



Notice of Hearing Examiner Decision

07/01/2019

To: Interested Parties and Parties of Record

RE: Project Name: Wheeler Street- Baker Addition Shoreline Variance
Applicant: Catherine M & Jeb E Baker
3290 NE Wheeler St
Poulsbo, WA 98370
Application: Wheeler Street- Baker Addition Shoreline Variance
Permit Number: # 18-03760

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:

<https://spf.kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.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.

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Kitsap Sun

Health District

DSE

North Kitsap Fire District

North Kitsap School District

Puget Sound Energy

Water Purveyor: Northwest Water Systems (Walker Beach)

Point No Point Treaty Council

Port Gamble S'Klallam Tribe

WA Dept of Fish & Wildlife; Chris Waldbillig and Nam Siu WA

State Dept of Ecology-SEPA

WA State Dept of Ecology-Wetland Review

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

**Shoreline Variance, File No. 18-03760
Wheeler Street Baker Addition**

June 28, 2019

1. FINDINGS OF FACT

1.1 Proposal. The Applicant requests a Shoreline Variance to allow improvements to an existing residence on a 1.33 acre lot on the Hood Canal shoreline.

Applicant/Property Owner: Jeb and Catherine Baker
9801 Powerhouse Road, Newcastle, CA 95658

Location: 3290 Wheeler Street, Poulsbo, WA 98370
Assessor No. 4337-000-019-0005

1.2 Hearing. An open record public hearing was held on June 27, 2019. The Kitsap County Department of Community Development ("DCD"), through Ms. Barnhart, described how the proposal conforms to shoreline variance requirements. The Applicant briefly addressed the proposal, confirming the proposed conditions were not objected to. No other individual present wished to testify.

1.3 Administrative Record. The Hearing Examiner admitted Exhibits 1-22, which included the Staff Report and Power Point presentation.

1.4 SEPA. The proposal is exempt from SEPA.¹

1.5 Public Notice. The proposal was properly noticed, with publication and mailing for both the application and public hearing.² No notice concerns were raised.

1.6 Public Comment. No public comments were received.

1.7 Agency/Tribe Comment. The proposal was circulated within the County, and comment was received regarding regulatory compliance. The Port Gamble S'Klallam Tribe commented on environmental resource concerns.³ In response, the Applicant voluntarily increased native vegetation planting from 540 to 648 square feet immediately above the bulkhead, exceeding the code's no net loss standard.⁴

¹ WAC 197-11-800(1); KCC Title 18.04.

² Exhibits 19 and 20.

³ Exhibits 14 and 16 ("We propose that the mitigation plan aim to improve the degraded shoreline, rather than only assure no-net-loss of ecological function.").

⁴ See Exhibit 4, as amended through Exhibits 17 and 18.

1.8 Zoning/Plan Designations and Surrounding Uses. The Comprehensive Plan and zoning designations are Rural Residential, one dwelling unit per five acres. The shoreline designation is Rural Conservancy. The Hood Canal shoreline is on the north, with Wheeler Street and SR 104 to the south. Single-family residences on land also zoned Rural Residential are on the east and west.

1.9 Variance Request. The Applicant has an existing one bed/one bath 1,446-square foot (966 square foot footprint) 1.5 story home. The home is one of two homes under 1,700 square feet in a 12-lot subdivision, and is the only one-bedroom residence. Neither the standard 130-foot buffer and 15-foot building setback or reduced 100-foot buffer and 15-foot building setback can be met, as the existing structure is within these buffer areas.⁵ The existing house is about 60 feet from the ordinary high water mark; the deck is about 40 feet away. All zoning setbacks are met,⁶ but a shoreline variance is required due to existing structure location, along with issues associated with access road location and surrounding habitat.⁷ The variance would allow 654 square feet of additions, including a bedroom, 3/4 bath, and conversion of an existing deck to a sunroom. Only existing impervious surface, lawn and landscaping will be disturbed with no waterward expansion. Mitigation and restoration are proposed.

