

Staff Report

Zoning Code Variance: Spriestersbach

Application Number: 1007205
Tax Parcel Number: 6510200160

Key Peninsula Advisory Commission (KPAC) Public Meeting: Thursday, July 27, 2023, at 5:30 p.m. This meeting is being held at the Key Center Fire Station (Headquarters), 8911 Key Peninsula Highway NW, Lakebay WA.

Proposal: This 0.2-acre parcel is currently only developed with a two-story structure constructed in the mid-1980s. It is a total of 1,026 square feet. The first floor consists of a garage (with attached bathroom) and the second floor with storage space. It is currently within the required 25-foot front yard Zoning Code setback from the abutting private road to the west. Specifically, the western wall is approximately 6 feet from the road and deck/roof eave approximately 3 feet. The location of the structure would not be changing. However, a Zoning Code Variance is required because (at a minimum), within the 25-foot setback the use would completely change (from garage/storage to single-family residence), it would increase in size by 36 square feet, and the roofline would change/increase in height by 3 feet, 3 inches. Note, directly across the street to the west, the applicants own a parcel developed with a single-family residence.

Project Location: The site is in the Rural 10 (R10) zone classification and Key Peninsula Community Plan area, located at 8607 189th Avenue NW, 225 feet east of Case Inlet and 825 feet south of Vaughn Bay, in Council District #7.

County Staff Recommendation: The KPAC meeting was previously scheduled for June 22, 2023. However, the day of the meeting, their Clerk was informed that there would not be a quorum. Therefore, no meeting was convened. In recent years, if a land use advisory commission (such as the KPAC) did not have a quorum, the County did not reschedule the meeting. However, the County Planning Manager has determined that the County must reschedule the matter based upon a review of the applicable codes by the County Deputy Prosecuting Attorney that represents the Department. Note, the attorney review was not due to this proposal but regarding a more recent controversial proposal.

In the meantime, the public hearing before the Pierce County Hearing Examiner was already scheduled to be heard on Wednesday, July 12, 2023, at 9:00 a.m. The hearing did ultimately occur before a Deputy Hearing Examiner. However, a decision has not been issued yet. Instead, the Examiner has left the record open until August 4, 2023, to receive, in part, the recommendation from the KPAC.

For the KPAC, Staff does not typically make a recommendation. However, for the Examiner, Staff did recommend approval of the proposal subject to the recommended conditions listed at the end of this report. For this second KPAC meeting, the remainder of this report is the same as what was presented to the Examiner (other than to include the additional notice required for the KPAC meeting and changing verbiage from Examiner to KPAC where appropriate).

The KPAC is not required to agree with Staff's recommendation. Therefore, depending upon the recommendation of the KPAC, Staff may need to reconsider its recommendation to the Examiner.

State Environmental Policy Act (SEPA): The proposal is exempt from environmental (SEPA) review per Pierce County Code, Title 18D, and Washington Administrative Code (WAC) Section 197-11.

County Contact: Ty Booth, Planner, 253-798-3727, ty.booth@piercecounitywa.gov

Pierce County Online Permit Information:

<https://pals.piercecounitywa.gov/palsonline/#/permitSearch/permit/departementStatus?applPermitId=1007205>



Project Data

Complete Application Date: February 27, 2023

Examiner's Hearing Date: July 12, 2023

KPAC Staff Report Mailed: July 20, 2023

Property Owners/Applicants: Daniel and Mary Spriestersbach
102 Shore Acres Road Southwest
Tacoma, WA 98498-5308
dan@pacwestlumber.com

Applicants' Agent: Mike Benjamin
MBA Architects
806 North 2nd Street
Tacoma, WA 98403
mgb@mbaarchitects.com

Public and Legal Notice

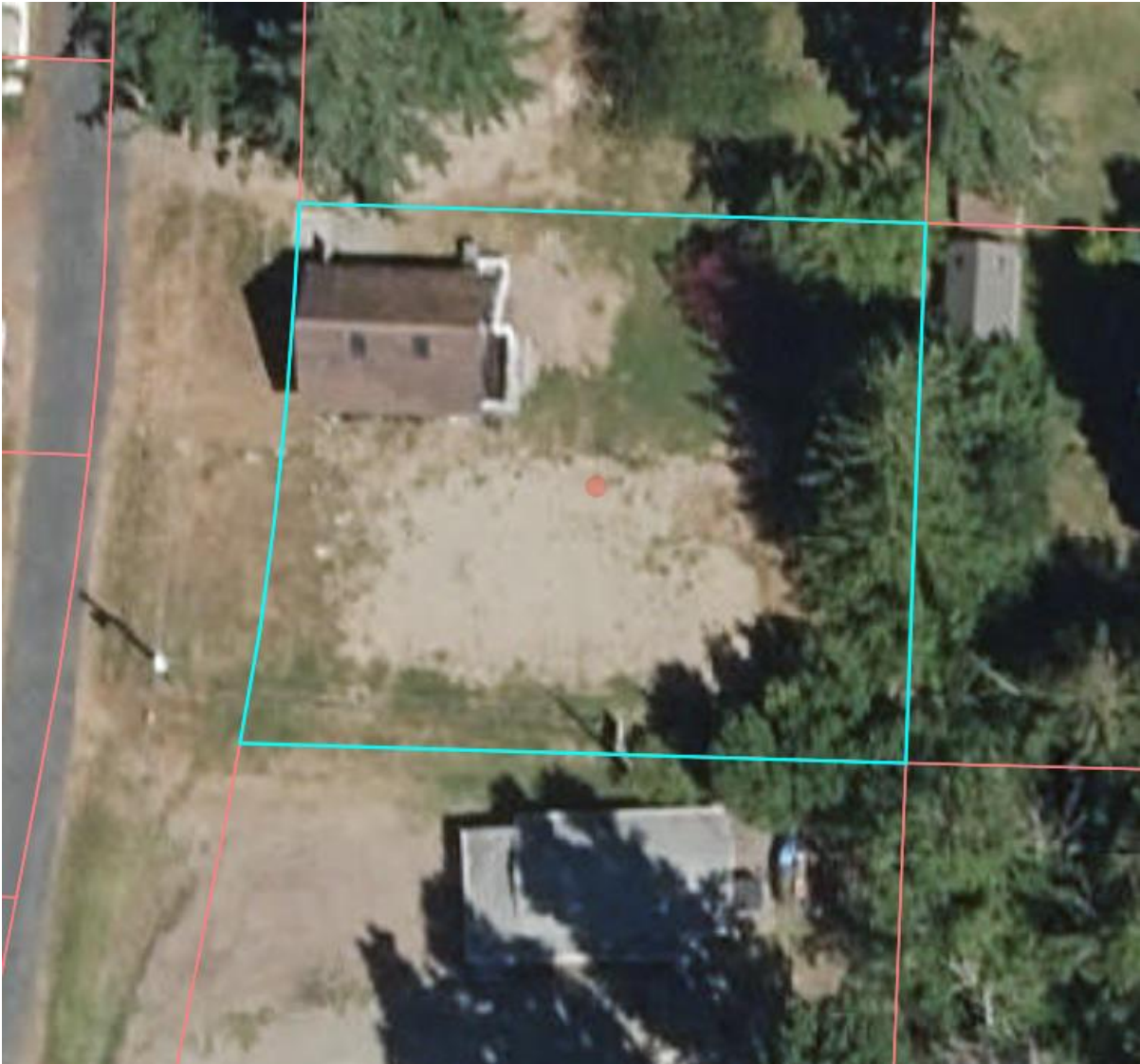
- *March 27, 2023:* Notice of Application and Public Meeting Notice, including the KPAC meeting and Examiner's Hearing information, was sent to the following:
 - Property owners within a radius of 300 feet, but not less than two parcels deep, around the exterior boundaries of the subject property.
 - Applicable governmental agencies
- *April 1, 2023:* Public notice sign posted on-site. A declaration of posting was subsequently submitted.
- *June 8, 2023:* Legal notice was published in the official County newspaper (*Tacoma News Tribune*), advertising the public meeting by the KPAC.

- *June 27, 2023*: Legal notice was published in the official County newspaper (*Tacoma News Tribune*), advertising the hearing by the Pierce County Hearing Examiner.
- *July 13, 2023*: Public notice of the rescheduled KPAC meeting was sent to property owners within a radius of 300 feet, but not less than two parcels deep, around the exterior boundaries of the subject property.
- *July 13, 2023*: Legal notice was published in the official County newspaper (*Tacoma News Tribune*), advertising the public meeting by the KPAC.

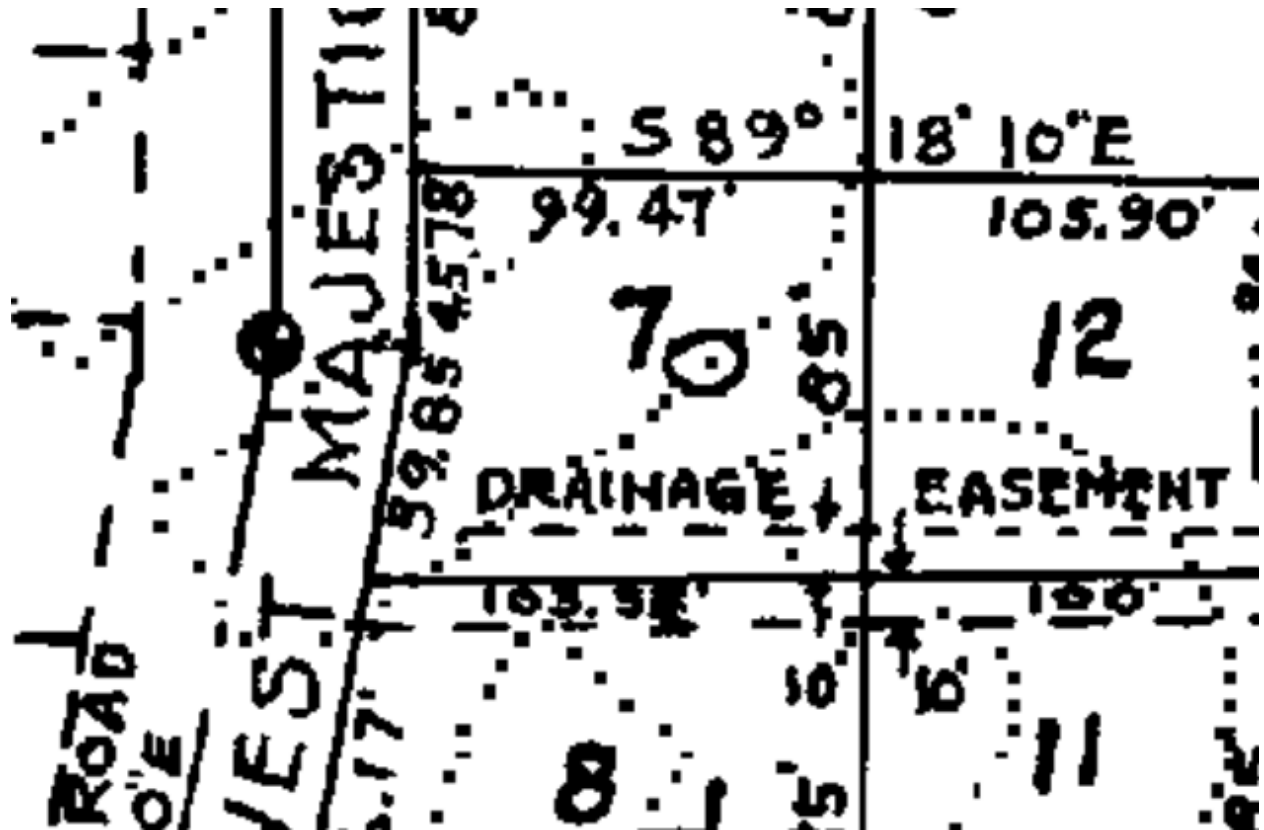
2022 Google Earth (subject parcel highlighted):



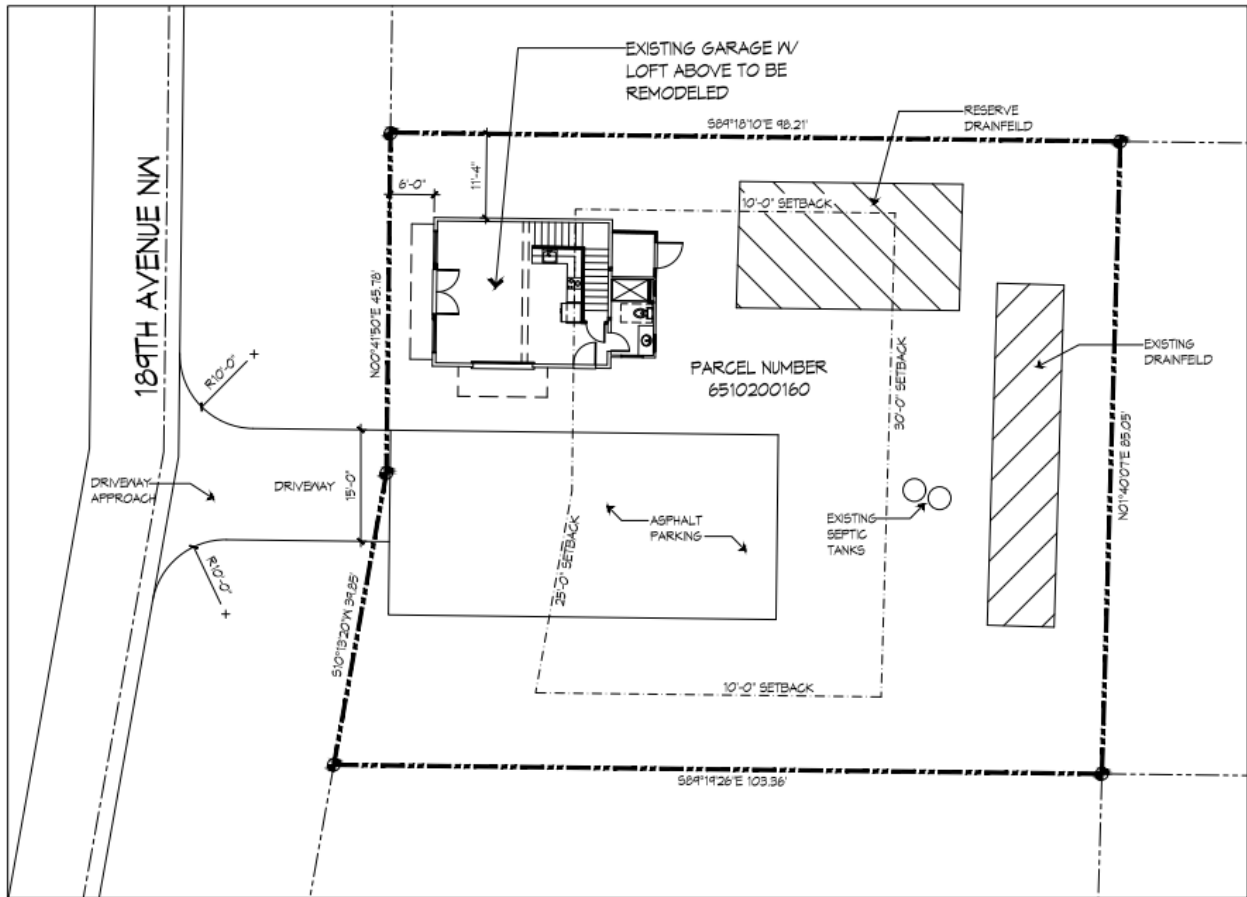
2020 County (subject parcel highlighted):



Recorded Subdivision (subject parcel is Lot 7)



Proposed Site Plan



Existing and proposed structure



Comments from the Public and Agencies

1. Abutting Property Owners and/or Public: One individual (abutting property owner to the south) has submitted comment emails expressing concerns about increased stormwater runoff, and potential flooding.
2. Agencies: No adverse comments have been received.

Site Characteristics

1. The parcel is Lot 7, within Block 2, of the recorded subdivision of Olmans Point Tracts. It was recorded in 1959.
2. The recorded plat shows a 10-foot-wide drainage easement located along the entirety of the south property line. A matching easement is located on the abutting parcel to the south (Lot 8).
3. The parcel is (approximately) 0.2 acre or 8,712 square feet in size. It is square/rectangular shaped and measures 101 feet (east-west) by 86 feet (north-south).
4. The west side of the parcel is abutted by and accessed from 189th Avenue NW. This is a private road that is located within a separate tract from the parcel.
5. The topography of the parcel is flat except for a slight slope along the south property line.
6. Most of the parcel is vegetated only with grass lawn. However, there are some trees located along the east property line.
7. The subject structure is the only one that exists on the parcel. It consists of a garage with bathroom attached and second floor storage space. It is located in the northwest corner of the parcel. A double-wide manufactured home was previously located south of the structure.
8. A newer asphalt parking area is located south of the structure, on-site septic system (septic tanks and drainfields) is located in the eastern half of the parcel, and the east/southeast portions of the parcel are fenced.

Parcel History

- 1959: Parcel was created.
- 1985: Building permit (#47875) issued for the garage.
- 2019: Demolition permit (#904581) issued for manufactured home and decks.
- 2021: Applicants purchase parcel. Directly across the street to the west, they own a parcel developed with a single-family residence.
- 2023: Subject variance application submitted.

Surrounding Land Use and Zoning / Shoreline Designations

	LAND USE	ZONING	SHORELINE
North	Vacant but utilized for RV storage and/or recreational purposes	Rural 10 (R10)	Not applicable (NA)
South	Single-family residences	R10	NA
East	Single-family residences	R10	NA
West	189 th Avenue NW and, across the street, single-family residences	R10	NA

Planning and Public Works Staff Review for Consistency with applicable Land Use Policies and Regulations

Pierce County General Provisions (Pierce County Code, Title 18)

This Code provides, in part, definitions for the terms used throughout various Titles of the Pierce County Code (including the Zoning Code). Section 18.25.030 contains, in part, the following definitions:

1. "Front lot line" means the portion of a lot line abutting a street right-of-way or future street right-of-way as identified through an official control.
2. "Front yard" means a yard lying between the minimum setback line for a structure and the front lot line and extending across the full width of the lot.
3. "Interior lot line" means any lot line other than a front or rear lot line.
4. "Interior yard" means all yards except front yards and rear yards.
5. "Rear lot line" means the lot line opposite and most distant from the front lot line.
6. "Rear yard" means a yard lying between the minimum setback line for a structure and the rear lot line and extending across the full width of the lot.
7. "Setback" means the minimum required distance between any structure and a specified line such as a lot, public or private right-of-way, easement, future street right-of-way as identified through an official control or buffer line that is required to remain free of structures unless otherwise provided herein.

Staff Comment: For this parcel, the front is on the west side (abutting the road), interior on the north/south sides, and rear on the east side.

Pierce County Zoning Code (Pierce County Code, Title 18A)

1. Setbacks are addressed in Section 18A.15.040. Table 18A.15.040-2., states that in the R10 zone, the required minimum front yard setback shall be 25 feet. In addition, it states that the required interior yard setbacks are 10 feet and rear yard setback is 30 feet. Note, there are various exceptions.

Staff Comment: The Applicant proposes to reduce the required 25-foot front yard setback to 6 feet for the structure and 3 feet for the porch and roof eaves. Within setback, at a minimum, the use would completely change (from garage/storage to single-family residence), and the roofline would change/increase in height by 3 feet, 3 inches. Therefore, such requires approval of a Zoning Code Variance. Otherwise, the structure would be located 11 feet, 4 inches from the north property line. Even if the eaves are included, the structure would meet the interior setbacks from the north and south property lines. As for the rear yard setback, the proposal far exceeds the requirement. Note, septic systems are not subject to Zoning Code setback requirements. In the R10 zone, Table 18A.15.040-3. of the Zoning Code limits height to 40 feet (for which the proposal would be far below).

2. Zoning Code Variances are addressed in Section 18A.75.040.

A. Purpose. The purpose of this Section is to provide a means of deviating from the requirements of Title 18A PCC in specific instances where strict application of these requirements would prevent property from being utilized in a similar manner as other properties in the same zone classification because of special features or constraints unique to the property involved.

B. Applicability.

(1) A variance may be used to deviate from a dimensional requirement of Title 18A PCC.

(2) No variance shall be granted to permit the establishment of a use or density otherwise prohibited in the zone in which the property concerned is located, or to waive applicable design standards described in Title 18J PCC.

(3) Where a variance has been granted, further reduction or deviations, such as those allowed in PCC 18A.15.040 C., Situational Setback and Height Provisions, shall not be approved or allowed.

Staff Comment: Chapter 18A.26 of the Zoning Code lists that in the Key Peninsula R10 zone, single-family residences are a permitted use. Staff has no evidence that the existing structure received approval of a variance when it was constructed.

C. Review Criteria. Before any variance may be granted, it shall be shown that:

(1) There are special circumstances applicable to the subject property or to the intended use such as shape, topography, location, or surroundings that do not apply generally to the other property or class of use in the same vicinity and zone;

(2) Such variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other property in the same vicinity and zone but which because of special circumstances is denied to the property in question;

(3) The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvement in such vicinity and zone in which the subject property is located;

- (4) The granting of such variance is consistent with the Comprehensive Plan including any applicable Community Plan; and
- (5) No significant adverse environmental impact will be caused as a result of the variance approval.

Staff Comment: The parcel is flat, and the drainage easement (on the south side of the parcel) is not regulated as a stream or wetland per the County Critical Areas regulations (Pierce County Code, Title 18E). When on-site, Staff could hear the trickle of water in the southeast corner of the property. If approved, the proposal would need to meet current County storm water requirements. Overall, staff finds that the proposal would not result in any environmental impacts.

For these reasons, there is no reason (it appears) why a new residence could not be constructed on-site that meets all applicable setbacks (without the need for a variance). The only special circumstance is that the structure itself already exists. The main question boils down to whether the Applicants should be allowed to upgrade an existing structure or due to the significant changes to the structure, is it appropriate instead to require a new residence that meets setbacks. On that note, it is subjective as to whether the use of the structure as a residence will have greater impacts than its past use as a garage. The subdivision in which the parcel is located appears to be a combination of full-time residences, vacation cabins, and undeveloped parcels utilized for recreational purposes. The west property line of the parcel is approximately 26 ½ feet east of the paved portion of the private road (189th Avenue NW). The proposed setback reduction is from where the private road easement and west property line meet. As such, if the variance is approved, as proposed, the structure would be nearly 30 feet from the current paved portion of the road. On that note, in reviewing the plans, Staff is unclear if any of the improvements to the west side of the structure (exterior wall, deck, and/or roof eaves) would be extending any closer to the road or not than the existing structure. Regardless, a recommended condition of approval is listed at the end of this report that no part of the structure be located closer to the road than existing.

D. Review Process.

- (1) An application for a variance will be considered an administrative variance if such request is to deviate not more than 20 percent from the minimum or maximum dimension allowed by Title 18A PCC including, but not limited to, the dimensions set forth in Tables 18A.15-040-1 and -2, and PCC 18A.15.040 C., Situational Setback and Height Provisions.
- (2) An application for administrative variance shall be reviewed and granted or denied by the Director or designee.
- (3) An application for variance to deviate more than 20 percent from the minimum or maximum dimension allowed by Title 18APCC including, but not limited to, the dimensions set forth in Tables 18A.15.040-1 and -2, and PCC 18A.15.040 C., Situational Setback and Height Provisions, shall be reviewed and granted or denied by the Hearing Examiner.

Staff Comment: As the proposal requests more than a 20% deviation, a public hearing and approval by the Examiner is required. The recommendation of the KPAC will be considered by County Staff and the Examiner as the proposal continues through the review process.

- (4) Approval Subject to Conditions. Approval may include specific conditions which will serve to accomplish the standards and criteria established by this Title and policies established by the Comprehensive Plan and any applicable Community Plan.

Staff Comment: See below recommended conditions should the Examiner decide to approve the proposal after receiving the KPAC recommendation.

Recommended Conditions of Approval

Land Use and Environmental Review (Planning) Division:

1. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the Examiner. Any substantial change to the design, terms, or conditions of the project shall be subject to approval of the Examiner and may require further and additional hearings.
2. All requirements of County agencies, including the Pierce County Building Department and Tacoma-Pierce County Health Department, must be met prior to the issuance of building permits for this proposal.
3. A building permit is required. The application shall be submitted within two years of the effective date of this decision.
4. The applicant shall comply with the Pierce County Inadvertent Archaeological and Historic Resources Discovery Plan (included as an Appendix to this Staff Report), in the event that any ground-disturbing or other project related activities associated with this development, or any future development of this site, uncover protected cultural materials (e.g., bones, shell, antler, horn or stone tools). The Pierce County Inadvertent Archaeological and Historic Resources Discovery Plan may also be found at <https://www.co.pierce.wa.us/907/Master-Document-List>
5. No part of the proposed structure, including deck and eaves, shall be located closer to the west property line than the existing structure.

Please note: A complete set of exhibits submitted at the hearing may be found at the following link: <https://pals.piercecountywa.gov/palsonline/#/permitSearch/permit/documents?applPermitId=1007205>

Spriestersbach Variance SR KPAC-TB.docx

Appendix

Inadvertent Archaeological and Historic Resources Discovery Plan

In the event that any ground-disturbing activities or other project activities related to this development, or in any future development, uncover protected cultural material (e.g., bones, shell, antler, horn or stone tools), the following actions will be taken:

1. When an unanticipated discovery of protected cultural material (see definitions below) occurs, the property owner or contractor will completely secure the location and contact:
 - a. The property owner and/or project manager;
 - b. A professional archaeologist;
 - c. Pierce County Planning & Public Works Department (253-798-7037);
 - d. The Department of Archaeology and Historic Preservation (DAHP) (Stephanie Jolivette, State Archeologist, 360-586-3088, 360-628-2755 cell);
 - d. The Puyallup Tribe (Brandon Reynon, Cultural Regulatory Specialist, 253-573-7986, 360-384-2298);
 - e. The Squaxin Island Tribe (Rhonda Foster, THPO, 360-432-3850, Stephenie Neil, Archaeologist, 360-432-3998);
 - f. The Nisqually Tribe (Brad Beach, Cultural Resources, 360-456-5221, ext. 2180) and
 - g. The Muckleshoot Tribe (Laura Murphy, Archaeologist, 253-876-3272).
2. If the discovery is human remains, the property owner or contractor will stop work in and adjacent to the discovery, completely secure the work area by moving the land-altering equipment to a reasonable distance, and will immediately contact:
 - a. The property owner;
 - b. The Pierce County Sheriff's Department (253-798-4721); and
 - c. The Pierce County Chief Medical Examiner, Karen Cline-Parhamovich, DO (253-798-6494) to determine if the remains are forensic in nature.
 - d. If the remains are not forensic in nature the Department of Archaeology and Historic Preservation (DAHP) Guy Tasa, State Physical Anthropologist, 360-586-3534; will take the lead on determining the appropriate method of treatment for the remains and will consult with the affected tribes.
3. Cultural material that may be protected by law could include but is not limited to:
 - a. Buried layers of black soil with layers of shell, charcoal, and fish and mammal bones (Figure 1);
 - b. Non-natural sediment or stone deposits that may be related to activity areas of people;
 - c. Stone, bone, shell, horn, or antler tools that may include projectile points (arrowheads), scrapers, cutting tools, wood working wedges or axes, and grinding stones (Figures 2 and 3);
 - d. Stone tools or stone flakes (Figures 2 and 3);
 - e. Buried cobbles that may indicate a hearth feature (Figure 4);
 - f. Old ceramic pieces, metal pieces, tools and bottles (Figures 5 and 6); and
 - g. Perennially damp areas may have preservation conditions that allow for remnants of wood and other plant fibers; in these locations there may be remains including: Fragments of basketry, weaving, wood tools, or carved pieces; and Human remains.
4. Compliance with all applicable laws pertaining to Archaeological Resources (RCW 27.53, 27.44 and WAC 25-48) and with human remains (RCW 68.50) is required. Failure to comply with these requirements could result in a misdemeanor and possible civil penalties and constitute a class C felony.

Figure 1: Shell midden



Figure 2: Example of stone tools



Figure 3: Example of stone flake



Figure 4: Example of hearth (oven) feature



Figure 5: Example of historic artifacts from debris scatter



Figure 6: Example of bottle from historic debris dump

