



200410040009

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: SHORELINE VARIANCE PERMIT SL 03 0695
ZONING VARIANCE PERMIT VA 03 0694

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: GEORGE TEREK

ASSESSOR PARCEL NO: P68465

LEGAL DESCRIPTION: The subject property is located at 6764 Salmon Beach Road., Anacortes, WA; a portion of Section 19, Township 34 north, Range 2 east, W.M., Skagit County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: George Terek
P. O. Box 1064
Anacortes, WA 98221

Agent: Scott Thomas
Attorney at Law
415 Pine Street
Mount Vernon, WA 98273-1245

File Nos: PL03-0694 (Zoning)
PL03-0695 (Shoreline)

Requests: Shoreline and Zoning Variances

Location: 6764 Salmon Beach Road, adjacent to Similk Bay,
within a portion of Sec. 19, T34N, R2E, W.M.

Land Use Designations: Shorelines –Rural Residential
Zoning – Rural Intermediate

Summary of Proposal: To obtain after-the-fact approval for a 10' by 14' sauna
built on the eastern boundary of the property and thus
within the side yard setbacks under both the Shorelines
Master Program and the Zoning Code.

Public Hearing: After reviewing the report of the Planning and Permit
Center, the Hearing Examiner conducted a public hearing
on August 25, 2004.

Decision: The application is denied.



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FINDINGS OF FACT

1. George Terek (applicant) seeks authorization for a sauna he built on the east side boundary line of his residential property.
2. The address is 6764 Salmon Beach Road, located within a portion of Sec. 19, T34N, R2E, W.M. The south side of the property abuts Similk Bay. The shoreline designation of the property is Rural Residential. The zoning designation is Rural Intermediate.
3. The side setback for single-family residential development in the Rural Residential shoreline environment is eight (8) feet. SMP 7.13(2)(C), Table RD. The Zoning Code likewise establishes an eight (8) foot side setback for accessory development in the Rural Intermediate district. SCC 14.16.300(5)(iv).
4. In this proceeding the applicant is trying to obtain variances from both of the applicable side yard setbacks in order to keep his sauna in place. The application is an effort to resolve an enforcement case wherein an order to remove the structure was entered.
5. The sauna is located to the rear of the northeast wall of the residence. It is approximately 10 feet by 14 feet in footprint. As built, the sauna is sunk into the earth so that its roof is level with the ground behind the house. It is earth-bermed on the north and west sides. The eastern wall is part of a concrete retaining wall.
6. The retaining wall was, in fact, built by the applicant's previous neighbor to separate their properties. As it turns out, a portion of that wall actually encroaches on the neighbor's property. The applicant and the neighbor have an agreement to solve this problem through an exchange of easements. The ground level on the neighbor's side of the wall is lower than on the applicant's property.
7. The applicant's lot is situated between the bay on the south and Salmon Beach Road on the north. The lot is fronted by a steep coastal bluff. The bank slopes at 95% over a distance of 36 feet and drops vertically another five feet to the Ordinary High Water Mark (OHWM) at a timber bulkhead. The house is situated some 40 to 60 feet behind the top of the bank. The sauna is about 80 feet from the top of the bank. Between the sauna and the top of the bank is a part of the main residence and an existing storage shed built adjacent to the east side of the residence. The sauna is not visible from the water.
8. A Fish and Wildlife Assessment prepared by Edison Engineering concludes that the sauna causes no measurable affects to the water of the bay or its buffer.



9. There is an attached garage in the middle of the rear of the house and there is a parking area between the garage and Salmon Beach Road. To the west of the house is a pool and a guest house. Another small accessory house is located near the road behind the pool. Between the house and the top of the bank is a flat area which contains lawn and some Douglas firs. The septic tank and drain field are in this area.

10. Because of the placement of various existing structures on the property the applicant asserts that the sauna could not reasonably be located elsewhere on the lot. He argues that the underground structure makes reasonable use of the unique topography.

11. There is a wood burning stove in the sauna that is vented through the roof. The applicant asserts that placing the sauna outside the dwelling and underground is an advantage in terms of fire safety.

12. The applicant is anxious to have a sauna for cultural reasons. His wife is from Russia and it is important to her to have access to this type of amenity.

13. The applicant draws attention to numerous instances on shoreline properties in the vicinity where structures have been built within the eight-foot side setback.

14. The application was reviewed by the Fire Marshal who commented that his department opposes variances to side yard setbacks for new construction because it may bring buildings closer together. This can limit the ability to get personnel and equipment into position between buildings and make it difficult to control the spread of fire from structure to structure.

15. The Staff notes that a sauna need not be constructed underground and concludes that the applicant has not shown that other locations on the site which do not intrude on the setback could not be used.

16. 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 subject matter of this proceeding.

2. The request is exempt from the procedural requirements of the State Environmental Policy Act.

3. Under the applicable criteria for a Shoreline Variance, application of the dimensional standards of the Shoreline Master Program must preclude or significantly interfere with a reasonable use of the property. SMP 10.03(1)(a).



4. In the instant case, reasonable residential use of the property is being made by the applicant without the subject sauna. There is a sizable house, a garage, a parking area several outbuildings and a pool. The sauna is an amenity. It may be culturally desirable but it is in no sense a necessity for reasonable residential use of the property as a whole.

5. If the sauna is viewed as an allowed residential accessory and therefore itself a kind of reasonable use, the side yard setback does not preclude or significantly interfere with such use. The space needed for a sauna is not large. It does not need to be underground. It does not need to be outside the house. It could be placed in one of the outbuildings. It could be placed in any number of other locations on the property.

6. The zoning variance criteria include a need for special conditions peculiar to the property which call for departing from the standard dimensional criteria. See SCC 14.10.030(2)(a).

7. This property like all property has its topographical and developmental peculiarities, but they do not operate to create special conditions that make it necessary to depart from the side yard setback in order to accommodate the use sought.

8. In sum, the application simply does not meet the criteria for approval of the variances sought.

9. To say no, in this instance, may seem silly because the structure does no physical harm. It has no adverse environmental or shoreline impacts and does not aggravate the already-cluttered aesthetics of the property boundary.

10. But the whole idea of variances is to respond to some special necessity dictated by a situation on the ground that is not of the applicant's making. More justification than mere convenience must be shown.

11. This is particularly true for after-the-fact variances where the applicant is asking for ratification of a fait accompli. Applications for after-the-fact variances must be analyzed as though the development in question were not there. The issue is whether, if the development did not exist, its construction would be allowed. The Examiner is convinced that if this sauna were proposed in the first instance, the need for placing it where it is would not appear compelling.

12. That there are other structures in the vicinity that violate the side yard setback is not determinative. There is no evidence that these anomalies are as a result of granted variances. There is no reason to conclude that the applicant's variance should be granted as a matter of fairness to insure equal treatment to him.

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



DECISION

The requested Shoreline Variance and Zoning Variance are denied.


Wick Dufford

Date of Action: September 27, 2004

Date Transmitted to Applicants: September 27, 2004

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 the decision or decision on reconsideration if applicable.

RECONSIDERATION/APPEAL – ZONING

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.



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