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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 SHORELINE VARIANCE PERMIT SL020353
And ADMINISTRATIVE SPECIAL USE SU000699

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: ROBERT and DRIENNA MUNSELL

ASSESSOR PARCEL NO: P46575

ABBREVIATED LEGAL DESCRIPTION: The proposed project is located at 4930 South Indian Village Lane, Anacortes, WA; a portion of Section 26, Township 36 North, Range 1 East, W.M., Skagit County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Robert and Drienna Munsell
21606 79th Avenue West
Edmonds, WA 98026

File No: PL02-0353

Request: Shoreline Variance Permit

Location: 4930 South Indian Village Lane, Guemes Island,
within a portion of Sec. 26, T36N, R1E, WM.

Summary of Proposal: To replace an existing cabin with a new two bedroom
residence located 56 feet back from the Ordinary High
Water Mark (OHWM) of the Bellingham Channel.

Land Use Designations: Shoreline: Rural Residential
Zoning: Rural Intermediate

Public Hearing: After reviewing the report of the Planning and Permit
Center, the Hearing Examiner conducted a public hearing
on December 18, 2002.

Decision: The application is approved, subject to conditions.



FINDINGS OF FACT

1. Robert and Drienna Munsell (applicants) seek to replace an existing cabin located 64 feet from the Ordinary High Water Mark (OHWM) with a two bedroom, two story, permanent home located at 4930 South Indian Village Lane on Guemes Island.
2. The property is located on the shoreline of Bellingham Channel within a portion of Sec. 26, T36N, R1E, WM. The shoreline designation is Rural Residential.
3. The average setback average from the OHWM for properties located within 300 feet of the subject property is 71.7 feet. The applicants seek to put the new house at 56 feet from the OHWM.
4. The local Shoreline Master Program (SMP), at Sec. 7.13(2), Table RD, states:

Residential structures shall be set back common to the average of setbacks for existing dwelling units within 300 feet of side property lines
5. The average of setbacks in this case is skewed by a single property where the house is 142 feet from the OWHM. The homes immediately to the north are 55 and 56 from the OHWM. The home adjacent to the south is 54 feet from the OHWM. The requested 56-foot setback would place the new home in line with the neighboring homes.
6. The area is densely developed with homes and has been for some years. The 664-square-foot summer cabin the applicants wish to replace was built in 1953. The new home will have 1,116 square feet per floor. It is intended as a full-time residence.
7. The property is a rectangle measuring 50 feet wide by 300 feet long. The neighboring lots are similarly narrow and deep. The Bellingham Channel forms the western boundary. The eastern property line is at West Shore Road.
8. Behind the existing cabin is a boat house/garage. To the east of that are two steep rock retaining walls. A septic tank and drain field lie south of the garage. A sloped driveway occupies the north side of the property. Near the east property line are two water wells, one on the subject property and the other on a neighbor's lot.
9. The various existing developments between the house and West Short Road are constraints on the ability to locate the new dwelling further landward than requested.
10. A Fish and Wildlife Site Assessment and Habitat Management Plan was prepared pursuant to the Critical Areas Ordinance. The author stated that the house would need to be about 58 feet from the OHWM in order to be visually in line with adjacent houses due to beach curvature. The requested 56 feet setback substantially accords with this observation.



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11. The area in front of the existing cabin is sandy with some beach plants including yellow sand verbena. One shore pine of 10" dbh is located on the south property line. South of the cabin is a flower garden. The vegetation in front of the cabin has been left alone. It is not mowed or watered. Plans are to remove a concrete patio that now occupies a portion of the front yard.

12. The Fish and Wildlife Assessment included an impact analysis which found that financial and aesthetic hardships would exist if the setback variance is not allowed. The report concluded that to insist on the 71.7 foot set back would deprive the applicants of rights commonly enjoyed by other properties in the area.

13. The Assessment recommended that best management practices be followed in the construction of the replacement home and called for replanting of any areas disturbed by construction activities. The set back area is to be placed within a Protected Critical Area and kept free of development in the future.

14. The Critical Areas staff reviewed the Fish and Wildlife Assessment and concluded that the reduced setback would not have significant adverse impacts on public resources.

15. The Health Department staff, after a site visit, determined that the on-site sewage system is in a pre-failure condition. An application for a system repair was issued and the design was approved.

16. The SMP contains the following criteria for a shoreline variance for development landward of the OHWM (See SMP 10.03(1):

- 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 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.



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

17. The Staff Report analyzes the application in light of these criteria and determines that, as conditioned, the project will be consistent with them. The Hearing Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

18. Notice of the application and of the hearing were properly given. There was no adverse testimony at the hearing. Five letters were received from neighbors. Four of these favored the proposal. One from neighbors whose house is about 400 feet south of the subject property expressed concern about the building of a two story residence in an area primarily developed in one-story houses.

19. The applicants pointed out that there are five two-story homes in the immediate vicinity, one of which is next door to the proposed site.

20. 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.

2. The proposal is exempt from the procedural requirements of the State Environmental Policy Act (SEPA). WAC 197-11-800(1)(b)(i). It is likewise exempt from the requirement for a Shoreline Substantial Development Permit. RCW 90.58.030(3)(e)(vi).

3. The findings support a conclusion that the reduced setback requested will be consistent with the variance criteria of the SMP at Sec. 10.03(1), if the following conditions are imposed:

(a) The permittees shall construct the project as described in the application materials, except as the same may be modified by these conditions.

(b) The permittees shall comply with the recommendations of the Fish and Wildlife Assessment prepared by Rupert P. Schmitt, Biologist, and dated June 18, 2002, including the following:

(i) A temporary erosion control plan shall be implemented during construction. Site plan conditions shall be monitored during construction and silt fences used as appropriate. Vegetation removal shall be minimized to the extent practicable.



The Protected Critical Area shall be replanted with native species as specified in a Plant Plan. All bare soils shall be covered with straw and permanently re-vegetated by seeding with a mixture of native species.

(ii) The permittees shall submit a Plant Plan for the lot, clearly marking the land waterward of the proposed structure as a Protected Critical Area, and showing the types and locations of native vegetation to be planted.

(iii) The Site Plan must be record with the County Auditor prior to issuance of a building permit.

(c) The permittees must obtain a Skagit County Building Permit and receive all other necessary approvals.

(d) The necessary improvements to the on-site sewage disposal system as approved by the Health Department shall be installed prior to occupancy of the new home.

(e) The project shall not be modified without review and approval by the Planning and Permit Center.

(f) The project shall commence within two years of the effective date of this variance and be complete within five years thereof, unless an extension is granted. If the project does not meet the timeframes for commencement and completion, the permit shall become null and void.

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

DECISION

The requested Shoreline Variance is approved, subject to the conditions set forth in Conclusion 3 above.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: January 7, 2003



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Copies Transmitted to Parties: January 7, 2003

APPEAL/RECONSIDERATION

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with the Planning and Permit Center within five (5) days after the date of this decision. 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 five (5) days after the date of decision, or decision on reconsideration, if applicable.



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