



Notice of Hearing Examiner Decision

10/24/2017

To: Interested Parties and Parties of Record

RE: Project Name: HENNING – Single Family Residence
 Applicant: Robert & Linda Henning
 817 52nd St SE
 Auburn, WA 98092-3815
 Application: Shoreline Variance
 Permit Number: 17 02041

Enclosed is the Decision issued by the Kitsap County Hearing Examiner for the above project.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:
http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%20206-23-09.pdf

The Decision of the Hearing Examiner is final, unless appealed, as provided under Washington law.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Help@Kitsap1.com or (360) 337-5777.

CC: Applicant/Owner: Robert and Linda Henning, lindabobhenning@gmail.com
Project Lead: Katharine Shaffer, kshaffer@co.kitsap.wa.us
Interested Parties: None
Health District
Public Works
Parks
Navy
DSE
Kitsap Transit
Central Kitsap Fire District

Central Kitsap School District
Puget Sound Energy
City/Planning Director
Water Purveyor
Sewer Purveyor
Point No Point Treaty Council
Suquamish Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA State Dept of Transportation
WA State Dept of Ecology
WA State Dept of Ecology
WA State Dept of Ecology

**KITSAP COUNTY HEARING EXAMINER
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**Shoreline Variance
File No. 17 02041**

October 24, 2017

The Kitsap County Hearing Examiner makes the following findings, conclusions, and decision on this Shoreline Variance proposal.

1. FINDINGS OF FACT

1.1 Proposal. The Applicants request a Shoreline Variance from the reduced 100-foot shoreline buffer to allow construction of a single family residence on the Holly Bay shoreline. The home would be set back approximately 71 feet from the ordinary high water mark. The variance is requested due to topographic constraints, existing septic system setback requirements, and view considerations in relation to neighboring structures. The Applicants/property owners and site location are as follows.

Applicants/Property Owners: Robert and Linda Henning, 817 52nd Street SE, Auburn, WA 98092.

Site Location: The site is located at 365 Seabeck Holly Road West, Seabeck, WA 98380 (Assessor No. 192402-1-100-1004).

1.2 Hearing. An open record public hearing was held on October 12, 2017. The Kitsap County Department of Community Development ("DCD"), through Ms. Shaffer, provided sworn testimony on how the proposal conforms with shoreline variance requirements. She described existing development on the surrounding properties, the lot's limited construction area due to steep slopes and septic system setbacks, and how the proposal, as designed, is the minimum necessary to afford the property owner reasonable use. Given the site constraints and consistency with the shoreline variance criteria, DCD recommended approval. The Applicant, through Mr. Henning, after being sworn in, expressed concurrence with DCD's presentation. No person present indicated a wish to submit oral comment.

1.3 Administrative Record. The Hearing Examiner reviewed Exhibits 1-22 before the hearing, which included the Staff Report. At the hearing, DCD proposed adding Washington Department of Fish and Wildlife comment and a Power Point presentation as Exhibits 23 and 24, respectively. The Examiner admitted all exhibits.

1.4 SEPA. The proposal is exempt from SEPA.¹

¹ WAC 197-11-800(6)(e) and KCC Title 18.04. *See* Ex. 22 (Staff Report).

1.5 Public Notice. The proposal was properly noticed, with publication and mailing occurring for both the notice of application and public hearing. The hearing notice was also posted at the site.²

1.6 Public Comment. No public comments were received.

1.7 Agency Comment. The proposal was circulated within the County and to interested state agencies, and comment was received regarding regulatory compliance. There were no objections to approval, as long as applicable requirements are met.

1.8 Zoning/Plan Designations. The Comprehensive Plan and zoning designations are Rural Residential, or RR. RR "promotes low-density residential development and agricultural activities that are consistent with rural character."³ The surrounding properties are zoned RR. The shoreline designation is Rural Conservancy.

1.9 Physical Characteristics. The vacant .63-acre parcel is "L" shaped. Extremely steep slopes are on the east,⁴ while the lot's west side, along the shoreline, is relatively flat.

1.10 Utility and Public Services.

- **Water:** PUD Water District
- **Power:** Puget Sound Energy
- **Sewer:** On-site septic system
- **Police:** Kitsap County Sheriff
- **Fire:** Central Kitsap Fire District
- **Schools:** Central Kitsap School District

1.11 Access. Site access is off of Seabeck Holly Road West, a County maintained right of way.

1.12 Site Constraints.

The lot is 300 feet deep from the ordinary high water mark, with the easternmost 80 feet constrained by steep slopes.

1.13. Habitat Assessment and Shoreline Mitigation Plan - Impacts.

The site is predominantly cleared and covered with maintained grasses or gravel along the shoreline. The upland vegetation along the eastern sloped area consists mainly of blackberry and horsetail with a clump of young red alder, along with shrubs, an ash tree, and buttercup plants. The marine shoreline area is characterized by gravel and sand, with a small patch of pickleweed below the ordinary high water mark.

² Exhibits 9, 20 and 21.

³ KCC 17.130.010.

⁴ Staff Report and Ex. 7.

The shoreline setback area does not contain high-quality habitat functions and no regulated streams or wetlands are present. No critical fish habitat was identified on mapping as being within 300 feet of the site, and the site investigation did not identify other priority habitats or threatened, endangered, or sensitive animal or plant species.⁵

1.14. Mitigation Plan.

A modest home with a deck, detached garage, and driveway is proposed. Shoreline stabilization work is not required as no work will occur waterward of the residence. As onsite vegetation is sparse and/or non-native, this limits impacts. The project includes Best Management Practices to isolate work areas, protect nearby marine resources, and minimize construction impacts.

Areas disturbed during construction will be repaired. A porous patio and fire pit area will be incorporated into a native vegetation garden, which will blend in with shoreline restoration planting. Also, a rain garden will be incorporated into landscaping. It will be planted with native species, and will treat and attenuate rooftop, driving, and other pervious/partially impervious surfaces.

A shoreline vegetation conservation strip will be revegetated with native shoreline vegetation. Replanting will allow for eventual recruitment of organic material to the shoreline area, which is now lacking, as well as provide refuge and forage habitat for shoreline dependent animals. This restored shoreline area will blend in with the native landscaping proposed immediately adjacent to the residence.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review of a Shoreline Variance.

The Hearing Examiner reviews this type of Shoreline Variance permit application.⁶ The Hearing Examiner renders a decision and may approve, approve with conditions, or deny a Shoreline Variance permit, with final approval by the Department of Ecology.⁷

2.2 Code Requirements Specific to a Shoreline Variance.

2.2.1 SMP Regulations' Rural Conservancy Setbacks

The Rural Conservancy shoreline designation provides for a 130-foot buffer and 15-foot construction setback, unless a buffer reduction is authorized per KCC 22.400.120. Through this criteria, and per KCC 22.400.120(B)(2)(d), buffers may be reduced to 100 feet with a no-net-loss report analysis and an associated mitigation plan, "to achieve no net loss of shoreline ecological functions." With the preparation of its no-net-loss report and mitigation plan, DCD determined

⁵ Ex. 7.

⁶ KCC 22.500.100(E)(2) and KCC 21.04.100.

⁷ See e.g., KCC 21.04.080, KCC 22.500.100(E)(8).

the Applicants had met these criteria.⁸ Also, as DCD explained, the lot is legally constrained by its size, shape, and geology, such that it cannot support a minimally sized home placed above the standard buffer.⁹ As this resulting area is less than 100 feet (plus 15), the Applicants requested a variance from the reduced standard buffer and setback.

2.2.2 Shoreline Variance Criteria

The purpose of a shoreline variance is to address "extraordinary or unique circumstances relating to the property such that the strict implementation of this master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020."¹⁰ A variance "should be granted ... where denial ... would result in a thwarting" of a RCW 90.58.020 policy.¹¹ "In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect."¹² Variances landward of the ordinary high water mark must meet the following criteria:

- a. That the strict application of the bulk, dimensional or performance standards set forth in Chapters 22.400 and 22.600 precludes, or significantly interferes with, reasonable use of the property;
- b. That the hardship described in subsection (E)(1) of this section is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this program, and for example, not from deed restrictions or from the actions of the applicant or a predecessor in title;
- c. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and this program, will not cause net loss to shoreline ecological functions and does not conflict with existing water-dependent uses;
- d. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
- e. That the variance requested is the minimum necessary to afford relief; and
- f. That the public interest will suffer no substantial detrimental effect.¹³

DCD's analysis found that these criteria were met, and detailed the reasons why, which were elaborated on at the hearing.¹⁴ The Hearing Examiner concurs with DCD's analysis. Strict application of the SMP setbacks would preclude reasonable use of this property. Unless a

⁸ See DCD Hearing Testimony, Staff Report, and Ex. 7.

⁹ KCC 22.400.120(B)(3).

¹⁰ KCC 22.500.100(E)(1).

¹¹ KCC 22.500.100(E)(3).

¹² KCC 22.500.100(E)(3).

¹³ KCC 22.500.100(E)(4).

¹⁴ See Staff Report and Exhibit 7.

variance is granted, reasonable residential accommodations will not be feasible, and reasonable economic use of the property will not be feasible.

This hardship is specifically related to the property itself, not the Applicants' actions. The site's steep slopes on the eastern side, coupled with its insufficient size, mean it cannot accommodate Health Department septic requirements while also complying with shoreline buffer and setback requirements. The Applicants did not create the size and shape of the parcel and have not taken any actions to create or worsen these site development challenges.

The project design is compatible with the other authorized residential uses within the area. The other properties all have residential uses, many of which are as close to the shoreline. As a result, granting the variance would not constitute a grant of special privilege. The use is exactly the type planned for under the County's comprehensive plan, zoning, and the SMP, and does not conflict with other uses along the shoreline, water dependent or not. Also, the variance is the minimum necessary to afford relief. As addressed in the findings above and through DCD's analysis,¹⁵ the structure's footprint is the minimum necessary to accommodate reasonable living accommodations at this location, and were placed as far from the ordinary high water mark as possible.

The proposal will not adversely impact shoreline ecological functions. A habitat mitigation plan was developed by a qualified professional which details mitigation to improve shoreline conditions. The buffer improvements are detailed in the findings above, including Finding 1.14,¹⁶ but include establishment of native vegetation and ongoing maintenance. The mitigation is a required component of approval.

As addressed in the technical analysis prepared for this proposal, there are no cumulative impact concerns which could arise from similar actions in this area. Residences were previously placed within this shoreline area. The lot is among the few remaining vacant lots. A report was prepared consistent with KCC 22.700.130,¹⁷ addressing the lack of cumulative impacts and the fact that this variance will not be combined with others so as to cause "substantial adverse effects to the shoreline environment."¹⁸ Further, the use proposed is authorized, and in fact is a preferred shoreline use.¹⁹ As a result, with the limited nature of the proposal and mitigation designed by a qualified professional, the public interest will suffer no "substantial detrimental effects."

To deny the variance would thwart SMA's central policies, which give "priority for single-family residences," and are designed to protect "private property rights consistent with the public interest," while also ensuring the shoreline functions and values are protected.²⁰ As detailed in the Staff Report, and elaborated on at the hearing, the proposal is consistent with local

¹⁵ See e.g., Staff Report, Exhibit 7, and DCD hearing testimony.

¹⁶ See also Exhibit 7.

¹⁷ See also KCC 22.500.100(E)(6).

¹⁸ KCC 22.500.100(E)(6).

¹⁹ KCC 22.500.100(E)(7) and KCC 22.600.105.

²⁰ RCW 90.58.020.

SMP policies, including those addressing residential development, ecological conservation, property rights, and cultural resource protection.²¹

In summary, the variance allows the property owners reasonable use of their property while also mitigating impacts and improving ecological functions at a location which lacks high quality habitat. The variance should be granted as it is consistent with SMA and SMP policies, and the County's shoreline variance criteria.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested Shoreline Variance, provided the following 27 conditions are adhered to.

Planning/Zoning.

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. The new residence is subject to the payment of impact fees. Impact fees must be paid at time of permit issuance, or if deferred, must be paid prior to final inspection. No certificate of occupancy will be granted until all impact fees are paid.
3. Any proposed modification (not including cosmetic work such as painting, papering and similar finish work), remodel or expansion of the building, regardless of whether a building permit is required, shall be reviewed by DCD and granted approval prior to such modification, expansion, construction and/or issuance of a building permit.
4. Only one residence shall be permitted on the subject property.
5. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.
6. No mobile home or recreational vehicle shall be allowed as an accessory dwelling unit (ADU).
7. The uses of the subject property are limited to the uses proposed by the Applicants and any other uses will be subject to further review pursuant to the requirements of the KCC. Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not be, and is not to be, construed as approval for more extensive or other utilization of the subject property.
8. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By

²¹See Exhibit 22, pgs. 5-17.

accepting this/these approvals, the Applicants represent that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the Applicants agree to promptly bring such development or activities into compliance.

9. The decision set forth herein is based upon representations made and exhibits contained in the project application (Exs. 1-22). Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.

10. The Shoreline Variance permit approval shall automatically become void if no development permit application is accepted as complete by DCD within two years of the Notice of Decision date or the resolution of any appeals.

11. Any violation of the conditions of approval shall be grounds to initiate revocation of this variance permit.

Environmental.

12. The Applicants shall follow the recommendations of the Wetland, Shoreline, Fish and Wildlife Habitat, and FEMA Floodplain Assessment Report and Conceptual Mitigation Plan report and detail by Soundview Consultants dated May 2017.

13. The planting and mitigation plan will be monitored for a minimum of five years to ensure survival.

14. The newly created single family residence will be limited to 35 feet in height per KCC 22.500.100(a)(2). Building height is defined in KCC 17.110.140.

15. The application requires that no new shoreline armoring is proposed, and that no armoring will ever be needed for the protection of any facilities on site.

16. Permit approval requires that refuse shall not be placed in buffers.

17. There shall be no clearing of vegetation or grading in the buffer area, as is depicted on the approved site plan. Prior to any clearing or development, please contact Development Services and Engineering Environmental staff at (360) 337-5777 to confirm buffer boundaries.

18. All structures must be built to flood standards in KCC Title 15. The single family residence must be at least one foot above the Base Floor Elevation

Fire.

19. Fire flow in the amount of 500 gallons per minute at 20 psi for a minimum of 30

minutes is required for new homes constructed.

Development Services and Engineering.

20. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to said plan acceptance.

21. The information provided demonstrates this proposal is a *Small Project* as defined in KCC Title 12. Due to the adjacent critical area (shoreline), the project requires a Simplified Drainage Review-Engineered Site Development Activity Permit (SDAP) from Development Services and Engineering.

22. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the Shoreline Variance application was deemed complete, May 24, 2017. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of SDAP application.

23. If the project proposal is modified from that shown on the submitted site plan dated May 24, 2017, Development Services and Engineering will require additional review and potentially new conditions.

Traffic and Roads.

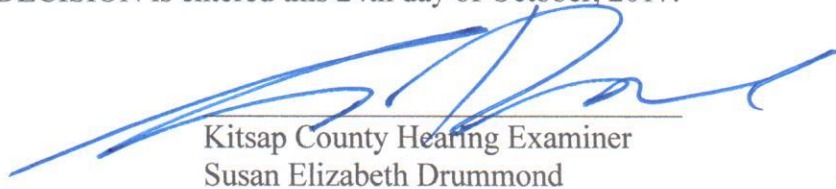
24. Submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the KCC. The KCPW 1601 form reserves road capacity for the project.

25. Submit plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with county rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter 11.22 of the KCC. Existing approaches may need to be improved to meet current standards.

26. The existing road approach to Allen King Road West shall be abandoned and the area shall be planted as proposed by the Applicants. Prior to requesting final inspection for the associated building permit, an inspection shall be requested to verify the planting/road approach abandonment.

27. Prior to completion of this permit with DCD, the Applicants shall apply for and satisfy all conditions of a Right-of-Way Permit through the Department of Public Works for any and all work performed in the county Right-of-Way associated with this project. You may contact Kitsap County Public Works, Right-of-Way Division at (360) 337-5777 to obtain a Right-of-Way permit.

THIS DECISION is entered this 24th day of October, 2017.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond