



Notice of Hearing Examiner Decision

04/22/2020

To: Interested Parties and Parties of Record

RE: Project Name: Fournier-Sidhu Shoreline Variance
 Applicant: Jake Fournier
 4113 Beechwood Dr W
 University Place, WA 98466
 Application: Shoreline Variance (SVAR)
 Permit Number: 19-05611

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **19-05611 Fournier-Sidhu SVAR**, subject to the conditions outlined in this Notice and included Decision.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.

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>

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: Jake & Jamie Fournier, jakefournier@gmail.com
Biologist: Eco Land Services, 510 C Street, Washougal, WA 98671
Engineer: ALTERNATIVE DESIGNS, altdesigns@wavecable.com
Health District
DSE
Prosecutor
Assessor
DCD
Kitsap Sun

Kitsap Transit
Central Kitsap Fire District
Bremerton School District
Puget Sound Energy
Water Purveyor - Kitsap PUD
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Wetland Review
WA State Dept of Transportation

Interested Parties:

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

**Fournier-Sidhu Shoreline Variance
File No. 19-05611**

April 20, 2020

1. FINDINGS OF FACT

1.1 Proposal. Shoreline Variance to construct a 946 square-foot single-family residence on Lake Symington.

Applicant/Property Owner: Jake Fournier and Jamie Sidhu, 1416 N. Prospect, Tacoma, WA 98406.

Location: 13731 NW Coho Run, Bremerton, WA 98312, Parcel No. 4535-000-182-0006.

1.2 Hearing. An open record public hearing was held April 9, 2020. Due to COVID-19 restrictions, the hearing was conducted remotely, with the Examiner, Kitsap County Department of Community Development (“DCD”), and Applicant calling in. Access information was provided to the public to allow citizens to join via video link and/or telephone call-in. There were no reported technical difficulties during the call or afterwards. However, in case any citizens who wished to comment had difficulty calling in, the record was kept open for a week, through April 16.¹ No additional written comments were received. DCD, through Ms. Shaffer, testified on how the proposal conforms to shoreline variance requirements.

The Applicant, through Mr. Fournier, detailed how he had resolved neighbor concerns before the hearing, including through the Home Owner's Association (“HOA”) (most comments were from HOA Board Members). There had been errors in understanding the project; it may have been confused with other projects under review. For example, some complaints were about a large garage, which is not proposed. The small home will be farther back than most of the other homes along the shoreline. The Applicant engaged a civil engineer and ecological firm to assist, and he believes the building permit items submitted follow DCD’s proposed conditions, which he does not object to. No other individual wished to testify.

1.3 Administrative Record. The Hearing Examiner admitted Exhibits 1-32, which included the Staff Report, application materials, documentation of agency consultation, public notice documents, and a DCD Power Point presentation.²

¹ Temporary Emergency Rule to Address COVID-19 Situation (April 1, 2020).

² The Index of Record identifies Exhibit 28 as the Cumulative Impacts Report. Exhibit 28 contains the Notice Of Public Hearing. The Cumulative Impacts Report is at Exhibit 26.

1.4 SEPA. DCD issued an unappealed Determination of Non-Significance.³ The project was conditioned for Title 12 KCC stormwater compliance.

1.5 Public Notice. The proposal was properly noticed, with publication and mailing for both the application and public hearing.⁴ No notice concerns were raised.

1.6 Public Comment. Several neighbors contacted staff regarding concerns about the environmental impact of the proposal.⁵ A No-Net-Loss Report and Shoreline Mitigation Plan⁶ support the project, which is conditioned to follow the mitigation plan (Condition 8). There was concern the variance would set a precedent; however, each variance is reviewed independently for variance criteria so approval of this variance does not set a precedent.

1.7 Zoning/Plan Designations. The Comprehensive Plan and zoning designations are Rural Residential. The shoreline designation is Rural Conservancy.

1.8 Site Characteristics. The 0.27-acre parcel is an irregular rectangle shape approximately 140 feet by 70 feet. Setback requirements preclude reasonable property use.

[T]his property has a depth of only 132 feet from the wetland edge to the northern property line, leaving only 32 feet of the property outside the reduced buffer. It is infeasible to build within a 32-foot area considering the additional 15-foot buffer setback, road, and side yard setbacks. In order to place a small home of 946 square feet, a driveway, and a septic site on the property, the buffer will need to be reduced to approximately 20 feet from the edge of the wetland with a 5-foot setback.⁷

Site topography slopes down moderately north to south from NW Coho Run toward the edge of Lake Symington. Vegetation consists of coniferous forest dominated by western red cedar, Douglas fir, and salal in the northern two-thirds of the property. On the south side is a berm-like feature that runs parallel to the lake edge.

1.9 Utility and Public Services.

- **Water:** Kitsap PUD #1
- **Power:** Puget Sound Energy
- **Sewer:** Septic
- **Police:** Kitsap County Sheriff
- **Fire:** Central Kitsap Fire & Rescue
- **Schools:** Central Kitsap School District

1.10 Access. 321 NW Coho Run, a County-maintained right of way.

³ Exhibit 19; Exhibit 29 (Staff Report), p. 2.

⁴ Exhibits 9, 28, and 31.

⁵ Exhibits 10-13 and 27; Exhibit 29 (Staff Report), p. 6.

⁶ Exhibit 5.

⁷ Exhibit 5 (Shoreline Mitigation Plan), pg. 8.

1.11 Variance Request. The residence would be set back 25 feet from the ordinary high-water mark. The Rural Conservancy shoreline designation has a standard 130 foot shoreline buffer, with a reduced standard buffer of 100 feet.⁸ As the lot is 140 feet in length and 70 feet wide, with either the standard or reduced standard buffer, there would be inadequate space to build anything on the lot. As the lot is severely constrained, and the buffer must be reduced by over 25% to allow for reasonable development, a variance is required.⁹ The project meets the non-shoreline or zoning code setbacks of 20 feet on the front and five on the sides.

1.12 Shoreline Mitigation Plan. Improvements are situated to minimize vegetation removal. Temporarily disturbed areas will be replanted with native shrubs and ferns. Tree additions are infeasible as they would create a threat to the home and surrounding residences, but habitat improvements will be made to ensure no net loss of ecological functions.

Large woody debris will be collected from the trees cleared for construction and will be added to the wetland and shoreline to provide nesting and hiding places for shoreline and wetland species. Northern flicker nesting boxes and bat boxes will also be built and installed in the buffer to increase habitat function.¹⁰

These habitat features, in a highly developed area, will achieve no net loss of shoreline/wetland ecological functions.¹¹

1.13 Construction Site. The proposed building site is the only suitable location due to the constrained building area. Due to the physical lot constraints, the project is at the most appropriate location with improvements minimized to the extent feasible. Mitigation is built into the project and that mitigation follows SMP locational and mitigation policies.¹²

1.14 Conditions/Staff Report. DCD proposed conditions to ensure project development consistent with SMP requirements. To ensure project consistency with County variance criteria, those conditions should be applied without revision. Except as modified here, the Staff Report, which details the County's SMP policies and elaborates on the proposed mitigation, is incorporated.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review. The Examiner reviews this Shoreline Variance application.¹³ The Examiner may approve, approve with conditions, or deny the variance, with the Department of Ecology making the final decision.¹⁴

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

⁸ KCC 22.400.120(B)(1)(d) and (B)(2)(d).

⁹ KCC 22.400.120(C)(1)(b)(ii).

¹⁰ Exhibit 5 (Shoreline Mitigation Plan), pg. 11.

¹¹ *Id.*

¹² KCC 22.400.105; KCC 22.400.110.

¹³ KCC 22.500.100(E)(2) and KCC 21.04.100.

¹⁴ See e.g., KCC 21.04.080, KCC 22.500.100(E)(8).

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."¹⁵ A variance "should be granted ... where denial ... would result in a thwarting" of a RCW 90.58.020 policy.¹⁶ "In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect."¹⁷ 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.¹⁸

As detailed in the Staff Report, DCD found these criteria were met.¹⁹ DCD's analysis, which finds strict application of the SMP setbacks would preclude the property's reasonable use, is incorporated.

The hardship is specifically related to the property, not the Applicant's actions. The variance request is due to the small parcel, resulting from a 1970 plat. 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.

¹⁵ KCC 22.500.100(E)(1).

¹⁶ KCC 22.500.100(E)(3).

¹⁷ KCC 22.500.100(E)(3).

¹⁸ KCC 22.500.100(E)(4).

¹⁹ Exhibit 29.

The variance is not a grant of special privilege not enjoyed by other properties. The neighboring parcels zoned RR are developed with single family homes. The variance requested is the minimum necessary to afford relief, allowing only a 946 square foot residence. Site plan design reflects compliance with other titles, including zoning setbacks. Once these requirements were applied to the site, the proposed footprint area was determined to be the most practical. The proposed buffer reductions are minimized with the home set landward to the greatest extent feasible.

As conditioned, the public interest will not suffer substantial detrimental effect. The proposed development allows for residential use, consistent with surrounding uses. Its small footprint and accompanying habitat improvements, meet the policy for no net loss of shoreline ecological function.

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.²⁰ As detailed in the Staff Report, and elaborated on at the hearing, the proposal follows 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 Shoreline Mitigation Plan and Cumulative Impacts Report.²¹ As detailed through this technical analysis, and the Staff Report, the project adequately addresses and follows 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.

The home is within the only area feasible, environmental attributes are addressed, there are no cultural resource or view blockage issues, and other code requirements are met. The project will have no effect on listed species or designated critical habitat, meeting KCC 15.13.010 (flood zone habitat protection). And, it protects the shoreline consistent with shoreline ecological functions/critical areas (KCC 22.300.100), vegetation conservation buffer provisions (KCC 22.300.105), and lake-fringe wetland provisions (KCC 22.400.115, Ch. 19.200 KCC).

The Staff Report details the Rural Conservancy designation policies (KCC 22.200.125); the project is consistent. There will be no net loss of habitat and mitigation will offset impacts associated with the buffer reduction. The building site is the only area suitable due to lot size and

²⁰ RCW 90.58.020.

²¹ Exhibits 5 and 26.

health district requirements to site the septic drainfield further landward, away from the lake. The variance allows reasonable property use, with impacts mitigated through habitat improvement and the project's small footprint. 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. The proposed single-family residence will be limited to 35 feet in height.
2. At the time of building permit, project shall demonstrate three 9' x 20' parking spaces.

Development Engineering

3. 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.

4. The information provided demonstrates this proposal is a Small Project as defined in KCC Title 12. The required level of drainage review is Simplified Drainage-Engineered, and as such will require the building permit application materials include a stormwater design that demonstrates compliance with Stormwater Minimum Requirements #1-5, as outlined in the Kitsap County Stormwater Design Manual.

5. On-site stormwater management, 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, December 13, 2019. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington.

6. The Washington State Department of Fish and Wildlife may require a Hydraulic Project Approval for the work required at the proposed outfall.

7. If the project proposal is modified from that shown on the submitted site plan received February 13, 2020, Development Services and Engineering will require additional review and potentially new conditions.

Environmental

8. This project shall follow the mitigation and recommendations of the submitted Shoreline Mitigation Plan prepared by Ecological Land Services dated November 26, 2019. Mitigation 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. This project is located within a flood hazard area as determined by KCC 15.04.040. All construction shall be in accordance with the flood resistant requirements of KCC Title 15. An elevation certificate prepared by a Washington licensed surveyor, engineer, or architect will be required at the time of building permit.

10. The placement of residential development on the property shall be located to make installation of a shore protection structure unnecessary.

Traffic and Roads

11. 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.

12. 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.

13. 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 SDAP process (or building permit if no SDAP is required). The need for and scope of bonding will be determined at that time.

Kitsap Public Health District

14. Required with the building permit is the Building Site Application (BSA) for on-site sewage and water supply.

DECISION entered April 20, 2020.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond