



Rafe Wysham
Director

KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

To enable the development of quality, affordable, structurally safe and environmentally sound communities.

Notice of Hearing Examiner Decision

4/10/2026

To: Interested Parties and Parties of Record

RE: Project Name: F&L PROPERTIES - Shoreline Variance
Type 3
Applicant: F&L Properties LLC
PO Box 476
Manchester, WA 98353
Application: SVAR
Permit Number: 23-04888

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit 23-04888: F&L PROPERTIES - Shoreline Variance Type 3 (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://www.kitsap.gov/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 by contacting the Department of Community Development; if you wish to view the case file or have other questions, please contact help@kitsap1.com or (360) 337-5777.

CC:

Applicant/Owner: F&L Properties LLC, John Grice, john@jagconstructionllc.net

Authorized Agent: William Palmer, wpconslts@telebyte.net

Interested Parties: Robert & Crystal Michelle Stevens, rlshassas@yahoo.com;

Taylor Harriman - Suquamish Tribe Archaeologist,

tharriman@suquamish.nsn.us

Prosecutor's Office

Assessor's Office
DCD
Kitsap Sun
Health District
Public Works
Parks
Navy
DE & PEP
USACE
Kitsap Transit
South Kitsap Fire District
South Kitsap School District
Puget Sound Energy
West Sound Utility District
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
Skokomish Tribe
WA Dept of Fish & Wildlife
WA Dept of Transportation/Aviation
WA State Dept of Ecology
WA State Dept of Ecology-Wetland Review
WA State Dept of Ecology-Shoreline
WA State Dept of Transportation
WA State Dept of Health
WA State Dept of Natural Resources
WA State Dept of Archaeology and Historic Preservation

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BEFORE THE HEARING EXAMINER FOR KITSAP COUNTY

Phil Olbrechts, Hearing Examiner

| | |
|---|---|
| RE: F&L Properties Shoreline Variance File No. 23-04888 | FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION. |
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INTRODUCTION

F&L Properties requests approval of a shoreline variance (SVAR) to construct a 1,080 square foot garage within the 85 foot shoreline buffer of Sinclair Inlet for a 0.44 acre parcel located at 3022 Beach DR, Port Orchard, WA. The application is approved subject to conditions.

At hearing the Applicant asserted that required mitigation plantings are not feasible because the soils of the project site can't sustain any required plantings. Condition 9 recommended by staff has been revised with underlined text below to provide some flexibility in meeting the no net loss standard. If the soils do prove to be inhospitable, the County can require that they be replaced in the mitigation area if feasible or as a last resort off-site mitigation may be authorized.

The Applicant also asserted at the hearing that no mitigation plantings are necessary to meet the no net loss standard because the proposal will not create any adverse impacts to shoreline resources. The position taken by the Applicant and their planner is contrary to that of their own habitat biologist, who concluded in the Applicant's habitat report that the mitigation is "appropriate" for mitigating against the cumulative impacts of encroaching into shoreline buffers. The required mitigation is found necessary to prevent impacts to shoreline resources.

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ORAL TESTIMONY

See Exhibit 21 for a computer generated transcript of hearing testimony.

EXHIBITS

Exhibits 1-18 listed in the Index to the Record prepared by County staff were admitted during the hearing. The following exhibits were also admitted during the March 25, 2026 hearing:

- Exhibit 19: Applicant PowerPoint
- Exhibit 20: Applicant criteria analysis

FINDINGS OF FACT

Procedural:

1. Applicant. F & I Properties LLC PO Box 476, Manchester, WA 98353
2. Hearing. The Hearing Examiner conducted a hybrid hearing on the application at 9:00 am on March 26, 2026.

Substantive:

3. Site/Proposal Description. F&L Properties requests approval of a shoreline variance (SVAR) to construct a 1,080 square foot garage within the 50-foot reduced shoreline buffer of Sinclair Inlet for a 0.44-acre parcel located at 3022 Beach DR, Port Orchard, WA.

The proposed garage will encroach into the shoreline buffer on two sides. KCC Section 22.400.120B1b requires a standard buffer of 85 ft with a 15-foot building setback and a 50-foot reduced standard buffer referenced in KCC 22.400.120(B)2. The Applicant proposes a 28%¹ reduction for the northwest buffer and an 18% reduction for the southwest buffer. The affected buffers are 50-foot reduced buffers authorized by KMC

¹ The staff report doesn't identify whether these % reductions apply to the 85 foot buffer or the 50 foot buffer. It is presumed the reduction applies to the 50-foot buffer since the need for the variance arises from the encroachment into the 50 foot buffer.

1 22.500.100E. Outside of the buffer the applicant proposes to build a concrete driveway
2 (553 sf), an eastern addition (863 sf), and a southern addition (403 sf) to an existing
single-family residence.

3 The existing shoreline single-family residence (SFR) was built on the project site in
4 1970. A bulkhead was installed over 50 years ago and surrounds the NW, NE, and SW
5 sides of the property, creating a peninsula into Sinclair Inlet. The backfilled bulkhead
land is approximately 16,955 sf in area. The primary driveway is from Beach Drive E
and provides direct access to the SFR.

6 Approximately 50% of the parcel is covered by impervious surfaces including an
7 existing two-story home, driveway, parking spaces, storage building, concrete slabs,
8 canopy, deck, concrete patio, and shipping container. The remainder of the property is
comprised of short grass or bare dirt.

9
10 4. Characteristics of the Area. The project site is surrounded on three sides
11 by single-family homes zoned RR with Port Orchard Bay/Sinclair Inlet bordering the
property to the west.

12 5. Adverse Impacts. No significant adverse impacts are anticipated from the
13 proposed variance.

