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Skagit County Auditor

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AFTER RECORDING RETURN TO:  
SKAGIT COUNTY HEARING EXAMINER  
1800 CONTINENTAL PLACE  
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON SHORELINE VARIANCE SL05-0911

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: KENT VAN EGDOM

ASSESSOR NO: P68248

LEGAL DESCRIPTION: The project is located at Lot 5, Rancho San Juan Del Mar, Subdivision 2, on White Cap Lane within a portion of Section 2, Township 34 North, Range 1 East, W.M., Skagit County, Washington.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Kent Van Egdom  
2606 Washington Blvd.  
Anacortes, WA 98221

**File No:** PL05-0911

**Request:** Shoreline Variance (sideyard setback)

**Location:** Lot 5, Rancho San Juan Del Mar, Subdivision 2.  
The site is on White Cap Lane within a portion of  
Sec. 2, T34N, R1E, W.M.

**Parcel No:** P68248

**Shoreline Designation:** Conservancy

**Summary of Proposal:** To build a single family residence behind a coastal bluff  
above Burrows Bay. The parcel is about 250 feet long  
and 100 feet wide with most of the area on face of the bluff.  
The developable area at the top of the bluff is about  
80 feet deep by 100 feet wide. The proposed house  
would be 30 feet back from the top of the bluff with  
sideyard setbacks of five feet on the north and 42 feet  
on the south.

**Public Hearing:** After reviewing the report of Planning and Development  
Services, the Hearing Examiner conducted a public hearing  
on February 27, 2008.

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



## FINDINGS OF FACT

1. Kent Van Egdom (applicant) seeks to build a single family residence behind a bluff above Burrows Bay. To overcome space limitations imposed by site constraints, he asks for a Variance from the sideyard setbacks established by the local Shoreline Master Program (SMP).

2. The property is one parcel north of the intersection of White Cap Lane and Marine Drive. (White Cap Lane is a gravel roadway.) The lot is Parcel #P68248, being Lot 5 of Rancho San Juan Del Mar, Subdivision 2. It lies within a portion of Sec. 2, T34N, R1E, W.M. The shoreline environment designation is Conservancy.

3. Proceeding from east to west, the property is relatively level for a short distance before sloping steeply downhill, eventually descending to the shore of Burrows Bay. The lot is 100 feet wide by 250 feet deep. However, the level area at the top of the bluff measures only about 100 feet wide by 80 feet deep. The rest of the parcel is on the face of the bluff. The entire lot, including the bluff, is heavily vegetated.

4. The bluff is about 135 feet high and on the property has a gradient of about 84 percent. Because the bluff is recognized as being active, geotechnical analysis was undertaken. A Geohazard Site Assessment, dated June 11, 2005, was prepared by Dr. Richard Threet. Later, a Geotechnical Investigation report, dated October 12, 2007, was prepared by Materials Testing and Consulting, Inc.

5. The geotechnical work sought to determine the subsurface soil conditions for evaluation of landslide hazards and the effect of the proposed residential construction on slope stability. The investigation was both qualitative and quantitative. The results of field and laboratory work indicated that deep-seated catastrophic landsliding is unlikely on the site. However, because the bluff is actively eroding and is sensitive to moisture, mitigating conditions for proper drainage and control of on-site water sources were recommended.

6. Dr. Threet recommended a setback from the bluff top of 20 feet. The proposal is for the foundation of the house to be located at 30 feet back from the top of the bluff. This is consistent with the landslide hazard buffer established under the Critical Areas Ordinance. SCC 14.24.430(1)(h).

7. The 30-foot setback into the 80 feet of lot depth on top of the bluff, leaves only 50 feet of developable depth. Moreover, the lot width was recently reduced by transfer away of approximately six feet on the north in resolution of a legal dispute. The measurement of the north sideyard setback for the Applicant will be measured from the boundary identified as a result of the civil action.



