

ISLAND COUNTY HEARING EXAMINER

RE: Critical Area Alteration)
Applicant: Ken & Andrea)
Schneider)
)
)
)
)

File No. CAA 141/10
FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION

SUMMARY OF APPLICATION AND DECISION

APPLICATION: The Applicants, Ken and Andrea Schneider, request approval of Island County’s shoreline review of and recommended buffer for a deck expansion within a Marine Fish and Wildlife Habitat Conservation Area.

DECISION: The Hearing Examiner hereby grants Approval of Island County’s recommendation for the requested Critical Areas Alteration and Shoreline Exemption to allow a deck expansion within a Marine Fish and Wildlife Habitat Conservation Area, subject to the Conditions of Approval, as modified herein, and recommended by Staff in the attached Staff Report.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing on January 20, 2011.

I.

PRELIMINARY INFORMATION

Applicant: Ken & Andrea Schneider

Property Location: 2363 Hidden Beach Drive, Greenbank, WA 98253

Applicable Ordinances: ICC 16.19, Island County Land Use Review Process, ICC 17.02, Island County Critical Areas Ordinance, ICC 17.03, Island County Zoning Code, ICC 17.05, Island County Shoreline Use Regulations

Publication: January 8, 2011, issue of the Whidbey News Times /SW Record

Mailing of Notice to Applicant: November 30, 2010 & December 23, 2010

Sign Posted: September 1, 2010

Mailing of Staff Report: January 10, 2011

Date of Application: August 23, 2010

Hearing Date: January 20, 2011

Exhibit Log:

1. Staff Report
2. Master Land Development Permit Application, 141/10 CAA; date received 7/26/10
3. Application Checklist
4. Form O Application for Critical Areas Alteration; date received 7/26/10
5. Form S Application for Shoreline Variance/Conditional Use Permit; date received 7/26/10
6. Variance Criteria
7. Field Indicator Worksheet
8. Site Plan depicting existing deck & new deck; date received 7/26/10
9. Septic tank & drainfield site plan for septic permit 114-78; date received 7/26/10
10. Quarter section map; date received 7/26/10
11. Photo of house and deck; date received 7/26/10
12. Aerial color photo depicting Hidden Beach Drive; date received 7/26/10
13. Request for Comment; dated 8/23/10
14. Account Summary Snapshot for S7115-00-0000K-0
15. Zoning/Critical areas summary for S7115-00-0000K-0
16. Access Land Use & Building Permit Summary for S7115-00-0000K-0
17. Quarter section map
18. ArcExplorer 2.0 Critical Areas printout
19. 7 Photos of deck depicting existing & addition along with north & south views
20. Email with comments from Bill Poss to Justin Craven; date emailed 9/3/10
21. Notice of Complete Application; dated 8/23/10
22. Affidavit of Mailing the Public Notice to Parties of Record and/or Property owners within 300 feet; date notarized 8/27/10
23. List of Parties of Record and/or Property owners within 300 feet along with account summary snapshot for each.
24. Affidavit of Mailing the Public Notice to Kenneth & Andrea Schneider; date notarized 8/27/10
25. Notice of Application; date of Notice 9/1/10
26. Placement of the Sign; date of Notice 9/1/10
27. Notification of Hearing Date letter to Kenneth & Andrea Schneider from Paula Bradshaw; dated 11/30/10
28. Affidavit of Mailing the Notification of Hearing Date; date notarized 11/30/10
29. Affidavit of Posting the Public Notice Sign; date notarized 9/1/10

30. Notification of Re-scheduling Hearing Date letter to Mr. & Mrs. Schneider from Paula Bradshaw; dated 12/23/10
31. Affidavit of Mailing the re-scheduling of Hearing Date to Kenneth & Andrea Schneider; date notarized 12/23/10
32. Letter with Staff Report from Paula Bradshaw to Ken & Andrea Schneider; dated 1/10/11
33. Affidavit of Mailing the Staff Report to Ken & Andrea Schneider; date notarized 1/10/11
34. Affidavit of Publication in 1/8/11 issue of the WNT/ SW Record, dated 1/10/11.

HEARING TESTIMONY

Justin Craven
Island County Planning & Community Development
P.O. Box 5000
Coupeville, WA 98239

Ken Schneider
3417 111th Drive NE.
Lake Stevens WA 98258

II.

The Applicants are requesting approval of a Critical Areas Alteration and Shoreline Exemption within a Marine Fish and Wildlife Habitat Conservation area buffer and shoreline jurisdiction in order to allow for a deck expansion on property located at 2363 Hidden Beach Drive, Greenbank, Washington.

The Applicant has indicated that the Staff Report is factually correct. The Applicant stated he had no objection to the Conditions of Approval recommended by Staff. There was no public comment on this matter at the hearing. The Findings of Fact and Conclusions of Law of the Critical Areas Planner for Island County Planning and Community Development, as set forth in the Staff Report, Exhibit #1 in the Hearing Examiner's file, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

At the public hearing, the Hearing Examiner agreed to the modification made to the number of plantings to be installed between the deck and bulkhead [Condition No. (c), page 8 of the attached Staff Report.

III.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

The Island County Critical Areas Planner has recommended approval of the requested Critical Areas Alteration and Shoreline Exemption for the proposed buffer alteration for a deck expansion within a Marine Fish and Wildlife Habitat Conservation Area.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit No. 1 in the Hearing Examiner's file. Subject to the Conditions of Approval set forth in the attached recommendation from Island County Planning and Community Development, the Hearing Examiner concludes that the project conforms to the Island County Critical Areas Ordinance, Chapter 17.02 ICC, the Island County Shoreline Master Program, Chapter 17.05 ICC, and WAC 173-27-040. Shoreline review occurred through the Critical Areas Alteration Application, (file number CAA 141/10). The Hearing Examiner should approve the requested Critical Areas Alteration and Shoreline Exemption, subject to conditions.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

The Hearing Examiner for Island County hereby grants approval to Ken and Andrea Schneider for the proposed Critical Areas Alteration and Shoreline Exemption allowing a deck expansion within a Marine Fish and Wildlife Habitat Conservation Area buffer within shoreline jurisdiction, on property located at 2363 Hidden Beach Drive, Greenbank, Washington, pursuant to the conditions set forth in the attached Staff Report, Exhibit No. 1 of the Hearing Examiner file.

Entered this 26th day of January 2011, pursuant to authority granted by State of Washington and Island County.

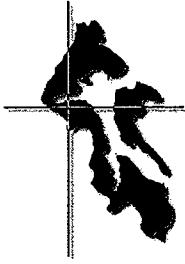


MICHAEL BOBBINK
Island County Hearing Examiner

APPEAL PROCESS:

CAA

This decision of the Hearing Examiner shall be a final and conclusive decision unless within fourteen (14) days following the mailing of such decision a written statement of appeal is filed with the Island County Board of Commissioners by the applicant, a Department of the County, or Party of Record, who is also an Aggrieved Person. Said statement shall set forth any alleged errors and/or the basis for appeal and shall be accompanied by a fee pursuant to the fee schedule adopted by the Board; provided that such appeal fee shall not be charged to a department of the County or to other than the first appellant ICC 16.13.100.b; ICC 16.19.190.



ISLAND COUNTY PLANNING & COMMUNITY DEVELOPMENT

Robert H. Pederson, AICP
Director

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Critical Areas Alteration & Shoreline Exemption Recommendation of Approval with Conditions

1. General Information

Applicants: Ken & Andrea Schneider
3417 111th Drive NE.
Lake Stevens WA 98258

Parcel Number: S7115-00-0000K-0

Permit Number: CAA 141/10

Site Location: 2363 Hidden Beach Drive, Greenbank, WA 98253

Staff Person: Justin Craven, Critical Areas Planner

Staff Report Date: January 10, 2011

2. Parcel Information

Zoning: Rural Residential

Shoreline Designation: Shoreline Residential

Parcel Size: Approximately 9,638 square feet

Project Description: After the fact review of a deck expansion within a Marine Fish and Wildlife Habitat Conservation Area (MFWHCA) buffer and shoreline jurisdiction. Island County mistakenly issued a building permit for the deck expansion without addressing the MFWHCA buffer or conducting shoreline review.

3. Applicable Sections of Code

- a. ICC 16.19, Island County Land Use Review Process
- b. ICC 17.02, Island County Critical Areas Ordinance
- c. ICC 17.03, Island County Zoning Code
- d. ICC 17.05, Island County Shoreline Use Regulations

4. Findings of Fact

- a. The application was accepted as complete on August 18, 2010.
- b. Pursuant to ICC 17.03, the parcel is zoned Rural Residential.
- c. Pursuant to ICC 17.03.070, the proposed use is permitted in the Rural Residential zone.
- d. The parcel was legally created and is consistent with the definition of Existing pursuant to ICC 17.02 and 17.03.
- e. A Marine Fish and Wildlife Habitat Conservation Area exists offshore and adjacent to the subject parcel. As such, ICC 17.02.050.C.4 requires a 75-foot buffer extending from the ordinary high water mark (OHWM). For this parcel, the OHWM is the seaward extent of the bulkhead.
- f. Pursuant to ICC 17.02.200.10, structures on the parcel in question are subject to a 50-foot shoreline setback. Please note this 50-foot setback is different from the 75-foot MFWHCA buffer.
- g. Pursuant to ICC 17.05.200.11, normal appurtenances to a residence, such as a deck, may be constructed within the 50-foot shoreline setback so long as they do not obstruct the water view corridor of adjacent waterfront residences.
- h. ICC 17.02.060 (Alteration of Wetlands, Deep Water habitats, Fish and Wildlife Habitat Conservation Areas and their Surrounding Buffers) can allow encroachment into a critical area and buffer.
- i. Pursuant to ICC 16.19.040.B, alterations of Fish and Wildlife Habitat Conservation Area buffer require a Type 3 decision process.
- j. The applicants received an approved building permit (#10-0324) to expand an existing 43-foot wide deck approximately 10 feet towards the bulkhead. Said building permit was erroneously issued by Island County without shoreline or critical area review.

- k. The Critical Areas Ordinance, specifically ICC 17.02.060, must be addressed through the review of a Critical Areas Alteration application because the deck addition is located within a MFWHCA buffer.
- l. Planning and Community Development received no public comments during the comment period from October 1, 2010 through September 1, 2010.

5. Analysis and Conclusions

Compliance with 17.02.060.B, Alteration of Wetlands, Deepwater Habitats, Fish and Wildlife Habitat Conservation Areas and their Surrounding Buffers is described below:

- a. The alteration will not preserve, improve, or protect the functions of the MFWHCA buffer. Mitigation in the form of buffer restoration is feasible and appropriate for this project.
- b. The proposal will impact approximately 430 square feet of MFWHCA buffer. No vegetation disturbance resulted from expanding the deck, as this buffer area consists of unvegetated sand. The affected buffer provides limited ecological functions relative to the MFWHCA because the buffer is entirely unvegetated and separated from the marine environment by a concrete bulkhead. The deck is slatted and does not create an impervious surface. Water quality impacts are expected to be insignificant.
- c. To mitigate potential impacts, the applicants shall plant the remaining buffer between the deck and bulkhead, being approximately 5 feet by 43 feet, to introduce near-shore vegetation.
- d. The project, subject to conditions of approval, is consistent with Chapters 17.02, 17.03, and 17.05 of the Island County Code.

6. Recommended Conditions of Approval

This project conforms to the Island County Critical Areas Ordinance, Chapter 17.02 ICC, the Island County Shoreline Master Program, Chapter 17.05 ICC, and WAC 173-27-040. Shoreline review occurred through the Critical Areas Alteration application (file number CAA 141/10). Planning and Community Development recommends approval of the Critical Areas Alteration and Shoreline Exemption applications subject to the following conditions:

- a. All development/activities shall be in substantial conformance with the submitted plans, subject to any modifications contained in the following conditions of approval, unless specific approval from this Department is granted.
- b. The railing shall not obstruct neighbors' water view corridor.
- c. The applicants shall plant the remaining buffer between the deck and bulkhead, being approximately 5 feet by 43 feet, to introduce near-shore vegetation. At least 20 plants, spaced approximately 2-3 feet apart on center, must be installed. Any of the following species may be used: *Achillea millefolium*, *Armeria maritima*, *Artemisia suksdorfii*, *Brodiaea (or Tritoleia) hyacinthina*, *Elymus mollis*, *Lathyrus japonicus*, or *Lathyrus littoralis*. Other appropriate native species may be substituted after receiving approval from the Planning Department. Approximately half of the plants are to be installed immediately next to the bulkhead.
- d. All mitigation planting shall be completed no later than November 30, 2011. Plants typically have a higher survival rate if planted during the wet season. Plants installed during the dry season will likely require supplemental watering.
- e. All plants installed within the MFWHCA buffer must be native to Island County. Plant species may be substituted after receiving approval from this department.
- f. Native species shall not be removed to install the required plants.
- g. Within 2 weeks following completion of all mitigating work, a letter or e-mail shall be sent to Justin Craven stating all mitigation work has been completed. Please include the number of each species planted and describe any deviations.
- h. Monitoring is required for a period of three years from the date the plan is implemented. A yearly monitoring report must be submitted no later than October 31st for three years following the initial planting. The report shall include at a minimum, the number of plants alive and dead, percent survival, general condition of the plants (vigor) and the area of restoration, amount of non-native species, and a proposal to improve any unsuccessful aspects of the plan. Staff reserves the right to verify submitted monitoring reports.
- i. If an 80% survival rate of the installed plants is not achieved during the three year monitoring period, all dead plants shall be replaced and the monitoring period may be extended.
- j. Pesticides, herbicides, or fertilizer shall not be used within the 75-foot MFWHCA buffer.
- k. No equipment or construction materials shall be stored or parked seaward of the bulkhead.

- l. Any construction and demolition debris shall be disposed of at a site approved by Island County Public Works Department. Treated wood must be separated and disposed of at an Island County transfer station. There shall be no dumping or disposing of debris seaward of the bulkhead.
- m. Applicants must maintain conformity to the submitted plans as approved in this decision. Any future modifications or revisions to the approved plan must first receive approval by this department.
- n. In the event that items of possible archaeological or historic significance are uncovered during excavation, the applicants shall cease excavation activities and immediately report such findings to the County.
- o. Hours of construction shall be limited to those associated with normal business hours (8:00 a.m. to 6:00 p.m.). If the applicant needs to work outside of normal business hours to access the project location, please contact the immediate surrounding neighbors and the Island County Planning Department at (360) 678-7800.
- p. The applicants bear the full responsibility of notifying site crews of the permit conditions and shall be held fully accountable for any activity which results in on or off-site hazards or damages.
- q. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years of the effective date the permit. Island County may authorize a single extension for a period not to exceed one year 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 any parties of record and the department.
- r. The applicants bear the full responsibility of notifying site crews of the above noted permit conditions.

SIGNED THIS _____ DAY OF _____, 2011

Justin Craven, Critical Areas Planner