

## Appendix A

September 26, 2025 Hearing Transcript  
Bauman Reasonable Use and Deviation  
Application for Shoreline Variance  
CAO24-029; DEV25-005

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Speaker 1 ([00:04](#)):

Okay, we're official. All right. Welcome everybody. It's September 26th, 2025, 9:00 AM I'm Phil ALBs, hearing examiner for the City of Mercer Island. This morning we're holding the hearing on a reasonable use and setback variance. The file number for CAO 24 dash 29 and DEV 25 dash zero five applicant's, Tim and Kathy Bowman. Now hearing format. This is my first land use hearing for Mercer Island. I work for 35 other communities and I'm used to a pretty standard hearing format, but I see in the Mercer Islands rules, theirs is a little different. You have the applicant go first instead of the staff. Is that what staff is used to doing? Or let me ask staff, is that the way you want to handle it today?

Speaker 3 ([00:53](#)):

Eileen, do you recall? Do we normally have a staff go before for Molly? Thank you. This is Eileen Key for Madrona Law Group attorney for the city. Yes. Under Mercer Island's rules, typically the applicant does go first.

Speaker 1 ([01:10](#)):

Okay. I was just asking if that was just, that's what you were used to doing because I can modify it and it is kind of an unusual order to have, but that's perfectly fine. One thing I will modify in the rule format though is that it has a public rebuttal as last and the applicant has the burden of proof they should be going last on any rebuttal evidence there. That's even more unusual format there, but we'll handle that way. But since that is in the rules, and I've always been fairly flexible about this, if you're a member of the public and you hear some final evidence that you know is, or you strongly feel or disagree with it, I'll let you do some sur rebuttal. But I will always let the applicant go last when it comes to evidence. So okay, now by state law, I'm only to consider evidence that's put into the record today and that's composed of the exhibits that are admitted into the record and testimony.

([02:01](#)):

Beyond that, I'm not allowed to talk to anyone about the project, I don't talk to the applicant or the staff or anyone else. Everything I know about this project is based on the evidence that's admitted today. That way everyone can know what the decision will be based upon and then that way you know what's going to be important and what's not. Let's see if I can share screen here. I can. Perfect. Okay, so this is

part of the staff report that was put together by Ms. McGuire, put together a pretty detailed explanation of how the criteria are met for the reasonable use and shoreline exceptions. And that is not the screen I was shooting for. Hold on a second. That's odd. Try that again. There we go. Very much better. So this is the,

(02:54):

Okay. Now did you see the exhibit list? You should be seeing the exhibit list on your end. Ms. McGuire. Is that Yes. Okay, good. Alright, so we've got a total of 32 exhibits. A lot of work went into these particular applications and that's composed of the staff report, the applications themselves, some plan sets and project narratives which describe how the criteria are met. We have a storm drain review, we have a wetland and stream delineation and assessment, and we have some comment letters and of course I've read all those and responses to those comment letters. And the environmental review composed of the State Environmental Policy Act checklist and the determination, it's not significant that no environmental impact statement is necessary. So at this point I just want to ask if anyone needs to see any of these documents or has any objection to their entry in the record.

(03:44):

If you do, just click on the virtual hand at the bottom of your screen. That would be you have a little react, a little heart there. If you click on that, there's a raise hand that'll pop up and you just click on that. So not seeing any takers, and that's pretty normal as well. So I'll go ahead and admit the staff report and exhibits one through 32. So with that, let's move on. Who wants to speak on behalf of the applicants today? It's not required, but if the applicants want to present their case, that would be the time to do it. Any takers out there? Is that you Mr. McClean? Okay. It would be me. Let me swear you in there then Just raise your right hand. Do you swear affirm to tell the truth, nothing but the truth in this proceeding?

Speaker 4 (04:23):

I do.

Speaker 1 (04:23):

Okay, great. Go ahead.

Speaker 4 (04:25):

Yeah, my name is Regan McClellan with McClellan Toone Architects. I've got my partner listening in Christopher Toone today. He's got to just leave at about nine 10 o'clock though. What I thought I'd do since we have this opportunity, is just to introduce the site and project briefly and then talk about the setback deviation and then talk about the RUE, the reasonable use exception. Is that okay?

Speaker 1 (04:56):

Oh yeah, yeah. Sounds good.

Speaker 4 (04:58):

Great. Why don't I share my screen so you've got something to look at other than me. Can everyone see a Google Earth aerial view?

Speaker 1 (05:13):

Yes.

Speaker 4 ([05:15](#)):

Okay. What you're seeing here is the site and there is the existing home on the property and the site. I'm tracing that with my little hand here. It's this odd shaped little parcel actually. It goes across this access easement to this large tree and then back over. So this area here. So as we've discovered over time, this is a very unusual site that is burdened by three critical areas, a wetland, setback and buffer from an offsite wetland area. And let open up that view right here. So here's our wetland, setback and buffer, which covers almost the whole site. As you can see, there's a little triangle here and a little triangle here that it doesn't cover. It does cover the whole buildable area and that watercourse setback is a type F. So that's the watercourse setback. The wetlands area is offsite as is the watercourse, which is right here. So the wetlands is here and you can see in green the wetlands buffer and the five foot and the 10 foot setback.

([06:47](#)):

There's also where the watercourse right about here, off property hits a storm drain and then heads down below the property by seconding and east west direction. And here you can see the, I think it's a 10 foot setback on either side and then a 45 foot setback running through the property here. There's also a steep slope area on the site and it covers the property in this sort of JY area right here. The additional constraints are we have a access easement by dissecting the site in the north south direction with its attendant five foot setback. So you can see we're pretty cut up here. We also have a 42 foot rear yard setback that was part of a covenant or a building pad restriction set in about the year 2000. And you can see that's quite an increase to the standard 25 foot rear yard setback, which is right here. So we're really getting pushed and pulled. The critical areas of setbacks cover 90% of the site and a hundred percent of the buildable area, making the site unbuildable without a zoning exception. There is an existing substandard 1,830 square foot home with no garage originally built in 1953 as a cabin for the local boy scout leader. The property's been remodeled over time, but is exhibiting substantial issues and stability due to foundation failure and extensive rot in the wood framing at the basement level. And that's all part of I think exhibit C Mercer builders.

([08:49](#)):

The owner is Tim and Kathy Bauman approached me a couple years ago and they would like to build a modest home in the site that is well suited for both of them and for visits from their adult children. We also requested that the home accommodate them aging in place so that they may be able to stay in the home as long as possible. So that's a very brief introduction to the site and project. Any questions about that examiner? AI?

Speaker 1 ([09:17](#)):

No.

Speaker 4 ([09:19](#)):

Okay. So let me first just go through the setback deviation, the requested front yard setback deviation. So here's our 20 foot standard setback and here's our requested 10 foot setback. So the setback deviation reduces the standard 20 foot to 10 foot. The deviation provides greater protection for the critical areas and is requested for that reason. So you can see that if we can move the house to the south, we're moving away from all the critical areas. The footprint of the proposed development would be reduced within the 40 foot wetland standard buffer by 100%. Here's that line and you can see if we can move the house back, we're out of that standard buffer completely. A five foot setback only encroach would be free by 88% and the five to 10 foot setback would be free by 36%.

[\(10:35\)](#):

The building footprint would be reduced 40% from within the piped watercourse 45 foot setback. So again, a pretty considerable reduction in that coverage. The footprint would be moved 10 feet further away from the watercourse itself, which is right here. So that source area and the deviation would've no effect on the buffer as it completely covers the buildable area of the site. The deviation would reduce the intrusion of the proposed garage into the steep slope area. Go back to here and you can see if I can move 10 feet back, I'm reducing the amount of coverage or intrusion into that steep slope area.

[\(11:25\)](#):

No use deviation is requested. The project is single family as zoned. The request will have no detrimental effect on the public or improvements within the vicinity and zone because the setback occurs on a city right of way that serves no other homes and has no or low visibility to other homes. And you can see that people mistake this for a driveway, but that's actually a city right of way and it only serves the bauman's property. And you can see to the right is heavily vegetated, so very low visibility from the neighborhood. The setback is also an improvement on the five foot setback of the existing home. So the new setback, the new home would actually move five feet back from the existing home.

[\(12:17\)](#):

The granting of the deviation will also allow for the construction of a three car garage, which would allow for off street parking. There is currently no off street parking, no garage. The code requirement for the proposed home is parking for three cars. The basis for the request is solely the increased in critical area setbacks. Over the past 30 years, and I've seen this in my career over time, the critical area setbacks just get greater and greater and that's if we'd done this 20 years ago, this probably wouldn't be an issue. The setback will also increase the distance of the proposed home from the watercourse wetland and piped watercourse critical area sources as well as reli the setbacks and buffers. Additionally, a large mitigation area is proposed to offset the proposed new home. The proposed home lot coverage is 1,393 square feet more than the existing cabin. A standard mitigation area requested by code is 100% of the increase in lot coverage. So the standard mitigation would be 1,393 square feet. The bauman's are offering 2,937 square feet of mitigation area, which is a 211% increase from the code requirement.

[\(13:53\)](#):

The mitigation area will have invasive non-native plantings removed and replaced by a native vegetation specified by a certified biologist. And that process is also called out in the conditions for approval from the city. The mitigation area is also configured to create a 10 foot buffer. Lemme go back to my plan right here. So we have a little leg of that and it covers this area of the site. So it's really a buffer. The whole thing is a buffer area between us and critical area sources. So we have a 10 foot buffer here between the yard and also critical area sources. So great carriers been taken to minimize the size of the home and I would like to address that in detail in RUE discussion. Any questions regarding that?

Speaker 1 [\(14:57\)](#):

No.

Speaker 4 [\(15:00\)](#):

Alright. The reasonable use exception is more complex, so we've got some more to say about that. I'm going to go through the criteria for the application. The first of which is the application of the critical area use chapter will deny all reasonable use. So a 200 square foot increase in the footprint is allowed. However, there is no location for the addition that would have no further expansion into 75% of the

watercourse buffer as the watercourse buffer covers the entire buildable area to maintain the legal non-conforming status. No more than 40% of the cabin's exterior walls may be structurally altered. A building survey by Jeffrey Winslow of Mercer Builders revealed significant rot in the framing of the lower level on the east side as Exhibit C Mercer builders.

(16:09):

And it's along this area that was accessible. So we've got significant rot in the framing of the lower level, and this is just what could be seen without undergoing explorative demolition. But in my experience, this is not a typical refining and a 1953 structure probably wasn't built to our standards back, probably pretty much say it wasn't built to current standards. Additionally, Mr. Winslow surveyed the floor levels and determined that the home has sunk towards the northeast corner quite a bit. So you can see here's the floor pitch. So you've got a three quarter inch here towards the northeast corner, a three inch drop in the deck, a one and a half inch drop towards that same corner, a one inch drop over the short area in the hall in the mudroom, and then some minor additional drop here towards this outdoor area where we're seeing the slab settling as well.

(17:20):

So that's pretty significant settlement. And what that says to me is maybe the rotten studs are factor, but seeing the slab settling outside shows that the foundations were probably not adequate to the slope and they're settling as well. So if the home were to be remodeled and brought up to current structural codes, there would need to be extensive foundation removal and or replacement or underpinning walls would have to be replaced where rotted or even if they are a sound, would need to be replaced to level the floor. Given these conditions, it is the judgment of the builder and myself that more than 40% of the exterior walls would require replacement daylighting. The existing piped watercourse is not possible. The pipe is buried between eight to 13 feet below ground across the site. So if we daylighted that, that would create an excavation where we'd have to have a stable slope of pitch of one to four, which is very standard, which would result in an excavation 100 feet wide that's wider than the site.

