



Kitsap County Department of Community Development

Notice of **CORRECTED** Hearing Examiner Decision

12/27/2019

To: Interested Parties and Parties of Record

RE: Project Name: Hancock- Critical Areas Variance
 Applicant: Michael A and Janele A Hancock
 1531 E Old Ranch Rd
 Allyn, WA 98524
 Application: CVAR
 Permit Number: #18-03479

Enclosed is the **CORRECTED** 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 timely 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.

Owner: Michael A and Janele A Hancock, mike380@live.com

Interested Parties:

Robbyn Myers, bgerobbbyn@comcast.net

Map LTD., patf@map-limited.com

Jack Stanfill, jackstanfill@hotmail.com

Mike & Amy O'Shaughnessy, oshaughnessyiii@gmail.com

CC: Project Lead, Steve Heacock
DCD Director, Jeff Rimack
DCD Assistant Director, Angie Silva

Kitsap County Prosecutor's Office
Kitsap County Assessor's Office
Kitsap Sun
Health District
Navy
DSE
North Kitsap Fire District
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'klallam Tribe
Squaxin Island Tribe
WA Dept of Fish & Wildlife
WA State Dept of Ecology- SEPA
WA State Dept of Ecology- Wetland Review

**KITSAP COUNTY HEARING EXAMINER
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND CORRECTED¹ DECISION**

**Critical Areas Variance, CVAR 18-03479
(Hancock)**

December 26, 2019

1. FINDINGS OF FACT

1.1 Proposal. The Applicants request a critical area variance from wetland and stream buffer requirements to allow for two single family residences on two separate parcels.

Applicants/Property Owners: Michael and Janele Hancock, 1531 East Old Ranch Road, Allyn, WA 98524.

Location: About 800 feet west of Olympic View Road NW and NW Anderson Hill Road. Assessor Nos. 182501-2-050-2001 (Parcel 2, 4.46 acres); 182501-2-049-2005 (Parcel 1 14.78 acres). (The nearest address is 5600 NW Anderson Hill Road, Silverdale, WA 98383).

1.2 Hearing. An open record public hearing was held on December 11, 2019. The Kitsap County Department of Community Development ("DCD"), through Mr. Heacock, summarized the proposal and described the technical analysis (Exhibit 28). The Applicant also testified, through Mr. Hancock, expressing agreement with DCD's summary, confirming lack of objection to DCD's proposed conditions, and outlining variance consistency with the code.

Ms. McQueary, a neighbor, testified. Her primary concern was to ensure the stream was properly typed (Type F). The stream meanders, in contrast with the farm ditches, which run in linear directions. As DCD and the Applicant confirmed, these concerns were addressed in the technical analysis which classified the stream as Type F. The Applicant's technical consultant met with Washington Department of Fish and Wildlife and the Suquamish Tribe on site, and the consultant revised her analysis to address their recommendations.² DCD proposed conditions to ensure compliance with these recommendations. The recommendations will also protect water quality, a concern which DCD indicated had been raised. A drainage report has been prepared and conditions require compliance with County stormwater requirements.³ No other citizens indicated a wish to testify.

1.3 Administrative Record. The Hearing Examiner admitted Exhibits 1-35, which included the Staff Report, Revised Wetland Delineation Report, notice documentation, and Power Point presentation. Exhibits 32-35 were submitted at the hearing (DCD power point;

¹ Decision corrected to identify the neighboring property referenced on pg. 3, ¶ 3, as the O'Shaughnessy property.

² Exhibit 28 (Revised Wetland Report). Based on DCD and Applicant testimony, the typing is conservative, as it is not clear if fish are in fact present. The Applicant indicated that stocking had occurred in the past, which is why fish were at one point present, but were since eaten by herons.

³ Exhibit 4 (Drainage Report).

public comment from Mr. Stanfill, with an aerial map; Health District comment; and, an aerial photo illustrating surrounding development patterns).

1.4 SEPA. The proposal is exempt from SEPA.⁴

1.5 Public Notice and Comment. Publication and mailing was provided for both the notice of application and public hearing, with hearing notice also posted at the site.⁵ KCC notice requirements were complied with.

1.6 Agency/Tribe Comment. The proposal was circulated, and comment was received regarding the onsite stream. Within the County, there were no objections to approval, as long as requirements are met. In response to comment from WDFW and the Suquamish Tribe,⁶ the critical areas analysis was revised.⁷

1.7 Zoning/Plan Designations. The Comprehensive Plan and zoning designations are Rural Residential, the same as surrounding properties, which allows one dwelling unit per five acres.⁸

1.8 Site and Project Details. Parcel 1 is 14.78 acres; Parcel 2 is 4.46 acres. On the larger parcel, forest lands are to the west, and are coupled with additional wetland and F-type waters. This area will remain undeveloped. Building within this area would increase project environmental impacts over location within the already cleared and degraded portions of the site.

Two wetlands, along with a Type F stream running east to west, take up much of the portions of the parcels under evaluation for development location. Wetland A, a Category II wetland, takes up much of both parcels' east side. Wetland B, a Category III wetland, is at Parcel 2's northwest corner, but crosses into Parcel 1's southwest corner. The 110 foot wetland buffer standard for the Category II and III wetlands and the 150 foot stream setback for the F-type creek, coupled with the 15 foot building setbacks severely restrict buildable area on both parcels.⁹ The net developable acreage on each parcel is about 14,000 square feet or .32 acres.¹⁰ The Wetland Report, Exhibit A, depicts the net available acreage on both parcels.

The exact development area is not finalized, but has been conceptually detailed, and includes living space, garage areas, a covered patio, and driveway/parking areas.¹¹ Anticipated development is in line with surrounding development, as documented in technical analysis documenting living space and garage areas for 26 nearby properties,¹² and the additional information submitted at the hearing.¹³

⁴ Ex. 31, pg. 2; KCC Title 18.04, WAC 197-11-800.

⁵ Exhibits 14, 15, 29, and 30.

⁶ Exhibits 17 and 19.

⁷ Exhibits 28; *see also* DCD responses at Exhibits 16-21.

⁸ KCC 17.130.010 (the zone "promotes low-density residential development ... consistent with rural character.").

⁹ Exhibit 28 (Revised Wetland Report), Ex. A.

¹⁰ These figures were outlined in the Revised Wetland Report (Exhibit 28), and clarified at the hearing.

¹¹ *See* Exhibit 4.

¹² Exhibit 27 (Technical Memorandum), Ex. A.

¹³ Exhibit 35.

The present critical area buffers within the investigation area are compromised, with Scotts broom well established (up to 8-10 feet tall) and some Himalayan blackberry. There are some remaining productive fruit trees, coupled with old fence lines and piled debris from past farming. To manage the invasive species now growing, the buffer areas are regularly mowed.

To allow for constructing a home on each of the two parcels, the Applicant requested reductions down to 50 feet for the wetland buffer, and to 75 feet for the stream buffer. The 15-foot building setbacks would remain. To address impacts, a mitigation plan has been developed which would improve buffer functioning. The buffers will be planted with native vegetation, maintained, and monitored, to ensure buffer functioning improves. The Wetland Report (Exhibit 28) details the proposed mitigation. With the mitigation, ecological conditions improve.

Several measures are in place to protect water quality. The area is within a closed basin, geographically lower than the O'Shaughnessy property.¹⁴ Septic design must comply with Health District requirements, including drainfield siting requirements, and the project overall must comply with building setbacks and the proposed reduced critical areas buffers.

1.9 Utility and Public Services.

- **Water:** Silverdale Water District
- **Power:** Puget Sound Energy
- **Sewer:** On-Site Septic (proposed)
- **Police:** Kitsap County Sheriff
- **Fire:** Central Kitsap Fire District
- **Schools:** Central Kitsap School District

1.10 Access. NW Anderson Hill Road, a County maintained right of way.

1.11 Conditions. DCD's proposed conditions ensure project development consistent with code and these findings. They should be included without substantive revision. Condition 8 was updated to reflect KCC 21.04.270's four year permit duration period, and a Condition 23 code reference corrected. Except as modified, DCD's Staff Report is incorporated by reference.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Jurisdiction. The Hearing Examiner has authority to hear and decide certain critical areas variance requests.¹⁵ The stream buffer request, on its own, qualifies for administrative reduction, as opposed to Examiner review, as half the total 150 foot buffer would remain.¹⁶ However, as the wetland buffer reduction exceeds 25%, the Hearing Examiner process is triggered. The two requests were consolidated before the Examiner.¹⁷

¹⁴ Hearing, DCD testimony, referencing map submitted with comment.

¹⁵ KCC 19.100.135 and 21.04.100.

¹⁶ Type II decision Chapter 19.800, Appendix F

¹⁷ KCC 21.04.180.

2.2 Variance Criteria. A variance may be granted, when an Applicant shows these criteria are met:

1. Because of special circumstances applicable to the subject property, including size, shape, or topography, the strict application of this title is found to deprive the subject property of rights and privileges enjoyed by other properties in the vicinity; provided, however, the fact that those surrounding properties have been developed under regulations in force prior to the adoption of this ordinance shall not be the sole basis for the granting of a variance.
2. The special circumstances referred to in subsection (A)(1) of this section are not the result of the actions of the current or previous owner.
3. The granting of the variance will not result in substantial detrimental impacts to the critical area, public welfare or injurious to the property or improvements in the vicinity and area in which the property is situated or contrary to the goals, policies and purpose of this title.
4. The granting of the variance is the minimum necessary to accommodate the permitted use.
5. No other practicable or reasonable alternative exists. (See Definitions, Chapter 19.150.)
6. A mitigation plan (where required) has been submitted and is approved for the proposed use of the critical area.¹⁸

Due to the extensive critical areas blanketing the two parcels, strict application of standard buffers deprive the property owners of the rights and privileges of use common to the nearby properties. The Applicant did not create or exacerbate these conditions. With the mitigation outlined, the variance would not result in substantial detrimental impacts to the critical areas. Nor would approval be detrimental to the public welfare or to nearby properties and improvements. Project mitigation will improve buffer functioning and mitigate impacts.

Given the limited buildable area, the reductions are the minimum necessary to accommodate the project. There are no practical or reasonable alternatives present. On the larger parcel, the wooded areas would have to be removed, and other variances required due to the wetland and stream conditions, creating added impacts and issues. Instead, with the project, the degraded areas on the two sites would be developed, but with mitigation. Impacts are mitigated according to Title 19.200.250 KCC, in a sequential analysis to avoid, minimize and mitigate. The mitigation analysis sequence is provided below for both Parcel 1 and Parcel 2.

¹⁸ KCC 19.100.135(A).

DCD, WDFW, Ecology, and the Suquamish Tribe reviewed the mitigation plan, and it was revised in response to comment to ensure on site critical areas are addressed, and the stream properly typed. As the variance criteria are met, the variance should be granted.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested Critical Areas Variance, provided these 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 future residential developments are 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 of the site plan or expansion of accessory buildings, regardless of whether a building permit is required, shall be reviewed by the Department of Community Development and granted approval prior to such modification, expansion, construction and/or issuance of a building permit.
4. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.
5. The uses of the subject property are limited to the uses proposed by the applicant and any other uses will be subject to further review pursuant to the requirements of the Kitsap County Code (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, and is not, to be construed as approval for more extensive or other utilization of the subject property.
6. 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 accepting this/these approvals, the applicant represents 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 applicant agrees to promptly bring such development or activities into compliance.
7. The decision set forth herein is based upon representations made and exhibits contained in the project application (Exhibits 1-35). 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.

8. This Critical Area Variance Permit approval shall automatically become void if no development permit application is accepted as complete by the Department of Community Development within four years of the Notice of Decision date or the resolution of any appeals.

9. Any violation of the conditions of approval shall be grounds to initiate revocation of this Critical Area Variance Permit.

Development Engineering

10. 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.

11. The information provided demonstrates this proposal is below the hard-surface thresholds to require a Site Development Activity Permit. However, due to the critical areas on the site, an engineered drainage plan will be required at the time of submittal of building permits for each lot.

12. The engineered drainage plan shall meet the requirements of the level of drainage review and the stormwater Minimum Requirements revealed by completion of the Stormwater Worksheet submitted with the building permit application.

13. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with Kitsap County Code Title 12 effective at the time the Critical Area Variance application was deemed complete, January 8, 2019. 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.

14. If the project proposal is modified from that shown on the submitted site plan dated December 23, 2018, Development Services and Engineering will require additional review and potentially new conditions.

15. Submit an application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the Kitsap County Code. The KCPW 1601 form reserves road capacity for the project.

16. All rights of access for adjoining properties currently in existence shall be preserved. Any amendment to the existing easement rights of adjoining property owners shall be properly executed and recorded prior to SDAP acceptance or building permit approval.

17. 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 Kitsap County Code. Existing approaches may need to be improved to meet current standards.

18. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the SDAP process. The need for and scope of bonding will be determined at that time.

19. If the project includes the construction of rock walls or other retaining facilities that either exceed four feet in height or sustain a surcharge, a separate building permit with an engineered design is required for such walls. This note shall be placed on the face of the final construction drawings.

20. Rock and retaining walls shall meet all applicable setback requirements of Kitsap County Stormwater Design Manual, Volume II, Chapter 9.

Environmental

21. Follow the recommendations of the Critical Area Assessment and Mitigation Report of BGE, LCC's revised June 10, 2019 report.

22. Mitigation plan will be monitored for a minimum of 5 years to ensure survival.

23. The newly created single-family residence will be limited to 35 feet in height per Kitsap County Code 17.420.052. Building height is defined in Kitsap County Code 17.110.140.

24. Permit approval subject to chapter 19.300.315 of Kitsap County Code, which states that buffers or setbacks shall remain undisturbed natural vegetation areas except where the buffer can be enhanced to improve its functional attributes. Refuse shall not be placed in buffers.

25. 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.

Absent a timely appeal, this Decision is final.¹⁹ The correction does not change appeal deadlines.

DECISION entered December 16, 2019, corrected December 26, 2019.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond

¹⁹ See Ch. 36.70C RCW (any appeal to be filed within 21 days of original Decision to superior court).