

August 5, 2016

**CITY OF BAINBRIDGE ISLAND, WASHINGTON
HEARING EXAMINER**

REPORT AND DECISION

Subject: Liljeblad Reasonable Use Exception

File number: PLN50261RUE

Location: No house number, off Hidden Cove Road, within S4, T 25N, R 02E.
Tax Parcel No. 042502-2-058-2008.

Request: A Reasonable Use Exception (RUE) to allow the construction of a single family residence, driveway, well, septic drainfield and catch basin on a vacant property encumbered by a Category III wetland and an associated 60' water quality buffer.

Environmental

Review: A Mitigated Determination of Non-significance (MDNS), in accordance with the State Environmental Policy Act (SEPA) was issued on June 30, 2016.

Applicants: Edle & Bo Urban (Ubbe) Liljeblad
241 Shepard Way NW
Bainbridge Island, WA 98110

Zoning: R-0.4, one residential unit per 2.5 acres.

Comprehensive

Plan Designation: OSR-0.4, Open Space Residential, one residential unit per 2.5 acres.

FINDINGS OF FACT

A. Site Characteristics

1. Assessor's Record Information:
 - a. Tax Lot Number: 042502-2-058-2008
 - b. Owners of record: Bo Urban (Ubbe) & Edle Liljeblad
 - c. Lot sizes: 1.2 acres or 52,272 square feet
 - d. Land use: Vacant

2. TERRAIN:
The property is relatively flat and gradually slopes from west to east.
3. SITE DEVELOPMENT:
The site is undeveloped.
4. ACCESS:
Vehicular access to the site is from an easement off Hidden Cove Road.
5. PUBLIC SERVICES:
 - a. Police: Bainbridge Island Police Department.
 - b. Fire: Bainbridge Island Fire District.
 - c. Septic: Kitsap County Health District
6. SURROUNDING USES
 - a. North: Single Family Residential
 - b. East: Single Family Residential
 - c. South: Single Family Residential
 - d. West: Undeveloped
7. EXISTING ZONING:
The site is zoned R-0.4, one unit per 2.5 acres.
8. SURROUNDING ZONING:
The surrounding vicinity is zoned R-0.4, one unit per 2.5 acres.
9. EXISTING COMPREHENSIVE PLAN DESIGNATION:
Open Space Residential, one unit per 2.5 acres (OSR-0.4).
10. SURROUNDING COMPREHENSIVE PLAN DESIGNATION:
Open Space Residential one unit per 2.5 acres (OSR-0.4).

B. Procedural Background

11. A pre-application conference was held on June 9, 2015, and the applicants applied for a Reasonable Use Exception (RUE) and Special Use Review on June 23, 2015. The applications were deemed complete on July 21, 2015, with a notice of application and SEPA comment period published on July 31, 2015. The comment period ended on August 14, 2015, with no comments received.
12. Staff requested from the applicants on November 6, 2015, revisions to the wetland report to address differences between it and the drainage plan. The various site plans needed to be consistent and the setbacks required verification. After delays were encountered, on April 20, 2016, staff sent a Notice of Incomplete Application to the owners specifying that the application would be deemed void if requested information were not received by June 20, 2016. The applicants submitted the missing information on June 6, 2016, including a revised wetland report.

13. On June 30, 2016, the City issued pursuant to SEPA a mitigated determination of non-significance (MDNS) with an appeal period ending on July 14, 2016. No appeals were filed.

14. Staff determined that a separate Special Use Review is not also required when an applicant is applying for a Reasonable Use Exception, the established practice being to process all development for a new single family residence and any accessory structures through the Reasonable Use Exception review.

15. No public comments were received during the comment period. A Health District comment letter dated October 8, 2015, addressed the setback requirements for the well. The applicants will need to submit a building site clearance application for proposed on-site sewage disposal and private water supply with their building permit application. The Fire Marshal comment letter dated July 27, 2015, requested that the project comply with the applicable provisions of the Fire Code and that the access road not be less than 12 feet wide with 13.5 feet overhead clearance, a matter also to be reviewed at building permit submittal. The Building Official provided a comment letter on July 15, 2015, specifying building permit review procedures.

16. The applicants are proposing to discharge stormwater from the access road via a catch basin into the wetland buffer within a level spreader swale. The roof stormwater is proposed for discharge to a splash block with dispersion. The City's Development Engineer reviewed the drainage plans and requested a maintenance plan be developed for the stormwater system that will handle roadway runoff from the existing unnamed easement road.

C. Regulatory Review

17. BIMC 16.20.080.G states the criteria for granting a reasonable use exception from the City's critical areas regulations:

- 1. The application of this chapter would deny all reasonable use of the property;*
- 2. There is no reasonable alternative to the proposal;*
- 3. The proposed impact to the critical area is the minimum necessary to allow reasonable use of the property;*
- 4. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant, or of the applicant's predecessor, that occurred after February 20, 1992;*
- 5. The proposed total lot coverage does not exceed 1,200 square feet;*
- 6. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the property;*
- 7. Any net loss of critical area functions and values, as determined by a qualified consultant through the application of best available science, will be mitigated on-site to*

the extent feasible if off-site options are not available. If off-site options, such as a fee-in-lieu or mitigation banking program, are available, the mix of on-site and off-site mitigation should be based on recommendations of the consultant;

8. A habitat management plan has been prepared pursuant to BIMC 16.20.060, unless it is determined through the applicable review process that such a plan is unnecessary; and

9. The proposal is consistent with other applicable regulations and standards.

18. The City uses the Department of Ecology's (DOE's) Washington State Wetland Rating System for Western Washington for the purpose of establishing wetland buffer widths, wetland uses and replacement ratios for wetlands. The wetland on the property is rated Category III. Both the wetland and its water quality buffer encumber the site and result in very limited buildable area outside their boundaries.

19. Category III wetlands are deemed to have a moderate level of function. A single-family-home is defined in the code as a moderate impact land use. Moderate impact land uses for a Category III wetland have a prescribed water quality buffer of 60' from the edge of the wetland. The wetland border approaches the western edge of the property where it encounters the 20' access easement, with only a very small portion of the northwestern corner of the site lying outside of the wetland and the buffer. Only about 500 square feet of land exists outside the wetland and buffer, but even this area is constrained as it lies both within the front yard setback and a 100-foot well radius. Thus the wetland, its buffer and applicable setbacks completely encumber the lot, and the applicants would have no reasonable use of the property without the requested exception. None of the site constraints are due to actions taken after February 20, 1992, by the applicants or their predecessors.

20. The applicants are proposing a 1,200 square foot residential footprint, a minimal driveway, a catch basin, a well and a drainfield within the wetland buffer. The project will disturb approximately 3,500 square feet of wetland buffer during site construction. The applicants are proposing to restore and enhance the buffer and wetland onsite to mitigate critical areas impacts. The project is conditioned to identify the buffers in the field prior to any construction activities, provide fencing and restrict herbicide and pesticide use to ensure long term protection of the wetlands after the introduction of the residential use. The applicant is proposing to enhance the wetland onsite by adding additional plantings to the entire wetland and buffer outside of the areas proposed for development, which equates to about an acre of wetland enhancement.

21. The applicants' wetland report recommended mitigation methods that included directing lighting away from the wetland, plantings and fencing. The report affirmed that the proposed single-family home and all supporting activities (drainfield) are located as far from the wetland edge as possible. The City is requesting that the invasive plants be removed from the wetland and buffer and that the applicants provide a more detailed mitigation, maintenance, monitoring and contingency action plan with their building permit application. The Department of Planning and Community Development shall approve the revised wetland mitigation plan as part of the building permit review and plantings shall be installed prior to final building permit inspection. Staff has determined that a habitat management plan is not required for this site.

22. Wetland buffers are to be temporarily fenced or otherwise suitably marked, as required by the

City, between the area where the construction activity occurs and the buffer. Temporary fencing shall be removed after the site work has been completed and the site is fully stabilized. The City may require that permanent signs and/or fencing be placed on the common boundary between a wetland buffer and the adjacent land to identify the wetland buffer. No building permit shall be issued until the applicants have submitted plans demonstrating that parking facilities will be provided and maintained. The applicants are proposing a driveway and two parking spaces, as required. Site development will comply with applicable regulations and standards, except those modified herein.

23. Not surprisingly, the proposal lies in a area characterized generally by high groundwater tables. A neighboring property owner, Frank Nance, expressed concern at the public hearing that the shared access driveway may need to be further elevated to avoid adverse impacts from construction vehicles and equipment. Plus staff identified a need to specify a site construction staging area location between the driveway and the drainfield and perhaps to impose seasonal limits on construction activity. In addition, a high water table will likely impose constraints on the septic design and may require a mound or other alternative system. RUE review provides little more than a conceptual framework for further planning, with most specific design decisions deferred to the building permit stage. The conditions proposed by staff have been modified to reflect these further future concerns. With such conditions included, no unreasonable threat to the public health, safety or welfare on or off the property will be posed.

24. In summary, the property is constrained by the following factors: nonconforming lot size (1.2 acres in a 2.5 acre zoning district), a 20-foot access and utility easement along its western border, and a wetland with a 60 foot buffer and an ancillary 15-foot building setback. The site lacks sufficient area outside the wetland and its buffer to construct a single-family home with a drainfield, driveway and well. With a lot area of 52,720 square feet and a maximum lot coverage of 10% for the R-0.4 district, the zoning would support a maximum footprint of 5,272 square feet on an unconstrained parcel. The impact of the proposed building envelope on the wetland buffer will be the minimum necessary to accommodate a reasonable residential use of the site consistent with zoning, and no reasonable alternative use is available.

CONCLUSIONS

1. The Hearing Examiner has jurisdiction over this reasonable use exception review proceeding. Standard notice and SEPA procedural requirements have been met.
2. The application meets the requirements of BIMC 16.20.080.G for granting a reasonable use exception from the City's critical areas regulations. These regulations, if strictly applied, would deny all reasonable use of the applicants' property. No reasonable alternative to the proposal approved hereunder exists. Applicable regulatory requirements can be met, and, as conditioned, the proposal does not pose a threat to the public health, safety or welfare.

DECISION

The reasonable use exception application of Edle & Bo Urban (Ubbe) Liljeblad (file no. PLN50261RUE) to establish a minimal residential building envelope in a wetland buffer is APPROVED, subject to the following conditions:

SEPA Conditions:

1. In order to protect the ground water and the wetland flora and fauna, the roofing material is to be of a non-leaching material that is not harmful to wetlands. Examples of non-leaching materials are, but not limited to, metal and tile roofs. Asphalt composition is not acceptable.
2. A split-rail type fence shall be installed along the edge of the 15' setback from the single family home. The fence may contain gates to access the restoration area and shall provide a clear distinction between native vegetation buffer area and any future landscaped area. The rails shall be high enough to allow small mammals and wildlife to pass through. The fence shall be indicated on the building permit application and in place prior to final inspection of the building permit.
3. A minimum of two signs indicating the presence of a protected wetland buffer shall be placed on the fence.
4. As indicated on the site plan, the total lot coverage shall not exceed 1,200 square feet. The building permit shall be reviewed to ensure that the maximum allowed lot coverage is not exceeded.
5. Prior to commencing any construction activity, the applicant shall have the wetland buffer temporarily fenced between the areas of construction activity, a maximum of 15 feet from the proposed residence. The fence shall be made of durable material and shall be highly visible. The fence shall be inspected as part of the building permit. The temporary fencing shall be removed once the construction activity is complete and replaced with permanent fencing (see condition below).
6. The applicant shall mitigate impacts to the on-site wetland and its buffer through native plant installation and invasive species removal. Prior to final building inspection, the applicant shall submit a revised wetland mitigation plan including mitigation goals and objectives, performance standards, maintenance and monitoring measures and contingency actions. The mitigation plan shall be in substantial compliance with BIMC 16.20.110 – Mitigation Plan Requirements – and may incorporate previously completed reports for the subject property and use guidance provided in Wetland Mitigation in Washington State: Part 2 - Developing Mitigation Plans (Version 1, March 2006, Publication #06-06-011b). The mitigation plan shall provide sufficient information, clarity and detail to demonstrate the proposed mitigation actions and maintenance and monitoring measures are adequate to achieve established mitigation goals and objectives. The Department of Planning and Community Development shall approve the revised wetland mitigation plan as part of the building permit review and plantings shall be installed prior to final building permit inspection.
7. The applicant shall submit a maintenance and monitoring plan with their building permit application and shall submit an annual monitoring report for up to seven years.
8. To reduce the impacts on the wetland, the applicant shall limit the amount of lighting on the exterior of the residence to the minimum necessary, shall install motion sensor lights to the rear of the house facing the wetland, plant dense vegetation around the buffer and record a covenant to limit the use of pesticides.

Project Conditions:

9. The proposed residence shall meet the setback and height requirements for the R-0.4 zoning district. To ensure the 25 foot front yard setback is met, the applicants shall have the 20' easement and 25' setback marked and inspected by planning staff prior to commencing construction.
10. The applicants shall submit a building site clearance application for on-site sewage disposal with their building permit application. The location, construction and operation of the on-site sewage disposal facilities shall be designed to avoid causing unmitigated adverse impacts to the wetland or its water quality.
11. The building permit application shall be reviewed for compliance with the fire marshal's requirement for the access road. Building permit review shall include the designation of an adequate onsite construction staging area having reasonable offsite access and located outside drainfield boundaries. The adequacy of the offsite access route shall be evaluated and upgrades required, if necessary to avoid degradation from construction phase impacts. Site disturbance activities and heavy vehicle access may be restricted to the dry season.
12. Any and all work that requires a permit shall be applied for. Building plans and review shall be subject to the 2012 International Codes, or such subsequent edition as may be adopted by Bainbridge City Council at time of building permit application.
13. The applicants shall apply for a Bainbridge Island Form #B111 Petition for Road Name and Form #B104 Addressing Request to secure a road name for the unnamed access drive and an address for the proposed single family residence. These are required as a component of any building permit application.
14. A maintenance plan shall be developed for the stormwater system proposed to handle roadway runoff from the existing access road. The plan shall be submitted with the building permit application.
15. The applicant shall record a notice on title specifying the presence of the wetland and the mitigation plan prior to the issuance of the building permit.

ORDERED August 5, 2016.



Stafford L. Smith, Hearing Examiner
City of Bainbridge Island

The Hearing Examiner is authorized to make the City of Bainbridge Island's final decision regarding a RUE application. A party with standing may seek judicial review of this decision by filing a timely suit in Kitsap County Superior Court under the Land Use Petition Act.

The exhibit list prepared by the Clerk of the Hearing Examiner's Office is attached.

EXHIBIT LIST

**UBE & EDLE LILJEBLAD
REASONABLE USE EXCEPTION
PLN50261RUE**

Staff Contact:
Heather Wright, Senior Planner

Public Hearing:
July 27, 2016

Hearing Examiner: Stafford L. Smith

NO.	DOCUMENT DESCRIPTION	DATE
1	Application – Reasonable Use Exception with Site Plans	06/23/2015 Received
2	Wetland Study Report dated May 12, 2015	06/23/2015 Received
3	Environmental (SEPA) Checklist with Staff Comments	06/23/2015 Received
4	COBI Memorandum – Building Division Comments and Conditions	07/15/2015 Dated
5	Bainbridge Island Fire Department Memorandum	07/27/2015 Dated
6	Notice of Application and SEPA Comment Period and Affidavit of Publication	07/31/2015 Published
7	Development Engineer Request	09/30/2015 (Dated)
8	Kitsap Public Health District Memorandum	10/08/2015 (Dated)
9	Correspondence between Planner and Wetland Biologist Clarifying Septic and Storm Water	11/06/2015 (Dated)
10	Correspondence between Septic Designer and Planner	12/03/2015 (Dated)
11	Request for Revisions from COBI's Review of Wetland Report	02/08/2016 (Dated)
12	COBI's Request for Wetland Information	03/02/2016 (Dated)
13	Planner's email to Applicant re: Wetland Update	03/09/2016 (Dated)
14	Notice of Incomplete Application	04/20/2016 (Dated)
15	Revised Site Plan from Applicant	05/05/2016 (Received)
16	Updated Wetland Study Report dated June 6, 2016	06/06/2016 (Dated)
17	Email from Planner re: Wetland Report Update	06/13/2016 (Dated)
18	SEPA Mitigated Determination of Nonsignificance	06/30/2016 (Dated)
19	Notice of Public Hearing and Certificate of Distribution and Posting	07/08/2016 (Published)
20	Staff Report	07/18/2016 (Dated)