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KITSAP COUNTY DEPT. OF
COMMUNITY DEVELOPMENT



Kitsap County Hearing Examiner

Stephen K. Causseaux, Jr.

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

KITSAP COUNTY

REPORT AND DECISION

CASE NO.: 080626-047
BURT CRITICAL AREAS VARIANCE

APPLICANTS/ Mark and Jill Burt
OWNERS: 17303 46th Street Court East
Bonney Lake, WA 98391

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 replacement of an existing small mobile home and its failing, nonconforming drainfield with a new, single-family residence and relocated, upland drainfield. Due to critical area buffer, floodplain and septic drainfield constraints on the property, the applicant is requesting a variance to reduce the critical area shoreline buffer from 100 feet to 50 feet (35 foot buffer and 15 foot building setback line) to accommodate the residential structure.

PROJECT LOCATION:

The proposal is located at 314 NW Rhododendron, Bremerton, 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 **June 26, 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	Revised Preliminary Site Plan	10/1/07	2/8/08
2	Water Availability Letter KCHD	8/23/07	2/8/08
3	Burt Habitat Management Plan – BGE Environmental LLC	1/2008	2/8/08
4	Environmental Review Checklist	2/8/08	2/8/08
5	Hearing Examiner Variance Application	2/7/08	2/8/08
6	Notice of Complete Application	4/2/08	N/A
7	Notice of Application	5/5/08	N/A
8	Affidavit of Mailing - NOA	5/5/08	N/A
9	Notice of Public Hearing	6/9/08	N/A
10	Affidavit of Mailing – NPH	6/9/08	N/A
11	Affidavit of Posting	6/11/08	N/A
12	Staff Report	6/18/08	N/A
13	Power Point Presentation	6/26/08	6/26/08

STEVE HEACOCK appeared, presented the Department of Community Development Staff Report, and introduced Exhibits "1" through "13" which included his powerpoint presentation. The applicant requests a critical areas variance for a shoreline setback for a new home. The site was previously improved with a mobile home and drainfield near the shoreline. The drainfield created a water quality problem as it was inadequate. The applicant will locate the new drainfield landward of the new home site. The home itself is behind view lines and the Habitat Management Plan will allow lower growing plants so that the applicant still has a view of the lake. Staff recommends approval.

MARK BURT, applicant, appeared and testified that they intend to build their retirement home and started three years ago with a property search. They have owned the site for four years and at the time they acquired it, the shoreline setback was 50 feet. At the building permit stage he ran into the critical areas setback requirement. He applied for a

variance and prepared the Habitat Management Plan. He 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 generally rectangular, .42 acre parcel of waterfront property abutting the western shoreline of Lake Tahuya in unincorporated Kitsap County. The parcel extends from Rhododendron Way to the ordinary high water mark of the lake. The parcel abuts the lake for approximately 97 feet and varies in depth from 247 feet along the north property line to 215 feet along the south property line.
5. The parcel was previously improved with a mobile home located in the central portion of the site and an on-site septic disposal system located between the mobile home and Lake Tahuya. The drainfield was nonconforming and failing.
6. The applicant proposes to replace the mobile home with a site-built, single family residential home located 50 feet from the ordinary high water mark of the lake and a new, modern, on-site septic disposal system and reserve area located between the home and Rhododendron Way.
7. The site plan shows a 2,600 square foot, single story, single family residential home which includes a garage and covered porch. The proposed footprint matches the size range for adjoining parcels. An existing driveway extending east into the site from Rhododendron Way along the north property line provides access to the new home.
8. The applicant engaged BGE Environmental, LLC, to prepare a Habitat Management Plan (HMP) for the site. The plan (Exhibit "3") notes that in January, 2008, the lot contained no improvements with the exception of a storage shed and was void of

native vegetation. The site consisted of bare ground and various grass species. The HMP notes that removal of the old drainfield along the shoreline and planting of native species represents a significant improvement to the quality of the lake and shoreline.

9. The site is located within the Rural Residential (RR) designation of the Kitsap County Comprehensive Plan and the RR zone classification of the Kitsap County Code (KCC), both of which authorize single family residential dwellings. The site is also located within the Rural Shoreline Environment of the Kitsap County Shoreline Management Master Program. Title 19 KCC sets forth the Kitsap County Critical Areas Regulations, and Section 19.300.315(A) KCC requires a 100 foot wide, shoreline buffer for the Rural Shoreline Environment. The applicant requests a variance from said buffer width to allow construction of the home 50 feet from the ordinary high water mark of Lake Tahuya.
10. Section 19.100.135 KCC sets forth the critical area variance criteria. Findings on each criteria are hereby made as follows:
 - A. The special circumstances applicable to the subject property which support the critical area variance include its shape and the location requirements from the new, on-site septic disposal system. Strict application of the 100 foot wide setback would deprive the applicant of a reasonable use of the parcel. Other parcels in the vicinity and around Lake Tahuya are developed with single family residential homes of moderate to large size. The site plan shows the primary and reserve drainfield located between Rhododendron Way and the proposed home site. The home cannot be relocated landward due to the required "no build" zone between the structure and the drainfield.
 - B. The special circumstances are not the result of the actions of the current or previous owner. A previous owner placed a single wide mobile home on the site in the early 1980s at a time where the County had no shoreline restrictions or setbacks. The mobile home became a valid, legal nonconforming use, but the applicant lost such rights upon removal of the mobile home. Furthermore, the on-site septic regulations have changed substantially since the 1980s and dictate the location of the home.
 - C. Granting the variance will not result in substantial detrimental impacts to Lake Tahuya or the public welfare. The variance will likewise not injure property or improvements in the vicinity and area. The home site is in an open grassy area and construction will not require removal of substantial native vegetation. The HMP will require planting of native vegetation along the shoreline.
 - D. Granting the variance is the minimum necessary to accommodate the permitted use. The applicant proposes a 2,600 square foot, single story

structure which includes a garage and covered porch.

- E. No other practical or reasonable alternative exists. Without the variance the applicant cannot enjoy a reasonably sized single family home on a lot previously improved with a single wide mobile home. The shoreline setback proposed is equivalent to that of homes on adjacent parcels. Enforcement of the setback would eliminate use of the lot due to the constraints of the on-site septic drainfield.
- F. The applicant has prepared a Habitat 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 the criteria set forth in Section 19.100.135 KCC and therefore should be approved subject to the following conditions:
 - 1. Site development shall comply with the site plans submitted for the single-family residential building permit (Exhibit 1). The main floor shall not exceed the approximately 1,900 sq ft building footprint, with 770 sq ft garage and 305 square foot covered porch, as proposed on the building plans.
 - 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 wood bulkhead.
 - 3. The proposal will be conditioned for completion of the Habitat Management Plan created by BGE Environmental LLC prior to issuance of final occupancy.
 - 4. Any Variance approval shall become void if no building permit application to construct the proposed single-family residence (SFR) is accepted as complete by the Department of Community Development, within three years of the date of the Hearing Examiner's decision.
 - 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 100 foot wide buffer from Lake Tahuya to 50 feet to allow construction of a single family residential home at a site located at 314 NW Rhododendron Way, Bremerton, is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 14th day of July, 2008.



STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 17th day of July, 2008, to the following:

**APPLICANTS/
OWNERS:**

Mark and Jill Burt
17303 46th Street Court East
Bonney Lake, WA 98391

OTHERS:

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

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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 31st, 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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