



City of Medical Lake Planning Department  
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[www.medical-lake.org](http://www.medical-lake.org)

## **STAFF REPORT TO THE PLANNING COMMISSION**

**File:** LU 2023-005 CA (Critical Area Review)

**Date of Staff Report:** May 17, 2023

**Date of Hearing:** May 25, 2023

**Staff Planner:** Elisa Rodriguez 509-565-5019 or [erodriguez@medical-lake.org](mailto:erodriguez@medical-lake.org)

**SEPA:** Proposal is exempt from SEPA per WAC 197-11-800 (1)(b)(i), the construction of a detached single family residential unit.

**Procedure:** This request requires a quasi-judicial review, therefore, the Planning Commission will hold a public hearing, then make a recommendation to the City Council. The City Council will make the final decision. The complete process can be found in the Medical Lake Municipal Code, Section 17.10.040 – Approval Process.

**Applicant:** Vince Barthels, Ardurra, 1717 S Rustle, Suite 201, Spokane, WA 99224

**Owner:** Kim Magnis, 962 Hummingbird Lane, Blanchard, ID 83804

**Proposal Location:** N Martin Street, north of W Brooks Road

**Spokane County Parcels:** 14073.0253 & 14182.0402

**Zoning Designation:** Single-Family Residential Zone (R-1)

**Proposal Summary:** The applicant proposes to build a single-family residence. This proposed residence is in the buffer of a category III wetland. The applicant is using the Reasonable Use Exception of section 17.10.100 of the Medical Lake Municipal Code (MLMC).

## PROPOSAL

The applicant is proposing a 1,248 square foot building for a single-family residence in the northeast corner of the subject site. The site is 21,960 square feet and is composed of two tax parcels. Approximately 80% of the site contains a wetland. The remainder of the site is a required buffer for this wetland. However, MLMC Section 17.10.100 allows an applicant to pursue a reasonable use exception. To prepare for the building, the applicant proposes to bring in fill. The total disturbance area will be approximately 2,700 square feet. A silt fence will be placed at the disturbance limits prior to construction. Prior to the removal of the silt fence, a fence or wall will be built to mark the edge of the protected area. To mitigate the impact of clearing vegetation, bringing in fill, and the creation of impervious surfaces, the applicant proposes to add vegetation in the wetland buffer. These plantings will be monitored and replaced, if necessary, over a period of five years.

## RELEVANT APPROVAL CRITERIA

In order to be approved, this proposal must comply with MLMC Section 17.10.060 – Approval Criteria for critical area permits and MLMC Section 17.10.100(B) – Reasonable Use Review Criteria.

## PROCEDURAL HISTORY

Application Submitted – April 27, 2023

Application Deemed Complete – May 4, 2023

Notice of Application Mailed and Posted – May 11, 2023

Notice of a Public Hearing Published in Cheney Free Press – May 11, 2023

## ANALYSIS

**Site and Vicinity:** The subject site abuts N. Martin Street to the east, single-family residences to the north and west, and a vacant property containing a wetland to the south. This site is the last vacant lot on the block, except the lot to the south which is fully comprised of a wetland. Approximately 80% of the subject site is a category III wetland. The wetland extends south to W. Brooks Road. The portion of the wetland on the subject site is relatively undisturbed in recent years. The portion of the wetland on the neighboring property to the south has been highly altered, namely walls have been constructed around the perimeter.

The site consists of two interior lots, together measuring 122 feet deep and 180 feet wide, totaling 21,960 square feet. The wetland covers the majority of the lot, excluding the northeast corner, which rises slightly and has 3 pine trees. The portion of the wetland on the subject site is mostly vegetated with grasses and cattails and a willow tree in the northwest corner of the site.

**Zoning:** The site is zoned Single-Family Residential, R-1. This zone allows single-family residences at a density of one unit per 6,000 square feet. The subject site has been zoned Single-Family Residential since 1941, however, the regulations in the municipal code have changed over time.

Three standards of the R-1 Zone that have a direct impact on this proposal are minimum setbacks, minimum building footprint, and minimum parking standards. As early as 1999 these standards were as they are

today. MLMC Section 17.16.060 – Development Standards, requires a 15-foot front setback and a 5-foot side setback. This same section requires two off-street parking spaces of nine by eighteen feet. MLMC Section 17.16.070 – Residential Use Standards, requires a residence to have a minimum of 800 square feet of ground floor area, excluding the garage.

The first critical area ordinance for the City of Medical Lake was adopted in 1994. This ordinance which created MLMC Chapter 17.10 – Resource Lands and Critical Area Preservation, required a critical area permit for any disturbance within 200 feet of a wetland. The residences on the block would have been within 200 feet of today's wetland. However, there is no record of a critical area permit review taking place prior to the construction of those residences built in 1998. This could have been because what is now considered a wetland was not considered a wetland at that time, because wetlands change over time, the City of Medical Lake was not implementing the adopted ordinance, or the records have been lost.

## **ZONING CODE APPROVAL CRITERIA**

Critical Area Reviews are subject to the approval criteria of MLMC 17.10.060.

A. Avoid Impacts. The Applicant shall first seek to avoid all impacts that degrade the functions and values of critical area(s). This may necessitate a redesign of the proposal.

The applicant is proposing a building footprint in the farthest northeast corner of the site while also meeting the required setbacks of fifteen feet on the front and five feet on the side. The wetland is a category III with a habitat score of 5, therefore a buffer of 130 feet is required. Even though the building is to be located as far as possible from the wetland, it is still within the required buffer. Having no land outside of the wetland and required buffer area, the applicant proposes to use the reasonable use exception of MLMC Section 17.10.100. Due to the makeup of the site, the avoidance of impacts is not feasible, therefore, this criterion is met.

B. Minimize Impacts. Where avoidance is not feasible, the applicant shall minimize the impact of the activity and mitigate to the extent necessary to achieve the activity's purpose and the purpose of the applicable ordinance. The applicant shall seek to minimize the fragmentation of the resource to the greatest extent possible.

The applicant is proposing a relatively small building footprint of 1,248 square feet. However, the site slopes down from the northeast corner to the wetland, therefore, the applicant is also proposing to bring in fill to create a level building footprint. The toe of the fill will be the edge of the area of disturbance, which will have an area of approximately 2,700 square feet. This area of disturbance will be demarcated by a silt fence (Condition A).

The subject wetland is an isolated basin which receives stormwater runoff from W. Brooks Road and has no outlet. In addition, it is completely surrounded by development. W. Brooks Road and N. Martin Street are paved, creating an artificial edge to the buffer. Within the same block, there are seven existing houses (and their respective manicured yards) either partially or completely within the 130-foot required buffer. The proposal allows the wetland to remain intact, while recognizing that it is already isolated by existing development.

The proposal will impact the wetland by disturbing the buffer, including the removal of up to 3 pine trees. The proposed development will remove vegetated areas, change the topography, and create impervious surfaces. To mitigate these impacts, the applicant proposes a planting plan to substantially improve the vegetative structure and habitat value (Condition B).

The proposal minimizes the impact of the development by keeping the disturbed area furthest from the wetland and mitigates its impact by planting appropriate vegetation to increase the value of the wetland and its habitat. For these reasons, this criterion is met.

C. Compensatory Mitigation. The applicant shall compensate for the unavoidable impacts by replacing each of the affected functions to the extent feasible. The compensatory mitigation shall be designed to achieve the functions as soon as practicable. Compensatory mitigation shall be in-kind and on-site, when feasible, and sufficient to maintain the functions of the critical area, and to prevent risk from a hazard posed by a critical area to a development or by a development to a critical area.

The applicant proposes to compensate for the unavoidable impacts of development by planting native plants at the edge of the wetland as shown in Exhibit A.6.

Per the Wetland Buffer Mitigation Plan (Exhibit A.5), during the month of April or October, native plants will be planted according to the approved site plan (Exhibit A.6). These plants will be protected by a temporary wildlife exclusion fence. All plants shall be native to the Spokane County area. The applicant is also proposing a 5-year maintenance and monitoring plan (Condition C).

The proposed mitigation is on site, in-kind, and sufficient to maintain the functions of the wetland. For these reasons, this criterion is met.

D. No Net Loss. The proposal protects the critical area functions and values and results in no net loss of critical area functions and values.

The applicant proposes to develop within the wetland buffer, however, the plantings proposed “will substantially increase the stratification, species richness, and habitat value of the wetland,” according to the applicant, a qualified wetland professional. The wetland report provided by the applicant has been reviewed by a third party, also a qualified wetland professional and has confirmed this statement. The wetland itself is not being reduced in size. For these reasons, this criterion is met.

E. Consistency with General Purposes. The proposal is consistent with the general purposes of this chapter and does not pose a significant threat to the public health, safety, or welfare on or off the development proposal site.

