

We frequently get questions from clients regarding permit variances—what is a variance? What is allowable through a variance? What are the conditions of such a permit? The best answer to these questions is “it depends. Variances vary.” In this information sheet we do our best to summarize variances for shorelines and wetlands permits.

What is a permit variance?

Permit variances allow for exceptions to required minimum buffer widths, when special circumstances make the buffers impossible or impractical to observe. There are two general types of variance processes: administrative review, and public hearing. Local ordinances define the type of process required depending on the requested variance. With an administrative review process, local planning department staff may grant limited variances under certain conditions. In Thurston County, for example, planning staff may authorize an administrative variance to reduce the buffer width by no more than 50%. Other variances typically require a public hearing, which is a quasi-judicial process. In Thurston County, this type of variance is called a Reasonable Use Exception. Variances requiring public hearings generally take longer to complete, cost more in fees paid to the jurisdiction and the consultants, and often have multiple conditions attached.

Permit variances may or may not be granted, according to the jurisdiction’s interpretation of applicable laws and rules. Regulatory agencies generally have more flexibility on administrative variances. In order to be eligible for a reasonable use exception, the property must pose unique or exceptional challenges so that applying the shoreline or wetland regulations would result in undue hardship on the property owner. Circumstances eligible for variances must not be self-imposed but rather must be naturally occurring or pre-existing. For example, a single-family property with stream buffers encompassing all the buildable areas would be eligible for a reasonable use exception, only if the lot was subdivided before the buffer regulations were adopted. A project is also eligible if the standard application of regulations would result in a property use that is less consistent with the intent of the regulation than the alternatives. For example, if a homeowner proposes to replace a mobile home located in a wetland buffer with a stick-built home, this project may be granted a variance because rebuilding within the existing footprint of the mobile home would prevent new impacts to the surrounding area. The public hearings authority will weigh the evidence and issue a decision on the variance request.

Reasonable use applicants must demonstrate that no other reasonable use can occur without impacting the critical area or buffers. Applicants must establish how the proposal avoids impacts as much as possible, minimizes the unavoidable impacts, and compensates for the unavoidable impacts with a mitigation plan. The regulating agency must consider both direct and cumulative impacts of the variance. Because the variance cannot award special privilege to one landowner over another, the agency must weigh the impact of similar variances that may be granted following the initial one. If “substantial adverse effects” (according to the Shoreline Management Act) to the protected environmental feature will result from these cumulative impacts, then the variance cannot be granted.

What are the conditions of a variance permit?

Regulatory agencies and public hearing authorities have much latitude for attaching conditions to variances, though some local ordinances establish guidelines. Usually, compensatory mitigation will be required to offset the environmental impacts. Examples of mitigation include weed control and enhancement plantings within the buffer or wetland, increased buffer width beyond the standard in sensitive areas, new constructed wetlands on- or off-site, and wetland banking credits. An environmental consultant is usually required to formulate a mitigation plan summarizing what and how the mitigation will occur. The jurisdiction may require a bond to be posted before the permit is granted, to cover the cost of implementing the mitigation plan. If the mitigation has not been adequately installed before the bond expires, the local jurisdiction can use the bond to pay for installation of the project.

Additional resources

Local government websites frequently include variance instructions and forms. WA Department of Ecology’s website includes a variance overview of the Shoreline Management Act. Sound Native Plants offers permit consultations including what property circumstances may warrant a variance, preparation of permit applications and mitigation planting design.