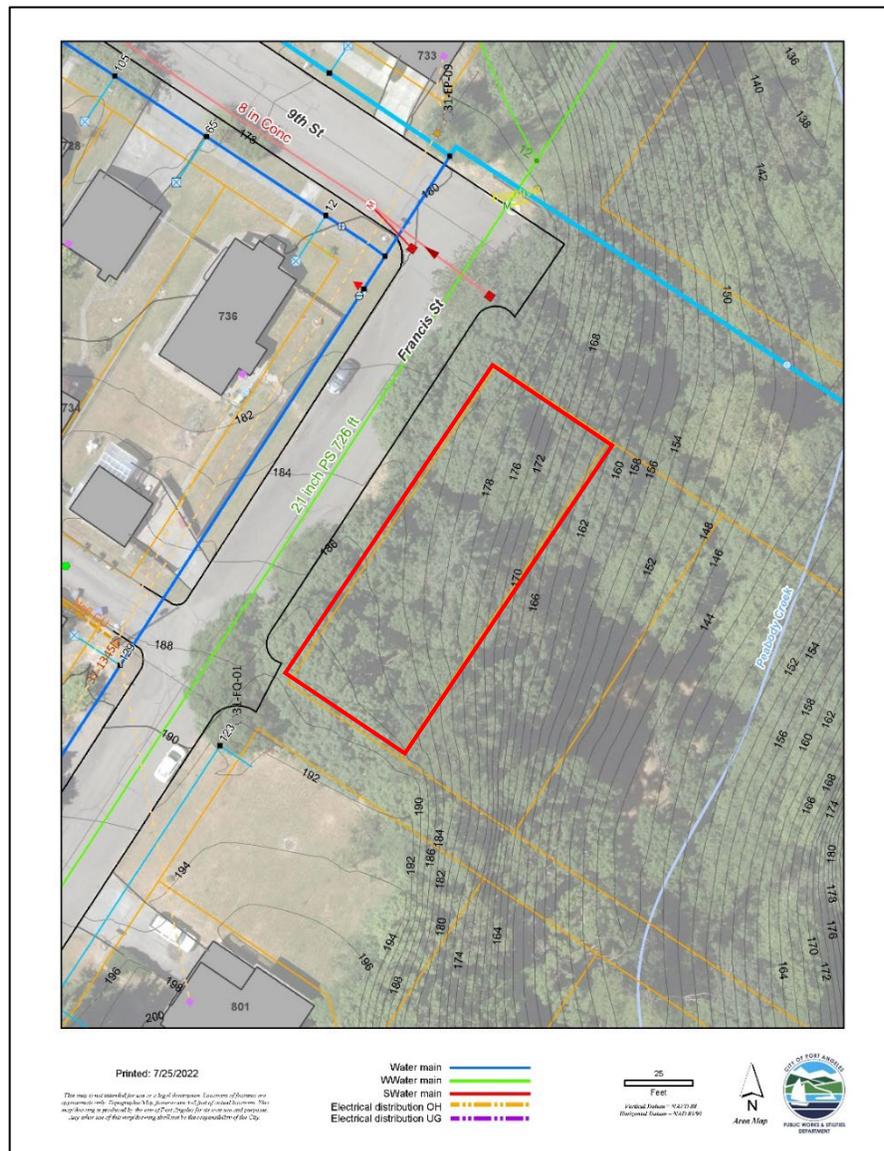


Figure 1: Site Plan with the location of available existing utilities and 2-ft contours (subject site in red)

