



Notice of Hearing Examiner Decision

4/6/2017

To: Interested Parties and Parties of Record

RE: Project Name: CATANIA – Shoreline Variance
Applicant: ANTHONY S. & BARBARA CATANIA
PO BOX 903
REDMOND, WA 98073

Application: SHORELINE VARIANCE
Permit Number: 16 03857

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

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

http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%2006-23-09.pdf

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

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

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

CC: ANTHONY S. & BARBARA CATANIA anthonyscatania@gmail.com
Interested Parties:
None

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

**Shoreline Variance
File No. 16 03857**

April 3, 2017

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

1. FINDINGS OF FACT

1.1 Proposal. The Applicants request a Shoreline Variance to allow construction of a single family residence. The Applicants/property owners and site location are as follows.

Applicants/Property Owners: Anthony and Barbara Catania, P. O. Box 903, Redmond, WA 98073.

Site Location: The site is located at 72XX Twin Spits Road, between 7264 and 7274, Hansville, WA 98340 (Assessor No. 4272-000-008-0005).

1.2 Hearing. An open record public hearing was held on March 23, 2017. The Department of Community Development (DCD), through Mr. Heacock, testified on how the proposal conformed with shoreline variance requirements. He described existing development on the surrounding properties, the constrained nature of the lot, Health Department septic drain field requirements, and how the proposal, as designed, is the minimum necessary to afford the property owner reasonable use. Given the site constraints and consistency with the shoreline variance criteria, DCD recommended approval. The Applicant, through Mr. Catania, after being sworn in, addressed the need for the variance to allow construction of the residence and expressed concurrence with DCD's presentation. No person present indicated a wish to submit oral comment.

1.3 Administrative Record. The Hearing Examiner reviewed Exhibits 1-17 before the hearing, which included the Staff Report. At the hearing, DCD proposed adding a power point and a DCD supplemental memo as Exhibits 18 and 19, respectively. The Examiner admitted all exhibits.

1.4 SEPA. The proposal is exempt from SEPA.¹

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

¹ WAC 197-11-800(6)(e) and KCC Title 18.04.

² Exhibit 16.

1.6 Public Comment. Staff received several phone inquiries from neighbors, but no public comments were received. The Suquamish Tribe provided comments related to tribal discovery and potential cultural resources in the general vicinity. The tribal archeologist visited the site and, although nothing was discovered, asked to be notified when the initial site work is planned.

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

1.8 Zoning/Plan Designations. The Comprehensive Plan designation is Rural Residential – Density Residential and the Zoning designation is Rural Residential, or RR. RR zoning allows one dwelling unit per five acres. RR "promotes low-density residential development and agricultural activities that are consistent with rural character."³ The surrounding properties are all zoned RR. The shoreline designation is Rural Conservancy.

1.9 Physical Characteristics. The 0.26-acre parcel is an undeveloped property originally platted in the 1930's, and located on the shoreline of Admiralty Inlet, locally known as Norwegian Point in Hansville. The parcel is undeveloped, but fenced, and planted in grass lawn. The property has been historically used for family outings. The parcel consists of a low bank waterfront on the north. It is located within the AE flood zone, so the house will be built to flood requirements, which will require an elevation certificate from a licensed surveyor.

1.10 Utility and Public Services.

- **Water:** PUD No. 1 Water District
- **Power:** Puget Sound Energy
- **Sewer:** On-site septic system
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire District
- **Schools:** North Kitsap School District

1.11 Access. Site access is off of Twin Spits Road NE, a County maintained right of way.

1.12 Site Constraints. The site is located within an old subdivision platted in 1939. The area was originally developed with mostly cabins, with homes ultimately being built on all the surrounding lots along the shoreline, many within 8-10 feet of the OHWM. However, this lot was never built on. The Applicants are now requesting the right to construct a minimally sized home and garage.

³ KCC 17.130.010.

The site's shape limits construction options. Running about 168 feet long from the OHWM to the road, and being 58 feet wide, the property is narrow and limited in size (11,326 square feet). Several code requirements further constrict the lot's buildable area.

The Health Department requires that the septic drain field be located upland and away from the shoreline, with a reserve area identified in the event of failure. These locational requirements are necessary to avoid sewage drainage into the waterway. In addition, an infiltration area is required for roof/driveway runoff for water quality treatment. The required areas for the drain field, reserve area, and driveway access, all work to drive house location toward the shoreline.

In addressing these site constraints, the Applicants minimized the building footprint (approximately 1,488 square feet for the residence, 283 square feet for the garage, and 165 square feet for a patio) to maximize the shoreline setback area.

1.13. Habitat Assessment and Shoreline Mitigation Plan - Impacts. Ecological Land Services, Inc. (ELS) prepared a Federal Emergency Management Agency Floodplain Habitat Assessment and Shoreline Mitigation Plan for the proposal. This study was prepared by Ms. Bartlett, PWS, a well-respected Kitsap County biologist.⁴

The study included a site visit to inventory shoreline conditions, with the report identifying mitigation to protect ecological conditions. Lacking any wetlands or streams, ELS found the site "is composed of mowed grass and weeds that provide few of the primary constituent elements necessary for support of fish species."⁵ The beach "is composed of cobble and lacks vegetation as well as woody debris so provides minimal protection or feeding areas for the listed species."⁶ The beach sand and cobble likely provide breeding habitat for certain fish species (sand lance, pacific herring, and surf smelt), but the nearshore area lacks "overhanging large wood, aquatic vegetation, large rocks and boulders, or side channels that would prove valuable to listed fish species."⁷ This section of shoreline is "developed with homes and mowed yards to the top of natural beach berm," with no adjacent forest or shrub cover.⁸ The project will not remove any native vegetation or impact habitat for listed plant or animal species.⁹

ELS concluded that the home "is located along a heavily developed shoreline of Hansville," is "the only undeveloped property in this area," and creates "no additional cumulative effects to the floodplain habitat."¹⁰ However, due to the requested variance, the analysis includes a mitigation plan, detailed below, and addressed by DCD during the hearing.

1.14. Mitigation Plan. The ELS report includes a mitigation plan to improve shoreline ecological functions and values. The plan includes a buffer mitigation area, removal of non-native species, soil improvement, control of invasive species, and establishment of a native plant

⁴ DCD hearing testimony.

⁵ Exhibit 11, p. 4.

⁶ Exhibit 11, p. 4.

⁷ Exhibit 11, pp. 4-5.

⁸ Exhibit 11, p. 5.

⁹ Exhibit 11, p. 6.

¹⁰ Exhibit 11, p. 6.

community through prescribed planting methods. This is then coupled with ongoing maintenance and monitoring, as well as a contingency plan. The Applicants have agreed to the mitigation, and it is a required permit condition.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review of a Shoreline Variance.

The Hearing Examiner reviews this type of Shoreline Variance permit application.¹¹ The Hearing Examiner renders a decision and may approve, approve with conditions, or deny a Shoreline Variance permit, with final approval by the Department of Ecology.¹² The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision.

2.2 Code Requirements Specific to a Shoreline Variance.

2.2.1 SMP Regulations' Rural Conservancy Setbacks

The Rural Conservancy shoreline designation provides for a 130-foot buffer and 15-foot construction setback, unless a buffer reduction is authorized per KCC 22.400.120. Through this criteria, and per KCC 22.400.120(B)(2)(d), buffers may be reduced to 100 feet with a no-net-loss report analysis and an associated mitigation plan, "to achieve no net loss of shoreline ecological functions." With the preparation of its no-net-loss report and mitigation plan, DCD determined the Applicants had met these criteria.¹³ Also, as DCD explained, the lot is legally constrained by both its size and shape such that it cannot support a minimally sized home and garage placed above the standard buffer.¹⁴ As detailed in the technical analysis, a restored 29-foot buffer area has been designed, with a modified five foot construction setback, for a 34 foot total protection area. However, as this resulting area is less than 100 feet (plus 15), the Applicants requested a variance from the reduced standard buffer and setback.

2.2.2 Shoreline Variance Criteria

The purpose of a shoreline variance is to address "extraordinary or unique circumstances relating to the property such that the strict implementation of this master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020."¹⁵ A variance "should be granted ... where denial ... would result in a thwarting" of a RCW 90.58.020 policy.¹⁶ "In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect."¹⁷ Variances landward of the OHWM must meet the following criteria:

¹¹ KCC 22.500.100(E)(2) and KCC 21.04.100.

¹² See e.g., KCC 21.04.080, KCC 22.500.100(E)(8).

¹³ See Exhibit 19, which was further addressed during DCD testimony.

¹⁴ KCC 22.400.120(B)(3).

¹⁵ KCC 22.500.100(E)(1).

¹⁶ KCC 22.500.100(E)(3).

¹⁷ KCC 22.500.100(E)(3).

- 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.¹⁸

DCD's analysis found that these criteria were met, and detailed the reasons why, which were elaborated on at the hearing.¹⁹ The Hearing Examiner concurs with DCD's analysis. Strict application of the SMP setbacks would preclude reasonable use of this property. Unless a variance is granted, reasonable residential accommodations will not be feasible, and reasonable economic use of the property will not be feasible.

This hardship is specifically related to the property itself, not the Applicants' actions. Due to the platting in the 1930's, the site is of insufficient size to accommodate Health Department septic requirements while also complying with shoreline setback requirements. The Applicants did not create the size and shape of the parcel and have not taken any actions to create or worsen these site development challenges. The site's 168 foot length and narrow width, coupled with Health Department requirements, as well as height restrictions, are simply not possible to all be complied with.

The project design is compatible with the other authorized residential uses within the area. The Applicants consulted with their neighbors on the proposal, and no concerns were raised.²⁰ The other properties all have residential uses, many of which are considerably closer to the shoreline. As a result, granting the variance would not constitute a grant of special privilege. The use is exactly the type planned for under the County's comprehensive plan, zoning, and the SMP, and does not conflict with other uses along the shoreline, water dependent or not. Also, the variance is the minimum necessary to afford relief. As addressed in the findings above and

¹⁸ KCC 22.500.100(E)(4).

¹⁹ See Staff Report, analysis in Exhibit 14 (prepared by the Applicants and concurred with by DCD), and Exhibit 19.

²⁰ Applicant hearing testimony.

through DCD's analysis,²¹ the footprint of the residence, garage, and deck are the minimum necessary to accommodate reasonable living accommodations at this location, and were placed as far from the OHWM as possible.

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

As addressed in the technical analysis prepared for this proposal, there are no cumulative impact concerns which could arise from similar actions in this area. Residences were previously placed within this shoreline area, as the property was originally platted in the 1930's. The lot is the sole remaining vacant lot. A report was prepared consistent with KCC 22.700.130,²² addressing the lack of cumulative impacts and the fact that this variance will not be combined with others so as to cause "substantial adverse effects to the shoreline environment."²³ Further, the use proposed is authorized, and in fact is a preferred shoreline use.²⁴ As a result, with the limited nature of the proposal and mitigation designed by a qualified professional, the public interest will suffer no "substantial detrimental effects."

To deny the variance would thwart SMA's central policies, which give "priority for single-family residences," and are designed to protect "private property rights consistent with the public interest," while also ensuring the shoreline functions and values are protected.²⁵ 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, property rights, and cultural resource protection.

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

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested Shoreline Variance, provided the following 28 conditions are adhered to.

Planning/Zoning.

1. All required permits shall be obtained prior to commencement of land clearing,

²¹ See e.g., Staff Report, along with Exhibits 14 and 19, and DCD hearing testimony.

²² See also KCC 22.500.100(E)(6).

²³ KCC 22.500.100(E)(6).

²⁴ KCC 22.500.100(E)(7) and KCC 22.600.105.

²⁵ RCW 90.58.020.

construction and/or occupancy.

2. The new residence is subject to the payment of impact fees. Impact fees must be paid at time of permit issuance, or if deferred, must be paid prior to final inspection. No certificate of occupancy will be granted until all impact fees are paid.

3. Any proposed modification (not including cosmetic work such as painting, papering and similar finish work), remodel or expansion of the building, regardless of whether a building permit is required, shall be reviewed by DCD and granted approval prior to such modification, expansion, construction and/or issuance of a building permit.

4. Only one residence shall be permitted on the subject property.

5. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.

6. The uses of the subject property are limited to the uses proposed by the Applicants and any other uses will be subject to further review pursuant to the requirements of the KCC.

7. Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not be, and is not to be, construed as approval for more extensive or other utilization of the subject property.

8. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the Applicants represent that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the Applicants agree to promptly bring such development or activities into compliance.

9. The decision set forth herein is based upon representations made and exhibits contained in the project application (16 03857). Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.

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

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

Development Engineering.

12. At building permit application, Applicants shall submit KCPW Form 1601 for issuance of a concurrency certificate, as required by KCC Section 20.04.030, Transportation Concurrency.

13. 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.

14. A Site Development Activity Permit (SDAP) may be required and will be analyzed at time of building permit submittal.

15. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the CUP application was deemed complete. 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.

16. The Washington State Department of Ecology (Ecology) may require registration of the infiltration trench as a Underground Injection Control (UIC) well in accordance with the Underground Injection Control Program (Chapter 173-218 WAC). The Applicants shall contact Ecology to determine if the facility is regulated under the UIC program.

17. The design of the infiltration facilities will be in accordance with Section 7.3.4 of the Kitsap County Stormwater Design Manual.

18. The infiltration facilities shall remain off line until the drainage areas are stabilized and the water quality treatment facility is adequately established. Temporary erosion and sedimentation ponds shall not be located over infiltration facilities. In addition, retention ponds shall not be utilized as temporary erosion and sedimentation control ponds.

19. During the construction of the proposed infiltration facilities, the Project Engineer shall provide an inspection to verify that the facilities are installed in accordance with the design documents and that actual soil conditions encountered meet the design assumptions. The Project Engineer shall submit the inspection report properly stamped and sealed with a professional engineer's stamp to Development Services and Engineering.

20. All retention facilities shall be a minimum of 200 feet from any slope steeper than 30%. This distance may be reduced based on a geotechnical engineering report. That analysis will be prepared by a Civil Engineer licensed in the State of Washington, knowledgeable in the practice of soils engineering and mechanics. The analysis will address the effects of groundwater infiltration, seepage, potential slip planes, and changes in soil bearing strength. The proposed facilities will be designed following the recommendations of the geotechnical analysis.

21. 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 (or building permit if no SDAP is required). The need for and scope of bonding will be determined at that time.

Environmental.

22. The Applicants shall follow the recommendations of the Floodplain Habitat Assessment report and details provided by Ecological Land Services.

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

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

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

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

27. The Suquamish Tribe shall be notified prior to site disturbance activities, and at the time of foundation excavation work so it may complete its archeological investigation.

28. 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.

THIS DECISION is entered this 3rd day of April, 2017.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond