



Location: 400 W. Gowe • Mail to: 220 4th Avenue South • Kent, WA 98032
Permit Center (253) 856-5301 FAX: (253) 856-6412
www.ci.kent.wa.us/permitcenter

Public Works

Critical Areas Reasonable Use/ Variance Application

Please print in black ink only.

Please check one: [] Reasonable Use [] Variance

Public Notice Board and Application Fees: See Fee Schedule

Application #: OFFICE USE ONLY KIVA #: OFFICE USE ONLY

Proposed Variance Zone

Address/Location:

King County Parcel Number (s): Acres:

1/4 Section Section Township N Range E

Applicant: (mandatory)

Name: Daytime Phone:

Mailing Address: Fax Number:

City/State/Zip: Signature:

Professional License No: Contact Person:

Property Owner 1: (mandatory if different from applicant)

Name: Daytime Phone:

Mailing Address: Fax Number:

City/State/Zip: Signature:

Property Owner 2: (if more than two property owners attach additional info/signature sheets)

Name: Daytime Phone:

Mailing Address: Fax Number:

City/State/Zip: Signature:

The above signed property owners, certify that the above information is true and correct to the best of our knowledge and under penalty of perjury, each state that we are all of the legal owners of the property described above and designate the following party to act as our agent with respect to this application:

Agent/ Consultant/ Attorney: (mandatory if primary contact is different from applicant)

Name: Daytime Phone:

Mailing Address: Fax Number:

City/State/Zip: License No.:

OFFICE USE ONLY:

Date Application Received: Received by:

Date Application Complete: Completeness Review by:



Critical Areas Reasonable Use/ Variance Application Instructions

If there are wetlands or streams on-site, the City strongly recommends that you submit a Wetland Delineation Report (5 copies) to Public Works Environmental Engineering Department prior to submittal of an application.

A Reasonable Use or variance is a grant of relief from the requirements of the critical areas (KCC 11/06) code regulations to allow development to occur in a manner otherwise prohibited by the Code. A Reasonable Use variance may be appropriate where, by reason of unique circumstances or practical difficulties existing on a property, the strict application of the regulations of the critical areas code would result in an exceptional and undue hardship for the property owner and a loss of use rights allowed to other property in the same vicinity.

The Hearing Examiner is authorized under Section 11.06.090 and 11.06.100 of the Kent City Code to hold a public hearing and render a decision on Reasonable Use and variance requests.

I. Pre-Application Conference

A variance application is normally exempt from SEPA and therefore does not require a pre-application conference. However, if the project for which the variance is being sought requires an environmental checklist; a pre-application conference will be required for the project prior to the submittal of any project permit application, including the variance and environmental checklist.

II. Variance Application Process

A. Application Form

Provide all information requested on the application form and accompanying application requirements. Answer all criteria and standards clearly and in as much detail as possible. Return the completed forms and supporting materials with the required number of copies and the appropriate fees to Environmental Engineering.

All items requested on the application and any other material that may be required by the city must be submitted at the time of application in order for the application to be accepted. An environmental checklist must be submitted in conjunction with this application unless Planning Services has made a determination that the proposed project is considered to be SEPA exempt.

B. Completeness Review

Within twenty-eight (28) calendar days after receiving a variance application, Public Works shall mail or personally provide to the applicant a written determination of completeness which identifies, to the extent known by the city, other agencies with jurisdiction over the application and states either that the application is complete or incomplete and, if incomplete, what information is necessary to make the application complete.

A determination of completeness shall be made when an application is considered to be sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. A determination of completeness does not preclude the city from requesting additional information or studies either at the time of notice of completeness or at some later time, if new information is required or where there are substantial changes in the proposal.

When the project permit application is determined to be complete, Public Works shall accept it and note the date of acceptance.

If the city does not provide a written determination to the applicant that the application is incomplete, the application shall be deemed complete at the end of the 28-day complete-

ness review period. The time period for review of project permit applications begins following the determination of a complete application.

C. Submission of Additional Information for an Incomplete Application

If the applicant receives a written determination from the city that an application is not complete, the applicant shall have up to ninety (90) calendar days to submit the necessary information to the city.

If the applicant either refuses in writing to submit additional information or does not submit the required information within the ninety (90) calendar day period, the application shall lapse because of a lack of information necessary to complete the review.

Within fourteen (14) calendar days after an applicant has submitted the requested additional information, the city shall again make the completeness determination as described above, and shall notify the applicant in the same manner.

D. Notice of Application

A notice of application shall be issued within fourteen (14) calendar days after the city has made a determination of completeness and at least fifteen (15) calendar days prior to the public hearing. One notice of application will be done for all permit applications related to the same project at the time of the earliest complete project permit application.

E. Comment

Public Works shall send a copy of the application to each affected agency and city department for review and comment. The city will also mail a notice of application to any person who requests such notice in writing. The affected agencies, city departments and the public shall have fourteen (14) calendar days to comment. Public Works must receive all public comments on the notice of application by 4:30 p.m. on the last day of the comment period. Comments may be mailed, personally delivered or sent by facsimile. Comments should be as specific as possible. The agency or department is presumed to have no comments if comments are not received within the specified time period. The Public Works Director shall grant an extension of time only if the application involves unusual circumstances.

Any extension shall only be for a maximum of three (3) additional calendar days.

F. Public Notice

The applicant is required to place one or more public notice boards on the property. The public notice board must be placed on the property as directed by Public Works, and no later than 14 days after a determination of completeness. The applicant must remove the public notice board(s) from the property within seven (7) days after the end of the comment notice period or the conclusion of the public hearing(s). Posting information and notice boards are available at Planning Services (253-856-5454).

The city will post the notice of application on the public notice board(s) located on the property and at Kent City Hall and in the register for public review at the Planning Services counter.

The city will publish the notice of application in a newspaper of general circulation within the city and will provide notice of application

G. Application Modifications

Minor changes in the application must be submitted no later than two working weeks prior to the scheduled public hearing on the application. Major changes in the application may require a new application submittal and/or a new SEPA determination.

H. Fees

There is a nonrefundable application fee for a Reasonable Use / Variance and a fee for each public notice board. See fee schedule for application fees. Checks should be made payable to the City of Kent.

III. Public Hearing Process

A. Scheduling for Hearing Examiner

An application will be scheduled for public hearing before the Hearing Examiner after the application has been determined to be complete. The date set for the hearing shall be no more than 100 days after the application has been determined to be complete. This time limit may be extended if an Environmental Impact Statement is required.

B. Notice of Public Hearing

The city will post the notice of public hearing on the public notice board(s) already located on the property.

The city will publish the notice of public hearing in a newspaper of general circulation within the city.

The city will mail the notice of public hearing and shall be mailed to the applicant, all owners of real property as shown by the records of the county assessor's office within three hundred (300) feet of the subject property, and any person who submits written comments on an application.

Notices shall be mailed, posted and first published not less than ten (10) calendar days prior to the hearing date.

C. Staff Report

Public Works shall coordinate and assemble the comments and recommendations of other city departments and governmental agencies having an interest in the application and shall prepare a report summarizing the factors involved and the staff's findings and recommendations. The report must state all of the decisions made as of the date of the report including recommendations on project permits in the consolidated permit process that do not require a public hearing. The report shall also state any mitigation required or proposed under the development regulations or SEPA. The report must be filed with the Hearing Examiner at least seven (7) calendar days prior to the scheduled hearing and copies of the report mailed to the applicant and made available for use by any interested party for the cost of reproduction.

D. Public Hearing

Before rendering a decision, the hearing examiner shall hold at least one (1) open record public hearing on any variance application.

Order of Hearing Proceedings:

- a. Presentation by city staff to describe the application, summarize issues presented, and give a recommendation;
- b. Presentation by applicant or representative;
- c. Presentations, questions or statements by members of the public interested in the application;
- d. Responses to questions by staff and applicant (rebuttal);

- e. Final recommendation by city staff (if necessary);
- f. Applicant and public may be permitted to respond to final recommendations if appropriate.

E. Due Process Considerations

Hearings before the Hearing Examiner are quasi-judicial proceedings, which means that certain due process protections apply. For example, no one may contact the Hearing Examiner in any manner, other than in the public hearing, for the purpose of influencing a decision, nor may the Hearing Examiner participate in any matter where he or she has a financial or personal interest, or where he or she has prejudged the matter in any way. Any person who has grounds to believe the Hearing Examiner may be influenced by a consideration outside the public record should promptly bring that concern to the attention of the Hearing Examiner.

IV. Decision Process

A. Hearing Examiner Decision

When the Hearing Examiner renders a decision or recommendation, the Hearing Examiner must make written findings from the record and conclusions therefrom which support such decision. The decision shall be rendered within ten (10) working days following conclusion of all testimony and hearings, unless a longer period is mutually agreed to on the record by the applicant and the Hearing Examiner.

The city will provide a notice of decision that also includes a statement of any threshold determination made under SEPA and the procedures for appeal of the Hearing Examiner's decision. The written notice of decision shall be provided to all parties of record and to any person who requested notice of the decision prior to the decision.

B. Request of Reconsideration

A party of record who believes that a decision or recommendation of the Hearing Examiner is based on erroneous procedures, errors of law or fact, or the discovery of new evidence which could not reasonably be available at the prior hearing, may make a written request for reconsideration by the Hearing Examiner within five (5) working days of the date the decision or recommendation is rendered. If a request for

reconsideration is accepted, a decision is not final until after a decision on reconsideration is issued.

A reconsideration request must set forth the specific errors or new information relied upon by such appellant and cite specific references to the findings and/or criteria. Reconsideration requests should be addressed to: Hearing Examiner, 220 Fourth Avenue S., Kent, WA 98032. Reconsideration requests are answered in writing by the Hearing Examiner within five (5) working days of the request.

C. Notice of Right to Appeal

The decision of the Hearing Examiner is final and conclusive unless the original applicant or an adverse party files a land use petition in King County Superior Court according to the procedural standards outlined in Chapter 36.70C RCW, Judicial Review of Land Use Decisions. The petition must be filed within twenty-one (21) calendar days from the date of the notice of decision.

D. Permit Expiration

Any variance authorized by the Hearing Examiner shall remain effective for one (1) year, unless the use is begun within that time or construction has commenced. If not in use or construction has not commenced within one (1) year, the variance shall become invalid.

THESE INSTRUCTIONS PROVIDE GENERAL INFORMATION ONLY AND DO NOT REFLECT THE COMPLETE TEXT OF THE PERMIT PROCESS REVIEW. SEE THE KENT CITY CODE FOR COMPLETE TEXT AND REQUIREMENTS.

Any person requiring a disability accommodation should contact the city in advance for more information. For TDD relay service for Braille, call 1-800-833-6385, For TDD relay service for the hearing impaired, call 1-800-833-6388, or call the City of Kent at (253) 856-5725.

Reasonable Use/ Variance Submittal Requirements Checklist

THE APPLICANT MUST PROVIDE THE FOLLOWING INFORMATION WHEN REQUESTING A VARIANCE:

- A. The completed original application making sure that all of the required signatures are obtained.
- B. Eight (8) copies of detailed site plans, drawn to decimal scale. **All large maps must be folded to fit into an 8½ x 14-inch envelope with the application name of the plan showing.** The site plans must include the following information:
 1. Vicinity map clearly showing the location of the project with respect to public streets and other parcels and development
 2. Property lines
 3. North arrow and engineering scale (ie. 1"=20'; **not** 1/8"=1' architectural scale)
 4. King County tax identification number
 5. Lot dimensions
 6. All existing and proposed public and private roads, driveway accesses and road right-of-ways and easements (access, utility, stormwater, etc.), with dimensions and road names, including curbs and gutters, sidewalks and/or edges of pavement. Include all existing driveways within 300 feet of the subject property on both sides of all streets, in both directions along public street frontages.
 7. All major manmade or natural features
 8. Proposed building location
 9. Building dimensions
 10. Building height and number of stories
 11. Setback dimensions (distance from all existing and proposed structures to property lines)
 12. Location of fire hydrants closest to the site
 13. Fire access road/drive within 150 feet of all portions of the exterior first floor of all structures. If not providing a circuitous fire access around each building, provide fire turn-around(s) with an unobstructed 45-foot radius.
 14. Location of parking areas (include dimensions of stalls and drive aisles)
 15. Vehicle loading and unloading areas, including truck loading and maneuvering area
 16. Vehicle Maneuvering Diagrams for all multi-family, commercial and industrial developments (See DEVELOPMENT ASSISTANCE BROCHURE #6-4, Vehicle Maneuvering Diagrams, for additional information)
 17. Location of paved areas
 18. Location of proposed landscape areas (include dimensions and area)
 19. Areas of future development
 20. Location of outside storage areas (include dimensions and area)
 21. List of all Hazardous materials and waste, the quantities and location on site
 22. Trash dumpster location
 23. Adjacent uses (undeveloped, single family, commercial, etc.)
 24. Location of water and sewer mains closest to the site and utility connections
 25. Existing and proposed fences (specify type of fence)
 26. Water features or wetlands, including but not limited to, lakes, ponds, saltwater, year-round or seasonal streams, creeks, wetlands, gully or natural drainage way, drainage ditches, etc.
 27. Critical areas such as wetlands, streams, hazard area slopes and endangered wildlife habitat
 28. Contours
 29. If there are wetlands on-site, the approved delineation boundaries and required buffer.
 30. If there are stream(s) on-site, the surveyed ordinary High Water Mark and required buffer(s).
 31. Proposed location and calculated area of any wetland or stream fill and/or buffer impacts.

THE APPLICANT MUST ADDRESS EACH OF THE FOLLOWING STANDARDS AND CRITERIA. THE INFORMATION MUST BE SUBMITTED ON SEPARATE 8½ X 11-INCH SHEETS OF PAPER, TYPED WITH ONE-INCH MARGINS.

- C. Eight (8) copies of a detailed project description of the development for which the specific Reasonable Use / Variance(s) is requested including proposed activities to take place on the site, hours of operation, existing and proposed structures, and list the applicable critical area code section(s) for which the Reasonable Use / Variance(s) is being sought.
- D. **Eight (8) copies of complete legal descriptions of all parcels involved with the project.**
- E. **Eight (8) copies of answers addressing Kent critical areas Code Section 11.06.090–Reasonable Use Provisions or 11.06.100–Variances:**

A variance shall only be granted after the Hearing Examiner has reviewed the Reasonable Use / Variance request to determine if it complies with the standards and criteria listed below. A variance shall only be granted if such finding is made.

**KCC Section 11.06.090
Reasonable Use Provision:**

- A. The standards and requirements of these regulations are not intended, and shall not be construed or applied in a manner, to deny all reasonable use of private property. If an applicant demonstrates to the satisfaction of the hearing examiner that strict application of these standards would deny all reasonable use of a property, development may be permitted subject to appropriate conditions.
- B. Applications for a reasonable use exception shall be processed as a Process III application, pursuant to Ch. 12.01 KCC.
- C. An applicant requesting relief from strict application of these standards shall demonstrate that all of the following criteria are met:
 - 1. No reasonable use with less impact on the critical area and its buffer is possible.

- 2. There is no feasible and reasonable onsite alternative to the activities proposed, considering possible changes in site layout, reductions in density, and similar factors that would allow a reasonable economic use with fewer adverse impacts.
- 3. The proposed activities, as conditioned, will result in the minimum possible impacts to affected critical areas, considering their functions and values and/or the risks associated with proposed development.
- 4. All reasonable mitigation measures have been implemented or assured.
- 5. The inability to derive reasonable economic use is not the result of the applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undevelopable condition.
- 6. Any alteration of a critical area approved under this section shall be subject to appropriate conditions and will require mitigation under an approved mitigation plan.

- D. Approval of a reasonable use exception shall not eliminate the need for any other permit or approval otherwise required for a proposal by applicable city regulations.
(Ord. No. 3746, § 3, 4-19-05)

**KCC Section 11.06.100
Variances:**

- A. Applications for variances from the strict application of the terms of this chapter to a specific property may be submitted to the city.

All variances except administrative variances per subsection (B) of this section shall be considered by the hearing examiner as a Process III application, pursuant to KCC 12.01.040. Approval of variances from the strict application of the critical area requirements shall be consistent with the following criteria:

- 1. There are unique physical conditions peculiar and inherent to the affected

property which make it difficult or infeasible to strictly comply with the provisions of this chapter.

2. The variance is the minimum necessary to accommodate the building footprint and access.
 3. The proposed variance would preserve the functions and values of the critical area, and/or the proposal does not create or increase a risk to the public health, safety, and general welfare, or to public or private property.
 4. The proposed variance would not adversely affect properties surrounding the subject site.
 5. Adverse impacts to critical areas resulting from the proposal are minimized.
 6. The special circumstances or conditions affecting the property are not a result of the actions of the applicant or previous owner.
 7. The variance shall not constitute a grant of special privilege.
- B. Other minor buffer modifications may be permitted by the director, as outlined in the provisions of this chapter.

(Ord. No. 3746, § 3, 4-19-05)

F. Eight (8) copies of required Code data:

1. Type of construction per UBC
2. Sprinklered/non-sprinklered
3. Occupancy classifications per UBC Chapter 3
4. Zoning district
5. Total lot area (square feet)
6. Total building area with area breakdown by levels (1st floor, mezzanine, etc.)
7. Allowable area calculations
8. Percent of site coverage
9. Area per occupancy (office, manufacturing, warehouse, retail, etc.)
10. Total number of parking stalls (include handicapped)

11. Total square footage of parking and maneuvering area
12. Total square footage of paved area
13. Square footage of required landscaping areas
14. Percentage of parcel in open space (apartment complexes only)

- G. Five (5) copies of the approved Wetland Delineation report.
- H. Five (5) copies of a Conceptual Wetland Mitigation Plan.
- I. A narrative discussion (which may include drawings) of alternative uses and layouts of the site.

All above items and any other material that may be required by the city must be submitted at the time of application in order for the application to be accepted. The application will then be reviewed for completeness and a notice of completeness or incompleteness will be mailed to the applicant within 28 calendar days of receipt of the application.