

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Linda Johnson and Pat Wardell
23592 Cooma Place
Mount Vernon, WA 98274

File No: PL06-0813

Request: Shoreline Substantial Development Permit and
Shoreline Variance

Location: On the shore of Big Lake on property located between
17274 and 17264 Lake View Boulevard, within a portion
of Lot 56 of Cheasty's Big Lake Tracts.

Parcel Nos: P118624 and P64458

Shoreline Designation: Rural Residential and Aquatic

Summary of Proposal: To build a 5.5 foot wide by 65.8 foot dock on property
that is six (6) feet wide at the water's edge. The nearshore
portion of the structure will be on pilings and stationary
(5.5' x 25'). The waterward portion will be floating (5' x
26'). A 20-foot-long gangway will connect the two dock
parts.

Public Hearing: After reviewing the report of Planning and Development
Services, the Hearing Examiner conducted a public
Hearing on May 21, 2008. The record was held open
for further information on other dock permitting actions
on Big Lake. The record closed on June 19, 2008.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Linda Johnson and Edward “Pat” Wardell (applicants) seek a Shoreline Substantial Development Permit and Variance to build a recreational dock on the shore of Big Lake.

2. The proposal will be located on property between 17274 and 17264 Lake View Boulevard. The upland property runs from Lake View Boulevard to the lake. It is a long narrow strip that is two feet in width for most of its length, but widens to six feet near the water’s edge. The applicants each have an undivided interest in the property. They are also owners of the lake bed area beneath the proposed dock.

3. The property is a portion of Lot 56 of Cheasty’s Big Lake Tracts. The shoreline designation is Rural Residential and Aquatic.

4. Neither of the applicants reside on lakefront lots. Applicant Johnson lives across the street about 400 feet north of the site. Applicant Wardell owns a house across the street and less than 100 feet south of the site. This house is apparently used as his domicile.

5. The subject application was filed on September 16, 2006. Notice of Development was published on December 21 and 28, 2006, mailed to surrounding property owners and posted on the site. The application was re-noticed on May 24, and 31, 2007.

6. The proposed dock would be 5.5 feet wide and 65.8 feet long. It would consist of a stationary pier (25’ x 5.5’) on pilings extending from an existing shoreside deck and connected by a gangway to a floating section (26’x5’) at the outer end. The gangway would be 20-foot movable ramp overlapping the float by several feet.

7. The neighbor to the south (Gloria Brandt) has an existing dock at her north property line. If this dock were to remain in place, there would be a separation of only one to two feet between the applicants’ proposed dock and the Brandt dock.

8. The proposed dock, at 65.8 feet in length, would be shorter than the 73.4-foot average length of docks within 300 feet of the property. The Brandt dock is approximately 84 feet long.

9. A Fish and Wildlife Habitat Assessment for the proposal, dated March 9, 2007, was prepared by Edison Engineering. The Assessment describes the project in useful detail, and concludes that it will cause no habitat damage. However, the report identifies safety concerns if the proposed dock is built next to the Brandt dock. The Assessment urges either one joint-use dock at the property line or moving the Brandt dock to a location farther away from the applicants’ proposed dock. General Site

Recommendations for minimizing erosion and sedimentation during construction are also given.

10. A Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) was prepared by County Planning and Development Services (PDS) and issued on August 2, 2007. The MDNS was not appealed. It contained the following conditions:

- (1) The applicant shall comply with all applicable provisions of Title 14.24, the Skagit County Critical Areas Ordinance (CAO).
- (2) The subject proposal shall comply with the Skagit County Shoreline Management Master Program (SCC 14.26) and the Shoreline Management Act RCW 90.58.
- (3) The applicant shall strictly adhere to the project information (site diagram) submitted for this proposal. If the applicant proposes any modification of the subject proposal, he/she shall request at a minimum, a permit revision from this office prior to the start of construction.
- (4) The applicant shall perform the General Site Recommendations as noted in the March 9, 2007, Fish and Wildlife Report prepared by Edison Engineering.

11. The Department of Ecology commented on the MDNS noting, among other things, that the proximity of the Brandt dock and the proposed dock would limit the usefulness of both docks, making a single joint-use dock more practical. Concern was also expressed for the cumulative effect of docks built in similar situations.

12. The dock application was initially opposed by both Gloria Brandt and John Paul Cox, the owner of the property to the north. Brandt's concern was primarily with the proximity of the two docks. Cox asserted that the applicant's do not own the lake bed below their proposed dock.

13. The record includes a judicial decree quieting title to the subject shorelands (lake bed) to the Wardell's in 1997. The Examiner finds no substantial question regarding the ownership of the site.

14. In late 2007, Gloria Brandt entered into an agreement terminating her opposition to the Wardell dock application in exchange for Wardell's promise to move her dock to the middle of her property.

15. Continued opposition to the application has been expressed by Jim Brandt, Gloria Brandt's son, who lives in a non-waterfront property across the street from the site, and by Peter Browning who has lakefront property two lots down.

16. Mr. Brandt is concerned with whether, even if his mother's dock is moved, her (and his own children's) swimming space will be unsafe. He argues that a variance is appropriate only if it doesn't hurt anyone. He also thinks that cars parking on the road in order to use the new dock will pose a problem. He is unsure that the County will grant a permit to move his mother's dock.

17. Applicant Johnson responded that she lives a short walk from the lake and therefore doesn't need parking. She said the Wardells are welcome to park at her house as well.

18. Mr. Browning testified to concerns with the safety of two docks side by side and with the visual effect of dock proliferation. He said he believes approval will mean that too many docks are being built too close together. He also expressed a desire for consistency in the treatment of applications, acknowledging that there are a few docks on similarly narrow access lots on the lake, but stating that others have been rejected. In addition he said that the Wardells have been allowing their renters to use their lake access and that the renters have not behaved like good neighbors.

19. The record was held open for the County to research its records to determine if there has been differential treatment for lot holders seeking variances for docks on the lake. The Shoreline Administrator reported that there is nothing in the files back to 1994 showing denial of shoreline variances on narrow lots.

20. Considerable information was presented on the history regarding a dock at or near the applicants' site, some of it conflicting. It is clear, however, that there has been a dock in the vicinity for many years and the existence of old pilings would appear to indicate that a dock once occupied the very spot where the new dock is sought.

21. Whatever the history, the major problem presented now is with the possibility that two docks might end up virtually side by side. This would limit the use of both docks. It would also present safety issues. As the Fish and Wildlife Assessment puts it:

The adjacent docks will present safety hazards to users. The narrow slot between the docks will change in width with wind shifts and gusts, and wave action will rock and move the two deck surfaces independent of one another. As well as moving slightly closer to and further from each other, the docks will change in their vertical orientation to one another as the docks rock with oncoming waves.

The Assessment concludes: "A new dock can be attached to piles such that the two docks will never touch, but neither can they be sufficiently far apart that there will be no risk of injury to body parts caught between the docks."

22. The local Shoreline Master Program (SMP) requires that all docks be located and constructed so as not to be a hazard to public health, safety and navigation. SMP 7.10((B)(13). Unless the problem of two immediately-adjacent docks can be resolved, the applicants' proposal cannot meet this standard.

23. The obvious and best safety solution is for the applicants and Mrs. Brandt to get together on sharing one joint-use dock. Joint-docks, in fact, are an SMP preference.

24. The alternative solution to the safety issue is to move the Brandt dock. Assuming that this can be permitted and is done, the Hearing Examiner is persuaded that the applicants' proposed dock will not present a significant safety problem.

25. The SMP establishes a sideyard setback of eight feet from side property lines for residential docks. SMP 7.10(2)(B)(4)(b). It is from this standard that a Shoreline Variance is sought. The lot is simply too narrow to allow a dock that meets the setback standard.

26. The criteria for approval of Shoreline Variances for development waterward of the Ordinary High Water Mark are set forth at SMP 10.03(2), as follows:

1. That the strict application of the bulk, dimensional or performance standards set forth in this Master Program precludes or a reasonable use of the property not otherwise prohibited by the master program.
2. That the hardship described above is specifically related to the property and is the result of unique conditions such as irregular lot shape, size, or natural features, and the application of this Master Program, and not, for example, from deed restrictions or the applicant's own actions.
3. That the design of the project is compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment.
4. That the requested variance does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.
5. That the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance.
6. That the public interest will suffer no substantial detrimental effect.

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

27. The Staff Report analyzes the application against these criteria and finds that it will comply with them. Except with respect to allowing docks side-by-side, the Examiner concurs with the Staff analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth. The Examiner finds that allowing

two docks 1-2 feet apart would not be in the public interest. However, the public interest (health, safety and welfare) would be preserved by separation of the docks as contemplated in the conditions below.

28. The criteria for approval of a Shoreline Substantial Development Permit (SMP 9.02) require that the development be:

1. Consistent with the Master Program
2. Consistent with the Act's policies, set forth in RCW 90.58.020
3. Consistent with rules adopted by the Department of Ecology.

29. Under the SMP, docks are a permitted use in the Rural Residential designation subject to the General Regulations. SMP 7.10(2)(A)(2). Indeed, because they provide access to navigation, docks are a preferred use under the Shoreline Management Act policy. RCW 90.58.020.

30. The General Regulations (SMP 7.10(B)) allow no more than one private noncommercial dock per lot for residential or recreational purposes. If there are existing docks within 300 feet of side property lines, a new dock shall be no longer than the average length of the existing docks. Various other dimensional and design requirements are established. If safety concerns are resolved and the Variance is granted, the proposed dock, as conditioned, will meet the criteria for Substantial Development Permit approval

31. 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 requirements of SEPA have been met.

3. If the joint-use alternative is pursued, the Variance will not be needed. See SMP 7.10(B)(4)(b). If the joint-use alternative is not pursued, the proposed dock, as conditioned, will be consistent with the applicable criteria for approval of a Shoreline Variance. SMP 10.03(2).

4. The proposed dock is for recreational use but is not associated with a single family residence on the property. It is not within a permit exemption and constitutes a "substantial development" requiring a Substantial Development Permit. See RCW 90.58.030(3), RCW 9.58.140(2).

5. The problem of user behavior, as an aspect of the compatibility of a use with neighboring uses, can be addressed through conditions of approval.

6. With the granting of the Variance, the proposed dock, as conditioned, will be consistent with the criteria for Substantial Development Permit approval. SMP 0.02.

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

CONDITIONS

Joint-Use Alternative - If the applicants and Mrs. Brandt agree to pursue a joint-use dock, the following conditions shall be met in addition to the General Conditions.

1. The applicants and Mrs. Brandt shall enter into a joint-use agreement detailing the sharing of expenses, maintenance, and insurance, and setting forth agreed operational conditions. The agreement shall be submitted to PDS for review and approval.
2. The parties to the joint-use agreement shall execute any easements needed in order to insure access to the dock.
3. Arrangements shall be made for removal of the Brandt dock and any needed approvals for this action shall be obtained.
4. The Brandt dock shall be removed prior to construction of the new joint-use dock.
5. If the new dock's location is to be adjusted from that initially proposed, or if modifications to the structure are proposed, the application shall be amended to reflect these changes and the amendment shall be submitted to PDS for review and approval.

Relocation of Brandt Dock Alternative – If the applicants do not choose to pursue a joint-use dock, they shall accomplish the following prior to construction of their dock:

1. All necessary permits for the relocation of the Brandt dock shall be obtained.
2. The Brandt dock shall be relocated to a position as far from the applicants' dock as possible consistent with side setback requirements.

General Conditions

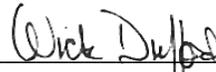
1. The project shall be constructed as described in the approved plans as submitted or as hereafter amended, except as the same may be modified by these conditions.
2. Prior to constructions the applicant shall obtain all other necessary approvals.

3. The applicants shall comply with all conditions of the MDNS issued August 2, 2007. (See Finding 11).
4. The applicants shall comply with all applicable State and local regulations, including in particular the provisions of the local SMP.
5. If the applicants proposes any modifications to the proposal, they shall submit an amended application and receive approval thereof prior to the commencement of construction.
6. The applicants shall develop a set of rules of conduct, aimed at preventing disruptive behavior and encouraging dock use that is compatible with the residential neighborhood setting. The rules shall be submitted to PDS for review and approval. Upon approval, the rules shall be posted at the landward end of the dock.
7. The rules shall include at least the following:
 - a. Limitation of use of the dock to the applicants, their immediate families and invited guests;
 - b. Prohibition of use of the dock by guests after dark, except when accompanied by an applicant or family member;
 - c. Prohibition of amplified sound and other noise that is audible at neighboring residences after 9:00 p.m.;
 - d. Clear notice that trespass on neighboring properties is not allowed;
 - e. A request that off-street parking be sought and used.
 - f. A request that the dock and access path be maintained in a clean and neat condition.
8. Commercial use of the dock is prohibited. The use of the dock shall not be included as an inducement to the rental of residential properties.
9. No structures shall be built or maintained on the surface of the dock, with the exception storage boxes for recreational/boating gear and emergency equipment.
10. The project shall commence within two years of receipt of all approvals necessary to commence construction and be completed within five years thereof or the permits shall become void.
11. Failure to comply with any permit condition may result in permit revocation.

DECISION

The requested Shoreline Substantial Development Permit and Shoreline Variance (PL06-0813) are approved, subject to the conditions set forth above.

DONE this 30th day of June, 2008.



Wick Dufford, Hearing Examiner

Date Transmitted to Applicant: June 30, 2008

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.