

REVIEW #2
RWHA-2025-0003

April 14, 2008

Rizwan Samad
8311 Hunts Pt. Place
Hunts Point, WA 98004

RE: PLN2007-00042

Dear Applicant:

Transmitted herewith is the Report and Decision of the City of Sumner Hearing Examiner relating to the above-entitled matter.

Very truly yours,

STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

SKC/cka
Enclosure
cc: All Parties of Record

OFFICE OF THE HEARING EXAMINER

CITY OF SUMNER

REPORT AND DECISION

CASE NO.: PLN2007-00042

APPLICANT: Rizwan Samad

SUMMARY OF REQUEST:

The applicant is requesting approval to reduce the 100 foot stream buffer width to 75 feet for a property located at 1827 West Valley Highway.

SUMMARY OF DECISION:

Request granted, subject to conditions.

PUBLIC HEARING:

After reviewing Community Development Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on March 31, 2008, at 3:46 p.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

EXHIBIT "1" - Community Development Department Staff Report and Attachments

ERIC MENDENHALL appeared, presented the Community Development Department Staff Report, and testified that the site is an irregularly shaped lot that is served by municipal water, sewer, and storm. Proper notice was given. The applicant desires to improve the site with a contractor yard, but a required stream buffer impacts the site. The zoning code allows reduction of the buffer from 100 feet to 75 feet. The site itself varies in width from 69 to 178 feet. Reduction will not harm the habitat and will improve the creek buffer. However, the request does not meet criteria one for a variance and therefore staff recommends denial.

RIZWAN SAMAD, applicant, appeared and testified that his family has owned the parcel for 40 years, and previously allowed the City to park its construction vehicles on the site when installing water and sewer lines. However, following completion of construction, the City

disappeared and left a big pile of debris on their parcel. They hired a professional do work after scrapping off the vegetation from the debris pile and level it. They constructed sidewalks, curbs, gutters, and streetlights on their side of West Valley Highway and streetlights on the other side of West Valley Highway. They spent an enormous amount of money. Now the City will not allow them to reduce the buffer by 25 feet. They hired a biologist who said that the improved buffer would help the stream and habitat. They submitted all things requested by the City and now the City is recommending denial. They have been going in a circle for the last five years. They cannot rent their property and it is useless if they can't get a variance.

MOHAMMAD JALALYAR appeared and testified that after the violation Mr. Samad contacted him for help. The 1998 aerial photographs show the dirt pile on the north side of the house. When the contractor left he didn't remove the dirt. In 2003 blackberries were growing all over the pile and so they graded the dirt and were issued a violation by the City. They prepared a temporary erosion and control plan and hydroseeded and provided straw mulch. The 100 foot wide buffer consumes all but ten feet of his property along West Valley Highway. The biologist states that the reduced buffer will not adversely impact the stream, but will increase the habitat and quality of buffer. They constructed 500 linear feet of curb, gutter, and sidewalk, about half of which is along the portion of the road subject to the 100 foot buffer variance area. They also installed planters and lighting. All of this work has been accomplished. If the variance is not granted then they only have ten feet of usable property along 250 feet of West Valley. A corner of the existing residence is also within the buffer. They put seven streetlights on the west side of West Valley Highway. To the east of the property is SR-167.

MR. MENDENHALL reappeared and testified that if the Examiner approves the variance it should only be for the area north of the outbuilding. They propose the area for storage which is not allowed even within the 75 foot wide buffer.

No one spoke further in this matter and so the Examiner took the request under advisement and the hearing was concluded at 4:14 p.m.

NOTE: A complete record of this hearing is available in the office of the City of Sumner Community Development Department.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. The project is exempt from SEPA review under WAC 197-11-800.
3. Notice of the hearing was published in the Tacoma News Tribune on March 14, 2008, posted on site, posted at Sumner City Hall, and mailed to all property owners

within 300 feet of the proposal on March 14, 2008.

4. The applicant has a possessory ownership interest in a long, narrow, 1.18 acre parcel of property abutting the east side of West Valley Highway, immediately west of SR-167 and north of the 24th St. E. interchange. The parcel abuts West Valley Highway for 528 linear feet and varies in width between 70 feet along the south property line and 179 feet along the north property line. The southern 250 feet of the parcel varies in depth between 70 feet on the south and 90 feet on the north. Improvements on the site include an office building/home outbuildings, and a large gravel area for parking and storing vehicles.
5. Much of the site consists of historic fill soils placed several decades ago. The topography in the fill area is virtually flat, but at the edge of the fill, topography descends sharply to the ordinary high water mark of Sotain Creek, a DNR Type 3 stream. Much of the slope occurs to the east of the applicant's parcel adjacent to the stream.
6. Sotain Creek flows from east to west through two large culverts under SR-167 near the center of the applicant's parcel. The stream then makes a 90 degree turn to the south and parallels the southern (narrow) portion of the applicant's parcel. The stream channel measures eight to ten feet in width and may support salmon. The creek eventually discharges into the White River.
7. Chapter 16.40 of the Sumner Municipal Code (SMC) sets forth the "Resource, Wildlife and Hazard Area Regulation Framework". Section 16.56.100(C) SMC requires a minimum 100 foot wide buffer from a DNR Type 3 stream. While Sotain Creek flows off-site, the 100 foot wide buffer extends across all but about ten feet of the southern 250 feet of the applicant's parcel. Thus, the Sotain Creek buffer prohibits use of the southern portion of the applicant's parcel.
8. Section 16.56.100(F) SMC authorizes property owners to apply for a variance to reduce a Type 3 stream buffer width from 100 feet to a minimum of 75 feet. Granting such variance would allow the applicant use of a 35 foot wide area. The applicant has submitted a variance application, but the Community Development Department recommends denial. According to the uncontradicted testimony of the applicant and his representative, the applicant's family has owned the parcel for 40 years and the applicant's mother, who resides in the existing structure, authorized the City's sewer/water contractor to park construction vehicles on the site when installing sewer and water lines in West Valley Highway. The contractor also stored soils from the construction on the site, but when the job was completed, did not remove them. The applicant then scraped and leveled the dirt pile without permits and the City issued a Stop Work Order.
9. The applicant corrected the violation and made inquiry to the City about developing the parcel. The parcel is located within the Interchange Commercial designation of

the City of Sumner Comprehensive Plan and the Interchange Commercial (IC) zone classification of the SMC. The City advised that development of the parcel would require road improvements to West Valley Highway. In accordance with the City's requirement, the applicant constructed curb, gutters, sidewalks, and streetlights along the east side of West Valley Highway across the full, 528 foot length of the parcel frontage. At the City's request the applicant also installed seven streetlights on the west side of West Valley Highway. The applicant testified that he incurred a substantial cost in making the improvements.

10. The applicant then discovered the 100 foot wide buffer requirement from Sotain Creek and the City advised of the possibility of obtaining a buffer reduction variance. Pursuant to SMC 16.56.100 the applicant retained B-12 Wetland Consulting, Inc., to prepare a wetland management plan for the variance application. In addition, the applicant engaged Thomas W. Waller, Jr., consulting biologist for MRK Engineering, Inc., to apply for the buffer variance. The variance would allow development of 328 linear feet of the commercial parcel which is located in a narrow corridor between West Valley Highway and SR-167.
11. To obtain a buffer width variance the applicant must show that the request satisfies the criteria set forth in SMC 16.56.100(F). Findings on each criteria are hereby made as follows:
 - A. The subject parcel is less than 200 feet in depth as measured perpendicular from the ordinary high water mark of Sotain Creek.
 - B. For virtually the entire length of the parcel which needs the variance, the parcel varies in width between 70 feet and 90 feet. The applicant does not request a reduction below 75 feet.
 - C. The applicant will need to comply with the impervious surface requirements of Section F(3).
 - D. It is not necessary to consult federal agencies.
 - E. According to Mr. Waller's letter, existing fish, plant, and wildlife habitats on the site will be enhanced through additional plantings. B-12 Wetland Consultants in its habitat management plan agrees with Mr. Waller.
 - F. The reduced buffer area includes enhancement measures to improve the functional attributes of the buffer through the use of plantings of native plant species. The applicant will also install sensitive area signage.
 - G. The applicant has submitted a best management practices plan which shows that the buffer enhancement will mitigate impacts to wildlife and habitat areas.

12. Prior to obtaining a buffer reduction variance the applicant must also show that the request satisfies the criteria set forth in SMC 16.40.120(D). Findings on each criteria are hereby made as follows:
- A. Criteria one requires a showing that strict requirements of the development standards (the buffer width) preclude or significantly interfere with a reasonable use of the property. The applicant proposes a use authorized by the IC zone classification. The southern 250 feet of the parcel cannot be used without the variance. Staff recommends denial because the northern area of the site contains approximately .82 acres which it asserts is a sufficient, usable area for a contractors yard. Staff notes that similarly zoned lots to the east are less than half an acre and support a contractors yard. While smaller lots may support smaller contractor yards, with the buffer reduction the applicant could accommodate a larger contracting business. Many contractor yards greatly exceed the half an acre in size. Granting the variance will provide greater leasable space consistent with the parcel size and its access directly onto West Valley Highway. Denial of the variance prohibits use of 250 feet of the parcel. Such interferes with a reasonable use of the property not otherwise prohibited by the zoning.
 - B. The hardship is specifically related to the property and is the result of a narrow lot and the location of the Sotain Creek which flows parallel to the lot.
 - C. The variance will not adversely impact adjacent properties nor will it adversely impact the critical area. The parcel is located between West Valley Highway and SR-167.
 - D. The variance does not constitute a grant of special privilege not enjoyed by other properties in the area and is the minimum necessary to afford relief. Staff has pointed to no other parcel which is impacted by Sotain Creek to the extent of the applicant's parcel. Furthermore, the applicant has installed street improvements the entire length of his parcel along West Valley Highway and installed streetlights along the west side of West Valley Highway. The variance is the minimum necessary to allow use of the southern 250 feet of the parcel.
 - E. The public interest will suffer no substantial detrimental effect. The applicant does not propose development waterward of the ordinary high water mark or within regulated wetlands.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The applicant has shown that the request for a variance to reduce a Type III stream buffer from 100 feet to 75 feet satisfies all criteria set forth in SMC 16.56.100(F) and SMC 16.40.120(D). Therefore the requested variance should be granted.

DECISION:

The request for a variance to allow reduction of a Type III stream buffer from 100 feet to 75 feet for a site located at 1827 West Valley Highway within the City of Sumner is hereby granted.

ORDERED this 14th day of April, 2008.

STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 14th day of April, 2008, to the following:

APPLICANT: Rizwan Samad
8311 Hunts Pt. Place
Hunts Point, WA 98004

OTHERS:

Mohammad Jalayar
1954 Union Avenue NE
Renton, WA 98059

Brant Schweiki
705 S. 9th Street #303
Tacoma, WA 98405

Ray Frey
12356 Northup Way NE #119
Bellevue, WA 98005

City of Sumner
c/o Eric Mendenhall
1104 Maple Street
Sumner, WA 98390

RECONSIDERATION AND APPEAL NOTICE

Reconsideration and Appeal Rights are set forth in Chapter 18.56 of the Sumner Municipal Code.