



## Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36  
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### NOTICE OF HEARING EXAMINER DECISION

October 27, 2008

To: Interested Parties and Parties of Record

RE: Project Name: **Koontz & Bradley – Accessory Dwelling Unit**  
Applicant: **Mark Koontz & Claire Bradley**  
**5881 Watauga Beach Drive East**  
**Port Orchard, WA 98366**  
**South Kitsap County, Commissioner District #2**  
Application: **Conditional Use Permit**  
Case Number: **081009-075 (4664-000-032-0001) LIS#06 40616**

Enclosed is the Decision issued by the Kitsap County Hearing Examiner in the above-referenced matter.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS APPEALED TO THE KITSAP COUNTY BOARD OF COMMISSIONERS, AS PROVIDED BY SECTION 120 OF THE KITSAP COUNTY LAND USE AND DEVELOPMENT PROCEDURES. **ANY APPEAL MUST BE FILED ON OR BEFORE THE CLOSE OF BUSINESS ON NOVEMBER 10, 2008.**

Pursuant to the Kitsap County Land Use and Development Procedures, (KCC 21.04.120) an appeal may be filed objecting to the Hearing Examiner's Decision. An appeal must be made in writing, and filed with both the Department of Community Development (DCD) and the Board of County Commissioners (BCC) offices. 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 case 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 contract representative for all contact with the DCD Director and BCC. All contact between the County and the appellants regarding the appeal, including notices, shall be through this contact representative; and

**NOTICE OF HEARING EXAMINER DECISION – KOONTZ-BRADLEY –  
CONDITIONAL USE PERMIT – ACCESSORY DWELLING UNIT**

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3. A written statement of the specific aspects(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.

The complete case file will be available for review at the Department of Community Development, Monday through Friday, except holidays, 8:15 a.m. to 4:00 p.m.

If you have questions, please contact me at (360) 337-4487. If you have procedural questions regarding the appeal hearing before the Board of County Commissioners, please contact the Clerk of the Board at (360) 337-7146.

Sincerely,



Karen Ashcraft  
Clerk of the Examiner

Enclosure

See attached transmittal

**BEFORE THE HEARING EXAMINER  
FOR KITSAP COUNTY**

In the Matter of the Application of	)	No. 081009-075
	)	
<b>Mark Koontz and Claire Bradley</b>	)	
	)	FINDINGS,
	)	CONCLUSIONS,
<u>For Approval of a Variance</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a variance to reduce the front yard setback up to 16.5-feet on property at 5881 Watauga Beach Drive East in Port Orchard, Washington, is **APPROVED**, subject to conditions.

**SUMMARY OF RECORD**

Request:

Mark Koontz and Claire Bradley request a variance to reduce the front yard setback up to 16.5-feet for construction of an attached two-car garage at 5881 Watauga Beach Drive East in Port Orchard, Washington.

Hearing Date:

The Hearing Examiner held an open record hearing on the request on October 9, 2008.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Meg Sands, County Planner  
Mark Koontz, Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Land Survey Location – Parcel Map
2. Pre-Application Meeting Request, received July 25, 2006
3. Site Plan, received July 25, 2006
4. Pre-Application Conference Confirmation Letter, dated October 23, 2006
5. KC Assessor's Property Report, dated October 23, 2006
6. GIS Aerial Photograph, dated October 23, 2006
7. GIS Topographic Map, dated October 23, 2006
8. GIS Aerial Assessor's Photograph

*Findings, Conclusions, and Decision  
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9. KC Assessor's Parcel Map
10. GIS Building Limitations Map, dated October 23, 2006
11. GIS Comprehensive Plan Map, dated October 23, 2006
12. Email message from Robbyn Meyers, dated November 6, 2006
13. Pre-Application Meeting Checklist, dated July 11, 2007
14. Pre-Application Summary Letter, dated July 30, 2007
15. Survey of Lot 32 of Watauga Beach Tracts, dated August 10, 2007
16. Certification for Use or Abandonment Septic KCHD, dated January 17, 2008
17. Pre-Application Inactive Letter, dated January 18, 2008
18. Letter from Claire Bradley, dated February 1, 2008
19. Water & Sewer Availability Letter West Sound Utility District, dated February 1, 2008
20. Hearing Examiner Variance Application, dated February 22, 2008
21. KCPW Application for Concurrency Test, received February 22, 2008
22. Site Plan, received February 22, 2008
23. Variance Triage Complete Checklist & Technical Review, dated February 22, 2008
24. Notice of Complete Application, dated March 25, 2008
25. Memorandum from Nathan D Holburn KCHD, dated April 3, 2008
26. Memorandum from Shawn Alire – DE Conditions, dated May 8, 2008
27. Email message from American Land Science with Attachment, dated May 28, 2008
28. Email message from American Land Science, dated May 29, 2008
29. Email message from Meg Sands, dated June 2, 2008
30. Site Plan, received June 6, 2008
31. Revised Site Plan, received July 1, 2008
32. Email message from Nathan Holburn KCHD, dated July 11, 2008
33. Email message from David Greetham, dated July 14, 2008
34. GIS Zoning Map, dated July 15, 2008
35. GIS Building Limitations Map, dated July 15, 2008
36. GIS Shoreline Master Plan Environments, dated July 15, 2008
37. GIS Aerial Photograph, dated July 15, 2008
38. WDFW Bald Eagle Management Plan, dated July 21, 2008
39. Memorandum from Shawn Alire – DE Conditions, dated July 24, 2008
40. Notice of Application, dated July 30, 2008
41. Affidavit of Mailing – Notice of Application, dated August 1, 2008
42. Notice of Application – Legal Notices Publication, dated August 23, 2008
43. Photographs (6), dated September 10, 2008
44. Email message from Meg Sands, dated September 11, 2008
45. Affidavit of Posting, with (2) photographs, dated September 23, 2008
46. Notice of Public Hearing, dated September 23, 2008
47. Affidavit of Mailing, dated September 23, 2008
48. Staff Report, dated September 30, 2008

*Findings, Conclusions, and Decision*  
*Kitsap County Hearing Examiner*  
*Koontz-Bradley Zoning Setback, No.081009-075*

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

### FINDINGS

1. Mark Koontz and Claire Bradley (Applicant) request approval of a variance to reduce the front yard setback up to 16.5-feet for construction of an attached two-car garage on property at 5881 Watauga Beach Drive East in Port Orchard, Washington.<sup>1</sup> *Exhibit 20*. The .13-acre site currently contains one Single Family Residence (SFR) and typical residential vegetation. *Exhibit 48, Staff Report, page 2*. Approval of the variance from the required 20-foot front yard setback would result in a 3.5-foot setback. *Exhibit 48, Staff Report, page 1*. Other residences located on the same road as the subject property have structures that do not meet the setback requirements. *Exhibit 2; Exhibit 3; Exhibit 20, page 8*.
2. Kitsap County (County) determined the variance application was complete on March 25, 2008. *Exhibit 24*. On July 30, 2008, the County mailed the notice of the application to all property owners within 400 feet of the subject property. *Exhibit 40; Exhibit 41*. On August 23, 2008, the County published notice of the application in accord with County ordinances. *Exhibit 42*. On September 23, 2008, the County mailed notice of the associated open record hearing to all property owners within 400 feet of the subject property. *Exhibit 46; Exhibit 47*. On September 23, 2008, the County posted notice of the hearing on the subject property. *Exhibit 45*.
3. Variance requests based on special circumstances applicable to the subject property such as size, shape, topography, location, or surroundings, are exempt from review under the State Environmental Policy Act (SEPA) if the request does not result in any change in land use or density. *Washington Administrative Code (WAC) 197-11-800(6)(b)*.
4. Kitsap County Code (KCC) 17.500.010 provides that a variance may be approved, subject to KCC 17.500.010 criteria. *KCC 17.500.010*. KCC 17.500.010 requires that subject property contain special circumstance, including size, shape, topography, location or surroundings that were not created by the applicant and do not apply generally to other property in the same vicinity or zone. *KCC 17.500.010(A)*. Ms. Sands testified that the subject property is unique

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<sup>1</sup> The property subject to the variance application is identified by Assessor's Tax Account Number 4664-000-032-0001. *Exhibit 20*. A legal description of the property is provided within the application. *Exhibit 20*.

in size and shape, and the Applicant did not place the house on the lot.<sup>2</sup> It would result in an unsafe condition to build a smaller garage and use the driveway as additional parking. *Testimony of Ms. Sands.*

5. Upon review of the proposed variance according to KCC 17.500.010 variance review criteria, County staff recommended approval of the variance application with nine conditions. Proposed conditions include conditions designed to mitigate impacts of the proposal as well as conditions required by County Code. Proposed conditions concern water and sewer services; septic tank abandonment; road approach permit requirements; right-of-way permit requirements; compliance with the Bald Eagle Management Plan; building permit requirements; and design limitations. *Exhibit 48, Staff Report, pages 6-7.*
6. The Applicant testified that he has read, understands, and agrees with the conditions of variance approval proposed by the County with no objects to the conditions or criteria for review identified by County staff as applicable to the variance application. *Testimony of Mr. Koontz.*

## **CONCLUSIONS**

### Jurisdiction

The Kitsap County Hearing Examiner is authorized to hear and decide variance requests. *Kitsap County Code (KCC) 2.10.070; KCC 17.500.040; KCC Table 21.04.030.*

### Criteria for Review

The hearing examiner may permit and authorize a variance of any numerical standard, excluding housing density, from the requirements of Title 17 KCC only when unusual circumstances relating to the property cause undue hardship in the application of Title 17 KCC. The granting of such a variance shall be in the public interest. A variance shall be made only when all of the following conditions and facts exist:

- A. There are special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, that were not created by the applicant and do not apply generally to other property in the same vicinity or zone;
- B. Such variance is necessary for the preservation and enjoyment of a substantial property right or use of the applicant possessed by the owners of other properties in the same vicinity or zone;
- C. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which property is located; and

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<sup>2</sup> In 2006, the SFR was rebuilt on the same footprint as a previous house built in the 1920s.

D. The variance is the minimum necessary to grant relief to the applicant.

*KCC 17.500.010.*

Conclusions Based on Findings

- 1. The application shall be approved as an uncontested application, with conditions recommended by the County and agreed to by the Applicant. The Hearing Examiner finds the listed conditions mitigate impacts, and allow the application to be consistent with the criteria for approval.** Upon review of the variance proposal and all associated exhibits according to Kitsap County Code (KCC) Section 17.500.010 variance review criteria, County staff recommended approval of the variance application with nine conditions. Proposed conditions concern water and sewer services; septic tank abandonment; road approach permit requirements; right-of-way permit requirements; compliance with the Bald Eagle Management Plan; building permit requirements; and design limitations. County staff testified that with conditions proposed by the County, the proposed variance would comply with applicable County ordinances. Mark Koontz, Applicant, testified that he has read, understands, and agrees with the conditions of variance approval proposed by the County with no objections to the conditions or criteria for review identified by County staff as applicable to the CUP application. As County staff and the Applicant have agreed that the variance proposal, with proposed conditions, would meet KCC Section 17.500.010 review criteria, and there are no objections to the application or proposed conditions, the variance proposal is uncontested and KCC Section 17.500.010 review criteria are met. Conditions of approval are necessary to ensure mitigation of impacts of the proposal and compliance with applicable County Code provisions. *Findings 1 – 6.*

**DECISION**

Based upon the preceding Findings and Conclusions, the request for a variance to reduce the front yard setback up to 16.5-feet on property at 5881 Watauga Beach Drive East in Port Orchard, Washington, is **APPROVED**, subject to the following conditions:<sup>3</sup>

Health District

All requirements of Kitsap County Health District shall be met, including but not limited to:

1. Water and sewer to be provided by West Sound Utility District.
2. The septic tank must be abandoned. Provide a copy of abandonment and pump out report to Kitsap County Health District.

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<sup>3</sup> This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by County Code.

Development Engineering

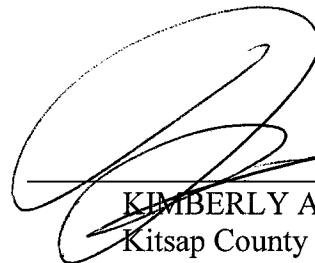
All requirements of Kitsap County Development Engineering shall be met, including but not limited to:

3. Submit a Road Approach Permit Application and plans for construction of asphalt concrete accesses between the edge of existing pavement and the right-of-way line at all intersections with county rights-of-way. Approaches shall be designed in accordance with Chapter 11.22, Kitsap County Road Standards, of the Kitsap County Code. Existing approaches may need to be improved to meet current standards.
4. Any work within the County right-of-way will require a permit to perform work on County right-of-way and possibly a maintenance or performance bond. This application must be submitted as part of the SDAP process (or building permit if no SDAP is required). The need for and scope of bonding will be determined at that time.

Planning

5. All required permits shall be obtained prior to construction and/or occupancy.
6. Site developments and construction shall comply with the requirements of the Bald Eagle Management Plan (Exhibit 38).
7. All building permits shall be subject to impact fees pursuant to the *Kitsap County Code (KCC)* in effect on the date of a complete building permit application.
8. The proposed dimensions and location of the garage are limited to those presented by the applicant and depicted on the revised site plan (Exhibit 31).
9. Any Variance approval shall become void if no building permit application to construct the proposed 22-foot by 22-foot attached two-car garage is accepted as complete, by the Department of Community Development, within three years of the date of the Hearing Examiner's decision.

Decided this 21<sup>st</sup> day of October 2008.



KIMBERLY A. ALLEN  
Kitsap County Hearing Examiner

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