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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 PERMIT SL 02 0495

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: TONI and DANA RUST

ASSESSOR PARCEL NO: P72963

LEGAL DESCRIPTION: The proposed project is located at 5782 Cains Court Bow, WA;
a portion of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 33, Township 36 North, Range 3 East,
W.M. Skagit County, Washington

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Toni and Dana Rust
5800 Cains Court
Edison
Bow, WA 98232

Agents: Oscar Graham and Pat Bunting
1211 MacCoys Court
Bow, WA 98232

File No: PL02-0495

Request: Shoreline Substantial Development and Variance Permit

Location: 5782 Cains Court, Edison, on the shore of Edison Slough,
within a portion of the SW1/4SW1/4, Sec. 33, T36N,
R3E, W.M.

Shoreline Designation: Rural

Summary of Proposal: To replace a pre-existing single-family residence with a
commercial artist studio/caretakers quarters, located 21 feet
landward from the Ordinary High Water Mark and within
6.7 and 9 feet of the side property line on the south. and 11
feet of the side property line on the north.

Public Hearing: After reviewing the report of the Planning and Permit
Center, the Hearing Examiner conducted a public hearing
on April 9, 2003.

Decision: The application is approved, subject to conditions.



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FINDINGS OF FACT

1. Toni and Dana Rust seek shoreline permits to replace a single-family residence with a commercial artist studio/caretakers quarters on the banks of the Edison Slough.

2. The location is in "downtown Edison," at 5782 Cains Court, within a portion of the SW1/4SW1/4, Sec. 33, T36N, R3E, W.M. The parcel # is P72963.

3. The property is a small trapezoidal lot, typical of the town plat lots in the commercial part of Edison. It measures approximately 87 feet on the north property line, 100 feet on the south property line and plus or minus 84 feet along the east and west property lines. The lot contains 7,200 square feet. The slough lies to the west.

4. The proposed new structure will replace a single-family residence that was removed about a year and one half ago. The residence was located approximately 20 feet from the top of the dike bank and about 25 feet from the Ordinary High Water Mark (OHWM) of the slough.

5. The new building will cover 970 square feet and will be 6.7 to 9 feet from the south side boundary and 11 feet from the north side boundary. The setback from the OHWM will be 21 feet.

6. The area between the slough and the proposed building is in grass. A Protected Critical Area (PCA) buffer will be created in that area and additional mitigation plantings will be inserted.

7. The property is zoned as Rural Village Commercial (RVC). The zoning regulations permit the proposed studio and caretaker quarters outright, and do not prescribe side and rear setbacks on lots such as this. See SCC 14.16.100(2)(5).

8. The subject property is within the historic commercial section of Edison. Development there stems from the turn of the 20th century with buildings often close together and often close to the slough. The adjoining properties are similar in size and developed with typical rural village businesses (e.g., art galleries, tavern, saloon, shops, art studios, bakeries, woodworking studios, boat building, car repair, cafes). In many of these, residential use is an accessory. There are commercial buildings on both sides of the subject lot. The applicant's proposal will be consistent with the character of the Edison business area.

9. The construction of the new building will allow the applicants to augment their existing art gallery/residence on the neighboring lot to the south. It will also allow them to move their garden art sculpture gallery to property owned by them. The garden sculpture is currently placed on leased land two lots to the south. The new building will provide much needed studio space, living quarters for an artist-in-residence, and a writing area.



10. The applicants' new building will actually be more attractive than the previous structure on the site. Also, an existing power pole will be removed and wires will be laid underground. The new plantings will add to the improved appearance of the property.

11. The application was reviewed under the State Environmental Policy Act (SEPA) and as a result a Mitigated Determination of Non-Significance (MDNS) was issued on January 9, 2003. No comments were received. The MDNS was not appealed.

12. The MDNS imposed the following conditions:

- a. Temporary erosion/sedimentation control measures shall be in place prior to the placement of any fill material. Said measures shall remain in place until the completion of the project.
- b. The applicant shall comply with Northwest Air Pollution Authority requirements.
- c. An engineered soil compaction report shall be required for all structures placed on fill material.

13. The Edison Slough is a Type 1 marine water. Because of the proximity of the slough, a Fish and Wildlife Assessment was prepared under the Critical Areas Ordinance. The Assessment, prepared by Graham-Bunting & Associates concluded that the replacement building will cause no impacts additional to those caused by the original building that was removed.

14. The subject project is a development on shorelines of the state and requires a Shoreline Substantial Development Permit. RCW 90.58.140(2).

