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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 0202

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: JOE and DONNA KELLY

ASSESSOR PARCEL NO: P72957

ABBREVIATED LEGAL DESCRIPTION: located at 14119 McTaggart Ave., Edison, WA
within Section 33, Township 36 North, Range 3 East, W.M., Skagit County, Washington.

UNOFFICIAL DOCUMENT

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of the Application of)
JOE AND DONNA KELLY)
)
For a Shoreline Variance Permit)
To Allow Construction of a)
25' x 45' Garage Addition)
To an Existing Single Family)
Residence Within the Shore Setback)
Located at 14119 McTaggart Avenue,)
Edison)
_____)

SL 00-0202
Findings of Fact,
Conclusions of Law
and Decision

THIS MATTER, an application for a shoreline approval, came on regularly for hearing on June 14, 2000, after due notice. The Planning and Permit Center was represented by Daniel Downs. The Applicants were represented by Oscar Graham, Consultant. Members of the public were given an opportunity to be heard.

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

FINDINGS OF FACT

1. Joe and Donna Kelly (applicants) seek to build a 25' x 45' foot garage located about 30 feet landward of the ordinary high water mark (OHWM) of the Edison Slough.
2. The project is located on residential property within the Rural Village of Edison where a single-family residence already exists within 27 feet of the OHWM of the slough. The address is 14119 McTaggart Avenue, which is within a portion of Sec.33, T36N, R3E, W.M.
3. The property is designated Rural under the Shoreline Master Program (SMP). The minimum shore setback from the OHWM in the Rural designation is 50 feet. SMP 7.13(2)(c), Table RD.
4. The property is one of a number of odd lots located along the slough. Many residences and accessory structures on these lots are pre-existing non-conforming uses located within the current shore setback.
5. The subject lot is squeezed between the slough on the north and McTaggart Avenue on the south. Consistent with present setbacks, there is only a 5' x 15' building



envelope left on the lot. But, like other houses in the vicinity, this residence needs a reasonably sized garage, storage and workspace. The existing site constraints require invading the setback in order to fit the structure onto the lot.

6. A Fish and Wildlife Site Assessment was prepared in relation to this project by Graham-Bunting & Associates. The report identified little impact from the proposal if appropriate erosion control measures are taken during construction. The report made the following recommendations:

- a) No ground disturbance at or near the OHWM.
- b) Trees should be planted in conformance with the site plan submitted.
- c) Plantings should be monitored for a three-year period.
- d) The area landward of the OHWM should be designated as a Protected Critical Area (PCA) consistent with the site plan submitted, and the same should be filed with the County Auditor's office as required by SCC 14.06.145.
- e) Low intensity residential activities should be allowed to continue.

7. 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.

8. The Staff Report analyses the project in light of these criteria and concludes that the project is consistent with them. The Examiner concurs in this analysis and adopts the same.

9. The proposed garage will be compatible with the existing pattern of development in this long-established neighborhood. The only public comment in the record is a letter from neighbors endorsing the project.

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

CONCLUSIONS OF LAW

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

2. The project is exempt from the procedural requirements of the State Environmental Policy Act (SEPA). WAC 197-11-800(6)(b).

3. Except as to the setback, the proposed residential accessory is consistent with policies and regulations of the SMP.

4. The findings support a conclusion that, as conditioned, the project meets the criteria for approval of a shoreline variance.

5. The following conditions should be imposed:

(1) The applicants shall record the site plan submitted with the Fish and Wildlife Assessment, dated April 18, 2000, showing the area waterward of the residence and garage as a Protected Critical Area and indicating the types and location of vegetation to be planted. The recording shall be made at the County Auditor's office prior to construction of the proposal.

(2) The applicants shall build the structure as proposed in their application.

(3) The applicants shall obtain a Skagit County Building Permit and all other necessary approvals.




(4) If the applicants propose any modifications of the project, they shall request a shoreline permit revision from the Planning and Permit Center prior to construction.

(5) The applicants shall carry out the recommendations of the Fish and Wildlife Site Assessment as set forth in Finding 6, above.

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

DECISION

The requested shoreline variance is granted, subject to the conditions set forth in Conclusion 5, above.



Wick Dufford, Hearing Examiner

Date of Action: August 7, 2000

Copies Transmitted to Applicant: August 7, 2000

Attachment: Staff Report

RECONSIDERATION/APPEAL

This decision shall become final unless a request for reconsideration or appeal is filed. A request for reconsideration shall be filed with the Hearing Examiner within five (5) days from the date of this decision. An appeal to the Board of County Commissioners shall be filed with the Planning and Permit Center within five (5) days from the date of this decision, or if reconsideration has been requested, within five (5) days from the decision after reconsideration.



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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: June 14, 2000

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12 APPLICATION FOR: Shoreline Variance #PL 00-0202

13
14 APPLICATION DATE: April 3, 2000

15
16 APPLICANT: Joe and Donna Kelly
17 14119 McTaggart Ave

18 PARCEL# 72957 Bow, WA 98232

19
20 PROJECT DESCRIPTION: To allow the construction of a 25' X 45' garage addition to an
21 existing single family residence 30 feet from the OHWM of Edison Slough. The variance
22 would total 20 feet as a 50 foot setback is required in the Rural Shoreline designation.

23
24 The proposal triggers the need for a shoreline variance because:

- 25 1. The minimum shoreline setback from the OHWM in the rural shoreline designation is
26 50 feet (see SCSMMP 7.13(2)© Table RD).

27
28 PROJECT LOCATION: The proposed project is located at 14119 Mctaggart Avenue,
29 Edison, within a portion of Section 33, Township 36 North, Range 3 East, W.M., Skagit
30 County.

31
32 RECOMMENDATION: **Approval**, with conditions stated at the end of the report.

33 EXHIBITS:

- 34
35 1. Staff report
36 2. January 20, 2000, Shoreline Variance application, a narrative, ownership
37 certification and photos.
38 3. April 13, 2000 & April 20, 2000, Notice of Development Application.
39 4. April 2000 Fish & Wildlife Site Assessment prepared by Graham-Bunting &
40 Associates.



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1 STAFF FINDINGS:
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- 3 1. The application has been advertised in accordance with Section 9.04 of the Skagit
4 County Shoreline Management Master Program (SCSMMP) and WAC 173-14-070.
5
6 2. The subject proposal is located on the shoreline of a property with a single-family
7 residence on Edison Slough in an area designated as a Rural Village by the Skagit
8 County Comprehensive Plan and within the Residential District under the Skagit
9 County Zoning Ordinance. The property is designated as Rural in the SCSMMP.
10
11 3. Staff determined that the subject proposal required a Fish & Wildlife Site
12 Assessment/Habitat Management Plan as required in 14.06.510 & 520 of the
13 Skagit County Critical Areas Ordinance (CAO) was required. The report
14 identified no or little impact from the proposal if appropriate erosion control
15 measures were taken during construction. The report proposed several courses of
16 action for effective mitigation of the proposal including:
17
18 a) No ground disturbance at or near the OHWM.
19 b) Trees should be planted in conformance with the attached site plan.
20 c) Plantings should be monitored for a three-year period.
21 d) The area landward of the OHWM should be designated as a Protected Critical
22 Area (PCA) consistent with the attached site plan and filed with the County
23 Auditors office as required in SCC 14.06.145.
24 e) Low intensity residential activities should be allowed to continue.
25
26

27 The consultant recommended and staff concur that a buffer extending from the
28 OHWM as depicted on the submitted mitigation plan will need to be recorded
29 with the County Auditor's office thereby allowing this area to enhanced with
30 vegetation.
31

- 32 4. The proposal is categorically exempt from the State Environmental Policy Act
33 (SEPA) as noted in WAC 197-11-800(1)(b)(I) regarding residential structures.
34
35 5. No comments have been received regarding the proposal.
36
37 6. Staff determined that the proposal is not located on a Shoreline of Statewide
38 Significance.
39
40 7. The SCSMMP, Chapter 10 Variances, sets forth the criteria for granting Shoreline
41 Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance permits
42 reads:
43

44 Variance permits for development to be located landward of the ordinary high
45 water mark (OHWM), except within areas designated marshes, bogs or swamps



1 pursuant to Chapter 173-22 WAC, may be granted provided the applicant can meet
2 all the following criteria; the burden of proof shall be on the applicant.
3

- 4 a. **That the strict application of the bulk, dimensional or performance**
5 **standards set forth in this Master Program precludes or significantly**
6 **interferes with a reasonable use of the property not otherwise**
7 **prohibited by this Master Program.**

8 *The parcel is nearly surrounded by the Edison Slough on the north and the*
9 *main access road to the town of Edison on the south and east.*
10 *Incorporation of the 50 foot shoreline residential setback as well as a 35'*
11 *front zoning setback from a major arterial road would leave only a 5' X*
12 *15' building envelope for the entire lot. Reasonable use is therefore*
13 *substantially diminished by the dimensional requirements.*
14

- 15 b. **That the hardship described above is specifically related to the**
16 **property and is the result of unique conditions such as irregular lot**
17 **shape, size or natural features and the application of this Master**
18 **Program and not, for example, from deed restrictions or the applicant's**
19 **own actions.**

20 *The hardship is due to the location of the lot in relation to the slough and*
21 *the road.*
22

- 23 c. **That the design of the project will be compatible with other permitted**
24 **activities in the area and will not cause adverse effects to adjacent**
25 **properties or the shoreline environment designation.**

26 *The surrounding area has been developed for rural residential use as*
27 *demonstrated by the Residential zoning designation. All residences within*
28 *300 feet of the side property lines are also within the 50 foot setback buffer*
29 *due to pre-shoreline management development patterns.*
30

- 31 d. **That the variance authorized does not constitute a grant of special**
32 **privilege not enjoyed by the other properties in the same area and will**
33 **be the minimum necessary to afford relief.**

34 *The issuance of a variance for this proposal would be consistent with the*
35 *relatively high-density development in the rural village of Edison.*
36 *Therefore, staff does not find the proposal to be a "grant of special*
37 *privilege" to the applicant.*
38

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

40 *Any possible detrimental effects however how remote, should be mitigated*
41 *through compliance with the conditions placed on the development as*
42 *recommended by staff and the environmental consultant.*
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1 **REVIEW OF APPLICABLE COUNTY SMMP POLICIES & REGULATIONS.**

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3 The proposal has been reviewed for consistency with SMP Chapter 7.13 Residential
4 Development as defined in Chapter 3.03. The entire chapter 7.13 of the SCSMMP regarding
5 Residential Development is included as Attachment "A" of the staff report, staff has
6 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:

17
18 **2. REGULATIONS**

19 A. Shoreline Area

20 (3) Rural

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

22 B General

23 (9) Shoreline setback;

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

27 *All of the residences within 300 feet of the side property lines are within 50 feet of the*
28 *OHWL, and the minimum setback is 50 feet from the OHWL in the Rural shoreline*
29 *designation, therefore, the "whichever is greater" in this case would be the 50 foot*
30 *minimum required in Table RD. Hence, the total variance sought from the OHWL for the*
31 *new residence is 20 feet from the OHWL.*

32
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34 **RECOMMENDATION**

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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 prior to
45 construction of the proposal.



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- 2. The applicant must obtain a Skagit County Building Permit and receive all the necessary approvals.
- 3. The subject proposal shall comply with the Skagit County Shorelines Management Master Program and the Shoreline Management Act RCW 90.58.
- 4. 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 shoreline permit revision from this office prior to the start of construction.
- 5. The applicant shall comply with the Fish & Wildlife Site Assessment recommendations in regards to utilizing proper sedimentation and erosion control measures during construction. The recommendations included:
 - 1. No ground disturbance at or near the OHWM.
 - 2. Trees should be planted in conformance with the attached site plan.
 - 3. Plantings should be monitored for a three-year period.
 - 4. The area landward of the OHWM should be designated as a Protected Critical Area (PCA) consistent with the attached site plan.
 - 5. Low intensity residential activities should be allowed to continue.

Prepared By: DD
Approved By:
Date: June 1, 2000
Amended: