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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 PERMIT SL07-0117 and  
ZONING VARIANCE VA07-0167

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: DONALD HANSEN and BROOKE GHEN

ASSESSOR NO: P66447

LEGAL DESCRIPTION: The project is located At 34988 North Shore Drive, within,  
Section 26, Township 33N, Range 6 East W.M., Skagit County, Washington.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Donald Hansen & Brooke Ghen  
2026 Cliff Drive, Suite 157  
Santa Barbara, CA 93109

**Representative:** Warren Otteson  
34207 South Shore Drive  
Mount Vernon, WA 98274

**File Nos:** PL07-0117  
PL07-0167

**Requests:** Shoreline Variance  
Zoning Setback Reduction

**Location:** Shore of Lake Cavanaugh at 34988 North Shore Drive,  
within a portion of Sec. 26, T33N, R6E, W.M.

**Parcel No:** 66447

**Land Use Designations:** Shoreline: Rural Residential  
Zoning: Rural Village Residential

**Summary of Proposal:** To replace a small existing nonconforming lakeside cabin with a larger new two-story cabin. A portion of the existing structure extends slightly waterward of the Ordinary High Water Mark (OHWM). The new residence will be at or landward of the OHWM. The smallness of the lot necessitates applications for variance from the shoreline setback, the road setback and the lot coverage limitation.

**Public Hearing:** After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on August 8, 2007.

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



## FINDINGS OF FACT

1. Donald Hansen and Brooke Ghen (applicants) seek variances to setback and lot coverage standards in order to replace an existing lakeside cabin with a new dwelling.

2. The site is 34988 North Shore Drive on Lake Cavanaugh, within a portion of Sec. 26, T33N, R6E, W.M. The shoreline designation is Rural Residential. The zoning district is Rural Village Residential (RVR). The parcel number is P66447. The road is on the north. The lake is on the south.

3. The site is a triangular piece of land measuring 82.25 feet wide along the road and 25.08 feet deep along the base of the triangle, between the road and the Ordinary High Water Mark (OHWM) of the lake. The property slopes steeply down from the road towards the water.

4. The septic system is located on the upper portion of another property located two lots to the east along the road. A small pump, located adjacent to the existing cabin, is used to pump effluent to the septic tank and drainfield.

5. The current cabin, deck and fireplace occupy 598 square feet. A small portion of the deck extends beyond the OHWM.

6. The proposal is to replace the current structures with a new two-story cabin occupying a footprint of 836 square feet. The waterward side of the new structure will be drawn back slightly so as to be at or slightly landward of the OHWM. A 96 square-foot deck and a set of stairs to the shore will be attached to the new house on the west

7. Presently the cabin is located approximately 10 feet below the road grade. Between the cabin and the road grade, the slope exceeds 30%. The new house will extend further inland than does the existing cabin. The expansion inland will require installation of an engineered bulkhead to support the road surface. The inland wall of the new house will be about eight feet from the front (roadside) property line.

8. The overall site coverage after the new construction will be 39.6%.

9. The Shoreline Master Program (SMP) limit for lot coverage in the Rural Residential environment is 30%. The standard shore setback is 50 feet from the OHWM. The front (roadside) setback standard in the RVR zone is 35 feet. Accordingly, approval of variations from all of these standards is sought in order to accommodate the planned project.

10. The requests are dictated by the extraordinary smallness of the lakeside area of the lot. The property was platted in 1946 long before current zoning, setbacks and



shoreline regulations came into existence. Cabins were built on the lake side of the road even when the property available was severely constrained. Often they were just small "fisherman cabins" built for weekend use. As stated in the application: "Today these structures are in many cases, both physically and functionally obsolete." The trend is to replace them with larger homes, built to modern code requirements. Compared to other such development, the applicants' project is modest in size. The proposal is for the reasonable development of the property.

11. The setbacks now in place would provide no lakeside property at all on this lot for building.

12. The Department of Public Works expressed no objection to the applicants' proposal so long as the structure is located at least eight feet inside the property line. Other departments consulted had no specific requests.

13. There were no written objections to the application and no public testimony at the hearing. One neighboring couple wrote a letter in support.

14. A Fish and Wildlife Habitat Assessment, dated January 22, 2007, was prepared by Edison Engineering. The report noted that the entire property is within the 50 foot critical area buffer that protects the lake. The report identified approximately 770 square feet of habitat directly adjacent to the water to the north of the new deck and stairs. This area is vegetated with cedars and maples, along with a few shrubs and ground cover. The construction of new residence will remove 267 square feet of habitat on the landward side of the residence. The report concluded if plants are added to increase the value of the habitat to the north of the house there will be no net loss of habitat value on the property. A planting program was recommended. In addition, procedures were suggested in order to avoid erosion and sedimentation during general site development.

15. On the basis of the Fish and Wildlife Habitat Assessment findings, the increase in lot coverage proposed will not have an adverse environmental effect.

16. The existing cabin represents a legal nonconforming structure. The Examiner finds that the proposed increase in this nonconformity on the shorelines can be accomplished without appreciable threat to the health, safety and general welfare of the public or the shoreline environment or the purposes of the shoreline management program. Denial of the variances should prevent the reasonable development of this particular parcel. No public benefit would be derived from such denial.

17. Variances from the Skagit County Shoreline Management Master Program for construction landward of the OHWM must meet the following criteria (SMP 10.03(1)):

- a. The strict application of the bulk dimensional or performance standards set forth in this Master Program precludes or significantly interferes with



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with a reasonable use of the property not otherwise prohibited by this Master Program.

b. 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 the adjacent properties or the shoreline environment designation.

d. The variance granted 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 the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

18. The Staff Report analyzes the request here in light of the above criteria and determines that, as conditioned, the development will be consistent with them. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

19. The project will be compatible with other non-conforming residential development that has occurred and is occurring on similar small properties around Lake Cavanaugh.

20. 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 requests were properly consolidated for hearing.

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

3. Both as to the shore setback and as to the lot coverage, the proposal, as conditioned, will be consistent with the criteria for approval of a Shoreline Variance. SMP 10.03(1).



4. The proposal, as conditioned, meets the exceptional conditions required for the approval of the enlargement or increase of a non-conforming use on shorelines. SMP 12.04.

5. The proposal, as conditioned, is consistent with the standards of SCC 14.16.810(4) for the reduction of zoning setbacks.

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

### CONDITIONS

1. The project shall be constructed as shown on the site plan submitted and as otherwise described in the application materials, except as the same may be modified by these conditions.

2. The applicants shall obtain a building permit and receive all other necessary County approvals.

3. If the applicants propose any modifications to the proposal, they shall apply for a new permit or a permit revision prior to commencing construction.

4. The project shall comply with all applicable provisions of the Skagit County Code, including the provisions of the local Shoreline Master Program.

5. The project shall adhere to the all of the recommendations set forth in the Fish and Wildlife Site Assessment prepared by Edison Engineering, dated January 21, 2007. The planting plan shall be implemented within one year of building permit issuance.

6. The Protected Critical Area (PCA) shall be accurately mapped and shall be recorded with the County Auditor prior to building permit approval.

7. The project shall be commenced within two years of the date of final approval and finished within five years thereof or the shoreline variances shall become void.

8. Failure to comply with any of these conditions may result in revocation of permits.



## DECISION

The requested Shoreline Variances and zoning setback reduction are approved, subject to the conditions set forth above. The structure shall not encroach waterward of the Ordinary High Water Mark. The structure shall not be closer than eight (8) feet from the front (roadside) property line. The lot coverage shall not exceed 39.6%.



Wick Dufford, Hearing Examiner

Date of Action: August 14, 2007

Date Transmitted to Applicants: August 14, 2007

## RECONSIDERATION/APPEAL - SHORELINES

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with Planning and Development Services 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 Planning and Development Services within five (5) days after the date of 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 Planning and Development Services 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 Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.

## DEPARTMENT OF ECOLOGY REVIEW

If approval of a Shoreline Variance or Shoreline Conditional Use becomes final at the County level, the Department of Ecology must approve or disapprove it, pursuant to RCW 90.58.140.

