



Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36
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Stephen K. Causseaux, Jr.

PORT ORCHARD WASHINGTON 98366-4682
(360) 337-7181 FAX (360) 337-4925
kashcraf@co.kitsap.wa.us

OFFICE OF THE HEARING EXAMINER

KITSAP COUNTY

REPORT AND DECISION

CASE NO.: 080508-034
DAWSON HOUSE 13
CRITICAL AREAS VARIANCE

APPLICANT: Heath Dawson
2244 Miller Bay Road
Poulsbo, WA 98370

OWNER OF RECORD: Michael Dawson
P.O. Box 1823
Lynwood, WA 98406

PROJECT REPRESENTATIVE: William M. Palmer
W.M. Palmer Consultants
P.O. Box 6
Port Orchard, WA 98366

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 development of a single-family residence and garage with a 2107 square foot footprint on a 0.27 acre parcel, located at 7184 NE William Rogers Road, Indianola. Due to the small lot size of 6,100 square feet, the applicant is requesting a variance to reduce the critical area shoreline buffer from 35 feet to approximately 20 feet to accommodate the residential structure.

The applicant is also requesting a Shoreline Substantial Development Permit (SSDP) pursuant to KCC Title 22 (Shoreline Management Master Program) to allow the construction of a T-shaped pier, ramp and float extending 110 feet waterward of the

ordinary high water mark.

PROJECT LOCATION:

The property is located at 7107 NE William Rogers Road in Indian Bay, Indianola, North Kitsap County, Commissioner District #1.

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	LIS Editor Critical Area Site Visit	10/26/04	10/26/04
2	Site Plan	2/9/07	2/12/07
3	Pre-Application Meeting Request	No Date	2/12/07
4	Request to Waiver Pre-Application Meeting	2/7/07	2/12/07
5	Environmental (SEPA) Checklist	2/7/07	2/12/07
6	KCPW Application for Concurrency Test	2/7/07	2/12/07
6A	Hearing Examiner Variance Application - attachments	2/7/07	2/12/07
7	KC Assessor's Property Report	2/14/07	N/A
8	Duplicate of 18		
9	Duplicate of Exhibit #6		
10	GIS Critical Areas Topo Map	2/14/07	N/A
11	Letter from Nancy Hanson	3/6/07	N/A
12	Pre-Application Conference Confirmation Letter	3/7/07	N/A
13	E-mail from Lisa Lewis	3/14/07	3/14/07

ITEM NO.	DOC. TYPE/SUBJECT	DATED	DATE REC'D.
14	GIS Aerial Photos (5)	3/27/07	N/A
15	GIS Comprehensive Plan Map	3/27/07	N/A
16	GIS Shoreline Master Plan Environments Map	3/27/07	N/A
17	GIS Building Limitations Map	3/27/07	N/A
18	GIS Aerial Photo	3/27/07	N/A
19	Duplicate of Exhibit #16		
20	Duplicate of Exhibit #10		
21	DE Pre-Application Checklist	3/27/07	N/A
22	KC Assessor's Parcel Map	No Date	N/A
23	Notice of Complete Application	10/22/07	N/A
24	Notice of Application	4/15/08	N/A
25	Affidavit of Mailing – NOA	4/16/08	N/A
26	Notice of Public Hearing	4/21/08	N/A
27	Affidavit of Mailing – NPH	4/21/08	N/A
28	Affidavit of Posting	4/23/08	N/A
29	Letter from William & Alyce Sherburn	No Date	4/24/08
30	Letter from Pat & Penny Goodfellow	4/25/08	4/29/08
31	Revised Site Plan	No Date	4/28/08
32	Staff Report	5/1/08	N/A
33	Memo from David Greetham with attachments	5/7/08	N/A
34	Power Point Presentation	5/8/08	5/8/08
35	Site Plan	5/8/08	5/8/08

DAVID GREETHAM appeared, presented the Department of Community Development Staff Report, and testified that the variance reduces the shoreline setback from 50 feet to 15 to 20 feet. The lot was created by the Indian Bay plat in 1968 and is located at the end of a cul-de-sac. The lot has an odd shape and provides little room for a septic drainfield. The only acceptable soils are located at the top portion of the lot close to the cul-de-sac. When the applicant obtains drainfield approval they will know how much room is left for the home. Little opportunity exists for habitat restoration. Staff recommends approval of the variance with conditions to include implementation of the replanting plan shown on Exhibit "31". The primary concern raised by residents is view interference. The code provides a view line rule and on Exhibit "31" the green line is the connecting line between abutting structures. Another issue relates to the height of the home. The applicant proposes a 2,060 square foot footprint, but the house will actually occur within the box shown on the site plan. The footprint includes a garage, deck, and living portion of the house.

