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, Skagit County Auditor

10/11/2000 Page 1 of 12 2:56:01PM

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

DOCUMENT TITLE: SHORELINE VARIANCE PERMIT SL 00 0305

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: ANTHONY and JANICE SNOW

ASSESSOR PARCEL NO: P69427

ABBREVIATED LEGAL DESCRIPTION: located at 15174 Channel Drive, LaConner, WA;
within Section 24, Township 34 North, Range 2 East, W.M., Skagit County, Washington.

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of the Application of)	
ANTHONY AND JANICE SNOW)	SL 00-0305
)	
For a Shoreline Variance Permit to)	FINDINGS OF FACT,
Construct a Single-Family Residence)	CONCLUSIONS OF LAW
With Garage at 15174 Channel Drive on)	AND DECISION
The Swinomish Channel north of)	
LaConner)	
)	

THIS MATTER, an application for a shoreline variance, came on regularly for hearing on September 13, 2000, after due notice. Daniel Downs appeared for the Planning and Permit Center. Oscar Graham, consultant, represented the applicants. Several members of the public testified.

From the testimony taken, exhibits entered and argument made, the following is entered:

FINDINGS OF FACT

1. Anthony and Janice Snow (applicants) seek to build a single-family residence/garage on a 13,040 square foot lot at 15174 Channel Drive adjacent to the Swinomish Channel on the west.
2. The address is within Skagit Beach Subdivision #1, located on a parcel about six lots south of the boat basin. The lot is within a portion of the NW1/4, Sec. 24, T34N, R2E, WM. The shoreline designation of the property is Rural Residential.
3. The lot is typical of the relatively small parcels created in the subdivision. It is 80 feet wide and 157 feet deep.
4. For this property, the minimum setback from the Ordinary High Water Mark (OHWM) residence is 50 feet. The shore setback for an accessory structure, such as a patio, is 35 feet. The standard setback from the road is 25 feet and side setbacks are eight feet on either side. The maximum allowable site coverage under the Shoreline Master Program (SMP) is 30%.
5. The proposed garage would be located on the street side of the house. The residence and garage together would occupy 3,574 square feet. A concrete driveway and primary and reserve drainfields would occupy almost all of the streetfront area of the lot not covered by buildings. There would be a sizable concrete patio on the water side of



the home. The driveway and patio would total about 3,325 square feet, bringing the total developed area to 6,899 square feet.

6. The area covered by buildings on the site would be slightly less than 30%. But with the driveway and patio, site coverage under the proposal would be around 53%. The setback of the house from the OHWM was originally proposed at 25 feet. This proposal has now been modified to a 36 foot setback. A variance from both the shore setback and the lot coverage requirements is sought.

7. The natural shoreline environment in this area was long ago altered by the deposit of dredge spoils on the channel banks. The waterward side of all lots in the subdivision is composed of such spoils. There is essentially no natural vegetation along the channel banks.

8. All properties in the area include shore protection structures that vary from rock riprap to pile and timber bulkheads.

9. Many homes have already been built along the channel in the vicinity. In general they are closer to the OHWM than 50 feet. Many of the lots have also been developed with more than 30% lot coverage. Significant patio areas on the waterward side are common. Numerous variances have been granted for such construction.

10. The average setback in the immediate area is about 35 feet. The applicants' proposed residence would be set back slightly more than the average and would be located behind the "line of sight" between the adjacent residences. As proposed, it would not compromise any existing views. The size of the house and garage would similar to that of existing nearby homes.

11. A Fish and Wildlife site Assessment/Habitat Management Plan, dated August 18, 2000, was prepared in connection with this proposal by Graham Bunting & Associates. The Assessment identifies little or no increased environmental impact from the proposal, provided that appropriate erosion control measures are taken during construction.

12. The Assessment recommends a program of planting low plants along the portion of the property waterward of the patio and the designation of this area as a Protected Critical Area recorded with the County Auditor.

13. The SMP does not specifically define what is included within the term "site coverage." The applicants have predicated their application on the assumption that the term includes the residence, accessory structures and attendant features.

14. Because of the relatively small lot size, it is not possible to develop a single family residence and typical related accessory structures consistent with adjacent developments and at the same adhere to the lot coverage and shore setback standards.



15. Across Channel Drive to the east of the subject property is agricultural land. The owner of the farm to the east testified that he has no objections to the proposed residential development and that it would have no adverse impacts on his property.

16. Two letters of concern were received. The owner to the north objected to the originally proposed 25 foot shore setback for the residence and to the 53% lot coverage. An owner to the south also objected to a 25 foot setback for the residence.. At the hearing this owner testified that the increase in setback to around 35 feet is reasonable. Another subdivision resident, from further south, testified that in his 20 years on Channel Drive residences have been approved so long as view interference was avoided.

17. 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.

18. The Staff Report analyzes the project in light of these criteria and concludes that the project will meet them. The Examiner concurs in this analysis and adopts the same.

19. 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 proposal is exempt from the procedural requirements of the State Environmental Policy Act (SEPA). WAC 197-11-800(6)(b).
3. The proposal complies with the Critical Areas Ordinance.
4. Residential development is a permitted use in the Rural Residential shoreline designation. SMP 7.13.2(2). The proposed development does not conflict with the policies of either the Shoreline Management Act or the SMP.
5. As conditioned, the proposed development will meet the criteria for a shoreline variance. SMP 10.03(1).
6. The following conditions should be imposed.
 - (1) The permittees shall strictly adhere to the project information (site diagram) as shown on Exhibit 11 herein. The project shall not exceed 53% lot coverage. The setback from the OWHM to the residence shall be 36 feet. The setback from the OWHM to the patio shall no less than 25 feet.
 - (2) The permittees shall record a site plan showing the lot in question, clearly marking the area of the Protected Critical Area (PCA) and shall show the types of native vegetation to be planted there. This site plan must be filed with the County Auditor's office prior to construction.
 - (3) If the permittees propose any modifications of the subject proposal, they shall request a shoreline permit revision from the Planning and Permit Center prior to constructing the same.
 - (4) The permittees shall comply with the recommendations of the Fish and Wildlife Site Assessment submitted by Graham Bunting and Associates, dated August 18, 2000. These include the following:
 - (a) Wet season construction shall be accompanied by the implementation of a temporary erosion and sedimentation control plan.
 - (b) Vegetation removal shall be minimized to the extent possible.

All vegetation removed during construction shall be replaced with native species in conformance with an approved planting plan. Plant survival shall be monitored over a five-year period and shall achieve an 80% survival rate at the end of five years.

(c) The recorded PCA shall provide for ongoing low impact residential related uses.

(5) The permittees shall obtain all other necessary approvals, including a County Building Permit.

(6) Construction material and other debris shall not be allowed to enter the water.

(7) Approval of this variance shall be obtained from the Department of Ecology. After such approval is obtained, construction shall commence within two years and project completion shall be achieved within five years.

7. 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 6 above.



Wick Dufford, Hearing Examiner

Date of Action: October, 11, 2000

Copies Transmitted to Applicants: October 11, 2000

Attachment: Staff Report

RECONSIDERATION/APPEAL

A request for reconsideration may be filed as provided in SCC 14.06.180. The decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Clerk of the Board within 14 days after the date of the Examiner's decision, or decision on reconsideration if applicable.



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3 **SKAGIT COUNTY PLANNING & PERMIT CENTER**

4
5 **FINDINGS OF FACT**

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7
8 REVIEWING AUTHORITY: Skagit County Hearing Examiner

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10 PUBLIC HEARING DATE: September 13, 2000

11
12 APPLICATION FOR: Shoreline Variance #PL 00-0305

13
14 APPLICATION DATE: June 6, 2000

15
16 APPLICANT: Anthony & Janice Snow
17 438 Modoc Way

18 PARCEL# 69427 LaConner, WA 98257

19
20 PROJECT DESCRIPTION: The construction of a single-family residence/garage of 3,574
21 sq. feet on a 13,040 sq. foot lot, 25 feet from the OHWM in a Rural Residential shoreline
22 designation that normally requires a 50-foot minimum setback. The applicant also seeks
23 an additional variance from the maximum 30% site coverage requirement in order to
24 develop 53% of said lot.

25
26
27 The proposal triggers the need for a shoreline variance because:

- 28 1. The minimum shoreline setback from the OHWM in the rural residential shoreline
29 designation is 50 feet (see SCSMMP 7.13(2)© Table RD).
30 2. The maximum allowable site coverage in the rural residential shoreline designation is
31 30% (see SCSMMP 7.13(2)© Table RD).
32 3. The minimum shoreline setback from the OHWM for an accessory structure in the
33 rural residential shoreline designation is 35 feet (see SCSMMP 7.13(2)© Table RD).
34

35 PROJECT LOCATION: The proposed project is located at 15174 Channel Drive,
36 LaConner, within a portion of Section 24, Township 34 North, Range 2 East, W.M.,
37 Skagit County.

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

40 EXHIBITS:

- 41
42 1. Staff report
43 2. June 6, 2000, Shoreline Variance application, a narrative, ownership certification
44 and photos.
45 3. June 12, 2000 Letter of Incompleteness.
46 4. July 12, 2000 letter from Graham-Bunting & Associates.



5. July 18, 2000 Letter of Completeness.
6. July 27, 2000 & August 3, 2000, Notice of Development Application.
7. August 2000 Fish & Wildlife Site Assessment prepared by Graham-Bunting & Associates.
8. August 17, 2000 letter of concern from Marykay Pasnick of 15158 Channel Drive, LaConner 98257.
9. August 25, 2000 letter of concern from Pat & Janet Good of 15188 Channel Drive, LaConner 98257.

STAFF FINDINGS:

1. The application has been advertised in accordance with Section 9.04 of the Skagit County Shoreline Management Master Program (SCSMMP) and WAC 173-14-070.
2. The subject proposal is located on the shoreline of a 13,040 square foot vacant lot adjacent to the Swinomish Channel in an area designated as Rural Reserve by the Skagit County Comprehensive Plan and under the Skagit County Zoning Ordinance. The property is designated as Rural Residential in the SCSMMP.
3. Staff determined that the subject proposal required a Fish & Wildlife Site Assessment/Habitat Management Plan as required in 14.06.510 & .520 of the Skagit County Critical Areas Ordinance (CAO) was required. The report was prepared by Graham Bunting & Associates and dated August, 2000 and identified no or little increased impact from the proposal if appropriate erosion control measures were taken during construction. The report proposed several courses of action for effective mitigation of the proposal including:
 - a) Wet season construction should be accompanied by the implementation of a temporary erosion and sedimentation control plan.
 - b) Vegetation removal should be minimized to the extent possible. All vegetation removed during construction should be replaced with native species in conformance with the attached site plan. Plant survival should be monitored over a five-year period with a 80% survival rate at the end of five years.
 - c) The area should be subject to the planting plan and designated as a Protected Critical area (PCA-Attachment C) and recorded at the County Auditor's office.
 - d) The recorded PCA should provide for ongoing low impact residential related uses.
4. The proposal is categorically exempt from the State Environmental Policy Act (SEPA) as noted in WAC 197-11-800(1)(b)(I) regarding residential structures.
5. Two letters of concern from Marykay Pasnick & Pat & Janet Good included the following comments:
 - a) The structure should be set back as far as the two neighboring houses.
 - b) The house size is not compatible with the rural nature of the area.



Staff visited the site on August 24, 2000 and evaluated the line of sight from the residence directly south of the vacant lot to the house located directly north of the vacant lot. Two photos were taken, one with staff standing at 25 feet from OHWM and another taken at 35 feet from the OHWM. At 25 feet the line of sight is blocked more than that which is already blocked by the existing house to the north and the proposed construction would likely affect the view from the house to the north as well.

In addition, the average setback of adjacent homes within 300 of both property lines is 35 feet thereby requiring a minimum setback of 35 feet to align it with the average of all the surrounding residences.

6. Staff determined that the proposal is not located on a Shoreline of Statewide Significance.

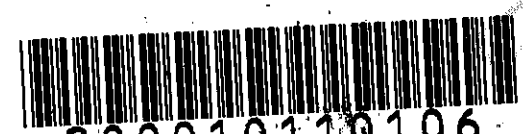
7. The SCSMMP, Chapter 10 Variances, sets forth the criteria for granting Shoreline Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance permits reads:

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.**

Residential development on the parcel is limited on the west by Swinomish channel and on the east by Channel Drive. In addition, 8-foot side yard setbacks area required as well as a 25 foot zoning setback from the property line off of Channel Drive. Necessary infrastructure space is allotted for the drain field and reserve drain field, an access road and a septic tank. Strict application of the maximum site coverage requirements (30%), would reduce the available building site, however the construction of a smaller residence would be possible. Staff recommends that the setback from the OHWM be increased form 25 feet to 35 feet for the structure, which may reduce the building size by approximately 600 sq. feet. This recommendation is due to the fact that the average adjacent property setbacks average 35 feet.

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.**



1 A drive by survey of residences in the area clearly indicates that exceeding
2 site coverage requirements is quite common in the area. Also, the average
3 setback of homes within 300 feet of the proposed home is 35 feet, reflecting
4 the prevalent residence placement existing in the area.

5 The hardships (setback from the OHWM and site coverage requirements)
6 are not related to irregular lot shape, but are due to the size of the lot,
7 natural features (i.e. Channel Drive and the Swinomish Channel),
8 expectations of sufficient house/garage size in the shoreline environment,
9 and its position relative to the Swinomish Channel and Channel Drive.

- 10
11 c. **That the design of the project will be compatible with other permitted**
12 **activities in the area and will not cause adverse effects to adjacent**
13 **properties or the shoreline environment designation.**

14 The surrounding area has been developed for rural residential use as
15 demonstrated by the Rural Residential shoreline designation. The July 12
16 letter from Graham Bunting & Associates noted the average setback of the
17 neighboring homes within 300 feet is 35 feet. Historically most of the homes
18 in the vicinity were built upon channel spoils that had been deposited
19 adjacent the channel over many years. Prior to the Shoreline Management
20 Act, numerous homes had been built closer than the later required 50 foot
21 setback and since that time numerous variances have been approved
22 allowing construction of residences closer than the 50 foot minimum due to
23 size constraints, infrastructure and the Swinomish Channel itself. No
24 adverse environmental effects to adjacent properties or the shoreline were
25 identified by the Fish & Wildlife report.

- 26
27 d. **That the variance authorized does not constitute a grant of special**
28 **privilege not enjoyed by the other properties in the same area and will**
29 **be the minimum necessary to afford relief.**

30 The issuance of a variance for this proposal would be consistent with the
31 relatively high-density residential development especially in regards to site
32 coverage exceedance and setback from the OHWM of the Channel, already
33 located on Channel Drive. Therefore, staff does not find the proposal to be
34 a "grant of special privilege" to the applicant. Staff have determined that
35 approving construction at 35 feet from the OHWM is the minimum relief
36 necessary.

- 37
38 e. **That the public interest will suffer no substantial detrimental effect.**

39 Most possible detrimental effects should be mitigated through compliance
40 with the conditions placed on the development as recommended by staff and
41 the environmental consultant. Loss of impervious surface may cause a non-
42 quantifiable decrease in shoreline functions.



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Skagit County Auditor

1 REVIEW OF APPLICABLE COUNTY SMMP POLICIES & REGULATIONS.

2
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:

18 2. REGULATIONS

19 A. Shoreline Area

20 (2) Rural Residential

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 *Most of the residences within 300 feet of the side property lines are within 50 feet of the*
28 *OHWL, and the minimum setback is 35 feet from the OHWL in the Rural Residential*
29 *shoreline designation, therefore, the "whichever is greater" in this case would be the 50*
30 *foot minimum required in Table RD. Hence, the total variance sought from the OHWL*
31 *for the new residence is 25 feet from the OHWL.*

32 C. Tabular Regulations

33 (1) Shore setback

34 (a) Single family and duplex units, roads, and parking. (See above)

35 (d) Accessory development – In Rural Residential a 35-foot minimum setback is required
36 from the OHWL.

37 (4) Site Coverage

38 (a) Single family and duplex units. In Rural Residential the maximum allowable site
39 coverage of "developed" land is 30%.

40
41 In conclusion the Department recommends approval of a house setback of 35 feet from
42 the OHWL, a accessory use setback (the deck) of 25 feet from the OHWL and approval
43 of the site coverage at a total of 53%.



200010110106

, Skagit County Auditor

10/11/2000 Page 11 of 12 2:56:01PM

1 RECOMMENDATION

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3 Based on the above findings, the Skagit County Planning and Permit Center would
4 recommend for **approval** of a Shoreline Variance Permit subject to the following
5 conditions:

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7
- 8 1. The applicant shall record a site plan showing the lot in question, clearly marking
9 the land waterward of the proposed structure as an Protected Critical Area and
10 shall show the types of native vegetation to be planted. The site plan must be
11 recorded by the County Auditor's (SCC 14.06.145(2)) office prior to construction
12 of the proposal. The site plan must also clearly delineate the house at a setback of
13 35 feet from the OHWM and a deck under 30 inches above grade no closer to the
14 channel than 25 feet from the OHWM.
 - 15
16 2. The applicant must obtain a Skagit County Building Permit and receive all the
17 necessary approvals.
 - 18
19 3. The subject proposal shall comply with the Skagit County Shorelines Management
20 Master Program and the Shoreline Management Act RCW 90.58.
 - 21
22 4. The applicant shall strictly adhere to the project information (site diagram) submitted
23 for this proposal. If the applicant proposes any modifications of the subject proposal,
24 he/she shall request a shoreline permit revision from this office prior to the start of
25 construction.
 - 26
27 5. The applicant shall comply with the Fish & Wildlife Site Assessment
28 recommendations in regards to utilizing proper sedimentation and erosion control
29 measures during construction. The recommendations included:
30
31 a) Wet season construction should be accompanied by the implementation of a
32 temporary erosion and sedimentation control plan.
33 b) Vegetation removal should be minimized to the extent possible. All vegetation
34 removed during construction should be replaced with native species in
35 conformance with the attached site plan. Plant survival should be monitored
36 over a five-year period with a 80% survival rate at the end of five years.
37 c) The area should be subject to the planting plan and designated as a Protected
38 Critical area (PCA-Attachment C) and recorded at the County Auditors office.
39 d) The recorded PCA should provide for ongoing low impact residential related
40 uses.
- 41
42

43 Prepared By: DD

44 Approved By:

45 Date:

46 Amended: August 31, 2000

