



11930 Cyrus Way  
Mukilteo, WA 98275  
(425) 263-8000

## Notice of Decision

### **Kakar Single-Family Residence Reasonable Use and Variance** 9180 63<sup>rd</sup> Place West

The City of Mukilteo has issued a Notice of Decision for a Reasonable Use and Variance as required by Regulatory Reform Act (RCW 36.70B.130) and Mukilteo Municipal Code (MMC 17.13.080), and has GRANTED the following project:

**Project Name:** Kakar Single-Family Residence Reasonable Use and Variance

**Proponent:** Jesse Jarrell, on the behalf of Mahmood Kakar

**Project Number:** SFR-RUP-HE -2019-001

**Description of Proposal:** Reasonable Use and Variance for the construction of a new single-family residence with a detached garage including associated grading, parking, landscaping, and street frontage improvements on approximately 1.4 acres consisting mainly of steep slopes. The property is zoned Single-Family Residential 12.5. Total permanent disturbance area estimated at around 7,000 s.f. with a reduction in the required critical areas and zoning setbacks.

**Project Location:** 9180 63<sup>rd</sup> Place West

<b>Project Decision:</b>	Granted
<b>Notice of Decision Date:</b>	Wednesday, November 20, 2019
<b>End of Appeal Date:</b>	Wednesday, December 11, 2019 (4:30 PM)
<b>Project Expiration Date:</b>	November 20, 2021

**Project Decision**

A public hearing was held before the Hearing Examiner on October 30, 2019, for a Reasonable Use Permit and Variance Application. After considering comments by the public, City staff, and outside agencies, the Hearing Examiner granted the project with conditions based on and subject to the attached Findings of Fact, Conclusions and Decision.

The Reasonable Use Permit and Variance shall be valid for two (2) years from the date of this Notice of Decision. If a building permit, as permitted by the Reasonable Use Permit and Variance, is not obtained within this period, the project permit shall become null and void, and a new Reasonable Use Permit and Variance will be required.

Any violation of the Conditions of Approval shall be considered a violation of the project permit and shall be subject to the City’s code enforcement procedures.

**Appeals**

An appeal of this decision must be filed by a Party of Record within 21 calendar days from issuance of this Notice of Decision. Only parties of record may initiate an administrative appeal of a land use development permit application. Parties of record include the applicant, any person who testified at the open record hearing on the application (if a public hearing was held), and/or any person who submitted written comments concerning the application (excluding persons who have only signed petitions or mechanically produced form letters). Appeals must be delivered to Snohomish County Superior Court by **Wednesday, December 11, 2019** at 3000 Rockefeller Ave., Everett, WA 98201.

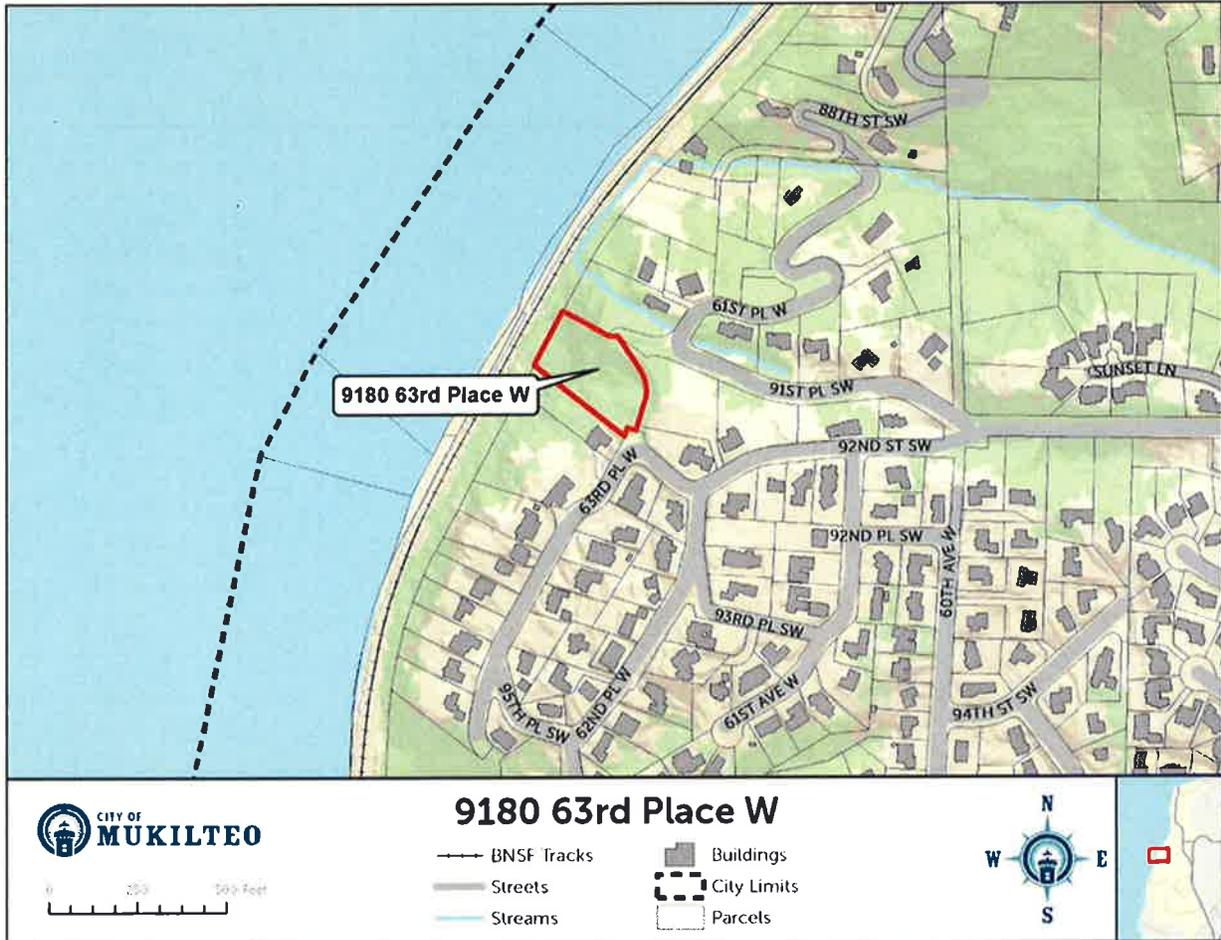
Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. For information regarding property valuations and/or assessments, contact the Snohomish County Assessor’s Office at 425.388.3433.

**Staff Contact:** Linda Ritter, Senior Planner (425) 263-8043

Email: [lritter@mukilteowa.gov](mailto:lritter@mukilteowa.gov)

  
Linda Ritter,  
Senior Planner  
Community Development  
Department  
Date: 11/18/19

  
for Vacant Andrea Swisstack  
Public Works Director  
Date: 11/20/19



**Location Map**

pc: Applicant/Representative  
 Reviewing Agencies  
 Interested Parties

CDD Director  
 Permit Services Assistants (2)

Property File  
 Property Owners (300')

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF MUKILTEO**

In the Matter of the Application of	)	No. SFR-RUP-HE-2019-001
	)	
<b>Jesse Jarrell, Western Engineers</b>	)	
<b>And Surveyors, on behalf of</b>	)	
<b>Mahmood and Bakhtbebe Kakar</b>	)	
	)	
For Approval of a Reasonable Use	)	FINDINGS, CONCLUSIONS,
<u>Permit and Variance</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a Reasonable Use Permit and variance to allow construction of a single-family residence, with a detached two-car garage and associated improvements, on a 1.4-acre lot containing steep slopes, at 9180 63rd Place West, is **GRANTED**. Conditions are necessary to address specific impacts of the proposal.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the request on October 30, 2019.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Linda Ritter, City Senior Planner  
Jesse Jarrell, P.E., Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report with the following attachments:
  - A. Location map, undated
  - B. Aerial map, created August 14, 2019
  - C. Land Use Permit Application, received January 25, 2019; Variance Supplemental Application Form, received January 25, 2019
  - D. Narrative Letter, dated January 25, 2019
  - E. Conceptual Site Plan (Sheet 1 of 1), dated April 24, 2018
  - F. Civil plans, dated April 24, 2018
    - i. Cover Sheet (Sheet No. 1 of 4)
    - ii. SWPPP Report (Sheet No. 2 of 4)
    - iii. Drainage & Utility Plan (Sheet No. 3 of 4)

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Kakar Reasonable Use Permit and Variance  
No. SFR-RUP-HE-2019-001*

- iv. Details (Sheet No. 4 of 4)
- G. Topographic Survey (Nos. S1 and S2, Sheets 1 and 2 of 2), dated March 7, 2017
- H. The Assessors Plat of Olympus Terrace, (#1678926), recorded February 28, 1984
- I. Building elevations (Sheets 1 and 2 of 10)
- J. Mitigated Determination of Nonsignificance, issued August 9, 2019;  
Environmental Checklist, dated January 23, 2019
- K. Geotechnical Engineering Study, GEO Group Northwest, Inc., dated May 29, 2008; Geotechnical Report, GEO Group Northwest, Inc., dated May 17, 2019
- L. Targeted Drainage Report, Western Engineers & Surveyors, dated January 11, 2019
- M. Letter from Jesse Jarrell, P.E., to Linda Ritter, dated July 8, 2019
- N. Letter from Jesse Jarrell, P.E., to Linda Ritter, dated January 8, 2019
- O. Notice of Application Status, dated February 19, 2019
- P. Notice of Application, dated February 27, 2019, and location map
- Q. Comments
  - i. Email from Robin Alexander to Linda Ritter, dated March 9, 2019
  - ii. Memo from Josette Fisher, Mukilteo School District, to Linda Ritter, dated March 7, 2019
  - iii. Letter from Jim Voetberg to Linda Ritter, dated February 19, 2019
  - iv. Letter from Jason Zyskowski, Snohomish County PUD, to Linda Ritter, dated March 18, 2019
  - v. Letter from James and Patricia Reed to Linda Ritter, dated March 15, 2019, and cover sheet
- R. Public Notice
  - i. Certification of Public Notice, Declaration of Mailing, dated February 27, 2019
  - ii. Certification of Public Notice, Declaration of Posting, dated February 28, 2019
  - iii. Certification of Public Notice, Declaration of Posting, dated March 4, 2019
  - iv. Certification of Public Notice, Declaration of Mailing, dated August 5, 2019
  - v. Certification of Public Notice, Declaration of Posting, dated August 6, 2019
  - vi. Certification of Public Notice, Declaration of Posting, dated August 8, 2019
  - vii. Certification of Public Notice, Declaration of Mailing, dated October 16, 2019
  - viii. Certification of Public Notice, Declaration of Posting, dated October 17, 2019
  - ix. Certification of Public Notice, Declaration of Posting, dated October 18, 2019

- x. Affidavit of Publication, *Everett Daily Herald*, dated October 18, 2019, and Classified Proof, published October 18, 2019
- S. City PowerPoint (16 slides)

The Hearing Examiner enters the following findings and conclusions based on the testimony and exhibits admitted at the open record hearing:

## **FINDINGS**

### Application and Notice

1. Jesse Jarrell, Western Engineers and Surveyors, on behalf of Mahmood and Bakhtbebe Kakar (Applicant), requests a Reasonable Use Permit (RUP) to allow construction of a single-family residence, a detached two-car garage, and associated improvements, on a 1.4-acre lot containing steep slopes. The property is located at 9180 63rd Place West. The Applicant also requests a variance reduction of the front yard setback from 25 to 10 feet; a reduction of the setback from the top of slope from 25 feet to zero feet (a reduction of 100 percent); and a modification of the steep slopes for a proposed building pad of 2,580 square feet on slopes greater than 40 percent, with a proposed total modification of 7,000 square feet of slope area.<sup>1</sup> *Exhibit I, Staff Report, pages 3 and 5; Attachment C; Attachment E; Attachment F; Attachment M; Attachment N.*
2. The City of Mukilteo (City) determined the Applicant's RUP and variance application was complete on February 19, 2019. On February 27, 2019, the City mailed a Notice of Application to the Applicant, property owners within 300 feet of the subject property, and interested parties, with a comment deadline of March 18, 2019. The next day, the City posted notice of the application on or near the site. On March 4, 2019, the City posted notice at the Rosehill Community Center, Harbour Pointe Shopping Center, City Hall, and the City post office. The City also published notice in the local newspaper of record. On October 16, 2019, the City mailed notice of the open record hearing to the Applicant, property owners within 300 feet of the property, and interested parties. The next day, the City posted notice at the Rosehill Community Center, Harbour Pointe Shopping Center, City Hall, and the City post office. On October 18, 2019, the City posted notice of the hearing on or near the site and published notice in the *Everett Daily Herald*. *Exhibit I, Staff Report, page 5; Attachment O; Attachment P; Attachment Q; Attachment R.*
3. In response to the notice documents, the City received two public comments on the proposal prior to the open record hearing. Adjacent property owner to the north, Robin Alexander, requested a meeting to express concerns. A telephone call with City staff clarified that her concerns were related to activities currently taking place on the

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<sup>1</sup> The property is identified by Assessor's Tax Parcel No. 00536900002100. A legal description of the property is included with the application. *Attachment C.*

property, not the proposed development. Adjacent property owners to the south, James and Patricia Reed, expressed concern over building construction near an existing rockery, a wooden retaining wall, and utility placement within a driveway easement. No grading activities, landscaping, or structures would take place, or be placed, outside of the approved disturbance limits. The Applicant and contractor would attend a pre-construction meeting with City staff.