WILLIAM PALMER appeared on behalf of the request and testified that the project meets the critical area variance criteria. The location of the house is based on the existing bulkhead and it will extend to within 20 feet thereof. They have located the on-site septic system as close to the cul-de-sac as they can get. The code requires a 100 foot separation from the ordinary high water mark of a water body. They do not have 100 feet, but will install a sand filter close to the house. Both the primary and reserve drainfields are proposed close to the cul-de-sac. A drainage easement extends along the north property line and they cannot build on it. They cannot build more to the north in front of the Sherburn parcel. A walkway extends across their parcel to serve the property to the south.

HEATH DAWSON, the applicant and son of the owner appeared and testified that the structure meets all criteria. They spent time working on the project and all measurements are correct. The structure will measure 65 feet in width and they will have a footprint of up to 2,060 square feet. They met with the homeowners association which remained neutral. However, they have no issues with the association. If they could build a house closer to the road they would. As it is they have approval for a septic system for a two bedroom structure. The 65 foot width includes 22 feet for a garage and 43 feet for the house foundation. They will cantilever the structure ten feet toward the drainfield for a total width of 32 feet.

CHARLES POLLMAR appeared and testified that the curtain drain requires a ten foot setback and that the 100 foot shoreline setback extends into the cul-de-sac. The septic system will have a two bedroom capacity. They have designed all components to meet the code. If they locate the house up the hill, they can't build on the site because of the necessity for an on-site septic system. The cantilever area will not require a setback as they will use post construction.

ALYCE SHERBURN appeared and testified that the applicant proposes a large home on a small lot. If they have a second and third story, it will dominant their house. They now have a view to Mt. Rainier and Seattle. Other vacant lots down the street could help with the septic system. The structure will extend close to theirs and on the front porch people will see their bath and bedroom. She wants the variance denied and the applicant required to move the septic system off site. They are asking for reason. They want the house to remain at a lower level, but the applicant does not agree. The homeowners association also questioned why they didn't take the septic off site. She feels that they want the variance to locate the house closer to the water.

PAT GOODFELLOW appeared and testified that he owns the adjacent parcel to the south. He is unsure that the applicant contacted the neighbor to the south of him who has a large lot and might accommodate septic effluent. He talked with the neighbor and he had no set fee that he would take for an easement. The house will not impact his view as much as the Sherburns, but it would cut off his view from the deck to the west. He has not seen any house plans and the homeowners association has not seen what the applicant proposes for the height of the structure. It is hard to pin-point the problems. An easement on the northwest corner of the property was recorded in 2001. It shows the property line 38.5 feet.

They can move the structure 15 feet over and rebuild the rockery and stairway, but such may impact the septic area. He does not want to lose the rockery shown on his property. The applicant will need a retaining wall which will also make the drainfield smaller. He could make a deal with the neighbor, as the neighbor has two lots with one vacant. He can't make a detailed presentation without the house plans.

MR. PALMER reappeared and testified that another constraint is a 20 foot wide, building setback from the cul-de-sac. They do not have a lot of options even if the septic is moved off site. If the Health Department approves the on-site system, it is better to do something on-site than pump the effluent to an easement off site. If they are forced to go off site it increases the cost. He believes that Mr. Dawson attempted to work out an agreement for septic with neighbors. The zoning code setback plus the critical area setback does not leave a lot of options for building on the lot.

HEATH DAWSON reappeared and testified that he talked with a few of the neighbors and found one willing to work with him. They dug holes on that neighbor's lot, but did not find good soils. He talked with other neighbors, but they would not make a decision. He is open to taking the effluent off site. It is better for all. If an off site drainfield were an option he would consider it. The 2,060 square foot footprint is considerably smaller than the neighbor to the north. The neighbor is set back 50 feet from the water. His home may impact the neighbor's view, but even with the new home, they will still have 180 degree plus view. The lots are small and it is common to have homes ten feet from each other in the area. Most of the homes look straight out into the water for their view.

MR. GREETHAM reappeared and introduced Exhibits "1" through "33". Exhibit "33" from the Health District shows a possibility for septic approval. If they do not obtain approval and have to go off site then he would require the house moved up to the front yard setback. Such would address the view issues.

MR. PALMER reappeared and testified that the Sherburn house is twice as large and that the closest point to the applicant's house is their garage.

MS. SHERBURN reappeared and testified that their house has a daylight basement and that a one story house would be the same as one with a daylight basement. Her house is setback 50 feet, but this one only 20 feet. Therefore, it is in front of her house and impacts her view.

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(6), the proposal is SEPA exempt.
4. The applicant has a possessory ownership interest in an irregularly shaped, .27 acre parcel of unimproved property located west of the cul-de-sac marking the terminus of Chief Sealth Drive NE. The parcel abuts the easterly shore of Miller Bay in the Indianola area of unincorporated north Kitsap County. The applicant requests a critical areas variance to allow reduction of the shoreline setback from 50 feet to 20 feet to accommodate a single family residential dwelling and attached garage.
5. The parcel measures approximately 72 feet in width at Chief Sealth Drive and expands to a width of approximately 135 feet at the shoreline. However, due to the unusual shoreline configuration, the parcel abuts the shoreline for approximately 150 linear feet. A rock bulkhead extends along the entire shoreline and bulkhead stairs provide access to the beach in the northern portion of the site. A proposed joint use dock serving the applicant's parcel and the abutting parcel to the north extends waterward from a point immediately north of the beach stairs.
6. The site plan shows the footprint of the house extending across the width of the lot and maintaining a minimum five foot setback from the south property line and a 15 foot setback from the north property line. Due to the lot's unusual configuration, a long, triangular portion of the lot extends approximately 85 feet to the west along the shoreline. The stairs to the beach and the proposed joint use dock are located within this triangular area.
7. The site plan shows access provided to the garage via a driveway extending southwest into the site from the cul-de-sac. The on-site septic system to include a sand filter, primary drainfield, and reserve drainfield are located between the house and the cul-de-sac south of the driveway. A curtain drain and drainage easement extend along the north property line, and a pathway and stairs providing access for the neighbor to the south extends across the southern portion of the parcel near the cul-de-sac.
8. The neighbor to the north raised concerns regarding view impacts of the proposed structure. The northern house is constructed approximately six feet from the joint property line, and a deck and patio extend adjacent to or even across the property line (Exhibit "31"). Furthermore, the house to the north is oriented such that the view

directly to the water extends over the triangular portion of the applicant's parcel. According to the site plan (Exhibit "35"), the waterfront ownership of the neighbor to the north consists of a 30 foot wide finger of land located at the neighbor's north property line, 90 feet from the applicant's proposed house. Due to the configuration of the shoreline, the neighbor's waterfront measures about 40 linear feet. Thus, much of the neighbor's view is over the applicant's parcel.

9. Chapter 17.450 KCC entitled "View Blockage Requirements" sets forth special shoreline structural setbacks. KCC 17.450.020(3) addresses situations where abutting lots on both sides of a vacant parcel have principal buildings. Said section provides in part as follows:

...Where there are adjacent principal buildings on both sides of the proposed structure on a regular shoreline, the shoreline structure setback line shall be determined by a line drawn between the building line of the adjacent principal buildings or that setback specified elsewhere in this Zoning Ordinance, whichever is greater.

Staff has drawn such a line between the "adjacent principal structures" and found that the applicant's proposed home does not extend waterward of said line (Exhibit "34"). However, because the shoreline setback is 50 feet, the applicant must acquire a critical areas variance to locate his home 20 feet from the ordinary high water mark of Miller Bay.

10. Prior to obtaining a critical areas variance the applicant must show that the request satisfies the criteria set forth in KCC 19.100.135. Findings on each criteria are hereby made as follows:
 - A. Numerous special circumstances apply to the property to include its size, shape, and soils such that strict application of the setback would deprive the parcel of rights and privileges enjoyed by other properties in the vicinity; namely, the right to construct a reasonably sized, single family residential home. Special circumstances include the only soils which can support an on-site drainfield located adjacent to the cul-de-sac; a curtain drain and drainage easement located along the north property line; and stairs and a pathway serving the home to the south crossing the southeast corner of the lot. The required 20 foot wide setback from the road also impacts the buildable area. The unusual shape of the lot renders the triangular, northwestern corner extending in front of the neighbor's house unbuildable. All of the above dictate the location of the house as proposed by the applicant.
 - B. The special circumstances referred to above are not the result of the actions of the current or previous owner. Previous owners created the lot as part of the Indian Bay subdivision in 1968 which Kitsap County

approved. At the time of approval the 50 foot wide, shoreline buffer requirements did not exist.

- C. Granting the variance will not result in substantial detrimental effects to the critical area (the shoreline) or the public welfare, nor will it injure property or improvements in the vicinity and area in which the property is situated. Furthermore, the variance is not contrary to the goals, policies, and purposes of the critical areas ordinance. The shoreline of Miller Bay, especially to the east and south is heavily developed with homes on similarly sized parcels. Locating the proposed house between two homes presently separated by 107 feet should not create further impacts on the shoreline especially considering the rip rap bulkhead and stairs. As found above, the structure will not unreasonably impact the view from the Sherburn lot for the reasons set forth above. The view from the Sherburn home looks over the applicant's lot, but the Sherburns have not obtained a view easement or height restriction easement, and the placement of the house meets KCC view protection standards.
- D. Granting the variance is the minimum necessary to accommodate a reasonably sized, single family residential home based upon the above listed special circumstances.
- E. No other practical or reasonable alternative exists at present. However, the applicant and staff expressed interest in continuing to search for an off-site location for the septic drainfield. Should such search be successful, staff would require relocation of the home to the 20 foot setback line from the road.
- F. The applicant has submitted a mitigation plan consisting of a conceptual buffer enhancement plan which would include installation of native vegetation along the shoreline buffer area. The plan also includes revegetation of a previously cleared buffer on the northerly lot area.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The applicants have shown that the request for a shoreline 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 with the JARPA (Exhibit 5) and the associated single-family residential building permit (Exhibit 25). The garage and main floor shall not

exceed the 2107 square foot building footprint proposed on the building plans.

2. Pursuant to KCC Chapter 19.500, a flood elevation certificate shall be provided prior to final building permit approval for the single-family residence and garage.
3. The pier, ramp and float shall be constructed in accordance with the JARPA application received by the Department of Community Development (Exhibit 5), except where modified through state or federal permit requirements.
4. Hydraulic Project Approval shall be obtained from the Washington Department of Fish and Wildlife prior to pier, ramp and float construction.
5. A building permit shall be obtained from Kitsap County Department of Community Development prior to pier, ramp and float construction.
6. Upon final issuance of the Shoreline Substantial Development Permit, all pier, ramp and float construction 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.
7. Should the applicant obtain authority to locate the septic drainfield off-site, the building footprint shall be relocated to the setback line from Chief Sealth Drive.
8. 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.
9. 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 improvement of a lot located at 20767 Chief Sealth Drive NE with a single family residential dwelling and garage having a maximum 2,060 square foot footprint 20 feet from the ordinary high water mark of Miller Bay 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: Heath Dawson
2244 Miller Bay Road
Poulsbo, WA 98370

OWNER OF RECORD: Michael Dawson
P.O. Box 1823
Lynwood, WA 98406

PROJECT REPRESENTATIVE: William M. Palmer
W.M. Palmer Consultants
P.O. Box 6
Port Orchard, WA 98366

OTHERS:

John Davidson
P.O. Box 1268
Kingston, WA 98346

Lee Lannoye
7159 NE William Rogers Road
Indianola, WA 98342

Alison O'Sullivan
P.O. Box 498
Suquamish, WA 98392

Wm & Alyce Sherburn
P.O. Box 258
Indianola, WA 98342

Pat and Penny Goodfellow

Charles Pollmar

20745 Chief Sealth Drive
Indianola, WA 98342

10081 Arrow Point Drive
Bainbridge Island, WA 98110

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.