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Skagit County Auditor

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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 SUBSTANTIAL  
DEVELOPMENT/VARIANCE/CONDITIONAL USE SL 01 0851;  
SPECIAL USE SU 02 0316; and VARIANCE VA 02 0317

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: CLARENCE and BARBARA ROZEMA, ROZEMA BOAT WORKS

ASSESSOR PARCEL NOS: P71189, P71073, P71079

LEGAL DESCRIPTION: The project is located at 11130 Bayview-Edison Road, Mount  
Vernon, WA; within Section 31, Township 35 North, and Range 3 East, W.M., Skagit  
County, Washington.

## BEFORE THE SKAGIT COUNTY HEARING EXAMINER

### FINDINGS, CONCLUSIONS AND DECISION

**Applicant:** Clarence and Barbara Rozema  
Rozema Boat Works  
11519 Walker Road  
Mount Vernon, WA 98273

**File Nos:** PL01-0851 (shorelines)  
PL02-0316 (special use)  
PL02-0317 (variance)

**Request:** Shorelines Substantial Development/Variance/Conditional Use  
Special Use Permit  
Variance

**Location:** 11130 Bayview Edison Road, within Sec. 31, T35N, R3E, W.M.,  
on the east shore of Padilla Bay.

**Land Use Designations:** Comprehensive Plan -- Rural Marine Industrial (RMI)  
Shorelines -- Rural Residential

**Summary of Proposal:** To rebuild and enlarge the existing structural footprint of a boat building facility. The north, south and plate bays will be removed and replaced with enlarged new structures a maximum of 30 feet high above grade. The north bay will be extended 12 to the north (12' x 70') and the south bay will be extended 20 feet to the south (20' x 70'). The total building footprint will increase 17%.

**Public Hearing:** After reviewing the report of the Planning and Permit Center, the Hearing Examiner conducted a public hearing on November 5, 2003.

**Decision:** The application is approved, subject to conditions.

## FINDINGS OF FACT

1. Clarence and Barbara Rozema, proprietors of the Rozema Boat Works, seek to rebuild and enlarge their existing boat building facility on Padilla Bay.
2. The facility is located at 11130 Bayview-Edison Road, within Sec. 31, T35N, R3E, W.M. The Rozema property occupies both the east and west side of the road. On the east side is an area of about .3 acres used for parking and boat storage. On the west side on a flat .73 acre waterfront lot are two existing buildings that house the existing business and manufacturing operations.
3. The instant project concerns only the area west of the road. The Comprehensive Plan and Zoning designation for that portion of the property is Rural Marine Industrial (RMI). The area is within a Rural Residential environment under the County's Shoreline Master Program (SMP). The shoreline is designated by statute as a Shoreline of Statewide Significance.
4. The original building on the site was erected in the 1890's. The boat works has been a key economic component of the Bayview Community since 1925. The Rozema's have operated it since 1955. The facility was built long before current zoning, long before current setbacks, and long before the adoption of the shoreline management program. Currently, it is the only development in the locale of a commercial/industrial nature. The existing main structure is located as close as four feet from the Ordinary High Water Mark (OHWM). It is a nonconforming structure.
5. The RMI zoning allows boat fabrication and repair as uses permitted outright. Also allowed outright are "shore/water transfers of marine related and/or raw natural resource materials." See SCC 14.16.170(2) and (3). The requirements for special use permit approval do not apply. Accordingly, for purposes of the zoning code, the use is conforming, but the building is not.
6. The SMP when originally written did not specifically recognize this historic boat building operation on the Bayview waterfront and has never been updated to do so. Under the SMP, a water dependent commercial use is permitted in the Rural Residential district, but an industrial use is not permitted. Analyzing this operation under the most restrictive category requires classifying both the use and the structure as nonconforming for shoreline purposes.
7. The applicants use the main building for boat construction and use the adjacent shore and waters for moving the finished boats out into Padilla Bay for delivery to purchasers. The building is currently 140 feet long (north-south) and 70 feet wide (east-west). The east face of the building sits near the edge of Bayview-Edison Road. The property on the bay side of the road is 100% developed with either structures or graveled working area. This full lot coverage will continue after the remodel.



8. The proposal is to enlarge the boat construction operations by expanding the main building 20 feet to the north and 12 feet to the south along the existing building line. The new construction will come within about four feet of the OHWM on the north and within about 12 feet of the OHWM on the south. The effect of following the existing waterward building lines will be that the remodel will not approach any closer to the OHWM than does the present structure.

9. The addition on the south will come within 8 feet of the southern property line. On the east, the structure will follow the existing building line along the edge of the road, but will not encroach upon the right-of-way. A survey was performed to verify this fact.