The purpose of Chapter 17.10 – Critical Areas, is to designate and protect critical areas and their functions and values, while also allowing for reasonable use of property. The subject site houses part of a wetland and its associated habitat. The applicant, a qualified wetland professional, has used the Wetland Rating System for Eastern Washington to determine that this wetland is a category III wetland with a habitat rating of five. Hence, Chapter 17.10 requires a 130-foot buffer. There is no part of the subject site that is outside

of the wetland or buffer, therefore, the applicant is pursuing a reasonable use exception to build in the buffer. The proposal is mitigating for any impacts to the wetland by increasing the quality and variety of vegetation on the site. The wetland is already isolated as a basin and completely surrounded by the built environment. The development does not pose a significant threat to public health, safety, or welfare. The wetland has been identified and categorized, the development is being mitigated, and the proposal is not a significant threat, therefore, this criterion is met.

F. Performance Standards. The proposal meets the specific performance standards of Fish and Wildlife Habitat Conservation Areas section 17.10.070.C, Frequently Flooded Areas section 17.10.080.D, and Wetlands section 17.10.090.F, as applicable.

The applicant, a qualified wetland professional, has determined that the subject wetland is a category III wetland with a habitat score of five. A residential development that has a density higher than one unit per acre is considered high-intensity. High-intensity development requires a 130-foot buffer from a category III wetland with a habitat score of five. Due to the fact that there is not a buildable area outside of the wetland and buffer, the applicant is pursuing a reasonable use exception. The performance standards of 17.10.090.F are being adhered to, therefore, this criterion is met.

Applicant wanting to use the Reasonable Use Exception are subject to the approval criteria of 17.10.100(B)

1. The application of this chapter would deny all reasonable economic use of the property.

There is no area of the subject site that is outside of the wetland and buffer, therefore, if the standards of Chapter 17.10 – Critical Areas, were adhered to, no development would be allowed on this site. Hence, the application of this chapter would deny all reasonable economic use of the property. For this reason, this criterion is met.

2. No other reasonable economic use of the property has less impact on the critical area.

The subject site is zoned Single-Family Residential, R-1. This zone allows single-family residences outright and churches, schools, hospitals, government buildings, and other essential facilities as conditional uses. No other allowed use would have a lesser impact on the wetland than the proposed single-family residence, therefore, this criterion is met.

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

The applicant is proposing a 1,248 square foot building footprint, which is similar to the surrounding residences. According to the Spokane County Assessor's website, the twelve residences on the same block and across the street from the proposed residence range in footprint from 826 to 2,490 square feet. The MLMC requires a residence to have a minimum floor area of 800 square feet on the ground floor, not including the garage. Of the four residences that have a smaller footprint than the proposed residence, only one meets today's standard of 800 square feet. The MLMC also requires two parking spaces. If the applicant chooses to build a garage for these spaces, the garage is likely to be no less than 400 square feet. The combination of the 800 square feet of residence and the 400 square feet of garage equal 1,200 square feet.

The site slopes down from the northeast corner of the property to the wetland, therefore, the applicant proposes to bring in fill to level the building footprint. This will create a disturbance area of approximately 2,700 square feet. This disturbance area encompasses the proposed building footprint, the required setbacks, the driveway, and enough perimeter area to construct the house.

If the reasonable economic use of the property is a residence, which is similar in size to those of the surrounding properties, then a 1,248 square foot building footprint and a 2,700 square foot disturbance area is the minimum necessary impact on the critical area to allow a reasonable use. For this reason, the criterion is met.

4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this chapter, or its predecessor.

The original critical areas ordinance was adopted by the City of Medical Lake in 1994. The subject site configuration and physical makeup predates this ordinance. The only thing that has changed for this site is the regulations set out in the municipal code. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant, therefore, this criterion is met.

5. The proposal does not pose a significant threat to the public health, safety, or welfare on or off the development proposal site.

The subject site is located on a block that is fully built out. The wetland, which is an isolated basin, possibly predates the residences. However, prior to 1994, the City of Medical Lake did not have regulations protecting the wetland. The proposed residence will not impact the wetland insofar as the wetland will not adversely affect the surrounding development. At this time, adding an additional residence will not pose a significant threat to the public health, safety, or welfare on or off the site, therefore, this criterion is met.

6. The proposal mitigates for the loss of critical area functions to the greatest extent feasible.

The applicant, a qualified wetland professional, proposes to mitigate the clearing and filling for the proposed development by planting native plants at the wetland perimeter. These plantings will be monitored by the applicant and the city for a period of five years to ensure 80% survival. In addition, a wall of fence will be built at the edge of the disturbance area, providing a clear boundary of the area that should remain undisturbed (Condition D). Finally, a perpetual deed restriction will be recorded with the property, informing future owners of the wetland, buffer, and regulations restricting development (Condition E). For these reasons, the loss of critical area functions have been mitigated to the greatest extent possible, and this criterion is met.

7. The proposal is consistent with other applicable regulations and standards.

In addition to the regulations and standards of Chapter 17.10 – Critical Areas, already covered in this review, section 17.10.090(G)(4) requires a permanent sign to be placed at the site to inform citizens of the existence

of a natural resource (Condition F) and section 17.10.040(A)(17) requires the final critical area review decision be recorded with Spokane County Auditor's office (Condition G).

The proposed building footprint will allow a future residence to meet the development regulations of the Medical Lake Municipal Code as written today. These regulations include minimum setbacks, minimum ground floor residence footprint, and minimum parking standards. The proposal is consistent with other applicable regulations and standards, therefore, this criterion is met.

## **CONCLUSION**

The proposal to build a single-family residence on a property with no area outside of a wetland or its buffer cannot avoid impacts to the wetland. However, using a reasonable use exception, those impacts have been minimized to the extent reasonable and all impacts will be mitigated to the extent necessary to retain the function and value of the wetland and its habitat. The applicant's wetland report was prepared by a qualified wetland professional, and this report was also reviewed and confirmed by a qualified wetland professional contracted by the City of Medical Lake. The applicant has demonstrated that the applicable approval criteria have been met. Because the approval criteria are met, the proposal should be approved.

## **RECOMMENDATION**

The approval criteria set out in MLMC 17.10.060 and 17.10.100 have been met. Therefore, the planning official recommends that the Planning Commission approve the Critical Area Review for a building of 1,248 square feet and a disturbance area of approximately 2,700 square feet, including the removal of trees with the following conditions of approval:

- A. Prior to any ground disturbance or the cutting of trees, the applicant must properly place a silt fence along the line of disturbance as shown on the site plan (Exhibit A.6). This silt fence must remain in place until all construction (including the permanent fence or wall) and landscaping is finished.
- B. The mitigation planting must be done in accordance with the planting plan (Exhibit A.5). The plants must be planted in the months of April or October to be the most successful. This timing may be adjusted with the approval of the City's qualified wetland professional consultant. The mitigation plantings must be completed prior to final occupancy of the residence.
- C. The mitigation plantings, per the approved Wetland Buffer Mitigation Plan (Exhibit A.5), will be monitored and maintained by the property owner for a period of five years. This includes an annual report submitted to the City of Medical Lake Planning Department prior to December 1<sup>st</sup>.
- D. A fence or wall of the owner's choosing delineating the permanent no disturbance area of the wetland must be constructed in the location depicted on the site plan (Exhibit A.6). This fence/wall must be constructed prior to final occupancy of the residence.
- E. Prior to receiving a building permit, the owner shall record a covenant with the Spokane County Auditor's office to inform subsequent purchasers of the existence of critical areas. The covenant shall state the presence of the critical area and buffer on the property, the application of this MLMC Chapter 17.10 – Critical Areas, to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist. The covenant shall “run with the land.”

- F. A Permanent sign shall be posted along the street frontage and must be perpetually maintained by the property owner. The sign shall be worded as follows or with alternative language approved by the planning official: “Protected Natural Resource. Call 509-565-5000 for more information.”
- G. The decision, including conditions, shall be recorded with the Spokane County Auditor. The applicant is responsible for recording the decision against the property and must provide a copy of the recorded decision to the City’s planning department. The decision must be recorded before the approved use is permitted and/or permits are issued, but no later than 30 days from the final decision.

**The Planning Commission may choose to do one of the following:**

Recommend approval, with conditions, of the critical area review as presented in the staff report.

Recommend approval, amending the conditions, of the critical area review as presented in the staff report.

Recommend denial of the critical area review.

**EXHIBITS**

- A. Application Materials
  - 1. Response to Approval Criteria of MLMC Section 17.10.060
  - 2. Response to Approval Criteria of MLMC Section 17.10.100
  - 3. Email re: Department of Ecology dated July 21, 2020
  - 4. Site Plan dated April 25, 2023
  - 5. Wetland Buffer Mitigation Plan dated July 2020
  - 6. Revised Site Plan dated May 16, 2023
- B. Public Notifications
  - 1. Notice of Application dated May 11, 2023
  - 2. Legal Notice, Published in Cheney Free Press on May 11, 2023
- C. SEPA (none)
- D. Communications
  - 1. Letter of Completeness dated May 4, 2023
  - 2. Memo re: review of Wetland Mitigation Plan received May 4, 2023
- E. Maps
  - 1. Aerial from the National Wetland Inventory website dated May 17, 2023