15. Relevant shore setbacks are established in the Shoreline Master Program (SMP). Table CD in SMP 7.03 provides for a 100-foot setback from the OHWM for primary structures and 50-foot sideyard setbacks for all structures. Therefore, in order to legitimize placement of the new building, the proposed development requires variances from the SMP's setbacks.

16. The businesses in the area are all connected to the Department of Ecology approved Large On-Site Septic System (LOSS). The installation of this system has removed the impacts of the discharge of raw sewage to Samish Bay and permitted the reopening of commercial shellfish beds. The proposed studio and caretaker's quarters will be served by the LOSS facilities.

17. There is an existing septic tank on the subject property that drains to the community drainfield about ½ mile east of the site. This on-site tank is located in the front yard and dictates the placement of the proposed new building at least five feet away



to the west. The effect is to push the replacement building slightly further toward the slough than the footprint of the prior residence. Nonetheless, the 21-foot setback from the OHWM will be consistent with the setbacks of neighboring buildings.

18. In general, the buildings in "downtown" Edison front directly on the streets and have small backyards or rear parking areas on the slough. The applicants' plan to keep the back yard in grass with additional plantings and a recorded PCA will, in fact, enhance the local shoreline.

19. The side setbacks proposed, like the shore setback, will be wholly consistent with other development in the neighborhood. There is no sense in which the request made will set an undesirable precedent or grant a privilege to these owners that neighboring properties do not have.

20. The SMP obviously does not contemplate anything quite like Edison in its provisions for commercial development. The regulations seek to limit commercial development in rural environments to "shoreline dependent" development. The application urges that this proposal is "shoreline dependent" because a shoreline location is needed for artistic inspiration, quality of light and scenic landscapes. This statement is, in itself, an example of creativity.

21. The requirement for "shoreline dependence" has often proven difficult to satisfy in commercial areas where proposed uses serve the function of improving public access to the waterfront but do not intrinsically require a waterfront location. Evaluated candidly, almost none of the development in Edison is "shoreline dependent" in the strict sense of the term. It could all exist elsewhere. But, the waterside location unquestionably enhances the charm of places like Edison and the term "dependence" needs to be applied with some elasticity in the circumstances.

22. Under all the circumstances, the applicants' assertion that the creation of their art requires a shoreline location should be taken seriously and accepted. Water dependence need not necessarily be a totally utilitarian concept.

23. Accordingly, the Examiner determines that the proposed use can be permitted in this shoreline location consistent with the SMP, if the variance criteria are met for non-compliance with standard dimensional criteria.

24. SMP 10.03(1) sets forth the criteria for granting shoreline variances for developments landward of the ordinary high water mark. The criteria are:

- 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.

25. The Staff Report analyzes the proposal against these criteria and finds that, as conditioned, it will comply with them. The Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

26. Numerous letters of support were received in connection with this application. There was no correspondence or testimony in opposition.

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

CONCLUSIONS

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding. SMP 8.07.

2. The requirements of SEPA have been met.

3. The findings support a conclusion that the proposed development, as conditioned, is consistent with the applicable variance criteria and that the setbacks proposed should be approved. See SMP 10.03(1).

4. The policies and regulations of the Shoreline Management Act, considered independently, are carried out in this case by the provisions of the local Shoreline Master Program (SMP). Except as to setbacks, the proposed development is consistent with the requirements of the SMP. Therefore, with the approval of the variances, a Shoreline Substantial Development Permit should be granted for the project. See SMP 9.02.

5. The following conditions should be imposed



- (1) The project shall be developed in accordance with the application materials submitted, except as the same may be modified by these conditions.
- (2) The conditions specified in the MDNS issued on January 9, 2003, shall be complied with.
- (3) The applicants shall obtain a Skagit County Building Permit and all other necessary approvals.
- (4) The applicants shall record in the County Auditor's office a site plan clearly marking the Protected Critical Area for this lot and showing the types and location of vegetation to be planted.
- (5) The project shall conform with the provisions of the Flood Prevention Ordinance.
- (6) The project shall comply with the mitigation proposals of the Fish and Wildlife Assessment, dated on September 19, 2002.
- (7) The project must be started within two (2) years of the date of the Department of Ecology's approval and completed within five (5) years thereof or the shoreline permit shall become void.
- (8) Failure to comply with all conditions of approval may result in permit revocation.

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

DECISION

The requested Shoreline Substantial Development Permit and Variances are approved, subject to the conditions set forth in Conclusion 5 above.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: May 1, 2003

Copy Transmitted to Applicant: May 1, 2003



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RECONSIDERATION/APPEAL

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.

