



CITY OF BLAINE

COMMUNITY DEVELOPMENT SERVICES DEPARTMENT

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## STAFF REPORT and RECOMMENDATION TO HEARING EXAMINER Type II Quasi-Judicial Decision – Variance Application and Critical Area Review

**To:** Hearing Examiner

**From:** Stacy Clauson, Project Planner

**Date of Report:** May 5, 2023

**File:** 2022114 (Critical Area Review) and 2023004 (Variance)

**Hearing Date:** May 22, 2023 at 10:00 am

**and Place:** The hearing will be held in the City Council chambers located at 435 Martin Street, Suite 4000, Blaine, WA 98230.

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### I. INTRODUCTION

**Applicant:** Mark Aho

**File No.:** 2022114 (Critical Area Review) and 2023004 (Variance)

**Site Location:** 1614 Runge Ave, Blaine, WA 98230; Parcel #4001074623700000

**Application:** Variance and Critical Area Review (Reasonable Use Exception)

**Review Process:** Quasi-Judicial, Type II-HE decision: Hearing Examiner shall hold the public hearing and make a decision.

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### III. RECOMMENDATIONS

#### Variance and Critical Area Review Applications

Based on Findings and Conclusions (**Section VI**) and Exhibits in this report, the Community Development Services Department (CDS or “the Department”) recommends that the Hearing Examiner approve the Variance and Critical Area Review Applications for Runge Ave Residence, subject to the following 12 conditions:

#### **General Conditions:**

1. Prior to start of any ground-disturbing activity or construction, the applicant shall obtain appropriate permits, including, but not limited to:
  - a. Residential building permit.
  - b. Utility Request.
  - c. ROW Excavation Permit.
2. This application is subject to the applicable requirements contained in the Blaine Municipal Code, Public Works Design and Engineering Standards and Building and Fire Codes, including but not exclusive to those outlined in Exhibit 17, incorporated by reference herein.
3. Prior to issuance of a building permit(s), the following shall be submitted and approved by Community Development Services:
  - a. Final building permit plans, demonstrating consistency with the applicable Building and Fire Codes.
4. The applicant shall be responsible for complying with any other state or local statutes, ordinance, or regulations applicable to this project.
5. All design and construction of development improvements shall be in conformance with the approved Variance and Critical Area Review Applications.
6. Development fees including but not limited to water, sewer and electrical connections, stormwater mitigation, and impact fees (traffic and fire mitigation) shall be paid prior to issuance of building permits.

#### **Specific Conditions of Approval:**

7. Compliance with Approved Permits and Plans. The approved site plan (Exhibit 8) and mitigation plans completed Northwest Wetlands Consulting LLC, received February 27, 2023 (Exhibit 9) are the official plans for this authorizing work within the wetland buffer. Any proposed modifications to the approved plans will require additional review and approval by the City.
8. Prior to issuance of a building permit, the following items will be required:

- a. Submittal and acceptance of a security device for implementation of the mitigation plan, to be established at 125 percent of the estimated costs for wetland and wetland buffer enhancement, maintenance and monitoring. This performance security may be released and replaced with a security for maintenance and monitoring after successful completion of the mitigation plan and acceptance of the as-built report.
- b. Dedicate a Conservation Easement encompassing the wetland and wetland buffer enhancement areas on the site. The boundaries of the Conservation Easement shall be consistent with the site plan in Exhibit 8. The easement shall be recorded with the Whatcom County Auditor's Office. Prior to recording, the easement language shall be accepted by the Critical Areas Administrator.
- c. Improvements shall be designed and constructed in accordance with the city's development guidelines and public works standards and the appropriate utility comprehensive plans. All water, sewer, gas, electric, and other utility services shall be located underground. Submit a revised site plan addressing the conditions in Exhibit 17, including but not limit to the following:
  - i. Depict utility connections, including:
    - 1. Water service from the existing main in Runge Avenue;
    - 2. Sanitary sewer service from the existing lateral located approximately 50 feet east of the existing manhole near the Runge/Haws intersection, or if this is not present or available, via a new sanitary sewer service tap at the main;
    - 3. Secondary power service.
  - ii. Restoration of the storm water conveyance ditch in Runge Avenue to support positive drainage, with stormwater from the site directed to this ditch after re-establishment and grading;
  - iii. Reduction of the proposed curb cut along Runge Avenue to a maximum of 12 feet, with the curb cut access design to be consistent with WSDOT Standard Plan F-80.10-04 Cement Concrete Driveway Entrance, and slopes to meet ADA standards;
  - iv. Surfacing of the driveway in concrete or other surface approved by the Public Works Department; and
  - v. Location of proposed mailbox.
- d. Utility fees. The applicant shall submit and obtain the issuance of a Utility Request application. The Utility Request is subject to review and approval by the Public Works Director. Prior to final approval of a Utility Request, the owner or their agent shall pay applicable fees and charges in full along with any deposits or other required monetary obligations set forth in the Unified Fee Schedule and the Blaine Municipal Code. Once

the Utility Request is issued and all applicable fees and charges have been paid in full, the property owner gains the right to establish connection to the system and has the right to receive sewer service in common with other customers of the utility.

