



Notice of Hearing Examiner Decision

05/24/17

To: Interested Parties and Parties of Record

RE: Project Name: MYERS – Shoreline Variance for Two Single Family
Residences on Two Lots
Applicant: MYERS THOMAS & LAURIE
7103 E SPRING HILLS RD
PORT ORCHARD, WA 98366

Application: Shoreline Variance (SVAR)
Permit Number: 16 04643

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

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

http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%2006-23-09.pdf

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

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

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

CC: Owner:
MYERS, THOMAS & LAURIE tom@playallstar.com
Architect:
LYMAN, BRIAN lymanarchitects@gmail.com
Engineer:
NL OLSON & ASSOCIATES nlolson2@nlolson.com
Interested Parties:
None

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

**Shoreline Variance
File No. 16 04643**

May 22, 2017

The Kitsap County Hearing Examiner makes the following findings, conclusions, and decision.

1. FINDINGS OF FACT

1.1 Proposal. The Applicants request a Shoreline Variance to allow construction of two new single family residences on two separate lots. The applications were consolidated as the same parties own both parcels. The Applicants/property owners and site location are as follows.

Applicants/Property Owners: Thomas and Laurie Myers, 7103 E. Spring Hills Road, Port Orchard, WA 98366.

Site Location: The sites are located at 3156 and 3176 Beach Drive E., Port Orchard, WA (Assessor Nos. 182402-4-018-2008 and 192402-1-003-2000).

1.2 Hearing. An open record public hearing was held on May 11, 2017. The Department of Community Development (DCD), through Mr. Heacock, provided sworn testimony on the proposal and addressed shoreline variance requirements. DCD described existing development on the surrounding properties; the constrained nature of the lots; the technical analysis outlining proposed mitigation, including buffer restoration, the planting plan, and rain garden; consultation with the Department of Ecology; and how the proposal, as designed, is the minimum necessary to afford the property owners reasonable use. Given the site constraints and consistency with the shoreline variance criteria, DCD recommended approval. The Applicants, through their architect, Mr. Lyman, expressed concurrence with DCD's testimony and the previously submitted Staff Report. No person present indicated a wish to submit oral comment.

1.3 Administrative Record. The Hearing Examiner reviewed Exhibits 1-19 before the hearing, which included the Staff Report. At the hearing, DCD proposed adding a power point as Exhibit 20. The Examiner admitted all exhibits.

1.4 SEPA. The proposal is exempt from SEPA.¹

1.5 Public Notice. The proposal was properly noticed, with publication and mailing occurring for both the notice of application and public hearing. The hearing notice was also posted at the site.² No concerns on notice were raised.

¹ WAC 197-11-800(6)(e) and KCC Title 18.04.

1.6 Public Comment. Staff received one phone inquiry from a nearby resident, but no public comments were received.

1.7 Agency Comment. The proposal was circulated within the County, and comment was received regarding regulatory compliance. There were no objections to approval, as long as applicable requirements are met. The Department of Ecology shoreline section provided comments on shoreline impacts. In response, the Applicants revised the site plan and no net loss report. As a result, the proposed structure on the north was pulled back to such a degree it could have been approved through a Type II permit, rather than through the Hearing Examiner process. The property on the south is more constrained than the north lot due to its small size. Thus, in addition to pulling the structures back, the proposed residential footprint is estimated at just under 900 square feet. As the Applicants' architect testified, this is as small as is feasible for reasonable residential accommodations at this location.

1.8 Zoning/Plan Designations. The Comprehensive Plan designation is Rural Residential and the Zoning designation is Rural Residential, or RR. RR "promotes low-density residential development and agricultural activities that are consistent with rural character."³ The surrounding properties are all zoned RR. The shoreline designation is Shoreline Residential. The purpose of the Shoreline Residential designation is "[t]o accommodate residential development" consistent with the SMP, as well as providing "appropriate public access and recreational uses."⁴

1.9 Physical Characteristics. The proposal consists of two separate parcels, a 0.22-acre parcel and a 0.49-acre parcel. Both are undeveloped platted properties located on the Sinclair Inlet shoreline. The parcels, historically used for family outings, consist of planted grass lawn, encroached upon by invasive species (*i.e.*, Silver maples). The parcels have a low-bank waterfront with a protective bulkhead originally built in the 1940's. The bulkhead was in poor condition, having been constructed with stacked "chunks of concrete," so was rebuilt about 2009-10, with DCD and Dept. of Fish and Wildlife approval. DCD described the reconstructed bulkhead as considerably improved upon, with better shoreline habitat functioning. The proposal lies outside the AE flood zone, and there are no streams or wetlands on the sites.

1.10 Utility and Public Services.

- **Water:** West Sound Utility District
- **Power:** Puget Sound Energy
- **Sewer:** West Sound Utility District
- **Police:** Kitsap County Sheriff
- **Fire:** South Kitsap Fire District
- **Schools:** South Kitsap School District

² Exhibits 12, 16 and 17.

³ KCC 17.130.010.

⁴ KCC 22.200.115.

1.11 Access. The sites are accessed off of Beach Drive E., a County maintained right of way.

1.12 Sites' Constraints. The north property is 0.49 acres and the south property is 0.22 acres. Both are subject to UR zoning setbacks,⁵ which require 20 foot front yard setbacks, and five foot rear and side setbacks. In addition, a 15 foot construction setback, plus SMP buffering of 50-85 feet are required. (To utilize the smaller 50 foot buffer, a no net loss report providing for buffer restoration is required). The parcels' relatively small sizes coupled with the extensive setbacks severely constrain site development.

1.13. Habitat Assessment and Shoreline Mitigation Plan - Impacts. The previously created lots are vacant. The no net loss and mitigation report, including the revised report materials, determined there will be no net loss of habitat and that mitigation will offset impacts associated with the shoreline buffer impacts. The technical analysis found there are no effects to endangered or threatened species with the proposal, and consistent with KCC 22.300.100, there will be no net loss of shoreline ecological functions.

1.14. Other.

- **View blockage.** There are no view blockage issues. Surrounding development is located waterward of the proposed residences. Compatibility with surrounding residential development was evaluated through technical analysis, and no compatibility concerns were identified.⁶
- **Bulk and Dimension.** In addition to meeting the urban setback requirements, KCC bulk/dimension requirements will be complied with.
- **Cultural Resources.** No comments were received from the Suquamish Tribe, and no cultural resources have been identified on the sites. If resources are discovered during construction, state requirements apply. *See* the Staff Report and also Ch. 27.44 RCW and Ch. 27.53 RCW.
- **Water Quality/Quantity - Rain Garden.** The proposal will use low impact development techniques to control on-site stormwater. Water quality is addressed through the shared rain garden stormwater system, as detailed in the no net loss and mitigation report.
- **Shoreline Habitat Restoration and Native Planting Plan.** Through the revised no net loss report and mitigation report BGE Environmental prepared,⁷ the shoreline buffer area will be restored with native plantings and enhanced through a planting plan, with invasive species removed. Overall, with this mitigation, vegetation and habitat functions will be improved upon.

⁵ This was addressed at the hearing. *See also* Staff Report, citing to former KCC 17.382.110, FN A4.

⁶ Exhibit 18 (Neighboring Shoreline Proximity Analysis).

⁷ Exhibits 4 and 15 (revised following Ecology consultation).

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review of a Shoreline Variance.

The Hearing Examiner reviews this type of Shoreline Variance permit application.⁸ The Hearing Examiner renders a decision and may approve, approve with conditions, or deny a Shoreline Variance permit, with final approval by the Department of Ecology.⁹ The Hearing Examiner may also continue the hearing to allow for additional information necessary to make *the proper decision*.

The Shoreline Residential designation requires an 85 foot buffer with 15 foot construction setback. With buffer restoration, a buffer reduction is allowed per KCC 22.400.120. Under these criteria, buffers may be reduced to 50 feet through a no net loss report and shoreline restoration plan. This analysis was submitted, and DCD found the KCC criteria for reduced standard buffers had been met.

The Applicants are thus requesting a variance on the northern property to reduce buffers from 50 feet down to 37.5 feet, with full buffer restoration proposed within the buffer, and coupled with the 15 foot setback. The patio and outdoor commons area fan into the setback, but no impervious surfaces extend waterward of the 37.5 foot shoreline buffer. On the southern property the Applicants are requesting a variance to reduce buffers to a variable 20-30 feet, which incorporates a five foot construction setback. Further detail on exact structure and restoration locations was summarized at the hearing, but is detailed in the revised no net loss report and mitigation plan.¹⁰

2.2 Shoreline Variance Criteria.

The purpose of a shoreline variance is to address "extraordinary or unique circumstances relating to the property such that the strict implementation of this master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020."¹¹ A variance "should be granted ... where denial ... would result in a thwarting" of a RCW 90.58.020 policy.¹² "In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect."¹³ Variances landward of the OHWM must meet the following criteria:

- 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;

⁸ KCC 22.500.100(E)(2) and KCC 21.04.100.

⁹ See e.g., KCC 21.04.080, KCC 22.500.100(E)(8).

¹⁰ The revised plan is at Exhibit 15.

¹¹ KCC 22.500.100(E)(1).

¹² KCC 22.500.100(E)(3).

¹³ KCC 22.500.100(E)(3).

- 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.¹⁴

DCD's analysis found that these criteria were met, and detailed the reasons why, which were elaborated on in the Staff Report and at the hearing.¹⁵ The Hearing Examiner concurs with DCD's analysis. Strict application of the SMP setbacks would preclude reasonable use of these two properties. Unless a variance is granted, reasonable residential accommodations and economic use will not be feasible.

The hardships present are specifically related to the properties themselves, not the Applicants' actions. The properties were previously divided under then applicable requirements, and the Applicants have not taken any actions to constrain their ability to build on the properties or created conditions which would exacerbate the situation.

The project design is compatible with the other authorized residential uses within the area. The Applicants and DCD described surrounding development, and provided photographs of surrounding residential structures.¹⁶ Five directly adjacent single family structures were evaluated. All have little to no protective buffering, are of similar square footage, and in some cases contain accessory dwellings or multiple structures. Based on visual estimations, these residences are about 10-30 feet from the shoreline. The proposal is similar in nature to these residential structures, but will be better mitigated to improve shoreline ecological functions, and in general further set back from the shoreline high water mark.

The proposal will not adversely impact shoreline ecological functions. The northern property's setback buffer and restored area will be 37.5 feet, and coupled with a 15 foot construction setback. The smaller southern property will also have a restored 20-30 foot buffer area, coupled with a limited construction setback. Stormwater will be treated through a rain garden, which will be located within the buffer area's outer portion. The no net loss report

¹⁴ KCC 22.500.100(E)(4).

¹⁵ See Staff Report, and analysis in Exhibits 15 and 4.

¹⁶ See Exhibit 18.

reviewed the rain garden and identified planting requirements for native vegetation, including planting locations, species, and monitoring.

As addressed in the technical analysis prepared for this proposal, there are no cumulative impact concerns which could arise from this proposal when coupled with similar actions in this area. Technical analysis was prepared addressing the lack of cumulative impacts and the fact that this variance will not be combined with others so as to cause "substantial adverse effects to the shoreline environment."¹⁷ Further, the use proposed is authorized, and is a preferred shoreline use.¹⁸ As a result, with the limited nature of the proposal and mitigation designed by a qualified professional, the public interest will suffer no "substantial detrimental effects."

To deny the variance would thwart SMA's central policies, which give "priority for single-family residences," and are designed to protect "private property rights consistent with the public interest," while also ensuring the shoreline functions and values are protected.¹⁹ As addressed in considerable detail in the Staff Report, and elaborated on at the hearing, the proposal is consistent with local SMP policies, including those addressing residential development, ecological conservation, property rights, and cultural resource protection.

In summary, the variance allows the property owners reasonable use of their property while also mitigating impacts and improving ecological functions on two vacant sites which presently lack high quality habitat. The variance should be granted as it is consistent with 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 the following 26 conditions are adhered to.

Planning/Zoning.

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. The new residences are subject to the payment of impact fees. Impact fees must be paid at time of permit issuance, or if deferred, must be paid prior to final inspection. No certificate of occupancy will be granted until all impact fees are paid.
3. Any proposed modification (not including cosmetic work such as painting, papering and similar finish work), remodel or expansion of the building, regardless of whether a building permit is required, shall be reviewed by DCD and granted approval prior to such modification, expansion, construction and/or issuance of a building permit.
4. Only one residence shall be permitted on each subject property.

¹⁷ KCC 22.500.100(E)(6).

¹⁸ KCC 22.500.100(E)(7) and KCC 22.600.105.

¹⁹ RCW 90.58.020.

5. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.

6. No mobile home or recreational vehicle shall be allowed as an accessory dwelling unit (ADU).

7. The uses of the subject property are limited to the uses proposed by the Applicants and any other uses will be subject to further review pursuant to the requirements of the KCC. Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not be, and is not to be, construed as approval for more extensive or other utilization of the subject property.

8. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the Applicants represent that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the Applicants agree to promptly bring such development or activities into compliance.

9. The decision set forth herein is based upon representations made and exhibits contained in the project application (16 04643). Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.

10. This Shoreline Variance permit approval shall automatically become void if no development permit application is accepted as complete by DCD within two years of the Notice of Decision date or the resolution of any appeals.

11. Any violation of the conditions of approval shall be grounds to initiate revocation of this Shoreline Variance permit.

Development Engineering.

12. At building permit application, Applicants shall submit KCPW Form 1601 for issuance of a concurrency certificate, as required by KCC Section 20.04.030, Transportation Concurrency.

13. 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.

14. The information provided demonstrates this proposal contains critical areas. A

Site Development Activity Permit (SDAP) may be required and will be analyzed at time of building permit submittal.

15. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the Shoreline Variance Permit application was deemed complete, October 12, 2016. 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.

16. The Washington State Department of Ecology (Ecology) may require registration of the infiltration trench as a Underground Injection Control (UIC) well in accordance with the Underground Injection Control Program (Chapter 173-218 WAC). The Applicants shall contact Ecology to determine if the facility is regulated under the UIC program.

17. The design of the infiltration facilities will be in accordance with Section 7.3.4 of the Kitsap County Stormwater Design Manual.

18. The infiltration facilities shall remain off line until the drainage areas are stabilized and the water quality treatment facility is adequately established. Temporary erosion and sedimentation ponds shall not be located over infiltration facilities. In addition, retention ponds shall not be utilized as temporary erosion and sedimentation control ponds.

19. During the construction of the proposed infiltration facilities, the Project Engineer shall provide an inspection to verify that the facilities are installed in accordance with the design documents and that actual soil conditions encountered meet the design assumptions. The Project Engineer shall submit the inspection report properly stamped and sealed with a professional engineer's stamp to Development Services and Engineering.

20. All retention facilities shall be a minimum of 200 feet from any slope steeper than 30%. This distance may be reduced based on a geotechnical engineering report. That analysis will be prepared by a Civil Engineer licensed in the State of Washington, knowledgeable in the practice of soils engineering and mechanics. The analysis will address the effects of groundwater infiltration, seepage, potential slip planes, and changes in soil bearing strength. The proposed facilities will be designed following the recommendations of the geotechnical analysis.

21. 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.

Environmental.

22. The Applicants shall follow the recommendations of the No Net Loss report and revised report by BGE Environmental LLC and the associated mitigation and planting plan.

23. The planting and mitigation plan will be monitored for a minimum of five years to

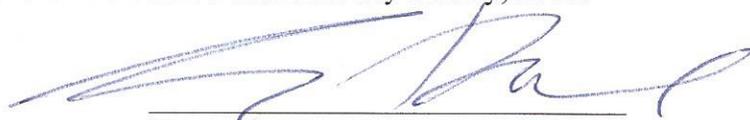
ensure survival.

24. The newly created single family residences will be limited to 35 feet in height per KCC 22.500.100(a)(2). Building height is defined in KCC 17.110.140.

25. Permit approval requires that refuse shall not be placed in buffers.

26. There shall be no clearing of vegetation or grading in the buffer area, as is depicted on the approved site plan. Prior to any clearing or development, please contact Development Services and Engineering Environmental staff at (360) 337-5777 to confirm buffer boundaries.

THIS DECISION is entered this 22nd day of May, 2017.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond