

**NOTICE OF DECISION**  
**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**Applicant:** Mick Nijher on behalf of Kanwardeep Nijher  
2123 242<sup>nd</sup> Street SE  
Bothell, WA 98021

**Request:** Shoreline Variance, PL18-0172  
Critical Areas Variance, PL17-0661

**Location:** 32907 South Shore Drive on Lake Cavanaugh. The property is located within NE1/4 Sec. 28, T33N, R6E W.M. The parcel number is P66823.

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

**Summary of Proposal:** To construct a replacement single family residence and detached garage at 56' 9" from the Ordinary High Water Mark (OHWM) of the lake, with the project covering 33.71% of the site. The critical areas shore setback is 100 feet. The Shoreline Master Program (SMP) shore setback is 80 feet. The SMP lot coverage limit is 30%.

**SEPA Compliance:** Exempt

**Public Hearing:** June 18, 2018. Testimony by Planning and Development (PDS) staff and the applicant. No public testimony.

**Decision/Date:** The application is approved, subject to conditions. Date June 27, 2018

**Reconsideration/Appeal:** Shorelines: Reconsideration may be requested by filing with PDS within 5 days of this decision. Appeal is to the County Commissioners by filing with PDS within 5 days of this decision, or decision on reconsideration if applicable.  
Critical Areas: Reconsideration may be requested by filing with PDS within 10 days of this decision. Appel is to the 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/hearingexaminer](http://www.skagitcounty.net/hearingexaminer)

## **FINDINGS OF FACT**

1. Mick Nijher on behalf of Kanwardeep Nijher seeks to build a replacement single family residence and detached garage on the shore of Lake Cavanaugh.

2. The property is at 32907 "South Shore Drive, within NE1/4 Sec. 28, T33N, R6E, W,M, The parcel number is P66823.

3. The property slopes gently down from South Shore Drive to the lake. Vegetation is mostly mowed lawn with a small stand of conifers in the northwest portion of the site. Presently on site are a 256-square-foot cabin built in 1952 and a 64-square-foot shed built in 1978. Both of these structures will be removed. The parcel also has a 254-square-foot dock which will be unaffected by the project.

4. A majority of the lots along Lake Cavanaugh contain cabins and residences with detached accessory buildings. Most parcels are served by individual wells and on-site septic systems.

5. The subject property is accessed from South Shore Drive. The access point will be relocated as a result of project. An Access Permit has been applied for. The area available for parking on the property will be adequate for the residential use.

6. The new home will have a footprint of 2872 square feet. Decks will cover 582 square feet. The detached garage, landward of the house, will cover 1050 square feet. The building complex when completed will fit in with other residential development in the neighborhood.

7. The proposed new septic system drainfield will be placed adjacent to the road. The siting of the drainfield and of neighboring wells with associated 100-foot protection zones pushes the area available for the home and garage toward the shore. Moreover, on the northwest property line, the lot is encumbered by a 35-foot easement which benefits property landward of South Shore Drive. The easement terms are broad, effectively preventing the applicant from use of the easement area. The overall effect of these features is to limit the area available for home construction.

9. For purposes of the side setback, the planning staff determined that the easement should be viewed as a side property line requiring an eight foot setback. The proposed structures on the applicant's property will be located a minimum of eight feet from the easement boundary.

10. Although the property is mainly in lawn, some trees will be removed to allow for the planned construction. A Habitat Conservation Area Site Assessment and Buffer Variance Plan was professionally prepared and a mitigation planting plan has been developed. The objective is no-net-loss of native trees and shrubs on the site.

11. The applicant seeks shore setback variances for both the 100-foot critical areas buffer and the 80-foot shoreline buffer (based on the average setbacks on neighboring properties). The shore setback sought is 56' 9" which would be the distance to the OHWM from the uncovered wooden deck attached to the new home. The distance from the shore to the foundation of the new home would be 71' 9". The application also asks for a slight variance from the 30% site coverage limit, allowing the total developed area to be 33.71%.

12. The Nijher family also owns the parcel (P66822) immediately to the southeast of the project site. This lot contains a 680-square-foot cabin with an attached 480 square-foot carport and a 432-square-foot detached garage.

13. The subject site is within a flood hazard area and will require a floodplain development permit. Building permits will be required for the new structures, a septic permit was applied for on December 1, 2017 (SW17-0371). The applicant has submitted a water file for review (WA17-0174). Stormwater review will take place with the building permit applications.

14. Public notice of the applications for critical areas and shorelines aspects of the project was provided as required by law. There were no written comments from the public on the proposal. No members of the public testified at the public hearing.

15. The Staff Report analyzes the application in light of the approval criteria for both a shoreline variance and a critical areas variance and concludes that, as conditioned, the project will meet both sets of 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. Reducing the buffers as proposed is the minimum variance possible to allow the continued use of the site. The site assessment and mitigation plan show that the proposal will avoid significant adverse effects to the Lake Cavanaugh shoreline.

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. Shoreline Master Program (SMP) 10.02, SCC 14.24.140, 14.06.060.

2. The project is exempt from the procedural requirements of the State Environmental Policy Act.

3. Residential development is permitted in the Rural Residential environment under the SMP and in the Rural Village Residential (RVR) zone under applicable zoning regulations.

4. As conditioned, the project complies with the shoreline variance criteria, (SMP 10.03(1), and the critical areas variance criteria (SCC 14.24.140(3)).

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

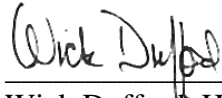
### CONDITONS

1. The project shall be constructed as described in the application materials, except as the same may be modified by these conditions.
2. The applicant shall obtain all required permits and abide by the conditions of same.
3. The recommendations of the Habitat Conservation Area Site Assessment and Buffer Variance Plan prepared by Bachman Environmental, dated November 14, 2017, shall be considered conditions of approval unless modified below.
4. The mitigation must be completed prior to final inspection of the proposed house.
5. The applicant shall submit an as-built sit plan of the mitigation plantings as well as provide photographs of the installed plants within 30 days of plant installation.
6. All mitigation plants must maintain a survival rate of 100% following the first year and 80% following years three and five. If the plants do not meet these survival rates, a qualified professional shall assess the site and determine the best method to improve the rate of survival for additional native plants.
7. A Protected Critical Area (PCA) site plan shall be recorded with the County Auditor's Office prior to approval of the building permit application for the proposed house.
8. Temporary erosion/sedimentation control measures shall be used in accordance with the Chapter 14.32 SCC (stormwater management).
9. The applicant and his contractors shall comply with all other applicable State and local regulations, including but not limited to Chapter 173-200 and 173-201A WAC (surface and ground water quality), Chapter 173-60 WAC, (noise).
10. The project shall be commenced within two years of the final approval of the shoreline variance and completed within five years thereof.
11. The critical areas variance shall expire if the use or activity for which it is granted is not commenced with three years of final approval. Knowledge of the expiration date is the responsibility of the applicant.
12. The applicant shall submit a copy of this Order with the building permit application.
13. If the applicant proposes any modification of the subject proposal, he shall notify Planning and Development Services prior to the start of construction.
14. Failure to comply with any permit conditions may result in permit revocation.

**ORDER**

The requested Shoreline Variance (PL18-0172) and Critical Areas Variance (PL17-0661) are approved, subject to the conditions set forth above.

**SO ORDERED**, this 27, day of June, 2018.



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Wick Dufford, Hearing Examiner

Transmitted to Applicant, County Staff and County Commissioners, June 27, 2018.

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