The City also received agency comments. The Mukilteo Water and Wastewater District commented on a 30-foot utility easement on the property owned by the District and indicated that no permanent structures are allowed within this easement. Because no water services or hydrants are available in the immediate area, if a residential sprinkler system is required, coordination with the District and City Fire Department would be needed. Gravity sanitary sewer service is not available to this lot. The Applicant would enter into an agreement with the District to ensure all water and sewer provisions meet the district's specifications and requirements, including any sanitary sewer grinder pump. The Snohomish County PUD No. 1 responded that the PUD has sufficient electric-system capacity to serve the proposed development, but facilities may require upgrading, with costs to be assigned as set out in PUD policies. The Mukilteo School District responded that the GMA requires school impact fees to be paid prior to building permit issuance. *Exhibit 1, Staff Report, pages 14 through 16; Attachment Q.*

#### State Environmental Policy Act

4. The City acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. The City analyzed the Applicant's environmental checklist and other available information. The Applicant's environmental checklist listed songbirds as observed or known to be on or near the site. No threatened or endangered species are listed as known to be on or near the site. The City's SEPA Responsible Official determined that, with 11 mitigation measures, the proposal would not have a probable significant adverse impact on the environment. The conditions include complying with the 2019 Geotechnical Report recommendations, tightlining stormwater to the base of the slope area, providing a landscape revegetation plan for any slope disturbance outside of the approved disturbance area, submitting a performance bond, and preventing audible construction area noise beyond the property lines between 6:00 PM to 7:00 AM on weekdays, 6:00 PM to 9:00 AM on Saturday, and all day on Sundays and holidays. The City issued a Mitigated Determination of Nonsignificance (MDNS) on August 9, 2019, with a comment deadline of August 23, 2019, and an appeal deadline of September 6, 2019. The City received no comments. The MDNS was not appealed. *Exhibit 1, Staff Report, page 4; Attachment J.*
5. Prior to building permit issuance, the Applicant would pay park impact mitigation fees, based on the mitigation fee in Chapter 3.105 of the Mukilteo Municipal Code (MMC), and school impact mitigation fees or other forms of negotiated impact mitigation as set out in Chapter 3.100 MMC, in effect at the time of fee payment. The Applicant would

pay transportation mitigation fees for each new PM peak hour trip generated by the proposed development or other forms of negotiated impact mitigation as set out in MMC 3.100.060.F.1, in effect at the time of building permit application. *Exhibit 1, Staff Report, pages 12 and 13.*

#### Comprehensive Plan, Zoning, and Critical Areas

6. The property is designated as Single-Family Residential Low Density (SFR-L) under the City Comprehensive Plan, which permits a development density of 3.49 dwelling units per acre. The MDNS identified the following Comprehensive Plan Goals and policies as relevant to the mitigation measures: LU9, which provides that the City manage and regulate development in critical areas to allow reasonable and appropriate uses in those areas while protecting them against adverse impacts; LT4, which provides that development applications be reviewed by the Mukilteo Water & Wastewater District for adherence to the developer extension standards of the relevant district; UT7, which provides that surface water management and planning operations comply with City, state, and federal surface water regulations and be consistent with the Comprehensive Plan; and UT7d, which provides that draining, flooding, and stormwater run-off impacts be minimized to the maximum extent practical. *Exhibit 1, Staff Report, page 16; Exhibit J.*
7. The property is located within the City’s RD 12.5 Single Family Residential zone.<sup>2</sup> Single-family residences are a permitted use within the zone. Lots within the RD 12.5 zone must measure at least 12,500 square feet. *MMC 17.20.020, Table 1.* Pursuant to MMC 17.20.020, Table 2, minimum setback requirements in the RD 12.5 zone are 25 feet for front yards, 25 feet for rear yards, and 5 feet for side yards. In addition, lot coverage must not exceed 30 percent, and building height must not exceed 30 feet. The Applicant proposes reducing the front yard setback from 25 feet to 10 feet, but would meet all other zoning bulk, height, and setback requirements. *Exhibit 1, Staff Report, page 4; Attachment C.*
8. Under Chapter 17.52A MMC, the City’s “Geologic Sensitive Area Regulations,” strict limits are placed on development in geologically sensitive areas, including areas with slopes steeper than 40 percent. Accordingly, under MMC 17.52A.050, a 25-foot setback is required from the top of slopes greater than 40 percent. If applied here, no building pad would be available for the site because steep slopes limit the buildable area of the property. The Applicant requests a variance to reduce the 25-foot setback to 0. *Exhibit 1, Staff Report, pages 4 and 10; Attachment K; Attachment L; Attachment M.*

#### Existing Conditions and Proposal

9. The property is approximately 60,509 square feet (1.4 acres) and was subdivided with the Plat of Olympus Terrace, recorded in 1947. This plat was recorded prior to the adoption

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<sup>2</sup> All surrounding properties to the north, east, and south are also zoned RD 12.5, with BNSF railroad tracks and Puget Sound to the west. *Exhibit 1, Staff Report, page 4.*

of the City's critical area regulations. The lot is undeveloped and accessed from 63rd Place West, a local access road. The property has steep slopes on-site at a greater than 40 percent grade that limits the buildable area of the property. The lot has a slope height of up to 184 feet, with grades ranging from an elevation of 36 feet at the west property boundary to 220 feet at the southeast corner. The slopes on the west side of the property range from 17 percent to 161 percent. Several slides on the property have exposed an 18-inch iron force main belonging to the Mukilteo Water and Wastewater District. Vegetation on-site consists mainly of tree canopy coverage. *Exhibit 1, Staff Report, pages 2 and 4; Attachment E; Attachment F; Attachment G; Attachment L.*

10. The Applicant proposes placing the building pad for the single-family residence and detached two-car garage on the southwest portion of the property adjacent to 63rd Place West. The residence and detached two-car garage footprint would be approximately 2,580 square feet, or 4 percent of the lot area. The driveway, walkways, and 5-foot maintenance area would add approximately 4,420 square feet, or seven percent, for a total area of disturbance of 7,000 square feet, or approximately 12 percent of the lot area. Condition 1, proposed by the City, notes that "The disturbance area shall also denote the border of the Native Growth Protection Area (NGPA)." The Applicant has requested a variance in order to reduce the front setback, thereby locating the structures closer to 63rd Place West; to reduce the setback from the top of slope from 25 feet to 0; and to modify 7,000 square feet of slope area. *Exhibit 1, Staff Report, pages 4, 5, and 16; Exhibit E; Exhibit F; Exhibit G; Exhibit M.*
11. A 2019 Geotechnical Report (GR) prepared by GEO Group Northwest, Inc., for the Applicant, determined that signs of soil movement, such as soil cracks, apparent slump blocks, and leaning trees, were observed at many locations on the site. The GR determined that the proposed development is acceptable for the subject site soil conditions (Site Class D soil – Stiff Soil). The GR provided recommendations for site preparation and general earthwork, augured concrete pile foundation, conventional retaining walls, drainage consideration, and concrete slabs, which are required by Condition 16. In addition, GEO Group Northwest, Inc., recommended that it be retained to provide monitoring and testing services for geotechnically related work during construction, as required by Condition 12. Final engineering drawings depicting revised clearing and grading, street improvements, and drainage design would be submitted to the City's Public Works Director for final review and approval before permit issuance. *Exhibit 1, Staff Report, pages 6, 17, and 18; Attachment K; Attachment M.*
12. The Applicant would revegetate any areas disturbed by construction, subject to an approved revegetation plan. *MMC 17.52A.040.A.4 and .070.* Revegetation would be required for the area around the building footprint, as well as for those areas that may require excavation for the installation of utilities. *Exhibit 1, Staff Report, pages 5 and 9; Exhibit E.*

13. City code requires that stormwater runoff be collected, detained, and released in accordance with the city's stormwater detention requirements. At no time can concentrated stormwater runoff be allowed to flow directly over a steep slope or impact a neighboring property. *MMC 17.52A.080.G*. Western Engineers & Surveyors, Inc., prepared a Targeted Drainage Report (TDR), dated January 11, 2019, for the Applicant's property. The TDR determined:
- Puget Sound is located approximately 130 feet to the west, with an intervening BNSF railroad right-of-way. The east side of the right-of-way contains a ditch allowing drainage to the north to a culvert under the railroad and into Puget Sound.
  - On-site improvements would consist of clearing/grading and removal of existing forest for the construction of a single-family residence in the southeast corner of the site.
  - Stormwater drainage from the development and driveway would be directed to catch basins. From there stormwater would be directed by pipe anchored to the hill to the bottom of the existing slope with a flow diffuser outlet to a ditch within the BNSF right-of-way.
  - Due to the amount of impervious surface, less than 5,000 square feet, runoff treatment and flow control are not required.
  - Disturbed soils during site grading would be stabilized by appropriate Best Management Practices (BMPs) including compaction of soils by vibratory roller or bulldozer and covering soils with straw. In addition, no wintertime grading or construction activities would occur. Construction periods longer than one working week (seven days) where the soils are exposed and un-worked would use the proscribed methods in the Storm Water Management Manual for Western Washington and the City's 2017 Development Standard Manual to reduce sedimentation transported offsite.
  - All Temporary Erosion and Sedimentation Control (TESC) devices and equipment would be inspected and maintained on a weekly basis if not sooner.
  - A general construction manager would manage the project for or by the owners. The construction manager would minimize sediment transport and turbid water leaving the site. *Attachment L*.
- In addition, the Applicant provided a Stormwater Pollution Prevention Plan (SWPPP) drawing and a Drainage & Utility Plan drawing. *Attachment F.ii and iii*.
14. City staff reviewed the Applicant's Draft Maintenance Agreements for the stormwater facilities and Declaration of Covenant and Grant of Easement for Stormwater Best Management Practices for consistency with *MMC 13.12.160.F*. City staff also reviewed the Applicant's Engineering Permit (No. ENG-2019-005) submitted with the RUP and variance applications. *Exhibit 1, Staff Report, page 12*.

15. The Applicant would comply with the City’s Fire Code Development Standards and 2015 International Fire Code, including an automatic 13D residential sprinkler system, a water supply capable of supplying the required fire flow for fire protection, an access route for firefighting apparatus, building addresses that are visible and legible from the road, hydrants fitted with a 4” quarter turn Storz adaptor, and a Washington State certification number for any fire protection system work. *Exhibit 1, Staff Report, page 20.*

Reasonable Use Permit and Variance

16. Pursuant to MMC 17.52.025.A, critical area regulations are not intended to deny all reasonable use of private property, and when no plan and/or mitigation can meet the critical area requirements, development may be permitted subject to appropriate conditions. *Exhibit 1, Staff Report, page 5.*
17. To be granted an RUP, an applicant must demonstrate that: no reasonable use with less impact on the critical area and/or buffer is feasible and reasonable; there are no feasible and reasonable on-site alternatives to the proposed use that would allow reasonable use of the property with less adverse impacts; there are no practical alternatives available for development of the property, considering existing technology, infrastructure, and logistics in light of the overall project purpose; the proposed use would be mitigated to the maximum practical extent and result in the minimum feasible alteration or impairment of functional characteristics of the site; the proposed use would not materially damage nearby public or private property or create a material threat to the health or safety of people on or near the property; the proposed use complies with all local, state, and federal laws; and the inability to derive reasonable use is not the result of the applicant’s own actions in segregating or dividing the property and creating an undevelopable condition after adoption of the City’s critical areas ordinances in 1992.<sup>3</sup> *MMC 17.52.025.B.*
18. The City reviewed the proposed project and determined:
- The proposal has been designed to have the least impact on the steep slopes;
  - The building pad would be located closest to the road and the two-car garage is detached to limit grading;
  - There are no practicable alternatives because steep slopes or setbacks cover the entire site. The geotechnical analysis makes recommendations based on the characteristics of the site and applies best available science and prevailing technology to the analysis and recommendations;

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<sup>3</sup> MMC 17.52.025.C.1 provides that RUPs shall allow the development of a modest single-family residential home on a critical area lot and that building setbacks may be reduced up to 50 percent where an applicant demonstrates to the City that the development cannot meet the City’s code requirements without encroaching onto a critical area or its buffer.

- Mitigation includes following the geotechnical report recommendations, limiting permanent disturbance to the approved disturbance area, and tightlining stormwater to the base of the steep slope;
- The Applicant would install engineered retaining walls around the proposed construction area, to limit impacts to the existing single-family residence located to the southwest, and would store all equipment and construction material outside the 63rd Place West right-of-way;
- The proposal would comply with the MMC and the City's development standards. The Applicant would obtain a permit from SF Railroad to discharge stormwater into its right-of-way;
- The Applicant did not subdivide the property or create the undevelopable condition after March 23, 1992 because the property was platted and recorded in 1947.

*Exhibit 1, Staff Report, pages 6 through 9.*

19. The City's critical areas regulations require that at least 70 percent of a reasonable use lot be left undisturbed. For lots that are 7,500 square feet or smaller, the maximum footprint is 1,500 square feet. *MMC 17.52.025.C.2.* The City staff report provided a table matrix depicting seven other RUPs within RD 12.5 zoning districts. City staff determined that, although the disturbance area (excluding driveways) is greater than the seven other RUPs, the lot size is almost twice as large, making the disturbance area of 12 percent lower than for the other RUPs. *Exhibit 1, Staff Report, page 11; Exhibit E.*
20. The City's critical areas regulations also allow yard areas only if they do not encroach into the critical area or buffer. Because this would not permit any yard area on the property, the City determined that a 5-foot maintenance area would be included in the disturbance area to allow the homeowner to perform necessary house maintenance. *MMC 17.52.025.C.2. Exhibit 1, Staff Report, page 12; Exhibit E.*
21. *MMC 17.52.025.C.3.c* provides that, if a development cannot be built without reducing a steep slope setback by less than 50 percent, the applicant must seek a variance pursuant to Chapter 17.64 MMC. To be granted a variance, an applicant must demonstrate that: the variance does not constitute a grant of special privilege inconsistent with the rules and regulations governing the uses of other properties in the vicinity or zoning district; the variance is necessary to provide it with use rights and privileges afforded other properties in the area because of special circumstances relating to the size, shape, topography, location, or surroundings of the property; granting the variance would not be materially detrimental to the public welfare or injurious to neighboring property; the variance is not needed to relieve financial hardship or hardship created by the applicant; and the variance would not allow a use that is not permitted, outright or by conditional use permit, in the zone. *MMC 17.64.040.A.*
22. The City reviewed the proposed project variance requests and determined:

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- The variance would not constitute a grant of special privilege. Single-family residences are a permitted use in the RD 12.5 zone, the MMC allows reasonable use of any property that is covered by critical areas such as steep slopes, and the Applicant has met all the other criteria for a RUP;
- There are special circumstances related to the topography because most of the site is covered by steep slopes 40 percent or greater, and relief is needed from the 25-foot setback from the top of the steep slopes;
- With the mitigation plan and Geotechnical Report recommendations, the project would not be detrimental to the public health and welfare or injurious to the property or improvements in the vicinity or zone in which the subject is situated. No agencies commented about adverse impacts. Separation from adjacent properties would be approximately 30 feet. The variance requests would reduce the front yard setback from 25 feet to 10 feet (60 percent) allowing the residence to be located closer to 63rd Place West, would reduce the top of slope setback from 25 feet to 0, would allow 12 percent (7,000 square feet) of the lot's steep slope to be impacted, and would not be detrimental to property or improvements in the area;
- The request is due to the nature of the property, not actions created by the Applicant;
- Single-family residences are a permitted use in the RD 12.5 zone.

*Exhibit 1, Staff Report, pages 5, 9 through 11.*

23. The Applicant would submit security devices or other allowable securities, to guarantee the performance or maintenance of the required work, prior to permit issuance. *Exhibit 1, Staff Report, pages 13, 20, and 21.*

Applicant Testimony and City Recommendation

24. Jesse Jarrell, P.E., Project Manager and Applicant Representative, testified about the location of the project and the selection of the building site to minimize exposure to the steep slopes. He explained that the Applicant is seeking an RUP because of slopes greater than 40 percent and is seeking a variance to allow a reduction in setbacks. He testified that the pipe that's going to take runoff water down the slope into a BNSF railroad ditch would require a permit and that the Applicant is in the application process with the railroad. He did not anticipate a problem with getting authorization. He noted that the Applicant would install a surface pipe in order to avoid disturbing the slopes. He testified that most of the stormwater would come from runoff from the roof and that any contaminants such as pesticides or fertilizers would be minimal—if at all. With regard to the variance application, he testified that the proposed residence would be well within the square footage of houses in the area. He explained that the 2019 Geotechnical Report was an update to the 2008 report and that the proposed conditions include complying with the recommendations in the 2019 report. He testified that the Applicant agrees with the proposed conditions. *Testimony of Mr. Jarrell.*

25. City Senior Planner Linda Ritter testified generally about the application and, specifically about how the application would satisfy the RUP and variance criteria. She explained that, with a 5-foot maintenance area, there would likely not be much lawn area. The Applicant would be prohibited from using a sprinkler system because of the slopes. She testified that on-site slopes were 40 percent, or greater, and that the RUP was necessary in order to allow the Applicant to use his property. She testified that the Applicant had a right to use the property with proper conditions. She referred to the City's analysis of other houses in the area and that the Applicant's proposal was reasonable given the current use of neighboring properties and development in the nearby area. She referenced the comments received and the responses provided in the staff report. She testified that, if any upgrades were required by Snohomish County PUD, they would be the responsibility of the Applicant. She also pointed out that payment of a school impact fee is a condition of the permit. In addition, the geotechnical report recommendations are also included as conditions, and the Applicant's geotech engineers would be involved in the project construction. The MDNS conditions limit the hours and days of construction work in order to avoid disturbing neighbors. She also testified about the limitations on the months of the year when there could be construction work on the property in order to minimize any risks caused by work near the slopes during wet seasons. She testified that City staff analyzed and determined that the request would meet the RUP and variance criteria and recommended that, with 32 conditions, the RUP and variance requests be granted. *Testimony of Ms. Ritter.*

## CONCLUSIONS

### Jurisdiction

The Hearing Examiner is authorized to hold an open record hearing for Type II permit applications, including variance applications. *MMC 2.38.030; MMC 17.13.060 - .070; MMC 17.64.040.* The City of Mukilteo has authorized the Hearing Examiner to approve, approve with conditions, or deny land use applications. *Chapter 17.13 MMC.*

According to MMC Section 17.13.060, Table 4, a decision to approve a reasonable use permit is a Type I administrative decision that does not require a public hearing. If the Applicant so elects, however, an application that involves two or more project permits may be processed under a consolidated review and approval process. The consolidated single process used must correspond to the process used for the required project permit, requiring a decision by the City's highest decision-maker. *MMC 17.13.060.F.* Here, the proposal involves review of a RUP and a variance application. The Applicant has elected to use the consolidated review and approval process. Thus, the Hearing Examiner also has authority to approve, approve with conditions, or deny the RUP application along with the variance application.

### Criteria for Review

#### *Comprehensive Plan and Development Regulation*

Under RCW 36.70B.040, a proposed project must meet the City's development regulations adopted under the Growth Management Act (Chapter 36.70A RCW) or its Comprehensive Plan

*Findings, Conclusions, and Decision  
Hearing Examiner for the City of Mukilteo  
Kakar Reasonable Use Permit and Variance  
No. SFR-RUP-HE-2019-001*

policies. The City of Mukilteo has adopted development regulations for RD 12.5 Single Family Residential Zoning in Chapter 17.20 MMC. These standards may be altered under the City's reasonable use provisions. *MMC 17.52.025.C.*

#### *Reasonable Use Permit*

Where a critical areas ordinance would have the effect of denying all reasonable use of private property, the Planning Department may grant a Reasonable Use Permit unless the Applicant is seeking greater reductions for single-family residential lots than provided for under MMC 17.52.025.C. Here, the Applicant is seeking relief from the critical areas regulations greater than allowed through administrative actions. *Chapter 17.52 MMC.* The Applicant must apply for a variance, which, together with the application for a RUP, is evaluated by the Hearing Examiner. *MMC 17.13.070 (Table 4).*

For the Hearing Examiner to grant a Reasonable Use Permit, the Applicant must demonstrate the following:

- A. [S]trict application of these standards would deny all reasonable use of a property. A reasonable use exception is intended as a "last resort" when no plan and/or mitigation can meet the requirements of this chapter and allow the applicant a reasonable viable use of his or her property.
- B. The Applicant must demonstrate . . . :
  1. That no reasonable use with less impact on the critical area and/or the buffer is feasible and reasonable;
  2. There is no feasible and reasonable on-site alternative to the proposed activity or use that would allow reasonable use with less adverse impacts to the critical area and/or buffer. Feasible on-site alternatives shall include, but are not limited to: reduction in density or building size, phasing of project implementation, change in timing of activities, and revision of road or parcel layout or related site planning considerations;
  3. There are no practical alternatives available to the applicant for development of the property. An alternative is practical if the property or site is available and the project is capable of being done after taking into consideration existing technology, infrastructure, and logistics in light of the overall project purpose;
  4. The proposed activity or use will be mitigated to the maximum practical extent and result in the minimum feasible alteration or impairment of functional characteristics of the site, including contours, vegetation and habitat, groundwater, surface water, and hydrologic conditions and consideration has been given to best available science;

5. There will be no material damage to nearby public or private property and no material threat to the health or safety of people on or off the property;
  6. The proposed activity or use complies with all local, state, and federal laws; and
  7. The inability to derive reasonable use is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after March 23, 1992.
- C. Allowed Reductions for Single-Family Residential Reasonable Use Lots. As provided under state law and the guidelines of the Department of Trade and Economic Development, reasonable use permits shall allow the development of a modest single-family residential home on a critical area lot.
1. Building setbacks may be reduced by up to 50 percent where the applicant demonstrates to the City that the development cannot meet the City's code requirements without encroaching onto a critical area or its buffer.
  2. Development on reasonable use lots shall leave at least 70 percent of the lot undisturbed to protect the critical areas. On small lots 7,500 square feet or less, a maximum building footprint of 2,500 square feet would be allowed. Additional impervious area for the driveway will be permitted which provides the shortest and most direct access to the house with minimal encroachment or impact into the critical area or buffer. When determining if the access has minimum encroachment or impact on a critical area, the use of bridges and open bottom culverts shall be considered minimal impact. Yard areas will be permitted only if they do not encroach into the critical area or buffer.
  3. Critical area regulations, buffers and/or setbacks may be reduced up to 50 percent by the planning director and public works director to allow development on reasonable use lots so long as the reduction results in the least impact to the critical area. Where the buffer reduction has the potential to result in significant adverse impacts to the critical area due to inadequate buffering, off-site buffer mitigation shall be required.

