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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 Variance Permit Applications CV990429, VA99-0430, and  
SL01-0391

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: Dena Blatt

ASSESSOR PARCEL NO: P19049

ABBREVIATED LEGAL DESCRIPTION: The proposed project is located at 12724 Marine  
Drive, Anacortes, WA; a portion of the NW 1/4 of the SW 1/4 of Section 02, Township  
34 North, Range 01 East, W.M. Skagit County, Washington.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

In the Matter of the Appeal of )  
**DENA BLATT** ) AP 99 0288 )  
 ) Bldg Permit App #97-1304 )  
From an Administrative Determination )  
Denying a Building Permit Application )  
For an Addition to a Residence at )  
12724 Marine Drive. )  
\_\_\_\_\_)  
 )  
In the Matter of the Application of )  
**DENA BLATT** ) PL#99-0429 - Reduced Critical )  
 ) Areas Buffer )  
For Variances from Buffer and Setback ) PL#99-0430 - Side Setback )  
Requirements . ) Variance )  
 ) PL#01-0391 - Shoreline Variance )  
\_\_\_\_\_)

THIS MATTER, came on regularly for hearing on January 23, 2002, after due notice. Marge Swint and John Cooper represented the Planning and Permit Center. John Shultz, Attorney at Law, represented Dena Blatt (applicant/ appellant).

**PROCEDURE**

The procedural history of this matter spans about five (5) years. A brief summary of the principal events follows:

1. May 1997 -- Appellant constructs addition to existing dwelling without a building permit.
2. June 3, 1997 -- Stop Work order; construction substantially complete.
3. June 16, 1998 -- Building Official denies after-the-fact building permit application.
4. May 26, 1999 -- Hearing Examiner denies appeal from building permit denial.
5. June 25, 1999 -- Appellant applies for critical areas buffer reduction and for variance to side setback.



6 February 8, 2000 -- County Commissioners remand matter to Hearing Examiner to correct deficiencies in record in regard to location of property lines and the necessity for variances.

7. July 27, 2000 -- Evidence establishes north property line. Hearing Examiner concludes that the reduced critical area buffer and side setback variance are needed for compliance with land use code.

8. May 17, 2001 -- Appellant applies for shoreline variance.

9. January 23, 2002 -- Hearing held on variances; Planning and Permit Center recommends denial.

### FINDINGS

1. The property in question is situated on the western shore of Fidalgo Island and includes a steep bluff rising about 170 feet above the water of Burrows Bay. The location is approximately one-half mile northeast of Edith Point. The address is 12724 Marine Drive (identified in prior proceeding as 1274-A Marine Drive).

2. The zoning is Rural Intermediate. The shoreline designation is Conservancy.

3. The bluff is a landslide hazardous area pursuant to the terms of Chapter 14.24 SCC.

4. Dena Blatt (appellant/applicant) purchased the property with an existing house already on it. This original residence is about 18 feet from the top of the bluff at its nearest point.

5. Through a contractor, the appellant built an addition to the original residence consisting of a ground-level garage and second floor living quarters, with decks attached. The second floor living quarters include a bedroom, bath and kitchen. The two-story addition was added to the north end of the original structure.

6. No building permit was obtained prior to the construction of the addition and, notwithstanding a subsequent application, no building permit has been issued for the addition.

7. Excluding decks, the footprint of the addition is 20 by 25 feet. The decks extend along both the west and north sides. There is also an exterior stairway along the north side.

8. The edge of the decking along the west side of the addition is about 12 feet from the top of the bluff. Minus the decks the addition would be in the neighborhood of



20 feet from the top of the bluff.. The decks on the north encroach upon the adjoining property to the north by approximately 2.5 feet.

9. The applicant has agreed to remove the decks and stairway on the north side of the addition. Without these structures, the addition would not encroach on the property to the north. Absent the decks and stairway, the addition would be set back about three feet from the property line.

10. The actual setbacks -- from the top of the bluff and from the north (side) property line -- violate the applicable setback standards. SCC 14.24.430(1)(h) establishes a minimum buffer width of 30 feet from the top of a landslide hazardous area. SCC 14.16.300(5)(a)(ii) establishes a side yard setback for this zone of eight (8) feet. The Skagit County Shoreline Master Program calls for a sideyard setback of 50 feet in this shoreline environment. SMP 7.13, Table RD.

11. The applicant has sought variance approval for the existing setbacks of the addition as built (minus the decks on the north). None of the setback standards have changed substantively since the applications for variance were filed.

12. The landslide hazardous area buffer may be reduced to a minimum of 10 feet when an applicant demonstrates to the Administrative Official that

the reduction will adequately protect the proposed development, adjacent developments and uses and the subject critical area.

The buffer adjacent to a marine bluff may also be increased by the Administrative Official to prevent risk of damage to existing and proposed development. SCC 14.24.430(1) (h).

13. Four geotechnical documents have been prepared in regard to the subject development on the property:

- (a) Geotechnical Evaluation -- JB Scott & Associates, November 20, 1997;
- (b) Geotechnical Reconnaissance and Consultation -- J. Keith Cross, June 5, 1998;
- (c) Geotechnical Reconnaissance and Consultation -- J. Keith Cross, December 5, 1998;
- (d) Supplement to December 5, 1998 Letter -- J. Keith Cross, April 13, 1999.

14. Upon consideration of the geotechnical reports, the Administrative Official (Director, Planning and Permit Center) has declined in this case to reduce the landslide hazardous area buffer below the 30-foot standard. At the hearing the current Building Official testified that the as-built location of the addition puts people in harms way.



15. The latest Staff Report analyzes the request to reduce the landslide hazardous area buffer in light of the standards for a Critical Areas Ordinance variance. See SCC 14.24.140(3). The Report concludes that the geotechnical site assessments for the subject property do not support a modification of the 30-foot dimensional requirement.

16. Finding No. 10 of the Examiner's decision of July 27, 2000, states that the geotechnical reports support a determination that a reduction in buffer area is justified, if minor drainage improvements are made as recommended.

17. In the present proceeding, the Examiner has reviewed these reports again and come to a contrary conclusion. Implicit in the prior finding was an assumption that reducing the buffer could be justified because the receding bank might not reach the structure (minus decks) for perhaps 70 years. This, however, is a probability based on an average rate of recession and does not negative the possibility that the bank could collapse and take the house with it next year.

18. Under all the circumstances, the Examiner finds evidence fails to show that a reduction of the buffer below the 30-foot standard feet will adequately protect the proposed development. The experts agree that landward migration of the bluff will continue as a result of the operation of natural forces. Sooner or later the bluff will have receded to the point where the addition in question will be undermined and its occupation will no longer be tenable. The use of known technology, such as a neighborhood-wide tie-back system, might at great cost retard this result, but would not in the long run prevent it.

19. What the geotechnical reports clearly do support is the proposition the construction and maintenance of the addition has not increased the instability of the bluff. However, this is only to say that the naturally occurring hazard has not been made worse. The hazard exists at this site independent of the buildings placed there.

20. Under SCC 14.10.020, variances are authorized in specific cases where departure from the requirements of the zoning code "will not be contrary to the public interest" and "where, due to special conditions, a literal enforcement of the provision of this Code would result in unnecessary hardship." The explicit criteria for approval of a variance are set forth at SCC 14.10.030(2), as follows:

- a. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district. Topics to be addressed include topographic or critical area constraints that make use of the particular site infeasible without the proposed variance.
- b. Literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of SCC Titles 14 and 15.



- c. The special conditions and circumstances do not result from the action of the applicant.
- d. The granting of the variance requested will not confer on the applicant an special privilege that is denied by SCC Titles 14 and 15 to other lands, structures or buildings in the same district.
- e. An explanation of how the requested variance meets any other specific criteria for the type of variance request, where applicable, including . . .
- (i) Explanation of compliance with the criteria for a Critical Areas Ordinance variance under SCC 14.24.140.
  - (ii) Explanation of compliance with the criteria for a shoreline variance under the Skagit County Shoreline Management Master Program.
- f. If applicable, an explanation from the Applicant as to why, if a variance is denied, the Applicant would be denied all reasonable use of his or her property.

21. The Staff Report analyzes the requested sideyard variance and concludes that the proposal fails to meet all of the applicable criteria. The Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

22. In particular, the Examiner notes that the addition and its northerly deck/stairs were built before a survey was made to establish the location of the property line. The encroachment into the side setback occurred under a mistaken idea of where the boundary lies. Further, there is nothing in the record establishing a need for the size of the addition or negating the notion that it could have been built so as to be consistent with the eight-foot setback.

23. For development landward of the OHWM, the criteria for approval of a shoreline 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.

24. In light of these criteria, the Staff analysis of the shoreline variance for the sideyard is again that this project does not qualify. Again, the Examiner concurs in this analysis and adopts the same.

25. Reasonable residential use was being made of the property prior to the construction of the addition. There has been no demonstration that the requested side variance is needed to prevent significant interference with reasonable residential use.

26. The property in question and its residence were served by an existing carport prior to the construction of the addition. This tends to undercut assertions regarding compatibility. There is no pattern in the neighborhood of developed lots with both carports and garages

27. At the hearing, the prior owner of the property and the neighbor to the north opposed the variance requests.

28. 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 persons and the subject matter of this proceeding. SCC 14.06050(1)(b).

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



3. The applicant has not carried her burden to justify approval of the variances sought.

4. On the matter of the setback of the new structure from the edge of the bluff, the central dispute is about the proper basis for determining whether a less-than-standard buffer should be allowed. The applicant argues that it only need be shown that the structure has not and will not increase the hazard of bank failure. The County takes the position that a reduction in buffer may be refused if the structure is endangered by proximity to the landslide hazard, even though the structure itself may not have an adverse impact on the stability of the bank.

5. The geotechnical studies establish that, at the subject site, slope stability is affected by ongoing natural coastal processes. After reviewing the various criteria for buffer alteration, the Examiner concludes that the critical consideration is not whether the structure is causing the hazard, but whether the location of structure is in fact safe.

6. This distinction was not analyzed in the remand hearing in 2000. The issue then was a procedural one -- whether approval of a critical area buffer reduction was needed as a prerequisite to granting a building permit. Whether such a buffer reduction should be approved on the merits was not then before the Examiner. Thus, Finding #10 of the July 27, 2000 decision is surplus, not necessary for the result.

7. In contrast, the instant proceeding is focused on the merits. In this context, the Examiner concludes that the buffer reduction sought has not been justified. This conclusion is based on the following:

(a) SCC 14.24.430((1)(h) provides for the administrative reduction of the buffer from 30 feet to as low as 10 feet. Among other things, the reduction must "adequately protect the proposed development." The Administrator has not granted such a reduction here.

(b) SCC 14.24.430(2) provides special criteria for altering a buffer in a geologically hazardous area. Among the standards are a requirement that there be "minimal hazard" as shown by qualitative analysis of slope stability that indicates "no significant risk to the development proposal." The operation of natural processes in this location means that the "no significant risk" standard cannot be met.

(c) SCC 14.24.140 (3) requires that a variance to a critical area dimensional setback be based on a professional assessment that supports modification of the requirement. The assessments made in this case do not show that a lesser buffer can be approved consistent with the idea of protecting the development.

8. The standard variance criteria and the shoreline variance criteria are clearly not met for the north sideyard setback sought. The ascertainment of property boundaries is the responsibility of the applicant. The existing encroachment into the setback is the result of the actions of the applicant. No special physical conditions peculiar to the property were shown that would prevent reasonable use of the site without the sideyard encroachment.



9. Accordingly, the Examiner concludes that none of the requests to vary the buffer or setbacks applicable to the subject addition should be granted.

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

### DECISION

The critical areas, sideyard setback, and shoreline setback variance requests are denied. As a result, the requisite compliance with land use requirements needed for issuance of a building permit has not been achieved.

DONE this 25<sup>th</sup> day of February, 2002

*Wick Dufford*

Wick Dufford, Hearing Examiner

### RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Planning and Permit Center within 14 days after the date of the decision, or decision on reconsideration, if applicable.



**SKAGIT COUNTY PLANNING AND PERMIT CENTER  
FINDINGS OF FACT**

**HEARING AUTHORITY:** SKAGIT COUNTY HEARING EXAMINER

**HEARING DATE:** January 23, 2002

**APPLICATION NUMBER:** VARIANCE PL#99-0429 Critical Areas  
PL#99-0430 Setback  
PL#01-0391 Shoreline

**APPLICANT:** Dena Blatt

**ADDRESS:** 12724 Marine Drive  
Anacortes, WA 98221

**CONTACT:** John Schultz, Attorney at Law  
160 Cascade Place  
Suite 218  
Burlington, WA 98233

**PROJECT LOCATION:** The proposed project is located 12724 Marine Dr. Anacortes, WA; within a portion of the NW ¼ of the SW ¼ of Section 02, Township 34 North, Range 1 East, W.M. Skagit County, Washington

**PROJECT DESCRIPTION:** *These variance requests are the result of an enforcement action concerning an addition built to a single-family residence without the benefit of permits. Variance request to allow for an addition to an existing single-family residence to be 3 feet from the side property lines instead of the required 8 feet as stated in SCC 14.04.090(5)(b)(i) [14.16.300(5)(a)(ii)] & 50 feet as stated in SCC 14.26.Chapter 7.13 Table RD. Also the request is to allow for the addition to be 10 feet from a steep slope instead of the required 30 feet as stated in SCC 14.06.430(7) [14.24.430(1)(h)].*

**Note:** Current zoning citations are in parenthesis.

**ASSESSOR'S ACCOUNT NUMBER:** 340102-0-025-0008

**PARCEL ID NUMBER:** P#19049



**ZONING:** Rural Intermediate

**COMPREHENSIVE PLAN:** Rural Intermediate

**RECOMMENDATION:** The Planning and Permit Center would recommend denial of the requested variance.

**EXHIBITS:**

- a. Variance Application PL99-0429 & PL99-0430 dated June 25, 1999
- b. Critical Area Variance Narrative Statement (PL99-0429)
- c. Amended Narrative for PL99-0430 prepared by Lissner & Associates dated April 26, 2001.
- d. Shoreline Variance Application PL01-0391 dated May 17, 2001.
- e. Shoreline Variance Narrative
- f. Site Plan & Revised Site Plan
- g. Letter from John Hicks, Attorney at Law, 1603 S. Third Street, Mount Vernon to Marge Swint dated July 20, 2001
- h. Assessor map
- i. Letter of Completeness dated June 27, 2001
- j. Notice of Development dated July 5, 2001
- k. Photos
- l. Letter from Wayne & Paddy Fraser, 11479 N. Del Mar Dr., Anacortes dated July 14, 2001
- m. Critical Areas Site Assessment Fish & Wildlife Report prepared by Northwest Wetland Solutions dated August 10, 2001.
- n. Exhibits previously submitted at May 12, 1999 and May 31, 2000 public hearing
- o. Hearing Examiners written order on remand from Board of County Commissioners dated July 27, 2000

**STAFF FINDINGS:**

1. At the time of the initial applications for the critical area variance (PL99-0429) and the setback variance (PL99-0430) the subject property was zoned Residential and the Comprehensive Plan, adopted June 1997, designated the area as Rural Intermediate. With the adoption of the Unified Development Code in July 2000, the subject property is zoned Rural Intermediate.
2. The initial applications (land use & critical areas) were submitted after the May 12, 1999 public hearing in which the Hearing Examiner denied the appeal by the applicant of a decision of the Planning & Permit Center Code Compliance Officer. The Code Compliance Office in a letter dated June 16, 1998 denied the issuance of a building permit for an already constructed addition to a existing residence. These applications were initially reviewed under the codes in effect at the time. Per Skagit County Code Section 14.01.033, a letter was issued on June 29, 1999 requesting additional information before the applications could be



processed. As part of the initial review, Staff determined that the property was within shoreline jurisdiction and that a shoreline side yard variance was also required. In April 2001, all of the requested information was submitted and the applications were able to proceed. Per Skagit County Code Section 14.06.100, a letter of completeness was issued on June 27, 2001. A Notice of Development Application for the application was posted on the subject property and published in a newspaper of general circulation on July 5, 2001 as required by Section 14.06.150(2) of Skagit County Code and Section 9.04 of the Shoreline Master Program. The Notice of Development was also published on July 12, 2001 as required by the Shoreline Master Program Section 9.04. The public hearing has been advertised in accordance with the requirements of Chapter 14.06.150(3) of the Skagit County Code.

3. The application has been reviewed in accordance with the State Environmental Act Guidelines WAC 197-11-800 (6)(b) and has been found to be exempt.
4. The subject property is not located in a flood hazard zone and is not adjacent to property designated as natural resource land. The subject property is within the shoreline jurisdiction of Burrows Bay and has a conservancy designation.
5. The subject parcel was initially reviewed with respect to the Skagit County Critical Areas Ordinance with the building permit application (97-1034). There are two critical areas within 200 feet of the subject site. Those critical areas include a Type-1 water (Burrows Bay) and a known geologically hazardous area. Per SCC 14.06.520 a fish and wildlife assessment and per SCC 14.06.42 a geologically hazardous area site assessment were required. A Geotechnical Evaluation dated November 20, 1997 prepared by JB Scott was submitted for review. This report basically stated that the addition negatively affected the adjoining bluff slope. As a result of this report, the building permit was denied. Subsequently additional reports (see Geotechnical Reconnaissance and Consultation Report dated June 5, 1998 and December 5, 1998) prepared by J. Keith Cross were submitted and reviewed. Staff's review indicates that the report provided by JB Scott and Associates and the reports by Mr. Cross failed to demonstrate that the reduction in buffer will adequately protect the proposed development. On the contrary, both reports indicate that the slope will continue to recede and eventually the existing structure will be subject to damage or loss due to coastal processes. The Fish and Wildlife Assessment prepared by Northwest Wetland Solutions dated August 10, 2001 was submitted and reviewed. The report stated that there was no impact as a result of the addition and staff concurs.



6. The subject property is approximately .78 acre and is located on the west side of Marine Drive. The property is rectangular in shape lying in an east/west configuration. The property measures approximately 125 feet along the east & west property lines, approximately 276 feet on the north property line, and approximately 271 feet on the south property line. According to the site plan submitted with the building permit, a single-family residence with a carport is located in the eastern portion of the property. The house is situated in a north/south configuration approximately 25 feet from the south property line and approximately 23 feet from the north property line. The carport, attached to the front of the residence at the south end, is approximately 17 feet from the south property line. There is a circular driveway off of Marine Drive that runs through the carport. The property is landscaped. There is a steep slope lying west of the house and according to J. Keith Cross, PE the bluff is on the order of 170 feet high. The original residence is located approximately 20 feet from the top of the steep bank and approximately 170 feet from the Ordinary High Water Mark of Burrows Bay. The property is served by on site septic and public water.

7. The adjoining properties on either side of the subject parcel are similar in size, developed with single-family residences and either carports, garages, or detached garages. According to the Assessor's records, many of the parcels that are developed within the area have comparable size homes as the applicant's home.

8. The applicant constructed a two-story addition to the north end of the existing residence without the benefit of a permit. As stated in the Written Order dated May 26, 1999, the addition consists of a 20' x 25' garage with a 20' x 10' deck area on the lower level with a 20' x 25' living area and 20' x 10' deck on the second story. There are stairs that run along the north side to the upstairs addition. The second story living quarters contain a large room (identified on the building plans as a "rec" room), a bedroom and a bath. The "rec" room plans show a complete kitchen area. A professional survey completed after enforcement action was taken shows that the addition encroaches upon the adjoining property to the north by approximately 2.5 feet. Staff notes that the applicant has agreed to remove the encroaching deck and stairs along the north side of the house. This will result in the addition, at its closest point, being 3 feet at the northeast corner and 6.2 feet at the northwest corner from the side property line. According to the survey done by Metron & Associates dated May 1999 the addition is within 20 feet of the bank and the deck is within 12 feet of the bank.

9. SCC 14.04.090(5)(b)(i) [14.16.300(5)(a)(ii)] lists the side yard setback for a primary structure as 8 feet. Shoreline



Master Program SCC 14.26.Chapter 7.13 Table RD states single family residences with a conservancy designation have a side yard setback of 50 feet. Skagit County's Critical Areas Ordinance 14.06.430 (7), Geologically Hazardous Area Mitigation Standards states that "a minimum buffer with a width of 30 feet shall be established from the top, toe, and all edges of all landslide hazardous areas". The ordinance further states that "the buffer may be reduced to a minimum of 10 feet when an applicant demonstrates to the administrative official that the reduction will adequately protect the proposed development, adjacent developments and uses and the subject critical area".

10. The applications were routed to the appropriate divisions (landuse, shorelines & critical areas) for review. These comments will be addressed in future findings.
11. Skagit County Code Section 14.04.223(1)(e) [14.10.030(2)] Variances states that certain items will be reviewed when approving or denying Variances. Those items are as follows:
  - a. **Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district. Topics to be addressed include topographic or critical area constraints that make use of the particular site infeasible without the proposed variance.**

