

December 31, 1998

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

DECISION ON APPEAL FROM ZONING VARIANCE DECISION

SUBJECT: Department of Development and Environmental Services File No. **L98VA006**

BARRY ANDERSON
Appeal of Variance Decision

Location: South of NE Bothell Way at the terminus of 82nd Court NE

Applicant: **Barry Anderson**
P. O. Box 37
Kent, WA 98035
(253) 631-6900

Appellant: **John W. Perry, Jr.**
6369 NE 193rd Place
Seattle, WA 98155
(425) 643-5248

County: **Sherie Sabour**
DDES/Land Use Services Division
900 Oakesdale Avenue SW
Renton, WA 98055
(206) 296-7112

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary: Approve a variance from stream setback requirements to provide an average buffer of 61.25 feet.

Department's Final: Same as above

Examiner: Approve variance to provide a buffer area south of a line parallel to the north property line, passing through a point located 35 feet west of the east property line and 40 feet north of the ordinary high water mark.

PRELIMINARY MATTERS:

Notice of appeal received by Examiner: September 24, 1998
 Statement of appeal received by Examiner: September 24, 1998
 EXAMINER PROCEEDINGS:

Pre-Hearing Conference: November 3, 1998
 Hearing Opened: December 16, 1998, at 10:35 a.m.
 Hearing Closed: December 16, 1998, at 11:47 a.m.

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Sensitive area protection
rivers and streams
- Stream buffers
- Variance

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner/Appellant: John W. Perry, Jr.
 6369 Northeast 193rd Place
 Seattle, WA 98155

Location: South of Northeast Bothell Way at the terminus of 82nd Court Northeast

STR: SE 12-26-4
 Zoning: R 1 SO
 Lot Size: 16,078 square feet
 Request: A variance from the stream buffer requirement (KCC 21A.24.360)

Proposed Use: To construct a single family residence 50 feet (35-foot buffer and 15-foot building setback) from the Ordinary High Water Mark (OHWM) of Sammamish River, instead of the required 115 feet (100-foot buffer and 15-foot building setback).

2. Except as modified below, the facts set forth in the King County Land Use Service Division Zoning Variance Report and Decision, dated August 26, 1998, are found to be correct and are incorporated herein by this reference.

3. The area of the subject lot at its northeast corner has been reduced by the construction of a cul de sac which exceeds the area dedicated by the short plat which created this lot. The additional area

of the cul de sac, as constructed, was not considered by DDES in making its decision on this application for variance.

4. Six other lots in the vicinity have received approval of variances which reduce the required buffer from the OHWM of the Sammamish River to distances varying from 25 feet to 55 feet from the OHWM. The variance proposed by the property owner is consistent with those variances, and does not grant any special privilege to this property owner.
5. The current owner of the subject property is John W. Perry, Jr. The property owner has modified the requested variance to allow for construction of a single family residence which will be located no closer than 55 feet to the ordinary high water mark of the Sammamish River at the south property line. This would provide a 40-foot buffer at a point 35 feet west of the east property line, from which the residence would be set back a minimum of 15 feet. In order to provide the maximum buffer consistent with the construction of a reasonably sized residence and garage on the property, the property owner agrees to the creation of a buffer area south of a line drawn parallel to the north property line.
6. The property owner will provide and implement a mitigation plan, to be reviewed and approved by DDES, which will result in significant improvement in the quality of the buffer area through the planting and maintenance of native species of vegetation.
7. Construction of a residence on the subject property, as proposed by the property owner, would not interfere with any significant views from adjacent or nearby residences.

CONCLUSIONS:

1. The variance approved below is reasonable and necessary because the strict enforcement of the provisions of the King County Zoning Code would create an unnecessary hardship to the property owner.
2. This variance is necessary because of the unique size, shape and location of the subject property. Failure to grant this variance would deprive the subject property of rights and privileges enjoyed by other properties in the vicinity and in the identical zone.
3. This variance does not create health or safety hazards, is not materially detrimental to the public welfare, and is not unduly injurious to property or improvements in the vicinity.
4. This variance does not allow establishment of a use not otherwise permitted in the zone, nor does it allow the creation of lots or densities that exceed the base residential density for the zone.
5. The variance approved by this decision is the minimum necessary to grant relief to the Applicant and the property owner. The variance does not infringe upon or interfere with any easement or covenant rights or responsibilities.

DECISION:

The appeal by John W. Perry, Jr. from the zoning variance report and decision issued August 26, 1998, is GRANTED, and a variance from the stream buffer requirements of KCC 21A.24.360 is GRANTED,

subject to the conditions set forth in the August 26, 1998, zoning variance report and decision, with the following modification:

Condition No. 3 is modified to provide as follows:

The stream buffer area shall be that portion of the subject property which lies south of a line drawn parallel to the north property line through a point located 35 feet west of the east property line and 40 feet northerly (measured perpendicular to the river channel) of the ordinary high water mark of the Sammamish River.

ORDERED this 31st day of December, 1998.

James N. O'Connor
King County Hearing Examiner

TRANSMITTED this 31st day of December, 1998, to the following parties and interested persons:

Barry Anderson
John W. Perry, Jr.
Peter J. Stager
Sherie Sabour

Doug Pearson
William K. Schoening
Nick Gillen

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding appeals from decision on applications for variance. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE DECEMBER 16, 1998, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND LAND USE SERVICES DIVISION FILE NO. L98VA006 – ANDERSON VARIANCE APPEAL.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the proceeding were Sherie Sabour and Nick Gillen, representing the County; John Perry and Barry Anderson.

The following exhibits were offered and entered into the hearing record:

- Exhibit No. 1 Department of Development and Environmental Services File No. L98VA006
- Exhibit No. 2 Zoning Variance Report and Decision dated August 19, 1998
- Exhibit No. 3 Site plan dated March 2, 1998

- Exhibit No. 4 Assessors map SE 12-26-4
- Exhibit No. 5 Site plans (3) of current variances in the immediate area
- Exhibit No. 6 Subject lot and adjacent lot to the east
- Exhibit No. 7 Fax between Barry Anderson and Sherie Sabour
- Exhibit No. 8 Copy of interim proposed line of variance supplied by Barry Anderson to John Perry dated August 6, 1998, updated August 14, 1998
- Exhibit No. 9 Memorandum for the record dated November 30, 1998, from John Perry To Whom it May Concern
- Exhibit No. 10 Written testimony of John Perry
- Exhibit No. 11 Memorandum statement of Barry Anderson
- Exhibit No. 12 Color photograph of site
- Exhibit No. 13 Recorded short plat No. 878916
- Exhibit No. 14 Color photographs (on one sheet) showing eastern neighbor's view
- Exhibit No. 15 Assessors map showing other lots with variances in the immediate area
- Exhibit No. 16 Chart showing size and variances of similar lots in area

JNOC:daz
variance\L98\L98VA006 rpt