



Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36
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OFFICE OF THE HEARING EXAMINER

KITSAP COUNTY

REPORT AND DECISION

CASE NO.: 080508-032
TOLAR DECK
CRITICAL AREAS VARIANCE

**APPLICANT/
OWNER:** Patricia Tolar
6775 View Drive SE
Port Orchard, WA 98367

**PROJECT
REPRESENTATIVE:** Patricia Tolar
6775 View Drive SE
Port Orchard, WA 98367

SUMMARY OF REQUEST:

The applicant is requesting a Critical Area Variance (CVAR) pursuant to Kitsap County Code (KCC) Title 19 (Critical Areas), Section 19.300.315.A in order to allow the construction of 450 square feet of decking and 60 square feet of concrete patio, onto a previously approved single family residence with an existing bulkhead. The recently approved single family residence was permitted under the 35 ft shoreline buffer and 15 ft building setback. The applicant would like to build decks to within 34 to 40 ft from the Ordinary High Water (OHW), within the previously-approved 15 ft building setback line. The proposed decks and concrete patio will require a critical area variance, in accordance with Kitsap County Code Title 19.100.135 (Critical Areas). Mitigation, in the form of a buffer enhancement plan, will be required as a condition of approval.

PROJECT LOCATION:

The property is located between 10109 and 10119 SE Cove Way, Port Orchard, South Kitsap County; Commissioner District #2.

SUMMARY OF DECISION:

Request granted, subject to conditions.

PUBLIC HEARING:

After reviewing Department of Community Development Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was conducted in the chambers of the Kitsap County Board of Commissioners on May 8, 2008.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

ITEM NO.	DOC. TYPE/SUBJECT	DATED	DATE REC'D.
1	Site Plan	No Date	No Rec'd Date
2	Pre-Application Meeting Request	No Date	9/10/07
3	Request to Waiver Pre-Application Meeting	9/10/07	9/10/07
4	Hearing Examiner Variance Application	9/10/07	9/10/07
5	Site Plan	No Date	9/10/07
6	GIS Building Limitations Map	9/11/07	N/A
7	GIS Zoning Map	9/11/07	N/A
8	GIS Shoreline Master Plan Environments Map	9/12/07	N/A
9	GIS Critical Aquifer Recharge Areas	9/12/07	N/A
10	GIS Critical Areas Topo Map	9/12/07	N/A
11	GIS Critical Areas Aerial Map	9/12/07	N/A
12	GIS Critical Areas Aerial Topo Map	11/18/07	N/A
13	GIS Critical Areas Map	11/18/07	N/A
14	Notice of Complete Application	11/20/07	N/A
15	Notice of Application	12/18/07	N/A
16	Affidavit of Mailing – NOA	12/19/07	N/A
17	Notice of Public Hearing	4/22/08	N/A
18	Affidavit of Mailing – NPH	4/21/08	N/A

ITEM NO.	DOC. TYPE/SUBJECT	DATED	DATE REC'D.
19	Affidavit of Posting	4/23/08	N/A
20	Letter from Kathryn Sherwood	4/30/08	5/4/08
21	Letter from Henry Granse	4/30/08	5/5/08
22	Staff Report	5/1/08	5/1/08
23	Power Point Presentation	5/8/08	5/8/08

STEVE HEACOCK, Senior Planner, appeared, presented the Department of Community Development Department Staff Report, and introduced Exhibits "1" through "23". The single family residential dwelling was permitted during the time that the shoreline setback requirements were 35 feet plus a 15 foot building setback from the buffer. The applicants now desire to construct a deck. The deck would be well behind the view line of parcels to the north and south. The home complies with all of the critical area constraints. Staff was unaware of the applicant's desire for a deck. At the time of construction of the home the proposed deck would have complied with the setback rule. Thus, the home with the deck would have complied with the code at the time of construction.

PATRICIA TOLAR appeared and testified that she did not submit the plans for the deck, but felt that she could revise the building permit. The door shown in the photographs is a garage door. She has no problems with conditions of approval.

No one spoke further in this matter and so the Examiner took the request under advisement.

NOTE: A complete record of this hearing is available in the office of Kitsap County Department of Community Development.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. Appropriate notice was provided pursuant to the Kitsap County Code.
3. Pursuant to WAC 197-11-800(1), the proposal is exempt from SEPA requirements.
4. The applicant has a possessory ownership interest in a rectangular, waterfront parcel of property extending between Cove Way and the ordinary high water mark of Driftwood Cove in the Port Orchard area of unincorporated Kitsap County. The property line extends beyond the bulkhead into the tidelands. The upland portion of

the parcel measures 50 feet in width and varies in depth between 144 feet along the south property line and 132 feet along the north property line.

5. The applicant applied for and received a building permit to allow construction of a new, two bedroom, single family residential dwelling 50 feet from the ordinary high water mark of Driftwood Cove as marked by the bulkhead. At the time of building permit application the applicant's home met all shoreline and critical areas setbacks which included a 35 foot wide buffer and 15 foot wide building setback from said buffer. The applicant now desires to construct a 450 square foot upper deck and a 60 square foot patio on the waterward side of the house. Had the applicant included the structures within the original building permit application, they likewise would have met all critical area/shoreline setbacks. However, since she did not include the decks within the application, they cannot relate back to the original issuance of the permit and now are subject to the current 100 foot wide, shoreline buffer. Therefore, to construct the decks the applicant must obtain a critical areas variance.
6. Prior to obtaining such variance the applicant must show that the request satisfies the criteria set forth in Section 19.100.135 of the Kitsap County Code (KCC). Findings on each criteria are hereby made as follows:
 - A. The special circumstances applicable to the parcel which justify the variance include its small size and the construction of improvements on both abutting parcels under regulations in force prior to adoption of the present KCC standards. Special circumstances also include the fact that the applicant at the time of submittal of a building permit application for the primary residence could have applied for and obtained a building permit for the proposed upper and lower decks. The deck will maintain a minimum setback of 34 feet from the ordinary high water mark as measured from the bulkhead.
 - B. The special circumstances are not the result of actions of the current or previous owner. The applicant submitted a completed building permit application which required a 35 foot shoreline setback plus 15 foot building setback therefrom. Thus, the applicant's home complied with the setbacks. According to the site plan the applicant could not have constructed the home farther from the shoreline due to the location of the septic tank five feet from the home; and the 20 foot wide, road and utility easement crossing the west side of the property. Even with the decks, the view from the applicant's parcel is restricted by homes on both sides.
 - C. Granting the variance will not result in substantial detrimental impacts to the shoreline or the public welfare, nor will it injure property or improvements in the vicinity. The variance does not violate the goals, policies, and purposes of the critical areas ordinance. Development will not result in removal of shoreline vegetation and all improvements will remain a substantial distance shoreward from existing improvements on abutting parcels. The applicant

has proposed a reasonably sized deck and patio which should not impact the shoreline.

- D. Granting the variance is the minimum necessary to accommodate the proposed decks. The applicant proposes a small patio footprint and footings to support the upper decks areas. Reducing the width of the deck will reduce its usefulness and further restrict the applicant's view.
- E. Staff has not required a mitigation plan, but the applicant desires to install native plantings to improve the present grass lawn. The improvements will not impact the shoreline area.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The applicant has shown that the request for a critical areas variance satisfies all criteria set forth in KCC 19.100.135 and therefore the variance should be granted subject to the following conditions:
 1. Site development shall comply with the site plans submitted for the deck structure (Exhibit 5). The main floor patio shall not exceed the 60 square foot building footprint proposed. Upper floor decks shall not exceed 450 square feet.
 2. The variance for critical area shoreline buffer reduction shall be allowed provided that development of the single-family residence will not require additional shoreline armoring. The shoreline shall remain in its natural condition, with the exception of the existing concrete bulkhead.
 3. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.
 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 precedent 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.

DECISION:

The request for a critical areas variance to allow construction of 450 square feet of decking and 60 square feet of concrete patio waterward of a previously constructed single family residential dwelling, and located a minimum of 34 feet from the bulkhead at a site located at 10113 Cove Way, Port Orchard, is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 17th day of June 2008.

STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this _____ day of _____, 2008, to the following:

**APPLICANT/
OWNER:**

Patricia Tolar
6775 View Drive SE
Port Orchard, WA 98367

**PROJECT
REPRESENTATIVE:**

Patricia Tolar
6775 View Drive SE
Port Orchard, WA 98367

OTHERS:

Dave Richman
10125 Cove Way SE
Port Orchard, WA 98367

Henry Granse
6751 View Drive SE
Port Orchard, WA 98367

Kathryn Sherwood
6767 View Drive SE
Port Orchard, WA 98367

Kitsap County Board of Commissioners
Kitsap County Department of Community Development
Kitsap County Department of Public Works
Kitsap County Prosecutor – Civil Division
Kitsap County Department of Parks and Recreation
Bremerton-Kitsap County Health Department
The Sun Newspaper

Pursuant to Kitsap County Code Section 21.04.120 and the Land Use Hearing Examiner Rules of Procedure, an OBJECTION to the Examiner's Decision may be filed, in this matter, in writing, with the Clerk of the Board of County Commissioners, on or before _____, 2008. Prior to the filing of an Objection, the objector shall pay the sum of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) to the Department of Community Development.