*See MMC 17.52.025.A - C.*

#### *Variance Criteria*

In making a decision on any variance application, the Hearing Examiner may approve the variance as presented, deny the variance, or approve the variance with such conditions, regulations, or safeguards as necessary to ensure that the variance meets the criteria below and

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that the purpose and intent of the regulations adopted in this title are not violated. *MMC 17.64.040.D*. A variance may be approved only if all of the following criteria are met:

1. The variance shall not constitute a grant of special privilege inconsistent with the rules and regulations governing the uses of other properties in the vicinity or zoning district in which the property for which the variance is requested is located; and
2. The variance must be necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity that are located in the same zoning district in which the subject property is located; and
3. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity or zone in which the subject property is situated;
4. Hardships of a financial nature, hardships which are self-created, and hardships which are personal to the owner and not to the property, shall not be grounds for a variance;
5. Variances shall not be granted if the granting of the variance would allow a use not permitted outright or by conditional use permit, or any use prohibited outright or by implications in the zoning district involved.

*MMC 17.64.040.A*.

#### Conclusions Based on Findings

##### *Comprehensive Plan and Development Regulations*

1. **With conditions, the proposal would comply with the City Comprehensive Plan and development regulations for the RD 12.5 Single Family Residential zoning district.** The proposed project would be developed according to the provisions for development flexibility within the City zoning code and in conformance with City Comprehensive Plan goals and policies. The lot would be developed within the development density limitations of the City Comprehensive Plan's SFR-L Single Family Residential Low Density designation for the property. The lot subject to the RUP and variance applications is a legal conforming lot with access to a public street. The proposed residence and two-car garage would cover approximately 4 percent of the lot, less than the 30 percent maximum lot coverage allowed within the RD 12.5 zone. After approval of the Applicant's variance request for a reduction of the front yard setback from 25 to 10 feet (60 percent), the proposed residence would meet all other zoning height, bulk, and setback restrictions in the RD 12.5 zone. As set out below, the reduced setback is necessary to reduce impacts to on-site critical areas and allow the Applicant to locate the residence closer to 63rd Place West and allow the Applicant to make reasonable use of the property. The City gave reasonable notice of the proposed project and open record hearing, and adequate opportunity for public comment.

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Conditions are necessary, including those to address the disturbance area; civil plans; the variance; clearing and grading; environmental mitigation measures contained in the MDNS; stormwater; fire department requirements; utilities; a pre-construction meeting with City staff, the Applicant, and contractor; as well as financial guarantees and mitigation fees. *Findings 1-25.*

*Reasonable Use Permit*

2. **With conditions, the proposal would comply with the Reasonable Use Permit approval criteria.** Strict application of the City's critical area standards would deny the Applicant the ability to build a single-family residence, a reasonable use of the property. Conditions are necessary, including those to address the disturbance area; civil plans; variance; clearing and grading; environmental mitigation measures contained in the MDNS; recommendations contained in the 2019 Geotechnical Report; stormwater; fire department requirements; utilities; a pre-construction meeting with City staff, the Applicant, and contractor; as well as financial guarantees and mitigation fees. *Findings 1, 4-20, 23-25.*
3. **No reasonable use with less impact on the critical area and/or the buffer is feasible and reasonable.** The proposal has been designed to have the least impact on on-site steep slopes by reducing the front yard setback to maintain the existing slope as much as possible and by piping stormwater to the base of the steep slopes. The geotechnical report recommendation and use of retaining walls would also improve slope stability. In addition to mitigating impacts, the Applicant would submit a revegetation plan. *Findings 1, 4-20, 23-25.*
4. **There is no feasible and reasonable on-site alternative to the proposed activity or use that would allow reasonable use with less adverse impacts to the critical area and/or buffer.** Because steep slopes and critical area buffers impact the entire site, the building pad was selected in a location closest to the existing property access. This reduces the proposal's impervious surface area and allows for the least possible on-site disturbance. In addition, slope impacts from construction disturbance would be mitigated by the Applicant's revegetation plan. Recommendations in the May 17, 2019, Geotechnical Report would further lessen proposed impacts. *Findings 4-20, 23-25.*
5. **There are no practical alternatives available to the Applicant for development of the property.** MMC 17.52.025.C provides that reasonable use permits allow the development of a modest single-family residential home on a critical area lot. Because critical areas and setbacks cover the entire property, no building pad is available without impacting critical areas or setbacks. The building footprint selected, however, has been designed to produce the fewest impacts on critical areas, as discussed in Conclusions 3

and 4. No practical alternatives are available to the Applicant in light of the overall project purpose. *Findings 1, 4-20, 23-25.*

- 6. With conditions, the proposed activity or use would be mitigated to the maximum practical extent and result in the minimum feasible alteration or impairment of functional characteristics of the site.** By following the recommendations from the 2019 Geotechnical Report, the Applicant would mitigate the proposal's impacts to the maximum practical extent. In addition, the re-vegetation plan would mitigate disturbance impacts. As noted above in Condition 2, conditions are necessary to ensure the Applicant meets all the requirements necessary for approval of a RUP and all applicable requirements of the City code. *Findings 1, 4-20, 23-25.*
- 7. With conditions, there would be no material damage to nearby public or private property and no material threat to the health or safety of people on or off the property.** The City gave reasonable notice of the proposed project and open record hearing, and adequate opportunity for public comment. The 2019 Geotechnical Report determined that signs of soil movement, such as soil cracks, apparent slump blocks, and leaning trees, were observed at many locations on the site. No evidence was presented, however, to indicate that granting the RUP or variance would damage nearby public or private property or pose a material threat to the health or safety of people on or near the property. Additionally, the Applicant would install engineered retaining walls around the proposed construction area to limit impacts to the existing single-family residence located to the southwest. Neighbors would not be affected by stormwater drainage because the runoff from the impervious surface areas would be collected, piped, and discharged at the base of the steep slope. As noted above in Condition 2, conditions are necessary to ensure the Applicant meets all the requirements necessary for approval of a RUP and all applicable requirements of the City code, including the MDNS's 11 mitigation measures. *Findings 1-20, 23-25.*
- 8. With conditions, the proposed activity or use would comply with all local, state, and federal laws.** The proposal meets the requirements of the Mukilteo Municipal Code and the City's development regulations. No other state or federal approvals are required. As noted above in Condition 2, conditions are necessary to ensure the Applicant meets all the requirements necessary for approval of a RUP and all applicable requirements of the City code, including the MDNS's 11 mitigation measures. *Findings 1-20, 23-25.*
- 9. The inability to derive reasonable use is not the result of actions by the Applicant.** The residential lot was platted prior to the City adopting critical area regulations. The Applicant's own actions did not create the inability to derive reasonable use of the property. *Findings 1 and 18.*

*Variance*

- 10. The variance would not constitute a grant of special privilege inconsistent with the rules and regulations governing the uses of other properties in the vicinity or zoning district in which the property for which the variance is requested is located.** The request is for a variance related to critical area setbacks, 7,000 square feet of impact to the steep slope, and a front yard setback; it is not a change in land use. Courts have held that a variance does not constitute a special privilege inconsistent with the rules and regulations governing the uses of other properties where the request is for relief from dimensional setbacks, not a use variance. *See City of Medina v. T-Mobile USA, Inc.*, 123 Wn. App. 19 (2004). The property is located in RD 12.5 Single Family Residential zone, which allows a single-family residence. Variance approval would enable development consistent with that allowed on surrounding properties within this zoning district and does not constitute a grant of special privilege. *Findings 1, 5 – 25.*
- 11. The variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the property, to provide it with use rights and privileges permitted to other properties in the vicinity that are located in the same zoning district in which the subject property is located.** Under MMC 17.52A.050, 25-foot setbacks are required from the top of steep slopes for all undeveloped lots. If this regulation were strictly applied to this lot, all reasonable use of the property would be taken, creating an unbuildable lot under standard zoning and critical areas regulations. This variance is necessary to allow the Applicant to build a single-family residence on-site, a privilege enjoyed by all other property owners in the vicinity. The front yard setback variance from 25 feet to 10 feet is necessary to allow the residence to be constructed closer to 63<sup>rd</sup> Place West and reduce the impacts to the steep slopes to 7,000 square feet of impact. *Findings 1, 3 – 25.*
- 12. With conditions, the granting of the variance would not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity or zone in which the property is situated.** As already stated in Conclusion 7, the 2019 Geotechnical Report determined that signs of soil movement, such as soil cracks, apparent slump blocks, and leaning trees, were observed at many locations on the site. No evidence was presented, however, to indicate that granting the RUP or variance would damage nearby public or private property or pose a material threat to the health or safety of people on or near the property. Additionally, the Applicant would install engineered retaining walls around the proposed construction area to limit impacts to the existing single-family residence located to the southwest. Neighbors would not be affected by stormwater drainage because the runoff from the impervious surface areas would be collected, piped, and discharged at the base of the steep slope. No impacts to public rights-of-way are envisioned. Conditions are necessary to ensure that the Applicant carries out the mitigation plan, Geotechnical Report recommendations, and the MDNS's 11 mitigation measures. *Findings 1, 3 – 25.*

13. **The variance is not the result of hardships of a financial nature, hardships that are self-created, or hardships that are personal to the owner and not to the property.** The request for a variance is due to the nature of the property, not any situation created by the Applicant. The lot was legally created prior to the adoption of critical area regulations restricting development in steep slope areas. The fact that the property was restricted when the Applicant purchased it is not grounds for denial on the basis of a self-imposed hardship since purchasers under Washington law stand in the shoes of prior owners. “The mere fact that a purchaser buys with actual or constructive knowledge of area restrictions does not, without more, justify the denial of a variance.” *Hoberg v. Bellevue*, 76 Wn. App. 357 (1994). *Findings 1, 21, and 22.*
14. **The granting of the variance would not allow a use that is not permitted, outright or by conditional use permit, or any use that is prohibited outright or by implication, in the zoning district involved.** Single-family residences are a permitted use in the RD 12.5 zone. *Findings 1, 21, and 22.*

### DECISION

Based on the preceding findings and conclusions, the request for a Reasonable Use Permit and variance to allow construction of a single-family residence, with a detached two-car garage and associated improvements, on a 1.4-acre lot containing steep slopes, at 9180 63rd Place West, is **GRANTED**, subject to the following conditions:<sup>4</sup>

#### Disturbance Area

1. The disturbance limit line as shown on the approved site plan submitted January 25, 2019 and approved October 15, 2019, delineates where all improvements may be constructed. The disturbance area includes the building footprint, the driveway, and a five (5) foot maintenance area measured from the roof overhang. The disturbance area shall also denote the border of the Native Growth Protection Area (NGPA).
2. No grading activities or landscaping may take place or be placed outside of the approved disturbance limits in order to minimize impacts to steep slope areas.
3. No structures, including fences or foundation walls, may be constructed outside of approved disturbance limits.
4. Utilities, other than the stormwater pipe proposed to be anchored on the slope, must be placed within the disturbance limit line or in the driveway access, or use alternative

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<sup>4</sup> This decision includes conditions required to reduce project impacts as well as conditions required to meet City Code standards. “An approved project permit shall be issued by the city only after the proposal has met all the requirements of the Mukilteo Municipal Code.” *MMC 17.13.030.F.*

methods acceptable to the Public Works Director to bring the utilities through the non-disturbance area.

5. In no case shall the disturbance area be greater than 30 percent of the property, excluding the driveway area, but including any parking/turnaround area.
6. Minor modifications of the site plan submitted may be approved by the Community Development Director and Public Works Director if the modifications do not require a change to the findings of fact or the conditions of approval

#### Civil Plans

7. Final engineering drawings depicting revised clearing and grading, street improvements, and drainage design shall be submitted to the City's Public Works Director for final review and approval before permit issuance. The street and drainage improvements shall be designed in accordance with the City's development standards. Minor modifications of the plans submitted may be approved by the Public Works Director if the modifications do not require a change to the findings of fact or the conditions of approval.
8. Engineering reports and civil drawings must address items in the City's comment letter dated April 3, 2019.
9. Geotechnical related plan details must be included in the Civil Engineering Plan set on a separate sheet, stamped by the Geotechnical Engineer of Record.
10. Structural engineering related plan details must be included in the final Civil Engineering Plan set on a separate sheet stamped by the Structural Engineer of Record.

#### Variance Approval

11. The following variances from MMC 17.20.020 Structure Bulk Matrix and MMC 17.52A.050 Geologic Sensitive Area Regulations are approved:
  - a. A reduction of the front yard setback from the southwestern property line from 25 feet to ten (10) feet.
  - b. A reduction of the setback from the top of slope from 25 feet to zero (0) feet.
  - c. Modification to the steep slopes of 7,000 square feet, or 12 percent of the site, to allow for construction of a single-family residence and a five (5) foot maintenance area on all sides of the structure.

#### Clearing and Grading

12. The Applicant's Geotechnical Engineer shall be on-site to observe all earthwork, including temporary excavation conditions, temporary shoring wall construction, and

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drilled pier installation. Copies of all inspection reports shall be submitted to the City's Engineering Department on a weekly basis.

13. Per the recommendations of the geotechnical report, no earthwork including site grading and utility installation shall be allowed during the winter construction season, October 1 through April 30.
14. Only those trees within the disturbance area are allowed to be removed. Other trees shall only be removed as allowed under MMC 17.52A.070, Vegetation Management on Steep Slopes. Outside of the approved disturbance area, only those trees that are determined to be hazardous by a certified arborist who specializes in risk assessment and a professional geotechnical engineer may be removed.
15. Provide written approval from the Mukilteo Water and Wastewater District for any activity that has the potential to disturb the existing force main servicing Lift Station 5.

#### Environmental

16. All conditions of the Mitigated Determination of Non-Significance (MDNS) issued August 9, 2019, shall be met:
  - All development shall proceed in accordance with the recommendations listed in the Geotechnical Report dated May 17, 2019, prepared by Geo Group Northwest, Inc. The cost of special inspections, if any, as recommended by the Geotechnical Report shall be the responsibility of the Applicant.
  - All site stormwater shall be tightlined above ground to the base of the slope area and discharged at the Burlington Northern Santa Fe Railroad right-of-way and not discharged at or above steep slope areas.
  - The stormwater piping and discharge location shall be constructed prior to the completion of the structure roofing so that stormwater may be collected and properly discharged.
  - Stormwater improvements shall be in accordance with the approved Targeted Drainage Report for the Kakar Property at 9180 63rd Place West prepared by Western Engineers and Surveyors dated January 11, 2019.
  - Any disturbance to the slope outside of the approved disturbance area shall require a landscape revegetation plan.
    - Prior to issuance of an engineering permit, all plantings associated with a project permit shall require the submittal of an acceptable performance bond in the amount of 150 percent of the cost for materials and labor.
    - Upon installation of the plants, a maintenance bond shall be submitted to warrant all required plantings against defects in labor and materials for a period of two (2) years after acceptance of those improvements by the City.

- All plantings shall be maintained in healthy growing condition. A final inspection will be performed at the end of the two (2) year period and any dead, dying, or diseased plant material shall be replaced prior to release of the maintenance bond. The City shall reserve the right to require an additional maintenance bond for up to a two (2) year period for any replaced or replanted plant material.
- Minor modifications of the approved landscape plans may be approved by the Community Development Director or Public Works Director if the modifications do not change the findings of fact or the conditions of approval.
- Special inspections shall be conducted for the constructed retaining wall(s) by the Design Structural Engineer, or their designee. Special inspection reports shall be completed and turned into the City for the file. These reports shall verify that the wall(s) were built per the approved engineered design or that any deviations were approved by the Structural Engineer of record.
- Per the International Building Code (IBC), the City may require that the property owner obtain a special inspection to address certain construction issues (such as topography, foundation types, unstable conditions, or soil types) prior to City approval. The cost of these special inspections will be the responsibility of the property owner.
- Prior to permit issuance, the Applicant shall submit a copy of the Burlington Northern-Santa Fe Railroad permit allowing release of the stormwater into their (Burlington Northern-Santa Fe) drainage ditch.
- Noise from construction activity that is audible beyond the property lines of the project site shall not be allowed between the hours of six (6) p.m. to seven (7) a.m. on weekdays, six (6) p.m. to nine (9) a.m. on Saturdays and all day on Sundays and holidays.
- The Applicant shall comply with all other applicable codes, regulations, and requirements.

#### Stormwater

17. Per the geotechnical report, the stormwater shall be piped and the discharge location shall be constructed prior to the completion of the roofing so that the stormwater may be collected and properly discharged as soon as the roof is completed.
18. A permanent landscaping sprinkler system is prohibited due to soil movement risk.
19. Special inspections by the geotechnical expert of record for the stormwater discharge pipe shall be required. The special inspection reports shall be submitted to the City. These reports shall verify that the stormwater outfall was built per the approved engineered design or that any deviations were approved by the Geotechnical professional of record.

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### Fire Department

20. The following requirements shall be adhered to during construction and completed before occupancy of any structure in accordance with Fire Code Development Standards and 2015 International Fire Code:
- An automatic 13D residential sprinkler system shall be required in accordance with Section 903.3.1 of the International Fire Code due to property topography and based on limited Fire Department access;
  - A water supply capable of supplying the required fire flow for fire protection must be provided;
  - An access route for firefighting apparatus must be provided at the start of construction. Minimum access route requirements include a 20' width, 13'6" vertical height clearance, and the ability to support a load up to 75,000 pounds;
  - All buildings must be addressed visibly and legibly from the road. When buildings are not visible from the street, appropriate provisions must be made to identify clearly which road or drive serves the appropriate address including private roads;
  - Hydrants shall be fitted with a 4" quarter turn Storz adaptor; and
  - Provide a Washington State certification number for any work done on fire protection systems, i.e. sprinkler systems, standpipe systems, fire detection/alarm systems or any underground for the fire protection system.

### Utilities

21. The Applicant shall enter into a "Developer Extension Agreement" with the Mukilteo Water and Wastewater District. All construction of water and sewer facilities shall be in accordance with the standards, specifications, and regulations of the District.
22. The cost of any work, new or upgrade, to the existing electric system and facilities that is required to connect the project to the Snohomish County PUD electric system shall be in accordance with applicable Snohomish County PUD policies.

### Other

23. Prior to permit issuance, a Land Use Binder shall be prepared and recorded with Snohomish County stating the Conditions of Approval for the Kakar Single-family Residence Reasonable Use Permit and Variance.
24. All contractors and subcontractors working on the project described herein shall obtain a business license from the City before initiation of any site work.
25. All construction equipment, building materials, and debris shall be stored on the Applicant's property, out of the public right-of-way. In no case shall the access to any private or public property be blocked or impinged upon without prior consent from the affected property owners and the City of Mukilteo.

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26. If at any time during clearing, grading or construction the public streets are not kept clean and clear, all work will stop until the streets are cleaned and maintained in a manner acceptable to the Public Works Director.
27. All mailbox locations must be approved and signed off by the U S Postal Service prior to permit issuance. Please contact the Growth Management Coordinator at 425.514.9843 to arrange an appointment.
28. The Applicant and contractor shall attend a pre-construction meeting with City staff to discuss expectations and limitations of the project permit prior to the start of construction or site improvements.
29. An on-site preconstruction meeting with the contractor is required.

Financial Guarantees and Mitigation Fees

30. Prior to permit issuance, the Applicant shall submit a performance bond in the amount of 150 percent of the cost of work.
31. All public improvements associated with a project permit shall require the submittal of an acceptable warranty surety to warrant all required improvements against defects in labor and materials for a period of twenty-four (24) months after acceptance of those improvements by the City. The warranty amount shall be equal to fifteen (15) percent of the costs of the improvements and installation, as determined by the City. The surety shall be submitted to and approved by the City of Mukilteo and executed prior to final approval.
32. The Applicant shall pay park impact, school and traffic mitigation fees or other forms of negotiated impact mitigation directly to the City of Mukilteo in accordance with MMC 3.100, MMC 3.105 and MMC 3.107 or similar requirements associated with the Growth Management Act. Payment of the impact mitigation fees shall be made to the City prior to building permit issuance. The total fee or mitigation amount shall be based on the mitigation fees in effect at the time of fee payment.

DATED this 12<sup>th</sup> day of November 2019.



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LEE RAAEN  
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