



200006120118

Kathy Hill, Skagit County Auditor

6/12/2000 Page 1 of 6 12:19:53PM

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

DOCUMENT TITLE: ORDER ON REVISION OF SHORELINE VARIANCE SL 9-86

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: JERRY and VIRGINIA SCHEFFER

ASSESSOR PARCEL NOS: P61844

ABBREVIATED LEGAL DESCRIPTION: located at 11110 Marine Drive, Anacortes, WA;
within Section 34, 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) JERRY AND VIRGINIA SCHEFFER) For a Revision to a Shoreline Variance) To make Alterations to a Single Family) Residence at 11110, Marine Drive on) Burrows Bay)	Revision to Shoreline Variance # 9-86 Findings of Fact, Conclusions of Law, And Decision
---	--

THIS MATTER, concerning an application for a shoreline variance permit revision, came on for hearing on April 26, 2000. The Planning and Permit Center was represented by Daniel Downs. The Applicants were represented by Julian Sayers, Consultant, and Joel Haggard, Attorney at Law. There was testimony from members of the public.

Based on the presentations at the hearing, the written materials submitted, and the arguments advanced, the following is entered:

FINDINGS OF FACT

1. Jerry and Virginia Scheffer (applicants) seek to make changes in an existing residence located at 11110 Marine Drive on the shores of Burrows Bay. The property is within a portion of Sec 34, T34N, R1E, W.M.
2. The area is designated Rural Residential under the Shoreline Master Program (SMP). The standard setback is 50 feet from the Ordinary High Water Mark (OHWM). The existing residence was built approximately 25 feet from the OHWM of Burrows Bay under a Shoreline Variance Permit issued to a prior owner in 1986.
3. The present house is built on two levels, a ground floor at approximately elevation 31.3 feet, and an upper level at elevation 40.3 feet. The home is at the top of a rock cliff that descends to the bay. However, the structure is considerably below Marine Drive, which along this property is at elevations between 100 and 110 feet.
4. The existing residence is located on a relatively level area underneath rock outcrops that occur near the middle of the lot. It is accessed by a curving driveway which leads down from the roadway above. The house has a garage on the ground level. There is a large deck along the water side, extending from the upper level.



200006120118

Kathy Hill, Skagit County Auditor

6/12/2000 Page 2 of 6 12:19:53PM

5. The current application requests a revision of the original permit. The following changes are proposed:

- a. The ground level garage is to be converted into two additional bedrooms, bathrooms, a sitting area, and an interior stairway going to the upper floor.
- b. A wall footing will be built where the former garage door existed and the pattern of the ground floor windows and door will be altered.
- c. The driveway will be shortened to provide a walkway entrance to the ground floor. An aeration tank and an expanded drain field will be added.

The remodeling will bring the total number of bedrooms in the home to five.

6. The SMP allows modifications to shoreline permits if the Administrator determines that the changes are "insignificant," i.e., within the scope and intent of the original permit. SMP 9.13. The term "scope and intent" is defined by the State permit regulation at WAC 173-27-100:

"Within the scope and intent of the original permit" means all of the following:

- (a) No additional over the water construction is involved . . . ;
- (b) Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;
- (c) The revised permit does not authorize development to exceed height lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance permit granted as the original permit or a part thereof;
- (d) Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable master program;
- (e) The use authorized pursuant to the original permit is not changed;
- (f) No adverse environmental impact will be caused by the project revisions.

7. Under the current proposal no additional over the water construction is proposed. Ground area coverage will actually be reduced by removing a portion of the existing driveway. All applicable dimensional requirements of the SMP will be met except the setback which was authorized by the original variance. Disturbed areas will be replanted with native vegetation. The building footprint will not change.

8. The work outside the existing footprint will be limited to the shortened driveway, a small rockery with steps to the ground floor and on-site sewage treatment improvements. These are all appurtenances that are exempt from residential permitting requirements under the Shoreline Management Act. They are therefore within the ambit of the initial shoreline authorization. The aeration tank and expanded drain field are features intended insure that adverse environmental impacts will not result.

9. A Geotechnical Report and a Fish and Wildlife Assessment were prepared in order to conform with the requirements of the Critical Areas Ordinance. The Geotechnical Report found that proposed grading and placement of the rockery is feasible. However, it was recommended that jointed rock in the outcrop uphill from the residence be bolted or removed to protect against rock falls. The Report noted that a wet season review was made this winter by a septic design firm and that no significant rise in perched groundwater levels was detected. No negative geologic impacts were identified regarding the expanded drainfield.

10. The Fish and Wildlife Report included an evaluation of the temporary disturbance of the drainfield area and of the new walkway. The Report identified no major negative environmental impacts.

11. The Critical Areas Ordinance requires a review of all projects within the standard 200-foot buffer by a Technical Interdisciplinary Team. This project was referred to the Team but it made no comments.

12. The Examiner finds that the current proposal is within the "scope and intent" of the original permit. In so finding, he emphasizes that the use authorized pursuant to the original permit is not changed.

13. There is a history of controversy concerning the use of this property and construction in aid thereof. In late 1998, the applicants sought a Special Use Permit to operate a bed and breakfast on the property. Construction on the site was commenced in the spring of 1999 without the necessary permits and then halted by the County. Appeals were filed by neighbors, opposing a shoreline exemption determination and protesting approval of the on-site sewage facilities. The process was attended by considerable public outcry, centering on the objections of persons living in the vicinity to a commercial enterprise locating in their residential neighborhood. Eventually, in the summer of 1999, the Special Use Permit application was withdrawn.

14. The current application for a residential remodel was made in September 1999. The applicants assert that the new bedrooms are for use by their extended family and that no bed and breakfast or other commercial operations is contemplated.

15. The public testimony at the hearing on the current application expressed continuing doubts about the intentions of the applicants. The fear in the nearby residential community is that this remodel is just a step in an incremental campaign to get a bed and breakfast into operation. The structural improvements proposed closely approximate those submitted in conjunction with the bed and breakfast proposal.

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



200006120118

Kathy Hill, Skagit County Auditor

6/12/2000 Page 4 of 6 12:19:53PM

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the parties and subject matter of this appeal.
2. The proposal is exempt from the procedural requirements of the State Environmental Policy Act. WAC 197-11-800(1).
3. The proposal is consistent with the provisions of the Critical Areas Ordinance.
4. The application meets the requirements for a shoreline permit revision. SMP 9.13; WAC 173-27-100.
5. The application does not seek a change in use. The single family residential use recognized in the initial variance permit is the sole use authorized on the property.
6. In light of the regulatory history relating to this property, it is appropriate that this residential remodel be made subject to the following conditions.
 - a. This permit revision is limited to the structural changes proposed for the purposes of single family residential use. No commercial activity on the site is authorized.
 - b. This approval is not intended to function as a basis for or as support for any future proposals to change the use of the property to a commercial use.
 - c. Prior to construction, the applicant shall obtain all other required permits and approvals.
 - d. If, at any time a change in use of this property is contemplated, application must be made to the Planning and Permit Center and appropriate public notice and public participation procedures must be followed.
 - e. Replanting of disturbed areas shall follow the recommendations contained in the letter of Aqua-Terr Systems, Inc., dated 25 March 2000.
 - f. Any rock bolting carried out on site shall be conducted under the supervision of a qualified geotechnical engineer.
 - g. Construction shall be commenced within two years of the issuance of this permit revision. Authorization to conduct development activities



200006120118


pursuant hereto shall terminate five years after the issuance hereof.

h. Failure to conform with the limitations and conditions imposed hereby may result in revocation of this permit.

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

DECISION

The Shoreline Variance Permit Revision requested is approved, subject to the conditions set forth in Conclusion 6 above.


Wick Dufford, Hearing Examiner

Date of Action: June 6, 2000

Copy transmitted to the Applicant: June 6, 2000

APPEAL

Any appeal shall be in accordance with WAC 173-27-100(8) and RCW 90.58.180.



200006120118
Kathy Hill, Skagit County Auditor
6/12/2000 Page 6 of 6 12:19:53PM