

# Initial Project Review

## Shoreline Variance / Land Use Variance: Pinney and Brown

**Application Numbers: 899941, 904432**  
**Parcel Number: 0020081025**

**Key Peninsula Advisory Commission (KPAC) Public Meeting: May 15, 2019, at 6:30 p.m.,** at the Key Peninsula Civic Center, VFW Room, 17010 South Vaughn Road, Vaughn, WA 98349.

**Proposal:** The applicants request the following:

- A Shoreline Variance to construct a deck waterward of the residence.
- A Land Use Variance to reduce the front yard setback from 25 feet to five feet two inches.

**Project Location:** 2208 - 215<sup>th</sup> Avenue SW, Lakebay, WA, in the Residential Shoreline Environment and Rural 10 (R10) zone classification, in the Key Peninsula Community Plan area, within Section 08, T20N, R1W, W.M., in Council District #7.

**Review Summary:** Staff has reviewed this proposal for compliance with all policies, codes, and regulations.

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

**County Contact:** Andrew Van Gordon, Associate Planner, [andrew.vangordon@piercecountywa.gov](mailto:andrew.vangordon@piercecountywa.gov)  
253-798-7113

**Pierce County Online Permit Information:**

<https://pals.piercecountywa.gov/palsonline/#/permitSearch/permit/departementStatus?applPermitId=899941>



## **Project Data**

Complete Application Date: February 28, 2019

Initial Project Review Mailed: May 9, 2019

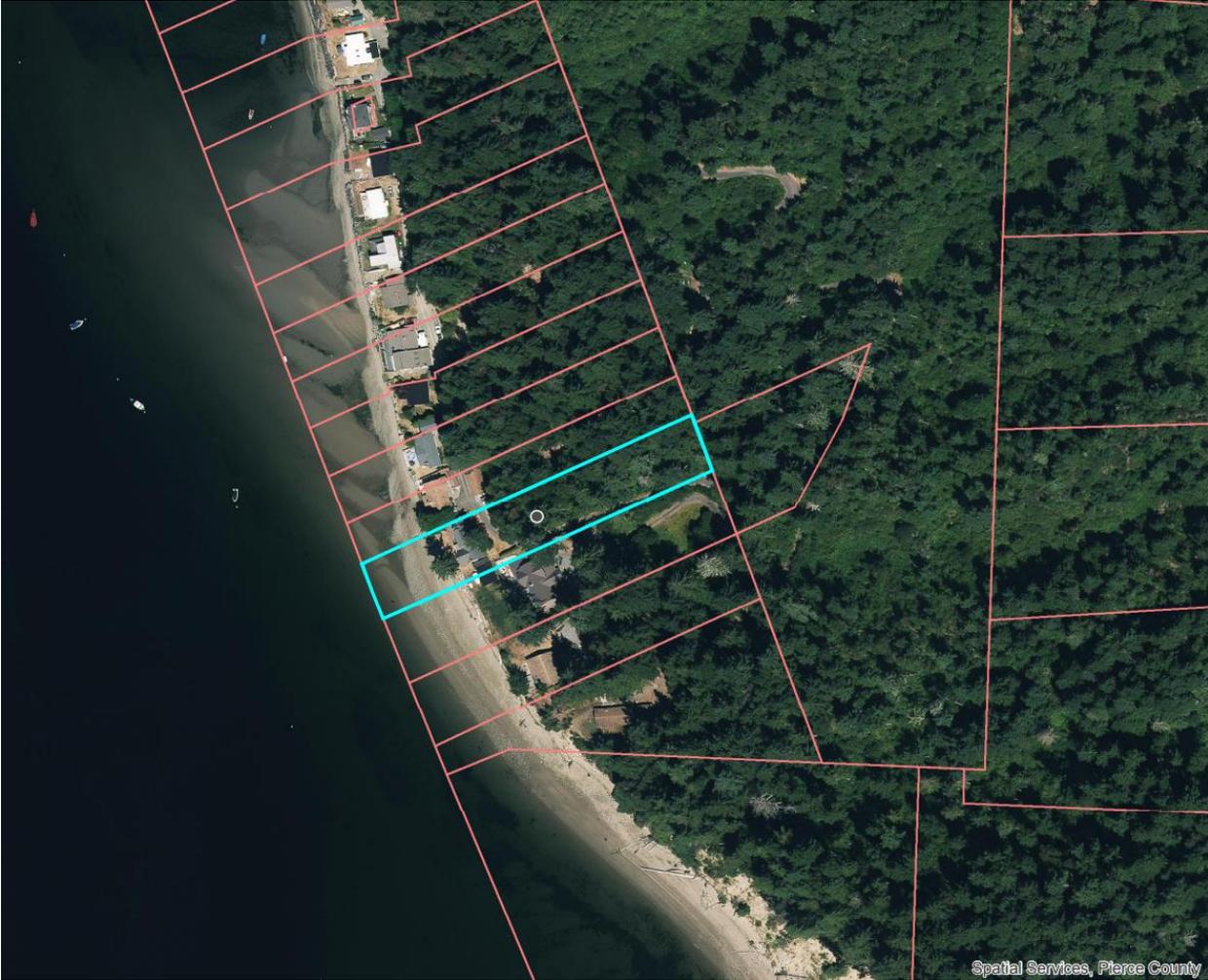
Property Owner/Applicants: Pinney, Alesia L and Brown, Jackie L  
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## **Legal and Public Notice**

- *March 11, 2019*: Notice of Application, including the Land Use Advisory Commission (LUAC) 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.
- *March 14, 2019*: Public Notice sign was posted on the site, confirmed with a Declaration of Posting.
- *May 01, and 02, 2019*: Legal notices were published in the official County newspaper (*Tacoma News Tribune*), and *Peninsula Gateway* newspaper, advertising the Key Peninsula Advisory Commission (KPAC) public meeting.

**2017 County Aerial**



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



## 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.
- Staff has not received comments from agencies that are opposed to the project.

## Surrounding Land Use / Shoreline / Zoning Designation

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

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

### Title 19A Appendix G: Key Peninsula Community Plan

The proposed Shoreline Variance is beyond the level of specificity found in the Community Plan policies. Staff did not find that the proposal conflicted with any goals or policies in the Community Plan.

### Title 18A Development Regulations – Zoning

- Setback and Height (18A.15.040)  
The required front yard setback for a property within the Rural 10 (R10) zone classification is 25 feet.

The applicant proposes to reduce the required front yard setback from 25 feet to five feet two inches. The applicant has applied for a Land Use Variance to reduce the setback.

- Key Peninsula Use Table (18A.26)

The applicant requests the land use variance for the benefit of an expansion of a detached single-family residence. Within the R10 zone in the Key Peninsula Community Plan area a detached single-family residence is permitted outright.

- Variances (18A.75.040)

The purpose of this Section is to provide a means of deviating from the requirements of Title 18A PCC in specific instances where strict application of these requirements would prevent property from being utilized in a similar manner as other properties in the same zone and classification because of special features or constraints unique to the property involved.

Before any variance may be granted, it shall be shown that:

1. There are special circumstances applicable to the subject property or to the intended use such as shape, topography, location or surroundings that not apply generally to the other property or class of use in the same vicinity and zone.

Staff finds that there are special circumstances associated with the project site.

The applicants' lot is one of only 14 along this stretch of shoreline where the residences are built at the base of the hillside. They are accessed by 215<sup>th</sup> Avenue SW which cuts through the properties. All residences along this stretch are situated west of 215<sup>th</sup> Avenue SW between the road and the Ordinary High-Water Mark (OHWM). The area east of 215<sup>th</sup> Avenue SW is extremely steep and essentially unbuildable.

This small neighborhood is unique in that within the general vicinity residences are built on top of the hillside as opposed to at the foot. The nearest residence to the north, which is a similar distance from the OHWM as the residences within the applicants' neighborhood, is approximately 1.2 miles north along the shoreline. The nearest residence to the south, which is a similar distance from the OHWM as the residences within the applicants' neighborhood, is approximately four miles south along the shoreline. However, neither of these instances are exactly similar. While they are located close to the shoreline neither are encumbered by an essentially unbuildable hillside or road running through the property.

2. Such variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other property in the same vicinity and zone, but which because of special circumstances is denied to the property in question.

Staff finds that the variance is necessary.

According to the Assessor-Treasurer the applicants' residence was originally built in 1953. An unpermitted second story expansion occurred at some point in 1989 or 1990. There is a history of permits being applied for on January 03, 1989 for expansion, however, it appears that final inspection never occurred. With that said it appears that the footprint of the original house has not been expanded. This would put the square footage of the legally permitted residence at approximately 1,204 square feet.

Using the Assessor-Treasurer's publicly available information Staff was able to determine that there were 15 other residences in this neighborhood. The average size of the residences is 1,430 square feet. Two properties have had Land Use Variances approved requesting reduced setbacks from the road for the benefit of the expansion of a single-family residence. The first was approved May 29, 2002, for SD/NP39-01/V12-02 (Kettering). The single-family residence was approved to expand to 1,794 square feet. The second was SD/NP24-07/V10-07 (Pinneo Single Family Residence). The single-family residence was approved to expand to 2,798 square feet.

The applicants' proposal would increase the effective footprint of the residence to approximately 1,826 square feet. The second story brings the total structure size to approximately 3,652 square feet. This would make it the largest residence in the area. However, the effective footprint would only expand by approximately 384 square feet (768 square feet with the second story) away from the water. The remainder of the footprint expansion comes by enclosing an existing carport. The requested reduced setback of five feet two inches is from the porch. The nearest the proposal is to the road, as measured from the foundation, is approximately nine and a half feet.

Although it would be the largest residence it is in line with the more recent expansions of Pinneo and Kettering along with the larger residences in the neighborhood.

3. The granting of such a variance will not be materially detrimental to the public welfare or injurious to the property or improvement in such vicinity and zone in which the subject property is located.

Staff has not seen evidence that granting of the variance would be materially detrimental to the public welfare or injurious to the property or improvement in such vicinity and zone. There is always a concern when a structure is proposed to be closer to a road. In this specific instance there would be a concern about emergency vehicles having enough room to pass without incident as the access to not only the applicants' residence but also the ones farther north are quite narrow. Staff has not received written comments from any such provider with concerns though. Staff has not received written comments from other residents within the area about concerns either.

4. The granting of such a variance is consistent with the Comprehensive Plan including any applicable Community Plan.

As previously spoken to, Staff finds that the granting of the variance would be consistent with the Comprehensive Plan and the Key Peninsula Community Plan.

5. No significant adverse environmental impact will be caused as a result of the variance approval.

Staff has not found nor seen evidence that approval of the variance will cause significant adverse environmental impact.

## Development Policies and Regulations - Shorelines – Title 18S

Shoreline Planning has reviewed the proposal for conformance with the requirements of Title 18S PCC, Development Policies and Regulations – Shorelines. The following is an analysis of how the project complies with various provisions of Title 18S.

- Recognition of Legally Established Development: Residential Structures (18S.10.055 C)  
Residential 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 predates 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 Shoreline Residential Shoreline Environment.

- Recognition of Legally Established Development: Nonconforming Structures (18S.10.055 D)  
Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers, or yards; area; bulk; height or density may be maintained and repaired and may be enlarge or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction would not be allowed for new structures.

The original residence predates 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 Shoreline Residential Shoreline Environment. A residence is a permitted use within the Shoreline Residential Shoreline Environment.

The residence is considered a nonconforming structure and may be enlarged pursuant to these two code sections.

- 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 an expansion to an existing residence located with the Residential SED. The expansion will occur within areas that are either already developed with impervious surface or will have minimal loss of vegetation. Additional plantings can be required to offset any vegetation loss. The proposed structure will be taller but the uplands area, on the opposite side of the road, is part of the applicants' property. All existing development is clustered along the shoreline.

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

Staff has received comment from both the Nisqually Indian Tribe and the Squaxin Island Tribe. The Squaxin Island Tribe commented that the area has a high potential for the location of cultural resources but due to the nature of the project have no specific concerns. Both tribes would like language relating to inadvertent discovery to be included. Staff has 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. This means assuring no net loss of ecological functions and process in shorelines, and protection of critical areas designated in Title 18E PCC.

Ecological functions refer to "...the work performed, or role played by, the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem" (18S.18.70 – Appendix A)

Applicable section policies include, but are not 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.

Regarding the applicants' proposal: expansion is mainly occurring landward of the existing residence. The expansion landward, into an area separated from the shoreline by the existing residence serves to avoid and minimize impacts to shoreline functions.

Staff has requested the applicant identify all vegetation proposed to be removed. If any vegetation is proposed to be removed a vegetation management plan will be required. While most of the expansion is occurring landward of the existing residence, there is expansion occurring waterward of the residence (the deck). This requires approval through a Shoreline Variance. The applicant has applied for a Shoreline Variance.

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

The Staff biologist has not completed their review as of the writing of this report. If critical areas are present, there may be expanded buffers to protect said critical areas.

○ 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 applicants' 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 applicants are proposing to expand: landward, parallel to the shoreline, upward and waterward. The expansion landward is landward of the existing, legally established residence which qualifies as "...a permanent substantial improvement (that) serves to eliminate or greatly reduce the impact of the proposed expansion upon Shoreline ecosystem functions". The expansion parallel to the shore is occurring over existing impervious surface in the form of the existing driveway and carport area. No existing vegetation is being removed as part of this expansion. The expansion upward is occurring above the existing building footprint but below the maximum allowed height of 35 feet. Finally, the expansion waterward requires a Shoreline Variance which the applicant has applied for.

○ 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 not provided this calculation. Staff has requested it be provided.

● 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 are not 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 applicants' 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 are not 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 applicants are proposing to increase the height of the structure from the existing, unpermitted height of approximately 24.5 feet to approximately 32.5 feet. There are no residences to the east of the applicants' property. The residence to the north is almost parallel to the applicants with the residence to the south being set back further from the shoreline than the applicants' property. While the residence would be seen it would not significantly obstruct the neighbors' view. Staff has not received comment from them that the additional height will be an issue.

- 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 applicants' 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 are not 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. Prior to approval of any associated development permits the applicant shall show that water quality impacts, such as preventing/cleaning spills of harmful substances, controlling stormwater and pollution, restoration to pre-project conditions and construction using materials that do not leach toxic substances are being met or planned for.

- 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 applicants' existing residential structure does not meet standards for buffers. However, the original residence is considered legally established as it predates the Shoreline Management Act.

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. There is no buffer width required for marine shorelines in the absence of other specific regulated habitat features.
3. Residential development shall comply with bulk standards (such as, but not limited to: setbacks, buffers, height, and density) of Title 18A PCC.  
The applicants are not meeting all setback requirements. They are requesting deviation from the front yard setback of 25 feet for properties within the Rural 10 zone. A Land Use Variance has been applied for.
4. New over-water residences and expansion of existing over-water residences, including floating homes, is prohibited.  
Not applicable. The applicants' 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.  
Staff has requested the applicant provide impervious surface calculations.
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 applicants are not proposing a new system but will be modifying the existing system. Staff has requested they identify where it will be located.

- 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 applicants' general proposal (expansion of a legally established existing single-family residence) can be considered exempt, the expansion waterward requires approval through a Shoreline Variance. The applicant has applied for said variance.

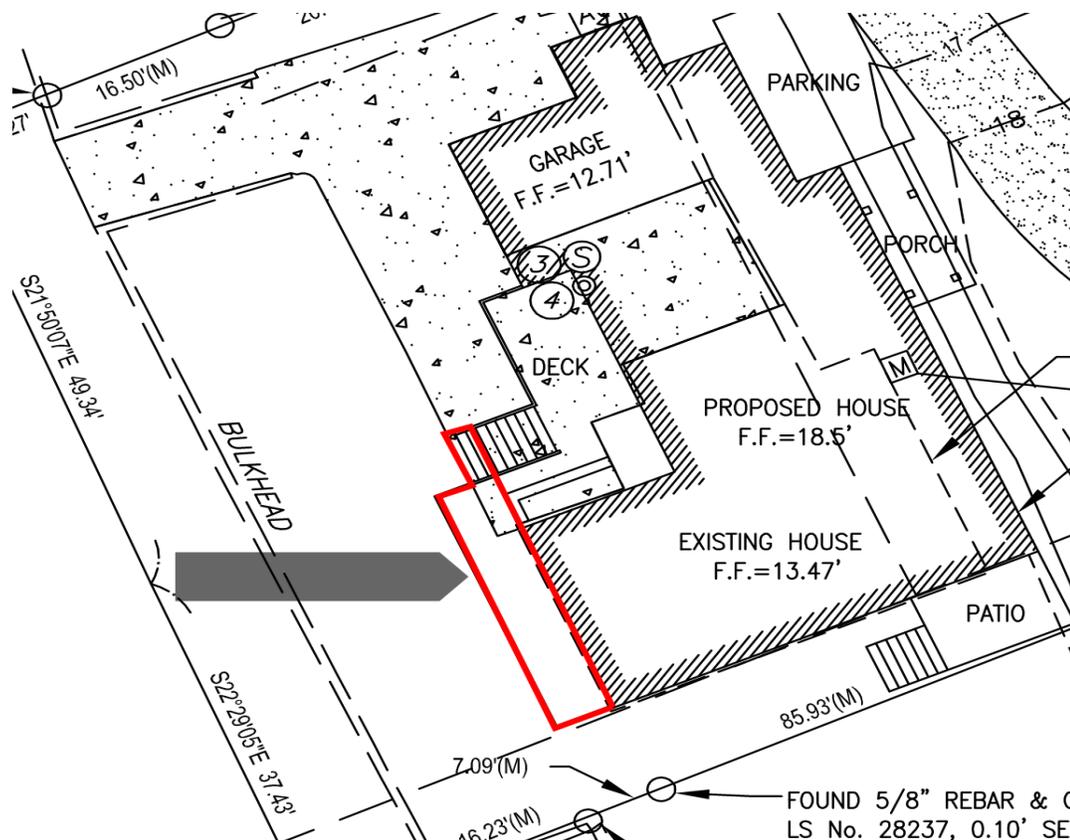
- Shoreline Permit Table: Shoreline Permit Table (18S.60.030-1)

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 applicants are proposing to expand the residence waterward within the required shoreline buffer. They have applied for a Shoreline Variance.



**Figure 2: Everything within the box indicated by the arrow is expansion waterward of the existing residence and requires approval through a Shoreline Variance. The area consists of portions of a deck and staircase.**

- 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 no evidence that denying the Shoreline Variance would result in a thwarting of the policy enumerated in the Act due to extraordinary circumstances.

- 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 not preclude the applicants from a reasonable use of the property. A single-family residence is still allowed on the property through 18S. Removing the waterward expansion of the structure would not prevent a single-family residence from being on the property.

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.

Staff find no unique circumstances that dictate waterward expansion.

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.

Staff has not seen evidence that the proposal will cause adverse impacts. The proposal would be compatible with other authorized development within the area as other residences have received approval through the County for an expansion of an existing residence.

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

Staff has been unable to identify other similar Shoreline Variances in the area. However, two Expansion of a Nonconforming Use applications have been approved within the past 20 years for residences within the area. It does not appear from the Hearing Examiner decisions associated with the applications that expansion waterward occurred.

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

Having the portion of the deck and stairs waterward of the existing structure, which currently has a deck and a patio, is not necessary for the reasonable use of the property.

- 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 cumulative impact of large numbers of shoreline property owners requesting variances for decks would not be insignificant. In this instance, where there are a limited number of residences along the stretch of shoreline with little chance of any other residences being built, the likelihood of cumulative impacts does not appear terribly great.

### **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.

The regulations are not preventing reasonable use of the property. A residence is constructed and has been in use since before the Shoreline Management Act. Expansion landward of the existing residence, upward of the existing footprint and parallel to the OHWM, if over existing impervious surface, is all available and part of the proposal. Being denied expansion waterward does not preclude or significantly interfere with the reasonable use of 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.

The design decision does not appear to be the result of any unique conditions of the parcel. As previously stated the applicants can expand landward, upward and parallel to the shore and are proposing to do so.

- 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.

The proposed design is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program. Staff has not seen evidence that it will cause adverse impact to the shoreline environment.

- d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area.

Staff did not find that other residences within the area which had expanded were approved through a Shoreline Variance. However, expansion did occur under the previous Pierce County Shoreline Management Program and shoreline regulations through a Shoreline Expansion of Nonconforming Use application process.

- e) That the variance requested is the minimum necessary to afford relief.

As previously stated a residence has existed on the property since before the Shoreline Management Act, providing reasonable use of the property. Additionally, the applicants are proposing to expand the residence landward, upward and parallel to the shore without the need for a Shoreline Variance.

- 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. The proposed shoreline project area is already developed with an existing single-family residence as are many of the properties within the near area. Beyond the small neighborhood of single-family residential structures, there is little, if any chance, due to the steep bluffs in the general area that future development will occur in a similar manner. There is no evidence that the proposal will cause substantial detrimental effects to the shoreline environment. Similar requests are unlikely to cause substantial effects to the shoreline environment or be inconsistent with RCW 90.58.020.