

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

**FINDINGS, CONCLUSIONS AND DECISION
ON REMAND**

Applicant: George Terek
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File No: PL 04-0781 (Remand)

Requests: Shoreline and Zoning Variances

Location: 6764 Salmon Beach Road, adjacent to Similk Bay,
within a portion of Sec, 18, T34N, R2E, W.M.

Land Use Designations: Shorelines – Rural Residential (PL 03-0695)
Zoning – Rural Intermediate (PL 03-0694)

Summary of Proposal: To obtain after the fact approval for a 10' x 14' foot emergency shelter, built partially underground on the eastern boundary of the property and thus within the sideyard setbacks under both the Shorelines Master Program and the Zoning Code:

Procedure: After a decision of denial by the Hearing Examiner, the applicant appealed to the Board of County Commissioners. Following a closed record hearing, the Commissioners remanded the matter to the Examiner for further consideration and clarification of information concerning use of the structure, impacts on neighboring properties, emergency access and fire risk. The Examiner held a remand hearing on March 23, 2005.

Decision: The application is approved, subject to a condition.

FINDINGS OF FACT

1. George Terek (applicant) seeks approval for a shelter built on his eastern property boundary at 6764 Salmon Beach Road, adjacent to Similk Bay. The structure is largely below ground surface and entirely landward of the residence. Two side yard variance requests are involved. One from the Shoreline Master Program (SMP 7.13(2), Table RD, and one from Zoning Code (SCC 14.16.300(5)(iv) – Rural Intermediate).

2. An earlier hearing was held analyzing the variance requests as for the location of a sauna. The Hearing Examiner denied the variances in September 2004 on the basis that no special necessity had been shown for locating a sauna within the side setbacks. On appeal, the Commissioners directed the Examiner to reconsider the structure as an emergency shelter. They asked for a review of the impacts on neighboring properties, on emergency access and on fire risk.

3. On remand, the applicant testified that his property is located atop a 60 foot shoreline bank in what he characterized as a “high wind zone.” The property is covered with tall trees which are vulnerable to storms. He presented photographic evidence of a large tree that toppled onto and through the roof of the main house. He said that in times of severe storm conditions, the underground bunker is the only safe place for his family to go.

4. The proposal was reviewed again by the Fire Marshal who stated that his office would not oppose the sideyard variances in this case. He noted that the structure is in line with pre-existing structures, is all concrete with no openings facing the adjacent property and is located in an area that has hydrants and fire flow. Because of the type of construction, he said there is little chance of a fire spreading from one property to another because of this structure.

5. The original proceedings were initiated after an enforcement action instigated by the complaint of the applicant’s neighbor to the east. The neighbor was principally bothered by smoke from the sauna. Mr. Terek has advised Staff that he is willing to restrict use of the stove in the structure to confirm its use as an emergency shelter and storage cellar.

6. The complaining neighbor has moved away. The current neighbor and the applicant have executed reciprocal easements to solve any problems concerning their mutual boundary. The new neighbor supports the request for variances.

7. The structure is not visible from the neighboring property, being located behind a retaining wall and concrete fence. The wall and fence form the eastern wall of the subject structure. Retaining walls built on the north and west sides resulted in a three sided walled area approximately 14 by 10 feet in size, which daylighted to the south. The applicant merely added a front wall, roof and door to create the shelter.

8. Counsel for the applicant summed up as follows: “The Terek’s do feel very vulnerable to power outages, trees falling on their house, bank erosion and natural disasters such as earthquake and tsunami. Approving this emergency shelter will not adversely affect the public interest. It is approved by the abutting landowner.”

9. There are other structures on the property seaward of the shelter that also occupy the sideyard setback. The addition of the shelter does not effectively create the condition of non-conformity. The structure has no impact on the shoreline. It has no adverse aesthetic impact.

10. All of the matters identified by the Commissioners have been responded to satisfactorily. The general purposes and intent of the Unified Development Code will not be violated by allowing this structure to remain. Its continuation is not contrary to the public interest.

11. 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 persons and the subject matter of this proceeding.

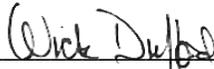
2. The purpose of setbacks is to provide light and air, to facilitate emergency fire fighting access and to serve aesthetic purposes. The structure is essentially buried. Its existence has no impact on the availability of light and air. It has no impact on the appearance of the property. It is not a fire hazard nor does it create a limitation on access for fighting a fire.

3. While within the shoreline zone, it is well back from the shore and situated within a complex of existing structures so that its impact on any shoreline resources, physical or aesthetic, is nil.

4. Accordingly, the Hearing Examiner concludes refusing to allow the shelter to continue in place will not advance any of the purposes for which the setbacks were established. To deny it would be an exercise in mere formalism.

DECISION

The requested variances are approved, subject to the condition that use of the structure be limited to use as an emergency shelter and storage cellar.



Wick Dufford, Hearing Examiner

Date of Action: April 13, 2005

Date Transmitted to Applicant: April 13, 2005

RECONSIDERATION/APPEAL-SHORELINES

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with the Planning and Permit Center 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 the Planning and Permit Center within five (5) days after the date of decision or decision on reconsideration, if applicable.

RECONSIDERATION/APPEAL -ZONING

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Planning and Permit Center within 14 days after the date of the decision, or decision on reconsideration, if applicable.

DEPARTMENT OF ECOLOGY REVIEW

If this decision becomes final at the County level, the Department of Ecology must approve or disapprove it, pursuant to RCW 90.58.140.