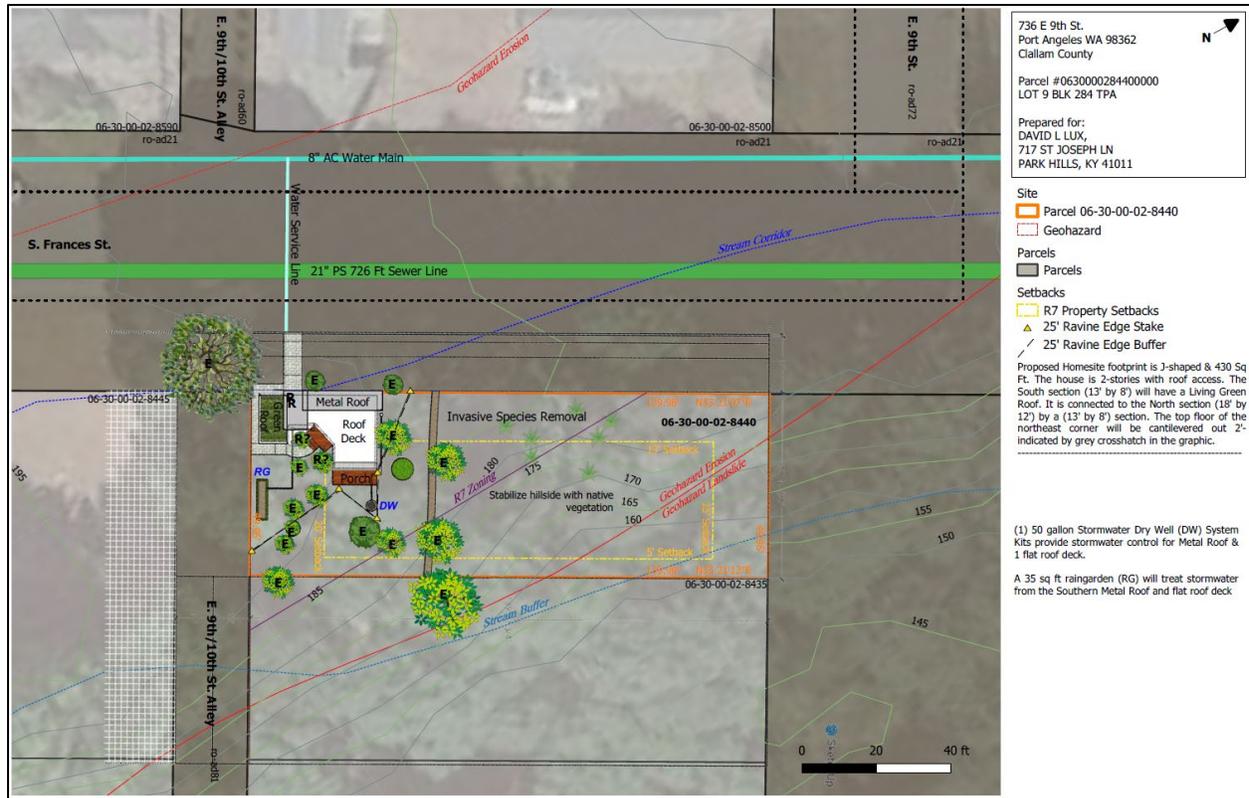


Figure 2: Proposed 430 sf 2-story residence with setback reduction variances on the rear and west side of Lot 9.

II. FACTS RELAVENT TO THE APPLICATION

Property Description: Lot 9, Block 284, Townsite of Port Angeles

Address: 736 East 9th Street

Property IDs / Tax Parcel IDs: 58677, 0630-0002-8440

Zoning: R7, Lower Density Residential and PBP, Public Buildings and Parks

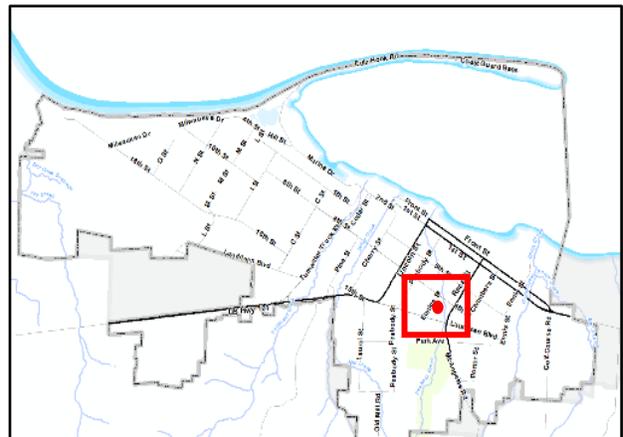
Comprehensive Plan Designation: Open Space and the Imprecise Margin separating the lot from Commercial and Low Density Residential Land Uses

Dimensions: 50' X 140'

