

KATHY HILL  
SKAGIT COUNTY AUDITOR

'99 MAY 10 P12:35

RECORDED \_\_\_\_\_ FILED \_\_\_\_\_  
REQUEST OF \_\_\_\_\_

**9905100110**

AFTER RECORDING RETURN TO:  
SKAGIT COUNTY HEARING EXAMINER  
302 SOUTH FIRST STREET  
MOUNT VERNON, WA 98273

DOCUMENT TITLE: SHORELINE SUBSTANTIAL DEVELOPMENT VARIANCE SL 99 0097

GRANTOR(S): SKAGIT COUNTY HEARING EXAMINER

GRANTEE: BLAIR AND DANYA FURMAN

ASSESSOR PARCEL NO: P66602

ABBREVIATED LEGAL DESCRIPTION: a portion of Section 27, Township 33 North, Range  
6 East, W.M., Skagit County, Washington

**9905100110**

BK 1987PG0336

**SKAGIT COUNTY HEARING EXAMINER**  
**STATE OF WASHINGTON**

In the matter of: )  
Application No. SL 99 0097 ) Findings act  
Of BLAIR AND DANYA FURMAN ) Entry of Order  
for a SHORELINE SUBSTANTIAL DEVELOPMENT/ ) No. SL 99 0097  
VARIANCE PERMIT for: To replace an existing single )  
Family residence with no expansion of the building\_ )  
Footprint shoreward of the existing structure. )

THIS MATTER having come regularly before the Skagit County Hearing Examiner for a Public Hearing under an application filed with the Skagit County Planning and Permit Center on behalf of the Applicant requesting a Shoreline Substantial Development/Variance Permit as described in the attached Report and Findings of that Department and located at 33707 South Shore Dr, Mount Vernon, WA, within Section 27, Township 33 North, Range 6 East, W.M., Skagit County, Washington;

Assessor Parcel No: P66602

And, notice having been given to all property owners within 300 feet of said property and all matters in the file having been considered together with the testimony, evidence, and exhibits in open hearing and made a part of the record in this matter; the Hearing Examiner makes the following findings of fact.

**FINDINGS OF FACT**

1. April 28, 1999 was fixed as the date of the public hearing and the Hearing Examiner held a public hearing on that date.
2. All persons present at the Public Hearing were given an opportunity to present evidence and testimony, and all correspondence received was made a part of the record.
3. The Application was advertised in accordance with the requirements of the Skagit County Shoreline Management Program (Section 14.28 of the Skagit County Code) and Chapter 173-14-070 of the Washington Administrative Code. The Public Hearing was advertised in accordance with the requirements of Section 14.01 of the Skagit County Code.
4. The Planning and Permit Center issued a Staff Report and Findings. The Hearing Examiner adopts Findings No. one (1) through eight (8) as presented in that Report.
5. Section 9.02 of the Skagit County Shoreline Management Master Program establishes criteria and standards for consideration of Shoreline Substantial Development Permits. These criteria and standards are as follows:

**Criteria for Granting Substantial Development Permits:**

1. Upon the effective date of this program, a shoreline substantial development permit or a statement of exemption shall be granted only when the proposed development is consistent with:
  - a. Policies and regulations of the Skagit County Shoreline Master Program; and

- b. Applicable policies enumerated in RCW 90.58.020 in regard to shorelines of the state and shorelines of statewide significance; and
  - c. Regulations adopted by the Department of Ecology pursuant to the Act (WAC 173-14).
2. Burden of Proof - The burden of proving that the proposed development is consistent with the above (paragraph 1) shall be on the applicant.
6. Section 10.03 of the Skagit County Shoreline Management Master Program establishes criteria and standards for consideration of Shoreline Variance Permits. These criteria and standards are as follows:
- 1. Variance permits for development to be located landward of the ordinary high water mark (OHWM), except within areas designated marshes, bogs or swamps pursuant to Chapter 173-22, Washington Administrative Code, may be granted provided the applicant can meet all the following criteria; the burden of proof shall be on the applicant.
    - a. That the strict application of the bulk dimensional or performance standards set forth in this Master Program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by this Master Program.
    - b. That the hardship described above 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 this Master Program and not, for example, from deed restrictions or the applicant's own actions.
    - c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.
    - d. That the variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the same area and will be the minimum necessary to afford relief.
    - e. That the public interest will suffer no substantial detrimental effect.
  - 2. Variance permits for development to be located either waterward of the OHWM or within marshes, bogs or swamps as designated pursuant to Chapter 173-22, Washington Administrative Code may be granted provided the applicant can meet all the following criteria; the burden of proof shall be on the applicant.
    - a. That the strict application of the bulk, dimensional or performance standards set forth in the Master Program precludes a reasonable use of the property not otherwise prohibited by this Master Program.
    - b. That the hardship described above 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 this Master Program and not, for example, from deed restrictions

or the applicant's own actions.

