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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 SL 99 0645 and
ZONING VARIANCE VA 99 0585

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: JACK FEES

ASSESSOR PARCEL NO: P61685

ABBREVIATED LEGAL DESCRIPTION: located at 5858 Lervick Drive, (Guemes Island)
Anacortes, WA; within Section 35, Township 36 North, Range 01 East, W.M., Skagit
County, Washington.

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of the Application of JACK FEES)	
)	SL99-0645/VA99-0585
)	
For Variances from the Side Setback and the Shore Setback for a Garage and House Addition at 5858 Lervick Drive, Guemes Island.)	Findings of Fact,
)	Conclusions of Law
)	and Decision
)	

THIS MATTER relates to an application for variances filed by Jack Fees. The application came on for hearing on January 26, 2000, after due notice. The Skagit County Planning and Permit Center was represented by Daniel Downs. Jack Fees represented himself. Members of the public were given an opportunity to be heard.

Testimony was taken, exhibits were admitted and argument was made. On the basis thereof, the following is entered:

FINDINGS OF FACT

1. Jack Fees (applicant) requests setback variances in order to build a garage and addition to his residence on property abutting the Bellingham Channel on the west shore of Guemes Island.
2. The address is 5858 Lervick Drive, which is a platted lot within the Plat of Agate Cove. The parcel is located within a portion off Sec. 35, T36N, R1E, WM. The lot measures 100 by 110 feet.
3. The applicant seeks to locate the garage and an addition to his house 42 feet from the Ordinary High Water Mark (OHWM). One side of the garage is proposed to be built three feet from the southerly side property line. The standard shoreline setback from the OHWM is 50 feet. (This figure applies here because 50 feet is slightly more than the average distance to the OHWM from the dwelling units on adjacent parcels.) The Shoreline Master Program (SMP) and the zoning code both prescribe an eight-foot side setback.
4. The property is designated Rural Intermediate in the Comprehensive Plan and is zoned Residential. The shoreline designation is Rural Residential.
5. For development landward of the ordinary high water mark, the Master Program's criteria for approval of a variance are set forth at SMP 10.03(1). The applicant must prove:



- 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 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.
- e. That the public interest will suffer no substantial detrimental effect.

In the granting of variance permits, the cumulative impact of additional requests for like actions in the area is to be considered.

6. A single family residence was built on the property in 1975. The drainfield was located directly behind the house. The prior placement of the house and accessory on-site sewage facilities on the small lot limits the space reasonably available for a garage and additions to the house. The garage will be attached to the south end of the house, adding a structure of 6 by 30 feet. The addition will be on the north ends of the house and will measure 22 by 18 feet. The new construction proposed will go in the only space feasible for such development.

7. Garages are normal appurtenances to residential use. The modest residential addition planned will allow the conversion of a 25 year-old beach cabin into a permanent home. Under the circumstances, application of the standard setbacks to the new structures would significantly interfere with reasonable use of the property.

8. The area is characterized by similar small plat lots and dense residential development. The majority of homes are either non-conforming in distance from the OHWM or at the 50 foot setback line. There are numerous structures sitting on or near property lines throughout the area.

9. The shore setback in this case is already effectively established by the existing house. It is about 37 feet from the OHWM. Neither of the proposed new structures will extend further seaward than the existing residence. The adjacent property nearest to the affected side-yard setback has no structures within 8 feet of the property line. Allowing the new structures to be located as proposed will cause no adverse effects on adjacent properties. The project will be compatible with existing development.



10. A Fish and Wildlife Site Assessment/Habitat Management Plan was prepared pursuant to the Critical Areas Ordinance. If appropriate measures are taken during construction to control erosion, the project is unlikely to result in adverse environmental impacts. A Protected Critical Area (PCA) will be recorded, preventing development of the property waterward of the existing residence.

11. Absent adverse impacts, the project will not detrimentally affect the public interest. Moreover, the cumulative effect of granting additional like requests in the area would not be likely to substantially degrade the shoreline environment.

12. No consulted agency raised concerns about this proposal. There were no public comments.

13. The reasons set forth in the application justify the granting of the variances sought. The variances are the minimum that will make possible the reasonable use of the property. The variances will not be contrary to the purpose and intent of the SMP or the zoning code and will not injure the neighborhood or otherwise be detrimental to the public welfare.

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 proposal is exempt from the procedural requirements of the State Environmental Policy Act. WAC 197-11-800(6).

3. The waterfront involved does not lie within a shoreline of statewide significance.

4. The proposed setbacks from the OHWM conflict with the relevant SMP limit for the Rural Residential environment. The side setback proposed conflicts with the requirements of both the SMP and the zoning code. See SMP 7.13(C) Table RD and SCC 14.04.090(5)(b).

5. Subject to the following conditions, the proposed garage and home addition will meet the variance approval criteria of SMP 10.03(1):

1. Construction shall strictly adhere to the project information (site diagram) submitted. If any modifications are proposed, a permit revision shall be obtained from the Planning and Permit Center prior to commencing construction.

2. All construction debris shall be properly disposed of on land in such a manner that it cannot enter the water or cause water quality degradation.



3. Mitigation of the effects of the project shall be undertaken consistent with the recommendations of the Fish and Wildlife Assessment prepared by Rupert Schmitt and dated November 3, 1999.

4. The applicant shall obtain a building permit and all other necessary approvals.

5. The applicant shall record a site plan showing the subject lot, clearly marking the land waterward of the proposed structure as a Protected Critical Area and showing the types and location of native vegetation to be planted. The site plan must be recorded at the County Auditors Office within 120 days of approval of this permit or the permit will become null and void. SCC 14.06.145(2).

6. The variance criteria of the zoning code are substantially similar to those of the SMP -- perhaps slightly less stringent. SCC 14.04.233. The Examiner concludes that the proposed side lot variance meets the criteria of the zoning code as well as of the SMP.

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

DECISION

The requested variances are granted, subject to the conditions set forth in Conclusion 5 above.



Wick Dufford, Hearing Examiner

Date of Action: March 13, 2000

Copies transmitted to Applicant: March 13, 2000

RECONSIDERATION/APPEAL

The shorelines 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.

When a decision approving a shoreline variance becomes final at the County level, it is subject to approval or disapproval by the State Department of Ecology.

