

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicants: Marcus Rempel
2210 33d Avenue South
Seattle, WA 98144

File No: PL05-0668

Request: Shoreline Variance

Location: North side of Samish Island, near the end of Mercer Road, abutting Samish Bay. The property is located within a portion of Sec. 26, T36N, R2E, W.M.

Shoreline Designation: Rural Residential

Summary of Proposal: To construct a new 20' x 40' cabin and a 4-6' high retaining wall behind it. The cabin will replace an existing structure and be located approximately 25' landward of the Ordinary High Water Mark (OHWM).

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on March 22, 2006. The record was held open until April 25, 2006, to allow family members time to agree on the placement sought for the new structure.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Marcus Rempel, on behalf of the Rempel family, seeks a shoreline variance for the placement of a new waterfront cabin next to Samish Bay. The senior Rempels live on uplands nearby. The subject parcel is owned by four brothers, Marcus, David, Timothy and Nicholas. The cabin will serve as a vacation home for four families.

2. The property is located on the north end of Samish Island near the end of Mercer Road, within a portion of Sec. 26, T36N, R2E, W.M.

3. The property is approximately 120 feet wide and 190 to 153 feet in depth. There is a flat area near the shore that extends about 45 feet landward from an ecology block bulkhead at the OHWM. Further landward, the property slopes up steeply. The bluff on the site is 70-76 feet high. An access easement (driveway) traverses the slope

4. There is an existing structure (approximately 10' x 12') at the toe of the bluff but it is in a state of deterioration and untenable. The site is currently used for camping and recreation. In summer a porta-potty is brought in.

5. The plan is to remove the old cabin and to build a replacement that would measure approximately 20' by 40' (800 square feet). The longer dimension would parallel the shore. A septic system would be installed, involving pumping the effluent uphill to a drainfield near Halloran Road, some 700 feet away.

6. The new cabin would be built near to the bluff with a retaining wall behind it to protect from any landslide risk. The setback of the house from the OHWM would be about 25 feet. There are no other viable building site opportunities on the site.

7. The shoreline bulkhead on the property was re-constructed in 1997. Ted Rempel, the father, testified that it has since shown no signs of weakness. In early review of this proposal the Department of Ecology expressed some doubt about the integrity of the bulkhead, but additional information, including a Hydraulic Project Approval from the Department of Fish and Wildlife, appears to have satisfied these initial concerns.

8. The applicant seeks a variance from the 50-foot setback imposed by the local Shoreline Master Program (SMP). See SMP 7.13(C), Table RD.

9. The pattern in the area is of non-conforming setbacks. Most development in the area took place before the adoption of the Shoreline Master Program (SMP). In the vicinity of the subject property are several developed residential lots where the houses have an average setback of 30 feet from the OWHM.

10. A Geologic Hazard and Fish and Wildlife Assessment was prepared for the project by Edison Engineering. The geologic investigation produced a conclusion that the cabin could safely be built at the toe of the bluff if a retaining wall were installed behind it. The report was reviewed by the County Geologist who concurred if mitigation requirements in the report are followed and if the retaining wall is six feet high.

11. The Fish and Wildlife Assessment was subsequently supplemented by an Addendum which recommended a detailed buffer enhancement plan consisting of plantings to provide a mixed shrub-scrub and forested buffer below the bluff. The purpose of the plan is to compensate for the loss of vegetation removed in connection with building the cabin.

12. The proposal was reviewed by various County Departments. Their concerns can be addressed through conditions of approval.

13. Variances from the Skagit County Shoreline Management Master Program for construction landward of the OHWM must meet the criteria of 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. That 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.

14. The Staff Report analyzes the application in light of the above criteria and concludes that, as conditioned, the project will be consistent with them. The Hearing Examiner concurs and adopts the staff analysis. The Staff Report is by this reference incorporated herein as though fully set forth.

15. The public hearing was properly noticed. There was no public testimony. There was no written public comment.

16. 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. SMP 10.02

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

3. The findings support a conclusion that the project, as conditioned, will meet the variance criteria of the SMP. SMP 10.03(1).

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

CONDITIONS

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

2. The setback from the OHWM shall be no less than 25 feet.

3. A retaining wall shall be constructed behind the cabin to a height of six feet.

4. The applicant must obtain a County Building Permit and receive all other necessary permits and approvals. This includes approvals for the septic system and appropriate easements if any portion of the system is off-site.

5. The fire safety requirements called for by the County Fire Marshal in his email of January 24, 2006, shall be met prior to obtaining a building permit.

6. The applicant shall comply with the drainage recommendations of the Geologic Hazard report dated May 26, 2005, and the conditions specified in the email of John Cooper, dated February 7, 2006.

7. The applicant shall comply with the construction practices listed in the Fish and Wildlife recommendations of May 26, 2005.

8. The applicant shall comply with the Buffer Enhancement Plan of the Fish and Wildlife Assessment Addendum of September 14, 2005. The mitigation area shall be

placed in a Protected Critical Area filed with the County Auditor pursuant to SCC 14.24.170.

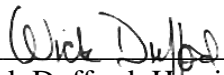
9. The buffer enhancement recommendations shall be implemented within five years of final permit approval.

10. The project shall be commenced with two years of the date of the Department of Ecology's approval and completed within five years thereof or the permit shall become void.

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

DECISION

The requested Shoreline Variance Permit is approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: May 17, 2006

Date of Transmittal to Applicant: May 17, 2006

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.