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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 00 0029

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: FRANCIS DALY

ASSESSOR PARCEL NOS: P66444, P66467

ABBREVIATED LEGAL DESCRIPTION: located at 35068 North Shore Drive; Lake Cavanaugh; within Section 25, Township 33 North, Range 6 East, W.M., Skagit County, Washington.

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

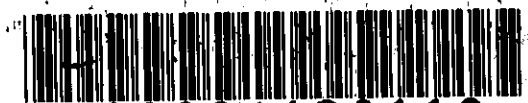
In the Matter of the Application of)	
FRANCIS DALY)	SL00-0029
)	
For a Shoreline Variance)	Findings of Fact,
to Allow Construction of a New)	Conclusions of Law,
Residence Within the Setback from)	
the Ordinary High Water Mark at)	
35068 North Shore Drive,)	
Lake Cavanaugh.)	
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THIS MATTER relates to an application for a shoreline variance filed by Francis Daly. The application came on for hearing on April 26, 2000, after due notice. The Skagit County Planning and Permit Center was represented by Daniel Downs. Robert Donat, builder, appeared for the applicant. 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. Francis Daly (applicant) seeks a variance in order to replace an existing house with a new residence on the shores of Lake Cavanaugh.
2. The present house contains only 455 square feet and is situated right at the Ordinary High Water Mark (OHWM). The proposed replacement will contain 1,088 square feet but will be set back 14 feet from the OHWM, with a deck located at six feet from the OHWM.
3. The existing house also touches the eastern property boundary. The new house will meet the standard eight foot setback for Rural Residential property.
4. The site is at 35068 North Shore Drive, Lot 21 of Lake Cavanaugh Subdivision, Division No. 1, which is within a portion Sec. 25, T33N, R6E, WM. The area is designated as a Rural Village by the Comprehensive Place. The shoreline designation is Rural Residential.
5. The lot is bisected by North Shore Drive, with the portion north of the road being relatively steep. This is also the condition of the neighboring lots on either side. Development in the vicinity is concentrated on the reduced lot areas to the south, sandwiched between the road, and the lake. The neighboring lots are of comparable size.



and residential development on these tracts generally encroaches significantly on the 50 foot setback from the OHWM. The average shoreline setback off residences within 300 feet of the project site is 11 feet from the OHWM. It is a neighborhood of non-conforming uses.

6. The southerly portion of the lot measures 61 feet along the lakefront and widens to approximately 70 feet along North Shore Drive. The western property line of this portion is about 75 feet and the eastern line is about 95 feet.

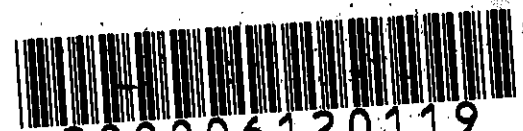
7. A Fish and Wildlife Site Assessment was prepared pursuant to the Critical Areas Ordinance (CAO). The report identified little or no impact from the proposal if appropriate erosion control measures are taken during construction. The report noted that properties located within 1,000 feet of the site are characterized by similar residential landscaping. The CAO requires protection of a 50 foot buffer extending inland from the lake. This should be designated a Protected Critical Area.

8. No public or agency comments were received by the Permit Center during the processing of the application. There was no public testimony at the hearing.

9. The Staff Report accurately describes the project, the setting and the criteria for approval. The Examiner adopts Findings 1 through 7 of that Report, a copy of which is attached.

10. Residential development is a permitted use in the Rural Residential shoreline, subject to dimensional requirements. The applicable setback for a house here, under the Shoreline Master Program (SMP) is 50 feet. SMP 7.13(2)(c), Table RD. The applicant seeks permission for the new house to intrude on this setback. For development landward of the OHWM, the 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 in the area is to be considered.

11. The Staff's analysis applying the variance criteria to the instant application is set forth in the Staff Report under Finding 7. The Examiner concurs in and adopts that analysis. There isn't room on the southern portion of the lot to build a house that meets all applicable setbacks. The new residence will be an improvement in terms setback from the OHWM over the existing cabin. It will also meet the sideline setback into which the existing cabin intrudes. The placement of this new residence in an already extensively developed area will be consistent with and compatible with the placement of neighboring residences.

12. The reasons set forth in the application justify the granting of the variance sought. Under the SMP, residential use is a reasonable use of the property. Strict application of the shoreline setback would preclude this reasonable use. The variance will make such use possible under terms that improve on existing conditions. The variance 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.

13. 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 shoreline involved is not a Shoreline of Statewide Significance.

4. Subject to the following conditions, the replacement residence as proposed will meet the variance approval criteria of SMP 10.03(1):

- (a) During construction, limit the amount of clearing and grading and soil disturbance to only the area necessary to complete the project.
- (b) Do not allow building debris or construction materials to enter the lake.
- (c) Prevent surface runoff from disturbed soils from entering the lake by



using erosion control measures, such as straw bales and silt fencing.

