

1 **BEFORE THE HEARING EXAMINER FOR THE CITY OF MONROE**

2 Phil Olbrechts, Hearing Examiner

<p>3 RE: Michael Suschik</p> <p>4 Reasonable Use and Variance</p> <p>5 RU2019-01and VR2019-01</p>	<p>6 <b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</b></p>
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7 **SUMMARY**

8 The Applicant has requested a reasonable use exception and variance to impact 18,000 square feet of a Category III wetland buffer to construct a single-family home at 13290 Chain Lake Road. The variance and reasonable use requests are approved subject to conditions.

9 **ORAL TESTIMONY**

10 *This summary is only provided as a convenience to the reader and does not represent any findings of fact, conclusions of law or suggest any significance as to the inclusion or exclusion of facts and testimony. No assurances are made as to accuracy. Reference should be made to the recording of the hearing for those that need an accurate rendition of hearing testimony.*

11 Amy Bright, Associate Planner, summarized the staff report. Ms. Bright noted that staff had considered two options presented by the Applicant – one with the driveway on the lot going through the wetland buffer and another with the driveway partially off the lot. After peer review of the Applicant’s analysis, staff decided to have the driveway partially off the lot to minimize wetland impacts. Ms. Bright confirmed that reference in the staff report to the size of the home as 7,059 square feet is in error and that the 7,059 square feet is the size of the wetland.

12 Kerrie McArthur, Applicant’s wetland biologist, noted that the wetland impact area created by the proposed single-family home will be 18,000 square feet. This is the amount of wetland that will be created in the wetland mitigation bank for the project. In response to examiner questions, Mr. McArthur noted that the 18,000 square feet of compensatory mitigation in the mitigation bank would be new or expanded wetlands, not wetlands that would already be protected by local wetland regulations. She also confirmed that the subject lot was just lawn and canary grass and that the compensatory mitigation would be for higher functioning wetlands. Consequently, overall, there would be a net benefit as a result of the mitigation for the drainage basin of the project as a whole, since the proposed compensatory mitigation will be located in the same drainage basin as the project.

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**EXHIBITS**

Exhibits 1-13 identified in the “Hearing Examiner Exhibit List” prepared by City staff was entered into the record during the hearing.

**FINDINGS OF FACT**

**Procedural:**

1. Applicant. The applicant is Michael Suschik, 13232 Chain Lake Rd, Monroe, WA 98272.
2. Hearing. The examiner held a hearing on February 27, 2020 at 10:30 am at Monroe City Hall in the Council Chambers.

**Substantive:**

3. Site Proposal/Description. The Applicant has requested a reasonable use exception and variance to impact 18,000 square feet of a Category III wetland buffer to construct a single-family home at 13290 Chain Lake Road. The property is 1.31 acres and contains a category III wetland and associated 80-foot wetland buffer. The property is currently vacant and composed largely of lawn and reed canary grass. 71% of the property is encumbered with the wetland or wetland buffer: the wetland is 7,059 square feet, its 80-foot buffer is 33,459 square feet and the entire size of the lot is 57,064 square feet. As shown in Figure 3 of the wetlands report, only small segregated portions of the lot are not encumbered and the majority of the unencumbered area is in the back of the lot (away from its access road) and cannot be accessed without encroaching into the buffer. The conditions of approval minimize encroachment into the wetland buffer by requiring access to the back of the lot via an easement on an adjoining parcel.
4. Characteristics of the Area. The subject lot is located in a single-family residential neighborhood zoned low density single-family residential and developed on all sides with single-family homes. As shown in page 6 of the staff report, the size of the proposed home is 24% smaller than the average size of surrounding homes. Only one other home from the surrounding ten homes is smaller than that proposed.
5. Adverse Impacts. As mitigated, the proposal will not create any significant adverse impacts. The primary mitigation proposed by the Applicant is 18,000 square feet of buffer credits purchased from either the Snohomish Mitigation Bank or the Skykomish Habitat Bank. These mitigation banks are in the same drainage basin as the project site. As testified by the Applicant’s biologist, the mitigation payment will be used to create new and expanded wetlands with higher function than the lawn and canary grass of the

1 project site. Consequently, the Applicant's biologist was able to conclude that the  
2 proposed mitigation would enhance overall wetland function to the drainage basin.

3 6. Necessity. The need for the reasonable use exception and variance is solely because  
4 of the Class III wetland. As shown in Figure 3 of the critical areas report, there is no  
5 room to place the home outside of the wetland and its buffer.

6 The Applicant also proposes the minimum variance necessary for reasonable use. The  
7 Applicant proposes to place the home in the back of the property (away from its access  
8 road), which is where the majority of unencumbered property is situated. Further, the  
9 conditions of approval require the Applicant to use a private access drive easement that  
10 is mostly off-site to further minimize encroachment into the buffer. The septic drain  
11 field will also be placed off-site within an easement. Finally, the Applicant proposes a  
12 home that is 24% smaller than surrounding homes.

### 13 CONCLUSIONS OF LAW

#### 14 **Procedural:**

15 1. Authority of Hearing Examiner. MMC 22.84.060B provides that the Examiner shall  
16 hold hearings and make final decisions on applications for variances and reasonable  
17 use requests.

#### 18 **Substantive:**

19 2. Zoning and Comprehensive Plan Designation. The project site is zoned low density  
20 single-family residential and its comprehensive plan designation is single-family  
21 residential.

22 3. Review Criteria and Application. Reasonable use criteria are governed by MMC  
23 22.80.050C2 and variance criteria are governed by MMC 22.66.040E. Applicable code  
24 provisions are quoted below in italics and applied through corresponding Conclusions  
25 of Law.

#### 26 **Reasonable Use**

27 **MMC 22.80.050C2a:** *This chapter would otherwise deny all reasonable use of the  
28 property;*

29 4. The criterion is met. As identified in Figure 3 of the critical areas report, 76% of  
30 the project site is encumbered with wetland or wetland buffer and the majority of  
31 unencumbered property is not accessible without encroaching into the wetland or  
32 buffer. For these reasons, it is not possible to build a reasonably sized home on the

1 property. Chapter 22.80 MMC prohibits single-family development in wetlands and  
2 wetland buffers. Since the property is primarily zoned for single-family development  
3 and the wetland and wetland buffers do not make it possible to build a reasonably sized  
4 home, it is concluded that application of Chapter 22.80 MMC will deny all reasonable  
5 use of the property.

6 **MMC 22.80.050C2b:** *There is no other reasonable use consistent with the underlying  
7 zoning of the property that has less impact on the critical area and/or associated buffer;*

8 5. The criterion is met. The zoning district for the subject property is R4 (Single-  
9 Family Residential – 4 units per acre). According to the staff report, an unencumbered  
10 site of this size could yield up to 5 units. There are no other reasonable uses that are  
11 consistent with R4 zoning that would provide a lesser impact on the critical areas and/or  
12 the critical area buffer.

13 **MMC 22.80.050C2c:** *The proposed development does not pose an unreasonable  
14 threat to the public health, safety or welfare on or off the property;*

15 7. The criterion is met. As determined in the Finding of Fact No. 5, the mitigation for  
16 the proposed encroachment will assure no overall significant loss of wetland functions  
17 and represents an improvement over current wetland conditions for the drainage basin.  
18 Further, the proposed development is fully compatible with surrounding development  
19 as it is comprised of a single-family home within a single-family neighborhood. For  
20 these reasons, the proposal does not pose an unreasonable threat to public health, safety  
21 and welfare.

22 **MMC 22.80.050C2d:** *Any alteration is the minimal necessary to allow for reasonable  
23 use of the property;*

24 8. The criterion is met for the reasons identified in Finding of Fact No. 6.

25 **MMC 22.80.050C2e:** *The inability of the applicant to derive reasonable use of the  
property is not the result of actions by the applicant after the effective date of the  
ordinance codified in this chapter or its predecessor; and*

9. The criterion is met. The need for the variance is clearly due to the wetland and its  
buffer.

1 **MMC 22.80.050C2f:** *The applicant may only apply for a reasonable use exception*  
2 *under this subsection if the applicant has also applied for a variance pursuant to*  
3 *Chapter 22.66 MMC, Variances.*

4 10. The criterion is met. A variance application has been submitted and is evaluated  
5 below.

6 **Variance**

7 **MMC 22.66.040E1:** *The variance shall not constitute a grant of special privilege*  
8 *inconsistent with the limitation upon uses of other properties in the vicinity and zoning*  
9 *district in which the property is located;*

10 11. The criterion is met. The Applicant requests to build a single-family home that is  
11 smaller than most of the surrounding homes. Since the property is zoned for single-  
12 family use, the Applicant only requests to use his property in a manner enjoyed and  
13 authorized for all surrounding properties.

14 **MMC 22.66.040E2:** *The variance is necessary because of special circumstances*  
15 *relating to the size, shape, topography, location or surroundings of the subject property*  
16 *to provide it with use rights and privileges permitted to other properties in the vicinity*  
17 *and in the zoning district in which the subject property is located;*

18 12. The criterion is met. The variance is necessary because the size and shape of the  
19 parcel do not make it possible to construct a reasonably sized home -- there isn't enough  
20 unencumbered property to construct a reasonably sized home and the majority of the  
21 unencumbered property can only be accessed by going through the wetland buffer.

22 **MMC 22.66.040E3:** *The granting of such variance will not be materially detrimental*  
23 *to the public welfare or injurious to the property or improvements in the vicinity and*  
24 *zoning district in which the subject property is situated;*

25 13. The criterion is met. As determined in Finding of Fact No. 5, as mitigated the  
proposal will not create any significant adverse impacts.

**MMC 22.66.040E4:** *The variance is the minimum necessary to grant relief to the*  
*applicant;*

14. The criterion is met for the reasons identified in Finding of Fact No. 6.

**MMC 22.66.040E5:** *The strict enforcement of the provisions of this title will create*  
*an unnecessary hardship to the property owner;*

1 15. The criterion is met. For the reasons identified in Finding of Fact No. 3 and 6,  
2 without the variance the Applicant would not be able to build a reasonably sized single-  
3 family home, which would create unnecessary hardship since the impacts of approval  
4 are fully mitigated as determined in Finding of Fact No. 5.

5 **MMC 22.66.040E6:** *The granting of the variance will not alter the character of the*  
6 *land, nor impair the appropriate use or development of adjacent property; and*

7 16. The criterion is met. The development of a single-family residence is consistent  
8 with the underlying zoning and the adjacent land use. Utilizing easements with the  
9 adjacent property owner for driveway and drain field use greatly reduces the impact to  
10 the wetland buffer.

11 **MMC 22.66.040E7:** *The variance is consistent with the policies and provisions of the*  
12 *comprehensive plan and the development regulations.*

13 17. The criterion is met. The project site is zoned low density single-family residential  
14 and its comprehensive plan designation is single-family residential. The proposed  
15 single-family home is consistent with both designations.

## 16 **DECISION**

17 The proposed variance is found to be consistent with all applicable reasonable use and  
18 variance criteria for the reasons identified in the Conclusions of Law above. The  
19 applications are approved subject to the following conditions:

- 20 1. The environmental impacts shall not exceed those identified in the SEPA checklist and  
21 the resulting SEPA Determination of Non-Significance.
- 22 2. Mitigation bank credits shall be purchased after building permits are issued and prior to  
23 occupancy is granted. 18,000 square feet of buffer credits shall be purchased from either  
24 the Snohomish Mitigation Bank or the Skykomish Habitat Bank.
- 25 3. A building permit is required for construction of the single-family residence.
4. An easement shall be recorded with Snohomish County Recorder's office between the  
subject property owner and the adjacent property owner for the septic drain field prior to  
building permit issuance.
5. An easement shall be recorded with Snohomish County Recorder's office between the  
subject property owner and the adjacent property owner for the shared driveway use prior  
to building permit issuance.
6. The disturbance limit line as shown on the footprint site plan (Exhibit 13) delineates  
where all improvements may be constructed.
7. No grading activities or landscaping may take place or be placed outside of these limits,  
except with an approved vegetation or mitigation plan.
8. No structures, including fences and the foundation walls, may be constructed outside of  
these limits.
9. Utilities must be placed within the disturbance limit line or in the driveway access, or use  
alternative methods acceptable to the Public Works Director to bring the utilities through

- 1 the non-disturbance area that do not require open excavation.
- 2 10. The Applicant, contractor and wetland specialist shall attend a pre-construction meeting
- 3 with City staff to discuss expectations and limitations of the project permit prior to the
- 4 start of construction or site improvements.
- 5 11. Lights shall be directed away from the wetland.
- 6 12. Grading around the house shall prevent channelized flor from lawns and dispersed into
- 7 the buffer.
- 8 13. Best management practices shall be used to control the dust during construction.

9 Dated this 5<sup>th</sup> day of March 2020.

10   
11 Phil A. Olbrechts  
12  
13 City of Monroe Hearing Examiner

14 **Appeal Right and Valuation Notices**

15 MMC 22.84.060B provides that the final decision of the Hearing Examiner is subject

16 to appeal to superior court. Appeals of final land use decisions to superior court are

17 governed by the Land Use Petition Act (“LUPA”), Chapter 36.70C RCW. LUPA

18 imposes short appeal deadlines with strict service requirements. Persons wishing to file

19 LUPA appeals should consult with an attorney to ensure that LUPA appeal requirements

20 are correctly followed.

21 Affected property owners may request a change in valuation for property tax purposes

22 notwithstanding any program of revaluation.

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