14 A. No Net Loss. The proposal will result in no net loss of ecological function.

15 The Applicant has prepared a habitat plan by a habitat biologist who formerly
16 worked for the Washington Department of Fish and Wildlife as a habitat
17 biologist for 31 years. The plan recognizes that there are environmentally
sensitive resources waterward of the project site but that the proposal will not
adversely affect any of them. As noted in the report:

18 *There is no construction proposed as part of this project*
19 *waterward of the bulkhead, and no negative effects on any PHS*
20 *in the area are expected to result from the project, per the*
21 *proposed mitigation plan (Figures A-1 and A-2). In other words,*
22 *PHS [priority habitats and species] would not be harmed by the*
project, and the proposed mitigation is expected to provide a net
benefit to PHS.

1 The habitat plan includes a planting plan to offset adverse impacts. A planting
2 area is recommended in the report that equals the area of proposed clearing in
3 the reduced shoreline buffer. The plan concludes that the mitigation is
“appropriate” since it prevents cumulative impacts resulting from shoreline
buffer encroachments.

4 Since the proposal with its mitigation will create a net ecological benefit and is
5 designed to prevent cumulative impacts, it is found to result in no net loss of
ecological function.

6 The Applicant asserts in Ex. 20 that the project site has been developed with
7 unique soils that cannot support any type of mitigation plantings. Staff testified
8 that they have never encountered soils that made it infeasible to support plant
9 mitigation requirements and that there are types of dune grass that can grow
10 under very inhospitable conditions. As noted by staff during the hearing, the
11 code requires no net loss and that can’t be waived. It would appear that at
12 worst, some of the soils might have to be replaced to accommodate required
mitigation plantings. Other options such as off-site mitigation can also be used
as a last resort. The conditions of approval will be modified to provide the
flexibility needed to explore alternative options if necessary to meet the no net
loss standard.

13 B. Navigation. No work will be done within navigable waters and the proposal
14 thus will have no impact upon navigation.

15 C. Aesthetics. No material significant adverse aesthetic impacts to Puget Sound
16 shoreline are anticipated. The Habitat Management Plan and Proposed Project
17 Mitigation report evaluated impacts to three homes across Beach Drive E.
18 Conclusions from this report state that there will be minimal view impacts and
19 does not meet the significant impact criteria under KCC 22.400.135. Given the
subjectivity of view impacts and the constitutional requirement for clear
standards under *Anderson v. Issaquah*, 70 Wn. App. 64, 76 (1993), the proposal
is not found to create any significant adverse view impacts.

20 D. Geologically Hazardous Areas. The project site is not encumbered by
21 geologically hazardous areas.

22 The staff report notes that the Kitsap County Geographic Information Systems
23 (GIS) indicate moderate seismic and high erosion geologic hazards on the

1 property, accompanied by moderate landslide hazards within 200 ft. However,
2 the Applicant had a geotechnical assessment of the project site by a professional
3 engineer, Ex. 10, and no geologically hazardous areas were found at the project
4 site. Given the more site specific analysis by the Applicant's engineer, the Ex.
5 10 report is found to be the most compelling evidence on the presence of
6 geologically hazardous areas.

7 E. Frequently Flooded Areas. The project site is not encumbered with any
8 frequently flooded area.

9 The staff report notes that the Kitsap County Geographic Information Systems
10 (GIS) shows the 100 Year Floodplain FEMA Flood Area Hazard to be on the
11 parcel. In accordance with KCC Title 15, during building permit review the
12 applicant must identify whether the cost of redeveloping the site with the SFR
13 additions is less than 50% of the original structure value. If more than 50%, the
14 lowest floor of newly constructed habitable space, including basements, must
15 be a minimum of one foot above the base flood elevation.

16 6. Minimum Necessary. The variance requested represents the minimum necessary
17 relief to afford reasonable use of the property. The proposal is the least intrusive and
18 smallest feasible solution that allows reasonable expansion of the legally existing
19 residential use and the addition of a garage. As testified by staff, the overall size of the
20 single-family home will still be smaller than the average size of surrounding homes.
21 As noted in the Applicant's criteria analysis, Ex. 20, p. 7, there are 8 homes located a
22 few hundred feet north of the project site that are located within 20 feet of their
23 bulkheads.

24 7. Special Circumstances. The shoreline buffer located on three sides of the project
25 site leaves no room to construct a reasonably sized home with a garage. The current
home has no garage. The proposed additions and garage enable a reasonably sized
home that is still of a lesser size than surrounding homes.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. KCC 21.04.100 classifies SVARs as Type
III processes. As outlined in KCC 21.04.110, a Type III process authorizes the hearing
examiner to issue a final land use decision for the County after holding a public hearing.

1 **Substantive:**

2 2. Zoning/Shoreline Designation. The property is currently zoned Rural
3 Residential and the shoreline designation is Shoreline Residential.

4 3. Review Criteria/CWVB. KCC 22.500.100E4 governs the criteria for
5 shoreline variances for projects landward of the ordinary high water mark. Applicable
6 variance criteria are quoted below in italics and applied via corresponding conclusions
7 of law.

8 **KCC 22.500.100E4a:** *That the strict application of the bulk, dimensional or*
9 *performance standards set forth in Chapters 22.400 and 22.600 precludes, or*
10 *significantly interferes with, reasonable use of the property;*

11 4. Criterion met. The criterion is met. Single-family residences are authorized within
12 the Shoreline Residential designation and hence is considered a reasonable use of the
13 project site. For the reasons identified in Findings of Fact No. 6-7, the proposed
14 shoreline buffer and setback encroachment is the only feasible location for the proposed
15 home. Without the variance the applicant would not be able to construct a reasonably
16 sized home with a garage at the project site.

17 **KCC 22.500.100E4b:** *That the hardship described in subsection (E)(1) of this*
18 *section is specifically related to the property, and is the result of unique conditions*
19 *such as irregular lot shape, size, or natural features and the application of this*
20 *program, and, for example, not from deed restrictions or from the actions of the*
21 *applicant or a predecessor in title;*

22 5. Criterion met. The criterion is met for the reasons identified in FOF No. 7. The
23 hardship is solely due to the shoreline buffer extending to three sides of the project site.

24 **KCC 22.500.100E4c:** *That the design of the project is compatible with other*
25 *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;

6. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
5. Single-family homes are authorized in the Shoreline Residential shoreline

1 designation. The proposed single-family use is consistent with the single-family homes
2 surrounding the project site. The proposal will create no net loss of ecological function
as determined in Finding of Fact No. 5A.

3 **KCC 22.500.100E4d:** *That the variance will not constitute a grant of special*
4 *privilege not enjoyed by the other properties in the area;*

5 7. Criterion met. The criterion is met. As outlined in Finding of Fact No. 7, the
6 variance is necessary to build a reasonably sized single-family home with a garage, a
use enjoyed by more waterfront lot owners to the north.

7 **KCC 22.500.100E4e:** *That the variance requested is the minimum necessary to*
8 *afford relief; and*

9 8. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
6.

10 **KCC 22.500.100E4f:** *That the public interest will suffer no substantial detrimental*
11 *effect.*

12 9. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
13 5.

14 **DECISION**

15 Based upon the conclusions of law above, the SVAR is found to comply with applicable
16 review criteria for the reasons identified in the conclusions of law above, subject to the
following conditions of approval:

17 **Planning/Zoning**

18 1. Building permits submitted for this development shall include construction plans
19 and profiles for all roads, driveways, storm drainage facilities and appurtenances. No
20 construction shall be started prior to said plan acceptance.

21 **Development Engineering**

22 2. Stormwater quantity control, quality treatment, and erosion and sedimentation
23 control, as required for the development, shall be designed in accordance with Kitsap

1 County Code Title 12 effective at the time the Building Permit is deemed fully
2 complete. If development meets the thresholds for engineered drainage design, the
3 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 Building Permit Application.

4 3. The owner shall be responsible for maintenance of the storm drainage facilities for
5 this development following construction. Before requesting final inspection for the
6 SDAP (or for the Building Permit if an SDAP is not required) for this development, the
7 person or persons holding title to the subject property for which the storm drainage
8 facilities were required shall record a Declaration of Covenant that guarantees the
9 County that the system will be properly maintained. Wording must be included in the
10 covenant that will allow the County to inspect the system and perform the necessary
11 maintenance in the event the system is not performing properly. This would be done
12 only after notifying the owner and giving him a reasonable time to do the necessary
13 work. Should County forces be required to do the work, the owner will be billed the
14 maximum amount allowed by law.

15 4. If the project proposal is modified from that shown on the site plan approved for
16 this permit application, Development Engineering will require additional review and
17 potentially new conditions.

18 5. At building permit application, submit Kitsap County Public Works Form 1601 for
19 issuance of a concurrency certificate, as required by Kitsap County Code 20.04.030,
20 Transportation Concurrency.

21 6. The property owners shall be responsible for maintenance of all landscaping within
22 the existing and proposed right-of-way including any structures other than roadway,
23 storm drainage facilities, and traffic signage. Maintenance shall include, but not be
24 limited to, mowing of lawn areas. A note to this effect shall appear on the accepted
25 construction plans. In addition, Development Engineering reserves the right to require
that covenants be recorded to address special maintenance requirements depending on
final design.

Environmental

7. This project is located within a flood hazard area (AE 13) as determined by Kitsap
County Code (KCC) Section 15.04.040. All construction shall be in accordance with
the flood resistant requirements of KCC Title 15. Upon completion of the project, the

1 owner shall provide to the Department of Community Development (DCD) a flood
2 elevation certificate completed by a Washington State licensed land surveyor,
3 identifying the elevation of the lowest floor in relation to the base flood elevation as
4 determined by the Flood Insurance Rate Map (FIRM) for the subject parcel.

5 In accordance with KCC Title 15, During building permit review the applicant must
6 identify that the cost of redeveloping the site with the SFR additions is less than 50%
7 of the original structure value. The newly constructed habitable space has the lowest
8 floor, including basements, a minimum of one foot above the base flood elevation.

9 Development that exceeds the 50% threshold shall require that all structure have their
10 lowest floor, including basements, a minimum of one foot above the base flood
11 elevation.

12 DCD highly recommends that a Washington State licensed land surveyor establish the
13 elevation of concrete foundation wall forms prior to the placement of concrete to ensure
14 that the height of the proposed lowest floor will be at least 1 foot above the base flood
15 elevation. This effort made early in the construction process could avert the unfortunate
16 expense of raising a constructed structure to a compliant elevation should it later be
17 found to be below the required minimum height above the base flood elevation. The
18 flood elevation certificate shall be submitted to DCD prior to requesting a final
19 inspection. A certificate of occupancy will not be issued until the flood elevation
20 certificate is received and approved by DCD.

21 8. Vegetation planting shall occur as specified in the approved mitigation or
22 enhancement plan produced in support of this permit. Planting of native vegetation
23 shall occur within the first dormant season once the permitted project has been
24 constructed and approved. When planting is complete, the applicant shall submit an as-
25 built plan to DCD for approval prior to requesting the final inspection. Any assignment
of savings, financial surety or other like security for performance of the buffer
mitigation plan shall be released if planting requirements are satisfied upon completion
of the site inspection and as-built approval.

9. The Department shall create a monitoring and maintenance plan, fees to be paid by
the applicant. This Monitoring and Maintenance permit requires annual reports, which
must be prepared by a professional biologist, for five years, and extended if necessary,
after DCD staff approves planting. Monitoring includes live and dead vegetation counts

1 and records of all maintenance activities. Maintenance activities can be defined as, but
2 are not limited to, removal practices on invasive or nuisance vegetation and watering
3 schedules. Monitoring information shall be summarized in a letter with photographs
4 depicting conditions of the vegetation and overall site. Monitoring reports are due to
5 Kitsap County Department of Community Development Services and Engineering
6 Division annually. If more than 20 percent of the plantings do not survive within any
7 of the monitoring years, the problem areas shall be replanted, and provided with better
8 maintenance practices to ensure higher plant survival. The construction of the permitted
9 project is subject to inspections by the Kitsap County Department of Community
10 Development. Extensions of the monitoring period may be required if original
11 conditions are not met. All maintenance and construction must be done in full
12 compliance with Kitsap County Code, including the Kitsap County Critical Area
13 Ordinance (Title 19 KCC) and Shoreline Master Program (Title 22 KCC). Any
14 corrections, changes or alterations required by a Kitsap County Development Engineer
Inspector shall be made prior to additional inspections. Any assignment of savings,
financial surety or other like security for maintenance of the buffer mitigation plan shall
only be released if monitoring requirements are satisfied in the final year of the
monitoring term.

If the Applicant establishes prior to or during monitoring that the soils of the project
site cannot accommodate required mitigation, the County may specify other reasonable
mitigation measures to ensure effective and successful mitigation to meets the no net
loss standard. Options may include replacing some of the project site soils or as a last
result authorizing off-site mitigation.

15 10. Mitigation Planting Bond. A performance bond, assignment of savings, or other
16 like security has been required by the department in an amount necessary to provide
17 for future site monitoring and possible corrective action required for compensatory
18 mitigation projects (one and one-half times the estimated cost of mitigation). Once the
19 project is completed and a maintenance bond is established, the performance bond will
20 be released. The maintenance bond, as determined by the wetland specialist/habitat
21 biologist, will be released upon success of the project, as determined by the metrics in
the mitigation plan, and no earlier than five years after completion of the mitigation
project or as otherwise established. If the approved mitigation is not completed or fails
to meet its success standards, the property owner must agree to a property access release
form, with forfeiture of funds after the specified monitoring period.

22 11. Due to site constraints and after demonstration of the shoreline variance criteria in
23 KCC 22.500.100(E), the 36 foot buffer and 15 foot building setback to the north, and

1 41 foot buffer and 15 foot building setback to the west, shall be applied per the Habitat
2 Plan and Proposed Project Mitigation report prepared by Lawrence D. Fisher dated
January 9, 2026.

3 12. Authorization is valid for 5 years from the date of approval by the Department of
4 Ecology. Construction activities shall be commenced or, where no construction
5 activities are involved, the use or activity shall be commenced within two years of the
6 effective date of a substantial development permit or shoreline exemption. A single
7 extension for a period not to exceed one year may be authorized based on reasonable
factors, if a request for extension has been filed before the expiration date and notice
of the proposed extension is given to parties of record and to the Department of
Ecology.

8 13. The proposed structure shall not cross the boundary line to the northeast. The
9 applicant shall acquire a temporary construction easement from neighboring parcels for
construction that occurs within 5 feet of the parcel line.

10 14. Subject to the conditions of the Habitat Plan and Proposed Project Mitigation report
11 prepared by Lawrence D. Fisher dated January 9, 2026, associated with this permit and
12 on file at the Department of Community Development.

13 15. Subject to the conditions of the Geological Hazard Assessment prepared by DE-
14 Civil, PLLC dated January 21, 2026, associated with this permit and on file at the
Department of Community Development. Structural fill may be necessary to ensure
new structures are protected from the potential of liquefaction.

15 16. This development shall be designed to not require additional shoreline stabilization
16 in the future and shall not be used to justify future shoreline stabilization.

17 17. Shoreline stabilization constructed between 2022-2023 requires a shoreline ACUP,
18 unless the height did not increase then it would require a shoreline exemption.

19 18. Vehicles or trailers shall not park on the lawn.

20 19. Illegal structures and illegal impervious surfaces shall be removed and planted with
21 native vegetation. This includes the concrete patio constructed between the house and
northern bulkhead, and the shed structures on the western portion. The
22

1 applicant can demonstrate that each of these elements were constructed legally to
2 satisfy this condition of approval.

3 **Traffic and Roads**

4 20. Any work within the County right-of-way shall require a Public Works permit and
5 possibly a maintenance or performance bond. This application to perform work in the
6 right-of-way shall be submitted as part of the SDAP process, or Building Permit
7 process, if a SDAP is not required. The need for and scope of bonding will be
8 determined at that time.

9 Dated this 9th day of April, 2026.

10 *Phil Olbrechts*

11

Phil Olbrechts,
12 Kitsap County Hearing Examiner

13 **Appeal Right and Valuation Notices**

14 The shoreline variance decision is a final land use decision of Kitsap County and after
15 approval or denial by the Washington State Department of Ecology may be appealed to
16 the Washington State Shoreline Hearings Board as governed by RCW 90.58.180.

17 Affected property owners may request a change in valuation for property tax purposes
18 notwithstanding any program of revaluation.

Appendix A

March 26, 2026 Hearing Transcript

F&L Properties Shoreline Variance

File No. 23-04888

Note: This is a computer-generated transcript provided for informational purposes only. The reader should not take this document as 100% accurate or take offense at errors created by the limitations of the programming in transcribing speech. A recording of the hearing is available at the Kitsap County Department of Planning should anyone need an accurate rendition of the hearing testimony.

Clerk Jones (00:01):

This meeting is being recorded.

Examiner Olbrechts (00:03):

All right. Good morning, everybody. It is March 26th, 2026, 9:00 AM on Phil Olbrechts Hearing Examiner for Kitsap County. Holding a couple hearings this morning. The first one is going to be three permits for an accessory dwelling unit composed of a shoreline substantial development permit, a zoning conditional use permit, and a shoreline conditional use permit. A lot of permits for such a small project. That's the way the code works here though. The hearing formats, we'll start off with presentation from staff and that will be Ms. Nitch. Is that how to pronounce your last name? Okay, great. All right. So Chelsea ... Oh, go ahead.

Clerk Jones (00:38):

Also, Phil, sorry, not to interrupt, but staff have requested to hear agenda item B first. Oh. So Darren Gurnee can go first and show our staff how it's going to work and then-

Examiner Olbrechts (00:51):

Oh, okay. That's fine.

Clerk Jones (00:54):

Yeah, if that's all right.

Examiner Olbrechts (00:55):

Yeah. Yeah. I usually like to do the longer one last so people don't have to wait through it, but they both look like they're pretty short anyway, so this should work just fine. Okay. So now we'll move on to the F&L properties application. This is for a shoreline variance application. File number ... Let's see here. Where we got the file number? 23-0488. And hearing format is we'll start off with a presentation from staff. Looks like that's going to be Mr. Gurney. After Mr. Gurney's done, then we'll move on to applicant comments if there are any. Then the public, if there's any public, and then back to Mr. Gurney to answer questions, complete the record, and the applicant has a matter of due process to gets the final opportunity to present evidence. By state law, I'm only allowed to consider evidence that's put in the record today.

[\(01:46\)](#):

That way we all know what information is considered for that final decision. I'm not allowed to talk to staff or applicant or get any other information except the exhibits and testimony that's made part of the record. And Mr. Gurney has put together a staff report of 18 exhibits composed of the staff report and the SEPA review and stormwater review. We got a public comment from the Suquamish Drive Geotechnical Report, Habitat report, site plans, and public comment from Stevens. Does anyone have any objection to entry of those documents or need to see them? If you're participating virtually, just click on the virtual hand at the bottom of your screen and we'll recognize you if you need to see any of those documents or have an objection. Hearing seeing none, I'll go ahead and exhibit and admit Exhibits one through 18. And Mr. Gurnee, I'll swear you in at this point.

[\(02:33\)](#):

Just raise your right hand. Do you swear or affirm to tell the truth, nothing but the truth in this proceeding? I do. Okay, great. Go ahead.

Director Gurnee [\(02:40\)](#):

Okay. We will pull up the slide shown in just a moment. Thank you. Okay. So this is the presentation for F&L Properties Shoreline Variance. My name is Darren Gurney with Department of Community Development. I am the current planning and environmental supervisor. As per the norm, this is meant to supplement the staff report, not replace it. So this is just additional information and clarification as needed today.

Clerk Jones [\(03:43\)](#):

Okay. I'll do it.

Director Gurnee [\(03:46\)](#):

I thought it was user error on the slideshow buttons, but it looks like Liliana's going to help me out today. Oh, great.

Director Gurnee [\(03:53\)](#):

The request from the applicant is the ability to construct a single-story garage of approximately a thousand square feet, revising the driveway location to create a driveway apron in front of side garage, and add a 403 square foot addition to the existing single-family residence. And this is over existing impervious surface and in place of an existing overstructure that is in place in the form of a carport. The garage will require a 28% reduction for the buffer to the shoreline and 18% reduction to the southwest buffer. No buffer reduction is necessary for the addition to the house because it is replacing existing development. Next, please. So applicants are FNL Properties, LLC. We received a complete application a while back, November of 2023. We sent out a notice of application on December 15th of 2023. And while CEPA is exempt, our notice application used the optional DNS process for which we did receive a few comments, as you mentioned.

[\(05:12\)](#):

One of the comments dealt with view blockage criteria and the potential of blocking the view of the neighbors, and that item I can address right now. View blockage is somewhat subjective. In our shoreline master program, it is something that we use that if you have a 10% reduction of your view, we would consider that substantial. And that 10% threshold comes from our zoning variance criteria. We have 10% is a typical item that goes through an administrative review where the director has authority to

approve a 10% variance in some way. So that becomes our threshold in the absence of that in our shoreline master program.

[\(06:05\)](#):

The proposal at hand does not exceed the 10% threshold. The big piece of this is that when we're measuring that 10%, we have a vaguely described view. So you could include just the water, you can include the water and land behind it. You can include almost the entire sky. So it becomes very difficult to administer a view blockage criteria with that baseline information, but the property in question, the height of the structure is not exceeding the limits allowed by shoreline codes, so we believe this does meet the intent of the code and does not create a substantial view blockage. Thanks, please. Little bit of background. This is located in the Commissioner two district just northeast of Port Port Orchard off of Beach Drive. The property, as you can see through many of our aerial imagery and some of the photos you'll see coming up is a projection out into the water.

[\(07:13\)](#):

Bulkhead created in the early 1900s backfilled with soils and then proceeded to have development of a single family home. And this was all prior to shoreline codes. This allows us to qualify as existing development for the purposes of the permits, please.

[\(07:35\)](#):

The zoning designation is rural residential, one unit per five acres. However, this is not a subdivision. Again, this is existing development, so expansion of NSFR is allowed. It's not creating any additional dwelling units. Next, please. This is the site plan provided by the applicant. It is a little difficult to read, but in the center of that area is where the garage will be located. The existing driveway to the east, that is being removed and replanted with vegetation. Mitigation for impervious surfaces created by the new garage is in the western corner of that bulkhead area, and so you have mitigation plantings to achieve no net loss. Next, please.

[\(08:32\)](#):

This is our zoning designation map, just reflecting the rural residential. Next, please. Our critical areas map. As you can see, there are landslide potential erosion hazard areas. You also have estrogen wetlands and tidelands. All critical areas on the property were addressed through geotechnical reports and habitat management plan. This also included a cumulative impact analysis addressing if others in the vicinity did the same things, would that have a larger impact? And by implementing our mitigation sequencing and the mitigation plantings, this would not have a cumulative impact on the shoreline. Next, please. Giving a little history, so this is 2012 aerial imagery. This is what we use typically to understand what it looks like in the winter.

[\(09:36\)](#):

And as we go through here, you'll see a progression of imagery. Next, please. 2018 imagery, this is meant to show a baseline of one piece that we are recognizing is not part of this permit, which is any kind of bulkhead increase in height, which subsequent aerial imagery does show there's a possibility. And so it's very clear in our staff report that this report is not approving any kind of bulkhead improvements that may have occurred in the past without permits while the shoreline code was in play. Next, please. 2023 aerial imagery, you can see that there is new concrete on the bulkhead edges out towards the water. This again is the component that we are not approving of in this permit, and that is for subsequent permits if necessary. This also indicates that you have the potential for development on an adjacent parcel to the northwest.

[\(10:41\)](#):

As part of our staff report and conditions of approval, if there's development within five feet of the parcel line, that would require at least a temporary construction easement to establish the legality that would allow somebody to do this development. Next, please.

[\(10:59\)](#):

This is our imagery from Department of Ecology. So we use this to further inform what the site might look like prior to development. You'll note that, again, in these photos, it also will indicate a little bit of treatment on the bulkhead that might have been increased in height, but that is addressed in the staff report as well. Next, please. And again, this image really illustrates that it is over the shoreline. So as much as our codes identify shoreline as the edge of the bulkhead for ordinary high watermark, this is directly over Tidelands, even though it is a historic fill feature. Next.

[\(11:48\)](#):

This is recent imagery. So Ecology put together this set of maps along the entire shoreline of Kitsap County. They either walked or used a kayak to go across all the properties and they have this available to the public. So these are a couple of images where you can see the new concrete form above an existing concrete. Next slide, please. And similar case here. Next, please. This development proposal, the variance, it does align with the goals. For the comprehensive plan, it environmental goals that is mitigating for any impacts to the environment. It is also recognizing the historic archeological resource possibility, and we, as a standard condition of approval, should any kind of construction reveal cultural or archeological elements of significance, they are to inform the appropriate agencies and government jurisdictions. Next, please.

[\(13:08\)](#):

And finally, for the variance criteria, we do recognize that this is a unique property. There's no other place to locate the garage that is proposed. It is central to the site instead of going closer to the shoreline to the northwest, northeast. It does go closer to the shoreline to the southwest, but there is no other option. And by including a garage, similar to an apertinence, it is the only location for a garage. This variance does allow for the use of the property. So this is consistent with subsection B. It's not materially detrimental to the immediate vicinity. Multiple properties in the vicinity have garages, so they are enjoying the same benefits of other neighbors in the vicinity. And then finally, this is the minimum relief necessary to get the application to an approval. We did work with the applicants significantly to minimize the amount of impacts to the shoreline, which is why you do see the shift of a road approach from the northeastern portion to a point that is directly away from the garage to the roadway.

[\(14:37\)](#):

A small little alcove that allows turnaround on the site and allows the applicants to pull out into the right of way without backing movements. So it's a safe exit and entrance into the property. Next, please.

[\(14:55\)](#):

So finally, the staff does recommend approval as conditioned. At this point, the hearing examiner reviews, and then you recommend approval, of course, to the Department of Ecology who has the final authority of decision, and that concludes our presentation.

Examiner Olbrechts [\(15:13\)](#):

Okay. Yeah, just some questions about the minimum necessary to afford relief criterion. I mean, if they have a reasonably sized footprint already, it's kind of hard to justify this addition, even if they don't have a garage, especially if they're remodeling the house, they could just put a garage within the existing

footprint instead of that addition. I mean, what's the size of the current home right now? I couldn't find that in the staff report.

Director Gurnee (15:38):

I will have to look that up. And I do know that the applicant's rep is here today, I believe.

Examiner Olbrechts (15:45):

Okay. Okay.

Director Gurnee (15:46):

So they might be able to answer that question. I will say it's a modestized home. It's not a large home. I believe it's approximately 1300 square feet, but I will have to double check on that figure.

Examiner Olbrechts (16:02):

Oh, okay. And I think the staff report, you kind of generally said that's comparable or the requested size is comparable to surrounding homes. Can you provide any more detail on that? Again, that's kind of key to what reasonable

Director Gurnee (16:13):

Is there. Yes. The homes in the surrounding area actually are probably larger than this home. Multiple stories in those locations, which going taller in this location would also, that runs into the viewline

Examiner Olbrechts (16:28):

Criteria

Director Gurnee (16:28):

As well.

Examiner Olbrechts (16:30):

So, but as proposed, is it still pretty similar to the surrounding home sizes or the surrounding home size is still larger?

Director Gurnee (16:37):

I believe the surrounding home sizes are still larger.

Examiner Olbrechts (16:39):

Okay. Okay. Sounds good. All right. Thank you, sir. Appreciate your comments. All right, let's go on to the applicant. Do the applicant want to add anything at this point? And then Leanne, are they virtual or are they in the meeting room?

Clerk Jones (16:52):

They are in the meeting room. The applicant's representative. William Palmer will be speaking.

Examiner Olbrechts (17:08):

Okay. All right, Mr. Palmer, let me swear you in. You get a chance, just raise your right hand. Do you swear or affirm to tell the truth, nothing but the truth in this proceeding?

Mr. Palmer: [\(17:18\)](#):

Okay.

Examiner Olbrechts [\(17:19\)](#):

Okay, great. Go ahead.

Mr. Palmer: [\(17:24\)](#):

I'm not sure exactly how my computer is going to interface with this. First of all, I'm William M. Palmer. I'm here representing John and Jerry Grice, and they are present in the room. And I don't know if my slide presentation is going to work, but I've got a couple of things that I want to cover knowing that the Department of Ecology is going to be reviewing your decision. And I wanted to take issue with some things that are in the staff report, and I'm going to go to page five of the staff report to start with, and I will make my slide presentation available to the hearing examiner as well in digital form as well as in written form. But on page five, staff lists some ecosystem and habitat goals, goal, and several policies. And I want to take issue with the policies that pertain to habitats and ecological processes because one of the issues in citing the garage on this piece of property has to do with whether or not it's justifiable buffer.

[\(19:59\)](#):

And when you look at the definition of a buffer in the shoreline master program, you don't find that there's evidence of such a buffer present on this property. Now, you can say that, well, we're buffering from the shoreline, so therefore we have 85 feet, but that's not even how the buffer is defined in the shoreline. My slight presentation would validate the fact that what the buffer definition is as found in the shoreline master program, also what the concept of no net loss, how that's defined, and also the ecosystems and how they're defined. None of these supportive policies of goal one equitism and habitat are evident in the property. Also, the habitat report, which clients had performed on this property, they didn't find any supportive information relative to the subject property from the bulkhead to the existing house of any evidence of a buffer that meets the definition in the Shoreline Master Program.

[\(21:55\)](#):

So my clients are being held to a standard that doesn't exist in the code, and that also on page six, they've got environmental policy 4.1, has to do with the collaborative across county programs and external agencies. The only problem with that policy is it ignores private property ownership and those that have that own a piece of property like the crisis. So I object to that being a citation because unless collaboration exists between property owners versus agencies, that we have a constitutional problem. I'm not going to get into that, but we have moving on to environmental policy 5.3, maintain and enhance long-term quality and quality and quantity of water resources. Well, the bulkhead and the backfill behind the bulkhead upon which the existing house rests took place in the 1950s.

[\(23:44\)](#):

The house wasn't built until 1971, excuse me, 1970, so it's been a very long time and there's no indication of any quality or quantity effect on water resources. Then I want to move on to page nine and this has to do with variances and this might be applicable to this piece of property. We submitted an address of all the variance criteria found in the Shoreline Master Program and the Shoreline Management Act and wanted to, under the environmental assessment found on page nine, move to the

second sentence, "The variance only approves the proposed changes indicated in the site plan." Seems straightforward enough vehicles and structures on the western portion of the site, fences constructed on the northern edge of the bulkhead and the new concrete on the entire bulkhead are not approved in this permit. Conditions of approval prevent vehicles from parking on its site. Well, if there's no buffer, what's a problem with parking on the site?

[\(25:34\)](#):

And I can go into great detail about this. In fact, one of the exhibits that I'll be submitting that was to go along with my PowerPoint deals with these kind of issues in detail.

[\(25:56\)](#):

My contention is that a variance process should never have been required. Now, my clients did acquiesce and we went through the variance process and hopes of expediting the building permit process, approval process, which the building permit was submitted in end of January of 2021. That's five years ago, a little more than five years, and we still don't have building permit approval, and for a long time we've been held up in the processing of this variance, and that's a concern to my clients. On many occasions, they've been to the Department of Community Development inquiring about the processing of this permit, and yet we know that ultimately, once the hearing examiner renders the decision, that we will be waiting at least 30 days to see what the Department of Ecology may choose to do, and we're prepared for that. But on the other hand, when certain definitions are not met and you're subject to a process, it gets a little old after a while.

[\(27:47\)](#):

On moving on to page 12 of the staff report, wanted to highlight the fact that there A, are no wetlands on the site moving into the central paragraph under entitled Critical Areas, and the habitat plan that we submitted states that there are no federally listed species or the critical habitats noted in the data that would be affected by the project. Priority habitat and species would not be harmed by the project and the proposed mitigation is expected to provide a net benefit. Well, again, my clients have agreed to provide mitigation. And what's the mitigation for?

[\(28:52\)](#):

It's for loss of habitat. No, there's no direct correlation to that. Is it for a loss of a buffer or impingement on the buffer? Well, a buffer has to have native vegetation in it between the bulkhead and the existing house. There's virtually no vegetation. Moving on to page 14, view protection issues. That was addressed in detail in December, early December, 2024. It was again addressed in the updated habitat report that was submitted last fall in 2025. View protection definitely is Not an issue because across on the south side of Beach Drive, the three homes that are closely positioned to this property have an elevation difference, several feet. One case, about 40 feet of height difference between this site and I included in my graphics, which are being submitted, a picture of the front elevations of both the garage and the house with its additions. And including that graphic is a notation of the heights of the peak heights of the new structures and the Shoreline Management Act, as well as the County Shoreline Master Program allow up to 35 feet, but that's to the peak and not how the height of a building is measured under the building code or even referenced in the zoning ordinance.

[\(31:43\)](#):

In short, we are thankful that staff did recommend approval, but we believe that we've been subject to a process that wasn't necessary in the first place and particularly not necessary where the "mitigation sequencing elements" where we were required to address a not build, which is the first option. Or if you build, you got to provide compensation in the form of new vegetation on the site that really doesn't support vegetation in the first place. And that's been true for close to 50 years. In order to get new

vegetation to grow, soil has to be imported. And of course, plants have to be maintained for a period of time in hopes that they'll be established on a permanent basis. The applicant's efforts to get plants to grow are met with mostly failure. But again, these are things that never should have been a requirement for this particular project.

[\(33:31\)](#):

One last comment, and it's something I've been concerned about relative to this property and others in Kitsap County is that you have real buffers and you have mythological buffers. In this case, the buffer is mythological and you've got terms that are cast around by State Department of Ecology picked up on by Kitsap County a term called no net loss. Well, in order to make a no net loss assessment, you have to have established a baseline environmental study to know what you had, to know whether it's going to be lost or not. And Kitsap County, and that's also true of the State Department of Ecology. Nobody has ever conducted a study in this county to establish a baseline from which you can measure whether there's a loss or not. And when they use the term no net loss, it means there might be some loss, but what's acceptable loss and what isn't.

[\(35:11\)](#):

That's also not determined. So while the clients and I appreciate the recommendation of approval, we think that the conditions of approval should be mitigated by the reality of the ordinance prescriptions, which start with the definitions versus wishlist of things that one might hope for.

[\(35:52\)](#):

My clients may wish to also testify, but I have copies of what I was going to use for PowerPoint and the supplemental discussion of required variance code compliance criteria. And I think I have enough for staff as well as a hearing examiner.

Examiner Olbrechts [\(36:26\)](#):

So Mr. Palmer, you said you had a PowerPoint you weren't able to show and you wanted to make that an exhibit, is that right?

Mr. Palmer: [\(36:33\)](#):

Yes. And I have a digital format for that if

Examiner Olbrechts [\(36:38\)](#):

You're

Mr. Palmer: [\(36:39\)](#):

An examiner would like that as well as the hard copies.

Examiner Olbrechts [\(36:43\)](#):

Okay. Yeah, digital's always the easiest. So we got your PowerPoint, we'll make Exhibit 19. And then 20, you said you had a criteria analysis, is that right?

Mr. Palmer: [\(36:52\)](#):

Yes. And that's supplemental to the PowerPoint.

Examiner Olbrechts [\(36:57\)](#):

Okay. And then was there another document as well?

Mr. Palmer: (37:01):

Well, I have a hard copy of the PowerPoint.

Examiner Olbrechts (37:03):

Oh, okay. All right. Well, I'll just say, I mean, does anyone have any objection over entry of the PowerPoint is 19 or the variance criteria analysis is Exhibit 20? Okay. Hearing seeing no objections, we'll admit those two documents. And did the applicants want to add anything? Mr. Palmer said the applicants might want to speak themselves. Don't have to, but now's your chance if you do.

Clerk Jones (37:27):

They would like to speak and they will come on up.

Examiner Olbrechts (37:29):

All right.

Mr. Palmer: (37:36):

All right. Go ahead and introduce yourself.

Applicant Grice (37:38):

I'm Jerriane Grice and I'm an owner. I am the owner of the property. Okay.

Examiner Olbrechts (37:44):

All right. Ms. Grice, let me swear you in. Just raise your right hand. Do you swear or affirm to tell the truth, nothing but the truth in this proceeding?

Applicant Grice (37:50):

Yes.

Examiner Olbrechts (37:50):

Okay, great. Go ahead.

Applicant Grice (37:53):

As far as the development of planting vegetation on this property, I tried since we bought the property to grow grass, it failed. Without bringing in eight to 10 inches of dirt on top of the soil, it's there. It doesn't hold water, so everything dies. I planted, I think, 23 different variations of shrubs on the property. All of them died. Finally, the only way I could grow anything is in pots. So I had probably 18 pots with vegetation in it. So my concern is I read that for five years it's going to be monitored. Someone's going to come on my property and look at my plants, and if something is not healthy, I have to replace it. And so I'm just wondering, how am I supposed to maintain this if it hasn't worked yet? Other than grass, I'm sure I can probably get grass off the beach next door and plant it, and maybe that will grow.

(39:18):

I know that will grow. So I'm not sure where this vegetation ... We did talk to an ecologist, but I'm not sure ... What? Oh, biologist. I'm sorry. Biologist. I'm not sure what we're supposed to do for maintaining for five years when for the last seven years, I couldn't grow anything.

Examiner Olbrechts (39:48):

Okay. Thanks for your comments. I'll certainly consider that. Thank you. Yeah, I'll be addressing that in the decision. Okay. Let's move on to public at this point. Are there any members of the public that want to add anything to this application? If you do, just click on your virtual hand at the bottom of your screen if you're participating virtually or if you're in the hearing room, just wave your hand and Ms. Jones, the clerk, will recognize you. So no takers, Ms. Jones?

Clerk Jones (40:15):

No takers in the hearing room, and it looks like no takers online as well. Okay.

Examiner Olbrechts (40:19):

Back to you, Mr. Gurney. Any final comments you want to make?

Director Gurnee (40:29):

I do, and I realize I am still under oath.

Clerk Jones (40:31):

Okay.

Director Gurnee (40:33):

So to answer a couple of the questions or remarks made regarding buffers, our shoreline master program identifies that the ordinary high watermark as determined by a biologist, that establishes where the shoreline edge exists. For each shoreline jurisdiction and Kitsap County Code 22400 120, it identifies vegetative buffers required for specific environmental designations. And for this designation, there is an 85-foot standard buffer with a reduced standard buffer of 50 feet. Each of those buffers carry with a 15-foot building setback as well. So it's an additive. The building setback intends to protect any kind of vegetation that's growing in the native buffers. With regard to no buffers existing on the site, that would conflict with our codes.

(41:35):

As mentioned by the applicant, it is difficult to have things grow on the property. We've heard that. We recognize that. When it comes to those kind of situations, typically you get into dune grasses and those things that are very drought tolerant as well as salt tolerant, especially given that you may have wicking of salt water from the tidelands up through the soils. You do have a mix of salt tolerant plants on the site, and that still indicates that there is a buffer on the site. So we would still stand behind our analysis that there is a buffer on the site. Regarding no net loss, regardless of if it's existing native vegetation or a mix of native and non-native, the added impervious surface is what really triggers the no net loss component. And by adding the impervious surface of the garage extra driveway apron, it is achieving no net loss by removing some of the driveway and adding planted mitigation, and that is required by Kitsap County Code in Title 22.

(42:58):

Conference with other agencies and jurisdictions, as you mentioned, we did receive comment from the tribes. We also conferred with ecology on multiple occasions for this permit to try and figure out solutions and how we would approach this through the variance criteria and what is the minimum relief necessary and multiple iterations of the site plan that got us to this point today. So I believe that's answering most of the questions that are outstanding, unless you have any additional questions for me.

Examiner Olbrechts (43:36):

So where is the ordinary higher water mark considered for this project? Is it at the bulkhead then or is it something- It is

Director Gurnee (43:43):

At the bulkhead

Examiner Olbrechts (43:44):

Edge, yes.

Director Gurnee (43:45):

That is a standard practice.

Examiner Olbrechts (43:46):

Yeah, that's what I thought. Okay. Sounds good. No, that ... Well, also, I mean, if it turns out there's just no vegetation that will work as mitigation, I mean, have staff come across a situation like that? Are there circumstances where you just throw up your hands and say, "Okay, we recognize there's nothing that can be done here," or how do you handle that?

Director Gurnee (44:06):

I have not come across that. I've checked with others and they have not come across that. In most circumstances in other situations, we have seen that somebody will add beach nourishment and have those kind of dune type grasses. I believe that's what the applicant was alluding to is those kind of dune grasses that don't require a ton of nutrients, a ton of water, and they thrive based on that kind of situation. So we do have some flexibility there if nothing's growing. Part of the five-year monitoring piece is that it's an adaptive management tool. So if there's something not working, the biologist can come back and come with recommendations, but that is something that is required by code. So we have little flexibility when it comes to the no net loss piece.

Examiner Olbrechts (45:01):

Okay, sounds good. I think we covered everything. So I'll go ahead, close the hearing. And yeah, I got a couple weeks to issue the recommendation to the Department of Ecology, and Mr. Palmer's brought up a few issues I'll look at closely and address them in the final decision. So it all looks pretty good though. So we'll get that decision out real soon. Thanks all for participating in this one.