(d) Record a site plan for the lot, marking the Protected Critical Area, and showing the types and location of vegetation to be planted. This site plan shall be recorded by the County Auditor's office within 120 days of approval of this variance permit or the permit shall become null and void.

(e) The applicant shall obtain a Skagit County building permit and all other necessary approvals.

(f) The project shall adhere to the site diagram submitted. If any modifications to the plans are proposed, a permit revision shall be requested prior to the commencement of construction.

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

DECISION

The requested setback from the Ordinary High Water Mark is granted, subject to the conditions set forth in Conclusion 4 above.



Wick Dufford, Hearing Examiner

Date of Action: June 5, 2000

Copies transmitted to Applicant: June 5, 2000

Attachment: Staff Report

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3 **SKAGIT COUNTY PLANNING & PERMIT CENTER**

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5 **FINDINGS OF FACT**

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8 REVIEWING AUTHORITY: Skagit County Hearing Examiner

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10 PUBLIC HEARING DATE: April 26, 2000

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12 APPLICATION FOR: Shoreline Variance #PL 00-0029.

13
14 APPLICATION DATE: January 20, 2000

15
16 APPLICANT: Francis Daly
17 1634 209th P NE
18 Redmond, WA 98053
19

20 PROJECT DESCRIPTION: To replace an existing 455 square foot residence with a larger
21 1,088 square foot residence. The existing residence is located at the Ordinary High Water
22 Mark (OHWM) with a deck extending at OHWM. The new residence will have a deck
23 set 6 feet back from the OHWM with the residence set back a total of 14 feet. The
24 existing residence sets on the lot line to the east, which under current regulations requires
25 an 8-foot setback in shoreline and zoning code requirements. The applicant has proposed
26 to place the new structure to conform to the required 8-foot side setback on the east
27 property line and increase the setback to the water from 6 feet to 14 feet. The proposal
28 triggers the need for a shoreline variance because:

- 29 1. Even though the proposal will pull back the development away from the lake from 6
30 to 14 feet the proposal cannot meet the minimum required setback in the Rural
31 Residential shoreline designation of 50 feet (see SCSMMP 7.13(2)© Table RD).
32

33 PROJECT LOCATION: The proposed project is located at 35068 North Shore Drive,
34 Lake Cavanaugh, within a portion of Section 25, Township 33 North, Range 6 East,
35 W.M., Skagit County. The subject proposal is located on the shoreline of Lake
36 Cavanaugh designated Rural Residential under the Shoreline Master Program.
37

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

39 EXHIBITS:

- 40
41 1. Staff Report
42 2. January 20, 2000, Shoreline Variance application, a narrative, JARPA, ownership
43 certification and photos.
44 3. February 17, 2000 & February 24, 2000, Notice of Development Application.
45 4. January 10, 2000 Fish & Wildlife Site Assessment prepared by Robert Knable.
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5 STAFF FINDINGS:
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- 7 1. The application has been advertised in accordance with Section 9.04 of the Skagit
8 County Shoreline Management Master Program (SCSMMP) and WAC 173-14-070.
9
- 10 2. The subject proposal is located on the shoreline of a property with a single-family
11 residence on Lake Cavanaugh in an area designated as a Rural Village by the
12 Skagit County Comprehensive Plan and within the Residential District under the
13 Skagit County Zoning Ordinance. The property is designated as Rural Residential
14 in the SCSMMP.
15
- 16 3. Staff determined that the subject proposal required a Fish & Wildlife Site
17 Assessment/Habitat Management Plan as required in 14.06.510 & 520 of the
18 Skagit County Critical Areas Ordinance (CAO) which was provided with the
19 application. The report identified no or little impact from the proposal if
20 appropriate erosion control measures were taken during construction. The report
21 proposed several courses of action for effective mitigation of the proposal
22 including:
23
- 24 a) Limit the amount of clearing, grading and soil disturbance to only the area
25 necessary to complete the project.
26 b) Do not allow building debris or construction materials to enter the lake.
27 c) Prevent surface runoff from disturbed soils from entering the lake by using
28 erosion control measures such as straw bales and silt fencing.
29
- 30 The consultant recommended and staff concur that a 50 foot buffer extending
31 from the lake landward across the property is required. The Protected Critical
32 Area (PCA) will need to be recorded with the County Auditor's office thereby
33 allowing this area to remain in its natural state.
34
- 35 4. The proposal is categorically exempt from the State Environmental Policy Act
36 (SEPA) as noted in WAC 197-11-800(1)(b)(I) regarding residential structures.
37
- 38 5. No comments have been received regarding the proposal.
39
- 40 6. Staff determined that the proposal is not located on a Shoreline of Statewide
41 Significance.
42
- 43 7. The SCSMMP, Chapter 10 Variances, sets forth the criteria for granting Shoreline
44 Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance permits
45 reads:
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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 lot is only 74' X 69' X 93' X 62' with North Shore Drive bisecting the lot into two sections. Much of the lot is at a slope of 25-30% slope, making it difficult to fit a house and meet the 35 foot zoning setbacks for an major arterial (North Shore Drive). The shoreline designation is Rural Residential implying that a residential development is not "unreasonable".

- 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 due to the size of the lot, the placement of North Shore Drive and topographic constraints.

- 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 surrounding area has been developed for rural residential use as demonstrated by the Residential zoning designation. All residences within 300 feet of the side property lines are also within the 50 foot setback buffer due to the physical topography.

- 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.**

The issuance of a variance for this proposal would be consistent with homes located on the surrounding properties. Therefore, staff does not find the proposal to be a "grant of special privilege" to the applicant.

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

The public interest is best served in this case by keeping the structure farther away from the North Shore Drive road easement which is the only transportation facility in the area. A second advantage is that the proposal is farther back from the OHWM than the existing cabin which should assist in reducing water quality concerns to some degree.



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1 REVIEW OF APPLICABLE COUNTY SMMP POLICIES & REGULATIONS.

2
3 Staff determined that the subject proposal required be reviewed for consistency with SMP
4 Chapter 7.13 Residential Development as defined in Chapter 3.03. The entire chapter 7.13
5 of the SCSMMP regarding Residential Development is included as Attachment "A" of the
6 staff report, staff has summarized the policies involved.

7 Staff determined that the proposal does not conflict with the **general policies** regarding
8 residential development, coordination, optimum use, joint use, public access, public use,
9 natural resource processes, hazardous areas, water quality & quantity, PUD's, floating
10 homes, community services, Shoreline Management jurisdiction, location and design and
11 construction and impacts. Staff has further determined that the proposal complies with all
12 SCSMMP **regulations** regarding shoreline designation, general regulations, accessory uses,
13 hazardous areas, shore defense works, landfilling, public access, fragile areas, utilities, roads
14 and parking areas, drainage, sewage and screening **except** shoreline setbacks.

15 The following inserts from the Regulation section are considered below with staff notes
16 in italics:

18 2. REGULATIONS

19 A. Shoreline Area

20 (2) Rural Residential

21 Residential development is permitted subject to the General and Tabular Regulations.

22 (9) Shoreline setback;

23 Residential structures shall be setback common to the average of setbacks for existing
24 dwelling units within 300 feet of side property lines or a minimum setback distance as
25 Required in Table RD, whichever is greater

26 *All of the residences within 300 feet of the side property lines are within 50 feet of the*
27 *OHWL, and the minimum setback is 50 feet from the OHWL in the Rural Residential*
28 *shoreline designation, therefore, the "whichever is greater" in this case would be the 50*
29 *foot minimum required in Table RD. Hence, the total variance sought from the OHWL*
30 *for the new residence is 44 feet including the deck at 6 feet from the OHWL that is 30"*
31 *or greater above average grade.*

34 RECOMMENDATION

35
36 Based on the above findings, the Skagit County Planning and Permit Center would
37 recommend for **approval** of a Shoreline Variance Permit subject to the following
38 conditions:

- 39
40
41 1. The applicant shall record a site plan showing the lot in question, clearly marking
42 the land waterward of the proposed structure as an Protected Critical Area and
43 shall show the types and location of native vegetation to be planted. The site plan
44 must be recorded by the County Auditor's (SCC 14.06.145(2) office within 120
45 days of approval of this permit or the permit will become null & void.
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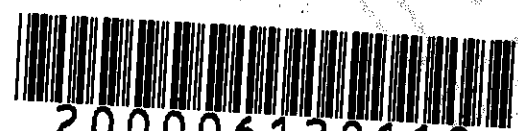
- 1 2. The applicant must obtain a Skagit County Building Permit and receive all the
2 necessary approvals.
3
- 4 3. The subject proposal shall comply with the Skagit County Shorelines Management
5 Master Program and the Shoreline Management Act RCW 90.58.
6
- 7 4. The applicant shall strictly adhere to the project information (site diagram) submitted
8 for this proposal. If the applicant proposes any modifications of the subject proposal,
9 he/she shall request a permit revision from this office prior to the start of
10 construction.
11
- 12 5. The applicant shall comply with the Fish & Wildlife Site Assessment
13 recommendations in regards to utilizing proper sedimentation and erosion control
14 measures during construction. The recommendations included:
15 a) Limit the amount of clearing, grading and soil disturbance to only that
16 area necessary to complete the project.
17 b) Do not allow building debris or construction materials to enter the lake.
18 c) Prevent surface runoff from disturbed soils from entering the lake by using
19 erosion control measures such as straw bales and silt fencing.
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25 Prepared By: DD

26 Approved By:

27 Date: March 21, 2000

28 Amended: March 27, 2000



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