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KITSAP COUNTY DEPT. OF
COMMUNITY DEVELOPMENT



Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36
<http://www.kitsapgov.com/dcd>

Stephen K. Causseaux, Jr.

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OFFICE OF THE HEARING EXAMINER

KITSAP COUNTY

REPORT AND DECISION

CASE NO.: 080612-041
MACKEY CRITICAL AREAS VARIANCE

**APPLICANTS/
OWNERS:** Richard and Christina Mackey
1033 NW 178th Street
Shoreline, WA 98177

**PROJECT
REPRESENTATIVE:** Paul Wandling
P.O. Box 305
Tracyton, WA 98393

SUMMARY OF REQUEST:

The project proposal consists of the construction of an 860 square foot garage with an upper-level cabin within 40 ft of a Category II wetland buffer. The applicant proposes a small cabin footprint to within 40 feet of the wetland, which by Kitsap County code, requires a 110 ft buffer and 15 foot building setback line. The proposed SFR will be built within 85 feet of the 110 ft wetland buffer, and therefore requires critical area variance approval, in accordance with Kitsap County Code Title 19 (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 at 8481 Point No Point Road NE, Hansville, North Kitsap County, Commissioner District No. 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 **June 12, 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	Wetland Delineation & Analysis Report	4/25/07	10/15/07
2	KCHD Building Site Application	9/9/07	No Rec'd Date
3	Hearing Examiner Variance Application	10/11/07	10/15/07
4	Request to Waiver Pre-Application Meeting	10/11/07	10/15/07
5	Notice of Complete Application	12/14/07	N/A
6	GIS Critical Areas Topo Map	1/16/08	N/A
7	GIS Critical Areas Aerial Map	1/16/08	N/A
8	KC Building Permit Application	11/21/07	1/9/08
9	Notice of Application	4/14/08	N/A
10	Affidavit of Mailing – NOA	4/14/08	N/A
11	Revised Notice of Application	4/21/08	N/A
12	Affidavit of Mailing – RNOA	4/21/08	N/A
13	Notice of Public Hearing	5/28/08	N/A
14	Affidavit of Mailing – NPH	5/28/08	N/A
15	Affidavit of Posting	5/28/08	N/A
16	Staff Report	6/6/08	N/A
17	Power Point Presentation	6/12/08	6/12/08
18	Letter from Barbara A Pistoresi	6/12/08	6/12/08

STEVE HEACOCK appeared, presented the Department of Community Development Staff Report, and introduced Exhibits "1" through "17". Improvements on the site include a small shed, and the house will be located near the shed. The wetland is to the rear. The applicant also owns the home across the road adjacent to the shoreline. They will move the existing shoreline home to the proposed location. A garage will be constructed below the

home. They will provide both buffer and wetland enhancement and the shaded area on the site plan is where the mitigation will occur. The septic is located on the northwest corner and the house in the center. The house contains 840 square feet. Staff recommends approval. A letter of concern addressed wildlife habitat and vegetation removal. However, in the area of the home the applicant will need to remove a small stand of alders, but this will only have a small impact on the wetlands. Impacts to deer and raccoon habitat were also addressed as concerns, but are considered urban wildlife and no species of concerns were identified on the site.

RICHARD MACKEY appeared and testified that the project will benefit the environment. They will move an existing cabin to the site which is better than to a landfill. They will remove invasive plant material from the wetland and buffer. He has never seen a raccoon on the site, but did see deer twice. He also sees deer on the beach. He had no questions about 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 an irregularly shaped, 40,800 square foot parcel of property abutting the south side of NE Point No Point Road approximately one-half mile south of its intersection with Hansville Road in the Hansville area of unincorporated Kitsap County. The applicant requests a critical areas variance to allow improvement of the site with a house on a 860 square foot footprint and an on-site septic disposal system.
5. Improvements on the site include a small storage shed.
6. The north property line of the parcel abuts Point No Point Road for 142 feet and expands to 210 feet along the south property line. The depth of the lot varies between 165 feet on the west and 181 feet on the east. Vegetation on the site

consists of a forested community dominated by red alder and a typical understory of salmonberry. Alki Consultants, LLC, a qualified wetlands expert, delineated a Category II depressional-riverine wetland on the southern portion of the site. The Kitsap County Critical Areas Ordinance requires a 110 foot wide buffer and 15 foot building setback therefrom for a Category II wetland. The applicant requests an 85 foot wide variance to reduce the wetland buffer from 110 feet to 25 feet.

7. The site plan shows the single family dwelling located a minimum of 20 feet from the road and the on-site septic system located five feet from the road. The clearing limits for the project provide for little or no rear yard, but do allow for a side yard parallel to Point No Point Road. The applicant also owns a single family dwelling on the lot north of Point No Point Road which abuts Puget Sound. The applicant proposes to move said home onto the site and construct a garage below the said home. Such will reduce noise and other impacts associated with house construction.
8. Prior to obtaining a critical areas 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 subject property which substantiate the variance include its shape. Furthermore, strict application of the buffers and setbacks will deprive the property of rights and privileges enjoyed in the vicinity. The lot configuration coupled with the location of the wetland virtually eliminates the site as a reasonable building location without the variance. Other properties in the area are improved with single family dwellings of moderate to large size. The applicant is recognizing the sensitivity of the site by proposing an 860 square foot, ground floor, garage footprint.
 - B. The special circumstances are not the result of the actions of the present or a previous owner. The existing lot was platted well before the initial Kitsap County Critical Areas Ordinance.
 - C. Granting the variance will not result in substantial detrimental impacts to the critical area or the public welfare, nor will it injure property or improvements in the vicinity and area. The project is likewise not contrary to the goals, policies, and purposes of the Critical Areas Ordinance. Any development within a wetland buffer can potentially adversely impact the wetland habitat and waters. However, the proposed project will not impact the wetland itself and will require removal of the small stand of alder trees near the road. Mitigation for the project will include the removal of invasive weeds from the wetland and its buffer. Such should increase the quality of the wetland.
 - D. The variance is the minimum necessary to accommodate the permitted use.

The applicant proposes a very small footprint for the lower floor and will move an existing cabin from the shoreline onto the site.

- E. No other practical or reasonable alternative exists. The applicant has located the home and the on-site septic system as close to the road as possible. Further reductions will eliminate the lot as a building site.
- F. The applicant has submitted a mitigation plan which staff has accepted.

CONCLUSIONS:

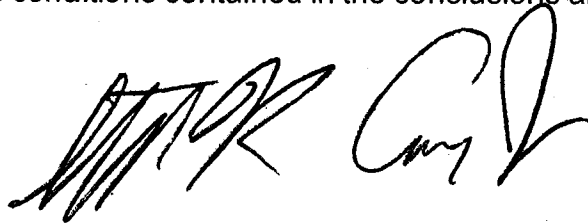
- 1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
- 2. The applicant has shown that the request for a critical areas variance satisfies all criteria set forth in Section 19.100.135 KCC, and therefore the variance should be approved subject to the following conditions:
 - 1. Site development shall comply with the site plans submitted for the residence and garage structure (Exhibit 8). The main garage floor shall not exceed the 860 square foot building footprint proposed.
 - 2. The variance for critical area wetland buffer reduction shall be allowed provided that development of the single-family residence will not require additional wetland encroachment. The wetland shall remain in its natural condition, with the exception of the proposed SFR construction and mitigation specified below.
 - 3. Wetland mitigation shall be completed as described in the April 25, 2007 wetland analysis by Alkai Consultants, LLC.
 - 4. If granted, the subject Critical Areas Variance shall be valid for three years following the date of approval.
 - 5. 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.
 - 6. 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 reduction of the required Category II wetland buffer from 110 feet to 85 feet to allow construction of a single family residential dwelling and on-site septic system at a site located at 8481 Point No Point Road NE, Hansville, is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 30th day of June, 2008.



STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 8th day of July, 2008, to the following:

**APPLICANTS/
OWNERS:**

Richard and Christina Mackey
1033 NW 178th Street
Shoreline, WA 98177

**PROJECT
REPRESENTATIVE:**

Paul Wandling
P.O. Box 305
Tracyton, WA 98393

OTHERS:

Barbara A. Pistoresi
8592 Point No Point Road NE
Hansville, WA 98340

Kitsap County Board of Commissioners
Kitsap County Department of Community Development
Kitsap County Department of Public Works
Kitsap County Prosecutor – Civil Division

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COMMUNITY DEVELOPMENT**

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 July 22nd, 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.

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