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Kathy Hill, Skagit County Auditor

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

DOCUMENT TITLE: ORDER ON SHORELINE VARIANCE APPLICATION SL 99 0550

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: JOHN and MARLA HOVEY

ASSESSOR PARCEL NO: P31294

ABBREVIATED LEGAL DESCRIPTION: located at 4536 South Shore Drive, Anacortes, WA; a portion of Section 14, Township 35 North, Range 1 East, W.M., Skagit County, Washington.

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of the Application of)	
JOHN & MARLA HOVEY)	SL 99-0550
)	
For a Shoreline Variance to Construct)	Findings of Fact,
A Residence at a Minimum Distance)	Conclusions of Law
of 76 Feet from the Ordinary High)	And Decision
Water Mark on the Southwest Shore)	
of Guemes Island)	
_____)	

THIS MATTER concerns an application to build a residence on the shoreline which violates the prescribed setback from the ordinary high water mark (OHWM). The application came on for hearing on December 22, 1999, after due notice. The Skagit County Planning and Permit Center was represented by Daniel Downs. Oscar Graham and Patricia Bunting, consultants, appeared for the applicants.

The applicants testified on their own behalf. Dietrich Brunner, a neighborhood property owner, spoke in opposition. There were letters of opposition from several other neighbors. The Examiner visited the site on January 12, 2000. Based on the testimony taken, exhibits admitted and argument made, the following is entered:

FINDINGS OF FACT

1. John and Marla Hovey (applicants) seek to build a single family home on the shorelines of Guemes Island. The proposed structure would violate the shoreline setback applicable at the site. Therefore, a variance is requested.
2. The address is 4536 South Shore Drive which is near the west end of the south shore of the island. The site is located within a portion of Sec. 14, T35N, R1E, WM. The area is designated as Rural under the Skagit County Shoreline Master Program (SMP).
3. An existing concrete foundation on the site lies 76 feet from the OHWM at its closest point. The shoreline setback on the lot is 101.8 feet. The applicants wish to place the home on the existing foundation. For this, a variance of roughly 25 feet is required. A low patio, less than 30" above ground, would extend waterward from the house.
4. The property is on a residentially developed shoreline where numerous prior homes have been built on narrow platted lots. Under the SMP, the waterfront setback in Rural environments is determined by averaging the setbacks of nearby existing homes that are within the shoreline strip. The Shoreline Administrator visited the site in response to this application



and made measurements to determine the proper setback. The 101.8foot setback figure is the result of his field work. No one contests this number.

5. The shoreline setback determined in this case is actually less than the setback for this property as calculated by a previous Shoreline Administrator in 1996. In the main, the difference reflects the removal of a home to the east which is more than 200 feet back from the OHWM. However, the existence of the foundation is the result of an earlier building permit approval from the County in 1991. The home contemplated for the foundation was never constructed.

6. The foundation was designed for a modular home. It's structural integrity at present is questionable. It could not be used -- at least not without substantial improvement -- for the home the applicants plan to build. Demolition and removal of this foundation would be relatively easy to accomplish.

7. The Staff recommends approval of the setback variance largely on the basis of the existence of the foundation that is in place. The Staff also notes that other existing structures on the site reduce the area available for home construction.

8. Currently the site contains a small house with a deck attached to the west and south. The edge of this deck is approximately 180 feet back from the OHWM. Behind this house are a septic mound, a boat shed and a well. The driveway proceeds down the west property line terminating in the area of the present house. The proposal is to convert this house into an artist's studio, removing bath and kitchen facilities so that it no longer qualifies as a dwelling.

9. The applicants do not want to move any of the structures already in place. Their consultants maintain that the combination of these structures add up to site constraints that make it unreasonable to require location of a new home at or behind the 101.8 foot line.

10. Only a portion of the existing foundation intrudes into the setback. It appears that, if this foundation were disregarded, there is ample room to build a reasonable home that conforms to the required setback without changing the location of existing site improvements. Topographical conditions are not such as to render this impractical. The garage proposed to be located toward the east property line could be relocated toward the west and a 10 foot separation from the converted artist's studio could still be maintained. Of course, the studio could also be incorporated into the new house.

11. The applicants purchased the property about five years ago after the foundation they wish to rely on was already in place. The existing conditions on the property are not of their creation. However, the instant application initially asked to locate the new home at a 65 foot shoreline setback, demonstrating that, at least initially, the location of existing foundation was not thought to be an essential determinant of the location of a new house.



12. In general, the area between houses and the water along this stretch of shoreline is in open lawn. But, the lot immediately to the west of the applicants' is currently undeveloped and there are trees and shrubs on it near the shore. This vegetation substantially limits views to the west from properties east of the applicants'.

13. A Fish and Wildlife Site Assessment/Habitat Management Plan was prepared by the applicants' consultants pursuant to the Skagit County Critical Areas Ordinance. Among other things, the report recommended that the area extending waterward from the proposed patio on the new house should be designated a Protected Critical Area and recorded as such with the County Auditor. The applicants agreed to this and committed to a voluntary program of planting native vegetation in the Protected Area.

14. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has jurisdiction over the parties and the subject matter of this proceeding.

2. The development is exempt from the procedural requirements of the State Environmental Policy Act. WAC 197-11-800(1)(b)(i).

3. The Staff suggests that because a shoreline variance is requested, a shoreline substantial development permit is required. The Examiner disagrees. Single family residences built for personal occupancy are not within the definition of substantial development. RCW 90.58.030(3)(e)(vi).

4. The SMP's basic shoreline setback in Rural designations is 50 feet. However, this setback is used only if there is only one or no dwelling units within 300 feet of the side property lines of the subject property. When there are two or more dwellings within 300 feet on either side, then the setback is the average of setbacks for existing dwelling units. SMP 7.13, Table RD - Tabular Shoreline Area Regulations. The 101.8 foot setback derived here conforms with the requirements of the SMP.

5. For developments landward of the OHWM, the criteria for approval of shoreline variances are set forth at SMP 10.03(1). All of the criteria must be met. The first of these is as follows:

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.

6. The Examiner concludes that the proposed variance fails to meet this criterion. Since the inception of the Shoreline Management Act, the variance requirements for shoreline



developments have been strictly construed. Variances are allowed only in truly unusual and aggravated circumstances where a genuine hardship would otherwise be experienced. The inability to build a residence at all, consistent with shoreline setbacks, is not in some circumstances adequate reason to grant a shoreline variance. See, Buechel v. Department of Ecology, 125 Wn.2d 196 (1994).

7. In this case, the Examiner concludes that the variance is sought essentially to serve the convenience of the applicant. Residential use of the subject property is explicitly allowed and by that fact is a reasonable use. But, this use of the property is already secured under the existing state of development. Such use is neither precluded nor significantly interfered with by the setback requirement. The desire to change the present dwelling into an artist's studio does not create a special circumstance justifying a variance. The "hardship" thus created would be solely of the applicants' own making.

8. Further, even if the existing cottage were changed into an artist's studio, the facts do not demonstrate an inability to build a reasonable home that complies with the setback.

9. Under the circumstances, the degree of interference with neighboring views is not determinative. The grounds for obtaining a variance are not limited to achieving compatibility with permitted activities in the area. The variance criteria are more stringent than those governing conditional uses.

10. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The shoreline variance request is **DENIED**.



Wick Dufford, Hearing Examiner

Date of Action: January 26, 2000.

Copies Transmitted to Applicant: January 26, 2000.

RECONSIDERATION/APPEAL

This decision shall become final five (5) days from the date of this Order unless a request for reconsideration or an appeal is filed in accordance with Section 13.01 of the Skagit County Shoreline Management Master Program.



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