Area: ~7,000 square feet

Existing Lot / Site Coverage: 0% / 9.5%

Proposed Lot / Site Coverage: 0% / 9.5%



IV. PROCEDURE

On March 16, 2022, the Applicant submitted Variance Permit (VAR) and Environmentally Sensitive Area Permit (ESA) applications to the Department of Community and Economic Development. The application was determined to be complete by City Planning Staff on April 20, 2022. The noticing for property owners

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P&Z Application Nos. 22-19 & 22-21 | Neiderschmidt Variance and Environmentally Sensitive Area Permits
736 East 9th Street

within 300 ft is listed as Exhibit 7. Notice of the applications were provided on the following dates and in the following manner:

VAR and ESA Applications and SEPA Public Comment Period

1. 4/22/22: Subject site, Posted sign
2. 4/22/22: City Hall, Notice board
3. 4/22/22: Property owners within 300' of subject site, Mailing
4. 4/27/22: Peninsula Daily News, Circulation

VAR Application Public Hearing

1. 7/16/22: Subject site, Posted sign
2. 7/16/22: City Hall, Notice board
3. 7/16/22: Property owners within 300' of subject site, Mailing
4. 7/16/22: Peninsula Daily News, Circulation
5. 7/16/22: City Website Newsflash

Per Section 2.18.060 PAMC, the Hearing Examiner will conduct a review of the VAR application, public testimony, and this staff report and decide on the permit within 120 days of the completeness determination. Such decision may be appealed to Clallam County Superior Court, provided that the appeal is filed within 15 days of the Hearing Examiner's decision per Chapter 36.70C RCW.

V. COMMENTS

Public Comment:

The public comment period was provided beginning with the notice of application on April 27, 2022, for a duration that closed on May 11, 2021. Notice of a public hearing for Variance Application No 22-19 provided a subsequent written public comment period that ended on July 29, 2022. Written public comment has been received from three community members and the Washington Department of Fish and Wildlife (WDFW) as of the publishing of this staff report.

Public Comment Synopsis

The written public comment from two community members requested a denial of the ESA and VAR and Determination of Significance due to the proposal being within an identified ESA. The third community member supported the proposal, so long as the development was modest to account for the considerable setback variance and impacts associated with development within an environmentally sensitive area.

WDFW suggested the inclusion of a stream buffer variance due to the subject parcel is adjacent to the Peabody Creek stream corridor (a Type 2 stream) and subject to a 250-foot buffer measured from the OHWM (Per PAMC 15.20.070). Additionally, they identified that there are steep slopes on this parcel suggesting that Peabody Creek is contained within a ravine and would be subject to a 200-foot buffer as measured from the top of the slope (Per PAMC 15.20.070 B.1.).

The full public comment record can be found as Exhibit 7.

Staff Response to Public Comment

Staff has made a Determination of Non-significance (No. 1451) based upon a review of Chapter 15.20 PAMC and the Geotechnical and ESA reports provided with ESA Application No. 22-21. The applicant submitted the required professional reports in order to demonstrate no net loss to ecological functions and sensitive habitats within or around the subject site as long as appropriate construction techniques and the mitigation plan of the ESA report are followed. The mitigation plan also includes a 3-year monitoring and contingency plan for the impacted and mitigation areas. Adherence to the suggested construction and mitigation techniques listed in the submitted geotechnical and ESA reports will be a condition of the ESA permit.

Staff has responded to the WDFW comments in the Section VI of this report by including a reference to the necessity of a variance to the stream corridor based upon the evidence provided in the letter and the identification of the corridor in the ESA report.

City of Port Angeles Departmental Comments:

Comments were received from the Public Works and Utilities Department and are incorporated into this staff report.

VI. FINDINGS OF FACT & STAFF ANALYSIS

Analysis and findings of fact from Department of Community and Economic Development (DCED) staff are based on the application materials, Port Angeles Municipal Code (PAMC), standards, plans, public comment, and other relevant materials available during the review period. The findings and analysis section this report is a summary of the completed review by DCED staff.

