

**NOTICE OF DECISION**

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**Applicant:** Larry Errthum  
1122 North 77<sup>th</sup> Street  
Seattle, WA 98003

**Request:** Critical Areas Variance, PL16-0337

**Location:** 41608 South Shore Drive, Concrete; Cape Horn on the Skagit Lot 23, Block B, within Sec. 12, T35N, R7E, W.M. Parcel No: P62922

**Land Use Designations:** Comprehensive Plan: Rural Intermediate (RI)  
Shoreline: Rural Residential

**Summary of Proposal:** To reduce the 200 foot buffer from the Skagit River to approximately 80 feet to allow retention of an existing shop and living space within the current footprint; to convert the existing carport to a viewing platform. Additional second floor living space may be added.

**SEPA Compliance:** Exempt

**Public Hearing:** December 7, 2016. Testimony by Staff and Applicant. No public testimony.

**Decision/Date:** The application is approved, subject to conditions. December 20, 2016

**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 Test:** The entire decision can be viewed at:  
[www.skagitcounty.net/hearingexaminer](http://www.skagitcounty.net/hearingexaminer)

## **FINDINGS OF FACT**

1. Larry Errthum, applicant, seeks a Critical Areas Variance to authorize an existing residence/shop within the standard 200 foot buffer of the Skagit River.
2. The property is an approximately 0.4 acre parcel (P62922), zoned Rural Intermediate (RI). It is situated within the Cape Horn development along the river front.
3. The parcel currently contains a two-story structure which houses a shop and unpermitted living space, as well as an unpermitted carport structure. The carport is located within the floodway. Residential use is allowed outright in the RI zone.
4. The parcel immediately to the east is designated public access. The parcel immediately to the west is owned by Skagit County. There are other residential structures in the vicinity.
5. Current measurement shows the subject residence/shop to be about 80 feet from the Ordinary High Water Mark (OHWM) of the river. The application seeks to legitimize this residence/shop in this location. No increase in footprint is proposed.
6. A previous owner received a building permit for a 960-square-foot single story shop located about 105 feet from the OHWM. The building never received a final inspection. Subsequently, the residential space, a second story and a covered porch were added. The present location of the structure closer to the OHWM is unexplained.
7. In 2007, a 492 square foot carport was built approximately 15 feet from the OHWM. This structure is within the floodway.
8. The present application is by a new owner who had no part in the previous construction on site. The purpose now is to give permit authorization for the residence/shop at its existing location, and to allow for alteration and repurposing of the carport. The proposal is to reduce the size of the carport to no more than 200 square feet and to use the remaining portion as a viewing platform. Approval of the present application and compliance with conditions imposed will satisfy the provisions of a Voluntary Compliance Agreement entered in December of 2015.
9. The present residence/shop is more than 50 from the OHWM of the river and therefore does not require a variance under the County's Shoreline Master Program (SMP). The re-purposed viewing platform will be at least 35 feet from the OHWM, meeting the SMP setback for an accessory structure. The developed area within the shoreline will be less than the maximum of 30% once the gravel access to the carport is reduced to a 4-foot wide walkway.
10. However, the structures on site are within the riparian buffer of 200 feet from the river imposed by the Critical Areas Ordinance. Therefore a Critical Areas Variance is required to legitimize the structures that will remain on site.

11. A Fish and Wildlife Assessment was conducted for the project in 2000 and a new one was performed in 2016. The conclusion of both assessments is that the fish and wildlife habitat lost can be mitigated (minimized) by the planting of trees and shrubs. Planting recommendations have been made. The restored buffer area will be protected from future development by its placement within a Protected Critical Area (PCA).

12. The subject parcel was created by land division in 1965 well before adoption of the Critical Areas Ordinance. The existing development imposes some impacts on the shoreline buffer, but the proposal will impose no new ones. Buffer restoration will be carried out where feasible. The proposal allows for development with the least impact on critical areas while providing a reasonable use of the property.

13. The application was circulated to interested departments and agencies. None had critical comments. The Health Department advised that there is an existing one bedroom septic system onsite (Permit #577-147). The Building Official noted that flood plain development and building permits will be required.

14. The Letter of Completeness was issued on August 15, 2016. Notice of Development Application was posted, published and mailed as required by law. No comments were received.

15. The Staff reviewed the application for compliance with the criteria for a Critical Areas variance (SCC 14.24.140(3)) and determined that, as conditioned, the proposal is consistent with the applicable 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.

16. The reasons set forth in the application justify the granting of the variance. The variance will be the minimum variance that makes possible the reasonable use of this parcel. The granting of the variance will be in harmony with the general purpose and intent of the Uniform Development Code and other applicable provisions of the County Code. The variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

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

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over this proceeding. SCC 14.24.140(1)(b).
2. The application is exempt from the procedural requirements of the State Environmental Policy Act (SEPA). WAC 197-11-800(6)(b).
3. The subject proposal complies with the Shorelines Management Act and does not require a permit thereunder.

4. The proposal, as conditioned, complies with the variance approval criteria of the Critical Areas Ordinance. SCC 14.24.140(3).

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

### **CONDITIONS**

1. The project shall conform to the application materials, except as the same may be modified by these conditions.

2. The applicant shall obtain all other applicable permits and abide by the conditions of same.

3. The applicant shall comply with all applicable local and state regulations.

4. The recommendations of the site assessment prepared by Edison Engineering, dated July 28, 2016, are incorporated herein as conditions of approval.

5. Prior to final inspection of the building permit for shop modifications, the following shall be completed:

a. A minimum of 20 native trees and 20 native shrubs must be placed within the reduced buffer area.

b. The downspouts must be disconnected from the drain lines that extend to the slope. The downspouts may be directed to splash blocks to avoid concentrating flow over the slope.

c. The carport structure within the buffer must be reduced in size to no more than 200 square feet. The remaining portion must be located a minimum of 35 feet from the OHWM of the Skagit River and may not be enclosed.

d. The gravel located waterward of the 100 foot buffer must be reduced to a pedestrian trail no more than four feet wide.

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

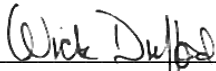
7. This variance shall expire if the use or activity for which it is granted is not commenced within three years of final approval. Knowledge of the expiration date is the responsibility of the applicant. SCC 14.24.140(6).

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

**DECISION**

The requested Critical Areas Variance (PL16-0337) is approved, subject to the conditions set forth above.

**DONE**, this 20<sup>th</sup> day of December, 2016.

  
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Wick Dufford, Hearing Examiner

Transmitted to Applicant and Staff: December 20, 2016.

See Notice of Decision, page 1, for appeal information