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, Skagit County Auditor

10/11/2000 Page 1 of 12 2:56:29PM

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

DOCUMENT TITLE: SHORELINE VARIANCE PERMIT SL 00 0329 and ZONING  
VARIANCE PERMIT VA 00 0384

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: CURTIS JOHNSON

ASSESSOR PARCEL NO: P20601

ABBREVIATED LEGAL DESCRIPTION: located at 15510 Snee Oosh Road, LaConner,  
WA; within Section 21, Township 34 North, Range 2 East, W.M., Skagit County,  
Washington.

UNOFFICIAL DOCUMENT

**SKAGIT COUNTY HEARING EXAMINER**  
**STATE OF WASHINGTON**

In the Matter of the Application of )	
<b>CURTIS E. JOHNSON</b> )	SL 00-0329
)	VA 00-0384
For a Shoreline Variance and Zoning )	
Variance to Construct a Garage )	FINDINGS OF FACT,
Within Side Setback and Height Limit )	CONCLUSIONS OF LAW
at 15510 Snee-Oosh Road )	AND DECISION
)	

THIS MATTER, an application for shoreline and zoning variances, came on regularly for hearing on September 13, 2000, after due notice. The Planning and Permit Center was represented by Daniel Downs. The applicant represented himself. One neighbor testified.

Based on the exhibits entered, testimony heard, and argument made, the following is entered:

**FINDINGS OF FACT**

1. Curtis E. Johnson (applicant) seeks to build a three-car garage on the property where his residence is, at 15510 Snee-Oosh Road. The property is located on shoreland adjacent Similk Bay in an area designated as Rural Residential under the Shoreline Master Program (SMP).
2. The site is within a portion of Sec. 21, T34N, R2E, W.M. It is fee simple property inside the boundaries of the Swinomish Reservation.
3. The proposed development is a 20 by 37 foot structure (740 square feet) with a height of 20 feet. It would be located three feet from the side (south) property line.
4. Variances are requested to accommodate the placement and height proposed. The relevant side setback distance is eight feet. The height limit for accessory structures is 15 feet.
5. The subject lot, like its neighbors, is long and narrow. The dimensions are 50 feet wide by 700 feet deep. From the water the lot gradually slopes up to a generally flat area behind the house..
6. The proposed garage is to be located behind the existing house at a distance of 106 feet from the Ordinary High Water Mark (OHWM). At this distance significant direct impacts on the land-water interface are unlikely.



7. A Fish and Wildlife Assessment/Habitat Management Plan, prepared by biologist Rupert Schmitt, was filed on September 5, 2000. The report identified no impact from the proposal if best management practices are followed during construction. The following conditions were recommended:

- a) Limit the amount of clearing, grading and soil disturbance to only that area which is necessary to complete the project. Keep all equipment away from the upper bank. Remove any excavated waste materials to an approved site.
- b) Do not allow building debris or construction materials to enter any water body and properly dispose of building wastes.
- c) Limit operations to dry periods and stable soil conditions and prevent surface run-off from disturbed soils or activities from entering any water. Use erosion control measures such as hay bales or barrier dams if run-off conditions occur.
- d) Immediately re-vegetate any exposed soil areas with grass seed or native vegetation and mulch upon completion of the project.

8. The inland portion of the subject lot is heavily forested. The narrowness of the lot makes it difficult to construct accessories behind the house and still provide access. The proposed garage site is the only location where vehicular access can be allowed with minimal disturbance of large fir trees. This is a special circumstance.

9. The adjoining lots both have houses and garages on them. The garages in both cases are about three feet from the subject property. The area is densely developed, with numerous structures sitting on or near property lines throughout the area.

10. The dimensions, topography and forested condition of the lot are not the result of actions of the applicant.

11. The 20-foot height for the structure is desired in order to put a storage room above the garage area. The location of the proposed building on the heavily forested property means the only visual impact would be on the neighbor to the south. This neighbor testified that she has no objection at all to the project. The proposed garage would be directly opposite her garage.

12. The garage as proposed is a reasonable use of the property. Under all the circumstances, strict application of the dimensional requirements of the SMP and zoning code would significantly interfere with this use. To allow the proposed variance to height and side yard setback standards would be consistent with development on other properties in the same district.



13. No adverse comments or concerns were raised by consulted agencies or members of the public

14. The reasons set forth in the application justify the granting of the variance. The variance is the minimum that will make possible a reasonable use of the land.

15. The granting of the variance sought will be in harmony with the general purpose and intent of the zoning code and will not be injurious to the neighborhood or otherwise injurious to the public interest.

16. 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 side setback and height, the proposed residential accessory is consistent with policies and regulations of the SMP and zoning code.

