

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicants:** Marvid and Dagnija Johnson  
P. O. Box 359  
La Conner, WA 98257

**File No:** PL05-0858

**Request:** Shoreline Variance Permit

**Location:** 1526 Channel Drive, on the shoreline of the Swinomish Channel, within a portion of Sec. 24, T34N, R2E, W.M.

**Shoreline Designation:** Rural Residential

**Summary of Proposal:** To build a single family residence with a setback of 26 feet from 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 July 26, 2006

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

## **FINDINGS OF FACT**

1. Marvid and Dagnija Johnson (applicants) seek to build a home within 26 feet of the Ordinary High Water Mark (OHWM) of the Swinomish Slough.

2. The property is located at 1526 Channel Drive, within a portion of Sec. 24, T34N, R2E, W.M. The parcel number is P69449.

3. The subject lot is approximately 12,584 square feet in size. There is an existing bulkhead at the OHWM. The proposed development will occupy about 3,511 square feet or 28% of the site.

4. The norm for houses in this development along the channel is for setbacks that are significantly closer to the OHWM than the standard of 50 feet. This trend was set before modern shoreline regulations were adopted. The average of setbacks of residences in the vicinity of the subject lot is 23.5 feet from the OHWM.

5. The 26 foot setback requested will be to the edge of the patio. The wall of the house will be 35 feet from the OHWM. The patio will be covered with a roof, but the sides will remain open.

6. The lot is just 60 feet deep, making it infeasible to build a house that complies with the standard setback. The lot size, like others nearby, is small.

7. The application was deemed to be complete on January 3, 2006. Proper public notification was given.

8. A Fish and Wildlife Habitat assessment was prepared and found no likely significant adverse impacts. A Protected Critical Area was recommended for the area not covered by structures. Erosion and sedimentation should be controlled during construction through the use of best management practices.

9. A similar setback variance request was approved in 1986 for this property, but the project was not completed within the two years allowed for construction and the permit lapsed.

10. The applicants initially proposed modifications to the bulkhead and placing fill behind it, but this application was withdrawn.

11. Residential development is contemplated within this shoreline designation. The area is, in fact, already heavily developed. Water and sewer facilities and adequate roadway access are available to the site. The proposal will meet all shorelines dimensional requirements other than setback.

12. One letter of concern was received from a neighbor. He also testified at the hearing. He was worried about view blockage but conceded that such will not be a problem so long as the patio is not elevated and no walls are built along its sides. The plans show no such walls.

13. Variances from the Skagit County 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. 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 thoroughly evaluates the proposal in light of these criteria and determines that, as conditioned, the project will be consistent with them. The Hearing Examiner concurs with this evaluation and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

15. The proposed residential setback will be similar to that of adjacent homes. The residence will be compatible with development in the area.

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 standard residential setback for single-family homes in the Rural Residential environment is 50 feet. SMP 7.13(2)(C), Table RD.
3. The proposed 26-foot setback, as conditioned, meets the variance criteria of the Shoreline Master Program. SMP 10.03(1).
4. Any finding herein which may be deemed a conclusion is hereby adopted as such.

## **CONDITIONS**

1. The project shall be constructed as shown in the applications materials, except as the same may be modified by these conditions.
2. The applicants must obtain a County Building Permit and all other necessary permits and approvals.
3. The development shall comply with all applicable state and local regulations, including those for water quality, drainage, and critical areas.
4. The proposed patio shall not be enclosed by walls but shall remain open at the sides in order to preserve the views of neighbors.
5. The applicants shall submit a copy of this decision with the Building Permit application.
6. The shoreline setback area shall be placed into a Protected Critical Area (PCA) complying with the requirements of SCC 14.24.170. The recorded PCA shall accompany the Building Permit application.
7. Construction shall begin within two years of the Department of Ecology's approval and shall be completed within five years thereof or the permit shall become void.
8. 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.

  
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Wick Dufford, Hearing Examiner

Date of Action: August 10, 2006

Date Transmitted to Applicants: August 10, 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.