



Notice of Hearing Examiner Decision

08/24/2018

To: Interested Parties and Parties of Record

RE: Project Name: Olsen Shoreline Residence
 Applicant: Greg and Claudia Olsen
 PO Box 7
 Olalla, WA
 Application: Shoreline Variance (III)
 Permit Number: 18-01043

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

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

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

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

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

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

CC: Applicant/Rep.: Design Workshop, Charles Ritter;
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Owner: Greg and Claudia Olsen, Greggolsen@msn.com
Engineer or Project Representative: Hodge Engineering,
lissa@hodgeengineering.com Kitsap County Health District, MS-30
Kitsap County Public Works Dept., MS-26
DCD Staff Planner: Candace Vickery, Stormwater/Traffic
DCD Staff Planner: Holly Roberts, Planning/Zoning

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

**Shoreline Variance
File No. 18-01043**

August 17, 2018

1. FINDINGS OF FACT

1.1 Proposal. The Applicants request a Shoreline Variance to allow a single-family residence to be constructed. The Applicants/property owners and site location are as follows.

Applicants/Property Owners: Greg and Claudia Olsen
P. O. Box 7
Olalla, WA 98359.

Location: 14447 Crescent Valley Road SE
Olalla, WA 98359
Assessor No. 102202-2-011-2009

1.2 Hearing. An open record public hearing was held on August 9, 2018. The Kitsap County Department of Community Development ("DCD"), through Ms. Barnhart, testified on how the proposal conforms with shoreline variance requirements. The Applicant, through Mr. Olsen, addressed the need for the variance to allow construction of the residence and expressed concurrence with DCD's presentation.

A neighbor raised concerns. She objected to the characterization of the original structure on the property as having burned down, and raised concerns about boundary line accuracy. She also had a question on the scope of reconstruction work. No other person present indicated a wish to submit comment.

The Planning Department clarified that the boathouse is not part of the proposal. The proposal is for a two story home, which will be located away from the shoreline from the pre-existing foundation. And, whether or not the original structure was burned by a fire, the site is very constrained by topography and meets the County's variance criteria.

1.3 Administrative Record. The Hearing Examiner admitted Exhibits 1-20, which included the Staff Report and Power Point presentation.

1.4 SEPA. The proposal is exempt from SEPA.¹

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

1.5 Public Notice. The proposal was properly noticed, with publication and mailing 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.

1.6 Public Comment. Except at the hearing, no public comments were received.

1.7 Agency/Tribe Comment. The proposal was circulated within the County, and comment was received regarding regulatory compliance. There were no objections to approval, as long requirements are met. There were no comments provided by the Tribes related to cultural resources. DCD proposed a condition providing for notification of DCD, the Washington State Office of Archaeology and Historic Preservation, and affected tribes if archaeological resources are uncovered during excavation.³

1.8 Zoning/Plan Designations. The Comprehensive Plan and zoning designation is Rural Residential, or RR. RR zoning allows one dwelling unit per five acres. RR "promotes low-density residential development and agricultural activities that are consistent with rural character."⁴ The surrounding properties are zoned RR. The shoreline designation is Rural Conservancy.

1.9 Physical Characteristics. The 0.26-acre parcel is on the Colvos Passage shoreline. Topography is immediately steep off the access from Crescent Valley Road SE. The location has a mixed mature forest with an open understory. English ivy covers the ground and leads up multiple tree trunks. A defined trail allows switchback access down the slope. An old structural foundation is midway down the slope. From there, a wooden terraced walkway provides shoreline access along the slope. A boathouse is at the property's southeast corner. The nearshore includes mixed grasses and forbs. A common use area exists with a fire pit and sitting benches. The shoreline contains large woody debris, with a five-foot wide cover of sparse dune grass landward of the ordinary high water mark.

1.10 Views. There are no view blockage concerns. The adjacent parcel to the north is vacant and the existing single-family residence to the adjacent south parcel is waterward of the proposed structure.⁵

1.11 Utility and Public Services.

- **Water:** Olalla Public Water System
- **Power:** Puget Sound Energy
- **Sewer:** On-site septic system (proposed)
- **Police:** Kitsap County Sheriff
- **Fire:** South Kitsap Fire & Rescue
- **Schools:** South Kitsap School District

² Exhibits 13, 16, and 19.

³ See KCC 22.400.130.

⁴ KCC 17.130.010.

⁵ KCC 22.400.135.

1.12 Access. Site access is off Crescent Valley Road SE, a County-maintained right of way.

1.13 Site Constraints. The proposed building site is in the approximate location of a previously existing single-family residence, which was destroyed by fire in 2014/15. While the nature of the previous structure was disputed by a neighbor at the hearing, it is not disputed that a foundation remains. Regardless of what existed before, a Shoreline Variance is required to rebuild, as the time frame to apply for a building permit within the pre-existing footprint expired. The footprint will be below the Reduced Standard Shoreline Buffer for the Rural Conservancy Shoreline Environment Designation of 100-feet from Ordinary High Water.

The Shoreline Variance would allow for 2-bedroom, 2-story single-family residence with associated driveway, parking area, and walkway. The residence will be about 60 feet from Ordinary High Water Mark, which is more than a 25% reduction of the Reduced Standard Buffer of 100 feet. The residence will be slightly landward of the existing footprint by 8 feet. The project will remove 150 square feet of existing impervious footprint and add 600 square feet of new impervious footprint, resulting in 450 square feet of new impervious surface impacts below the 100-foot reduced buffer. A Shoreline Mitigation Plan and No Net Loss Report were prepared.⁶

1.14 Steep Slopes. The site is mapped in Kitsap County GIS as a 'High Geological Hazard Area,' as defined in Kitsap County Code 19.400. This classification required the submittal of a Geotechnical Report.⁷ The report concluded that the development as proposed is feasible, with conditions for foundation placement. The foundation on the home's eastern is to be embedded at least three feet below grade, with the deck foundation at least six feet below grade. The west end and portions of the north foundation walls are to be designed as retaining walls, including wall footings embedded at least 18-inches below the adjacent grade and 10 horizontal feet of soil. Per the Geotechnical Report⁸ recommendation, all stormwater is to be piped down the slope to the shoreline with a T-diffuser end. The project has been reviewed under Kitsap County Code Title 12 and conditions for further review and approval with the Building Permit are provided in the DSE Preliminary Conditions Memorandum.⁹

1.15 Habitat Assessment and Shoreline Mitigation Plan. The No-Net-Loss and Mitigation Report¹⁰ finds there will be no net loss of habitat and that mitigation will offset impacts associated with the shoreline buffer impacts. The proposed building site is the only suitable location due to the slopes and need to site the drainfield at its proposed location further landward. Due to the physical lot constraints, the project has been sited in the most appropriate location and the size minimized to fit the building site and within the median size of neighboring homes.

⁶ They address both this proposal and a future proposal for lot immediately adjacent to the north under the same ownership.

⁷ Exhibit 9.

⁸ Exhibit 9.

⁹ Exhibit 14; KCC 22.400.125.

¹⁰ Exhibit 8.

The development is entirely above Ordinary High Water and is designed per geotechnical engineer recommendation to not require additional shoreline or bluff stabilization. Mitigation follows SMP locational and mitigation policies.¹¹ The Examiner incorporates the Staff Report findings, which detail the County's SMP policies and elaborate on the proposed mitigation.

1.16 Conditions. The DCD proposed conditions ensure project development consistent with SMP requirements, and with the above findings. The Examiner finds they should be applied to the project as written, so has proposed no revisions.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review of a Shoreline Variance. The Hearing Examiner reviews this type of Shoreline Variance permit application.¹² The Hearing Examiner decides and may approve, approve with conditions, or deny a Shoreline Variance permit, with final approval by the Department of Ecology.¹³

2.2 Code Requirements Specific to a Shoreline Variance.

2.2.1 SMP Regulations' Rural Conservancy Setbacks. The Rural Conservancy shoreline designation provides for a 130-foot buffer and 15-foot construction setback, unless a buffer reduction is authorized per KCC 22.400.120. Through this criteria, and per KCC 22.400.120(B)(2)(d), buffers may be reduced to 100 feet with a no-net-loss report analysis and an associated mitigation plan, "to achieve no net loss of shoreline ecological functions." With preparing the No-Net-Loss Report and Mitigation Plan, the Applicants met these criteria. However, as the lot is constrained by both size and shape, it cannot support a minimally sized home above the standard buffer.¹⁴ The Shoreline Variance is required.

2.2.2 Shoreline Variance Criteria, KCC 22.500.100(E). The purpose of a shoreline variance is to address "extraordinary or unique circumstances relating to the property such that the strict implementation of this master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020."¹⁵ A variance "should be granted ... where denial ... would result in a thwarting" of a RCW 90.58.020 policy.¹⁶ "In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect."¹⁷ Variances landward of the OHWM must meet these 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;

¹¹ KCC 22.400.105; KCC 22.400.110.

¹² KCC 22.500.100(E)(2) and KCC 21.04.100.

¹³ See e.g., KCC 21.04.080, KCC 22.500.100(E)(8).

¹⁴ KCC 22.400.120(B)(3).

¹⁵ KCC 22.500.100(E)(1).

¹⁶ KCC 22.500.100(E)(3).

¹⁷ 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.¹⁸

DCD's analysis found these criteria were met, and detailed the reasons in the Staff Report,¹⁹ which were elaborated on at the hearing. The Hearing Examiner concurs with and incorporates DCD's analysis. Strict application of the SMP setbacks would preclude reasonable use of this property. Unless a variance is granted, reasonable economic use of the property will not be feasible.

This hardship is specifically related to the property itself, not the Applicants' actions. The variance request is due to the existing non-conforming setting of the property. The most restrictive element is the site's steep topography and relatively small size, which constrains the buildable area. Due to the depth of the lot and the slopes, and Kitsap County Health drainfield compliance requirements, the Rural Conservancy reduced buffer cannot be achieved. Relief to the standard and reduced buffer are necessary to allow reasonable development.

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

The variance will not constitute a grant of special privilege not enjoyed by other properties in the area. The neighboring parcels are built out or undeveloped. Structure ages range from the 1940's to the early 2000's. Living space is variable within single to two-story buildings. Neighboring houses have a median footprint of approximately 1,500 square feet. Lot sizes range from 0.26 acres up to nearly 2 acres, with tidal ownership. The proposed structure has a footprint of 1,212 square feet with upper level living space of 830 square feet, which aligns below the median footprint within the common developed shoreline properties. No associated outbuildings are proposed.

¹⁸ KCC 22.500.100(E)(4).

¹⁹ Exhibit 18.

The variance requested is the minimum necessary to afford relief. Site plan design reflects compliance with other titles, specifically zoning setbacks and Kitsap Public Health District standards. Once these requirements were applied to the site and the geotechnical concerns considered, the existing footprint area was the most practical. The proposed buffer reductions are minimized as redevelopment over a previously existing use, and set landward to the greatest extent feasible.

The public interest will suffer no substantial detrimental effect. The proposed development retains the residential use, with shoreline buffer restoration to meet the policy for no net loss of shoreline ecological function.

To deny the variance would thwart SMA's central policies, which give "priority for single-family residences," and protect "private property rights consistent with the public interest," while also ensuring the shoreline functions and values are protected.²⁰ As detailed in the Staff Report, and elaborated on at the hearing, the proposal is consistent with local SMP policies, including those addressing residential development, ecological conservation, and property rights.

In summary, the variance allows the property owners reasonable use of their property while also mitigating impacts. 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 these 16 conditions are adhered to.

Development Engineering.

1. 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.

2. The information provided demonstrates this proposal is a Small Project as defined in KCC Title 12, and meets the criteria to require a Simplified Drainage Review-Engineered level of drainage review. Engineered drainage plans are required to be submitted with the building permit.

3. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the Shoreline Variance application was deemed complete, March 6, 2018. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of building permit application.

²⁰ RCW 90.58.020.

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

5. Prior to building permit issuance, a recorded easement document shall be submitted for the stormwater facilities located off-site on the northerly adjoining parcel.

6. If the project proposal is modified from that shown on the submitted site plan dated March 19, 2018, Development Services and Engineering will require additional review and potentially new conditions.

Environmental.

7. This project shall follow the recommendations of the Subsurface Exploration and Geotechnical Engineering Evaluation report (Coastal Solutions, LLC, 1/10/17).

8. This project will comply with the No Net Loss and Mitigation Plan (BGE Environmental, LLC; 8/18/17). Planting must be completed, inspected and approved prior to the final inspection of the building permit. There will be a 5-year monitoring period with annual reports provided to DCD demonstrating compliance with the mitigation plan in this report.

9. The proposed mitigation planting for this proposal includes off-site mitigation. In total, the mitigation planting area is intended to also mitigate for standard shoreline buffer impacts for future development to the off-site parcel, for a total mitigation area of 1,470 square feet. 900 square feet is intended to mitigate for this proposal only. The additional planting area, for purposes of this proposal, is considered restoration only. Should the current or future owner of the off-site parcel wish to utilize this restoration as mitigation for the purposes of their proposal, they may do so only within five years from the date of inspection of the planting (Title 22, Appendix B.5).

10. Prior to building permit issuance, a Notice to Title shall be recorded with the Kitsap County Auditor's Office for the adjacent property that is the subject of the off-site mitigation (parcel number 102202-2-010-2000). This Notice to Title shall indicate that the Shoreline Buffer Mitigation, as provided by the No Net Loss and Mitigation Plan (BGE Environmental, LLC; 8/18/17) be retained in perpetuity.

11. If archaeological resources are uncovered during excavation, the contractor and property owners must immediately stop work and notify DCD, the Washington State Office of Archaeology and Historic Preservation, and affected tribes.

Traffic and Roads.

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

13. With the building permit application, the Applicants shall submit plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with county rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter 11.22 of the KCC. Existing approaches may need to be improved to meet current standards.

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

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

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

THIS DECISION is entered this 17th day of August, 2018.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond