

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicants:** Brody and Dana Hansen  
15313 SE 80<sup>th</sup>  
Newcastle, WA 98059

**Agent:** Jackie Chriest/Warren Otteson  
33688 Bamboo Lane  
Mount Vernon, WA 98274

**File Nos:** PL 05-0113, PL05-0114

**Request:** Setback Reduction (from road)  
Shoreline Variance (from lake)

**Location:** 35000 North Shore Drive, Lake Cavanaugh, within a  
portion of Sec. 25, T33N, R6E, W.M.

**Shoreline Designation:** Rural Residential

**Summary of Proposal:** To replace an existing 696 square-foot cabin plus deck  
with a new 1,204 square-foot three story cabin plus deck.  
The new deck will be located one foot landward of the  
Ordinary High Water Mark (OHWM), in contrast to the  
existing deck which extends five feet over the water. The  
new structure is to be eight feet from the property line on  
the road.

**Public Hearing:** After reviewing the report of Planning and Development  
Services, the Hearing Examiner conducted a public hearing  
on October 26, 2005.

**Decision:** The applications is approved, subject to conditions.

## **FINDINGS OF FACT**

1. Brody and Dana Hansen (applicants) seek relief from the standard setbacks from both the shore and the road in relation to a new cabin and deck they wish to build on the Lake Cavanaugh waterfront.

2. The project is located at 35000 North Shore Drive, within a portion of Sec. 25, T33N, R6E, W.M. The property is Lot 2 of Block 5 of Lake Cavanaugh Subdivision 1. The shoreline environment designation is Rural Residential. The parcel number is P66448.

3. The applicants proposed cabin and deck will replace an existing cabin and deck. The existing cabin has a 696 square-foot footprint. The new structure will have three stories and a 1,204 square foot footprint. The new deck will occupy 156 square feet, a reduction in size from the current deck.

4. The new deck will be one foot back from the Ordinary High Water Mark (OHWM) while the existing deck extends some five feet waterward of the OHWM. The rear portion of the new house will be as close as eight feet from the property line adjacent to the road.

5. Under the local Shoreline Master Program (SMP) the standard shore setback in this area is 50 feet. The standard setback from the road is 35 feet.

6. The property in question was platted in the 1940's. It is split in two by North Shore Drive. The front lot (west of the road) is irregularly shaped. The lakeshore dimension is 64.66 feet. The inland (east) boundary is 60 feet. The north side between the OHWM and the road is about 43 feet. The south side is about 60 feet.

7. The land above the OHWM slopes at between two and 15 percent to the northeast and then increases in a steep slope to the road. North Shore Drive lies just above the top of the bank. Thus, the entire buildable portion of the lot is within the 50 foot shore setback.

8. An updated site plan shows a future garage built on the back lot east of the road. This will insure that parking is kept out of the County right of way.

9. The property in question shares its narrow width with other early-platted lots along the lake. The location at which North Shore Drive cuts across this particular property severely limits the depth available for building. The upsloping topography is another constraint. The existing cabin is nonconforming to the current code. The replacement structure will somewhat decrease the non-conformity of the setback on the lake side of the house.

10. Nonconformity with the 50 foot shore setback is the rule, not the exception, along this waterfront where most development occurred prior to the adoption of contemporary shoreline regulations. An analysis of homes within 300 feet of the subject property shows that the average setback from the OHWM is 6.8 feet. In general the neighboring lots have more depth to work with. Yet, on the shore side the applicants' proposed house and deck will be approximately in line with the other buildings in the vicinity. Photographic evidence confirms the compatibility of the proposal with existing development along the shore.

11. A Fish and Wildlife Habitat Site Assessment, dated February 13, 2005, was prepared by Edison Engineering. The report stated that the increased house footprint will reduce the size of the fish and wildlife habitat near the shore, but recommended a Planting Plan to offset the potential negative impacts.

12. The Planting Plan calls for the installation of a number of shrubs and ferns alongside the house within an area 50 feet landward of the OHWM that would be set aside as a Protected Critical Area (PCA). The Assessment concludes that if planted as recommended, the property will provide more habitat value with a new residence than it currently provides.

13. In addition the Assessment recommended the following general site development conditions:

- (a) Two rows of silt fences should be erected downgradient of and within ten feet of any proposed soil disturbance. The silt fence will set clearing limits and minimize transport of sediments toward the lake. Silt fence should be removed following revegetation of the site. One layer of silt fence may be placed across the grassed area confined within the bulkhead.
- (b) Stockpiled soils should be covered with polyethylene sheeting if they are to remain on site more than 24 hours and no soil should be stored on the west side of North Shore Drive.
- (c) No soils or construction or demolition materials should be stored waterward of the silt fence.
- (d) Drainage from roof downspouts should be conducted to the shore through or adjacent to the bulkhead.
- (e) Concrete footings, slabs and all outdoor brickwork should be covered with polyethylene sheeting if rain is likely to occur within 72 hours of pouring the concrete. Concrete spills or runoff may be neutralized by the application of sodium bicarbonate (baking soda) to lower the pH. At least

10 pounds of sodium bicarbonate and a minimum of five gallons of saturated bicarbonate solution should be kept on site during construction.

(f) All construction at the site should be conducted during the dry season (between the end of May and the end of September) to minimize erosion and sedimentation transport brought on by seasonal rains

14. There was no public correspondence about this proposal. At the hearing a neighbor testified that he and others in the neighborhood are happy with this proposed upgrade of the property.

15. Agency comments about the proposal are reflected in conditions of approval.

16. Variances from the shoreline master program for construction landward of the OHWM must meet the following criteria (SMP 10.03(1)):

a. The strict application of the bulk dimensional or performance standards set forth in this Master Program precludes or significantly interferes with with a reasonable use of the property not otherwise prohibited by this Master Program.

b. The hardship described above is specifically related to the property and is the result of unique conditions such are irregular lot shape, size or natural features and the application of this Master Program and, not, for for example, from deed restrictions or the applicant's own actions.

c. The design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to the adjacent properties or the shoreline environment designation.

d. The variance granted does not constitute a grant of special privilege not enjoyed by the other properties in the same area and will be the minimum necessary to afford relief.

e. The public interest will suffer no substantial detrimental effect.

In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

17. The Staff Report analyzes the proposal against these criteria and determines that, as conditioned, the project will be consistent with them. 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.

18. The topography, lot size and lot configuration impact the reasonable development of the subject property. With parking relegated to the east side of the road, the project presents no traffic safety problems. The public health, safety and welfare will be maintained if the setback from the road is reduced to eight feet.

19. 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 subject matter of this proceeding.

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

3. The requests for variations from the setbacks at both the front and rear of the new house have been consolidated in this proceeding pursuant to SCC 14.16.060.

4. As conditioned, the proposed shore setback will be consistent with the criteria for a Shoreline Variance. SMP 10.03.

5. Under the facts, the project meets the criteria for a reduction of the setback between the house and the road. SCC 14.16.810(4).

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

### **CONDITIONS**

1. The project shall be constructed as shown on the revised site plan dated August 9, 2005, except as the same may be modified by these conditions.

2. The applicants must obtain all other required permits and approval, including a Skagit County Building Permit.

3. No parking will be allowed within the County right-of-way.

4. The shore setback shall be at least one foot from the OHWM. The setback between the house and the road shall be at least eight feet.

5. A Protected Critical Area (PCA) shall be established within the 50-foot shore setback area not occupied by the house and deck. A drawing of the PCA shall be recorded with the County Auditor and submitted to Planning and Development Services with the building permit application.

6. The project shall carry out the recommendations of the Fish and Wildlife Assessment, dated February 13, 2005, by Edison Engineering. This includes both the provisions of the Planting Plan (pages 5-7) and the general site development recommendations (BMP's) set forth in Finding 13 of this decision.

7. The applicants shall comply with all relevant County ordinances and State statutes and regulations, including the Shoreline Master Program, the Shoreline Management Act, the Critical Areas Ordinance, and the Drainage Ordinance.

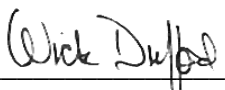
8. The applicants shall provide required information to the Health Department about water and septic usage upon submittal of a building permit application.

9. Construction shall be commenced within two years and completed within five years of the effective date of the shoreline variance permit (WAC 173-27-090).

10. Failure to comply with any conditions of this permit may result in its revocation.

### **DECISION**

The requested Shoreline Variance and the requested setback reduction between the house and road are approved, subject to the conditions set forth above.

  
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Wick Dufford, Hearing Examiner

Date of Action: November 29, 2005

Date Transmitted to Applicants: November 29, 2005

### **RECONSIDERATION/APPEAL**

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

## **DEPARTMENT OF ECOLOGY REVIEW**

If approval of a Shoreline Variance or Shoreline Conditional Use becomes final at the County level, the Department of Ecology must approve or disapprove it, pursuant to RCW 90.58.140.