Staff generally recognizes that special conditions and circumstances apply to topographic hardships, i.e., a large ditch or creek or other physical feature peculiar to a particular parcel of property that has a detrimental impact on a proposed development. Staff visited the site and confirmed the topography of the parcel. As noted in earlier findings the addition was constructed without the benefit of county review and permits. No topographical hardships in relationship to the side yard were identified. A special condition/circumstance involved with this request deals with the fact that at the time the addition was constructed (May, 1997), the applicant believed there was the necessary side yard setback needed to meet the requirements of the zoning code. It was not until an actual survey was completed in May, 1999 that showed the deficiency. According to the applicant's narrative, there was a fence along the northern property line that had been in place for many years. It needs to be noted that the property owner is responsible for locating all property lines. What is unknown, is if the applicant had been aware of the property line location prior to construction would she have still opted for the size of the addition that was constructed or revised her plans to make it fit on her property. The fact that the addition was



built without a permit should not warrant a special condition/circumstance. The applicant maintains that removal of the addition will be a substantial physical and financial hardship.

- b. That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter.

Staff notes that the literal interpretation of the provisions of this chapter would not deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter. The existing residence had a carport before the addition was added. The addition consists of a garage on the lower level and a living area on the upper level. In reviewing the Assessor's records for properties within 500 feet of the subject parcel, it is not uncommon to have either a carport or a garage but not both. Therefore the applicant is not being deprived of rights commonly enjoyed by other properties. The homes in the area are a mixture of those built before there were regulations and those built after the adoption of codes. Because of this, there may be developed lots in the area that have structures that don't meet the setback requirement. However, the existing residence was built in 1979/1980 after the adoption of setback requirements. Based on the site plan submitted with the building permit, it appears that there was enough room on the property to add an addition to the residence that would meet the setback requirements.

- c. That the special conditions and circumstances do not result from the actions of the applicant.

As noted in criteria (a) special conditions generally refer to the physical makeup of a parcel of property. For the side yard setback, the conditions/circumstances involved are not topographical in nature. As stated earlier, it is the property owners' responsibility to know the location of their property lines. It should be noted that the property owner to the north has owned the property at least since the early 80's and the applicant has owned her lot since 1989. In addition, the fact that the building was constructed without the benefit of county review and permits results from the actions of the applicant. Again, it is the applicant's responsibility to follow county development regulations.

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



It would appear that to grant this variance based on the fact that the applicant did not know the location of the common north property line and to remove the structure would be a substantial hardship would be granting a special privilege. The applicant has not provided justification for the size or location of the addition. Not knowing the location of property lines or economic hardship is not justification for granting a variance.

12. **Critical Areas** SCC 14.06.100 (3) [14.24.140(3)] states that **"Variances to dimensional setbacks of this chapter may be issued by the Hearing Examiner following the preparation of a site assessment by a qualified professional where the conclusions of the site assessment supports a modification of the dimensional requirements. Such a conclusion must include all necessary mitigation. The Hearing Examiner must make a finding that the issuance of a zoning variance by itself will not provide sufficient relief to avoid the need for a variance to the dimensional setback and other requirements for critical areas regulated by this Chapter, and that a site assessment and mitigation plan demonstrates that the proposed project allows for development of the subject parcel with the least impact on critical areas while providing reasonable use of the property, and full mitigation of project impacts"**.

Staff notes that the applicant has submitted geologically hazardous area site assessments concerning the improvements to the subject residence. The site assessments generally conclude that the improvements performed on the subject residence should not have an effect on the stability of the existing slope. Staff concurs with these findings. However, the reports further indicate that the subject site is, at the very least, adjacent to an active landslide hazard area with an actively eroding (raveling) slope. The Cross report (pg 4), dated 12-05-98, indicates the coastal bluff has been subject to an average erosion rate of 3 inches per year. The report by Cross further notes that "these average rates consisted of many years when no apparent loss of bank occurred followed by an event in which several feet of top bank was lost". The report submitted by JB Scott and Associates (pg 1) offers a similar scenario predicting that "in the near future, some minor failures consisting of slab like wedges will occur in the top of the bluff slope". Staff notes that the history of landslide failures in the Puget Sound area include "slab like wedges" ranging in thickness of a few feet to as much as 30 feet. Staff concludes that the reports clearly indicate that the coastal bluff and adjacent uplands represents a landslide hazard area.

13. Skagit County's Critical Areas Ordinance 14.06.430(7) states **"A minimum buffer with a width of 30 feet shall be**



*established from the top, toe and all edges of all landslide hazard areas. "The buffer may be reduced to a minimum of 10-feet when the applicant demonstrates to the administrative official that the reduction will adequately protect the proposed development, adjacent developments and uses and the subject critical area".*

Staff notes that the buffer between the landslide escarpment and existing development is approximately 12 feet. Staff notes that the geologically hazardous area site assessments submitted by the applicant fail to demonstrate that the existing buffer will adequately protect the residence or the recent improvements. On the contrary, both reports clearly indicate that the slope will continue to recede and eventually the existing structure and improvements will be subject to damage or loss due to coastal geologic processes.

14. SCC 14.06.020 (4) [14.24.020(4)], Title and Purpose of the Critical Areas Ordinance states *"Geologically hazardous areas include areas susceptible to the effects of erosion, sliding, earthquake, or other geologic events. They pose a threat to the health and safety of citizens when incompatible residential, commercial, industrial, or infrastructure development is sited in areas of a hazard. Geologic hazards pose a risk to life, property, and resources when steep slopes are destabilized by inappropriate activities and development or when structures or facilities are sited in areas susceptible to natural or human caused geologic events. Some geologic hazards can be reduced or mitigated by engineering, design, or modified construction practices so that risks to health and safety are acceptable. When technology cannot reduce risks to acceptable levels, building and other construction within identified geologically hazardous areas shall be prohibited."*

Staff notes that the geotechnical reports indicate that landslide mitigation (technology) is not feasible at this time. Therefore the title and purpose of the critical areas ordinance concludes that building and other construction within geologically hazardous areas shall be prohibited.

Under the requirements of the Critical Areas Ordinance as indicated above, it does not appear that the existing setbacks comply with code and therefore the County cannot issue a permit for development within this known landslide hazard area.

15. 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. 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 narrative submitted on behalf of the applicant states the existing addition was built in reliance upon lines of occupation. It was not until a survey was performed (post-construction) that the side yard setback violation became known. Removal of the structures to meet setback requirements would seem an unreasonable and excessive requirement at this point. As previously stated, the reliance upon lines of occupation created the hardship. The location of the addition has not negatively impacted the geology of the site.

*Staff response*— The only point the applicant makes is that the building was built based on lines of occupation. An error by the applicant or his/her representative does not sufficiently demonstrate that being within 8 feet of the property line precludes or significantly interferes with a reasonable use of the property. The site already has a residence and a carport which are "reasonable items" in the area. The applicant has not further demonstrated why this addition must be allowed and to not allow it would be unreasonable.

The applicant has not demonstrated how the hardship is unique to the property and it WAS the applicant's actions that have caused the current claim of a hardship which is unacceptable per the language of this criteria.

- b. 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.

*Applicant*—The construction has been completed without negative shoreline impact. The only negative impact is to



the neighbor to the north whole property has been encroached upon. The removal of the deck and driveway on the north side of the house will satisfy the encroachment and relief from the minimum 8-foot side yard setback will allow for compliance with county code.

*Staff*--The applicant has not provided information to demonstrate that building within side property setbacks in the area is compatible with adjacent properties.

- c. **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.**

*Applicant*--The variance is being request due to reliance upon lines of occupation to determine side yard setback. The variance grant, while possibly appearing to be a special privilege to the applicant, it really is not as the applicant relied upon others for the siting and construction of the addition.

*Staff*--Approval of a variance in a case where applicant error is the cause of the hardship would be a grant of special privilege not afforded to other property owners within shoreline jurisdiction.

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

*Applicant*--Based upon documentation by geologists and septic installers, the addition appears to have no negative impact to the site. The removal of the encroachment should be satisfactory to the neighbors and in the long run, the increase in taxes based upon increased valuation should offset any short term complications.

*Staff*--Approval of such a variance may be detrimental to the public interest in the fact that in may encourage other property owners to seek variance approval based on human errors committed by the property owner or his/her representative. Cumulative impact must always be considered when reviewing shoreline development proposals.

16. In conclusion--The Staff's analysis of the development impacts results in a finding that the stability of the bluff is a key factor. Staff review finds the bluff unstable and to issue any permit not in compliance with codes would not be in the best interest of the County. The County is not responsible for the economic hardship created by constructing without a permit.



**RECOMMENDATION:**

Based on the above findings the Planning and Permit Center would recommend **denial** of the requested variance to allow for an addition to a single-family residence to be 3 feet from the north side property line and within 10 feet of a steep slope.



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Skagit County Auditor