City of Port Angeles Comprehensive Plan

All Municipal Code Amendment applications must be consistent with the Port Angeles Comprehensive Plan. The following Port Angeles Comprehensive Plan policies are identified by Planning Staff to support the proposal in VAR Application No. 22-19 and ESA Application No. 22-21:

Land Use Element	
Goal: G-3A	To guide land development in a manner that balances providing certainty about future land use and allowing flexibility necessary to adapt to future challenges and opportunities.
Policy: P-3A.01	Use the Comprehensive Plan Land Use Map as a conceptual guide when making all zoning and other land use decisions, including all land use decisions and approvals made by City Council and/or any of its appointed Commissions, Boards, or Committees.
Goal: G-3B	To ensure residential land use and development is compatible with the environment with existing uses and residents, and with desired urban design.

Staff Analysis: The proposal seeks a compromise through site design flexibility. The site plan identifies a reduction in setback in order to adequately site a residence while also minimizing immediate impacts and future potential harm to an identified ESA ravine and Peabody Creek. By removing the structure further from the ravine, the proposer seeks to minimize impact to the identified stream and geologically hazardous area.

Conservation Element		
Goal: G-7A	To guide land development in a manner that balances providing certainty about future land use and allowing flexibility necessary to adapt to future challenges and opportunities.	
	Policy: P-7A.02	Promote compatibility between the land and its use by regulating the intensity of the land use.
	Policy: P-7A.04	Building density should decrease as natural constraints increase.
Goal: G-3B	To protect and enhance the area's unique physical features, its natural, historical, archaeological, and cultural amenities, and the overall environment.	
	Policy: P-7B-09	Protect water quality and prevent erosion through the retention of existing vegetation

Staff Analysis: The proposal seeks to minimize immediate impacts and future potential harm to an identified ESA ravine and stream, Peabody Creek. By requesting a variance to reduce the rear setback to from 20 ft to 2 ft and side setback from 13 to 2 ft the proposed residence is attempting to reduce any potential harm to the ESA due to erosion and geotechnical stress. Mitigation proposed in the ESA report intends to improve the ecological function of the ESAs within the subject site and reduce any downstream effects from development includes noxious weed removal and the installation of a rain garden, proposed green roof, and native plant materials seek. The submitted geotechnical report (Exhibit 4) and ESA Report (Exhibit 5) provide adequate justification for the proposal through appropriate construction techniques and habitat restoration.

Title 15 PAMC: 15.20.070. - “Development Standards”

15.20.070 Development standards.

- A. *Streams.* All areas falling within the corridors identified in the following subsection are subject to the requirements of this chapter.
1. *Stream corridors.* This subsection defines corridor dimensions for different classes of streams and their tributaries as rated pursuant to WAC 222-16-020 and -030. All areas falling within a corridor are subject to review under this chapter unless excluded by the Director of Community and Economic Development. Dimensions are measured from the seasonal high-water mark or elevation of the stream or watercourse as follows:

Type 1	250 feet
Type 2	250 feet
Type 3	150 feet
Type 4	100 feet
Type 5	none

Should the stream be located within a ravine, the greater dimension of either the stream corridor, or the ravine corridor, will be used to define areas subject to the requirements of this chapter.

2. *Stream buffers.* Any development or construction adjacent to a stream shall preserve a buffer which is wide enough to maintain the natural hydraulic and fish and wildlife habitat functions of that stream. The following buffers of undisturbed native vegetation shall be provided for different classes of streams and their tributaries as rated pursuant to WAC 222-16-020 and -030. Dimensions are measured from the ordinary high water mark or elevation of the stream or watercourse, or from the top of the bank or dike:

Type 1	100 feet
Type 2	100 feet
Type 3	75 feet
Type 4	50 feet
Type 5	none

3. Stream corridors and buffers shall be increased to include streamside wetlands which provide overflow storage for stormwaters, feed water back to the stream during low flows or provide shelter and food for fish.
4. *Additional buffers.* The Director of Community and Economic Development may require either additional native vegetation or increased buffer sizes when environmental information indicates the necessity for additional vegetation or greater buffers in order to achieve the purposes of this chapter. In cases where additional buffers are not feasible, the Director of Community and Economic Development may require the applicant to undertake alternative on-site or off-site mitigation measures, including but not limited to a financial contribution to projects or programs which seek to improve environmental quality within the same watershed.

B. *Locally unique feature—Ravines, marine bluffs and beaches and associated coastal drift processes.*
All areas falling within the corridors identified in the following subsection are subject to the requirements of this chapter.

1. *Locally unique feature corridors:* The following corridors, as measured from the top of ravines, the top and toe of marine bluffs, and beaches, define areas subject to the requirements of this chapter, unless excluded by the Director of Community and Economic Development:

Ravines	200 feet;
Marine Bluffs	200 feet;
Beaches and Associated Coastal Drift Processes	Shoreline Management Jurisdiction

Should locally unique feature corridors also overlay stream corridors, the criteria of this section will be used.

2. *Buffers.* The following buffers of undisturbed vegetation shall be established from the top of ravines; the top and toe of marine bluffs and ravines:

Ravines	25 feet
Marine Bluffs	50 feet

Beaches and Associated Coastal Drift Processes	Per the City's Shoreline Master Program as adopted by PAMC 15.08.040
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3. Undisturbed buffers adjoining both marine bluffs and beaches shall be sufficient to assure that natural coastal drift processes will remain unimpaired.
 4. *Buffer reduction.* The buffer may be reduced when expert verification and environmental information demonstrate to the satisfaction of the Director of Community and Economic Development that the proposed construction method will:
 - a. Not adversely impact the stability of ravine sidewalls and bluffs;
 - b. Not increase erosion and mass movement potential of ravine sidewalls and bluffs;
 - c. Use construction techniques which minimize disruption of the existing topography and vegetation; and
 - d. Include measures to overcome any geological, soils and hydrological constraints of the site.
- C. *Geological hazard (erosion, landslide, seismic) areas.* Areas containing or adjacent to geological hazard areas shall be altered only when the Director of Community and Economic Development concludes, based on environmental information, the following:
1. For landslide hazard areas:
 - a. That the land clearing, grading or filling activities will adhere to the best management practices.
 - b. That the vegetation in erosion hazard areas will be preserved or replaced.
 2. There will be no increase in surface water discharge or sedimentation to adjacent properties;
 - a. There will be no decrease in slope stability on adjacent properties; and
 - b. Either:
 - i. There is no hazard as proven by evidence of no landslide activity in the past in the vicinity of the proposed development and a quantitative analysis of slope stability indicates no significant risk to the development proposal and adjacent properties;
 - ii. The landslide hazard area can be modified or the development proposal can be designed so that the landslide hazard is eliminated or mitigated so that the site is as safe as a site without a landslide hazard; or
 - iii. The alteration is so minor as not to pose a threat to slope stability.

Staff Analysis: The geotechnical report identifies the top of the geologically hazardous steep slope ravine of Peabody Creek and its ESA buffer (See Exhibit 6). The ravine is a locally unique feature with a buffer of 25 feet from the top of the ravine. The geotechnical report identifies the area of proposed disturbance to be outside of the ESA buffer and has identified the subject site to be on soils that have very low to low liquefaction potential.

The ESA report identifies Peabody Creek's ordinary high water mark (OHWM), its associated stream

buffer and corridor have also been identified adjacent to the subject site and identifies the area of disturbance to be outside of the 75 foot stream buffer (See Exhibit 6). The applicant has proposed the construction of a residence within the 150-foot stream corridor that encompasses nearly the entirety of the property, with exception of the southwestern corner of the property, and the ESA report provides adequate development conditions and a mitigation plan that demonstrates no net loss and habitat restoration within and downstream of the subject site due to the proposed activities. A monitoring plan spanning three years after mitigation requirements have been fulfilled has also been recommended by the report.

Staff finds that the submitted geotechnical and ESA reports verify that by following recommended construction methods the proposal fulfills the requirements listed in 15.20.070.C.

Staff also accepts the recommendation from WDFW to provide a variance to reduce the stream corridor of Peabody creek on the property to outside the proposed area of disturbance from construction activity. Mitigation planting is a requirement of the proposal and is allowed within the ESA, per the conditions and mitigations provided in the ESA report.

14.40.045 Parking reduction tools.

If the following criteria are satisfied, then the parking requirements of Table 14.40-1 may be reduced accordingly.

- A. *Non-single occupant vehicles.* Parking requirements may be reduced in direct ratio for each percentage point of access provided by non-single occupant vehicle.
- B. *Transit.* Parking requirements may be reduced by 50 percent if a bus stop or other mass transit facility is located within 2,500 feet of the project site.
- C. *Cooperative parking.* Parking requirements may be reduced in direct ratio for each percentage point of parking provided by cooperative parking agreement per section 14.40.070.
- D. *LID facilities.* Parking requirements may be reduced by 25 percent to allow for incorporation of LID facilities into the parking lot design.
- E. *On-street parking.*
 - 1. *Applicability.* This option is available for all uses in residential and commercial zones.
 - 2. *Credit.* Every 22 linear feet of legal on-street parking within 250 feet of the subject site can be counted toward the total required parking.
 - 3. *Accessible spaces.* On-street parking may not be used to meet minimum requirements for accessible parking under the Americans with Disabilities Act of 1990, the current ADA Standards for Accessible Design, and the adopted building code.

Staff Analysis: Single household dwellings require two off-street parking spaces. In accordance with Section 14.40.45.B PAMC, the subject site is within 2,500 ft of a designated bus stop on Race Street near 8th street, reducing the required off street parking to one space. In accordance with Section 14.40.45.E.2, the proposal is within 250 ft of 22 linear feet of legal on-street parking. Staff finds that a parking reduction of 1 space is available and that the space can be credited to on-street parking. No off-street parking is required for the construction of a single household dwelling at the subject site.

Title 17 PAMC:17.96.080. - “Variances”

The applicable sections of Title 17 for the proposal are examined below to demonstrate consistency and compatibility with variances.17.96.080.C.1:

No variance shall be granted by the Hearing Examiner until after a public hearing is adequately noticed and held, as hereinafter provided, and until after the Department of Community and Economic Development has found that the provisions of all other ordinances, with which compliance is required, have been fulfilled. In acting on an application for a variance, the Hearing Examiner shall have and exercise original jurisdiction in receiving, granting or denying all applications for such variance uses as provided for in this chapter and shall have the power to place in such permits conditions or limitations in its judgment required to secure adequate protection to the zone or locality in which such use is to be permitted. The Hearing Examiner must also find:

- a) The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located;

Staff Analysis: The applicant has proposed the construction of a single household dwelling in the R7 zone. Due to the constraints of a geologically hazardous stream ravine and the presence of a stream corridor on nearly the entirety of the subject site, the applicant has requested a variance from rear and side setbacks and the waiver of off-street parking requirements to reduce the impacts of development to these ESAs. Every existing household directly adjacent the subject property is located outside existing setback standards. Parking reduction requests are made on a case by case-by-case basis, and after cursory review staff finds that any property owner in the surrounding neighborhood could make a similar successful request due to the existence of nearby bus routes and abundance of legal on-street parking. Staff finds this criterion is met.

- b) That such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject site, to provide it with use rights and privileges permitted to other properties in the vicinity and zone in which the subject site is located;

Staff Analysis: Geotechnical and ESA reports submitted with the application (see Exhibits 4 and 5) provide the professional opinion that in order to safely construct a single household dwelling on the subject site that contains a geologically hazardous ESA, stream corridor, and stream buffer, the structure should be located as far from the ESA buffer as is feasible to ensure public safety. The ESA report includes a mitigation plan to achieve no net loss of habitat function on the site and downstream. Staff finds this criterion is met with the inclusion of recommended conditions and development mitigation plan.

- c) That the granting of such variance shall not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject site is situated.

Staff Analysis: The proposal seeks to move the location of a proposed structure further from a ravine edge. The purpose of this action is to reduce the probability that the structure be materially detrimental to the public welfare, injurious to the subject site’s ESA’s or in the vicinity, zone, and downstream of the subject site. Staff finds this criterion is met.

Environmental Review

This project was reviewed under the Washington State SEPA threshold determination rules requirements and procedures; and was issued a Determination of Non-significance (DNS) on July 22, 2022 (No. 1451). In accordance with WAC 197-11-355, the 14-day appeal period expired on August 4, 2022. The SEPA checklist and environmental documents are on file at the City of Port Angeles Department of Community and Economic Development Planning Division and are available upon request.

Consistency

In preparation and submission of a Municipal Code Amendment City Staff has demonstrated that all standards will be met in accordance with the City's Comprehensive Plan and the Port Angeles Municipal Code.

VII. DECISION, CONCLUSIONS

Having reviewed and considered the staff report, application materials, public comment, and all the information presented, the City Planning Division recommends approval of Application No. 22-19 for a Variance Permit and No. 22-21 for an Environmentally Sensitive Area Permits and makes the following conclusions:

1. Analysis and findings of fact from City Staff are based on the entirety of the application materials, municipal code, standards, plans, public comment, and all other materials available during the review period. Collectively the information contained in the staff report is the record of the review. The analysis and findings section of this report is a summary of the City Staff completed review and the specific findings of fact.
2. (VAR 22-19) Per PAMC Section 2.18.060 of the Port Angeles Municipal Code (PAMC), the Hearing Examiner is authorized and directed to hear and decide Variance Permits. As to all of the foregoing issues and matters, the decision of the Hearing Examiner shall be the final decision of the City. Such decision may be appealed to the Clallam County Superior Court, provided that the appeal must be filed with the City within 21 days after the Director issues the decision. An appeal application for any decision of the Hearing Examiner shall stay all further proceedings by the Department of Community and Economic Development specific to the property under appeal.
3. (ESA 22-21) Per Section 2.18.065 PAMC, the decision of the Director shall be an administrative decision. Such decision may be appealed to the Hearing Examiner, provided that the appeal must be filed with the City within 21 days after the Director issues the decision, provided that if a longer appeal period is established by state law, the longer period shall control. If an appeal is not filed within the applicable period, the decision of the Directors is the final decision of the City. An appeal application for any decision of the Director shall stay all further proceedings by the Department of Community and Economic Development specific to the property under appeal.
4. (VAR 21-19) The proposal's geotechnical and critical area analyses confirms that there is just cause to allow for a variance of the rear and side setbacks and therefore succeeds in fulfilling variance criteria 17.96.080.a-c prohibiting special privilege, special circumstance, and failure to uphold public health, safety and welfare.
5. (ESA 22-21) The proposal's geotechnical and ESA report analyses confirms that there is just cause to

allow for development within an identified environmentally sensitive area stream corridor.

6. (VAR 21-19) The proposal meets the requirements granting a waiver of off-street parking for the construction of a single household residence.
7. A Determination of Non-significance (No. 1451) was issued for the proposal on July 22, 2022.

VIII. ENVIRONMENTALLY SENSITIVE AREA PERMIT CONDITIONS AND DIRECTOR APPROVAL

1. The development shall adhere to the recommendations and considerations of the geotechnical report submitted by Crescent Environmental, PLLC and ESA Report submitted by Peninsula Environmental Group, Inc.
2. Any and all work performed in the ESA and its buffer identified in the submitted geotechnical and environmentally sensitive area reports must adhere to the mitigation plan submitted as Section 12 of the ESA Report.
3. The ESA and its buffer shall be maintained at no net loss in accordance with Chapter 15.20 PAMC and any future disturbance to the ESA and its buffer requires an Environmentally Sensitive Area or Environmentally Sensitive Area Exception permit application.
4. The approval of this permit does not exempt the proposed project from other local, state, or federal permitting requirements.

Normaan Gollub
Normaan Gollub (Jul 29, 2022 15:30 PDT)

Jul 29, 2022

Approved by Norm Gollub, Community and Economic Development Interim Director

Date

VII. VARIANCE RECOMMENDED CONDITIONS OF APPROVAL

1. The approval of this permit does not exempt the proposed project from other local, state, or federal permitting requirements.

APPENDIX

Exhibit 2: Variance Application No. 22-19 Materials

Exhibit 3: ESA Application No. 22-21 Materials

Exhibit 4: Geotechnical Report for 0630-0002-8440 Prepared by Crescent Environmental, PLLC

Exhibit 5: ESA Report for 736 E 9th St Prepared by Peninsula Environmental Group, Inc.

Exhibit 6: Maps and Plans

Exhibit 7: Noticing Materials

Exhibit 8: Public Comment

Exhibit 7: DNS # 1451

PZ 22-19 22-21 Staff Report - Final

Final Audit Report

2022-07-29

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