- c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.
  - d. That the requested variance will not constitute a grant of special privilege not enjoyed by the other properties in the area and will be the minimum necessary to afford relief.
  - e. That the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance.
  - f. That the public interest will suffer no substantial detrimental effect.
3. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were to be granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies of RCW 90.58.020 and this Master Program and should not produce substantial adverse effects to the shoreline environment.
7. The Hearing Examiner reviewed this application with respect to the criteria for approval and the requirements of Section 14.28 of the Skagit County Code.

#### **CONCLUSIONS**

The Hearing Examiner, having duly considered the matter, including all the testimony and evidence presented at the Public Hearing and on file including the application, the Environmental Information required by the State Environmental Policy Act Guidelines and other environmental information, information from other interested persons, information from other County Departments affected, and independent studies of the Skagit County Planning and Permit Center finds that:

- 1. The proposed development, with the appropriate conditions, modifications, and/or restrictions which, if necessary and applicable, are listed below as conditions of approval is consistent and/or compatible with the following policies, regulations, and statutes:
  - a. The Policies and Regulations of the Skagit County Shorelines Management Master Program; and
  - b. Applicable policies enumerated in R.C.W. 90.58.020 in regard to shorelines of the state and shorelines of statewide significance; and
  - c. Regulations adopted by the Washington State Department of Ecology pursuant to the Shorelines Management Act and contained in Chapter 173-14, Washington Administrative Code.
- 2. That the proposed project substantially meets the criteria for granting variance permits as set forth in Section 10.03 of the Skagit County Shoreline Management Master Program.

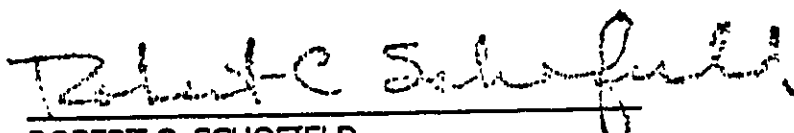
**DECISION**

The Hearing Examiner APPROVES the application for a Shoreline Substantial Development/Variance Permit subject to the following conditions:

1. All construction debris shall be properly disposed of on land in such a manner that it cannot enter into the waterway or cause water quality degradation.
2. The project shall be started within two (2) years of the date of this order and completed within five (5) years of the date of this order or the shoreline permit will become void.
3. The applicant shall record the site plan prepared by Wetland Resources Inc. and dated January 27, 1999 showing the buffer of the Type 4 stream and the dimensions of the developed and undeveloped areas within the buffer of the Protected Critical Area (Lake Cavanaugh). The site plan shall be recorded with the Skagit County Auditor (SCC 14.06.145(2)) within 120 days of the date of approval of this permit or the permit shall become null and void.
4. The applicant shall obtain a Skagit County Building Permit and obtain all the necessary approvals incorporated within the said permit.
5. The subject proposal shall comply with the Skagit County Shoreline Master Program and the Shoreline Management Act RCW 90.58.
6. The applicant shall strictly adhere to the project information (site diagram) submitted for this proposal. If the applicant proposes any modifications of the subject proposal, he/she shall request a permit revision from the Skagit County Planning and Permit Center prior to start of construction.

This decision shall become final five (5) days from the date of this order unless appealed in accordance with Sections 9.11 or 13.01 of the Skagit County Shoreline Management Master Program.

SKAGIT COUNTY HEARING EXAMINER

  
ROBERT C. SCHOFIELD

Date of Action: May 5, 1999

Copies transmitted to Applicant: May 5, 1999

Attachment: Staff Report and Findings

C: Applicant, File, County Commissioners, Hearing Examiner

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BK 1987 PG 0340



REVIEWING AUTHORITY: Skagit County Hearing Examiner

PUBLIC HEARING DATE: April 28, 1999

APPLICATION FOR: Shoreline Substantial Development/Variance #SHL 99-0097

APPLICATION DATE: February 26, 1999

APPLICANT: Blair & Danya Furman  
6219 136<sup>th</sup> PI S.W.  
Edmonds, WA 98026

PROJECT DESCRIPTION: To remove an existing residence and replace it with a new single family residence. The new residence will be locate 36 feet from the Ordinary High Water Mark (OHWM) which is 4 feet farther landward than the existing residence. No expansion of the building footprint will occur shoreward as the existing structure is 32 feet from the OHWM and the new structure will be 36 feet.

PROJECT LOCATION: The proposed project is located at 33707 South Shore Drive, Mount Vernon, within a portion of Section 27, Township 33 North, Range 6 East, W.M., Skagit County.

RECOMMENDATION: Approval, with conditions stated at the end of the report.

EXHIBITS:

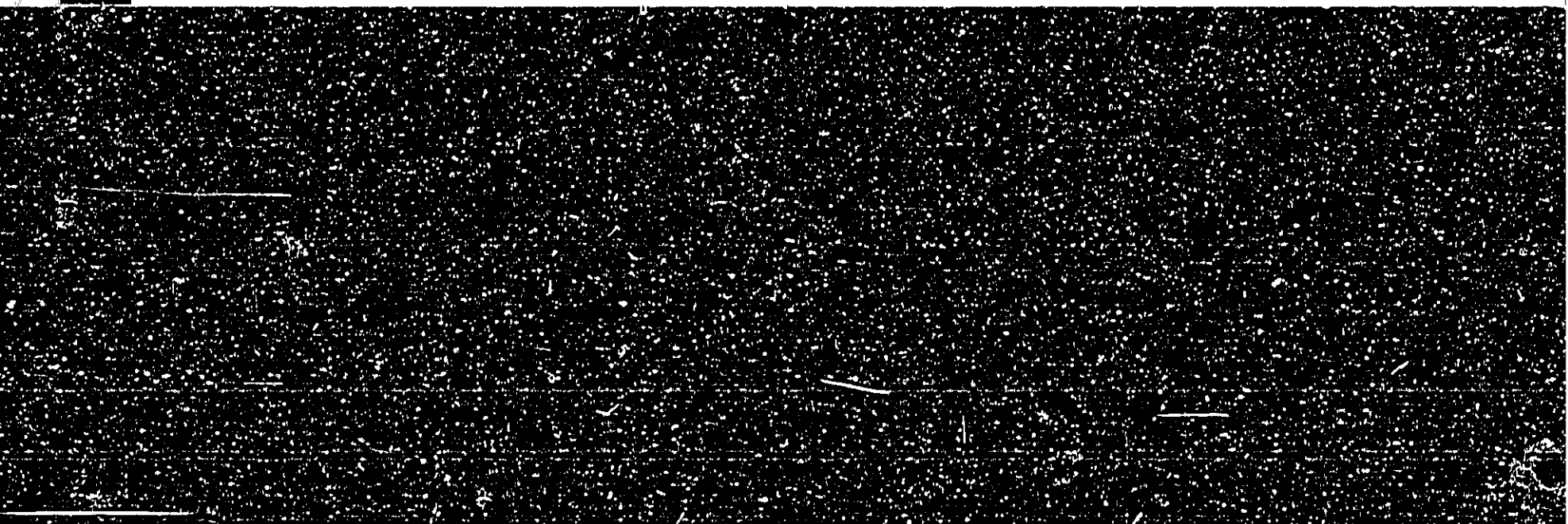
1. Staff Report
2. February 26, 1999, Shoreline Substantial Development application SHL99-0097 and Critical Area Review Form with a narrative, ownership certification and maps.
3. March 11 & March 18, 1999, Notice of Development Application.
4. March 1, 1999 Letter of Completeness.
5. April 14, 1999 Wildlife Habitat Analysis prepared by Wetland Resources Inc.
6. January 27, 1999 Wetland Delineation Report prepared by Wetland Resources Inc.

STAFF FINDINGS:

1. The application has been advertised in accordance with Section 9.04 of the Skagit County Shoreline Master Program (SMP) and WAC 173-14-070.
2. The subject proposal is located on the shoreline of a property with a single-family residence on Lake Cavanaugh in an area designated as a Rural Village by the Skagit County Comprehensive Plan and within the Residential District under the Skagit County Zoning Ordinance. The property is designated as Rural Residential in the SMP.
3. No objections have been received regarding this proposal.

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4. Staff determined that the subject proposal required a Site Assessment/Habitat Management Plan as required in 14.06.520 of the Skagit County Critical Areas Ordinance (CAO) which was provided on April 18, 1999. The report determined that the proposal will have little if any negative impact to the site.
  5. Staff has determined that the subject proposal shall be reviewed for consistency with SMP Chapter 7.13 Residential Development.

5.13 (B) Single Family Residences

Although single family residences are exempt from shoreline permit procedure (RCW 90.58.030 (3-e-vi)), the county, for the benefit of the lot owner, adjacent properties, and other shoreline and water body users, should review all proposals for construction to determine if:

- (1) The proposal is or is not exempt from permit procedures

*This proposal is not exempt because of the reduced setback requests on the shoreline.*

- (2) The proposal is suitably located and designed and that all potential adverse impacts to the shoreline and water bodies have been recognized and mitigated.

*The proposal is more environmentally sensitive due to the proposal being 4 feet farther from the OHWM than the existing structure. Also with enhancement to the streams north bank the overall functional value of the site could be improved.*

7.13 (C) Location

- (1) Existing and designated areas - New substantial developments should locate in existing developed areas or in officially designated residential areas providing development in these areas is consistent with this program.

*The area was adopted as part of the Lake Cavanaugh Rural Village in the 1997 Skagit County Comprehensive Plan. This Rural Village designation reflects the urban setting that already exists in this area.*

- (2) Geohydraulics - Residential development should be located:

- a. so as not to interfere with geohydraulic processes.
- b. Inland from feeder bluffs, drift sectors, and accretion shore forms.
- c. To avoid or minimize the need for shore defense, stabilization, and flood protection works.
- d. To utilize and protect the integrity of the shore resources for the benefit of present and future residents and users.

*The current proposal will not require shoreline stabilization or flood protection works*

6. The Skagit County Planning and Permit Center has determined that the subject request is consistent with the criteria for granting Shoreline Substantial Development Permits.

7. Master Program, Chapter 10 Variances, sets forth the criteria for granting Shoreline Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance permits reads:

Variance permits for development to be located landward of the ordinary high water mark (OHWM), except within areas designated marshes, bogs or swamps pursuant to Chapter 173-22 WAC, may be granted provided the applicant can meet all the following criteria; the burden of proof shall be on the applicant.

- a. That the strict application of the bulk, dimensional or performance standards set forth in this Master Program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by this Master Program. *The existing lot is divided by a Type 4 stream with 50 foot buffers from each bank and has an existing drain field located directly landward of the cabin. These in place barriers make it unfeasible to move the proposed residence a greater distance landward.*
  - b. That the hardship described above 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 this Master Program and not, for example, from deed restrictions or the applicant's own actions. *The hardship is specifically related to the specific natural feature (Type 4 stream) and was not caused by the applicant.*
  - c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation. *The entire lakefront has been developed for intensive rural residential use as demonstrated by the Rural Residential Shoreline designation as well as the Rural Village designation by the Skagit County Comprehensive Plan. No adverse effects are anticipated by the proposal.*
  - d. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the same area and will be the minimum necessary to afford relief. *Due to stream buffer requirements and the existing location of adjacent homes the proposal does not constitute a special privilege.*
  - e. That the public interest will suffer no substantial detrimental effect. No detrimental effect has been identified.
8. The Skagit County Department of Public Works has no comment on the proposal.





### RECOMMENDATION

Based on the above findings, the Skagit County Planning and Permit Center would recommend for **approval** of a Shoreline Substantial Development Permit subject to the following conditions:

1. All construction debris shall be properly disposed of on land in such a manner that it cannot enter in to the waterway or cause water quality degradation.
2. The project must be started within two (3) years of the date of this order and completed within (5) years of the date of this order or the shoreline permit will become void.
3. The applicant shall record the site plan prepared by Wetland Resources Inc. and dated January 27, 1999 showing the buffer of the Type 4 stream and the dimensions of the developed and undeveloped areas within the buffer of the Protected Critical Area (Lake Cavanaugh). The site plan must be recorded at the County Auditors (SCC 14.06.145(2) office within 120 days of approval of this permit or the permit will become null & void.
4. The applicant must obtain a Skagit County Building Permit and receive all the necessary approvals incorporated within the said permit.
5. The subject proposal shall comply with the Skagit County Shorelines Master Program and the Shoreline Management Act RCW 90.58. In doing so, the applicant shall receive a Skagit County Shorelines Substantial Development Permit.
6. The applicant shall strictly adhere to the project information (site diagram) submitted for this proposal. If the applicant proposes any modifications of the subject proposal, he/she shall request a permit revision from this office prior to the start of construction.

Prepared By: DD

Approved By:

Date:

April 20, 1999