

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSION AND DECISION**

**Applicant:** Cheryl Bishop  
16559 Country Club Drive  
Burlington, WA 98233

**Agent:** Oscar Graham  
Graham-Bunting Associates  
3643 Legg Road  
Bow, WA 98232

**File No:** PL07-0806

**Request:** Shoreline Variance

**Location:** 11481 Blue Heron Road at the northeast corner of Samish Island on the shore of Samish Bay, within the SW1/4 Sec. 25, T36N, R2E, W.M.

**Parcel No:** P47042

**Shoreline Designation:** Rural Residential

**Summary of Proposal:** To demolish a 1,132 square-foot beach cabin and replace it with a contemporary two-story residence with a footprint of 1,258 square feet. The residence will be set back 17.5 feet from the Ordinary High Water Mark (OHWM). Sideyards will be maintained at eight feet. The height will be 28 feet from pre-existing grade to the gable ridge. Site coverage will be reduced from 39% to 35%.

**Public Hearing:** After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on April 23, 2008.

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

## **FINDINGS OF FACT**

1. Cheryl Bishop (applicant) seeks to replace an existing beach cabin with a new resident on the shore of Samish Bay, set back the same distance from the Ordinary High Water Mark (OHWM).

2. The site is on the beach and the northeast corner of Samish Island. The address is 11481 Blue Heron Road. The parcel number is P47042. The property is within the SW1/4 Sec. 25, T36N, R2E, W.M.

3. The proposal is to demolish the 1,132 square-foot cabin and build a new two-story residence with a footprint of about 1,258 square feet. The proposed setback is measured at 17.5 feet from the OHWM. The residence and appurtenant development will result in site coverage of 35%.

4. The shore setback in the area, as established by the local Shoreline Master Program (SMP) is 50 feet. The standard for lot coverage is a maximum of 30%. Therefore, variances are sought from these two requirements in order to pursue the project.

5. Side yard setbacks will be maintained at eight feet from the east and west property lines. The proposed height will be 28 feet from the pre-existing grade to the peak of the gable ridge. Both of these dimensional proposals will be within SMP standards.

6. The OHWM was identified here in accordance with the statutory definition of Mean Higher High Tide (MHHT), located at the toe of the existing concrete and rock bulkhead. The bulkhead is located somewhat landward of the MHHT, in contrast to bulkheads to the east which are located waterward of MHHT. Nonetheless, the applicant's bulkhead will not be extended.

7. This strip of waterfront is densely developed with nonconforming shoreside homes, originally mainly seasonal cabins. Over the past 30 years the community has been in transition to larger homes often used as full-time residences. Aerial photography shows that all of the homes in the vicinity are similarly situated within the regulatory shore setback. The proposed replacement home will be in line with adjacent residences to the east and west. The applicant's bulkhead is approximately eight feet landward of the adjacent bulkhead to the east, but will not be extended.

8. Existing homes in the area share a sort of community patio consisting of a concrete pad on the seaward side that occupies the space between the dwellings and the top of their bulkheads. The pad in front of the subject replacement residence will be retained, but there is a raised wooden deck over the pad extending from the present cabin

that will be removed. The net effect will be to open up the shore area and improve the appearance of the site.

9. The lots in this area are narrow and confined between the shore and Blue Heron Road. The subject lot is accessed via a grass driveway leading to a parking area on the south side of the existing and proposed cabins. The remainder of the available lot area on the landward side is occupied by the on-site sewage disposal system. Practically there is little ability to place the house further from water.

10. The size of the parcel makes it impracticable to adhere to the site coverage limit. However, the proposal will result in a reduction of site coverage from 39% to 35%. Aerial photographs indicate that the neighboring lots likely also exceed the site coverage standard.

11. A Fish and Wildlife Site Assessment, dated November 9, 2007, was prepared by Graham-Bunting Associates. The report recommends retaining the bulkhead at its present location. The proposal will result in no increase in habitat impacts.

12. The site is within a designated flood hazard area. The replacement structure must be designed and built to withstand flooding, storm tides and extraordinary waves.

13. 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 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 and the applicant's narrative analysis the proposal in light of these criteria and conclude that, as conditioned, the project 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. 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(3).

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, 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. The applicant shall adhere to the recommendations of the Fish and Wildlife Site Assessment, dated November 9, 2007.

4. The applicant shall comply with all applicable state and local regulations, including but not limited to, Chapters 173-201A and 173-200WAC (surface and ground water quality), Chapter 173-60 WAC (maximum environmental noise levels), Chapter 14.23 SCC (drainage) and Northwest Clean Air Agency requirements.

5. If the applicant proposes any modification to the proposal, she shall apply for a new permit or permit revision prior to commencing construction.

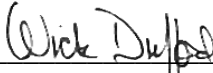
6. The project shall commence within two years of the date of final approval and be completed within five years thereof or the variance shall become void.

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

### **DECISION**

The requested Shoreline Variance (PL07-0806) for shore setback and site coverage is approved, subject to the conditions set forth above.

DONE this 7<sup>th</sup> day of May, 2008.

  
\_\_\_\_\_  
Wick Dufford, Hearing Examiner

Date Transmitted to Applicant: May 7, 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.