



KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

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Larry Keeton, DIRECTOR

STAFF REPORT

RECOMMENDATION TO THE HEARING EXAMINER

Date: April 22, 2008

Application Date: July 18, 2007

Project: Babb Shoreline Substantial Development, Shoreline Conditional Use Permit and Zoning Variance

LIS #: 07-48610 (SSDP and SCUP) and 07-50886 (Zoning Variance)

Type of Application and Description of Proposed Project:

William Babb has applied for Shoreline Substantial Development (SSDP) and Shoreline Conditional Use (SCUP) permits to construct one single family residence on a 1.16 acre lot in the Conservancy shoreline environment. The residence would be constructed approximately 100 feet from the ordinary high water mark (OHWM) on the west shore of Colvos Passage and approximately 40 feet from the top of the 40 foot high vertical bluff.

Proposed building footprint for the two story residence is approximately 1150 square foot, a 300 square foot deck and porch area, and a 445 square foot attached garage. The proposal also includes construction of a stormwater outfall at the shoreline edge.

The applicant also requests a variance from KCC Title 17 (Zoning) to allow construction of the single family residence, deck and garage with a reduction of the required 50 foot building setback to the road easement to 15 feet (Exhibit 32).

Project Location:

The subject parcel is located on Lot A of Short Subdivision 167R off of Wilson Creek Road SE, Port Orchard, Colvos Passage, Puget Sound, Kitsap County, Commissioner District 2.

Assessor's Account #: 112302-4-017-2007

Applicant, Representative and Owner of Record:

William W. Babb III
4415 82nd Avenue Court West
University Place, WA 98466

SEPA Status:

The zoning variance is exempt from SEPA review under WAC 197-11-800(6). SEPA for the SCUP was processed with the February 13, 2008 Revised Notice of Application under the Optional DNS process (Exhibit 33). A Determination of Nonsignificance

(DNS) was issued on April 7, 2008. As of this date, no appeals or comments have been received.

Physical Characteristics:

The 1.16 acre property is located on the west shore of Colvos Passage (Exhibit 24). The December 26, 2001 Geotechnical Report (Exhibit 15) describes a beach composed of gravel with a very dense substrate. The shoreline is undeveloped with many large driftwood logs located along the beach. The lot is well vegetated with native second growth conifer, deciduous trees, shrubs, vines, grasses and various species of ferns. The slope from the beach to the top of the bluff is near vertical in some areas and others relatively flat. The land where the structures would be located is much flatter. The lot depth ranges from 284 feet to 300 feet, and the lot width is approximately 170 feet. The lot, as well as both adjoining properties, is undeveloped.

Comprehensive Plan and Zoning Designation:

The property is designated Rural Residential (1 dwelling unit per 5 acres).

Minimum setbacks = 50 feet - front yard
= 20 feet - side and rear yard

Shoreline Environment Designation:

Conservancy

Minimum buffer = 50 feet from OHWM
Minimum setback = 15 feet

Surrounding Land Use and Zoning:

The surrounding area is zoned Rural Residential. The intent of the Rural Residential zone is "...to recognize areas which have been committed or developed for rural residential uses on smaller lots" (KCC 17.310.010). Adjacent lots are of similar size and range from one to 1.5 acres. The majority of the existing lots are historic lots that do not conform to the 5 acre minimum lot size.

Public Utilities:

Water: PUD # 1
Power: Puget Sound Energy
Sewer: On-site septic system

Transportation and Off-Street Parking:

Existing access is from Wilson Creek Road SE. The proposed single family residence driveway and garage would provide off-street parking.

Public Services:

Police: Kitsap County Sheriff
Fire: South Kitsap Fire Protection District 7
Schools: South Kitsap School District 402

Comments Received:

County Health District:

A letter dated March 13, 2008 states, “the proposed house and garage shown on the Variance site plan do not match those shown on the BSA. The house and garage shown on the Variance application will encroach on the no-build zone of the septic system.

This is not permitted. All building foundations must be outside of the drainfield 10 feet no-build zone. All site plans must meet the universal site plan requirements. As one has already been submitted to Health as part of the BSA, any new site plans must be re-submitted by a licensed septic designer.”

A final site plan, resubmitted to the Kitsap County Health Department on March 10, 2008, is currently under review.

County Development Engineering:

A memo dated March 14, 2008 describes the project as located within a Critical Area Drainage; thus, requiring a Site Development Activity Permit (SDAP). More information and requirements are listed in Exhibit 31.

Public Utility District #1:

No comments.

Tribe:

No comments.

Public Input:

No comments.

Analysis:

The request for the variance to the front yard has been reviewed for consistency with KCC Chapter 17.500 (Zoning Variances). The existing historical lot is constrained by its shallow depth. Current zoning setbacks, and critical area constraints, do not allow sufficient buildable area for a moderate single family residence and appurtenances without a zoning variance. The geologically unstable slope condition is the most significant limitation to site development. The current 50 foot front yard zoning setback additionally limits the footprint for the proposed single family residence and garage.

In order to allow development of the site with a residence, deck and garage, the applicant is requesting reduction of the front yard setback of 50 feet to 15 feet from the property line adjacent to Wilson Creek Road SE.

The applicable criteria for shoreline conditional use permit found in Title 22 and variance criteria found in Title 17 (Zoning) are similar, but not identical. The criteria and analysis of each are listed below, with cross-referencing where applicable.

Staff has reviewed the proposal and offers the following analysis of the project. Kitsap County Code citations are followed by staff comments.

Documents Consulted in the Analysis:

Geotechnical Report with associated building permit applications (Exhibits 15)
Joint Aquatic Resource Permit Applications, July 18, 2007 (Exhibit 7)
Environmental (SEPA) Checklist, July 17, 2007 (Exhibit 8)
Letters from James Levey Ph.D. PE, December 26, 2001 and August 31, 2007 (Exhibit 15)
Memo from Kitsap County Health District (March 13, 2008 (Exhibit 30)
Memo from Kitsap County Development Engineering, March 14, 2008 (Exhibit 31)

Policies and Regulations Applicable to the Subject Proposal:

The proposed project has been reviewed for compliance with the following policies and regulations from Kitsap County Code (KCC).

KCC Title 12 Stormwater Management
KCC Title 17 Zoning
KCC Title 19 Critical Areas Ordinance
KCC Title 21 Land Use Procedures Ordinance
KCC Title 22 Shoreline Management Master Program

Zoning Code (KCC Title 17)

KCC 17.500.010 Conditions for granting a variance.

The hearing examiner may permit and authorize a variance of any numerical standard, excluding housing density, from the requirements of this title only when unusual circumstances relating to the property cause undue hardship in the application of this title. 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.

Staff Comment: The proposal is consistent with this regulation. The applicant has requested the minimum variance necessary to balance critical area protection standards with the right to develop the parcel consistent with that allowed in the Rural Residential zone designation.

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.

Staff Comment: The subject parcel occurs in the Rural Residential zone, under which the primary permitted use is detached single-family residential development. Due to on-site critical area constraints, such variance is necessary to allow the applicant to enjoy the residential use possessed by owners of other properties in the vicinity, and the Rural Residential zone as a whole.

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.

Staff Comment: The requested front yard setback reduction from 50 feet to a minimum of 15 feet would allow for increased setback to the high hazard slope area on the water side of the parcel. If granted, such variance would allow for greater protection of publicly owned “waters of the state”, as well as the fish and game that inhabit the system, thus minimizing the potential for detrimental impacts to the public welfare.

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

Staff Comment: While the proposed front yard setback is significantly less than the 50 feet normally required in the rural zone, the applicant has requested the minimum variance necessary to balance critical area protection standards with the right to develop the parcel consistent with that allowed in the Rural Residential zone designation.

KCC 22.16.060 The Conservancy Shoreline Environment Designation

a. Conservancy Environment.

(1) Purpose. The purpose of the conservancy environment is to protect, conserve and manage existing natural resources and valuable historic and cultural areas in order to ensure a continuous flow of recreational benefits to the public and to achieve sustained resource utilization. Another purpose is to protect fish and wildlife habitat and environmentally sensitive areas.

(2) Designation Criteria. A conservancy environment is an area intended to protect, conserve, and maintain its existing character. Nonconsumptive uses which can utilize resources on a sustained-yield basis while minimally reducing opportunities for future uses are preferred. Such areas may be identified by one or more of the following:

(a) Areas that can be managed on a sustained-yield basis while minimally reducing opportunities for other future uses of the resources of the area.

(b) Areas presenting severe biophysical limitations. Typical biophysical limitations include steep slopes, biological wetlands, areas prone to flooding, areas prone to landsliding, and areas with inadequate water supply or sewage disposal capabilities.

(c) Areas which present potential for current or future community recreational needs and are located near existing or potential population centers.

(d) Areas important to regional ecological balance, such as areas rich in quality and quantity of life forms, areas important to the maintenance of natural water quality and flow, or areas important to maintaining the food chain process such as estuaries, riparian corridors, and wetlands.

(3) Management Policies. The following policies should be applied to any permissible uses occurring in the conservancy environment:

- (a) Uses of a non-permanent nature which do not substantially degrade the existing character of the areas should be encouraged.
- (b) Nonconsumptive uses should be encouraged.
- (c) Development should be limited to those proposals which demonstrate preservation of environmentally sensitive features.

Staff Comment: Single family residential development is permitted in the Conservancy shoreline environment subject to an SSDP and SCUP. At the same time, one of the stated purposes of the Conservancy shoreline designation is "...to protect fish and wildlife habitat and environmentally sensitive areas." The subject parcel contains environmentally sensitive areas, critical areas including steep slopes and a relatively undisturbed saltwater shoreline. Management Policy 3.c above requires that development be limited to those proposals which demonstrate preservation of such features. Staff finds the application to be in compliance with the applicable SCUP requirements, subject to conditions of approval listed elsewhere.

In order to address critical area protection requirements pursuant to KCC 19.300 (Fish and Wildlife Habitat Conservation Areas), the applicant will be required to maintain a non-clearing shoreline buffer in excess of 50 feet.

The applicant will be required to submit a Site Development Activity Permit pursuant to KCC Title 12 in order to control drainage over the steep slope area (Development Engineering memo, Exhibit 31).

22.28.230 Use Activities – Residential Development

2. Policies.

- a. Residential development should be compatible with the character of the shoreline environment.

Staff Comment: The applicant has proposed construction of an approximately 2300 square foot single family residence with associated deck and garage. Consistent with the existing forested character of the Colvos Passage shoreline environment, site clearing is generally limited to the area surrounding the proposed residence. The development is not out of character for residential development elsewhere in the vicinity.

- b. Adequate distance between the ordinary high water mark and residential development should be maintained to protect water quality, protect natural systems, and insure preservation of the integrity of the shoreline environment. Placement of structures should be located on property so as to avoid the necessity for shore protection structures.

Staff Comment: Development will comply with the minimum 50 foot Conservancy Shoreline buffer as specified at KCC 19.300.315, and the minimum 40 foot slope buffer specified in the geotechnical report. Installation of shore protection structures is not proposed and the prohibition of these will be a recommended condition of approval.

c. Residential development shall be consistent with the purpose and intent of the applicable environment designation.

Staff Comment: Please refer to staff comments under KCC 22.16.060 above (Conservancy Environment).

d. Sewage disposal, storm drainage, and water supply facilities should be in compliance with local and state health regulations.

Staff Comment: The applicant has submitted two septic drainfield designs to the Kitsap Health District for sewage disposal and water supply (Exhibits 4, 32). The applicant will also be required to obtain an SDAP for the engineered stormwater system. Stormwater will be collected and tight lined to the shoreline at the base of the bluff. The associated building permit applications (07-48610, 07-45103 and 07-50886) will not be issued until applicable Washington Department of Fish and Wildlife (WDFW) Hydraulic Project Approval, Health District, Kitsap County stormwater approvals are received.

e. Residential development should provide, preserve, or restore shoreline vegetation for control of erosion, slope stability, and habitat.

Staff Comment: With the exception of the storm drainage pipe, clearing will be prohibited on the steep slope, pursuant to KCC 19.400.415 and the applicant's geotechnical report.

f. Joint use of shoreline access and shoreline facilities should be encouraged.

Staff Comment: The site currently provides shoreline access via a small trail on the shoreline slope. The surrounding lots are undeveloped.

g. Lot area should be calculated using only those lands landward of the ordinary high water mark.

Staff Comment: The application complies with this requirement. No subdivision of land is proposed.

h. Proposed residential developments should be consistent with the adopted comprehensive development plan.

Staff comment: Single family residential use is consistent with the "Rural Residential" Comprehensive Plan designation for the surrounding vicinity.

3. Environments and Permit Requirements.

c. Single-family residential developments may be permitted subject to a SSDP and SCUP in the conservancy.

Staff Comment: The subject lot occurs within the conservancy environment. The applicants have properly applied for an SSDP and SCUP.

4. General Regulations.

a. Adequate distance between the ordinary high water mark and residential development shall be maintained to protect water quality, protect natural systems, and insure the integrity of the shoreline environment.

Staff Comment: Please refer to response under policy 2.a, above.

b. Residential development shall be consistent with the purpose and intent of the applicable environment designation.

Staff Comment: Please refer to response under KCC 22.16.060 (Conservancy Environment), above.

c. Setback and buffer requirements for residential development shall be based on the minimum criteria set forth within the Critical Areas Ordinance (Title 19 of this code) in addition to the site specific critical areas requirements.

Staff Comment: The proposal is in compliance with this regulation. Critical area development standards require a minimum 50 foot buffer and additional 15 foot construction setback from the ordinary high water line in the Conservancy environment. The proposed building sites will exceed this setback. As depicted on the site plans (Exhibit 32, and associated septic designs), the residence would be approximately 100 horizontal feet from ordinary high water. The minimum 40 foot slope setback has been determined through a site-specific geotechnical report.

d. The placement of residential development on property shall be designed so as to make the installation of shore protection structures unnecessary.

Staff Comment: The applicants' geotechnical report did not recommend construction of a shoreline protection structure in order to justify the recommended building setback. It is anticipated that retention of native vegetation on the steep slope will slow long term natural shoreline erosion.

e. Sewage disposal and water systems shall be in compliance with state and local health regulations.

Staff Comment: The applicant must obtain Kitsap Health District approval for sewage disposal and water supply.

f. Septic systems shall not occur within one hundred feet of a biological wetland.

Staff Comment: The application complies with this regulation.

g. Surface water drainage shall comply with the Kitsap County Storm Water Management Ordinance (Chapters 12.04 through 12.32 of this code).

Staff Comment: The applicant is currently required to obtain an SDAP for stormwater management on site. The SDAP will be conditioned pursuant to KCC Title 12. Approval of the SCUP will be conditioned on successful SDAP issuance.

- h. Where applicable, the following shall be submitted with permit applications.
- (1) All applications shall provide for a silt and erosion control plan during construction;
 - (2) When applicable, all applications shall include a plan for permanent drainage and erosion control;
 - (3) When applicable, all applications shall include a geological or geotechnical report pursuant to the Critical Areas Ordinance (Section 19.700.010, Special Reports).

Staff Comment: The applicant will be required to submit a plan for drainage and erosion control through the SDAP process (Exhibit 31). Silt and erosion control measures will be a condition of Kitsap County SDAP approval, and conveyed to the applicant during the standard “pre-construction meeting” required for all SDAPs. The subject application includes a geotechnical report prepared pursuant to KCC 19.700.010 (Exhibit 15).

22.08.40 Shoreline Permit Procedure, Application Procedure for permits

An application for a permit shall be made on forms prescribed by the shoreline administrator. The application shall be made on behalf of the property owner, lessee, contract purchaser or other person entitled to possession of the property.

Staff comment: The applicant, who is also the property owner, has properly filed a Joint Aquatic Resource Permit Application (JARPA) for the proposed development.

22.28.20 Shoreline Conditional Use Permit

Shoreline conditional use permits shall be granted only after the applicant can demonstrate all of the following:

- (1) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;

Staff Comment: RCW 90.58.020 enunciates the State’s policy “...to provide for management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses...”. Shoreline management is implemented through the local master program (KCC Title 22), which was updated and adopted by the Board of County Commissioners in February 1999. Based on the preceding analysis, staff finds that the proposal is consistent with applicable policies and the Shoreline Master Program.

- (2) That the proposed use will not interfere with the normal public use of public shorelines;

Staff Comment: The applicant has not proposed any activity that will interfere with normal use of public shorelines. The proposed residences would be located approximately 100 feet landward of the ordinary high water mark.

(3) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and Shoreline Management Master Program;

Staff Comment: Based on the analysis above, the proposed use of the lots for single-family development is compatible with the Rural Residential zoning and Comprehensive plan designations, and the Residential Use activities allowed in the Shoreline Management Master Program.

(4) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

Staff Comment: The proposal will result in some adverse effects to the shoreline environment via permanent removal of tree cover which aids in slope stability. However, the project will be conditioned for compliance with KCC Title 12 (Stormwater), Title 19 (Critical Areas) and per conditions outline in the geotechnical report (Exhibit 15) in order to prevent significant adverse effects to the shoreline environment. The applicant's SDAP and the WDFW Hydraulic Project Approval process will ensure that drainage impacts are appropriately mitigated. Shoreline bulkhead construction is prohibited. Structures shall be sited such that a hard shoreline bulkhead structure is not required to protect the residences.

(5) That the public interest suffers no substantial detrimental effect.

Staff Comment: It is staff's opinion that the development will have no substantial detrimental effect on the public interest if compliant with the recommended conditions of approval.

Conclusion:

The proposal has been reviewed for consistency with Kitsap County Code Title 17 (Zoning) and Title 22 (The Shoreline Management Master Program), including policies and regulations relating to the Conservancy shoreline environment, single-family residential development, and the Shoreline Conditional Use Permit criteria. Staff finds the proposal to be in conformance with the referenced policies and regulations.

Recommendation:

Based upon the above findings and conclusions, it is recommended that the Babb Zoning Variance and the Shoreline Substantial Development and Shoreline Conditional Use Permits for Lot A property of short plat 167R be **APPROVED** subject to the following fourteen conditions:

1. This project is located within a Critical Drainage area as defined in Title 12.28.020 of the Kitsap County Code. Therefore, Development Engineering will require a Site Development Activity Permit (SDAP) at time of building permit prior to construction activities. SDAPs shall be prepared by a Civil Engineer licensed in the State of Washington.
2. Following land use approval, a Site Development Activity Permit (SDAP) will be required prior to construction activities. The guidelines for submitting a SDAP can be found in Chapter 2 of the Kitsap County Stormwater Design Manual.
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. Please denote the design vehicle on the plan set. 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.
5. At time of building permit submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04, Transportation Concurrency, of the Kitsap County Code. The KCPW 1601 form is how you reserve road capacity for your project.
6. Site development shall comply with the recommendations of the December 26, 2001 and August 31, 2007 geotechnical report by James R. Levey, PhD PE, Art Anderson Associates. Sufficient monitoring, testing and consultation shall be required in order to confirm that the conditions encountered are consistent with those indicated by the geotechnical reports, to provide recommendations for design changes should the conditions revealed during the work differ from those anticipated, and to evaluate whether earthwork and foundation installation activities comply with contract plans and specifications.

7. Prior to building permit approval, an addendum to the geotechnical report shall be provided for DCD review and approval. At a minimum, the addendum shall address impacts from the proposed upslope septic drainfield installation and assess any changes in site conditions since the August 31, 2007 report addendum.

8. Vegetation shall be maintained on the property. During construction, clearing shall be kept to a minimum and shall be revegetated after the foundation and base course materials have been placed.

9. A non-clearing native vegetation buffer shall be retained within 50 feet of ordinary high water of Colvos Passage, or to the top of steep slopes as identified in the geotechnical report, whichever is greater. An unpaved shoreline access trail, not exceeding four feet width, is permitted in the buffer.

10. Approval is subject to obtaining Building Site Application approval from the Kitsap County Health District.

11. Site development shall comply with applicable Washington Department of Fish and Wildlife Bald Eagle Habitat Plan requirements.

12. Shoreline bulkhead construction is prohibited. Structures shall be sited such that a hard shoreline bulkhead structure is not required to protect the residences.

13. A Hydraulic Project Approval (HPA) shall be obtained from Washington Department of Fish and Wildlife prior to installation of the proposed stormwater outfall at the shoreline. Information regarding an HPA can be found at <http://www.wa.gov/wdfw/hab/hpapage.htm>, or by calling the Office of Regulatory Assistance at (360) 407-7037. This permit is required prior to issuance of the SDAP.

14. Upon final permit issuance by the Department of Ecology, all construction must commence within two years and be completed within five years. A one-time one year extension is available but only if requested on or before ninety days of the original permit expiration. No exceptions allowed unless provided for by law.

cc: Hearing Examiner
Clerk of the Hearing Examiner, Karen Ashcraft
Applicants
Interested Parties
Puyallup Tribe
Bremerton-Kitsap County Health District, MS-30
Kitsap County Development Engineering
DCD Staff Planner, Lisa Lewis
Development Engineering
DCD File