

Return Address:

Greg Robertson
Po Box 276
Carson, WA 98610

Document Title(s) or transactions contained herein:

Critical Areas Variance App.

GRANTOR(S) (Last name, first name, middle initial)

Robertson, Greg, A.

☐ Additional names on page ____ of document.

GRANTEE(S) (Last name, first name, middle initial)

Skamania Co.

☐ Additional names on page ____ of document.

LEGAL DESCRIPTION (Abbreviated: i.e., Lot, Block, Plat or Section, Township, Range, Quarter/Quarter)

Lot 1 Hillside Short Plat

☒ Complete legal on page 8 of document.

REFERENCE NUMBER(S) of Documents assigned or released:

CA-04-07

☐ Additional numbers on page ____ of document.

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER

03-07-25-2-0-0120-00

☐ Property Tax Parcel ID is not yet assigned

☐ Additional parcel numbers on page ____ of document.

The Auditor/Recorder will rely on the information provided on the form. The Staff will not read the document to verify the accuracy or completeness of the indexing information.

Greg Robertson
PO Box 276
Carson, WA 98610



**Skamania County
Department of Planning and
Community Development**

Skamania County Courthouse Annex
Post Office Box 790
Stevenson, Washington 98648
509 427-9458 FAX: 509 427-8288

**STAFF REPORT AND
ADMINISTRATIVE DECISION
CRITICAL AREAS VARIANCE APPLICATION
FOR**

**Greg Robertson
File No. CA-04-07
November 3, 2004**

This staff report addresses the application of Greg Robertson who is requesting a variance to the minimum development standard that specifies the stream buffer zone for a Class II Stream shall be 100' in order to construct a single family home, well, septic tank, drainfield, reserve drainfield, driveway, garden, and open yard area within up to 70' from the Ordinary High Water Mark (OHWM) of Kanaka Creek on his property located in Skamania County, Washington, Tax Lot Number 03-07-25-2-0-0120-00.

PROPERTY DESCRIPTION

Improvements - newly installed well and old pit-rocked access road

Lot size - 6.67 acres

County Zoning - (R-2) Residential - 2

APPLICABLE CRITERIA

§21A.04.010

A.

**RELATIONSHIP TO SHORELINES MANAGEMENT MASTER PLAN AND
SHORELINES MANAGEMENT ACT PERMITS ORDINANCE.**

In event of any conflict between this Title and regulations contained in the Shorelines Ordinance, those regulations which provide greater protection of Critical Areas shall apply.

Finding:

The subject request does not require a Shoreline Substantial Development Permit nor does it require a Shoreline Variance since Kanaka Creek is not a designated Shoreline of County or State significance.

§21A.04.020

C(3).

Variances to buffer widths in excess of 50% for residential uses and all

variances for commercial or industrial uses may be granted by the Board, after public hearing thereon, as set out in Section 21.16.060(B). Those provisions are set out below.

Finding: Since the proposed project does not include a commercial or industrial use, no portion of the requested development will be located closer than 70' from the OHWM, and the total required setback from the stream is 100', the request does not exceed the 50% reduction allowed administratively. No public hearing is required.

§21.16.070
B.

[A]ny variance granted . . . shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated.

Finding: Although the proposed development includes components normally associated with residentially-zoned property, granting a variance to locate the proposed development within the buffer would be considered a special privilege because alternative building sites located outside of the buffer are available on the property and other property owners would be required to utilize these alternative sites prior to obtaining an approved variance.

For example, the north end of the property has ample room to accommodate the proposed development outside of the creek buffer. Alternatively, the applicant's submitted site plan shows an alternative building site is available on the southern portion of the property, which would be entirely outside of the buffer area. The applicant has not shown that it is necessary to clear the home site to within 70' of the creek to accommodate the proposed development.

Although ample space is available on the property to place a well outside of the creek buffer area, the applicant has installed a new well within 70' of the OHWM of Kanaka creek without an approved variance to the 100' buffer width. Since removal of the unpermitted well would cause further disturbance to the buffer, a variance should be granted only for the prior unauthorized placement of the well, providing appropriate mitigation is included as a condition of approval.

B(1). Because of special circumstances applicable to [the] subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive subject property of rights and privileges enjoyed by other properties in the vicinity and under identical zone classification and/or special purpose district;

Finding: Kanaka Creek is located in the bottom of a steep-walled valley, which runs from north to south along the entire length of the western portion of the property. The remainder of the property is relatively flat. Kanaka Creek Road forms the eastern property boundary. The property narrows as it approaches its southern end. The applicant has

proposed to develop the southern area of the property.

Strict application of the critical areas buffer would not deprive Mr. Robertson of the residential use of his property, a right and privilege enjoyed by other properties in the vicinity under identical zone classification, since alternative building sites are available. The un-permitted well installation within the creek buffer was not dictated by the property's special circumstances since alternative sites exist. Rather, the applicant chose to place the well within the buffer without an approved variance.

Instead of removing the well, mitigation should be required as a condition of granting a variance for only the well placement, since removal of the well would cause further harm to the buffer.

B(2). That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone classification and/or special purpose district in which subject property is situated;

Finding: The granting of this variance would be detrimental to the public welfare or injurious to the property or improvements in the area because it would result in placing a development within the creek buffer despite the presence of alternative building sites on this property, which other property owners would not be entitled to do. Additionally, in a similar situation along Kanaka Creek Road, a variance request (CA-98-08) was denied because alternative building sites outside of the buffer were available on the property.

Since a well has been placed within the buffer without the proper variance approvals the applicant has already negatively affected the public welfare and property or improvements in the area. However, a variance should be granted, only for the well, to avoid further damage to the buffer by removal activities as long as mitigation is required as a condition of approval.

In addition to the criteria set out in Section 21.16.070(B), any applicant for a variance under this Chapter must further show:

§21A.04.020

C(3)a. That no practicable alternative exists to locating the proposed development within a stream, creek, river or buffer area; and

Finding: The proposed placement of the home is not the only site available on the property that would provide for a reasonably sized single-family dwelling, septic system, drainfield, reserve drainfield, driveway, garden, and cleared yard area. The applicant's submitted site plan indicates an alternative building site on the southern end of the property is available. This alternative site would not require a variance to the creek buffer. In addition, the northern end of the property has enough room to accommodate the

proposed development without the need for a variance.

The applicant should not have placed a well within the creek buffer without obtaining the proper variance. In addition, the availability of alternative well sites outside the creek buffer would have precluded a variance for this structure had the applicant applied prior to installation. Removal of the well, however, would cause further damage to the buffer and so mitigation for the un-permitted well should be included as a condition of granting a variance for just the well.

- b. That on-site mitigation measures agreed to by the applicant are adequate to avoid significant degradation of the stream creek or river.

Finding: Appropriate mitigation for the unauthorized well placement should include:

1. Removal of all noxious weeds, such as Japanese knotweed and non-native blackberry, within the creek buffer accompanied by replacement of these weeds with native riparian tree and shrub species.
2. Maintenance of the property by the landowner to prevent future spread of weeds and ensure survival of mitigation plantings.
3. Preparation, submittal, and approval of a weed removal and planting plan by the applicant to the Planning Department prior to issuance of an occupancy permit on the property.
4. Enlargement of the creek buffer width from 100' to 130' for a distance along the length of the creek of 50' to compensate for the reduction due to unauthorized well placement.
5. Preparation, submittal and approval of a plan depicting the placement of the increased buffer location prior to issuance of an occupancy permit.
6. No further construction, placement of structures, or vegetation removal within the newly configured creek buffer without obtaining an approved variance prior to commencing development activities.
7. No further after-the-fact variances shall be issued on the subject property. The property owner must remove any further unauthorized disturbance of the creek buffer.
8. The conditions of this variance approval shall be recorded in the County deed records to ensure notice of the conditions to successors in interest.

§21A.06.020

A.

CLASS I (SEVERE) LANDSLIDE HAZARD AREAS.

Class I Landslide Hazard Areas (LHAs) are areas of known mappable landslide deposits which have been designated Landslide Hazard Areas by the local legislative body.

Finding: The subject property is location within a known, mapped LHA designated as an LHA by the County. The requirements listed in this Title for Class I LHAs should be included as a condition of this variance. The requirements include:

1. Prior to signing a building permit authorizing any use allowed in the underlying land use designation or zone, the Department shall require the applicant to submit a geotechnical report prepared by a professional engineer, licensed in the State of Washington, with expertise in geotechnical engineering or by a geologist/hydrologist or soils scientist describing site stability and proposing mitigation measures sufficient to avoid on-site and off-site landslide hazards.
2. Should the applicant question the presence of a landslide hazard area on his/her property, the applicant may submit a geological assessment. The geological assessment shall include the following:
 - a. A description of the topography, surface and subsurface hydrology, soils, geology, and vegetation of the site; and
 - b. An evaluation of the analysis area's inherent landslide hazards;
 - c. A site plan of the area delineating all areas of the site subject to landslide hazard; and
 - d. Proposed mitigation measures to be implemented by the applicant, including but not limited to minimizing site disturbance or grading, implementing erosion control measures, such as the retention of existing vegetation and controlling surface water drainage through stormwater retention and detention systems.
 - e. The submittal must include a contour map of the proposed site, at a scale of 1"=20' or as deemed appropriate by the Department. Slopes shall be clearly delineated for the ranges between 15 and 29%, and 30% or greater. When site-specific conditions indicate the necessity, the department may require the topographic data to be field surveyed.
3. As part of any development permit granted under this section, the owner of the property subject to development shall record a completed LANDSLIDE HAZARD AREA NOTICE with the Skamania County Auditor.
4. Approval of all future short plats and subdivisions shall require a note on the face of the plat stating: NOTICE: This site lies within a landslide hazard area. Restrictions on use or alteration of the site may exist. For more information, contact the Skamania County Department of Planning and Community Development.

CONCLUSIONS

1. The variance would constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated since the variance is not necessary to build the home, driveway, septic system, drainfield and reserve drainfield, garden, and open yard area on the subject lot. Alternative building sites outside of the creek buffer exist. Since a well was installed within the creek buffer without the necessary approvals and its removal would cause further damage to the buffer area, a variance for only the well placement within the buffer area should not constitute a grant of special privilege as long as the conditions of the variance approval are met.

2. Alternative building sites exist and so the special circumstances of the property would not prohibit placement of a single-family home with the strict application of the critical areas buffer. However, a variance, with appropriate conditions, should be granted only for placement of the un-permitted well within the creek buffer to avoid further buffer disturbance.
3. The granting of the variance would be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone classification in which the subject property is situated since alternative building sites outside of the buffer exist and other similar application have previously been denied by the Department (CA-98-08). However, a variance with appropriate conditions should be granted only for placement of the un-permitted well within the creek buffer to avoid further buffer disturbance.
4. The subject property is located within a Class I (Severe) Landslide Hazard Area. An approved geotechnical report should be required prior to issuance of a building permit. The appropriate notice should be recorded with the County Auditor prior to issuance of a building permit.

DECISION

The requested administrative variance is hereby denied, except that the unauthorized well placed within the creek buffer may remain provided the following conditions are met:


1. Removal of all noxious weeds, such as Japanese knotweed and non-native blackberry, within the creek buffer accompanied by replacement of these weeds with native riparian tree and shrub species.
2. Maintenance of the property by the landowner to prevent future spread of weeds and ensure survival of mitigation plantings.
3. Preparation, submittal, and approval of a weed removal and planting plan by the applicant to the Planning Department prior to issuance of an occupancy permit on the property.
4. Enlargement of the creek buffer width from 100' to 130' for a distance along the length of the creek of 50' to compensate for the reduction due to unauthorized well placement.
5. Preparation, submittal and approval of a plan depicting the placement of the increased buffer location prior to issuance of an occupancy permit.
6. No further construction, placement of structures, or vegetation removal within the newly configured creek buffer without obtaining an approved variance prior to commencing development activities.
7. No further after-the-fact variances shall be issued on the subject property. The property owner must remove any further unauthorized disturbance of the creek buffer.
8. The conditions of this variance approval shall be recorded in the County deed records to ensure notice of the conditions to successors in interest.
9. Prior to signing a building permit authorizing any use allowed in the underlying land use designation or zone, the Department shall require the applicant to submit a geotechnical report prepared by a professional engineer, licensed in the State of Washington, with expertise in geotechnical engineering or by a geologist/hydrologist or soils scientist describing site stability and proposing mitigation measures sufficient to avoid on-site and off-site landslide hazards.
10. Should the applicant question the presence of a landslide hazard area on his/her property, the

applicant may submit a geological assessment. The geological assessment shall include the following:

- a. A description of the topography, surface and subsurface hydrology, soils, geology, and vegetation of the site; and
 - b. An evaluation of the analysis area's inherent landslide hazards;
 - c. A site plan of the area delineating all areas of the site subject to landslide hazard; and
 - d. Proposed mitigation measures to be implemented by the applicant, including but not limited to minimizing site disturbance or grading, implementing erosion control measures, such as the retention of existing vegetation and controlling surface water drainage through stormwater retention and detention systems.
 - e. The submittal must include a contour map of the proposed site, at a scale of 1"=20' or as deemed appropriate by the Department. Slopes shall be clearly delineated for the ranges between 15 and 29%, and 30% or greater. When site-specific conditions indicate the necessity, the department may require the topographic data to be field surveyed.
11. As part of any development permit granted under this section, the owner of the property subject to development shall record a completed **LANDSLIDE HAZARD AREA NOTICE** with the Skamania County Auditor.
 12. Approval of all future short plats and subdivisions shall require a note on the face of the plat stating: **NOTICE: This site lies within a landslide hazard area. Restrictions on use or alteration of the site may exist. For more information, contact the Skamania County Department of Planning and Community Development.**

Notice Date:

11/12/04


Charly Boyd, Watershed and Shorelines Planner
Department of Planning & Community Development

APPEALS

You may appeal this Administrative Variance to the Critical Areas Ordinance decision within 10 days of the date listed above, by submitting a Notice of Administrative Appeal form and appeal fee of \$100.00 to the Planning Department at P.O. Box 790, Stevenson, WA 98648. You should be prepared to make specific factual objections on the appeal form.

LANDSLIDE HAZARD AREA NOTICE

Tax Parcel No.: 03-07-25-2-0-0120-00

Address: _____

Legal Description: _____

NOTICE: This site lies within a landslide hazard area. Restrictions on use or alteration of the site may exist. For more information, contact the Skamania County Department of Planning and Community Development.

Exhibit A

A tract of land in the Northwest quarter of Section 25, Township 3 North, Range 7 East, Willamette Meridian, described as follows:

Lot 1 of HILLSIDE SHORT PLATS, recorded in Book "3" of SHORT PLATS, page 313, records of Skamania County, Washington, described as follows:

Gary H. Martin, Skamania County Assessor

Date 8/31/04 Parcel # 3-7-25-2-120
G.S.