



Notice of Hearing Examiner Decision

08/16/2023

To: Interested Parties and Parties of Record

RE: Project Name: Abbott Shoreline Variance (Type III)
Applicant: Paul & Kathy Abbott
13531 NW Coho Run
Bremerton, WA 98312
Application: Shoreline Variance
Permit Number: 22-01456

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #22-01456 Abbott (Type III) Shoreline Variance**, subject to the conditions outlined in this Notice and included Decision.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

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

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 by contacting the Department of Community Development; if you wish to view the case file or have other questions, please contact help@kitsap1.com or (360) 337-5777.

CC: Owner/Applicant: Paul & Kathy Abbott, 12iknowu@gmail.com,
kathy.themormor.abbott@gmail.com
Biologist: ECOLOGICAL LAND SERVICES, INC, joanne@eco-land.com
Health District
Public Works
Parks
Navy
DSE
Kitsap Transit
Central Kitsap Fire District
Central Kitsap School District

Puget Sound Energy
Kitsap PUD #1
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA Dept of Transportation/Aviation
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Wetland Review
WA State Dept of Ecology- Shorelines
WA State Dept of Transportation
Interested Parties: Michael Marfut, thefutster@yahoo.com; Rebecca Galavan, laleonne@centurylink.net; C Newman, ctnewman87@gmail.com; Adam Putz, adamputzphd@gmail.com; Rebekah Padgett – Dept of Ecology Shoreline, rpad461@ecy.wa.gov; Neil Molstad – Dept of Ecology Wetland, nemo461@ECY.WA.GOV;

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

In the Matter of the Application of)	No. 22-01456
)	
)	
Paul and Kathy Abbott)	Abbott Shoreline Variance
)	
)	
For a Shoreline Variance)	FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The request for a shoreline variance to allow development of a single-family residence and associated improvements, on a 0.31-acre property located at 13531 NW Coho Run, in the Bremerton area of unincorporated Kitsap County, is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the requests on July 13, 2023. The record was left open until July 20, 2023, to allow for the submission of additional comments and materials on the proposal.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

- Kathlene Barnhart, County Senior Planner
- Paul Abbott, Applicant Representative
- Amanda Walston, County Clerk to the Hearing Examiner

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated July 6, 2023
2. Application Submission Form, dated March 28, 2022
3. Shoreline Mitigation Plan and FEMA Floodplain Assessment, Ecological Land Services, Inc., dated August 26, 2021
4. Project Narrative, undated
5. SEPA Environmental Checklist, dated March 3, 2022
6. JARPA Form, dated February 25, 2022
7. Stormwater Worksheet, undated

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Abbott Shoreline Variance
No. 22-01456*

8. Site Plan/Stormwater Plan, dated October 22, 2021
9. Simplified Drainage Review – Engineered Submittal Waiver, undated
10. Site Photographs
11. Structural Engineering Plans, dated January 29, 2022
12. Notice of Application, dated May 13, 2022
13. Comment from Michael and Julia Marfut, dated May 18, 2022
14. Comment from Rebecca Gallavan, dated May 21, 2022
15. Comment from Washington State Department of Fish and Wildlife, dated June 1, 2022
16. Response Email from Kitsap Public Health District, dated June 3, 2022
17. Letter from the Washington State Department of Ecology, dated June 13, 2022
18. Comment from Anonymous Resident, dated June 24, 2022
19. Topographic Survey, dated October 19, 2022
20. Septic Alternative Letter, Allied Design, Inc., dated August 17, 2022
21. Revised Shoreline Mitigation Plan and No Net Loss Report, Ecological Land Services, Inc., dated January 2023
22. Applicant Response to Information Request, undated
23. Revised Architectural Site Plan, dated February 5, 2022
24. Revised Site Plan, dated January 11, 2023
25. Applicant Response to Information Request of May 1, 2023, dated May 10, 2023
26. Authorization to Use Site Plan, dated May 9, 2023
27. Proposed RV Removal Routes, undated
28. SEPA Determination of Nonsignificance, dated June 9, 2023
29. Preliminary Stormwater Conditions Memorandum, dated June 22, 2023
30. Notice of Public Hearing, dated June 28, 2023
31. Certification of Public Notice, dated June 30, 2023
32. Public Comments:
 - a. Comment from Mike Marfut, dated June 29, 2023
 - b. Comment from Adam Putz, dated June 30, 2023
33. Staff Presentation
34. Hearing Sign-In

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Paul and Kathy Abbott (Applicant) request a shoreline variance (SVAR) to reduce the required 130-foot shoreline buffer associated with Lake Symington—and a coincident Category III lake-fringe wetland—to a minimum of 27 feet, with a 15-foot structural setback, to accommodate the construction of a single-family residence and attached

garage.¹ The single-family residence and garage would have a building footprint of approximately 1,891 square feet. Associated improvements would include installation of a septic drain field, driveway, and utilities. As mitigation for the 3,062 square feet of buffer that would be impacted from the proposal, the Applicant would enhance the remaining buffer areas through the planting of native vegetation and installation of wildlife nest boxes. The 0.31-acre property is located at 13531 NW Coho Run, in the Bremerton area of unincorporated Kitsap County.² *Exhibit 1, Staff Report, pages 1 through 3; Exhibit 2; Exhibit 4; Exhibit 8; Exhibit 11; Exhibits 21 through 25.*

2. Kitsap County (County) determined that the application was complete on April 27, 2022. On May 13, 2022, the County provided notice of the application to property owners within 800 feet of the subject property and to reviewing departments and agencies. The County's notice materials stated that comments on the proposal could be submitted up until seven days before the open record hearing associated with the application. On June 28, 2023, the County provided notice of the open record hearing associated with the application by mailing notice to interested parties and property owners within 800 feet of the site, publishing notice in the County's publishing newspaper of record, and posting notice at the subject property. *Exhibit 1, Staff Report, pages 1 and 7; Exhibit 12; Exhibit 30; Exhibit 31.*
3. The County received the following comments on the proposal from reviewing agencies and members of the public in response to the notice materials:
 - The Washington State Department of Fish and Wildlife (WDFW) expressed concern that the (initial) proposed mitigation plan would not achieve a result of "no net loss" of ecological functions and would not adequately mitigate for the proposed impacts to the reduced critical area buffers. WDFW stated that impacts could be reduced through the installation of an above ground septic system that would not rely on site clearing for the associated drainfield.
 - Kitsap Public Health District commented that the Applicant had a portable wastewater tank that was being properly disposed of and that the subject property showed no garbage or signs of inappropriate sewage disposal.

¹ County staff determined that the proposal would be exempt from requiring a shoreline substantial development permit (SSDP), under Kitsap County Code (KCC) 22.500.100.C.3.g, which provides: Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of Kitsap County or a state agency having jurisdiction thereof, other than requirements imposed pursuant to Chapter 90.58 [Revised Code of Washington (RCW)]. *KCC 22.500.100.C.3.g.*

² The property is identified by Kitsap County Assessors Tax Account No. 4535-000-167-0005. *Exhibit 1, Staff Report, page 1.*

- The Washington State Department of Ecology (DOE) expressed concerns that the (initial) proposed plans for the residence would not entail the minimum necessary to justify the variance request and that the Applicant could further reduce impacts by removing a proposed garage and deck, adjusting the footprint of the residence, reducing the length of the proposed driveway, and modifying the location of the proposed septic drainfield. DOE noted that a residence on the subject property may degrade the on-site wetland over time and that maintaining a recreational vehicle already present on the property may be the most reasonable use of the site. DOE also stated that the particular circumstances of the subject property, specifically, the presence of a wetland with substantial amounts of scrub-shrub/forested vegetation, do not appear to be typical for much of the shoreline of Lake Symington and that it may not be appropriate to compare the proposed development with other parcels and existing residences in the vicinity.
 - Michael and Julia Marfut expressed concerns about the proximity of the proposed development to the shoreline and potential pollution associated with the development. Michael Marfut also suggested that the Applicant minimize the size of the proposed development.
 - Rebecca Gallavan echoed concerns about the proximity of the proposed development to the shoreline.
 - An anonymous resident expressed concerns about changes made to the property by the Applicant and that the Applicant had removed boats kept on the property prior to the survey of the property.
 - Adam Putz expressed opposition to the proposed development.
- Exhibits 13 through 18; Exhibit 32.*

4. County staff provided the following responses to comments on the proposal from reviewing agencies and members of the public:
- County staff requested revisions to the Applicant's Shoreline Mitigation Plan to address the prior, unpermitted clearing and grading activities that had occurred on-site. County staff determined that additional permits would be required for any temporary or permanent over-water structures and storage buildings proposed for the site but, also, that the Applicant has indicated that existing overwater structures have been removed and that a storage shed on the property would be removed. The County noted that conditions on the variance approval would address the need for additional permits for accessory structures that may cause buffer impacts.
 - A site visit was conducted with County staff, WDFW, and DOE on June 14, 2022. The Applicant was asked to address minimization and provided a revised plan with a reduced footprint, removed deck, and placement of development as far landward as septic setbacks would allow. The proposed septic location is as far from the lake and wetlands as possible and alternative septic designs would utilize less area than the initial design.

- Revisions were provided to the Applicant’s Shoreline Mitigation Plan. In addition to the logs and bat/bird boxes previously proposed, the revised plan now includes planting six conifer trees and 95 other shrubs and ferns within the buffer. The current RV location would be the site of the proposed residence. The temporary location of the RV during construction (Temporary Living Quarters) would be replanted as part of the mitigation plan.
- County staff reached out to Kitsap Public Health regarding the temporary RV to investigate that sanitation was being appropriately addressed in the interim. Kitsap Public Health verified that wastewater is being properly disposed of on a regular basis at an approved facility. An approved septic design is required for building permit approval. Septic designs are required to meet minimum water setbacks, with deviations typically requiring additional monitoring and maintenance. The approval of the on-site septic system is under the authority of Kitsap Public Health. With compliance with local and state health regulations, as well as demonstration of no net loss to ecological functions and mitigation, the project would be compliant with the requirements of the Kitsap County Shoreline Master Program.

Exhibit 1, Staff Report, pages 8 and 9.

State Environmental Policy Act

5. The County acted as lead agency and analyzed the environmental impact of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The County consolidated notice of the SEPA review and application comment periods under the optional process provided for by Washington Administrative Code (WAC) 197-11-355, with a 14-day comment deadline. The County’s notice materials stated that the County’s SEPA Responsible Official expected to issue a Determination of Nonsignificance (DNS) for the proposal. After analyzing the Applicant’s environmental checklist and other available information, the County determined that the proposal would not have a probable significant adverse impact on the environment and issued a Determination of Nonsignificance (DNS) on June 9, 2023, with an appeal deadline of June 23, 2023. The DNS was not appealed. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 5; Exhibit 12; Exhibit 28.*

Comprehensive Plan, Zoning, and Surrounding Properties

6. The property is designated “Rural Residential” by the County Comprehensive Plan. County staff identified the following Comprehensive Plan goals and policies as relevant to the proposal:
 - Encourage and support shoreline diversity through planned and coordinated development, which gives preference to water-dependent uses, traditional and historic use patterns, and environmental protection.
[Policy SH-1]

- Uses and activities along shorelines and in the waters of Kitsap County should not have a significant adverse effect on water quality. [Policy SH-3]
- Land use activities shall be sited and designed to minimize conflicts with and impacts on the shoreline environment. [Policy SH-8]
- Encourage development practices and design standards for the rural area, such as minimizing changes in grade from pre-development site conditions in order to maximize native vegetation retention. [Policy LU-55]

Exhibit 1, Staff Report, pages 4 and 5.

7. The subject property is zoned “Rural Residential” (RR). Properties to the north, south, and west are also zoned RR. The property to the east is zoned Lake (L). The RR zone “promotes low-density residential development and agricultural activities that are consistent with rural character. It is applied to areas that are relatively unconstrained by environmentally sensitive areas or other significant landscape features. These areas are provided with limited public services.” *KCC 17.130.020*. Properties to the south and west are developed with single-family residences. The property to the north is currently undeveloped. Lake Symington is located directly east of the subject property. Detached single-family residences are permitted outright in the RR zoning district. *KCC 17.410.042. Exhibit 1, Staff Report, pages 3, 4, and 22.*

8. KCC 17.420.060A.42.b provides that
 Any single-family residential lot of record as defined in Chapter 17.110 that has a smaller width or lot depth than that required by this title, or is less than one acre, may use that residential zoning classification that most closely corresponds to the dimension or dimensions of the lot of record, for the purpose of establishing setbacks from the property lines.

County staff determined that the 0.31-acre property is a legally existing, non-conforming lot with a minimum lot size and lot width below the standards for a lot located in the RR zoning district. Accordingly, the subject property must comply with development standards applicable to the Urban Restricted (UR) zoning district. The UR zoning district requires 20-foot front setbacks, five-foot side setbacks, and ten-foot rear setbacks. *KCC 17.420.052*. In compliance with these standards, the proposed residence would be set back 20 feet from the front property line, five feet from the side property lines, and 27 to 41 feet from the rear property line abutting Lake Symington. *Exhibit 1, Staff Report, pages 3, 4, and 9.*

Existing Site and Critical Areas

9. The 0.31-acre property is situated on the western shoreline of Lake Symington. The property slopes down moderately from west to east from NW Coho Run toward the edge of Lake Symington. The property is forested, with vegetation consisting of coniferous forest dominated by western redcedar, western hemlock, evergreen huckleberry, and sword fern in the western two-thirds of the property. The eastern third of the property is vegetated with red alder and hardhack and contains a depression that is adjacent to the edge of Lake Symington. On the south side of the depression is a berm-like feature that runs parallel to the edge of the lake. Water frequently floods into the area waterward of the berm. A part of the property has been cleared for a driveway, power, and temporary RV housing. The RV would be moved from its temporary position during construction to a place west of the house footprint. The RV would be required to be removed or unoccupied within 30-days of certificate of occupancy for the proposed single-family residence or permit expiration of the SVAR. *Exhibit 1, Staff Report, pages 1 through 3, and 11; Exhibit 21; Exhibit 27.*

10. Ecological Land Services, Inc., prepared a report addressing critical areas on the property on behalf of the Applicant, entitled “Shoreline Mitigation Plan and No Net Loss Report,” (“Mitigation Plan” or “MP”), revised January 2023. The Mitigation Plan identified two wetlands (Wetlands A and B) on the subject property. Wetland A is a Category III lake fringe wetland located in the depression in the eastern portion of the property. Wetland B is Category IV depressional wetland located within the shoreline buffer. The MP determined that the buffer associated with Wetland B would fall within the shoreline buffer, so no additional buffer associated with Wetland B is required. The Mitigation Plan determined that, as a Category III wetland with a moderate habitat score and associated with a moderate land use intensity, Wetland A would require a 60-foot buffer under KCC 19.200.220. However, the buffer associated with Wetland A lies entirely within the 130-foot shoreline buffer associated with Lake Symington, so the Wetland A buffer is regulated as a part of the shoreline. The 130-foot buffer associated with Lake Symington begins at the boundary of Wetland A. The MP’s evaluation of the project’s impacts to the on-site wetland buffer and proposed mitigation for these impacts are discussed in detail later in this decision. The FEMA 100-year floodplain also extends onto the property. *Exhibit 1, Staff Report, pages 1, 2, 10, and 11; Exhibit 3; Exhibit 21.*

Shoreline Management Act and County Shoreline Master Program

11. The proposed single-family residence would be located within 200 feet of the Lake Symington ordinary high water mark (OHWM), and its associated lake-fringe wetlands. The State Shoreline Management Act (SMA) and the County Shoreline Master Program, Title 22 KCC, govern work within 200 feet of the Lake Symington OHWM. *RCW 90.58.030(2)(e) and (g); KCC 22.200.100.A. Exhibit 1, Staff Report, page 1; Exhibit 21.*

12. The primary goal of the SMA is to protect the public interest in the state's shorelines through a coordinated development process. The SMA contemplates protecting against adverse effects to the public health, the land, the vegetation, the wildlife, and the waters, and preserving the public's opportunity to enjoy the physical and aesthetic qualities of the natural shoreline to the greatest extent feasible. Permitted uses in the shorelines must be designed and conducted in a manner to minimize damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. *RCW 90.58.020*.
13. The purpose of the County Shoreline Master Program (SMP) is to guide the future development of the shorelines in Kitsap County in a manner consistent with the Shoreline Management Act. *KCC 22.100.110*. The SMP establishes six shoreline environment designations "based on the existing development pattern, the biophysical capabilities and limitations of the shoreline being considered for development, the provisions of WAC 173-26-211 and the goals and aspirations of the citizens of Kitsap County as expressed in the Comprehensive Plan." *KCC 22.200.105*. The proposed residential use would be located within the "Rural Conservancy" environment. The purpose of the Rural Conservancy environment is to "protect ecological functions, conserve existing natural resources and valuable historic and cultural areas in order to provide for sustained resource use, achieve natural floodplain processes, and provide recreational opportunities." *KCC 22.200.125*. Single-family residential development is allowed in the Rural Conservancy environment. *KCC Table 22.600.105*. The standard shoreline buffer in the Rural Conservancy environment is 130 feet. *KCC 22.400.120.B.1.d. Exhibit 1, Staff Report, pages 10, 11, and 23*.
14. *KCC 22.300.125* provides general policies for shoreline use and planning that apply to all use and development activities within the SMP jurisdiction, regardless of the shoreline environment designation. The purpose of the SMP's general shoreline use and site planning policies is to "[p]reserve and develop shorelines in a manner that allows for an orderly balance of uses by considering the public and private use, along with the development of shorelines and adjacent land areas with respect to the general distribution, location and extent of such uses and development." *KCC 22.300.125*.

Shoreline Variance

15. *KCC 22.400.120.B* allows for the administrative reduction of the 130-foot shoreline buffer to 100 feet. Approval of a shoreline variance (SVAR) is required to reduce the 130-foot shoreline buffer associated with Lake Symington by more than 25 percent. *KCC 22.400.120.B; KCC 22.400.120.C*. The Applicant proposes to reduce the shoreline buffer to a minimum of 27 feet to accommodate construction of a single-family residence

and associated improvements. Under KCC 22.500.100.E.1, the purpose of a shoreline variance is:

strictly limited to granting relief from specific bulk, dimensional, or performance standards (not uses) set forth in [the SMP] where there are extraordinary or unique circumstances relating to the property such that the strict implantation of [the SMP] will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

Exhibit 1, Revised Staff Report, pages 15 through 19; Exhibit 4; Exhibit 28; Exhibit 29.

16. As noted above, the Applicant provided a Mitigation Plan to address impacts to the on-site critical areas buffer. The Mitigation Plan determined that the proposal would not directly impact the on-site wetland or shoreline but would result in 3,062 square feet of unavoidable impacts to the 130-foot shoreline buffer from construction of a single-family residence, driveway, and septic drainfield. The Applicant proposes to minimize impacts from the proposed development by locating the septic drainfield as close to the road as possible and building a modestly sized home with an attached garage totaling approximately 1,891 square feet. Vegetation within the buffer would be retained and any vegetation disturbed outside the construction area would be restored. The Applicant would also minimize impacts by utilizing Best Management Practices (BMPs), including installation of silt fences to prevent sedimentation to the shoreline during construction. The Applicant would mitigate for impacts by enhancing the reduced buffer with native plant species, including planting understory vegetation beneath the red alder forest, planting six conifer trees within the buffer, and installing habitat features such as downed logs and bat/bird boxes. The Mitigation Plan includes monitoring requirements and a maintenance plan to ensure that the proposal would result in no net loss of shoreline ecological functions. *Exhibit 1, Staff Report, pages 10, 11, and 24; Exhibit 21*

17. The County SMP provides shoreline variance decision criteria specific to development landward of the OHWM. *KCC 22.500.100.E*. County staff reviewed the proposal and determined that, with conditions, it would satisfy the specific criteria for a shoreline variance under *KCC 22.500.100.E.4*. Specifically, County staff determined:
 - It is infeasible to build within the 26-foot area provided by an administrative buffer reduction, which would allow a reduction to a 100-foot buffer, considering the additional 15-foot structural setback, along with required road and side yard setbacks. To place a 1,284 square foot home and 607 square foot attached garage (totaling approximately 1,891 square feet), and a septic system drainfield on the property, the shoreline buffer would need to be reduced to between 27 and 41 feet from the edge of Wetland A (including a 15-foot structural setback).
 - The lot size and shape are the result of a legal plat from 1970, prior to the Shoreline Master Program adoption. The shoreline and associated natural wetland buffer, as well as FEMA floodplain, create a hardship of unique conditions for this parcel that restrict the ability to develop under the standard

requirements of Title 19 and 22 KCC. The hardship is not from deed restrictions or actions of the Applicant or previous owner.

- The design of the project is compatible with the other single-family residential uses within the Lake Symington development area. The lot and neighborhood are zoned Rural Residential and consist of mostly legally existing, non-conforming lots of the same size (approximately 0.30 acres). The use would not conflict with any existing water-dependent uses and the mitigation proposed would ensure the proposal meet the “no net loss” requirement of the SMA and SMP. Further, most lots around Lake Symington are already developed with single-family residences. Requests for similar variances in the area would be limited to the few vacant lots remaining around the lake, which cumulatively would not increase “substantial adverse impacts to the shoreline environment.”
- The shoreline of Lake Symington is heavily developed with single-family properties. Many properties on this lake have development including low retaining walls at the OHWM, and homes built as close as approximately 20 feet from the OHWM of the lake. The proposal would not be granting a special privilege not enjoyed by other properties in the area.
- Impacts to the shoreline would be minimized by siting the septic system drainfield as close to the road as possible and by developing a modestly sized house with attached garage of approximately 1,891 square feet. The scope of the proposal has also been reduced from the initial application to reduce the footprint, including removal of waterward decking that had been proposed initially. Vegetation would be retained within the shoreline buffer and any vegetation disturbed outside the construction area would be restored. The location of the house and driveway are restricted due to the location of the septic drainfield, building setbacks, and property depth. The project would also minimize impacts by utilizing BMPs, including features such as silt fences to prevent sediments from washing into the shoreline during construction.
- The proposal would not cause a detrimental effect on public interest. The proposal is similar in use and size of other development in the neighborhood. A mitigation plan is proposed to enhance the shoreline/wetland buffer to result in no net loss of shoreline or wetland ecological functions by adding vegetation and habitat features in a highly developed area of the county.

Exhibit 1, Staff Report, pages 11 and 12.

Testimony

18. County Senior Planner Kathlene Barnhart testified generally about the proposal, the review process that occurred, and how—with conditions—the proposal would be consistent with the County’s Comprehensive Plan, zoning ordinances, critical areas ordinances, and shoreline master program; and how it would meet the requirements for approval of a shoreline variance. She provided a detailed description of the proposed single-family residential development, consistent with the findings above. Ms. Barnhart

explained that, because of the size of the property and various constraints, it would be infeasible to build a single-family residence outside of the designated 130-foot shoreline and associated wetland buffers. She stated that the Applicant requests a 27- to 41-foot buffer to accommodate the construction of a single-family residence and associated improvements and noted that the proposed residence and septic drain field would be located as far from Lake Symington as possible. Ms. Barnhart commented that the shoreline of Lake Symington is heavily developed with single-family residences and that some residences are built as close as 20 feet from the ordinary high water mark (OHWM) of Lake Symington. She explained that the Applicant reduced the original footprint of the proposed development, including removing proposed waterward decking, in response to comments made by DOE and others. She noted that the County had met with DOE to review the final site and mitigation plans and that DOE determined the revised plans addressed the agency's concerns. Ms. Barnhart also noted that the proposal would be conditioned to ensure construction would meet residential flood hazard design standards, which include a minimum floor elevation of one foot above the base flood elevation. She noted that County staff requested revisions to the Mitigation Plan to address prior unpermitted clearing and grading activities that had occurred on-site. Ms. Barnhart noted that single-family residential development is exempt from the requirements of a shoreline substantial development permit (SSDP) under the County code. Finally, she noted that the Applicant has applied for a temporary living quarters permit for the RV that is currently on-site. *Testimony of Ms. Barnhart.*

19. Applicant Paul Abbott explained that the plans for the residence were revised to address the concerns of DOE and other limitations of the property. He stated that, specifically, the proposed deck was eliminated, and the proposed daylight basement was changed to a crawl space because of the FEMA 100-year flood plain. He noted that a member of DOE staff had visited the property twice and has reviewed the site plans. *Testimony of Mr. Abbott.*
20. County Clerk to the Hearing Examiner Amanda Walston testified that the public hearing link posted on the County's website was incorrect but was corrected during the course of the hearing. Ms. Walston explained, however, that all other notice materials associated with the hearing were accurate (i.e., the materials mailed and published) and that she had contacted all parties of record about access to the hearing to ensure that no access issues were unaddressed. She noted that no parties had appeared on the incorrect link and, accordingly, the County believed reasonable notice of the hearing had been provided as required by the municipal code. *Testimony of Ms. Walston.*

Staff Recommendation

21. Ms. Barnhart testified that County staff recommends approval of the shoreline variance, with conditions. Mr. Abbott testified that he understands and would comply with County

staff's recommended conditions. *Exhibit 1, Staff Report, pages 16 through 18; Testimony of Ms. Barnhart; Testimony of Mr. Abbott.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide applications for a shoreline variance. *KCC 2.10.070; KCC 21.04.050; KCC 21.04.080; KCC 22.500.100.*

Criteria for Review

Shoreline Management Act

The Shoreline Management Act is codified at Chapter 90.58 RCW. Applicable policies of RCW 90.58.020 include those to foster “all reasonable and appropriate uses”; protect against adverse effects to the public health, the land, and vegetation and wildlife; and give priority to single-family residences and appurtenant structures in authorizing alternations to the natural condition of the shoreline. Nonetheless, “private property rights are ‘secondary to the SMA’s primary purpose, which is to protect the state shorelines as fully as possible.’” *Samson v. City of Bainbridge Island*, 149 Wn. App. 33, 49, 202 P.3d 334 (2009) (internal quotation marks omitted) (quoting *Lund v. Dep’t of Ecology*, 93 Wn. App. 329, 336-37, 969 P.2d 1072 (1998)). Permitted shoreline uses must be designed to “minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.” *RCW 90.58.020*. See also *Buechel v. Dep’t of Ecology*, 125 Wn.2d 196, 203, 884 P.2d 910 (1994).

In promulgating the Shoreline Management Act of 1971, the legislature recognized that “ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development” of the state’s shorelines. *RCW 90.58.020*. The legislature also determined that “unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest.” *RCW 90.58.020*. Accordingly, the Shoreline Management Act requires local governments to develop a master program to regulate shoreline uses consistent with its guidelines. *RCW 90.58.080(1)*.

Shoreline Variance Permit

As noted above, applicable Department of Ecology shoreline regulations are located in Chapter 173-27 WAC. WAC 173-27-170 sets forth permitting procedures and permit criteria for shoreline variances. The Hearing Examiner reviews the application under the following criteria:

- (1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

- (2) Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(c), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:
 - (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;
 - (b) That the hardship described in (a) of this subsection 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 the master program, and not, for example, from deed restrictions or the applicant's own actions;
 - (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 shoreline master program and will not cause adverse impacts to the shoreline environment;
 - (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.

WAC 173-27-170.

Consistent with the requirements under WAC 173-27-170, the County SMP provides in relevant part:

1. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional, or performance standards (not uses) set forth in this program where there are 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.
2. Variances shall be classified as a Type III permit under Chapter 21.04. Administrative variances shall be a Type II permit and may be granted where allowed under the use and modifications matrix or applicable permit requirements.
3. Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

4. Variance permits for development that will be located landward of the OHWM, except within those areas designated as marshes, bogs, or swamps pursuant to Chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:
 - 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.

5. Variance permits for development and/or uses that will be located waterward of the OHWM, or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:
 - a. That the strict application of the bulk, dimensional or performance standards set forth in Chapters 22.400 and 22.600 preclude all reasonable use of the property;
 - b. That the proposal is consistent with the criteria established under subsections (E)(4)(a) and (b) of this section; and
 - c. That the public rights of navigation and use of the shorelines will not be adversely affected.

6. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments and/or uses in the area where similar circumstances exist, the total of the variances shall remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment. The applicant shall demonstrate such consideration through submittal of a cumulative impacts report, where required (Section 22.700.130).

7. Variances may not be granted to authorize uses different from the shoreline use and modifications matrix in Section 22.600.105.

8. All applications for shoreline variances approved by the county, including administrative variances, shall be forwarded to Ecology pursuant to WAC 173-27-200, for final approval, approval with conditions, or denial. No approval shall be considered final until it has been acted upon by Ecology.

KCC 22.500.100.E.

The criteria for review adopted by the Kitsap County Board of County Commissioners are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with County development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

With conditions, the proposal would be consistent with the specific criteria for a shoreline variance under the SMA and County SMP. A shoreline variance is required to allow development within the 130-foot buffer associated with the shoreline of Lake Symington and a coincident Category III lake-fringe wetland on the site. Specifically, the Applicant requests a shoreline variance to reduce the 130-foot buffer to a minimum of 27 feet to accommodate the construction of a single-family residence, attached garage, driveway, and septic drain field. The 0.31-acre property is a legally, nonconforming property located in the Rural Residential zoning district. *KCC 17.420.052.* The 130-foot buffer associated with Lake Symington extends over almost the entire property. A reduction of the buffer to 100-feet, which is allowed by administrative approval, would create only a 26-foot buildable area, which is inadequate to allow construction of even a modest single-family residence, comparable to other homes in the vicinity. The property must also accommodate the installation of a septic drainfield, which prevents the proposed single-family family from being located further from the Lake. Because these circumstances, which are unique to the site and are not the result of any action of the Applicant, would prevent residential development on the property, strict application of buffer standards would preclude the Applicant's reasonable use of the property, justifying the grant of a shoreline variance.

The proposed residence would not directly impact the on-site wetland or shoreline and has been designed to minimize impacts to the buffer by locating the septic drainfield as far as possible from the OHWM of Lake Symington. Moreover, the proposed structural footprint of the residence would be moderate in size: the footprint of the proposed residence and attached garage would be approximately 1,891 square feet. The Applicant would also minimize impacts by retaining on-site vegetation and installing silt fences to prevent sediment from washing to the shoreline during construction. The Applicant would mitigate for permanent buffer impacts by enhancing the reduced buffer with native plant species in the red cedar understory, planting six conifers, and installing habitat features such as downed logs and bird/bat boxes. The Applicant's revised Mitigation Plan, which was submitted following coordination between the Applicant,

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County staff and DOE, determined that the proposed development would result in no net loss of ecological functions of the buffer area.

The County provided adequate opportunity to comment on the proposal and reasonable notice of the associated open record hearing. The County received comments from DOE about the size of the proposed development and from members of the public, who expressed concerns about the proposed development's proximity to the shoreline. As detailed above, however, these concerns were addressed through the iterative review process and the Applicant has submitted revised materials to reduce potential impacts to the shoreline and associated critical areas to the greatest extent possible.

The requested variance is the minimum necessary to allow the Applicant to develop the property with a modestly sized single-family residence and associated improvements. The location of the proposed residence cannot be moved further landward because of septic drainfield requirements. In response to concerns raised by DOE, the Applicant reduced the size of the proposed development by removing a waterward deck that had been proposed, in addition to other alterations. Single-family residential development is a permitted use in the Rural Residential zoning district and Rural Conservancy environment and consistent with surrounding development. County staff noted that the property, which was platted prior to the adoption of the Shoreline Management Act, is situated among many other shoreline properties that are located in the Rural Residential zoning district and legally nonconforming. Many of these properties are developed with single-family residences and some residences are located approximately 20 feet from the OHWM of Lake Symington. Accordingly, approval of the shoreline variance would not constitute a grant of special privilege.

The County issued a DNS for the proposal, which was not appealed. The use would not conflict with any water dependent uses or other uses of property in the vicinity. The Hearing Examiner concurs with County staff that the proposed development would be in the public interest. Cumulative impacts of additional requests for like actions in the area have been considered. County staff determined that similar variance requests in the area would be limited to the few vacant lots left around Lake Symington, which would not cumulatively increase substantial adverse impacts to the shoreline environment. *Findings 1 – 21.*

DECISION

Based on the preceding findings and conclusions, the request for a shoreline variance to allow development of a single-family residence and associated improvements, on a 0.31-acre property located at 13531 NW Coho Run, in the Bremerton area of unincorporated Kitsap County, is **APPROVED**, with the following conditions:

1. The project shall meet the required zoning setbacks of 20-feet from the front (west) and five-feet from the sides (north and south). The rear setback is the shoreline/wetland

buffer and setback. These zoning setbacks apply to both the single-family residence and the temporary location of the RV as a Temporary Living Quarters.

2. A Temporary Living Quarters permit shall be required for the Recreational Vehicle.
3. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
4. 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.
5. The decision set forth herein is based upon representations made and exhibits contained in the project application Permit #22-01456. 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 and Washington Department of Ecology.
6. Building permits submitted for this development shall include construction plans and profiles for all roads, driveways, storm drainage facilities and appurtenances. No construction shall be started prior to said plan acceptance.
7. The information provided demonstrates this proposal is a Small Project as defined in Kitsap County Code Title 12, and is located within a mapped critical area; as such the building permit application materials shall include a drainage design demonstrating compliance with Minimum Requirements #1-5, as outlined in the Kitsap County Stormwater Design Manual. All work shall be in accordance with the Accepted Plans under Building Permit #22-00585, once approved.
8. A qualified habitat biologist shall make specific mitigation recommendations per Kitsap County Stormwater Design Manual, Vol II., Section 8.3. Where required, a professional engineer shall incorporate the recommendations into the stormwater management designs.
9. If the project proposal is modified from that shown on the site plan approved for this permit application, Development Services and Engineering will require additional review and potentially new conditions.

10. Construction techniques shall implement best management practices to ensure protection of the shoreline, its associated buffer, and local water quality. Such best management practices shall include protective silt fencing, protective orange construction fencing along defined work areas, working during periods of limited rainfall or potential for adverse erosion, and seeding of exposed soils as needed to prevent adverse erosion.
11. The project is required to follow the mitigation and monitoring plan as provided in the *Shoreline Mitigation Plan and No Net Loss Report* (Ecological Land Services, Revised 1/2023). The habitat biologist shall flag the buffer location prior to start of construction. An as-built report of the mitigation from the biologist is required prior to final inspection of building permit.
12. The owner is responsible for maintenance of the planting area for 5 years, including removal of invasive plant species, reinstalling failed plantings, and irrigation. Monitoring shall occur for five-years, with reports submitted to KCDLCD by December 31 of each monitored year.
13. A 27 to 41 foot vegetated buffer and additional 15-foot structural setback, as well as additional habitat features as depicted in the approved *Shoreline Mitigation Plan and No Net Loss Report* shall be maintained. No additional clearing, structures, storage, or debris is permitted within the buffer or below Ordinary High Water without additional review and permitting by Kitsap County Department of Community Development, and state permits as necessary.
14. The shoreline view line, as depicted on the approved site plan shall be maintained.
15. Upon final permit issuance, all construction for the project must commence within two years and be complete within five years. A one-time, one-year extension is available but only if requested on or before ninety days of original permit expiration. No exceptions are allowed unless provided for by law.
16. The RV will be required to be moved from the temporary location in the buffer and the buffer restored prior to final inspection on the building permit. The RV will be removed from the parcel or unoccupied within 30-days of certificate of occupancy or permit expiration. Temporary (90-day) occupancy may be granted through a separate permit. Any areas disturbed during removal must be replanted. If the removal requires access over a neighboring parcel, authorization will be required to be verified prior to SFR final inspection.

17. An approved Building Site Application (BSA) from Kitsap Public Health shall be provided with the DCD building permit application.

Decided this 16th day of August 2023.



ANDREW M. REEVES
Hearing Examiner
Kitsap County