8. The residence is proposed to be located about 175 feet from the Ordinary High Water Mark (OHWM) of the bay and thus falls within Shoreline Management Act jurisdiction. The SMP establishes a residential sideyard setback of 50 feet in the Conservancy designation. Compliance with this setback would eliminate any possibility of development and, therefore, the applicant has requested a Variance. The requested sideyard Variance would be from 50 feet to 5 feet on the northern boundary and from 50 feet to 42 feet on the southern boundary

9. The site plan calls for a house (including deck and garage) with a footprint of approximately 40 by 32 feet. A portion of the house and deck will be cantilevered over the setback line. The house will be two stories high but will not interfere with established views. The entire shoreline of Burrows Bay and the adjacent inland areas have been developed with single-family residences. The residences in the area are of similar construction and size to that proposed. The proposal is consistent with existing development.

10. The site plan shows sufficient area for parking to prevent encroachment into White Cap Lane. The parking configuration was reviewed and approved by the County Department of Public Works.

11. The project will include septic tanks and a reserve drainfield that will be located within 20 feet of the top of the bluff. No problem with this arrangement was identified in the geotechnical materials.

12. Fifteen comment letters were received, all in opposition to the variance. Most of the concern focused on the potential landslide hazard. In response to the comments, the County required the additional analysis, including slope stability modeling, that was provided by Materials Testing and Consulting, Inc. Their report was prepared by a Geotechnical Engineer.

13. The geotechnical work was further reviewed by the Staff geologist with the resulting conclusion that the bluff-top setback is adequate to avoid bluff failure and that the house will be safe at the proposed location for the life of the structure.

14. The Materials Testing and Consulting report contains the following under the heading "Geo-hazards Mitigation:"

- 1) We do not recommend constructing a pathway to the beach unless we review the planned construction to ensure that the pathway does not increase the risk of slope retreat or instability.
- 2) It should be noted that slope erosion and mass wasting may be accelerated by human activity such as:
  - Adding side-cast debris to the slope
  - Increasing the surface water runoff and groundwater flow on the slope



- Removal of the vegetation on the slope
- Heavy construction equipment traffic on the slope
- Placing excavated soil near the slope crests

3) Minimizing the volume and velocity of water that travels down the slope face will decrease the likelihood of slope failures.

4) Prior to construction, a silt fence and/or continuous line of straw bales should be placed upland of the slope crests. Heavy construction equipment, construction materials, or native and imported soils should not be placed behind the erosion control devices. At the end of the project, all disturbed vegetation should be repaired and maintained until it is established.

5) Surface runoff that drains toward the slope should be captured in surface drainage ditches and directed into catch basins and routed through closed pipes as described below.

6) Concentrated surface water should not be allowed to traverse the slope during or after the construction phase of the project. Roof downspouts and footing drains should be routed into closed pipes which outfall into appropriate drainages. Outlets for these pipes should be protected from erosion through the use of rip-rap or some other energy dissipating device. Similarly, concentrated drainages should be captured in closed pipe systems and routed down slope to outfall in appropriate drainages. Drain outfalls may consist of structures designed to spread the discharge over a length of slope parallel to the slope contours, or drywells to temporarily hold the runoff and allow it to percolate into the surrounding soil. In no case should drainage be allowed to outfall onto slope faces as a concentrated discharge.

(7) Existing vegetation should not be removed except as noted above. These provide additional stability to the loose top soil and minimize the effect of down-slope water movement. To improve the view, the trees may be partially de-limbed by a professional arborist able to judge the correct amount of cutting that will preserve the health of the trees. Grading or excavation of soils outside of the setback during construction should be accompanied by grass re-seeding and re-vegetation. To maximize water uptake and minimize down-slope movement of colluvium, vegetation should be planted in a buffer zone from the crest for a distance of 10 feet where space is available. According to "Vegetation Management: A Guide for Puget Sound Bluff Property Owners" (Manashe, 1993) the following types of vegetation provide good to excellent erosion control and would be suitable for planting in the 10-foot buffer zone. [followed by a list of evergreen and deciduous plants].



15. Only one member of the public testified at the hearing – Jerry Bongard, the neighbor to the south. He said the concern that the development could have an adverse impact on the stability of the bluff, including the stability of the bluff on neighboring properties, is a fear shared by a number of neighbors. He said that if every requirement is met, his worries about damages to his own property have been somewhat allayed.

16. An administrative variance was granted to the applicant for reductions in the front and side setbacks established under the zoning code in light of the site topography and constraints imposed by the shore setback and septic system requirements.

17. A Fish and Wildlife Habitat Site Assessment, dated October 25, 2005, was prepared by Edison Engineering. The report found that the setback from the water provided by the project will be an adequate buffer for the resources in and associated with Burrows Bay. Erosion-control measures similar to those recommended by the geotechnical report were suggested. Staff asks that the Fish and Wildlife Habitat Conservation Area be placed into a Protected Critical Area (PCA).

18. Variances from the Skagit County SMP 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 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 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.



19. The Staff Report analyzes the side setback variance application against these criteria and determines that, as conditioned, the proposal is 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.

20. Lot 5 is the last remaining undeveloped lot on White Cap Lane. The lot was created in the 1950's with a width far narrower than properties contemplated by the side setbacks of the SMP. Without a Variance no structure can be built on the property. The other properties on the lane have been developed with side setbacks similar to what the applicant is proposing. Far from granting a special privilege, the requested variance would accomplish parity with the neighboring properties.

21. Under the SMP the shore setback for residential development in Conservancy environments is 75 feet. If, as is usual, this setback is measured from the Ordinary High Water Mark (OHWM), the proposed house, at 175 feet landward, more than meets the standard. However, the Staff Report reports a comment which asserted that the shore setback from erosion bluffs should be measured from the top of the bluff rather than the OHWM. The Staff interpretation was that measurement from the top of the bluff is required only for accessory development.

22. Any conclusion herein which may be deemed 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. SMP 10.02(3).

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

3. The active bluff on the subject parcel is a geologically hazardous area under the terms of the Critical Areas Ordinance (CAO). Critical areas review is conducted as a part of the approval of underlying land use permits – here as part of the requested Shoreline Variance process. SCC 14.24.050.

4. The technical information developed demonstrates that the project, as proposed and as conditioned, will be consistent with the CAO. See SCC 14.24.430.

5. Residences are exempt from the Substantial Development Permit requirement of the Shoreline Management Act (SMA), but must conform to the dimensional requirements of the local shoreline master program (SMP) or obtain a Variance.

6. Within the Conservancy designation, the SMP establishes a sideyard setback from side property lines for single-family homes of 50 feet. SMP 7.13(2)(C) – Table



RD). The proposal, as conditioned, is consistent with the criteria for a Variance from this standard. SMP 10.03(1).

7. In the Hearing Examiner's opinion, context and common sense support further review of the issue of whether an additional Shoreline Variance from the applicable shore setback is required in this case. See SMP 7.13(2)(C)(1) (p. 7-91). He recommends, that Planning and Development Services obtain a legal opinion on the question of whether the 75-foot shore setback for a residence on this parcel should be measured from the top of the bluff or from the OHWM.

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

### CONDITIONS

1. The project shall be developed as described in the application materials, except as the same may be modified by these conditions.

2. The applicant shall comply with the Geo-Hazards Mitigation recommendations set forth in the report of Materials Testing and Consulting, Inc., dated October 12, 2007. (See Finding 14.)

3. The project shall be constructed and maintained in accordance with applicable State and County regulations, including but not limited to, State water quality standards for surface and ground water, Chapters WAC 173-201A, 173-200; County drainage ordinance, Chapter 14.32 SCC; County critical areas ordinance, Chapter 14.24 SCC; County shoreline master program, Chapter 14.26 SCC.

4. The applicant shall obtain all other required permits. A copy of this decision shall be submitted with the building permit application.

5. The Fish and Wildlife Habitat Conservation Area and the Geological Hazard Area shall be placed into a Protected Critical Area (PCA) per SCC 14.24.170. The PCA shall be recorded with the building permit application.

6. The project shall be commenced within two years of the date of final approval and shall be completed within five years thereof, or the Variance shall become void.

7. Failure to comply with any conditions may result in permit revocation.



## DECISION

The requested Shoreline Variance from the sideyard setback of the Shoreline Master Program is approved, subject to the conditions set forth above.

DONE this 18<sup>th</sup> day of March, 2008



Wick Dufford, Hearing Examiner

Date Transmitted to Applicant: March 18, 2008.

## RECONSIDERATION/APPEAL

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.

## 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.