10. The remodeled building will encroach on setbacks established by both the zoning code and the SMP. The front, rear and side zoning setback is 50 feet from the exterior property boundary. SCC 14.16.170(6)(a). The impervious surface limit is 48% of the lot. SCC 14.16.170(6)(d). The applicant requests setback variances for the west, south and east to accommodate the building and asks for a site coverage variance.

11. The applicable shore setback from the OHWM in the Rural Residential district is 150 feet. The applicable Rural Residential shoreline side setback is 100 feet. SMP 7.11(2)(C), Table PI. The applicant requests variances from the OHWM and the south side setbacks.

12. At SMP 12.04, the following is stated with respect to expanding a non-conforming use:

If the Hearing Examiner . . . determines that the enlargement, extension or increase of the non-conforming use of shorelines or structures on shorelines can be accomplished without appreciable threat to the health, safety and general welfare of the public or the shoreline environment and purpose of this Program and the Act, and that to deny the enlargement, extension or increase in the non-conformity would constitute a hardship greater than the public benefit from denial of the non-conformity, such proposals shall be permitted subject to terms and conditions established by the Hearing Examiner . . . and attached to the variance and/or conditional use permit of the applicant.

13. Because variances apply only to dimensional requirements, the Planning and Permit Center has apparently decided that a Shoreline Conditional Use Permit is needed in order to expand the boat building use at the site. This is an example of an unclassified use, i.e., one that is not specifically listed as a conditional use.

14. The purpose of the proposed remodel is to allow the boat works to work on larger boats in order to meet the demands of the modern market place. The project will also make the facility more workable, efficient and safe. It will replace a hodge-podge of structures to the north and south of the present main building with a new inclusive steel structure that will be both better looking and greatly improved structurally. The effect will be the better fire protection, better noise dampening, less cramped work space, and an all-round safer working environment



15. The current building is broken up into four different sections or manufacturing bays. There is a south bay, a center bay, a north bay and a plate bay. The project will take down the north, south and plate bays and new steel bays will be built in their place on the existing concrete floor. The center bay will remain unchanged. The bays will be taken down and rebuilt one at a time so that the facility can remain in production. Apart from the construction, two power poles in front of the building will be removed and the power company will serve the new structure through rerouted underground power lines. The outfitting shop will remain in place, approximately 60 feet north of the remodeled building's north wall.

16. The Rozema Boat Works is the only property in this RMI zoning district. The zoning was clearly created to incorporate and perpetuate this operation. Other uses in the Bayview area are residential or agricultural. Over its long history, the company has proven compatible with these adjacent uses. The expansion project is not expected to result in any change to the level of traffic around the buildings or in the off-site impacts of the operation.

17. The Padilla Bay National Estuarine Reserve is located adjacent to the site. A Fish and Wildlife Site Assessment was prepared to analyze effects of the project on marine species protected by the Reserve. The report identified no new impact on fish or wildlife, either within the project boundaries or the Reserve. The report noted that the site is already fully utilized for boat construction and that the proposal will not remove existing habitat or change the nature or intensity of the ongoing use of Padilla Bay.

18. On March 11, 2003, the County issued a Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) for the project. The conditions added were standard requirements for compliance with existing regulations. The MDNS was not appealed.

19. The project represents a substantial development on shorelines of the state and therefore requires a Substantial Development Permit. The requirements for such permits are essentially that the development comply with the policies of the Shoreline Management Act and with the provisions of the local Shoreline Master Program (SMP). See RCW 90.58.140, SMP 9.02. The policies involved here include the preferences for Shorelines of Statewide Significance (RCW 90.58.020, SMP 5.03), as follows:

- (1) The statewide interest should be recognized and protected over the local interest.
- (2) The natural character of shorelines of statewide significance should be preserved.
- (3) Uses of shorelines of statewide significance should result in long term benefits to the people of the state.
- (4) The natural resources and ecological systems of shorelines of statewide significance should be protected.
- (5) Public access to publicly owned areas in shorelines of statewide significance should be increased.

- (6) Recreational opportunities for the public should be increased on shorelines of statewide significance.

20. The proposed project is directly in aid of navigation. The promotion and protection of public rights in navigation is one of the major aims of the Shoreline Management Act and a key focus of its policies. The use therefore serves a statewide interest. The environmental effects on the natural shoreline have long since been experienced, and this expansion project will do nothing to impose new impacts. Although the facilities will be larger and will accommodate larger craft, the level and intensity of activity is not expected to materially change. The history of the operation reflects long-term public benefit in terms of employment and contribution to the economy -- benefits that the proposal is designed to continue into the future. The proposal is consistent with the applicable shoreline policies including those for Shorelines of Statewide Significance. With variance and conditional use approval, will be consistent with the regulations of the local SMP.

21. The criteria for Shoreline Conditional Use Permits are set forth at SMP 11.03, as follows:

- (a) That the proposed use will be consistent with the policies of this Master Program and policies of RCW 90.58.020.
- (b) That the proposed use will not interfere with normal public use of the public shorelines.
- (c) That the proposed use of the site and design of the project will be compatible with other permitted uses in the area.
- (d) That the proposed use will cause no unreasonable adverse effects.
- (e) That the public interest will suffer no detrimental effect.

For unclassified uses, there is the additional requirement that extraordinary circumstances preclude a reasonable use of the property in a manner consistent with the use regulations of the master program.

22. The criteria for Shoreline Variance for development located landward of the OHWM are set forth at SMP 10.03, as follows:

- (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) The public interest will suffer no substantial detrimental effect.

In granting variances, consideration is to be given to the cumulative impact of additional requests for like actions in the area.

23. The zoning variance criteria are substantially similar to those for Shorelines Variances. See SCC 14.10.020(2). The major additional requirement is compliance with requirements of the zoning code other than dimensional limits. The application was reviewed by various County departments. The departments identified no problems with code compliance that cannot be addressed by conditions of approval.

24. The Staff Report analyzes the proposal in light of the criteria for zoning variances and for Shoreline Variance Permits and Conditional Use Permits. The Staff has found that, as conditioned, the development will be consistent with the relevant 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.

25. The Rozema Boat Works is a one of a kind operation in its neighborhood -- one that has over the years successfully demonstrated that it is a good neighbor and a needed contributing business in the community, the County and the State. The policy of the County as reflected in its zoning code is to encourage this operation to continue. Notwithstanding the failure to update the shoreline program to the same effect, the proposed expansion is consistent with underlying purposes of the shoreline program and can be approved under the SMP.

26. The boat building operation is a reasonable use of the property and its continuation requires that it be expanded in order to compete in today's market. This reasonable use would, therefore, effectively be precluded by requiring strict compliance with the provisions of the SMP.

27. The zoning variance sought is the minimum needed to continue the reasonable use. Granting the variance will be in harmony with the general purposes and intent of the zoning code and will not be injurious to the neighborhood or otherwise detrimental to public welfare.

28. The proposal can be accomplished without appreciable threat to the health, safety and general welfare of the public, without damage to the shoreline, and without violation of the purposes of the Shoreline Management or its implementing local master program. To deny the enlargement project would constitute a hardship greater than the public benefit derived from denial of the non-conformity.

29. There was no adverse public written comment or testimony on this application. There was testimony at the hearing to the effect that the neighbors are enthusiastic about the project.



30. Any conclusion herein which may be deemed a finding is here adopted as such.

### CONCLUSIONS OF LAW

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

2. The requirements of SEPA have been met.

3. The criteria for varying the zoning setback and lot coverage requirements have been met. SCC 14.10.020(2).

4. The requirements for the Rural Marine Industrial district do not include the subject activities within the category requiring Special Use Permit approval. See SCC 14.16.170(4) and (5).

5. The criteria for a Shoreline Substantial Development/Variance/Conditional Use Permit will be met, if the permit is conditioned as set forth below. SMP 9.02, 10.03, 11.03.

6. The following conditions should be imposed:

(1) The project shall be carried out in compliance with the application materials submitted, except as the same may be modified by these conditions.

(2) The applicant shall obtain all other required permits prior to commencing construction.

(3) The applicant shall comply with all conditions of the Mitigated Determination of Non-Significance issued on March 11, 2003.

(4) The project shall be commenced within two years of final permit approval and completed within five years thereof or the permit shall become null and void.

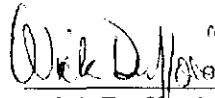
(5) Failure to comply with all permit conditions may result in permit revocation.

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



## DECISION

No Special Use Permit is required under SCC 14.16.170. The requested zoning variance and Shoreline Substantial Development/Variance/Conditional Use Permit are approved, subject to the conditions set forth in Conclusion 6 above.



Wick Dufford, Hearing Examiner

Date of Action: December 15, 2003

Date Transmitted to Applicant: December 15, 2003

### RECONSIDERATION/APPEAL -- ZONING VARIANCE

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.

### RECONSIDERATION/APPEAL -- SHORELINES

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.

### DEPARTMENT OF ECOLOGY REVIEW

If this decision to grant the Shoreline Variance and Conditional Use Permit becomes final at the County level, the Department of Ecology must approve or disapprove these actions, pursuant to RCW 90.58.140.

