

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Jay Shepler
7280 Worline Road
Bow, WA 98232

Contact: Steve Kramer
8046 Collins Road
Sedro Woolley, WA 98284

Request: Shoreline Variance, PL16-0462
Administrative Zoning Variance, PL16-0463
Administrative Critical Areas Variance, PL16-0464

Location: 11393 Blue Heron Road, within SW1/4 Sec. 25, T36N,
R2E, W.M.; Parcel No. P47011

Shoreline Designation: Rural Residential
Zoning Designation: Rural Intermediate

Summary of Proposal: To replace an existing cabin with a new single-family residence located the same distance from the Ordinary High Water Mark (OHWM) – 57 feet. Due to lot size constraints, the replacement structure cannot meet the minimum side setback of eight feet on the east side.

SEPA Compliance: Exempt

Public Hearing: August 23, 2007. Testimony by Planning and Development Services (PDS) staff and Applicant. No public testimony.

Decision: The application is approved, subject to conditions.

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 PS within 14 days of this decision or decision on reconsideration, if applicable.

Online Text: The entire decision can be viewed at:
www.skagitcounty.net/hearingexaminer

FINDINGS OF FACT

1. Jay Shepler (applicant) seeks to replace an existing cabin with a new residence on the shore of Samish Bay.

2. The site is at 11393 Blue Heron Road, within SW1/4 Sec. 25, T36N, R2E, W.M. The lot, one among a number of small adjacent properties originally platted in the 1940's, is only 37 feet wide. The depth of the parcel from the Ordinary High Water Mark (OHWM) to the road is 202 feet.

3. The existing cabin, built in 1944, has a foot print of 486 square feet. It is located about 57 feet from the OHWM. Between the cabin and the shoreline are a 288 square-foot concrete patio and two brick paver patios. The area landward of the cabin is on fill placed over the native sand.

4. The proposal is to replace the old cabin with a new two-story home with a footprint of 24' x 36'. The height overall will be less than 30' above average grade. The proposal includes a 24' x 8' covered patio and a 10' x 6' covered entry. The two brick paver patios waterward of the proposed home will be removed.

5. The replacement home will be placed 57 feet from the OHWM, the same as the present cabin. The average setback for residences within 300 feet of the site is approximately 56 feet.

6. However, the narrowness of the lot necessitates encroaching into the side setback for both shorelines and zoning in order to build a reasonably-sized dwelling. On one side the new home will intrude into the eight-foot side setback.

7. A Category III wetland is located south of Blue Heron Road. Neither the wetland nor its buffer extend to the subject parcel.

8. There is an existing onsite septic system between the cabin and the road. Repair of this system has been approved, but the system has not yet been installed. Potable water for the proposed home will be provided by the local public water system – Samish Farms Water Association.

9. Parking onsite has been on the lawn between the house and road, as is common along this stretch of Blue Heron Road. With the new home project, two parking spaces that are more formal will be established along the road. The new septic design requires a traffic barrier to prevent cars from parking on the drainfield.

10. The project will meet all requirements of the current Stormwater Management Manual. Details of the drainage plan will be provided at the time of floodplain development permit or building permit.

11. Adjacent properties are generally developed with residential and recreation buildings, erected on slightly wider parcels. Blau Oyster is a commercial operation located about 400 feet to the west of the subject site.

12. The current project is in keeping with the trend in the neighborhood. It will blend with the setting and present no adverse aesthetic impacts.

13. Notice of Development Application for this project was published, mailed and posted as required by law. No comments were received from the general public.

14. The Samish Indian Nation wrote to advise that there is a high risk of encountering protected archaeological resources on the site. An archeological survey was submitted in response. The applicant must obtain a State-issued archaeological site alteration and excavation permit before any ground disturbing activity.

15. The site is within an A1 designated flood hazard area and will require a floodplain development permit. A building permit will be required before the house is renovated.

16. The applicant was routed to various County Departments. None had adverse comments.

17. The site is located in a Rural Residential shoreline environment and is zoned Rural Intermediate. In both, residential development is allowed. However, the project will not meet the side setback required by Shoreline Master Program and the Zoning Ordinance, and it will not meet the setback from the water required by the Critical Areas Ordinance.

17. The side setback variances are necessitated by the narrowness of this particular lot. Only one other lot in the area is less than the average width of approximately 50 feet. The proposed new structure will be 24 feet wide, as compared to the average home width of about 28 feet.

18. The replacement home here will be compatible with other permitted development in the area. This new home will be similar in size and construction to those nearby, and will not cause adverse effects to the shoreline environment.

19. Removal of impervious surfaces and installation of native vegetation will improve shoreline buffer functions and values. The development will not set a precedent adverse to shoreline values.

20. Intrusion of the house into the critical areas buffer from the water is required by the need to place the septic drainfield a minimum of 100 feet from the OHWM. Issuance of a zoning variance by itself will not provide sufficient relief to avoid the need for a variance to the critical areas dimensional setback.

21. A site assessment and mitigation plan was prepared, as well as a floodplain habitat biological assessment. The conclusion reached is that the development, as mitigated, will not

adversely affect the functions and values of the marine shoreline buffer. The proposed development allows development of the parcel with the least impact on critical areas while providing a reasonable use of the property.

22. The Staff Report analyzes the application in light of the Shoreline Master Program polices and regulations, the Shorelines variance criteria, the Zoning variance criteria, and the Critical Areas variance criteria. The Staff analysis is that, as conditioned the project will be consistent with the relevant approval 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.

23. 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. SMP 10.02(3), SCC 14.06.050(1)(b)(i).

2. The variance applications are exempt from the requirements of the State Environmental Policy Act. WAC 197-11-800(6)(e).

3. As conditioned, the proposed Shoreline Variance, Zoning Variance and Critical Areas Variance are consistent with the relevant approval criteria. SMP 10.03(1), SCC 14.10.040(1)(d), SCC 14.24.140(3).

4. The variances are the minimum that will make possible the reasonable use of this property and are in harmony with the general purpose and intent of the Skagit County Code.

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

CONDITIONS

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

2. All required permits shall be obtained and their conditions shall be adhered to.

3. The recommendations of the Watermark Critical Area, LLC, site assessment dated July 28, 2016, shall be considered conditions of approval, except as modified herein.

4. The mitigation measures must be completed prior to final inspection of the proposed house. The applicant shall submit an as-built plan of the mitigation plantings as well as provide photographs of the installed plants. The plan and photographs shall be submitted within 30 days of plant installation.

5. All mitigation plants shall maintain a survival rate of 90% following the first year. At the end of years three and five, any plants not surviving will be replaced to ensure 85% survival (three years) and 80% survival (five years). If the plants do not meet the specified survival rates, a qualified professional must assess the site and determine the best method to improve the rate of survival for additional native plants.

6. The applicant shall comply with the recommendations of the cultural resources report and all requirements of the Washington State Department of Archeology and Historic Preservation.

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

8. The Critical Areas 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.

9. Temporary erosion/sedimentation control measures shall be utilized in accordance with Chapter 14.32 SCC.

10. The applicant shall comply with all state and local regulations, including but not limited to Chapters 173-200 and 173-201A WAC (surface and ground water quality), Chapter 173-60 WAC (noise), Chapter 14.16 SCC (zoning).

11. A copy of this permit decision shall be submitted with the building permit application.

12. The project shall commence within two years of the Shoreline Variance approval and be completed within five years thereof.

13. If the applicant proposes any modification of the subject proposal, he shall notify Planning and Development Services (PDS) prior to the start of construction.

14. Failure to comply with any condition of approval may result in permit revocation.

DECISION

Wick Dufford

The subject applications (PL16-0462, PL16-0463, PL16-0464) for a Shoreline Variance, an Administrative Zoning Variance and an Administrative Critical Areas Variance are approved, subject to the conditions set forth above.

SO ORDERED, this 31st day of August, 2017.

Wick Dufford

Wick Dufford, Hearing Examiner

Transmitted to Applicant, Steve Kramer and County Staff, August 31, 2017.

See Notice of Decision, page 1, for appeal information,