

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicant:** Jason and Maria Kitzman
20654 Prairie Road
Sedro Woolley, WA 98284
- Request:** Critical Areas Variance, PL14-0460
- Location:** 20654 Prairie Road, within the NE1/4 Sec. 33, T36N, R4E, W.M.
Parcel #P50559.
- Land Use Designation:** Rural Reserve
- Summary of Proposal:** To authorize replacement of a failing deck at a single family residence. The new deck (23' x 47') extends six feet farther north than the previous deck, includes a second story balcony and is covered. The deck is 57.6 feet from the Ordinary High Water Mark (OHWM) of the Samish River.
- SEPA Compliance:** Exempt
- Public Hearing:** July 8, 2015. Testimony by staff and applicant. No public testimony. Planning and Development Services (PDS) recommended approval.
- Decision/Date:** The application is approved, subject to conditions. July 23, 2015.
- Reconsideration/Appeal:** Reconsideration may be requested by filing with PDS within 10 days of this decision. Appeal is the Board of County Commissioners by filing with PDS within 14 days of this decision or decision on reconsideration, if applicable.
- Online Text:** The entire decision can be viewed at:
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner)

FINDINGS OF FACT

1. Jason and Maria Kitzman seek a Critical Areas Variance authorizing a deck on their residence near the Samish River.
2. The project is located at 20654 Prairie Road, within NE1/4 Sec. 33, T36N, R4E, W.M.
3. The application arises from an enforcement action following a complaint received on April 16, 2014. A Notice of Violation was issued on August 8, 2014, followed by a Notice and Order to Abate on September 29, 2014. The violation was construction of a deck without a building permit.
4. In order to resolve the problem, the applicants applied for a Critical Areas Variance on November 13, 2014, intending upon receipt of the variance to apply for a building permit for the deck.
5. The Samish River and the area approximately 50 feet to the east are located within an A5 flood hazard area. The project and residence are outside of the floodplain in Zone C.
6. The applicants have constructed a new deck (23' x 47') which extends six feet farther north than the previous deck, includes a second story, and is covered. The deck replaces a failing single-story uncovered deck of 654 square feet. The new deck is 57.6 feet from the Ordinary High Water Mark (OHWM) of the river. The project is exempt from Shoreline Management Act permit requirements.
7. The application seeks a Critical Areas Variance to reduce the critical areas buffer from 200 feet to 57.6 feet.
8. Topographic constraints of the parcel limit the area available for development of the western portion of the site and preclude strict application of the buffer requirements of the Critical Areas Ordinance.
9. A site assessment, with a mitigation plan, was submitted by a qualified professional. Best available science was used to support the reduction in critical area buffer.
10. The Fish and Wildlife Habitat Assessment concludes that the deck will not have an adverse impact on the river or its associated riparian environment.
11. The deck location, attached to the existing residence, is as far from the OHWM as possible, given the steep topography. The variance is the minimum variance that will make possible the reasonable use of this property.
12. The project preserves the ecologic value of the Samish River and meets the intent of the Critical Area Ordinance to protect critical areas. The project is not likely to affect federally listed or endangered species.

13. The critical areas buffer between the home and the OHWM contains few trees and little shrubbery or other vegetation. The bank in this stretch is about 15 feet high. A plan for plantings along the shore, prepared to enhance the buffer area, has already been carried out.

14. The critical areas buffer that remains will be identified as a Protected Critical Area (PCA) and kept free from development.

15. The owners' failure to obtain permits prior to construction stemmed from their belief that their contractor had obtained the necessary permission for the project.

16. Surrounding land uses include single family residential homes, farms and related agricultural uses. The development will be compatible with its setting.

17. No correspondence from the general public was received. No comments were received from Federal, State or Tribal resource agencies.

18. The Staff Report analyzes this application against the criteria for approval of a Critical Areas Variance and finds that, as conditioned, the project will be consistent with the criteria. The Hearing Examiner concurs with this evaluation and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

19. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. SCC 14.06.050(1)(b)(i).

2. The project is exempt from the procedural requirements of the State Environmental Policy Act (SEPA). WAC 197-11-800(6)(b).

3. As conditioned, the proposal meets the requirements for a Critical Areas Variance. SCC 14.24.140.

4. Any finding herein which may be deemed a conclusion is hereby adopted as such.

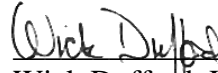
CONDITIONS

1. The recommendation of the Critical Areas Site Assessment report and addendum shall be considered conditions of approval, except as modified by the conditions below.
2. The mitigation plan for enhancement of the remaining shoreline buffer area shall be fully implemented.
3. All mitigation plants shall maintain a survival rate of 100% following the first year after planting and of 80% following years three and five. If the plants do not meet the specified survival rate, a qualified professional must assess the site and determine the best method to improve the rate of survival for additional native plants.
4. The applicant shall comply with all relevant local and state regulations, including but not limited to, the temporary erosion/sedimentation control measures of the Skagit County Drainage Ordinance (Chapter 14.32 SCC).
5. The applicant shall obtain a building permit for the deck which is the subject of this variance. A copy of this variance decision shall be submitted with the building permit application.
6. The applicant shall obtain any other permits which may be required.
7. The Critical Areas Variance shall expire if the implementing building permit is not issued within three years of final approval hereof. Knowledge of the expiration date is the responsibility of the applicant. (SCC 14.24.140(6))
8. If any modification of the structure is contemplated, the applicant shall request and receive a permit revision from PDS, prior to commencing construction.
9. The remaining critical area buffer shall be placed into a PCA, as required by SCC 14.24.900. The PCA and site plan must be recorded by the time of building permit application review.
10. The Critical Areas Variance shall expire if the building permit is not approved within three years of this decision.
11. Failure to comply with any permit condition may result in permit revocation.

DECISION

The requested Critical Areas Variance (PL14-0460) is approved, subject to the conditions set forth above.

DONE, this 23rd day of July, 2015.



Wick Dufford, Hearing Examiner

Transmitted to Applicant, July 23, 2015.

See Notice of Decision, page 1, for appeal information.