



KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

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STAFF REPORT APPEAL OF ADMINISTRATIVE DECISION

RECOMMENDATION TO THE HEARING EXAMINER

Hearing Date: February 26, 2009

Project Name: Hanson Beach Stairway and Deck

Type of Action: Appeal of Type I Administrative Decision to deny an after-the-fact permit for a beach stairway and deck

File No.: 09 65051

Appellant:

John and Catherine Hanson
2604 Vincent Way
Bremerton, WA 98312

Project Applicant and Site Address:

Same as above

Background Summary:

The appellants applied for an after-the-fact Kitsap County shoreline exemption permit on January 13, 2009, to bring into compliance a beach stair and an attached 160 square foot patio deck constructed in September 2006 (Permit 09-64145). Pursuant to Kitsap County Code Title 19.300.315, the structures were constructed within the 100-foot shoreline buffer.

Department staff conducted a field investigation and thoroughly reviewed the after-the-fact application from a shoreline substantial development exemption permit, including the Joint Aquatic Resources Application Form and an aerial photo interpretation for the above referenced project.

Pursuant to Kitsap County Code (KCC) 22.12.010(87)(1)(a) and KCC 22.08.050, shoreline permit exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed criteria under KCC 22.12.010(87)(2)(a) may be granted exemption from the substantial development permit process. Based on this review, the permit application for the stairway has been approved under KCC 22.10.010(87)(2)(a). The stairway project has also been determined to be exempt under SEPA, pursuant to WAC 197-11-800(2) for minor new construction.

However, pursuant to and KCC 22.12.010(87)(2)(a) and KCC 19.100.110(A) and (B), the

160 square foot deck constructed within the 100-foot buffer of the semi-rural Phinney Bay shoreline does not meet exemption requirements, and was thus denied. As stated in the January 21, 2009 letter from Kitsap County, "The deck, except what is the minimum size necessary to ensure the stability of the stairway, must be removed per code enforcement requirements."

In accordance with KCC Section 22.12.010(87)(1)(b), an exemption from the substantial development permit process is not an exemption from compliance with the Kitsap County Shoreline Management Master Program or from any other regulatory requirements. Approval of the stairway exemption was subject to the following condition:

1. An approved Kitsap County Building Permit is required.

The appellant submitted a timely appeal on January 30, 2009.

Primary issues related to deficiencies in the applicant's Appeal of the Administrative Decision are summarized below.

Summary of issues raised by appellants, relevant County or State code, and the department's response are summarized in the following table:

Issues raised by appellants:	Relevant Code:	Department Response:
<p>1. <i>Factual Errors</i></p> <p><i>If the deck is listed in KCC 22.12.010 as a normal appurtenance connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and, therefore, does not require a substantial development permit.</i></p>	<p>Kitsap County Code (KCC) Title 22.12.010(87)(2)(g)</p>	<p>Kitsap County DCD staff agrees that single-family residences, and necessarily connected appurtenances, are exempt from a Shoreline Substantial Development Permit. We do, however, disagree that the deck is a "necessarily connected appurtenance."</p> <p>KCC 22.12.010(87)(1)(a) states in part: Exemptions shall be construed narrowly and must meet the precise terms of the exemption.</p> <p>KCC 22.12.010(87)(1)(c) states: The burden is on the applicant to show that proposal qualifies for an exemption.</p> <p>KCC 22.12.010(87)(2)(g) states in part, "an 'appurtenance' is necessarily connected to the use</p>

		<p>wetlands or wetland buffers pursuant to the following guidelines:</p> <ol style="list-style-type: none">1. Trails and related facilities shall, to the extent feasible, be placed on existing road grades, utility corridors, or any other previously disturbed areas.2. Trails and related facilities shall be planned to minimize removal of trees, soil disturbance and existing hydrological characteristics, shrubs, snags and important wildlife habitat.3. Viewing platforms and benches, and access to them, shall be designed and located to minimize disturbance of wildlife habitat and/or critical characteristics of the affected wetland.4. Trails and related facilities shall generally be located outside required buffers. Where trails are permitted within buffers they shall be located in the outer portion of the buffer and a minimum of 30 feet from the wetland edge, except where wetland crossings or viewing areas have been approved. <p>Staff finds the proposal does not meet any of the above guidelines, especially that the structure shall be located in the outer portion of the buffer and a minimum of 30 feet from the wetland edge. In fact, the deck structure is located immediately adjacent to the intertidal estuarine wetland area. The Columbia Encyclopedia summarizes the environmental value of estuaries:</p> <p>"Estuaries represent one of the most sensitive and ecologically important habitats on earth. They provide sanctuary for many species of</p>
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		<p>waterfowl, store nutrients for larval and juvenile marine life, and serve as breeding grounds for many desirable species of ocean fish."</p> <p>No other shoreline deck structures are located in the vicinity and allowing it to occur will set a negative precedence.</p>
<p><i>2. Factual Errors</i></p> <p><i>If the total project cost is below the maximum valuation of "two thousand five hundred dollars" as listed in KCC 22.12.010, therefore, does not require a substantial development permit.</i></p>	<p>KCC 22.12.010(87)</p>	<p>KCC 22.12.010(87)(1)(c): The burden is on applicant to show that he qualifies for an exemption.</p> <p>KCC 22.12.010(87). The code states that "Substantial development" means any development of which the total cost or fair market value exceeds two thousand five hundred dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state; except that the following shall not be considered substantial developments for the purpose of this chapter...</p> <p>The JARPA application provides an estimated cost of \$15,000 for the stairway and deck. The applicant, even though requested, was unable to provide the cost separately.</p> <p>Even if below the \$2500 cost, critical areas within the shoreline, such as the shoreline here, are also subject to the Critical Area Ordinance (CAO). Therefore, the project must not only comply with all policies and regulations of the SMP, including KCC 22.12.010, but with the CAO requirements of KCC 19.200.225(G) and KCC 19.300.315(I)(3) as well. KCC 19.200.225(G), discussed above for wetlands, is essentially the same as KCC 19.300.315(I)(3) for</p>

		shorelines. Lastly, in applying the CAO, the provisions of KCC 19.100.115 and KCC 22.04.010 state that when a conflict occurs between or within regulations, the more restrictive shall apply to protect the natural resource.
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Conclusion:

The appellants have not adequately demonstrated compliance with applicable code provisions, and that associated critical areas are not being impacted. Additionally, since the date of their application to bring the stairway and deck into compliance with Kitsap County Code, the appellant has made no attempt to consider reducing the deck size, as requested by Kitsap County, but only wishes to stay with the existing plan.

Recommendation:

Based on the above analysis, the Department recommends that this appeal be **DENIED** and the original Department permit decision be upheld.

- cc: Appellant
- DCD File
- Hearing Examiner
- Clerk of the Hearing Examiner