

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Variance – Critical Areas) C.A. VAR 2018-0021
Application for)
Mark and Karalee Stokes) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Critical Areas Variance Permit to allow for wetland buffer impacts and a decreasing in with of standard wetland buffers in order to allow construction of a single-family residence and appurtenances on property located at 2003 East Smith Road, Bellingham, Washington.

Decision: The requested Critical Areas Zoning Variance Permit is approved, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

I.

Applicants: Mark and Karalee Stokes

Property Address: 2003 East Smith Road
Bellingham, Washington 98226

Legal Description: A portion of the NW ¼ of the NE ¼ and the NE ¼ of the NE ¼ of Section 35, Township 39 North, Range 03 East, W.M.

Assessor's Parcel Number: 390335 375485

Zoning: Rural [R5A]

Comprehensive Plan: Rural

Total Acreage: 4.66 acres

Roads: Public

Water and Sewer Supply: Private, On-Site

Fire Protection: Whatcom Fire District No. 4

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Mount Baker School District

Vegetation: The site is largely relic pasture interspersed with areas of shrubbery.

Adjacent Land Uses:
North: R5A – Single-family Residential
East: R5A - Single-family Residential
South: R5A - Single-family Residential
West: R5A –Single-family Residential

Authorizing Codes, Policies, Plans, and Programs

1. Revised Code of Washington [RCW] Chapters 36.70
2. Revised Code of Washington [RCW] 58.17
3. Whatcom County Comprehensive Plan
4. Whatcom County Code, Title 2, Chapter 2.33-Permit Review Procedures
5. Whatcom County Code Chapter 12.08, Development Standards
6. Whatcom County Code Chapter 15, Building Code/Fire Code
7. State Environmental Policy Act (SEPA)
8. Washington Administrative Code Chapter 197-11
9. Whatcom County Environmental Policy Administration Chapter 16.08
10. Whatcom County Code Chapter 16.16, Environment - Critical Areas
11. Whatcom County Code, Title 14, Use of Natural Resources
12. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
13. Whatcom County Code Title 24, Health Regulations

Legal Notices: Posted – Notice of Public Hearing, February 14, 2019

Mailed – Notice of Application, December 7, 2018
Notice of Public Hearing, February 8, 2019

Published – Notice of Application, December 7, 2018

Notice of Public Hearing, February 14, 2019

Hearing Date: February 27, 2019

Parties of Record

Mark and Karalee Stokes
4021 Cedarbrook Court
Bellingham, Washington 98229

Matt Mahaffie, Natural Resources Planner
Planning and Development Services

Exhibits

- 1 Critical Areas Variance Application, with attachments
 - 1-1 Agent Authorization
 - 1-2 Property Owners Address Instructions for Notice Purposes
 - 1-3 Chicago Title Statutory Warranty Deed, with Exhibit A: Exceptions
 - 1-4 Determination of Complete Application, January 22, 2018
 - 1-5 Property Owners Mailing Labels
 - 1-6 Customer Receipt, September 27, 2018
- 2 Staff Report, dated February 2, 2019
- 3 Proposed Site Plan, Buffer Impacts, and Mitigation Map, surveyed by Larry Steele and Associates, Inc. dated March 12, 2018
- 4 2nd Revised Critical Areas Assessment Report and Mitigation Plan: Wetlands and Habitat Conservation Areas – Stokes Smith Road Property, prepared by Miller Environmental Services, LLC, dated October 17, 2018
- 5 Certificate of Mailing Notice of Application, December 7, 2018
- 6 Bellingham Herald Tear-Sheet, Notice of Application, published December 7, 2018
- 7 Certificate of Mailing Notice of Public Hearing, February 8, 2019
- 8 Bellingham Herald Affidavit of Legal Notice of Public Hearing, February 14, 2019
- 9 Certificate of Posting of Notice of Application and Public Hearing, February 14, 2019

II.

The Applicant is seeking a Critical Areas Zoning Variance to construct a single-family home. The site is fully encumbered by wetlands and the wetland buffers. The project

requires a variance for the scope of the wetland buffer impacts. A mitigation plan has been prepared to address the unavoidable impacts to the buffers of Category II and III wetlands. The home is proposed in a fashion to accommodate the needs of the applicants' permanently disabled son, with the accessory building necessary to house exercise and therapy equipment as well as storage for a mobility cart. Therefore, the proposal has been modified and kept to a minimum, but still exceeds the size thresholds put forth for reasonable use under the Whatcom County Code ("WCC").

III.

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the requested Zoning Variance Permit in the Staff Report, Exhibit No.2, dated February 2, 2019, subject to conditions. The Findings, Conclusions, and Recommendations set forth in the Staff Report, Exhibit No.2, a copy of which is attached hereto, are incorporated herein by this reference. The Applicant has indicated that there are no factual inaccuracies in Staff's factual findings and no objection to the Conditions of Approval requested by Staff. There was no public comment on the application at the public hearing.

The Findings in the Staff Report are hereby adopted by the Hearing Examiner as Findings of Fact herein.

IV.

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.

As a single-family residence, the construction of the proposed single-family residence is categorically exempt from SEPA pursuant to WAC 197-11-800(1)(b)(i).

Pursuant to WCC 20.84.120 (1)-(3), the Applicants' circumstances are found to be applicable for the granting of the Critical Areas Zoning Variance. As the site is fully encumbered by wetlands and the wetland buffers, allowing development only under the Reasonable Use standards of WCC 16.16 would cause hardship on the owner for the reasons set forth in the staff report, and does not allow for reasonable development the property under these specific circumstances.

As conditioned by the recommendations of the staff, and subject to the Conditions of Approval, any Critical Areas Variance granted must be consistent with the applicable Variance Criteria. This application for a Critical Areas Variance is consistent with the applicable Variance Criteria, and consequently granting a Variance allowing the requested development to exceed the Reasonable Use standards of WCC 16.16.270 is appropriate.

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 concurs with the Technical Review Committee's Recommendation and approves the Applicant's Variance request to decrease the site wetland buffers as proposed, subject to the requested Conditions of Approval.

A Critical Areas Variance Permit is hereby granted to Mark Stokes to decrease the site's wetland buffers to accommodate the construction of a single-family residence on Assessor's Parcel No.390335 382466 0000, addressed as 2003 East Smith Road, Bellingham, Washington, subject to the following conditions:

1. Permit Changes or Modifications: The use and location on site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. Building Permit: Whatcom County Planning and Development Services must issue a building permit prior to the commencement of construction activities.
3. Stormwater/Watersheds: Development will utilize four (4) splash blocks (1 per 700sf of roof area) which maintain the required 50' vegetated flow path at all times.
4. Stormwater/Watersheds: The section of driveway expanded for development will utilize existing vegetation for the necessary flow paths through native vegetation.
5. Critical Areas - Mitigation: Building permit issuance for this proposal shall be contingent upon full implementation of the requirements put forth in the following document: *2nd Revised Critical Areas Assessment Report and Mitigation Plan: Wetlands and Habitat Conservation Areas* as prepared by Miller Environmental Services October 17, 2018. Implementation shall be subject to successful monitoring for a period of time not less than 5 years as well as any associated fees for same.
6. Critical Areas – Assignment of Savings: Prior to building permit issuance, an Assignment of Savings or Surety Bond for Mitigation must be submitted.
7. Critical Areas – Agreement to Maintain: Prior to building permit issuance, a completed and signed Agreement to Maintain the Mitigation Form must be submitted and.
8. Critical Areas – Notice on Title: Prior to building permit issuance, a critical areas protective covenant in the form of a Conservation Easement must be submitted and approved.
9. Inadvertent Discovery: If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907) LNTHPO (384-2280) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and Lummi Sche'lan'en Department (384-2312) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
10. Right to Farm: Pursuant to WCC, Title 14, the owners of the property upon which this variance is granted shall sign a statement of acknowledgment

containing a disclosure that pertains to the use of natural resources in Whatcom County. This disclosure shall be made on the building permit issued by Whatcom County Planning & Development Services.

NOTICE OF POTENTIAL REVOCATION AND PENALTIES

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

**NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF
THE WHATCOM COUNTY HEARING EXAMINER**

This action of the Hearing Examiner is final.

The Applicant, any party of record, or any County Department may appeal any Final Decision of the Hearing Examiner to Superior Court or other body as specified by WCC 22.05.020. The Appellant shall file a written Notice of Appeal within 21 calendar days of the Final Decision of the Hearing Examiner, as provided in RCW 36.70C.040.

A Final Decision of the Hearing Examiner on a shoreline substantial development permit, shoreline variance, shoreline conditional use permit, or on the appeal of any order, requirement, or administrative permit decision, or determination by the Administrator, based on a provision of the Whatcom County Shoreline Management Program, may be appealed pursuant to WCC 23.60.150.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

DATED this 1st day of March 2019.



Rajeev D. Majumdar, Hearing Examiner *Pro Tem*