

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Peter S. Nager  
19724 Jewell Road  
Bothell, WA 98012

**File No:** PL07-0315

**Request:** Shoreline Variance

**Location:** Shore of Lake Cavanaugh at 33200 West Shore Drive,  
within SW1/4 Sec.22, T33N. R6E, W.M.

**Parcel Nos:** P66897, P66898

**Shoreline Designation:** Rural Residential

**Summary of Proposal:** To demolish an existing cabin and boathouse and to  
construct a new residence and garage. The house will  
be setback 35 feet 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 14, 2007.

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

## **FINDINGS OF FACT**

1. Peter S. Nager (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 Management Program (SMP). The established setback under 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 35 feet landward of the OHWM. The foundation of the residence will be 43 from the OHWM.

3. The project involves the removal of a 576-square-foot cabin with deck. The existing cabin is 20 feet from the OHWM. Its deck is about 10 feet from the OHWM. An existing boathouse located on the OHWM will also be removed. Thus, the proposal will reduce the developed footprint within the shoreline buffer.

4. The site is at 33200 West Shore Drive, within the SW1/4 Sec. 22, T31N, R6E, W.M. The site is flat near the water but slopes up to the road in the rear. The site is accessed from West Shore Drive via a narrow and steep gravel driveway. The driveway is shared with the neighbor to the west. Slightly uphill of the house is a leveled area used for parking. This area will be the site of the new garage. The parking area is more than 50 feet from the OHWM.

5. The proposed new home will occupy 1,008 square feet. The new detached garage will be 690 square feet. The residential deck will take up about 300 square feet. The overall project will result in 20.3 % site coverage, substantially lower than the 30% coverage limit set forth in the SMP. Relevant side-setback and height restrictions will be met.

6. Construction of the new home with the increased setback will require a modest amount of excavation. A new four foot high retaining wall will be built on landward side of the residence.

7. The construction plan will accommodate the new home without requiring reconstruction of the driveway. Any change in the current configuration would make access problematic. Moreover, preserving the current driveway will also mean the preservation of several large mature fir trees.

8. The Examiner takes notice of the many narrow and steep lots on Lake Cavanaugh which have created a development pattern where the 50 foot setback is more the exception than the rule. Existing homes within 300 feet of the applicant's lot average 26.1 feet back from the OHWM. The proposal, then, will result in a setback greater than the neighborhood average.

9. The existing drainfield will be unaffected by the project and is adequate to accommodate the proposed development. Encroachment on the septic tank will need to be addressed during building permit review. However, no cumulative adverse water quality impacts are anticipated.

10. A Fish and Wildlife Assessment, prepared by Edison Engineering, concluded that the habitat adjacent to the lake may be slightly improved by the project due to the reduction in the developed footprint there. The report recommended that shrub-scrub or significant herbaceous vegetation removed for the new residence be transplanted to the area between the house and shore. A number of recommendations were made to control erosion and sedimentation during the construction phase. Based on the report, the Staff concluded that the project will comply with Critical Areas regulations.

11. A Protected Critical Area (PCA) will be established within the shore setback area not affected by development.

12. There were no written or oral objections to the proposal. One neighboring couple wrote a letter in support.

13. Variances from the SMP for construction landward of the OHWM must meet the following criteria, under 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 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.

14. 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.

15. 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 unique topography of the lot. The project will be compatible with other residential development that has occurred and is occurring on similar properties around Lake Cavanaugh.

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.

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 shown on the submitted plans and as otherwise described in the application materials, except as the same may be modified by these conditions.

2. The applicants shall obtain a building permit and receive any other necessary approvals.

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 29, 2007.

6. The Protected Critical Area (PCA) shall be accurately mapped and shall be recorded with the County Auditor prior to building permit approval.

7. The applicant shall comply will all relevant State and County regulations, including, but not limited to, State Water Quality Criteria for Surface Water and for Ground Water, temporary erosion/sedimentation measures of the County Drainage Code, Maximum Environmental Noise Levels, and Northwest Clean Air Agency requirements.

8. Aesthetic impacts shall be minimized to the extent practicable.

9. A copy of this decision shall be submitted with the building permit application.

10. The project shall be commenced within two years of the date of final approval and finished within five years thereof or the variance shall become void.

11. Failure to comply with any of these conditions may result in permit revocation.

### **DECISION**

The request Shoreline Variance is approved, subject to the conditions set forth above. The development shall be set back at least 35 feet from the OHWM.



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Wick Dufford, Hearing Examiner

Date of Action: November 29, 2007

Date Transmitted to Applicant: November 29, 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 becomes final at the County level, the Department of Ecology must approve or disapprove it, pursuant to RCW 90.58.140.