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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 SL 03 0955 and
FRONT SETBACK VA 04 0354

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANT: MICHAEL MINOR

ASSESSOR PARCEL NO: P70403

ABBREVIATED LEGAL DESCRIPTION: The subject property is located at 9701 Samish
Island Road, Bow, WA; within Section 27, Township 36 North, Range 2 East, W.M., Skagit
County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Michael Minor
2901 Comanche Drive
Mount Vernon, WA 98273

Agent: David Hough
17483 W. Big Lake Boulevard
Mount Vernon, WA 98274

File No: PL03-0955 (shoreline setback)
PL04-0354 (front setback)

Request: Shoreline Variance (setback)
Front Setback

Location: 9701 Samish Island Road, within a portion of Sec. 27,
T36N, R2E, WM. Parcel #70403, on the shores of
Samish Bay.

Land Use Designations: Rural Residential (Shoreline Master Program)
Rural Intermediate (Comprehensive Plan)

Summary of Proposal: To construct a single family residence 14 feet landward of the
Ordinary High Water Mark and to reduce the front setback
(from the road) to 20 feet. The proposed residence will
extend waterward beyond the top of the bank.

Public Hearing: After reviewing the report of the Planning and Permit
Center, the Hearing Examiner conducted a public hearing
on July 21, 2004. After the hearing the Examiner visited
the site.

Decision: The application is approved, subject to conditions.



FINDINGS OF FACT

1. Michael Minor (applicant) seeks setback reductions in order to build a waterfront residence on a small lot on Samish Island on the shores of Samish Bay.

2. The property is Parcel #70403 located at 9701 Samish Island Road. The lot is within a portion of Sec. 27, T36N, R2E, W.M. The bay is on the north side. The County road is along the south side.

3. The lot is approximately 200 feet long (along the shore) and averages 57 feet in width, encompassing roughly 11,400 square feet. The seaward boundary lies beyond the OHWM. Thus, the effective width is perhaps 50 feet on the west side and less than 10 feet on the east side. According to the Staff Report, these dimension are substandard in comparison to nearly all lots created in the County. There is presently a travel trailer on the site that has been used for many years.

4. The property has an 85% to 90% slope from the Ordinary High Water Mark (OHWM) to the top of the bank. The bank (or bluff) is between 17 and 21 feet high. From the top of the bank landward the property depth at its wide point is less than 35 feet from the south property line.

5. The proposal is to build a 24-foot by 50-foot (1200 square foot) residence on the western side of the lot. Of the 24 feet of the house's width, 14 feet will extend over the top of the bank toward the water. This will bring the shore-side wall to within about 14 feet of the OHWM, as measured horizontally. An additional 800 square feet will be occupied by a driveway and parking area south of the house. The distance from the edge of the road to the house will be approximately 20 feet. The total amount of square footage for the proposed residence, parking area, walkways and stairs is approximately 2,477 square feet.

6. The lot coverage will about 17.5%, but this figure is somewhat misleading since a significant portion of the lot is below the top of the bank. The house will have two stories and a basement, but relevant height limitations will be met.

7. The property is in a Rural Residential shoreline designation under the County's Shoreline Master Program (SMP). The minimum standard setback from the OHWM is 50 feet in such areas. The property is in a Rural Intermediate district under the Comprehensive Plan. The applicable front setback is 25 feet. The applicant is asking for a variance from the shore setback and for a reduction of the front setback.

8. The placement of the house will be accomplished by installing a sheet steel pile retaining wall that will extend along the 50-foot water-side length of the house and effectively be sunk below the footing level. The retaining wall will be constructed immediately waterward of H-piles that will support the front of the residence. Soil sloped up from the beach will cover a



lower part of sheet pile wall. Behind the upper portion of sloped soil will be an excavated basement.

9. The plans call for placing the septic system and drainfield near the road on the easterly portion of the lot. A three-foot wide distribution bed that is 120 feet long will be situated a minimum of 15 feet from the top of the bluff. The usual requirements for drainfield placement are at least 100 feet from the OHWM and 50 feet from the top of the bluff. Waivers of these requirements from the Department of Health will be needed to carry out the proposed plans. A septic permit application is being held until this variance procedure is completed.

10. Under the Critical Areas Ordinance, the area landward of the OHWM functions as a buffer for a Fish and Wildlife Habitat Conservation Area (HCA). A Geologic Hazard and Fish and Wildlife Life Assessment of the site was issued by Edison Engineering on November 19, 2003. An Addendum to the Assessment was produced on March 1, 2004.

11. The Assessment noted that the base of the bluff is presently protected by a riprap bulkhead. The bluff is well vegetated with alder and locust trees, blackberries and shrubs. There are no signs of slope instability. In order to build the project, no setback from the bluff is possible and extensive modification of the western 65 feet of the coastal slope at the site will be required. From a geotechnical point of view, the Assessment concluded that the residence and the septic system can be built without posing a significant geohazard to persons on or off site.

12. The Assessment further concluded that the impacts of HCA buffer disturbance will not significantly degrade existing fish and wildlife habitat, provided that appropriate buffer enhancement measures are taken. A buffer enhancement plan was presented, consisting of proposed plantings calculated to compensate for the habitat removed on the face of the bluff and upland.

13. The neighborhood in question has been residentially developed for many years. The shoreline homes located to the west are sandwiched between the road and the shore and all are within 50 feet of the OHWM. The subject property is the last in this line of narrow-width lots. To the east, the road turns southeast and the lot sizes increase substantially, allowing homes to maintain greater setbacks from the water.

14. To the west existing residences are built on or near the top of the bluff. Several decks extend beyond the top of the bank. There are, however, no homes that extend over the bank, as is proposed here. The existing homes and decks that are within the 50-foot setback were placed there prior to adoption of the SMP and are legally non-conforming as to the setback. A variety of bulkheads have long been in existence along this waterfront.

15. The subject lot is the result of a plat that was filed in 1883 (Town of Atlanta). The property has been in the Minor family for over 45 years.

16. Four adverse comments were written by Samish Island residents. They were concerned, among other things, about the precedent of allowing this structure on pilings over the



bank, and the placement of the septic system so close to the shore. A next door neighbor wrote a letter endorsing the proposal. At the hearing one of the concerned writers testified. The immediate neighbors on both sides spoke in support of the project.

17. The criteria for a Shoreline Variance are set forth at SMP 10.03. For developments landward of the OHWM the requirements 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 other 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.

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

18. The Staff Report analyzes the proposal in light of these criteria and effectively concludes 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.

19. Under SMP 7.13(2)(A)(2), residential development is allowed outright on Rural Residential shorelands, subject to the setbacks and other dimensional requirements set forth for the designation. Residential use is therefore a reasonable use of the property. The County has assessed the property as a single-family residential lot at \$249,600. There is no way to build any house on the property that complies with the standard SMP shore setback and therefore, the application of that standard would significantly interfere with a reasonable use.

20. The need for a setback variance is directly related to the size and configuration of the lot. The applicant's actions have not created this situation.



21. The home proposed will be compatible in scale with others in the neighborhood. The preponderance of evidence is that it will not significantly impair the views of other waterfront owners, nor otherwise adversely affect adjacent properties.

22. The house will, in part, project over the top of the bank, but it will not project over the beach or over the water. There is no evidence that the placement of the house will adversely affect shoreline resources. The plantings proposed will mitigate for any negative impacts to the shore-side environment.

23. None of the other properties in the area are quite so constrained as is the subject property. The proposed house will have no seaward deck. It will extend over the bank only about as far as decks do on neighboring lots. Thus, it will adhere roughly to the existing structural line of conformity. Under the circumstances, the intrusion into the shore setback will not constitute a grant of special privilege.

24. While it is true that residential use of a sort is possible on the lot without building a house over the bank, the placement of even a travel trailer violates the shore setback. The proposed house is of modest size and essentially the minimum design spatially for a permanent residence in the area.

25. Assuming that the geotechnical analyses are correct, there are no identified threats to public health, safety or welfare that construction of this house will pose. The public interest does not appear to be detrimentally affected.

26. There is little likelihood of adverse cumulative impacts from granting the shore setback variance. The circumstances here of lot size, configuration, and relationship to neighboring development appear unique. The variance can be pursued without harmful effects. In the unlikely event that such circumstances were replicated elsewhere, the granting of another variance would not constitute cumulative harm.

27. On the landward side of the house, the setback from the road is subject to the provisions of SCC 14.16.810(4), which states:

The Administrative Official may reduce the required front, side and rear setbacks where topography or critical areas or the lot's size and configuration impact reasonable development of the property. To reduce the front or rear setback, the Administrative Official must determine the public health, safety, and welfare will be maintained. Consultation with the Department of Public Works concerning traffic safety may be solicited during this analysis.

28. The Department of Public Works had no comment on the proposal other than to note that parking is not allowed within the County right-of-way. The Fire Marshal was consulted but made no comments.

29. The Examiner finds that the reasonable development of the property in question would be impacted by the application of front setback, given the topography, size and configuration of the lot. On the record made, the public, health, safety and welfare will be maintained if the front setback is reduced as requested.

30. 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. The two applications were consolidated for processing pursuant to SCC 14.06.060.

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

3. That the proposed house will extend over the bank, while the neighboring houses do not is, in this case, a distinction without a difference. The purposes underlying the structural setback from the OHWM are to protect the natural resources of the shorelines, to preserve the natural processes of the land-water interface, and to maintain the aesthetics of the waterfront. Here none of the values the regulation seeks to protect will be compromised by granting the variance sought. At this particular location, the resources of the shore will be little affected and such effect as there is will be offset by mitigation efforts. The project will have no impact on littoral drift. The project will be aesthetically consistent with pre-existing development along the particular stretch of shore.

4. The citizen concerns expressed about this application dealt primarily with the notions that approving it would be grant a special privilege and would open the door to a multiplicity of developments located close to the water and over the bank. But, the Examiner is convinced that the situation here is one of a kind. What recommends the variance are the coexistence of adjacent development much of which is substantially within the setback, and an extremely constrained lot that cannot practically undergo residential development without relief from the standard setback. Approval in these circumstances, far from constituting special treatment, merely puts the applicant on an equal footing with his neighbors.

5. It should be pointed out that the relevant variance standard under the SMP is whether the setback "precludes or significantly interferes with a reasonable use of the property." This is quite different from a standard that requires the setback to "preclude any reasonable use of the property." The inquiry is not whether some other use of the property could reasonably be made. It is whether a type of use identified as reasonable (an allowed use) is significantly interfered with. This proposal might not meet the stricter standard. But it does meet the standard set forth in Skagit County's SMP.

6. The findings support a conclusion that the proposal, as conditioned, will meet the criteria for a shore setback variance (SMP 10.03(1)) and will also meet the criteria for reduction of the front setback (SCC 14.16.810(4)).



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

CONCLUSIONS OF LAW

1. The project shall be constructed as described in the application materials, except as the same may be modified by these conditions.
2. The project shall utilize the revised site plans from the March 3, 2004 Fish and Wildlife Site Assessment Addendum prepared by Edison Engineering.
3. All recommendations discussed in the November 19, 2003 Geotechnical Report and Fish and Wildlife Site Assessment and the March 3, 2004 Addendum prepared by Edison Engineering shall be followed, including those regarding construction, buffer enhancement, monitoring procedures and contingency planning.
4. The applicant shall obtain all other necessary permits or waivers, including approvals necessary for the installation of the on-site sewage system proposed.
3. The applicant shall obtain a County building permit. A copy of this decision shall be submitted with the building permit application.
4. No parking shall be allowed in the County road right-of-way.
5. No expansion of the residence waterward shall be allowed without County approval.
6. The applicant shall comply with all relevant County regulations, including Chapter 14.24 SCC, Drainage Ordinance.
7. The project shall be completed within two years of Department of Ecology approval and completed within five years thereof, or the permit shall become void.
8. Failure to comply with any of the conditions of this permit may result in its revocation.



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DECISION

The applications for a shore setback variance and for a reduction of the front yard setback are approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: August 30, 2004

Date Transmitted to Applicant: August 30, 2004

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.

DEPARTMENT OF ECOLOGY REVIEW

If this decision to grant the Shoreline Variance becomes final at the County level, the Department of Ecology must approve or disapprove it, pursuant to RCW 90.58.140.