9. Prior to start of construction, the applicant shall install temporary erosion and sedimentation control measures to protect the wetland and buffer area located outside of the approved disturbance area during construction activities. The measures shall be inspected and accepted by the Public Works and Community Development Services Department prior to start of work.
10. During construction, the following standards shall apply:
  - e. The applicant shall ensure that no development or fill activity occur within the wetland or protected buffer area, except as necessary to implement the approved mitigation plan contained in Exhibit 9.
  - f. The applicant shall implement the approved mitigation plan contained in Exhibit 9.
  - g. The following Inadvertent Discovery Plan (IDP) shall be maintained on-site and followed should archaeological resources or human remains be encountered:

**Inadvertent Discovery of Archaeological Resources:**

Should archaeological resources (e.g. shell midden, animal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Stephanie Jolivette, Local Government Archaeologist 360-628-2755) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-961-7752; Tamela Smart, Deputy THPO 360-927-2944) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.

**Inadvertent Discovery of Human Skeletal Remains on Non-Federal and Non-Tribal Land in the State of Washington (RCWs 68.50.645, 27.44.055, and 68.60.055)**

"If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future

preservation, excavation, and disposition of the remains" (DAHP).

11. Prior to final inspection, the following required improvements shall be completed and inspected by Community Development Services:

- h. The wetland mitigation plan prepared by Northwest Wetlands Consulting Inc. received February 27, 2023 (Exhibit 9) shall be completed, and the as-built plan shall be submitted and pass a final inspection by Community Development Services.
- i. The applicant shall install Native Growth Protection Area (NGPA) signs and a split-rail fence, as depicted on Exhibit 8.
- j. Submittal and acceptance of a security device for implementation of the monitoring and maintenance, to be established at 125 percent of the estimated costs for wetland and wetland buffer enhancement, maintenance and monitoring.
- k. Required work in the City right-of-way and or on City utilities and infrastructure detailed in Exhibit 17 and per any conditions as outlined in an approved Right-of-Way Excavation Permit, shall be completed and accepted by the Public Works Department and other agencies with jurisdiction.

12. Prior to release of the performance security for the maintenance and monitoring work, the applicant shall submit monitoring reports and demonstrate consistency with the performance standards contained in the mitigation plan prepared by Northwest Wetlands Consulting Inc. received February 27, 2023 (Exhibit 9). This includes:

- l. Submittal and acceptance of monitoring reports on Years 1, 2, 3, and 5 by December 31<sup>st</sup> of each monitoring year by a qualified wetland professional.
- m. Consistency with the performance standards 1a, 1b, and 1c, as detailed in Exhibit 9.
- n. If consistency is not obtained, the applicant is responsible for implementation of the contingency plans identified in Exhibit 9.

#### **IV. PROJECT DESCRIPTION AND REQUEST**

Variance and Critical Area Review request to authorize placement of a modular single-family residence on a site containing a Category III wetland and associated buffer. The proposal includes the following requests: 1) A proposal for a Reasonable Use Exception under BMC 17.82.140 to authorize construction of the residence within wetland buffer areas and a reduction of the building setback from the reduced wetland buffer from 10-feet to 5-feet, and 2) A Variance under BMC 17.06.170 for the following: a) Reduction in the Residential-Low Zoning District front yard setback from 25-feet to 10-feet; b) Reduction in the side yard setback from 8-feet to 5-feet along east property line; and c) Reduction in the required parking stalls from 2 stalls to one stall. A wetland mitigation plan has been submitted with the request.

#### **A. GENERAL INFORMATION**

1. Applicant: Mark Aho

2. Primary Contact: Mark Aho
3. Property Owners: MARK G & RENEE G AHO
4. Property Location: 1614 Runge Ave, Blaine, WA 98230 (**Exhibit 20**).
5. Assessor Parcel Number (APN): Parcel #4001074623700000
6. Zoning: Residential Low-Density Zoning District (**Exhibit 20**)
7. Geographic Subarea: Central Blaine.
8. Total Area: 8,174 square feet, per the [Stebner’s Replat](#) (**Exhibit 21**)
9. Existing Improvements: The site is currently vacant (**Exhibit 20**).
10. Topography: A large upland stockpile degraded with invasive Himalayan blackberry (*Rubus armeniacus*) is located along the eastern boundary of the parcel (see photos in **Exhibit 9**) The remainder of on-site topography is generally level, with small variations in elevation throughout (**Exhibit 9**)
11. Vegetation: The parcel is undeveloped and forested with deciduous trees and shrubs. (**Exhibit 9**)
12. Public Services:

Water:	City of Blaine	Fire:	Fire District #21
Sewer:	City of Blaine	Police:	City of Blaine
Storm Water:	City of Blaine	Electricity:	City of Blaine

13. Comprehensive Plan Land Use Designations, Zoning Classifications and Existing Land Uses of the Site and Surrounding Area:

AREA	LAND USE DESIGNATION	ZONING	EXISTING USE
Project Site	RES 4-6 – Residential Single-Family	Residential Low	Vacant
North of Site	RES 4-6 – Residential Single-Family	Residential Low	<a href="#">Tract B of the plat of Drayton Reach, Division I.</a> identified as containing a wetland and associated buffer over a portion of the Tract
South of Site	RES 4-6 – Residential Single-Family	Residential Low	Runge Avenue and recently constructed single-family residence

East of Site	COM – Commercial	Planned Commercial	Fourplex
West of Site	RES 4-6 – Residential Single-Family	Residential Low	Vacant

14. Zoning and Transportation:

The site is located within the Residential Low Zoning District that is part of Central Blaine. This Zoning District is situated between Peace Portal Drive and the Drayton Harbor shoreline and Dakota Creek. This site is located at the transition from the Planned Commercial zone, which is located to the east of the site.

The purpose of the Residential-Low Zoning District is to maintain and create an environment which meets the needs for single-family detached residential housing, with small accessory dwellings, by restricting uses within the district and by establishing a minimum lot size and a maximum density.

Runge Avenue is identified as a Local Collector, which is described in the Transportation Element of the Comprehensive Plan as roads that collect and distribute traffic between neighborhoods, business areas, and the rest of the arterial system. They provide for easy and direct access to abutting properties and carry low to moderate volumes of traffic.

15. Date of Application: December 14, 2022 (initial) (**Exhibits 1-2**); January 10, 2023 (resubmittal of additional information) (**Exhibits 2-3**); January 11, 2023 (payment of application fees) (**Exhibit 4**); February 23, 2023 (**Exhibits 5-7**); and February 27, 2023 (**Exhibits 8-9**).

16. Determination of Completion: February 27, 2023 (**Exhibit 10**)

17. Notice Information:

a. Notice of Application (**Exhibit 11**):

- Publication: March 8, 2023 (**Exhibit 13**)
- Mailing: March 1, 2023 (**Exhibit 12 and 14**)
- Posting: March 2, 2023 (**Exhibit 15**)
- Comment Period Ending: March 22, 2023

b. Notice of SEPA determination: Exempt, dated March 16, 2023 (**Exhibit 19**)

c. Notice of Hearing:

- Publication: May 5, 2023 (**Exhibit 23**)
- Mailing: May 5, 2023 (**Exhibit 24**)
- Posting: May 5, 2023 (**Exhibit 25**)



## V. BACKGROUND

The subject property was platted as Lot 1 of [Stebner's Replat](#), recorded in September 1996 (Exhibit 21). No encumbrances are shown on the face of the recorded plat.

The subject property is located south of [Tract B of the plat of Drayton Reach, Division I](#), which was recorded in January 2008. The recorded plat identified a wetland and associated buffer over a portion of the Tract. The wetland and wetland area buffer were shown on the recorded map as terminating at the joint property line.

The property was purchased by Mark and Renee Aho in August 2020.

## VI. ANALYSIS <sup>1</sup>

### A. APPLICATION PROCESS

1. The city received the Critical Area Review application on December 14, 2022 (initial) (**Exhibits 1-2**); the Variance application, as well as some additional information on January 10, 2023; (**Exhibits 2-3**); payment of fees on January 11, 2023 (**Exhibit 4**); submittal of building plans and specifications on February 23, 2023 (**Exhibit 5-7**); and submittal of the final, revised wetland report and site plan on February 27, 2023 (**Exhibits 8-9**). The materials reviewed for consistency with the applicable criteria include:

1 - [Land Use Master Invoice](#)

2 - [Variance Application Form](#)

3 - [Critical Area Review Application Form](#)

4 - [Site Plan](#)

5 - [Wetland Mitigation Plan and Reasonable Use Exception Consistency Analysis](#)

6 - [Building Floor Plans](#)

7 - [Building Elevation Drawings](#)

8 - [Construction Specifications](#)

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<sup>1</sup> Project analysis includes CDS findings and conclusions based on a review of current materials applicable to the project.

2. BMC [17.06.170](#) and [17.82.140](#) describe what constitutes a complete application for a Variance and Reasonable Use Exception Application.
3. The city issued a Notice of Complete Application on February 27, 2023 (**Exhibit 10**).
4. Per BMC [17.02.050.B.1.d](#), the Hearing Examiner has the power and duty to authorize a Variance application. Pursuant to [BMC 17.82.140.A](#), the Hearing Examiner has the authority to authorize a Reasonable Use Exception.
5. Pursuant to BMC [17.02.050.B.1.d](#), [17.06.170.D.2](#), [17.82.140.A](#) and [17.06.040.A.2](#), notice of hearing is required and the Hearing Examiner is required to hold an open record hearing addressing the Variance Application and Reasonable Use Application requests.
6. An open public record hearing is scheduled before the Hearing Examiner on May 22, 2023 at 1:30 PM (**Exhibit 22**).

**CONCLUSION: The application is being processed in accordance with the procedural requirements for Type II-HE applications established in Chapter 17.02, 17.06, and 17.82 of the BMC.**

#### **B. PUBLIC NOTICE AND COMMENT**

1. Notice of Application and Hearing (**Exhibit 11-15 and 22-25**):
  - a. The applicant published a Notice of Application per BMC 17.06.100 and .110 in the Bellingham Herald; mailed it to property owners within 300 feet of the site; and posted it on the subject property on or before March 8, 2023 (**Exhibits 12-15**).
  - b. Subsequently, the Department issued a Notice of Public Hearing per BMC 17.06.110 in the Bellingham Herald; mailed it to property owners within 300 feet of the site; and posted it on the subject property on or before May 9, 2023 (**Exhibits 22-25**).
2. As of the issuance of this staff report, no public comments have been received.

**CONCLUSION: The application meets the noticing requirements for Type II applications established in BMC Chapter 17.06.**

#### **C. ENVIRONMENTAL REVIEW AND CRITICAL AREAS ANALYSIS**

1. The city acted as lead agency and determined that the project is categorically exempt from SEPA as a land use decision per BMC 17.80.140.C. (**Exhibit 19**).
2. Per BMC 17.80.040, a SEPA checklist is not required to process the subject Variance or Critical Area Review application.
3. According to the City's [Critical Area Maps](#), the property to the north of the site contains a Category 3 wetland (**Exhibit 20**). This wetland system was previously investigated as

part of the Drayton Reach, Division 1 plat, which established a Tract with a conservation area protecting the wetland and its associated buffer, which was recorded in 2008.

4. The applicant, Mark Aho, retained a wetland specialist to conduct a wetland determination for the site in January/February 2021 (**Appendix A of Exhibit 9**). This investigation determined that the wetland to the north had increased in size, and now substantially encumbered the subject property. The wetland that extends onto the site is depicted as approximately 5,000 square feet in size, and was rated as a Category III with a Low Habitat rating, requiring a wetland buffer of 50-feet per BMC 17.82.340.B.<sup>2</sup> Based on these findings, the entire site is comprised either of wetland or wetland buffer.
5. Regulated activities are prohibited a Category III wetland and its standard buffer, except as indicated in BMC [17.82.100](#) through [17.82.150](#) and [17.82.350](#). The applicant is proposing placement of a modular home within the inner portion of the wetland buffer, which is not eligible for a buffer averaging or reduction under BMC 17.82.340.D. Due to the extent of encumbrance on the property, the applicant is seeking a Reasonable Use Exception under BMC 17.82.140.
6. BMC 17.82.280 specifies long-term protection measures, including a building setback line, signage, fencing, notice on title, protective covenant, and granting of ingress and egress for monitoring and compliance evaluation. The building setback provisions established in BMC 17.82.280.A specify a building setback line of 10-feet, and authorize certain activities, including an uncovered deck, utilities and impervious surfaces that meet water quality standards, within this setback area, as permitted under BMC 17.82.280.A.2.c. The applicant has proposed an uncovered deck, parking pad, and utilities to extend up to the wetland buffer edge. Additionally, the applicant has requested a reduction in the typical 10-foot buffer setback along a portion of the wetland edge, to a minimum of 5-feet at the northwestern corner of the proposed residence. This item is being considered as part of the Reasonable Use Exception under BMC 17.82.140.

**CONCLUSION: The application meets the SEPA standards of the Chapter 17.80 BMC and Chapter 197-11 WAC. As conditioned, the proposal will meet the long-term protective**

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<sup>2</sup> In 2014, the Washington State Department of Ecology updated the Washington State Wetland Rating Systems for Western Washington, which have not been incorporated into the table provided in BMC 17.82.340.B. Under the new system, a Habitat Score of 3-5 would rate as a low level of function for wildlife habitat, whereas in the 2004 system, this would be a score of 19. This change is further described on the Department of Ecology website: <https://ecology.wa.gov/Water-Shorelines/Wetlands/Tools-resources/Rating-systems> The Wetland Rating sheet indicates that the wetland has a habitat score of 4, which means that the wetland has a low level of function for wildlife habitat under BMC 17.82.340.B. A Category III wetland with a low level of function for wildlife habitat requires a 50-foot buffer.

measures contained in BMC 17.82.280. The applicant is seeking a Reasonable Use Exception under BMC 17.82.140, which is addressed under Section E below.

#### D. LAND USE AND ZONING

##### 1. Residential Low Development Standards

The proposed project site is in the Residential Low Zoning District, and the standards for development in this zone are established in BMC [17.34](#). A single-family residence is a permitted use in this zoning district (BMC 17.34.020). Staff's analysis of the applicable standards are contained in **Exhibit 18**.

**CONCLUSION: The proposal, except as requested to be varied under the Variance provisions in BMC 17.06.170, is consistent with the development standards for the Residential Low Zoning District zoning district contained in BMC 17.34 and the applicable development standards.**

#### E. REASONABLE USE EXCEPTION CRITERIA

The following section describes the request against the Reasonable Use Exception permit criteria contained in BMC 17.82.140.E. The applicant has addressed these criteria in **Exhibit 9 (see pages 18-19)**.

1. The application of this chapter would deny all reasonable and economically viable use of the property.

**Discussion:** *Per Section C above, all of the subject property is encumbered by the on-site wetland and wetland buffers. A modification to the wetland buffer through buffer averaging or buffer width reduction as allowed under BMC 17.82.340.D would not provide any available buildable area on the lot. As a result, without further encroachment into the wetland or wetland buffer through a Reasonable Use Exception, the applicant would be denied reasonable and economically viable use of the property.*

2. There is no other feasible and economically viable alternative use of the property with less of an impact on the critical area(s) and/or the critical area buffers than the proposed use. Feasible alternatives to be evaluated by the hearing examiner may include, but are not limited to:
  - i. Change in use;
  - ii. Reduction in size of use;
  - iii. Change in timing of activity; and
  - iv. Revision of project design.

**Discussion:** *The site is located in an area planned for single-family development, and the primary permitted use in the Residential Low Zoning District (BMC 17.34) is a single-family residence, or associated appurtenances. As a result, there are no other primary permitted*

uses that would have lesser impact to the critical area. As noted above, there is no buildable area available on the site without encroachment into the wetland or wetland buffer beyond what is authorized under the provisions for buffer averaging or reduction under BMC 17.82.340.D.

In addition, the applicant has proposed to place a modular single-family home on the subject property consisting of a 456 square foot building footprint, which is smaller in footprint than other existing single-family dwellings in the vicinity (300 feet) which have an average of 1,300 square foot building footprints (inclusive of garages). The applicant has also sought reductions in other setbacks (required front and side yards) and the parking standard in order to minimize the impacts to the wetland. As such, staff recommends that there are no feasible alternatives with less of an impact to the critical area.

3. The proposed impact to the critical area is the minimum impact necessary to allow for reasonable and economically viable use of the property.

**Discussion:** As noted in the applicant’s narrative, the proposal avoids any direct impact to the critical area<sup>3</sup>, but there is an indirect impact from the work proposed in the wetland buffer area<sup>4</sup>. Staff recommends that this impact is the minimum necessary to allow for reasonable and economically viable use of the property. As noted above, the proposed building footprint is smaller than other existing single-family dwellings in the vicinity. In addition, the applicant is preserving a significantly larger portion of the property as open space. The subject property contains 8,174 square feet of area, and the total proposed area of disturbance is 1,588 square feet, inclusive of the proposed building, parking, deck and setback yards. This comprises less than 20 percent of the lot, with the other 80 percent of the lot preserved as wetland and wetland buffer area. This open space area is substantially larger than the typical open space required in the Residential-Low Zoning District, which is a minimum of 40 percent of the lot area.

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<sup>3</sup> As defined in BMC 17.82.540, “Critical areas” means the following areas as required by Chapter [36.70A](#) RCW and WAC [365-190-080](#), and as defined and regulated in this chapter: wetlands, geologically hazardous areas, frequently flooded areas, fish and wildlife habitat conservation areas, and aquifer recharge areas.

<sup>4</sup> Under the Wetland Mitigation in Washington State Part 1: Agency Policies and Guidance ([Publication 21-06-003](#)), indirect impacts are “adverse effects on wetlands that occur outside the footprint of direct impacts” (page 43) and include activities outside of a wetland that affect how it functions, such as a residential development adjacent to a wetland that results in reduced hydrologic, water quality, or habitat functions.

4. The proposal is limited to the minimum encroachment into the critical area and/or its buffer necessary to prevent the denial of all reasonable and economically viable use of the property.

**Discussion:** *The on-site wetland is located generally on the western two-thirds of the property, and the wetland buffer area encompasses the remainder of the property. The applicant has focused development in the narrow buffer area, in particular in the southeastern portion of the site in order to minimize impacts to the wetland and to preserve a buffer area in the northeastern corner of the site, which is close to the edge of an off-site wetland. In addition, the applicant has proposed a modification to the buffer setback, to the front setback from Runge Ave and reduction in the amount of parking stalls (see Section II.F below) in order to locate the building and parking further south and as far away from the critical area as possible.*

*In addition, the applicant's wetland consultant has stepped through mitigation sequencing (Exhibit 9, page 10), demonstrating the steps taken to avoid, minimize, rectify, reduce and compensate for unavoidable impacts.*

5. The proposed action will result in minimal alteration of existing contours, with a minimum impact on vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions.

**Discussion:** *As noted previously, the proposal avoids direct impact to the wetland, and activity is focused on the narrow area of wetland buffer on the site. The applicant has submitted an analysis of current buffer conditions (Exhibit 9, page 10). Per the analysis of current buffer conditions, the wetland on the site has limited or reduced water quality, hydrological and habitat functions. Further, the wetland is currently indirectly impacted by surrounding existing development, including multifamily development located to the east and development to the west and north (Exhibit 9, map on page 8). The wetland buffer contains invasive species and leftover fill material, and therefore its ability to protect and maintain expected functions at the site from adjacent land uses is currently compromised.*

*The applicant's wetland consultant has evaluated the indirect impacts to the wetland that may result from the proposal (Exhibit 9, page 8), including shading, water quality, wildlife corridor, and hydrology. The analysis concludes:*

- *Adverse shading impacts are not anticipated due to the size of the proposed construction;*
- *No loss of water quality function is anticipated;*
- *Wildlife corridors will not be disrupted due to the location of the development near the roadway;*
- *The hydrologic function of the wetland will experience no net loss.*

*In addition, the applicant's wetland consultant has stepped through mitigation sequencing (Exhibit 9, page 10), demonstrating the steps taken to avoid, minimize, rectify, reduce and compensate for unavoidable impacts.*

6. The proposal will result in no net loss of the critical area's functions and values consistent with the best available science. In order to satisfy this criteria, the proposal shall include a mitigation plan developed as part of a critical area detailed study that is based upon the best available science to assure that any impact to the critical area and its buffer is mitigated consistent with the requirements of BMC [17.82.360](#), [17.82.430](#), [17.82.480](#) or [17.82.510](#) such that there is no net loss to the functions and values of the affected critical area(s) and to mitigate for unavoidable impacts. Such mitigation measures may occur on-site or off-site where necessary to ensure that the measures are capable of being implemented to achieve their purpose as established in the critical area detailed study approved by the administrator.

**Discussion:** *The applicant has submitted a plan for enhancement of a portion of the wetland and the remaining buffer on the east side of the wetland (see Exhibit 9). The goal for the mitigation plan is to improve woody canopy coverage in the watershed in order to better capture precipitation during the wet season, resulting in hydrological mitigation, and establish a more diverse plant community, resulting in habitat mitigation. The 1,588 square foot of impact area in the buffer is proposed to be offset by 1,129 of wetland buffer mitigation (e.g., invasive plant removal and replanting), together with an additional 2,961 square feet of enhancement of the wetland.*

*Direct impacts to wetlands require compensatory mitigation as outlined in BMC 17.82.360.C. In this case, there is no direct impact to the wetland; rather, the impact is indirect, occurring outside of a wetland in a manner that affects how the wetland will function. Typically, wetland buffer impacts in the outer 25 percent of the wetland as authorized under BMC 17.82.340.D are compensated for at a 1:1 ratio. In this case, since the buffer impact is located closer to the wetland and the functions of the wetland may be more impacted, there is need for greater mitigation than the typical 1:1 ratio. In this case, the applicant has proposed approximately a 2.5:1 mitigation ratio, which is closer to the 3:1 ratio for direct impacts to a Category III wetland identified in BMC 17.82.360.C. The mitigation is located in close proximity to the area of impact to provide the greatest opportunity to offset impacts.*

*The proposal includes a plan for monitoring the success of the mitigation plan, as well as long-term protective measures, including use of setbacks from the wetland buffer edge, installation of protective fencing and wetland signage, creation of a Conservation Easement or Covenant on the property (Exhibit 9).*

7. The proposal is otherwise consistent with the purpose and intent of this chapter.

**Discussion:** *As discussed in sections above, the proposal balances the need to protect the functions and values of the wetlands, while allowing for economically beneficial and productive use of the property, which is consistent with the purpose and intent of the City Critical Area Regulations, pursuant to BMC 17.82.010.A.*

8. The proposed development does not pose a threat to public health and safety.

**Discussion:** *The applicant's proposal includes placement of a modular single-family home, which is a permitted use in the Residential-Low Zoning District. The City's Building Division will review the building permit application for compliance with building and life/safety codes during the building permit review.*

9. The proposed activity will not result in unmitigated adverse effects to species listed as threatened or endangered by the federal government or the state of Washington.

**Discussion:** *Based on both field observations and review of information materials provided by the Department of Fish and Wildlife, the applicant's consultants concluded that no threatened, endangered, or candidate species or associated habitats (other than the wetland) have been identified within the review area or immediate vicinity (Exhibit 9, page 38 and 83)*

10. The proposed activity complies with all other federal, state, and local laws, including those related to erosion and sediment control.

**Discussion:** *Project construction is required to comply with the City of Blaine Public Works Standard Guidelines and must meet the Washington State Department of Ecology's Stormwater Management Manual for Western Washington (SWMMWW-Current Edition), as further addressed in the Public Works Department review and recommended conditions for development (Exhibit 17).*

11. The inability to derive reasonable economic use of the property is not the result of the actions of the applicant or the segregating or dividing of the property after the effective date of the ordinance codified in this chapter.

**Discussion:** *The subject property was created as Lot 1 of [Stebner's Replat](#) (Exhibit 21), recorded with Whatcom County on September 9, 1996. This predates the adoption of Chapter 17.82 BMC, which was adopted by the City Council as Ordinance 09-2729 on July 27, 2009.*



**CONCLUSION:** Subject to the recommended Conditions of Approval, the proposal complies with the Reasonable Use Exception criteria, and a Critical Area Permit should be granted by the Hearing Examiner consistent with the recommended conditions. The applicant has limited the size of the proposed structure and parking pad and located the proposed improvements on the portion of the property furthest from the critical areas in order to limit the impact to the adjacent wetland. There are no further feasible alternatives to the proposed modular single-family dwelling on the subject property that would allow a reasonable economic use with less adverse impacts to the critical area and buffer.

**F. VARIANCE DECISION CRITERIA**

The proposed project site is located in the Residential Low Zoning District, and the standards for development in this zone are established in BMC 17.34. The following section F.1 describes the development standards that are proposed to be varied, while Section F.2 analyzes the request against the Variance permit criteria. The applicant has addressed these criteria in **Exhibit 3**.

1. Proposed Development Standards to be Varied:

- a. Pursuant to BMC 17.34.040, the following setback standards apply to the proposed building:

PROPERTY LINE	SETBACK	APPLIES TO
<i>Building</i>		
Front	25 feet	Runge Avenue
Side (interior)	8 feet	East and west property lines
Rear	30 feet	North property line

**Discussion:** *The proposal varies from the required setback standards as follows:*

- *Building:*
  - *Proposed 10’ minimum setback along Runge Avenue, requiring review as a variance.*
  - *Proposed 5’ minimum setback along the east property line, requiring review as a variance.*

*The proposal also varies from the standard parking requirement, proposing 1 stall instead of the two stalls typically required.*

2. Variance Approval Criteria. BMC 17.06.170.B establishes the following requirements for approving a variance application:

- a. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district.

**Discussion:** As detailed in Section E above, the entire site is comprised either of wetland or wetland buffer. In order to create a reasonable area for development, the applicant has proposed to reduce the front yard setback by up to 60% (from 25 feet to 10 feet), the side yard setback along the east property line approximately 38% (from 8 to 5 feet) and to reduce the number of parking spaces provided by half (from 2 to 1 parking spaces). The total encumbrance of the property by wetland and critical area is a special condition that is not applicable to other lands in the Residential Low Zoning District.

- b. That literal interpretation of the provisions of this division would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this division;

**Discussion:** Unless relief is provided, the lot would not be buildable, depriving the applicant of property rights that other properties in the Residential Low Zoning District enjoy. The applicant has attempted to balance the need for buffer reduction with the proposed setback reduction. If the proposed residence was shifted to the north, the area available for wetland buffer mitigation would be reduced.

- c. That the special conditions and circumstances do not result from the actions of the applicant.

**Discussion:** The applicant purchased the site in August 2020. At the time, no wetland reconnaissance or delineation of the property that had been completed. The documents on file regarding the wetland were related to the property to the north of the site, and the wetland buffer was shown on the face of the plat as being contained on that property (see Tract B of the [Drayton Reach, Division 1 Plat](#)). The City's [Critical Area Maps](#) similarly identified the wetland on the north of the site. Only after the purchase of the property did the owner have a wetland consultant review the site, at which point it was determined that the property was encumbered by wetlands.

- d. That granting the variance requested will not confer on the applicant any special privilege that is denied by this division to the other lands, structures or buildings in the same district.

**Discussion:** As noted above, given the extent of encumbrance by the wetland and its associated buffer, providing relief from the both the critical area and bulk

*and dimensional standards in the Residential Low zone would not provide any special privilege, but is intended to provide for reasonable use of the property.*

BMC 17.06.170.D further establishes the following requirements for approving a variance application:

- e. The hearing examiner shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.

**Discussion:** *As noted above, given the extent of encumbrance by the wetland and its associated buffer, providing relief from both the critical area and bulk and dimensional standards in the Residential Low zone is intended to provide for reasonable use of the property.*

- f. The hearing examiner shall further make a finding that the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

**Discussion:** *Runge Ave is identified as a Local Collector, which typically has a right-of-way width of 60-feet. The current right-of-way is 70 feet in width, so there is excess right-of-way that will help to separate the building from the sidewalk and street. The building is also small in height and length along the right-of-way, minimizing the impact of the proposed encroachment along the street.*

*The property is located in an area of transition along Runge Ave, with the Planned Commercial site located to the east of the property. In this zone, properties smaller than 5 acres in size use the setback standards for the Highway Commercial, Subzone A, which establishes a minimum building setback of 15 feet from the front property line under BMC 17.24.060. This setback has been incorporated into the design of neighboring properties to the east, which are each developed as two-story fourplex buildings, as follows:*

<b>Address</b>	<b>Approved Front Building Setback<sup>5</sup></b>
<b>1660 Runge Ave</b>	<b>15 feet</b>
<b>1650 Runge Ave</b>	<b>20 feet</b>
<b>1640 Runge Ave</b>	<b>20 feet</b>

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<sup>5</sup> Information from approved Site Plans on file with the City of Blaine.

*The proposal, while it will situate the building closer than these neighboring properties, is smaller in scale and should not pose an impact on the neighborhood.*

*According to information contained on the building permit, the property directly to the east of the site is setback 15-feet from the shared property line, allowing for a minimum separation between the buildings of 20-feet, minimizing impacts between the properties.*

*With respect to the proposed reduction in parking, Runge Ave is designed to accommodate on-street parking for guests. Given the building size and layout and availability of on-street parking, a reduction of one parking stall should not pose an impact to the neighborhood.*

**CONCLUSION: Subject to the recommended Conditions of Approval, the proposed use complies with the variance criteria, and a Variance Permit should be granted by the Hearing Examiner consistent with the recommended conditions.**

#### **G. PUBLIC UTILITIES AND SERVICES**

1. *Fire Protection.* The Deputy Fire Marshal has reviewed the proposal and has indicated that there are no findings against this project (**Exhibit 16**).
2. *Water, Sewer, Stormwater, Electricity, and Transportation.* The Public Works Department has evaluated the proposal and has determined that, subject to conditions, this site will be adequately served by public facilities (**Exhibit 17**). Exhibit 17 contains a number of conditions of approval, which are incorporated herein.

**CONCLUSION: CDS has coordinated with other departments and agencies that may have regulatory authority of the application, pursuant to BMC 17.06.130.B.2. If the Variance and Reasonable Use Exception are approved, the project shall comply with the applicable requirements contained in the Blaine Municipal Code, Public Works Design and Engineering Standards and Building and Fire Codes.**

#### **H. TRANSPORTATION CONCURRENCY AND TRAFFIC IMPACT FEES**

1. Traffic Concurrency.
  - a. Pursuant to BMC 17.05.020, projects that propose to generate more than 50 trips per peak hour must be reviewed for transportation concurrency.

- b. According to the trip generation rates typical of a detached single family residence (Land Use Code 210), as specified by the Institute of Traffic Engineers (ITE) manual, 11<sup>th</sup> edition, the project is estimated to generate approximately 0.99 PM peak hour trips.
- c. The project, therefore, does not trigger the requirements for concurrency certification.

2. Traffic Impact Fees.

- a. The applicant will be responsible for payment of traffic impact fees at the time of building permit issuance.
- b. Based on the estimated increase in total PM peak hour trips, the estimated traffic impact fee is \$2,475.

**VII. APPEALS**

Pursuant to BMC [17.06.180.B](#), Type II final decisions made by the Hearing Examiner shall be final and conclusive unless a timely judicial appeal is filed with the superior court of Whatcom County pursuant to BMC [17.06.190](#).

**VIII. LAPSE OF APPROVAL**

Variance

- A. Pursuant to BMC 17.06.170.F, in granting any variance, the Hearing Examiner shall set the expiration date at 12 months from issuance. If establishment or construction of the variance conditions has not commenced within this 12-month period, the applicant may reapply for a new variance permit. The Hearing Examiner may extend the expiration date by one six-month period upon written request and evidence that the applicant intends to activate the permit within that time limit.

Critical Area Review

- B. Pursuant to BMC 17.82.250.D, when issued in conjunction with a building or development permit, a final critical areas determination shall become void at the time that the associated building or development permit is invalidated.

**IX. EXHIBITS**

Distributed to the Following Parties: