



Kitsap County Department of Community Development

FORMAL DIRECTOR'S INTERPRETATION

Date: December 27, 2018

Location: Miller Bay Rd NE; vacant lot north of and abutting 20980 Miller Bay Rd NE

Permit: 18-04142, Dir Interpretation-Formal

Subject of Interpretation

Kitsap County Code (KCC) 22.400.135: View Blockage; Determining the structure setback and view line for a vacant lot with adjacent principal buildings on both sides of the proposed structure (22.400.135(A)(3)).

Cause for Interpretation

This interpretation addresses how the shoreline view blockage setback line is determined, specifically where there are adjacent principal buildings on both sides of the proposed structure and where one lot has an overwater accessory structure that preexists Kitsap County's Shoreline Master Program.

This interpretation is solely related to shoreline view blockage standards under Title 22 KCC, Shoreline Master Program, and does not address the legality of the use under state law. Furthermore, this interpretation may not be construed as an authorization to circumvent or violate state or federal laws.

Background

This interpretation was triggered by a Staff Consultation to discuss construction of a new single-family residence on a vacant shoreline parcel adjacent to two developed shoreline parcels. Both lots have single-family residences. The lot to the south also has an existing, non-conforming overwater structure, which the proponent claims is being used as an accessory dwelling unit. The overwater accessory structure pre-dates the current primary residence. The vacant and adjacent parcels are on a regular shoreline. In accordance with KCC 22.400.135(A)(3), the shoreline structure setback line is determined by a line drawn between the building line of the adjacent principal buildings, or the shoreline buffer, whichever is greater. The provision states in full:

Adjacent Principal Buildings on Both Sides on a Regular Shoreline. Where there are adjacent principal buildings on both sides of the proposed structure on a regular shoreline, the shoreline structure setback line shall be determined by a line drawn between the building line of the adjacent principal buildings or the buffer and setback specified elsewhere in this Program, whichever is greater. See Figure 22.400.135(A)(3).

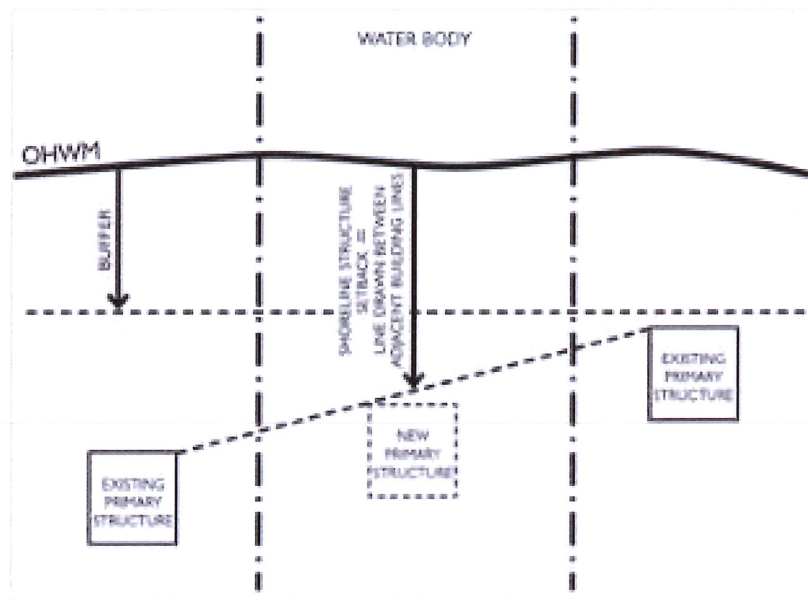


Figure 22.400.135(A)(3)
Buffer and shoreline structure setback on a regular shoreline with adjacent primary structures on both sides.

The proponent has requested an interpretation of code to determine which building on the waterfront property to the south of the subject parcel should be considered the “adjacent principal building” for the purpose of determining the view blockage shoreline setback between the adjacent principal buildings on the south and north sides of the property. Using the definitions of building (KCC 22.150.185), principal building (KC 22.150.485), and accessory structures – view blockage (KCC 22.150.100), the proponent argues that KCC 22.400.135(A)(3)’s setback line be interpreted as:

‘A line drawn between the structures, used or intended for supporting or sheltering any use or occupancy, closest to the ordinary high-water mark on the lots abutting the applicant’s lot, excluding structures encompassing less than two hundred square feet....’.

The proponent contends the overwater structure does not meet the definition of “accessory structure-view blockage” because the overwater structure is over 200 square feet, is occupied, and is closest to the ordinary high-water mark. The proponent argues that since the nonconforming structure does not meet the accessory structure-view blockage definition, it should be considered the adjacent principal building and used to determine the structure.

Interpretation

When interpreting County Code, the purpose is to give effect to the legislative intent of the code. KCC 1.04.040. To give effect to the legislative intent, the plain meaning of the code’s language is determined by reviewing the language of the specific provision in the context of the legislative

scheme as a whole along with any related code or state law provisions. *Burns v. City of Seattle*, 161 Wn.2d 129, 140, 164 P.3d 475 (2007).

Title 22 is Kitsap County’s Shoreline Master Program (“SMP”). Kitsap County Code exempts the SMP from strict construction. KCC 22.100.135. Instead, when interpreting the SMP, the department must do so in a manner to “give full effect to the purposes, goals, objectives, and policies for which the Act and this program were enacted and adopted, respectively.” *Id.* The purpose and intent of the Shoreline Master Program is “to guide the future development of the shorelines in Kitsap County in a manner consistent with the Shoreline Management Act of 1971. . .” KCC 22.100.110. In doing so, the SMP abides by governing principals, the policy statement in RCW 90.58.020, and the state regulations in chapter 173-26 WAC. KCC 22.100.130. RCW 90.58.020, the Shoreline Management Act’s (“SMA”) policy statement, encourages protection of the shoreline for the public benefit.. The public benefit includes preserving the shoreline for both ecological function and aesthetic value. *Id.* When interpreting the SMA, it “is to be broadly construed in order to protect the state shorelines as fully as possible.” *Buechel v. State Dep’t of Ecology*, 125 Wash.2d 196, 203, 884 P.2d 910 (1994). Thus, when interpreting Kitsap County’s SMP, the department will do so in a manner as protective of the shoreline as possible while balancing the other relevant policy goals such as increasing public access to, and recreational opportunities in, the shoreline. See RCW 90.58.020(1)-(7); KCC 22.100.130(G).

KCC 22.400.135(A)(3), “View Blockage: Adjacent Principal Buildings on Both Sides on a Regular Shoreline,” promotes the SMA’s policies by siting new development back away from the shoreline by the greater of either a view line or a setback from the buffer. The intent of KCC 22.400.135(A)(3) is to protect water views of existing principal shoreline buildings when new development is proposed on adjacent shoreline parcels.¹ The View Blockage standards in this section establish the shoreline setback line to be measured from “the building line of the adjacent principal buildings”.

Title 22 provides the following relevant definitions:

22.150.100 Accessory Structure-View Blockage: as it relates to view blockage, buildings and other structures encompassing less than 200 square feet and less than ten feet in height from grade level, and fences which are less than six feet in height from grade level.

22.150.110 Adjacent Principal Building: a principal building on a lot abutting the applicant’s lot.

22.150.185 Building: Any structure used or intended for supporting or sheltering any use or occupancy.

22.150.190 Building Line: the perimeter or that portion of a principal building closest to the ordinary high water mark (OHWM), but excluding decks and balconies, open

¹ The SMA also protects views of surrounding properties by limiting the height of any new or expanded buildings. RCW 90.58.320.

steps, architectural features (such as cornices), and roof overhangs.

22.150.485 Principal Building: that building on a lot closest to the ordinary high water mark excluding accessory structures.

22.150.600 Structure: A permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except vessels.

When a term or word is not defined by the Title 22, it has its ordinary accepted meaning within the context of the code provision it is used in unless otherwise defined by chapter 90.58 RCW, WAC 173-26-020, or WAC 173-27-030. KCC 22.150.050. When discerning the plain meaning of a phrase, other related code provisions should be considered. *Burns*, 161 Wn.2d at 140. The definition for an accessory structure in Title 17 (17.110.030) provides further clarification of what is considered an accessory structure for land use permitting:

17.110.030 Accessory use or structure: “Accessory use or structure” means an activity or structure that is commonly associated with but subordinate to any principal use or structure.

The overwater structure located on the adjacent south parcel does not meet the definition of an accessory structure – view blockage in KCC 22.150.100. Meaning, the overwater structure would meet the definition for a principal building if there was not a primary residence on the same parcel. However, as explained more fully below, the overwater structure shall be considered an accessory structure because it is subordinate to the primary residence or principal structure.

To determine the view blockage line, it is necessary to determine what residence is the principal building on the lot, the overwater structure or the primary residence. The definition of principal building specifically excludes accessory structures. The proponent requests that the department interpret the term accessory structures within the definition of principal building to mean accessory structures-view blockage as defined by KCC 22.150.100 instead of the ordinary meaning of the term as used for permitting defined in KCC 17.110.030. The proponent’s interpretation fails because accessory structures-view blockage is a complete term and used as such elsewhere in the SMP. This can be seen when comparing KCC 22.400.135(B) with KCC 22.400.105(A)(6):

KCC 22.400.135(B) Accessory Structures. ***Accessory structures as defined for the purposes of view blockage*** may be sited within the shoreline structure setback area; provided, that they do not substantially obstruct the view of adjacent principal buildings and comply with applicable buffer provisions. (emphasis added).

KCC 22.400.105(A)(6) Non-water-oriented facilities and ***accessory structures***, except for preferred shoreline uses, such as single-family residences and single-family residential appurtenances when consistent with buffer provisions in this chapter,

must be located landward of buffers and adjacent water-oriented uses, or outside shoreline jurisdiction, unless no other location is feasible. (emphasis added).

KCC 22.400.135(B) regulates the *siting* of new accessory structures. The proposal is for the siting of a new single-family residence and the overwater structure in question is an existing, non-conforming structure pre-dating the Shoreline Management Act. It is acknowledged that the adjacent overwater structure would not meet today's definition of a shoreline accessory structure due to the size and height, but again, this section and definition only apply to the *siting of new accessory structures*. While the definition does not specify that it applies only to new structures, KCC 22.400.135(B) is the only section of KCC Title 22 where this term is applied. The definition in 22.150.100 for "accessory structure- view blockage" is intended for KCC 22.400.135(B) only, and will only be applied as such.

Chapter 22.150 KCC does not have a definition of accessory structure uncoupled from the view blockage definition. As stated previously, undefined words should be given their ordinary meaning based on the context in which they are used unless otherwise defined by chapter 90.58 RCW, WAC 173-26-020, or WAC 173-27-030. KCC 22.150.050. No relevant terms except structure are defined by state law or regulation. WAC 173-27-030 and Title 22 KCC use the same definition of structure.

Accessory structure is a common permitting term. As provided above, KCC 17.110.030 defines accessory use or structure as "an activity or structure that is commonly associated with but subordinate to any principal use or structure." The Merriam-Webster Dictionary defines accessory as "a thing of secondary or lesser importance."

In this instance, the overwater structure is located on the same tax lot and address as a single-family residence and is subordinate to the principal use of the single-family residence. In other words, the overwater structure is accessory to the single-family residence just like a garage or boathouse would be. In fact, the overwater structure likely fits the definition of an accessory dwelling unit. Thus, the overwater structure is more properly categorized as an accessory structure. Because the definition of principal building excludes accessory structures, the overwater structure does not meet the principal building definition and cannot be considered the principal building on the property.

Since the view line is established using the adjacent principal buildings, the overwater structure cannot be used to establish the shoreline structure setback line. Further, the provision states that the view line or the buffer and setback shall apply, whichever is greater. In this case, the 85-foot standard shoreline buffer and additional 15-foot building setback for the Shoreline Residential designation is very close to the view line. A site plan with delineation of Ordinary High Water Mark and the correctly drawn view line would be required to determine which is greater, and therefore which and would be the applied shoreline structure setback.

The department's interpretation is consistent with the purpose and intent of both the SMA and the SMP. Keeping development further away from the shoreline preserves both ecological function and aesthetic values while still allowing use and development of the shoreline

Conditional Waiver Available

The Conditional waiver procedure (22.400.135(D)) allows for relief from the strict application of the view blockage section through a Type II administrative decision, provided the applicant can demonstrate the following:

- (a) (and (b)) The hardship which serves as the basis for granting the conditional waiver is specifically related to the property of the applicant and does not apply generally to other property in the vicinity;
- (c) The hardship which results from the application of the requirements of this chapter is not the result of the applicant’s own actions;
- (d) The conditional waiver, if granted, will be in harmony with the general purpose and intent of the Act and this Program in preserving the views of the adjacent shoreline residences; and
- (e) In balancing the interest of the applicant with adjacent neighbors, if more harm will be done by granting the conditional waiver than would be done by denying it, the conditional waiver shall be denied.

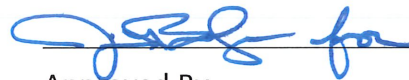
Conclusion

The proponent’s interpretation of KCC 22.400.135(A)(3) does not support the letter or intent of the County’s Shoreline Master Program. The shoreline structure setback line shall be measured from the building line of the adjacent principal building, the single-family residence. A Conditional View Blockage Waiver can be applied for, demonstrating criteria set forth in KCC 22.400.135(D)(1) are met.

This decision is a final Type 1 decision of DCD and may be appealed within 14 days of the mailing date noted above pursuant to KCC 21.04.290.



Dec. 27, 2018



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Date

Approved By
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Director