4. The findings support a conclusion that, as conditioned, the project meets the criteria for variance approval under the SMP and the zoning code. SMP 10.03(1), SCC 14.04.223(1)(e).

5. The following conditions should be imposed:

(1) The permittee shall comply with the Fish and Wildlife Site Assessment recommendations as set forth in Finding 7 herein.

(2) Best management practices shall be followed during construction.

(3) The permittee shall strictly adhere to the project information (site diagram) submitted for this proposal. The garage may be built three from the south property line and the height may be 20 feet.

(4) The permittee shall revegetate any disturbed areas not used for the structure and access as soon as practical following construction.

(5) Prior to construction, the permittee shall record in the County Auditor's office a site plan showing the lot in question, and clearly marking the Protected Critical Area.



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

(7) If the permittee proposes any modifications to the project, he shall request a permit revision from the Planning and Permit Center.

(8) The approval of the Department of Ecology shall be obtained. Construction shall begin within two years of such approval and be completed within five years thereof.

6. 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: October 11, 2000

Copies transmitted to Applicants: October 11, 2000

### 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**

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5 **FINDINGS OF FACT**

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8 REVIEWING AUTHORITY: Skagit County Hearing Examiner

9  
10 PUBLIC HEARING DATE: September 13, 2000

11  
12 APPLICATION FOR: Shoreline Variance PL#00-0329 & Zoning Variance  
13 PL#00-0384.

14  
15 APPLICATION DATE: July 7, 2000

16  
17 APPLICANT: Curtis E. Johnson  
18 15510 Snee-oosh Road  
19 PARCEL#20601 LaConner, WA 98257

20  
21 PROJECT DESCRIPTION: The construction of a 20' X 37' garage with a height of 20'  
22 located 3 feet from the south property line. The proposal will be located 106 feet from the  
23 OHWM and requires two variances due to the inability to meet the 8-foot minimum  
24 requirements for side setbacks within the respective shoreline and zoning designations as  
25 well as exceeding the 15-foot height requirement for accessory structures within  
26 shoreline jurisdiction.

27  
28 The proposal triggers the need for a shoreline and or a zoning variance because:

- 29 1. The minimum side yard setback in both the rural residential shoreline designation is 8  
30 feet and the residential zone is 8 feet (see SCSMMP 7.13(2)© Table RD) &  
31 (14.04.090(5)(b)).  
32 2. The maximum allowable height for an accessory structure within 200 feet of the  
33 OHWM is 15 feet above average grade (see SCSMMP 7.13(2)© Table RD).

34  
35 PROJECT LOCATION: The proposed project is located at 15510 Snee-Oosh Road,  
36 LaConnor, within a portion of Section 21 Township 34 North, Range 2 East, W.M.,  
37 Skagit County. The subject proposal is located on the shoreline of Similk Bay designated  
38 Rural Residential under the Shoreline Master Program.

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

41 EXHIBITS:

- 42  
43 1. Staff report  
44 2. June 15, 2000, Shoreline/Zoning Variance applications, a narrative, ownership  
45 certification and photos.  
46 3. June 23, 1998 Fish & Wildlife Site Assessment by David Symmank.



- 1 4. June 29, 2000 Fish & Wildlife Site Assessment by Rupert Schmitt.
- 2 5. July 10, 2000 Letter of Completeness.
- 3 6. July 13, 2000 & July 20, 2000, Notice of Development Application.

4  
5 STAFF FINDINGS:

- 6
- 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 adjacent to the Swinomish  
11 Channel in an area designated as Swinomish Urban Growth Area by the Skagit  
12 County Comprehensive Plan and under the Skagit County Zoning Ordinance.  
13 The property is designated as Rural Residential in the SCSMMP.  
14
- 15 3. Staff determined that the subject proposal required a Fish & Wildlife Site  
16 Assessment/Habitat Management Plan as required in 14.06.510 & 520 of the  
17 Skagit County Critical Areas Ordinance (CAO) was required. The report  
18 identified no impact from the proposal if appropriate erosion control measures  
19 were taken during construction. The report proposed several courses of action for  
20 effective mitigation of the proposal including:  
21
  - 22 a) Limit the amount of clearing, grading and soil disturbance to only that area  
23 which is necessary to complete the project. Keep all equipment away from the  
24 upper bank and that any excavated material is removed to an approved site.
  - 25 b) Do not allow building debris or construction materials to enter any part of the  
26 water body and properly dispose of building wastes.
  - 27 c) Limit operations to dry periods and stable soil conditions and prevent surface  
28 run-off from disturbed soils or activities from entering the water. To use  
29 erosion control measures such as hay bales or barrier dams if run-off  
30 conditions exists.
  - 31 d) Immediately re-vegetate any exposed soil areas with grass seed and/or native  
32 vegetation and mulch upon completion to the project.

33  
34 The Critical Areas Ordinance requires that a site plan be recorded at the County  
35 Auditors office prior to beginning construction per S.C.C 14.06.145.  
36

- 37 4. The proposal is categorically exempt from the State Environmental Policy Act  
38 (SEPA) as noted in WAC 197-11-800(1)(b)(I) regarding residential structures.  
39
- 40 5. No comments have been received regarding the proposal.  
41
- 42 6. Staff has determined that a Technical Team was not necessary for proposal per  
43 S.C.C. 14.06.735.  
44



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1 7. Section 14.04.223 (1) (e) Variances of the Skagit County Code states that certain  
2 items will be reviewed when approving or denying Variances. Staff comments as  
3 they relate to the Variance criteria are as follows:  
4

5 **a. That special conditions and circumstances exist which are peculiar to**  
6 **the land, structure or building involved and which are not applicable**  
7 **to other lands, structures, or buildings in the same district.**  
8

9 *Residential development on the parcel is limited on the north and south by*  
10 *the narrowness of the lot, which is only 50 feet wide. This makes it difficult*  
11 *to construct an accessory structure and still allow access to the property.*  
12 *The zoning code requires a 8 foot side yard setback in the rural zoning*  
13 *designation which would reduce the buildable envelope to only 34 feet not*  
14 *counting the need for room for the access road.*  
15

16  
17 **b. That literal interpretation of the provisions of this chapter would**  
18 **deprive the applicant of rights commonly enjoyed by other properties**  
19 **in the same district under the terms of this chapter.**  
20

21 *The issuance of a variance for this proposal would be consistent with the*  
22 *relatively high-density residential development already located in the area.*  
23

24  
25 **c. That the special conditions and circumstances do not result from the**  
26 **actions of the applicant.**  
27

28 *The applicant has indicated that the conditions did not result from his*  
29 *actions but were caused when the lot was created.*  
30

31 **d. The granting of the variance requested will not confer on the**  
32 **applicant any special privilege that is denied by this chapter to other**  
33 **lands, structures, buildings in the same district.**

34 *The area is densely developed with numerous structures sitting on or near*  
35 *property lines throughout the area.*  
36

37  
38 8. Staff has determined that the proposal is located adjacent to a Shoreline of  
39 Statewide Significance. Chapter 5 of the Skagit County Shoreline Management  
40 Master Program (SCSMMP) list the applicable policies. The policies are (staff  
41 notes in *italics*):  
42

43 a. That statewide interest should be recognized and protected over local interest.  
44 *State and local interest coincide in promotion of residential development in*  
45 *residential shoreline areas.*



1 b. The natural character of shorelines of statewide significance should be  
2 preserved.

3 *The proposal is over 100 feet from the shoreline in an area of intense residential*  
4 *development.*

5 c. Uses of shorelines of statewide significance should result in long term benefits  
6 to the people of the state.

7 *Protection of residential shoreline via protection of critical areas is beneficial to*  
8 *both local and state interests.*

9 d. The natural resources and ecological systems of shorelines of statewide  
10 significance should be protected.

11 *No harmful impacts were identified by the Fish & Wildlife report regarding the*  
12 *proposal as long as best management practices were employed correctly.*

13 e. Public access to publicly owned area in shorelines of statewide significance  
14 should be increased.

15 *N/A*

16 f. Recreational opportunities for the public should be increased on shorelines of  
17 statewide significance.

18 *The primary function at the site is residential in nature.*

19  
20 9. The SCSMMP, Chapter 10 Variances, sets forth the criteria for granting Shoreline  
21 Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance permits  
22 reads:

23  
24 Variance permits for development to be located landward of the ordinary high  
25 water mark (OHWM), except within areas designated marshes, bogs or swamps  
26 pursuant to Chapter 173-22 WAC, may be granted provided the applicant can meet  
27 all the following criteria; the burden of proof shall be on the applicant.

28  
29 a. **That the strict application of the bulk, dimensional or performance**  
30 **standards set forth in this Master Program precludes or significantly**  
31 **interferes with a reasonable use of the property not otherwise**  
32 **prohibited by this Master Program.**

33 *Residential development on the parcel is limited on the north and south by*  
34 *the narrowness of the lot, which is only 50 feet wide. This makes it difficult*  
35 *to construct an accessory structure and still allow access to the property.*  
36 *The SCSMMP only allows accessory structures to reach a maximum*  
37 *height of 15 feet, which does not allow readily for storage unless the*  
38 *ground area of the structure is increased thereby increasing the total*  
39 *impervious surface on the lot. The SCSMMP requires a 8 foot side yard*  
40 *setback in the rural residential shoreline designation which would reduce*  
41 *the buildable envelope to only 34 feet not counting the need for room for*  
42 *the access road.*

