

Staff Report

Shoreline Variance / Shoreline Exemption: Ormbrek, Betty

Application Numbers: 915818, 911827

Parcel Number: 0122271008

Key Peninsula Advisory Commission (KPAC) Public Meeting: October 16, 2019, at 6:30 p.m., at the Key Peninsula Civic Center, VFW Room, 17010 South Vaughn Road, Gig Harbor, WA 98349

Examiner's Hearing: October 31, 2019, at 11:00 a.m., at the Pierce County Public Services Building (Annex), South Entrance, Public Meeting Room, 2401 South 35th Street, Tacoma, WA

Proposal: The applicant requests the following:

- A Shoreline Variance to install a new septic system within the shoreline buffer; and
- A Shoreline Exemption for the construction of a new single-family residence.

Project Location: 8912 128th Street Court NW, Gig Harbor, WA, in the Residential Shoreline Environment and Rural 10 (R10) zone classification in the Key Peninsula Community Plan area, within Section 27, T22N, R1W, W.M., in Council District #7.

Staff Recommendation: County Staff has reviewed this proposal for compliance with all applicable policies, codes, and regulations. Staff recommends **approval** to the LUAC as the project meets the Shoreline Variance review criteria.

State Environmental Policy Act (SEPA): SEPA review is not required for this proposal.

County Contact: Kaycee K Hathaway, Assistant Planner, kaycee.hathaway@piercecountywa.gov
253-798-3297

Pierce County Online Permit Information:

<https://palsonline.co.pierce.wa.us/palsonline/#/permitSearch/permit/departmentStatus?applPermitId=915818>



Project Data

Complete Application Date: July 23, 2019

Initial Project Review Mailed: October 9, 2019

Property Owner: Betty Ormbrek
13317 Goodrich Drive NW
Gig Harbor, WA 98329-8624
Betsyrose3@outlook.com

Applicant: Armata Construction Services, LLC
Attn: Ryan Miletich
1416 NW 46th Street, Suite 105, PMB 135
ryan@armataconstruction.com

Agent: GK Structural Engineering, LLC
Attn: Jeff Gilliland, PE, SE
14703 - 1st Lane NE, Suite 205
Duvall, WA 98019
jeff@gkstructural.com

Legal and Public Notice

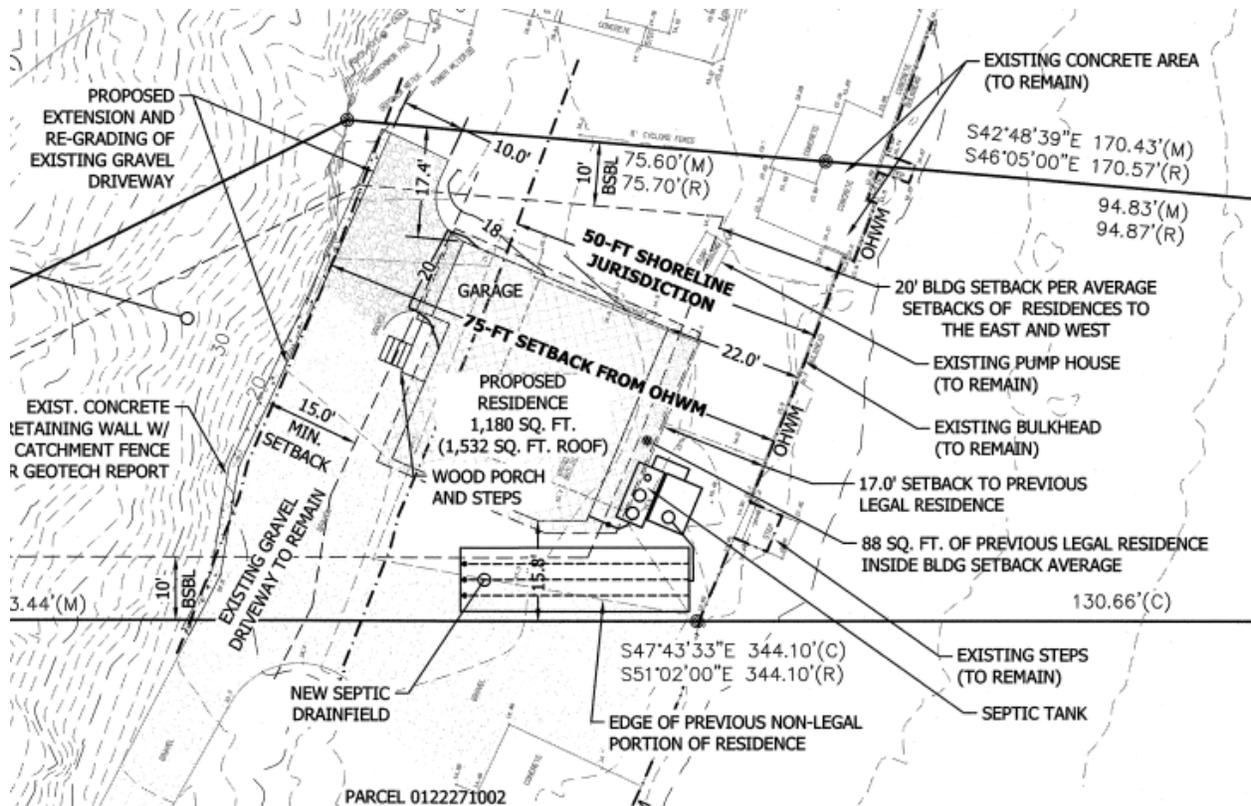
- *August 2, 2019*: Notice of Application, was sent to property owners within a radius of 300 feet, but not less than two parcels deep, around the exterior boundaries of the site.
- *August 28, 2019*: Revised Notice of Application and the Key Peninsula Advisory Commission (KPAC) meeting date, was sent to property owners within a radius of 300 feet, but not less than two parcels deep, around the exterior boundaries of the site.
- *August 3, 2019*: Public Notice sign was posted on the site, confirmed with a Declaration of Posting.
- *October 2, and 3, 2019*: Legal notices were published in the official County newspaper (*Tacoma News Tribune*), and *Peninsula Gateway* newspaper, advertising the KPAC public meeting.

2017 County Aerial



Figure 1: Project will be occurring on the highlighted parcel.

Proposed Site Plan and Cross Section



(Please Note: the “50 foot shoreline jurisdiction” reference is inaccurate. “200 feet” is the correct number. Also “75 foot setback” is inaccurate. There is a 75-foot buffer, not a setback)



Comments from the Public and Agencies

- Comments received on this proposal may be found by accessing the online permit information referenced on page 1.
- No comments have been received from the public.
- Comments were received from affected Tribes (see the discussion in the “Archeological, Culture, and Historic Resources (18S.30.020)” section.
- Staff has not received comments from State or Federal agencies.

Surrounding Land Use / Shoreline / Zoning Designation

	LAND USE	SHORELINE	ZONING
North	Vacant Land	Shoreline Residential	Rural 10 (R10)
South	Puget Sound	N/A	N/A
West	Single Family Residence	Shoreline Residential	R10
East	Single Family Residence	Shoreline Residential	R10

Initial Planning and Public Works (PPW) Staff Review for Consistency with Regulations and Policies

Title 19A Pierce County Comprehensive Plan

The Comprehensive Plan applies to all proposed land uses in the County. It supports single-family residences within the rural areas. Supporting policies include, but aren’t limited to:

- **LU-63:** Allow a variety of rural residential land uses and densities that are consistent with the rural lifestyle and within the carrying capacity of the natural environment.

The proposal does not conflict with any goals or policies in the Comprehensive Plan, although the proposed variances from buffer requirements is beyond the level of specificity found in the Comprehensive Plan policies.

- LU-63.3.4 Maintain and promote rural residential land uses that: Protect environmentally sensitive features.

The applicant is requesting to install a new septic system within areas that had either previously been developed with impervious surface or are minimally vegetated. Any loss of vegetation can be offset through installation of native vegetation. The proposal is not expected to negatively affect the environmentally sensitive features of the shoreline and, therefore, does not conflict with any goals or policies in the Comprehensive Plan.

Title 19A Appendix G: Key Peninsula Community Plan

The proposal does not conflict with any goals or policies in the Comprehensive Plan, although the proposed variances from buffer requirements is beyond the level of specificity found in the Community Plan

Title 18A Development Regulations – Zoning

- Key Peninsula Use Table (18A.26)
The applicant requests a Shoreline Variance for the benefit of a new septic system within the shoreline buffer. Within the R10 zone, in the Key Peninsula Community Plan, area a detached single-family residence is permitted outright.

Title 18S Development Policies and Regulations - Shorelines

The following is an analysis of how the project complies with key provisions of Title 18S.

- Recognition of Legally Established Development: Residential Structures (18S.10.055 C)
Residential structures and appurtenance structures that were legally established which do not meet standards for setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon areas where construction or use would not be allowed for new structures.

The original residence predated the Shoreline Management Act and is considered to have been legally established. It does not meet the current buffer requirement of 75 feet for the Residential Shoreline Environment. It is considered a nonconforming structure and under this section can be rebuilt and, potentially, enlarged if the enlargement does not increase the extent of nonconformity.

Structurally raising the floor elevation of an existing legally established single-family residence, which is necessary to protect the structure from flooding due to sea level rise, shall be allowed in accordance with the height limits set forth in PCC 18S.30.060, Scenic Protection and Compatibility.

- Recognition of Legally Established Development: Restoration of Development Due to Damage(18S.10.055 G)

If a nonconforming use or nonconforming structure is damaged, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged; provided, that application is made for the permits necessary to restore the development within three years of the date the damage occurred and all permits are obtained, and the restoration is completed within two years of permit issuance.

The original residence predated the Shoreline Management Act and is considered to have been legally established. It does not meet the current buffer requirement of 75 feet for the Residential Shoreline Environment. It is considered a nonconforming structure and under this section can be rebuilt and, potentially, enlarged if the enlargement does not increase the extent of nonconformity.

Structurally raising the floor elevation of an existing legally established single-family residence, which is necessary to protect the structure from flooding due to sea level rise, shall be allowed in accordance with the height limits set forth in PCC 18S.30.060, Scenic Protection and Compatibility.

- Residential Shoreline Environment Designation (SED) (18S.20.050)

The Residential SED applies to shoreland areas that are predominately single-family or multi-family residential development or are planned and platted for residential development. Applicable policies include, but aren't limited to:

Policy B.1: Priority should be given to residential and water-oriented commercial development where such development can be accommodated with no net loss of shoreline ecological function.

Policy B.3: Development should be designed to preserve and enhance the visual quality of the shoreline, including views over and through the development from the upland side, and views of the development from the water.

The applicant is requesting to install a new septic system within an area that had previously been developed with impervious surface.

The proposed structure will be raised approximately 3½ feet to meet the flood elevation requirements. This is not expected to negatively affect views from the upland side which consist of a densely vegetated steep slope. There may be some effect upon views “over and through” the development, but the location of the new structure relative to surrounding homes is such that any effect is unlikely to be significant.

- Archeological, Culture, and Historic Resources (18S.30.020)

Staff has received comment from the Puyallup, Nisqually, and Squaxin Island Indian Tribes. The Squaxin Island Tribe commented and deferred their comments to the Nisqually Tribe. The Puyallup and Nisqually Tribes requested that a cultural resource survey be completed and that language relating to inadvertent discovery be included as part of the project approval. Staff did not receive comment from the Department of Archeological and Historic Preservation.

- Ecological Protection (18S.30.030)

The intent of the Ecological Protection policies and regulations is to ensure that shoreline development is established and managed in a manner that protects existing ecological functions and ecosystem-wide process and that mitigates adverse impacts to ecological functions.

Applicable section policies include, but aren't limited to:

Policy B.1: Establish and manage shoreline uses and development in a manner that mitigates adverse impacts so that the resulting ecological condition is maintained or improved.

Policy B.2: All shoreline uses and development should avoid and minimize adverse impacts on the shoreline environment.

Policy B.4: Assure that shoreline modifications individually and cumulatively do not result in a net loss of ecological functions. This is to be achieved by limiting the number and extent of shoreline modifications and by giving preference to those types of shoreline modifications that have a lesser impact on ecological functions and requiring mitigation of identified impacts resulting from shoreline modification.

- Ecological Protection: Regulations - General (18S.30.030 C)

All development shall occur as outlined in Table 18S.30.030-1, Mitigation Sequencing, with avoidance of impacts being the highest priority. Lower priority measures shall be applied only when higher priority measures are determined to be infeasible or inapplicable.

The applicant demonstrates avoidance of impacts by expanding the house laterally, no closer to the water than was the original structure, and mainly upon the footprint of the original garage.

The new septic vault does not extend waterward of any original structures. As such, the applicant has applied for a Shoreline Variance.

- Ecological Protection: Regulations – Critical Areas (18S.30.030 D)

The Staff Biologist has completed their review and concludes the project meets Review Waiver 18S.20.035 B (formerly, prior to October 26, 2018, the effective date of PCC Title 18S, Exemption “V” -18E.20.030 V).

- Ecological Protection: Regulations – Shoreline Buffers (18S.30.030 E)

Development on shorelines is subject to both the buffer requirements of Title 18S PCC and the applicable requirements of Title 18E PCC. The applicant's property is located within the Shoreline Residential SED which has a 75-foot buffer. Per PCC 18S.30.030 E.5 expansion of legally existing development within the standard Shoreline buffer is allowed without a Shoreline Variance in the following instances:

- a. Expansion landward of existing development within a Shoreline buffer when an existing permanent substantial improvement serves to eliminate or greatly reduce the impact of the proposed expansion upon Shoreline ecosystem functions.
- b. Development may be allowed in-line with existing development, parallel to the shoreline and no closer than the existing structure, when on existing impervious surfaces and when there is no loss of existing vegetation.
- c. Development is allowed upward, above an existing building footprint, provided applicable height limits of the Master Program and zone classifications are satisfied.

The bulk of the expansion occurs in a direction away from the water such that the waterward edge of the new home will be no closer than was the original structure. Expansion parallel to shore occurs over areas that were impervious prior to the fire. The only expansion that does not meet an administrative allowance of PCC Title 18S is that associated with the septic tank, for which a Shoreline Variance is being pursued.

- Ecological Protection: Regulations-Impervious Surface Limits (18S.30.030 F)
For residential development, not more than one third of the parcel within shoreline jurisdiction and landward of the ordinary high water mark shall be covered by effective impervious areas including parking areas but may exclude a 12-foot-wide driveway. The applicant has demonstrated that the total impervious surface is going to be reduced from pre-fire 23-percent to 18-percent with the new construction and mitigation.

- Excavation, Dredging, Filling, and Grading (18S.30.040)

The intent of the policies and regulations in this section is to provide direction for shoreline excavation, dredging, filling, and/or grading associated with a principle use. Applicable section policies include, but aren't limited to:

Policy B.1: Prohibit fill waterward of the ordinary high watermark (OHWM) except for restoration projects, mitigation actions, beach nourishment or enhancement projects, or when necessary to support a water dependent use, public access, cleanup of contaminated sediments, or alteration of a transportation facility of statewide significant.

Policy B.2: Locate and design new development to avoid the need for fill. When fill is deemed necessary, its use should be minimized, and environmental impacts mitigated.

Policy B.4: Locate and design new development to avoid or minimize the need for maintenance dredging.

The applicant's proposal does not include any development waterward of the OHWM nor does it require any fill or maintenance dredging. Excavation is proposed associated with an expansion of a single-family residence which is the primary and allowed use. Staff does not find that the amount of excavation associated with the expansion is excessive.

- Scenic Protection and Compatibility (18S.30.060)

The intent of the policies and regulations of this section is to preserve shoreline scenic vistas and to ensure development on shorelines is compatible with the surrounding environment, existing and planned development. Applicable section policies include, but aren't limited to:

Policy B.1: Encourage sustainable residential development through restrictions on the scale of development, preservation of vegetation and topography, and preservation of views.

Policy B.2: Locate new residential structures with respect to views and with a height limit of 35 feet.

Policy B.11: Consider impacts to view and scenic resources enjoyed by abutting uses.

- Scenic Protection and Compatibility: Regulations – General (18S.30.060 C)

The applicant is proposing to increase the height of the structure from the existing, height of approximately 24.5 feet to approximately 25.5 feet. There are no residences to the north of the applicant's property. The residences to the east and west are almost parallel to the applicant and, as such, addition of one foot to the structure height doesn't appear to serve as an obstruction to the neighbors' view. Staff has not received comment from adjacent neighbors regarding the additional height.

- Scenic Protection and Compatibility: Regulations-Height Limits (18S.30.060 D)

Residential structures shall not exceed a height of 35 feet without approval through a Shoreline Variance. The applicant's proposal does not exceed 35 feet.

- Water Quality, Stormwater, and Nonpoint Pollution (18S.30.100)

The intent of the policies and regulations of this section is to protect against adverse impacts to water quality and quantity. Applicable section policies include, but aren't limited to:

Policy B.1: Locate, construct, and operate development in a manner that maintains or enhances the quantity and quality of surface and ground water over the long term.

Policy B.2: Prevent impacts to water quality and stormwater quantity that would result in a new loss of shoreline ecological functions.

Policy B.3: Prevent contamination of surface and ground water and soils.

The applicant will be required to meet all stormwater and site development requirements.

- Residential (18S.40.100)

The intent of the policies and regulations of this section is to accommodate residential development and appurtenances. Single-family residences are a preferred use within the Conservancy and Residential SEDs when consistent with control of pollution and prevention of damage to natural environment. The Residential polices and regulations encourage sustainable residential development through restrictions on the scale of development, preservation of vegetation and topography, and minimization of impacts to fish and wildlife habitats. Applicable section policies include, but aren't limited to:

Policy B.1: Set structures back from required shoreline buffers to ensure compatibility between uses and protection of buffer areas from residential activities.

Policy B.4: When on-site sewage systems are required for residential development, those system and their associated drainfields should be installed outside of the shoreline.

Policy B.7: Prohibit new over-water residences, including floating homes.

Policy B.9: Residential development should preserve existing vegetation, open space, habitat, and critical areas.

Policy B.11: New residential structures should be located with respect to views and should not exceed a height of 35 feet.

- Residential: Regulations – General (18S.40.100 C)

1. Existing legally established residential structures and appurtenant structures located in a Shoreline Environment Designation (SED) which permits the residential development, but that do not meet standards for setbacks, buffers, yards, area, bulk, height or density, shall be considered conforming for purposes of administering Title 18S PCC.

The applicant's original residence did not meet current buffer standards, but was legally established (as it predates the Shoreline Management Act) and may, therefore, be re-constructed and, potentially, expanded pursuant to PCC 18S.10.055 Recognition of Legally Established Development.

2. Table 18S.030-2, Standard Shoreline Buffers and Setbacks, indicates the required buffer and setback for each SED. Table 18E.40.060-1, Fish and Wildlife Habitat Conservation Area Buffer Requirements, indicates the required fish and wildlife habitat area buffer width for each water type. Chapter 18E.40 PCC includes the provisions by which fish and wildlife habitat area buffers and setbacks may be modified.

The Standard Shoreline Buffer is 75 feet for properties within the Shoreline Residential SED.

3. Residential development shall comply with bulk standards (such as, but not limited to: setbacks, buffers, height, and density) of Title 18A PCC.

The applicant is meeting all bulk standards save for the need to reduce the shoreline buffer to allow for the septic features.

4. New over-water residences and expansion of existing over-water residences, including floating homes, is prohibited.
Not applicable. The applicant's residence is not built over-water.
5. Residential development on a lot shall comply with Chapter 18E.110 PCC, Erosion Hazard Areas.
The applicant shall be required to meet all requirements.
6. Residential structures shall not exceed a height of 35 feet pursuant to PCC 18S.30.060 D, Scenic Protection and Compatibility.
The proposal is under 35 feet in height.
7. Not more than one third of the parcel within shoreline jurisdiction and landward of the ordinary high water mark shall be covered by impervious areas, except that new lots in a Natural or Conservancy SED shall be limited to 10 percent effective impervious surfaces, including parking areas but excluding a 12-foot wide driveway. This restriction applies to both principle and accessory uses and structures.
The applicant is removing pre-existing impervious surfaces such that impervious surface is going to be reduced from pre-fire 23-percent to 18-percent.
8. New waterfront developments of two or more dwelling units within shoreline jurisdiction shall provide for joint use water access, unless determined during the review of the project that such joint use water access is infeasible due to topographic constraints.
Not applicable.
9. Septic tanks and drain fields for new sewage disposal systems shall be located outside of shoreline setbacks and buffers.
The applicant's is proposing a new system that will be within the buffer. The applicant has applied for a Shoreline Variance. Per the septic designer letter dated August 28, 2019, there are site constrains with the locations of the existing wells.

- Shoreline Substantial Development (SD) Permit Exemptions: Single Family Residences (18S.60.020 C.7)

Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of 35 feet above average grade level, and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to Chapter 90.58 RCW, can be reviewed as an Exemption to a Shoreline Substantial Development Permit.

While the applicant's general proposal (reconstruction of a single-family residence and installation of a new septic system) may be allowed as an Exemption, the installation of a new septic within the buffer requires approval through a Shoreline Variance.

- Shoreline Permit Table: Shoreline Permit Table (18S.60.030-1)

A single-family residential use is permitted within the Shoreline Residential SED.

- Shoreline Variance (18S.60.070)

The purpose of a Shoreline Variance is limited to granting relief from dimensional standards found in Title 18S PCC where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of Title 18S PPC will impose unnecessary hardship on the applicant or thwart the policies found in the Shoreline Management Act.

The applicant is proposing to install a new septic system within the shoreline buffer. They have applied for a Shoreline Variance.

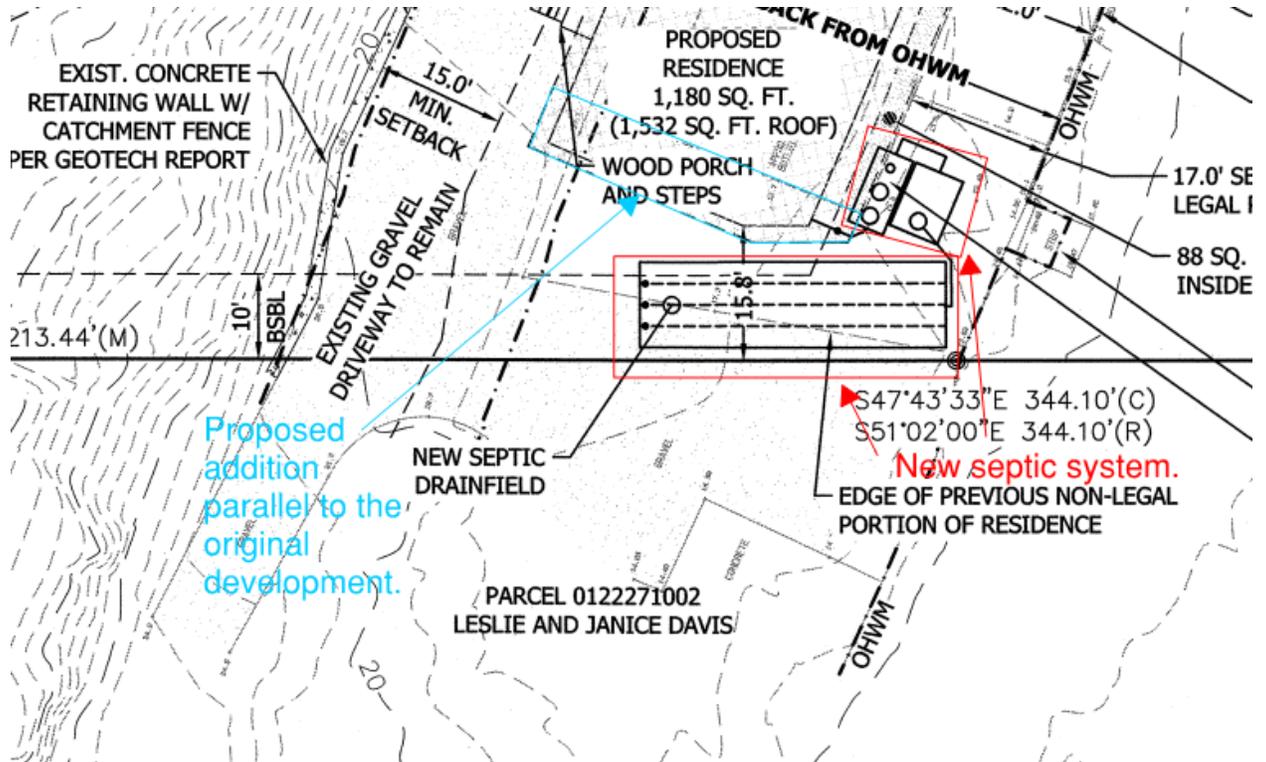


Figure 2: Everything within the red box indicated by the arrow is expansion waterward of the existing residence and requires approval through a Shoreline Variance. Everything within the blue box indicated by the arrow is expansion parallel and over existing impervious surface of the burnt down residence and requires approval through a Shoreline Exemption.

- Shoreline Variance: Decision Criteria – General (18S.60.070 D)

- A Shoreline Variance shall not be granted unless the applicant demonstrates that denial of the permit would result in a thwarting of the policy enumerated in the Act due to extraordinary circumstances, and the public interest would suffer no substantial detrimental effect.

The applicant has provided evidence that the application is consistent with the Act and the Public appear to suffer no substantial detrimental effect.

- Shoreline Variance: Decision Criteria – Development Landward of Ordinary High Water Mark (18S.60.070 E)

In addition to the General Decision Criteria in PCC 18S.60.070 D., any Shoreline Variances for development landward of the OHWM or landward of any wetland may be authorized provided the applicant can demonstrate all of the following:

1. The strict application of the bulk or dimensional standards precludes or significantly interferes with reasonable use of the property.

Strict application would preclude the placement of the septic features on the parcel and would not allow a single-family residence, which would interfere with reasonable use of the property. Per the Tacoma-Pierce County Health Department's comment the proposed location of the septic is the only location available on site for the septic. To move forward with the septic permitting the applicant must meet all health standards and that requires specific distances between the wells and the septic components – which forces the location to be as proposed.

2. The hardship described in PCC 18S.60.070 E.1 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 Title 18S PCC and not, for example from deed restrictions or the applicant's own actions.

The need for a variance is due solely to the physical features of the parcel.

3. The design of the project is compatible with other authorized development within the area and with development planned for the area under the Comprehensive Plan and Title 18S PCC, and will not cause adverse impacts to the shoreline environment.

The proposal would be compatible with other authorized development within the area, in terms of proposed structures, structure size, and presence of septic features. Impacts associated with septic features are offset by the removal of impervious area and introduction of native plants.

4. The Shoreline Variance will not constitute a grant of special privilege not enjoyed by the other properties in the area.

The variance is intended to afford the applicant the same use of their parcel as the surrounding properties

5. The Shoreline Variance requested is the minimum necessary to afford relief.

The County finds the variance requested is the minimum necessary.

- Shoreline Variance: Decision Criteria – Cumulative Impact (18S.60.070 I)

In the granting of all Shoreline Variances, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

The majority of single-family homes along the shoreline are on septic. Were they all to be allowed to construct replacement septic features closer than were the original features, there would be a cumulative impact to shoreline function. The majority of shoreline parcels do not share the characteristics of the subject parcel that have been discussed in this Staff Report, and it is expected that the majority of future septic repair projects will not have to be constructed waterward of existing structures. As such, and given the emphasis of PCC Title 18S on avoidance and minimization of impacts, the expectation is that there will be relatively few “like actions” for which the County recommends approval.

Title 173 WAC Ecology, Department of

- Review criteria for variance permits (WAC 173-27-170 (2))
Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:
 - a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property.
Not allowing the installation of a septic system may prevent a single-family residence from being on the property.
 - b) That the hardship described in (a) of this subsection 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 the master program, and not, for example, from deed restrictions or the applicant's own actions.
As spoken to earlier in the report the property does have unique conditions associated with it.
 - 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 shoreline master program and will not cause adverse impacts to the shoreline environment.
Staff has not seen evidence that the proposal will cause adverse impacts. The proposal would be compatible with other authorized development within the area.
 - d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area.
Granting of this variance would not qualify as a grant of special privilege.
 - e) That the variance requested is the minimum necessary to afford relief.
The minimum necessary to afford relief is what the applicant has applied for. The Tacoma-Pierce County Health Department has commented and stated that this is the only location on the parcel that the septic system can be located for public health protection.
 - f) That the public interest will suffer no substantial detrimental effect.
There is no evidence that the public interest will suffer substantial detrimental effect.
- Review criteria for variance permits (WAC 173-27-170 (4))
In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. See Cumulative Impact discussion, page 13.