1.10 Site. The upland parcel is treed (fir, cedar, maple, other) and includes the access road. The lot gently slopes toward the shoreline, with the developed area being flat and the existing home within the FEMA Floodplain. A Floodplain Habitat Assessment was provided with the Habitat Survey and Shoreline Mitigation Plan. Improvement cost is less than half the current home's assessed value, so the home need not be brought up to the Title 15 flood control standards for Frequently Flooded Areas. A bald eagle nest is within 330 feet of the property; the project will meet USFW guidance on avoidance. The shoreline is mapped for high coastal erosion hazard, but the site has an existing shoreline bulkhead. Soils are mostly sand with good natural drainage.

1.11 Views. There are no view blockage concerns. Additions are landward of the view lines for the adjacent primary structures.

1.12 Utility and Public Services.

- **Water:** Well (Walker Beach)
- **Power:** Puget Sound Energy
- **Sewer:** On-Site Septic
- **Police:** Kitsap County Sheriff
- **Fire:** Kitsap County Fire District 18
- **Schools:** North Kitsap School District #400

1.13 Access. Access is off NE Wheeler Street, a County road within SR 104 right-of-way. A private access easement serves the parcel and neighbors.

⁵ KCC 22.400.120(B)(1-4).

⁶ Exhibit 21 (Staff Report), pg. 3.

⁷ See Exhibit 21 (Staff Report), pg. 15.

1.14 Habitat Assessment and Shoreline Mitigation Plan. The Habitat Survey and Shoreline Mitigation Plan⁸ along with required monitoring and maintenance assures no net loss of ecological functions and processes. The 540 square feet of buffer impact is mitigated with 648 square feet of shoreline buffer restoration.⁹

1.15 Cultural Resources. Protected cultural resources have not been identified on site. However, if encountered during excavation the project is conditioned to require work stoppage and notice to agencies.¹⁰

1.16 Site and Staff Report. While the lot likely would not be subdivided today in the way it originally was, the KCC does allow reasonable use of property. Mitigation is built into the project and that mitigation follows SMP locational and mitigation policies.¹¹ Except as modified here, the Staff Report, which details the County's SMP policies and elaborates on the proposed mitigation, is incorporated.

1.17 Conditions. DCD proposed conditions to ensure project development consistent with SMP requirements. Those conditions should be applied without revision.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review. The Examiner reviews this Shoreline Variance application.¹² The Examiner may approve, approve with conditions, or deny the variance, with the Department of Ecology making the final decision.¹³

2.2 Code Requirements Specific to a Shoreline Variance.

2.2.1 SMP Setbacks. The Shoreline Conservancy designation requires a 130-foot buffer and 15-foot building setback, unless a buffer reduction is authorized. With a no net loss report and mitigation plan, buffers may be reduced to 100 feet "to achieve no net loss of shoreline ecological functions."¹⁴ With its Habitat Survey and Mitigation Plan, the Applicant met these criteria. However, due to the physical constraints of the property, the site cannot support a minimally sized home above the reduced buffer.¹⁵ The Shoreline Variance is required.

2.2.2 Shoreline Variance Criteria, KCC 22.500.100(E). 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."¹⁶ A variance "should be

⁸ Exhibit 4.

⁹ Exhibits 4, 14, 16-18, and 21 (Staff Report), pg. 10.

¹⁰ See KCC 22.400.130.

¹¹ KCC 22.400.105; KCC 22.400.110.

¹² KCC 22.500.100(E)(2) and KCC 21.04.100.

¹³ See e.g., KCC 21.04.080, KCC 22.500.100(E)(8).

¹⁴ KCC 22.400.120(B)(2)(d).

¹⁵ KCC 22.400.120(B)(1) and (2).

¹⁶ KCC 22.500.100(E)(1).

granted ... where denial ... would result in a thwarting" of a RCW 90.58.020 policy.¹⁷ "In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect."¹⁸ These criteria must be met:

- 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.¹⁹

As detailed in the Staff Report, DCD found these criteria were met.²⁰ DCD's analysis, which finds strict application of the SMP setbacks would preclude the property's reasonable use, is incorporated.

The hardship is specifically related to the property, not the Applicant's actions. The variance request is due to site size and current structure location. The lot and existing structure are non-conforming, and improvements are necessary to provide reasonable living space. Relief from buffer and setback requirements is necessary to allow for reasonable development.

The project design is compatible with the other authorized residential uses within the area and with planned uses, will not cause net loss to shoreline ecological functions, and does not conflict with existing water-dependent uses. Parcel use and design is compatible with the locale.

The variance is not a grant of special privilege not enjoyed by other properties. The neighboring parcels are built out and the home proposed is consistent with nearby residential development. The variance requested is the minimum necessary to afford relief. Site plan design

¹⁷ KCC 22.500.100(E)(3).

¹⁸ KCC 22.500.100(E)(3).

¹⁹ KCC 22.500.100(E)(4).

²⁰ Exhibit 21.

reflects compliance with other titles, including zoning setbacks, and the improvements do not extend closer into the shoreline than the existing structures.

As conditioned, the public interest will not suffer substantial detrimental effect. The proposed development retains the residential use, with shoreline buffer restoration to meet the policy for no net loss of shoreline ecological function.

To deny the variance would thwart SMA's central policies, which give "priority for single-family residences" and protect "private property rights consistent with the public interest," while ensuring shoreline functions and values are protected.²¹ As detailed in the Staff Report and elaborated on at the hearing, the proposal is consistent with local SMP policies, including those addressing residential development, ecological conservation, and property rights.

2.3 Other Shoreline Policies. Consistency with Ch. 22.800 KCC, Appendix B, addressing mitigation, was documented through the Habitat Siting and Mitigation Plan, as amended following tribal consultation.²² As detailed in the Staff Report and findings above, the project adequately addresses and follows the Ch. 22.400 KCC shoreline regulations on:

- Optimizing project location;
- Mitigating environmental impacts;
- Protecting critical areas;
- Including vegetative buffers;
- Protecting water quality and quantity;
- Protecting cultural resources;
- Avoiding view blockage; and,
- Complying with bulk and dimension standards.

Allowing for reasonable use precludes the use of established setbacks. Instead, mitigation is imposed to minimize impacts and improve conditions, beyond the "no net loss" standard. The variance allows the property owners reasonable use of their property, but coupled with mitigation to protect environmental and shoreline resources. The variance should be granted as it follows SMA and SMP policies, and the County's shoreline variance criteria.

2.4 Shorelines of Statewide Significance, KCC 22.300.145. In Kitsap County, areas "seaward from the line of extreme low tide" within Puget Sound and Hood Canal (from the Kitsap-Mason line to Foulweather Bluff) are designated as shorelines of statewide significance. To recognize and protect statewide interests over the local, development proposals with this designation are reviewed for consistency with RCW 90.58.020 and various shoreline policies. Primary considerations are summarized below.

Recognize and protect state over local interests. These policies provide for consulting with WDFW, Ecology, affected tribes and other agencies/interest groups on proposals that could affect anadromous fisheries or other priority species or habitats; and, considering state agencies'

²¹ RCW 90.58.020.

²² Exhibits 4, 17, and 18.

relevant policies and recommendations. Outreach was conducted, and the project incorporates agency approaches to shoreline mitigation and ecological restoration, thus protecting both state and local interests in encouraging responsible shoreline access.

Preserve shoreline natural character. These policies provide for administering regulations to minimize damage to shoreline ecology; to facilitate restoration where natural resources are being diminished; and new intensive development "should upgrade and redevelop those areas where intensive development already occurs, rather than allowing high intensity uses to extend into low intensity use or underdeveloped areas." The project is not an intensive development or high intensity use, and is mitigated to address shoreline ecology issues.

Protect long-term over short-term benefit. These policies provide for preserving sufficient areas to accommodate "current and projected demand for economic resources such as shellfish beds and navigable harbors;" strictly limit actions that would convert resources into irreversible uses or detrimentally alter natural conditions; evaluate short term economic gain/convenience over long term and costly environmental impairment; and promote aesthetic considerations. The use would not be detrimental to natural conditions or result in irreversible, adverse shoreline impacts.

Protect shoreline resources and ecology. These policies provide for considering "incremental and cumulative impacts while ensuring no net loss of shoreline ecosystem processes and functions;" ensuring "the long-term protection of ecological resources of statewide importance, activities impacting anadromous fish habitats, forage fish spawning and rearing areas, shellfish beds and other unique environments;" and limiting "public access where improvements would result in a loss of shoreline ecological functions, such as in priority or sensitive habitats." The project as proposed and mitigated would not have significant adverse impacts on ecosystem processes and functions.

Increase public access to publicly owned areas of the shorelines. These policies provide for preserving/encouraging public access to areas with scenic or cultural qualities; giving priority to paths, trails, and linear shoreline access; and, locating development inland to enhance access. Shoreline access is not impeded and planting native vegetation will improve shoreline conditions.

Increase recreational opportunities for the public in the shoreline. These policies provide for accounting for state agencies/citizen interests in visiting public shorelines regarding public access/recreation requirements; and, encouraging "development of facilities for recreational use of the shorelines," while reserving upland areas for lodging, with provisions for nonmotorized shoreline access. The proposal furthers recreational shoreline use.

Hood Canal Policies. The project better protects the Canal's "unique and significant marine" environment than the existing structure. By taking measures to protect and improve the shoreline area, the statewide over the local interest is served. And, with the consultation which occurred with the project, policies encouraging coordination on resource use are met.

The project follows these policies, and also furthers their underlying objectives to support environmentally responsible utilization of shoreline resources and water dependent uses. The identified location is well suited for the use, which the County's SMP, and the SMA more generally, both support. The project follows the County's shoreline regulations and policies, and the Shoreline Management Act, Ch. 90.58 RCW, and should be approved.

DECISION

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

Development Engineering

1. The information provided demonstrates this proposal falls below thresholds of new/replaced hard surface and ground disturbance that would require engineered drainage design. The building permit application materials for the addition shall depict how roof runoff from the addition is to be managed.

2. Erosion and sedimentation control shall be designed in accordance with Kitsap County Code Title 12 effective at the time the Shoreline Variance application was deemed complete, December 13, 2018. Erosion and sedimentation control measures shall remain in place throughout the construction period.

3. If the project proposal is modified from that shown on the submitted site plan received December 5, 2018, Development Services and Engineering will require additional review and potentially new conditions.

Environmental

4. This project shall follow the Habitat Survey and Shoreline Mitigation Plan (Ecological Land Services, Inc.; dated 11/27/17). As-built to be provided to DCD for review prior to scheduling final inspection. Five-year monitoring and maintenance are required. As-built should include areas of restoration planting, as agreed to by landowner, demonstrated in Exhibits x and y.

5. This project shall follow the National Bald Eagle Management Guidelines as demonstrated in the USFWS certification dated 1/2/18. This includes, but may not be limited to, no development activity during the nesting season (January 1 to August 31) and roosting season (October 15 to March 15).

6. This addition to the single-family residence is located within the mapped 100-year FEMA floodplain, but is currently under the 50% market value threshold for requiring the structure to be flood-proofed per Kitsap County Code Title 15. The value of these improvements is estimated at \$73,673.10, under 50% of the \$250,240 current assessed building value. Any additional improvements over the next ten (10) years may not cumulatively exceed the 50% value threshold at that time without requiring compliance with Kitsap County Code Title 15.

7. Permit approval subject to conditions in this Decision.

8. Should archaeological resources be uncovered during excavation, the responsible contractor or homeowner shall immediately stop work and notify Kitsap County, the Washington State Office of Archaeology and Historic Preservation and the Port Gamble S'Klallam Tribe.

DECISION entered June 28, 2019.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond