



KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

614 DIVISION STREET MS-36, PORT ORCHARD WASHINGTON 98366-4682
(360) 337-5777 FAX (360) 337-4925 HOME PAGE - www.kitsapgov.com/dcd/

Larry Keeton, Director

REVISED NOTICE OF ADMINISTRATIVE DECISION

June 23, 2011

To: Interested Parties and Parties of Record

RE: Project Name: Witcher – Critical Area Buffer Reduction
Application: Critical Area Buffer Reduction Variance
File Number: LIS# 09 86093

Enclosed is the Administrative Decision issued by the Kitsap County Department of Community Development (DCD) for the above referenced application.

THE DECISION OF THE DEPARTMENT IS FINAL, UNLESS APPEALED TO THE KITSAP COUNTY HEARING EXAMINER BEFORE THE CLOSE OF BUSINESS ON JULY 19, 2011. PLEASE NOTE: THE COURTHOUSE WILL BE CLOSED ON JULY 4, 2011.

Pursuant to the Kitsap County Land Use and Development Procedures, an appeal may be filed objecting to the Department's Decision. An appeal must be made in writing, and received by the Department of Community Development (DCD). At the time of filing the appeal, the appellant shall pay the sum of five hundred dollars (\$500.00). This fee is non-refundable and subject to change. Make check payable to Kitsap County Department of Community Development (DCD).

The written appeal shall be made on, or attached to, an appeal form provided by DCD, and shall contain the following information.

1. The project name, project applicant, application type, and file number designated by the County;
2. The name, address, and signature of each appellant. If multiple parties file a single appeal, the appeal document shall designate, in writing, one party as the contact representative for all contact with the DCD Director and the Office of the Hearing Examiner. All contact between the County and the appellants regarding the appeal, including notices, shall be through this contact representative; and
3. A written statement of the specific aspect(s) of the Decision and/or SEPA determination being appealed, the reasons why each is in error as a matter of fact or law, and the evidence relied upon to prove the error

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The complete application file will be available for review at the Department of Community Development, Monday through Thursday, except holidays, from 10:00 a.m. to 3:45 p.m. by appointment only. You may make an appointment by calling me at (360) 337-4487.

If you have questions, please contact me at (360) 337-4487 or David Greetham at (360) 337-5777.

Sincerely,



Karen Ashcraft
Clerk of the Examiner

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KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

614 DIVISION STREET MS-36, PORT ORCHARD WASHINGTON 98366-4682 LARRY KEETON, DIRECTOR
(360) 337-5777 FAX (360) 337-4925 HOME PAGE - www.kitsapgov.com/dcd

June 21, 2011

REVISED
NOTICE OF TYPE II ADMINISTRATIVE DECISION
WITCHER CRITICAL AREA BUFFER REDUCTION
LIS# 09 86093

This is a *revised* Notice of Decision regarding the above referenced critical area buffer reduction application. This revised decision is issued in response to the November 2, 2010 remand decision and subsequent December 2, 2010 clarification issued by the Kitsap County Hearing Examiner. This is a type II administrative decision in accordance with Section 21.04 of the Kitsap County Code (Land Use Procedures). Included in this notice are a summary of the proposal and the revised decision. The contact person for this application is David Greetham, Environmental Planner, Kitsap County Department of Community Development, and may be reached at (360) 377-5777.

Planning File Number: 09 86093

Assessor's Number: 4414-000-009-0003

Applicant / Owner:

GORDON WITCHER
6112 CHICO WAY N.W.
BREMERTON, WA 98312

Site Description:

The approximate .75-acre parcel consists of an existing single family residence developed on a historic lot of record. The property is located on the western shoreline of Dyes Inlet at 6112 Chico Way N.W., in unincorporated central Kitsap County. The parcel consists of low bank waterfront, with a previously developed residence in the central portion of the site approximately 175 feet from the shoreline, and a lawn area leading to a bulkhead and stairs to the beach. The westerly portion of the parcel abutting Chico Way is forested.

Type of Application and Description of Proposed Project:

The application is for a Type II Administrative Buffer Reduction from the 100-foot shoreline buffer and 15-foot building setback required for Semi-Rural shorelines in accordance with the Kitsap County Critical Areas Ordinance (KCC 19.300.315). Pursuant to KCC 19.300.315(A)(4), the applicant is requesting a buffer reduction from the 100 foot shoreline buffer to a minimum of 61 feet on the north and 57 feet on the south, to allow development of a single family residence. The applicant's stated goal of the proposal is to enjoy the rights and privileges enjoyed by other landowners in the project vicinity. Other homes in the immediate project vicinity have historically been constructed within approximately 40-70 feet of the shoreline. The 100 foot shoreline critical area buffer on the subject parcel is currently existing and managed as lawn area.

The proposed single family residence would occur within an approximate 2000 square foot working footprint. The existing 1600 square foot single-family residence would be removed.

The application is subject to the critical area buffer reduction criteria at KCC 19.300.315(A)(4), including a review against the variance criteria at KCC 19.100.135 and review and approval of a Habitat Management Plan (HMP) to offset impacts from new construction.

Summary of project review:

The original Notice of Application was issued on March 3, 2010 for public review and comment. Comments were received from local residents expressing concerns with the proposed buffer reduction. Issues raised include, but are not limited to, environmental impacts from the proposal and compliance with applicable buffer reduction criteria. Following review and consideration of comments received, the applicant modified the proposal to include an expanded HMP.

The expanded HMP included provisions for low impact development to control existing and future stormwater runoff, installation of native vegetation in a portion of the shoreline buffer, connection to sewer in order to avoid additional clearing for septic drainfield area, and retention of the mature forested area on the westerly portion of the site.

Based on review of the application materials (as modified), aerial photos, site conditions, public comments and applicable code criteria, staff initially determined that the application met the criteria for an administrative buffer reduction, subject to seven conditions of approval, including implementation of the applicant's HMP. On June 29, 2010, a Notice of Type II Administrative Decision to approve the request was issued.

On July 15, 2010, the Type II administrative decision was appealed. Following unsuccessful mediation of the appeal by the parties in accord with Kitsap County Code 21.04.120, an open record appeal hearing was scheduled for October 14, 2010.

On November 2, 2010, the Kitsap County Hearing Examiner issued a decision affirming the appeal and remanding the issue to the Director of the Kitsap County Department of Community Development for action consistent with the decision.

The Hearing Examiner decision provides 18 findings, and a conclusion based on the findings. The primary conclusion was that *"Upon review of the whole record, a reasonable person would conclude that the County DCD decision to approve the critical areas buffer reduction variance request was not supported by substantial evidence that all criteria were met."* The conclusion includes discussion of the buffer reduction criteria at Kitsap County Code (KCC) 19.300.315.A.4, which requires submittal of a HMP. The decision also clarifies that an applicant must first demonstrate pursuant to the variance criteria at KCC 19.100.135 that buffer widths cannot be met.

Analysis in response to remand decision:

The decision was specifically remanded to the County DCD for reconsideration in accordance with all of the KCC 19.100.135 variance review criteria (Hearing Examiner Decision, p. 11). A review of those criteria follows. The variance criteria are italicized, followed by a staff response to each.

19.100.135 Variances

- A. *A variance in the application of the regulations or standards of this title to a particular piece of property or a variance to the use prohibitions of this title may be granted by Kitsap County, when it can be shown that the application meets all of the following criteria:*
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 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 granting of a variance.*

The application does not comply with this criterion.

As stated in the Hearing Examiner decision, the applicant "...asserts that the location and surroundings of the existing Witcher residence in relation to the location of the existing shoreline setback line established by all other residences in the immediate vicinity constitutes special circumstances that apply to the subject property and do not apply to other property in the area. In particular, the Applicant asserts that the location of the existing Witcher residence between two driveways distinguishes the existing residence from immediately adjacent homes" (Nov. 2, 2010 Hearing Examiner Decision. p. 11).

The applicant also asserts that because the houses immediately to the north and south have been remodeled since adoption of the Critical Areas Ordinance, they were not developed under regulations in force prior to the adoption of the CAO.

The current CAO was adopted in 2005 and amended in 2007 to incorporate current shoreline buffers. It is staff's opinion that subsequent remodel activities have not substantially altered the existing developed condition driving the variance request, and that such developed condition was established under rules in force prior to adoption of the CAO. The existing driveway and house locations were developed in advance of the current regulations.

2. *The special circumstances referred to in subsection 1 above are not the result of the actions of the current or previous owner.*

The application complies with a portion of this criterion, although it has not been established whether the application complies with the entire criterion.

While it is unknown if the existing house location is a result of action by the previous owner, it is clearly not the result of actions by the current owner. Likewise, adjacent development activities were not the result of actions by either 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 (be) injurious to the property or improvements in the vicinity and area in which the property is situated or (be) contrary to the goals, policies and purpose of this title.*

While the application complies with the portion of this criterion relating to critical areas, compliance with the entire criterion has not been established.

With regard to critical area impacts, staff has reviewed the applicant's HMP and determined that the request would not result in substantial detrimental impacts to the critical area. Additionally, the applicant's *Shoreline Ecological Functions Analysis* concludes that "Overall, no net loss of shoreline ecological functions will occur as a result of the proposed redevelopment and, over the life of the project, shoreline ecological functions will have a slight increase." (Wetland Resources, Inc., April 20, 2011)

With regard to the remainder of the criterion, it appears that the granting of the variance would be injurious to the property or improvements in the vicinity and area in which the property is situated. During the public comment period, the adjacent property owners to the north indicated that approval of the buffer reduction request as proposed would have a negative impact on views from their existing improved property. As such, it has not been clearly established that the application complies with this portion of the criterion.

4. *The granting of the variance is the minimum necessary to accommodate the permitted use.*

The application does not comply with this criterion.

The primary permitted use in the Urban Restricted zone is residential development, 1-5 dwelling units per acre (depending on property restrictions). As the subject property currently accommodates a single-family residence as well as the required shoreline buffer and setback, the applicant could choose to build the new residence in the footprint of the existing house, or in an alternative location outside of the 100 foot buffer.

5. *No other reasonable or practicable alternative exists. (See Definitions, Chapter 19.150.)*

The application does not comply with this criterion.

Pursuant to KCC 19.150.520, "*Practicable alternative*" means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and having less impacts to critical areas. It may include an area not owned by the applicant for which an easement has been obtained in order to fulfill the basic purposes of the proposed activity."

As stated in criterion 4 above, the applicant could reconstruct the new residence in the footprint of the existing house or in an alternative location outside of the 100 foot buffer, neither of which would preclude the opportunity to have less impacts to critical areas.

6. *A mitigation plan (where required) has been submitted and is approved for the proposed use of the critical area.*

The application complies with this criterion. The applicant has prepared a HMP, which was reviewed and approved by DCD staff in 2010. The HMP has subsequently been supplemented with a supporting document, the April 20, 2011 *Shoreline Ecological Functions Analysis* cited under criterion 3, above.

Decision:

The Witcher Type II Buffer Reduction request is **denied** due to the fact that it does not meet all of the variance criteria at KCC 19.100.135.

Appeals: Any interested person may appeal the decision regarding this application within 14 days following the issuance of the decision (see cover letter for dates). Specific appeal procedures are found in the Kitsap County Land Use and Development Procedures Ordinance (KCC Title 21). This ordinance may be obtained from the Department of Community Development and is available at local libraries and on the Internet at www.kitsapgov.com.

Examination of File and Staff Contact: The application file may be examined at the Department of Community Development, 619 Division Street, Port Orchard, Washington, between the hours of 8:15 a.m. and 4:00 p.m. Monday through Thursday, except holidays. The staff person assigned to this project is David Greetham and may be contacted at (360) 337-5777.

Review Authority: Kitsap County DCD, Environmental Review Section

Materials reviewed for revised decision: Kitsap County Hearing Examiner Decision, dated November 2, 2010; Kitsap County Hearing Examiner Clarification Decision, dated December 2, 2010; e-mail from applicant's consultant titled "Comments regarding Remand of Witcher Variance", dated December 7, 2010; e-mail from applicant's consultant titled "Shoreline setback line for Witcher Variance", dated December 7, 2010; letter from applicant's attorney titled "Witcher Applications for Critical Areas Variance (LIS# 09 86093) and Shoreline Exemption" (with attachments), dated May 13, 2011.

Distribution:

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- X Karen Ashcraft, Clerk of the Hearing Examiner
- X DCD File Copy (LIS#09 86093)