(18:45):

Additionally, the cut would significantly impact both the wetlands and open watercourse and the very large trees on the north property line. So that's just not realistic. And remodeling the existing cabin would not be economically feasible or even possible due to the constraints of the critical area codes. Reasonable use of the property would result in the demolition of the existing single family residence and construction of a new single family residence that conforms to current development and building codes. However, the site is heavily constrained by critical areas and that would prevent this construction without the granting of this reasonable use exception. So clearly the criterion is met. Any questions about that?

Speaker 1 (19:43):

No.

Speaker 4 (19:44):

Okay. Number two, there is no reasonable use with less impact on the critical areas. Current zoning of R 12 primarily allows single family residential use. A modest residential design is the best use of the site with the least impact on the critical areas. The proposed design has been optimized to reduce the footprint as much as possible and to increase the distance from critical areas. Great care has been taken to minimize the impact of the development on the critical areas. The main design features that minimize the impact are one, the size of the home is minimized. The neighboring homes are two to three times

larger than the existing home and all have garages. The eight surrounding homes contiguous to the property have an average of 3,975 square feet. The proposed Bauman home is 3000 hundred 53 square feet, which is 222 square feet smaller than the neighborhood average.

[\(20:58\)](#):

So that average was an important metric for us in determining well, this is reasonable. The proposed design is not full redevelopment. The proposed home is much smaller than allowed by zoning regulations. The gross floor area is 70% of the allowable, 30% below the maximum allowed by code. The hardscape is 36% of the allowable, 64% below the maximum. The landscaping area is increased to 121% of the required. The proposed lot coverage is 67% of the allowable, 33% below the maximum allow by code. So that's achieved by doing a three story home, maximizing the height and trying to pull the footprint in as much as possible.

[\(21:57\)](#):

The proposed home is placed, let me go back to my plan set. The proposed home is placed in the southwest corner of the property, creating the greatest distance from the home to the critical areas. And you can see we're just really right up against our access easement to the west and our 10 foot setback property line to the south. And the 10 foot reduction in that front yard setback is critical. So this reduction will place the home even further away from source points of the critical area setbacks. The proposed home is configured as a three story structure to minimize the building footprint and minimize the impact on critical areas. The building height is maximized to create a smaller footprint, even though age in place was a goal of the client. The proposed design limited one level living, which places the main suite on the main floor with the living areas, and that's a critical component of age in place. So that means we've got the garage, the living areas, and the main suite, the bedroom all on one level. And that's a general goal of about 80% of my clients that come to me. So we immediately saw that, well, that's probably not going to be viable for this particular exception. So that's now the main suite's on the third floor. So that's a pretty serious compromise for the Bauman's property.

[\(23:38\)](#):

The area of the daylight basement that extends below the footprint of the main living area. So here's the main living area, and I'll go down to the floor plans. Here's our main living area and our garage mudroom and stairs. That's about the minimum you can have on your main floor. There's an area that extends below this deck area that is daylight basement and that's about 500 square feet. Now to conserve footprint, I could have put that on top of the garage. However, this still would've been reserved as deck area. So the end result would've been the same for lot coverage. And you can see down here it's about this area. It's this room down here, that's the area that might've gone over. But as noted by the staff report as well, the end result is pretty much the same with the demolition of the existing home in this area. And hardscapes the site disturbance, there would be no difference.

[\(24:55\)](#):

And then the impact to critical areas would be about the same as well. Again, the large mitigation areas proposed to offset the increase in lot coverage, and I think we discussed that pretty thoroughly. That mitigation area, again, that's here and that's 211% of the required mitigation area. So as part of our analysis of this, I sat down with the owners, Kathy and Tim Bauman, and we discussed alternatives for dealing with the site without a granted reasonable use exception. Together we came up with three scenarios, all of which have significant financial consequences in the devaluation of the property. The first option would be to go ahead and try to remodel the current home, which will take about a million to 800,000 and then suffer the economic loss not only of the cost of the improvement, but also a massive devaluation of land as their, I don't believe exist.

[\(26:12\)](#):

A buyer that would pay 3.7 million for one thousand nine hundred thousand nine hundred eighty square foot home with no garage on the west side of Mer Island. If we could even do that because we might be down to demolishing over 40% of the exterior structural walls just to be able to remodel the structure, we'd have to bring that up to current codes. So I think this is an unreasonable economic option. It would not be pursued by the owner. The second choice is to sell the property at a loss. The property would be far worth, far less if no reasonable development can occur on the site. The RUE application is now part of the public record. So any future buyers will be aware that the home size is constrained and far below by what is offered on similar properties on the island. And no garage will be allowed. Again, I think this is an unreasonable and option and would not be pursued by the owner.

[\(27:23\)](#):

The third choice, which may or may not work, is the most economically viable is to let the property go vacant, withhold maintenance until it becomes derelict and can be condemned by the city. So at this time, another attempt that would allow demolition of the structure so that the site is not burdened by the existing structure at this time, another attempt at the reasonable use exception can be made without burden of the existing structure. However, this would also entail considerable economic hardship carrying a \$2.5 million investment with no ability to make use of it for up to one or two years. And unmaintained home, I believe, would also be a burden on the neighboring property owners summation. The existing single family residence is legally nonconforming. As discussed previously, since a full remodel of the existing residence would include exterior modifications to bring the residents into conformance with the current building and energy codes, more than 40% of the exterior walls would likely need to be structurally altered, which would require the residents to come into conformance all the residential development standards, including setbacks and critical area buffers.

[\(28:48\)](#):

Even if the existing breath residence was demolished and rebuilt in the exact same footprint and configuration, a reasonable use exception would still be required, which demonstrates that based on current development standards there would be no reasonable use of the property remaining to the owner without the granting of this exception. Additionally, the effectiveness of an alternative design that may reduce the footprint and condense the proposed residence is minimal compared to the level of disturbance that would be required to demolish existing residence and associated site improvements as would be necessary to establish a reasonable use of the property. That was a lot. Any questions about that?

Speaker 1 [\(29:39\)](#):

No. Was that the end of your presentation?

Speaker 4 [\(29:42\)](#):

I've got only another page.

Speaker 1 [\(29:44\)](#):

Oh, okay. Go ahead. I'll ask my questions when you're done. Yeah, go ahead.

Speaker 4 [\(29:46\)](#):

Okay. Alright. The other criteria, any alterations to critical areas in associated buffers is the minimum necessary for reasonable use of the property. So the proposed residence has been located and designed

to minimize impacts to critical area buffers. As discussed, the requested setback deviation greatly increases the distance from critical area sources and within the buffers care was taken to maximize the use of the area of demolition of the existing structure and landscape. For our new building path, the home maximizes the height zoning to create a more compact parking space on site. The design proposes reasonable deck areas on the west side of the main floor, the furthest away from the critical area sources. And then page 14 of the staff report, I think neatly summarizes a comparison. The existing and proposed setbacks and shows that improvement.

(30:56):

Number four, the proposed development only provides a higher standard for the health, safety and welfare of the public. The proposed location will follow the current zoning codes. The proposed design is well under the maximum development allowed by the codes. The current oil heating system and oil tank will be removed from the property and out of the critical area buffers and setbacks. There will be a thorough review of the sanitary sewer system of the residents in connection to the main sewer. And we believe the proposal is consistent with the purpose of the reasonable use code and public interest. This conforms to the single family zone setbacks and density. The current design is built into both side yard and front yard setbacks. The proposed design will improve upon the existing condition and conform to the current zoning code. It improves the critical area. Setbacks from the watercourse in wetlands provides an offset of 211% of the increased lot coverage for mitigation measures to improve biodiversity and ecological health of the watercourse in wetland improves the safety of the site by providing a code compliance structural foundation and fire suppression system and minimizes impacts to critical areas by providing improved setbacks and locating the mitigation areas to create a buffer between the development and watercourse of wetlands.

(32:30):

And then finally, the owners agree to and support all the conditions of approval as proposed by staff report. There it?

Speaker 1 (32:39):

That's it. Okay. Sounds good. Yeah, just a few questions. One is, maybe this exhibit exists but I couldn't find it, which is basically a full critical area study. I mean it's required by the Mercer Island Code where you're supposed to assess project impacts and the mitigation and come to the conclusion that with the mitigation, all impacts are adequately mitigated. All I see in the administrative record that's been presented is a wetland and stream delineation and assessment. There's no mitigation or impact assessment that I could find anywhere. Is that somewhere in the record or is that, I mean, like I said, it's required by the code. It's pretty standard for any reasonable use that I've done. I've done a few hundred of them and I just didn't see any impact assessment by a qualified biologist for this application.

Speaker 4 (33:33):

We were requested to provide the delineation. And my understanding is as we move forward, and staff can reply to this, that those statements would be created based upon the proposed development.

Speaker 1 (33:49):

Okay. Again, I think that the one major issue here is whether this is the minimum size or not, and there is a lot of variation between jurisdictions as to how that's assessed. And on one extreme, I work for a few dozen communities. On one extreme, I've got Mason County that in their code says 3000 footprint is considered to be minimum reasonable use. And right now they're fighting with Department of Ecology as to whether they can really continue to push that standard. But that's what they have. On the other

extreme is the city of Edmonds where they basically said minimum reasonable use if you're fully encumbered is the footprint of a two car garage. And you put the living area on top of it. And I even had an application where some people had a two foot roof overhang and the city attorney fought against it and said, that's additional shading that creates additional impact.

(34:39):

That's not minimum reasonable use. So they weren't even allowed to have the overhang in that case. I think in a lot of jurisdictions this would be considered a pretty large home kind of a strain to say that this is minimum reasonable use. And the staff report was kind of, I mean it is a little hard to follow because it said that the applicant, as far as I could understand, hadn't minimized it as much as they possibly could. But it looks like what staff concluded was that having it larger though doesn't make any difference in terms of impacts. But there's no evidence to show that. I mean, you have a one-to-one mitigation ratio that inherently shows that the bigger the project, the more the impact. So I don't know how staff came to that conclusion. Do you have a wetland biologist that could address that maybe today or any comment on that?

Speaker 4 (35:28):

I don't.

Speaker 1 (35:29):

Okay. Okay.

Speaker 4 (35:30):

However, in the two years we've been working on this, this is the first time I've heard the term minimum minimal reasonable use.

Speaker 1 (35:39):

Okay.

Speaker 4 (35:39):

It's always been reasonable use.

Speaker 1 (35:41):

Okay. Okay. Sounds good. And maybe

Speaker 4 (35:43):

Staff can address that. That's a new concept for me today.

Speaker 1 (35:46):

Okay, sounds good. Yeah. And yeah, most it

Speaker 4 (35:48):

Hasn't been requested by me, by the city.

Speaker 1 (35:50):

Okay. Okay. Got it. Alright, sounds good. Alright, well let's move on to the staff at this point. And that's Ms. McGuire, I believe you there, Ms. McGuire?

Speaker 2 ([36:02](#)):

Yes I am.

Speaker 1 ([36:02](#)):

Okay. Lemme swear you in. Just raise your right hand. Do you swear affirm to tell the truth, nothing but the truth in this proceeding? I

Speaker 3 ([36:08](#)):

Do.

Speaker 1 ([36:08](#)):

Okay, great. Go ahead.

Speaker 3 ([36:10](#)):

Thank you. So I'm Molly McGuire, senior planner with the city of Mercer Island. I'll just go over a brief summary. Obviously you have the staff report and I won't be presenting any new information. So this is their request for two different proposals, one for the setback, deviation for the protection of critical areas and one for the granting of a reasonably used exception for the demotion of an existing single family residence and construction of a new single family residence. Cepa determination of nonsignificance was issued on August 4th, 2025 and no appeals were filed. A brief background, the property is currently developed with single family residence with several walkways, Rockies and driving surfaces. And the proposed residence would be constructed in generally the same location as these existing improvements. The existing residence was constructed in 1953 and is legally nonconforming due to the location being five feet from the front property line within the front yard setback within several critical area buffers and a landslide hazard area and the construction being out of compliance with current building and energy codes.

([37:21](#)):

So the applicant had a building survey performed and in order to remodel and bring the existing residents into compliance, more than 40% of the exterior walls would likely need to be structurally altered, which would result in the loss of nonconforming status. And if this nonconforming status is lost, the entire building would need to be brought into compliance with current development standards, which includes all of the critical area buffers and setbacks. So as shown in exhibit four, the type F watercourse buffer encumbers the entire building pad. So there would be no location on the property where a new single family residence could be constructed consistent with the critical area standards. So in an effort to locate the new residence further away from the category four wetland piped watercourse and type F watercourse, the applicant has requested the approval of a setback deviation, which would decrease the required 20 foot front yard setback to 10 feet.

([38:19](#)):

And this would allow the residents to be constructed closer to the front yard setback, front yard property line on the south and increase the protection of those critical areas. And then the applicant has also requested the granting of a reasonable use exception since the application of the development standards would deny reasonable use of the property. So these findings are all detailed in the staff

report. Staff included a recommended condition of approval for a detailed mitigation plan to be submitted during building permit review for the impacts to the watercourse and their buffers that achieves equivalent or greater ecological function, which is listed in Mercer Island City Code 19.0 7.180. Subsection E and staff has reviewed the proposed development in accordance with standards for setback deviations and reasonable use exceptions. And based on the findings in the staff report recommends approval with conditions of city file numbers CAO 24 dash 0 29 and DEV 25 dash 0 0 5. And I'm happy to answer any questions.

Speaker 1 ([39:29](#)):

Okay. Yeah, just kind of along the same lines I was asking the applicant there, I was just curious why staff didn't require the full critical area study. I mean 19 0 7 1 10 requires those studies and B seven requires an assessment of probable effects of critical areas and B eight requires an assessment of necessary mitigation. As I mentioned, that's pretty standard when you're actually building within a buffer and you have the benefit of a qualified biologist that can tell you that the encroachment won't create any problems. Is it kind of standard for the city not to require a full critical area study for something like this?

Speaker 3 ([40:08](#)):

No. So the critical area review two would be required at the time that a building permit is submitted and the criteria for approval in the reasonable use exception code did not specifically speak to a full critical area study could it being required.

Speaker 1 ([40:29](#)):

Okay. So that assessment's going to be done at the building permit review, that's how this is handled?

Speaker 2 ([40:36](#)):

Yes.

Speaker 1 ([40:36](#)):

Okay. Sounds good. And then kind of on the minimum size, I mean the standard that applies to minimizing the size of your house is, let's see, a three, which is any alteration of the critical error and buffer is a minimum necessary to allow for reasonable use. And of course the smaller your footprint, the more you minimize that encroachment. And I didn't entirely follow the staff report. I think your staff report said that it sounded like you were saying that the applicant hadn't done everything they could to minimize the size of the home, but it didn't matter because a larger home wouldn't increase the impact. Am I correctly summarizing your conclusion on that issue?

Speaker 3 ([41:19](#)):

Yeah, the location of the new residence in kind of the general same location as previously developed areas of the property is kind of what we relied on there within the existing footprint of the walkways, rockings driving surfaces and

Speaker 1 ([41:36](#)):

Footprint. Alright, but this will, I mean the additional encroachment, is that just going to go into an existing lawn area or something? Is that what's going on or?

Speaker 3 ([41:48](#)):

I believe the encroachment is over hardscape, so Rockies walkways

Speaker 1 ([41:55](#)):

And

Speaker 3 ([41:55](#)):

The driving services.

Speaker 1 ([41:56](#)):

Okay. So it's already a disturbed area. Okay, that makes sense then. That's good. Okay. Yeah, that's all I had. Oh, but the other one was since I haven't done reasonable use for Mercer Island before, have you had reasonable use requests like this before? I mean, are there other decisions I could look at just to try to be consistent with how this issue has been handled in Mercer Island?

Speaker 3 ([42:23](#)):

I don't believe there's a similar one. I think there was one in conjunction with them. Variance as your director Jeff Thomas has,

Speaker 1 ([42:35](#)):

Oh, I'm Mr. Thomas. Oh, let me swear you in. I guess I should swear you in. Just raise your hand. Do you swear affirm to tell the truth, nothing but the truth in this proceeding?

Speaker 5 ([42:43](#)):

I do.

Speaker 1 ([42:44](#)):

Okay, great. Go ahead.

Speaker 5 ([42:46](#)):

Just very quickly to help answer that question, the last reasonable use that the city took up, was it, I believe it was a 2017 or 2018 file number? It did come before the hearing examiner, I believe in 2020 or 2021. So we don't do these very often about every five to seven years, but the city would be happy to forward you a copy of that decision if you would like to review it.

Speaker 1 ([43:16](#)):

Yeah, I guess, yeah, just that could be helpful. I think it doesn't have to be admitted as an exhibit because, a decision ordinances and prior decisions are considered. You can take judicial notice of it. So yeah, I'll take a look at it. That sounds good. And applicants, if you want a chance to respond to that prior decision, I can certainly leave that open for you. Okay, thanks Mr. Thomas, appreciate your input. Alright, starting getting a little cough here. Let's move on to public comments at this point. And if anyone wants to speak at this point, go ahead and click on the virtual hand at the bottom of your screen there. As I said, you got a react button, click on that and you can hit raise hand. Not seeing any takers.

Now this is there. Now this isn't a hybrid hearing, is it Ms. McGuire? I mean, are there any members of the public in the council chambers or something?

Speaker 2 ([44:11](#)):

No.

Speaker 1 ([44:12](#)):

Okay. Yeah, it's all virtual. Yeah. Yeah. Okay. Well we can go back. I'm sorry for that coughing fit. Go back to the applicant. Any final comments, Mr. Clone?

Speaker 4 ([44:25](#)):

No final comments.

Speaker 1 ([44:26](#)):

Okay. I

Speaker 4 ([44:26](#)):

Think we've worked really closely with the city over the past almost two years now and they've been really helpful and we've been trying to work very closely with them so that this would be accepted and this has been quite a journey for the owners.

Speaker 1 ([44:42](#)):

Okay. Sounds good. Alright then I can go ahead and close the hearing. I said I got a couple weeks to issue that decision and yeah, I mean I know the staff report kind of disagreed with the applicant's use of average surrounding home size, but that is, it kind of gives you an indication for what's feasible for the location and in the absence of any other information is pretty persuasive. And you combine that with the fact that we have a degraded footprint and the expansion doesn't increase the impact. So it sounds pretty good. Like I said, I kind of would've liked to see a full critical areas report. I think that's really critical when you're dealing with reasonable use because one of the most important considerations is will this increase? We will rather rule the impacts be fully mitigated and without the opinion of a qualified wetland biologist, you're speculating just a little bit, but I think we can get by on this one and it should probably be fairly straightforward approval.

([45:43](#)):

So we'll get that decision out. Like I said, should be probably an approval, probably no required reduction in size or anything of that nature. I mean, beyond that, I mean clearly the existing home, there's no obligation to keep that there. I mean, if you've got something that doesn't meet building code and obviously for the high quality Mercer Island building environment, that's not something that's economically feasible to try to sell to somebody else or to live in that area really. So should be a good result for the applicants. And as I said, we'll get that out in the next couple of weeks. Thanks all for your participation today. Have a great weekend and we're adjourned.

Speaker 4 ([46:22](#)):

Thank you very much.