43  
44 b. **That the hardship described above is specifically related to the**  
45 **property and is the result of unique conditions such as irregular lot**  
46 **shape, size or natural features and the application of this Master**



1 **Program and not, for example, from deed restrictions or the applicant's**  
2 **own actions.**

3 *The narrow width (50 feet) of the lot and nearby lots in the vicinity creates a*  
4 *hardship for property owners who want to construct a garage or similar*  
5 *accessory structure. Site coverage requirements of 30 % also serve to*  
6 *discourage property owners from building larger structures at a lesser*  
7 *height (under 15 feet tall) in the shoreline environment.*

8  
9 c. **That the design of the project will be compatible with other permitted**  
10 **activities in the area and will not cause adverse effects to adjacent**  
11 **properties or the shoreline environment designation.**

12 *The surrounding area has been developed for rural residential use as*  
13 *demonstrated by the Rural Residential shoreline designation. The June 29,*  
14 *2000 report prepared by Rupert Schmitt identified little or no impact from*  
15 *the proposal*

16  
17 d. **That the variance authorized does not constitute a grant of special**  
18 **privilege not enjoyed by the other properties in the same area and will**  
19 **be the minimum necessary to afford relief.**

20 *The issuance of a variance for this proposal would be consistent with the*  
21 *relatively high-density residential development already located in the area.*  
22 *Therefore, staff does not find the proposal to be a "grant of special*  
23 *privilege" to the applicant.*

24  
25 e. **That the public interest will suffer no substantial detrimental effect.**

26 *Any possible detrimental effects however how remote, should be mitigated*  
27 *through compliance with the conditions placed on the development as*  
28 *recommended by staff and the environmental consultant.*

29  
30  
31 **REVIEW OF APPLICABLE COUNTY SMMP POLICIES & REGULATIONS.**

32  
33 The proposal has been reviewed for consistency with SMP Chapter 7.13 Residential  
34 Development as defined in Chapter 3.03. The entire chapter 7.13 of the SCSMMP regarding  
35 Residential Development is included as Attachment "A" of the staff report, staff has  
36 summarized the policies involved.

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



1 The following inserts from the Regulation section are considered below with staff notes  
2 in italics:  
3

4 **2. REGULATIONS**

5 A. Shoreline Area

6 (2) Rural Residential

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

8 C. Tabular Regulations

9 Table RD

10 (2) Side yard setbacks (d) Accessory structures – Rural Residential - 8 feet.

11 (3) Height imitations © Accessory development – Rural Residential – 15 feet.

12 *The proposal to place the garage 3 feet from the south property line triggers the need for*  
13 *a side yard setback variance and the 20-foot height proposed exceeds the 15 feet*  
14 *normally allowed without a variance.*

15  
16 **RECOMMENDATION**

17  
18 Based on the above findings, the Skagit County Planning and Permit Center would  
19 recommend for **approval** of a Shoreline Variance & Zoning Variance Permits subject to the  
20 following conditions:  
21

- 22
- 23 1. The applicant shall record a site plan showing the lot in question, clearly marking  
24 Protected Critical Area. The site plan must be recorded by the County Auditor's  
25 (SCC 14.06.145(2)) office prior to construction of the proposal.  
26
  - 27 2. The applicant must obtain a Skagit County Building Permit and receive all the  
28 necessary approvals.  
29
  - 30 3. The subject proposal shall comply with the Skagit County Shorelines Management  
31 Master Program and the Shoreline Management Act RCW 90.58.  
32
  - 33 4. The applicant shall strictly adhere to the project information (site diagram) submitted  
34 for this proposal. If the applicant proposes any modifications of the subject proposal,  
35 he/she shall request a shoreline permit revision from this office prior to the start of  
36 construction.  
37
  - 38 5. The applicant shall comply with the Fish & Wildlife Site Assessment  
39 recommendations in regards to utilizing proper sedimentation and erosion control  
40 measures during construction. The recommendations included:  
41
    - 42 a) Limit the amount of clearing, grading and soil disturbance to only that area  
43 which is necessary to complete the project. Keep all equipment away from the  
44 upper bank and that any excavated material is removed to an approved site.
    - 45 b) Do not allow building debris or construction materials to enter any part of the  
46 water body and properly dispose of building wastes.



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- c) Limit operations to dry periods and stable soil conditions and prevent surface run-off from disturbed soils or activities from entering the water. To use erosion control measures such as hay bales or barrier dams if run-off conditions exists.
- d) Immediately re-vegetate any exposed soil areas with grass seed and/or native vegetation and mulch upon completion to the project.

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



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