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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 VARIANCE VA04-0966

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: MAX TAUBERT

ASSESSOR PARCEL NO: P72999

LEGAL DESCRIPTION: the project is located at 5847 Main Street, Bow, WA; a portion of Section 33, Township 36 North, Range 3 East, W.M., Skagit County, Washington.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**Applicant:** Max Taubert  
Box 263  
Edison, WA 98232

**Agent:** Bruce Lisser  
Lisser and Associates, PLLC  
P. O. Box 1109  
Mount Vernon, WA 98273

**File No:** PL03-0966

**Request:** Variance

**Location:** Shed at 5847 Main Street in Edison, within a  
portion of Sec. 33, T36N, R3E, W.M.

**Land Use Designation:** Rural Village Residential (RVR)

**Summary of Proposal:** To maintain a newly-constructed porch measuring 4' x 10'  
that was added to replace an entrance ramp at a non-  
conforming structure.

**Public Hearing:** After reviewing the report of the Planning and Permit  
Center, the Hearing Examiner conducted a pubic hearing  
on September 22, 2004.

**Decision:** The Hearing Examiner concludes that the porch may  
remain in place.



## FINDINGS OF FACT

1. Max Taubert (applicant) seeks a variance for a small porch he has added to a non-conforming multi-purpose shed in the village of Edison.
2. The address of the property is 5847 Main Street. The property is a .33-acre parcel fronting on Main Street and abutting the Edison School property. The lot is described Lots 1 to 4, Block 6, Haller's Addition to Edison. It is within a portion of Sec. 33, T36N, R3E, W.M. The zoning is Rural Village Residential (RVR)
3. The shed is an accessory building on a lot that also contains a small residence and a small garage. The lot is roughly square. The house covers approximately 1,171 square feet. The garage covers about 240 square feet. The shed contains just 516 square feet.
4. There is a pending building permit application (BP01-0502) that seeks to convert the shed to an Accessory Dwelling Unit.
5. The shed was built many years ago, perhaps before the turn of the 20<sup>th</sup> Century – long before the advent of the dimensional standards of modern zoning. Its placement is about 3.8 feet from the rear property line. This is within the 25-foot rear setback for the RVR zone. SCC 14.16.310(5)(a)(iii).
6. The subject porch consists of a solid landing, a roof and two supporting posts. It measures 4' x 10' (40 square feet). The porch replaces an old entrance ramp. No dimensions for the ramp were given. However, from photographic evidence the ramp appears to have covered a little less ground than does the new porch. The configuration is different, with the porch placed compactly across the face of the building and the ramp extending straight out from the door into the yard. The difference in footprint is very slight.
7. The porch in question is a landing for the front door on the opposite side of the shed from the rear lot line. Thus, its influence on the setback nonconformity is nil. It does nothing to increase the nonconformity. Behind the shed along the rear boundary is an open grassy area that provides open space adjacent to the school's tennis court on the next lot.
8. The zoning code deals with non-conforming structures in SCC 14.16.880. That section states that legally non-conforming structures may continue, but that such structures may not be expanded, altered or reconstructed except under limited, specified circumstances, including routine maintenance and repairs and restoration after fire or other natural calamity. Repairs may include structural repairs needed to maintain a building in safe structural condition. Restoration may not extend any nonconformity that existed prior to the damage.



9. Staff has treated the porch as an expansion of a non-forming structure, stating that it is larger than required for structural repair to bring the entrance up to modern safety standards. The old ramp sloped directly from the lawn up to the door. Current standards require a floor landing by each exterior door. The width of the landing must be not less than the dimension of the door served. The other dimension of the landing must be a minimum of 36 inches. (See International Residential Code, SCC 15.04.020(10)).

10. Because the Staff viewed the porch as an expansion, a variance from the restriction on expansion of non-conforming uses was sought by the applicant in an effort to keep the porch.

11. The variance standards of Chapter 14.10 SCC are designed to apply to situations where, due to special conditions, literal enforcement of the provisions of the code will result in unnecessary hardship. The special conditions must be peculiar to the building or land, such as topographical or critical area constraints. The special conditions should make use of the particular site infeasible without the variance. The special conditions must not result from the actions of the applicant.

12. The staff determined that this particular variance request does not meet the variance criteria and recommended that it be denied.

13. 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 application is exempt from the requirements of the State Environmental Policy Act (SEPA). WAC 197-11-800(6)(b).

3. The Hearing Examiner agrees with Staff that this situation does not present a picture where a hardship that is not of the applicant's making will render use of the property infeasible without a variance.

4. However, the Examiner concludes that, under all the circumstances, the porch comes within the narrow exception to the restriction on expansion and alteration of non-conforming structures, set forth in SCC 14.16.880.

5. The construction involved was very minor. Something of the sort was necessary in order to bring the doorway entry up to code. Safety is a prime purpose of the building codes. And repairs necessary to maintain a safe non-conforming building are allowed by the zoning code.



6. The porch replaces a ramp in the interests of safety and does so by inserting a structure which is only slightly larger than the old one. The subject porch only modestly exceeds minimum dimensions required by code. There is no building code maximum size for an exterior door landing.

7. The Examiner construes SCC 14.16.880 to allow minor enlargements or alterations to non-conforming structures when carried on as repairs that will improve the safety of the structure. In the present case, the enlargement is *de minimis* and fits within the intent of the zoning code in allowing safety-based repairs.

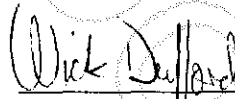
8. It must be emphasized that there is no increase in non-conformity here. The intrusion into the setback is not made worse. Setbacks are intended to secure light and air and to serve aesthetic ends. No purpose of the subject rear setback is violated by allowing this porch to remain in place.

9. Accordingly the Examiner holds that the subject porch is consistent with the purposes of SCC 14.16.880 and that, therefore, no variance is required.

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

### DECISION

The subject porch may remain in place. The variance application is dismissed as moot.



Wick Dufford, Hearing Examiner

Date of Action: October 25, 2004

Date Transmitted to Applicant: October 25, 2004

### RECONSIDERATION/APPEAL

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.

