

## NOTICE OF DECISION

### BEFORE THE SKAGIT COUNTY HEARING EXAMINER

**Applicants:** Michael and Karen Ball  
14225 43d Avenue West  
Lynnwood, WA 98087

**Request/File No:** Critical Areas Variance Modification PL13-0123

**Location:** Lots 130 and 131, Cascade River Park #1, near Marblemount;  
within NW1/4 Sec. 14, T35, R11E, W.M.

**Land Use Designation:** Rural Reserve

**Summary of Proposal:** Modify a Critical Areas Variance for construction of a single-family residence to allow a slightly larger residence with a slightly larger deck and a slightly larger garage with an accessory dwelling above. The project will not require a Shoreline Variance.

**SEPA Compliance:** Exempt per WAC 197-11-800(6)(b)

**Public Hearing:** July 10, 2013. Testimony by County staff and applicant. No public testimony. Planning and Development Services (PDS) recommended approval.

**Decision/Date:** The application is approved, subject to conditions. July 26, 2013.

**Reconsideration/Appeal:** A Request for Reconsideration may be filed with PDS within 10 days of this decision. An appeal to the Board of County Commissioners may be filed with PDS within 14 days of the 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. Mike and Karen Ball (applicants) see a modification of a previously approved Critical Areas Variance (PL98-0220) in order to increase the size of an approved residence and garage that were authorized but not constructed in 1998.

2. The location is at 64282 East Cascade Drive, Cascade River Park #1, Lots 130 and 131, bordering the Cascade River, near Marblemount. The lots, combined by boundary line modification, contain 0.43 acres.

3. The subject site was created by land division in 1963, long before the adoption of either the Shoreline Management Act or the County's Critical Areas Ordinance.

4. The land use designation is Rural Reserve. The Shoreline designation is Rural Residential. Under the local Shoreline Master Program (SMP) the shoreline setback is 50 feet from the Ordinary High Water Mark (OHWM).

5. The instant proposal is for construction that is 54 feet from the OHWM, conforming to the applicable shoreline setback. Moreover, the proposal meets all other dimensional requirements of the SMP.

6. However, the proposal does not meet the 200 foot setback from the river established under the Critical Areas Ordinance (CAO). Indeed, the entire site is within this 200 foot riparian buffer. The site measures 120 feet wide and 150 feet deep.

7. The original variance to the critical areas buffer authorized a 34' x 24' single family residence with a 12' x 12' deck and a 4' x 12' covered porch, as well as a 24' x 24' detached garage located landward of the home. The home was to be set back 50 feet from the OHWM. This approval was given in 1998 under PL98-0220. Under the approval the 200 foot buffer was reduced to 100 feet.

8. The originally authorized residence, deck, porch and garage have not been built. However, the authorized on-site septic tank and drainfield were installed in 2000.

9. The current proposal is for a 34' x 30' residence with a slightly larger deck and a 32' x 26' detached garage with an accessory dwelling unit on the second floor. The garage will meet the standard zoning setback of 35 feet from the road. The total additional footprint will be 456 square feet of which only 200 square feet is within 100 feet of the river. All of the additional square footage of the garage is landward of the previously approved reduced buffer.

10. The parcel is on the north side of the river within an older, established subdivision. Vegetation has grown up since the 1998 variance approval and new plantings have been installed by the applicant. At present the site contains pockets of large evergreens and some big leaf maples. The center of the property, where the house is proposed to be located, is cleared.

11. A Critical Area Site Assessment was prepared for this application by Graham-Bunting Associates (dated March 10, 2013). The Assessment determines that the critical area impact will be a reduction in area where riparian vegetation would otherwise grow and perform buffer functions.

12. The Assessment recommends enhancement of the remaining buffer through the installation of native trees and shrubs. The mitigation recommended uses best available science so that the least impact on the critical area will be experienced consistent with reasonable use of the property. A site plan depicting the remaining buffer as a Protected Critical Area should be filed with the County Auditor.

13. The impacts of slightly enlarging the development footprint parallel to the river will be offset by increasing plantings in the areas adjacent to the stream, restoring the functions and values of the riparian corridor. The mitigation plan calls for vegetation maintenance, monitoring and long-term protection.

14. Neither the initial variance nor this modification are necessitated by actions of the applicant. The variance actions remedy special circumstances associated with lot width and lot length. Additional factors supporting the present modification are the location of the existing driveway and septic system, and retention of the cluster of mature cedar trees centrally located on the property.

15. The applicants have provided a thorough explanation of the justification for their requested variance modification under both the critical areas variance criteria and the code criteria for variances generally. The Staff Report similarly contains an analysis showing consistency of this proposal with CAO variance requirements. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

16. Residential development including a detached garage and accessory dwelling are permitted uses with the Rural Reserve zone. Many adjacent lots in the subdivision have been developed for residential uses. The setback proposed here is consistent with the average for other development within 300 feet on either side. The granting of this variance modification would not confer any special privilege on the applicants.

17. The proposal was circulated to the various county departments. Their comments are reflected in conditions of approval.

18. The application and the hearing were duly noticed as required by law. There was no public testimony at the hearing. Three letters of opposition were received.

19. A letter from the Skagit Systems Cooperative objected to allowing two dwelling units, but failed to note that this site consists of two lots combined by boundary line modification. Without this combining, two dwelling units would have been permissible. Moreover, many of the lots within the subdivision have multiple structures suited to residential

use, as well as travel trailers and recreational vehicles. No specific harm from the project to fisheries resources was identified.

20. The other letters were from owners within the subdivision who objected to building so close to the river within a Wild and Scenic Rivers reach. However, no violation of any federal restriction was identified. They also asserted that the applicants are not complying with covenants and restrictions of the subdivision. The County is not a party to such restrictions and their enforcement is a private matter.

21. Graham-Bunting Associates provided a thoughtful letter in response to the objections made. The Examiner is in agreement with this response.

22. The proposed placement of the structures under all the circumstances is the minimum necessary to make reasonable use of the property. No adverse impacts on the function and values of the critical area have been identified.

23. The hardship involved is the result of the size of the lot and the size of the critical area buffer, not actions of the owners. The granting of the variance will be in harmony with the general purpose and intent of the Unified Development Code and will not be injurious to the neighborhood or otherwise injurious to the public welfare.

24. 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, as a land use modification pursuant to SCC 14.06.050(1)(b)(iv).

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

3. Under the facts, the proposal is exempt from requirements for Shoreline Management Act permits.

4. Because the previously approved variance did not specify an expiration date, it could still be constructed as approved. The current regulatory limitation to a three-year construction period was not then in effect. Staff therefore reviewed the present application as though the previously approved structures were built and treated this request as one simply to add on to the approved buildings. The Examiner approves this approach.

5. Residential uses and residential accessory uses are allowed in the Rural Reserve zone. SCC 14.16.320(f)(i).

6. There is no specific separate procedure for modifying a Critical Areas Variance. Accordingly, a modification is evaluated under the criteria for granting a variance initially. On

the record made, the project, as conditioned, meets these criteria. SCC 14.14.140(3), SCC 14.10.030(2).

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

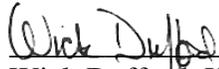
### **CONDITIONS**

1. The project shall be carried out as described in the application materials, except as the same may be modified by these conditions.
2. The applicants shall obtain all other required permits and abide by the conditions of same.
3. The applicants shall comply with all recommendations of the Critical Areas Site Assessment prepared by Graham-Bunting Associates, dated March 10, 2013.
4. The applicants shall take such action as necessary to insure compliance with all Health Department requirements.
5. A Protected Critical Area (PCA) site plan shall be recorded with the County Auditor's office prior to approval of the first building permit application.
6. The applicants shall submit a copy of this decision with the initial building permit application.
7. This variance shall expire if the use or activity for which it is granted is not commenced within three years of final approval. Knowledge of the expirations date is the responsibility of the applicants.
8. Failure to comply with any condition may result in permit revocation.

## DECISION

The requested Critical Areas Variance modification is approved, subject to the conditions set forth above.

**DONE**, this 26th day of July, 2013.



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Wick Dufford, Hearing Examiner

Transmitted to Applicants, July 26, 2013

See Notice of Decision, Page 1, for Appeal information