

1 **PARTICIPANTS:**

2 Jerry Smith, Associate Planner

3 Nancy Stelow, Windermere Realty, 1220 Water St., Port Townsend, WA
4 representing the current owner, David Smith

5 Gary Greene, purchaser, 7962 Grand Ave, Bainbridge Island, WA 98110

6 Present but not testifying:

7 Betty Greene, 7962 Grand Ave, Bainbridge Island, WA 98110

8 Linda Tilley, Coldwell Banker Forrest Aldrich Inc., 2365 Sims Way

9 No other parties were present to testify.

10 **The Hearing Examiner closed the public hearing at 1:50 p.m.**

11 **TABLE OF EXHIBITS:**

| EXHIBITS/LOG ITEMS | DOCUMENT | DATE |
|---|--|-----------|
| 1 | Staff Report together with 72 Log Items | 8/23/2002 |
| The following items were mailed to the Examiner before the hearing: | | |
| 72 | Staff Report Revised Copy | 8/29/2002 |
| 73 | Fax Comment from Daniel Callahan | 8/28/2002 |
| 74 | Fax transmittal of above to Gary Greene | 8/28/2002 |
| 75 | Fax transmittal of above to Nancy Stelow | 8/28/2002 |
| 76 | Email from Gary Greene - reply to fax | 8/29/2002 |
| The following items were presented at the open record hearing: | | |
| 77 | Affidavit of Public Notice | |
| 78 | Fax Comment from William Fulton | 9/4/2002 |
| 79 | Fax transmittal of above to Gary Greene | 9/4/2002 |
| 80 | Fax transmittal of above to Nancy Stelow | 9/4/2002 |

22 **FINDINGS OF FACT**

23 1. The Applicants are Daniel Smith (current owner) and Gary Greene
24 (purchaser). Since Gary Greene is pursuing the variance, including
25 making the Site Plan changes; "Applicant" will refer to Gary Greene.

26 2. The request is for variances from the Jefferson County Unified
27 Development Code [UDC] to vary the requirements of Section 3.64
28 Environmentally Sensitive Areas District, specifically §§ 3.6.8 (Fish
29

1 and Wildlife Habitat Areas), Table 3-2 Standard Streamside Buffers and
2 §§ 3.6.8(g)(5) Buffers - Standard Requirements (i, ii, iii, iv, & v).
3 The required buffer for a Type V Stream is 50 feet. The Applicant is
4 requesting that the buffer be stream reduced to 10 feet.

5 3. The subject property includes Parcels 821151005 and 821151006 in
6 the NE¹/₄ of Section 15, Township 28 North, Range 1 East, W.M.

7 4. The property is designated as Rural Residential, 1 dwelling unit
8 per five acres (RR:1:5). The Comprehensive Plan designation is Rural
9 Residential. The Shoreline Designation is Suburban.

10 5. The property contains the following Critical Areas:

- 11 a. Type 1 Shoreline Area;
- 12 b. Shoreline Wetland Area;
- 13 c. Shoreline Susceptible Aquifer Recharge Area;
- 14 d. Slight Landslide Hazard Area;
- 15 e. Seismic Hazard Area;
- 16 f. Bald Eagle Territory;
- 17 g. Osprey Nest; and
- 18 h. Type V Stream.

19 6. The Staff Report contains a detailed analysis of the application
20 and additional facts regarding the proposal and surrounding
21 conditions. The Examiner has reviewed the Staff Report, conducted a
22 public hearing, and now adopts the findings in the Staff Report as his
23 own Findings of Fact.

24 7. The Applicant Gary Greene testified regarding the thought process
25 that he went through in addressing the various site conditions. He
26 explained that his current home on Bainbridge Island is on high bluff
27 land, and that he has gained a respect for the potential problems with
28 building too close to such a bluff. He also expressed a desire to
29 save as many trees as possible.

1 **REVIEW CRITERIA**

2 The variance application is subject the provisions of the Jefferson
3 County UDC Section 8.9 Variances. The following criteria apply:

- 4 ▪ Section 8.9(1) Purpose
- 5 ▪ Section 8.9(2) Scope
- 6 ▪ Section 3.6.4(h) Reasonable Economic Use Variance (1);
7 (i) Notice (1,2,3,4); (j) Findings (1,2,3,4,5,6,7&8); and
8 (k) Conditions (1,2)(i,ii).

9
10 **CONCLUSIONS OF LAW**

11 1. As is often the case when several environmentally sensitive areas
12 are present within one property, there will be conflicting forces at
13 play. A number of the environmentally sensitive areas are
14 concentrated in the western portion of the property—in this case
15 working in concert to protect the eagle/osprey habitat. The
16 topography of Tala Point drops 300 feet from the center ridge to the
17 shore of Hood Canal, in about 2,000 feet to the east. These forces of
18 nature, while enhancing habitat, add pressure to the bluff and
19 shoreline. The eastern portion of the property has limited space
20 before the bluff drops 60 or more feet to the beach. The Type V
21 Stream traverses north-south parallel with the contours of the slope,
22 which is probably why it is often dry and yet has the Type V
23 classification. The fresh ground water—below the surface—has its
24 interaction with the saltwater migrating inland. As more wells remove
25 fresh water from the aquifers, the seawater is drawn in. Here the
26 saltwater/freshwater balance becomes critical. At the same time, the
27 stability of the bluff is also critical.

28 The UDC §3.6.5.c(3) addresses the perceived saltwater intrusion
29 problem with a requirement "...to infiltrate all stormwater runoff, to

1 the maximum extent practicable, onsite." Fortunately, the UDC
2 recognizes the need for practicality, because the proximity of a 60-
3 foot high bluff in a region with a history of slides reveals a serious
4 conflict.

5 The wildlife habitat to the west, the wells located in the center
6 (along with the Type V Stream), and the saltwater intrusion potential
7 and high bluff along the east end of the property, all combine to
8 create the building limitations of the site. These are all natural
9 forces at play—none caused by the Applicants or their predecessors.

10 2. The Applicant has gone through several iterations of site plan
11 designs in order to respond to the environmental sensitive areas.
12 Since the Type V Stream was not identified until a field review, one
13 last change by the Applicant was to eliminate a proposal to use a
14 culvert to carry the stormwater. Instead, the site plan includes two
15 foot bridges connecting the parking area/garage with the house. The
16 site plans were also changed in the driveway/parking/garage area by
17 realigning the driveway to avoid taking trees. The garage building
18 became two stories to accommodate an office/gym in order to reduce the
19 total building footprint. The series of site plan changes, together
20 with testimony by the Applicant, support a conclusion that a real
21 effort was made to accommodate the environmental sensitive areas.

22 3. A review of the spaces, setbacks proposed building locations
23 supports a conclusion that there are severe constraints on the
24 property due to the environmental sensitive areas; and moreover, that
25 the final site plan is the best alternative.

26 4. Recommended Condition 15 raised questions by the Examiner in the
27 hearing. The recommended condition goes beyond the cited UDC section
28 by prioritizing alternative methods of infiltrating stormwater runoff.
29 As a practical matter, successful infiltration depends on soil and

1 geologic conditions. Many soils will not support infiltration. Other
2 soils and underlying geology will provide excessive rates of
3 infiltration, thereby allowing groundwater contamination. The proper
4 soil/geologic conditions typically are not present. While a simple
5 panacea for improving water quality (such as drainage to the
6 shoreline), the suggested method of using drywells to enhance
7 infiltration is especially problematic near bluffs and steep slopes.
8 Stormwater pumped into the soil by hydraulic head created by drywells
9 can destabilize the bluff and steep slopes; thereby counter-acting any
10 perceived gains in water quality. Recommended Condition 15 is
11 inappropriate as written, and should be modified accordingly.

12 5. The Staff Report contains a detailed analysis within paragraphs 1
13 through 15 at pages 3 - 10 of the proposal's consistency with the
14 applicable criteria. The Examiner has reviewed that analysis and the
15 criteria, and now accepts the analysis as his own Conclusions. The
16 Reasonable Economic Use Variance is justified.

18 DECISION

19 Based upon the testimony presented at the Open Record Hearing, a
20 site visit by the Examiner, the documents and exhibits admitted into
21 the record, and the above Findings of Fact and Conclusions of Law, it
22 is hereby the decision of the Hearing Examiner that the Reasonable
23 Economic Use Variance request by Daniel Smith (current owner) and Gary
24 Greene (purchaser) is hereby **GRANTED**, subject to the following
25 conditions:

- 26 1. Prior to issuance of the County Building and Sewage Disposal
27 Permit(s), the Applicant will be required to complete, execute,
28 and record an approved Declaration of Restrictive Covenant, which
29 will consolidate each separate tract into one (1) building tract
for the purpose of constructing a single-family residence
utilizing an individual on-site sewage disposal system.

- 1 2. Prior to the issuance of the County Building and Sewage Disposal
2 Permit(s), the Applicant shall submit a professionally prepared
3 Buffer Enhancement Plan to the Department of Community
4 Development for review and approval. The plan shall use native
5 vegetation, which substantiates that an enhanced buffer will
6 improve the functional attributes for habitat and provide
7 additional protection to the adjacent stream.
- 8 3. Buffer distances associated with the stream shall be measured
9 horizontally from the ordinary high water mark (OHWM) as
10 determined by either the Washington State Department of Fish and
11 Wildlife, or the Washington State Department of Natural
12 Resources, or a qualified professional with stream experience.
- 13 4. A building setback line of five (5) feet will be required from
14 the edge of the approved buffer area.
- 15 5. The stream buffer area shall be retained in it's natural
16 condition, however, minor pruning of vegetation to enhance views
17 or provide access may be permitted as long as the function and
18 character of the buffer are not diminished.
- 19 6. With approval of the Habitat Management Plan submitted August 22,
20 2002, the location of the outer extent of approved buffers shall
21 be marked in the field as follows: a) A permanent physical
22 separation along the boundary of the stream buffer shall be
23 installed and permanently maintained; b) The buffer perimeters
24 shall be marked with temporary signs at an interval of one parcel
25 or every one hundred feet (100) feet, whichever is less. The
26 signs shall remain in place prior to and during approved
27 construction activities. The signs shall contain the following
28 statement: "Buffer - Do Not Remove or Alter Existing Native
29 Vegetation."
7. The applicant shall submit a Drainage and Erosion Control Plan
for review and approval. The plan shall include a grading
component.
8. All trees and under-story lying outside of driveway access and
utility easements shall be retained (except for hazard trees)
during clearing for the driveway and utilities, provided that
under-story damaged during approved clearing activities may be
pruned.
9. Damage to vegetation retained during initial clearing activities
shall be minimized by directional felling of trees to avoid
critical areas and vegetation to be retained.

- 1 10. Retained trees, under-story and stumps may subsequently be
2 cleared only if such clearing is necessary to complete the
3 proposal involved in the project application.
- 4 11. For the site plan (Site Plan Advance Approval Determination -
5 SPAAD) approval on the property, the applicant shall include the
6 boundary of the streamside buffer area on the approved Site Plan.
- 7 12. The applicant may also choose to dedicate the streamside buffer
8 area through a conservation easement or deed restriction that
9 shall be recorded with the Jefferson County Auditor. The form of
10 any such instrument shall be approved by the Jefferson County
11 Prosecuting Attorney's Office.
- 12 13. Residential structures shall not exceed thirty-five feet in
13 height.
- 14 14. The applicant shall follow recommendations as stated in the
15 Drainage and Erosion Control Plan, Habitat Management Plan, the
16 Buffer Enhancement Plan and the Site Plan Advance Approval
17 Determination (SPAAD).
- 18 15. Pursuant to Unified Development Code, Section 3.6.5.c(3), all new
19 single-family residential construction located within 500 feet of
20 any marine shoreline is required to infiltrate storm water runoff
21 on-site, to the maximum extent practicable. The Drainage and
22 Erosion Control Plan required in Condition 7 above shall be used
23 to implement this condition, provided that the use of drywells is
24 not the preferred method unless deemed safe by a licensed
25 geotechnical engineer in light of Conclusions 1 and 4 above and
26 approved by Jefferson County.

27 **DATED this 11th day of September 2002.**

28 

29 **Irv Berteig**
Jefferson County Hearing Examiner

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