



Notice of Hearing Examiner Decision

08/12/2021

To: Interested Parties and Parties of Record

RE: Project Name: Schulman Stream Buffer Reduction
 Applicant: Robert Schulman & Mie Mukai
 1916 Rebecca Creek Road
 Canyon Lake, TX 78133-5920
 Application: Critical Area Variance (CVAR)
 Permit Number: #20-04318

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #20-04318 Schulman Stream Buffer Reduction – Critical Area Variance**, 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 of Record: Robert Schulman & Mie Mukai,
mie.mukai@gmail.com
Project Representative: Myers, Robbyn, bgerobbyn@comcast.net
Health District
Public Works
Parks
Navy
DSE
Kitsap Transit

Central Kitsap Fire District
Central Kitsap School District
Puget Sound Energy
PUD #1 of Kitsap
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 Transportation

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

**Critical Area Variance
CVAR 20-04318
(Schulman Stream Buffer Reduction)**

August 4, 2021

1. FINDINGS OF FACT

1.1 Proposal. The Applicant requests a critical area variance to reduce the standard Type-F stream buffer from 150-feet to a variable width of 38-113 feet. The variance would allow for one single-family home on a 2.07-acre lot.

Applicant/Property Owner: Robert Schulman & Mie Mukai, 1916 Rebecca Creek Road, Canyon Lake, Texas, 78133-5920.

Location: No site address. Assessor number 282501-1-026-2002.

1.2 Hearing. An open record public hearing was held July 22, 2021. 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 either a video link 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 through July 29. No comment was received following the hearing. At the hearing, DCD, through Mr. Schulman and Ms. Meyers, further described the project and confirmed there were no concerns with DCD's proposed conditions. No member of the public indicated a wish to speak.

1.3 Administrative Record. The Hearing Examiner admitted Exhibits 1-22, which included the Staff Report, application materials, documentation of agency consultation and public notice, and DCD Power Point presentation.

1.4 SEPA. The proposal is exempt from SEPA.¹

1.5 Public Notice and Comment. Hearing and application notice was provided consistent with KCC requirements.² Public comments were not provided during the staff review period or at the hearing.

1.6 Agency Comment. The proposal was circulated within the County. As long as requirements are met, there were no objections to approval.

¹ Ex. 21 (Staff Report), p. 2; KCC Title 18.04, WAC 197-11-800.

² Exhibits 10, 19 and 20; KCC 21.04.080, .210.

1.7 Zoning/Plan Designations. The Comprehensive Plan and zoning designations are Rural Protection, with a Rural Conservancy shoreline designation. Surrounding zoning and uses are:

- North: RP, single-family home
- East: RP, single-family home
- South: Park, Kitsap County Park/Right-of-Way (Tracyton Blvd. NW)
- West: Waterbody (shoreline bluff to Dyes Inlet)

1.8 Site Physical Characteristics. The vacant site is overgrown with trees and low vegetation. Access is through a dirt access point, with beach access through stairs on the west. A Type-F stream runs along the east property line. BGE Environmental prepared a Habitat Management Plan and No-Net Loss Report, and verified stream typing with WDFW and Suquamish Tribe biologists.³

The Rural Conservancy shoreline designation provides for a 130-foot buffer on the west and the stream triggers a 150-foot buffer on the east. This is coupled with additional 15-foot building setbacks from the buffers, top of slope buffers for the steep slopes on the site, and a 50-foot property line setback on the north. Through no fault of the owner or previous owner, this leaves limited developable area.⁴

The Habitat Management Plan and No-Net Loss Report outline mitigation to avoid substantial detrimental impact. Mitigation includes stream corridor enhancement with native trees and shrubs, along with eradicating invasive Himalayan blackberry and English ivy. A five-year monitoring plan is included. The mitigation plan (Exhibit 4) follows Ch. 19.300 KCC.

The reductions would allow for a 1,013 square foot single-family residence and supporting facilities. If the structure moves in any direction, it impacts a zoning setback, other critical area buffer, or shoreline buffer, leaving no other practicable or reasonable siting alternatives. “[T]he requested buffer reduction is the minimum necessary to establish a setback around the residence while optimizing the streams top-of-slope buffer function.”⁵

1.9 Geologic Hazards. There are geologically hazardous areas on the bluff and near the stream. A full geotechnical engineering report meeting KCC 19.700.725 will be required during development permit review. Vegetation buffering will be required, along with setbacks, with modification requests reviewed through KCC 19.400.435(2). The site is also within the shoreline’s Rural Conservancy designation, but the project is outside the 130 foot buffer and 15-foot building setback.⁶

1.10 Utility and Public Services.

- **Water:** Private Well

³ Exhibit 21 (Staff Report), p. 8; Exhibits 4 and 5.

⁴ Exhibit 21 (Staff Report), p. 9, *see* illustration.

⁵ Exhibit 21 (Staff Report), p. 10, citing to environmental consultant’s findings.

⁶ Exhibit 21 (Staff Report), p. 13.

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

1.11 Access. Vehicle access is proposed via an existing easement which leaves the parcel on the north, traverses northerly, and intersects with Tracyton Boulevard NW.

1.12 Development Engineering/Stormwater. Development Services and Engineering reviewed the land use proposal and found the concept for civil site development acceptable.

1.13 Conditions. DCD's proposed conditions ensure project development consistent with code and these findings. They should be included without substantive revision. Except as modified, DCD's Staff Report is incorporated by reference.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Jurisdiction. The Hearing Examiner may hear and decide critical areas variance requests for a buffer reduction for single-family residences greater than 50%.⁷ The request falls within this category. The Examiner has jurisdiction.

2.2 Critical Area Variance Criteria. A variance may be granted when an applicant shows these criteria are met:

1. Because of special circumstances applicable to the subject property, including size, shape, or topography, the strict application of this title is found to deprive the subject property of rights and privileges enjoyed by other properties in the vicinity; provided, however, the fact that those surrounding properties have been developed under regulations in force prior to the adoption of this ordinance shall not be the sole basis for the granting of a variance.
2. The special circumstances referred to in subsection (A)(1) of this section are not the result of the actions of the current or previous owner.
3. The granting of the variance will not result in substantial detrimental impacts to the critical area, public welfare or injurious to the property or improvements in the vicinity and area in which the property is situated or contrary to the goals, policies and purpose of this title.
4. The granting of the variance is the minimum necessary to accommodate the permitted use.

⁷ KCC 19.300.315(A)(3)(b); KCC 19.100.135; KCC 21.04.100, #5.

5. No other practicable or reasonable alternative exists. (See Definitions, Chapter 19.150.)

6. A mitigation plan (where required) has been submitted and is approved for the proposed use of the critical area.⁸

Due to the shoreline and stream on two sides, coupled with a 50-foot setback on the north, strict application of stream buffering would deprive the property owners of the rights and privileges of use common to the nearby properties. The Applicant did not create or exacerbate these conditions.

Given the limited buildable area, and modest structure proposed, the reductions are the minimum necessary to accommodate the project. There are no practical or reasonable alternatives present and impacts are mitigated.

As conditioned, the variance would not result in substantial detrimental impacts to critical areas, nor would approval be detrimental to the public welfare or to nearby properties and improvements. Project mitigation will improve buffer functioning and mitigate impacts. As the critical area variance criteria are met, the variance should be granted.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested Critical Area Variance subject to these conditions:

Planning/Zoning

1. Permit approval subject to conditions in the Hearing's Examiner Decision.
2. The proposal shall be compliant with the applicable zoning standards of the Rural Protection (RP) zoning district.
3. At the time of SDAP submittal, the site plan shall show all current easements to ensure the project does not encroach on required setbacks or the easement(s) itself.

Development Engineering

4. 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.
5. The information provided demonstrates that, due to the proximity of critical areas, this proposal will require a Site Development Activity Permit (SDAP) from Development Services and Engineering.

⁸ KCC 19.100.135(A).

6. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with Kitsap County Code Title 12 effective at the time of development permit application. 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.

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

8. If the project proposal is modified from that shown on the submitted site plan accepted for review September 29, 2020, Development Services and Engineering will require additional review, potentially new conditions, and potentially a revision to this decision.

Environmental

9. The proposal shall follow the recommendations of the Habitat Management Plan dated September 8, 2020, by BGE Environmental.

10. A Hydraulic Project Approval (HPA) may be required for the proposed outfall. Prior to SDAP approval, the applicant shall submit an approved HPA from the Washington State Department of Fish and Wildlife (WDFW) or documentation from WDFW specifying that an HPA is not required.

11. Due to the presence of geologically hazardous areas on site, a full geotechnical engineering report shall be submitted with the SDAP application. The report shall be to the standards outlined in KCC 19.700.725. The report shall specifically address compliance with applicable standards of KCC 19.400.410, KCC 19.400.435 and KCC 22.400.105. The report shall demonstrate that the project is set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure. A subsequent full geotechnical analysis may result in additional concerns, questions, or conditions about proposed development, and a full geotechnical report may cause a need to review and modify any prior approval.

12. Pursuant to KCC 19.400.410(C), the proposed clearing for the project and all critical area buffers shall be marked in the field for inspection and approval by the department prior to beginning work. The field marking of all buffers shall remain in place until construction is completed, and final approval is granted by the department. Permanent marking may be required as determined necessary to protect critical areas or its buffer.

13. All clearing, grading, and vegetation removal shall be in accordance with 19.400.410(D). Clearing and grading shall be limited to the period between May 1st and October 1st, unless the applicant provides an erosion and sedimentation control plan prepared by a professional engineer licensed in the state of Washington that specifically and realistically identifies methods of erosion control for wet weather conditions.

14. Pursuant to KCC 22.400.105, the project shall comply with the following standards:

- a. New development shall be located and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.
- b. New development on lots constrained by depth, topography or critical areas shall be located to minimize, to the extent feasible, the need for shoreline stabilization.
- c. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis.
- d. 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.

15. The project shall comply with applicable standards for residential development in accordance with KCC 22.600.170.

Traffic and Roads

16. Submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the Kitsap County Code. The KCPW 1601 form reserves road capacity for the project.

17. The required Site Development Activity Permit application shall include documentation of rights of use of the access easement indicated as providing access to this parcel.

18. The required Site Development Activity Permit shall include 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 Kitsap County Code. Existing approaches may need to be improved to meet current standards.

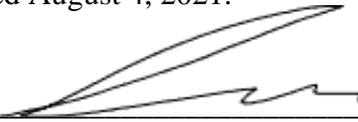
19. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the SDAP process (or building permit if no SDAP is required). The need for and scope of bonding will be determined at that time.

Kitsap Public Health District

20. An approved Building Site Application shall be submitted at the time of building permit application.

Absent a timely appeal or filing of reconsideration, this Decision is final.⁹

DECISION entered August 4, 2021.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond

⁹ Ch. 36.70C RCW (any appeal to be filed within 21 days to superior court); HER 1.9.1, RCW 36.70C.020.