

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Thomas Bishop  
3318 198<sup>th</sup> Place SE  
Bothell, WA 98012

**File No:** PL07-0314

**Request:** Shoreline Variance

**Location:** 33176 West Shore Drive on the shore of Lake Cavanaugh,  
within SW1/4 Sec. 22, T33N, R6E, W.M.

**Parcel No:** P66893

**Shoreline Designation:** Rural Residential

**Summary of Proposal:** To demolish an existing cabin and remove a travel trailer  
and to construct a new residence and attached garage.  
The new deck will be set back 26 feet landward from the  
Ordinary High Water Mark.

**Public Hearing:** After reviewing the report of Planning and Development  
Services, the Hearing Examiner conducted a public hearing  
on November 28, 2007.

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

## **FINDINGS OF FACT**

1. Thomas Bishop (applicant) seeks a Shoreline Variance to build a new residence within the shore setback on Lake Cavanaugh.
2. The property is in the Rural Residential environment under the local Shoreline Master Program (SMP). The setback established by the SMP is 50 feet landward from the Ordinary High Water Mark (OHWM). The applicant wants to build so that the deck in front of his new house is 26 feet landward of the OHWM. The foundation of the residence will be 36 feet from the OHWM.
3. The project involves the demolition of a 363 square-foot cabin and the removal of a 25-foot long travel trailer. The existing cabin is approximately 14 feet from the OHWM. The project will, thus, increase the shore setback on the property.
4. The site is at 33176 West Shore Drive within SW1/4, Sec. 22, T33N, R6E, W.M. The Parcel Number is P66893. Access is via a gravel driveway from West Shore Drive. The driveway leads to a parking area in front of the existing cabin. The entire site is landscaped with lawn and native plant species.
5. The proposed new residence will have a foot print of about 1,224 square feet with a 644 square-foot garage attached at the rear (upland). There will be a 360 square-foot deck on the lake side.
6. The lot slopes upwards toward from the lake. Construction of the new home and garage will require a modest amount of excavation. A retaining wall will be built behind the house. The home will have a daylight basement.
7. The overall project will result in 26.6% site coverage, lower than the 30% site coverage limit set forth in the SMP. Relevant side setback and height restrictions will be met. The dimensions and appearance of the new home will consistent with neighboring residential development.
8. Uphill of the new retaining wall, the space between the garage and the road is occupied by the existing drain field. This drain field will be retained. The driveway will be converted to two concrete strips, but kept in the same location. Preservation of these existing features and the topography of the site, prevent a greater shore setback than planned. The new house and deck have been pushed back as far as is realistic on this site.
9. The shore setback on the parcel to the west is presently 5.1 feet from the OHWM. On the parcel to the east, the shore setback is 11.5 feet. The average shore setback for the area is 30.4 feet based on residential development within 300 feet of each side of the subject parcel. The instant proposal, with a 26-foot setback to the deck and 36-foot setback to the house, is essentially consistent with the placement of surrounding

structures. Indeed, one nearby residence was granted a variance for a 26 foot setback in 1999.

10. A Fish and Wildlife Assessment, prepared by Edison Engineers, concluded that the slight decrease fish and wildlife habitat functions and values caused by the project can be mitigated by plantings. Moreover, the project will result in reduced effects over the most waterward portion of the buffer due to removal of the old cabin. The lakefront buffer that remains after construction can be enhanced by following a planting plan which diversifies vegetation and increases biomass

11. A Critical Area Site Plan was prepared, showing a Protected Critical Area in the regulatory 50-foot shore setback area.

12. The existing septic system and drainfield were approved for a three bedroom home. The proposed new home will have two bedrooms. Possible encroachment of the new garage on the existing septic tank will need to be addressed during building permit review.

13. Letters of support were written by two neighboring couples. One neighbor testified in favor of the project at the hearing. There was no adverse correspondence and no adverse testimony.

14. Variances from the SMP 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 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 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.
- 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.

15. The Staff Report analyzes this request in light of the above criteria and determines that, as conditioned, the development 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.

16. The Examiner takes notice of the many narrow and steep lots on Lake Cavanaugh, a situation which has created a development pattern where the 50-foot setback is more the exception than the rule. Proposals such as this which increase the unoccupied shore area are an improvement over the practices of the past.

17. The proposed residence and garage are a reasonable use of the property consistent with the SMP's environment designation. To deny the proposal would significantly interfere with this use. The incursion into the setback is necessitated by the topography of the lot and the necessary maintenance of the existing on-site sewage disposal system. Because the development will be within the capacity of the existing system, no cumulative adverse water quality impacts are anticipated.

18. 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 request is exempt from the procedural requirements of the State Environmental Policy Act (SEPA). WAC 197-11-800(6).

3. As conditioned, the proposal will be consistent with the criteria for approval of a Shoreline Variance. SMP 10.03(1).

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

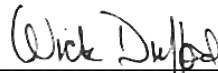
### **CONDITIONS**

1. The project shall be constructed as described in the application materials and Staff Report, except as the same may be modified by these conditions.

2. The applicant shall obtain a building permit and receive any other necessary approvals. A copy of this decision shall be submitted with the building permit application.
3. Any issues concerning encroachment on the septic tank shall be resolved before building permit approval.
4. If the applicant proposes any modifications to the proposal, he shall apply for a new permit or a permit revision prior to commencing construction.
5. The applicant shall comply with the recommendations of the Fish and Wildlife Assessment prepared by Edison Engineering, dated April 27, 2007. In particular the planting plan shall be carried out.
6. The Protected Critical Area (PCA), as mapped, shall be recorded with the County Auditor prior to building permit approval.
7. The applicant shall comply with all relevant State and County regulations, including, but not limited to, State Water Quality Criteria for Surface Water and for Groundwater, temporary erosion/sedimentation measures of the County Drainage Code, Maximum Environmental Noise Levels, and Northwest Clear Air Agency requirements.
8. The project shall be commence within two years of the date of final approval and finished with five years thereof or the variance shall become void.
9. Failure to comply with any of these conditions may result in permit revocation.

### **DECISION**

The requested Shoreline Variance is approved, subject to the conditions set forth above. The development shall be set back at least 26 feet from the OHWM.



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Wick Dufford, Hearing Examiner

Date of Action: December 5, 2007

Date Transmitted to Applicant: December 5, 2007

## **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.