



Notice of Hearing Examiner Decision

05/04/2019

To: Interested Parties and Parties of Record

RE: Project Name: Danubio Shoreline Variance
Applicant: Scott Danubio
1797 Miracle Mile Dr NE
Port Orchard, WA 98366
Application: Shoreline Variance (SVAR)
Permit Number: 18-00261

Enclosed is the Decision issued by the Kitsap County Hearing Examiner for the above project.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

<https://spf.kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>

The Decision of the Hearing Examiner is final, unless appealed, as provided under Washington law.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Help@Kitsap1.com or (360) 337-5777.

CC: Applicant/Owner: Scott Danubio, danubio@skschools.org and Melinda Danubio, mutherofdragons@gmail.com
Project Representative: Glenn Kramer, carolk@camano.net
Engineer: David Bannon PE*, Bannon Engineering, bannoneng1@comcast.net
Project Biologist/Rep: Myers, Robbyn, bgerobbbyn@comcast.net
Health District
Public Works
Navy
DSE
South Kitsap Fire District
South Kitsap School District

Puget Sound Energy
Water Purveyor
Sewer Purveyor
Point No Point Treaty Council
Suquamish Tribe
WA Dept of Fish & Wildlife
WA State Dept of Ecology-Shoreline Review
Interested Parties:
None

**KITSAP COUNTY HEARING EXAMINER
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

Danubio Shoreline Variance, File No. 18-00261

May 1, 2019

1. FINDINGS OF FACT

1.1 Proposal. The Applicant requests a Shoreline Variance to allow him to build a single-family residence.

Applicant/Property Owner: Scott Danubio
1797 Miracle Mile Drive NE
Port Orchard, WA 98366

Applicant Representative: Glenn and Carol Kramer
5775 Turnberry Place SW
Port Orchard, WA 98367

Location: 1793 Miracle Mile Drive NE
Port Orchard, WA 98366
Assessor No. 4516-001-012-0003

1.2 Hearing. An open record public hearing was held on April 25, 2019. The Kitsap County Department of Community Development ("DCD"), through Mr. Heacock, testified on how the proposal conforms to shoreline variance requirements. The Applicant's representative, Mr. Kramer, briefly addressed the site's history. No other individual wished to testify.

1.3 Administrative Record. The Hearing Examiner admitted Exhibits 1-21, which included the Staff Report and Power Point presentation.

1.4 SEPA. The proposal is exempt from SEPA.¹

1.5 Public Notice. The proposal was properly noticed, with publication and mailing for both the application and public hearing.² No notice concerns were raised.

1.6 Public Comment. No public comments were received.

1.7 Agency/Tribe Comment. The proposal was circulated within the County, and comment was received regarding regulatory compliance. The Suquamish Tribe commented on cultural resource concerns.³ A cultural resources report is a required condition of approval.⁴

¹ WAC 197-11-800(1); KCC Title 18.04.

² Exhibits 16, 18, and 19.

³ Exhibit 17.

1.8 Zoning/Plan Designations. The Comprehensive Plan designation is LAMIRD, and the zoning designation for the site and surrounding properties is Manchester Village Low Residential, or MVLR, which allows two dwelling units per acre. The shoreline designation is Shoreline Residential.

1.9 Site Characteristics. The 0.48-acre parcel is on the Yukon harbor shoreline, and protected by a wooden bulkhead. The area available for building a home is relatively flat, but abuts a slope so steep that driveway access is not feasible; parking is at the top, with a trail leading to the residence and shoreline. There are trees on the slope, but there is little to no vegetation on the lower portion of the parcel, except for grass and previous residential landscaping. The nearshore is a benched area with rocky substrate. The required mitigation will re-landscape the entire shoreline buffer with native plants adapted to shoreline conditions.

1.10 Views. The proposed residence is within the view line of the southern-adjacent residence, but due to elevation differences exceeding 70 feet, does not impact its view line.

1.11 Utility and Public Services.

- **Water:** Manchester Water District
- **Power:** Puget Sound Energy
- **Sewer:** Kitsap County
- **Police:** Kitsap County Sheriff
- **Fire:** South Kitsap Fire & Rescue
- **Schools:** South Kitsap School District

There is no fire truck or emergency vehicle access to the site, although fire boats are within the area. The residence will have fire sprinklers.

1.12 Access. Miracle Mile Drive NE, a County-maintained right of way.

1.13 Variance Request. The building site is in the approximate location of a cabin which was demolished after a slide moved it a foot. If applied, buffer and building setback preclude rebuilding the structure. A variance is necessary to allow the 3-bedroom, 2-story single-family residence, which includes an upper deck and walkway to the shoreline, and residential access trail.⁵ The house includes 1,800 square feet of new impervious footprint, with 1,704 square feet for the residence, and an outdoor patio and walkway comprising the remainder.

The residence will be about 31 feet from the Ordinary High Water Mark, which is more than a 25% reduction of the 50 foot Reduced Standard Buffer, and considerably less than the standard 85 foot buffer and 15 foot building setback. The project includes a 24 foot restored shoreline buffer with a modified 5 to 7 foot building setback. A No Net Loss and Mitigation Report supports the request.⁶

⁴ See KCC 22.400.130.

⁵ The project includes an upland driveway and parking area for three cars (per code requirements). A future garage may be proposed on the upland area, outside shoreline jurisdiction.

⁶ Exhibit 9.

1.14 Steep Slopes. The site is a High Geological Hazard Area,⁷ and requires a Geotechnical Report. The Report describes the site as "located between a shoreline to the east and a coastal bluff to the west. The bluff's vertical height was on the order of about 75 feet with gradients in the range of 50 percent to 100 percent."⁸ There is a history of slides and "the proposed building area will be susceptible to shallow debris slides in future."⁹ The geotechnical analysis concluded that the development as proposed is feasible, but only with numerous recommended conditions addressing foundation placement and design, stormwater management, vegetation, additional engineering review, a setback from the slope's toe, and a one story high catchment wall.¹⁰

If the recommendations presented in this report are implemented in the project design and construction guidelines, it is our opinion that the proposed development should not significantly increase the overall landslide or erosion risk on this or adjacent properties.¹¹

The space between the slope's toe and home is eight feet. Originally, it was ten, but based on Ecology consultation, this figure was reduced.

During a shallow slide event, the underlying structure can undergo extensive structural damage from the slide's impact energy if a conventional wood frame construction is implemented. In order to decrease the slide impact risk, N.L. Olson has proposed a catchment wall for the height of the proposed structure's first story. The proposed catchment wall will also incorporate a level setback area located west of the wall for slide debris storage. N.L. Olson has referenced the geotechnical engineering report associated with this project that provides a more in-depth discussion of the catchment wall and recommendations for its installation.

Previously, N.L. Olson recommended positioning the proposed single family residence a horizontal setback distance of about ten (10) feet from the slope base. The client however has requested a two (2) feet reduction in the setback distance to eight (8) feet, which in N.L. Olson's opinion will still be within the project's intent of decreasing slide debris velocity and slide debris storage.¹²

While a qualified professional has reviewed the project, and extensive mitigation is built into it, as the report acknowledges, geological risks cannot be eliminated.

1.15 Tidal Inundation. Tidal inundation is a risk.¹³ County building code requirements will be adhered to and the bulkhead does protect the site. However, the risk will remain, and those risks do increase with a reduced shoreline buffer and setback.

⁷ Ch. 19.400 KCC.

⁸ Exhibit 6 (Geotechnical Engineering Report), pg. 1.

⁹ Exhibit 10 (BGE Environmental, Technical Memo), attached correspondence from N.L. Olson & Associates, pg. 2.

¹⁰ *Id.*, pgs. 1-2, and Exhibit 6.

¹¹ Exhibit 6, pg. 9.

¹² Exhibit 10 (Technical Memo), attached correspondence from N.L. Olson & Associates, pg. 2.

¹³ Exhibit 6, pg. 19.

1.16 Habitat Assessment and Shoreline Mitigation Plan. The No-Net-Loss and Mitigation Report¹⁴ finds there will be no net loss of habitat and that mitigation will offset impacts associated with the shoreline buffer impacts. The analysis calculates 954 square feet of reduced standard buffer impact mitigated with 2,500 square feet of shoreline buffer restoration. Further details were provided following consultation with Ecology, in which SMP requirements were specifically addressed.¹⁵

1.17 Construction Site. The proposed building site is the only suitable location due to the steep slopes and constrained building area. Due to the physical lot constraints, the project is at the most appropriate location and the size minimized to fit the building site. The development is above Ordinary High Water Mark and is designed per geotechnical engineer recommendations to not require additional shoreline or bluff stabilization. While the site is challenging, and the lot likely would not be subdivided in the way it originally was today, the KCC does allow reasonable use of property. Mitigation is built into the project and that mitigation follows SMP locational and mitigation policies.¹⁶ Except as modified here, the Staff Report, which details the County's SMP policies and elaborate on the proposed mitigation, is incorporated.

1.18 Conditions. DCD proposed conditions to ensure project development consistent with SMP requirements. Those conditions should be applied without revision, except a reference to the geological engineer's updated letter should be added to Condition 7. Given the geological challenges on the site, two conditions should be added. Confirmation by a geotechnical engineer that all recommendations were adhered to with project development should be required. To confirm this, the geotechnical engineer will need to be involved at key points in construction.¹⁷ The geotechnical report notes some modification to report recommendations may be required based on future subsurface exploration work; any such modifications must be based on geotechnical engineer recommendations.¹⁸ The geotechnical report recommends notice to future property owners of its recommendations regarding certain future improvements.¹⁹ Recorded notice of the variance and geotechnical analysis prepared should be provided.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review. The Examiner reviews this Shoreline Variance application.²⁰ The Examiner may approve, approve with conditions, or deny the variance, with the Department of Ecology making the final decision.²¹

2.2 Code Requirements Specific to a Shoreline Variance.

2.2.1 SMP Setbacks. The Shoreline Residential designation requires an 85-foot buffer and 15-foot building setback, unless a buffer reduction is authorized. Per KCC

¹⁴ Exhibit 9.

¹⁵ Exhibits 9 and 10.

¹⁶ KCC 22.400.105; KCC 22.400.110.

¹⁷ Exhibit 6, pg. 20.

¹⁸ Exhibit 6, pgs. 14 and 20.

¹⁹ Exhibit 6, pgs. 19-20 (*i.e.*, deck area not to be enclosed; certain additions, such as outside stairs, not to be added).

²⁰ KCC 22.500.100(E)(2) and KCC 21.04.100.

²¹ See *e.g.*, KCC 21.04.080, KCC 22.500.100(E)(8).

22.400.120(B)(2)(b), buffers may be reduced to 50 feet with a no net loss report and mitigation plan, "to achieve no net loss of shoreline ecological functions." With its No Net Loss Report and Mitigation Plan, the Applicant met these criteria. However, due to the physical constraints of the property, the site cannot support a minimally sized home above the reduced buffer.²² The Shoreline Variance is required.

2.2.2 Shoreline Variance Criteria, KCC 22.500.100(E). The purpose of a shoreline variance is to address "extraordinary or unique circumstances relating to the property such that the strict implementation of this master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020."²³ A variance "should be granted ... where denial ... would result in a thwarting" of a RCW 90.58.020 policy.²⁴ "In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect."²⁵ These criteria must be met:

- a. That the strict application of the bulk, dimensional or performance standards set forth in Chapters 22.400 and 22.600 precludes, or significantly interferes with, reasonable use of the property;
- b. That the hardship described in subsection (E)(1) of this section is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this program, and for example, not from deed restrictions or from the actions of the applicant or a predecessor in title;
- c. That the 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 this program, will not cause net loss to shoreline ecological functions and does not conflict with existing water-dependent uses;
- d. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
- e. That the variance requested is the minimum necessary to afford relief; and
- f. That the public interest will suffer no substantial detrimental effect.²⁶

As detailed in the Staff Report, DCD found these criteria were met.²⁷ DCD's analysis, which finds strict application of the SMP setbacks would preclude the property's reasonable use, is incorporated.

²² KCC 22.400.120(B)(1).

²³ KCC 22.500.100(E)(1).

²⁴ KCC 22.500.100(E)(3).

²⁵ KCC 22.500.100(E)(3).

²⁶ KCC 22.500.100(E)(4).

²⁷ Exhibit 20.

The hardship is specifically related to the property, not the Applicant's actions. The variance request is due to site geography. The most restrictive element is the site's steep topography and constrained buildable area. Relief from buffer and setback requirements is necessary to allow for reasonable development.

The project design is compatible with the other authorized residential uses within the area and with planned uses, will not cause net loss to shoreline ecological functions, and does not conflict with existing water-dependent uses. Parcel use and design is compatible with the locale.

The variance is not a grant of special privilege not enjoyed by other properties. The neighboring parcels are built out and the home proposed is consistent with nearby residential development. The variance requested is the minimum necessary to afford relief. Site plan design reflects compliance with other titles, including zoning setbacks. Once these requirements were applied to the site, and the geotechnical concerns considered, the proposed footprint area was determined to be the most practical. The proposed buffer reductions are minimized as redevelopment over a previously existing use, and set landward to the greatest extent feasible.

As long a project conditions are fully complied with, the public interest should not suffer substantial detrimental effect. The proposed development retains the residential use, with shoreline buffer restoration to meet the policy for no net loss of shoreline ecological function, and extensive conditions address the site's geographic hazards.

To deny the variance would thwart SMA's central policies, which give "priority for single-family residences," and protect "private property rights consistent with the public interest," while ensuring shoreline functions and values are protected.²⁸ As detailed in the Staff Report, and elaborated on at the hearing, the proposal is consistent with local SMP policies, including those addressing residential development, ecological conservation, and property rights.

2.3 Other Shoreline Policies. Consistency with Ch. 22.800 KCC, Appendix B, addressing mitigation, was documented through the No Net Loss Report,²⁹ and cumulative impacts have been considered, and are not a significant concern.³⁰ As detailed in the Staff Report, and findings above, the project adequately addresses and is consistent with the Ch. 22.400 KCC shoreline regulations on:

- Optimizing project location;
- Mitigating environmental impacts;
- Protecting critical areas;
- Including vegetative buffers;
- Protecting water quality and quantity;
- Protecting cultural resources;
- Avoiding view blockage; and,
- Complying with bulk and dimension standards.

²⁸ RCW 90.58.020.

²⁹ Exhibits 9 (No Net Loss Report) and 10 (BGE Environmental, Technical Memo).

³⁰ Exhibit 10 (Technical Memo), pg. 3 of letter placed just before Ecology consultation comment.

The key concern is protecting the structure from bluff and tidal incursions. While strict compliance with the shoreline setback and situating the project farther from the bluff's toe is preferable, allowing for reasonable use precludes the use of established setbacks. Instead, mitigation is imposed to minimize impacts. As the geotechnical report identifies, slide and tidal inundation risks will remain even with required mitigation. However, the variance allows the property owner reasonable use of his property, though coupled with extensive mitigation to address site development risks. The variance should be granted as it follows SMA and SMP policies, and the County's shoreline variance criteria.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested Shoreline Variance, provided these conditions are adhered to.

Planning/Zoning

1. Three parking spaces are required for the proposal.

Development Engineering

2. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to said plan acceptance.

3. The information provided demonstrates this proposal is a major development as defined in KCC Title 12, and meets the criteria to require a Site Development Activity Permit level of drainage review (SDAP). Engineered drainage plans are also required to be submitted with the future building permit.

4. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the Shoreline Variance application was deemed complete, January 22, 2018. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of SDAP application.

5. The Washington State Department of Fish and Wildlife may require a Hydraulic Project Approval if any associated project work is required on the shoreline.

6. If the project proposal is modified from that shown on the submitted site plan, Development Services and Engineering will require additional review and potentially new conditions.

Environmental

7. This project shall follow the recommendations of the Subsurface Exploration and Geotechnical Engineering Evaluation report (N.L. Olson and Associates, Exhibit 6), and with the

correspondence attached to the Technical Memorandum (Exhibit 10) from N.L. Olson and Associates, dated August 20, 2018. This condition requires compliance with all recommendations, including the recommendation that earthwork activities be restricted between the months of April through October.

8. This project will comply with the No Net Loss and Mitigation Plan (BGE Environmental, LLC; Exhibit 9). Planting must be completed, inspected and approved prior to the final inspection of the building permit. There will be a 5-year monitoring period with annual reports provided to DCD demonstrating compliance with the mitigation plan in this report.

9. A cultural resources report is required at time of SDAP application. If archaeological resources are uncovered during excavation, the contractor and property owners must immediately stop work and notify DCD, the Washington State Office of Archaeology and Historic Preservation and affected tribes.

Traffic and Roads

10. The Applicant shall submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the KCC. The KCPW 1601 form reserves road capacity for the project.

11. With the building permit application, the Applicant shall submit plans for construction of the road approach 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 the Kitsap County Road Standards as established in Chapter 11.22 of the KCC. Existing approaches may need to be improved to meet current standards.

12. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the building permit. The need for and scope of bonding will be determined at that time.

13. If this project includes the construction of rock walls or other retaining facilities that either exceed four feet in height or sustain a surcharge, a separate building permit with an engineered design is required for such walls. This note shall be placed on the face of the final construction drawings.

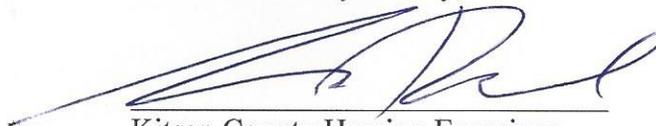
14. Rock and retaining walls shall meet all applicable setback requirements of Vol. II, Chapter 9.4.4 of the Kitsap County Stormwater Design Manual.

Other

15. A geotechnical engineer shall confirm the recommendations identified in Condition 7 were followed in constructing the residence.

16. Record notice against the property of both the variance decision and geotechnical analysis prepared in support of the requested variance.

THIS DECISION is entered this 1st day of May, 2019.

A handwritten signature in blue ink, appearing to read 'S. Drummond', is written over a horizontal line.

Kitsap County Hearing Examiner
Susan Elizabeth Drummond