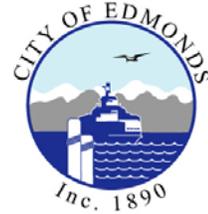


City of Edmonds Development Information



Critical Areas Variance: Reasonable Economic Use

The following is a guideline that describes the factors that the City of Edmonds Development Services Department will consider in determining whether to recommend approval of a critical areas variance based on the “reasonable economic use” exception. ***This document is intended to assist applicants*** for such variances in understanding the City’s critical area variance criteria, but ***it does not replace or supplement the requirements of the code itself***. The statements in this handout are not binding on the City’s hearing examiner, who is free to interpret the code and other applicable law independently. Obtaining a critical areas variance involves complex criteria. Applicants may want to obtain advice from a land use professional (e.g., a permit expeditor, architect, or land use lawyer) in determining whether it makes sense to pursue such a variance for a particular piece of property.

FEE: See Fee Sheet (Critical Areas Variance fee plus actual cost of Hearing Examiner)

Note: Additional fees may apply.

What is “reasonable economic use?”

Reasonable economic use is defined in the Edmonds Community Development Code (ECDC) as the following:

ECDC 23.40.005 Definitions pertaining to critical areas.

“Reasonable economic use(s)” means the minimum use to which a property owner is entitled under applicable state and federal constitutional provisions in order to avoid a taking and/or violation of substantive due process.

Note that all applications for a critical areas variance will be reviewed under the above definition. The City’s hearing examiner makes decisions on these applications after considering a recommendation from City staff and conducting a public hearing.

Factors the City considers when assessing the “reasonable economic use” exception

When determining whether to recommend a variance under the “reasonable economic use” exception, the City will begin with the city code on variances:

ECDC 23.40.210 Variances.

A. Variances from the standards of this title may be authorized through the process of hearing examiner review in accordance with the procedures set forth in Chapter 20.85 ECDC only if an applicant demonstrates that one or more of the following two conditions exist:

...

2. *The application of this title would deny all reasonable economic use (see the definition of “reasonable economic use(s)” in ECDC 23.40.005) of the subject property. A reasonable use exception may be authorized as a variance only if an applicant demonstrates that:*

- a. The application of this title would deny all reasonable economic use of a property or subject parcel;*
- b. No other reasonable economic use of the property consistent with the underlying zoning and the city comprehensive plan has less impact on the critical area;*
- c. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;*
- d. 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 the ordinance codified in this title or its predecessor;*
- e. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;*
- f. The proposal minimizes net loss of critical area functions and values consistent with the best available science; and*
- g. The proposal is consistent with other applicable regulations and standards.*

...

Anyone attempting to seek a variance under the “reasonable economic use” exception must prove that *all seven* elements of the “reasonable economic use” exception have been satisfied. If any element is not met, staff will recommend denial. Each element is assessed using a number of factors. The following is a review of the factors the City will assess for each element:

- a. The application of this title would deny all reasonable economic use of a property or subject parcel.*

For this element, the City must assess whether the critical areas ordinance denies the property owner all reasonable economic use of their property using several factors. The City will consider several factors to determine if the critical areas regulations deny all reasonable economic use:

1. The economic impact of the regulations on the property owner;
2. The extent to which the regulation has interfered with distinct investment-backed expectations, particularly those held at the time of purchase of the property;
3. The character of the governmental action, i.e. how the regulation is serving the public interest by countering the adverse public impact of the proposed development;
4. The size, location and physical attributes of the property;
5. The regulations in effect at the time of purchase of the property;
6. The purchase price of the property; and
7. The cumulative environmental impacts of the proposed development.

Assessing these factors takes into account the balancing of the public need with the interference with private investment-backed expectations. You can expect that the City will consider monetary factors such as property value and purchase price, as well as the status of the critical areas ordinances and zoning laws at the time of purchase. For example, if existing

land regulations limit the permissible uses of a property at the time of acquisition, a purchaser usually cannot reasonably expect to use land for prohibited purposes. Further, the City will assess the level of sensitivity of the critical area and how the critical area ordinance acts to protect that area. As an example, the public interest served by stream buffers is fairly high, with larger buffers (such as the 100 foot buffer imposed for anadromous fishbearing streams adjacent to reaches with anadromous fish access) indicating the need for higher protections for more sensitive and/or ecologically valuable streams to the City of Edmonds. The City will weigh these factors when making its recommendation about whether the critical area ordinance denies all reasonable economic use to the property.

- b. No other reasonable economic use of the property consistent with the underlying zoning and the city comprehensive plan has less impact on the critical area.

This factor will require a consideration of all possible uses of the property that may be consistent with the Edmonds Community Development Code (even if those uses are not expressly referenced in the permitted use table). Note that the Edmonds Community Development Code no longer includes a requirement that the minimum reasonable economic use for a residentially zoned lot which meets or exceeds minimum bulk requirements is use for one single-family residential structure. This may mean, depending on the particular facts of the application, that the City could find that a residentially zoned lot is not entitled to be developed with a residential structure, where a reasonable economic use with lesser impact on the property exists or could exist.

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

This element assesses whether the proposed development has minimized impacts to the critical area to the maximum possible extent, while still allowing for reasonable economic use of the property. City staff will consider the proposed project and make a recommendation regarding the minimal impacts by comparing the proposed project to all other possible uses of the property (including but not limited to aggregation with neighboring property, utility use, recreational use, open space use) in regards to the location, size and physical attributes of the property. The City will also consider monetary factors such as property value and purchase price of the property, as well as the property values of similar properties in the area.

Just because a proposed project satisfies the applicable zoning requirements does not mean that the proposed impact is the minimum necessary to allow for reasonable economic use of the property. Most of the City's zoning requirements establish maximum use of a property, not minimum use of a property. So, mere compliance with the City's other development regulations (e.g. height, bulk, lot area coverage) will not be enough to satisfy this criterion.

- d. 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 the ordinance codified in this title or its predecessor.

The City will not allow a variance based on the "reasonable economic use" exception when the property owner has created the conditions that resulted in the need for the critical area variance.

Further, as part of the "reasonable economic use" analysis, the City will consider whether the critical area restrictions placed on the property had been adopted at the time of purchase. Such knowledge (constructive or actual) affects the owner's investment-backed expectations for the property. As stated above, if existing land regulations limit the permissible uses of the property at the time of acquisition, a purchaser usually cannot reasonably expect to use the land for prohibited purposes.

The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site.

In making the determination of whether a proposal poses an unreasonable threat to the public health, safety or welfare on or off the development proposal site, the City will weigh the impact of the proposal against the level of sensitivity of the critical area. The City may also consider the cumulative impact of the proposal, assessing how the public health, safety, or welfare would be affected if such variances as that requested would be allowed to proliferate around the critical area. To satisfy this criterion, applicants will likely need to submit a scientific analysis of the proposal's impact upon the critical area, which would likely be subject to peer review at the cost of the applicant.

e. *The proposal minimizes net loss of critical area functions and values consistent with the best available science.*

The burden is on the applicant to demonstrate that the proposal minimizes net loss of critical area functions and values consistent with the best available science. The applicant should provide all critical area studies and other reports and plans requested by the City that incorporate the latest and most accurate data. As with the criterion above, these should be prepared by professionals with appropriate credentials depending on the type of critical area impacted. The applicant's submissions here would likely be subject to peer review at the cost of the applicant.

f. *The proposal is consistent with other applicable regulations and standards.*

The City will review whether the proposed project complies with all other regulations and requirements under the Edmonds Community Development Code, as well as state and federal law, when making this determination.

Application Procedure

Contact the City of Edmonds Planning Division for information on the submittal requirements for a critical areas variance application as well as information on the review process.

Note: This information should not be used as a substitute for City codes and regulations. The Edmonds Community Development Code (Ecdc) may be viewed at www.edmondswa.gov. The applicant is responsible for ensuring compliance with the fees and regulations that are applicable at the time of submittal. If you have a specific question about a certain aspect of your project, please contact the Planning Division at 121 Fifth Avenue North, (425) 771-0220. Please note that other local, state, and/or federal permits or approvals may be required.