

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicants: Michael and Lynn Garvey
322 122nd Place NE
Bellevue, WA 98005

Request: Critical Areas Variance, PL15-0212

Location: Shore of Skagit Bay at 15537 Yokeko Drive, within Sec. 24,
T34N, R1E, W.M. Parcel Nos P73409, P73411, P73414

Land Use Designation: Rural Intermediate (RI)

Summary of Proposal: Removal of prior residential development (two homes and attached garage) and replacement with 845 square foot-longhouse, also known as the spirit house. The project was undertaken without a permit. The longhouse is within the 100 foot shoreline buffer under the Critical Areas Ordinance.

SEPA Compliance: Exempt (WAC 197-11-800(6) (b))

Public Hearing: September 23, 2015. Testimony by Staff and applicants' consultant. No public testimony. Planning and Development Services (PDS) recommended approval.

Decision/Date: The application is approved, subject to conditions. October 6, 2015

Reconsideration/Appeal: Reconsideration may be requested by filing with PDS within 10 days of this decision. Appeal is to the Board of County Commissioners by filing with PDS within 14 days of this decision or decision on reconsideration, if applicable.

Online Text: The entire decision can be viewed at:
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner)

FINDINGS OF FACT

1. Michael and Lynn Garvey seek a Critical Areas Variance in order to authorize demolition and renovation on residential property, including the construction of a traditional longhouse within the 100-foot setback from the shore (See SCC 14.24.530(2)).

2. The site is located at 15537 Yokeko Drive on Skagit Bay, within SE1/4 Sec 24, T34N, R1E, W.M. The Parcel Numbers are P73409, P73411 and P73414. The zoning is Rural Intermediate (RI). Yokeko Drive borders on the west; Skagit Bay on the east. Adjacent to the north and south are similar rural residential parcels.

3. The site historically contained two homes and a detached garage. One home was removed in 1999 and the other home, detached garage, septic and the associated driveway/parking areas were removed in 2013. Construction of the longhouse began in 2014. This activity was done without a permit.

4. The longhouse is situated 46 feet landward of the Ordinary High Water Mark (OHWM) of the bay, near the top of a steep shoreline bank. The Garvey residence is located on an adjacent contiguous parcel. For shoreline management purposes, then, the longhouse is an accessory development. Under the local Shoreline Master Program, the setback for accessory development is 35 feet from the OHWM. Thus, Shoreline Management Act approval is not needed.

5. However, the Critical Areas Ordinance establishes a 100-foot setback from the OHWM. The structure intrudes into this critical areas buffer by more than 50% of the buffer-width and, therefore, requires a Hearing Examiner variance. SCC 14.24.140(1)(b).

6. Geotechnical investigations, dated April 3, August 16, and September 14, 2015, were prepared by Edison Engineering. The bank adjacent to the longhouse is being protected by a rockery bulkhead authorized under a shoreline exemption (PL15-0179).

7. The longhouse, referred to as a spirit house by the applicants, covers 845 square feet. It is in essence a work of art, constructed in the Tlingit style. Traditional carvers were consulted in its creation. Framing members were brought in from Haida Gwaii. There is a carved western red cedar totem pole at one end. There is a taller totem adjacent to the structure. The Fish and Wildlife Assessment refers to the overall installation as a sculpture.

8. In testimony, the applicants' consultant described the project as an "undevelopment." The previous residential development, removed from the site in 2013, occupied 9,189 square feet. The total developed area now totals 1,695 square feet, including the longhouse, driveway

and carport. The longhouse was placed in the location of a previous residence and is 16.5 feet from the southern property boundary.

9. In connection with the development, planting beds were established between the road and the bluff and a planting program was implemented concurrent with the placement of the structure. Approximately 1,200 plants including groundcover, shrubs and trees are in the process of being installed. A large proportion of this planting is within 100 feet of the OHWM.

10. For land use purposes, the longhouse is incidental to the nearby primary residence. It is not a public venue. Its use is private, shared by the applicants and their guests.

11. A zoning variance could not address the requested near-shore location of the longhouse. The fish and wildlife and geo-hazard assessments were prepared using best available science and, with the insertion of the rockery bulkhead, show no net adverse critical areas effects. The mitigation planting improves the condition of most of the shoreline buffer area. The creation of the longhouse is a reasonable development of the property, involving a minimal dimensional reduction of the buffer with the least possible impact on the nearby shore.

12. The placement of the longhouse is not a matter of economic convenience. Its location is dictated by the traditional and historic placement of longhouses near the water. The granting of the variance will be consistent with the general purpose and intent of the Critical Areas Ordinance, resulting in an overall improvement of the marine shoreline buffer. The remaining undeveloped buffer will be designated as a Protected Critical Area.

13. The application was reviewed by various County departments and none had objections. Public notice was given as required by law. A number of letters in support were received. One correspondent questioned the placement of the longhouse waterward of neighboring homes, noted past erosion of the bank, and asked whether there is a setback requirement for large totem poles. These matters are addressed through the variance request and construction of the bulkhead.

14. The Staff Report analyzes the application in light of the criteria for a Critical Areas Variance and concludes that, as conditioned, the project meets the criteria. 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.

15. 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 subject matter of this proceeding. SCC 14.06.050(1)(b)(i).

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

3. As conditioned, the proposal meets the requirements for a Critical Areas Variance. SCC 14.24.140.

4. As conditioned, the proposal meets the requirements for a land use variance. SCC 14.10.030. The reasons set forth in the application justify the granting of the variance. It is the minimum variance that will make possible the reasonable use requested. The variance is in harmony with the general purpose and intent of the Unified Development Code.

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

CONDITIONS

1. All other required permits shall be obtained, and their conditions shall be complied with.

2. The recommendations of the Geotechnical Investigations of Edison Engineering (Exhibits 6, 7, and 8) shall be carried out.

3. All conditions in the Fish and Wildlife Habitat Site Assessment and Addendum (Exhibits 4 & 5) shall be considered conditions of approval.

4. A Protected Critical Area (PCA) site plan shall be recorded with the County Auditor's office prior to approval to the building permit application.

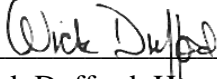
5. The Critical Areas Variance shall expire if the building permit is not issued within three years of final approval. Knowledge of the expiration date is the responsibility of the applicants.

6. Failure to comply with any permit condition may result in permit revocation.

DECISION

The requested Critical Areas Variance (PL15-0212) is approved, subject to the conditions set forth above.

DONE, this 6th day of October, 2015.



Wick Dufford, Hearing Examiner

Transmitted to Applicants October 6, 2015

See Notice of Decision, page 1, for appeal information